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

UNITED STATES OF AMERICA,)	Docket No. 03 CR 11
)	
Plaintiff,)	
)	
v.)	Chicago, Illinois
)	April 22, 2004
MATTHEW HALE,)	9:00 o'clock a.m.
)	
Defendant.)	

VOLUME 12
TRANSCRIPT OF PROCEEDINGS - TRIAL
BEFORE THE HONORABLE JAMES T. MOODY, and a jury

APPEARANCES:

For the Government:	HON. PATRICK J. FITZGERALD United States Attorney, by MS. VICTORIA J. PETERS MR. M. DAVID WEISMAN Assistant United States Attorneys 219 South Dearborn Street Chicago, Illinois 60604
For the Defendant:	DURKIN & ROBERTS, by MR. THOMAS ANTHONY DURKIN MR. PATRICK W. BLEGEN 53 West Jackson Boulevard Suite 615 Chicago, Illinois 60604

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1 (The following proceedings were had in open court outside
2 the presence of the jury:)

3 THE COURT: Good morning.

4 MR. DURKIN: Good morning, Judge.

5 THE COURT: Counsel, are you ready to go?

6 MR. WEISMAN: Government is, your Honor.

7 THE COURT: Defense?

8 MR. DURKIN: Yes. Only one question, Judge. The
9 press has asked whether the jury instructions are public
10 record. We told them we thought they were, but we didn't want
11 to do anything --

12 THE COURT: Why wouldn't they be? I think so.

13 MR. DURKIN: I just wanted to make sure it was okay if
14 we gave them copies.

15 THE COURT: When?

16 MR. DURKIN: After you instructed them.

17 THE COURT: Fine. I don't care. Do you care?

18 MR. WEISMAN: No.

19 THE COURT: I don't care. Is that the practice up
20 here?

21 MS. PETERS: I never had them ask for jury
22 instructions. They are read in public court, so I don't see
23 why they couldn't get them.

24 THE COURT: I am from Small Town USA, and I don't know
25 what you do up here in the big city. So we will do her.

1 MR. DURKIN: You wouldn't imagine.

2 THE COURT: I understand all that. Besides, I am
3 being very facetious.

4 (Jury entered the courtroom.)

5 THE COURT: Please be seated. Good morning.

6 At this time it's my duty to read to you the
7 instructions on the law that applies to this case. And I am
8 going to have my clerk hand each of you a set of the Court's
9 instructions, and you can follow along by reading to yourself
10 these instructions as I read them to you.

11 So if you can just hand eight to the first juror in
12 each row. If you just take one and pass the remainder down.

13 (Documents tendered.)

14 THE COURT: All right. If you just turn to Court's
15 instruction No. 1, and I will begin reading them to you.

16 Members of the jury, you have seen and heard all the
17 evidence and the arguments of the attorneys. I will now
18 instruct you on the law.

19 You have two duties as a jury. Your first duty is to
20 decide the facts from the evidence in the case. This is your
21 job and yours alone.

22 Your second duty is to apply the law that I give you
23 to the facts. You must follow these instructions even if you
24 disagree with them.

25 Each of the instructions is important, and you must

1 follow all of them. Perform these duties fairly and
2 impartially. Do not allow sympathy, prejudice, fear or public
3 opinion to influence you. You should not be influenced by any
4 person's race, color, religion, national ancestry or sex.

5 Nothing I say now and nothing I said or did during the
6 trial is meant to indicate any opinion on my part about what
7 the facts are or about what your verdicts should be.

8 The evidence consists of the testimony of the
9 witnesses, the exhibits admitted in evidence and stipulations.
10 A stipulation is an agreement between both sides that certain
11 facts are true or that a person would have given certain
12 testimony.

13 You are to decide whether the testimony of each of the
14 witnesses is truthful and accurate in part, in whole, or not at
15 all, as well as what weight, if any, to give to the testimony
16 of each witness.

17 In evaluating the testimony of any witness, you may
18 consider among other things the witness' age, the witness'
19 intelligence, the ability and opportunity the witness had to
20 see, hear or know the things that the witness testified about;
21 the witness' memory; any interest, bias or prejudice the
22 witness may have; the manner of the witness while testifying;
23 and the reasonableness of the witness' testimony in light of
24 all the evidence in the case.

25 You should use common sense in weighing the evidence

1 and consider the evidence in light of your own observations in
2 life.

3 In our lives we often look at one fact and conclude
4 from it that another fact exists. In law we call this
5 inference. A jury is allowed to make reasonable inferences.
6 Any inferences you make must be reasonable and must be based on
7 the evidence in the case.

8 Some of you have heard the phrases circumstantial
9 evidence and direct evidence. Direct evidence is the testimony
10 of someone who claims to have personal knowledge of the
11 commission of the crime which has been charged, such as an
12 eyewitness. Circumstantial evidence is the proof of a series
13 of facts which tend to show whether the defendant is guilty or
14 not guilty.

