

1 Friday Session, March 22, 2002, at 9:00 A.M.

2 (Proceedings in the absence of the jury:)

3 THE COURT: Good morning, ladies and
4 gentlemen.

5 MR. MORFORD: Good morning, your Honor.

6 MR. TRAFICANT: Good morning.

7 THE COURT: We are here primarily to do work
8 regarding your concerns, Mr. Traficant, regarding rulings
9 of the Court yesterday when Mr. Johnson and Mr. Manganaro
10 were testifying, and we're giving you this opportunity,
11 without the jury present, to try to do whatever it is you
12 propose to do under the Rules of Evidence to establish that
13 they need a hearing to meet a hearsay exception under the
14 Rules of Evidence, and we told you how the procedure would
15 work, which is that they would be called to the stand, and
16 then we elicit from them the answers that they were not
17 permitted to give to the testimony yesterday. And that
18 gives me an opportunity to follow whatever your theory is
19 with witnesses out of the hearing of the jury. And then we
20 can rule on whether or not there's some exception or that
21 this is not hearsay.

22 So we're ready for you to call your first --

23 MR. TRAFICANT: I informed the Court
24 yesterday Mr. Johnson and Mr. Manganaro could not be here
25 today, and they are not here today.

1 THE COURT: No, sir. You didn't inform us of
2 that.

3 MR. TRAFICANT: Well, let's look at the
4 record.

5 THE COURT: We have it. Do you have it?

6 MR. TRAFICANT: No, I don't. I haven't been
7 buying the record. Mr. Manganaro testified on the stand --

8 THE COURT: What did you think we had allowed
9 the jury to stay home today for? What was your impression?

10 MR. TRAFICANT: Are you cross-examining me?

11 THE COURT: I'm asking you what in the world
12 you thought --

13 MR. TRAFICANT: To go over this matter here.

14 THE COURT: Well, you have to go over it. I
15 gave you the procedure. I'll read you -- shall I read
16 again out loud exactly what I said yesterday?

17 MR. TRAFICANT: No, you don't have to. I
18 know what you said.

19 THE COURT: Well, then, bring in a witness.

20 MR. TRAFICANT: You have two of the tapes. I
21 don't have either Mr. Johnson, who could not be here, nor
22 Mr. Manganaro, who could not be here, and I have another
23 fellow that is here who can testify, who will testify --

24 THE COURT: Well, we don't have a jury, sir.
25 We said we'd let the jury go home. Surely you were

1 listening when we sent the jury home and told them to come
2 back on Monday.

3 MR. TRAFICANT: Yes. You said we would voir
4 dire those people, who, in fact, had knowledge --

5 THE COURT: No. I specifically said
6 Mr. Johnson and Mr. Manganaro. They're the ones who were
7 testifying.

8 MR. TRAFICANT: Well, I don't have them here.

9 THE COURT: Well, then, I'll listen to the
10 Government on that issue.

11 MR. MORFORD: Your Honor, this is not the
12 first time this has happened. The Court has made it very
13 clear what the Defendant needed to do, and as with any
14 other party in a proceeding, if he's not prepared to go
15 forward, it's his evidence. He's been told numerous times
16 what he has to do to lay a proper foundation. He's refused
17 to do it. Therefore, this evidence should not be admitted.
18 It's not admissible anywhere.

19 MR. TRAFICANT: I'd like to respond. I have
20 filed a motion, and that motion speaks to the salient
21 points of law that, in fact, do reflect the admissibility.
22 I have submitted four tapes to them. Two of them you
23 already have relative to prosecutorial misconduct. The
24 other deals with a witness who may not be called since the
25 Prosecution did not call that witness, and the other one

1 deals with a person that took the Fifth Amendment. So --

2 THE COURT: Is this the motion you filed a
3 few moments ago when you came to court?

4 MR. TRAFICANT: Yes, I did.

5 THE COURT: Okay. Let me just -- let me just
6 remind you that when you file a motion, my first question
7 to you always is: Did you serve it on the other side?

8 MR. TRAFICANT: I served it immediately.

9 THE COURT: They have a copy? You have this?

10 MR. MORFORD: Yes, your Honor. We have this.
11 I had a chance to go through it, and I don't have a problem
12 taking it one point at a time right now to save the Court
13 time.

14 THE COURT: Okay. Well, what we'll do is let
15 them respond. I want you to respond in writing -- you
16 apparently have a lot of time this morning to do that --
17 respond in writing as we do in every motion that's filed.

18 I don't know how you got through it. I haven't
19 gotten through it. It's over an inch thick, and it was
20 filed here at 9:37 this morning.

21 So as soon as we consider, like we always consider
22 motions, and I will let the Government respond and ask them
23 to do it in writing as soon as they possibly can.

