

1                   IN THE COURT OF COMMON PLEAS  
2                   OF CHESTER COUNTY, PENNSYLVANIA

3                   -----  
4   COMMONWEALTH OF PENNSYLVANIA       :   NO. 6132-02  
5                   vs.                       :  
6   MICHAEL MARCAVAGE                   :

7                   -----  
8                   Wednesday, March 12, 2003  
9                   -----

10  
11   BEFORE:           HONORABLE ROBERT J. SHENKIN  
12                   Chester County Courthouse  
13                   Courtroom No. 2  
14                   West Chester, Pennsylvania

15   APPEARANCES:

16                   ALEX SILOW,  
17                   For Commonwealth

18                   MICHAEL MARCAVAGE,  
19                   Pro se.

20  
21  
22  
23                   Reported By:   HELEN M. CONOVER  
24                                   Official Court Reporter

COPY

I N D E XCOMMONWEALTH'S TESTIMONY

<u>WITNESS</u>	<u>DR</u>	<u>CR</u>	<u>RDR</u>	<u>RCR</u>
Seargeant Thomas Sjostrom	8	16	--	--

DEFENDANT'S TESTIMONY

<u>WITNESS</u>	<u>DR</u>	<u>CR</u>	<u>RDR</u>	<u>RCR</u>
Linda Beckman	29	--	--	--
Michael Marcavage	35	38	--	--

E X H I B I T SCOMMONWEALTH'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MRKD</u>	<u>ADMTD</u>
C-1	- Bull Horn	15	16

P R O C E E D I N G S

THE COURT: Commonwealth versus Michael Marcavage, on the charge of disorderly conduct? Is that the charge?

MR. SILOW: That's correct, your Honor.

THE COURT: You're Mr. Marcavage?

MR. MARCAVAGE: Yes, your Honor. I was under the impression that this was an arraignment. The case was heard in the district court in my absence, because the hearing information was sent to the wrong address.

I stand before you today and ask for a continuance based on these facts: I have not had the opportunity to file pretrial motions. In addition, I intend on subpoenaing Governor Rendell, since he is the one who authorized and asked me to speak at his rally. Because of his executive privileges, I will need some time to do this. Once again, your Honor, I ask that the Court grant me a continuance based on these reasons.

(Pause.)

THE COURT: All right. There was a

1 hearing before the district justice, apparently in  
2 your absence; is that correct?

3 MR. MARCAVAGE: That is correct, your  
4 Honor.

5 THE COURT: And you say you didn't  
6 know anything about that until you were notified  
7 that you had been convicted?

8 MR. MARCAVAGE: Exactly.

9 THE COURT: And then you took an  
10 appeal?

11 MR. MARCAVAGE: Yes.

12 THE COURT: And for some reason you  
13 thought this was an arraignment?

14 MR. MARCAVAGE: Yes.

15 THE COURT: The basis for your  
16 request for a continuance is what?

17 MR. MARCAVAGE: On the understanding  
18 -- misunderstanding that this was an arraignment,  
19 and that this was not heard in the district court  
20 with my presence; therefore, I did not have an  
21 opportunity to plead guilty or not guilty or  
22 request a hearing.

23 THE COURT: Well, you have an  
24 opportunity now. If you want to plead guilty, you

1 can do it now.

2 MR. MARCAVAGE: Well, I'm pleading  
3 not guilty, your Honor.

4 THE COURT: Well, now you had the  
5 opportunity to plead not guilty, that takes care of  
6 that.

7 The fact that there was a hearing  
8 held in your absence is a non-event. Had you not  
9 been notified of it in time to file an appeal, that  
10 would have been a different story, but since you  
11 did find out about it in time, you filed the  
12 appeal, this is a hearing de novo, so the only  
13 issue is whether you are prepared to present your  
14 defense. If the only thing you're missing is the  
15 opportunity to subpoena Governor Rendell, you'll  
16 have to do something better, because we're not  
17 going to continue the matter for you to try to do  
18 something that isn't going to happen. What's  
19 next?

20 MR. MARCAVAGE: Well, understand I am  
21 not fully prepared.

22 THE COURT: Why is that?

23 MR. MARCAVAGE: Because I was under  
24 the understanding that this was an arraignment.

1 THE COURT: Well, fine, so if the  
2 matter is continued, what is it you're going to do  
3 to prepare yourself to defend?

4 MR. MARCAVAGE: I would like to file  
5 pretrial motions and also the opportunity to  
6 subpoena Governor Rendell. Those are the two  
7 requests.

