

34 Franklin St.
Lyons, NY 14489
September 24, 2007

Honorable Gustave J. DiBianco
US Magistrate Judge
P.O. Box 7396
Syracuse, NY 13261-7396

RE: United States v. Murtari

Dear Judge DiBianco:

This letter is in response to your order regarding witnesses & exhibits for my trial scheduled for October 3rd along with a Motion. It also include details of a desire to stipulate to many of the facts to hopefully save time at trial. Finally, it contains a recent news story and some messages describing future planned activity at the Federal Building.

PLANNED WITNESSES & EXHIBITS:

I left a message for Mr. Southwick last week regarding getting copies of any written reports, photographs, and other evidence in his possession. I know he was busy with another trial, but as of today I have not had any response. The following list assumes no surprises in what I receive (or don't receive) from Mr. Southwick.

EXHIBITS:

1. The placard I was carrying when arrested (I have in my possession). A photograph(s) of what was written on the ground (Mr. Southwick).
2. Federal building/GSA regulations.

WITNESSES (and brief partial rationale for testimony):

1. Officer Chapman and Officer Berhwold – arresting officers in current and past 'chalk' incidents.
2. Mr. Talerico (GSA) – Part of GSA staff during earlier 'chalk' incidents. Allowed actions w/no permit.
3. Mr. Burris (GSA) – Current GSA building manager. Permit requirements for free speech activity on the Plaza. Public property nature of the Plaza area.
4. John Murtari – I will waive my right not to testify.

DEFENSE: I know this is not required ahead of time. I hope to prove that no crimes occurred. *I know you & Mr. Southwick are familiar with all this:*

elements of a crime - It is generally agreed that the essential ingredients of any crime are (1) a voluntary act or omission (*actus reus*), accompanied by (2) a certain state of mind (*mens rea* - in Anglo-American law, criminal intent or evil mind.). An act may be any kind of voluntary human behavior.

MOTION to RETROACTIVELY VACATE STAY-AWAY ORDER:

I believe this is still pending. During the appearance on the 17th I believe the Court admitted the order was 'too broad'? Perhaps the Government could consider asking for withdrawal of the order? That a video of a peaceful parent standing in front of a US Federal Building with a picture of children and

asking a US Senator for help would show armed security hand-cuffing them is just not appropriate.

STIPULATION as to INCIDENT FACTS:

If it would save time I would be happy to coordinate with Mr. Southwick and stipulate to any facts regarding the incidents before the trial. I know we had tried to do this before and you did not approve. Perhaps it could just be read into the record when the trial begins so there would not be need for all that testimony? I will try to speak to Mr. Southwick regarding this.

FUTURE PLANS for Sep 27 – Oct 3:

I was interviewed last week by a local regional paper and an excellent story ran (attached). It is this type of 'press' that I hope will move the Civil Rights effort for parents forward. I also sent out an email message to our group (excerpts attached). I hope to return to the building on the 27th at app 11 AM with the pictures I carried last time. As of today I expect no other active participants and I plan to bring no chalk. This will be the final incident of this cycle of activity. No more incidents will occur prior to my trial and possible jail sentence.

I assume Mr. Southwick's office will control what happens that day and whether I am just 'ticketed' and released, or if there will be an arraignment. While I am happy as above to promise there will be no more incidents; I hope to avoid the issue of signing a "Conditional Release" as imposed by the Government.

My great hope is that another mother and father will come forward to participate with me in which case we may all three write "I LOVE YOU" to our kids.

I felt I had to make these tentative plans clear in an attempt to reduce some of the effort required by the Government and avoid last minute activity. Please, I do not wish this to be seen as some type of act of 'open defiance' to the Court's order, or a failure to appreciate my last release from jail. None of that is true.

I also hope the Government will not use this information to physically 'block' any potential action on my part as they have in the past. I used to announce all my activities until the Government used the info to anticipate and inhibit my actions by physical force. In this recent cycle of activity I have arrived unannounced and I assume it has placed an extra burden on staff. I wish to avoid that.

John Murtari
315-635-1968, x-211
jmurtari@AkidsRight.Org

Attach:

- 1) AKidsRight.Org list message excerpts
- 2) Finger Lakes Times Article – Sep 20, 2007

CC: Mr. Richard Southwick, Asst. US Attorney
P.O. Box 7198
100 South Clinton St.
Syracuse, NY 13261-7198

Attachment 1 – AKidsRight.Org list message excerpt, complete message at:
<http://www.AKidsRight.Org/archive/archive2007/0036.htm>

I got out of jail Monday (for more details see #3 below) and it's great to be a FREE man! I do plan on going back next Thursday, Sep 27 (app 11 AM). As before with just a picture of my son and other parents and the message "Sen. Clinton Help Us". I have one local TV reporter that is "very interested" in the event and will probably be there. She did several 'in jail' interviews last year with me and produced good coverage. Two print news stories have run in the last week.

