

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)
)
) Case No.
 Plaintiff,) CR-04-127-S-RCT
)
 vs.)
)
 DAVID ROLAND HINKSON,)
)
)
 Defendant.)
)

BEFORE THE HONORABLE RICHARD C. TALLMAN
JUDGE OF THE UNITED STATES CIRCUIT COURT
SITTING BY DESIGNATION
(Sitting with a Jury)

Boise, Idaho
January 27, 2005 (Thr)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY
(VOLUME 13, PAGES 2,860 THROUGH 2,892)

PREPARED FOR:
WESLEY W. HOYT
Attorney at Law

(COPY)

Reported by:
Lori A. Pulsifer, CSR, RMR, CRR
QNA Court Reporting
E-mail: realtimeqna@msn.com
Telephone: (208) 484-6309

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Michael Patrick Sullivan
 Assistant United States Attorney
 U.S. Department of Justice
 10th and Constitution, N.W.
 Room 2644
 Washington, D.C. 20530

A N D

Mr. Michael D. Tracy
 Assistant United States Attorney
 U.S. Department of Justice
 601 D Street, N.W.
 Suite 6500
 Washington, D.C. 20530

FOR THE DEFENDANT:

Mr. Wesley W. Hoyt
 Attorney at Law
 HC 66, Box 311A
 Kootenai, Idaho 83539

A N D

Mr. Thomas Nolan
 Attorney at Law
 NOLAN, ARMSTRONG & BARTON, LLP
 600 University Avenue
 Palo Alto, California 94301

* * *

QNA COURT REPORTING (208) 494-6309

(Neither Mr. Nolan nor the defendant was present for the following proceedings.)

(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: Good morning, counsel.

MR. HOYT: Good morning, Your Honor.

THE COURT: Mr. Hoyt, I understand the Marshals have yet to get your client to the building here.

It seems to me that we can, at least, take care of the preliminary matters, if there are any, with regard to the transcript, unless you have an objection.

I will leave it entirely up to you, but I don't think this is a critical stage of the deliberations. But if you would prefer that we wait for him, I will do that.

MR. HOYT: Your Honor, I think we can proceed.

THE COURT: I do, too. Let's see, I guess I was given the proposed mark-up. Are you both in agreement, now, that there is no dispute over those provisions?

MR. SULLIVAN: Yes, Your Honor. We went back and forth and came up with a version that we both agree on.

THE COURT: Very well. Mr. Hoyt, that's

QNA COURT REPORTING (208) 494-6309

acceptable to you?

MR. HOYT: That is acceptable, Your Honor.

THE COURT: Then we will go ahead, as soon as the jury is here, at 9:00, and we will send Ms. Pulsifer in.

And then I circulated, last night, a couple of proposed draft answers to the two questions. Have you both had a chance to look at those?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Mr. Hoyt?

MR. HOYT: I have, indeed, Your Honor.

THE COURT: Just for the record, with respect to the question of Mr. Harding's testimony, the answer from the court will be:

"You may not have a transcript of Mr. Harding's testimony. However, the court reporter will be permitted to read the admissible portions of the testimony to the jury.

"The court reporter is not permitted to answer any questions, and you should not engage in any discussion with one another while she is present.

"Your foreperson may instruct her to stop at any time and ask her to leave the room. She will not be permitted to return without express permission from the court."

QNA COURT REPORTING (208) 494-6309

Is that acceptable to both sides?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Mr. Hoyt?

MR. HOYT: Yes, Your Honor.

THE COURT: Have you had a chance to talk with Mr. Hinkson about the court's proposed answer to the question?

MR. HOYT: No, Your Honor.

THE COURT: Then I think we'd better wait until he arrives so that you, at least, have an opportunity to show him what we propose to do before we send it in.

You can, I think, just indicate to Ms. Longstreet if he has no objection --

MR. HOYT: All right.

THE COURT: -- rather than reconvene the court.

And then, secondly, I propose to answer their question: "What are the consequences if we agree on certain counts and are unable to agree on others? Would the fact that we are unable to agree on certain counts negate our verdict on other counts?"

The answer from the court will be: "The fact that you are unable to come to agreement on certain counts will not negate any verdict on other counts on

QNA COURT REPORTING (208) 494-6309

1 which you can reach a unanimous agreement."

