

1 (Proceedings heard in open court:)

2 THE CLERK: 09 CR 105, United States of America
3 versus Christopher Kelly and BCI Corporation.

4 MR. Schar: Judge, I know counsel for the defendants
5 as well as co-counsel for the United States are -- okay.

6 I think there are some last-minute issues we are
7 still trying to resolve.

8 THE COURT: No, there are no last-minute issues. I
9 said 2:15 --

10 MR. SCHAR: Yes, Judge.

11 THE COURT -- and I said it ten times.

12 Please tell the attorneys to come in.

13 (Pause.)

14 MR. MONICO: Good afternoon, Judge. I'm sorry, your
15 Honor.

16 The proposal --

17 THE COURT: Just a minute. Let's get all the
18 attorneys here.

19 MR. SCHAR: Judge, Reid Schar and Chris Niewoehner on
20 behalf of the United States.

21 MR. MONICO: Mike Monico, T.R. Eppel, Jacque Jacobson
22 on behalf of the defendant, Mr. Kelly, who is present before
23 the Court.

24 THE COURT: Good afternoon.

25 MR. LIENENWEBER: Good afternoon, Judge.

1 Thomas Lienenweber on behalf of BCI Commercial.

2 MR. MONICO: I'm sorry, Judge. There was a delay --

3 THE COURT: There is no issue.

4 MR. NIEWOEHNER: Chris Niewoehner.

5 THE COURT: The matter was continued from this
6 morning until now. What is the status of the case?

7 From the government's perspective, what is the
8 status?

9 MR. SCHAR: Judge, I believe we have a plea
10 arrangement. The final details are being reviewed by the chain
11 through our office. I expect to have it up here -- and I know
12 that you have a 2:15 deadline, Judge -- to have that up here
13 within the next five to ten minutes.

14 We are ready to proceed, either with the plea --

15 THE COURT: All right. Let's not waste any time
16 then.

17 Is there an agreement to continue the trial or strike
18 the trial date?

19 MR. MONICO: Yes, your Honor.

20 MR. SCHAR: Judge, only if there is a plea today. We
21 are ready to go to trial tomorrow if there is no plea.

22 THE COURT: All right. I won't hold you any longer.
23 We will call the case again in about ten minutes.

24 MR. SCHAR: Thank you, Judge.

25 (Recess.)

1 THE CLERK: 09 CR 105, United States versus
2 Christopher Kelly and BCI Corporation.

3 MR. SCHAR: Good afternoon again, Judge.

4 Reid Schar and Chris Niewoehner on behalf of the
5 United States.

6 THE COURT: All right. Good afternoon.

7 MR. MONICO: Good afternoon, your Honor.

8 Michael Monico, Jacqueline Jacobson and T.R. Eppel on
9 behalf of Mr. Kelly, who is present before the Court.

10 THE COURT: Good afternoon.

11 MR. LEINENWEBER: Good afternoon, your Honor.

12 Thomas Leinenweber on behalf of BCI Corporation.

13 THE COURT: Good afternoon.

14 What is the status of the case?

15 MR. SCHAR: Judge, I believe we have a plea agreement
16 to provide to your Honor in relation to resolving the case as
17 to Mr. Kelly.

18 I believe that we are still working through a
19 resolution with BCI. However, depending upon what your Honor's
20 schedule is, if you could hear a second plea today to resolve
21 that after Mr. Kelly's plea, or, alternatively, we can set
22 another date for BCI to --

23 THE COURT: Or we could proceed with the corporation
24 tomorrow, if Mr. Lienenweber is ready.

25 MR. LIENENWEBER: I'm fine.

1 THE COURT: Tomorrow is an agreeable date?

2 MR. LIENENWEBER: Certainly, your Honor.

3 THE COURT: All right. So you may linger, if you
4 wish, or you can come back tomorrow.

5 MR. LIENENWEBER: I'll stay.

6 MR. MONICO: Your Honor, Mr. Lienenweber would have
7 the permission to act on behalf of the company tomorrow at the
8 plea.

9 THE COURT: You are representing Christopher Kelly,
10 right?

11 MR. MONICO: Yes. Yes, your Honor.

12 THE COURT: You are not representing the corporation.

13 MR. MONICO: No. But I believe Mr. Kelly is giving
14 --

15 THE COURT: Mr. Lienenweber will speak for the
16 corporation.

17 MR. MONICO: Yes, your Honor.

18 THE COURT: May I have a copy of the agreement?

19 MR. SCHAR: Judge, there have been some changes.
20 Mr. Kelly will initial that.

21 THE COURT: All right.

22 MR. SCHAR: And then we will --

23 May I approach, Judge?

24 THE COURT: Yes.

25 THE CLERK: Thank you.

1 THE COURT: Are you Christopher Kelly?

2 THE DEFENDANT: Yes.

3 THE COURT: Would you get a little closer to the
4 microphone, Mr. Kelly.

5 Please raise your right hand and be sworn.

6 (Defendant sworn.)

7 THE COURT: Mr. Kelly, your attorneys have advised
8 the Court that you wish to withdraw your plea of not guilty and
9 to enter a plea of guilty based upon the terms of the written
10 plea agreement.

