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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

CR 01-56

:

-against-

:

United States Courthouse
Brooklyn, New York

JOHN DeROSS :

ANTHONY SAINATO :

January 23, 2002

Defendants. :

9:00 o'clock a.m.

- - - - - X

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE REENA RAGGI
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government:

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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

D'Urso-cross-Smith

7 THE COURT: Mr. Smith, when you're ready.

8 MR. SMITH: One minute, please, your Honor.

9 THE WITNESS: Your Honor, do I need this back?

10 THE COURT: No, leave it there. I'll have the
11 lawyers pick it up at the next break.

12 CROSS-EXAMINATION

13 BY MR. SMITH:

14 Q Good morning.

15 A Good morning.

16 Q Yesterday when you testified, you described a structure
17 in connection with organized crime?

18 A Yes, I did.

19 Q You started with the boss, right?

20 A Correct.

21 Q You said beneath the boss was the underboss?

22 A Correct.

23 Q Beneath the underboss was the consiglieri or counselor?

24 A Correct.

25 Q Beneath the counselor was a captain, right?

GR OCR CM CSR

D'Urso-cross-Smith

- 1 A Correct, a bunch of captains.
- 2 Q Right. Then beneath the captains were soldiers?
- 3 A Correct.
- 4 Q Beneath the soldiers were associates, right?
- 5 A Correct.
- 6 Q Then beneath the associates would be the victims, right?
- 7 A I never looked at it that way. I'm sure many people are
8 beneath associates.
- 9 Q You were an associate of organized crime for a long time,
10 right?
- 11 A Yes.
- 12 Q I think you started your criminal activity as early as 14
13 years old?
- 14 A No, I believe maybe 15, 16, something in that
15 neighborhood.
- 16 Q And back then you wanted to grow up to be a gangster,
17 right?
- 18 A No, not back then.
- 19 Q Back then you began sort of your education with your
20 cousin, Dino Lombardi?
- 21 A Dino Lombardi I became closer to when I came home from
22 prison but I worked at his restaurant that he was a maitre d'
23 in, you know, while I was younger.
- 24 Q When did you start working in the restaurant,
25 Ruggiero's, I think you said it was?

D'Urso-cross-Smith

- 1 A Correct. I believe I was bussing tables 15 or 16 years
2 old.
- 3 Q Back then you knew Dino, right?
- 4 A He was my cousin.
- 5 Q Back then you talked about organized crime, right?
- 6 A Correct.
- 7 Q Back then he told you about the structure of organized
8 crime, right?
- 9 A He educated me somewhat.
- 10 Q He told you about bosses, consiglieris, underbosses,
11 right?
- 12 A Yes.
- 13 Q Soldiers, right?
- 14 A Correct.
- 15 Q And told you the types of crimes that people in organized
16 crime commit, right?
- 17 A No, we really didn't discuss it at that point, you know.
18 He just educated me on the life somewhat.
- 19 Q He told you about the various people that came into the
20 restaurant who were reputed to be members or associates of
21 organized crime, right?
- 22 A He would point them out when they walked in, yes.
- 23 Q People like William, Bill Cutolo, Senior?
- 24 A Right.
- 25 MR. LeMOLE: Could I have a side bar?

D'Urso-cross-Smith

1 THE COURT: Yes.

2 (Side bar.)

3 MR. LeMOLE: I want to object to the line Mr. Smith
4 is going into. It's highly prejudicial to my defense, starts
5 to look like inconsistent, totally inconsistent with my
6 position.

7 THE COURT: I don't understand that. You'll have to
8 be more specific.

9 MR. LeMOLE: The opening to organized crime about
10 Bill Cutolo, looks to me like his argument is going to be his
11 client was a victim of Bill Cutolo. It's the government's
12 theory it carries right down to Mr. DeRoss. In that respect
13 he's providing, assisting in the government's case. Quite
14 frankly, I object to it. I move for withdrawal of a juror.

15 THE COURT: Withdrawal of the juror?

16 MR. LeMOLE: Yes.

17 THE COURT: Mr. Smith made plain in his opening he
18 was going to try to persuade the jury that the evidence showed
19 his client to be a victim rather than a criminal. I
20 understood this was going to be his route.

21 I also told the parties in advance there's a
22 Supreme Court case law on what it takes to establish the
23 defenses so inconsistent that parties cannot be tried
24 together. I am not going to rule on this motion orally at
25 side bar, but any time you wish to file a brief on this

D'Urso-cross-Smith

1 subject, I'll take a brief.

2 (Open court.)

