

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF COLORADO

3 Criminal Action No. 05-cr-00545-EWN

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

7 JOSEPH P. NACCHIO,

8 Defendant.

---

9 REPORTER'S TRANSCRIPT  
10 TRIAL TO JURY  
11 VERDICT

---

12 Proceedings before the HONORABLE EDWARD W. NOTTINGHAM,  
13 Judge, United States District Court for the District of  
14 Colorado, commencing at 4:34 p.m., on the 19th day of April,  
15 2007, in Courtroom A1001, United States Courthouse, Denver,  
16 Colorado.

17  
18  
19  
20  
21  
22  
23  
24 THERESE LINDBLUM, Official Reporter  
25 901 19th Street, Denver, Colorado 80294  
Proceedings Reported by Mechanical Stenography  
Transcription Produced via Computer

**APPEARANCES**

1  
2 For the Government CLIFFORD B. STRICKLIN, ESQ.  
3 JAMES O. HEARTY, ESQ.  
4 KEVIN TRASKOS, ESQ.  
5 United States Attorney's Office  
6 1255 17th Street  
7 Denver, Colorado  
8 LEO WISE, ESQ.  
9 COLLEEN CONRY, ESQ.  
10 U.S. Department of Justice  
11 1400 New York Avenue  
12 Washington, D.C.  
13 For the Defendant HERBERT J. STERN, ESQ.  
14 JEFFREY SPEISER, ESQ.  
15 EDWARD NATHAN, ESQ.  
16 MARK RUFOLLO, ESQ.  
17 Stern & Kilcullen  
18 75 Livingston Avenue  
19 Roseland, New Jersey  
20 JOHN M. RICHILANO, ESQ.  
21 MARCI GILLIGAN, ESQ.  
22 Richilano & Gilligan  
23 1800 15th Street  
24 Denver, Colorado  
25

## P R O C E E D I N G S

16 *THE COURT:* The Court has received the following note  
17 from the jury: Your Honor, the jury has reached a verdict.

18 And so at this time we'll have the jury brought in.

19 (Jury in at 4:35 p.m.)

20 *THE COURT:* Good afternoon Mr. Foreman, has the jury  
21 reached verdicts in this case?

22 *JUROR WEATHERLY:* We have, Your Honor.

23 *THE COURT:* Would you hand your verdicts to the  
24 bailiff.

25 Members of the jury, please listen to the reading of

1 your verdicts.

2           What I'm going to do is read the entirety of Count 1.  
3 For the other counts, since they're identical, what I'm just  
4 going to announce is the verdict that you have reached on a  
5 particular count, rather than reading the entire language of  
6 the count.

7           Count 1, We, the jury, upon our oaths, unanimously  
8 find the defendant, Joseph P. Nacchio, in Count 1 of the  
9 Indictment not guilty.

10           Count 2, not guilty.

11           Count 3, not guilty.

12           Count 4, not guilty.

13           Count 5, not guilty.

14           Count 6, not guilty.

15           Count 7, not guilty.

16           Count 8, not guilty.

17           Count 9, not guilty.

18           Count 10, not guilty.

19           Count 11, not guilty.

20           Count 12, not guilty.

21           Count 13, not guilty.

22           Count 14, not guilty.

23           Count 15, not guilty.

24           Count 16, not guilty.

25           Count 17, not guilty.

1 Count 18, not guilty.  
2 Count 19, not guilty.  
3 Count 20, not guilty.  
4 Count 21, not guilty.  
5 Count 22, not guilty.  
6 Count 23, not guilty.  
7 Count 24, guilty.  
8 Count 25, guilty.  
9 Count 26, guilty.  
10 Count 27, guilty.  
11 Count 28, guilty.  
12 Count 29, guilty.  
13 Count 30, guilty.  
14 Count 31, guilty.  
15 Count 32, guilty.  
16 Count 33, guilty.  
17 Count 34, guilty.  
18 Count 35, guilty.  
19 Count 36, guilty.  
20 Count 37, guilty.  
21 Count 38, guilty.  
22 Count 39, guilty.  
23 Count 40, guilty.  
24 Count 41, guilty.  
25 Count 42, guilty.

1           And the form appears to be signed by the foreperson  
2 and by all members of the jury.

3           Mr. Foreman, were these and are these your verdicts?

4           *JUROR WEATHERLY:* They are, Your Honor.

5           *THE COURT:* So say ye all?

6           *JURY:* Yes, Your Honor.

7           *THE COURT:* I propose to poll the jury, unless there  
8 is objection.

9           *MR. STERN:* I would appreciate it if you would.

10          *THE COURT:* Madam Clerk, will you poll the jury.

11          *COURTROOM DEPUTY:* Juror No. 103537, Meshell Bontz,  
12 were these and are these your verdicts?

