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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CR 92-10369-Z

ZOBEL, D. J.

UNITED STATES OF AMERICA

v.

ALFRED TRENKLER

Eighteenth Day of Hearing

APPEARANCES:

For the Government:

Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,
Assistant United States Attorneys, Federal Courthouse,
Boston MA 02109.

For the Defendant:

Terry R. Segal Esq., Scott P. Lopez, Esq., and
Brenda Ruel Sharton, Esq., SEGAL & FEINBERG,
210 Commercial Street, Boston, MA. 02109.

Courtroom 3
Federal Courthouse
Boston, Massachusetts

November 23, 1993

Computer-Aided Transcription

1 THE COURT: Let the record reflect that Mr. Segal has
2 kindly agreed that the defendant didn't have to be here while
3 I send the jury off again, and that counsel will work out
4 something about the missing hapless drawing.

5 [Whereupon, the jury entered the courtroom.]

6 THE COURT: Good morning, please be seated.

7 Members of the jury, I hope that you have adhered to
8 the admonition that I gave you yesterday, not to talk about
9 the case overnight. You shall now continue your
10 deliberations.

11 The cafeteria will send up the morning refreshments.
12 I will ask the marshal to take you to lunch at about 1
13 o'clock. And again while you are out downstairs at lunch,
14 don't talk about the case, just continue your deliberations
15 when you return to the jury room.

16 I will again be guided by your desires as to when you
17 wish to quit if you do not have a verdict. Although I hope
18 that you will work as long as possible today.

19 You are now charged to continue your deliberations.

20 [Whereupon, the jury was excused to continue their
21 deliberations at 9:05 a.m.]

22 MR. SEGAL: In future sessions, I would like the
23 defendant here, if possible.

24 THE COURT: Oh, yes, yes. I mean, if anything
25 happens, a question or anything, of course we'll have him

1 here. I just had hoped you would agree so we could get them
2 going.

3 MR. SEGAL: I meant if we're in tomorrow, it seems
4 they can have him here at 9.

5 THE COURT: The problem is they can't begin to bring
6 him down until all jurors are here.

7 Off the record.

8 [Recess.]

9 (Question by the jury at 10:35 a.m..)

10 THE COURT: The jury has asked whether it might have
11 a copy of Detective, I think it's Lanergan, Lanergan's notes
12 from his conversation with Mr. Trenkler.

13 It is my understanding that they did not come into
14 evidence. However, if counsel agree that the jury can have
15 them, then they can have them.

16 MR. SEGAL: I would not agree to it.

17 THE COURT: All right. I will simply tell them that
18 they are not in evidence.

19 Now, I have also asked Mr. McLaughlin to prepare the
20 charge, and he has done that. I have reviewed it and
21 corrected a couple of typographical errors and he will have
22 it. And I have asked that he prepare a copy that doesn't
23 include the colloquy with Mr. Libby about singular unique and
24 spatial agents and that doesn't include the colloquy with
25 counsel about having no objections. And if you want, we can

1 send it to the jury, together with a note in response to this
2 question, telling them that those notes are not in evidence
3 and therefore not available to them.

4 MR. SEGAL: I would have no objection to just sending
5 the charge. In fact, I think you mentioned that.

6 THE COURT: I did mention it to them.

7 MR. SEGAL: I think it makes sense.

8 MR. KELLY: No problem.

9 THE COURT: I should also tell counsel that the jury
10 had earlier requested that each of them have a copy of the
11 indictment, and we have made copies sufficient so that each
12 juror has an indictment.

13 Any reason I can't respond to the note in writing?

14 MR. KELLY: No, your Honor, not on behalf of the
15 government.

16 MR. SEGAL: No, that's fine, I agree.

17 [Pause.]

18 THE COURT: Were they offered into evidence?

19 MR. LIBBY: No, your Honor, we used it to refresh his
20 recollection.

21 THE COURT: Okay, have a look and see if this is
22 okay.

23 (Pause.)

24 MR. LIBBY: They were, however, used to refresh his
25 recollection on the stand. I don't know if the Court wants

1 to --

2 THE COURT: I don't think I need to say anything more
3 than that. Members of the jury, I regret that I cannot give
4 you Detective Lanergan's notes as they were not offered nor
5 admitted into evidence.

6 If you wish it, I will send you a copy of the charge,
7 however. Sort of a small promise.

8 MR. SEGAL: They understand what the word charge
9 means, assume they do, the Court's charge.

10 THE COURT: We mentioned the word several times.

11 [Recess.]