3 Q We're still talking about your education into organized
4 crime at the restaurant, you understand?

5 A Correct.

6 Q Now you're being told about a number of people who are
7 members of organized crime, right?

8 A Correct.

9 Q You even actually are waiting on their tables, right?

10 A Sometimes, yes.

11 Q You're actually overhearing conversations, right?

12 A I never paid attention to conversations.

13 Q But earlier you said someone like Wild Bill Cutolo, he's
14 reputed to be a member of organized crime, right?

15 A Correct.

16 Q That's something that you remembered, right?

17 A Yes, which I confirmed later on.

18 Q Right. You were even probably told what organized crime
19 family he was reputed to be a member of, right?

20 A Yes.

21 Q Then there were other individuals?

22 A Like?

23 Q You don't have to go into names, but there were other
24 people, for example, people that came in and Dino might say
25 "Hey, this guy is a wise guy," right?

D'Urso-cross-Smith

1 A Yes.

2 Q Wise guy is another name for a member of organized crime,
3 right?

4 A Yes.

5 Q Or Dino might say, "you know that guy, he's with a
6 particular organized crime organized crime family?"

7 A Right.

8 Q Or he was an associate?

9 A Didn't point out associates. Certain individuals that
10 meant something, that he believed meant something, he would
11 point them out to me.

12 Q In the type of circles of the world that Dino was talking
13 about, made members were people who were well respected,
14 right?

15 A Correct.

16 Q You're paying attention, right?

17 A Yes.

18 Q Because you want to eventually become a made member of
19 organized crime?

20 A At that time, no, I was going to school.

21 Q During the entire period of time that you're getting your
22 education at the restaurant, it would be accurate to say you
23 never saw Anthony Sainato come into that restaurant, right?

24 A That's correct.

25 Q It would be accurate to say Dino never said to you that

D'Urso-cross-Smith

1 Anthony Sainato is a made member of organized crime, right?

2 A I didn't see him, so evidently it didn't come up.

3 Q Right. It would be accurate to say he never even told

4 you he was associated or with anyone in organized crime,

5 right?

6 A Never came up.

7 Q Let's fast forward.

8 You're on parole, right?

9 A Yes.

10 Q You come out of prison. You wanted to hustle, right,

11 make some money. Would that be an accurate statement?

12 A Correct.

13 Q You started engaging in other criminal activity, right?

14 A Correct.

15 Q Gun possession, right?

16 A Correct. I don't know if that all occurred when I was on

17 parole.

18 Q But you're in your twenties, early twenties, right?

19 A Yes.

20 Q You're still talking to Dino, right? Is he still alive

21 then?

22 A Correct.

23 Q He's still giving you an education about organized crime,

24 right?

25 A He actually introduced me to the world.

D'Urso-cross-Smith

1 Q Right. In fact, he did a little more than he did when
2 you were 15. He actually introduced you to people who were
3 made members of organized crime, right?

4 A Correct.

5 Q You met these people and they spoke to you freely, right?

6 A Correct.

7 Q During that period of time, if we can just freeze it, at
8 that time you never heard of Anthony Sainato during that time
9 either, right?

10 A That is correct.

11 Q You're engaging in crimes. You're not doing it alone,
12 right?

13 A Correct.

14 Q You've become associated with people who are members of
15 organized crime?

16 A Yes.

17 Q As an associate, you're actually the person who is out
18 there committing the crimes and passing the money up, right?

19 A Sometimes I passed it up. Sometimes I didn't.

20 Q Right. Sometimes you kept it for yourself.

21 A Correct, sometimes.

22 Q But now you're talking to them. They kind of trust you,
23 right?

24 A That is correct.

25 Q They're taking you into their confidence, right?

D'Urso-cross-Smith

- 1 A Correct.
- 2 Q They're telling you about crimes that can be committed,
3 right?
- 4 A Correct.
- 5 Q Scores to be had, right?
- 6 A Correct.
- 7 Q They're also telling you about past scores they've been
8 involved in, right?
- 9 A Sometimes, yes.
- 10 Q Sometimes they're also telling you about crimes that
11 other people may have committed, right?
- 12 A Sometimes.
- 13 Q Sometimes they're telling you about joint crimes with
14 other crime families, right?
- 15 A Correct.
- 16 Q They're telling you who is a made member and who isn't a
17 made member, right?
- 18 A Certain times, yes.
- 19 Q Who is the boss of this family, who isn't the boss of
20 this family, right?
- 21 A Correct.
- 22 Q Who is a captain, right?
- 23 A Right.
- 24 Q You're learning all these things. You're being told who
25 is in what crew, right?

