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*When you stand up in front of the jury to argue,
you're in the spotlight.
There's no place to run or hide.*

CCJA ELOQUENCE SPOTLIGHT
Federal RICO Prosecution
Defense Argument

Jury argument is, in part, about the force of words. The **Spotlight** presents you with the opportunity to read the jury speeches of skilled advocates and to briefly think with the speaker's head. If you do this enough, it will help you become a better one-sided conversationalist. You may find it useful to print this argument to hard copy and file it away for future reference in your own trials. If you have time, study good arguments the way a lepidopterist studies butterflies under glass, with an eye for themes, symmetry, and the use of figures of speech. When you read the [transcript](#) of a good jury argument, do it with a pair of scissors close at hand, so you can clip out the phrases and

expressions that you find persuasive and place them in your jury argument file.

<http://www.jdsupra.com/post/documentViewer.aspx?ID=30678c75-bbb7-4679-b5b1-9718de777f5c>

On behalf of the trial advocates who visit our jury argument web site, the CCJA extends its gratitude to Ms. NiaLena Caravasos for sharing the text of her eloquent and moving "reasonable doubt" speech to the jury in a complex federal organized crime prosecution. The text is as she spoke it. This excellent summation reads well. It sounds even better. We underscore the fact that the text of effective jury arguments is delivered for the ear and not the eye. Precisely correct written English often sounds like overblown babble when it is spoken. To capture the persuasive essence of a good jury speech, practice reading it aloud. [Note: I have made notes at various points in this argument when rhetorical figures of speech are used to drive a point home. There are some [figures of speech](#) that I didn't highlight. See if you can identify them.]

Background: What follows are selected excerpts from the jury argument of Ms. Caravasos in the marathon trial of [United States v. Joseph Merlino et al](#), Criminal Number 99-363, tried in the United States District Court of the Eastern District of Pennsylvania from 20 March 2001 to 20 July 2001. The seven defendants who went to trial were as follows: Joseph Merlino, who was alleged to be the boss of the Philadelphia *La Cosa Nostra* (LCN); Steve Mazzone, who was alleged to be the underboss of the Philadelphia LCN; George Borgesi, who was alleged to be the consigliere of the Philadelphia LCN; John Ciancaglini, who was alleged to be a made member of the Philadelphia LCN; Frank Gambino, who was alleged to be a made member of the Philadelphia LCN; Martin Angelina, who was alleged to be a made member of the Philadelphia LCN; and Angelo Lutz, who was alleged to be an associate of the Philadelphia LCN.

The government's indictment, which was superseded four times, consisted of various charges including RICO, RICO conspiracy, murder(s), attempted murder(s), theft(s), extortion(s), and gambling. Although the government had numerous cooperating witnesses, this was reputedly the first time in local history that they had an alleged former boss of the LCN (Ralph Natale) cooperate and testify on behalf of the government.

Ms. Caravasos represented the defendant Frank Gambino. At the conclusion of this four month trial, Mr. Gambino was acquitted of all the substantive RICO and RICO conspiracy charges, as well as all the charges of violent crimes in aid of racketeering that related to murders and attempted murders. [For detailed information leading up to the trial, try this [web site](#).]

THE ARGUMENT

(Guilt by association - shared surname between accused and infamous family of organized crime)

From the beginning of this trial there was much mention made of the name Gambino. Numerous times you heard about the infamous Gambino crime family of New York. And with every such mention it is possible that someone might make the exact misassumption that I made at the very first moment that I began my involvement in this case. It is possible that some of you might wonder, whether aloud with your voice or silently with your eyes, whether or not Frank Gambino was associated with the New York Gambinos, simply because they share the same last name. You, however, know that such an assumption is not true. You know it because you heard the stipulation between the defense and the federal government, the stipulation which stated that Mr. Frank Gambino is not and never has been a member, an associate, or a blood relation of the New York Gambinos. You also heard that the similarity of their surnames is nothing more than a coincidence.

(Reasonable doubt) .

Judge Hutton will explain to you, however, that in a criminal case the defense need not present any evidence of anything. The entire burden of proof regarding this indictment rests solely with the federal government. The prosecutors are the ones who must prove each and every element of the crimes charged, and they must do so beyond all reasonable doubt. If the federal government fails to prove its claims to you beyond a reasonable doubt, then you must assume that it is not so. When we make various decisions in our lives, we do so with different degrees of certainty. Judge Hutton will explain to you that having "a reasonable doubt" means that there is something that would cause you to "hesitate" in a matter of importance in your life. Now, there are various things that each of us deem to be important decisions in our lives. But, for argument's sake, let's take the example of marriage. Marriage is something that at least some of us deem to be an important decision. If you are in the process of contemplating marriage, but you just can't quite bring yourself to go out and get that ring or you just can't quite bring yourself to get down on one knee and ask the question or you just can't quite bring yourself to accept the other person's proposal, you are hesitating to act in a matter of personal importance to you. You've got that lagging doubt. Having a reasonable doubt doesn't mean that you would be prevented from acting. It doesn't mean that, at the end of the day, you will not act. You could very well end up marrying that person. What reasonable doubt means and all that it means is that you "hesitate" to act. If you hesitate to act in a matter of importance in your life, then you are not certain of that decision "beyond a reasonable doubt." I submit to you that whether or not you believe the word of people telling you a particular story, the credibility, if you will, of the polluted sources [[Note that this theme of "polluted sources" of government information is a defensive theme that threads this argument.](#)] presented to you by the federal government, that is something that could cause you to have a reasonable doubt. That is something that could cause you to "hesitate" to act.

(Credibility of witnesses - informants and cooperating co-conspirator witnesses)

In his instruction to you, Judge Hutton will tell you that an "informant" is someone who provides evidence against someone else either to escape punishment for his own sins and crimes or for some other personal reason or advantage. Judge Hutton will also tell you that the testimony of informants and alleged accomplices and cooperating witnesses must be examined and weighed with greater care than you would give the testimony of a witness who is not so motivated (or inspired or polluted). The polluted sources in the case against Mr. Gambino are Ralph Natale, Ronald Previte, Fred Angelucci, and Christopher Aleardi *aka* Ronnie the Bricklayer.

(Attacking the character of the opposition's witnesses - specific bias of cooperating witnesses)

Natale - From the date of Natale's special revocation of parole hearing, which was 5 December 1999 one and a half years before this trial, two FBI agents came to the hearing and went to bat for him. Just because he had told his tale to the federal government. He could have gotten up to eleven years for violating his parole but because the federal government spoke so well of him and his cooperation, he got none. Not even one day of jail did he get for violating his parole. Even before Natale stepped into this courtroom, he had already learned what the federal government could do for him. He already knew what the federal government did for him in the past, and for others who told their tale in order to save themselves, like Philip Leonetti and Sammy "the Bull" Gravanno. Natale admitted that because of the drug indictment against him he was looking at life in prison. He also admitted that only at the request of the federal government does he have the chance of walking away from a life behind bars. Only if the federal government files that motion you heard about, that is

called a 5K1 motion, does he have the chance of getting out of prison. Because without a motion filed by the federal government, no judge can do anything for him. Natale admitted to you that he told his tales in this courtroom because that is the only way that he can come home. He told his tales to you to save himself, and he did it because that is the way the system works.