2 MR. HOYT: "To wit"?

3 THE COURT: I changed it to "on which," just
4 to be more grammatically correct.

5 MR. SULLIVAN: "On which." I agree.

6 THE COURT: With that change, is that
7 acceptable to both sides?

8 MR. HOYT: It is, Your Honor subject to my
9 client's review of the matter.

10 THE COURT: All right. Did the Marshals give
11 us any indication?

12 THE COURTROOM CLERK: About five more minutes.

13 THE COURT: Well, I think we can just wait.
14 He should be here at 9:00. We are right before 9:00.

15 Is there anything else we need to take up?

16 MR. SULLIVAN: I don't believe so, Judge.

17 THE COURT: Okay.

18 MR. HOYT: How are we marking the transcript,
19 Your Honor, that relates to Mr. Harding, the one that
20 will be read by Ms. Pulsifer?

21 THE COURT: As I understood it, you both had
22 marked in thick, black, felt pen the portions that you
23 did not want read to the jury.

24 Let me check with Ms. Longstreet, but I
25 believe that should scan electronically without any

1 problems.

2 THE COURTROOM CLERK: We can mark it as
3 Court's Exhibit No. 3.

4 THE COURT: We will mark it as Court's Exhibit
5 No. 3 for the record.

6 Then I am signing and filing these answers so
7 that will be in the record, as well. You will have it
8 both in the transcript and in the court file.

9 MR. HOYT: You mean, the jury questions and
10 answers?

11 THE COURT: Yes.

12 MR. HOYT: Very good.

13 THE COURT: So I think we have made as clear a
14 record as I know how to make as to what we are doing.

15 THE COURTROOM CLERK: I generally seal those.

16 THE COURT: You are going to seal the
17 questions and the answers.

18 THE COURTROOM CLERK: They won't have access
19 to them.

20 THE COURT: We are giving copies to counsel.
21 They will know what they look like.

22 THE COURTROOM CLERK: Okay.

23 THE COURT: All right. Counsel, I do
24 appreciate your help on the questions; and I did take a
25 look at some of the Ninth Circuit cases.

1 I agree with Mr. Nolan's observation that we
2 are not at a point yet where the jury is dead-locked. I
3 am hoping that our proposed responses to these two
4 questions will aid them in their ability to continue
5 their fact-finding and complete their deliberations.

6 Let me also ask, as well, Mr. Hoyt, do you
7 want us to set up a telephone link for Mr. Nolan if we
8 have any further questions today?

9 MR. HOYT: I am listening, and I'm thinking.
10 Yes. If we do have further questions, I think that it
11 would be appropriate, Your Honor, to do that.

12 THE COURT: Ms. Longstreet, do we have a
13 speaker phone in here?

14 THE COURTROOM CLERK: No.

15 THE COURT: We don't? Can you make
16 arrangements with Clay to install one?

17 THE COURTROOM CLERK: We would have to do it
18 in chambers or a different courtroom.

19 THE COURT: That will work. We can do it in
20 my chambers or move to another one of the courtrooms
21 that has a speaker phone in it.

22 MR. HOYT: Very good.

23 THE COURT: So if we call you for any further
24 questions, we will tell you where to report, as soon as
25 we figure out which courtrooms are available.

1 MR. HOYT: Very good.

2 (Whereupon, the defendant entered the
3 courtroom.)

4 MR. HOYT: If I might have a moment, Your
5 Honor?

6 THE COURT: Of course, Mr. Hoyt. Take your
7 time.

8 (Whereupon, an off-the-record discussion was
9 held between Mr. Hoyt and the defendant.)

10 MR. HOYT: May it please the court?

11 I have consulted with my client, and we are in
12 agreement. The two answers as proposed by the court are
13 acceptable.

14 THE COURT: Very well. With that stipulation,
15 I will hand the two answers to Ms. Longstreet, ask that
16 she take those into the jury room as our response, and
17 bring Ms. Pulsifer with her to leave Ms. Pulsifer in the
18 jury room to begin reading the transcript of
19 Mr. Harding's testimony as they have requested.

20 We will be in recess until further call.

21 (Whereupon, the court reporter read a portion
22 of the trial transcript containing the testimony of
23 James C. Harding to the jury.)

24 . . .

25 (Subsequently, the following proceedings were

2869

1 held outside the presence of the jury.)

