

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
vs.

07-cr-59
07-cr-60

JOHN MURTARI,

Defendant.

MINUTES OF BENCH TRIAL
held on March 18, 2008,
at the United States District Courthouse,
100 South Clinton Street, Syracuse, New York,
the HONORABLE DAVID E. PEEBLES, Presiding.

A P P E A R A N C E S

FOR THE UNITED STATES
OFFICE OF THE UNITED STATES ATTORNEY
Northern District of New York
100 South Clinton Street
Syracuse, New York 13260
BY: RANSOM REYNOLDS, AUSA

FOR THE DEFENDANT
JOHN MURTARI, Pro Se

KENNETH M. MOYNIHAN
Stand-by Counsel
Attorney at Law
120 East Washington Street
Syracuse, New York 13202

Eileen McDonough, RPR, CRR
Official U.S. Court Reporter
100 S. Clinton Street
Syracuse, NY 13261
(315)234-8546

1 (Court convenes at 9:55 a.m.)

2 THE CLERK: Case is United States versus John
3 Murtari, 08-cr-59, and 08-cr-60. Counsel, please note your
4 appearances for the record.

5 MR. REYNOLDS: Ransom Reynolds for the United
6 States. Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. MURTARI: John Murtari. Good morning,
9 Your Honor.

10 THE COURT: Good morning, Mr. Murtari. How
11 are you?

12 MR. MURTARI: Very good.

13 THE COURT: I will note for the record that
14 your stand-by counsel, Mr. Moynihan, is also present this
15 morning. Good morning, Mr. Moynihan.

16 MR. MOYNIHAN: Good morning. And late, Your
17 Honor.

18 THE COURT: Actually, you're not late because
19 I did state in my memorandum-decision that the trial would
20 start at 10:00 this morning, so you were exactly on time.

21 MR. MOYNIHAN: Thank you.

22 THE COURT: And my courtroom deputy beat me up
23 for that because she thought it started at 9:30.

24 All right, are you prepared to proceed at this
25 time, Mr. Reynolds?

1 MR. REYNOLDS: Yes, Your Honor.

2 THE COURT: Mr. Murtari?

3 MR. MURTARI: Yes, Your Honor.

4 THE COURT: Why don't we begin with opening
5 statements, if you would like to make an opening statement.

6 MR. REYNOLDS: I just have a brief one, Your
7 Honor. May it please this Honorable Court, as you're aware,
8 Your Honor, Mr. Murtari stands before you having two pending
9 informations which he is going to be having a bench trial on
10 today.

11 The first one is a superseding information
12 that charges a violation of Title 18, United States Code,
13 Section 401(3), for an alleged violation which occurred on
14 January 24th of 2008, that is that he violated your court
15 order, written order, on January 18th of 2008 by coming down
16 to the Federal Courthouse here at 100 South Clinton Street,
17 Syracuse, New York, and writing with chalk on the surface of
18 the plaza.

19 The second count or information which he is
20 before you for a bench trial today has basically the same
21 allegations but that occurred on January 29th, 2008, and does
22 contain the same offense violation.

23 In order to establish the defendant's guilt
24 beyond a reasonable doubt, I need to satisfy to Your Honor
25 three elements basically that are the elements for that

1 Section 4013, and convince you beyond a reasonable doubt that
2 the defendant is guilty as charged.

3 Those elements are as follows. First, that
4 the Court gave the defendant certain orders. In this case it
5 was to not deface government property. Second, that the
6 defendant disobeyed and disregarded those orders. And third,
7 that the defendant acted willfully and knowingly in
8 disobeying those orders.

9 I will prove to you -- we will prove to you
10 today that you, Your Honor, as you're aware, issued an order
11 in court on January 17th, 2008, it was a verbal order.
12 Mr. Murtari was present in court that day. You outlined the
13 terms of your order and stated to him that he was not to
14 deface government property and specifically added that
15 defacement included the writing with chalk.

16 We will also prove that on January 24th,
17 Mr. Murtari disobeyed your order by coming down to the
18 Federal Courthouse and writing in chalk on the plaza, "I love
19 Dom." He then was released and issued a ticket, and five
20 days later came back down on January 29th, 2008, and wrote in
21 chalk on the plaza again. This time he wrote, I believe,
22 "Senator Clinton help us" and "I love Dom."

23 The government will prove that the defendant
24 violated your court orders on those two dates, and in doing
25 so he acted knowingly and willfully. As I mentioned, he had

1 been advised of court order on January 17th and the written
2 order on January 18th and he chose to disobey that order by
3 coming down here and doing what I just described he did on
4 those dates.

5 And finally, the government's going to prove
6 to your satisfaction what happened on January 24th and
7 January 29th, through the testimony of Federal Protective
8 Service Officer Joe Chapman, who observed Mr. Murtari engaged
9 in those actions on those two dates here in front of the
10 Federal Courthouse. Thank you.

11 THE COURT: Thank you, Mr. Reynolds.

12 Now, Mr. Murtari, you may choose to make an
13 opening statement at this point, although I'm sure that
14 you'll be testifying in your behalf later. I leave that to
15 you. Would you like to make an opening statement?

16 MR. MURTARI: Yes, Your Honor, just briefly.

17 I think some of the facts won't be in dispute
18 that Mr. Reynolds has brought up as far as the facts in this
19 case, but I think what you'll be hearing from the defense is
20 just the element of willfulness, of what's the mental aspect
21 of the defendant when he was doing those acts, and that's
22 what I'll be presenting and should hopefully be brief and not
23 too long.

24 THE COURT: All right. Thank you.

25 Mr. Reynolds, if you'll proceed and call your first witness,

Joseph Chapman - Direct

1 please.

2 MR. REYNOLDS: Thank you, Your Honor. At this
3 time the government calls Joseph Chapman to the stand.

4 JOSEPH CHAPMAN, called as a witness and being
5 duly sworn, testifies as follows:

6 DIRECT EXAMINATION BY MR. REYNOLDS:

7 Q Good morning.

8 A Good morning.

9 Q Please state your name for the record.

10 A Joseph Chapman.

11 Q And where are you employed?

12 A Syracuse, New York, Federal Protective Service.

13 Q And how long have you been employed by the Federal
14 Protective Service?

15 A Five years.

16 Q And what are your current duties and
17 responsibilities?

18 A Federal law enforcement and risk assessments for
19 government owned and leased facilities.

20 Q And where are you assigned?

21 A Right out of the Syracuse office.

22 Q And you're assigned to this building, the Hanley
23 Federal Building?

24 A Yes.

25 Q And how long have you been assigned to this

Joseph Chapman - Direct

1 building?

2 A Five years.

3 Q And is this a building leased by the federal
4 government?

5 A Yes.

6 Q Do you know an individual named John Murtari?

7 A Yes, I do.

8 Q Can you tell us how you know him?

9 A Dealt with Mr. Murtari for five years now.

10 Q In what capacity?

11 A Arresting him.

12 Q For what?

13 A For violating federal court orders, pretty much the
14 same stuff.

15 Q Is it fair to say that he has frequently come down
16 and peacefully protested outside of the Federal Building?

17 A Yes.

18 Q And would you say that you've observed him do that
19 over the past five years?

20 A Yes.

21 Q And you've arrested him on several prior occasions,
22 is that correct?

23 A Yes.

24 Q Do you see him in the courtroom today?

25 A Yes, I do.

Joseph Chapman - Direct

1 Q Could you point him out for the record, please?

2 A (Indicating).

3 MR. REYNOLDS: Your Honor, let the record
4 reflect that the witness has identified Mr. Murtari, the
5 defendant.

6 THE COURT: Yes, so noted.

7 Q I would like to direct your attention to, first of
8 all, January 17, 2008, and ask you if you were present during
9 a court proceeding which Mr. Murtari had in this courtroom
10 here where Judge Peebles issued an order?

11 A Yes.

12 Q And have you had an opportunity to read that order?

13 A Yes.

14 Q And among other things, does the order state that
15 Mr. Murtari is not to deface federal property?

16 A Yes.

17 Q And were you also -- you mentioned that you were
18 present in court on January 17th. Did you also hear Judge
19 Peebles tell, verbally tell Mr. Murtari that defacement
20 included the use of chalk on federal property?

