UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA	:	Criminal No.: 00 CR. 600 (RCC)
v.	:	Filed: June 1, 2000
SELWYN LEMPERT,	:	Violations: 15 U.S.C. § 1 18 U.S.C. § 371
Defendant.	:	18 U.S.C. § 1503 26 U.S.C. § 7201

- x

INFORMATION

COUNT ONE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America, acting through its attorneys, charges:

1. Selwyn Lempert ("Lempert") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Lempert resided in Monsey, New York. Lempert was an employee of Nick Penachio Co., Inc. (“Penachio Co.”).

3. Penachio Co. was a New York State corporation located in the Bronx, New York. Penachio Co. was primarily a vendor of food.

4. The Board of Education of the City of New York (“NYCBOE”) was the entity responsible for operating New York City's public school system, the largest in the United States. Its annual budgets, which approached $10 billion, were

funded by the federal, state, and city governments. It serviced a student population of nearly 1.1 million and operated more than 1,500 facilities. It served approximately 640,000 lunches and 150,000 breakfasts every school day, the majority of which were subsidized by various government programs, primarily those programs established pursuant to the National School Lunch Act of 1946 and administered by the United States Department of Agriculture.

5. The NYCBOE solicited bids from, and awarded contracts to, vendors of food on a regular basis. The primary food contracts awarded by the NYCBOE were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. Both public and non-public schools received food pursuant to these contracts. Individual schools placed orders as needed, usually once or twice a week.

6. The NYCBOE sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including frozen food, produce, and groceries. Each of these bids and contracts was divided into parts, usually geographically by borough. The company bidding the lowest price for a particular part of a contract usually received an award for that part. The term of most of these contracts varied from three to six months. Toward the expiration of the contract period, the NYCBOE again solicited bids for the supply of food.

7. The NYCBOE required bidders to certify, under penalty of perjury,

that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or with any competitor.

8. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

9. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

II. TRADE AND COMMERCE

10. During the period covered by this Count, Penachio Co. purchased substantial quantities of food, including produce, for resale to the NYCBOE from suppliers located throughout the United States, or from wholesalers who obtained their goods from suppliers located throughout the United States.

11. From approximately 1991 until approximately April 1999, pursuant to contracts that are the subject of this Count, the NYCBOE purchased approximately $87 million of produce from members of the conspiracy, including

approximately $25.3 million of produce from Penachio Co.

12. The activities of the defendant and co-conspirators with respect to the sale of food to the NYCBOE, including the sale of produce pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

III. DESCRIPTION OF THE OFFENSE

13. From approximately 1991 until approximately April 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

14. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of produce to the NYCBOE.

15. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the submission of bids for the supply of produce, Lempert and co-conspirators participated in meetings and conversations where

they discussed and agreed how to bid so as to divide upcoming contracts to supply produce to the NYCBOE. Some of these meetings took place at different sites in or near New York City, including at the offices of Penachio Co.;

(b) Lempert and co-conspirators designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of contracts to supply produce to the NYCBOE;

(c) Lempert and co-conspirators discussed and agreed on the prices or price levels they would bid on specified parts of contracts to supply produce to the NYCBOE, and then bid accordingly. Their agreement often had the effect of increasing the prices in the bids, including the prices that, at least among the co-conspirators, were intended to be the winning bids;

(d) Lempert and co-conspirators refrained from bidding or submitted intentionally high, complementary bids on specified parts of contracts to supply produce to the NYCBOE;

(e) Co-conspirators gave Lempert substantial amounts of cash with the understanding that he would use the cash to pay potential bidders not to bid competitively on particular contracts to supply produce to the NYCBOE. Lempert then offered to pay, and in fact paid, substantial amounts of money in cash to potential competitors in exchange for their agreement not to bid competitively for those contracts, or to employees of potential competitors in exchange for information about the prices their employers were preparing to

quote in upcoming bids for those contracts. For example, in one situation, Lempert paid a co-conspirator $100,000 in cash in exchange for the co-conspirator's agreement not to bid competitively on an upcoming produce contract; and

(f) Co-conspirators falsely certified, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or competitor.