12 THE COURT: The jury says it will cease its
13 deliberations at 4.

14 MR. SEGAL: My question is how you plan to handle
15 tomorrow.

16 THE COURT: Wisely.

17 MR. SEGAL: We always knew that. I guess the
18 question is, I think you told the jury they might be here part
19 of Wednesday. My question is, I don't know.

20 THE COURT: Well, one of the jurors was overheard to
21 worry about her two turkeys. Frankly, so am I worried about
22 my two turkeys, on the other hand, I understand that this
23 takes precedence.

24 So what do you want me to do?

25 MR. SEGAL: I'm not sure I have -- I think there are

1 a couple of possibilities. One, you can bring them in and say
2 at noon, do you want to go home? That's one possibility. Or
3 you could say, we are going to deliberate till noon tomorrow.
4 I'm not sure I want to say that in advance.

5 THE COURT: Well, I suppose the alternative is simply
6 to leave it to them.

7 Mrs. Dello Russo reminds me a juror has a flight to
8 catch at 3.

9 MR. SEGAL: 3 tomorrow?

10 THE COURT: Yes.

11 Which means that they have to be out of here by 2 at
12 the latest.

13 So we had previously told them they would not be here
14 on Friday, so I think we assume that they want to suspend
15 their deliberations sometime between 2 and 3 tomorrow. I
16 think 3 clock is ample time to get to the airport from here by
17 subway.

18 MR. SEGAL: The flight is at 3.

19 THE COURT: 2 o'clock. Did I say 3? 2 o'clock. An
20 hour is more than enough time to get to the airport.

21 MR. SEGAL: You're talking about a very tricky
22 holiday.

23 THE COURT: True.

24 Why don't we inquire, let's inquire from them. My
25 guess is that they will want to accommodate the juror who has

1 to catch a flight.

2 MR. SEGAL: I guess my thought would be --

3 THE COURT: The jury is coming. We haven't assembled
4 them yet, so you can rest.

5 That is what I will do, Mr. Segal, I will inquire of
6 them and tell them that we will honor their earlier
7 commitments and that if they do not finish by whatever time
8 tomorrow they wish to suspend, which I assume will be sometime
9 between 1 and 2, then we will start again on the following
10 Monday. I don't know what else to do.

11 MR. SEGAL: Except, I'd give them the option if they
12 want to leave at noon tomorrow. It's a busy day.

13 THE COURT: And forego lunch on the government.

14 MR. SEGAL: I don't think it's Maison Robert that
15 comes in here, your Honor.

16 THE COURT: I will ask them.

17 MR. KELLY: Reflecting on the discussion here, is it
18 possible that in discussing the scheduled for tomorrow, that
19 you can explain to the jury that you are happy to be guided by
20 what their wishes are, you understand there is at least one
21 juror who has a flight commitment and, therefore, if they
22 haven't reached a judgment by say, whatever, 1:30 or 2:00,
23 that obviously we will suspend, rather than put a hard time on
24 it of 12 clock?

25 THE COURT: Yes.

1 MR. KELLY: Thank you.

2 [Whereupon, the jury entered the courtroom at
3 4:05 p.m.]

4 THE COURT: Please be seated.

5 Members of the jury, you have indicated again that
6 you wish to suspend now. And as I told you I would, I'm
7 honoring your request.

8 We need to pay some attention to tomorrow. I
9 understand one of you has a flight at 3?

10 A JUROR: At 4.

11 THE COURT: Do you have some idea collectively,
12 Ms. Casero, you're the Foreperson of this jury, as to when you
13 wish to suspend tomorrow?

14 A JUROR: 2:30.

15 THE COURT: All right, that's what we will do.

16 We will then reconvene at 9 o'clock tomorrow morning
17 and you will work until 2:30, and then if you do not have a
18 verdict at that point or earlier, we will suspend then, not to
19 reconvene until the following Monday at 9.

20 So subject to the admonition that I have gave you
21 yesterday, you are now excused until 9 o'clock tomorrow
22 morning.

23 Thank you very much.

24 [Whereupon, the jury was excused at 4:07 p.m.]

25 THE COURT: Court is in recess until 9 o'clock

1 tomorrow morning.

2 [Whereupon, the jury trial adjourned at 4:08 p.m., to
3 be resumed on Wednesday, commencing at 9 o'clock a.m.]

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5 **CERTIFICATE**

6 We certify that the foregoing is a correct
7 transcription of our computer-aided stenographic notes of the
8 proceedings in the above-entitled matter.

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James E. McLaughlin

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Laura K. S. Walker

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