24 MR. MORFORD: We will, your Honor.

25 And the only point I would note, to finish up what I

1 was saying before, the record will reflect that the Court
2 specifically instructed Congressman Traficant to have those
3 witnesses here today. He said that Mr. Manganaro had two
4 bids, but Mr. Johnson would be here. And I think the
5 record will --

6 MR. TRAFICANT: I do not recall having said
7 that.

8 THE COURT: The record is here, Congressman.
9 That's why we have court reporters.

10 MR. TRAFICANT: The record -- I wasn't
11 able -- I was told there would be no jury, and that
12 Mr. Johnson wasn't needed. And I was under the
13 impression --

14 THE COURT: I don't know whoever told you he
15 wasn't needed. Let me go to another topic since we have
16 you here.

17 MR. TRAFICANT: Let's do that.

18 THE COURT: Okay. This is a topic you seem
19 to be confused about, and it would help if you would read
20 the Court rulings.

21 Now, if you'd go back and read the Court ruling of
22 January 29th, which is Docket Number 153 on this issue of
23 Government vendetta --

24 MR. TRAFICANT: That's January 29th?

25 THE COURT: Right. Docket 153.

1 There was a ruling by this Court regarding any
2 references to what you allege is a Government vendetta
3 against you.

4 I want you to read it so that you understand what it
5 is you can and can't do. I did not exclude all records as
6 to any vendetta. Instead, I ruled that, like anybody else,
7 you must demonstrate to me out of the hearing of the jury
8 how any such references are relevant to the issues in this
9 case, your guilt or innocence on the charges against you or
10 to the credibility of a witness. You have to do that
11 before you can refer to any Government vendetta as you call
12 it in front of this jury.

13 MR. TRAFICANT: When have I referred to a
14 vendetta? Could you refresh me --

15 THE COURT: If you plan to ask questions
16 about a Government vendetta or present evidence about a
17 Government vendetta or anything that relates to what you
18 seem to characterize as a Government vendetta, you need to
19 let us know beforehand, before you attempt to do that in
20 front of this jury, so that we can allow time, as we did
21 today -- although I am not sure I will ever again release a
22 jury for a full day for you --

23 MR. TRAFICANT: This was --

24 THE COURT: -- allow time for you to satisfy
25 the Court outside of the hearing of this jury that the

1 references are somehow relevant to this case. Like all
2 other evidence, any evidence regarding what you
3 characterize as a Government vendetta has to be relevant to
4 the lawsuit. This is not just out there on the streets
5 where you can say whatever you want. This is a court of
6 law. We follow the rules.

7 So, at least, maybe we can get that settled for
8 today, and I'm not going to have you discuss it until you
9 read the Court's prior orders.

10 MR. TRAFICANT: Your Honor, I have to ask a
11 question. Am I allowed?

12 THE COURT: You're allowed to read the order,
13 and then you can respond, and we'll -- I'll listen to you
14 on Monday when we get back.

15 MR. TRAFICANT: No. I want to ask a question
16 now. I don't have the order with me.

17 THE COURT: You never bring any of these
18 things with you, but it's very easy for you to get them.

19 MR. TRAFICANT: For the record, have I
20 mentioned a vendetta? You are now asking me to alert you
21 if I might even refer to a vendetta.

22 THE COURT: In front of this jury, yes.

23 MR. TRAFICANT: Yes. Did I refer to vendetta
24 when I proved that in 1993, my IRS form was flagged for
25 criminal investigation?

1 THE COURT: You weren't listening to the
2 witness, apparently, when he testified when you asked those
3 questions.

4 MR. TRAFICANT: I listened to him very well.

5 THE COURT: Mr. Morford?

6 MR. MORFORD: Your Honor, he may not have
7 used the word vendetta, but he has certainly put this
8 vendetta notion in, included it in his opening statement
9 when he got up and said, "I've been targeted by the
10 Government since 1983 when I was acquitted. I've been
11 targeted. Friends in Congress said, Jim, you have a target
12 on your back. Watch what you say. I did the Taxpayers
13 Bill of Rights."

14 That was all evidence of a vendetta and entirely
15 irrelevant. So to sit here and say there was no attempt by
16 him to circumvent the Court's ruling on vendetta is just
17 not true.

18 THE COURT: In any event, Congressman, you
19 have failed to bring anyone here we can use to deal with
20 the issues of hearsay. I understand that there are a lot
21 of people here who have asked through the Court staff
22 whether or not when we adjourn, which we're about to do, we
23 can talk a little about the east courtroom.

24 MR. TRAFICANT: I want to respond to
25 Mr. Morford's statement. Did Mr. Morford object to any

1 statements I made in my opening remarks? No. Therefore,
2 he waived any right to object to any statement I make about
3 targeting or vendetta.

4 THE COURT: Thank you, Congressman.

5 MR. TRAFICANT: What's good for the goose is
6 good for the gander. That's what he said yesterday.

7 THE COURT: Thank you. We're adjourned. See
8 everybody at 9:00 on Monday morning, and I appreciate your
9 all being here, including my staff, who came in especially
10 for this hearing today.

11 We will now adjourn the hearing, but since there are
12 a bunch of people here who have asked that we talk about
13 the east courtroom, that's what I'll do next, and you're
14 welcome to wait until after we conclude this hearing.

15 (Proceedings adjourned.)

16 C E R T I F I C A T E

17 I certify that the foregoing is a correct
18 transcript from the record of proceedings in the
19 above-entitled matter.

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