Angelucci - Although he admitted to being involved in the thefts of a whole slew of items totaling more than \$1.1 million, the government held him responsible for less than one-third of that amount. Although he made a total of more than \$60,000 profit from these thefts. The federal government never asked him to pay restitution, nor did they prosecute him for income tax evasion. Although Angelucci admitted to having committed a total of seven other thefts of tractor trailers, thefts that the federal government knows about, thefts that he made \$16,500 profit from, the federal government has not arrested or indicted him for those crimes. They have not referred him to the local authorities for prosecution. They have not asked him to make restitution. They have not prosecuted him for income tax evasion.

For his efforts here, there is no question that what Angelucci wants is to walk away from jail. And there is no question that Angelucci knows how the system works in that regard. He knows it because he reaped those benefits three times before in his life. Once when he walked away from jail in his federal counterfeiting case in the early 70's because he told tales against others to save himself and the federal government made a pitch for him to get probation, and, indeed, probation he did get. The second time there was no jail when he participated in the armed hijacking of a meat truck, where it was his plan to hijack the truck, where he knew what was on the truck. So, he had two other people go and tie the driver up, so he could come in and steal the truck, where it was his plan for a gun to be involved. The third time there was no jail, courtesy of the federal government, was when he participated in the home invasion, where it was his plan for the woman to get tied up and her eyes bound with tape, where he told those two other guys to go in and do this to this woman so that he could then go in and steal \$10,000 worth of things from her home, where it was his plan for a gun to be involved, where his plan to do this to this woman was carried out while her baby was inside. For all of these times, Angelucci walked away from jail with probation. And even though the DA's office objected in the case involving the mother and her baby, he got probation anyway because the federal government made a pitch for him also in state court. And, even though the judge knew about Angelucci's life-long criminal history, and, even though the judge knew all of these horrible details about these crimes, the judge gave him probation anyway, courtesy of the federal government.

Aleardi aka Ronnie the Bricklayer - Since the moment that Christopher Aleardi struck his cooperation deal with the federal government the federal government has paid more than \$75,000 in order to support him and has spent more than 40 hours meeting with him and preparing him to testify. And for what? So that he could spend one hour and fifteen minutes telling you his story on direct. Aleardi admitted that the federal government is the one who decides whether he has done what he needs to do in order to get a lower sentence.. He admitted that he did not wish to go to jail for five years and would rather have probation. And he also admitted to you that because he told his tale against other individuals, and because the federal government expected him to do the same in this case, they already made a pitch for him at his sentencing. When Judge Weiner actually asked the prosecutor, "What kind of sentence are you seeking?" one of the same federal prosecutors from this case didn't tell Judge Weiner to give whatever sentence the judge felt was appropriate. Instead, this federal prosecutor asked the Court to give him five years probation. And the judge stated that it is because the federal government requested it and urged him to give it that, indeed, that is the reason that the judge did give Aleardi five years probation. And he walked away from jail. And Aleardi admitted to you that he will lose his agreement and his probation unless he came here to testify.

(Specific lies, prior convictions, prior bad acts, etc. of opposition witnesses)

Natale- Ralph Natale testified before the Senate Committee in '82-83. He understood that he had an obligation to tell the truth because he was under oath. But he also had a grant of immunity. And what that means is that the only way for him to get in trouble was to lie. Yet he lied for two days anyway - to a room full of Senators, and they believed him. And not only did he lie to them, but he admitted to you that he had no trouble telling those lies. He did it convincingly. He admitted that he comes to you as a thoroughly trained liar. Ralph Natale told you without a doubt that he has lied every day of his entire life - to everyone, and they believed him. But he wants you to believe that - *to you* - he is telling the truth. And he wants you to believe this in the face of a conversation that he had with Tyrone Denittis on 20 June '96 where Natale clearly admits, "They try to make people cooperate. They don't mean them to tell the truth. Cooperate with them." Natale wants you to believe that *to you* he is telling the truth, and he wants you to believe this in the face of Government's Exhibit T-70, which is a conversation on 24 January '96 between himself and Steve Mazzone where Natale clearly admits "You know, it's a shame, you know, if you commit a crime and you get caught, you should go to jail ... go serve your time, whatever it is.. but now these guys turn and become liars and try to give their time to somebody else."

Ronnie the Bricklayer - He lied to the federal government regarding his drug use in a meeting with one of the same federal prosecutors who is trying this case plus two federal agents also involved in this case plus his own attorney. Aleardi lied to all four of those people about whether he had ever used crack cocaine. And not only did he lie to all of them, while he was a cooperating witness, but he did it well, well enough so that all four of these people believed him. But yet the federal government wants you to believe - beyond a reasonable doubt - that *to you* he is telling the truth. When Aleardi testified before the grand jury in this matter, the same grand jury, by the way, that relied on his word and indicted Mr. Gambino, Aleardi stood before the people serving on the grand jury and he took an oath to tell the truth, just as he did with you. But he did not tell the grand jurors the truth. Instead he lied to the grand jury. When Aleardi was asked whether there were any other times that he had been involved in criminal activity, his response was "No, I have no criminal record whatsoever." The question by the grand jury, however, was not whether he had been prosecuted and convicted. The question was whether there were any other times that he had been "involved" in criminal activity. Aleardi lied to the grand jury and never told them about his participation in that illegal check cashing scheme in New Jersey with checks totaling \$27,000, which, by the way, is a crime that also involves lying. And the federal prosecutor who was with Aleardi, one of the same federal prosecutors involved in this trial, knew that Aleardi lied, but yet did not say anything that would enable the grand jury to learn the truth. And the grand jury never knew the truth - the whole truth - because neither Aleardi nor the federal government told them. They just let it go. They let the lie go. And the grand jury believed Aleardi. But yet the federal government wants you to believe this perjurer is telling the truth to you.

Angelucci - Angelucci has been a government witness ... a polluted source ... a master of deceit .. long enough to know that the best way to tell a story depends upon the circumstances ... and his stories vary ... [Notice the analogy.] just like in those dinner clubs where they put on a mystery show and the audience participates ... and the outcome varies depending on the audience reactions. The same thing happened here with Angelucci. His stories changed depending upon who he was talking to. When Angelucci testified under oath before the grand jury, he did not know that Aleardi, aka Ronnie the Bricklayer, was also a cooperating witness. So, at that time, when he did not know that Aleardi was a cooperating witness, Angelucci told the grand jury that John Berry and Christopher Aleardi had threatened him. Now, when Angelucci testified under oath here in front of you he knows