2 THE COURT: Counsel, before we bring the jury

3 in, given the questions that we have previously had from

4 the jury, I propose to ask two questions before I allow

5 the jury to tender the verdict.

6 The first question would be to the Foreman:

7 Has the jury reached a verdict?

8 "Yes" or "no"?

9 And then, without telling me how the jury

10 stands numerically, is it unanimous as to each count?

11 "Yes" or "no"?

12 If he answers, "No," I propose to ask:

13 Is the jury dead-locked as to some of the

14 counts?

15 "Yes" or "no"?

16 If he says, "Yes," we can do either one of two

17 things. I can send the jury back in, and we can talk

18 about it at that point; or I would propose to give an

19 Allen charge.

20 Your response?

21 MR. SULLIVAN: I would like to see the Allen

22 charge, of course, Your Honor. I'm sure Mr. Hoyt would,

23 too. Other than that, I think that would be fine.

24 THE COURT: I won't send them back in if you

25 are in agreement that those are the answers to give to

QNA COURT REPORTING (208) 484-6309

2870

1 the question, which I will give the Allen instruction,

2 which is 7.7 of the Ninth Circuit Model Rules.

3 Is that acceptable?

4 MR. HOYT: That's acceptable.

5 THE COURT: Fine. Bring in the jury.

6 (Whereupon, the following proceedings were

7 held in the presence of the jury:)

8 THE COURT: Mr. Steele, as the foreperson of

9 the jury, "yes" or "no," has the jury reached a verdict?

10 THE FOREPERSON: On some counts.

11 THE COURT: Without telling me how the jury

12 stands numerically, is it unanimous as to each count?

13 "Yes" or "no"?

14 THE FOREPERSON: To some of the counts. To

15 some of the counts.

16 THE COURT: Is the jury dead-locked as to some

17 of the counts? "Yes" or "no"?

18 THE FOREPERSON: Yes.

19 THE COURT: Very well. I am now going to give

20 you a supplemental instruction.

21 Members of the jury: You have advised that

22 you have been unable to agree upon a verdict as to each

23 of the eleven counts in this case. I have decided to

24 suggest a few thoughts to you.

25 As jurors, you have a duty to discuss the case

QNA COURT REPORTING (208) 484-6309

2871

1 with one another and to deliberate in an effort to reach

2 a unanimous verdict if each of you can do so without

3 violating your individual judgment and conscience.

4 Each of you must decide the case for yourself

5 but only after you consider the evidence impartially

6 with your fellow jurors.

7 During your deliberations, you should not

8 hesitate to re-examine your own views and change your

9 opinion if you become persuaded that it is wrong.

10 However, you should not change an honest

11 belief as to the weight or effect of the evidence solely

12 because of the opinions of your fellow jurors or for the

13 mere purpose of returning a verdict.

14 All of you are equally honest and

15 conscientious jurors who have heard the same evidence.

16 All of you share an equal desire to arrive at a verdict.

17 Each of you should ask yourself whether you

18 should question the correctness of your present

19 position.

20 I remind you that, in your deliberations, you

21 are to consider the instructions I have given you as a

22 whole.

23 You should not single out part of any

24 instruction, including this one, and ignore others.

25 They are all equally important.

QNA COURT REPORTING (208) 484-6309

2872

1 You may now retire and continue your

2 deliberations.

3 Please rise.

4 (Whereupon, the jury was excused from the

5 courtroom; and the following proceedings were held

6 outside their presence:)

7 THE COURT: Ladies and gentlemen, please be

8 seated. We are going to take the jury back down to the

9 jury room that they have been conducting their

10 deliberations in.

11 The court will be in recess subject to any

12 further communications from the jury.

13 (Recess.)

14 (Subsequently, the following proceedings were

15 held outside the presence of the jury:)

16 THE COURT: All right. Do we have Mr. Nolan

17 on the phone, or did that not work?

18 MR. HOYT: Your Honor, I just reached

19 Mr. Nolan; and he said that he would be on standby if

20 there were any further questions or issues, such as

21 another Allen issue.

22 THE COURT: Well, here is what I've got. I

23 have got another note from the jury that says:

24 "Judge Tallman:

25 "The jury is dead-locked on three counts and

QNA COURT REPORTING (208) 484-6309

1 has reached unanimous decisions on the other eight
2 counts. We do not believe that we will be able to
3 resolve this dead-lock.

