

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * *
* M C. 01- 47
*
* NOVEMBER 18, 2004
*
* 10: 00 A. M
*
* PROVIDENCE, RI
* * * * *

BEFORE THE HONORABLE ERNEST C. TORRES
CHIEF DISTRICT JUDGE
(CRIMINAL CONTEMPT HEARING EXCERPT)

APPEARANCES:

SPECIAL PROSECUTOR: DESISTO LAW OFFICES
BY: MARC DESISTO, ESQUIRE
BY: JOAN MCPHEE, ESQUIRE
211 ANGELL STREET
PROVIDENCE, RI 02903

FOR MR. TARIANI: BINGHAM MCCUTCHEN, LLP
BY: MARTIN MURPHY, ESQUIRE
150 FEDERAL STREET
BOSTON, MA 02110
- AND -
EDWARDS & ANGELL
BY: DEMING SHERMAN, ESQUIRE
ONE FINANCIAL CENTER
PROVIDENCE, RI 02903
- AND -
SUSAN WEINER, ESQUIRE
NBC, INC.
30 ROCKEFELLER PLAZA
10TH FLOOR EAST
NEW YORK, NY 10112

1 NOVEMBER 18, 2004 - 10:40 A.M

2 THE COURT: WELL, THE ISSUE IS A VERY SIMPLE
3 ONE: DID MR. TARICANI WILLFULLY VIOLATE THIS COURT'S
4 ORDER OF OCTOBER 3, 2003 DIRECTING HIM TO ANSWER
5 QUESTIONS FROM THE SPECIAL PROSECUTOR REGARDING WHO
6 PROVIDED HIM WITH THE SO-CALLED CORRENTE VIDEOTAPE IN
7 VIOLATION OF THE PROTECTIVE ORDER ENTERED BY JUDGE
8 LAGUEUX? AND THE ELEMENTS OF THE OFFENSE OF CRIMINAL
9 CONTEMPT ARE JUST AS MR. DESISTO STATED.

10 FIRST OF ALL, THERE HAS TO BE A LAWFUL ORDER OF
11 REASONABLE SPECIFICITY, AND SECONDLY, THE DEFENDANT
12 MUST HAVE VIOLATED THAT ORDER, AND THIRD, THE VIOLATION
13 MUST HAVE BEEN WILLFUL.

14 NOW, THE ARGUMENT THAT YOU MAKE, MR. MURPHY,
15 SOUNDED TO ME LIKE MORE OF AN ARGUMENT QUARRELING WITH
16 THE VALIDITY OF THE ORDER. YOU BASICALLY REHASHED
17 ARGUMENTS THAT WERE MADE AT THE TIME THE ORDER WAS
18 ENTERED, WERE MADE TO THIS COURT, WERE MADE TO THE
19 FIRST CIRCUIT COURT OF APPEALS AND WERE REJECTED BY
20 BOTH AND HAD PREVIOUSLY BEEN REJECTED BY THE SUPREME
21 COURT IN BRANZBURG. SO THAT'S REALLY NOT WHAT WE'RE
22 HERE TO DETERMINE. IT'S ALREADY BEEN DETERMINED THAT
23 THE ORDER WAS A LAWFUL ORDER. REGARDLESS OF WHAT
24 MR. TARICANI'S BELIEFS MAY BE OR YOUR BELIEFS MAY BE,
25 IT'S BEEN DETERMINED TO BE A LAWFUL ORDER. AND EVEN IF

3

1 IT WEREN'T, IT IS IMMATERIAL IN A CONTEMPT PROCEEDING,
2 ONE CANNOT COLLATERALLY ATTACK THE ORDER THAT HAS BEEN
3 VIOLATED.

4 THE PROPER APPROACH FOR SOMEONE TO TAKE, IF THEY
5 DISAGREE WITH A COURT ORDER, WHICH THEY HAVE EVERY
6 RIGHT TO DO, IS TO APPEAL THAT ORDER AND THAT WAS DONE
7 IN THIS CASE. MR. TARIANI APPEALED THIS COURT'S
8 ORDER, WHICH HE HAD EVERY RIGHT TO DO, HE WAS
9 UNSUCCESSFUL IN HIS APPEAL. BUT ONE CANNOT, AFTER
10 VIOLATING THE ORDER, THEN CHALLENGE THE VALIDITY OF THE
11 ORDER. THAT WOULD RESULT IN A VERY CHAOTIC SITUATION
12 WHERE COURT ORDERS WOULD BE REGARDED WITH IMPUNITY,
13 BECAUSE RATHER THAN CHALLENGING THEM WITH PROPER
14 PROCESS, INDIVIDUALS WOULD SIMPLY FLAUNT THEM AND WAIT
15 UNTIL THEY WERE TAKEN TO TASK FOR IT.

