



1 December 6, 1989

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3 (Open court, jury not present)

4 MR. SHIAH: I asked to see the Court because we have  
5 a problem.

6 My client, Ralph Lamont Munn, has informed me that he no  
7 longer wishes to participate in the trial.

8 The reason for that is that there have been ongoing  
9 discussions between myself and the U. S. Attorney's office  
10 regarding a possible plea in this case.

11 I have kept my client informed of the status of those  
12 discussions and negotiations. Mr. Hopeman and I have been  
13 talking at least over the last two to three days, and we have  
14 been trying to work something out. I relayed to my client,  
15 this morning, Mr. Hopeman's last communication to me -- which  
16 I understand is from the U. S. Attorney himself -- that at  
17 least, as of this morning, his mind set was that there will be  
18 no further negotiations and no further pleas.

19 John and I discussed that.

20 He indicated to me that he would attempt to talk to him  
21 again; and I said Fine, I would urge that.

22 And when I met with my client this morning, I gave him  
23 the last message.

24 Because he asked me, quite frankly, "What's going on?",  
25 and I told him that I was meeting with Mr. Hopeman, last

1 night.

2 I told him what the most recent status was.

3 And he said that's it, that he did not want to  
4 participate, and he said, "You may as well take me back  
5 downstairs".

6 I respect his desires in this particular situation.

7 I don't think this is any imagined thing on his part.

8 He feels very strongly about this, that he went forward  
9 and participated in the plea negotiation process, he made his  
10 proffer of proof; and now he's being told that nobody wants to  
11 respond to that.

12 Therefore, he's decided he does not want to participate  
13 in the trial.

14 He asked the marshals to take him downstairs, which  
15 presumably they have.

16 And that is where we are.

17 THE COURT: Well, you know, this is a kind of  
18 situation which obviously I have never been faced before.

19 MR. HOPEMAN: I think you've got to tell him that  
20 he's got a right to be there, if he wants to, and that he  
21 understands that; and, if he chooses not to be there, that his  
22 lawyer will be there for him.

23 THE COURT: At all times.

24 MR. FRIEDBERG: Wouldn't you think that could be  
25 done in chambers, without the rest of us present?

1 MR. HOPEMAN: I would think so.

2 THE COURT: I suppose I better do it in chambers.

3 Off the record.

4 (Remarks off the record.)

5 THE COURT: Back on the record.

6 MR. SHIAH: Notwithstanding my client's desire not  
7 to be present, I do think it hampers the defense somewhat  
8 because he's been cooperative with me.

9 I have utilized his information and his assistance in the  
10 course of the trial.

11 He's only a 19 year old kid. I understand why he is  
12 frustrated; but, by the same token, I would urge him to be  
13 there with me, to assist me in his defense -- which I have  
14 been charged to do.

15 THE COURT: Well, I will do the same.

16 And while we were off the record, we were just talking  
17 about the practical ways of handling this, and I think I will  
18 adopt what we were talking about; that is, I will call, if we  
19 can have Mr. Nunn be brought here, and we will talk with him,  
20 with yourself -- with Mr. Shiah -- and the court reporter, and  
21 with no other attorneys present.

22 So at least we will have that.

23 And I will advise him that he has a right not to be  
24 there; but, also, that the trial will continue, and that we  
25 can't stop the trial by his actions, and that you will

1 continue.

2 Mr. Hopeman?

3 MR. HOPEMAN: What will you tell the jury?

4 THE COURT: If he is not there?

5 I don't know exactly.

6 I guess my first reaction would be to tell them exactly  
7 what happened.

8 MR. FRIEDBERG: I don't think so.

9 I think you can tell them -- as you can do when somebody  
10 absconds -- to disregard the fact that he is not there.

11 THE COURT: That is what I was going to say.

12 I mean, I would say that "Mr. Nunn has decided he will  
13 not be here this morning. It has nothing to do with your  
14 responsibilities in this case, and you should disregard the  
15 fact that he is not here. His attorney will continue to  
16 defend him."