IV. JURISDICTION AND VENUE

16. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT TWO -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America further charges:

17. Paragraphs 1 through 9 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

18. In addition to the contracts described in Paragraphs 5 and 6 of

Count One, the NYCBOE occasionally sought bids and awarded contracts for furnishing and delivering specified quantities of frozen food and grocery items to be warehoused.

V. TRADE AND COMMERCE

19. During the period covered by this Count, Penachio Co. purchased substantial quantities of food, including frozen food, for resale to the NYCBOE from brokers, who ordered goods on behalf of Penachio Co. from suppliers located throughout the United States. These suppliers commonly shipped the goods ordered by the brokers directly to Penachio Co.

20. From approximately May 1996 until approximately April 1999, pursuant to contracts that are the subject of this Count, the NYCBOE purchased approximately $126 million of frozen food from members of the conspiracy, including approximately $563,000 of frozen food from Penachio Co.

21. The activities of the defendant and co-conspirators with respect to the sale of food to the NYCBOE, including the sale of frozen food pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

VI. DESCRIPTION OF THE OFFENSE

22. From approximately May 1996 until approximately April 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable

restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

23. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of frozen food to the NYCBOE.

24. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the submission of bids for the supply of frozen food, Lempert and co-conspirators participated in meetings and conversations where they discussed and agreed how to bid so as to divide upcoming contracts to supply frozen food to the NYCBOE. These meetings were held at different sites in or near New York City, including the Crowne Plaza LaGuardia Hotel in Queens, the Ramada Inn or Courtyard by Marriott at LaGuardia in Queens, the offices of Penachio Co., a meeting room available to the businesses operating at the Hunts Point Food Distribution Center in the Bronx, and a food trade show at the Meadowlands in East Rutherford, New Jersey;

(b) Lempert and co-conspirators designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of

contracts to supply frozen food to the NYCBOE;

(c) Lempert and co-conspirators discussed and agreed on the prices or price levels they would bid on specified parts of contracts to supply frozen food to the NYCBOE, and then bid accordingly. Their agreement often had the effect of increasing the prices in the bids, including the prices that, at least among the co-conspirators, were intended to be the winning bids;

(d) Lempert and co-conspirators refrained from bidding or submitted intentionally high, complementary bids on specified parts of contracts to supply frozen food to the NYCBOE;

(e) Co-conspirators gave Lempert substantial amounts of cash with the understanding that he would use the cash to pay potential bidders not to bid competitively on particular contracts to supply food to the NYCBOE. Lempert then offered to pay, and in fact paid, substantial amounts of money in cash to potential competitors in exchange for their agreement not to bid competitively for those contracts;

(f) Co-conspirators shared the net profits earned on contracts to furnish and deliver specified quantities of frozen food items to be warehoused by giving each other money or free merchandise. For example, in 1997, after one co-conspirator had completed a contract to furnish and deliver three items -- breaded chicken patties, chicken miniatures, and breaded chicken pieces -- to the warehouse maintained by the NYCBOE, it paid approximately $47,000 by check to each of four co-conspirators that had agreed not to bid competitively for that contract; and

(g) Co-conspirators falsely certified, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other

bidder or competitor.

VII. JURISDICTION AND VENUE

25. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT THREE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America further charges:

26. Paragraphs 1 through 3 and Paragraphs 8 and 9 of Count One of this Information are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

VIII. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

27. The Department of Citywide Administrative Services of the City of New York ("DCAS") was the agency that provided support to various municipal entities that served the public, including the entities responsible for overseeing hospitals, jails, homeless shelters, and other facilities. DCAS became responsible for providing this support in July 1996 when it replaced the Department of General Services of the City of New York ("DGS"). DCAS (and its predecessor DGS) conducted competitive bidding for the supply of necessary items,

including food, on behalf of several New York City entities (collectively the "DCAS entities"), including the Health and Hospitals Corporation ("HHC"), the Department of Juvenile Justice ("DJJ"), the Department of Correction ("DOC"), the Department of Homeless Services ("DHS"), the Human Resources Administration ("HRA"), and the Administration for Children's Services ("ACS").