16 SO THE FOCUS HERE IS A VERY SIMPLE ONE AND IT IS
17 WHETHER MR. TARIANI WILLFULLY VIOLATED THE ORDER, AND
18 THE EVIDENCE WITH RESPECT TO THAT MATTER IS CLEAR AND
19 OVERWHELMING AND UNDISPUTED. THERE'S NO QUESTION THAT
20 MR. TARIANI WAS AWARE OF THE OCTOBER 2 ORDER, THAT IS
21 EVIDENT FROM THE TRANSCRIPT OF THE DEPOSITION FROM
22 WHICH MR. DESISTO READ A FEW MOMENTS AGO, AS WELL AS
23 THE PRIOR HISTORY OF THESE PROCEEDINGS.

24 HE APPEALED THE ORDER, THAT'S PRETTY COMPELLING
25 EVIDENCE, IN ADDITION TO THE STATEMENTS HE MADE IN

4

1 RESPONSE TO MR. DESISTO'S QUESTIONS THAT HE WAS AWARE
2 OF THE ORDER, HE READ IT, AND HE APPEALED IT, AND HE
3 APPEALED THE CIVIL CONTEMPT SANCTION THAT WAS IMPOSED
4 WHEN HE REFUSED TO COMPLY WITH THE ORDER. BOTH OF
5 THOSE APPEALS, AS I'VE SAID, WERE UNSUCCESSFUL.

6 THERE'S NO QUESTION THAT THE ORDER IS SPECIFIC

7 ON ITS FACE. I CAN'T IMAGINE A MORE SPECIFIC ORDER;
8 THERE'S NO AMBIGUITY IN THE ORDER; IT'S NOT EVEN
9 CLAIMED THERE'S ANY AMBIGUITY HERE. THERE'S NO
10 QUESTION THAT MR. TARICANI, AS HE CANDIDLY HAS
11 ACKNOWLEDGED REPEATEDLY THROUGHOUT THESE PROCEEDINGS,
12 THERE'S NO QUESTION THAT HE HAS REFUSED TO ANSWER THESE
13 QUESTIONS EVEN AFTER THE ORDER WAS UPHELD ON APPEAL,
14 AND THERE'S NO QUESTION THAT THE VIOLATION IS WILLFUL.
15 MR. TARICANI HAS BEEN AFFORDED NUMEROUS OPPORTUNITIES
16 TO COMPLY WITH THE ORDER. ON SEVERAL OCCASIONS THE
17 COURT URGED HIM TO RECONSIDER AND EXPLAINED THE
18 CONSEQUENCES THAT COULD RESULT FROM CONTINUED REFUSAL.

19 NEVERTHELESS, MR. TARICANI HAS PERSISTED IN HIS
20 REFUSAL FOR REASONS THAT HE OBVIOUSLY THINKS ARE GOOD
21 REASONS OR IMPORTANT TO HIM, BUT REGARDLESS OF WHAT HIS
22 REASONS MAY BE, IT DOESN'T CHANGE THE FACT THAT THE
23 EVIDENCE PROVES BEYOND A REASONABLE DOUBT THAT HE IS
24 GUILTY OF CRIMINAL CONTEMPT, AND I SO FIND.