17 MR. HOPEMAN: Fine.

18 THE COURT: Or words to that effect.

19 MR. HOPEMAN: All right,

20 THE COURT: That is what I thought I would say.

21 I didn't mean to go through -- Mr. Wylde, do you have a  
22 comment?

23 MR. WYLDE: No.  
24  
25

1 (In chambers; those present are Judge Doty, Mr. Hopeman, Mr.  
2 Shiah, the defendant, the law clerk, the court reporter, and  
3 deputy marshals)

4 THE COURT: Why don't you sit down, Mr. Nunn?

5 The reason that I have asked you to come up and that we  
6 are here in chambers, is to talk about what your decision is;  
7 and we understand what you said, and what your attorney has  
8 told you, and what you have told him.

9 I want to make sure you understand what you are doing,  
10 and what is going on.

11 Your attorney has told us that you want to just not be  
12 here during the trial, and it is our understanding that your  
13 attorney and the U. S. Attorney have tried to work out  
14 something, negotiate a plea --

15 THE DEFENDANT: Mm-hum.

16 THE COURT: -- and have been unsuccessful in doing  
17 that.

18 And that is your understanding too?

19 THE DEFENDANT: Somewhat.

20 THE COURT: Well, it is my understanding that what  
21 has happened is that your attorney has tried as hard as he  
22 could, because he's been back and forth and he's been  
23 informing the Court what is going on, but he's been telling us  
24 what's going on, and Mr. Hopeman has been working on the other  
25 side, but apparently Mr. Hopeman has not been authorized to

1 reach any kind of a --

2 THE DEFENDANT: Yes.

3 THE COURT: -- deal with your attorney, so that it  
4 is just up in the air.

5 And that is, of course, a situation that, as the Court, I  
6 can't get involved in -- that is something that goes on beyond  
7 this -- but I want to make sure you understand what is  
8 happening, so that you can use your own good judgment, with  
9 your lawyer's advice.

10 What is going to happen -- and, as I understand it, you  
11 have told your lawyer you just don't want to be there any  
12 more.

13 Is that about right?

14 THE DEFENDANT: Yes, because there's too much -- I'm  
15 being confused with all this stuff going on, even with my  
16 lawyer, so I --

17 THE COURT: Well, it's not easy, there's a lot of  
18 hard material that is being put forth in the court, and it is  
19 not easy for anybody to understand all of that.

20 But the real point I want to make with you is this: You  
21 have a right to be there --

22 THE DEFENDANT: Yes.

23 THE COURT: -- an absolute right to be there.

24 You also have a right not to be there, if you want to  
25 choose that right.

1 THE DEFENDANT: Mm-hum (Nods head up and down).

2 THE COURT: But I have to tell you -- I want you  
3 clear headed and thinking about this -- that the trial is  
4 going to go on --

5 THE DEFENDANT: Yes.

6 THE COURT: -- one way or the other, and you are  
7 going to be considered as part of that trial one way or the  
8 other, and the jury will be considering your guilt or lack of  
9 guilt --

10 THE DEFENDANT: Yes.

11 THE COURT: -- one way or the other.

12 You understand all that?

13 You don't have to be sitting in there, if you choose not  
14 to, but you have to have a knowing, a voluntary waiver of  
15 that, if you choose that.

16 I want to make sure you know what is going on.

17 Your attorney -- I am going to order him to be there, he  
18 is not going to leave, and he can't leave because he's been  
19 told -- and he understands what's going on -- he's going to  
20 have to be there, and he will be doing, he will be  
21 representing you and defending you to the extent that he can,  
22 just as he would be if you were there.

23 THE DEFENDANT: So if I, if I stay in court, I can  
24 get on the stand, right?

25 THE COURT: You can take the stand. That is another

1 whole issue -- and we will go into that if you do decide to  
2 take the stand -- under the Fifth Amendment.

3 I am going to give you a warning about that.

4 You probably understand the Fifth Amendment right you  
5 have under the Constitution?

6 THE DEFENDANT: Yes, I understand all that.

7 THE COURT: But before you take the stand, I will  
8 talk to you further about that.

9 Anybody, any one of the defendants can.

10 But certainly you can take the stand, you can do all  
11 those things.

12 You have all those rights.

13 THE DEFENDANT: What if there's other issues that  
14 concern the whole matter, you know?

15 THE COURT: For example?

16 THE DEFENDANT: For example, my attorney -- when I  
17 was in Stillwater, and he asked me to tell him the truth --  
18 told him the truth.

