

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, : CR-01-56
:
v. : U.S. Courthouse
:
JOHN DeROSS and : Brooklyn, New York
:
ANTHONY SAINATO, :
Defendants. : TRANSCRIPT OF TRIAL
:
: January 30, 2002
-----X : 9 o'clock a.m.

BEFORE:

HONORABLE REENA RAGGI, U.S.D.J.
and a Jury.

APPEARANCES:

For the Government: ALAN VINEGRAD,
United States Attorney
One Pierrepont Plaza
Brooklyn, New York 11201
BY: AMY WALSH,
NOAH PERLMAN,
DAN DORSKY,
Assistant U.S. Attorneys

For the Defendants

John DeRoss - PAUL LeMOLE, ESQ.
Anthony Sainato - DALE L. SMITH, ESQ.

Court Reporter: Mickey Brymer, RPR
Official Court Reporter
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201
(718) 260-2439

SUMMATION - SMITH

1 THE COURT: Are we ready to proceed?

2 MR. LEMOLE: Yes, Judge.

3 (The jury enters the courtroom.)

4 THE COURT: Please be seated, ladies and gentlemen.

5 Mr. Smith, we will hear from you now.

6 MR. SMITH: Thank you, your Honor. Good day.

7 A JUROR: Good day.

8 MR. SMITH: I've written down some of the things that
9 I want to talk about and what I think the evidence has shown
10 in the case and part of why I wrote it down is because I don't
11 want to forget it. You know, this is a very, very serious
12 federal crime -- crimes that my client Anthony Sainato is
13 being charged with, and certainly the way Judge Raggi has
14 conducted these proceedings, you can't come away with anything
15 but the seriousness of the proceedings and, really, how you
16 should, you know, take your duty as jurors in this case. And
17 one of the things that you had to do early on was to take an
18 oath and the oath involved your commitment to try the case
19 truly and fairly, without bias or prejudice for either side,
20 and what I'm doing now is to ask you to adhere to that oath,
21 to give this man, as you are required, the presumption of
22 innocence, because that presumption, it started at the
23 beginning of the trial, it still operates now and it follows
24 you into the room as you deliberate unless and until you come
25 to the conclusion that the government has proven each and

SUMMATION - SMITH

1 every element of each and every charge beyond a reasonable
2 doubt.

3 I'm not going to define for you what beyond a
4 reasonable doubt is, but to be sure it is a heavy burden of
5 proof. Judge Raggi will tell you what it means. And believe
6 me, as I sat in here the past week, week and a half, the
7 evidence has failed miserably, miserably to prove beyond a
8 reasonable doubt that Anthony Sainato committed any, any of
9 the crimes that he has been charged with.

10 I want to talk to you about the evidence and what I
11 think it has shown. He is charged with racketeering,
12 racketeering conspiracy, embezzlement, mail fraud and
13 extortion, and significant to all these charges, according to
14 the government, is that they had to do with the Colombo crime
15 family, organized crime. That's what they said. They are
16 accusing this man of being either a member, an associate, a
17 participant, a person employed by. They're saying he
18 committed crimes in the name of the Colombo crime family.
19 That's what these three individuals say. That's not what any
20 of the witnesses said. That is not what any of the documents
21 that were brought before you said and the documents do talk.
22 We'll talk about that later on, but from their mouths he's a
23 gangster, he is employed by, but what they say is not
24 evidence, none of it.

25 They can sit there, and they are very intelligent

SUMMATION - SMITH

1 people -- you know to get a job in the U.S. Attorney's Office
2 you have to be intelligent, and they're intelligent and they
3 can sit in their office and theorize and construct and come up
4 with creative arguments for why this man is a member and an
5 associate and a participant in the crimes of the Colombo crime
6 family, but they don't have the evidence to support it. Let's
7 talk about that evidence.

8 Now, an enterprise, like a corporation or an
9 organization, even though it is an entity it can only operate
10 through human beings. It can't operate any other way.
11 According to them it is a secret society, but they say they
12 have people with an inside track. That's what they say.

13 Michael D'Urso, let's talk about him. They say that
14 Michael D'Urso is such a person with an inside track, so let's
15 see what Michael D'Urso has to say about Anthony Sainato being
16 a member of, an associate of, a participant in, a person
17 employed by or in any way involved with the Colombo crime
18 family. What does Michael D'Urso say?