11 Is that correct?

12 THE DEFENDANT: That's correct.

13 THE COURT: Is there some reason why you are
14 whispering?

15 THE DEFENDANT: No. I said: "That is correct," your
16 Honor. I'm sorry.

17 THE COURT: Try to speak up so the court reporter can
18 hear what you have to say.

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Within the last 24 hours have you had any
21 alcoholic beverages to drink?

22 THE DEFENDANT: No, I have not.

23 THE COURT: Have you used any drugs or chemicals?

24 THE DEFENDANT: No, I have not.

25 THE COURT: Are you taking any prescription

1 medication?

2 THE DEFENDANT: No, I am not, your Honor.

3 THE COURT: Are you clear-minded this afternoon?

4 THE DEFENDANT: Yes, I am.

5 THE COURT: And do you know what you are doing?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: What is the date of your birth?

8 THE DEFENDANT: 6-26-58.

9 THE COURT: And where were you born?

10 THE DEFENDANT: Champaign, Illinois.

11 THE COURT: How far have you gone in school?

12 THE DEFENDANT: Bachelor's in landscape architecture
13 from the University of Illinois at Champaign.

14 THE COURT: When did you receive that degree?

15 THE DEFENDANT: 1980.

16 THE COURT: What do you ordinarily do for a living?

17 THE DEFENDANT: I'm a commercial roofing contractor.

18 THE COURT: You have the right to a jury trial, and
19 you also have the right a trial before a Judge sitting alone
20 without a jury, which is known as a bench trial.

21 You have the right to be represented by an attorney
22 at all times, as, indeed, you are now with your attorney
23 standing to your immediate left.

24 You are presumed to be innocent of these charges, and
25 the government bears the burden of proving your guilt beyond a

1 reasonable doubt.

2 You have the right to a jury trial, and you also have
3 the right to a trial before a Judge sitting alone without a
4 jury, which is known as a bench trial. You may waive your
5 right to a jury trial, but only if the government would agree,
6 and the Court would have to approve of your waiver of trial by
7 jury.

8 If you did that, then the case would proceed to a
9 trial before a Judge sitting alone without a jury. But if you
10 plead guilty, there will not be a trial of any kind.

11 In a jury trial, 12 people hear the evidence in the
12 case, and they decide whether you are guilty or not guilty.
13 The government has the burden of proving your guilt beyond a
14 reasonable doubt.

15 You are not required to prove your innocence; the
16 government is required to prove your guilt beyond a reasonable
17 doubt.

18 You and your attorneys would have the right to
19 participate in the selection of the jury by exercising what are
20 known as peremptory challenges or challenges for cause, but
21 eventually 12 people would be selected to sit as jurors in the
22 case.

23 They would sit in the jury box to your immediate
24 right, listen to all of the evidence, and then decide whether
25 the government has proven your guilt beyond a reasonable doubt.

1 The verdict would have to be unanimous, and that
2 means that all 12 people on the jury would have to agree upon a
3 verdict of either guilty or not guilty.

4 If the case went to trial before a Judge sitting
5 alone without a jury, the government would have the same
6 burden, which is to prove your guilt beyond a reasonable doubt.

7 If you plead guilty, there will not be a trial of any
8 kind. If the case did go to trial, you would have the right to
9 confront the witnesses against you. That means to see them
10 here in open court, and to hear what they have to say while
11 under oath or affirmation from the witness stand.

12 And after any witness would testify in the case, you
13 and your attorneys would have the right to cross examine, which
14 means to ask questions. You would also have the opportunity,
15 you and your attorneys, to object to the introduction of any of
16 the government's evidence.

17 If the case went to trial, you would have the right
18 to testify yourself, to call witnesses in your own behalf, and
19 you would also have the right to remain silent, which means to
20 say nothing.

21 And you would also have the opportunity to present
22 other evidence.

23 You would not be required to put on any case
24 whatsoever because of the presumption of innocence and that the
25 government has the burden of proving your guilt beyond a

1 reasonable doubt. But if you said that you wanted a trial, it
2 would be your right to have one.

3 You would have the right to testify yourself. If you
4 did that, you would be sworn or you would affirm to tell the
5 truth. You would then make your statement from the witness
6 stand, and if you did that then the government would have the
7 right to cross examine you, which means ask questions of you.

8 You have an absolute constitutional right to remain
9 silent at trial, and that means to say nothing. And if you
10 exercised that right, the government would not be permitted to
11 comment about that in any way whatsoever, and under our law,
12 neither the Judge nor the jury may draw any negative inference,
13 anything bad, from you exercising your absolute constitutional
14 right to remain silent at trial.

15 If you decided that you wanted to call witnesses, it
16 would be your right to do so. And if any of your witnesses
17 were reluctant or unwilling to come in, or refused to come in,
18 subpoenas could be issued for their attendance.

19 And, thus, you would have the authority and the power
20 of the Court to compel witnesses to testify in the case.

21 You would also have the opportunity, as I have said,
22 to present other evidence, and you would never be required to
23 prove your innocence. The government would be required to
24 prove your guilt beyond a reasonable doubt.