21 A Yes.

22 MR. REYNOLDS: Your Honor, at this time I
23 would offer Exhibit Number 1, which is your order, written
24 order, dated January 18, 2008. I offer that as a matter of
25 record in this case. And I would also offer Exhibit Number

Joseph Chapman - Direct

1 5, which is a transcript of the proceedings that occurred in
2 court on January 17th, 2008. It's really just a portion of
3 the transcript and it's the portion -- it contains seven
4 pages and it is the portion where you mention that defacement
5 includes chalk. Mr. Murtari has been provided a copy of both
6 of these and I offer them both as a matter of record in this
7 case.

8 THE COURT: All right.

9 MR. MURTARI: Your Honor, the one thing, just
10 a minor mix-up, I had gotten Mr. Reynolds' listed exhibits
11 and I got the one transcript from February 1st, but I checked
12 with myself and Mr. Moynihan, we don't have that January 17th
13 one.

14 MR. REYNOLDS: That was given to you at the
15 February 1st court appearance, but I have another copy for
16 you.

17 MR. MURTARI: You mean the transcript, that's
18 what you're talking about, not the order, the actual
19 transcript?

20 MR. REYNOLDS: Yes, I gave it to you on
21 February 1st.

22 MR. MURTARI: Okay.

23 MR. REYNOLDS: And I have a copy, if Your
24 Honor would like one also.

25 THE COURT: We have -- you've submitted four

Joseph Chapman - Direct

1 copies or four sets of exhibits in manila file folders; we're
2 just simply trying to locate them. Why don't we take about a
3 two-minute recess and let me check because I know I've got
4 them.

5 (Short recess taken.)

6 THE COURT: Has Mr. Murtari been provided with
7 a copy of the transcript?

8 MR. REYNOLDS: Yes, he has.

9 THE COURT: Just so we're clear, it is a
10 transcript that's been scanned in and consists of seven pages
11 plus the certification of the court reporter?

12 MR. REYNOLDS: Yes, it is, Your Honor.

13 THE COURT: And you've marked that as
14 Exhibit 5.

15 MR. REYNOLDS: Exhibit 5. And I have an extra
16 copy here, if you would like one, Your Honor.

17 THE COURT: I have one. Mr. Murtari, any
18 objection to my receiving Exhibits 1 and 5 into evidence at
19 this time?

20 MR. MURTARI: No, Your Honor.

21 THE COURT: All right, they're received.

22 (Government Exhibits 1 and 5 were received in
23 evidence.)

24 Q Officer Chapman, I would like to direct your
25 attention to January 24th, 2008, and ask you if you observed

Joseph Chapman - Direct

1 Mr. Murtari on federal property here at the Hanley Federal
2 Building that day?

3 A Yes, I did.

4 Q Can you tell us approximately when that was?

5 A Approximately 2:00 in the afternoon.

6 Q And did you know that he would be coming down that
7 day?

8 A Yes, from his website.

9 Q Do you recall what his website indicated when you
10 read it that day?

11 A That he would show up at the Federal Building at
12 2:00.

13 Q And is that -- does Mr. Murtari usually announce on
14 his website when he is going to be coming down to the Federal
15 Building?

16 A Yes.

17 Q So he arrived approximately 2:00, is that correct?

18 A Yes.

19 Q And where did you first see him?

20 A I saw him from inside the building, he was standing
21 10, 15 feet away from the front door.

22 Q And what, were you observing him through a camera
23 system or in person?

24 A Both, in person and through the camera.

25 Q So, he stood in front of the building on the

Joseph Chapman - Direct

1 Clinton Street side of the building, is that correct?

2 A Yes.

3 Q And what was he doing as he was standing there?

4 A He was holding a sign with four pictures on it.

5 Q How long was he standing there?

6 A Twenty-five minutes.

7 Q At any time did he do anything other than just
8 stand there holding pictures?

9 A Yes. He started writing on the plaza with chalk.

10 Q And did you observe him do that?

11 A Yes, I did.

12 Q And approximately how close to the door, if you
13 know, did he write on the plaza with chalk?

14 A Fifteen feet away.

15 Q And upon seeing this, what did you do?

16 A That's when I approached him and informed him that
17 he is violating a federal court order and gave him an
18 opportunity to stop writing on the plaza; told him if he
19 doesn't stop, then I will arrest him.

20 Q So, you approached him. As you approached him, was
21 he still writing in chalk on the plaza?

22 A Yes.

23 Q And when you approached him, you said exactly what
24 to him again?

25 A I told Mr. Murtari to stop writing on the plaza or

Joseph Chapman - Direct

1 he will be arrested, and I gave him several opportunities to
2 leave.

3 Q And did he have any response to you?

4 A He said he is going to continue his actions.

5 Q All right. And what did you do at that point?

6 A That's when I arrested him.

7 Q And in addition to advising him that if he
8 continued he would be arrested, did you also advise him that
9 he was in violation of a court order?

10 A Yes, I did.

11 Q What did he write on the -- what was he writing on
12 the plaza?

13 A "I love Dom."

14 Q And did you, in fact, stop him and arrest him at
15 some point?

16 A Yes.

17 Q And was he issued a notice or a ticket?

18 A Yes, he was.

19 Q And what was the ticket for?

20 A Failure to comply.

21 Q And was that failure to comply with your order for
22 him to stop when he refused?

23 A Yes.

24 Q I'm going to show you what's been marked as Exhibit
25 Number 2, and ask you if you recognize it and if you can tell

Joseph Chapman - Direct

1 us what that is?

2 A Yes. That's what Mr. Murtari wrote on the plaza.

3 Q And what does that say?

4 A "I love Dom."

5 Q And that's what you observed him write on
6 January 24th, 2008?

7 A Yes.

8 Q And do you know what, if any, steps were taken to
9 remove the chalk from the plaza on January 24th, 2008?

10 A Yes. Maintenance was called.

11 Q And do you know how they removed the chalk?

12 A Yes. With a water hose.

13 MR. REYNOLDS: At this time I would offer
14 Exhibit Number 2, Your Honor, and Mr. Murtari has been
15 provided a copy of it.

16 THE COURT: Any objection?

17 MR. MURTARI: No, Your Honor.

18 THE COURT: All right, Exhibit 2 is received.

19 (Government Exhibit 2 was received in
20 evidence.)

21 Q After issuing Mr. Murtari a ticket or an appearance
22 ticket for -- was it an appearance ticket basically that you
23 issued him?

24 A Yes.

25 Q For failure to comply, was he allowed to leave

Joseph Chapman - Direct

1 after that, leave the building?

2 A Yes.

3 Q He wasn't brought before a judge or anything like
4 that?

5 A No.

6 Q After Mr. Murtari leaving on January 24th, did
7 there come a time when you saw Mr. Murtari back down here at
8 the Federal Building?

9 A Yes.

10 Q And do you recall when that was?

11 A The 29th.

12 Q The 29th of January?

13 A Yes.

14 Q And so this would be about approximately, about
15 five days later, correct?

16 A Yes.

17 Q Were you expecting Mr. Murtari that day?

18 A Yes.

19 Q And tell us why.

20 A From his website, he indicated on his website.

21 Q That he would be coming back to the Federal
22 Building?

23 A Yes.

24 Q Approximately what time did he arrive on
25 January 29th?

Joseph Chapman - Direct

1 A 2:00 in the afternoon.

2 Q And can you tell us what you observed him do when
3 he arrived on that day?

4 A He was holding a sign with four pictures on it,
5 15 feet, 10, 15 feet away from the building.

6 Q And did there come a time when he did something
7 other than just stood there and held pictures?

8 A Yes. He took chalk out and started writing on the
9 federal plaza.

10 Q Do you recall approximately how long he had been
11 there before, been standing there before he started writing
12 in chalk?

13 A Approximately 25 minutes.

14 Q And on this day, January 29th, and on January 24th,
15 was he standing alone?

16 A Yes.

17 Q Nobody else was with him?

18 A No.

19 Q And what did he write with the chalk on
20 January 29th?

21 A "I love Dom" and "Senator Clinton help us."

22 Q "Senator Clinton help us"?

23 A Yeah.

24 Q Did you observe him write that on the plaza?

25 A Yes, I did.

Joseph Chapman - Direct

1 Q And what did you do as you saw him writing this?

2 A That's when I approached him and told him he is
3 violating a federal court order and placed him under arrest.

4 Q So, you gave him an opportunity to stop on
5 January 24th, but on January 29th, 5 days later, you just
6 arrested him?

