UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. MATTHEW HALE, Defendant-Appellant.	)	On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division, No. 03 CR 011, The Honorable James T. Moody, presiding

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BRIEF AND APPENDIX FOR THE DEFENDANT-APPELLANT

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STATEMENT OF JURISDICTION

Since I was charged with violating 18 U.S.C. sec. 373 and 18 U.S.C. sec. 1503, the district court had jurisdiction under 18 U.S.C. sec. 3231. This court has jurisdiction under 28 U.S.C. sec. 1291 as this is a direct appeal from the judgment of conviction entered on April 6, 2005. Notice of appeal was timely filed on April _____, 2005.

ISSUES PRESENTED FOR REVIEW

1) Whether a rational jury could have found beyond a reasonable doubt that the target of my alleged murder solicitation was Judge Lefkow as opposed to one of the lawyers for Kirkland & Ellis.

2) Whether a rational jury could have found beyond a reasonable doubt that I was serious that the government informant murder Judge Lefkow.

3) Whether a rational jury could have found beyond a reasonable doubt that I solicited, commanded, induced, or otherwise endeavored to persuade the government informant to commit murder.

4) Whether the trial court erred in admitting evidence of my statements concerning the shooting spree of Ben Smith as "circumstances strongly corroborative of (my) intent" that the government informant murder Judge Lefkow, denying me a fair trial.

STATEMENT OF THE CASE

On April 26, 2004, I was found guilty by a jury of violating Counts One, Two, Four, and Five of a Third Superseding Indictment. Count One alleged that I committed the offense of Obstruction of Justice in violation of 18 U.S.C. sec. 1503 by sending a letter to the Honorable Judge Joan H. Lefkow allegedly containing false information (S.A. 051). Count Two alleged that under circumstances strongly corroborative of intent, I solicited, induced, or otherwise endeavored to persuade a government informant to murder her (what would be a violation of 18 U.S.C. sec. 111 and sec. 1114 dealing with the protection of federal employees) in violation of 18 U.S.C. sec. 373 (S.A. 053). Count Four alleged that by virtue of my alleged solicitation of Judge Lefkow's murder, I committed the offense of Obstruction of Justice in violation of 18 U.S.C. sec. 1503 (S.A. 059). Count Five alleged that I violated 18 U.S.C. sec. 1503 by telling my father to testify falsely to a grand jury.

A motion for judgment of acquittal on all counts, or in the alternative, a motion for new trial on all counts, was timely filed on June 24, 2004. On November 10, 2004, the district court granted my motion for judgment of acquittal on Count Five, denied it as to Counts One, Two, and Four, and denied my motion for a new trial (S.A. 001-042).

STATEMENT OF THE FACTS

I. My Association with Tony Evola.

Over a period of two years, government informant Tony Evola, at the behest of the FBI, infiltrated my church, the World Church of the Creator (hereafter "Church"), advanced to the position of head of my personal security (Tr. Vol. 6, pp.197, 213-214), and tried to persuade me that various people, including the Honorable Judge Joan H. Lefkow, should be murdered (Gov't Tr. 1/11/01; Def. Ex. 30, 5/25/01; Def. Ex. 32, 8/21/01; Gov't Tr. 12/17/02, B.O.E.). He further repeatedly referred to all of these people, as well as others, as "rats" (Gov't Tr. 1/11/01, pp. 2,11,14,18,22; Def. Ex. 30, p.1; Def. Ex. 32, pp. 3,8; Gov't Ex. 12/11/01 email; Gov't Tr. 2/5/02, p.1; Gov't Tr. 12/05/02, pp. 5,6, B.O.E.; Gov't Tr. 12/17/02, pp. 5,14,15,19, B.O.E.).

On several occasions in which Evola urged or suggested violence, I asserted my unwillingness to break the law (Gov't Tr. 1/11/01; Def. Ex. 30; Def. Ex. 32; Gov't Tr. 12/05/02, B.O.E.; Gov't Tr. 12/17/02, B.O.E.) and further asserted that as an organization devoted to legal and peaceful change, we must continue that approach (Gov't Tr. 1/11/01; Gov't Ex. 1/12/01 email; Def. Ex. 30; Def. Ex. 32; Gov't Tr. 12/06/01).

By the year 2002, however, after having been solicited several times the previous year by Evola, my position changed: I would continue to comport myself within the law, but if he wanted to do something outside the law (as he clearly indicated he did), that was his own business (see Gov't Tr. 2/5/02, p.8, lines 21-26: "Now I can't, once again, I can't order any kind of ah, physical attack upon the man. I can't instruct that uhm, but you do what you, what you want to do, you know. I mean, it's, it's, that's ah, none of my business and none of my concern"; Gov't Tr. 5/24/02, p.2, lines 14-16: Evola: "if you wouldn't mind him falling off the earth..." Hale: "No, I wouldn't

mind at all."; Gov't Tr. 12/05/02, B.O.E., p.5, lines 9-16: "Well, whatever you want to do basically, it's, you know? Ah, my position's always been that I, you know, I'm gonna fight within the law and but ah, that information's been pro-, provided. If you wish to ah, do anything yourself, you can, you know?"; Gov't Tr. 12/17/02, B.O.E., p.17, lines 5-6: "whatever a person wants to do, that's their own decision"; p.20, lines 8-9: "If they do something, that's their own business."

II. The Trademark Litigation.

In May 2000, an entity formally known as TE-TA-MA Foundation but operating as Church of the Creator (hereafter "TE-TA-MA") sued my Church for trademark infringement in the Northern District of Illinois at Chicago. The case was initially assigned to Judge Plunkett but was later transferred to Judge Lefkow (Tr. Vol. 4, pp. 51-53). TE-TA-MA was represented by Kirkland & Ellis lawyers James Amend (Tr. Vol. 4, p. 51), Kevin O'Shea, and Paul Steadman (Tr. Vol. 4, p. 75) (Gov't Ex. 12/4/02 email, B.O.E.).

In January 2002, Judge Lefkow granted summary judgment in my Church's favor (Tr. Vol 4, p. 59). The Kirkland & Ellis lawyers decided to appeal. I was upset about this and tried to discourage them from doing so (Tr. Vol. 4, pp. 126-131). I called them "scoundrels", labeled Amend a "definite Jew", and Steadman a "probable Jew" (Tr. Vol. 4, pp. 121, 128). I had in fact impugned the motives of the Kirkland & Ellis lawyers consistently since the filing of the lawsuit, calling the latter "malicious" and "frivolous" (Tr. Vol. 4, p. 128). Throughout the litigation, I in fact urged my followers to call, harass, and make threats against the three lawyers (Tr. Vol. 4, pp. 118-121). At my request, members of the Church made threatening phone calls and sent threatening emails to Amend and the other lawyers. The lawyers in turn asked Judge Lefkow to award attorney fees partially on that basis (Tr. Vol. 4,

pp. 90-93) but she declined to do so in March 2003 (Tr. Vol. 4, p. 107).

Judge Lefkow's granting of summary judgment in our favor was reversed by a panel of this Court in July 2002, the panel ordering Judge Lefkow to order my Church to quit using the name "Church of the Creator" (Tr. Vol. 4, pp. 61, 137). Following this, the Church and I accused the lawyers of fraud in bringing the case and moved to disqualify them from continuing to represent TE-TA-MA (Tr. Vol. 4, pp. 83-85). On November 19, 2002, Judge Lefkow issued her order and injunction (Gov't Ex. 29).

In late November 2002, I read an article on the website of the Anti-Defamation League claiming that Judge Lefkow's order required us to deliver up for destruction all material bearing the name "Church of the Creator". I consequently wrote up an article for our monthly newsletter called "The Struggle" addressing this possibility and quoting what our Founder Ben Klassen had written in The White Man's Bible concerning the possibility of violence being used by the government one day in order to deprive us of our religious liberties. This article was sent as a preview to twenty-seven members or supporters of the Church, including Tony Evola, before being mailed out in paper form as well as emailed to our email list (Gov't Ex. 11/29/02 email, B.O.E.).

On the premise that Judge Lefkow's order really did require the destruction of our materials--contrary to merely the obliteration of the infringing mark as the lawyers had requested and made clear was all they wanted before she issued her order (Tr. Vol. 4, pp. 76-77, 122)--I entitled the article "Rigged Court System Declares War on Church" and stated that the alleged order "places our Church in a state of war with this federal judge and any acting on authority of her kangaroo court." I further stated "...not only is this a war against our Church and its teachings but also a war against me personally since I represent this struggle." I also stated, "...nor have we received any docu-

mentation at all that such an order has been issued." I further expressed my hope that Judge Lefkow would hear the motion we had pending to dismiss TE-TA-MA's case and award judgment in our favor based on the fraud we had alleged it had committed in getting a trademark on what we felt was our rightful name (Gov't Ex. 11/29/02 email, B.O.E.).

I had used somewhat similar rhetoric to the preceding two and a half years earlier when I had also perceived my, or my Church's, Constitutional rights as being violated (Gov't Tr. 6/30/00, B.O.E.). I had said then the following: "I declare today that this government is illegitimate, has no basis of authority over we racial loyalists who are free according to our own conscience to take whatever actions we deem necessary to resist this tyranny" (Id, p.2, lines 24-30). I further had announced that I could "no longer in good faith and in good conscience urge, recommend, or instruct my adherents and supporters in general to obey the laws of this land" (Id, lines 35-39).