19 He candidly admitted to all of his crimes. He said I
20 was an associate of the Genovese family -- that's one of the
21 five crime families in New York -- and we commit crimes in the
22 name of our organized crime entities and he said not only did
23 I commit crimes for the Genovese crime family, but I also
24 committed crimes with members of the Colombo crime family. He
25 said that his education in organized crime began as early as

SUMMATION - SMITH

1 when he was 14 or 15 years old in a restaurant called
2 Ruggerio's and his cousin, I think his name is Tino Lombardi,
3 gave him an education and his cousin told him who everyone
4 is. People like John Gotti would come in. My cousin would
5 say, Oh, yeah, he's with the Gambinos. This other person
6 would come in and, yes, he's with the Bonannos and he's with
7 this. And we have an insider called by the government, a
8 cooperating witness who said I know about organized crime, I
9 met people involved in organized crime, they have admitted to
10 me their involvement in organized crime, I have committed
11 crimes with them, I have been to social clubs and I have been
12 to restaurants.

13 Do you know Anthony Sainato? No.

14 Ever heard of Anthony Sainato? No.

15 Ever heard anything about any crime that he ever
16 committed, about his membership in any organization, his
17 membership with the Colombo crime family, his association with
18 the Colombo crime family, his employment with the Colombo
19 crime family? Hasn't, any of it.

20 So, here you have an insider who for a very long
21 period of time is committing crimes, going to social clubs,
22 attending meetings, meeting people, committing crimes with
23 them. Never heard of him.

24 But, wait, there is more. Why? Because D'Urso,
25 their witness, a cooperating witness over a three-year period,

SUMMATION - SMITH

1 is involved in criminal activities with the Colombo crime
2 family. According to them he began to cooperate and met on
3 numerous occasions over a three-year period with Frank
4 Campanella and he met with William Cutolo. You heard Cutolo
5 is a high ranking member of the Colombo crime family. Yes,
6 D'Urso said I taped these conversations about criminal
7 activity. He talked about a guy named Peter Lowe, he talked
8 about Georgie and these guys being associates and their being
9 involved. He talked to Frank Campanella and Frank Campanella
10 spoke to him freely about his own involvement in criminal
11 activity. Frank Campanella spoke to him freely about William
12 Cutolo's involvement in Colombo crime family criminal activity
13 and not once did Frank Campanella say to him, Oh, yeah, by the
14 way, this guy over here is with us. Did you hear that, he's
15 with us?

16 Michael D'Urso is taping Frank Campanella. Frank
17 Campanella is at his place of employment. He's meeting with
18 Frank Campanella over a three-year period and not once does
19 Frank Campanella say to Michael D'Urso excuse me, here is my
20 associate or here's Mr. Cutolo's associate, or here is some
21 other Colombo crime family associate, or here is some member
22 of the Colombo crime family, give him his respect. Did you
23 hear that? And the reason you didn't hear it is because this
24 man is not a member of the Colombo crime family. This man is
25 not an associate of the Colombo crime family. This man is not

SUMMATION - SMITH

1 a person employed by the Colombo crime family. He has got
2 nothing to do with the Colombo crime family.

3 It is not just Michael D'Urso; it is Mr. Molinaro.
4 He also committed crimes in the name of the Colombo crime
5 family. He talked about people going to the social club that
6 belonged to William Cutolo. He talked about people he
7 collected loan shark payments for. Did you hear him say that
8 he ever met Anthony Sainato? Did you hear him say that he
9 ever even heard of Anthony Sainato? The only statements you
10 have heard about his membership and association and employment
11 by the Colombo crime family came from the mouths of these
12 three people, the prosecutors.

13 The Judge will tell you that what they have to say is
14 not evidence. Mr. Perlman got up in his opening statement and
15 said he's a gangster. Not a single witness, not one told you
16 that they know him as a gangster. I thought the evidence was
17 that he worked inside Gallo helping with the dispatchers and
18 he also worked with Suffolk Alpa assisting Gallo in delivering
19 their product.

20 In order for you to find him guilty as the government
21 submits, you have to find that his employment by the Colombo
22 crime family was somehow through, I think, Mr. Cutolo, Sr. and
23 maybe Frank Campanella. That's the government's theory.

24 According to them they have a series of documents,
25 they said, Government's Exhibit 1.12, which is a May 1999

SUMMATION - SMITH

1 ledger sheet with figures. They haven't quite explained what
2 the figures represent, but it is significant, they say,
3 because it was recovered in the home of someone who is
4 supposed to be the boss of the Colombo crime family. They say
5 this is evidence of his association and employment, but I'll
6 talk about that.

7 Then there's some other document. I believe a series
8 of ledgers found in Government's Exhibit 7.6. Why are these
9 significant? Well, they're significant for a couple of
10 reasons, but the main reason is that according to the evidence
11 in the case these documents came from William Cutolo, Jr. It
12 was handed over to a federal agent, an FBI agent, and you take
13 that little piece of testimony and if you take the testimony
14 of Vito Salerno, which I submit was very credible, and you put
15 those two together, you will recall that Vito Salerno said
16 that at a given time he paid loan shark money to William
17 Cutolo, Sr. and then there came a time that he also paid money
18 to William Cutolo Jr.