D'Urso-cross-Smith

- 1 A Correct.
- 2 Q During that whole period of time of your education,
3 you're not once told that Anthony Sainato is either a member
4 or an associate of organized crime, right?
- 5 A That is correct.
- 6 Q You're not being told that Anthony Sainato is a
7 participant in any crimes of organized crime, right?
- 8 A That is correct.
- 9 Q Now, before you said you committed or participated in a
10 murder in 1996. Is it '96?
- 11 A Yes.
- 12 Q Before you got to 1996, you committed a host of other
13 crimes, right?
- 14 A Correct.
- 15 Q Like loansharking, right?
- 16 A I revealed all the crimes, yes.
- 17 Q Right. That's when you lend people money at exorbitant
18 rates of interest, right?
- 19 A Correct.
- 20 Q You actually keep records of the transactions, right?
- 21 A I never put anything on paper.
- 22 Q But you know of some members of organize crime or some
23 loansharks who did, right?
- 24 A I knew some loansharks that did, right.
- 25 Q In fact, over the time that you've been associated with

D'Urso-cross-Smith

1 organized crime, you've actually seen loanshark records,
2 right?

3 A I've seen a couple.

4 Q In fact, typically, the typical loanshark record would
5 actually have an indication of the victim, right, who was
6 actually paying the money?

7 A Sometimes, sometimes not.

8 Q In code maybe?

9 A Maybe cryptically, the name of that person could
10 understand himself, only himself can interpret who the
11 customer was.

12 Q Could be an initial?

13 A Could be a code name, right.

14 Q Then you would have the actual amount of the loan that
15 was extended, right?

16 A I can't speak. You know, I've seen where there was and
17 there was just what was being collected every week, you know,
18 how it was getting paid, from my knowledge.

19 Q But you have seen records with the amount of the loan
20 listed, right?

21 A Some records, yes.

22 Q Then below the amount that's listed, you've also seen the
23 weekly payment, right?

24 A Sometimes, yes.

25 Q The weekly payment very often, it would show the date

D'Urso-cross-Smith

1 that the amount is either due or paid, right?

2 A I can't remember all those details. I didn't keep
3 records, so I can only speak for what I've seen.

4 MR. SMITH: With the Court's permission, I'll
5 approach the witness.

6 THE COURT: Okay.

7 MR. SMITH: I'll show him what's only being marked
8 for identification. It's marked Government Exhibit 7.5.

9 THE COURT: We'll keep it at that. Ladies and
10 gentlemen, it doesn't matter which side uses an exhibit. If
11 it's received in evidence, you decide what weight, if any, to
12 give it.

13 It's 7.5, Mr. Smith?

14 MR. SMITH: Yes, your Honor.

15 THE COURT: Thank you. Go ahead.

16 Q Sir, look at the 5th column.

17 A Okay.

18 Q Of that document. You see where I am?

19 A On the left-hand side?

20 Q No, going from left to right, the 5th column. They're
21 actually numbered on top.

22 A Yes, I do see that.

23 Q The first figure, you see a number, right?

24 A Yes.

25 Q Then another number below that?

D'Urso-cross-Smith

- 1 A Correct.
- 2 Q They appear to be added to form a total, right?
- 3 A I don't know if I'm in the right -- I see 6-5 and 6-12
- 4 -- seems to be weekly dates.
- 5 MR. SMITH: Can I approach the witness so I can show
- 6 him what I'm talking about?
- 7 THE COURT: Yes.
- 8 Q No, in the 5th column.
- 9 MR. SMITH: I'm pointing him to the first figure in
- 10 the 5th column.
- 11 A 100,000?
- 12 Q Yes. You see a figure below that, right?
- 13 A Yes.
- 14 Q Then a figure below that that appears to be the total of
- 15 the two figures above, right?
- 16 A Correct.
- 17 Q Then there are a series of numbers that are equal, right?
- 18 A Correct.
- 19 Q It appears as if they're dated on the first of each
- 20 month; is that accurate?
- 21 A One looks like 20 to me. The other one looks like 72.
- 22 One looks like 620.
- 23 Q Let me ask you a question. Assume a loan of \$500,000,
- 24 right?
- 25 A Correct.

D'Urso-cross-Smith

1 Q A vig of one percent.

2 MR. DORSKY: Objection, this document is not in
3 evidence.

4 THE COURT: The document is not in evidence.

5 MR. SMITH: This is a hypothetical question.

6 THE COURT: I'm not sure I'm prepared to receive,
7 accept this witness as an expert in loansharking records. He
8 said he did not keep records himself. He has seen other
9 people's records, but I don't think that makes him an expert
10 in loansharking records. I'll sustain the objection.