7 A Yes.

8 Q I'm going to show you what's been marked as Exhibit
9 Number 3, and ask if you recognize it, and if you can tell us
10 what's depicted in that photograph?

11 A Yes. That's what Mr. Murtari wrote on the plaza,
12 "I love Dom. Senator Clinton help us."

13 MR. REYNOLDS: At this time, Your Honor, I
14 would offer Exhibit Number 3.

15 THE COURT: Any objection?

16 MR. MURTARI: No, Your Honor.

17 THE COURT: Fine, Government Exhibit 3 is
18 received.

19 (Government Exhibit 3 was received in
20 evidence.)

21 Q On January 29th, 2008, did you find chalk or take
22 the chalk that Mr. Murtari was writing on the plaza with?

23 A Yes, I did.

24 Q And did you log it in as evidence?

25 A Yes.

Joseph Chapman - Direct

1 Q Did you take the chalk on January 24th, 2008 that
2 Mr. Murtari was writing with?

3 A No, I didn't.

4 Q Did you let him keep it on that day?

5 A Yes.

6 Q I'm going to show you what's been marked as Exhibit
7 Number 4 and ask you if you recognize this and if you can
8 tell us what it is?

9 A Yes. That's the chalk I took off Mr. Murtari.

10 Q On January 29th?

11 A Yes.

12 Q And does it appear to be in the same condition as
13 when you recovered it from his person on January 29th?

14 A Yes.

15 Q And are there any signatures? Exhibit Number 4 is
16 in an evidence bag, is it not?

17 A Yes, it is.

18 Q And are there any signatures or markings on the
19 outside of that that you recognize?

20 A Yes.

21 Q And can you tell us what those are, please?

22 A My signature.

23 Q And is there a date or anything else contained on
24 it?

25 A Yes. The 29th.

Joseph Chapman - Direct

1 MR. REYNOLDS: At this time I show exhibit
2 Number 4 to Mr. Murtari and offer it into evidence, Your
3 Honor.

4 THE COURT: Any objection?

5 MR. MURTARI: No, Your Honor.

6 THE COURT: All right, Exhibit 4 is received.

7 (Government Exhibit 4 was received in
8 evidence.)

9 Q Officer Chapman, there is one pink and one blue
10 large piece of chalk in Exhibit Number 4, correct?

11 A Yes.

12 Q And on January 24th Mr. Murtari wrote in chalk in
13 the color of pink, is that correct, and that's what's
14 depicted in Exhibit Number 2?

15 A Yes.

16 Q And then on January 29th, as depicted in Government
17 Exhibit Number 3, he wrote in blue, correct?

18 A Yes.

19 Q And on January 29th, were any steps taken to remove
20 the blue chalk from the plaza?

21 A Yes. Maintenance was called.

22 Q Did you check on January 24th and January 29th to
23 see if Mr. Murtari had applied for a permit with GSA to
24 peacefully protest outside the building?

25 A Yes, I did.

Joseph Chapman - Direct

1 Q And had he applied for a permit?

2 A No.

3 MR. REYNOLDS: Your Honor, I have no further
4 questions. Thank you.

5 THE COURT: All right, Mr. Murtari, any
6 cross-examination for Officer Chapman?

7 MR. MURTARI: Yes, Your Honor. Can I do it
8 from here, Your Honor?

9 THE COURT: As long as you keep your voice up,
10 that will be fine. Whatever is more convenient for you.

11 MR. MURTARI: I can go up there, Your Honor.

12 THE COURT: All right.

13 *CROSS-EXAMINATION BY MR. MURTARI:*

14 Q Officer Chapman, as you said, you've known the
15 defendant, you've arrested him for the last over period of
16 five years?

17 A Yes.

18 Q And during that time it's fair to say his conduct,
19 he has always been quiet in whatever he has done?

20 A Yes.

21 Q He has been non-threatening to other members of the
22 public accessing the building?

23 A Yes.

24 Q I would assume you would say he hasn't acted out or
25 been disruptive in any way in what he is doing?

1 A No. No.

2 Q And once you do put him under arrest, he has been
3 cooperative with you?

4 A Yes.

5 Q And never been rude to anyone in this history?

6 A No.

7 Q And just to clarify one thing, Officer Chapman, for
8 the Court, other than your experience with the defendant
9 outside the building, you have no relationship with him?

10 A No.

11 Q Right. You don't know him or his family, or, I
12 mean, there is no other relationship besides what you see as
13 part of your official duties?

14 A Yes.

15 Q And the incident with chalk, Officer Chapman, I
16 assume you're aware of other earlier incidents where the
17 defendant wrote with chalk outside the building, correct, in
18 2005?

19 A Yes.

20 Q And I assume you're aware, and I assume the Court
21 as a matter of record here in the building with Judge
22 DiBianco -- I'm sorry, with Judge Lowe, that the defendant
23 was arraigned once for writing with chalk on the ground?

24 A Yes.

25 Q You were present at that arraignment?

1 A Yes.

2 MR. MURTARI: And, Your Honor, as a matter of
3 record, those charges were later dismissed by the U.S.
4 Attorney's Office.

5 Q And Officer Chapman, I assume you're also aware
6 after that there were some other incidents with chalk where
7 no action was taken by you that occurred after that, where
8 there was writing on the ground?

9 A I don't recall but that could be true.

10 THE COURT: Do you have a time frame?

11 MR. MURTARI: Your Honor, I mean, I'll be
12 making testimony to it, but these events occurred in 2005.

13 THE COURT: Thank you.

14 Q Officer Chapman, just to clarify one technical
15 issue on the clean-up. I know there has been a lot of these
16 incidents with chalk over the years here. When Mr. Reynolds
17 was questioning you, you spoke of the two days, the 24th and
18 the 29th, and on the 24th, this was the first incident, you
19 brought the defendant in, right, arrested him, gave him the
20 ticket?

21 A Yes.

22 Q And then you were asked about observing the
23 clean-up. I ask you specifically to recall, that day did you
24 actually see them clean it up that day?

25 A No.

1 Q Okay. But on the 29th did you see them clean it?

2 A I think I did. I'm not sure, to be honest with
3 you.

4 Q Okay. Thank you. Well, Officer Chapman, one thing
5 in general in the defendant's time here, his motivation, why
6 is he doing what he is doing? You're an inspector for the
7 investigative service?

8 A Yes.

9 Q What would you say his motivation is?

10 MR. REYNOLDS: I'm going to object, Your
11 Honor. The state of mind of the defendant through this
12 officer I think is inappropriate.

13 THE COURT: Sustained.

14 MR. MURTARI: Asking why? I mean, he is an
15 investigator, asking why did the defendant come down.

16 THE COURT: You're asking him to speculate as
17 to your state of mind, and I don't think there has been any
18 testimony to suggest that he has the competence to do that.
19 If he was maybe a psychiatrist or a psychologist and you were
20 asking his expert opinion about that, that might be
21 appropriate.

22 MR. MURTARI: All right, Your Honor. Okay,
23 Your Honor, no further questions.

24 THE COURT: Thank you. Any redirect,
25 Mr. Reynolds?

1 MR. REYNOLDS: No, thank you, Your Honor.

2 THE COURT: Thank you, Officer, you may step
3 down. Does the government have any further evidence to
4 offer?

5 MR. REYNOLDS: No, Your Honor.

6 THE COURT: The government rests?

7 MR. REYNOLDS: The government rests, Your
8 Honor.

9 THE COURT: Mr. Murtari, do you have any
10 motions to make before you present your case?

11 MR. MURTARI: No, Your Honor.

12 THE COURT: All right. Then will you proceed
13 with your case, please?

14 MR. MURTARI: Yes, Your Honor. I'll be taking
15 the stand.

16 THE COURT: All right.

17 JOHN MURTARI, called as a witness and being
18 duly sworn, testifies as follows:

19 THE COURT: Now, as we did this once before,
20 you can choose to either give your testimony in narrative
21 form or you can ask yourself questions. I leave that to you
22 as to how you would like to proceed.