19 So, members of the jury, what that means is that
20 William Cutolo, Jr. is aware of and he was a participant in
21 his father's crimes.

22 We also know from the testimony that he's a
23 cooperating witness. You heard that he made tape recordings
24 of various individuals supervised by the FBI, a cooperating
25 witness. Now, you didn't hear him testify. Well, certainly

SUMMATION - SMITH

1 wouldn't you want to know, if he's involved in his father's
2 crimes and this man is associated with him, wouldn't you want
3 to know if the FBI said to him, Okay, Junior, you have these
4 ledgers, we know this guy is with your dad, why don't you
5 approach him with the tape running and talk to him about his
6 involvement in criminal activity and show him these documents
7 and get him to talk about these documents and get him to talk
8 about what these documents represent? Wouldn't you want to
9 know that? Wouldn't you want to have heard from William
10 Cutolo, Jr. testifying under oath that he's aware of his
11 father's criminal activities and he's aware of his father's
12 associates and here is one? Wouldn't you want to hear that?
13 But you didn't hear it. All you heard were some tapes he made
14 and his statements aren't even being offered for the truth.

15 He is a cooperating witness and you don't hear from
16 him. He's a member or an associate of the Colombo crime
17 family in a position to know all his father's crimes and who
18 he committed them with and they don't call him.

19 I submit the reason that they don't call him is
20 because if he were called he wouldn't support their theory.
21 He would tell you that Anthony Sainato is not a participant in
22 the crimes of the Colombo crime family, but he would tell you
23 that Anthony Sainato was a loan shark and an extortion victim
24 of his dad. That's what he would tell you. Not a
25 participant, not an associate, not a member, not a person

SUMMATION - SMITH

1 employed by, a victim. He probably would tell you like he
2 collected from Vito Salerno loan shark proceeds, he would
3 probably tell you he collected them from my client, Anthony
4 Sainato, as well. He would probably tell you he collected
5 loan shark -- not loan shark, extortion payments that his
6 father was extorting, and he probably would tell you it had
7 nothing to do with Local 400 or any union; that his father as
8 a high ranking member of the Colombo crime family doesn't need
9 a union to extort people. All he has to do is threaten them
10 with death. All he has to do is let them know who he is, a
11 high ranking member of the Colombo crime family, capable,
12 capable of bringing bodily harm and killing, if necessary.
13 That man would kill at his behest and he needs nothing more.
14 He doesn't need Local 400.

15 So, when you see the documents -- in fact, where is
16 it? You heard from William Cutolo, Sr. He testified through
17 this document, 7.5. William Cutolo testified. You will
18 recall Vito Salerno saying that he recognized the handwriting
19 of Cutolo, Sr.

20 You will recall that Salerno, a loan shark victim,
21 his records were prepared in the same way. These entries,
22 weekly entries, April 10th, April 17th, April 24th, May 1st,
23 \$500, \$500, \$500 on an original loan of 40,000 which
24 translates into what points per week, vig, juice, whatever you
25 want to call it? I think the witnesses referred to it as all

SUMMATION - SMITH

1 kinds of different things. William Cutolo again testified
2 that yes, Tony Sainato or Gallo Wine was required under the
3 threat of death -- oops. This isn't the original, is it?
4 No. -- under the threat of death was required to pay \$15,000
5 a year. That's what William Cutolo said.

6 Ms. Walsh, when she addressed you on this subject she
7 sort of glanced over it and said, Oh, yeah, maybe he was a
8 victim of loan shark and maybe other crimes, but we still
9 think he's involved with the Colombo crime family, we still
10 think he is a participant and then she sought of juxtaposed
11 Vito Salerno along with Anthony Sainato. She said, Well, he
12 was a victim, too, and he committed money laundering and you
13 will recall when I cross-examined Mr. Salerno it was clear,
14 very clear and he told you where he went wrong.

15 First of all, he told you that he was aware of a
16 20-year sentence, 20 years in prison for racketeering. That's
17 what you get, 20 years in prison for racketeering, for being a
18 part of the Colombo crime family. That's what you get.
19 That's what he began by telling you.

20 What did he say, also? He confirmed that he was a
21 loan shark victim, that he borrowed money to finance his
22 company and, yes, he knew who he was borrowing from and he
23 agreed to pay it back. But you know what, that is not a crime
24 for him to borrow money from Mr. Cutolo at exorbitant rates of
25 interest. Where Mr. Salerno told you he went wrong and where

SUMMATION - SMITH

1 he candidly acknowledged he went wrong was when he decided to
2 put Mr. Cutolo on the payroll for a no-show job knowing that
3 the money he was repaying to him came from illegal proceeds.
4 He was sort of cleaning it up by now, making him a salaried
5 employee for no work. That's where he went wrong by
6 committing money laundering.

