

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 16-
v.	:	DATE FILED:
JOSEPH O'NEILL	:	VIOLATIONS:
	:	18 U.S.C. § 1001 (false statements – 2
	:	counts)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times relevant to this indictment:

Relevant Persons and Entities

1. The Philadelphia Municipal Court (Municipal Court) is one of the two courts that comprise the First Judicial District of Pennsylvania, the judicial body that administers the court system in Philadelphia, Pennsylvania. The Municipal Court has two divisions, the Criminal Division and the Civil Division. Under Pennsylvania law, the jurisdiction of the Municipal Court is limited. The Criminal Division conducts preliminary hearings for most adult felony offenses charged in Philadelphia and conducts trials of criminal offenses carrying **maximum sentences of incarceration of five years or less.** The Civil Division adjudicates civil disputes where the amount in controversy is \$12,000 or less for small claims cases, all landlord and tenant cases, and \$15,000 in real estate and school tax cases. There are judges who handle both criminal and civil cases before the Municipal Court.

2. Pennsylvania's Code of Judicial Conduct sets forth standards of conduct for judges in Pennsylvania. Philadelphia Municipal Court judges were required to follow the Code of Judicial Conduct, including Rule 2.9 which provided: "A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter[.]"

3. Defendant JOSEPH O'NEILL was a Municipal Court Judge.

4. Joseph C. Waters, Jr. ("Waters"), charged elsewhere, was a Municipal Court Judge. He was initially appointed in July 2009 to fill a vacancy on the Court. To retain his position on the Court, Waters ran successfully in the November 2009 election for a seat on the Court.

5. Samuel Kuttab ("Kuttab"), charged elsewhere, was a politically active businessman who owned and managed various businesses in Philadelphia, including Donegal Investment Property Management Services ("Donegal"). Kuttab supported Waters in several efforts to obtain judicial positions within the First Judicial District. Kuttab used his political and business connections to support Waters' efforts to secure a July 2009 appointment to the Municipal Court. Kuttab later supported Waters' election to the Municipal Court by contributing money and actively recruiting other persons to give money or in-kind campaign contributions to Waters' campaign.

6. In return for the support he provided to Waters, Kuttab asked Waters to [use his influence as a Municipal Court Judge in a civil small claims case pending in the Municipal Court](#).

7. Judge #1, known to the Grand Jury, was a Municipal Court Judge.

8. Houdini Lock and Safe Company (“Houdini”) was a Pennsylvania corporation that provided security services, including burglar and fire alarm system set up and monitoring, throughout the Delaware Valley. Houdini provided alarm system monitoring to Donegal pursuant to a signed contract between the companies.

Houdini Lock and Safe Co. v. Donegal Investment Property Management Services
Small Claims Litigation

9. On or about August 9, 2011, Houdini filed a small claims lawsuit against Donegal in Municipal Court. Houdini alleged in the lawsuit (hereafter referred to as “Houdini v. Donegal”) that Donegal failed to pay for services it had received from Houdini under the terms of their contract. Houdini sought \$2,738.44 in damages, costs, and fees from Donegal.

10. The Municipal Court scheduled a hearing in the small claims case for September 30, 2011. Judge #1 was the Municipal Court judge scheduled to hear the trial.

FBI Investigation of Houdini v. Donegal Small Claims Litigation

11. The Federal Bureau of Investigation (“FBI”) was conducting an investigation related to Waters’ use of his judicial position to benefit Kuttab. As part of the investigation, the FBI obtained court orders permitting the FBI to monitor and record conversations occurring over telephones used by Waters and Kuttab. During the court-authorized monitoring of telephones used by Waters and Kuttab, FBI agents intercepted conversations related to the small claims case of Houdini v. Donegal.

12. On or about September 30, 2011, Waters contacted Judge #1 by telephone and requested favorable treatment for Kuttab and Donegal, as follows:

WATERS: I got something in front of you at 1 o'clock today.
Judge #1: Okay, tell me, what is it?
WATERS: The, the name's Donegan, okay.
Judge #1: Okay.
WATERS: Ah, it's ...has something to do with an alarm company. Sam

Kuttab ... will be there.
Judge #1: Okay, and, uh, okay.
WATERS: You know Sam Kuttab?
Judge #1: And who do you need?
WATERS: Uh, we, we, we got the, the, the defendant ... we got the defendant,
Donegan, the name is.
Judge #1: Oh, okay. Okay.
WATERS: Alright.