11 Q Sir, loansharking is one -- it's a popular crime for
12 people in organized crime; is that accurate?

13 A Yes, it is.

14 Q In fact, the victims of the loanshark are people who
15 usually cannot afford to get a conventional loan at a bank?

16 A That is correct.

17 Q One of the things you want to do as a loan shark -- you
18 said pretty much successful, right?

19 A Correct.

20 Q You want to make certain that the person, the victim, can
21 actually pay the loan, right?

22 A In some instances, that was my model, that I didn't want
23 to put myself in a predicament where I wouldn't get my money
24 back. Others worked differently.

25 Q Right. For example, if you're in a particular

D'Urso-cross-Smith

1 neighborhood, you know someone is addicted to crack, never had
2 money, you wouldn't lend him money, would you?

3 A I definitely wouldn't.

4 Q It's not likely you would be repaid; is that correct?

5 A That's correct.

6 Q Very often organized crime members actually lend money to
7 people who have businesses, right?

8 A That is correct.

9 Q People who are in a position to pay?

10 A That is the ideal customer.

11 Q It's not unusual for members of organize crime when they
12 extend such a loan to actually want to see the books and
13 records of the businessman, right?

14 A I've never encountered that. Again, speaking for myself,
15 I've never done that. I'm not aware of anybody that has done
16 that.

17 THE COURT: I'm going to ask you to at least phrase
18 your questions initially in terms of his own experience. If
19 you're going to ask him what he knows generally, I'll have to
20 decide if there's a basis to allow him to offer an opinion.
21 Start by asking about his own direct experience.

22 MR. SMITH: Yes, I will, your Honor.

23 Q You made a series of tapes when you began to cooperate,
24 right?

25 A Correct.

D'Urso-cross-Smith

1 Q The tapes that were actually played in court is not the
2 complete universe of tapes, right?

3 A Yes, I believe that to be correct.

4 Q There are other tapes that you actually made that you
5 didn't hear while you were in court yesterday and today?

6 A Right.

7 Q This might be a silly question, but you are actually
8 familiar with the contents or the conversations of all your
9 tapes because you were a participant, right?

10 A I believe so.

11 Q Right. Maybe your memory is not the best right now, but
12 certainly you can say things like who you spoke to when you
13 went out there, correct?

14 A Yes.

15 Q In fact, one of the things the FBI agents did was to sort
16 of direct you to people that you can talk to that would
17 actually discuss criminal activity with you, right?

18 A They never directed me, just whoever I was meeting I was
19 given topics. They didn't direct me, say today we're set out
20 to go get this person. That never occurred.

21 Q No, that's not what I'm suggesting.

22 A Okay.

23 Q For example, you said before you began to cooperate, you
24 actually were involved in some kind of extortion of a gourmet
25 deli or some sort?

D'Urso-cross-Smith

- 1 A Yes.
- 2 Q Gourmet Boutique, I believe you said, sorry.
- 3 A Yes.
- 4 Q After you began to cooperate, you continued to
5 participate in the extortion under the supervision of the FBI,
6 right?
- 7 A That is correct.
- 8 Q So, your whole purpose in continuing with that operation
9 and discussing with the participants of that particular
10 conspiracy was to obtain evidence, right?
- 11 A Yes, that was.
- 12 Q In that particular case, this was an instance where you
13 were actually approaching people who were likely to discuss
14 criminal activity with you, right?
- 15 A Correct.
- 16 Q You spoke to Frank Campanella at length, you said?
- 17 A Yes, I have.
- 18 Q In fact, the government yesterday introduced a number of
19 tape recordings of conversations with Frank Campanella, right?
- 20 A They did.
- 21 Q I think you also said that you knew Frank Campanella to
22 work at Gallo Wine?
- 23 A Correct.
- 24 Q Out in Syosset, Long Island?
- 25 A Correct.

D'Urso-cross-Smith

- 1 Q You had numerous conversations with Frank Campanella,
2 right?
- 3 A Yes.
- 4 Q Many of the conversations that you had with Frank
5 Campanella involved organized crime, right?
- 6 A Correct.
- 7 Q The interest that both of you had involved organized
8 crime?
- 9 A Right.
- 10 Q Extortion, for example?
- 11 A Yes.
- 12 Q He even talked to you about members of his crew. For
13 example, he spoke to you about Mr. Cutolo, right?
- 14 A Correct.
- 15 Q I don't know if you've known this before, but you came to
16 learn the position of Mr. Cutolo, right?
- 17 A Yes, I did.
- 18 Q In fact, you understood him to be a powerful man in
19 organized crime, right?
- 20 A That was my impression.
- 21 Q A captain in the Colombo Crime Family?
- 22 A That was what I had learned.
- 23 Q A man that was respected in the world that you had lived
24 in?
- 25 A That is correct.

