

Pretrial Hearing Day 4

Discussion following ex Parte in camera hearing

Dec. 19, 1997

U.S. District Court, Eastern District, Sacramento Discussion following ex Parte in camera hearing

SACRAMENTO, CALIFORNIA

FRIDAY, DECEMBER 19, 1997, 3:55 P.M.

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(Following an ex parte in camera hearing, the courtroom was opened to the public.)

THE COURT: Please state your appearances for the record.

MR. CLEARY: Robert Cleary, Stephen Freccero, Steven Lapham for the Government.

MS. CLARKE: Judy Clarke, John Balazs, Quin Denvir, and Gary Sowards for the defense. Mr. Kaczynski's presence has been waived.

THE COURT: I thank the Government for joining us. There was a defense matter that was decided ex parte in camera, which I will issue an order on later. I thought that the parties would work over the weekend on jury selection issues, and I thought I should bring a communication to your attention which I received – one of them I received about two days ago, and the other I just received moments ago. I'm going to give you copies of the communication through my deputy clerk, and I will state on the record what's set forth in the communication so that the public will know – I should state I will set forth on the record aspects of what's set forth in the communications. One of the communications concerns juror 10. Juror 10 states, "I would like to be excused from serving on jury duty. Since November 12 two events have happened that may affect my ability to concentrate fully on this case. One of my employees is leaving, which will leave us short staffed in the laboratory. My mother being diagnosed as having possible breast cancer." The communication that I just received moments ago is the communication from juror 165. I'm going to read into the record the essence of that communication. "I did not mention at my previous appearance that I am scheduled to be out of the country from January 4, 1998 until January 11, 1998. This trip was planned as a surprise for my wife's 40th birthday. I purchased the tickets on November 18, 1997, never believing that I might be chosen for this jury. I have contacted the travel agent and have been informed that the tickets are nonrefundable. I cannot postpone the tickets to another date. Enclosed please find my receipt showing that I paid \$1,486.84 for the tickets. I have been advised by an attorney that this may be grounds for my release from jury service at this time. Thank you for your consideration." (Pause in the proceeding.)

THE COURT: When you are ready to give a response, I will receive it.

MR. CLEARY: Your Honor, we'd have no objection to excusing both of the jurors. (Discussion off the record among defense counsel.)

MS. CLARKE: Your Honor, our thought is perhaps the Court could put it over, the decision over, until Monday, and maybe we could ask the juror, as we did with all other travel plan jurors, whether the knowledge that they're serving on jury duty and have to be present pursuant to a court order in court, whether or not that could affect the nonrefundability of the ticket. That's kind of how we did it with the other

traveling jurors, and he may not have known to do that because the issue wasn't in front of him at the time.

THE COURT: You want me to call the juror and ask him that question?

MS. CLARKE: Right, if the travel agent knew or the airline knew that he would be in court pursuant to a court order. I've actually changed travel plans a lot with court orders. So it may be that that could alleviate his problem.

THE COURT: Okay. The defense has asked the Court to call the juror and inquire whether the travel agent has been contacted and informed of the fact that the agent – or that the juror is supposed to be in the court and, pursuant to a summons, to serve on the jury and whether that information will affect the decision as to the nonrefundability of the tickets and perhaps cause the travel agent to make an adjustment. Correct?

MR. CLEARY: Correct, Your Honor.

THE COURT: So there's a stipulation as to juror 10. And as to juror 165, I will make the inquiry you've asked me to make.

MS. CLARKE: Your Honor, we were a little reluctant to enter into any final decisions today –

THE COURT: Okay.

MS. CLARKE: – until Monday morning, if we could hold. But that information would certainly help us on 165.

THE COURT: Okay. And there's nothing for me to do as far as 10 is concerned.

MR. DENVIR: We would prefer to wait until Monday if we could on that, Your Honor.

THE COURT: Okay. Anything further?

MR. DENVIR: No, Your Honor.

MS. CLARKE: No, Your Honor.

MR. CLEARY: No, Your Honor. (Time noted: 4:03 p.m.) REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)) ss. COUNTY OF SACRAMENTO) I, SUSAN VAUGHAN, certify that I was the official Court Reporter and that I reported verbatim in shorthand writing the foregoing proceedings; that I thereafter caused my shorthand writing to be reduced to typewriting; and that the pages numbered 3499-3502 inclusive, constitute a complete, true and correct record of said proceedings:

COURT: U.S. District Court Eastern District of California

JUDGE: Honorable GARLAND E. BURRELL, JR., Judge

CAUSE: U.S. vs. Theodore Kaczynski Case No. Cr. S-96-259 GEB

DATE: FRIDAY, DECEMBER 19, 1997 (Vol. 20) IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on the 19th day of December, 1997. _____ SUSAN VAUGHAN, CSR No. 9673 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

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

– oOo –

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

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REPORTERS' DAILY TRANSCRIPT JURY TRIAL VOLUME 20, pp. 3499-3502
DISCUSSION FOLLOWING EX PARTE IN CAMERA HEARING FRIDAY, DE-
CEMBER 19, 1997

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The Ted K Archive

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