

Jury Trial Day 6

Conference call regarding trial scheduling

JANUARY 12, 1998

U.S. District Court, Eastern District, Sacramento Conference call regarding trial scheduling SACRAMENTO, CALIFORNIA MONDAY, JANUARY 12, 1998, 1:30 P.M.

—oOo—

(The following proceedings were held in chambers via telephone conference call.)

THE COURT: Hi. This is Judge Burrell. Can you hear me?

MR. CLEARY: Yes, we can.

THE COURT: Please state your appearances for the record. This is being reported by a Certified Shorthand Reporter.

MR. CLEARY: Robert Cleary, Steve Lapham, and Stephen Freccero for the government.

MR. DENVIR: Quin Denvir, Judy Clarke and Gary Sowards for Mr. Kaczynski.

THE COURT: Thank you. I've got a few matters I want to cover. First, should we proceed with the trial on the 22nd, I think the jury should not have to appear until 9:00 a.m. that morning, because between 8:00 a.m. and 9:00, we need to cover the Faretta issue, and the government indicated the need to cover your stipulations. Do you concur?

MR. CLEARY: Yes, Your Honor.

MR. DENVIR: Yes, Your Honor.

THE COURT: In light of that, and also because of the anonymity of the jurors, my thought is that it is probably ill-advised to mail to each of them a communication from the court, and that I should direct my jury administrator to communicate with the prospective – I guess I shouldn't call them prospective any longer – with the jurors orally. Do you agree with that?

MR. CLEARY: Yes, we do, Your Honor.

MR. DENVIR: Yes, Your Honor, we also agree.

THE COURT: Then I need to see if you approve the following communication. I intend, if you agree, to file an order in this action which reads as follows: "The jury administrator is directed to read the following verbatim to each juror and to provide such communication as necessary to ensure his or her appearance and continued standby status: The judge told me to tell you that we are still involved in proceedings which are necessary under the law in this case which will delay the start of this jury trial. At present we anticipate that these proceedings will be resolved no later than January 22, 1998, and that trial could commence by 9:00 a.m. on that date. If there is to be a later start, you will be notified. The Court and the parties appreciate your patience. Please remember the admonition to avoid all news media and discussions with others about the case. It is so ordered." It dated today's date and my signature. Response.

MR. CLEARY: No objection from the government.

MR. DENVIR: None, Your Honor.

THE COURT: Okay. The next matter concerns closed hearings. I plan on releasing in a redacted form as much of the closed proceedings as I can under law. I've already reviewed the Christmas Eve closed proceedings, and about a week ago I directed one of

my lawyers to tell the defense what aspect of that proceeding I was inclined to release. A defense lawyer told my lawyer that he wanted to look at a portion of the public record before responding. I told my lawyer to tell the defense counsel that was okay. I assume defense counsel is still looking at the public record.

MR. DENVIR: That's correct. We'll try to finish up this 14 afternoon or tomorrow morning.

THE COURT: In regard to that particular transcript, my court reporter has been sick. She's the individual that reported that proceeding, and she has been out of the courthouse for a few days. However, I think she did come in and report one proceeding while sick. I was actually not pleased about that because I don't want to get sick myself. Today I left a message with my court reporter because I assumed she had reported the January 7 closed proceeding, but I found out that I was mistaken. The reporter who reported the January 5 proceeding has provided me with a draft copy of that closed proceeding, and that reporter assisted me in obtaining a draft copy of a January 7th closed proceeding. I have made copies of those proceedings for review by the defense. I intend if possible sometime today to review those proceedings to make a determination as to whether portions of them can be made public. Now, further, in light of public proceedings conducted to date, I contemplate revisiting the December 19, 1997 and December 22, 1997 closed proceedings to determine whether other portions of those transcripts should be made public. The January 5 and January 7 closed proceedings, rough drafts of the same are available for pick up by the defense today.

MR. DENVIR: Where would they be picked up, from the reporters or from your chambers?