that Aleardi is a cooperating witness. So, now, when he knows this and does not want you to badly of Aleardi, since that would hurt the government's case and his own cause, Angelucci's story now changes and he tells you that Aleardi never threatened him. And not only did he lie to you, he also now wants you to believe that the court stenographer at the grand jury got it wrong. Don't you hate it when that happens! Particularly, since you heard the stenographer's certification that her transcript was indeed correct. I mean, if Angelucci's explanation is not ridiculous, I don't know what is. Also convenient is the fact that in *United States v. Robert Miller, Sr.*, where Angelucci wanted to help the government against Bobby Miller, Sr., he told the jury in that trial that it was Miller Sr. who asked Angelucci to deliver Sony TVs to Ralph Abbruzzi and says nothing about Mr. Gambino. Yet here, where he's trying to help the government convict Gambino, his story changes, and he tells you that Mr. Gambino was involved in directing the delivery of Sony TVs to Abruzzi. When Fred Angelucci testified before the grand jury, he took an oath to tell the truth, the whole truth, the same oath he took in this courtroom. Yet when Angelucci was asked whether he had ever been convicted before of criminal offenses, he told the grand jury only about one counterfeiting and burglary conviction from 1978. Now, I don't need to tell you - you heard it for yourselves - that Fred Angelucci has the kind of criminal record that [Note the metaphorical comparison.] if they gave frequent flyer miles for time spent traveling through the criminal justice system, he'd be flying free for years to come. There can be no dispute that he did not tell the truth, the whole truth, to the grand jury. His two state burglary convictions in 1963 and '69 ... he lied about those. His one state conviction for conspiracy to commit burglary in 1963 ... he lied about that. His four state convictions for burglary, larceny, and receiving stolen property in 1962, '63, '67 and '70 ... he lied about those. His one state conviction for insurance fraud in 1970 ... he lied about that. His one federal conviction for the interstate transportation of stolen property in 1971 ... he lied about that. His two federal convictions for interstate transportation of a stolen motor vehicle in 1969 and '70 ... he lied about those. His conviction in 1974 for violating his federal probation ... he lied about that. His federal conviction in the Virgin Islands in 1977 for forging a signature while using a stolen credit card ... he lied about that. His state conviction for the armed hijacking of a meat truck ... he lied about that. His state conviction for home invasion where the mother was tied up and taped up .. while the baby was inside ... he lied about that. But , when you think about it, it's not really surprising that he lies under oath. Because, after all, many of the crimes for which he has been convicted - burglaries, receiving stolen property, forgeries, insurance fraud, larcenies, counterfeiting - all of these convictions also involve dishonesty and lying - lying to banks, lying to insurance companies, lying to ordinary people. And the federal prosecutor who was with Angelucci at the grand jury, who is also one of the same federal prosecutors involved in this trial, knew that Angelucci lied, but that prosecutor did not say anything that would enable the grand jury to learn the truth. Do you think that, perhaps, the grand jurors might have viewed Angelucci differently had they know the truth? But the fact remains that the grand jury never knew the whole truth because neither Angelucci nor the federal government told them. They just let it go. They let those lies go. And the grand jury, the same grand jury that returned the indictment against Mr. Gambino in this case, that grand jury believed Angelucci. And now the government wants you to believe that this perjurer, this lifelong liar, has suddenly decided to tell you the truth. Fred Angelucci lies on tape...under oath ... pretty much anywhere and to anyone. He is, shall we say, an indiscriminate liar. Not only has he been lying to people his entire life while stealing from them and defrauding them ... but he also lied about that on a tape-recorded conversation ... transcript 262 on the 26th of October '98 when he told John Berry, " 35 fucking years I've been straight ... I never ripped nobody off, and I don't want nobody to rip me off." You had Fred Angelucci telling you under oath on the stand that he and Ronnie the Bricklayer took sample race car sets to Mr. Gambino in an attempt to sell them to him, and not only did Angelucci say that under oath, but he also said it on page 2 of transcript , the conversation of October 9 '98 with Frank Buono, where he says, "Now, we took the sample of the race cars. " "The white-haired guy Ronnie .. takes one of them to Frank Gambino." You then had Ronnie the Bricklayer telling you the opposite under oath. He testified , and I asked him again on cross just to make sure, that he never participated in any

attempts to sell race car sets to anyone. One of them is obviously lying to you about the reasonable for you to think that both of them are lying to you about Mr. Gambino?

(The trial court's instruction re false testimony of lying witnesses - false in one, false in all)

In his charge, Judge Hutton will instruct you about a provision in the law which is called "False in one ... false in all." And what this means is that if you believe that a witness lied about one thing, you may, if you wish, conclude that the witness lied about everything. And Judge Hutton will also tell you that you may, if you wish, disregard that witness' entire testimony. Based on what you know about these men, I submit to you fairness would seem to demand that this is exactly what you should do. Disregard the testimony of these polluted sources .. of Natale.. of Aleardi ... and of Angelucci.

(Lack of evidence of the alleged RICO "continuing criminal enterprise")

[Notice how defense counsel makes effective use of the rhetorical question as a figure of speech in her argument. The rhetorical question is one of the most useful forensic devices available to trial advocates. It provides a wonderful way of indirectly giving the jury information without seeming pushy. The rhetorical question assumes its own answer, but most good lawyers will answer it if the answer is not overwhelmingly self-evident.] Other than polluted sources telling you about how Mr. Gambino was supposedly a member of an enterprise called *La Cosa Nostra*, what reliable proof do you actually have of that? What tangible evidence, other than unpolluted evidence, do you actually have that proves association between Mr. Gambino and this alleged enterprise? Natale told you that he's known Mr. Gambino for 20 years, and you also heard evidence in the form of a stipulation between the defense and the government that Mr. Gambino has been a resident of South Philadelphia from 1984 to March 2000, a span of 16 years and 3 months. So, if you calculate 365 days a year times 16 years, 3 months, he's resided in South Philadelphia for 5930 days. Now, in those 5930 days in the same neighborhood, what physical evidence of association have you seen? You saw one photograph of him at the wedding of Natale's granddaughter; one photograph of him, Joey, and Stevie outside of a court proceeding; a couple of photos of him and a man named James Ranieri walking on the street outside the Ben Franklin Hotel on the day of the christening for one of Joey's children; one photo of Mr. Gambino standing outside Joe Malone's bar; one surveillance report of Mr. Gambino arriving once to the area of 9th and Moore and being greeted by one of the other defendants; one videotape of Mr. Gambino speaking to Natale at the racetrack - now in reference to that videotape, the government tried to make an issue out of the fact that during a portion of the time that they spent speaking together, they spoke in the stairwell; this however means absolutely nothing because, if you remember Natale's testimony, he admitted that he had a conversation with Louis Turra in the same stairwell and even though he and Turra were whispering in the privacy of the stairwell, Natale admitted that they spoke of nothing illegal; they spoke only about the appeal of one Turra's friends; one tape-recorded conversation of Mr. Gambino being at the same get-together with Previte, Merlino, and Ralph Abbruzzi; one videotape of Mr. Gambino going to a birthday party at Gianna's; one photograph of Mr. Gambino, Joey Merlino, Mr. Abbruzzi Sr., and Nick Virgilio outside of Abbruzzi's Variety Store, where Mr. Gambino is sitting in a lounge chair sunning himself. Okay, back to my calculations. You have nine days where you have seen black and white proof of Mr. Gambino being somewhere with alleged members of *La Cosa Nostra*. But what about the other 5921 days that he's lived in South Philadelphia? Where is the evidence of association?

[Note the use of the phrases "you saw" and "you heard," as counsel lists the relevant proof.] You saw evidence about money orders that were sent to Natale by various people, but none of those money orders were sent by Mr. Gambino. You heard evidence re various people going to visit Natale while

he was in jail, but you saw no evidence that Mr. Gambino ever visited him. You saw photos of the people in attendance at Michael Ciancaglini's funeral; yet, if you noticed ... and if you did not, I invite you to look again ... because those photos also show you that Mr. Gambino was not there. You saw videotapes of Greenpeace, the clubhouse at 6th and Catherine, but you never saw any evidence of Mr. Gambino going there. You heard evidence re a surveillance report listing the people in attendance at Joey Merlino's Christmas Party in 1997; yet, you heard that Mr. Gambino was not on that list. You saw videotape re a Christmas Party on December 9th at Gino's Cafe; yet, you saw that Mr. Gambino did not attend. You saw evidence of the individuals who attended the wedding of Tyrone Denittis' daughter; yet, you did not see Mr. Gambino there. You saw videotapes of the guests arriving at the wedding of Steve Mazzone's child, but you never saw any evidence of Mr. Gambino going there.