7 Anthony Sainato didn't commit money laundering. He
8 didn't give Mr. Cutolo or his wife a no-show job. He didn't
9 write out checks for the construction of William Cutolo's
10 home. He didn't write a check to Huffman Koos for William
11 Cutolo's furniture. That's where Mr. Salerno went wrong.
12 Otherwise he is a simple victim, victim of the crimes of
13 William Cutolo and the Colombo crime family, nothing else.

14 And that, members of the jury, is what Anthony
15 Sainato is, a victim of the crimes of William Cutolo, Sr. and
16 the Colombo crime family and nothing else.

17 Normally, when the government decides that someone's
18 crime is in the name of organized crime, they have to make a
19 connection, there has to be a relationship between the
20 criminal activity and the entity and normally the proof is
21 money going from the criminal activity and being kicked up or
22 passed along or paid to the participants and members of the
23 entity. They don't have that.

24 Where is there any evidence of the connection? You
25 know what, that is why they put on this witness, this

SUMMATION - SMITH

1 so-called loan shark expert, Mr. Galanek, who I submit was not
2 candid with you when he said that looking at this record he
3 couldn't come to a conclusion as to whether or not this is a
4 loan shark record. He wasn't candid. I submit to you he was
5 not because the government knows that for them to make a
6 connection they have to show a money stream and they would
7 like to argue that this represents the money stream, but it
8 doesn't. It represents Anthony Sainato, a victim of William
9 Cutolo and the Colombo crime family. Nothing else.

10 How do we know Mr. Galanek was less than candid?
11 Well, there were a couple of other exhibits that he said based
12 on three characteristics those are loan shark records. He saw
13 1.5, he saw a figure that he could deem was an amount for the
14 loan and he saw some names. He said, Oh, without question
15 that's a loan shark record. He didn't see any weekly
16 payments, he didn't see any of the other characteristics of a
17 loan shark transaction and, thus, a possible entry on a
18 record, but he said with those three characteristics that's
19 enough. I submit to you that he testified in that manner
20 because he thinks it supports the government's case as it
21 relates to Mr. DeRoss.

22 When it came to this, I believe it was Mr. Perlman
23 that questioned him and Mr. Perlman handed him the document
24 and said look at this, can you tell? Oh, no, I would be
25 speculating. Put that away, that doesn't mean anything.

SUMMATION - SMITH

1 Well, Mr. Galanek, there is a name here, look.
2 There's Tony Sainato. Maybe that's the identity of the
3 victim. Look at this, Mr. Galanek. You have the same one and
4 a half. Couldn't that represent points? Couldn't this other
5 one percent represent points, Mr. Galanek? Isn't the weekly
6 \$500 amount consistent with the weekly payment that you have
7 to pay to the loan shark? I mean isn't there something called
8 a knock down where normally the principal is reduced?
9 Couldn't that \$5,000 represent a knock down? Oh, no, I would
10 be speculating.

11 You heard Judge Raggi even question him. Judge Raggi
12 questioned him about the entries about line 14. The Judge
13 wanted to know about KD. Couldn't that mean knock down? Oh,
14 I don't know. I'm not sure. I don't know. Well,
15 Mr. Galanek, what about the document that convinces you it is
16 not a loan shark transaction or a loan shark record?

17 (Continued on the following page.)

18

19

20

21

22

23

24

25

Smith - summation

1 MR. SMITH: (Cont'd.)

2 And I think he paused for, like, a half hour. It
3 seems he didn't have an answer. I submit he didn't have an
4 answer because he knows that this record -- that this document
5 is sufficient in and of itself to raise in your minds that
6 this man is not guilty of any of the charges -- this document
7 alone, because this is the only connection to the Colombo
8 family and it demonstrates not employment by not membership
9 and not association with but a victim of the Colombo crime
10 family and nothing else.

11 So William Cutolo, Jr. handed over some ledgers they
12 are claiming is related to my client. I don't know. Maybe it
13 is. Maybe it isn't. I know there was a handwriting expert up
14 there and his testimony was, yes, I believe he wrote this and
15 you will recall that Vito Salerno also testified -- it might
16 be Vito Salerno, I may be mistaken. You, of course, have
17 access to the record, but someone testified about providing
18 some kind of records to Mr. Cutolo, and got the impression
19 that it had to do with -- well, let me see if you can repay
20 the loan and I submit that that makes sense. And certainly,
21 those records would be consistent with Mr. Cutolo's desire to
22 know if he loaned this man 40,000 or \$20,000 or 60,000 or
23 500,000. That his company generates sufficient income to
24 repay the loan. So what? So what? Once, again, his
25 borrowing money and repaying William Cutolo does not make him

Smith - summation

1 a participant in the crimes of the Colombo crime family. It
2 only makes him a victim.

