

HOLLIS DRISCOLL
Official Court Reporter
U.S. District Court
225 Cadman Plaza East
Brooklyn, New York 11201
(718) 260-2469
SS#: 073-52-7337

I N V O I C E

November 1, 2002

TO: Barbara Vale

IN RE: USA v. Jason Vale
CR-02-466

Transcript of proceedings
October 22, 2002

Before J. Gleeson

pp. 1-19
19 pp. @ 6.00 per page
Daily Copy

AMOUNT DUE: \$ 114.00

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR-02-466 (JG)
-against- : United States Courthouse
JASON VALE, : Brooklyn, New York
Defendant. : October 22, 2002
: 11:30 a.m.

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: ROSLYNN R. MAUSKOPF
United States Attorney
BY: CHARLES KLEINBERG
Assistant United States Attorney
One Pierrepont Plaza
Brooklyn, New York 11201

For the Defendant: THE LEGAL AID SOCIETY
FEDERAL DEFENDERS DIVISION
BY: JAN ROSTAL, ESQ.
THOMAS CONCANNON, ESQ.

Court Reporter: Holly Driscoll, CSR
225 Cadman Plaza East
Brooklyn, New York
718-260-2469

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1 THE CLERK: United States versus Jason Vale, docket
2 number CR-02-466.

3 MR. KLEINBERG: Good morning, Your Honor.

4 THE CLERK: Will the parties state their appearances
5 parties.

6 MR. KLEINBERG: Charles Kleinberg, Assistant U.S.
7 Attorney, for the United States.

8 MS. ROSTAL: Good morning, Your Honor. Jan Rostal,
9 Federal Defenders.

10 MR. CONCANNON: Good morning, Federal Defenders,
11 Thomas Concannon.

12 THE DEFENDANT: Good morning, Your Honor. Jason
13 Vale.

14 MR. KLEINBERG: Your Honor, let me just bring you up
15 to speed as of the last conference. The defendant had
16 inspected on October 1 the materials that we had made
17 available for inspection in July but the United States had not
18 yet copied the materials that the defendant asked to be copied
19 on October 1. On October 15 we hand delivered to the
20 defendant the materials that they requested to be copied.
21 Those materials consist of one box of documents about the size
22 of a xerox paper box and another box of documents about half
23 that size. That completes the government's production and as
24 per our discussion at the last conference, I would ask that we
25 schedule a motion day and schedule a trial date. We would ask

1 for late January or early February.

2 THE COURT: Ms. Rostal.

3 MS. ROSTAL: Judge, I know you're on trial, there's a
4 lot going on here but if you'll indulge us for just a moment.

5 THE COURT: Take your time, the jury just retired to
6 deliberate.

7 MS. ROSTAL: Okay. That was a quick trial.

8 I just want to, first of all, give you some
9 background to this case because I think that the couple of
10 times that I've appeared -- in any event, this has all been
11 sort of overwhelming and new to me and I haven't had a chance
12 to appreciate and understand the issues.

13 We have some specific requests, one about bail, one
14 about clarifying a statement the government made last time we
15 were here about Mr. Vale allegedly continuing to violate the
16 injunction. We think that's a pressing matter and we want
17 clarification from both the government and Court, if possible,
18 on it. But before I get to that, let me just give you a
19 little background about what I'm learning about this case.

20 I think I said last time that I was here that I had
21 thought that the government was dealing with this case since
22 the year 2000. I was wrong and I wasn't corrected by
23 Mr. Kleinberg. I believe it was at least 1998, that's when
24 the undercover buys of apricot seeds began. So, it was likely
25 before then that the FDA got involved in this and lawyers got

1 involved in this.

2 Mr. Vale was targeted by the FDA, if you will,
3 because he was operating a company, as you know, known as
4 Christian Brothers, a web site called www.apricotsfromgod, and
5 the backdrop to that which I think is of some importance in
6 the case is Mr. Vale's own experience, when he was 18 he was
7 diagnosed with a cancer, a small cell cancer that required
8 surgery and a grapefruit size tumor was removed from him.
9 They recommended continued chemotherapy and/or radiation. He
10 didn't -- he and his mother, who has been here in court, they
11 told him it was terminal at the time, they elected against
12 it. The cancer returned when he was 19.

13 He then underwent very serious surgery where they
14 removed not only tumors but a part of his lung, three ribs,
15 he's got a back covered with scars from the surgeries. He
16 went through a pretty critical course of radiation and
17 chemotherapy which was very, very hard, as you can imagine, on
18 him and his family. He came out of that and five or six years
19 later the cancer returned, only this time in a different site,
20 and he and his family decided that time not to go through the
21 conventional chemotherapy and surgery treatments. He changed
22 his diet. He is convinced that through nutrition and prayer
23 that he was able to not only beat the cancer that he had but
24 prevent its reoccurrence.

25 He found out about apricot seeds, believed that they

1 contained something called -- a compound, if you will, called
2 nitrilocite which there are people out there, I remember the
3 Laetrile debate myself from the seventies but I haven't given
4 it much thought in recent years, and there are a lot of people
5 out there who seem to think, rightly or wrongly, that the
6 anecdotal evidence is that people who eat apricot seeds and
7 lima beans and millet and certain readily available foods that
8 have nitrilocites in them are able to not only prevent but
9 shrink tumors.

10 There hasn't been much scientific debate on the
11 subject because in the seventies the FDA decided that that was
12 not a -- there was no scientific basis for that being a cure
13 or prevention. The folks who believe in this think that that
14 was a result of the fact that the compound itself is a food
15 and cannot be patented and, therefore, the pharmaceutical
16 companies couldn't get convinced to do the sort of studies and
17 tests that would result in it becoming a new drug approved by
18 the FDA and, therefore, no longer putting people like Mr. Vale
19 in the position of having to sell it in some illicit way.