15 The law makes no distinction between the weight to be
16 given either direct or circumstantial evidence. You should
17 decide how much weight to give to any evidence. All the
18 evidence in the case, including the circumstantial evidence,
19 should be considered by you in reaching your verdicts.

20 Certain things are not evidence. I will list them for
21 you. First, testimony that I struck from the record or that I
22 told you to disregard is not evidence and must not be
23 considered.

24 Second, anything that you may have seen or heard
25 outside the courtroom is not evidence and must be entirely

1 disregarded. This includes any press, radio or television
2 reports you may have seen or heard. Such reports are not
3 evidence, and your verdicts must not be influenced in any way
4 by such publicity.

5 Third, questions and objections by the lawyers are not
6 evidence. Attorneys have a duty to object when they believe a
7 question is improper. You should not be influenced by any
8 objection or by my ruling on it.

9 Fourth, the lawyers' statements to you are not
10 evidence. The purpose of these statements is to discuss the
11 issues and the evidence. If the evidence as you remember it
12 differs from what the lawyers said, your memory is what counts.

13 It is proper for an attorney to interview any witness
14 in preparation for trial.

15 The indictment in this case is the formal method of
16 accusing the defendant of an offense and placing the defendant
17 on trial. It is not evidence against the defendant and does
18 not create any inference of guilt. The defendant has pleaded
19 not guilty to the charges.

20 The defendant is presumed to be innocent of each of
21 the charges. This presumption continues during every stage of
22 the trial and your deliberations on the verdicts. It is not
23 overcome unless from all the evidence in the case you are
24 convinced beyond a reasonable doubt, that the defendant is
25 guilty as charged.

1 The government has the burden of proving the guilt of
2 the defendant beyond a reasonable doubt. This burden of proof
3 stays with the government throughout the case. The defendant
4 is never required to prove his innocence or to produce any
5 evidence at all.

6 The defendant has an absolute right not to testify.
7 The fact that the defendant did not testify should not be
8 considered by you in any way in arriving at your verdicts.

9 You have heard evidence of acts of the defendant other
10 than those charged in the indictment. You may consider this
11 evidence only on the question of the defendant's intent and
12 whether circumstances exist that strongly corroborate the
13 defendant's intent. You should consider this evidence only for
14 this limited purpose.

15 You have heard evidence that before the trial
16 witnesses made statements that may be inconsistent with the
17 witness' testimony here in court. If you find that it is
18 inconsistent, you may consider the earlier statement in
19 deciding the truthfulness and accuracy of that witness'
20 testimony in this trial.

21 If that statement was made under oath, you may also
22 consider it as evidence of the truth of the matters contained
23 in that prior statement.

24 You have heard testimony from Tony Evola, who received
25 benefits from the government in connection with this case;

1 namely, payment of money. You may give his testimony such
2 weight as you feel it deserves, keeping in mind that it must be
3 considered with caution and great care.

4 You have heard recorded conversations. These recorded
5 conversations are proper evidence, and you may consider them
6 just as any other evidence. When the recordings were played
7 during the trial, you were furnished transcripts of the
8 recorded conversations prepared by government agents. The
9 recordings are the evidence, and the transcripts were provided
10 to you only as a guide to help you follow as you listen to the
11 recordings.

12 The transcripts are not evidence of what was actually
13 said or who said it. It is up to you to decide whether the
14 transcripts correctly reflect what was said and who said it.
15 If you noticed any difference between what you heard on the
16 recordings and what you read in the transcripts, you must rely
17 on what you heard, not what you read. And if after careful
18 listening you could not hear or understand certain parts of the
19 recordings, you must ignore the transcripts as far as those
20 parts are concerned.

21 Two videotapes of a CNN interview with defendant were
22 admitted into evidence as Government Exhibit 7/5/99 CNN Tape
23 No. 7, and Government Exhibit 7/5/99 CNN Tape No. 8. As I
24 previously instructed you, this evidence can only be considered
25 by you with respect to Count 5 of the indictment.

1 Counts 1, 4 and 5 of the indictment each charge
2 defendant with obstruction of justice in violation of Section
3 1503(a) of Title 18 of the United States Code. The relevant
4 portion of Section 1503(a) states as follows:

5 Whoever corruptly or by threats or force endeavors to
6 influence, intimidate or impede any officer in or of any court
7 of the United States, or corruptly or by threats or force or by
8 any threatening letter or communication influences, obstructs,
9 or impedes or endeavors to influence, obstruct or impede the
10 due administration of justice, commits an offense against the
11 United States.

12 Counts 2 and 3 of the indictment each charge defendant
13 with solicitation of another person to commit a crime of
14 violence in violation of Section 373 of Title 18 of the United
15 States Code. The relevant portion of Section 373 states as
16 follows:

17 Whoever with intent that another person engage in
18 conduct constituting a felony that has as an element the use,
19 attempted use, or threatened use of physical force against the
20 person of another in violation of the laws of the United States
21 and under circumstances strongly corroborative of that intent,
22 solicits, commands, induces or otherwise endeavors to persuade
23 such other person to engage in such conduct, commits an offense
24 against the United States.