8 THE COURT: Was Governor Rendell  
9 there? Is he a witness to this?

10 MR. MARCAVAGE: Yes. He's the one  
11 who had asked me to speak at his rally and is  
12 involved directly in this matter. Therefore, it's  
13 important that his presence or that he responds to  
14 the questions I present in order for me to defend  
15 myself in this matter. It is only right that the  
16 Court would allow me to take action on the  
17 subpoena.

18 THE COURT: Mr. Silow, what's the  
19 Commonwealth's position?

20 MR. SILOW: We are opposed to any  
21 continuance whatsoever in this matter, your Honor.  
22 The sergeant in this case has come out and made his  
23 appearance here today. We would ask --

24 THE COURT: What's the nature of your

1 evidence going to be?

2 MR. SILOW: Excuse me, your Honor?

3 THE COURT: What is the nature of  
4 your evidence going to be?

5 MR. SILOW: Testimony on behalf of my  
6 witness.

7 THE COURT: Yes, but I have to have  
8 some idea what it is to be able to judge --

9 MR. SILOW: That he was creating a  
10 disturbance during a public speaking engagement for  
11 the now Governor Rendell, your Honor.

12 THE COURT: All right. Request  
13 denied. We'll proceed.

14 MR. MARCAVAGE: Your Honor, I would  
15 like the record to show that the defendant is not  
16 fully prepared for trial today to represent  
17 himself, to represent himself and to proceed would  
18 be an issue raised by the defendant on appeal, if  
19 necessary, to the Superior Court.

20 THE COURT: Call your first witness,  
21 please.

22 MR. SILOW: Your Honor, I would first  
23 ask for sequestration.

24 THE COURT: Excuse me?

Sjostrom - direct

1 MR. SILOW: We would also ask for  
2 sequestration.

3 THE COURT: Of who?

4 MR. SILOW: If the defendant has any  
5 witnesses, which I believe he does.

6 THE COURT: Do you have witnesses  
7 here with you?

8 MR. MARCAVAGE: Yes, I do have  
9 witnesses, your Honor.

10 THE COURT: Request is denied. Let's  
11 go.

12 MR. SILOW: We call Sergeant Sjostrom  
13 to the stand, your Honor.

14 COMMONWEALTH'S TESTIMONY

15 ...SERGEANT THOMAS SJOSTROM,  
16 S-J-O-S, as in Sam, T-R-O-M, having been duly  
17 sworn, was examined and testified as follows...

18 DIRECT EXAMINATION

19 BY MR. SILOW:

20 Q. Sergeant, can you please state where  
21 you're currently employed?

22 A. With the Phoenixville Borough Police  
23 Department in Chester County, Pennsylvania.

24 Q. And how long have you been employed in



Sjostrom - direct

1     that capacity?

2           A.     About 13 and a half years.

3           Q.     And did you say that you were a sergeant?

4           A.     Yes.

5           Q.     Have you been an officer anywhere else  
6     before this?

7           A.     No, I was not.

8           Q.     I would like to now direct your attention  
9     to May 19th of last year, 2002, around 3 p.m., and  
10    I believe it was a Sunday afternoon. What if  
11    anything significant happened that day that brought  
12    you into court here today?

13          A.     I'm a patrol sergeant. We were scheduled  
14    day shift that day. I was notified ahead of time  
15    of a democratic rally that was to take place at the  
16    Reeves Park, which is located at Third Avenue and  
17    Starr Street in Phoenixville.

18          Q.     If I may just interrupt you for a second.  
19    Is that in Chester County, Pennsylvania?

20          A.     Yes, it is.

21          Q.     While you were at the park, did you come  
22    in contact with anybody in the courtroom that day  
23    that brought you into court here today?

24          A.     Yes, I did.

Sjostrom - direct

1 Q. And can you please state what the person  
2 is wearing and where he is sitting for the record?

3 A. The defendant is wearing a black suit,  
4 light colored shirt.

5 Q. Where is he sitting?

6 A. At the defense table.

7 MR. SILOW: Let the record reflect  
8 that the witness did identify the defendant,  
9 your Honor.

10 THE COURT: Noted.

11 MR. SILOW: Thank you, your Honor.

12 BY MR. SILOW:

13 Q. And what happened then?

14 A. I had two bike officers assigned to the  
15 park for observation and any problems that may  
16 occur at this rally. They were under instructions  
17 that if anything was to happen they were to notify  
18 me immediately so I may respond to the scene.