4 "Thanks, Jim Steele," who is the foreperson.
5 What we can do --

6 MR. HOYT: May I? Since we have a question,
7 may I go ahead and get Mr. Nolan? It will only take a
8 moment. I have him on speed dial.

9 THE COURT: Absolutely.

10 MR. HOYT: Let me get him.

11 THE COURT: Okay.

12 MR. HOYT: We figured out, by experimentation,
13 that it worked through this microphone.

14 (Whereupon, Mr. Hoyt placed a telephone call
15 to Mr. Nolan and, subsequently, the following
16 proceedings were held:)

17 MR. HOYT: Mr. Nolan, you are now on speaker
18 phone. The judge has advised us -- we are in session,
19 and the judge has advised us that there is another note
20 from the jury.

21 The jury has indicated that it is dead-locked
22 on three and has unanimous verdicts on the other eight.
23 And we are ready to proceed.

24 Your Honor, where do you think we are at this
25 point?

QNA COURT REPORTING (208) 484-6309

1 THE COURT: Mr. Nolan, I will read it. For
2 your benefit, I will read the note again.

3 It says: "The jury is dead-locked on three
4 counts and has reached unanimous decisions on the other
5 eight counts. We do not believe that we will be able to
6 resolve this dead-lock."

7 Did you hear that, Mr. Nolan?

8 MR. HOYT: Did you hear that, Mr. Nolan?

9 MR. NOLAN: Yes, I did. Yes. And my
10 suggestion is that you agree to allow it, if the Judge
11 is willing to take the verdicts, and to declare the
12 remaining a hung jury.

13 THE COURT: Let me suggest this: The Ninth
14 Circuit Model Instructions -- the Committee recommends a
15 Post-Allen charge inquiry under Ninth Circuit 7.8 and
16 the comment -- I will read it into the record -- says:

17 "If the jury indicates that it is dead-locked
18 after an Allen charge is given, the Committee recommends
19 asking the foreperson of the jury the following:

20 "In your opinion, is the jury hopelessly
21 dead-locked?

22 "If the foreperson's response is 'yes,' then
23 ask the foreperson:

24 "Is there a reasonable probability that the
25 jury can reach a unanimous verdict if sent back to the

QNA COURT REPORTING (208) 484-6309

1 jury room for further deliberation?

2 "If the foreperson's response is 'no,' then
3 ask the following question of the entire panel:

4 "Do you feel there is a reasonable probability
5 that the jury can reach a unanimous verdict if sent back
6 to the jury room for further deliberations?"

7 Now, I believe that that post-Allen charge
8 inquiry contemplated the situation where they are unable
9 to reach agreement on any count.

10 Here, they have indicated that they have
11 reached a unanimous decision on eight of the eleven
12 counts.

13 Let me first ask Mr. Sullivan: What is the
14 Government's position on the Post-Allen charge inquiry?

15 MR. SULLIVAN: Your Honor, I first want to
16 note we have had trial for approximately three weeks and
17 only two days of deliberations.

18 This is very early in the deliberations for
19 them to be claiming to be dead-locked, to the extent
20 that they wouldn't be able to resolve it if they
21 underwent further deliberations.

22 I would suggest the court forego questioning
23 them at this point. They have only deliberated two
24 days. I would suggest we release them for the day, let
25 them go home, and come back tomorrow and begin their

QNA COURT REPORTING (208) 484-6309

1 deliberations again.

2 And if we get another note, then we go through
3 the process suggested by the Committee.

4 THE COURT: All right. Let me hear then from
5 the defense.

6 MR. HOYT: All right. Mr. Nolan, did you hear
7 that?

8 MR. NOLAN: I heard most of it. My
9 understanding is that the court has indicated a possible
10 scenario of questions, and that the Government said they
11 didn't want that, that they wanted to send the jury back
12 for further deliberations and see what they say
13 tomorrow. Am I correct?

14 MR. HOYT: I think that's a good summation.

15 MR. NOLAN: All right. My request, on behalf
16 of Mr. Hinkson, would be that the court go through the
17 colloquy that the court is proposing on the basis,
18 number one, that they have demonstrated that they are
19 able to agree which is, I think, a factor to consider in
20 whether or not to force them to continue to deliberate.

21 If you had a situation where they had not
22 agreed, you might be talking about some kind of
23 hostility or jumping to opinion.