23 MR. MURTARI: Yes, Your Honor. Thank you.

24 The first thing I would like to establish is
25 the mental motivation, my motivation in coming to the

1 building. For me the issue is family rights, something I
2 wasn't aware of until I experienced a divorce myself. It was
3 the most gut-wrenching experience I have ever been through.
4 You know, it made a former military officer break down and
5 cry many times. When I saw the pain that my child went
6 through, that I went through.

7 I saw it. I'm an educated man. I saw it as I
8 struggled with what happened and the pain and I saw so many
9 people go through it. I saw it as a new civil right, a new
10 right that perhaps we've taken for granted and haven't
11 officially recognized in America.

12 I know that as I use these words, it's a new
13 concept to people, to good people who just haven't been
14 through it, just as I hadn't been through it, and that is why
15 sometimes as far as my mental state I can understand the to
16 many people in the courtroom this issue of family rights is
17 something foreign that would motivate a person.

18 And I would like to draw an analogy back to
19 the late forties and the struggle of blacks against
20 segregation, and to draw an analogy of a very similar Federal
21 Building like this in Montgomery, Alabama, in 1947, before
22 civil rights became trendy for blacks. Unfortunately, you
23 can notice there is no supporters here in the courtroom today
24 of the group I'm associated with. But you could imagine a
25 black man trying to make a focus and writing with chalk, I am

1 equal. And the importance of that, that mental motivation of
2 the civil right is that when we don't recognize civil rights,
3 a great evil exists in society, that segregation was a great
4 evil, and that the more it was tolerated, the more harm that
5 was done.

6 Moving on, as far as my goals regarding my
7 conduct when I formed a group and what my goals and methods
8 were, the idea was to take some lessons from history of
9 peaceful change of civil rights using things that Gandhi did
10 or Martin Luther King did. And I'm certainly not comparing
11 myself to those great individuals, but merely saying we're
12 trying to copy their methods, that they weren't harming other
13 people, that they were with dignity standing up for what they
14 believed in, and if there was any risk involved or suffering
15 involved, they were going to accept that themselves.

16 So, the goal established for the people in the
17 group was that we could achieve through peaceful means and a
18 willingness to potentially sacrifice freedom that we could
19 achieve a meeting, face-to-face meeting with a U.S. senator
20 to hear what our issues were.

21 And I do this, again, as a goal with the group
22 because so many people are angry because when civil rights
23 aren't recognized, there is friction in society, there is
24 anger, and so often that's broken out in Family Court type
25 situations. We hear of, you know, murders and suicides and

1 really awful things. And I've had mothers call me whose sons
2 have committed suicide and talked to them, and through my
3 actions some people said, John, you give me hope that there
4 is a positive way to do this, and that's what I have told
5 people, that, look, there is a positive way to do this and
6 I'm going to show you. Right. You want to go off and you
7 want to be mean, but there is another way to do that that's
8 just as effective and requires courage.

9 I wish to bring up the issue specifically of
10 the rule of law and the order of the court not to deface, not
11 to write with chalk. And I wish to go back to my own
12 experience as a former Air Force officer and pilot. I had --
13 I went to our Air Force academy, had probably some of the
14 finest training our government offers, and I want to talk
15 about one issue, one ethical issue of unintended consequence,
16 which may not be familiar to many people. I never flew in
17 combat but we were taught in the academy, especially this was
18 back after the Vietnam war, as pilots you were dropping five
19 hundred 1,000-pound unguided bombs, and at times you knew you
20 were going to kill women and children when that bomb
21 exploded. And the issue was your goal, what you're trying to
22 achieve is just -- it's a great -- you know, there was a
23 great reason in defending liberty or freedom, right, and even
24 though when you let go of that ordinance, as long as it's
25 controlled and minimized, even though innocent people could

1 be killed, which would normally be a crime, you're not going
2 to be held morally culpable for that.

3 And that was this issue of unintended
4 consequence, and later on in my experience for me when I left
5 the Air Force for a while, I had considered the Catholic
6 priesthood. I spent some time in a priest seminary program,
7 completed about 18 hours of philosophy and again was exposed
8 to the just war philosophy and the fact that sometimes there
9 is moral actions we do. And there is a quagmire there, you
10 got something morally that you want to get done, right, and
11 that's where your intent is and your focus is but, yes, there
12 is going to be an unintended consequence that separately and
13 alone would be considered wrong, but you're not going to be
14 held culpable for because that was not your actual intent at
15 the time.

16 So, in closing, in the information that I'm
17 being charged with, I'm charged with willfully knowing,
18 willfully and knowingly disobeying and resisting. That was
19 certainly not the primary intent of my actions. If someone
20 asked me, as you're balancing this thing, Mr. Murtari, doing
21 this and violating the order, how did you try to evaluate
22 this morally? I knew I had told people. We have probably
23 over 5,000 people on our e-mail list, a lot of people know me
24 out there, and they know what I stand for and they're
25 skeptical. And to stop, for me to stop and say, okay, guys,

1 I'm facing this order and I don't know what to do and I'm
2 just going to stop, they would basically say, well, look, you
3 didn't practice what you preached, unfortunately.

4 And so for me, the greater moral issue as far
5 as what I wanted to do was to forward the issue of civil
6 rights. I mean, I've been down here in 2005. I mean, I have
7 my own notes of when incidents occurred, and the one incident
8 Officer Chapman talked about was on January 20th, 2005, where
9 I was actually arrested and arraigned by Judge Lowe. That
10 was dismissed by the U.S. Attorney's office in a later
11 appearance. And then I returned to the building on five
12 other days to basically just simply write that same message
13 and no action was taken. On one of those days I was
14 fortunate, another mother actually joined me in front of the
15 building and we actually had a local TV station there, they
16 actually recorded it and reported on it.

17 Finally, the last minor issue is just a
18 technical thing on clean-up, on the clean-up of the building,
19 my attitude toward that and the fact of writing on the
20 ground. I just want to make some clear testimony. As I was
21 asking Officer Chapman, on January 24th, the first incident,
22 it was basically almost snowing outside when I wrote, and I
23 was released after being held for about an hour to be
24 processed. And I can remember walking out of the building
25 and it was still there, but it was getting -- it was

1 disappearing. Now the other date I have no idea.

2 I do wish to say that on one occasion I had
3 spoken with the building manager, Mr. Burris, outside the
4 building, and he had brought up the issue of the chalk on the
5 ground and cleaning it up, and I did tell him, I go,
6 Mr. Burris, look, I'm happy before I leave for the day, I'll
7 clean it for you, you know, I'm happy to do that, that's
8 really not a problem. Because I've watched, I've actually
9 been outside on those other occasions. On one occasion I saw
10 somebody come out and what they do is they come out with a
11 bucket of water and pour it over and it basically dissipates.
12 So, I had expressed my willingness to clean up after myself.

13 And the goal is with this, Your Honor, again
14 the intent is not to necessarily disobey the orders, it's to
15 move this forward. I always hope the chalk can sometimes be
16 effective with the media as just a novelty. If I can be
17 permitted long enough do that and maybe get some other
18 parents involved, it would be that kind of a novel thing,
19 gee, these good parents are outside the Federal Building
20 writing "Senator Clinton help us" because they're not getting
21 a response and hopefully that would be enough to do it.

22 And I have no further testimony at this time,
23 Your Honor.

24 THE COURT: Thank you. Mr. Reynolds?

25 MR. REYNOLDS: Thank you, Your Honor.

1 *CROSS-EXAMINATION BY MR. REYNOLDS:*

2 Q Mr. Murtari, how many years have you been coming
3 down to the Federal Building here in Syracuse and peacefully
4 protesting?

5 A I think the first incident was way back in 1999.

6 Q And do you know approximately how many times you've
7 been arrested since 1999 for doing that?

8 A Well, initially I was trying to -- I would
9 peacefully walk inside the building.

10 Q Is it fair to say over ten?

11 A Yes.

12 Q And you have your own website, correct?

13 A Yes, I do.

14 Q And through that website you have support for your
15 cause, correct?

16 A Yes, I do.

17 Q Okay. And did I hear you correctly that since 1998
18 there was only once that you had one other person protesting
19 with you and that was a female?

