UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT SORICH,	)	
	)	
Movant,	)	
	)	
v.	)	No. 10 cv 1069
	)	Judge David H. Coar
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

MOVANT SORICH'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO VACATE AND SET ASIDE JUDGMENT AND SENTENCE PURSUANT TO 28 U.S.C. § 2255

Movant, **ROBERT SORICH**, by his attorneys **THOMAS ANTHONY DURKIN, JOHN D. CLINE, and JANIS D. ROBERTS**, respectfully submits this supplemental memorandum in support of his Motion to Vacate and Set Aside Judgment and Sentence Pursuant to 28 U.S.C. § 2255, filed on February 17, 2010.[1]

INTRODUCTION

Since their arrest in July 2005, Movant, Robert Sorich, and his codefendants have argued to this Court that the government's honest services mail fraud theory exceeded the scope of 18 U.S.C. § 1346. Starting at their preliminary hearings and more pointedly after indictment, these defendants have argued, in so many words, that their alleged conduct did not constitute a crime under § 1346. They have argued as well that § 1346 was unconstitutionally vague as applied to them. At the government's urging, this Court rejected defendants' arguments. The Seventh Circuit similarly rejected their challenges to the government's honest services theory, and the

[1] Timothy McCarthy and Patrick Slattery, who filed separate § 2255 petitions and adopted Sorich's initial memorandum of law in support of his Motion to Vacate and Set Aside Judgment and Sentence, R. 13 in Case 10 cv 1089 and R. 10 in Case 10 cv 1091, intend to adopt this supplemental memorandum.

Supreme Court, over the dissent of Justice Scalia, denied their petition for certiorari raising these same issues. Sorich, thus, went to prison as this Court ordered for forty-six (46) months.[2]

It turns out that Sorich and his codefendants were right. On June 24, 2010, the Supreme Court, by a 6 to 3 vote, limited the scope of the honest services fraud statute to bribes and kickbacks—neither of which was alleged or proven here. *Skilling v. United States*, 2010 U.S. LEXIS 5259, at *22, *96-*97 (June 24, 2010).[3] The Supreme Court held, in an opinion authored by Justice Ginsburg, that any broader interpretation of § 1346 would cause the statute to be unconstitutionally vague and would violate the rule of lenity, just as Sorich and his codefendants had argued here and in the Seventh Circuit. *See id.* The three Justices who did not join the honest services portion of the majority opinion, Justices Scalia, Kennedy, and Thomas, would have gone further, and declared § 1346 void for vagueness in its entirety. Thus, all nine Justices accepted some or all of the various arguments Sorich and his codefendants presented in their challenge of these honest services mail fraud charges.

Following *Skilling*, Sorich and his codefendants' § 2255 motions for vacation of their convictions present three questions, only the third of which requires extended discussion:

1. Does *Skilling* apply to cases on review under § 2255?

2. Did the honest services instructions in this case permit the jury to convict the defendants for conduct that the Supreme Court has now determined does not violate § 1346?

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[2] Slattery was sentenced to a term of twenty-seven (27) months and McCarthy was sentenced to a term of eighteen (18) months.

[3] As Sorich noted in his initial brief, the government effectively conceded in the Supreme Court, through its briefs and oral argument in *Skilling* and *Black*, that the position it took in Sorich's case was wrong and that his conduct—which did not involve any personal gain to himself or to the other participants in the alleged scheme—did not amount to a crime under § 1346. See R. 4 at 4 in Case No. 10 cv 1069.

3. Was the error in permitting the jury to convict Sorich and his codefendants for non-criminal conduct under § 1346 harmless in light of the alternative money or property mail fraud theory that the jury instructions presented?

For the reasons that follow, the answer to question 1 is "yes." Under settled Supreme Court and Seventh Circuit law, decisions that narrow the substantive scope of federal criminal statutes apply to cases on review under 28 U.S.C. § 2255.

The answer to question 2 is also "yes." The jury instructions in this case did not limit honest services fraud to bribes and kickbacks and thus permitted the jury to convict Sorich and his codefendants for conduct that is not criminal.