24 But the fact that they were able to agree, I
25 think, indicates that they are and have considered this

QNA COURT REPORTING (208) 484-6309

1 at some length and in good faith.

2 They have shown a split for quite some time,
3 from the notes from the jury. They appear to be working
4 and have worked very hard, and I think it should be
5 resolved now by way of accepting it.

6 Going through the colloquy that the court
7 recommends allows a jury who disagrees to be able to
8 say, "No, I want to spend more time." If they all
9 agree, I think it would be inappropriate to send them
10 back to further deliberate.

11 THE COURT: I will note for the record that
12 the Committee note cites to a Ninth Circuit 1978
13 decision, *Arnold vs. McCarthy*, 566 F.2d 1377, 1387.

14 It indicates seven factors that the court
15 should consider before declaring the jury hopelessly
16 dead-locked; and they inclined:

- 17 1. A timely objection by the defendant;
- 18 2. The jury's collective opinion that it
19 cannot agree;
- 20 3. The length of the deliberations of the
21 jury;
- 22 4. The length of the trial;
- 23 5. The complexity of the issues presented to
24 the jury;
- 25 6. Any proper communications which the Judge

QNA COURT REPORTING (208) 484-6309

1 has had with the jury; and

2 7. The effects of possible exhaustion and the
3 impact which coercion of further deliberations might
4 have on the verdict.

5 I'm trying to factor those in. I would say
6 that we did have eleven days of testimony, a full day of
7 argument. Jury deliberations commenced last Wednesday
8 morning -- I guess it was yesterday -- the 26th, at
9 approximately 9:00 a.m.

10 The jury deliberated until approximately 12:30
11 yesterday, took an hour luncheon recess, and then
12 deliberated again until approximately 5:00 o'clock last
13 night.

14 Then they requested a read-back of
15 Mr. Harding's testimony. That commenced at about ten
16 after 9:00 this morning, the 27th of January. It took
17 until approximately 10:40 a.m.

18 They resumed deliberations, took a luncheon
19 recess at approximately 12:40 p.m., until about 1:30 or
20 1:40 p.m., and then sent out the note at about 2:20 p.m.
21 that we addressed the last time we met.

22 The court gave an Allen charge at
23 approximately 3:10 p.m. today, the 27th; and it is now
24 almost 5:00 p.m. Mountain Standard Time.

25 I think we ought to, at least, inquire as to

QNA COURT REPORTING (208) 484-6309

1 whether or not, in the collective opinion of the jury,
2 further deliberations might prove fruitful if we send
3 them home for the evening and lets them come back fresh
4 in the morning.

5 Depending upon how that question is answered,
6 we can poll each individual juror and ask that and, at
7 that point, see whether or not it's fruitless to have
8 them deliberate further.

9 How does that sound, Mr. Sullivan?

10 MR. SULLIVAN: Agreeable, Your Honor.

11 THE COURT: Mr. Hoyt or Mr. Nolan?

12 MR. HOYT: Mr. Nolan, first of all, did you
13 understand what it was the Judge said?

14 MR. NOLAN: What I heard -- what I heard was
15 that he thinks he should ask the jury now about whether
16 or not they think, by coming back, it would make a
17 difference, or words to that effect.

18 I agree that the court, at this point, should
19 question the jurors and then make a decision based upon
20 the response from the jurors.

21 THE COURT: Very well. With that
22 understanding, go ahead, Mr. Hoyt.

23 MR. HOYT: And, Your Honor, for the record,
24 the defendant is placing an appropriate -- any further
25 Allen charge objection on the record.

QNA COURT REPORTING (208) 484-6309

1 THE COURT: I am not proposing to give a
2 further Allen charge at this point. The only indication
3 in the comments is simply a Post-Allen inquiry, which is
4 what I am proposing to do, and then whether or not they
5 think that further deliberations will be fruitful on the
6 three counts on which they cannot reach agreement. I
7 don't propose to further instruct them.

8 MR. HOYT: All right. Excellent. Thank you,
9 Your Honor.

10 MR. NOLAN: Thank you, Your Honor. I will
11 hang up unless I'm needed again.

12 THE COURT: Very well, Mr. Nolan. We will
13 call you and let you know as soon as we get some answers
14 here.

15 MR. HOYT: Talk to you later. Bye.

16 (Whereupon, Mr. Nolan hung up the telephone.)