25 The defendant is charged in Count 1 of the indictment

1 with corruptly endeavoring to obstruct the due administration
2 of justice in violation of the Section 1503(a) of Title 18 of
3 the United States Code by sending a letter containing false
4 declarations to Judge Joan H. Lefkow. To sustain this charge
5 the government must prove the following propositions:

6 First, that the defendant endeavored to influence,
7 obstruct or impede the due administration of justice; second,
8 that the defendant acted knowingly; and third, that the
9 defendant's acts were done corruptly; that is, with the purpose
10 of wrongfully impeding the due administration of justice.

11 If you find from your consideration of all the
12 evidence that each of these propositions has been proved beyond
13 a reasonable doubt, then you should find the defendant guilty.
14 If on the other hand you find from your consideration of all
15 the evidence that any of these propositions has not been proved
16 beyond a reasonable doubt, then you should find the defendant
17 not guilty.

18 The defendant is charged in Count 2 of the indictment
19 with solicitation of another person, namely Tony Evola, to
20 commit a crime of violence in violation of Section 373 of Title
21 18 of the United States Code. To sustain this charge, the
22 government must prove the following propositions.

23 First, that the defendant with strongly corroborative
24 circumstances intended for Tony Evola to engage in conduct
25 constituting a felony that involved the use, attempted use or

1 threatened use of physical force against Judge Joan H. Lefkow,
2 in violation of the laws of the United States; and second, that
3 the defendant solicited, commanded, induced or otherwise
4 endeavored to persuade Tony Evola to engage in that conduct.

5 If you find from your consideration of all the
6 evidence that each of these propositions has been proved beyond
7 a reasonable doubt, then you should find the defendant guilty.
8 If on the other hand you find from your consideration of all
9 the evidence that any of these propositions has not been proved
10 beyond a reasonable doubt, then you should find the defendant
11 not guilty.

12 The defendant is charged in Count 3 of the indictment
13 with solicitation of another person, namely Jon Fox, to commit
14 a crime of violence in violation of Section 373 of Title 18 of
15 the United States Code. To sustain this charge the government
16 must prove the following propositions:

17 First, that the defendant with strongly corroborative
18 circumstances intended for Jon Fox to engage in conduct
19 constituting a felony that involved a use, attempted use, or
20 threatened use of physical force against Judge Joan H. Lefkow
21 in violation of the laws of the United States; and second, that
22 the defendant solicited, commanded, induced or otherwise
23 endeavored to persuade Jon Fox to engage in that conduct.

24 If you find from your consideration of all the
25 evidence that each of these propositions has been proved beyond

1 a reasonable doubt, then you should find the defendant guilty.
2 If on the other hand you find from your consideration of all
3 the evidence that any of these propositions has not been proved
4 beyond a reasonable doubt, then you should find the defendant
5 not guilty.

6 Examples of strongly corroborative circumstances that
7 are highly probative of the intent to solicit another to use
8 physical force against an individual include but are not
9 limited to the following:

10 A, the fact that the defendant offered or promised
11 payment or some other benefit to the person solicited if he
12 would commit the offense. B, the fact that the defendant
13 threatened harm or some other detriment to the person solicited
14 if he would not commit the offense. C, the fact that the
15 defendant repeatedly solicited the commission of the offense,
16 held forth at length in soliciting the commission of the
17 offense, or made express protestations of seriousness in
18 soliciting the commission of the offense. D, the fact that the
19 defendant believed or was aware that the person solicited had
20 previously committed similar offenses. And E, the fact that
21 the defendant acquired weapons, tools or information suited for
22 use by the person solicited in the commission of the offense or
23 made other apparent preparations for the commission of the
24 offense by the person solicited.

25 The surrounding circumstances in general must indicate

1 that the solicitor is serious that the person solicited
2 actually carry out the crime.

3 As to Counts 2 and 3 of the indictment, the government
4 must prove beyond a reasonable doubt that the defendant was not
5 entrapped. Thus the government must prove beyond a reasonable
6 doubt either, one, that before contact with law enforcement the
7 defendant was ready and willing or had a predisposition or
8 prior intent to commit the offense; or two, that the defendant
9 was not induced or persuaded to commit the offense by law
10 enforcement officer or their agents.

11 In determining whether the defendant was entrapped,
12 you may consider, one, the background of the defendant; two,
13 whether it was law enforcement officers or their agents that
14 first suggested the criminal activity; three, whether the
15 defendant showed reluctance to perform criminal activity; four,
16 whether law enforcement officers or their agents repeatedly
17 induced or persuaded the defendant to perform criminal
18 activity; and five, whether law enforcement officers or their
19 agents offered exceptional persuasion or merely solicited the
20 commission of a crime.