13          *JUROR BONTZ:* Yes.

14          *COURTROOM DEPUTY:* Juror No. 81270, Terrell Dye, were  
15 these and are these your verdicts?

16          *JUROR DYE:* Yes.

17          *COURTROOM DEPUTY:* Juror No. 84451, Emarit Ranu, were  
18 these and are these your verdicts?

19          *JUROR RANU:* Yes.

20          *COURTROOM DEPUTY:* Juror No. 98909, Alexander Wilson,  
21 were these and are these your verdicts?

22          *JUROR WILSON:* Yes.

23          *COURTROOM DEPUTY:* Juror No. 111063, Denise Dillinger,  
24 were these and are these your verdicts?

25          *JUROR DILLINGER:* Yes.

1           *COURTROOM DEPUTY:* Juror No. 81675, Vera Rowe, were  
2 these and are these your verdicts?

3           *JUROR ROWE:* Yes.

4           *COURTROOM DEPUTY:* Juror No. 111862, Carroll  
5 Weatherly, were these and are these your verdicts?

6           *JUROR WEATHERLY:* Yes.

7           *COURTROOM DEPUTY:* Juror No. 101236, Douglas Stoneman,  
8 were these and are these your verdicts?

9           *JUROR STONEMAN:* Yes.

10           *COURTROOM DEPUTY:* Juror No. 104243, David McCanless,  
11 were these and are these your verdicts?

12           *JUROR McCANLESS:* Yes.

13           *COURTROOM DEPUTY:* Juror No. 116763, Jeffrey Johnson,  
14 were these and are these your verdicts?

15           *JUROR JOHNSON:* Yes.

16           *COURTROOM DEPUTY:* Juror No. 23209, Stanley Jensen,  
17 were these and are these your verdicts?

18           *JUROR JENSEN:* Yes.

19           *COURTROOM DEPUTY:* Juror No. 91000, Anna Garduno, were  
20 these and are these your verdicts?

21           *JUROR GARDUNO:* Yes.

22           *THE COURT:* The jury having been polled and all having  
23 responded affirmatively, the Court will receive the verdicts.

24           Members of the jury, I'm going to discharge you from  
25 your jury service in this court. There are a couple of things

1 I want to tell you.

2 First of all, I want to thank you for your jury  
3 service. You've been a diligent jury. You have shown up  
4 continuously, every day, on time. You have deliberated over  
5 several days, giving careful consideration to all of the  
6 evidence and all of the testimony in the case. No one could  
7 have asked for more of you as jurors.

8 The legal system depends very heavily on the  
9 willingness of people such as yourselves to take time to hear  
10 these cases and decide these cases. It's the sole touch of  
11 democracy in the legal system, and we appreciate it very much.

12 The other thing I want to tell you is this court has a  
13 local rule of practice prohibiting parties or attorneys from  
14 contacting you to discuss your jury service or your verdict  
15 unless they get prior permission of the Court. I've never been  
16 asked for it, nor given prior permission, and so I don't  
17 know -- I doubt that I will do so in this case. I doubt that  
18 any request will be made. But if you receive a contact from a  
19 party or attorney, you should contact my chambers as soon as  
20 possible, and I will see that it is looked into.

21 At this time you are discharged from jury service in  
22 this court, with the thanks of the Court.

23 (Jury out at 4:43 p.m.)

24 *THE COURT:* The Court will defer entry of judgment on  
25 the verdicts until the United States Probation Department has

1 had an opportunity to prepare a presentence report. The matter  
2 is now referred to the United States Probation Office for  
3 preparation of the presentence report.

4 I would like to try to set a sentencing date, and I'm  
5 prepared to do so, if counsel are prepared to do so.

6 The first time I have is July 27 at 9:00 a.m.

7 *MR. STRICKLIN:* No objection, Your Honor.

8 *MR. STERN:* Could I have one minute, Your Honor?

9 *THE COURT:* You may.

10 *MR. STERN:* That's fine, Your Honor.

11 *THE COURT:* Very good. The sentencing will be July 27  
12 at 9:00 a.m.

13 Anything else?

14 *MR. STERN:* May I have one second, Judge?

15 *THE COURT:* Yes.

16 *MR. STERN:* May we have some additional time to file  
17 our motions?

18 *THE COURT:* Oh, yes. Yes. What time do you need?

19 *MR. STERN:* Well, since the sentencing is July 27, if  
20 it wouldn't inconvenience the Court, I'd like 60 days. I don't  
21 think that that pushes us -- I could manage in 45.

22 *THE COURT:* Why don't you take 45. The Government  
23 will probably want to respond.

24 *MR. STERN:* Yes, that's right. You're correct.