20 A There was one time when the person actually did
21 something like that with chalk. There has been other little
22 quiet things we've done where people have come to the
23 building, I've been with other people in legal things, so --

24 Q But as far as peaceful protest, is it fair to say
25 that on only one prior occasion you had somebody in addition

1 to yourself protesting at the Federal Building here?

2 A Yes. When there was an event where there might
3 have been a risk of arrest, yes, that's true.

4 Q And you mentioned that there is all these people
5 supporting you in your civil rights movement and you
6 mentioned the term we. Where are all these people? Are any
7 of them in the courtroom today?

8 A No. As I said, they are not.

9 Q And, in fact, you posted on your website that in
10 anticipation of this trial you tried to advise everybody the
11 trial date, and you did in fact advise them and you asked
12 them to come support you, didn't you?

13 A I certainly did, yes, that's correct.

14 Q Did I hear you correctly when you were giving your
15 narrative on direct there, did you say that your movement is
16 about civil rights and you equated it to the civil rights of
17 African Americans, and did you say that before the civil
18 rights for the blacks became trendy? Did you say that?

19 A Yes, that's what I said.

20 Q Do you consider what you are doing to be trendy?

21 A Not right now it's not, no.

22 Q You mentioned that you were in the Air Force. And
23 in the Air Force there is a chain of command, isn't there?

24 A Yes, there is.

25 Q And how long were you in the Air Force for?

1 A For about four years at the academy and six years
2 on active duty.

3 Q And were you ever during that time written up for
4 not following the chain of command or not following
5 somebody's orders in the Air Force?

6 A No.

7 Q So you understand -- you understood when you were
8 in the Air Force that if you didn't follow orders, there
9 would be consequences to not following the order, correct?

10 A Yes.

11 Q You were able to follow the orders in the Air
12 Force, yet you choose not to follow the orders of federal
13 judges, isn't that correct, federal magistrate judges?

14 A No.

15 Q Okay. Isn't it a fact that you since 1998 have
16 intentionally violated court orders?

17 A Not talking about all of them together, I can't
18 answer that, Mr. Reynolds, I don't know.

19 Q And isn't it a fact that you've also violated state
20 orders, isn't that true, state court orders, and been held in
21 contempt?

22 A Yes, I have.

23 Q And that was for refusal to pay child support,
24 correct?

25 A Yes, it was.

1 Q And after being advised by Judge Peebles of the
2 exact details of his order and what conduct was allowed and
3 was not allowed, you posted on January 24th, 2008 on your
4 website that you were going to be coming down here again,
5 correct?

6 A Yes, I did.

7 Q You either by bus or car brought yourself to the
8 Federal Building and arrived right on time at 2:00 as you had
9 stated on your website, correct?

10 A Yes, I did.

11 Q And you brought chalk with you, correct?

12 A Yes, I did.

13 Q Because it was your intention to write in chalk on
14 the federal plaza on January 24th, correct?

15 A Yes, it was.

16 Q In fact, you were well aware of the judge's order
17 telling you that you couldn't do that, correct?

18 A I was aware of it, yes.

19 Q And yet you, after standing there for 15 minutes or
20 so and no one coming out and arresting you, you chose to then
21 go the extra step and start writing with the chalk on the
22 plaza, correct?

23 A Yes, I did.

24 Q Okay. And you did the same thing on January 29th,
25 you posted on your website that you were going to come down

1 here, correct?

2 A That's correct.

3 Q And you brought chalk with you?

4 A Yes, I did.

5 Q You arrived at the same time, right on time at
6 2:00, as you stated on your website, correct?

7 A Yes, I did.

8 Q And even after being let go, issued an appearance
9 ticket by Joe Chapman on January 24th, five days later you
10 came down to engage in the exact same conduct, correct?

11 A Yes, I did.

12 Q And all full well aware of what the judge's order
13 was, correct?

14 A I was aware of it, yes.

15 MR. REYNOLDS: I have no further questions,
16 Your Honor. Thank you.

17 THE COURT: Mr. Murtari, I guess I didn't
18 fully understand your testimony. I'm trying to understand
19 what motivated you to -- after 20 or 25 minutes of peacefully
20 standing and holding your son's pictures, what motivated or
21 prompted you to then take out your chalk and write on the
22 plaza?

23 THE DEFENDANT: Your Honor, the motivation was
24 the commitment to the group, to the people that are following
25 this to saying this is what I'm gonna try to do to emphasize

1 the effort with Senator Clinton.

2 THE COURT: Was it your intention then to
3 underscore your commitment to your cause by violating a court
4 order and showing that you were willing to suffer the
5 consequences of violating the court order?

6 THE DEFENDANT: Your Honor, the goal was to
7 write there with chalk. Yes, I was conscious of your order,
8 but, you know -- and you -- and, obviously, the two acts are
9 combined, Your Honor. In the same sense of if you ask me,
10 John, you were running in on a target, you knew there were
11 women and children down there, yet you dropped the bomb.
12 Right? You knew those people were going to be killed. Did
13 you mean to kill those folks? Well, no, I didn't really mean
14 to kill those people. I didn't mean to kill those people.
15 That wasn't my intent.

16 THE COURT: I guess I'm trying to understand
17 why you feel that writing in chalk, as you say, something
18 that easily and quickly dissipates, why you think that's a
19 more forceful showing of your commitment than standing
20 peacefully and holding your son's pictures or a placard or a
21 sign that might say the same thing?

22 THE DEFENDANT: Your Honor, my experience has
23 been over these many years that it's more forceful because
24 there is an element of personal risk with it.

25 THE COURT: Because you would be violating a

1 court order?

2 THE DEFENDANT: Yes. I mean -- well, yes, but
3 I never -- that's true, Your Honor, yes. I see what you're
4 saying there, that's true. But the issue is I tried to do
5 things that -- as Mr. Reynolds has said, I've been arrested,
6 my initial activity was inside the building walking quietly
7 in the hall, and there was probably 35 arrests that were done
8 downtown, but eventually it was allowed. And then later on
9 it was not allowed and they come up with the federal trial.
10 And similar things with the chalk, yes. I mean, it's a minor
11 thing.

12 It's again going back to the civil rights
13 movement. The Freedom Riders would sit and get on a bus to
14 establish their dignity, and I imagine some of them, there
15 may have been orders issued against them, don't do that,
16 right, don't get on the buses, you're inconveniencing the
17 people, you're causing a problem, we have to stop the bus, we
18 have to arrest you, people don't get to work on time. So it
19 was meant to be the minimal thing. And hopefully, Your
20 Honor, not only by -- but the novelty of it, again, that was
21 hopefully a side issue.

22 THE COURT: I see that as a different, a
23 different matter, an African American wanting to have the
24 same rights on that bus as a non-minority.

25 Here's what I think happened, and tell me if

1 you think I'm wrong. You stood for 25 minutes with your
2 photographs peacefully demonstrating, nothing happened to
3 you, and you felt no other alternative but to defy my court
4 order in order to convince your followers that you believed
5 in your cause and were prepared to suffer whatever
6 consequences might occur from violating my court order. I
7 mean, isn't that really what we're talking about here?

8 THE DEFENDANT: Your Honor, no. The reason I
9 wait, you know -- I mean, the reason I wait -- I mean, I
10 always tell, try to tell them what time really as a
11 convenience to the officers so they'll know. You know what I
12 mean? Officer Chapman, whoever is on duty will know that
13 Murtari is coming at two today, right, and it won't be a
14 hassle. The reason I wait 15 or 20 minutes usually is I'm
15 always hopeful today someone may join me, potentially today
16 the media will show up, and they run a little late, so I
17 always do wait a little interval, even though I know I could
18 have showed up and started writing immediately.

19 So, no, Your Honor, that's really not true
20 that it was like, no, nothing's happened so far. I mean, I
21 knew on these two incidents, right, as I said on my website I
22 was going to write with chalk, but the delay is merely to
23 give an opportunity to hopefully let something better happen,
24 media coverage and another persons show up.

25 THE COURT: When you took chalk to hand and

1 wrote on the federal plaza on January 24th and January 29th
2 of this year, is there any doubt in your mind whatsoever that
3 you were violating my court order?

4 THE DEFENDANT: Your Honor, I understood the
5 conditions of the order, that you had said not to write, and
6 I knew that what I was doing was writing.