25 These are your rights and you give them up by

1 pleading guilty.

2 Do you understand the things that I have just said to
3 you?

4 THE DEFENDANT: Yes, I do, your Honor.

5 THE COURT: Do you have any questions on anything
6 that I have said?

7 THE DEFENDANT: No, sir.

8 THE COURT: If this case proceeded to trial, what
9 would the government's evidence show?

10 MR. SCHAR: Judge, with respect to Count 1 of the
11 indictment, the evidence would show that beginning no later
12 than in or about September 1998, continuing through at least in
13 or about May 2006, in the Northern District of Illinois,
14 Eastern Division, and elsewhere, Defendant Christopher Kelly,
15 together with BCI Commercial Roofing, Inc., Co-Schemer A and
16 Company A, and others known and unknown to the grand jury,
17 devised and intended to devise and participated in a scheme and
18 artifice to defraud American Airlines and United Airlines of
19 money and property, including confidential information, and
20 also American Airlines' and United Airlines' right to control
21 the disposition their property through the awarding of
22 contracts for roofing construction services by means aof
23 materially false and fraudulent pretenses, representations and
24 promises, material omissions, which scheme I'm going to now
25 further describe.

1 More specifically, during the course of the scheme
2 the defendant was president and owner of BCI Roofing. BCI
3 Roofing was in the business of providing commercial roofing
4 services.

5 Co-Schemer A was the president and owner of Company
6 A. Company A was in the business of providing consulting
7 services to various entities relating to the construction,
8 repair and replacement of roofs.

9 American Airlines was a commercial airline company.
10 It had hangars at O'Hare Airport, and, from time to time,
11 contracted with vendors to obtain services relating to its
12 roofs at O'Hare.

13 United Airlines, likewise, was a commercial airline
14 with hangars at O'Hare who from time to time contracted with
15 vendors to obtain services.

16 During the period of the scheme American Airlines and
17 United awarded contracts for roofing construction services to
18 the lowest bid submitted by a responsible contractor.

19 The evidence would show, Judge, that it was part of
20 the scheme that the Defendant and BCI Roofing, together with
21 Co-Schemer A and Company A, fraudulently steered construction
22 contracts for roofing work at American Airlines' and United's
23 O'Hare facilities to BCI Roofing by falsely representing to
24 American Airlines and United the estimated costs of roofing
25 projects to be performed by manipulating the bidding process

1 for those projects in return for hidden kickbacks from the
2 defendant and BCI Roofing to Co-Schemer A and Company A.

3 After learning about roofing projects being
4 undertaken by American Airlines or United at O'Hare, the
5 defendant and Co-Schemer A attempted to obtain the consulting
6 work for Company A by having Co-Schemer A and Company A agree
7 to provide roofing consulting services to American Airlines or
8 United at less cost than other roofing consultants, with the
9 understanding that once Company A obtained the consulting work,
10 Co-Schemer A would fraudulently steer the contracts for roofing
11 construction work on the projects to the defendant and BCI
12 Roofing, and, thereafter, the defendant and BCI Roofing would
13 provide hidden kickbacks to Co-Schemer A and Company A.

14 After Company A obtained roofing consulting work from
15 American Airlines or United on a particular project, Co-Schemer
16 A reviewed the project, determined the nature and extent of the
17 roofing construction work, and secretly met with the defendant
18 to inform the defendant of the nature and extent of the work to
19 be performed.

20 Judge, the evidence would further show that they --
21 that the defendant and Co-Schemer A ultimately attempted to
22 prevail upon the airlines to pick a particular budget.

23 After American Airlines approved the budget,
24 Co-Schemer A produced a project booklet that described the
25 roofing project and could be provided to roofing contractors

1 who were prospective bidders so they could review the roofing
2 project.

3 After producing the project booklet for a particular
4 roofing project for American or United, Co-Schemer A typically
5 held a pre-bid meeting at which potential bidders on the
6 project would review the project booklet and project site and
7 ask questions on the project.

8 The defendant sent an employee of BCI Roofing to
9 these meetings to create the false impression that the
10 defendant and BCI Roofing were unaware of the details of the
11 project and were participating in the bidding process in the
12 same manner as other prospective bidders, even though the
13 defendant previously had learned the details of the project
14 from Co-Schemer A.

15 The defendant and Co-Schemer A would disclose certain
16 budget figures which were American's and United's confidential
17 information to potential bidders on the project for the purpose
18 of inducing bids that would be larger than BCI Roofing's bids.

19 The defendant, anticipating that other bidders would
20 submit high bids, and knowing that American Airlines and United
21 would award the roofing contract to the lowest bidder,
22 submitted a bid on behalf of BCI Roofing that the defendant
23 believed to be sufficiently under the budget figure that it
24 would be lower than other bids, but would still provide for a
25 profit for BCI Roofing on the project.