As for Judge Lefkow's order, I had stated publicly that I did not intend to abide by it because I considered it a freedom of religion issue (Tr. Vol. 4, p.74). Kirkland & Ellis lawyer Amend in turn filed a motion seeking to hold the Church and me in contempt through a rule to show cause (Tr. Vol. 4, p.73) alleging that the Church had failed to comply with Judge Lefkow's order (Tr. 4, p.67). The lawyers further sought a bench warrant for my arrest (Gov't Tr. 12/17/02, p.28, lines 23-24, B.O.E.).

On December 4, 2002, I met with our IL State Leader Jon Fox (Tr. Vol.5, p.81), told him I would be obtaining Judge Lefkow's address for a street demonstration in front of her house (Tr. Vol.5, pp.126-127) in the event that I was indeed arrested (Def.Ex.18), eventually did get it (Tr. Vol. 5, p.227), and provided it to him (Tr.Vol. 5, p.231; Def.Ex.18). Accordingly, I emailed Evola whom I had delegated similar tasks to in the past (Tr.Vol.6, p.217), and asked

him to get her address as well as that of the three Kirkland & Ellis lawyers, providing their business addresses in the process (Gov't Ex. 12/04/02 email, B.O.E.). I further labeled Amend a "Jew", Steadman a "Jew", O'Shea a "Traitor White", and Judge Lefkow a "Probable Jew or Married to Jew" the same way I had labelled Amend and Steadman before (Tr. Vol.4, pp.121,128). As was my position upon the denial of my law license (see again Gov't Tr. 6/30/00, B.O.E.) I included a statement saying "Any action of any kind against those seeking to destroy our religious liberties is entirely up to each and every Creator according to the dictates of his own conscience." A "Creator" was a member of the World Church of the Creator (Tr. Vol. 7, p.16). I closed with the slogan "RAHOWA!", an acronym for "Racial Holy War" which I used routinely in place of "hello" and "goodbye" in my writings and conversations with my fellow Church members (see e.g. Gov't Tr. 6/30/00, B.O.E.; Gov't Tr. 1/11/01; Gov't Ex. 12/5/02 email, B.O.E.; et alia). "RAHOWA", further, is a war of minds, not violence (Tr. Vol. 5, pp.29-30).

The next day, December 5, 2002, Evola unexpectedly showed up at my house (Gov't Tr. 12/5/02, p.1, lines 6-7 and p.7, lines 21-24, B.O.E.). The bulk of the conversation took place inside (Tr. Vol. 7B, p.84). The following exchange took place:

Evola: Well, I got your email about the Jew judge,...
Hale: Right.
Evola: ...you wanting his address and the other rats. Ah...
Hale: That information yes, for educational purposes and for whatever reason you wish it to be.
Evola: Are we gonna...I'm workin' on it. I, I got a way of getting it. Ah, when we get it, we gonna exterminate the rat?
Hale: Well, whatever you wanna do...
Evola: Jew rat?
Hale: ...basically, it's, you know? Ah, my position's always been that I, you know, I'm gonna fight within the law and but ah, that information's been pro-, provided. If you wish to, ah, do anything yourself, you can, you know?
Evola: Okay.

Hale: So that makes it clear.
Evola: Consider it done.
Hale: Good.
Evola: Consider it done. Ah, it's fucked up, man.
Hale: Yeah well (chuckling)...

Gov't Tr. 12/5/02, p.4 line 26 thru p.5, line 23.

According to Evola, I nodded and smiled at him while I said the words "whatever you wanna do basically" (Tr. Vol. 8, p.88).

I reiterated the position I had set forth in the email of the previous evening and repeated in the excerpt above by saying "whatever a Creator wants to do is, is their decision..." (Gov't Tr. 12/5/02, p.6 lines 23-24, B.O.E.).

Evola then stated that he would get the address of the "Jew judge" and "lawyer rat" (Id, p.6, lines 32-34) (There is an errant comma between "lawyer" and "rat" in the transcript but obviously commas don't exist audibly, "lawyer" modifies "rat" just as "Jew" modifies "judge" before it, there is no break between the words on the recording, and the court reporter at trial transcribed it as "lawyer rat" (Tr. Vol. 9, p.75)). I did not then query Evola as to whether the "Jew rat" he had said that he was going to "exterminate" was a different person than this "lawyer rat."

I then told Evola to send the addresses of the judge and lawyers as soon as he obtained that information so that I could post it on the Internet (Gov't Tr. 12/5/02, p.7, lines 1-6, B.O.E.). I had posted information about the Kirkland & Ellis lawyers in the past as well (Tr. Vol. p.121).

Shortly before the end of the conversation, Evola stated that he was "just a guy trying to keep (me) alive" to which I replied, "if you get word that I've been, you know, something happens to me, then, you know, make sure that, that the world knows about it in a very strong way, you know." (Gov't Tr. 12/5/02, p.8, lines 14-23, B.O.E.).

Since Evola had stated that he would obtain the addresses, I emailed 27

members and supporters (the same people I had sent the 11/29/02 email to) that same evening, including Evola, telling them that we were in the process of getting the home addresses (Gov't Ex. 12/5/02 email, B.O.E.).

Four days later, on December 9, 2002, I received an email from Evola indicating for the first time that he had murderous designs towards a "femala rat" (Gov't Ex. 12/9/02 email, B.O.E.). It was supposed to read "female", "femala" being a typo (Tr. Vol. 9, p.24). He was instructed by the FBI to send the e-mail but didn't know why (Id). He was told to send me the email directly following a meeting with the FBI and prosecutor where he met the latter for the first time (Id, pp. 18-25).

On December 12, 2002, I wrote Judge Lefkow reporting the fraud of Kirkland & Ellis lawyer Kevin O'Shea, imploring her to hear our pending motion for judgment in our favor due to the fraud of the other side, referring to her in the sixth paragraph as "Your Honor" and "thank[ing] (her) for (her) time and consideration" (Gov't Ex. 11; Tr. Vol. 4, pp. 142-146).

On December 17, 2002, eight days following my receipt of the email informing me that Evola had designs on the life of Judge Lefkow for the first time, Evola came to my house once again, unannounced (Gov't Tr. 12/17/02, p.1, B.O.E.). The bulk of the conversation took place as we walked around the block (Tr. Vol. 7B, pp. 83-84). I told him that I couldn't be a part of any plot on the life of Judge Lefkow (p.2, lines 24-25). I told him that I couldn't "be a party to such a thing" (p.6). I told him "the shit's gonna really hit the fan" (p.11, lines 5-6). I told him that I was innocent as far as any attempt on the life of Judge Lefkow was concerned (p.11, lines 14-17). He asked for an alibi, "two trusted brothers", and money which I refused (pp. 9,11,12,15,17,18, and 21). I told him--as I had on December 5th and in my email of December 4th--that whatever a person did was according to the dictates of their own consci-

ence (p.13, lines 23-24). I told him that I hadn't ordered, instructed, or encouraged Judge Lefkow's murder (p.14, lines 3-6). He told me that "she's gotta go down, I guess" to which I replied, "I don't" (p.15, lines 1-5). I told him that his plans were "too serious", "incredible" (unbelievable), and that I didn't want her murder (p.20, lines 1-4). I denied having ordered Judge Lefkow's murder (p.21, lines 8-14). I told him that if his plans really came to pass that "it would be a very, very heated situation" (p.26 lines 8-9).

I told him that I didn't want to know about his plans because I thought I was legally obligated to inform on him (p.7, line 31 thru p.8, line 7). At the same time, I thought that as a minister, our conversation was privileged (p.7 lines 15-21) and that I had a duty to "keep confidences confidential" (p.14 lines 9-21). Thus I told him that he was"putting me in an impossible situation" (p.6 lines 17-18).

Unlike what occurred on December 5th, I didn't nod or smile at him on December 17th (Tr. Vol. 9, pp.46, 48, 53-54).

I was arrested on January 8, 2003 (Tr. Vol. 9, pp.123-124) and charged with soliciting Judge Lefkow's murder and obstruction of justice by virtue of that alleged solicitation.

III. The Third Superseding Indictment and the Trial.

The government in its Third (and final) Superseding Indictment cited the July 1999 shooting spree of Benjamin Smith and my alleged reactions to it as "circumstances, among others, strongly corroborative of (my) intent that (Evola) engage in the forcible assault upon and murder of, United States District Judge Joan Humphrey Lefkow" (S.A. 056-057). At trial, the prosecution elicited testimony concerning the Smith shooting spree (Tr. Vol. 4, pp. 186-202) over objection (S.A. 061-068; Tr. Vol. 4, pp. 187-194) and played recordings of my commenting on Smith, the spree, and its victims (see Gov't Tr.

7/30/99, 6/17/00, and 6/29/00) also over objection (S.A. 062-082; Tr. Vol. 4, p.188-194, Tr. Vol. 6, pp. 181-193). The prosecution further, also over objection, cited Smith and his victims in closing argument (Tr. Vol. 11, pp. 15-17) and rebuttal (Tr. Vol. 11, pp.123-124) and during the latter said, "The government had evidence that the defendant had a member of his organization kill two people and shoot lots of others" (S.A. 084; Tr. Vol. 11, p.140) despite the trial court's admonition to "stay away from anything that's going to be inherent in saying that Hale had anything to do with Ben Smith" (S.A. 068; Tr. Vol. 4, p.194).