7 THE COURT: Do you have anything further in
8 response to cross-examination or my questioning?

9 MR. MURTARI: Yes, Your Honor. One issue with
10 regarding the issue of what we were taught obeying lawful
11 orders. One early lesson that we had at the academy, I can
12 still remember this vividly because we were freshman there,
13 and some upperclassman said to another guy, Mr. So-and-So, if
14 I gave you an order to shoot some innocent civilians, would
15 you follow it? And I can remember he went around asking
16 guys. And a few guys said, well, yes, sir, if it was an
17 order, I would pull the trigger, right. And later, and
18 luckily, and we do give our officers good training, he came
19 back and said, you shouldn't do that, that's, you know -- and
20 what he brought us back to is you've got a duty to obey
21 lawful orders, not just orders in general, and your duty is
22 to uphold and defend the Constitution of the United States
23 and you're always responsible for your individual actions. I
24 don't mean, Your Honor, that your order was unlawful, I don't
25 mean to get into that, because you affirmed it.

1 THE COURT: Well, no, I didn't affirm it. I
2 don't mean to interrupt you, but as I pointed out to you in
3 my decision, if you believed my order was unlawful, you had
4 recourse.

5 MR. MURTARI: Your Honor, I'm not bringing
6 that up, Your Honor, I'm not even -- only merely Mr. Reynolds
7 had brought that up on cross-examination, this issue of
8 obeying orders and what that means and that there is still an
9 element of individual responsibility. But, Your Honor, if
10 Mr. Moynihan, my advisor, I don't know if he has questions to
11 ask, but if he could be given an opportunity.

12 MR. MOYNIHAN: Your Honor, if we just have a
13 brief recess and I'll talk to him and see if he has covered
14 everything that he wants to cover, even just two minutes.

15 THE COURT: Why don't you confer and we'll
16 just remain here.

17 (Short recess.)

18 MR. MURTARI: Okay, Your Honor, that's all.

19 THE COURT: Any recross?

20 MR. REYNOLDS: No, thank you, Your Honor.

21 THE COURT: Thank you, Mr. Murtari. You may
22 step down. Do you have any other evidence to offer?

23 MR. MURTARI: No, Your Honor.

24 THE COURT: Then the defense rests?

25 MR. MURTARI: Yes, sir.

1 THE COURT: Is there any rebuttal testimony?

2 MR. REYNOLDS: No, Your Honor.

3 THE COURT: All right, the government rests?

4 MR. REYNOLDS: Yes, sir.

5 THE COURT: Mr. Murtari, would you like to
6 make a closing -- well, let's see, I would ask the government
7 to go first, and then Mr. Murtari, and then you would have
8 rebuttal.

9 MR. REYNOLDS: Okay. Your Honor, I just have
10 a brief closing statement to make. I've summarized the
11 elements that I believe support this offense in my opening
12 statement. I think that the evidence is clear in support of
13 those elements based upon the testimony of Joseph Chapman and
14 the defendant's own admissions that he was aware of your
15 court order, that he was present in court, knew that the
16 order included the use of chalk and that he was not to write
17 in chalk, write with chalk on the plaza. That establishes
18 knowledge of your order, which is one of the elements of the
19 offense.

20 He chose to come down here, as he testified to
21 from your questioning of him as well as mine, on both dates,
22 January 24th and January 29th, 2008. And, in fact, on the
23 first date, January 24th, Officer Chapman went out there and
24 gave him the opportunity to stop what he has doing and leave
25 without being arrested and advised him of the order. And

1 Mr. Murtari, with being given that opportunity, what does he
2 do? He disregards Officer Chapman's commands and disregards
3 your order and made a choice to continue writing, knowing
4 full well that he was in violation of your order and that he
5 was going to be arrested. I think that shows the element of
6 the defendant acting willfully and knowingly in disobeying
7 your court order.

8 After the 24th and being allowed to leave on
9 an appearance ticket, he comes back five days later knowing
10 that the last time he was let go with just an appearance
11 ticket, and I submit to you that he came back down five days
12 later because he wanted to get arrested. And I think you
13 discussed with him during your questioning his motivation for
14 doing so. But again, he made a conscious decision, he
15 knowingly and willfully came down here from Lyons, New York,
16 and stood out there and had to go the extra step of writing
17 in chalk because that's the one thing that violated your --
18 one of the things that violated your court order.

19 So, I submit to you when you take a look at
20 the testimony of Joseph Chapman and the testimony of
21 Mr. Murtari, where he acknowledges your order and admits to
22 coming down here and writing with chalk on the plaza, that
23 that evidence is sufficient to establish the defendant's
24 guilt beyond a reasonable doubt on both the offenses, both
25 informations before the Court right now, Your Honor. Thank

1 you.

2 THE COURT: Thank you. Mr. Murtari.

3 MR. MURTARI: Your Honor, briefly I would like
4 the Court to consider the issue of the unintended
5 consequence. It's certainly recognized by our government.
6 You know, we don't put our pilots or people who serve in the
7 military on trial, even though they do end up killing
8 innocents and could be many of the things that Mr. Reynolds
9 has said would apply. You're going into combat, you know
10 you're going to drop a bomb, there is innocents there, you
11 know you're going to kill people that day. Yes, I did. But
12 again, the issue is the moral dilemma, and it is, and it's
13 not cut and dry, and depending on who's running the war
14 crimes trial, a different side might win.

15 Your Honor, regarding the civil rights issue
16 and the black Freedom Riders, I also draw analogy to that,
17 getting on a bus, how does society handle them? Do we try to
18 limit ourselves to merely saying, look, it's a statutory
19 violation, right, there is no intent involved, you got on the
20 bus, you violated the statute, we're going to send you to
21 jail. Or when society sees this type of morally motivated
22 individual, is it appropriate to up the ante and say now we
23 have got an order in place and now we're going to hold you
24 willfully?

25 Unfortunately, in the family rights aspect,

1 where before where the black man it was very easy to do an
2 act which asserted the freedom by sitting in the bus, sitting
3 on the lunch counter next to a white person, or for the
4 Indians with Gandhi violating a salt law and making a little
5 bit of salt, that would trigger the law.

6 But as a parent, Your Honor, I struggle with
7 the folks, don't get your children involved in it.
8 Obviously, I can't grab my son and violate a custody order,
9 as much as I would like to. I have had to obey, Your Honor,
10 orders that I have found very distasteful with regard to my
11 son, and I have followed them.

12 So this avenue of writing I love my child is
13 about my coming up with what's something that we can do that
14 demonstrates that same, get on the bus, make the salt, do
15 something peaceful. That's what that's about, Your Honor.

16 THE COURT: Thank you. Anything further in
17 rebuttal?

18 MR. REYNOLDS: Just briefly, Your Honor.
19 Mr. Murtari talks about unintended consequences, and the
20 bottom line is that he appears to disagree with state law
21 regarding child custody issues, and what he has done, he
22 needs to be -- the law is what it is and you have the
23 authority to give the order that you gave, and he chose to
24 violate it, so he needs to be held accountable for his
25 actions.

1 The analogy I think of is when you swear in
2 jurors on a jury, regardless of whether or not they disagree
3 with the law as you give it to them, they still have to
4 follow those instructions. And, obviously, Mr. Murtari is
5 making a choice not to follow your instructions, and I submit
6 to the Court that he should be held accountable for those
7 actions. Thank you.

8 THE COURT: All right. Well, having heard the
9 evidence adduced at trial, I am convinced, Mr. Murtari, that
10 the government has proven each of the requisite elements of
11 criminal contempt in violation of 18, United States Code,
12 Section 401(3) with regard to both the January 24, 2008
13 incident, which forms the basis for Information Number
14 08-cr-59, and January 29, 2008, which forms the basis for
15 Information Number 08-cr-60, and that they have been proven
16 beyond a reasonable doubt. And so I find you guilty with
17 regard to both counts.

18 I am prepared to pass sentence at this time,
19 if the parties feel that that's appropriate. Is the
20 government prepared for sentencing at this time?

21 MR. REYNOLDS: Yes, Your Honor.

22 THE COURT: Mr. Murtari and Mr. Moynihan, I
23 can certainly give you a 15 minute recess if you would like
24 to speak regarding the matter, but I feel like I have
25 sufficient information concerning the matter and to inform my

1 judgment under the sentencing provisions.