19 And he told me, "You can't say that. The Government  
20 doesn't want you to say that."

21 THE COURT: Well, I don't want to get into those  
22 kinds of things, for fear that we are going to cross over the  
23 boundary of the Fifth Amendment rights.

24 But I know that we got a letter, I received a letter from  
25 you while you were in Stillwater, and the magistrate did,

1 also, you know, and I am sure you know how he dealt with that,  
2 but that was dealt with while you were there, and I  
3 understand, maybe, what you are talking about.

4 But from anything the court can observe, Mr. Shiah has  
5 been doing a very good job, and working hard, and been  
6 defending you as well as he can, and I think as well as could  
7 be done, from my view -- obviously, I don't know what you  
8 know.

9 But I want to make sure you understand this issue this  
10 morning -- that is, that you have a right to be there, and you  
11 have a right to not be there if you don't want to be -- but  
12 make sure you think it through, because Mr. Shiah is going to  
13 still be there representing you, and the case is going to go  
14 on and continue whether you are there or not.

15 It is up to you.

16 [ MR. SHIAH: Just so the record is clear, I am not  
17 sure what Mr. Nunn is talking about -- if it was in the  
18 context of plea negotiations or his version of what  
19 happened -- but I have never advised him not to tell the  
20 truth. ]

21 MR. HOPEMAN: Well, his, his proffer, I don't have  
22 any problems with.

23 His proffer is a little inconsistent with the testimony  
24 of Loren Duke, which was that he didn't know whose money it  
25 was.

1- Mr. Nunn stated to the officer that Loren Duke and Marcel  
2 Duke and other people had money in the 29 kilo deal.

3 THE COURT: This is in the --

4 MR. HOPEMAN: That's not the reason that the  
5 Government doesn't want to enter into a plea bargain with Mr.  
6 Nunn at this time.

7 The reason is that the U. S. Attorney won't approve any  
8 plea bargains in this case now, at this late date.

9 That is the only reason.

10 Judge, I think Mr. Nunn should understand that, if he  
11 wants to leave the trial, he can come back any time he wants  
12 to.

13 THE COURT: That is true, too. And I suspect what  
14 will happen is that you will just be brought along physically,  
15 you will come over every day, and you can stay where you wish,  
16 you can come up and be in the trial, or you can stay down in  
17 the marshal's holding area, and go back -- is Mr. Nunn still  
18 being kept at Ramsey overnight? --

19 THE MARSHAL: Yes, sir.

20 THE COURT: -- and just go back over to Ramsey  
21 overnight.

22 And, as I say -- Mr. Hopeman just made sure that you  
23 understood -- you can come and go as you please.

24 It is your right.

25 MR. HOPEMAN: The record should also show that I am

1 going to talk to the U. S. Attorney about this again.

2 I don't know if that would change Mr. Nunn's mind about  
3 whether he wants to be in court.

4 I will talk to the U. S. Attorney later today.

5 I understand the reasons for the U. S. Attorney's policy,  
6 but I will talk to him.

7 THE COURT: Okay.

8 Mr. Shiah, do you have anything else that ought to be  
9 covered?

10 MR. SHIAH: No, sir.

11 THE COURT: Mr. Hopeman, anything else that I  
12 haven't brought up or you haven't brought up at this point?

13 MR. HOPEMAN: Mr. Nunn, do you understand that your  
14 lawyer is going to be in there fighting for you, even if you  
15 are not there?

16 THE COURT: Do you want to answer that question Mr.  
17 Nunn?

18 You don't have to.

19 Are you with us, Mr. Nunn?

20 Just shake your head one way or the other.

21 MR. HOPEMAN: The record should show that he makes  
22 no response.

23 THE COURT: I think that was obvious.

24 MR. HOPEMAN: I think he should also be advised that  
25 it would be helpful to his defense if he were present in court.

1 with his attorney.

2 THE COURT: Well, I wanted to make sure, Mr. Munn,  
3 you understood that, that if -- are you listening? I know  
4 your eyes are --

5 THE DEFENDANT: (Nods head up and down).

6 THE COURT: Okay, I saw you nod.

7 I just want -- my personal view is that you are a lot  
8 better off while you are there, because it's going to go  
9 ahead -- as I indicated to you -- it is going to go ahead  
10 whether you are there or not.