21 While no single factor necessarily indicates by itself
22 that a defendant was or was not entrapped, the central question
23 is whether the defendant showed reluctance to engage in
24 criminal activity that was overcome by inducement or
25 persuasion.

1 Counts 2 and 3 require that the defendant intended for
2 another person to engage in conduct constituting a felony
3 involving the use, attempted use or threatened use of physical
4 force against Judge Joan H. Lefkow in violation of the laws of
5 the United States. You are instructed as a matter of law that
6 killing or attempting to kill any officer or employee of the
7 United States in any branch of the United States government
8 while such officer or employee is engaged in or on account of a
9 performance of official duties is a violation of the laws of
10 the United States.

11 The question of a defendant's intent is a matter for
12 you to determine. And since intent is a state of mind and it
13 is not possible to look into a person's mind to see what went
14 on, you may infer the intent of the defendant in this case by
15 taking into consideration all of the facts and circumstances
16 shown by the evidence which indicate his state of mind, except
17 for any evidence as to which you have been instructed to limit
18 your consideration to a particular count or issue.

19 It is not a defense to a charge of solicitation of
20 another person to commit a crime of violence in violation of
21 Section 1503(a) of Title 18 of the United States Code that the
22 person solicited could not be convicted of a crime because he
23 lacked the state of mind required for its commission.

24 The defendant is charged in Count 4 of the indictment
25 with obstruction of justice by endeavoring to impede a judicial

1 officer, namely Judge Joan H. Lefkow, in the discharge of her
2 duties in violation of Section 1503(a) of Title 18 of the
3 United States Code. To sustain this charge, the government
4 must prove the following propositions:

5 First that Judge Joan H. Lefkow was an officer in or
6 of any court of the United States; second, that the defendant
7 endeavored to influence, intimidate or impede Judge Joan H.
8 Lefkow by soliciting, inciting or encouraging Judge Lefkow's
9 murder on account of her being a judicial officer in or of any
10 court of the United States; third that the defendant acted
11 knowingly; and fourth, that the defendant's acts were done
12 corruptly; that is, with the purpose of wrongfully impeding the
13 due administration of justice.

14 If you find from your consideration of all the
15 evidence that each of these propositions has been proved beyond
16 a reasonable doubt, then you should find the defendant guilty.
17 If on the other hand you find from your consideration of all
18 the evidence that any of these propositions has not been proved
19 beyond a reasonable doubt, then you should find the defendant
20 not guilty.

21 The defendant is charged in Count 5 of the indictment
22 with corruptly endeavoring to influence, obstruct or impede the
23 due administration of justice in violation of Section 1503(a),
24 of Title 18 of the United States Code, by instructing or
25 directing his father, Russell Hale, Jr., to testify before a

1 grand jury that during the course of an interview with CNN
2 journalists the defendant had to cut off the interview because
3 he started crying and was unable to complete the interview
4 because of his emotional reaction to Ben Smith's death, knowing
5 that at no time during the interview did he have to discontinue
6 the interview. To sustain this charge, the government must
7 prove the following propositions:

8 First that there was a pending grand jury
9 investigation; second that the defendant endeavored to
10 influence, obstruct or impede the due administration of
11 justice; third that the defendant acted knowingly; and fourth,
12 that the defendant's acts were done corruptly, that is with the
13 purpose of wrongfully impeding the due administration of
14 justice.

15 If you find from your consideration of all the
16 evidence that each of these propositions has been proved beyond
17 a reasonable doubt, then you should find the defendant guilty.
18 If on the other hand you find from your consideration of all
19 the evidence that any of these propositions has not been proved
20 beyond a reasonable doubt, then you should find the defendant
21 not guilty.

22 As used in Counts 1, 4 and 5, the word corruptly means
23 that the defendant acted with an improper motive or with an
24 evil or wicked purpose.

25 As used in Counts 1, 4 and 5, endeavor means any

1 effort or act to influence, obstruct or impede the due
2 administration of justice. The endeavor need not be
3 successful, but it must have at least a reasonable tendency to
4 influence, obstruct or impede the due administration of
5 justice.

6 A grand jury investigation is a judicial proceeding
7 which constitutes the administration of justice.

8 When the word knowingly is used in these instructions,
9 it means that the defendant realized what he was doing and was
10 aware of the nature of his conduct and did not act through
11 ignorance, mistake or accident. Knowledge may be proved by the
12 defendant's conduct and by all the facts and circumstances
13 surrounding the case.

14 The First Amendment to the Constitution of the United
15 States protects the right of individuals to free association.
16 Membership in the World Church of the Creator or any other
17 religious, political or racial organization is not a crime.
18 The First Amendment also protects the right of individuals to
19 maintain and express their beliefs no matter how unpopular.