3 Another thing. Vito Salerno said he had been charged
4 with racketeering and being he didn't plead guilty to it he
5 said to you that, no, I don't view myself as being employed by
6 membership in or associated with the Colombo crime family.
7 Vito Salerno is the only person who testified, and I am not
8 talking about the prosecutors when I say testify, he is the
9 only witness who told you what Anthony Sainato's status is in
10 connection with this case. He was the only one, and he said
11 that Anthony Sainato was a victim, according to his
12 understanding and everything he knew. And I submit that
13 Vito Salerno was, again, one of those insiders, like Mr.
14 D'Urso, like Mr. Molinaro, like 7.5, William Cutolo, like the
15 absence of William Cutolo, Jr., like the tapes, the voice of
16 Frank Campanella. All those insiders say that this man is not
17 a member or a participant in the crimes of the Colombo crime
18 family.

19 I submit to you, members of the jury, that based on
20 that complete lack of objective evidence, that you must acquit
21 Anthony Sainato of all of the charges. All of them. There is
22 no question about that.

23 I want to talk to you about the charge of
24 embezzlement, because even though it is charged as one of the
25 racketeering acts and part of the racketeering conspiracy

Smith - summation

1 involving the Colombo crime family, it is also charged
2 separately as a substantive independent crime, and the theory
3 there is that you may find him guilty, even if you find that
4 there is no connection to the Colombo crime family. So I want
5 to deal with that as a separate crime by itself, because I
6 think, once again, that the evidence fails to show that this
7 man had the criminal intent to embezzle or to steal or to take
8 or convert or any asset or property of the union, and I want
9 to start with the testimony of Ken O'Connor, because his
10 testimony was crucial. It was significant, and if you didn't
11 get the connection, here is the connection.

12 He told you that prior to 1998, which is the date
13 that this little conspiracy began to steal money from the
14 union, that he represented Anthony Sainato in a collective
15 bargaining agreement. And what does that mean? He said that
16 given the custom and practice of the industry, everyone knew
17 that the entire company couldn't be unionized because the wine
18 couldn't get delivered. It is cheap wine and therefore, the
19 unions knew and the employers knew that less than all men
20 would join the union. And they got together with Local 868
21 and entered into a contract, a collective bargaining
22 agreement, Defendant's Exhibit Q.

23 So Mr. Sainato in the presence of and with the advice
24 of counsel was made to understand that it is perfectly lawful
25 and legitimate to enter into an agreement with the union where

Smith - summation

1 fewer than all men would join that union. Keep that in mind.
2 That is significant as it relates to Local 400, because I
3 submit to you that the intent of everyone involved with the
4 Local 400 contract was that less than all men would join the
5 union, and it makes perfect sense. Because, as you know,
6 first of all, some of the men were already in a union, Local
7 868. So, certainly, no one could have contemplated that those
8 men would be a members of Local 868 as well as members of
9 Local 400. That is the first thing. So the government's
10 theory that Anthony Sainato knew when he mailed those
11 remittances, that they were false in that they listed less
12 than the complete employee list just doesn't hold water,
13 because Kathleen Joseph told you that she didn't expect the
14 remittances to list all employees, just employees who were
15 members.

16 Let's look at this contract for a minute. First of
17 all, the first thing that is wrong with this is that it is not
18 even an original. That is the first thing, and that goes to
19 lack of objective proof, but put that aside. I think out of
20 their mouths they said, oh, Anthony Sainato signed this
21 contract, and that is out of their mouths. Not a single
22 witness said that. And you will recall that Mr. Tytel, a very
23 capable -- and he is truly an expert witness, never said that.
24 So what you have before you is an absolute absence of any
25 evidence that Anthony Sainato signed this. That's enough for

Smith - summation

1 an acquittal, but there is more.

2 We know William Cutolo signed this because
3 Kathleen Joseph said he did. She said -- that's what she said,
4 and the government offered this Government Exhibit 18. What
5 they didn't offer was the Defendant's Exhibit K which purports
6 to be another agreement that was signed in 1995. Why is this
7 significant? Why did they not let you know about it? Well,
8 first of all, if you look at K, Defendant's K, it says -- it
9 begins by saying that the employer hereby recognizes the union
10 as the sole and exclusive collective bargaining representative
11 of all of its production, maintenance, shipping and receiving
12 employees,, okay, that's 1995. And we know that remittances
13 were being sent to Local 400 as early as 1995. So this
14 agreement 13.18 that the government submitted started in 1998.
15 So maybe your first question for Mr. Dorsky when he gets up to
16 address you may be, well, what was in place between 1995 and
17 1998? What were the expectations of the parties? What did
18 they contemplate? Did they contemplate 30 or 40 people in the
19 union or less than that? Where is the agreement that took
20 place between February of 1995 up until April of 1998 in the
21 effective date of Government Exhibit 13.8? Could you say
22 maybe, well, course of conduct? No complaint from either side
23 must mean that that is what they contemplated? I think so. I
24 think that is a fair inference. Government doesn't have any
25 evidence to say what was in place, but that, again, goes to

Smith - summation

1 good faith. Keep in mind that Mr. O'Connor, who is a very
2 capable lawyer, has already said that based on experience and
3 his advice and everything else, the understanding of
4 Mr. Sainato is that less than all the men in the union is
5 perfectly legitimate. So if there is no collective bargaining
6 agreement in place, certainly the conduct, the parties would
7 control.