25 *THE COURT:* And I'd like to have a little time before

1 I --

2 MR. STERN: That's true. Sure.

3 THE COURT: Anything else?

4 MR. STRICKLIN: There were the two issues that we  
5 discussed, Your Honor.

6 THE COURT: Right. The first was the matter of bond.

7 MR. STRICKLIN: Yes, Your Honor, 3143.

8 THE COURT: And the Government's request is what,  
9 Mr. Stricklin?

10 MR. STRICKLIN: We request specifically a -- the bond  
11 as I understand it is a \$2 million unsecured bond. We request  
12 a \$5 million secured bond. And if the Court deems it  
13 appropriate, electronic monitoring in his place of residence.

14 THE COURT: Mr. Stern.

15 MR. STERN: I don't believe anybody can consciously  
16 say that Joe Nacchio is a risk of flight. It's true, we've  
17 lost the case; but we'll be here for sentencing. We've been  
18 here every other time.

19 I would ask the Court not to change the conditions of  
20 bond, certainly not to impose an electronic monitoring device.

21 THE COURT: All right. The matter of bond in this  
22 case is governed by Title 18 United States Code Section  
23 3143(a), which pertains to release or detention pending  
24 sentence.

25 And in pertinent part it states that the judicial

1 officer shall order that a person who has been found guilty of  
2 an offense and who is waiting imposition or execution of  
3 sentence be detained unless the judicial officer finds by clear  
4 and convincing evidence that the person is not likely to flee  
5 or pose a danger to the safety of any other person or the  
6 community if released under Section 3142(b) or (c).

7           If the judicial officer makes such a finding, such  
8 judicial officer shall order the release of the person in  
9 accordance with Section 3142(b) or (c).

10           The Court finds by clear and convincing evidence that  
11 the defendant, Mr. Nacchio, is not likely to flee. He has  
12 remained in the United States. The clerk of the court has his  
13 passport, and he has appeared timely on every occasion when he  
14 was required to be in court.

15           The Court further finds by clear and convincing  
16 evidence that he does not pose a danger to the safety of any  
17 other person or the community if he is released.

18           And therefore, he will be released under Section  
19 3142(b) or (c).

20           Frankly, the Court sees no reason to modify the  
21 conditions of his release at this time. It is true, he has  
22 been found guilty by the jury. But the bond that he is under  
23 has been sufficient to secure his appearance. I'm confident  
24 that it will be sufficient to continue to secure his  
25 appearance.

1           Accordingly, bond will be continued on the same terms  
2 and conditions as already established.

3           As to the other matter, that is, the forfeiture, is  
4 that the other matter you wanted to raise, Mr. Stricklin?

5           MR. STRICKLIN: Yes, Your Honor.

6           THE COURT: All right. Mr. Nacchio, I don't know  
7 whether your attorneys have had a chance to address you or talk  
8 to you about this. Rule 32.2 --

9           Mr. Stern indicates that he has.

10           Rule 32.2 of the Federal Rules of Criminal Procedure,  
11 specifically Subsection (a) (4) of that rule says, upon a  
12 party's request in a case in which the jury returns a verdict  
13 of guilty, the jury must establish whether the Government has  
14 established the requisite nexus between the property and the  
15 offense committed by the defendant.

16           There is a forfeiture count in this Indictment asking  
17 that you forfeit -- or requesting the Court to order that you  
18 forfeit some \$100 million in property.

19           I believe this rule entitles you to a jury  
20 determination on the nexus between the property and the offense  
21 of which you have been found guilty.

22           And accordingly, I would have the jury do that unless  
23 you waived your right to have the jury make that determination.

24           Have you done that -- have you discussed the matter  
25 with your counsel, first of all?

1           *THE DEFENDANT:* Yes, I have.

2           *THE COURT:* And what do you wish to do with respect to  
3 the jury's determination?

4           *THE DEFENDANT:* I'll --

5           *MR. STERN:* Before he answers, may I just clarify one  
6 thing?

7           *THE COURT:* Yes.

8           *MR. STERN:* Although the demand was 100 million, I  
9 think it's understood there would only be a forfeiture as to  
10 those counts that he was found guilty, am I correct?

11           *THE COURT:* Well, that's something we can argue about.  
12 And I know you've taken a position in prior proceedings  
13 concerning the --

14           *MR. STERN:* I think the Government agrees with that.

15           *THE COURT:* The Government agrees we're only talking  
16 about the counts --

17           *MR. STRICKLIN:* Yes.

18           *THE COURT:* All right.

19           So, Mr. Nacchio, as your attorney just said, the  
20 forfeiture would pertain only to those counts in which the jury  
21 has found you guilty.

22           *THE DEFENDANT:* Yes.

23           *THE COURT:* And the question is whether you wish to  
24 exercise your right to have a jury determine that or whether  
25 you wish to have the Court do that as part of your sentencing