17 THE COURT: Let's bring in the jury.

18 (Whereupon, the following proceedings were
19 held in the presence of the jury.)

20 THE COURT: Mr. Steele, as the foreperson of
21 the jury, I understand, from your note, that you have
22 reached a unanimous agreement as to some counts but are
23 dead-locked as to others; is that correct?

24 THE FOREPERSON: Correct.

25 THE COURT: In your opinion, is the jury

QNA COURT REPORTING (208) 484-6309

2881

1 hopelessly dead-locked on those counts on which they
2 cannot reach agreement?

3 THE FOREPERSON: Yes, Your Honor.

4 THE COURT: Is there a reasonable probability
5 the jury can reach a unanimous verdict if sent back to
6 the jury room for further deliberations as to those
7 counts?

8 THE FOREPERSON: No, sir.

9 THE COURT: All right. Counsel, unless --
10 well, let me ask one other question.

11 Do you think that if I sent you all home for
12 the evening that you could have a good night's rest and
13 come back here tomorrow morning to continue
14 deliberations and that you might be able to reach a
15 unanimous verdict as to all counts?

16 Let me ask each one of you that question.
17 Having that question in mind, Mr. Casey?

18 TRIAL JUROR CASEY: No.

19 THE COURT: Mr. Taylor?

20 TRIAL JUROR TAYLOR: No.

21 THE COURT: Mr. Bennett?

22 TRIAL JUROR BENNETT: No.

23 THE COURT: Mr. Steele?

24 THE FOREPERSON: No, sir.

25 THE COURT: Mr. Sawin?

Q&A COURT REPORTING (208) 484-6309

2883

1 THE COURT: Mr. Steele, would you hand the
2 signed verdict form to the bailiff, please?

3 Mr. Hinkson, would you please rise and face
4 the jury?

5 All right. Madam Clerk, would you please read
6 the verdict?

7 THE COURTROOM CLERK: Should I just say "no
8 verdict"?

9 THE COURT: Yes.

10 THE COURTROOM CLERK: We, the jury, find as
11 follows:

12 As to Count 1, no verdict;
13 As to Count 2, no verdict;
14 As to Count 3, no verdict;
15 As to Count 4, not guilty;
16 As to Count 5, not guilty;
17 As to Count 6, not guilty;
18 As to Count 7, guilty;
19 As to Count 8, guilty;
20 As to Count 9, guilty;
21 As to Count 10, not guilty.
22 As to Count 11, not guilty.

23 So say we all.

24 Signed, Jim Steele, Foreperson.

25 Dated January 27, 2005.

Q&A COURT REPORTING (208) 484-6309

2882

1 TRIAL JUROR SAWIN: No.

2 THE COURT: Mr. Blatt?

3 TRIAL JUROR BLATT: No.

4 THE COURT: Ms. Howell?

5 TRIAL JUROR HOWELL: No.

6 THE COURT: Ms. Haynes?

7 TRIAL JUROR HAYNES: No.

8 THE COURT: All right. Ms. Crawford?

9 TRIAL JUROR CRAWFORD: No.

10 THE COURT: Ms. Palmado?

11 TRIAL JUROR PALMEDO: No.

12 THE COURT: Mr. Lee?

13 TRIAL JUROR LEE: No, Your Honor.

14 THE COURT: Ms. West?

15 TRIAL JUROR WEST: No.

16 THE COURT: Counsel, based upon the jury's
17 response, I propose at this time to ask the foreperson
18 to tender the verdict.

19 I will review it and proceed to receive the
20 verdict as to those counts on which the jury has reached
21 a unanimous agreement.

22 Is that acceptable to the Government?

23 MR. SULLIVAN: Yes, Your Honor.

24 THE COURT: Mr. Hoyt?

25 MR. HOYT: Yes, Your Honor.

Q&A COURT REPORTING (208) 484-6309

2884

1 THE COURT: Would the parties like the jury
2 polled?

3 Mr. Sullivan?

4 MR. SULLIVAN: Yes, Your Honor.

5 THE COURT: Mr. Hoyt?

6 MR. HOYT: Yes, Your Honor.

7 THE COURT: Madam Clerk, would you please poll
8 each member of the jury?

9 THE COURTROOM CLERK: Ladies and gentlemen, as
10 I read your name, just answer "yes" or "no." Answer
11 "yes" if this is your verdict; "no" if it is not, as I
12 read it.