The answer to question 3 is "no." The government's honest services theory, with its emphasis on violations of the *Shakman* decree, was the very heart of the government's case at trial. There is at least a "grave doubt" whether the erroneous honest services instructions were harmless. *O'Neal v. McAninch*, 513 U.S. 432, 435 (1995). Accordingly, defendants' convictions based on conduct that the Supreme Court has made absolutely clear is not criminal under § 1346—must be vacated. Anything less would nullify their Sixth Amendment right to trial by jury. *See, e.g., Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993).

ARGUMENT

I. *SKILLING* APPLIES TO CASES ON REVIEW UNDER § 2255.

Skilling indisputably applies to cases on review under § 2255. The Supreme Court has declared that "[n]ew *substantive* rules generally apply retroactively [to cases on habeas review]. This includes decisions that narrow the scope of a criminal statute by interpreting its terms." *Schriro v. Summerlin*, 542 U.S. 348, 351-52 (2004) (emphasis in original); *see Bousley v. United States*, 523 U.S. 614, 619-21 (1998); *Welch v. United States*, 604 F.3d 408, 413 (7th Cir. 2010);

Muth v. Frank, 412 F.3d 808, 816-17 (7th Cir. 2005); *Lanier v. United States*, 220 F.3d 833, 838 (7th Cir. 2000); *Stanback v United States*, 113 F.3d 651, 654 n.2 (7th Cir. 1997).

Skilling "narrow[ed] the scope of a criminal statute [§ 1346] by interpreting its terms." The decision thus applies to Sorich's motion under § 2255.

II. UNDER *SKILLING*, THE INSTRUCTIONS PERMITTED THE JURY TO CONVICT SORICH UNDER 18 U.S.C. § 1346 FOR CONDUCT THAT IS NOT CRIMINAL.

Turning to the second question, this Court's instructions permitted the jury to convict Sorich under 18 U.S.C. § 1346 for conduct that as *Skilling* makes clear is not criminal.

Skilling holds that the honest services statute extends *only* to schemes involving bribes and kickbacks. *Skilling*, 2010 LEXIS 5259, at *22 ("We therefore hold that § 1346 covers only bribery and kickback schemes."); *see id.* at *96-*97. This case involves neither bribes nor kickbacks, as the government conceded in opening, Tr. 42[4] ("This is a case about fraud. It's not a bribery case."), and again in closing, Tr. 4877 ("[I]t was not about bribes in this case.").

This Court's honest services instructions never mention bribery or kickbacks and did not limit the honest services theory to fraud predicated on those offenses. To the contrary, the instructions permitted the jury to find the defendants guilty under the honest services theory if they merely "intended to misuse their positions for private gain for themselves or others." R. 282 at 34; *see id.* at 27 ("A scheme to defraud is a scheme that is . . . intended to deprive a governmental entity of the honest services of its employees for personal gain to a member of the scheme or another."), 29-30 ("As part of the honest services they owed the City and the people of the City of Chicago, defendants . . . were required to conduct themselves in a manner consistent with" certain specified provisions of law, including the *Shakman* decree; none of the cited

[4] Unless otherwise noted, the references to record cites, transcript cites, and docket entries refer to Case No. 05 cr 644.

provisions concerns bribery or kickbacks), 37 ("The phrase 'intent to defraud' means that the acts charged were done knowingly with the intent . . . to deprive the City of Chicago and the people of the City of Chicago of their right to the honest services of their public employees.").[5]

Because the honest services instructions in this case did not confine § 1346 to bribes and kickbacks and thus permitted the jury to convict Sorich for conduct that this criminal statute does not reach, those instructions constituted error. *See Skilling*, 2010 U.S. LEXIS 5259, at *105-*106; *Black v. United States*, 2010 U.S. LEXIS 5253, at *12, *17 (June 24, 2010).

III. THE ERROR IN INSTRUCTING ON HONEST SERVICES WAS NOT HARMLESS.

The Court's error in permitting the jury to convict Sorich and his codefendants for non-criminal conduct is not harmless. A fair reading of the trial transcript in its entirety should compel this Court to conclude that the defendants were wrongfully convicted and are entitled to a new trial.