11 The jury members, who are going to be determining the  
12 ultimate decision, are going to make up their mind based on  
13 the facts, whether you are there or not and so forth.

14 I don't know what they are going to do, what they will  
15 decide.

16 If you are not there, I'm going to have to tell them to  
17 disregard the fact that you are not there, and I will do that,  
18 on the record so that they understand that -- they won't  
19 really understand everything, but they will at least  
20 understand that you are not there, and that it's not important  
21 for them in order to decide one way or the other about what  
22 they're going to be deciding.

23 MR. SHIAH: He's not going to give the reasons  
24 you're not there, but merely going to tell the jury that you  
25 are not there and they are supposed to not consider that.

1 THE COURT: I don't know if you heard, you probably  
2 don't remember, but earlier on in the case I told them to  
3 disregard the fact that some people had pled guilty -- the  
4 same kind of a thing that I will be telling them this morning,  
5 if you decide -- do you understand that?

6 THE DEFENDANT: (Nods head up and down).

7 THE COURT: I notice your eyes are closing, but --

8 THE DEFENDANT: Yes.

9 THE COURT: Okay, you do understand that. I just  
10 wanted to make sure.

11 Are you okay this morning? Are you physically fine?

12 THE DEFENDANT: I don't know.

13 THE COURT: You don't know?

14 Are you, mentally, having problems? Confused?

15 THE DEFENDANT: Probably.

16 THE COURT: Well, I can understand why you might be  
17 unhappy.

18 But are you able to decide this morning?

19 MR. SHIAH: Your Honor, on the basis of my client's  
20 response, I am going to ask for a continuance until he gets  
21 evaluated, so he can make a proper decision as to whether or  
22 not he can participate in the trial. I am concerned about his  
23 physical and mental well being, as he sits here, just based on  
24 his response to the court's question, and, on his behalf, I am  
25 going to ask for a continuance until he's evaluated, to

1 determine whether or not he is competent to continue to stand  
2 trial in this case.

3 THE COURT: Do you have any idea what that would  
4 take, where -- how would we go about it?

5 You know, I am off my own turf here.

6 MR. SHIAH: I don't know.

7 But I think, all thing beings considered, that he has a  
8 right to be in a clear state of mind when he makes his  
9 decision, and I think that they can make arrangements to have  
10 him over to Ramsey or be evaluated by some professional who is  
11 more competent -- with no disrespect to the court or myself --  
12 I feel uncomfortable, based on what I am seeing here; and, if  
13 I am going to represent him, I think that he has to be  
14 evaluated, so we can make an intelligent decision, or so that  
15 he can make an intelligent decision about what he wants to do.  
16 These are very serious charges for Mr. Nunn, and we all know  
17 what the exposure is, and I want to make sure that he knows  
18 what he is doing, because we are talking about some important  
19 decisions.

20 THE COURT: Mr. Hopeman, do you have any comment  
21 about that?

22 MR. HOPEMAN: I don't have any objection to his  
23 being evaluated.

24 I do have an objection to a continuance. It would seem  
25 to me that, if it is going to take him awhile to be evaluated,

1 we ought to sever him out and proceed against the others, and  
2 declare a mistrial in his case alone, perhaps, and start over  
3 again later.

4 THE COURT: Well, I don't know.

5 Why don't we do this -- and, Mr. Nunn, do you understand  
6 what we are talking about now?

7 THE DEFENDANT: A little bit.

8 THE COURT: Okay.

9 Well, maybe we ought to do just what Mr. Shiah is  
10 suggesting.

11 Marshal, why don't you, if you would, take Mr. Nunn back  
12 down to the marshal's cell?

13 Do you have any idea of whether we could contact somebody  
14 at Ramsey County?

15 MR. HOPEMAN: Usually they are done at Rochester.

16 I think what we should do is call the magistrate, because  
17 they do this, and they will know how it is typically handled.

18 THE COURT: Okay.

19 Well, I can do that, and I'll call the magistrate, and we  
20 will just give a short delay here this morning, at least to  
21 find out what we are going to be up against, and then we will  
22 make a decision as to how to proceed from that point.