1 Co-Schemer A, knowing that American Airlines and
2 United wanted at least three roofing companies to bid on each
3 roofing project, and to help ensure that the defendant and BCI
4 Roofing obtained certain roofing projects, submitted fictitious
5 bids for certain projects so that it appeared to the airlines
6 that there were three legitimate bidders on the project, when,
7 in fact, as Co-Schemer A knew, there were not three legitimate
8 bidders for the project.

9 Co-Schemer A ensured that each fictitious bid was
10 higher than BCI Roofing's bid, and, therefore, the fictitious
11 bid would not and could not be the winning bid.

12 After receiving the construction contracts from
13 American Airlines and United for the roofing work at O'Hare as
14 a result of the fraudulent and manipulated bidding process, the
15 defendant kicked back to Co-Schemer A and Company A a portion
16 of the funds they received through the fraudulently obtained
17 contracts, which kickbacks totaled at least \$450,000.

18 Defendant provided the kickbacks to Co-Schemer A and
19 Company A in a variety of methods, including by having
20 Co-Schemer A and Company A falsely invoice the defendant and
21 BCI Roofing for consulting services that were never performed,
22 and by passing money through third parties in order to conceal
23 the true source and nature of the kickback payments.

24 And, thereafter, having Co-Schemer A and Company A
25 provide false invoices to the third parties, so that it

1 appeared that Co-Schemer A and Company A had completed work,
2 when, in fact, Co-Schemer A and Company A had done no work for
3 the third parties, and the invoices were meant to further
4 conceal the true source and nature of the kickback payments
5 from the defendant and BCI Roofing to Co-Schemer A and Company
6 A.

7 In particular, the evidence would show that defendant
8 and Co-Schemer A rigged a variety of contracts in the manner
9 described, including roofing contracts for: A, in
10 approximately 1998, American Airlines Hangar 1; B, in
11 approximately 2001, American Airlines Air Cargo Building; C, in
12 approximately spring of 2004, United's Service Center Hangar;
13 and, D, in approximately fall 2005, United's L-Check Hangar.

14 Through the actions described above, the defendant
15 and BCI Roofing, together with Co-Schemer A and Company A,
16 fraudulently deceived American Airlines and United into
17 awarding the four roofing contracts described above to BCI
18 Roofing, totaling approximately \$8.5 million, based on a belief
19 that these contracts were the result of an honest and
20 competitive bidding process, when, in fact, as the defendant
21 knew, the prices at which those contracts were awarded did not
22 result from an honest and competitive bidding process and were
23 in amounts that guaranteed profits to BCI Roofing and
24 undisclosed kickbacks to Company A.

25 For each of the four projects, the defendant provided

1 kickback money to Co-Schemer A. In particular, as to the
2 American Airlines Air Cargo Building, Co-Schemer A provided
3 approximately seven fraudulent invoices to the defendant and
4 BCI Roofing.

5 The invoices indicated that Company A had completed
6 consulting work for BCI Roofing. In fact, Judge, as the
7 evidence would show, and defendant knew, no such work was
8 performed.

9 Rather, the invoices were produced so that it
10 appeared that BCI Roofing had a reason to pay money to Company
11 A.

12 The invoices totaled approximately \$137,000. The
13 defendant and BCI Roofing paid the fraudulent invoices with
14 checks to Company A.

15 The \$137,000 in checks were all kickback payments
16 that the defendant provided to Co-Schemer A because of the
17 rigged process that was able to secure the American Airlines
18 Air Cargo Building for the defendant and BCI Roofing.

19 The evidence would further show that in relation to
20 the United Service Center Hangar contract, the defendant and
21 BCI Roofing provided Co-Schemer A with approximately \$132,000
22 in kickbacks in exchange for BCI Roofing obtaining the
23 contract.

24 The defendant hid the payment of the contracts to
25 Co-Schemer A by passing the money to Co-Schemer A through third

1 parties.

2 In particular, the evidence would show the defendant,
3 through BCI Roofing, provided \$60,000 to Individual B and
4 Individual B's company, Company C.

5 Thereafter, and at the defendant's direction,
6 Co-Schemer A fraudulently invoiced Company C for \$72,000 in
7 consulting services, although Co-Schemer A had never provided
8 consulting services to Company C.

9 Also at the defendant's direction, Individual B
10 provided \$72,000, including the 60,000 he had received from the
11 defendant, to Co-Schemer A as part of Co-Schemer A's kickback
12 payment in relation to the United Service Center Hangar
13 contract.

14 In addition, in relation to the United Service Center
15 Hangar contract, at the defendant's direction, Co-Schemer A
16 provided a fraudulent \$47,000 invoice to an entity called
17 Irving Park Involvement LLC and Irving Park Development LLC.

18 In fact, as defendant knew, Co-Schemer A and Company
19 A had never done any work for any Irving Park entity.
20 Thereafter, the defendant arranged for a \$47,000 check from
21 Rezko Enterprises to be provided to Co-Schemer A as a payment
22 for the fraudulent invoice and as part of the kickback payments
23 on the Service Center Hangar.

24 The defendant also arranged for a \$13,000 check from
25 Company D to be provided to Co-Schemer A as a kickback payment

1 in relation to the United Service Center Hangar.