19 I was notified, I did respond to the  
20 scene at that time.

21 Q. What happened then?

22 A. I did observe Mr. Marcavage to the rear of  
23 the benches where people were sitting. There were  
24 people on stage giving speeches. I did observe

Sjostrom - direct

1 Mr. Marcavage standing on the rear of the bench,  
2 actually standing on the bench to the rear of the  
3 crowd, with a small microphone, and he was shouting  
4 through the microphone into the crowd.

5 Q. Okay. And what did you do with the  
6 microphone -- excuse that. Strike that.

7 And what happened next?

8 A. I also observed the crowd yelling back at  
9 him to stop his actions so they can proceed to hear  
10 the speech. There were other protestors also with  
11 signs, et cetera, to the back where Mr. Marcavage  
12 was standing. My concern, at that point, because  
13 the crowd was getting hostile towards  
14 Mr. Marcavage, and because of the fact that he was  
15 using a PA system or a small microphone to voice  
16 his opinion. I did approach Mr. Marcavage, I asked  
17 him to step down off the bench so I may proceed to  
18 talk to him.

19 Q. What happened then?

20 A. I then asked him to stop using the  
21 microphone, if he wants to be heard -- to be here  
22 in a protest or a show of solidarity, solidarity  
23 with his other group, that's fine, but the PA  
24 system and the disruption has to stop.

Sjostrom - direct

1 Q. And what did the defendant say, if  
2 anything, at this time?

3 A. He proceeded to give me an argument at  
4 that point in time. And basically I came down to  
5 the fact that if he continued to use the microphone  
6 and he continued to cause a disturbance, that he  
7 would be asked to leave the park.

8 Q. And did he stop at that time using the  
9 microphone?

10 A. Yes, he did.

11 Q. Did you later come in contact with the  
12 defendant that day?

13 A. Yes.

14 Q. And under what circumstances was that?

15 A. After I observed for a while that things  
16 were calmed down, everything was okay, I did leave,  
17 and when Mr. Rendell arrived, I was called back to  
18 the scene.

19 Q. And why were you called back to the scene?

20 A. I told my officers when Mr. Rendell got  
21 there to call me back, I wanted to be present.

22 Q. Did you come in contact with the defendant  
23 at that time also?

24 A. Yes, I did. Yes, I did.

Sjostrom - direct

1 Q. And what happened? Under what  
2 circumstances did you come in contact with the  
3 defendant?

4 A. A few minutes into the -- to Mr. Rendell's  
5 speech, Mr. Marcavage was seen running up the  
6 center aisle of the benches, carrying a large sign,  
7 probably about three-foot-by-four-foot sign, and he  
8 was advancing in a quick motion towards Mr. Rendell  
9 while he spoke.

10 Q. What happened after that?

11 A. The crowd became, again, angry with  
12 Mr. Marcavage's actions. One person in the crowd  
13 actually ran up and grabbed the sign and took off  
14 running. Mr. Marcavage continued towards  
15 Mr. Rendell, who was up on stage. And there's an  
16 area between the front of the benches and the  
17 stage, I'd say there's about a 20-foot area where  
18 nobody else was standing, and Mr. Marcavage  
19 advanced to that spot and in front of Mr. Rendell.

20 Q. And was that marked off that you couldn't  
21 enter that area?

22 A. No, it was not.

23 Q. What happened next?

24 A. At that time he proceeded, Mr. Marcavage

Sjostrom - direct

1 proceeded to yell and point at Mr. Rendell,  
2 insisting that he be heard, as Mr. Rendell was  
3 attempting to give a speech.

4 Q. How did the crowd seem at this time?

5 A. At that time the crowd continued to yell  
6 and get angry with Mr. Marcavage. Other protestors  
7 that were there weren't involved with  
8 Mr. Marcavage's actions.

9 At that point in time, I was about to  
10 approach and ask Mr. Marcavage to step away from  
11 the stage, when Mr. Rendell actually stopped, gave  
12 Mr. Marcavage an opportunity to speak. He actually  
13 leaned down and handed Mr. Marcavage the  
14 microphone. He said -- or whatever. He didn't  
15 actually address him as anything. He said, He has  
16 something to say, here, I'm going to give you a  
17 minute to talk, here's the microphone, it's yours.

18 Mr. Marcavage then proceeded to go on  
19 about an incident or incidents at the Phoenixville  
20 Hospital, and then after he got done saying what he  
21 had to say, he handed the microphone back to  
22 Mr. Rendell.

23 Q. And what happened after that?

24 A. Mr. Rendell said, Okay, are you done? And

Sjostrom - direct

1 then he proceeded to give his speech. He gave the  
2 man an opportunity to speak, he spoke, and then at  
3 that point Mr. Rendell was going to proceed with  
4 his speech. I actually thought that was going to  
5 be the end of it.