23 You understand, Mr. Nunn, what we are going to do?

24 MR. SHIAH: He's going to have a continuance, Monty,  
25 and we are going to try and make arrangements to have somebody

1 take a look at you to see how you are doing, that is what he's  
2 doing right now.

3 We are not making any decision on whether the trial is  
4 going forward or whether you are going to have to decide right  
5 now whether you want to be there or not.

6 Do you understand that much?

7 THE DEFENDANT: Yes.

8 MR. SHIAH: Okay.

9 THE COURT: Okay, fine, thank you.

10 Go ahead.

11 Why don't you --

12 MR. SHIAH: Your Honor, would it be possible to, --  
13 would I have an opportunity to confer with him in the  
14 marshal's office?

15 THE COURT: Sure, absolutely.

16 MR. SHIAH: Thank you.

17 THE COURT: That's no problem, is it, down there,  
18 for Mr. Shiah to confer with Mr. Nunn?

19 THE MARSHAL: No, Your Honor.

20 MR. SHIAH: Thank you.

21 (Recess)

22 (In open court, jury present)

23 THE COURT: Well, Ladies and Gentlemen of the jury,  
24 when we started this case and we did the voir dire, I think I  
25 promised you we would have a very interesting case, and I am

1 sure it has been that way you to you, until now. It continues  
2 to be interesting in some of the developments, also, and a  
3 development has occurred this morning, so that it is going to  
4 cause us to recess for the rest of the day.

5 I am not even sure that we will actually be in trial  
6 tomorrow.

7 Are there any of you who go long distances back and  
8 forth?

9 (Some hands are raised)

10 THE COURT: I'm not sure -- have they told you about  
11 the code-a-phone earlier?

12 (Jurors heads are nodded up and down)

13 THE COURT: I'll tell you what: Would you please  
14 all of you call the code-a-phone tonight? I think they tell  
15 you after six, don't they, they give you that information?

16 Would you call the code-a-phone after six tonight, about  
17 Judge Doty's case, because there is a question of whether we  
18 will be coming back tomorrow or not, and I would just as soon  
19 not have all of you traipse in here tomorrow and just be told  
20 that we are going to recess for tomorrow, also.

21 If you would call the code-a-phone, and I'll make sure.

22 And if there is any question in your mind as to whether  
23 you should be here, please come back at 9:00 o'clock tomorrow  
24 morning.

25 In other words, if it is confusing on the code-a-phone --

1 because I haven't talked to the jury clerk about it yet -- if  
2 it is confusing on the code-a-phone or something else, please  
3 come back here, ready for trial, tomorrow morning at 9:00  
4 o'clock.

5 At some point you will know what some of these issues  
6 are, but right now I am not going to tell you because it does  
7 not affect your deliberations, and we don't want it to affect  
8 your deliberations in any way, but at some point we will let  
9 you know what all these things are that are happening, if you  
10 are interested at that point.

11 A JUROR: What is our panel called? Are we A, B, C,

12 D, or what are we?

13 THE COURT: That's probably because I haven't talked  
14 to the --

15 Do we have a contact here with the clerks office?

16 Randy, would you mind, while we are here, would you go  
17 down and get Ms. Stassen and find out? Just tell her, as you  
18 bring her over, because she's back over this way (indicating),  
19 ask her how we can do this, to make sure that everybody  
20 understands what is happening.

21 (The law clerk leaves the courtroom)

22 THE COURT: Is there anything else that ought to be  
23 discussed by counsel?

24 MR. HOPEMAN: No, sir.

25 THE COURT: Anything else that anybody can think of?

1 Well, let's just sit at ease until we find out how to  
2 make sure that we have the right information to you.

3 (The jury clerk enters)

4 THE COURT: The question we have, Ms. Clerk, is that  
5 we may not want to come back tomorrow morning, but we will  
6 know by 5:00 o'clock tonight, and the question is: Can this  
7 jury call the code-a-phone?

8 THE CLERK: (Nods head up and down).

9 THE COURT: Some of them call from long distances  
10 What are they --

11 THE CLERK: I think the wisest thing to do is if  
12 I would say, "Anyone who is here on the Duke trial."

13 THE COURT: Okay, so the code-a-phone will be set  
14 with that message on it?

15 THE CLERK: I can do that, it will be on at 5:00  
16 o'clock tonight.

17 THE COURT: After 5:00 o'clock?

18 THE CLERK: Mm-hum.

19 THE COURT: So would you make sure we get in contact  
20 each other, so that you can get the information from me, would  
21 you, please?