13 Mr. Casey? Is this your verdict?

14 TRIAL JUROR CASEY: Yes.

15 THE COURTROOM CLERK: Mr. Taylor, is this your
16 verdict?

17 TRIAL JUROR TAYLOR: Yes.

18 THE COURTROOM CLERK: Mr. Bennett?

19 TRIAL JUROR BENNETT: Yes.

20 THE COURTROOM CLERK: Mr. Steele?

21 THE FOREPERSON: Yes.

22 THE COURTROOM CLERK: Mr. Sawin?

23 TRIAL JUROR SAWIN: Yes.

24 THE COURTROOM CLERK: Mr. Blatt?

25 TRIAL JUROR BLATT: Yes.

Q&A COURT REPORTING (208) 484-6309

1 THE COURTROOM CLERK: Ms. Howell?

2 TRIAL JUROR HOWELL: Yes.

3 THE COURTROOM CLERK: Ms. Haynes?

4 TRIAL JUROR HAYNES: Yes.

5 THE COURTROOM CLERK: Ms. Crawford?

6 TRIAL JUROR CRAWFORD: Yes.

7 THE COURTROOM CLERK: Ms. Palmado?

8 TRIAL JUROR PALMEDO: Yes.

9 THE COURTROOM CLERK: Mr. Lee?

10 TRIAL JUROR LEE: Yes.

11 THE COURTROOM CLERK: Ms. West?

12 TRIAL JUROR WEST: Yes.

13 THE COURTROOM CLERK: All in the affirmative,
14 Your Honor.

15 THE COURT: Very well. The court will accept
16 the verdict as to Counts 4, 5, 6, 7, 8, 9, 10, and 11
17 and order it filed.

18 I will declare a mistrial as to Counts 1, 2,
19 and 3.

20 Ladies and gentlemen of the jury, I would like
21 to thank you for your efforts to reach a unanimous
22 agreement on all of the counts.

23 I will accept your verdict on those counts on
24 which you have reached a unanimous verdict; but I am
25 obligated by law to declare a mistrial as to the

QNA COURT REPORTING (208) 484-6309

1 remaining counts on which you were unable to reach
2 agreement.

3 At this time, I will discharge you from
4 further jury service with the thanks of the court.

5 You are relieved of all of the restrictions
6 that I previously imposed upon you. You may choose to
7 talk about the case with anyone you wish, or you may
8 choose not to speak with anyone. It is entirely up to
9 you.

10 The court will meet with you privately in the
11 jury room to say good bye and to thank you, each of you
12 personally, for your jury service.

13 You may now retire to the jury room.

14 THE COURTROOM CLERK: Please rise.

15 (Whereupon, the jury was excused from the
16 courtroom; and the following proceedings were held
17 outside their presence:)

18 THE COURT: As to the custodial status of
19 Mr. Hinkson, under 18 USC Section 3143(a)(1), the court,
20 quote, "shall order that a person who has been found
21 guilty of an offense and who is awaiting imposition or
22 execution of sentence be detained unless the judicial
23 officer finds by clear and convincing evidence that the
24 person is not likely to flee or pose a danger to the
25 safety of any other person or the community if

QNA COURT REPORTING (208) 484-6309

1 released."

2 In light of the jury's verdict, the defendant
3 now bears the burden of showing that he is not a flight
4 risk or a danger to the community.

5 I am relying upon United States vs. Wheeler at
6 795 F.2d 839, 840, Ninth Circuit, 1986.

7 There is no presumption that release is
8 appropriate, and the Government does not have the burden
9 of proving by clear and convincing evidence that the
10 defendant is a flight risk or a danger to others.

11 The defendant has not introduced evidence
12 sufficient to meet his burden of showing by clear and
13 convincing evidence that he is not a flight risk or a
14 danger to others.

15 Prior to trial, the court held that pretrial
16 detention was required because the defendant was
17 awaiting sentencing in the tax case and, also, because,
18 under applicable pretrial detention standards of proof,
19 the court was satisfied that he was a flight risk and a
20 danger to others or to the community, as outlined in my
21 order, docket number 129, denying the defendant's motion
22 for a de novo detention hearing.

23 Following the jury's verdict of guilty in the
24 tax case, this court ordered the defendant detained
25 under Section 3143(a)(1).