20 Well, race forward to the present or at least the
21 past few years, Mr. Vale after his own experience, after what
22 he believes are the experience of many, many other rational
23 people and healthy people, started this company Christian
24 Brothers and started quite openly selling apricot seeds. The
25 FDA as early as I believe 1998 and possibly earlier started

1 sending him warning letters and that culminated in the
2 litigation with which Your Honor is quite familiar and,
3 ultimately, the consent decree and the injunction at hand.

4 Now, the problem that we face is that, and I say a
5 problem only because as things -- I've learned in the course
6 of my brief career here I guess, you know, the more
7 interesting it seems, the less interesting it is depending on
8 how much time you have. This is a fascinating case. There
9 are I think important issues not only of First Amendment
10 concerns but also free exercise of religion concerns, the
11 question of the contempt, the nature of a contempt charge,
12 whether it needs to be brought by grand jury indictment,
13 whether the government can proceed by order to show cause,
14 what are some of the defenses to this, is there an intent
15 defense, is there a necessity defense.

16 These are all issues that we're struggling with and
17 that at this point we can't even tell Mr. Vale what we think
18 he ought to do. And as you can see, he's quite able himself
19 to figure out his own course, he went pro se in the civil --
20 parts of the civil litigation. He's very active obviously in
21 his own defense but we're trying to give him some rational
22 guidance here that, you know, won't waste the Court's time and
23 is consistent with our obligations as his attorneys.

24 Now, when we stood up in court last time, what was
25 that, a month ago or three weeks ago, we told the Court that

1 we went to the FDA offices and reviewed some 30 boxes.
2 Mr. Kleinberg corrected me and said it was 20. It turns out,
3 I talked to the agent, it was 27, not that I care about these
4 things but we were in a room for many hours that day where we
5 couldn't be in the room with any of the boxes alone, the doors
6 were locked if somebody left or somebody came in, there's a
7 mirror there so they could watch you going through, we had no
8 moments of privacy to go through the boxes or the documents.
9 They're obviously taking this very, very seriously which I
10 don't begrudge them, they're entitled to do so, but making it
11 that much more difficult for us to do our jobs.

12 To give you an example, I think the first time we
13 were here, if I remember right, I remember looking at the
14 order to show cause and there was a reference in there to an
15 affidavit underlying the order to show cause that was sworn to
16 by the FDA agent. I think I might have said something about
17 it on the record, I frankly don't recall. I do recall saying
18 something to Mr. Kleinberg about it and then I forgot about
19 it, quite honestly. We got involved in all the other
20 discovery. I've, you know, been collecting all the other
21 discovery as well as boxes of things that Mr. Vale has given
22 me and I think it was on the 15th, the day we got the
23 discovery letter, I hadn't yet received the copies that they
24 were going to give me and I went back to the order to show
25 cause because I was thinking about an issue and I remembered

1 that affidavit.

2 I called the agent and I said I just want to make
3 sure that affidavit is coming as part of this. Oh, I'll get
4 back to you on that, he told me. And I got a call a little
5 while later and a letter that afternoon from Mr. Kleinberg
6 telling me that the affidavit was under seal and that we had
7 to make a motion to the Court to unseal the affidavit that was
8 underlying the order to show cause. That is the charging
9 instrument against my client.

10 Now, I don't dispute that and I doubt -- and
11 Mr. Kleinberg tells me he's not going to object to my making
12 such a motion but never, I don't think in my practice, have I
13 seen a situation where, for example, at an arraignment on a
14 complaint or an arrest warrant that there's an underlying
15 sealed affidavit and that it becomes the defense attorney's
16 obligation to not only discover it and find it amid all of the
17 other pieces of the puzzle that we're trying to put together,
18 and make an affirmative motion to unseal it. This is what
19 we're dealing with. We're trying to, you know, understand all
20 of this and things are being kept from us that unless we
21 figure them out, we don't have access to them, something as
22 important as that.

23 So, one of the things that I need to ask the Court
24 today is to unseal the affidavit which was attached to the
25 charging instrument against my client.

1 THE COURT: Granted.

2 MS. ROSTAL: Thank you.

3 I just also want to point out just so the Court knows
4 that in terms of what the government is seeking in this case,
5 I have from one of the other -- from the previous litigation
6 with Mr. Vale, one of his previous lawyers had given him what
7 was described as the government's -- U.S. Attorney's federal
8 sentencing guidelines calculations in the event that they did
9 bring contempt charges against him and it refers to a section
10 of the guidelines that they believe is an analogous guideline
11 to a contempt count of conviction and they telling Mr. Vale
12 that he faced a potential sentence of 235 to 293 months under
13 the sentencing guidelines.

14 Now, I'm not suggesting that we agree with that or
15 that that in any way has any rational basis but I know from my
16 discussions with Mr. Kleinberg here he's looking for time and
17 serious time and so this isn't -- it's a very simple case to
18 them but it's complicated to us for a host of reasons I think
19 I've outlined to the Court. I'd love to get it, you know, in
20 many ways I'd love to get it going, I'd love to get the case
21 tried in January. I don't think that's reasonable. I don't
22 think it's reasonable for all of the reasons that I've stated
23 but for my own personal concerns, I know I'm going to be gone
24 over a week in Thanksgiving, I'm going to be gone two weeks in
25 December over the Christmas holidays. That leaves about three