28. DCAS sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including produce and frozen foods. Each of the produce and frozen foods bids was divided into parts, primarily geographically by borough. With respect to the award of produce contracts, the company bidding the lowest aggregate price for each particular part of a contract usually received an award for that part. With respect to the award of the frozen food contracts, DCAS usually awarded those contracts on an item-by-item basis to the company bidding the lowest price on each item. The term of most of the contracts for the supply of produce was one month; the term of the contracts for the supply of frozen food was one year. Toward the expiration of the contract period, DCAS again solicited bids.

29. The primary food contracts awarded by DCAS were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. Individual municipal facilities placed orders as needed, usually once or twice a week.

30. DCAS required bidders to certify, under penalty of perjury, that,

among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or with any competitor.

IX. TRADE AND COMMERCE

31. During the period covered by this Count, Penachio Co. purchased substantial quantities of food, including frozen food, for resale to the DCAS entities from brokers, who ordered goods on behalf of Penachio Co. from suppliers located throughout the United States. These suppliers commonly shipped the goods ordered by the brokers directly to Penachio Co. In addition, Penachio Co. purchased substantial quantities of food, including produce, for resale to the DCAS entities from suppliers located throughout the United States, or from wholesalers who obtained their goods from suppliers located throughout the United States.

32. From approximately the early-to-mid 1990s until approximately April 1999, pursuant to contracts that are the subject of this Count, Penachio Co. sold approximately $13 million of food, primarily produce and frozen foods, to the DCAS entities, mainly to the jails maintained by the DOC on Rikers Island.

33. The activities of the defendant and co-conspirators with respect to the sale of food to the DCAS entities, including the sale of produce and frozen foods pursuant to contracts that are the subject of this Count, were within the

flow of, and substantially affected, interstate trade and commerce.

X. DESCRIPTION OF THE OFFENSE

34. From approximately the early-to-mid 1990s until approximately April 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

35. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of produce and frozen foods to the DCAS entities.

36. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the submission of bids for the supply of produce, Lempert and co-conspirators discussed and agreed how to bid so as to divide upcoming contracts to supply produce to the DCAS entities;

(b) In approximately May 1998, Lempert also discussed and agreed with co-conspirators how to bid so as to divide the items scheduled in a bid to

supply frozen food to certain of the DCAS entities that was opened on May 19, 1998;

(c) Lempert and co-conspirators designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of contracts to supply produce to the DCAS entities;

(d) Lempert and co-conspirators designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of a contract to supply frozen food to the DCAS entities;

(e) Lempert and co-conspirators discussed and agreed on the prices or price levels they would bid on specified parts of contracts to supply produce to the DCAS agencies, and then bid accordingly;

(f) Lempert and co-conspirators discussed and agreed on the prices or price levels they would bid on specified parts of a contract to supply frozen food to the DCAS agencies, and then bid accordingly;

(g) Lempert and co-conspirators refrained from bidding or submitted intentionally high, complementary bids on specified parts of contracts to supply produce to the DCAS entities;

(h) Lempert and co-conspirators refrained from bidding or submitted intentionally high, complementary bids on specified parts of a contract to supply frozen food to the DCAS entities;

(i) Co-conspirators gave substantial amounts of cash to Lempert

with the understanding that he would use the cash to pay potential bidders not to bid competitively on particular contracts to supply produce to the DCAS entities. Lempert then offered to pay, and in fact paid, substantial amounts of money to potential competitors, both in cash and by checks issued by Penachio Co., in exchange for their agreement not to bid competitively for those produce contracts; and

(j) Co-conspirators falsely certified, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or competitor.

XI. JURISDICTION AND VENUE

37. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT FOUR -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America further charges:

38. Paragraphs 1 through 3 and Paragraphs 8 and 9 of Count One of this Information are repeated, realleged, and incorporated in Count Four as if

fully set forth in this Count.

XII. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

39. The Nassau County Department of General Services ("Nassau DGS") was the agency responsible for managing procurement on behalf of the agencies of Nassau County, New York, including the agency that administered the Nassau County correctional facilities.

40. Nassau DGS sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including produce and dairy items. The company bidding the lowest price for the contract usually received an award of that contract. The term of the contracts for produce and dairy items was usually one month. Toward the expiration of the contract period, Nassau DGS again solicited bids.

41. The primary food contracts awarded by Nassau DGS were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. The facilities whose contracts were handled by the Nassau DGS placed orders as needed, usually once or twice a week.