D'Urso-cross-Smith

1 Q The kind of person who men would kill at his behest,
2 right?

3 A That's what I learned.

4 Q Now, during the entire period of time since you had your
5 discussions with Frank Campanella, he never said to you that
6 Anthony Sainato is a member of organized crime, right?

7 A Not to my recollection.

8 Q He never said to you that Anthony Sainato is an associate
9 of organized crime, right?

10 A Not to my recollection.

11 Q He never said to you that Anthony Sainato was a
12 participant in any of the crimes committed by members of
13 organized crime, right?

14 A I don't remember any of that.

15 Q Never said to you that he was a participant in the crimes
16 of the Colombo Crime Family, right?

17 A Not to my recollection.

18 Q Which is the enterprise that's charged in this
19 indictment, right?

20 MR. DORSKY: Objection.

21 THE COURT: Argumentative, Mr. Smith.

22 Anything else?

23 MR. SMITH: Yes, I'll move on.

24 Q One of the things that you also did -- and this is
25 before you began to cooperate in 1998 -- that you frequented

D'Urso-cross-Smith

1 a number of places that organized crime members congregated,
2 right?

3 A That's correct.

4 Q You went to social clubs, right?

5 A Yes, I did.

6 Q You went to more than one social club, right?

7 A Yes, I did.

8 Q When you arrived at these social clubs, you were
9 introduced to members of organized crime?

10 A Yes, I was.

11 Q And you were part of discussions about members of
12 organized crime?

13 A Yes, I was.

14 Q And people often talked about crimes that various members
15 of organized crime committed, right?

16 A Yes, they did.

17 Q In fact, at some point you were paying particular
18 attention to who was who in organized crime, right?

19 A Sometimes I did.

20 Q One of the things, one of the hard lessons you learned
21 was the gentleman by the name of Frank Persico who actually
22 wanted to kill you because you had spoken loudly to him,
23 right?

24 A Correct.

25 Q After that incident, you're paying attention, right?

D'Urso-cross-Smith

1 A Correct.

2 Q You're keeping your ears and your eyes open, right?

3 A This is true.

4 Q If someone said this person is a member of organized

5 crime, you pay attention, right?

6 A Correct.

7 Q If someone said this person is associated with organized

8 crime, you pay attention, right?

9 A I did.

10 Q Because if you step on the wrong toes, you could die,

11 right?

12 A Absolutely.

13 Q Now, during this heightened level of awareness, no one

14 ever said to you that Anthony Sainato is a member of organized

15 crime, did they?

16 MR. DORSKY: Objection, he's testified repeatedly he

17 never heard of Mr. Sainato.

18 THE COURT: He's focusing now on the social clubs?

19 MR. SMITH: Yes.

20 THE COURT: During the time that you were in the

21 social clubs, did anyone ever mention Anthony Sainato to you?

22 THE WITNESS: No, they didn't.

23 Q Never mentioned him as an associate or a participant in

24 any of the crimes of the Colombo Crime Family?

25 A In any of the people I dealt with, to my recollection,

D'Urso-cross-Smith

1 never brought up his name to my recollection.

2 Q You, yourself, committed crimes in connection with
3 members or associates of the Colombo Crime Family, right?

4 A Yes, I did.

5 Q In fact, I believe the Giannini crew that you were part
6 of, that the government claims and that you pled guilty to in
7 connection with the murder of John Borelli, was alleged to be
8 part of the Colombo Crime Family; is that right?

9 A No, I believe there was only one individual that was
10 alleged to be part of the Colombo Family. The other ones were
11 different families.

12 Q I'll show you 3500-MD-6.

13 MR. SMITH: With the Court's permission I'll
14 approach the witness.

15 Q (Continuing.) I'll ask you to read the highlighted
16 section and see if it refreshes your recollection as to
17 whether or not the government alleged the Giannini crew was
18 part of the Colombo Crime Family and that you pled guilty to
19 it.

20 MR. DORSKY: Objection, Judge.

21 THE COURT: Sustained. That's a compound question.
22 It does not matter what the government alleged. You can
23 certainly ask him if he pled guilty to being a member of a
24 crew associated with the Colombo Crime Family, but you have to
25 break up the question. It does not matter what the government

D'Urso-cross-Smith

1 alleged. It only matters whether he acknowledges that it was
2 such.

3 MR. SMITH: I only prefaced it as sort of an
4 adoption.

5 THE COURT: Rephrase the question, Mr. Smith, if you
6 want to pursue it at all.

7 MR. SMITH: I apologize, your Honor. Are you
8 finished?

9 Q Do you agree, sir, the Giannini crew was part of the
10 Colombo Crime Family?

11 A One member.

12 Q And you committed that particular crime with a member of
13 the Colombo Crime Family, right?

14 A Correct.

15 Q The person that you committed the crime with, you had
16 known him prior to the actual commission of the crime, right?