Each of the mail fraud counts charged Sorich and his codefendants both under the improperly broad honest services theory and under a money or property theory approved by this Court and upheld by the Seventh Circuit. R. 140 at 1-17; 92 at 9-11; *United States v. Sorich*, 523 F.3d 702, 713 (7th Cir. 2008), *cert. denied*, 129 S. Ct. 1308 (2009). The jury instructions similarly presented both theories. *E.g.*, R. 252 at 26-37. As *Skilling* and *Black* make clear, the presence of both theories—one valid and one invalid—requires harmless error analysis under the standard set forth in *Hedgpeth v. Pulido*, 129 S. Ct. 530 (2008) (per curiam). *Skilling*, 2010 U.S. LEXIS 5259, at *106; *Black*, 2010 U.S. App. LEXIS 5253, at *17. Because there is, at a minimum, "grave doubt" about whether the erroneous honest services mail fraud instructions had

[5] Consistent with the jury instructions and the government's concessions at trial, the second superseding indictment (R. 140) does not allege that the defendants (or anyone else) received bribes or demanded kickbacks, and there was no evidence at trial of bribes or kickbacks. *E.g.*, Tr. 867-68, 2107, 2628, 2632.

a "substantial and injurious effect or influence" on the jury's decision to convict Sorich, his conviction must be vacated, as the jury found him guilty of mail fraud and nothing else.

A. The Legal Standard.

When (as here) the jury returns a general verdict of guilty on counts that rest on two theories, one valid and one invalid, the harmless error standard of *Brecht v. Abrahamson*, 507 U.S. 619 (1993), and *Kotteakos v. United States*, 328 U.S. 750 (1946), governs on habeas review. *See Pulido*, 129 S. Ct. at 531. Under *Pulido*, "a reviewing court finding such error should ask whether the flaw in the instructions [permitting conviction under the invalid theory] had 'substantial and injurious effect or influence in determining the jury's verdict.'" *Id.* (quoting *Brecht*, 507 U.S. at 623).

Two key principles guide application of the *Brecht* standard. First, in *O'Neal v. McAninch*, 513 U.S. 432 (1995), the Supreme Court held that when a habeas judge finds error, but has a "grave doubt" as to whether the error is harmless, then reversal is required. The "grave doubt" standard is not a stringent one. It means that, where the record is evenly balanced, a court must find that the error was *harmful*. Of course, where the record is tilted even slightly toward the conclusion that the error was harmful, then the "grave doubt" standard has likewise been met. *O'Neal* describes the standard as follows:

> By "grave doubt" we mean that, in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error. We conclude that the uncertain judge should treat the error, not as if it were harmless, but as if it affected the verdict, *i.e.*, as if it had a "substantial and injurious effect or influence" in determining the jury's verdict.

Id. at 435; *see, e.g., Smiley v. Thurmer*, 542 F.3d 574, 584 (7th Cir. 2008) (applying *O'Neal* standard). In this case, therefore, if the Court finds that it is just as likely as not

that the improper honest services instructions affected the verdict, then the Court must vacate Sorich's conviction.

Second, the *Brecht* standard focuses on the effect of the error on the verdict; it does not involve either an assessment of the sufficiency of the evidence or a prediction of the likely outcome of an error-free retrial. As the Supreme Court explained in *Kotteakos*, the reviewing court must not "speculate upon probable reconviction and decide according to how the speculation comes out." *Kotteakos*, 328 U.S. at 763 (quotations omitted); *see, e.g., Smiley*, 542 F.3d at 584 ("'The inquiry . . . is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered was surely unattributable to the error.'" (quoting *Sullivan*, 508 U.S. at 279). Nor is the inquiry "merely whether there was enough [evidence] to support the result." *Kotteakos*, 328 U.S. at 765. The proper question is whether "the error itself had a substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand." *Id.*; *see O'Neal*, 513 U.S. at 437. In terms of this case, therefore, the Court should not speculate about the possibility that Sorich would be convicted at a retrial on the money or property theory alone, nor should it focus on whether the evidence on the money or property theory was sufficient for conviction.

B. There Is at Least "Grave Doubt" About Harmlessness Here.

Under the *Pulido/Brecht/O'Neal/Kotteakos* standard, the defects in the honest services instructions simply cannot be said to be harmless. From opening statement through closing argument, the government relied heavily—indeed, almost exclusively—on the honest services theory. Time and again, as will be demonstrated below, the prosecutors—over objection—equated the defendants' violation of the *Shakman* civil consent decree with guilt under their honest services fraud theory. The jury instructions as well emphasized the honest services

theory, and the instructions on the money or property theory did not even identify the alleged property right at issue. Under these circumstances, there has to be at least "grave doubt" about whether the unconstitutional honest services theory presented in this Court's jury instructions had a "substantial and injurious effect or influence in determining the jury's verdict."