STANDARD OF REVIEW

I. Insufficiency of Evidence (Issues 1-3)

"In all criminal cases, the government must prove each element, even those that the defendant does not specifically contest, beyond a reasonable doubt to convict a defendant." U.S. v. Jones, 248 F.3d 671, 675 (7th Cir. 2001).

A conviction will be reversed on appeal if no rational jury could have found the defendant guilty beyond a reasonable doubt. A defendant is not required to demonstrate that no evidence at all supports his conviction, but rather that the evidence cannot support a finding beyond a reasonable doubt. U.S. v. Rahman, 34 F.3d 1331, 1337 (7th Cir. 1994) (18 U.S.C. sec. 373 conviction reversed).

II. Erroneous Admission of Evidence (Issue 4)

This Court reviews a district court's evidentiary rulings for an abuse of discretion. It asks whether the district court made a decision that was within the range of options from which this Court might expect a reasonable trial jurist to choose under the circumstances. United States v. Heath, 188 F.3d 916, 920 (7th Cir. 1999) (Judge Moody decision to admit evidence reversed). A conviction will be reversed and the case remanded for a new trial if the defendant can show that trial errors of less than constitutional dimensions may have had a "substantial influence" on the result of the trial. United States v. Pirovolos, 844 F.2d 415, 425 (7th Cir. 1988) citing Kotteakos v. U.S., 328 U.S. 750, 764-65 (1946).

SUMMARY OF THE ARGUMENT

Stripped of media hype, attorney argument, ideological hate, and the natural aversion for a man charged with trying to have a judge murdered, there is no evidence that a solicitation of the Honorable Judge Joan H. Lefkow's murder occurred or that I intended harm towards her in any way. On the contrary, the evidence shows decisively that I refused to join a plot against her life and that I didn't want her murder. Thus the case that this Court now sits in judgment upon is unusual in that not only does the defendant-appellant before it argue that no rational jury could have found him guilty beyond a reasonable doubt but further, that the evidence absolutely proves his innocence.

Specifically, in order for a conviction under 18 U.S.C. sec. 373 to be valid, a rational jury must have been able to find beyond a reasonable doubt that the target of the alleged solicitation was Judge Lefkow, that I was serious that Evola actually harm her, and lastly, that I endeavored to persuade him to do so. Instead, as I will demonstrate, there is no evidence of any of these elements, let alone all of them, not to mention proof beyond a reasonable doubt to any rational person. Further, the evidence actually shows beyond a reasonable doubt that it wasn't even Judge Lefkow being talked about, that I wasn't serious that Evola harm her, and that I did not endeavor to persuade him to do so. Thus my convictions must be reversed.

The decision of the trial court to allow into evidence my inflammatory statements concerning the Ben Smith shooting spree as "circumstances strongly corroborative of (my) intent" that Evola murder Judge Lefkow was unreasonable, violated the principles of Rules 403 and 404 of the Federal Rules of Evidence, and denied me a fair trial. Those statements I made concerning Smith and his spree had absolutely no probative value as to whether I intended that Evola murder Judge Lefkow and were unfairly prejudicial.

ARGUMENT

I. No rational jury could have found beyond a reasonable doubt that the target of my alleged solicitation was Judge Lefkow as opposed to one of the Kirkland & Ellis lawyers.

The entire premise of the government's case rests on the assumption that I thought that Evola was talking about Judge Lefkow on December 5th. This is an assumption not only totally lacking in evidence to support it but is also totally disproved by the December 9th "femala rat" email and my reaction to Evola's (new found) plans against Judge Lefkow expressed on December 17th. I submit that the facts stated above show clearly what happened here: I thought that Evola was talking about a lawyer--one of the lawyers listed in the December 4th email as Jewish and for whom I had shown animosity towards for two years. He then confirmed my understanding when he said that he was going to get the address of the "Jew judge" and "lawyer rat". Then suddenly on December 9th, he emailed me telling me that he planned on having a "femala rat", or Judge Lefkow, murdered. When Evola and I spoke on December 17th, I told him that his new plans were too serious, that I didn't want her murder, that the shit was going to really hit the fan if it happened, that I wasn't encouraging it, that I hadn't ordered it, and other statements totally negating any intent that she be harmed.

Presumably the FBI instructed Evola to send the "femala rat" email because it sought my conviction on a charge of soliciting the murder of a federal judge rather than a lawyer, or perhaps it genuinely thought that Evola and I were talking about Judge Lefkow on December 5th. In any case, the fact that the FBI felt compelled to specify the "femala rat" rather than simply "rat" shows that the FBI itself didn't know who was being talked about (and hoped to select the identity of "the rat" after the fact) and if the FBI didn't know, it is difficult to envision how a rational jury could have found

beyond a reasonable doubt that I knew. In any case, just because Evola announced plans on December 9th to have a "femala" rat murdered doesn't make it so that I thought he was talking about Judge Lefkow on December 5th, and I of course refuted the notion that I wanted harm to her during our conversation on December 17th. Further, Evola's switching of targets from a lawyer on December 5th to Judge Lefkow on December 9th was to my mind nothing new as borne out by the conversation of August 21, 2001 (Def. Ex. 32) in which he alternated between wanting to kill a man named Dan Hassett and Ken Dippold.

While I believe that the foregoing already itself demonstrates reasonable doubt to any rational person, I will now provide further argument and analyze the facts in minute detail so as to insure that my name is cleared of this falsehood. I will do so through the evidence, reason, logic, and mathematics.

A. No rational jury could have found beyond a reasonable doubt that I thought Evola was talking about Judge Lefkow on December 5, 2002 when he asked, "we gonna exterminate the rat?" "Jew rat?"

Since the jury had a duty to presume me innocent of the charge itself, it follows that it had a duty to presume me innocent of each element of the charge. It follows therefore that the jury had a duty to 1) presume that I did not solicit, 2) presume that there weren't circumstances strongly corroborative of my intent, and 3) presume that I thought Evola wasn't talking about Judge Lefkow. Only if a rational jury could have found beyond a reasonable doubt the converse of these presumptions--all three of them--could my conviction(s) be valid.

No rational person can say that it is clear from the above excerpt (pp. 7-8) of the conversation that I thought Evola was talking about Judge Lefkow. Hence no rational jury could have found beyond a reasonable doubt that I thought he was and my convictions must be reversed. A reading of the transcript coupled with the December 4th email shows clearly that Evola is referring

to multiple people as "rats" and at one point even refers to a "Jew judge" and "lawyer rat". There is thus huge doubt as to who Evola was even talking about, let alone who I thought he was talking about. Evola of course never says that he's talking about Judge Lefkow and nor do I acknowledge that he's talking about her. What he says is that he's going to "exterminate" a "Jew rat" but he admitted at trial that the term "Jew rat" "couldn't be just limited to one person" and that the term "Jew rat" "could have been" used frequently to refer to people in addition to Judge Lefkow (Tr.Vol.9, pp.75-76). Not only does this show reasonable doubt that I thought the "Jew rat" being talked about on December 5th was Judge Lefkow and hence requires reversal of my convictions, but further, this means that I could have heard him speak about murdering a "Jew rat" on December 5th and then heard him speak about a plan to murder a "Jew rat" on December 17th without thinking that he was talking about the same person. After all, if Evola refers to several people as "Jew rats", how could I know that a "Jew rat" on one occasion is the same as that on another occasion?

The issue of course is what I would think--not what the government would have me think. Put succinctly, I submit that no rational jury could find that of the four people whom Evola referred to as "rats" on December 5th--two of whom I had referred to in my December 4th email as Jews (both lawyers) and one as a "Probable Jew or Married to Jew" (Judge Lefkow) (see again Gov't Ex. 12/04/02 email, B.O.E.) that beyond a reasonable doubt, I thought he was referring to Judge Lefkow, and if there isn't proof beyond a reasonable doubt that I thought he was talking about Judge Lefkow, my convictions simply must be reversed. If there isn't proof beyond a reasonable doubt that I thought he was talking about Judge Lefkow, there was only one conversation, and one conversation only, in which he and I talked about a plot against her life and that was on December 17th, and what did I say on that date? I said that his plans were

"too serious", that I didn't want her murder, that the shit was going to really hit the fan if it happened, and other statements totally at odds with my saying "Good" on December 5th. My statements on the two dates simply cannot be reconciled while maintaining the fiction that I thought he was talking about Judge Lefkow on both occasions.

The simple fact of the matter is that when I knew definitively that he had violent designs towards Judge Lefkow (on December 9th) and spoke about the matter (on December 17th), I completely rejected the notion that I wanted her harmed. In other words, the evidence shows that when Evola clearly expressed a plan to murder Judge Lefkow for the first time in conversation on December 17th, my responses included "this is too serious", "the shit's gonna really hit the fan", "I don't want anything", and other statements completely at odds with my saying "Good" on December 5th. It is plain that I thought Evola was talking about a lawyer on December 5th and there isn't a shred of evidence to the contrary.