25 JUST TO ALSO MAKE ANOTHER COMMENT ON THE POINT

5

1 THAT YOU MADE, MR. MURPHY, IN YOUR ARGUMENT, THIS
2 QUESTION OF WHETHER MR. TARICANI ACTED IN GOOD FAITH, A
3 GOOD FAITH BELIEF THAT HE WAS DOING THE RIGHT THING, AS
4 MR. DESISTO HAS INDICATED, OR, AT LEAST, I DON'T KNOW
5 IF HE INDICATED THIS, BUT I WILL SAY IT, THAT THERE'S A
6 BIG DIFFERENCE BETWEEN COMMITTING AN ACT OR VIOLATING A
7 COURT ORDER, OR COMMITTING AN ACT, I SHOULD SAY, AND A
8 GOOD FAITH BELIEF THAT THAT ACT DOESN'T VIOLATE A COURT
9 ORDER, AND ON THE OTHER HAND, COMMITTING AN ACT KNOWING
10 THAT THAT ACT VIOLATES A COURT ORDER BUT HAVING A GOOD

11 FAITH BELIEF THAT THE INDIVIDUAL HAS WHAT THE
12 INDIVIDUAL BELIEVES IS A GOOD REASON FOR VIOLATING THE
13 COURT ORDER. AND IN THE FORMER CASE, THERE WOULDN' T BE
14 CONTEMPT. AN INDIVIDUAL CAN' T BE GUILTY OF CRIMINAL
15 CONTEMPT UNLESS HE UNDERSTANDS THE NATURE OF THE ACT
16 THAT HE' S ENGAGING IN. BUT IN THE LATTER CASE,
17 ALTHOUGH A GOOD FAITH BELIEF THAT THAT INDIVIDUAL' S
18 REASONS MAY BE GOOD REASONS, AT LEAST TO HIM FOR
19 VIOLATING THE COURT ORDER, THAT DOESN' T CHANGE THE FACT
20 THAT THE VIOLATION IS A WILLFUL VIOLATION. IT DOESN' T
21 INSULATE THE INDIVIDUAL FROM THE CONSEQUENCES.

22 SO AS I SAID, I FIND MR. TARICANI GUILTY OF
23 CRIMINAL CONTEMPT IN THIS MATTER. I' M GOING TO
24 SCHEDULE SENTENCING FOR 10 O' CLOCK ON THURSDAY,
25 DECEMBER 9.

6

1 I FIND NO NEED IN THIS CASE FOR A PRESENTENCE
2 REPORT AS SUCH FOR A NUMBER OF REASONS. FIRST OF ALL,
3 CRIMINAL CONTEMPT IS NOT TREATED THE SAME AS OTHER
4 OFFENSES, PARTLY BECAUSE THE FACTS ARE USUALLY, AS IN
5 THIS CASE, OPEN AND MATTERS OF RECORD. WELL, AS I
6 SAID, THE NATURE AND CIRCUMSTANCES OF THE OFFENSE ARE
7 KNOWN HERE AND THEY' RE A MATTER OF RECORD.

8 SECONDLY, THERE ARE NO GUIDELINE CALCULATIONS
9 THAT NEED TO BE MADE IN THIS CASE, WHICH IS USUALLY ONE
10 OF THE PRINCIPLE PURPOSES OF PREPARING A PRESENTENCE
11 REPORT. THERE ARE NO GUIDELINE CALCULATIONS THAT NEED
12 TO BE MADE BECAUSE THERE IS NO APPLICABLE GUIDELINE,
13 THERE IS NO GUIDELINE THAT APPLIES TO CRIMINAL

14 CONTEMPT.

15 IN ADDITION, MR. TARICANI IS A PUBLIC FIGURE
16 ABOUT WHOM A GREAT DEAL IS ALREADY KNOWN, THIS IS NOT A
17 SITUATION WHERE WE'RE DEALING WITH AN INDIVIDUAL WHOSE
18 BACKGROUND MAY BE TOTALLY UNKNOWN. MR. TARICANI ALSO
19 HAS PREVIOUSLY SUBMITTED MEDICAL AFFIDAVITS AND OTHER
20 INFORMATION REGARDING THE STATE OF HIS HEALTH, WHICH,
21 WITH COUNSEL'S PERMISSION, THE COURT HAS FORWARDED TO
22 THE BUREAU OF PRISONS.

23 FINALLY, IF MR. TARICANI IS SENTENCED TO PRISON,
24 ONE OF THE THINGS THAT THE BUREAU OF PRISONS WOULD NEED
25 TO KNOW IS WHETHER OR NOT HE HAS ANY CRIMINAL RECORD,

7

1 BECAUSE THAT WOULD INFLUENCE THE SELECTION OF THE
2 INSTITUTION TO WHICH HE MIGHT BE ASSIGNED, AND,
3 FRANKLY, I'D BE ASTONISHED IF MR. TARICANI HAS ANY
4 CRIMINAL RECORD, BUT THAT'S A MATTER THAT CAN BE
5 HANDLED VERY EASILY, THE PROBATION OFFICER CAN CONDUCT
6 A BCI CHECK JUST TO CONFIRM THAT.