[Notice that Ms. Caravasos makes great use of the figure of speech known as *anaphora* which is a figure in rhetoric in which the same word is repeated at the beginning of successive clauses or sentences. Here she makes effective use of the phrase "You heard."] You heard a total of 101 tape-recorded conversations of Ronald Previte, speaking with various people, yet, in only one did he ever actually speak with Mr. Gambino. You heard a total of 15 tape-recorded conversations of Peter Caprio *aka* Pete the Crumb speaking about various defendants. Yet, he never speaks about Mr. Gambino. You heard 144 tape-recorded conversations, presented to you by the government, of Ralph Natale calling and speaking with various people from prison. Yet, you never heard him call or speak with Mr. Gambino. You heard 33 tape-recorded conversations, presented to you by the defense, of Natale speaking with this wife and daughter from prison, and during those conversations Natale speaks about Clem Hipple, Danny D'Ambrosia, Peter Caprio George Anastasia, and he also speaks about and bad mouths some of the other individuals on trial here. But I invite you to look again at the transcripts because when you do so you will see that never ever does Natale even mention Mr. Gambino.

When you have polluted sources, as you do in this case, it is critical, absolutely critical, that you look to the other evidence for corroboration to back up the tale of the polluted sources ... to cleanse the pollution, if you will. Even Agent John Foley admitted to you that "If the cooperating witnesses do not have a track record of telling the truth, then you need to get corroboration." The non-polluted sources in this case are the photos, the money orders, the visitor logs, and the tape-recorded conversations. The untainted, unpolluted evidence shows you that Mr. Gambino is pretty much nowhere and does pretty much nothing. No money does he send. No visits does he make. No conversations does he have. No respects does he pay to alleged members of *La Cosa Nostra*.

You know that if the government had any unpolluted evidence of him belonging to an enterprise, they would have shown it to you. You know this because they have shown you everything else under the sun. You know that if they had photos of him being at Michael Ciancaglini's funeral they would have shown them to you. If they had videotapes of him visiting the Greenpeace clubhouse, they would have shown them to you. If they had surveillance reports of him attending Joey Merlino's Christmas party, they would have shown them to you. If they had videotapes of him visiting Gino's Cafe, they would have shown them to you. If they had physical evidence of him attending the wedding of Tyrone Denittis' daughter, or the christening of Steve Mazzone's child, they would have presented them to you. If they had money orders of him having sent money to Natale, they would have shown them to you. If they had logs of him visiting Natale, they would have shown them to you. If they had more than one conversation of Previte speaking with Mr. Gambino, they would have played them for you. If they had any conversations of Caprio speaking about Mr. Gambino, you would have heard them. If they had any conversations of Natale speaking with Mr. Gambino, they would have played them for you. If they had any conversations of Mr. Natale speaking about Mr. Gambino, you would have heard them.

The federal government, with its infinite resources, has collected every bit of memorabilia ... and they've given you all they have and they have nothing on Mr. Gambino - nothing you can trust, nothing you can reliably believe ... nothing you would not doubt ... nothing that would not cause you to "hesitate to act" [referring to the definition of "reasonable doubt"] ... nothing other than tales from polluted sources who come to you as admitted perjurers with selective memories .. who come to you as very convincing, lifelong liars.

(Opposition witness now testifying to facts that are totally absent from the witness' earlier statements to law enforcement officers)

When Ralph Natale was cross-examined by Mr. Jacobs, he admitted to having read his 302's [These are the FBI's written notes re witness interviews. As a matter of practice, the FBI typically does not take signed written statements from its witnesses.] He admitted to having read two or three times the statements reflecting what the federal government says Natale told them during the some 500 hours spent preparing for this trial. Natale admitted that the facts that the FBI wrote down in all 85 pages of his 302's were correct. He swore to their accuracy and stated that the "basic facts are there." He said that the placing of some words may be different, but the 302's are basically 100% accurate.

Natale testified re a meeting with bookmakers at Front and Reed in early '95. He said supposedly that various members of the mafia were paired up with bookmakers, and he spoke of an alleged agreement that was reached for *La Cosa Nostra* to take one-half of the bookmakers' business. Natale also told you that Mr. Gambino was supposedly there and that he was paired with a bookmaker named James Ranieri. When I asked him about this on cross-examination, however, he admitted to me that these 302 statements, whose accuracy he vouched for, say nothing about Mr. Gambino being at this meeting, and they say nothing about Mr. Gambino and Mr. Ranieri being paired together. Natale also testified re a meeting that supposedly occurred two weeks after the Milicia shooting, during which time the topic of discussion was video poker. profits.,and Natale told you that Mr. Gambino was supposedly at this meeting where they discussed splitting up profits. When I asked him about this on cross-examination, however, he admitted to me that those 302 statements, whose accuracy he vouched for, say nothing about Mr. Gambino being at this meeting, and he also admitted that those 302 statements, whose accuracy he vouched for, say nothing about Mr. Gambino receiving any video poker machine profits.

(Absence of proof that accused has wealth - the "lifestyle" defense)

And also keep in mind the other fact about Mr. Gambino that Natale conceded during my cross-examination. Natale conceded that Mr. Gambino did not live a life of affluence or luxury. He never purchased a home. Nor did he ever remodel a home. Instead, he lived only in an apartment in South Philadelphia. Ask yourselves also whether you heard any evidence about Mr. Gambino driving a Porsche, a Jaguar or a Maserati? You did not. You heard only that he arrived somewhere once driving a Ford that wasn't even registered to him. And actually, if you think about it, you never heard any evidence about him ever owning any car at all. I submit to you that this picture hardly signifies the lifestyle of someone who is supposed to be a made member of *La Cosa Nostra*, an organization whose purpose is to make money. Remember the words of Ronald Previte when he told you that one of the reasons the federal government gave him money is because he "had to keep up a nice front and drive nice cars and stay in character" as an alleged member of *La Cosa Nostra*. So, what all this leaves you with is one of two possibilities as far as Mr. Gambino is concerned - either Mr. Gambino is the sorriest, most pathetic excuse for a made member of the mafia that you've ever

heard of or he really is not one of them.

(Discounting the cooperating coconspirator's testimony regarding the defendant's role in an alleged shooting)

In reference to the shooting of Anthony Milicia, Ralph Natale admitted that he was not at the scene of the shooting, that he did not provide the weapon, that he did not drive the car, that he did not participate or aid in any manner. According to him, the extent of his involvement concerned two acts: (1) he claims to have given the order for Milicia to be killed and for Mr. Borgesi to use the "right equipment," i.e., a shotgun. and (2) he claims to have met with Mr. Gambino and Mr. Merlino at a rowhome in South Philadelphia three or four days after the shooting, at which time Mr. Merlino supposedly told him that Mr. Gambino was the shooter and Mr. Gambino supposedly offered some excuse as to why he was unsuccessful.