22 THE CLERK: Fine.

23 THE COURT: I don't know if you heard Ms. Stassen,  
24 but -- for anybody that will call the code-a-phone -- it will  
25 be identified as the Duke trial. So you don't have to

1 understand the A, B, C's, or whatever.

2 If there is nothing on the code-a-phone, that means you  
3 should be here at 9:00 o'clock.

4 A JUROR: What is that number again?

5 THE CLERK: 290 3268; or 3219, also.

6 THE COURT: Everybody have the correct information?

7 THE CLERK: You understood that, if there is no  
8 message, that you are to be here?

9 That might be confusing.

10 THE COURT: That will not be confusing to this jury.  
11 They are a very good jury, very good.

12 Okay, thank you very much.

13 THE CLERK: Thank you.

14 THE COURT: So with that, Ladies and Gentlemen, you  
15 are excused for today.

16 And call the code-a-phone after 5:00 o'clock.

17 And if there is a message on there, it will let you know  
18 what it is.

19 If there is no message, please come back at 9:00 o'clock  
20 tomorrow, and we will see you at that time.

21 Thank you.

22 Counsel, if you would call the clerk's office, those of  
23 you who are not in St. Paul -- any questions from counsel? --  
24 then you can inform your client.

25 Anything else that ought to come before the court this

1 morning?

2 MR. HOPEMAN: Yes, sir, I think there is.

3  
4 (Jury not present)

5  
6 THE COURT: I think Mr. Shiah wants to make a motion.

7 Do you want to do it at the Bench or in open court?

8 MR. SHIAH: I can do it at the bench.

9 (At the Bench:)

10 MR. SHIAH: As the court is aware, when we started  
11 court this morning, I advised the court that my client did not  
12 wish to participate in the proceedings any further and wanted  
13 to leave the courtroom.

14 In response to that, we met in chambers, and the court  
15 conducted an inquiry of my client, Mr. Nunn, regarding that  
16 decision, and attempted to determine whether or not he  
17 understood what he was doing.

18 I believe that is on the record.

19 After watching what happened in court, I had some  
20 concerns about his mental competency to continue as a  
21 defendant in this trial, and I raised that with the court on  
22 the record, and the court then ordered him to be evaluated.

23 Subsequent to that meeting in chambers, my client was  
24 removed to the marshal's office on the sixth floor.

25 I had an opportunity to meet with him briefly.

1 I was again concerned about his mental health.

2 I advised the marshals what the situation was.

3 I left.

4 And it is now my understanding that, shortly after I  
5 left, he made an aborted suicide attempt.

6 I am not sure what the specifics are.

7 But it is my understanding now that he has been  
8 transported, first, for physical examination and evaluation at  
9 Ramsey Hospital; and, second, pursuant to an order of the  
10 court, he is now going to be evaluated to determine his mental  
11 competency.

12 I have three motions.

13 The first motion is that, based on these facts, I would  
14 move on behalf of Ralph Lamont Nunn for a mistrial.

15 Secondly, if the court deems it inappropriate to grant  
16 the mistrial motion, I would move for immediate severance of  
17 my client from this pending trial.

18 And, third, I would ask that, if I am still in trial, I  
19 would ask for a hearing, pursuant to the rules, to determine  
20 my client's mental competency to continue as a defendant in  
21 this case.

22 THE COURT: Mr. Hopeman?

23 MR. HOPEMAN: I oppose the first two motions.

24 I want to reserve objections on the third, until I hear  
25 more from the court about what the psychiatrist has said.

1 THE COURT: Well, so that the record is clear at  
2 this point, Mr. Shiah has accurately depicted what has gone  
3 on, at least in the Court's view, and the court has ordered a  
4 psychiatric exam to be performed.

5 The Court's been told by pretrial services that that  
6 psychiatric exam may be completed as early as this evening,  
7 and that is why the court has given the jury the instructions  
8 it has at this point.

9 Based upon the motions this morning and the fact that the  
10 court does not know yet what the situation is with Mr. Shiah's  
11 client, I am going to deny the motion for mistrial.