7 NOW HAVING SAID THAT, I DO WANT TO AFFORD
8 MR. TARICANI AN OPPORTUNITY TO PRESENT PRIOR TO
9 SENTENCING, ANY INFORMATION THAT HE BELIEVES OUGHT TO
10 BE CONSIDERED BY THE COURT IN DETERMINING HIS SENTENCE.
11 AND IN PARTICULAR, I WANT TO GIVE HIM AN OPPORTUNITY TO
12 SUBMIT ANY ADDITIONAL INFORMATION REGARDING THE STATE
13 OF HIS HEALTH.

14 I AM AWARE OF THE FACT THAT MR. TARICANI HAD A
15 HEART TRANSPLANT SOME YEARS AGO AND THAT THAT REQUIRES
16 SPECIAL CARE AND MAY MAKE HIM MORE VULNERABLE TO
17 CERTAIN KINDS OF DISEASES. I'M ALSO AWARE THAT

18 MR. TARICANI, TO HIS CREDIT, HAS CONTINUED TO LIVE A
19 VERY ACTIVE LIFE, HE HAS VIGOROUSLY CONTINUED TO PURSUE
20 HIS PROFESSION AND HE' S TRAVELED ABROAD RECENTLY.

21 I' M AWARE THAT THE BUREAU OF PRISONS HAS SOME
22 FIRST-RATE MEDICAL FACILITIES THAT ARE FULLY EQUIPPED
23 TO HANDLE A WIDE VARIETY OF SERIOUS MEDICAL CONDITIONS,
24 AND I' M TOLD THAT THEY HAVE SUCCESSFULLY MANAGED AND
25 ATTENDED TO THE SPECIAL NEEDS OF HEART TRANSPLANT

8

1 PATIENTS.

2 NOW, AS I SAID, MR. TARICANI PREVIOUSLY FILED
3 SOME MEDICAL AFFIDAVITS UNDER SEAL AND WITH COUNSEL' S
4 PERMISSION, THE COURT HAS PROVIDED THAT INFORMATION TO
5 THE BUREAU OF PRISONS, BUT I THINK IT' S IMPORTANT TO
6 GIVE MR. TARICANI AN OPPORTUNITY TO PRESENT ANY
7 ADDITIONAL EVIDENCE THAT MAY ASSIST THE BUREAU OF
8 PRISONS IN ASSESSING ITS ABILITY TO PROVIDE HIM WITH
9 WHATEVER CARE AND TREATMENT MAY BE APPROPRIATE TO HIS
10 CONDITION. AND IF HE SHOULD BE SENTENCED TO PRISON, IT
11 WOULD ALSO ENABLE THE BUREAU OF PRISONS TO DESIGNATE AN
12 APPROPRIATE INSTITUTION SO THAT MR. TARICANI COULD BE
13 TRANSPORTED THERE DIRECTLY AT THE TIME OF SENTENCING
14 AND WOULD NOT BE PLACED IN TEMPORARY HOLDING FACILITIES
15 ALONG THE WAY THAT MIGHT NOT BE AS WELL-EQUIPPED TO
16 HANDLE WHATEVER HIS SPECIAL NEEDS ARE.

17 ANY INFORMATION THAT MR. TARICANI WISHES TO
18 PRESENT FOR CONSIDERATION AT SENTENCING SHALL BE FILED
19 BEFORE THE CLOSE OF BUSINESS NEXT WEDNESDAY, NOVEMBER
20 24. AND LIKE THE MEDICAL INFORMATION PREVIOUSLY FILED,

21 THE COURT WILL RESPECT MR. TARIANI' S RIGHT TO PRIVACY
22 AND WILL KEEP THAT INFORMATION UNDER SEAL IF
23 MR. TARIANI WISHES, WITH THE EXCEPTION THAT COPIES
24 MUST SERVED ON THE SPECIAL PROSECUTOR SO THAT HE WILL
25 BE FULLY INFORMED, AND THE COURT WILL ENTER A