8 Kathleen Joseph said whenever she got a remittance
9 she didn't just take the check and run to the bank and deposit
10 it, she got the remittance, she got the check, went over to
11 the union office, checked its records, made certain that there
12 was a checkoff of the member, matched the numbers, then made
13 the deposit. And she said the only time that the numbers
14 didn't match was in January, February, March and I think April
15 of 1998 and what does she do? She talks to Mr. Petillo and
16 Mr. Petillo writes the letter or tells her to call
17 Anthony Sainato and the money is sent.

18 Certainly, when that discrepancy occurred, if the
19 money was withheld or converted, then they might have a case
20 for embezzlement and theft of union assets. They may have a
21 case, but that didn't happen. That is not what he's charged
22 with. No other time during the entire period from 1995 up
23 until 2001 is there any indication that money was collected
24 from any employee and not turned over to the union.

25 And they are claiming that part of the theft was

Smith - summation

1 benefits that Frank Campanella stole because he was a
2 supervisor and somehow Anthony Sainato was supposed to know
3 about that? Why? Because they work at the same place? They
4 live in the same state? Where is the connection other than
5 out of the mouth of Ms. Walsh? Where is the connection?
6 Where is the evidentiary connection? What can you point to
7 either in the exhibits, the documents or the testimony of any
8 witness making that connection? Oh, yeah, Frank Campanella
9 pled guilty. They talk about that. We knew there was a union
10 embezzlement because Frank Campanella pled guilty to it, and
11 we knew there was an extortion because Frank Campanella pled
12 guilty to it. They candidly acknowledged that, as the Judge
13 will instruct, Frank Campanella's guilty plea cannot be used
14 as evidence of Anthony Sainato's participation in any crime.
15 So I am not going to spend a whole lot of time with you on
16 this because it doesn't prove that he participated in the
17 crime.

18 But look at the circumstances of
19 Mr. Frank Campanella's plea and I am not going to defend him.
20 I am not going to say that he was not involved in any criminal
21 activity or he shouldn't have taken a guilty plea. I don't
22 care about that. I represent Anthony Sainato and what I know
23 from the evidence in this case is that Frank Campanella was
24 parroting the worst of the former Assistant United States
25 Attorney working with them. Those were his words not

Smith - summation

1 Frank Campanella's. And I submit to you his plea given under
2 those circumstances should be disregarded by you entirely. It
3 shouldn't mean anything because those were his words and if
4 you read the transcript, the Judge said to Mr. Campanella,
5 Mr. Campanella, tell me in your own words what you did. And
6 Frank Campanella got a document -- a statement written by the
7 Assistant United States Attorney -- not by his lawyer, by the
8 Assistant United States Attorney and he parroted word for
9 word -- look at that plea -- big words in there. I don't
10 even know some of them, and they have Frank Campanella
11 parroting some of those words.

12 Under the circumstances that plea should just be
13 ignored by you entirely. Entirely. It means nothing just in
14 terms of the value -- the evidentiary value, the proof, the
15 documents and whether or not they meet their burden of proof
16 in this case.

17 Just briefly as it regards the embezzlement, they
18 talk about the prosecutor's -- that is, talk about
19 Anthony Sainato causing the remittances to be mailed. They
20 said he filled them out, I think. You will have access to the
21 complete record. You will have access to all the documents.
22 Where was there testimony anywhere that he filled out the
23 remittances? Who said that? Who said that he filled out or
24 signed the remittances? Ms. Walsh? That's not good enough.
25 Government Exhibit 13.20. Ms. Walsh got up before you and she

Smith - summation

1 said: Oh, yeah, Sainato signed this. Says who? Not Tytel.
2 He was the only one that identified signatures. Did you hear
3 Tytel say that in his opinion Anthony Sainato signed this?
4 She's not a witness. Doesn't mean anything that she said he
5 signed it. There is no proof before you that he did.