20 Also the mere abstract teaching of the moral propriety
21 or even moral necessity for a resort to force and violence is
22 protected by the First Amendment.

23 In considering whether the government has proven the
24 defendant guilty beyond a reasonable doubt, you may consider
25 the defendant's membership in the World Church of the Creator

1 and his beliefs regarding race relations only insofar as they
2 may pertain to the issue of intent.

3 Upon retiring to the jury room, select one of your,
4 member as your foreperson. The foreperson will preside over
5 your deliberations and will be your representative here in
6 court.

7 A form of verdicts has been prepared for you. Take
8 this form to the jury room. And when you have reached
9 unanimous agreement on the verdicts, your foreperson will fill
10 in and date the form. And each of you will sign it.

11 Each count of the indictment charges the defendant
12 with having committed a separate offense. Each count and the
13 evidence relating to it should be considered separately. And a
14 separate verdict should be returned as to each count. Your
15 verdict of guilty or not guilty of any offense charged in one
16 count should not control your decision as to any other count.

17 I do not anticipate that you will need to communicate
18 with me. If you do, however, the only proper way is in writing
19 signed by your foreperson, or if he or she is unwilling to do
20 so by some other juror, and given to the marshal. I will then
21 respond as promptly as possible, either in writing or by having
22 you return to the courtroom so that I can address you orally.

23 I caution you, however, with regard to any message or
24 question you might send that you should never state or specify
25 your numerical division at that time.

1 The verdicts must represent the considered judgment of
2 each juror. Your verdicts, whether they be guilty or not
3 guilty, must be unanimous. You should make every reasonable
4 effort to reach verdicts. In doing so you should consult with
5 one another, express your own views, and listen to the opinions
6 of your fellow jurors. Discuss your differences with an open
7 mind. Do not hesitate to reexamine your own views and change
8 your opinion if you come to believe it is wrong. But you
9 should not surrender your honest beliefs about the weight or
10 the effect of evidence solely because of the opinions of your
11 fellow jurors or for the purpose of returning unanimous
12 verdicts.

13 All 12 of you should give fair and equal consideration
14 to all the evidence and deliberate with the goal of reaching an
15 agreement which is consistent with the individual judgment of
16 each juror. You are impartial judges of the facts. Your sole
17 interest is to determine whether the government has proved its
18 case beyond a reasonable doubt.

19 MR. WEISMAN: Can I consult with defense counsel?

20 THE COURT: Yes. Which one are you looking at?

21 MR. WEISMAN: 24, your Honor.

22 THE COURT: 1503 (a) should be changed.

23 MR. WEISMAN: Yes, your Honor.

24 THE COURT: Ladies and gentlemen, turn to Court's
25 instruction No. 24, if you please.

1 Do you both agree it should be changed?

2 MR. DURKIN: Yes.

3 THE COURT: This is the instruction that tells you
4 that it is not a defense to a charge of solicitation of another
5 person to commit a crime of violence in violation of Section
6 1503(a). That's not the right section for this instruction.
7 It should be --

8 MR. WEISMAN: 373.

9 THE COURT: -- Section 373, not 1503(a).

10 And what I will do, after you adjourn back to the jury
11 room to deliberate upon your verdict, I will supply you with a
12 new Court's instruction No. 24. And I would ask that you pull
13 the old one out, give it to the marshal, and insert the new one
14 in this package. Okay?

15 Is that satisfactory to counsel?

16 MR. WEISMAN: Yes.

17 MR. DURKIN: Yes.

18 THE COURT: All right. With that, would the CSO in
19 whose charge this jury will be please stand. I am going to
20 place this jury in your charge. So you raised your hand.

21 (Court security officer duly sworn.)

22 THE COURT: Okay. Ladies and gentlemen, you are now
23 going to be escorted back to the jury room. After you get
24 there, the marshal will come back, get all of the exhibits that
25 were admitted and a form of verdicts. A tape recorder I think

1 we have available, correct?

2 MR. WEISMAN: Yes, your Honor. We have a video player
3 and --

4 THE COURT: A video player and tape recorder. Those
5 will be taken back for your use of all of those things during
6 your deliberations.

7 So with that, I would ask the marshal now to escort
8 this jury to the jury room to deliberate upon their verdicts
9 and to advise this Court when this jury is ready to report its
10 verdict. Can you do that?

11 MR. WEISMAN: Can I see you --

12 MS. PETERS: Excuse the alternates?

13 THE COURT: I will do that. You know, just give me a
14 chance. I seldom forget anything, even as old as I am.

15 I need to have Gregory Popp, Gail Moore, Clinton
16 Stokes and Wesley Bartle stay with me. The rest of you can be
17 escorted to the jury room. Okay.

18 (Jury retired to deliberate on its verdict at 9:35 o'clock
19 a.m.)