2 The evidence would further show that in relation to
3 United L-Check Hangar -- that is the 2005 project -- the
4 defendant arranged the payment of \$187,000 in kickbacks to
5 Co-Schemer A in exchange for BCI Roofing obtaining the United
6 L-Check Hangar contract.

7 The defendant originally arranged the single \$137,000
8 kickback payment to Co-Schemer A from an entity affiliated with
9 Antoin Rezko. After it was determined, however, that a single
10 \$187,000 was not practical, the evidence would show the
11 \$187,000 kickback payment was broken into approximately six
12 smaller checks totaling \$187,000.

13 For each check, Co-Schemer A fraudulently invoiced an
14 entity affiliated with Antoin Rezko and received a check from
15 that entity.

16 The defendant admits that the defendant and BCI
17 Roofing made profits of over \$2.5 million from the multiple
18 contracts that were rigged by the Defendant Co-Schemer A.

19 As to Count 1, in furtherance of the scheme just
20 discussed, on or about August 9, 2004, at Chicago, in the
21 Northern District of Illinois, Eastern Division, and elsewhere,
22 the defendant, along with co-defendant BCI Roofing, for the
23 purpose of executing the scheme just described and attempting
24 to execute the scheme, did knowingly cause to be delivered by
25 mail, according to the directions thereon, an envelope

1 containing a \$590,400 check from United Airlines, Inc., to BCI
2 Roofing, and addressed to BCI Roofing in Markham, Illinois, in
3 violation of Title 18, United States Code, Section 1341.

4 With respect to Count 14 of the indictment, to which
5 the defendant is also pleading guilty, Judge, the evidence
6 would show that on or about October 23rd, 2004, in the Northern
7 District of Illinois, Eastern Division, and elsewhere, the
8 defendant BCI -- the defendant knowingly engaged in a monetary
9 transaction affecting interstate commerce and criminally
10 derived property of a value greater than 10,000, which was
11 derived from specified unlawful activity -- namely, mail fraud
12 -- in violation of Title 18, United States Code, Section 1341,
13 in that the defendant knowingly provided a BCI Roofing check in
14 the amount of \$93,000 to Casino A for the payment of a personal
15 gambling debt incurred by the defendant in violation of Title
16 18, United States Code, Sections 1957(a) and (2).

17 More specifically, the defendant obtained substantial
18 criminally derived profits through the criminal bid-rigging and
19 kickback mail fraud scheme in which he participated and which I
20 just described.

21 After obtaining the profits from the mail fraud
22 scheme, the evidence would show that the defendant knowingly
23 took the criminally derived profits and used them for his
24 personal use for a variety of monetary transactions, each being
25 over \$10,000.

1 In particular, the defendant knowingly participated
2 in the following monetary transactions affecting interstate
3 commerce and criminally derived profits from the mail fraud
4 scheme:

5 A, on or about August 6, 2004, the defendant
6 knowingly provided a BCI Roofing check from a federally insured
7 bank in the amount of \$58,000 to Company B for the purchase of
8 personal electronic equipment for defendant.

9 B, on or about December 3rd (sic), 2004, the
10 defendant knowingly provided a BCI Roofing check from a
11 federally insured bank in the amount of \$150,000, of which
12 \$82,277.64 came from the criminally derived profits from the
13 mail fraud scheme to Individual A for the payment of a personal
14 gambling debt incurred by the defendant.

15 C, on or about October 25th, 2004, defendant
16 knowingly provided a BCI Roofing check from a federally insured
17 bank in the amount of \$93,000 to Casino A for the payment of a
18 personal gambling debt incurred by the defendant.

19 D, on or about December 8th (sic), 2004, defendant
20 knowingly provided a BCI Roofing check from a federally insured
21 bank in the amount of \$700,000, of which \$665,088.58 -- I'm
22 sorry -- a hundred thousand, eighty-eight dollars and 58 cents
23 came from the criminally derived profits from the mail fraud
24 scheme to Antoin Rezko to repay a personal loan used to
25 purchase a house for the defendant.

1 E, on or about February 10th, 2005, the defendant
2 knowingly provided a BCI Roofing check from a federally insured
3 bank in the amount of \$40,000 to the defendant for his personal
4 use.

5 And, finally, the evidence would show, F, on or about
6 February 10th, 2006, defendant knowingly provided a personal
7 check from a federally insured bank in the amount of \$130,000,
8 of which \$110,617 --

9 THE COURT: Is that 130 or 140?

10 MR. SCHAR: Judge, it should be 130. And I think the
11 plea agreement unfortunately still tracks the unamended
12 indictment.

13 THE COURT: All right. Proceed.

14 MR. SCHAR: On or about February 10th, 2006, the
15 defendant knowingly provided a personal check from a federally
16 insured bank in the amount of 130,000, of which \$110,617.91
17 came from the criminally derived profits from the mail fraud
18 scheme, to Casino B for the payment of a personal gambling debt
19 incurred by the defendant.

20 Defendant knew that at the time he was conducting
21 each of these transactions he was using criminally derived
22 profits for his personal use.