42. Nassau DGS required bidders to certify, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for

the purpose of restricting competition as to any matter relating to such prices, with any other bidder or with any competitor.

XIII. TRADE AND COMMERCE

43. During the period covered by this Count, Penachio Co. purchased substantial quantities of food, including produce and dairy items, for resale to the Nassau County Correctional Center ("NCCC"), a facility whose contracts were handled by the Nassau DGS, from suppliers located throughout the United States, or from wholesalers, who obtained their goods from suppliers located throughout the United States.

44. From approximately 1996 until approximately April 1999, pursuant to contracts that are the subject of this Count, Penachio Co. sold approximately $1 million of food, primarily produce and dairy items, to the NCCC.

45. The activities of the defendant and co-conspirators with respect to the sale of food to the NCCC, including the sale of produce and dairy items pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

XIV. DESCRIPTION OF THE OFFENSE

46. From approximately 1996 until approximately April 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title

15, United States Code, Section 1).

47. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of produce and dairy items to the NCCC.

48. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the submission of bids for the supply of produce and bids for the supply of dairy items to the NCCC, Lempert and co-conspirators discussed and agreed how to bid so as to divide upcoming contracts. In general, Lempert and co-conspirators agreed that, at least among the co-conspirators, Penachio Co. and another company would alternate being the low bidder for the monthly produce contract. In addition, Lempert and co-conspirators agreed that, at least between Penachio Co. and a third co-conspirator, those two companies generally would alternate being the low bidder for the monthly contract for dairy items;

(b) Lempert and co-conspirators discussed and agreed on the prices or price levels they would bid for contracts to supply produce and dairy items to the NCCC, and then bid accordingly;

(c) Lempert and co-conspirators refrained from bidding or submitted intentionally high, complementary bids for contracts to supply produce and dairy items to the NCCC; and

(d) A co-conspirator paid Lempert $1000 in cash in the months when the co-conspirator received the contract to supply dairy items to the NCCC, in exchange for Penachio Co.'s not bidding competitively for those contracts.

XV. JURISDICTION AND VENUE

49. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT FIVE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America further charges:

50. Paragraphs 1 through 3 of and Paragraphs 8 and 9 of Count One of this Information are repeated, realleged, and incorporated in Count Five as if fully set forth in this Count.

XVI. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

51. The Newark Public Schools operated the public school system in

Newark, New Jersey. That system, the largest in New Jersey, serviced approximately 44,000 students and operated more than 80 facilities. The Newark Public Schools served more than 7 million meals each year, and spent about $7 million annually on food and milk. The Newark Public Schools' annual budgets were funded by the federal, state, and city governments, including funding pursuant to the National School Lunch Act of 1946.

52. The Newark Public Schools sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including produce. The company bidding the lowest total price for the produce contract usually received an award of that contract. Toward the expiration of the contract period, the Newark Public Schools again solicited bids.

53. The primary food contracts awarded by the Newark Public Schools were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. The schools maintained by the Newark Public Schools placed orders as needed, usually once or twice a week.

XVII. TRADE AND COMMERCE

54. During the period covered by this Count, Penachio Co. purchased substantial quantities of food, including produce, for resale to the Newark Public Schools from suppliers located throughout the United States, or from wholesalers who obtained their goods from suppliers located throughout the United States.

55. From approximately 1996 until approximately April 1999, pursuant to

contracts that are the subject of this Count, Penachio Co., through its affiliate Hahn Food Products Corp. ("Hahn Food"), sold approximately $1.5 million of food, primarily produce, to the Newark Public Schools.

56. The activities of the defendant and co-conspirators with respect to the sale of food to the Newark Public Schools, including the sale of produce pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

XVIII. DESCRIPTION OF THE OFFENSE

57. From approximately 1996 until approximately April 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

58. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of produce to the Newark Public Schools.

59. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the submission of bids for the supply of produce, Lempert and co-conspirators discussed and agreed how to bid so as to divide upcoming contracts. In general, Lempert and co-conspirators agreed that, at least between Penachio Co. (and Hahn Food) and another company, those two companies would alternate being the low bidder;

(b) Lempert and co-conspirators discussed and agreed on the prices or price levels they would bid for contracts to supply produce to the Newark Public Schools, and then bid accordingly; and

(c) Lempert and co-conspirators refrained from bidding or submitted intentionally high, complementary bids for contracts to supply produce to the Newark Public Schools.