2 MR. MOYNIHAN: We're prepared to go forward,
3 Your Honor.

4 THE COURT: All right. Then, Mr. Murtari,
5 I'll hear from you regarding sentencing. What should I do?
6 If you were me, what would you do and why?

7 MR. MURTARI: Your Honor, I know I've been
8 held, I don't know the exact day count now, over, at least
9 over 50, would have been 60 days the 29th of this month, so I
10 don't know what the count is now.

11 THE COURT: I counted only 40.

12 MR. MURTARI: Because, well, it would be two
13 months March 29, right? Because I got arrested on the 29th
14 and was held since.

15 THE COURT: Right. Three days in January, 29
16 in February and 18 in this month; I think it's forty days.
17 Fifty days, I'm sorry.

18 MR. MURTARI: Fifty days, okay, Your Honor.
19 Your Honor, I hope that will be enough punishment for the
20 incidents. If it's not, Your Honor, I can understand the
21 need to impose more time. The only thing I'm asking is a
22 brief interlude before reporting to the marshals. I think I
23 wrote you in my letter. There won't be any more incidents
24 between now and any sentence. Excuse me, Your Honor. I
25 would just like the opportunity to complete the vacation

1 period with my son. Thank you.

2 THE COURT: Mr. Moynihan, would you like to
3 weigh in?

4 MR. MOYNIHAN: Just briefly, Your Honor. As
5 the Court's aware, this whole incident is, I think, a minimal
6 form of civil disobedience. I don't think there is any doubt
7 that as you just found after the trial here that he disobeyed
8 your court order. He didn't write on the sidewalk with spray
9 paint or deface the building in any permanent way. And fifty
10 days in jail for some chalk that was washed away is an act of
11 civil disobedience, which think is really what Mr. Murtari is
12 involved here. I think fifty days is sufficient.

13 The Court does know that the full purpose of
14 his cause is to be able to be with his son and this is the
15 time he has had to sacrifice. He has plans to be with his
16 son for Easter, which is an important thing for he and his
17 son, and I ask the Court to consider that. Obviously, his
18 son is important enough to him to motivate him to do these
19 things for many years now.

20 How much time is enough for violating a court
21 order and that court order not to write with chalk on the
22 plaza? I'm not usually in this situation; it's usually how
23 many decades in prison someone is going to get for actually
24 committing a serious, serious offense. I'm not minimizing
25 the Court's rule and how we need to obey those.

1 I was impressed with Mr. Reynolds' analogy of
2 the jury instructions, and I think that's something here that
3 should be considered as a similar type of offense. They're
4 instructed not to disregard what you instruct them to do and
5 the penalties for those types of things are small, they're in
6 relation to what the crime is here.

7 I don't know why Mr. Murtari feels the need to
8 be arrested. I don't think he likes to be arrested. And if
9 it's to get attention, it hasn't worked; there is nobody
10 here. And why it's important for the federal agents with GSA
11 and whoever else to really be after Mr. Murtari to get him
12 off the property when he hasn't done anything to disturb
13 anyone, thus putting the Court in a position to have to issue
14 an order, I don't know why.

15 I was here when you issued the order about
16 don't write with chalk, and it didn't seem rationally related
17 to any of the issues in the case because even writing with
18 the chalk doesn't disturb the public coming and going. I
19 understand the defacement argument. I think that washes away
20 pretty quickly, the defacement argument does. And it seems
21 that the government really wants Mr. Murtari to stop coming
22 here. But the Court knows in your order that they can't
23 prohibit him from coming here. He has a right in a public
24 forum to express himself, and this is a minimal way for him
25 to express himself without disturbing people, other than

1 wasting this officer's time, which sometimes he does and
2 sometimes he doesn't.

3 As Mr. Murtari testified throughout the trial,
4 that at times they didn't bother him when he wrote with
5 chalk. Other times they would come and take his chalk before
6 he wrote with it. Other times they would just let him go
7 about his business.

8 I understand it's inconvenient for the Court,
9 the government's time here, the Court's time here, but I
10 think that the fifty days that Mr. Murtari has spent in
11 violation of the Court's order is sufficient to penalize him
12 and send a message to the community that he shouldn't do
13 that. That's all I have. Thank you.

14 THE COURT: Thank you. Mr. Reynolds, I'll ask
15 you the same question I asked Mr. Murtari, what should I do
16 and why?

17 MR. REYNOLDS: Your Honor, the bottom line is
18 that we wouldn't be here today in lieu of your order dated
19 January 18, 2008 if Mr. Murtari didn't choose to go that
20 extra step and write with chalk. He has been given over the
21 past ten years numerous opportunities. By his own admissions
22 he has had over 34 arrests, several convictions. I'm not
23 sure exactly how many offenses he has been convicted of. And
24 after ten years of that, where are we today?

25 He is told by Your Honor that he can go out

1 there and peacefully protest, yet that is not enough for him,
2 he has to go the extra step and defy your court order and
3 write with chalk. So, obviously, after ten years of doing
4 this through the system here, he has not been deterred
5 whatsoever, and the reason he hasn't been deterred is because
6 he hasn't been inconvenienced in any way, because he has been
7 allowed to schedule any jail time that he has had to do
8 around the visits that he has had with his son, the scheduled
9 visits he has had.

10 I submit to you the only thing that's going to
11 deter him is to keep him in jail, give him a significant jail
12 time, a term that keeps him locked up I would say through
13 August. As he has represented to Your Honor that in his
14 letters, or at least letters that I have received from him,
15 that he promises he won't come back to the Federal Building
16 until after his summer break with his son. So, as of a week
17 before this trial, he still wasn't deterred from coming back
18 down here. And my guess is, based upon his behavior on
19 January 24th and January 29th, that after July of '08 and
20 when he comes back down here, he is not going to be satisfied
21 with just peacefully protesting out there, he is going to
22 take it the extra step.

23 I believe that in order to deter future
24 criminal activity, that a significant jail term should be in
25 place. And I just want to respond to two things that

1 Mr. Moynihan said. The Federal Protective Service is not
2 after him. Mr. Murtari comes to us, they don't have to go
3 out and seek, find him, all they have to do is look outside
4 the front windows.

5 And the final thing I want to just refer to
6 what Mr. Moynihan said in regards to it's not a big deal, I
7 don't know exactly what his quote was, when a juror doesn't
8 follow your instruction. Well, it is a big deal because what
9 could happen is if a juror chooses not to follow a judge's
10 instruction during a trial, an innocent man could be found
11 guilty.

12 So the respect of the Court and the court
13 order is an important process in the judicial system, it
14 should be respected, it should be obeyed, and there should be
15 severe consequences if violated. Thank you.

16 THE COURT: All right. Thank you, I'm going
17 to take a ten minute recess and I'll be back to give you my
18 decision.

19 THE CLERK: Court stands in recess at 11:10.

20 (Recess at 11:10.)

21 (Reconvene at 11:23.)

22 THE COURT: Well, gentlemen, Mr. Moynihan said
23 something earlier to the effect that he is usually here or
24 upstairs representing convicted felons who are about to be
25 sentenced to months, if not years, of prison time. And I

1 have to tell you that although I've never sentenced a felony
2 defendant because it exceeds my jurisdiction, I can't imagine
3 working harder at crafting an appropriate sentence in a case
4 such as that than in this situation.

5 I've struggled mightily and I've thought a
6 great deal about what I would do if I found Mr. Murtari
7 guilty in these two matters, and I have to tell you that it's
8 been a struggle for me to decide what the appropriate
9 consequences would be that would be fair to both the
10 government and the public in general, as well as the
11 maintenance of the integrity of the Court and making sure the
12 court orders are properly complied with, and Mr. Murtari's
13 individual circumstances.

14 I have to disagree with Mr. Moynihan in the
15 sense that to set the stage, this case is not about chalking.
16 It's not about simply writing in the plaza "I love Dom," or
17 anything else for that matter. I certainly don't condone
18 that and certainly believe that it would be an administrative
19 and custodial nightmare if everyone that wanted to write in
20 chalk in and around the Federal Building were free to do so.

21 But that's not what this case is about. It's
22 about defiance of a court order, a court order that you,
23 Mr. Murtari, understood and willfully and consciously in my
24 view violated because of your commitment to your cause, and
25 that is something that I consider most serious.