23 In total, the evidence would show the defendant
24 completed over \$1 million in monetary transactions affecting
25 interstate commerce with criminally derived profits from the

1 defendant's mail fraud scheme.

2 THE COURT: Mr. Monico, are these the facts upon
3 which your client is pleading guilty?

4 MR. MONICO: Yes, your Honor.

5 THE COURT: Mr. Kelly, did you hear what the
6 government's evidence would show if this case proceeded to
7 trial?

8 THE DEFENDANT: Yes, I did, your Honor.

9 THE COURT: Did you hear everything the prosecutor
10 just said?

11 THE DEFENDANT: Yes, I did, your Honor.

12 THE COURT: Did you also hear what Mr. Monico just
13 said?

14 THE DEFENDANT: Yes, I did, your Honor.

15 THE COURT: Are these the facts upon --

16 THE DEFENDANT: Yes, they are.

17 THE COURT: Are these the facts upon which you are
18 pleading guilty?

19 THE DEFENDANT: Yes.

20 THE COURT: To put it another way, is that what
21 happened and is that what you did?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Count 1 carries a maximum
24 sentence of 20 years' imprisonment. Count 1 also carries a
25 maximum fine of \$250,000, or twice the gross gain or gross loss

1 resulting from that offense, whichever is greater.

2 Furthermore, with respect to Count 1, the Judge may
3 also impose a term of supervised release of not more than three
4 years. The actual period of supervised release with that
5 limitation would be determined by the Judge at the time of the
6 sentencing.

7 Count 14, the second count to which you are pleading
8 guilty, carries a maximum sentence of ten years' imprisonment.

9 Count 14 also carries a maximum fine of \$250,000, or
10 twice the gross gain or gross loss resulting from that offense,
11 whichever is greater.

12 Furthermore, with respect to Count 14, there would be
13 a term of supervised release of not more than three years. The
14 actual period of supervised release, with the three years'
15 limitation, would be determined by the Judge at the time of the
16 sentencing.

17 The Court can also order restitution to victims of
18 the offense in an amount to be determined by the Court.

19 And there would be a special assessment of \$100 with
20 respect to each of the two counts to which you are pleading
21 guilty.

22 So that, therefore, under the counts to which you are
23 pleading guilty, the total maximum sentence is 30 years'
24 imprisonment. There would be a total maximum fine of one-half
25 million dollars, or twice the gross gain or gross loss

1 resulting from the offenses of conviction, whichever is
2 greater, a period of supervised release, and a special
3 assessment totaling \$200, in addition to any restitution
4 ordered by the Court.

5 Do you understand the maximum penalties provided for
6 by the law?

7 THE DEFENDANT: Yes, I do, your Honor.

8 THE COURT: Are you also aware that at the time of
9 the sentencing, the Court will be looking at the federal
10 sentencing guidelines? They are no longer mandatory, but will
11 serve as guides to the Court.

12 Are you aware of that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: About how many times have you discussed
15 this case with Mr. Monico and your other attorneys?

16 THE DEFENDANT: Numerous, your Honor.

17 THE COURT: Can you put a number on it?

18 THE DEFENDANT: Hundreds, your Honor.

19 THE COURT: Have you met with your attorneys
20 face-to-face?

21 THE DEFENDANT: Extensively.

22 THE COURT: Have you met with your attorneys
23 face-to-face in Mr. Monico's office?

24 THE DEFENDANT: Yes.

25 THE COURT: And have you spoken with him and the

1 other attorneys by telephone?

2 THE DEFENDANT: Yes.

3 THE COURT: And when you did discuss the entire case
4 with your attorneys, did they explain to you what your rights
5 are and what you would be giving up by pleading guilty?

6 THE DEFENDANT: Yes.

7 THE COURT: And when you talked to Mr. Monico and the
8 other attorneys and they explained to you what your rights are,
9 did they tell you essentially the same things that I have just
10 told you, but using other words and language?

11 THE DEFENDANT: Yes.

12 THE COURT: Did you read this written agreement?

13 MR. MONICO: We went through it, Judge. We can't say
14 we --

15 THE DEFENDANT: I can't say I read the whole thing.

16 MR. MONICO: -- read the whole thing. But we did --

17 THE DEFENDANT: I understand it.

18 MR. MONICO: We do understand what Mr. -- Mr. Schar
19 just said.

20 What I would ask, Judge, is that -- I don't think the
21 government would object -- if we can have, perhaps, the signed
22 copy you have back after this proceeding, so that we can make
23 sure it's accurate and everything is consistent with what
24 Mr. Schar just said.

25 THE COURT: No. We will stop now and have your

1 client read this agreement.

2 MR. MONICO: Yes, your Honor.

3 THE COURT: Take a brief recess.

4 (Recess.)

5 MR. MONICO: Thank you, your Honor.

6 THE COURT: Could you pass that agreement up,
7 counsel.

8 MR. MONICO: Yes, sir.

9 THE COURT: Now, Mr. Kelly, Mr. Monico, just before
10 the break, said that you had gone over this agreement with him,
11 is that right?