The second superseding indictment charged Sorich with five counts of mail fraud. R. 140 at 1-17. The mail fraud charges rested on an alleged scheme to defraud the people of the City of Chicago and the City itself of "money, property and the intangible right to the honest services of [the defendants and other City employees] participating in the hiring and promotion process, and to obtain money and property by means of materially false and fraudulent pretenses, representations, promises and material omissions." *Id.* at 6. According to the indictment and the jury instructions (both of which the jury had during deliberations), the duty of honest services arose from provisions of state and local law and from the so-called *Shakman* decree. *Id.* at 4-5; R. 282 at 28-34.

At trial, the government focused heavily on the *Shakman* civil consent decree and the related honest services theory. Not surprisingly, the first words of the government's opening statement were: "Ladies and gentlemen, this is a case about breach of public trust." Tr. 35; *see also* Tr. 78. The government contended throughout its opening that the defendants had violated the *Shakman* decree or, more specifically, that the purported political hirings and promotions had violated the consent decree. Tr. 36, 41, 46-48. The government declared, for example, that the defendants "violate[d] the law, including the federal court order [the *Shakman* decree] which unmistakably and unequivocally banned political considerations for these very jobs I have been talking about." Tr. 40. Mining deeper in that same vein, the government repeatedly focused on the so-called *Shakman* certifications that were a part of the required paperwork for all non-policy

City positions. The government contended that the City employees responsible for the hiring decision—the defendants, immunized government witnesses, and their unindicted co-schemers—attested that political considerations played no role in the hiring decisions and that these "false certifications"—mandated by the *Shakman* decree—were signed in order to further the scheme. Tr. 46, 52, 53, 61. The government also claimed Defendants Sorich and McCarthy as part of the Mayor's Office of Intergovernmental Affairs ("IGA") acted "in direct violation of the *Shakman* decree." Tr. 66; *see also* Tr. 63.

Consistent with this theme, as its *first* exhibit, the government introduced the *Shakman* compliance manual and questioned virtually all of the witnesses involved in hiring or promotions about it. GX Personnel 1, SA-9; Tr. 254-56. The government extensively questioned the key witnesses involved in the hiring processes at the various departments—all alleged to be knowing participants in the fraud scheme—about their understanding of the *Shakman* decree, the *Shakman* certifications, and the fact that these "false certifications" were signed either by the witness or the departments' commissioners or deputy commissioners.

For example, Mary Jo Falcon, Director of Personnel first for the Department of Sewers and later for the combined Water Management Department, described her understanding of the *Shakman* decree, the "Detailed Hiring Provisions for Compliance with the *Shakman* Judgment" (Gov. Ex. Personnel 1), and *Shakman* procedures used in the departments. Tr. 243-245, 252-254, 256-57, 258-259. Falcon testified concerning the *Shakman* certification forms, IGA's allegedly improper involvement in the hiring process, and that either she or her commissioner signed these *Shakman* certifications knowing that political considerations affected the selection process. Tr. 264-66, 271, 290, 325-26, 353-54, 372-73, 407-10, 412-13. Falcon, like most of the

immunized government witnesses, admitted that she repeatedly "made false statements on the *Shakman* certifications." Tr. 555-57.

Similarly, the government conducted an extensive examination of another alleged co-schemer, Jack Drumgould, Assistant Commissioner for the Department of General Services and then Assistant Commissioner of Personnel for the Department of Streets and Sanitation, about the *Shakman* decree, the hiring and promotion criteria required to be used because of the decree, and that the *Shakman* decree prohibited "political hiring, political considerations in hiring" or "no political influence—either in hiring or promotions." Tr. 1312-18. Drumgould was asked about "*Shakman* referral lists," the personnel departments' short-hand reference to the paperwork generated to fill a position or promotion, about *Shakman* certifications, and whether he signed these *Shakman* certifications. Tr. 1319, 1382, 1434-36. At the end of his direct examination, the government asked Drumgould why he never reported this "improper" involvement of the defendants in the hiring and promotion process and he responded "because it was a violation of *Shakman* decree" and he "knew it was a dishonest system." Tr. 1752.