17 A Correct.

18 Q In fact, there were other attempts to kill John Borelli
19 where that member of the Colombo Crime Family was actually
20 present, right?

21 A Correct.

22 Q And you and he discussed criminal activity unrelated to
23 John Borelli, correct?

24 A Correct.

25 Q And he discussed with you, for example, who was who with

D'Urso-cross-Smith

1 the Colombo Crime Family, right?

2 A At times, yes.

3 Q Right.

4 The person who was the member of the Giannini crew
5 who was part of the Colombo Crime Family, he never said to you
6 Anthony Sainato is a member of the Colombo Crime Family, did
7 he?

8 A That's correct.

9 Q He never said to you that Anthony Sainato was an
10 associate of the Colombo Crime Family, did he?

11 A I don't even know if they knew each other.

12 Q He never said to you --

13 A Never said --

14 Q -- that Anthony Sainato was a participant in any crime
15 that he knew the Colombo Crime Family to commit, right?

16 A That's correct.

17 (Continued on next page.)

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D'Urso-cross-Smith

1 EXAMINATION CONTINUES

2 BY MR. SMITH:

3 MR. SMITH: Your Honor, I would like to draw the
4 witness' attention to the transcript of the recording.

5 THE COURT: Of course.

6 Q Sir, if you will take a look at GX 3.2T? It is page
7 one.

8 A Okay.

9 Q There is a passage sort of in the middle of the page,
10 where this statement is attributed to you. Italo --

11 A By whom? Italo.

12 Q Italo?

13 A Italo, yes.

14 Q Italo?

15 A Yes.

16 Q You know what that means? They're not starving.

17 Do you see that passage?

18 A Yes.

19 Q Do you recall the context of that conversation?

20 A Partly, yes.

21 Q And, in fact, when you said they're not starving, you
22 were actually referring to the victims of the extortion,
23 right?

24 A Correct.

25 I don't know if they were victims or in cahoots with

D'Urso-cross-Smith

1 those people at that time.

2 Q Well, certainly it wasn't unusual in your experience that
3 people that you or your fellow members of organized crime were
4 shaking down were actually crying that they can't afford to or
5 they are broke, right?

6 That happened in your experience?

7 A Sometimes it has occurred, yes.

8 Q Right.

9 And if you recall the context of the conversation,
10 you were telling your fellow participant in crime that these
11 people are -- actually have money, right?

12 A I believed that's what I was stating.

13 Q In fact, if you go down further, Italo was talking about
14 actually going in and running the operation of the victim,
15 right?

16 A Correct.

17 Q Do you recall the context of that conversation?

18 A Yes, I do.

19 Q In your experience as a -- an associate of organized
20 crime, it would be accurate to say that that is not unusual,
21 to put someone in there to run the victim's business, right?

22 A It all depends. I mean, are you asking me to give you an
23 opinion? Or are you --

24 Q Well, I am asking you about that has occurred in your own
25 experience.

D'Urso-cross-Smith

1 A Well, from my experience, we've never put anybody in
2 anywhere --

3 MR. LeMOLE: Objection.

4 THE COURT: Sustained.

5 Let me first ask you, what did you understand Italo
6 to be saying, to be proposing in this conversation?

7 THE WITNESS: In this conversation, Frank here had
8 made me previously -- had informed me that they made a
9 financial investment in the company, aside from what they had
10 been obtaining from them. And that he -- they were putting
11 Italo in there on behalf of their financial interest to
12 oversee the operation, make sure they weren't getting screwed
13 out of any proceeds.

14 THE COURT: All right. Now Mr. Smith, what do you
15 want to ask the witness beyond that?

16 MR. SMITH: Nothing, Your Honor.

17 I will go on to something else.

18 THE COURT: All right.

19 Q Take a look, sir, at 3.4T, page one.

20 If you start reading from the middle of the page
21 down? See if it refreshes your recollection about that
22 conversation.

23 (Pause.)

24 A The middle of the page where?

25 Q Anywhere in the middle of the page.

D'Urso-cross-Smith

- 1 A Okay. I remember.
- 2 Q You are having a discussion with Frank Campanella about
3 the unions, right?
- 4 A Correct.
- 5 Q Putting someone in the union, right?
- 6 A Correct.
- 7 Q Your recollection is that Campanella said to you no
8 union, no union. If he's real good and does real good, I can
9 get him in.
- 10 A Correct.
- 11 Q I try not to put guys in the union. I can't afford the
12 union.
- 13 Do you recall Frank Campanella saying that?
- 14 A Yes, I do.
- 15 Q Was it your understanding based on his statement that he
16 was the person who was actually paying the cost of the
17 employee being in the union?
- 18 Is that what you understood him to mean?
- 19 A I understood him to mean that he was talking for the
20 company, that it's expensive to maintain. I knew all along
21 that he was -- his job was to take care of the payroll and to
22 see that trucks get out.
- 23 Q Now, if you'd go on to three X -- 3.7T? There is a
24 conversation that you are having with Sammy Aparo?
- 25 A Okay.