The best possible scenario for the government was that there was a 33% chance on its face that I thought Evola was talking about Judge Lefkow on December 5th since there were two other people listed as either Jews or "Married to Jew" in the email he was referring to (see again Gov't Ex. 12/4/02 email, B.O.E.). In reality, however, the chance was more like zero for all of the reasons I've stated along with this additional fact: the evidence shows that I thought Judge Lefkow was married to a Jew, not that she is Jewish herself (Tr. Vol.5, p.20 and Tr. Vol.5, p.112). I would thus far more likely think that Evola was referring to one of the Jewish lawyers when he said he was going to "exterminate" the "Jew rat" than a woman I didn't even think was Jewish. Whether 33% or zero, such a "chance" can hardly be considered by any rational jury as proof beyond a reasonable doubt.

As a summary to this point, the evidence shows that Evola on December 5th said that he was going to "exterminate" a "Jew rat" and that I thought that James Amend and Paul Steadman, both lawyers, were Jewish. The evidence further shows that I thought that Judge Lefkow was not Jewish. The evidence also shows that Evola on December 5th referred to a "lawyer rat". Thus the "Jew rat" and the "lawyer rat" were to my mind one and the same.

It also bears note that of the numerous people whom Evola had referred to as "rats" over a two-year period, all of them were male. So, I would more likely think that he was once again referring to a male--specifically one of the lawyers--when he asked "we gonna exterminate the rat?" "Jew rat?" Further, whether it's right or wrong, the term "rat" is almost never used in regards to women. For example, most people if they heard the statement, "That no good rat", would think that the person being talked about is a man, not a woman. So, once again, for this reason as well as for multiple others, I would far more likely think that he was talking about one of the lawyers than Judge Lefkow.

As for motive, the facts show decisively that I had a greater motive to "solicit" the murder of one of the Kirkland & Ellis lawyers than the judge who had ruled in our favor. I had accused them of fraud, I had urged my followers to harass and threaten them, I had tried to disqualify them from continuing to represent TE-TA-MA, and certainly the death of a lawyer for TE-TA-MA would benefit my Church more than that of Judge Lefkow. If one of the lawyers had been murdered, perhaps the litigation would have ended. If Judge Lefkow had been murdered, she simply would have been replaced by another judge. Further, I had asked her in my December 12th letter (see again Gov't Ex. 11) to hear our pending motion to throw out the trademark case on grounds of fraud which begs these questions: 1) how could she hear our motion if she were dead? and 2) why would I bother to write her a letter asking her to do so if I had solicited her murder

one week before? So, while my trial counsel unfortunately wasted time and distracted the jury during Amend's testimony and closing argument trying to show that it would have made more sense if I had solicited the murder of the three judges on the Court of Appeals who had ordered Judge Lefkow to reverse herself, whose murder would it have made more sense soliciting still? One of the lawyers for TE-TA-MA.

The trial court, in denying my motion for judgment of acquittal, based its decision that a rational jury could have found beyond a reasonable doubt that I thought that Evola was talking about Judge Lefkow on December 5th on the notion that when Evola said, "I, I got a way of getting it. Ah, when we get it, we gonna exterminate the rat" that the "it" related back to "his address" (he apparently thought the judge was a man)(S.A. 011, 014-015). This is clearly in error since I had just said to him, "That information yes, for educational purposes and for whatever reason you wish it to be" and the information I was referring to was wanting the addresses of Judge Lefkow and the three lawyers. I had, after all, tasked him with getting several addresses, not just Judge Lefkow's, and that was the "information" Evola's "it" was referring to. As he said at the beginning of the exchange, "Well, I got your email about the Jew judge, you wanting his address and the other rats." Though there is an omitted apostrophe after the "s" in "the other rats", it is obvious that it was the addresses of "the other rats" that I wanted, not "the other rats" themselves (see again Gov't Ex. 12/4/02 email, B.O.E.). In other words, a factually correct reading of the excerpt shows that 1) Evola said that I wanted Judge Lefkow's address and "the other rats" addresses, 2) that that was the "information" I was referring to, 3) that his "it" related back to "information", not "his address", and that 4) Evola queried whether we were going to "exterminate" one of these four people, narrowing it down to three when he as-

ked, "Jew rat?". Let me illustrate the foregoing as follows:

> Evola: Well, I got your email about the Jew judge,...
> Hale: Right.
> Evola: ...you wanting his address and the other rats (addresses). Ah...
> Hale: That information (my wanting the addresses) yes, for educational purposes and for whatever reason you wish it to be.
> Evola: Are we gonna...I'm workin' on it (getting the information, i.e. the addresses). I, I got a way of getting it (the information, i.e. the addresses). Ah, when we get it (the information, i.e. the addresses), we gonna exterminate the rat?
> Hale: Well, whatever you wanna do...
> Evola: Jew rat?
> Hale: ...basically, it's, you know? Ah, my position's always been that I, you know, I'm gonna fight within the law and but ah, that information's (the business addresses) been pro-, provided. If you wish to, ah, do anything yourself, you can, you know?
> Evola: Okay.
> Hale: So that makes it clear.
> Evola: Consider it done.
> Hale: Good.

It is thus clear that the trial court failed to understand that when Evola said he was going to get "it" that the "it" was composed of four addresses and that the sustaining of my convictions is a result of a clearly mistaken reading of the excerpt. The "his" and "rats" in "you wanting his address and the other rats" are both possessive, referring to my request for Judge Lefkow's address and the three lawyers' addresses. That is the "information" Evola's "it" referred to and consequently Evola queried whether we were going to "exterminate" one of these four people. Thus reasonable doubt exists right on its face as to whom I thought Evola was talking about and acquittal is mandated.

I note also that the lack of an apostrophe after "rats" in the printed transcript obviously doesn't change the fact that "rats" is possessive since no punctuation marks exist audibly, it's what was said that is the evidence as the jury was instructed (Tr. Vol. 12, p.8), and Evola was clearly referring to my request for Judge Lefkow's address ("his address") and the three lawyers' ("and the other rats") addresses. He then said "I'm workin' on it" meaning that he was working on getting the addresses. I accordingly sent out an email to twenty

-seven people later that evening saying, "[w]e are in the process of getting their home addresses as well" (Gov't Ex. 12/5/02 email, B.O.E.) (emphasis added). If the "it" weren't the "information" (four addresses) I had asked him to obtain, I would hardly have announced that we were in the process of getting their home addresses. Further, I said later in the conversation, "I mean yeah, as soon as you get it, I mean send it certainly. I'll post it on the internet. We want our people to know and, and ah, information about these people..." (Gov't Tr. 12/5/02, p.7 lines 2-6, B.O.E.) (emphases added). What does Evola in turn say? "I'm working on that now" (Id, line 9)--just as he said "I'm workin' on it" earlier. Thus beyond a shadow of a doubt, when Evola said "Ah, when we get it, we gonna exterminate the rat?" the "it" was the information I had asked him to obtain: the home addresses of four people. The trial court's entire reasoning in denying my motion for judgment of acquittal on grounds of insufficient evidence (S.A. 008-016)--and in fact its entire (mis)understanding of this case expressed therein--is a tragic (for me) result of its failure to appreciate that the "rats" in "and the other rats" is possessive and hence the "information" Evola's "it" was referring to was composed of four addresses and not just Judge Lefkow's. Its thinking that a rational jury could have found beyond a reasonable doubt that I 1) solicited Evola, 2) that I thought he was talking about Judge Lefkow, 3) that I "passively exhorted" him, and 4) that my comments on December 17th were some kind of attempt to evade responsibility for my supposed crime rather than an absolute rejection of Evola's new plans--all of these falsehoods spring from not recognizing that "rats" is possessive, hence the "information" I asked him to obtain was composed of four addresses, and thus that he queried whether we were going to "exterminate" one of these four people whose addresses he was working on obtaining. It is further little wonder why I would answer "Well, whatever you wanna do basically..." to such a vague question.

Finally, Evola's "it" couldn't have been "his address" to him either since he felt the need to clarify which rat he was querying about exterminating: the "Jew rat".

The trial court's error is further demonstrated in what it wrote in its decision declining to order an analysis of the recording (S.A. 043-047). I had filed a motion for an analysis because there is reason to believe that Evola actually said "and all his rats" rather than "and the other rats", with the government later changing it to the latter in order to make Judge Lefkow a "rat" (and "the other" rats) in an effort to fabricate a federal charge and a fictitious "plot" against Her Honor Judge Lefkow (S.A. 044; R. 219: R. 245).

The trial court stated:

"Using the version of the conversation that Hale suspects is accurate and believes would prove his innocence, the conversation would be as follows:

> Evola: Well, I got your e-mail about the Jew judge. . .
> Hale: Right.
> Evola: . . .you wanting his address and all his rats.
> Hale: That information, yes, for educational purposes and for whatever reason you wish it to be.
> Evola: Are we gonna. . .I'm workin' on it. I, I got a way of getting it. Ah, when we get it, we gonna exterminate the rat?

Recorded conversation of 12/05/02. The court fails to see how this proves Hale's innocence. The "it" that Evola refers to is plainly the address of the "Jew judge," therefore, the "rat" Evola proposes exterminating is that person."

November 22, 2004 Order, p. 3 (S.A. 046).