12 THE DEFENDANT: Yes.

13 THE COURT: Not only with Mr. Monico, but with two
14 other attorneys, right?

15 THE DEFENDANT: Yes.

16 THE COURT: Were they available to answer any
17 questions that you had regarding any of the terms of this
18 agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you then ultimately read it or reread
23 it?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you sign the last page of it?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you have the original, Eric?

3 THE CLERK: That's the original.

4 MR. SCHAR: I'm sorry. May I approach?

5 THE CLERK: Thank you.

6 THE COURT: As I was saying, Mr. Kelly, did you sign
7 the last page of this written agreement?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And Mr. Monico signed it as well, is that
10 right.

11 THE DEFENDANT: Yes.

12 THE COURT: As did Mr. Fitzgerald, and as did
13 Mr. Schar, is that correct?

14 MR. SCHAR: Yes, sir.

15 THE COURT: Are there any particular provisions of
16 the plea agreement, Mr. Monico, that you want to underscore or
17 draw emphasis to?

18 MR. MONICO: Well, there are two, your Honor. One
19 relates to sentence. It's an 11(c) sentence -- (c)(1)(C) --
20 (c)(1)(B), your Honor.

21 THE COURT: Yes.

22 MR. MONICO: And which means that there is an agreed
23 sentence of 57 months' consecutive to a 37-month sentence that
24 the defendant has already been given.

25 And that there is a forfeiture number, your Honor, of

1 an agreement of \$450,000.

2 THE COURT: And all of that is covered in greater
3 detail within the terms of the written plea agreement, is that
4 right?

5 MR. MONICO: Yes, your Honor. Exactly.

6 THE COURT: Is that right, Mr. Kelly?

7 THE DEFENDANT: Yes.

8 THE COURT: And did you discuss all of this with your
9 attorneys?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, would it be fair to say that when
12 you discussed this written agreement and ultimately
13 signed -- read it and signed it, that you became aware of what
14 your constitutional rights are and what you would be giving up
15 by pleading guilty?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And so I have advised you, is that right?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: The agreement advises you?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And Mr. Monico and his two associates as
22 well have advised you of your constitutional rights?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And what is it that you have decided to
25 do?

1 THE DEFENDANT: I'm sorry, sir?

2 THE COURT: What is it that you have decided to do?

3 THE DEFENDANT: To plead guilty to the charges and
4 accept 57 months' incarceration and a fine of \$450,000 --

5 MR. MONICO: Forfeiture.

6 THE DEFENDANT: -- forfeiture of \$450,000, and a fine
7 of \$100,000 for my corporation.

8 THE COURT: Well, it wouldn't be right for you to
9 summarize the entire agreement by those few sentences. Do you
10 understand that?

11 THE DEFENDANT: Okay.

12 THE COURT: You are pleading guilty, are you not?

13 THE DEFENDANT: Yes, I am.

14 THE COURT: On the entirety of this written
15 agreement?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: All of its terms?

18 THE DEFENDANT: Yes.

19 THE COURT: Every term in here?

20 THE DEFENDANT: Absolutely.

21 THE COURT: Are you being threatened in any way?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you being pressured or forced or
24 shoved into pleading guilty?

25 THE DEFENDANT: I would be remiss if I didn't say

1 that there was a great deal of pressure in my life right now.
2 But I'm doing it freely, and willingly, understandingly,
3 knowingly, conscious of the ramifications of my actions, and
4 I'm accepting responsibility here in front of you today, Judge
5 Norgle.

6 THE COURT: All right. Do you want to ask any
7 questions of the Court?

8 THE DEFENDANT: No, I do not, sir.

9 THE COURT: Are you clear-minded this afternoon?

10 THE DEFENDANT: Yes, I am, sir.

11 THE COURT: And you mentioned before that you haven't
12 been -- had any drugs or alcohol or anything of that nature, is
13 that correct?

14 THE DEFENDANT: That's correct, your Honor.

15 THE COURT: And during the course of the morning you
16 have been talking to your attorneys, right?

17 THE DEFENDANT: At length, sir.

18 THE COURT: And you have discussed this case with
19 them on, you said, hundreds of occasions?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Is it fair to say you have had enough
22 time to think about all of this?

23 THE DEFENDANT: Yes, your Honor, I have.

24 THE COURT: All right. This is an important
25 question: Then what is it that you have decided to do?

1 THE DEFENDANT: To plead guilty to the charges as
2 outlined by the prosecutor.

3 THE COURT: Now, with respect to the factual basis
4 for the plea of guilty, which is spelled out in great detail
5 within the written plea agreement, is this consistent with the
6 Bourjaily proffer?

7 MR. SCHAR: Yes, it is, Judge.

8 THE COURT: Is that correct, Mr. Monico?

9 MR. MONICO: Yes, your Honor.

10 THE COURT: There is a factual basis for the plea of
11 guilty to the counts to which Mr. Kelly is pleading guilty.

12 The plea of guilty has been made voluntarily,
13 knowingly, intentionally, without any form of threats or
14 coercion.