20 THE COURT: Be seated.

21 Speaking to the four people who, if you didn't know,
22 you were alternate jurors in this case. You probably realized
23 that way before, early on when this trial began. But had one
24 of the regular 12 jurors become incapacitated by illness or for
25 some other reason and not been able to stay with us for all

1 this time, you would have immediately stepped in and taken
2 their place and then been able to go back and deliberate upon
3 verdicts in this case. That didn't happen. They all stayed
4 with us.

5 I want to express the Court's appreciation for your
6 services in this case. You know and I know it's a hardship to
7 serve as a juror. You have taken time away from your family,
8 your friends, your workplace those things that you normally do
9 during the course of your daily activities.

10 But you have, in fact, performed a very patriotic duty
11 in helping your judicial branch of government to continue to
12 function appropriately. You have been very attentive. You
13 have been very conscientious. You performed your duties well.
14 And I am grateful for your cooperation.

15 Throughout the trial, you know, I have been telling
16 you that you can't talk about this case with anyone. You can't
17 read, view or listen to any news media coverage about this
18 case. Well, I release you from that admonition. But the
19 choice is yours. If you don't want to talk about this case
20 with anyone, you don't have to do that.

21 So with that, I am going to release you. I take it
22 you have jackets or rain umbrellas and that kind of stuff. I
23 want to have the marshal take you back so you can obtain all of
24 those things. And again, thank you so much for participating.
25 Hope you enjoyed it. Kind of a stressful situation, but

1 anyway. Have a safe trip home. Thank you.

2 (Alternate jurors excused.)

3 MR. WEISMAN: Judge, can I impose on the Court? I
4 have a matter before another Court at 9:45. I am wondering if
5 I can be excused. Ms. Peters will be here.

6 THE COURT: You are with me until it's done. Just
7 don't go too far.

8 MR. WEISMAN: I won't.

9 THE COURT: I take it again, just for the record, only
10 the exhibits that you have agreed upon were introduced in this
11 trial are in that buggy, right?

12 MS. PETERS: Yes.

13 THE COURT: Again, don't go too far. We talked about
14 it before. Leave with the marshal your cell phone number or
15 your pager numbers so we can get a hold of you if they have a
16 question or if they return a verdict.

17 MS. PETERS: I think the marshal handled that
18 yesterday. He got our numbers.

19 THE COURT: Good.

20 MS. PETERS: We should let the Court know that we have
21 12 copies of the transcript books that the jury was using when
22 they listened in the bottom of the cart.

23 THE COURT: That's been agreed to by the defense? You
24 have to speak to me.

25 MR. BLEGEN: Yes.

1 THE COURT: Thank you.

2 I take it you will stipulate that when it comes time
3 to feed these people, I can do that without bringing you back
4 to allow that to happen.

5 MS. PETERS: Absolutely.

6 THE COURT: If during their deliberations they desire
7 to call their significant others to tell them where they are,
8 is that okay too?

9 MS. PETERS: Of course.

10 MR. DURKIN: Yes.

11 THE COURT: Okay.

12 MS. PETERS: Your Honor, if we don't hear anything
13 from them at the end of the day, what is your practice? Do you
14 bring them into the jury box to excuse them?

15 THE COURT: I just ask the marshal to go back and ask
16 them if -- whatever is the custom here, I will --

17 MS. PETERS: I would rather just have them go. I
18 don't think there is a necessity to bring them out.

19 THE COURT: I just go ask, you know, the Court wants
20 to make an inquiry whether or not you people want to separate
21 for the evening. And if they say they do, then I do have to
22 bring them back and give them an instruction on what to do
23 while they have been separated and what to do when they come
24 back.

25 MS. PETERS: Okay. So you bring them back to give

1 them the instruction.

2 THE COURT: Yes, I have to do that. What I will do is
3 have the -- if you don't disagree with my procedure, have the
4 marshal around 5:00 o'clock ask them whether they would like to
5 separate for the evening and come back tomorrow morning.

6 MS. PETERS: That will be fine.

7 THE COURT: Is that okay with the defense?

8 MR. DURKIN: As long as it's clear it's their choice.

9 THE COURT: It's their choice, yes. And I will make
10 that clear with the marshal. And that's all he is going to
11 say. Period.

12 MR. DURKIN: That's fine.

13 THE COURT: What else can I do as far as housekeeping
14 matters are concerned? I can't think of anything.

15 MR. DURKIN: Judge, I don't think it's necessary for
16 you to read the instruction into the record. We will accept
17 your just putting that in the record.

18 THE COURT: Which instruction?

19 MR. DURKIN: The one with the typographical error.

20 THE COURT: I will just change it. You don't need to
21 be here.

22 MR. DURKIN: You can make it part of the record.
23 That's fine.

24 THE COURT: I will read it into the record.

25 MR. BLEGEN: Can we get a copy of it?

1 THE COURT: Absolutely. I will just lay it on the
2 desk.

3 MR. DURKIN: Somebody will be here.

4 THE COURT: Someone from the government will be here
5 to get a copy of it?

6 MS. PETERS: Someone from the government will be here.
7 The marshal --

8 THE COURT: I will go tell him to come and get it.
9 Pull out the two things that he is to take back there. Bring
10 them down here, would you, so I know what he is supposed to do.