The trial court was plainly incorrect. As shown thoroughly above, the "it" was the "information" I wanted and the information I wanted consisted of the home addresses of four people. (Further, my innocence would indeed be absolutely proven if Evola really did say "and all his rats" since Judge Lefkow wouldn't be one of the "rats" from whom Evola proposed to "exterminate".) (Also note how the trial court varied the punctuation of the excerpt itself.)

It bears further note that since Evola referred to all four people as

"rats" and two of them were listed as "Jew"(s) in the email he was referring to (both lawyers), these two individuals were by definition "Jew rats". Thus I would naturally think that Evola was referring to one of these lawyers on December 5th when he proposed the extermination of the "Jew rat".

Further, the fact that Evola had referred to a "Jew judge" and now suddenly was asking if we were "gonna exterminate the rat?", "Jew rat" would cause a person in my position to think that he was talking about two different people. Otherwise, he simply would have asked, "we gonna exterminate the judge?" "Jew judge?" (It's highly doubtful in fact that Evola was even talking about Judge Lefkow since he went from talking about a "Jew judge" to a "Jew rat" and then later mentions a "Jew judge" again immediately preceding a "lawyer rat" (see Gov't Tr. 12/5/02, p.6, lines 32-34, B.O.E.)). Note also that when he said "lawyer rat", I didn't stop him and say, "Don't tell me you were talking about a lawyer earlier?" I didn't because I thought that the "Jew rat" and the "lawyer rat" were one and the same. Also, once again, the only people whom I thought were Jews were the lawyers.

There is thus overwhelming doubt that I thought Evola was talking about Judge Lefkow on December 5th and the idea that a rational jury could have found beyond a reasonable doubt that I thought he was is ridiculous. At a minimum, there was a 67% chance that I thought he was talking about one of the lawyers whom I had listed as Jews in the very email he was referring to. If it was more probable than not that I thought he was talking about a lawyer, reasonable doubt exists by definition. It is perhaps akin to a mugging victim saying at a police lineup, "it could be #1, it could be #2, or it could be #3." If this isn't reasonable doubt, it is difficult to conceive of what would be, and this doesn't even factor into account the massive evidence that exists that I thought he was talking about a lawyer as discussed supra and infra.

Finally, if all of this weren't enough, there is Evola's claim that I nodded at him in supposed affirmation of his plans on December 5th but did not nod at him during our lengthy conversation of December 17th. (He actually claimed that he didn't see me nod on that date (Tr. Vol. 9, pp.46-48, 53-54). Well, if I had meant for him to murder Judge Lefkow, wouldn't I make sure he saw it as I did in regards to the "rat" on December 5th? Especially to contradict my saying over and over again that I had no desire for her murder?) There is simply no explanation for this other than the fact that I thought he was talking about a lawyer, and not Judge Lefkow, on December 5th.

Also, it makes no sense that I would "solicit" the murder of Judge Lefkow in my house where I "thought the place was bugged" (Tr. Vol. 9, p.32) but would over and over again repudiate the notion that I wanted him to harm her as we walked outside (Tr. Vol. 7B, pp.83-84).

I will now demonstrate--if I haven't already--how the evidence proves beyond a shadow of a doubt that I thought that Evola was talking about a lawyer on December 5th.

B. How a close analysis of the December 17th conversation demonstrates that beyond a shadow of a doubt, I thought that Evola was talking about a lawyer on December 5th.

I ask that the reader now place in front of himself or herself the transcript of the December 17th conversation found in the Book of Exhibits. I will go through it chronologically, demonstrating beyond a shadow of a doubt that I thought that Evola was talking about a lawyer on December 5th.

1) p.1 lines 20-23 "...the stuff you talked about last time, I just cannot talk about. I cannot talk about stuff like that, you know?" (If I had really thought that Evola was talking about Judge Lefkow on December 5th, why would I say "stuff like that" on the 17th? I would instead say, "I cannot talk

about that.").

2) p.2 lines 7-10 "I mean I just, I cannot, I cannot. We can go upstairs. I just, I cannot, you know..." (If I had solicited Judge Lefkow's murder on December 5th, why would I say this on December 17th? I am obviously nervous about Evola wanting to talk to me about his new plan to murder a federal judge. Note that I said nothing like this on December 5th and evinced no nervousness whatever).

3) p.5 lines 6-9 "...the more unusual activity that occurs, the more people are going to presume things that aren't true and that's, that's what I don't want." (Yes, like people thinking that I wanted harm to Judge Lefkow!).

4) p.6 lines 3-4 "I can't be a party to such a thing." (Why would I say this if I had solicited Judge Lefkow's murder on December 5th? The words "such a thing" further imply that we were talking about something new).

5) p.7 lines 1-3 "...and in fact, I don't know of such a thing. I don't even know what you're talking about." (Ditto the above. Also, I'm once again evincing a nervousness not shown on December 5th).

6) p.7 line 31 to p.8 line 7 "...if what you're talking about is what I think you're talking about, there's a federal statute that makes it an imprisonable offense to know about a crime that's to be occurred without telling anybody, see?" (This passage is loaded with meaning. First, why would I even question what Evola was talking about if he had only communicated an intent to murder Judge Lefkow? I would obviously know what he was talking about unless he had expressed an intent previously to murder two different people. Second, did I talk about a federal statute on December 5th? No. Well, my legal training would tell me that the federal government would have no jurisdiction over not informing on a plot against a lawyer).

7) p.11 lines 5-9 "the shit's gonna really hit the fan, you know? I mean

that type of stuff..." (Contrast this with my saying "Good" on December 5th. Do people normally think that it's "good" when the shit hits the fan? I obviously thought that Evola's plans towards a lawyer on December 5th were good and that his plans against Judge Lefkow were not good ("the shit's gonna really hit the fan"). Also, why would I say "that type of stuff" if I thought he was talking about the same person on December 5th?).

8) p.11 lines 14-17 "...I have to be innocent, which of course, I am." (Yes, innocent of anything having to do with Judge Lefkow and yes, of course I was since we had never spoken about a murder plot against her until now--December 17th).

9) p.13 lines 3-5 "I just, I just don't have any. I can't, I have no involvement in such a thing..." (If I had solicited the murder of Judge Lefkow on December 5th, why would I say that "I have no involvement in such a thing"on December 17th?).

10) p.13 lines 8-24 Evola says that he received an "order" for Judge Lefkow's murder. I tell him that no such order exists.

11) p.13 line 33 to p.14 lines 1-6 Evola says that he took from the last conversation that she must be murdered. I tell him, "Well, you gotta understand I could never, never order such a thing or instruct or encourage...". We are obviously speaking at cross purposes. In any case, if I had solicited Judge Lefkow's murder on December 5th, why would I say "I could never, never order such a thing..."? The word "could" is subjunctive, the grammatical mood of potential, hypothetical, or unreal action. If I had thought on December 5th that he was going to murder Judge Lefkow, I would not be speaking subjunctively about it on December 17th. I submit that this alone proves that I thought that Evola was talking about a lawyer on December 5th for there is no way that I would speak about Judge Lefkow's murder as being a possibility on Dec-

ember 17th if I considered it a done deal on December 5th.

12) p.14 lines 24-25 In addition to Evola's important admission noted earlier that the term "Jew rat" "couldn't be just limited to one person" and that it "could have been" used frequently in reference to people other than Judge Lefkow, note further that he says "That Jew rat" which connotes more than one. This thus refutes any validity to the notion that since I didn't say, "Tony, last time you were talking about a lawyer" (as if I would need to do so when it was clear to me that he was) that that meant that the "Jew rat" he was talking about on December 17th was the same "Jew rat" he was talking about on December 5th. The term was obviously generically used.

13) p.15 lines 1-5 Evola says "That Jew rat, you know, she's gotta go down I guess...". I say, "Well, I don't..." (If I had solicited Judge Lefkow's murder on December 5th, why would I say this on December 17th?).

14) p.18 lines 16-19 Yes, I wanted "to be able to say with honesty that under a polygraph and under any kind of scrutiny" that I hadn't solicited or conspired to murder Judge Lefkow!

15) p.19 line 5 Ditto #12 above. ("this Jew rat" proves that there was more than one and reasonable doubt about who I thought he was talking about on December 5th).

16) p.20 lines 1-4 The best evidence there is that I thought that Evola was talking about a lawyer on December 5th and not Judge Lefkow. This passage proves it in fact. Why would I say "this is too serious" in reference to Judge Lefkow's murder if I had said "Good" to it on December 5th? (Do people normally find things that are "too serious" to be "good"?) Why would I say that Evola's plans against Judge Lefkow are "incredible" (not believable) if I believed on December 5th that he was going to murder her? Why would I say "I don't want anything" in regards to her murder if I had wanted her murder,

said "Good" to it, and nodded my head to it on December 5th? Why would I say "I'm not a party to anything" in regards to her murder if I was a party on December 5th? It is absolutely plain that I thought that he was talking about someone else on the 5th. Further, Evola agrees with all of my statements: "Right. Right. Right. Right. Right." (line 5)

17) p.20 line 30 to p.21 line 1 "Okay, well I guess that's the deal on that and ah, I'm sorry you came so far." (I obviously thought that I had turned him down as far as his plans against Judge Lefkow were concerned).