9

1 PROTECTIVE ORDER PROHIBITING THE SPECIAL PROSECUTOR
2 FROM DISCLOSING THAT INFORMATION, EXCEPT TO THE EXTENT
3 THAT MAY BE NECESSARY TO REFER TO IT DURING THE
4 SENTENCING HEARING. AND THERE' S A SORT OF AN IRONY
5 HERE, THIS MAY BE ONE COURT ORDER THAT I THINK EVERYONE
6 MIGHT AGREE, EVEN MR. TARIANI WOULD AGREE, IS
7 IMPORTANT BE ADHERED TO IN THIS CASE.

8 THE SPECIAL PROSECUTOR MAY HAVE UNTIL THE CLOSE
9 OF BUSINESS ON WEDNESDAY, DECEMBER 1, TO FILE ANY
10 ADDITIONAL INFORMATION THAT THE SPECIAL PROSECUTOR MAY
11 DEEM APPROPRIATE OR IMPORTANT IN LIGHT OF WHATEVER
12 MR. TARIANI MAY CHOOSE TO FILE.

13 IN ORDER TO FACILITATE THE PROCESS, I WILL BE
14 ASKING THE CHIEF PROBATION OFFICER, MR. WEINER, TO
15 INTERVIEW MR. TARIANI TODAY, HOPEFULLY RIGHT AFTER
16 THESE PROCEEDINGS, AND TO PREPARE A BRIEF REPORT
17 SUMMARIZING ANY PERTINENT INFORMATION THAT MAY BE
18 PROVIDED BY MR. TARIANI IN DOING WHATEVER FOLLOWUP HE
19 MAY DEEM APPROPRIATE. AND IF ANY REPORT IS IN ORDER,
20 THAT THAT REPORT SHOULD BE FILED BY NEXT TUESDAY,
21 NOVEMBER 23RD, AND THE COPIES SHOULD BE PROVIDED TO
22 BOTH COUNSEL.

23 SINCE THE REPORT WOULD HAVE A MUCH MORE LIMITED
24 SCOPE AND PURPOSE THAN A PRESENTENCE REPORT, IT' S

25 UNLIKELY THAT ANYONE WOULD HAVE ANY REASON, I WOULD

10

1 THINK, TO OBJECT TO IT OR COMMENT ON IT, BUT IF ANYBODY
2 BELIEVES THAT THERE' S ANYTHING IN A REPORT, IF THERE IS
3 ONE FILED, THAT THEY WISH TO TAKE ISSUE WITH, ANY SUCH
4 OBJECTION SHALL BE FILED NO LATER THAN TUESDAY,
5 DECEMBER 7.

6 AND I SHOULD SAY, MR. TARICANI, THAT YOU HAVE NO
7 OBLIGATION TO TALK WITH THE PROBATION OFFICER, AND IF
8 YOU CHOOSE TO TALK WITH HIM, YOU HAVE A RIGHT TO HAVE
9 YOUR COUNSEL PRESENT WHEN THAT INTERVIEW TAKES PLACE.

10 ALSO AT THE TIME OF SENTENCING YOU WILL HAVE THE
11 RIGHT TO ADDRESS THE COURT AND SAY ANYTHING THAT YOU
12 THINK OUGHT TO BE CONSIDERED IN DETERMINING YOUR
13 SENTENCE. AGAIN, YOU' RE NOT UNDER ANY OBLIGATION TO
14 SAY ANYTHING AT THAT TIME, YOUR COUNSEL WILL HAVE AN
15 OPPORTUNITY TO SPEAK ON YOUR BEHALF, AND IT' S UP TO YOU
16 WHETHER YOU WISH TO LEAVE ALL OF THE TALKING TO YOUR
17 COUNSEL OR WHETHER YOU ALSO WISH TO MAKE A STATEMENT
18 THAT IS RELEVANT TO THE ISSUES REGARDING SENTENCING.