11 (Brief recess.)

12 THE COURT: The modified Court's instruction No. 24
13 now reads as follows: It is not a defense to a charge of
14 solicitation of another person to commit a crime of violence in
15 violation of Section 373 of Title 18 of the United States Code,
16 that the person solicited could not be convicted of a crime
17 because he lacked the state of mind required for its
18 commission.

19 I will take this instruction, modified 24, to the jury
20 room and collect 12 of the old ones.

21 (Recess until 10:55 o'clock a.m.)

22 THE COURT: On this date at 10:30 this morning, CSO
23 Dino G. Kotsovetis, K-o-t-s-o-v-e-t-i-s, received the following
24 note from this jury: "Judge Moody, we need a copy of the
25 letter to Judge Lefkow. The letter was sent. Was it opened by

1 her? The letter is not in folder for 12/12/02. Exhibit 11.
2 Lucy Davenport."

3 MS. PETERS: That's because it's right here, Judge.
4 We had thought there was a copy of it in there. So we have it
5 here. We can provide it to your clerk, if you like.

6 THE COURT: Any objection?

7 MR. DURKIN: No.

8 MR. BLEGEN: No.

9 MR. DURKIN: Because there --

10 THE COURT: There was another part to it.

11 MR. DURKIN: Is there a question?

12 THE COURT: There is. Was it opened by her? I don't
13 know. It was opened by the court, I believe.

14 MR. DURKIN: I believe she said it was opened by her
15 staff.

16 THE COURT: I don't know the precise language.

17 MR. DURKIN: Do we have the transcript here?

18 THE COURT: Here is the thing. I am going to respond
19 as follows, inasmuch as you now agree that that letter can go
20 back. "Members of the jury, I received a note from you that
21 says as follows:" Then I will just put the guts of it in
22 there. And I am going to say, "Let me respond as follows:
23 Exhibit 11 as requested is now being given to you." And what
24 ever else you can tell me after reading the transcript of her
25 testimony, what happened to it once it came to the court.

1 And then my following paragraph is, "Keep in mind that
2 you should consider what I have just said and Exhibit 11
3 together with all the other instructions that I gave you
4 earlier. All these instructions are important, and you should
5 consider them together as a whole." Or I'm sorry. "Keep in
6 mind that you should consider this evidence together with all
7 the other evidence. Do not consider it by itself, out of
8 context. Consider all the evidence together as a whole."

9 That's the last phrase. Anybody going to object to
10 that?

11 MR. DURKIN: No.

12 THE COURT: But we need to get --

13 MR. WEISMAN: Ms. Peters has gone to get the
14 transcript.

15 THE COURT: -- the right words. And you tell me how
16 it should be, and I will go up and type it. And then we will
17 read it into the record and then you can agree or disagree or
18 whatever. Whatever happens, I will give it to the CSO who is
19 in charge of the jury.

20 MR. DURKIN: I guess the only question I have, just
21 thinking out loud, is that do we want to get in the practice of
22 answering a question that is actually a comment on the
23 evidence?

24 THE COURT: I don't know. I am going to do what you
25 people agree.

1 MR. DURKIN: I wonder maybe we just give them the
2 transcript.

3 THE COURT: Of her testimony? That might be good.

4 MR. DURKIN: I mean, I am reluctant. I can just
5 imagine the fight we are going to have as to --

6 MR. WEISMAN: Why don't we --

7 MR. DURKIN: -- how we would answer.

8 THE COURT: Why don't you just give her the
9 transcript.

10 MR. WEISMAN: I have no objection to that.

11 MR. DURKIN: I'd like to see it but I don't think --

12 THE COURT: It's short. I don't think it was very
13 long.

14 MR. WEISMAN: The other option I think would be just
15 to say, your collective memory of the testimony is what should
16 dictate.

17 MR. DURKIN: But if we do that, then the next request
18 is going to be for the transcript.

19 MR. WEISMAN: That's fine. I agree.

20 THE COURT: What I am going to say at the end of this
21 thing is, keep in mind that you should consider this evidence
22 together with all the other evidence. Do not consider it by
23 itself, out of context. Consider all the evidence together as
24 a whole. I cover what you are saying.