XIX. JURISDICTION AND VENUE

60. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT SIX -- OBSTRUCTION
(18 U.S.C. § 1503)

The United States of America further charges:

61. Paragraphs 1 through 3 of Count One of this Information are repeated, realleged, and incorporated in Count Six as if fully set forth in this Count.

62. In approximately June 1998, Lempert, having knowledge of the grand jury investigation, did corruptly influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice in the federal grand jury sitting in the Southern District of New York, by endeavoring to withhold, conceal, alter, or destroy certain records in existence as of June 26, 1998 and which were commanded by a grand jury subpoena duces tecum dated June 26, 1998 issued to Penachio Co. and which were material to the grand jury's investigation, in violation of Title 18, United States Code, Section 1503.

63. Specifically, Lempert took documents that he had created and that

reflected information about bids submitted to the Board of Education of the City of New York from his office to his home and failed to disclose the existence of those documents to the representatives of the Penachio Co. who were responsible for identifying, gathering, and producing documents responsive to the June 26, 1998 subpoena.

64. In approximately September 1999, Lempert, having knowledge of the grand jury investigation, did corruptly influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice in the federal grand jury sitting in the Southern District of New York, by endeavoring to withhold, conceal, alter, or destroy certain records which predated September 8, 1999 and which were commanded by a grand jury subpoena duces tecum dated September 8, 1999 issued to Penachio Co. and which were material to the grand jury's investigation, in violation of Title 18, United States Code, Section 1503.

65. Specifically, Lempert destroyed an accounts payable file maintained by Penachio Co. that contained documents relating to transactions in 1996 between Penachio Co. and Jacobson Produce, Inc.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1503

COUNT SEVEN -- CONSPIRACY TO COMMIT MAIL FRAUD
(18 U.S.C. § 371)

The United States of America further charges:

66. Paragraphs 1 through 3 and Paragraphs 8 and 9 of Count One of this Information are repeated, realleged, and incorporated in Count Seven as if fully set forth in this Count.

XX. DESCRIPTION OF THE OFFENSE

67. From approximately November 1996 until approximately July 1998, the exact dates being unknown to the United States, the defendant and co-conspirators did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree to defraud the United States of America and to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1341 and 1346, all in violation of Title 18, United States Code, Section 371.

68. It was a part and object of the conspiracy that Lempert and his co-conspirators, having devised and intending to devise a scheme and artifice to (a) defraud Nassau County and the Nassau County Sheriff's Department; (b) obtain money and property from Nassau County by means of false and fraudulent pretenses, representations, and promises; and (c) deprive the Nassau County Sheriff's Department of its right to the honest services of one of its employees; executed the scheme and artifice by and through the use of the United States mails, in violation of Title 18, United States Code, Sections 1341 and 1346.

XXI. THE MANNER AND MEANS BY WHICH THE

CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

69. Between approximately November 1996 and approximately July 1998, Lempert paid approximately $21,000 in cash to an employee of the Nassau County Sheriff's Department who was in charge of purchasing food for the Nassau County

Correctional Center (the "NCSD purchasing agent"). The cash represented one-half of the proceeds of an embezzlement scheme, pursuant to which Lempert caused Penachio Co. to issue false and fraudulent invoices totaling approximately $42,000 to the Nassau County Correctional Center and the NCSD purchasing agent arranged for those invoices to be paid, usually via United States mail. The invoices were false and fraudulent in that they sought payment for food items that had not been delivered and were not intended to be delivered. The NCSD purchasing agent facilitated the payment of the false and fraudulent invoices by signing the invoices or by causing another employee of the Nassau County Correctional Center to sign them, thereby attesting that the Nassau County Correctional Center had received the items listed on the invoices when, in fact, it had not.

XXII. OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the Southern District of New York, and elsewhere:

70. Between November 1996 and July 1998, Lempert and co-conspirators caused Penachio Co. to issue and to receive payment for at least 28 false and fraudulent invoices to the Nassau County Correctional Center. Lempert or co-conspirators prepared these invoices in the Southern District of New York at the

Penachio Co. offices in the Bronx. The total value of the false and fraudulent invoices was approximately $42,000.