D'Urso-cross-Smith

1 Q You see the last passage?

2 A The last line from myself?

3 Q No. Actually, where there is a broken line and then
4 there is a conversation.

5 A Oh, yes, yes.

6 Q The --

7 A There are actually two conversations, one with Frank
8 Campy, one with Sammy Aparo.

9 Q I am speaking about the one with Sammy Aparo.

10 A Yes.

11 THE COURT: As I instructed the jury yesterday, this
12 conversation is received only as background, not for the truth
13 of the statements. I just want that clear to everyone.

14 Go ahead.

15 Q Do you recall that conversation?

16 A Yes.

17 Q You were talking actually there about Wild Bill Cutolo,
18 right?

19 A Correct.

20 Q I think you said that that guy got so many businesses,
21 right?

22 A Correct.

23 Q At that time it was your knowledge or understanding that
24 actually Wild Bill Cutolo did have a lot of businesses, right?

25 A At that time, yes.

D'Urso-cross-Smith

1 Q You didn't know the specifics of the businesses, right?

2 A That's correct.

3 Q You didn't know, for example, who his loanshark victims
4 were, right?

5 A Correct.

6 Q Right?

7 A Correct.

8 Q You didn't know, for example, who his extortion victims
9 were?

10 A Correct.

11 Q Right?

12 A I knew of, you know, the one that was always in
13 discussion.

14 Q Right.

15 The one that you were participating in jointly?

16 Right?

17 A Correct.

18 Q Other than that, you don't know who all of his victims
19 were, right?

20 A Correct.

21 Q In fact, you had a later conversation about him again, at
22 3.9T, page one, where Sammy Aparo says to you, yeah, they
23 don't forget. They do not forget.

24 Then you said something unintelligible. And you
25 said, could have been dangerous. He had a good crew, a bunch

D'Urso-cross-Smith

1 of kids.

2 Then Sammy Aparo says, yeah, he had a lot and he was
3 in big action.

4 Right?

5 A Yes.

6 Q Do you recall that conversation?

7 A Yes.

8 Q What did you understand Sammy Aparo to mean by that
9 comment?

10 A That Bill Cutolo was in big action.

11 Q A well respected man, right?

12 A Correct.

13 Q Involved in a lot of criminal activity, right?

14 A From our knowledge.

15 Q Involved in extortions, right?

16 A From our knowledge, yes.

17 Q Involved in loansharking?

18 A Yes.

19 Q In fact, there is an even later conversation, at 3.15T,
20 on page five, just above the broken line, where Frank
21 Campanella says, loads? Unintelligible. I said Billy, you
22 pick up one hundred and fifty thousand a week.

23 Do you recall that?

24 A Yes.

25 Q What did you understand -- what was your understanding of

D'Urso-cross-Smith

1 that statement?

2 A That Bill Cutolo earned in excess of one hundred and
3 fifty thousand a week.

4 Q Which is a lot of money, right?

5 A Absolutely.

6 Q Even in your best day you didn't earn that, right?

7 A That's true.

8 Q That would mean that Bill Cutolo had a lot of loanshark
9 victims, right?

10 A May have.

11 Q That would mean that Bill Cutolo had a lot of extortion
12 victims, right?

13 A Could have.

14 Q Now, if you go to page three of the same exhibit, just
15 above the broken line, Frank Campanella makes a reference to
16 Local One and a Joe Bones.

17 Do you recall that?

18 A Yes.

19 Q Did you understand Local One to be a union?

20 A Yes.

21 Q This tape is actually dated October 30, 1999, right?

22 A I believe so.

23 Q You can look at the bottom right part of the page.

24 A Yes.

25 Q That was after the period of time that -- by several

D'Urso-cross-Smith

1 months that Cutolo disappeared, right?

2 A I believe so. I don't remember the date.

3 Q You knew in your dealings with Frank Campanella that he
4 was an associate of Bill Cutolo, right?

5 A Yes.

6 Q You know from your experience as a member of organized
7 crime that if Campanella has any influence with a union, it is
8 probably through Bill Cutolo, right?