18) p.26 lines 7-9 "...you gotta understand that if all this would come to pass, it would be a very, very heated situation." (Do people normally think that "very, very heated situations" are "good"? Also, if I thought on December 5th that he was going to kill Judge Lefkow, why would I say "if" on December 17th? After all, if I thought that Evola had said "Consider it done" to Judge Lefkow's murder on December 5th, there's simply no reason why I would be speaking theoretically about it on December 17th. Obviously I thought he was talking about a lawyer on December 5th and Judge Lefkow on December 17th. Also note again the subjunctive language: "if", "would", "would".).

C. What I said on the respective dates--a brief comparison.

What I said on December 5th in response to Evola's saying "Consider it done" to the murder of an unspecified "Jew rat": "Good"

What I said on December 17th after Evola first announced on December 9th that he had designs on the life of a "femala rat" or Judge Lefkow:

"Here's the thing brother. Here's the thing. I can't be a party to such a thing." p.6 lines 2-4

"I just, I'm not party to such a thing..." p.6 lines 28-29

"...the shit's gonna really hit the fan, you know? I mean that type of stuff..." p.11 lines 5-9

"I just, I just don't have any. I can't, I have no involvement in such a thing..." p.13 lines 3-5

(Gov't Tr. 12/17/02, B.O.E.). My innocence is absolutely proven by the evidence. I refused to join a plot against Judge Lefkow's life.

D. Conclusion.

The government's case rested on the assumption or desire that I thought that Evola was talking about Judge Lefkow on December 5th. An assumption or desire, however, is not evidence, and there is in fact no evidence whatever that I did. Instead, the evidence shows decisively that: 1) I thought Evola was talking about a lawyer on December 5th, 2) that the FBI had Evola send me a "femala rat" email on December 9th in an obvious fraudulent effort to make Judge Lefkow "the target" retroactively, 3) that this email told me for the first time that Evola had designs on her life, and 4) that I consequently rejected any involvement in a plot against her life the one and only time Evola and I talked about such: December 17th.

Since there is zero evidence that I thought Evola was talking about Judge Lefkow on December 5th and in fact overwhelming evidence that I didn't, no rational jury could have found beyond a reasonable doubt that I solicited her murder. Thus a crucial element of 18 U.S.C. sec. 373--that the target of the alleged solicitation be a federal official--is missing and my convictions on Counts Two and Four violate due process. Vachon v. New Hampshire, 414 U.S. 478, 480 (1974).

Instead of being a solicitor of Judge Lefkow's murder, I am clearly an innocent man who turned down the desperate pleas of the government agent provocateur to be part of something I did not want. This "case" is a tragic sham not only for me who has endured years of imprisonment for something I didn't do but also for Judge Lefkow who was needlessly and callously put in fear for her life by the prosecutors and the FBI. They owe us both an apology.

While it is true that circumstantial evidence can show a defendant's intent, there is simply no circumstantial evidence in this case. If I had embraced his plans against Judge Lefkow stated in his December 9th email when

he came back to my house on December 17th, this would indeed be circumstantial evidence that I thought his plans on December 5th and December 17th were one and the same. Instead, I told him that his plans were "too serious", that I couldn't be a party to "such a thing", that I didn't want her murder, etc. Nor was it anything new to me that he had switched his interest from wanting to murder a lawyer to wanting to murder Judge Lefkow in light of the fact that he had expressed a desire to kill numerous people over a two year period and on one occasion, August 21, 2001, went back and forth between who he wanted to kill (see again Def. Ex. 32).

Every single fact points in the direction that I thought Evola was talking about a lawyer on December 5th and not Judge Lefkow: the fact that my language on December 17th when he came back to my house was totally different; the fact that I didn't nod my head on December 17th but did on December 5th; the fact that I wanted Judge Lefkow to hear our pending motion to throw out the trademark case on grounds of fraud; the fact that I had more of a motive to solicit the murder of one of the lawyers than the judge who had ruled in our favor--all of these facts and more show decisively that I am innocent.

I hope that this terrible and contrived calumny may now come to an end and that the Honorable Judge Joan H. Lefkow may one day know for certain that any thoughts that I tried to have her murdered are horribly misplaced.

II. No rational jury could have found beyond a reasonable doubt that I was serious that Evola murder Judge Lefkow.

18 U.S.C. sec. 373 requires that the alleged solicitation take place "under circumstances strongly corroborative of intent." As the jury was instructed, "[t]he surrounding circumstances in general must indicate that the solicitor is serious that the person solicited actually carry out the crime." (Tr. Vol. 12, pp. 12-13) United States v. Gabriel, 810 F.2d 627, 635 (7th Cir. 1987).

Since beyond a reasonable doubt I solicited the murder of a lawyer, if anyone, no rational jury could have found beyond a reasonable doubt that I was serious that Evola murder Judge Lefkow. Thus the serious element of the statute automatically fails. There was only one conversation about a plot to murder Judge Lefkow and that was on December 17th. On that date, I said about Evola's new plans that:

> I couldn't be a party to the murder of Judge Lefkow. p.6 lines 3-4
>
> I wasn't a party to the murder of Judge Lefkow. p.6 lines 28-29
>
> The shit was going to really hit the fan if he carried out the murder of Judge Lefkow. p.11 lines 5-6
>
> I could never, never order, instruct, or encourage the murder of Judge Lefkow. p.14 lines 3-6
>
> I wasn't going to have Judge Lefkow murdered. p.19 lines 27-28
>
> His plan to murder Judge Lefkow was too serious. p.20 line 1
>
> I didn't want her murder. p.20 lines 2-3
>
> I wasn't encouraging her murder p.20 line 6
>
> I hadn't given him an order to murder Judge Lefkow. p.21 lines 13-14
>
> If Judge Lefkow's murder occurred, it would be a very, very heated situation. p.26 lines 7-9

Obviously Evola's new plans (first expressed in his December 9th email) were too serious as far as I was concerned (Gov't Tr. 12/17/02, B.O.E.).

III. Even if somehow a rational jury could have found beyond a reasonable doubt that I thought that Evola was talking about Judge Lefkow on December 5th, no rational jury could have found beyond a reasonable doubt that I solicited, commanded, induced, or otherwise endeavored to persuade him to murder.

In the preceding, I have shown that there is absolutely no evidence that I solicited Judge Lefkow's murder and that I was not serious that Evola commit the crime. Here I will demonstrate that there is absolutely no evidence that I solicited, commanded, induced, or otherwise endeavored to persuade Evola to murder anyone.

The language of the statute indicates that it is whether I endeavored to persuade Evola to commit a crime of violence that is at issue here and there is simply no evidence that I endeavored to persuade him to do so. The November 29th email wasn't an endeavor to persuade him to harm Judge Lefkow as it was sent to twenty-seven people, clearly indicated that it was going to be sent to many more people, didn't say one word about harming her, and, as shown by the 6/30/00 telephone message (B.O.E.), was typical rhetoric on my part.

Nor was my email of December 4th an endeavor to persuade Evola to harm her. The "Any action of any kind..." language meant what it said, didn't apply to just Evola, was entirely consistent with what I had said in June 2000 after the U.S. Supreme Court refused to hear my law license case, and was consistent with my conversations with Evola in February and May 2002. It was hardly an endeavor to persuade him to murder Judge Lefkow. It was a statement made to a man who habitually tried to convince me to act outside the law, and my saying that whatever anyone did was entirely up to them according to the dictates of their own conscience in advance of any overtures by Evola made perfect sense. Thus I was annoyed when he was at my door the next day (Gov't Tr. 12/5/02, p.1, line 6, B.O.E.) and further annoyed when he showed up on December 17th (Gov't Tr. 12/17/02, p.1, lines 5-6, B.O.E.).

The government is thus left with the conversation on December 5th and there was simply no endeavor to persuade him to commit murder on that occasion either. While I did say "That information yes, for educational purposes and for whatever reason you wish it to be" (which the trial court characterized as a "hint"--S.A. 010), that statement was once again consistent with my conscience language in the email, consistent with our prior conversations (and thus nothing unusual nor nefarious), and consistent with my long-standing policy that when our religious liberties are jeopardized, people can do what they want. This was not an endeavor to persuade Evola to murder anyone, let alone murder Judge Lefkow specifically (once again, the word "information" was in reference to my wanting four addresses).

Evola then a few moments later asked, "we gonna exterminate the rat?" I told him that he could do what he wanted, that I was going to fight within the law, but yes, I did give him information and he could do what he wanted with it. This too was not an endeavor to persuade him to murder the lawyer we were talking about nor Judge Lefkow as the statute would require. It should also be remembered once again Evola's history of soliciting me and my annoyance that he had come to my house yet again unannounced. Naturally I would say, "If you wish to, ah, do anything yourself, you can, you know?" as would anyone if they had been sought out for violence as many times as I had been by Evola.

As for my saying "Good", that too didn't endeavor to persuade him to murder for a couple reasons. A one-word expression of an opinion is not an endeavor to persuade someone to commit a crime and further, Evola had already said that he was going to "exterminate the rat" (i.e. "Consider it done"). Thus my saying "Good" couldn't be an endeavor to persuade him to do something he had already said that he was going to do.