Let's look at each of these things one by one. As far as orders are concerned, I asked Natale and he told me that if a mafia boss gives an order to a member of *La Cosa Nostra* and that member does not comply with that order - the punishment is death. Yet, not only was Milicia not killed pursuant to the order Natale says he gave, but Natale obviously did not impose the punishment of death upon Mr. Gambino for failing to carry out the supposed order. Now, Ralph Bertolino saw the firearm and confirmed it most certainly was not a shotgun, and Natale also admitted that although a shotgun was not used pursuant to his order, he obviously did not impose the punishment of death on Mr. Borgesi. You also have Gaetano Scafidi telling you the following things: (1.) that a mafia boss is the one who selects who commits which particular crimes, and (2) that once a violent act is over, you forget about it and never speak about it again. In which case, Natale would have specified who the shooter of Milicia should be and, thus, would not need to learn about it later, and he also would not have met with any one to discuss the shooting after it was over. [Here comes another of many good rhetorical questions with answers.] So, what do these inconsistencies tell you? What they tell you is that: (1) Mr. Gambino is not a member of La Cosa Nostra, and (2) Natale never gave any such orders re the shooting of Milicia.

The only shred of evidence that links Mr. Gambino to the Milicia shooting is the meeting where Ralph Natale says that he met with Mr. Gambino and Mr. Merlino three or four days later and Mr. Gambino supposedly confessed. Since the shooting of Milicia occurred on 29 May 1996 and the month of May has 31 days, this meeting would have occurred either on the first or second of June '96. I asked Natale and he admitted that he neither has nor has he ever seen any photographs, any videotapes, or any audio surveillance of himself being in the company of Mr. Gambino and Mr. Merlino during that time period. You have also heard me ask every law enforcement agent who testified whether they had any surveillance reports from those dates and whether they could corroborate Natale in reference to such a meeting having occurred, and they could not. You know that if the federal government had any such corroboration, they would have produced it, and you know this because they have shown you every other piece of memorabilia imaginable.

Now, what information exactly did Natale tell you that Mr. Merlino and Mr. Gambino told him at this meeting? [Here counsel quotes crucial testimony of an opposition witness from the record, referring to the questioning prosecutor as "Mr." and to the witness by his surname.] So that I do not misquote anyone unintentionally I would like to read to you directly from the court transcript:

Question by Barry Gross (pp. 18-19): "How soon after Milicia was shot did you have the conversation?"

Answer by Ralph Natale (p. 19): "About three or four days after."

Question by Mr. Gross (p. 18): "And what did Merlino tell you?"

Answer by Natale (p. 18): "Merlino said the glass shattered, the girl starts screaming."

Question by Mr. Gross (p. 18): "So, did you go downstairs and speak to anybody?"

Answer by Natale (p.18): "I spoke to Frank Gambino downstairs."

Question by Mr. Gross (p. 19): "And what did he tell you?"

Answer by Natale (p.19): "He said, I tried the best I could, but who the hell knows? She starts screaming. He shot the glass."

Now, you know from this that the only information that Natale actually told you about the Milicia shooting is that a woman was screaming and glass was breaking.

You also know, because Natale admitted it to you during Mr. Jacob's cross-examination, that all of the violent crimes charged in this indictment were reported in the Philadelphia newspapers. You also know, because Natale admitted it, that, although he did not read newspapers that much, he did tell you that he read stories about the mafia and their alleged activities. In addition to him telling you, you've also seen evidence of Natale reading the newspaper through various conversations that you heard about. Remember the meeting of 5 October '95 at the racetrack between Natale, Previte, and others where Natale told Previte regarding the Billy Veasey murder that "the papers are blaming the shooting on us." Remember the phone call between Natale and Tyrone Denittis on 25 January '96 where Natale refers to the *Inquirer* article that he read re Battaglia becoming a rat. Remember also when Natale admitted to hearing and believing things that he read in the newspaper, things about the government's theory about Sal Avena, the 70 year-old almost blind lawyer who was on trial between March and May of '96. And remember yet again the conversation between Natale and his wife on May 31 of '96 which, by the way, occurred coincidentally just two days after the Milicia shooting, where Natale speaks about reading a newspaper article about Joey Merlino selling coffee and cigars on Passyunk Avenue. In addition to actually reading the articles in the newspaper, Natale admitted that the information regarding all of the shootings at issue in this case was common talk and knowledge on the street. To quote Natale, his exact words were, "Every human being reads the newspaper and then discusses it."

I invite you to look at the newspaper articles that ran in the Daily News and the *Inquirer* the day after the Milicia shooting. What you will see is that the information that Natale told you, the only information, about the woman screaming and the glass breaking is contained in those newspaper articles, both of which ran the very next day. The *Inquirer* says: "Police identified the bar's current owner as Bonnie Leone, who was in the Explorer with Milicia at the time of the assault." "Police said his face was also cut with flying glass from the Explorer's windows, three of which were shattered." And the *Daily News* says: "Bonnie, who was in the front seat, fled the van screaming 'Help!' and left the passenger door open, neighbors said." "Bullets shattered two windows on the driver's side and a side window on the passenger side." Natale told you nothing that the entire city of Philadelphia and the surrounding areas wasn't exposed to. Is it reasonable to think that Natale knew about the glass breaking and the woman screaming because he read it in the newspaper? Even if he himself didn't actually read the articles, is it reasonable to think he spoke with someone who had read them? I submit to you that both of these are very plausible, very reasonable explanations for where Natale got his information from.

I know he told you, as his excuse for not knowing more information, that he did not want to know specific information about the shootings in this case. But before you decide whether or not to actually believe that, remember that Natale also told Ms. Denton at his special revocation hearing, "I don't wanna be specific because I don't want nobody to hang me with something really specific."

If you look carefully at the evidence in this case, Natale's own words show you that he learned from an outside source about the shooting of Mr. Milicia days before this alleged meeting with Mr. Gambino and Mr. Merlino. Let's look at Government's Exhibit T-144, the conversation that Natale

had with Dan Daidone in his residence, this conversation occurred at about 8:18 a.m. on 30 May the very next day after the Milicia shooting. Now, keep in mind that Natale told you that he did not meet with Mr. Merlino and Mr. Gambino until three or four days later, but yet during this conversation the very next morning, Natale already knew that Milicia had been shot, and Natale also admitted to me - and you can see from that conversation itself, that not only did he already know that Milicia had been shot, but he also knew that Milicia's girlfriend was in the car with him at the time of the shooting.

What else do you know from this same conversation from Natale's own words? You know that Anthony Milicia was a man who went out to collect his own money and that he was looking to get robbed. When I asked him on cross-examination, Natale admitted to me that this is what this man did for a living - he collected the money from his video poker machines and, as a result, he obviously made himself a target for attacks. In this conversation, Natale spoke to Daidone about the prior beatings on him, and when I asked him, Natale admitted to me that he neither ordered those beatings nor did those beatings have anything to do with *La Cosa Nostra*. Natale also spoke to Daidone about the prior robberies on Mr. Milicia, and when I asked him, Natale admitted to me that he neither ordered those shootings nor did those shootings have anything to do with *La Cosa Nostra*. Is it reasonable to think that the shooting of Mr. Milicia for which Mr. Gambino is charged also had nothing to do with *La Cosa Nostra*, and most certainly had nothing to do with Mr. Gambino?