9 MR. DORSKY: Objection.

10 That's --

11 THE COURT: Sustained, as to form.

12 Q When you testified yesterday you spoke generally about
13 the rules of organized crime, right?

14 A Correct.

15 Q You spoke of the hierarchy, right?

16 A Yes.

17 Q You said what an associate was, right?

18 A Correct.

19 Q He's usually assigned to a made member of organized
20 crime, right?

21 A Correct.

22 Q He also has to report to that made member all his
23 criminal activities, right?

24 A He is supposed to.

25 Q Right.

D'Urso-cross-Smith

1 He is required to by the rules, right?

2 A Correct.

3 Q Now, based on what you knew about Bill Cutolo, do you
4 think that there would have been severe consequences if he had
5 discovered that someone had violated the rule?

6 A I believe so, yes.

7 Q Now, so if in fact Mr. Campanella had some influence over
8 Local One, chances are Mr. Cutolo would know about it, right?

9 MR. DORSKY: Objection, Judge.

10 THE COURT: Sustained.

11 You can't --

12 MR. SMITH: I see the problem, Your Honor. My
13 fault.

14 Q Given the rules of La Cosa Nostra, Frank Campanella would
15 be required to tell Bill Cutolo about his influence over Local
16 One, right?

17 A I believe so.

18 Q Now, of all the times that you spoke to Frank Campanella
19 during these recordings, he never told you of a strike at the
20 location where he actually worked, right?

21 A I don't believe so. I am not certain if he might have
22 mentioned it or not.

23 Q When he spoke to you and made reference to Local One, was
24 it your understanding that the Local One problem or issue
25 dealt with some other workplace, right?

D'Urso-cross-Smith

- 1 A I don't understand the question.
- 2 Q Well, do you remember the conversation about Local One?
- 3 A Parts of it, yes.
- 4 Q Or the reference to Local One?
- 5 A Yes, yes.
- 6 Q Did you have an understanding as to what Frank Campanella
7 was saying when he referred to Local One?
- 8 A He said that he had had a problem with the union and I --
9 I didn't -- I believed to have been a problem that he couldn't
10 straighten out with the union. I don't -- that's all that I
11 remember regarding it.
- 12 Q You spoke of your own experience involving an extortion,
13 I believe it was of a glass company?
- 14 A Correct.
- 15 Q I think what you said you did was to send a union
16 representative or delegate?
- 17 A Correct.
- 18 Q To --
- 19 A Unionize the shop.
- 20 Q To unionize the shop, right?
- 21 A Correct.
- 22 Q How many people were involved in that particular criminal
23 episode?
- 24 A Five, six.
- 25 Q Okay. Now, aside -- did an actual representative from

D'Urso-cross-Smith

1 the union go?

2 A From what I had heard, yes. I didn't have contact
3 directly with a union representative.

4 Q Okay. Did the five or six people who were involved in
5 that particular criminal episode, were they -- have any
6 official title at all with the union?

7 A I -- the people I have spoken to didn't have any official
8 title with the union.

9 Q So it would be accurate to say that based on your own
10 experience, that people like yourself, members and associates
11 of organized crime, can actually commit an extortion by the
12 use of a union without even being part of the union, right?

13 MR. DORSKY: Objection, Judge.

14 THE COURT: Do you understand the question?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: You may answer the question.

17 Q You don't need to be part of the union to commit an
18 extortion, right?

19 A It is possible, yes.

20 Q In fact, ordinary crime figures control unions without
21 even being there, right?

22 A Some, some of them do. Some of them don't.

23 Q Now, you said you pled guilty to murder and you are
24 facing sentencing, right?

25 A Correct.

D'Urso-cross-Smith

1 Q And then you listed a host of other crimes that you have
2 been involved with that you made the government aware of that
3 you are not being prosecuted for, right?

4 A Correct.

5 Q I think you pled guilty in 1998, June?

6 A That is correct.

7 Q Since that time, you have not been in custody, right?

8 A That is correct.

9 Q So you actually have been on the street or in the -- your
10 relocation the whole entire time?

11 A Correct.

12 Q Right?

13 It is your expectation that you don't go to prison at
14 all for any time, right?

15 A That's not my expectation.

16 Q Well, certainly if you are going to get, for example,
17 fifteen years in prison, you might want to start doing it
18 earlier rather than later, right?

19 A I don't understand. What do you mean?

20 Q Well, you do know that if you were in prison now, you
21 would actually be getting credit for the time that you are
22 serving, right?

23 A Correct.

24 Q So while you are on the street, you are not getting
25 credit, right?

D'Urso-cross-Smith

1 A I believe not, yes.

2 MR. SMITH: Can I have one minute, please, Your
3 Honor?

4 THE COURT: Yes.

5 (Pause.)

6 MR. SMITH: I have no further questions.

7 THE COURT: Thank you.