15 And Mr. Kelly is represented by three competent
16 attorneys, and has advised the Court that he understands
17 everything, that he has had enough time to think about all of
18 this, and that he has decided to enter a plea of guilty asking
19 the Court to implement this written plea agreement.

20 It is so ordered.

21 The matter will be then continued for sentencing.

22 Are you asking, Mr. Monico, for a specific date?

23 MR. MONICO: No, your Honor.

24 THE COURT: You want this continued generally, or do
25 you have a specific date in mind?

1 MR. MONICO: No, I don't have a specific date in
2 mind, Judge.

3 THE COURT: All right. Then the routine sentencing
4 date, Mr. Fulbright, would be?

5 THE CLERK: Anywhere from mid-November on.

6 THE COURT: Okay. Is November 18th a reasonable
7 date?

8 MR. MONICO: November 18th seems reasonable, Judge.

9 THE COURT: From the government's standpoint,
10 November 18th, is that a reasonable date?

11 MR. SCHAR: That's fine, Judge.

12 THE COURT: All right. So November 18th at 10:00
13 o'clock for sentencing.

14 Mr. Kelly is presently free on bond, is that right?

15 MR. SCHAR: He is, Judge.

16 I'm sorry, one last thing on the plea before we move
17 to the bond issue.

18 There is several changes in the plea agreement I
19 think you have. They have all been initialed by myself,
20 Mr. Monico and Mr. Kelly.

21 There is one line in paragraph 10 that was initially
22 crossed out. I believe I have written "stet," s-t-e-t, and "no
23 change" next to it.

24 THE COURT: Yes.

25 MR. SCHAR: Just so the record is clear, that line

1 will remain in the plea agreement. The other changes, I
2 believe, are all consistent with the parties' understanding.

3 THE COURT: So as I hold this original now in my
4 hand, this is the agreement you are asking the Court to
5 implement, is that right?

6 MR. SCHAR: Yes, Judge.

7 THE COURT: Is that correct, Mr. Monico?

8 MR. MONICO: Yes, your Honor.

9 THE COURT: And is that correct, Mr. Kelly?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All of the changes which have been
12 initialed are now part of the original plea agreement, which
13 the Court has accepted and will implement in due course.

14 Now, on the issue of the release order, what is the
15 government's present position?

16 MR. SCHAR: Judge, the government's present position,
17 I believe it's in agreement with defense counsel, is that
18 Mr. Kelly will surrender, I believe, to the MCC on September
19 18th, which would be, if I'm not mistaken, next Friday.

20 THE COURT: Yes.

21 MR. SCHAR: And that his conditions between that time
22 and this time should be modified to include the fact that he
23 will not go anywhere near a location at 2047 North Milwaukee, I
24 believe, and individuals called 1, 2 and 3, who I will disclose
25 to Mr. Monico.

1 And, as well, Mr. Kelly will maintain a curfew
2 between midnight and 6:00 a.m. which he will call in to
3 Pretrial when he arrives home.

4 Based on that, the government agrees that September
5 18th would be a reasonable surrender date, understanding that
6 the bond is ultimately your determination, Judge.

7 THE COURT: All right. Mr. Monico, are you and your
8 colleagues on behalf of Mr. Kelly agreeing to these
9 modifications?

10 MR. MONICO: We are, your Honor.

11 THE COURT: So that the main change would be that
12 Mr. Kelly would report for detention on Friday, the 18th.

13 MR. MONICO: Yes, your Honor.

14 THE COURT: All right. It is so ordered.

15 MR. MONICO: Thank you, your Honor.

16 MR. SCHAR: Thank you, Judge.

17 THE COURT: Mr. Lienenweber, if you want to return
18 tomorrow, we can do it tomorrow. Or if you need the presence
19 of Mr. Kelly, another way to approach it would be to continue
20 this matter to the 18th at 10:00 o'clock.

21 And after the change of plea with respect to the
22 corporation, then Mr. Kelly could report to detention. Is that
23 a practical way to do this?

24 MR. LIENENWEBER: Judge, could we do that? Could we
25 do it the morning of the 18th, if that's all right?

1 THE COURT: Yes. It would be at 10:00 o'clock on the
2 18th, Friday.

3 MR. LIENENWEBER: That's right.

4 THE COURT: Assuming this goes through more or less
5 routinely, Mr. Kelly then would report for detention.

6 MR. MONICO: Yes, your Honor.

7 THE COURT: Do you agree to that, Mr. Kelly?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. So be here then Friday,
10 September 18th, at 10:00 o'clock, in relationship to the
11 corporate defendant.

12 And, Mr. Lienenweber, corporate attorney, will be
13 here at the time.

14 The other attorneys are certainly welcome to be here
15 if they wish to be here.

16 Thank you, counsel.

17 MR. MONICO: Thank you, your Honor.

18 MR. SCHAR: Thank you, Judge. Thank you for hearing
19 us.

20 (Proceedings concluded.)

21

22 CERTIFICATE

23 I hereby certify that the foregoing is a true and
24 correct transcript of the proceedings in the above-entitled
25 case.

/S/Maellen E. Pittman
Official Court Reporter

September 14, 2009
Date