I'm really hoping to get some other people to that Fed Plaza next Thursday to watch and offer moral support; and hopefully at least one Mom & Dad willing to use chalk and write "I LOVE YOU" to their kids and "SEN CLINTON HELP US" -- and accept the consequences. I think we could get some great additional media coverage in this area. I will also try to contact Clinton's local office again, we have a draft agenda for a meeting with her and I think it is pretty 'safe' – check it out: <http://www.AKidsRight.Org/clinton/agenda.htm>

I don't want 'us' to be distracted by the legal arguments on free speech, etc -- We are not there to prove that. We are there to show our willingness to quietly stand up for what we believe in and to call public attention to Sen. Clinton and get her to meet publicly with parents (not asking for that much). We are not trying to 'demonize' her at all; just show her how much parents care about this issue AND get TV/print reporters to go to her local office and ask *"Why won't you meet with these mothers and fathers? It sounds like they love their children very much and they feel their basic Right to be parents was violated."*

... US Magistrate DiBianco is a compassionate man even though I directly violated his stay-away order. When I was brought to Federal Court on Monday (in a orange jump-suit and manacled with hand-cuffs and leg-irons) I did not expect to be released. The US Attorney made a strong argument that since I had refused to sign a "Conditional Release" (promising not to re-offend pending my trial), I should be held until trial - now scheduled for October 3rd.

I spoke to the Court about the Civil Rights nature of my efforts and tried to draw an analogy to a Mississippi Court Room in the 50s, and a Judge/Prosecutor facing a Black Man that had violated the law and sat "in the front of the bus." When there is grave injustice in a society, there is friction and conflict. I understood his order deserved 'respect', but that had to yield to the peaceful Civil Right goal.

Magistrate DiBianco looked at me and said, "Mr. Murtari, you hold the key to your freedom today. I will again give you a chance to sign the Conditional release form. The Court will adjourn for 5 minutes so you can read the form. When I return, if you do not sign, you will be returned to jail..."

It was depressing to think about. I didn't want to go back and could not sign such a promise. When the Judge returned I apologized, but again refused to promise that I would not re-offend. Everyone in the Courtroom was surprised when he said, after a long pause, "Okay....I will let you go, but I will again confirm my order."

I do believe he appreciates my motivation and is attempting to pull his punches -- although he pretty much guaranteed that if I go back, he will hold me and give a SPEEDY trial on not only the chalk, but multiple contempt charges. The chalk is a max of 30 days, the contempt's carry a max of 6 months -- I will have two of each when I return next week. If it's not too expensive I will try to get the transcript.

We are 'blessed' with a powerful cause. We want to be reunited with the children we love, that mean the world to us. When we 'project' that in our words and actions, other people do take notice and respond. http://www.AKidsRight.Org/civil_back.htm

Lyons parents' rights activist trial to start Oct. 3

By **JIM MILLER**

FINGER LAKES TIMES

SYRACUSE — A Lyons man arrested after chalking messages to his son and Sen. Hillary Clinton outside the Federal Building will be tried Oct. 3.

John Murtari, who considers himself a parents' rights activist, said he was arrested three times: Twice for destruction of government property after writing the messages and once for contempt of court.

One message read "I love Dom," the name of Murtari's son. The other read "Sen. Clinton Help Us."

He wants Clinton to meet with members of A Kids Right, a group that wants child support laws changed. Murtari acts as its local coordinator and said he hopes the "drama" of his arrest will get the senator's attention.

Murtari said a judge ordered him to stay away from the Federal Building after his first two arrests. His third visit Sept. 13 meant a contempt charge and four days in jail.

"I did return as a matter of free speech with just a simple picture of my son, and I stood quietly in front of the building," Murtari said.

He has been in trouble with the law before. He spent four months in Syracuse-area jails last year for failure to pay \$60,000 in back child support.

Murtari, who contends that the courts ordered him to pay more than he can af-

ford and didn't take into account the expenses he incurred when he traveled to see his son, refused food and most liquids during his incarceration.

He and members of his group argue that child support laws are unfair.

They say children have a basic right to spend time with both parents, and they advocate the passage of a "Family Rights Act" that would ensure the right to

counsel and a jury trial in family court matters.

Murtari and other group members plan to return to the Federal Building Sept. 27.

"I will probably get arrested again," Murtari said.

Assistant U.S. Attorney Richard Southwick, who is handling the case, could not be reached for comment.

♦♦♦

jmiller@fltimes.com

Dr. Stephen Ignaczak

Dr. Bruce Yirinec

FINGER LAKES HEMATOLOGY & ONCOLOGY

*Board Certified Medical Oncologists & Hematologists
Genetic Counseling Services Available*

Phone: (315) 462-1472

Fax: (315) 462-2639

6 Ambulance Drive

Clifton Springs