The trial court's "cookie jar" analogy (S.A. 011, 015) doesn't hold up, a-

mong other reasons, because in that scenario, it is the child speaking who wants the other child to put his hand in the cookie jar while the other child is silent. Evola was hardly silent here. The analogy further ignores Evola's numerous attempts to get me to put my hand in the cookie jar (i.e. join murder plots). A more proper analogy to the facts of this case would be if the first child had several times urged the second child to put his hand in the cookie jar and the first child came to him yet again one day (as Evola did to me on December 5th) and asked, "are we going to take a cookie?" and the second child replied, "I never have before and I won't now but you can do what you want." The first child saying "Consider it done" and the second child saying "Good" would hardly be an endeavor to persuade on the part of the second child that the first child take a cookie! (see Id at 012). The fact that I laughed right after saying "Good" further shows that I hardly thought my remark was "grave" as the trial court claimed.

On another note, as is clear from the context, my "if something happens to me, then, you know, make sure that, that the world knows about it in a very strong way" language near the end of the conversation (Gov't Tr. 12/5/02, p. 8, lines 14-23, B.O.E.) was in response to Evola's saying to me, "Na, I'm just a guy trying to keep you alive" and thus obviously wasn't an endeavor to persuade him to murder anybody. Yes, I wanted the world to know about it if I were killed and not knowing exactly how Evola could do that, I told him to just use his imagination. Further, the government cannot have it both ways: it can't say that I had already endeavored to persuade Evola to murder Judge Lefkow and say that this later cryptic statement on my part in response to Evola's professed interest in keeping me alive was also an endeavor to persuade. By that point, after all, Evola had already said "Consider it done". There obviously would be little point in endeavoring to persuade Evola to murder the lawyer we had talked about earlier when he had already said "Consider it done" to doing so. In any case,

once again, this statement at the end of the conversation clearly had nothing to do with what had been talked about earlier.

This leaves us with Evola's head nod claim as discussed earlier--a claim which is strong evidence that I thought he was talking about a lawyer on December 5th since there was no head nod on December 17th following my receipt of the December 9th "femala rat" email. Even that could not be an endeavor to persuade because assuming that I did nod my head as this Court must, I nodded in response to Evola's question, "we gonna exterminate the rat?" In other words, I didn't endeavor to persuade him to commit the crime but rather, agreed to its commission. An agreement to the commission of a crime is not a solicitation, but rather, a conspiracy, and in the law, one cannot conspire with government agents. There was simply no endeavor to persuade Evola to murder anyone and the fact that Evola replied with "Consider it done" to what I said only shows that he arrived at my house "pre-persuaded" by the FBI to be bent on murder.

Let me now graphically illustrate why the exchange on December 5th simply cannot be an endeavor to persuade Evola to murder the lawyer we were talking about or anybody else. Let us compare it with the exchange exactly ten months earlier on February 5, 2002. On that date, I said the following:

"Now I can't, once again, I can't order any kind of physical attack upon the man. I can't instruct that uhm, but you do what you, what you want to do, you know. I mean, it's, it's, that's ah, none of my business and none of my concern." Gov't Tr. 2/5/02, p.8, lines 21-26

Compare that with what I said on December 5, 2002:

"Well, whatever you wanna do basically, it's, you know? Ah, my position's always been that I, you know, I'm gonna fight within the law and but ah, that information's been pro-, provided. If you wish to ah, do anything yourself, you can, you know? Gov't Tr. 12/5/02, p.5, lines 9-16 B.O.E.

There is simply no substantive difference between the two conversations. If anything, the prior conversation (about a man named Dan Hassett) was closer to an endeavor to persuade Evola to commit violence than the latter because in

that conversation, Evola hadn't queried me about harming him. Further, I specifically said in the second conversation that I was going to fight within the law.

The fact that Evola then said "Consider it done" in the second conversation and I replied with "Good" doesn't change anything for the reasons stated above, and if Evola had said, "I think I'll kill Dan Hassett then" after my remarks on February 5, 2002 and I had replied with "Good", that wouldn't have been an endeavor to persuade either. The man could do what he wants. Neither of my statements, in February 2002 concerning Dan Hassett nor on December 5, 2002 concerning a lawyer, were an endeavor to persuade Evola to murder.

Thus there is a total lack of evidence that I endeavored to persuade Evola to murder anyone generally nor Judge Lefkow specifically as 18 U.S.C. sec. 373 would require and my convictions on Counts Two and Four hence must be reversed. No rational jury could have found beyond a reasonable doubt that I solicited, commanded, induced, or otherwise endeavored to persuade him to murder Judge Lefkow even if somehow there was evidence that I thought he was talking about her and not a lawyer as the evidence conclusively shows.

IV. The trial court wrongly admitted into evidence statements of mine concerning the July 1999 shooting spree of Ben Smith as "circumstances strongly corroborative of intent" that Evola murder Judge Lefkow, denying me a fair trial in the process.

The trial court allowed into evidence these statements--made 2½ to 3½ years before anything to do with Judge Lefkow--under the notion that they could somehow strongly corroborate my alleged intent that Evola murder her. In reality, the probative value of the statements was zero, their admission was wildly prejudicial, and their admission undoubtedly motivated the jury to convict me on an improper basis, namely, that I was the "type" of man to solicit a murder or simply that I deserved to be convicted for my offensive remarks regardless. In other words, instead of being "circumstances strongly corroborative of (my) intent" that Evola murder Judge Lefkow, the Ben Smith evidence was in reality unduly prejudicial propensity evidence that denied me a fair trial.

The problem with the trial court's reasoning in allowing the Smith evidence set forth in its decision to deny me a new trial (S.A. 037, note 31) is multiple. First, how could the evidence "aid the jury in understanding Hale's conversations with Evola"? The court gave no example of how it could do so and why it would need aid in understanding plain conversations. Second, none of the transcripts admitted in which I talked at any length about Smith involved an actual conversation between Evola and me on the topic. Instead, I am talking with <u>others</u> about Smith and Evola is merely listening and recording me. Thus there is no evidence that I in some way tried to "influence" Evola with my comments on Smith. (The first recording, from 7/30/99, in fact, came from a memorial service I held eight months before I even <u>met</u> Evola in March 2000 (Tr. Vol. 7B, pp. 119-120)). Third, while there was evidence that I told James Burnett that the shootings were beneficial to the Church as far as bringing in more membership and publicity to the Church goes (Tr. Vol. 4, p. 198), how does that statement, made in July 1999, strongly corroborate my intent that

Evola murder Judge Lefkow in December 2002 (especially when I told him that his plans against Judge Lefkow were too serious and that I didn't want anything)? Fourth, the trial court (as is clear from its opinion) simply failed to understand the difference between allowing a person to do what they want and being serious that they commit a murder. In other words, "allowing" someone to do that which meets the dictates of their own conscience is simply not the same as intending that they commit murder. Nor did the jury need the Smith evidence to know that "(me) and Evola were not joking" (since Evola had urged the murder of several people previously) and nor could the Smith evidence shine any light on that anyway. As for entrapment/predisposition, since my counsel objected to it being admitted, this wouldn't even be an issue.

Nor can it even be said that I ever spoke well of Smith's actions in the midst of any of the conversations Evola and I had concerning his proposed violence against various individuals as all of the recordings of me talking about Smith were from only two time periods--July 1999 (before I'd even met Evola) and June 2000--the latter date being over six months before he first tried to badger me into going along with his stated desire to murder Ken Dippold (Gov't Tr. 1/11/01). Therefore, it can't even be said that I was trying to send him some kind of "message" by talking about Smith to others since my conversations about Smith occurred long before any "murder plots" were ever proposed by him. In fact, the evidence shows just the opposite: that once I knew about Evola's zeal for violence, I never spoke about Smith the same way in his presence again.

Thus, even though the government may present other acts evidence to prove intent when a defendant is charged with a specific intent crime, United States v. Long, 86 F.3d 81, 84 (7th Cir. 1996), my comments on Smith years before anything to do with Judge Lefkow simply had no connection whatever to my alleged intent that Evola harm her. Its probative value (which was zero) further was

clearly "outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Fed. R. Evid. 403 Thus, even though "[t]his court reviews a district court's decision to admit evidence only for an abuse of discretion," the decision to admit evidence will be reversed when it is clear that the questioned evidence had no bearing upon any of the issues involved at trial. Id at 83. For the reasons indicated above, whatever I thought of Smith or his spree in 1999 or 2000 simply had no bearing on whether I intended that Evola murder Judge Lefkow in late 2002.

As is clear from the transcripts of the two recordings played in which I talked in Evola's presence about Smith's crimes (Gov't Tr. 6/17/00 and Gov't Tr. 6/29/00), my comments consisted of observations, speculations, and humor about his actions rather than any advocacy of them. Observations, speculations, and humor about his crimes simply have no relation whatever to whether I intended that Evola murder anyone in June 2000 when I made the statements nor in December 2002 regarding whether I intended that he murder Judge Lefkow. How my idle comments on Smith 2½ years before anything to do with Judge Lefkow (with Evola merely a third-party taping me) could possibly show that I was serious that Evola murder her is mystifying.

Further, a reading of the 7/30/99 transcript of the memorial service I held following Smith's death (which once again, Evola didn't attend) likewise shows that there was no advocacy of his crimes but merely praise of him as an individual. The idea that my praise of Smith as an individual during what was in essence a funeral oration is relevant to whether I intended that Evola murder Judge Lefkow 3½ years later is beyond serious discussion.