13. On or about September 30, 2011, in the scheduled hearing in the Municipal Court before Judge #1, the attorney representing Donegal requested a continuance of the trial because he was not prepared for the hearing. Houdini opposed the request for a continuance and argued that the trial should proceed as scheduled. Judge #1 granted Donegal's request for a continuance of the hearing. The Municipal Court rescheduled the trial for November 16, 2011.

14. On September 30, 2011, Judge #1 notified Waters in a telephone conversation that he/she had continued the small claims case at the request of Donegal's attorney:

Judge #1: Good. I just wanted to let you know, um, I continued that matter.
WATERS: Okay.
Judge #1: But, um, cause the, the twelve year old who came for your client wasn't ready, they opposed it, but I marked it "must be tried" cause they were really ...
WATERS: Okay.
Judge #1: ... jumping up and down, but I did continue it and I gave them a long date so hopefully that's enough for them.
WATERS: Okay, cool.
Judge #1: Alright, I did what I could.
WATERS: Alright. I, I know you do, uh, believe me and I appreciate it.

15. On or about November 16, 2011, Kuttab reminded Waters in a telephone conversation that the small claims trial against his company, Donegal, was scheduled for that afternoon.

16. On or about November 16, 2011, Waters contacted defendant JOSEPH O'NEILL by telephone and, in an ex parte conversation about the small claims case, requested favorable treatment for defendant Kuttab and Donegal (the defendant in the small claims civil action), advising defendant O'NEILL:

WATERS: Uh, you got a case this afternoon, Houdini v. Donegal Investments. All right uh--
O'NEILL: Yeah? You got me.
WATERS: Huh?
O'NEILL: You got me? Do I?
WATERS: Yeah, Donegal is Sam Kuttab. He's a friend of mine, so if you can take a hard look at it...
O'NEILL: Who's your guy? The defendant?
WATERS: Yeah, the defendant.
O'NEILL: Okay.
WATERS: All right?
O'NEILL: No problem.
.....
O'NEILL: Diebold, right?
WATERS: Na . . . Nnnn . . . My guy is Donegal. It's Sam Kuttab. He's a little Arab guy. He's Donegal Investment.
O'NEILL: Okay. Good enough.
WATERS: Okay. Thanks.

17. On or about November 16, 2011, the trial of Houdini v. Donegal commenced in the Municipal Court before defendant JOSEPH O'NEILL. Kuttab appeared and testified in Donegal's defense. At the conclusion of the evidence, as requested by Waters, defendant O'NEILL ruled ~~in favor~~ of Donegal and dismissed Houdini's claim for \$2,738.44 in damages. Based on this ruling, Houdini could not collect from Donegal its fees for services rendered to Donegal.

18. After the verdict, an attorney for Houdini notified Kuttab and Donegal that the owner of Houdini intended to exercise his right to appeal to the Philadelphia Court of Common Pleas defendant JOSEPH O'NEILL's decision in favor of Donegal. Houdini was

entitled under the rules governing appeals to a new trial before the Philadelphia Court of Common Pleas where he could achieve a verdict in his favor.

19. Knowing that Houdini could appeal, Waters facilitated settlement negotiations between Kuttab and an attorney for Houdini to avoid an appeal of defendant JOSEPH O'NEILL'S decision.

20. The parties then settled the litigation for \$600 without Houdini pursuing an appeal of defendant JOSEPH O'NEILL'S decision.

21. In brokering this settlement, Waters and Kuttab caused a check of \$400 (representing the \$600 settlement minus attorneys fees) to be mailed to Houdini. This settlement amount was substantially less money than Houdini could have collected through an appeal of defendant JOSEPH O'NEILL'S decision.

FBI Interviews of Defendant JOSEPH O'NEILL

22. On or about September 19, 2012, as part of the FBI's investigation into the circumstances surrounding the ex parte conversations involving Waters, Kuttab, and defendant JOSEPH O'NEILL, as well as other potential wrongdoing in the Philadelphia court system, the FBI conducted a series of interviews.