25 MR. WEISMAN: Right. I agree with Mr. Durkin. I

1 think it's best to provide the transcript in total, not --

2 THE COURT: I would think that would be the better
3 thing to do.

4 MR. DURKIN: In that case then, I don't remember
5 whether there were any sidebars. But maybe we should get --

6 MR. WEISMAN: I don't think there were with Judge
7 Lefkow. We will see.

8 THE COURT: I don't think there were any sidebars with
9 her.

10 Now, now the original of 11 you agree is going to go
11 back, right?

12 MR. DURKIN: Right. That was an oversight, wasn't it?

13 THE COURT: I think so.

14 MR. WEISMAN: Everyone has copies. I am not sure what
15 happened.

16 THE COURT: They say the letter is not in folder
17 12/12/02.

18 MR. DURKIN: For the record, I believe we -- perhaps
19 you should put this in there that I think we had a stipulation
20 that at the time this was admitted that these parenthesis are
21 not part of the letter.

22 MR. WEISMAN: That's in. That should be in the
23 testimony. If it's not in the testimony, then we agree this --
24 to include that in there. But I think that will be in the
25 testimony.

1 THE COURT: I don't know. Do you want to redact it by
2 taking the parenthesis out?

3 MR. DURKIN: I don't think we can do that without
4 it -- it would make it look worse.

5 THE COURT: Okay.

6 MR. DURKIN: That would be my only suggestion. My
7 recollection is we did it by stipulation that --

8 THE COURT: You know, that happened in the early part
9 of this trial. I don't remember that.

10 MR. DURKIN: Maybe it will be in the transcript.

11 (Brief pause.)

12 MS. PETERS: I do have the transcript here, if Mr.
13 Durkin wants to read over my shoulder.

14 THE COURT: Is that thick one the total?

15 MS. PETERS: This is -- what I am looking at here is
16 Volume 4. It's the morning of April 12 that has opening
17 statement.

18 THE COURT: All I want is the Lefkow testimony.

19 MS. PETERS: This is the way we get it. And I can --

20 THE COURT: Can we pull it out, right?

21 MS. PETERS: Sure. I didn't know you wanted -- I
22 thought you wanted me to find out what she said.

23 THE COURT: I think in your absence, I think what has
24 happened is that the parties have agreed that in response to
25 this question, we will furnish Judge Lefkow's transcript of her

1 testimony along with Government Exhibit 11.

2 Did I incorrectly state that, Mr. Durkin?

3 MR. DURKIN: That's right, subject to our review of
4 the transcript. I want to make sure. I think that's a good
5 idea after I read it.

6 (Brief pause.)

7 MS. PETERS: There is no sidebars in this, Judge.

8 MR. DURKIN: If we were to just give pages 133 through
9 151, there is only -- unfortunately there is just one answer on
10 151. We will have to redact -- maybe we should -- maybe we
11 should redact from about line 8.

12 THE COURT: Why don't you fix that up and then let me
13 go upstairs and get the response prepared. And the response is
14 going to be: "In response I am furnishing you with Government
15 Exhibit No. 11 and also with a written transcript of Judge Joan
16 H. Lefkow's testimony. Keep in mind that you should consider
17 this evidence together with all the other evidence. Do not
18 consider it by itself, out of context. Consider all the
19 evidence together as a whole."

20 MR. DURKIN: That's fine.

21 THE COURT: You get that done and I will be right
22 back.

23 (Brief recess.)

24 THE COURT: Do you have the transcript of Judge
25 Lefkow?

1 MS. PETERS: Yes, Judge.

2 THE COURT: It's agreed that that should be sent back,
3 correct?

4 MS. PETERS: Yes, your Honor.

5 MR. BLEGEN: Yes.

6 THE COURT: Along with Government Exhibit 11.

7 MR. WEISMAN: Yes, your Honor.

8 MR. BLEGEN: Yes.

9 THE COURT: With the following instruction: "Members
10 of the jury, I have received a note from you that says," and I
11 quote, "Judge Moody, we need a copy of the letter to Judge
12 Lefkow. The letter was sent. Was it opened by her? The
13 letter is not in folder for 12/12/02, Exhibit 11.

14 "In response I am furnishing you with Government
15 Exhibit 11 and with a written transcript of the testimony of
16 Judge Joan H. Lefkow. Keep in mind that you should consider
17 this evidence together with all the other evidence. Do not
18 consider it by itself, out of context. Consider all the
19 evidence together as a whole." Enter April 22, 2004, Judge
20 James T. Moody, United States District Court, with my
21 signature.

22 Any objection?

23 MS. PETERS: No.

24 MR. DURKIN: No.

25 THE COURT: Okay. Greg, if you would hand this to the

1 marshal, the two exhibits and my direction to the marshal. And
2 ask that he give it to the jury.

3 To complete the record this morning, I instructed the
4 CSO who is in charge of this jury to retrieve from the jury
5 each of their Court's instructions No. 24. He did that. And
6 he was also directed to give them a modified Court's
7 instruction 24, 12 copies of it, so that they each might have a
8 corrected 24. He did all of that.

9 Is that all right?

10 MS. PETERS: Yes.

11 MR. DURKIN: That's fine.

12 THE COURT: Thanks. Bye.

13 (Trial recessed until 12:15 o'clock p.m. of the same day.)
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