Not only do you not have any reliable evidence pointing to Mr. Gambino, but the only reliable evidence you do have points away from him. You have a police report prepared on the day of the shooting by two officers, a report that was reviewed and signed off on by their supervisor, a report that states that the information contained in the report came from a sight source, in other words, [Note the use of *anadiplosis*, repetition of the last words of one clause at the beginning of the next.] an eyewitness, an eyewitness that these officers deemed reliable because that's how they marked it on the report, an eyewitness whose information these officers confirmed because that's how they marked it on the report, a report that the sergeant told you was authentic. And what does this report say? It says that the "doers were two white males in their early 20's." Those men obviously did not include my client. [Note how this paragraph and the next each end with an embedded command that the client was not the shooter.]

And then you have Ralph Bertolino, who himself was a witness to the shooting, an eyewitness that the government called to the stand ... not the defense ... a man who was not testifying in order to curry any favors from the government or in exchange for any deal - a man who just happened to be around when the shooting occurred. And what did this man tell you? He told you that the shooter was not older than him - and he was 35 at the time. He told you that the shooter was not an elderly man, and he also confirmed for you the obvious - that Mr. Gambino is indeed an elderly gentleman and that Mr. Gambino was obviously not the shooter.

The choice is clear. You must either trust polluted source Ralph Natale or you trust the police report plus the unbiased eyewitness. I cannot imagine that there is even a question. The fact that the federal government can actually stand here with a straight face and ask you to convict Mr. Gambino is beyond unbelievable.

(Using the government's tape-recorded conversations as evidence of the accused's innocence - the cooperating co-conspirators as the "eyes, ears and voice" of the federal government)

I would like now to speak with you about the tape-recorded conversations re the theft charges. It is

critical - absolutely critical - that you recognize that Angelucci is a veteran at cooperating with the government. To say it politely, he has been around. He knows how it's done. He knows how the game is played. He is not an innocent. His job, so to speak (while working for the federal government) was to wear a wire, and in a period of four and a half months, Angelucci secretly recorded 40 conversations. Ronald Previte, he has also been around. He, too, is not an innocent. Previte is a man who also told you that his duties, while working for the government, were to wear a wire and make tape-recorded conversations, and he certainly did that quite well. Because Previte told you that for this case alone he made 300-400 recordings. They say that "Experience is the best teacher," and Ronald Previte and Fred Angelucci are as good as they come, and [Notice how the phrase "the tapes they (he) made for you" will be a recurring theme in this portion of the argument and how this phrase is juxtaposed against the tapes' lack of incriminating statements concerning the accused] the tapes that they made for you are the best that these veterans could do.

Only Previte and Angelucci knew that they were wearing a wire. [Note the upcoming use of *anaphora*, repetition of the same words at the beginning of succeeding sentences.] They admitted that they could have spoken about anything while wearing the wire. They admitted that they could have spoken to anyone while wearing that wire. They admitted that they are the ones that decided who to tape. They admitted that they are the ones that decided when to tape. They admitted that they are the ones that decided what to say on those tapes. They admitted that they are the ones who decided what questions to ask on those tapes. They admitted that their purpose for wearing the wire was to gather evidence against people - people who they say were involved in the thefts. Their purpose was to gather evidence against Mr. Gambino. Their purpose was to gather evidence for you. Not only were they both the "eyes and ears" of the federal government, but they both knew that one day they would also be their "voice" through these tape-recorded conversations that would one day be played for you. Yet, out of 300-400 recordings, Ronald Previte only got one conversation in which he actually spoke to Mr. Gambino.

Now, there's another conversation where Merlino says he'll give \$5,000 to someone named Frank, but there is no reference of a last name. So, there is no reliable way that we can know that Merlino meant Frank Gambino or that Mr. Gambino ever received any money. Because you never heard Previte say to Mr. Gambino something like, "Hey, you got that \$5,000 from skinny Joey, right?" And, after all, remember that you heard about two other men named Frank - one was Frank that Ronnie the Bricklayer told you about that was in the truck with him during the theft of the trains and fans. And the second was Frank Buono who you heard about from both Angelucci and Aleardi. Buono was being paid for the use of his lot and the use of his trailers for thefts. Previte could have and should have gotten some confirmation like that for you. Because, after all, he knew that one day he would be the "voice" of the federal government. And he also knew that his purpose for wearing a wire was to gather [Note the use of *anadiplosis*, the use of the last word of one clause at the beginning of the next.] incriminating evidence, evidence that would one day be played for you. So, just like he got Joey on tape admitting his involvement with various stolen goods, so, too, should he have gotten such evidence for you on Mr. Gambino ... if it were true. But yet, in the one tape-recorded conversation that Previte does have with Mr. Gambino, what do they say to each other? They spoke of having seen one another at the racetrack and other places .. nothing else. And you know for sure that there exists no other tape-recorded conversation between Previte and Mr. Gambino. Because if there were any, you can be sure that the federal government would have played it for you, because they kept you here for months playing everything else for you.

Now Ralph Abbruzzi tells Previte that Mr. Gambino supposedly will meet Previte to commit some theft that never actually occurs. But if you noticed, Previte then did not go back to Mr. Gambino, who was still at that gathering, and say something like, "So, I hear I'm gonna be meeting you wherever." Previte in no way says anything to Mr. Gambino that would verify for you that Mr. Gambino was a

knowing and willing participant in whatever Mr. Abbruzzi was talking about. [Another question followed by a suggested answer.] Why not? Maybe because Previte knew that it was all Abbruzzi and Merlino and whoever else you heard in his countless tapes regarding stolen property. Maybe because he knew that Mr. Gambino would say, "I'm not meeting you. What are you talking about?"

As far as Angelucci is concerned, you heard thirteen conversations where he speaks only to other people - not Mr. Gambino. And then you have three in which he speaks solely to Mr. Gambino and one in which Mr. Gambino is a partial participant.

As far as the conversations not involving Mr. Gambino are concerned, they concern other people gossiping about who supposedly did what...gossip... like when people gossip about who's supposedly having an affair with whom. Maybe it's true ...maybe it's not. Maybe it's rumors that these people were repeating ... rumors started by Angelucci when he didn't have his little recorder on. Whatever the scenario, I submit to you that gossip is too unreliable to use as a basis to convict a man.

(What the tapes don't say about various charges of receiving stolen property)

Now instead of speaking generally about these tapes , I would like to look specifically at what they say or , more importantly, what they don't say! They don't say anything about Mr. Gambino being involved with directing Angelucci to take stolen Sony TVs to Ralph Abbruzzi. Actually, if you look on T261 (conversation between Angelucci and Aleardi on 14 October '98) on the bottom of page 7, you'll see where Angelucci speaks about the TV loads and Aleardi answers, "Oh ... with Bobby Miller." Angelucci's response is "Right." He says nothing about Mr. Gambino, just like he said nothing about Mr. Gambino to Bobby Miller's jury. And again Angelucci speaks about the two TV loads on T266 (conversation between Angelucci and Bobby Miller Sr. and Jr.) on page 7, and he says that he and Bobby were the "honchos" on the TV loads. Again, he says nothing about Mr. Gambino. And also on T279 (in that partial conversation that Angelucci has with Mr. Gambino) on 11 February '99, well, Mr. Gambino is still a participant in the conversation on page 6 where Angelucci says "But, when, we took them two Schneider loads, Bobby Miller had the paperwork in his hand." Now, if Mr. Gambino had really been involved in directing Angelucci to take Sony TVs to Mr. Abbruzzi, if it wasn't just Bobby Miller Sr. as Angelucci told the jury in Bobby Miller's trial, then Angelucci could have... would have .. and should have added something about Mr. Gambino and the TVs so that he could have responded on tape. After all, Angelucci was out there gathering evidence on Mr. Gambino for you. He could have and should have gotten on tape where Mr. Gambino admits to being involved with the Sony TVs. [Notice that this and succeeding paragraphs end with the phrase, "He did not." This circular repetition of a phrase at regular intervals is called cycloides.] He did not.