QNA COURT REPORTING (208) 484-6309

1 In addition to the substantial evidence before
2 the court when it rendered that order, the court now has
3 to consider the fact that the defendant has been found
4 guilty by a jury of soliciting the murders of federal
5 officers in Counts 7, 8, and 9 of the Superseding
6 Indictment.

7 That conduct for which the defendant has now
8 been found guilty by proof beyond a reasonable doubt
9 constitutes a direct attack on the safety of federal
10 judicial, prosecutorial, and law enforcement officers
11 and the due administration of justice.

12 I note, also, that the defendant committed the
13 crimes for which the jury has now convicted him of while
14 he was on pretrial release following his November 21,
15 2000, arrest on the tax case Indictment, which is Case
16 No. 02-CR-142-S-RCT.

17 In addition, the court credited the testimony
18 introduced at trial that, while the defendant has been
19 incarcerated pending sentencing in the tax case and
20 trial on these charges here, the defendant has continued
21 to engage in efforts to solicit murders as recently as
22 November 2004.

23 The court finds that this past misconduct
24 demonstrates, beyond question, that to release the
25 defendant would place the lives and safety of others and

QNA COURT REPORTING (208) 484-6309

1 the community at large in jeopardy.

2 Furthermore, the defendant remains
3 incarcerated subject to sentencing following the jury's
4 guilty verdict in the tax case.

5 For these reasons, the court holds that
6 release pending sentencing is prohibited by 18 USC
7 Section 3143(a) (1) and finds by proof beyond a
8 reasonable doubt that no conditions will adequately
9 protect the safety and security of the community.

10 Alternatively, the court reiterates its prior
11 findings that, if released, the defendant would flee the
12 jurisdiction to avoid punishment for his crimes.

13 The defendant is remanded to the custody of
14 the United States Marshal.

15 Sentencing shall be scheduled for March 28,
16 2005, commencing at 9:00 a.m. Mountain Time in Boise.

17 Will the clerk read the attendant dates to
18 that order?

19 THE COURTROOM CLERK: Yes, Your Honor.

20 MR. SULLIVAN: Excuse me, Your Honor. Could I
21 bring up one matter? Mr. Taxay and I have another trial
22 that starts March the 15th that may go two weeks.

23 THE COURT: All right.

24 MR. SULLIVAN: Could we make the sentencing
25 date a little later?

QNA COURT REPORTING (208) 484-6309

1 THE COURT: Do you want a longer date than
2 March 28th?

3 MR. SULLIVAN: Yes, please.

4 THE COURT: Let's see. Alternatively, I can
5 schedule it for April 25, 2005, at 9:00 a.m. here in
6 Boise.

7 Very well. The clerk will read the dates that
8 are attendant to that date.

9 THE COURTROOM CLERK: Date of sentence, April
10 25, 2005, at 9:00 a.m. before Judge Tallman;
11 Original report due to counsel March 21, 2005;
12 Notification of objections by counsel due
13 April 4, 2005;

14 Final report due to court and counsel April
15 18, 2005.

16 THE COURT: Anything further that the court
17 needs to take up at this time?

18 MR. SULLIVAN: Nothing further from the
19 Government.

20 THE COURT: Mr. Hoyt?

21 MR. HOYT: Your Honor, if I might have a
22 moment to consult with co-counsel?

23 THE COURT: Of course.

24 (Whereupon, Mr. Hoyt places a telephone call
25 to Mr. Nolan.)

QNA COURT REPORTING (208) 484-6309

1 MR. HOYT: Your Honor, counsel is wondering if
2 it is jurisdictional to file a Motion for New Trial
3 within seven days or can we get some time?

4 THE COURT: I will give you thirty days.

5 MR. HOYT: That's all we have. Thank you.

6 THE COURT: Very well. The court will be in
7 adjournment.

8 Thank you, all, for your efforts.

9 (Whereupon, the court stood adjourned.)

10 * * *

QNA COURT REPORTING (208) 484-6309

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C E R T I F I C A T E

I, LORI A. FULSIFER, certify that I made a
shorthand record of the matter contained herein, and
that the foregoing typewritten pages contain a full,
true, and accurate transcript of said shorthand record,
done to the best of my skill and ability.

DATED this 27th day of April 2005.

LORI A. FULSIFER, CSR, RMR, CRR
Certified Shorthand Reporter
Idaho Certificate 354

QNA COURT REPORTING (208) 484-6309