6 But the most significant part of the embezzlement
7 charge is the lack of the motive, lack of financial incentive
8 for Anthony Sainato to seek to have the criminal intent to
9 take anything from Local 400. Absolutely not. We presented a
10 witness who established for you that during the period of this
11 alleged conspiracy to defraud and embezzle from Local 400
12 Premier, Gallo Wine, Gallo Wine was paying the union and
13 pension benefits, not his company. Not the company he was
14 working with, associated with, whether there were five men in
15 Local 400, whether there were two, whether there were 15,
16 whether there were 20, whether there were 1,000, and I submit
17 to you there is no proof as to the number.

18 I think this is what one witness Vanderstuyf said:
19 Yeah, I was there two weeks. It looked like they had 30.
20 Another witness said I was there one day and they looked like
21 they had 20 or 30. There is no proof as to the number of men.
22 There is no proof as to the -- if even anyone was eligible to
23 be in the union. Look at the contract. It said you have to pay
24 dues. It said you have to wait 30 days. Where is the evidence
25 that someone said, oh, yeah, I went to Mr. Sainato and I asked

Smith - summation

1 him if I could join the union and he said no, I can't, or I
2 have been there 20 days and/or 30 days or ten years and I
3 wanted to be in the union but somehow I never became a
4 member? Not a single employee. So you have no proof before
5 you that there were men associated with the company who were
6 even eligible to be in the union. How can you conclude based
7 on this type of evidence, given the heavy burden of proof
8 beyond a reasonable doubt, that this man committed the crime
9 of embezzlement, theft, conversion of the benefit and welfare
10 plans? You can't. And the reason you can't is that this crime
11 was created by them (indicating). They sat in their office
12 and they came up with creative arguments for why this man is
13 involved with the Colombo crime family, but theories and
14 creative arguments are not enough, because no matter what,
15 they can't get up and argue the opposite. They are intelligent
16 enough to come up with any creative argument to respond and
17 say if they wanted to they could make this a crime involving
18 the Genovese family, if they wanted to just by saying it, but
19 no witnesses have. And I submit to you that there is no
20 evidence in this case from which you can conclude beyond a
21 reasonable doubt that Anthony Sainato embezzled and committed
22 mail fraud upon Local 400. You can't. And by the way,
23 defendant's Exhibit F and G and H and I, is convincing proof
24 of a lack of a motive for this man to commit this crime.

25 And you heard the testimony, the remittances all paid

Smith - summation

1 for by Premier, Daymont. All paid for. Not only that but
2 during the same period of the conspiracy you heard -- you
3 heard Ms. Walsh on her summation say, oh, yes, Ken O'Connor
4 negotiated a contract but it had nothing to do with this
5 because it was a different period. That is not true. Look --
6 look (indicating).

7 Gallo Premier, Daymont making payments to the welfare
8 fund of 816 on behalf of 868. Look at the list of men: 1999,
9 2000, 2001 during the same period. So, of course, what Ken
10 O'Connor did and what he negotiated and the contract with 868
11 with contributions to 816, of course, it has meaning because
12 it provides a disincentive for this man. It doesn't save him
13 his money. The cost is passed on. He sends him a bill and
14 they pay it. Why would he defraud Local 400? They think that
15 simply because it was run by William Cutolo? Whoever heard of
16 the mafia controlling a union? Doesn't make him involved in
17 the crimes of the Colombo crime family.

18 I think I have gone on a bit long. So I want to wrap
19 it up but I want to talk about Mr. Vanderstuyf. This is the
20 gentleman that said he was extorted and I would like to place
21 for you his testimony in context. Keep in mind that
22 Anthony Sainato worked with Gallo Premier Wine for 30 years,
23 and I submit to you that you can infer that from an over
24 30-year period that he knows the people who are in charge, who
25 run Gallo for 30 years, and they are claiming that a man would

Smith - summation

1 worked there for two weeks, who had absolutely no idea what he
2 was doing was somehow threatened because he was the one that
3 was giving away work? That is not nonsense. That didn't
4 happen. Let me place his testimony in context. Two weeks. He
5 comes from a bus company. He doesn't know anything about
6 trucking. He doesn't know the difference between a container
7 and a trailer. You recall Rizzo -- Mr. Rizzo from
8 Mediterranean (ph) Ship line. He identified for you and told
9 you the difference. Mr. Vanderstuyf doesn't know who the
10 warehouse belongs to, where the truck was being loaded.
11 Mr. Vanderstuyf doesn't know who the containers belong to,
12 where the items are being loaded. He doesn't know any of
13 these things and that is significant to place his testimony in
14 context.

15 What does he say?

16 Isn't it a fact, sir, that Anthony Sainato said to
17 you that's my container and he yelled at you?

18 What does Vanderstuyf say? Does he say, no, he never
19 said that?

20 No, he said, oh, I don't recall that. I don't recall
21 that.

22 That's significant. I read once where a man said,
23 listen, I am from New York and when someone says they don't
24 recall something, they mean it happened, because if it didn't
25 happen he would have told you it didn't happen, but he didn't

Smith - summation

1 tell you that. He said, oh, I don't recall that.