1 You didn't commit any violence. You certainly
2 did not injure any party directly. But nothing in my mind
3 should be taken more seriously than a court order. And I'm
4 not doing my job, nor am I protecting the Court's prerogative
5 if I view that lightly.

6 You are a graduate of the United States Air
7 Force Academy, I saw from your resume and I heard from your
8 testimony. My daughter is a graduate of the Air Force
9 Academy, and I know from her experience and having spoken
10 with her that she understands what it is to receive an order
11 and to comply with that order, and I know that she knew that
12 there were severe consequences for failing to abide by an
13 order. And as I told you, if you believed that my order was
14 improvident, you had evidence to pursue, including an appeal
15 of my order.

16 So, whatever the wisdom of my order may be,
17 and Mr. Moynihan, perhaps rightly or wrongly, suggests that
18 it really wasn't necessary to prohibit you from chalking, I
19 felt that it was, I did, and it was a court order that was
20 issued that should have been complied with and was not.

21 You're obviously a very intelligent
22 individual. I like you. You're committed to your cause and
23 I respect you for that. You've spent a great deal of energy
24 in the pursuit of your cause. But I have to agree with
25 Mr. Moynihan, the steps that you are taking to pursue your

1 cause and to publicize your cause and engage the assistance
2 of others is not working, and I wish there was some way to
3 convey to you that there are probably much more constructive
4 ways for you to pursue your cause and spend that energy and
5 perhaps get the recognition that you seek for your cause and
6 for the civil rights of fathers besides being arrested and
7 spending time in the Jamesville Correctional Facility.

8 I can't overlook that each time that you are
9 arrested for committing an infraction or violating a court
10 order, there is a drain on resources. It's not an
11 inconvenience to me because that's what I'm here for, but it
12 is an inconvenience to others, the court prosecutors, the
13 federal public service officers whose time is spent, in your
14 situation it could be spent more constructively. And so
15 these are also considerations that I take into account when I
16 decide what an appropriate sentence would be.

17 And so I have decided to treat you like I
18 treat my children; aggressive discipline. My children, who I
19 love very much, sometimes defy my orders. I know you find
20 that hard to believe. And so the first time they do, I
21 punish them accordingly, and the second time they do, there
22 is a greater punishment, until they reach a threshold where
23 they understand that the consequences are more than they're
24 willing to suffer, however wonderful that violation may feel
25 to them. And I'm trying to do the same with you.

1 And I have to tell you this also. I reject
2 any suggestion that you should be punished and your prison
3 sentence should be organized to meet your convenience and to
4 allow you to spend time with your son. That's just not how
5 the system works, and I reject that firmly, now and in the
6 future. All right.

7 I understand completely your desire to be with
8 your son, I respect that, I appreciate it, I understand that,
9 but that's just not how the system works. And it will cause
10 me great pain to separate you from your son even for five
11 minutes. Okay?

12 MR. MURTARI: Yes, sir.

13 THE COURT: Now, I've looked at your prior
14 history, at least what's available to me, talking about
15 recent history. Judge DiBianco found you guilty, a little
16 bit different offense, failing to obey the directive of a
17 Federal Protective Service officer, two counts. He sentenced
18 you to ten days on each count, to be served concurrently.

19 So it was the sentence and judgment of the
20 Court as follows. On 08-cr-59 I sentence you to a period of
21 20 days incarceration, a fine of \$100, and there is a
22 mandatory special assessment of \$10 that I am obligated to
23 impose.

24 On the second offense, 08-cr-60, I sentence
25 you to a period of 35 days incarceration, to be served

1 consecutively. You will be given credit for time served.
2 \$250 fine and a \$10 mandatory special assessment.

3 In that way I think you can see that for each
4 violation I've increased the penalty, and if I were to
5 sentence you on a future violation, I undoubtedly would
6 increase the penalties even further, just so you understand
7 my thinking.

8 I understand the government's position but I
9 just don't think that a lengthy prison sentence is the answer
10 in this case. The only thing it will do, and I'm not saying
11 there isn't a benefit to this, the only thing it would do is
12 would be to keep you from coming to the Federal Building
13 during that time that you're behind bars, but I don't think
14 that's the answer. I personally think that, this is just me
15 personally speaking, that, as I said, I like you, if you want
16 to stand in the federal plaza peaceably and abide by the
17 requirements that any other member of the public has to abide
18 by and hold your sign, I think that's wonderful. I would be
19 happy to say hello to you as I come and go and wish you well.
20 But in terms of violating the law or my court orders, I can't
21 sanction that.

22 So that is the order and judgment of the
23 Court. Both sides have the right to appeal that sentence.
24 Mr. Murtari, any such appeal must be filed within ten days of
25 today's date, and you should consult with your stand-by

1 counsel, Mr. Moynihan, who can advise you as to whether or
2 not an appeal is appropriate. Anything further,
3 Mr. Reynolds?

4 MR. REYNOLDS: I just have one either request
5 or suggestion that's being touched on at the end, Your Honor.
6 I would request maybe that you make your order of
7 January 18th, 2008 a permanent order. It might provide
8 clarification for Mr. Murtari in the future should he want to
9 come down here and engage in future conduct and might also
10 set the parameters between him and building security as far
11 as what's allowed and what's not allowed.

12 THE COURT: I gave that some thought. I think
13 that the only way I could do that would be to sentence him to
14 some sort of probation and make that a condition of
15 probation. I'm not sure that I can issue an order to that
16 effect. Perhaps I have the ability to do that.

17 MR. REYNOLDS: I suggest this. If I could
18 have an opportunity to look into it, my understanding from
19 prior cases is that there is, in fact, a standing order,
20 permanent order in place which keeps Mr. Murtari out of the
21 building, and I believe that's been litigated up to the
22 Second Circuit, so maybe I can get you some information on
23 what authority was available to issue that and then maybe on
24 that you could consider it.

25 THE COURT: All right. And I would give

1 Mr. Murtari an opportunity to respond. I guess, in my view,
2 I wouldn't be doing anything that isn't already prohibited.
3 In other words -- well, I don't know, is defacement? He was
4 not charged with defacement, but I have to believe that
5 defacement as opposed to destruction of federal property is
6 still a violation.

7 MR. REYNOLDS: I believe it is.

8 THE COURT: That would include chalking in my
9 mind. But I hear your concerns and I think it probably would
10 be appropriate if I feel I can lawfully issue such an order
11 that would reaffirm and reiterate what I think is already the
12 situation that he is prohibited from defacing through
13 chalking, or otherwise, federal property, and then I would
14 give Mr. Murtari an opportunity to submit any response, and
15 if it's appropriate I will issue such an order.

16 MR. REYNOLDS: Thank you.

17 THE COURT: How long do you need,
18 Mr. Reynolds, to address that? Can it be done in the next,
19 say, two weeks?

20 MR. REYNOLDS: Yeah, I believe it can.

21 THE COURT: All right. How about two weeks
22 from Friday?

23 MR. REYNOLDS: Sounds good.

24 THE COURT: And, Mr. Murtari, I will give you
25 two weeks to respond to anything that the government

1 suggests.

2 MR. MURTARI: Yes, Your Honor.

3 THE COURT: So your response will be due --
4 theirs would be due on the 4th of April. I haven't been too
5 good at math today but I think I got it. And then yours will
6 be due on the 18th of April. Anything further, Mr. Reynolds?

7 MR. REYNOLDS: No. Thank you, Your Honor.

8 THE COURT: Mr. Murtari, anything further?

9 MR. MURTARI: No, Your Honor.

10 THE COURT: Mr. Moynihan?

11 MR. MOYNIHAN: No, Your Honor.

12 THE COURT: All right, thank you.

13 THE CLERK: Court is adjourned at 11:35.

14 (Court adjourned at 11:35.)

15 * * *

16

17

18

19

20

21

22

23

24

25

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

C E R T I F I C A T I O N

I, EILEEN McDONOUGH, Registered Professional Reporter and Certified Realtime Reporter, DO HEREBY CERTIFY that I attended the foregoing proceedings, took stenographic notes of the same, that the foregoing is a true and correct copy of same and the whole thereof.

EILEEN McDONOUGH, RPR, CRR