The remainder of the government's case was heavily peppered with references to the *Shakman* consent decree where their witnesses—immunized because of their concern over conduct the Supreme Court has now determined is not a violation of § 1346—admitted their complicity in the alleged political hiring scheme. John Kosiba, a licensed attorney who served as Assistant Commissioner of the Water Department, Commissioner of the Sewers Department, and Chief of Infrastructure in the Mayor's Office, identified *Shakman* referral lists and admitted to signing false *Shakman* certifications. Tr. 1102-04. Carmen Iacullo, General Superintendent of the Bureau of Streets in the Department of Streets and Sanitation and later a deputy commissioner, testified about his understanding that, under the *Shakman* decree, political

considerations could play no part in hiring or promotion decisions in a *Shakman*-covered position. Tr. 2758-59. Michael Sheahan, a supervisor in the personnel office of the Department of Aviation while defendant McCarthy was there, testified about hiring sequences in which he received candidates names from IGA for which Defendant McCarthy signed *Shakman* certifications. Tr. 3727-32. The government later argued that these certifications were "false" because of IGA's involvement in the selection process and because McCarthy knew IGA's candidates provided by Sorich were politically connected. *E.g.*, Tr. 4944.

In its closing arguments, the government again hammered away at these violations of the *Shakman* decree as the linchpin of its honest services theory. *See, e.g.*, Tr. 4928-29, 4931-32, 4944, 5179-80, 5187-88. It insisted that the defendants' conduct was "political. It was a violation of the *Shakman* consent [decree]." Tr. 5208. It accused the defendants of "breach[ing] the public trust" and engaging in a "perversion of the public trust." Tr. 4851, 4856. Its principal discussion of the jury instructions focused almost entirely on the honest services theory and that as part of the "duty to provide honest services" defendants were required to comply with the *Shakman* decree. Tr. 4928-32. It argued: "The defendants carried out this crime for many years. They knew the rating sheets were false. They knew the *Shakman* certifications were false. That's honest services?" Tr. 4944. Gratuitously, the government added that the defendants actually provided "dishonest services." Tr. 4945. In support of this honest services theory, the government returned again and again to the false *Shakman* certifications, stressing the testimony of witnesses like John Kosiba and Mary Jo Falcon who had admitted knowingly signing false certifications. Tr. 4847, 4849, 4863, 4929-31, 4943-44.

In its rebuttal peroration, moments before deliberations began, the government attorney again beat the *Shakman* drum to underscore the government's principal theory of guilt. These

comments, being the very last unrebutted argument the jury heard, speak volumes with respect to whether it can be said that the instructions and *Shakman* evidence constituted harmless error. "Understand that this scheme was meant to deprive the people of more than money in performing these jobs. *Something more important*, and it's the reason why Ms. Ruder said, this is every bit as important as a bribery scheme in terms of corruption. Because this scheme, like any of these schemes, that deprives the people of the trust they placed in their employees is a depr[i]vation of honest services. That itself is a violation of the federal mail fraud statute." Tr. 5242 (emphasis added). The government added that the defendants "had a duty, a duty, to the people that live here and they breached it." Tr. 5243. It declared that "Shakman . . . got his judgment," but "[t]he crime continued," and it urged the jurors to be the "brakes" on the "machine." Tr. 5244.

The "crime" the government was describing in this final argument was the defendants' breach of their duty of honest services by violating the *Shakman* decree. Tr. 5186-88. As far as the government was concerned, if a hiring decision was political it "was a violation of the *Shakman* consent [decree]" and it shows defendants were "guilty of the charges in the indictment." Tr. 5208.