19 I WILL SAY THAT, AGAIN, YOU' RE UNDER NO
20 OBLIGATION TO DO THIS, BUT ONE OF THE THINGS THAT I
21 WOULD CONSIDER OF SOME SIGNIFICANCE IN DETERMINING YOUR
22 SENTENCE IS WHETHER AT THE TIME THE TAPE WAS PROVIDED
23 TO YOU, YOU KNEW THAT THAT TAPE WAS BEING PROVIDED TO
24 YOU IN VIOLATION OF A COURT ORDER. AS I SAY, YOU' RE
25 NOT REQUIRED TO ADDRESS THAT POINT IF YOU DO NOT WISH

11

1 TO, BUT IT'S SOMETHING THAT I WOULD BE INTERESTED IN
2 KNOWING IF YOU DO WISH TO ADDRESS IT.

3 YOUR SENTENCE, OBVIOUSLY, IS NOT GOING TO BE
4 DETERMINED UNTIL ALL OF THIS INFORMATION IS PRESENTED
5 AND UNTIL I HAVE HEARD WHATEVER YOU MAY HAVE TO SAY OR
6 WHATEVER ANYONE ELSE MAY HAVE TO SAY AT THE TIME OF THE
7 SENTENCING HEARING, BUT THIS APPEARS TO BE THE FINAL
8 STEP IN THE PROCESS IN THIS COURT. THERE'S NO WAY OF
9 TELLING WHAT THE SENTENCE IS GOING TO BE AT THIS TIME,
10 BECAUSE AS I SAY, I DON'T HAVE ALL THE FACTS YET, BUT
11 YOU OUGHT TO BE PREPARED FOR ANY EVENTUALITY AT THE
12 TIME OF SENTENCING.

13 IS THERE ANYTHING FURTHER THAT COUNSEL HAVE?

14 MR. MURPHY: YES. MAY I BE HEARD BRIEFLY ON ONE
15 ASPECT OF THE SCHEDULE, YOUR HONOR?

16 THE COURT: YES.

17 MR. MURPHY: ONE OF MR. TARICANI'S DOCTORS IS
18 OUT OF THE COUNTRY AT THE MOMENT. I DO NOT BELIEVE
19 THAT HE WILL HAVE RETURNED BY THE 24TH OR THE 23RD, SO
20 I WOULD RESPECTFULLY REQUEST, AS TO THE MEDICAL
21 INFORMATION THAT THAT DOCTOR MAY PROVIDE, THAT WE BE
22 PERMITTED TO SUBMIT THAT TIMELY UPON HIS RETURN TO THE
23 COUNTRY.

24 THE COURT: WHEN WILL HE BE RETURNING?

25 MR. MURPHY: I BELIEVE HE WILL BE RETURNING ON

12

1 THE 24TH OR THE 25TH. IF EITHER OF THOSE DATES TURNS
2 OUT TO BE WRONG, IF I COULD CONTACT THE COURT AND LET

3 THEM KNOW AND THE SPECIAL PROSECUTOR.

4 THE COURT: IS THIS A DOCTOR THAT HAS PREVIOUSLY
5 SUBMITTED AN AFFIDAVIT OR OTHER INFORMATION?

6 MR. MURPHY: NO, YOUR HONOR.

7 THE COURT: DO YOU HAVE ANYTHING TO SAY ON THAT,
8 MR. DESISTO?

9 MR. DESISTO: NO, YOUR HONOR.

10 THE COURT: WITH THAT EXCEPTION, THEN, YOU MAY
11 SUBMIT THAT REPORT AS SOON AS THE DOCTOR RETURNS, AND I
12 WILL EXTEND YOUR TIME, IF THERE'S ANY RESPONSE THAT YOU
13 WISH TO MAKE, I WILL EXTEND YOUR TIME, MR. DESISTO, TO
14 RESPOND TO THAT INFORMATION SO THAT YOU HAVE A WEEK TO
15 RESPOND TO THAT AS WELL.

16 MR. MURPHY: THANK YOU, YOUR HONOR.

17 THE COURT: PENDING SENTENCING, I'M GOING TO
18 CONTINUE MR. TARIANI ON PERSONAL RECOGNIZANCE. I
19 CERTAINLY DON'T VIEW HIM AS ANY THREAT TO FLEE OR ANY
20 DANGER TO THE COMMUNITY. SO HE WILL BE CONTINUED ON
21 PERSONAL RECOGNIZANCE UNTIL THE DAY OF SENTENCING.

22 COURT WILL BE IN RECESS.

23 (ADJOURNED.)

24

25