THE COURT: They're in my chambers.

MR. CLEARY: We'll send someone over.

THE COURT: Next I want to cover a supplemental order I contemplate issuing today. In the supplemental order I plan on specifically ordering Dr. Sally Johnson to come to California. I know she's already here, but I'm going to order her to come because I think the government needs this for travel purposes, at least I've been told that by a deputy United States Marshal. I also plan on covering in that supplemental order the statutory things which I know the defense recognizes should be covered in Dr. Johnson's report. I will list them for you if you desire, because I plan on giving her a copy of the supplemental order. Would you like me to list them, or do you know what they are?

MR. CLEARY: Is that from 4247, Your Honor, (b) or (c), I think it is?

THE COURT: 4247(c).

MR. CLEARY: We know what they are, Your Honor.

MR. DENVIR: We also do, Your Honor.

THE COURT: I don't have to list them and you don't mind me providing that information to the doctor?

MR. CLEARY: No, Your Honor.

MR. DENVIR: No objection.

THE COURT: I'm also inclined to direct Dr. Johnson to give a copy of her report to counsel for the parties and the Court by 7:00 p.m. on January 16, and I will set forth in a footnote next to that requirement that she can let me know if she needs more time. It's my understanding she may be able to give us the report by that time. Do you have a different understanding about it? I know you both communicated with the doctor.

MR. CLEARY: I think she's optimistic she can meet that deadline, Your Honor.

THE COURT: Neither party sees a problem with including that in the order?

MR. CLEARY: The government doesn't.

MS. CLARKE: We have talked to Dr. Johnson. She's trying to meet that deadline. It seemed to me she might need until later on Friday night.

THE COURT: I plan on staying in my chambers Friday night, and I will be available by telephone. If she needs more time, I can extend the deadline. I will wait on her report.

MS. CLARKE: That would be fine.

MR. DENVIR: That would be fine, Your Honor.

THE COURT: Okay. In the order I also plan on directing her to personally attend the competency hearing, with the understanding that she won't have to attend if you both indicate you don't think it's necessary and I agree.

MR. DENVIR: Fine, Your Honor.

THE COURT: That's all I wanted to cover. Is there anything further to cover from your perspectives?

MR. CLEARY: Nothing from the government, Your Honor.

THE COURT: How about the defense?

MR. DENVIR: Nothing further from the defense either.

THE COURT: Thank you.

MR. DENVIR: Thank you.

THE COURT: Good-bye. (Proceedings concluded.) IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

- oOo -

BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

- oOo -

8 UNITED STATES OF AMERICA,)) Plaintiff,)) vs.) No. Cr. S-96-259 GEB)
THEODORE JOHN KACZYNSKI,)) Defendant.) -----

- oOo -

REPORTERS' DAILY TRANSCRIPT JURY TRIAL VOLUME 26, pp. 3750-3756
MONDAY, JANUARY 12, 1998

- oOo -

Reported by: DENNIS F. McKINNON, CSR #2223 A P P E A R A N C E S 2
For Plaintiff UNITED STATES OF AMERICA: OFFICE OF THE U.S. ATTORNEY
650 Capitol Mall Sacramento, CA 95814

BY: ROBERT J. CLEARY STEPHEN P. FRECCERO R. STEVEN LAPHAM
Special Attorneys to the United States Attorney General For the Defendant: OF-
FICE OF THE FEDERAL DEFENDER 801 "K" Street, Suite 1024 Sacramento, CA
95814 By: QUIN A. DENVIR Federal Defender, Eastern District of California JUDY
CLARKE Executive Director, Federal Defenders of Eastern Washington and Idaho
STERNBERG, SOWARDS & LAURENCE 604 Mission St., 9th floor San Francisco,
CA 94105

BY: GARY D. SOWARDS

– oOo –

The Ted K Archive

Jury Trial Day 6
Conference call regarding trial scheduling
JANUARY 12, 1998

unabombertrial.com

www.thetedkarchive.com