Conversely, the potential for unfair prejudice was enormous. Even the trial court recognized that my "close relationship" (as the prosecutor put it) with Smith and that I "talk(ed) well about the guy" "allow(ed) an inference

that (I) had something to do with Ben Smith and his shooting spree" (S.A. 063-064) and yet, as this Court has stated:

"Any implication that a criminal defendant is guilty of uncharged offenses unfairly encourages the jury to find the defendant guilty because of his or her bad character, rather than because the evidence warrants a guilty verdict."

United States v. Pirovolos, 844 F.2d 415, 426 (7th Cir. 1988), citing United States v. Miller, 508 F.2d 444, 448-49 (7th Cir. 1974).

This is precisely what happened here. The jury was clearly unfairly encouraged to find me guilty because of what happened with Smith. There was a huge risk that the jury would conclude from the admission of the Smith evidence that "he did it before, so he must have done it again." This is precisely what Fed. R. Evid. 404(a) is designed to prohibit. The Smith evidence in fact had no possible effect but to unfairly encourage the jury to convict me because of the implication that I had something to do with his crimes as well as plain animosity for what I said about them.

This Court has recognized that if a jury may have used such evidence to infer a propensity to commit the charged crime, it is unfairly prejudicial. U.S. v. Jones, 248 F.3d 671, 676 (2001). This standard is overwhelmingly met here. Not only might the jury have inferred a propensity on my part to solicit murder, it is practically certain that it di so and I was obviously denied a fair trial as a result. The jury could in fact reasonably think that the very reason why the Smith evidence was admitted was to show propensity on my part to solicit murder and thus the result of its admission clearly was to lower or maybe erase in fact the prosecution's burden to prove guilt beyond a reasonable doubt.

It is noteworthy that the trial court, in denying my 404(b) objection to the admission of the Smith recordings, seemed to think that Rule 404(b) was not a viable objection because I was charged with a specific intent crime (S.A. 082)

This is a distinction I have been unable to find anywhere in the law. As this Court has stated:

> "We have fashioned a four-prong test to determine the appropriateness of admitting evidence of other crimes, wrongs, or acts. Under this test, the admissibility of the evidence is dependent upon whether: (1) the evidence is directed toward establishing a matter in issue other than the defendant's propensity to commit the crime charged; (2) the evidence shows that the other act is similar enough and close enough in time to be relevant to the matter in issue; (3) the evidence is sufficient to support a jury finding that the defendant committed the similar act; and (4) the evidence has probative value that is not substantially outweighed by the danger of unfair prejudice."

United States v. Robinson, 161 F.3d 463, 467 (7th Cir. 1998).

Clearly, the admission of the Smith evidence fell afoul of numbers (2) and (4). As for (2), my "other act" of observing, speculating, and laughing about Smith's shooting spree had no relevance to whether I intended that Evola murder Judge Lefkow, as discussed supra and infra. There is simply no similarity between what I said about Smith and his crimes in June 2000 (Gov't Tr. 6/17/00 and 6/29/00)--where Evola merely acted as a "walking spike mic"--and the idea that I intended that he murder Judge Lefkow 2½ years later. Nor is there any similarity between what I said at a funeral oration for Smith (where I praised him for his legal dedication to the cause prior to his illegal actions) (Gov't Tr. 7/30/99) and the idea that I intended that Evola murder Judge Lefkow either.

As for (4), in light of the above, since the Smith evidence had no probative value whatever, the danger of unfair prejudice obviously substantially outweighed its probative value for all of the reasons I've indicated.

It is obvious from the indictment and the trial transcript excerpts where counsel argued over the admission of the Smith evidence (S.A. 048-083) that the prosecution sought to use the Smith crimes as a battering ram to secure a conviction. Since it didn't have a valid case against me concerning Judge Lefkow, it clearly sought to combine with it my inflammatory comments on Smith's actions

in order to secure a "composite" conviction: a conviction for Smith's crimes, for "soliciting" Smith, for laughing about what Smith did, and lastly, for "soliciting" Evola to murder Judge Lefkow. Thus the jury was clearly unfairly encouraged to find me guilty because of uncharged conduct rather than because the evidence warranted a guilty verdict, per Pirovolos, supra. "The term 'unfair prejudice', as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." United States v. Heath, 188 F.3d 916, 923 (7th Cir. 1999), quoting Old Chief v. United States, 519 U.S. 172, 180 (1997). (I note that in Heath, it was found that Judge Moody had abused his discretion in admitting evidence). Here, the Smith evidence wasn't even relevant, and obviously statements of mine such as his spree "must have been pretty fun" had a high capacity to lure the jury into declaring guilt on the charges--all five of them as a matter of a fact--independent of the proof specific to them (Gov't Tr. 6/29/00, p.8 line 5).

In fact, whatever thread of a fair trial that remained after the introduction of the Smith evidence was severed when the prosecutor stated in rebuttal that "The government had evidence that the defendant had a member of his organization kill two people and shoot lots of others" (S.A. 084) in a last ditch effort to further poison the trial, insure a conviction, and in direct contravention of the trial court's admonition to "stay away from anything that's going to be inherent in saying that Hale had anything to do with Ben Smith" (S.A. 068). While the trial court denied my motion for a new trial regardless (S.A. 036-042) because it was "convinced" that the jury heard the prosecutor's remark differently than its plain language, it was precisely the wrongful admission of the Smith evidence in the first place that enabled the prosecutor to make his inflammatory comment regardless of what he actually "meant" to say or what the

trial court thought he meant. In any case, it is difficult to conceive of a more prejudicial remark than this one that clearly invited the jury to find me guilty because the government supposedly had evidence that I ordered the Smith shootings. The jury would obviously be unfairly motivated to find me guilty of soliciting the murder of Judge Lefkow when the prosecutor is telling it essentially that I had already had Smith "kill two people and shoot lots of others." The jury may well in fact have felt compelled to find me guilty in order to stop me from causing more murder--when the reality is that I didn't solicit Smith either or have anything to do with any murders.

Due to its error in admitting the Smith evidence, the trial court naturally chose to view the prosecutor's remark (which it believed was improper) in isolation finding that it alone didn't warrant a new trial (S.A. 041). However, in determining whether it made my trial so unfair as to require a new one, the remark is not considered in isolation but in the context of the entire trial. United States v. DeRobertis, 755 F.2d 1279, 1282 (7th Cir. 1984). When combined with the admission of the Smith evidence itself, the prosecutor's remark clearly resulted in a trial that was overwhelmingly unfair. The fact that there was no evidence of any of the elements of 18 U.S.C. sec. 373 (no evidence of a federal target, no evidence of an endeavor to persuade Evola to murder, and no evidence that I was serious that he do so) and yet I was still convicted shows just how unfairly prejudicial the Smith evidence and resulting argument was and how I was denied a fair trial. While the trial court noted that I was found not guilty on one count--a count that was based solely on the word of a man who admitted that he lies when he's angry (Tr. Vol. 6, p.70), is a sufferer from mental illness (Tr. Vol. 4 Excerpted), and "enemy" of mine (Tr. Vol. 6, p.65)--for the proposition that I "was not convicted blindly out of prejudice caused by an improper prosecutorial remark" (S.A. 042), the real issue is whe-

ther the improper admission of the evidence as a whole poisoned my right to a fair trial on those charges that I was convicted on and remain intact. (By all means, if the Court would like to read the entirety of Jon Fox's testimony (Tr. Vol. 5, p.79 to Vol. 6, p.142) to see how utterly ridiculous it was, please do so. The reality is that instead of showing that I received a fair trial, my acquittal on only one count out of five (which had little to no evidence supporting them) shows that I didn't receive a fair trial. In other words, my acquittal on the Fox count merely shows that his testimony was so incredible that even a prejudiced jury couldn't stomach it).

An error in admitting evidence will be held harmless only if this Court is convinced that the error did not influence the jury, or had but very slight effect, and the Court can say with fair assurance, after stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. United States v. Pirovolos, 844 F.3d 415, 421 (7th Cir. 1988), quoting Kotteakos v. U.S., 328 U.S. 750, 764-65 (1946) and other cases. Under this standard, there is simply no way that the erroneous admission of the Smith evidence, coupled with the prosecutor's misconduct, could possibly be harmless.

CONCLUSION

While a jury verdict "must be sustained if there is substantial evidence to support it," United States v. Jordan, 722 F.2d 353, 359 (1983) (emphasis added), here there is no evidence at all of any, let alone all, of the elements of 18 U.S.C. sec. 373: there is no evidence at all that I thought Evola was talking about Judge Lefkow on the key date in question; no evidence at all that I was serious that he murder her; and no evidence at all that I endeavored to persuade him to do so. Thus I pray that this Honorable Court reverse my convictions under Counts Two and Four and free me from this horrible falsehood regardless of however errant my beliefs may be.

In that the admission of the Ben Smith evidence denied me my right to a fair trial, poisoning the proceedings and making the entire verdict unreliable, I pray that this Honorable Court grant me a new trial on Count One--and on Counts Two and Four were that remedy to be appropriate instead of reversal for insufficient evidence.

Humbly submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).