Now, as far as the baby food is concerned, there is conversation between Angelucci and other people about that, where they gossip about Mr. Gambino supposedly having been involved in that. But if you notice on page one of T275 (in one of the conversations where Angelucci actually speaks with Mr. Gambino on 19 January '99), you'll see where Angelucci speaks about the baby food and says, "And then to go in there and take a shot, like Ronnie did, in there for a while to open 'em up." Now, if Mr. Gambino had really been involved in the baby food theft, if it wasn't just Ronnie the Bricklayer, then Angelucci [Note that the argument uses assonance, resemblance of sound in words and syllables that are near one another, in repeatedly stressing that the wired government informants "could have , would have, and should have" gotten incriminating statements from the accused.] could have .. would have ...and should have said to Mr. Gambino on that tape, "...take a

shot like you and Ronnie did..." After all, Angelucci was out there gathering evidence on Mr. Gambino for you. He could have and should have gotten something on tape where Mr. Gambino admits to being involved with the baby food theft. He did not.

And again on page seven of T277 (in one of the conversations where Angelucci speaks with Mr. Gambino on 10 February '99) Angelucci says, "I mean, you know, nine times outta 10 you're gonna hit a home run. But I don't wanna hook up to a box that I don' know what it is. You know what I mean, Frank? I'm outta there." Now, if Mr. Gambino had really been involved in the baby food theft, if it wasn't just Ronnie the Bricklayer, then Angelucci could have...would have ...and should have said to Mr. Gambino on that tape, "I don't wanna hook up to something if I don't know what it is, like what you and Ronnie did with that baby food." After all, Angelucci was out there gathering evidence on Mr. Gambino for you. He could have and he should have said something on tape to Mr. Gambino about him being involved with the baby food theft. He did not.

And not only that, but if you look on T279, you'll see that Angelucci waits until after Mr. Gambino exits the conversation on page 12 before he begins to discuss anything about the baby food theft that had occurred and for which Mr. Gambino is charged. Ask yourselves why that would be. If Mr. Gambino had really been involved with the baby food theft, then there would be no reason not to discuss it in his presence.

As far as the bicycles are concerned, I invite you to look through any of the Angelucci tape-recorded conversations - those where he speaks to Mr. Gambino and those where he speaks to others - and see whether you find any mention of stolen bicycles, because there is none whatsoever. Now, if Mr. Gambino were really involved with the stolen bicycles, don't you think that Angelucci could have...would have...should have said something to Mr. Gambino about them on tape? Angelucci could have said to Mr. Gambino something like, "You made out good with those bicycles." After all, Angelucci was out there gathering evidence on Mr. Gambino for you. He could have and should have gotten something on tape where Mr. Gambino admits to being involved with stolen bicycles. He did not.

[Notice how the argument here repeats the refrain of the previous paragraph.] As far as the women's sweatsuits are concerned, I invite you to look through any of Angelucci's tape-recorded conversations - those where he speaks with Mr. Gambino and those where he speaks to others - and see whether you find any mention of stolen women's sweatsuits, because there is none whatsoever. Now, if Mr. Gambino were really involved with the stolen women's sweatsuits, don't you think that Angelucci could have...would have...and should have said something to Mr. Gambino about them on tape? Angelucci could have said to Mr. Gambino something like, "Hey, how about those sweatsuits you got?" After all, Angelucci controlled who to tape...when to tape ...and what to say. Angelucci was out there gathering evidence on Mr. Gambino for you. He could and should have gotten something on tape where Mr. Gambino admits to being involved with stolen women's sweatsuits. He did not.

Although he knew that he was gathering evidence on this man for you, never once did Angelucci make it a point to speak with Mr. Gambino - as the voice of the federal government - on any of these charges actually facing Mr. Gambino. Never once did Angelucci say anything to him that would indicate to you that Mr. Gambino had done any of these things. [Another rhetorical question.] Why not? Maybe he didn't say anything because he knew that Mr. Gambino would respond and say, "What Sony TVs? What baby food? What bicycles? What sweatsuits? What are you talking about?" Or maybe he did say something to him and Mr. Gambino denied involvement, and then maybe Angelucci hit his little rewind button. Is it possible that that happened and Angelucci deleted that exculpatory evidence? Well, he admitted to me on cross-examination that he could stop and rewind

his tapes, and you also know that from the preamble in T257. And he also admitted to Mr. Jaco during cross-examination that in the three and one-half month time period between the time that Angelucci records his first conversation, which was 9 October '98, and the time of the last tape-recorded conversation between himself and Mr. Gambino, which was on 19 January '99, that he had many conversations with Mr. Gambino for which there is no recording. So, the only question is whether you think that Angelucci might be the type of untrustworthy person who would perhaps delete exculpatory evidence. And after everything you've heard about Angelucci and from Angelucci, I can't even imagine that any of you would put something like that past him.

So, what this means is that in order to convict Mr. Gambino of receiving stolen property, you would have to believe the following two things: One, that Mr Gambino was responsible for this enterprise called *La Cosa Nostra* - when there is no reliable evidence even to show you that he is part of any such enterprise; when Ronnie the Bricklayer admitted that Bobby Miller Sr. and Fred Angelucci were just stealing this stuff for themselves - not for anyone else; when Judge Weiner at Aleari's sentencing says that Aleari was the one who created an enterprise regarding the thefts and that the enterprise included Miller Sr., Russo, Berry, DiDomenicus brother, Buono, and Romeo; and when you have Gaetano Scafidi who told you that a mafia boss selects the individual *who* will commit *which* particular crimes - yet, when Mr. Gross asked Natale who was involved in the cargo thefts, Natale said that he had no clue. Two, you would have to believe the uncorroborated word of Angelucci and Aleari, two men who have lied elsewhere under oath, but yet want you to believe that they're telling you the truth.

As you heard, despite the staggering amount of physical surveillance in this case, there exists no photographs or videotape surveillance of Mr. Gambino stealing, possessing or doing anything with Sony TVs, baby food, bicycles, or women's sweatsuits. And despite the fact that there does exist fingerprint evidence linking certain individuals to some of these items, none of the prints belong to Mr. Gambino.

Of all the physical surveillance conducted by the federal government, they have not managed to get anything that would corroborate their polluted sources. Just like they cannot corroborate Natale re meeting he says he had with Mr Gambino and Joey, they also cannot corroborate Angelucci or Aleari. Think about why this is, and while you're thinking about why that is, think about the fact that if they had any such corroboration they would have shown it to you. Because, as you know, they've shown you every other piece of memorabilia under the sun.

In a couple of conversations where Angelucci does speak to Mr. Gambino, they speak about committing future thefts, thefts that Angelucci admitted never actually occurred. Now the government wants you to convict Mr. Gambino for conspiracy to receive stolen goods. Why? Just because he talked about stealing things that he never actually stole. Now, when John Stanfa talked to Sergio Battaglia about killing Joey Merlino, Michael Ciancaglini, and Gaeton Lucibello, the federal government didn't arrest them, even though they had seized guns, because they didn't think they had enough to get convictions for conspiracy to commit murder. If the federal government can put FBI Agent Charlotte Lang on the stand to tell you they believed that conversation and guns were not enough to convict Stanfa of conspiracy, how then can this same federal government ask you to convict Mr. Gambino of conspiracy based upon conversation?