71. Between November 1996 and July 1998, Lempert paid the NCSD purchasing agent approximately $21,000 in cash, an amount that represented one-half of the proceeds of the false and fraudulent invoices that the NCSD purchasing agent had caused the Nassau County Controller's Office to pay. The NCSD purchasing agent received some of these payments in the Southern District of New York at the Penachio Co. offices in the Bronx.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

COUNT EIGHT -- INCOME TAX EVASION
(26 U.S.C. § 7201)

The United States of America further charges:

72. Paragraphs 1 through 3 of Count One of this Information are repeated and realleged, and incorporated in Count Eight as if fully set forth in this Count.

73. Beginning in 1991, when Lempert first went to work at Penachio Co., he made arrangements with certain of the company's senior executives to receive a part of his compensation "off the books." Lempert was paid his "off the books" compensation by submitting phony claims for reimbursement of expenses he had purportedly incurred in the course of his employment at Penachio Co. The phony claims included some claims for entertainment

expenses, but, at least since 1994,

were mainly claims for what purported to be the reimbursement of expenses incurred in connection with alleged purchases of food for Penachio Co. From 1994 until mid-1999, Penachio Co. reimbursed Lempert for phony claims totaling approximately $35,000 per year.

74. Beginning in approximately 1994, Lempert also arranged to receive money from suppliers of food and services to Penachio Co. One supplier paid Lempert money in connection with his placing orders with that supplier for produce and frozen food, and also in connection with his making arrangements for that supplier to receive a contract to warehouse frozen foods for Penachio Co. The money was paid both in cash and by checks written to entities, which checks Lempert then either deposited into a bank account he controlled or cashed. The cash payments from this supplier totaled approximately $10,000, the payments by check totaled approximately $79,000. Lempert also received money from another supplier in connection with his placing orders with that supplier for frozen food. The second supplier paid Lempert approximately $10,000 in cash. Lempert did not report any of the money he received from either of the two suppliers to Penachio Co. as income on his federal income tax returns.

75. In addition, Lempert kept and did not report as income at least $15,000 of the cash he collected in connection with the implementation of a

conspiracy to rig bids for the supply of produce to the Board of Education of the City of New York, as charged in Paragraph 15(e) of Count One of this Information, and also did not report as income the cash he received from the conspirator with whom he conspired to rig bids to supply dairy items to Nassau County, as charged in Paragraph 48(d) of Count Four of this Information.

76. On or about April 15, 1995, April 15, 1996, April 15, 1997, April 15, 1998, and April 15, 1999, in the Southern District of New York and elsewhere, Lempert did unlawfully, willfully, and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for each of the tax years 1994, 1995, 1996, 1997 and 1998, by filing and causing to be filed with the Internal Revenue Service Center, false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, wherein he and his spouse failed to report as income a total of at least $294,000 that he had received as compensation from Penachio Co., from suppliers to Penachio Co., and in connection with a conspiracy to rig bids to the NYCBOE and a conspiracy to rig bids to Nassau County; whereas, as he then and there well knew and believed, their true taxable income for those calendar years was substantially in excess of the specific sums

reported, upon which additional taxable income there was owing to the United States of America substantial additional income tax.

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7201

_____"/s/"_____
JOEL I. KLEIN
Assistant Attorney General

_____"/s/"_____
RALPH T. GIORDANO
Chief, New York Office

_____"/s/"_____
JAMES M. GRIFFIN
Deputy Assistant Attorney General

_____"/s/"_____
REBECCA MEIKLEJOHN

_____"/s/"_____
SCOTT D. HAMMOND
Director of Criminal Enforcement

_____"/s/"_____
DOUGLAS M. TWEEN

Antitrust Division
U.S. Department of Justice

_____"/s/"_____
MARY ANNE F. CARNIVAL

_____"/s/"_____
MARY JO WHITE
United States Attorney
Southern District of New York

_____"/s/"_____
DEBRA C. BROOKES

_____"/s/"_____
ELIZABETH PREWITT

Attorneys

Antitrust Division
U.S. Department of Justice
26 Federal Plaza, Room 3630
New York, New York 10278
(212) 264-0654