2 Who is Mr. Vanderstuyf? This is man who reads a
3 newspaper and hears a search of Gallo Wine and what does he
4 do? He goes up to the FBI to find out. Hey, what is going on
5 with that search? What is happening there? Tell me about
6 this criminal investigation you guys are conducting. This is a
7 man who has his first meeting with the FBI about an incident
8 that occurred in November of 1999. He has his first meeting in
9 the year 2001. He doesn't report any crime in November,
10 December of 1999. He doesn't report a crime in the year 2000,
11 in the early part of 2001.

12 He goes to the FBI early in 2001 with absolutely no
13 recollection of what occurred. So that is what he said. I
14 don't recall if he talked about the containers and I gave you
15 a sufficient background through the testimony of Mr. Rizzo and
16 rights and responsibilities of Anthony Sainato to those
17 containers, and I submit to you that when Anthony Sainato
18 yelled at Mr. Vanderstuyf he said leave my containers alone,
19 not I am going to break you. That's my load. The loads at
20 Gallo go out at 5:30 in the morning. He would have to have
21 supervision to see that the truck that was going out actually
22 had anything in it.

23 Listen, you saw throughout this entire trial
24 Agent Carmichael. You heard from Agent Vita and the entire
25 FBI. Wouldn't you want to have heard, excuse me, Mr. Gallo, we

Smith - summation

1 heard about an incident in November of 1999. We have a
2 witness. He's kind of flakey. He doesn't know the difference
3 between a container or a trailer. He doesn't know if the guy
4 yelled at him about a container. He's not sure. He came to us
5 about information about an investigation. We need to
6 corroborate the story. We have a subpoena here. We would like
7 to know if you ordered George Debaud wine in November 1999. We
8 would like to know if you tried to hire another trucking
9 company. Check your records. And Mr. Gallo, yeah, we did. And
10 the other tucking company that we hired was John Doe and John
11 Doe trucking. Here's the number. Here's their card. Why
12 don't you go and talk to them, and see if they will confirm
13 Mr. Vanderstuyf's story. Why don't you go and see if the
14 trucker would say that when he saw Mr. Sainato and he pulled
15 out that Mr. Sainato said, excuse me, you're using my
16 container or did he say, excuse me, that's my load, that's my
17 work, I am going to break you? Don't do it. Wouldn't you
18 want to have heard that? Wouldn't you want confirmation,
19 corroboration? Wouldn't you want to have known that
20 Agent Carmichael said, excuse me, Mr. Gallo, we heard this.
21 There were two men loading the truck at the time of this
22 incident, this yelling, and screaming, can we get their
23 names? Can you check the records? Can you check the time
24 cards? We would like to interview them. See if they heard
25 yelling. See if they heard container versus load? Wouldn't

Smith - summation

1 you want to know that? Wouldn't you want some confirmation
2 other than Mr. Vanderstuyf in a brief encounter a year and a
3 half before he meets with the FBI? Almost more than two years
4 later he comes in and he testifies and he doesn't even recall
5 if it was about a container. He doesn't recall and this man
6 will go to prison for 20 years because he doesn't recall? Is
7 that the kind of proof that could convince you beyond a
8 reasonable doubt that this man extorted him, that this man did
9 it in the name of the Colombo crime family? Is that the kind
10 of proof that can put him in jail for 20 years?

11 MR. DORSKY: Objection.

12 THE COURT: Overruled.

13 MR. SMITH: You know, I ended my opening statement. I
14 said simply because you don't see Anthony Sainato up there as
15 a victim/witness testifying about the crimes that
16 William Cutolo and the Colombo crime family committed upon
17 him, doesn't mean they have a right to put him over there. The
18 government's mentality is either you are with us or you are
19 with them. It is not good. They can't do that. And simply
20 because he is not testifying there doesn't mean that you can
21 find that he is a participant in their crimes. You simply
22 can't.

23 I told you he was the head of the Sainato family. His
24 family cannot compete with the Colombo crime family. So he is
25 not going to testify about those crimes. So he hired me to

Smith - summation

1 deal with them, and I submit to you that the evidence in this
2 case does not prove beyond a reasonable doubt that this man
3 committed any of these crimes, and I ask you to find him not
4 guilty on all of them.

5 Thank you.

6 THE COURT: It is about seven minutes after one, so we
7 will break now for the lunch recess. I will ask everyone to
8 be back at 2:15. We will hear rebuttal argument from the
9 government then. Continue to keep an open mind. Don't discuss
10 the case. All rise.

11 (Jury out.)

12 THE COURT: 2:15, I will see you then. Thank you.

13 (Court recessed.)