(Economics of crime)

Throughout the trial, there has been much discussion re the *economics of crime*. And during the months that I've spent sitting here, I've had an opportunity to think about what that means. I know

that we all have our own interpretation and explanation of that phrase. But what I'd like to do is with you my thoughts about this concept.

One of the primary mechanisms by which the economic world functions is the stock exchange. And around the world, as you all know, there exist various stock exchanges ;;; London...Hong Kong...New York...Tokyo...and so on. On all of these stock exchanges, people trade stock for various commodities. These exchanges are the mechanism by which we assess value to these various commodities .. silver, gold , platinum...whatever they may be.

The more valuable the commodity, the more people are willing to pay for it and the higher its price on any given stock exchange. The most valuable commodity that we have in this world, however, is not traded on any of these exchanges. That commodity is freedom.

The price of freedom is higher than the price of anything else. How do we know this? We know that the people are not just willing to pay for freedom. We know it because people are willing to die for freedom. This reality is something that we've seen proof of historically through the centuries. This is the reason that we fought the British...to be free. This is the reason that thousands of people, even in this day, are willing to risk their lives to come to our country - to come to the land of the free.

We see it in the stowaways from China, who stuff their bodies into cargo containers and remain there in total darkness as they get pounded for weeks while they make their way across the Pacific Ocean. We see it in the refugees from Haiti who swarm onto these tiny little dinghies, dinghies that can barely float from the weight of so many desperate people. We see it in those who flee from Mexico, who risk their lives in 120 degree temperature as they trek across the desert so they can jump across the border... into freedom.

So, if you find yourselves wondering, even for a moment, whether the polluted sources - Natale, Previte, Angelucci, Alardi, and others - would be willing to lie to you in exchange for their freedom..think again.

Think of that little Cuban boy, Elian Gonzales, that we, as a nation, became so fond of, and think of his mother who we never got the chance to know, the mother who took her son out of Cuba and boarded a little dingy in the dead of night, the mother who took her little boy and set sail in the cold deadly waters of the Atlantic. Elian's mother did that so that she and her child could escape from the government of Fidel Castro. She did that so that she and her little boy could come to the land of the free. And when you think of her, remember that she was willing to risk the lives of two people; she was willing to die in the process, and she did die, just so she and her son could be free. When you think of the little boy Elian Gonzales and his mother, ask yourselves - these men that you heard from, these polluted sources who told you tales on behalf of the government - is there anything - is there absolutely anything that you honestly believe they wouldn't do to be free?

(Accused scooped up with big fish - story of boy casting net from pier and catching little fish - throw him back)

I am certain that all of us...whether we are lovers of the sea or not...have seen at some point in our lives the little boy, for example, standing at the edge of the pier with a little fishing net and throwing his net into the water in search of some big fish to take home for dinner and then lifting it up ..scooping it up from the ocean. The little boy looks at what he caught ... and in his net along with the rest of his catch he sees that he scooped up whatever happened to be swimming around with the big fish. And what he sees is that he scooped up this tiny, scrawny, little fish. Now, the little boy is

excited nevertheless because it's just one more thing that he caught. But his father, who is older, wiser and who knows better says to him, "Son, what do you want with that? It doesn't belong with these other fish. Throw it back."

Mr. Gambino is like most other people. To those who are close to him and who care for him, he is someone very important. But, in the world of *La Cosa Nostra*, he does not belong. In that world, he is a nobody. He is just someone who got scooped up in the process. [Note that the advocate uses *anaphora* in the form of the phrase "He got scooped up" at the beginning succeeding sentences.] He got scooped up into the "we" who all had mistresses...when he never even had a wife. He got scooped up into the "we" who lived in luxury by purchasing and remodeling homes...when he has always lived in an apartment. He got scooped up into the "we" who enjoy the mafia style greeting...when you heard that many men from certain cultures greet other men with a hug and a kiss. He got scooped up into being called a made member of the mafia...when Natale told you that he was made by Joey Merlino, shortly after getting out of prison, at the same ceremony that Mr. Gambino was supposedly made. Yet, when Ronald Previte was asked to name who was a made member in January 1995, he listed various people, including Ralph, but Mr. Gambino was not in his list. He got scooped up into being called a made member of the mafia, even when Fred Angelucci told you that Mr. Gambino never hung out at Ninth and Moore, the alleged hangout for *La Cosa Nostra* members. He got scooped up into being called a made member of the mafia when a man allegedly from within his organization - Gaetano Scafidi - came here to testify. And what did he tell you about Mr. Gambino? Scafidi told you that he met Mr. Gambino through Joey Merlino, which, of course, means nothing because a 69 year -old man living in South Philadelphia for seventeen years knows everybody. Scafidi also told you that he really didn't have anything to do with Mr. Gambino. And, if you noticed, Scafidi did not tell you one blessed thing about this man. He didn't tell you that Mr. Gambino has ever committed any crime. He didn't even tell you that Mr. Gambino is a part of *La Cosa Nostra*.

He got scooped up into being called a made member of the mafia...where you've seen that photo of him at the wedding of Ralph Natale's granddaughter, and when you look at that photo, you can see that Mr. Gambino is wearing neither a tuxedo nor even a suit and tie, like he was when he was walking outside the Ben Franklin Hotel with James Ranieri. Now, this is not a photo of guys just sitting around and relaxing at a wedding. This is a photo of guys posing for a picture, looking their best, if you will. Now, if he were really a made member of the mafia.. and if Ralph Natale were really his boss, would Mr. Gambino dare to show up at this affair improperly dressed? Would Mr. Gambino dare to disrespect Natale in that manner?

He got scooped up into being called a made member of the mafia.. when you saw from the photos that he did not attend the funeral of Michael Ciancaglini. Now, you heard evidence about how Michael Ciancaglini was worshipped by *La Cosa Nostra* and various people went to his funeral to pay their respects to him. If Mr. Gambino were really a part of *La Cosa Nostra*, do you think that he would not have attended?

He got scooped up into being called a made member of the mafia ... when to the law enforcement agents who were doing surveillance on Gianna's Restaurant he was a name without a face. To these law enforcement agents who made it their business to track organized crime figures, he was known only as a "white male..60s...dark suit...big nose."

(Conclusion)

At some point in the jury deliberation room you're going to have to just close your eyes, sit back, and

ask yourselves... "the evidence that I've seen and heard during this trial, during these past few
a half months..is this the kind of evidence that the federal government should be giving me when
they ask me to take a man's life away?" You're going to have to ask yourselves whether your coming
back with a guilty verdict for Mr. Gambino signifies what you believe our justice system is
about..what your system of justice is about.

(Request for verdict)

What I ask of you now is that you return from the deliberation room and by your verdict say that you
hesitate to act to convict Mr. Gambino because of the polluted sources, because of the absence of
corroborating evidence, because of the absence of evidence linking him to any enterprise, because
of the words that you do not hear on the tapes or see in the transcripts, because both the
eyewitness and the police report describe the shooter as something other than an elderly gentleman.
I ask you to return a verdict of not guilty on all charges against Mr. Gambino, and I ask you to bring
justice back.

I thank you very much for the attention that you have paid me throughout this speech and throughout
this trial.

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