23. On or about September 19, 2012, the FBI interviewed defendant JOSEPH O'NEILL about his handling of the small claims case of Houdini v. Donegal. In response to the agents' inquiry whether anyone had contacted him in advance of the hearing and asked for a favor in Kuttab's case, defendant O'NEILL denied that any person had contacted him and asked for a favor, and added that he would have remembered if anyone had done so.

24. On or about September 19, 2012, immediately after the FBI agents' interview of defendant JOSEPH O'NEILL, FBI agents intercepted a telephone conversation of

Waters in which he learned the FBI had interviewed defendant O'NEILL. In a subsequent conversation, Waters, who had unsuccessfully tried to reach O'NEILL by telephone, indicated that he was going to speak with O'NEILL.

25. On or about September 19, 2012, defendant JOSEPH O'NEILL called one of the FBI agents who had interviewed him earlier in the day and left a voice message asking the agent to call him. On or about September 20, 2012, defendant O'NEILL left a second message for the FBI agent to call him.

26. On or about September 20, 2012, the FBI responded to defendant JOSEPH O'NEILL's request to speak and conducted a second interview of defendant O'NEILL. In response to the FBI's inquiry whether anyone contacted him in advance of the hearing to request him to dismiss the case against Donegal, O'NEILL responded that no one had asked him to "fix" the Donegal case, adding that if anyone had done so, he would want to punch him. In response to the FBI's inquiry if anyone had contacted him before he heard the case of Donegal and told him the defendant involved in the case was a friend, O'NEILL said that "did not happen."

27. On or about September 20, 2012, shortly after the FBI's second interview of defendant JOSEPH O'NEILL, FBI agents intercepted a telephone conversation of Waters in which his secretary told him to call O'NEILL and speak to him about the just-completed second FBI interview.

28. On or about September 19, 2012, in the Eastern District of Pennsylvania, defendant

JOSEPH O'NEILL,

in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States Department of Justice, within the executive branch of the United States, knowingly and

willfully made materially false, fictitious, and fraudulent statements and representations in that defendant ONEILL, when asked by FBI agents if anyone had contacted him before he heard the small claims case of Houdini v. Donegal and asked for a favor, O'NEILL denied that any person had contacted him and asked for a favor, adding that he would have remembered if someone had done so, when, as O'NEILL well knew, his statements were false, fictitious, and fraudulent, because Philadelphia Municipal Court Judge Joseph Waters had called O'NEILL before the hearing, and in an ex parte conversation, asked a favor, i.e., to "take a hard look" at the case, explaining, "Yeah, Donegal is Sam Kuttub. He's a friend of mine, so if you can take a hard look at it."

In violation of Title 18, United States Code, Section 1001.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 27 of Count One are realleged and incorporated here.
2. On or about September 20, 2012, in the Eastern District of Pennsylvania, defendant

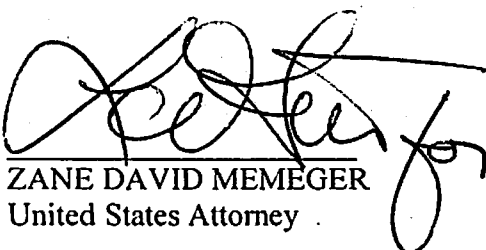
JOSEPH O'NEILL,

in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States Department of Justice, within the executive branch of the United States, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations in that (after defendant ONEILL told agents that nobody had asked him to fix a case and if somebody had done so he would want to punch him), FBI agents asked O'NEILL, if before the hearing, anyone had told him that the defendant in the Houdini case was a "friend." Defendant O'NEILL responded, that "did not happen," when, as defendant O'NEILL well knew, his statement was false, fictitious, and fraudulent, because Philadelphia Municipal Court Judge Joseph Waters had called O'NEILL before the hearing, and in an ex parte conversation, told defendant O'NEILL, "Yeah, Donegal is Sam Kuttab. He's a friend of mine, so if you can take a hard look at it."

In violation of Title 18, United States Code, Section 1001.

A TRUE BILL:

FOREPERSON


ZANE DAVID MEMEGER
United States Attorney