The Court's jury instructions, on the whole, highlighted the honest services theory and themselves raise "grave doubt" about the effect of the specific improper instructions on the jury's general verdict. The instructions overall devoted far more attention to the honest services theory than to the money or property theory. The instructions referred to the money or property theory only briefly, *without even identifying the money or property at issue.* R. 282 at 26-27, 37. By contrast, the honest services theory (and the related *Shakman* decree) received page after page of

detailed instructions. R. 282 at 26-35, 37. This proliferation of honest services instructions inevitably caused the jury to focus on that theory.[6]

By contrast to the honest services theory that the government pounded home at every opportunity, its money or property mail fraud theory was unfocused and illusive. At best, the government paid lip service to the money or property theory, never really articulating a coherent theory that addressed the notion—somewhat novel at that time—that the City's "right to control" who gets hired or promoted was somehow a concrete, traditional property right of the City under § 1341.[7]

There was no evidence that the City lost money as a result of the patronage hiring system; the jobs would have been filled, and the money would have been spent on salaries, even if hiring had been done free of purported political influence. These facts caused this Court, the government, and the Seventh Circuit difficulty in identifying the property right at issue. In denying defendants' motion to dismiss the indictment, this Court found that the indictment charged defendants with depriving the City of its "property right to control how its money should be spent." R. 92 at 11, A-1 at 11; *see* R. 334 at 6-7, A-2 at 11; Tr. 12/18/06 at 14-15. At trial, the government identified the property right as the actual jobs at issue, even though there was no evidence that the City awarded any jobs as a result of patronage that it would not have awarded without patronage. *E.g.*, Tr. 41; 4877; Tr. 5169-70, 5240. The jury instructions (like the indictment) were silent on the alleged property right at issue. On appeal, the Seventh Circuit

[6] To be clear, we do not necessarily fault the Court for devoting such extensive attention to the honest services theory, given the prominence the government paid to it. We merely note that the emphasis in the instructions on honest services and matters related to the *Shakman* decree undoubtedly caused the jury to focus on that theory, and further note that it was the government that drafted the bulk of the mail fraud instructions which were given, over defendants' objections.

[7] Before the October 4, 2006 Seventh Circuit decision in *United States v. Leahy*, 464 F.3d 773 (7th Cir. 2006), the government could only cite to the district court decision in *United States v. Duff*, 336 F. Supp. 2d 852 (N.D. Ill. 2004), for the proposition that the City's "right to control how its money is spent" is property under § 1341. R. 87, pp. 4-5.

characterized the property at issue variously as "hundreds of millions of dollars," "qualified civil servants," "job opportunities," and "jobs." *Sorich*, 523 F.3d at 712-13.

A jury forced to focus exclusively on the money or property theory—in whichever of its many permutations the government might ultimately have chosen at trial—may well have refused to convict, based (among other reasons) on its inability to find a property right of the City deprived by the alleged fraud scheme beyond a reasonable doubt. But the Court need not even reach this conclusion. All the Court needs to find is that the erroneous honest services instructions contributed to these convictions. That is clearly the case here. The honest services theory—involving what the government characterized as "[s]omething more important" than jobs, Tr. 5242—gave the jury an easy alternative to puzzling over the nature of the alleged property right of the City. Under the government's honest services instructions, as long as the jury found that Sorich knowingly violated the *Shakman* decree and that he intended personal gain to *someone,* even a nonparticipant in the alleged scheme, such as an innocent jobseeker—it was free to find him guilty of mail fraud under a theory that the Supreme Court has now determined not to be a crime.

Given the government's overwhelming emphasis and reliance on the honest services theory and its extensive reference to the *Shakman* decree in opening and closing, the focus of the evidence on *Shakman*, the emphasis the jury instructions placed on honest services, and the ambiguity of the government's money or property theory, it must be said that there is at least a "grave doubt" as to whether the erroneous honest services theory had a "substantial and injurious effect or influence" on the jury's verdict. *O'Neal,* 513 U.S. at 435.[8]

[8] Because the jury instructions did not require the jury to find one theory or the other unanimously, the Court must vacate Sorich's conviction if it has a "grave doubt" as to whether the erroneous honest services instructions had a "substantial and injurious effect or influence" on the vote of *even one juror.*

CONCLUSION

For the foregoing reasons, and for the reasons stated in Sorich's initial memorandum, the Court should vacate his mail fraud convictions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that foregoing Movant Sorich's Supplemental Memorandum of Law In Support of His Motion to Vacate and Set Aside Judgment and Sentence Pursuant to 28 U.S.C. § 2255; and Unopposed Motion to Stay Briefing and Resolution was served on August 5, 2010, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

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