12 I am going to deny at this time the motion for severance,  
13 but certainly would encourage Mr. Shiah to make such a motion  
14 again, and maybe -- even on the Court's own motion -- may  
15 grant the severance, should other developments occur.

16 And I will also just hold up the ruling as to the  
17 evaluation, to give you, Mr. Shiah and counsel, any other  
18 information, so we have some information upon which to base  
19 such a motion after we hear from whoever is performing the  
20 psychiatric evaluation at this time.

21 But I encourage you to bring that motion up again,  
22 depending on what happens tomorrow.

23 I will just tell counsel here that it is the Court's view  
24 that, if we either have no completed psychiatric evaluation by  
25 tonight or 5:00 o'clock, or that evaluation is negative, that

1 I may not have trial tomorrow.

2 Mr. Hopeman, do you think we could handle the severance  
3 and those issues -- let's assume that he comes out negative,  
4 and the examiner says that he is not capable of standing  
5 trial -- would we have a problem going ahead tomorrow with the  
6 severance?

7 MR. HOPEMAN: No, we can go ahead.

8 THE COURT: Okay.

9 That may be the situation.

10 But I frankly want to evaluate what the psychiatric  
11 examination says before I decide anything further.

12 MR. SHIAH: And if we move into that third area, on  
13 just the issue of competency, as I explained to the court  
14 earlier, I want a full competency hearing with an opportunity  
15 to bring in my own people to present our side of the case.

16 THE COURT: And you certainly have the right to do  
17 that, and I don't want to indicate in any way that you are  
18 going to denied your right to do this.

19 At this time it may be premature, and it may be that you  
20 will be satisfied with what comes from the evaluation.

21 MR. SHIAH: I agree.

22 THE COURT: Anything else any other counsel wants to  
23 make at this point?

24 MR. HOPEMAN: 9:00 o'clock tomorrow?

25 THE COURT: 9:00 o'clock tomorrow is presumed.

1 I think you should just call the clerk's office here if  
2 you have any question about it.

3 MR. HOPEMAN: Could I have an order restraining  
4 anybody from talking to the press about what has happened?

5 THE COURT: Barry and Joe, you didn't hear that last  
6 comment.

7 MR. VOSS: I didn't.

8 THE COURT: The Government counsel has requested  
9 that this the court issue an order forbidding counsel to  
10 discuss this matter with their clients.

11 MR. HOPEMAN: No. With "the press".

12 THE COURT: I'm sorry, "the press" -- well, I don't  
13 think I need to issue that order.

14 MR. HOPEMAN: I meant for the government to be  
15 included.

16 THE COURT: And the government and everybody  
17 included in that.

18 MR. FRIEDBERG: Is that everybody in government?

19 MR. HOPEMAN: Yes, everybody from George Bush on  
20 down.

21 (Laughter)

22 THE COURT: No, not everybody.

23 Everybody that is here at the bench is hereby ordered to  
24 not to speak to the press until, at least, we know something  
25 more about it.

1 Anything else you would like to have on the record?

2 MR. HOPEMAN: No, thank you.

3 THE COURT: Let me make one point, Mr. Hopeman.

4 I understand, from the courthouse grapevine, that members  
5 of the press were down in the marshal's office during some of  
6 the activity, and they may well have found out about this  
7 independently.

8 MR. HOPEMAN: I don't know about that.

9 THE COURT: And I don't know whether the grapevine  
10 is correct, but you know how those things work. Apparently,  
11 there was some other activity going on, and the press had been  
12 summoned, and apparently they were there when this was going  
13 on, for some other reason.

14 MR. HOPEMAN: Well, they may have gone in there,  
15 because I noticed bluecoats running through the courthouse  
16 right before this happened with their keys jingling and  
17 everything, and that is a sign.

18 THE COURT: I don't know.

19 But, anyway, be that as it may, it is all, as I say,  
20 grapevine material, and it may not be true.

21 (Away from the Bench:)

22 THE COURT: Anything further for the court to  
23 determine this morning?

24 MR. HOPEMAN: No, Your Honor, thank you.

25 THE COURT: The court will stand in recess until

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tomorrow morning at 9:00 o'clock.

(Recess)

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