6 Q. But was it the end of it?

7 A. No, it was not.

8 Q. What happened after that?

9 A. When Mr. Marcavage felt that he was  
10 ignored, he then continued to yell into the crowd,  
11 yell at Mr. Rendell, and proceed to interrupt the  
12 speech.

13 Q. And was he using the bull horn at all?

14 A. I don't recall if he was using the bull  
15 horn at that point in time. I know at one point  
16 one of my officers did confiscate the bull horn  
17 from him. We then approached Mr. Marcavage. We  
18 got close enough to talk to him to say, look, he  
19 needed to stop and leave the park at that point in  
20 time.

21 MR. SILOW: Can I have this marked as  
22 C-1, for identification purposes, your Honor.

23 (Whereupon, an item was marked, for  
24 identification, as Commonwealth's Exhibit C-1

## Sjostrom - direct/cross

1 at this time.)

2 BY MR. SILOW:

3 Q. Sergeant, I'm now handing you what has  
4 been marked as C-1, for identification purposes.  
5 Do you recognize what I handed you?

6 A. Yes, I do.

7 Q. And what is that, if you know?

8 A. This is the loud speaker that he was using  
9 that day.

10 MR. SILOW: I'll move for the  
11 admittance of C-1 into evidence at this time,  
12 your Honor.

13 THE COURT: Any objection?

14 MR. MARCAVAGE: No.

15 THE COURT: It's admitted.

16 MR. SILOW: No further questions at  
17 this time, your Honor.

18 THE COURT: Cross-examine.

19 CROSS-EXAMINATION

20 BY MR. MARCAVAGE:

21 Q. Officer -- Sergeant Sjostrom; is that  
22 correct?

23 A. Yes.

24 THE COURT: Sir, do you want to



## Sjostrom - cross

1 remain at the table while you question,  
2 please.

3 MR. MARCAVAGE: Yes, Sir.

4 THE COURT: Please sit down.

5 BY MR. MARCAVAGE:

6 Q. Did you receive any complaints from anyone  
7 in the park?

8 A. Yes.

9 Q. Okay. Were these just general complaints  
10 or were they specific people who complained to you  
11 concerning my actions?

12 A. I had more than one person approach me and  
13 complain about your actions.

14 Q. Did you record their names?

15 A. At that time, no, I did not.

16 Q. Why was it that you didn't think it was  
17 necessary to record individuals who were  
18 complaining about my speech?

19 A. Because at that point I was observing the  
20 actions.

21 Q. How did you determine that the general  
22 complaints were, the annoyance level exceeded the  
23 law, the complaints that were made, how did you  
24 determine that the individuals were saying my

## Sjostrom - cross

1 speech was against the law?

2 A. Could you rephrase the question, please?

3 Q. Sure. What I'm trying to understand is,  
4 is there an annoyance level that needs to be met in  
5 order for you to make an arrest based on any law?

6 A. We have disorderly conduct, which is  
7 unreasonable noise, and unreasonable noise can be  
8 anything that affects other people.

9 Q. Was I arrested under that particular law?

10 A. You were cited for disorderly conduct.

11 Q. What do you understand disorderly conduct  
12 to be?

13 A. Creating a hazardous condition. Causing  
14 annoyance to others.

15 Q. Okay. Well, let me read Section 5503,  
16 disorderly conduct, Subsection (a): Offense  
17 defined: "A person is guilty of disorderly conduct  
18 if, with intent to cause public inconvenience,  
19 annoyance, or alarm or recklessly creating a risk  
20 thereof, he: No. 1, engages in fighting or  
21 threatening or in violent behavior.

22 No. 2: Makes unreasonable noise.

23 No. 3: Uses obscene language or  
24 makes an obscene gesture.

Sjostrom - cross

1                   Or, No. 4: Creates a hazardous or  
2 physically offensive condition by any act which  
3 serves no legitimate purpose of the actor."

4                   According to the citation --

5                   MR. SILOW: I would like to object at  
6 this time, your Honor. Is there a question  
7 here, or --

8                   THE COURT: Well, he's finally  
9 getting to it. If you had objected a little  
10 bit ago, it might have helped, but I think he's  
11 now getting to the question.

12 BY MR. MARCAVAGE:

13                  Q. The citation says --

14                  THE COURT: Overruled.

15 BY MR. MARCAVAGE:

16                  Q. -- I was charged with Section 5503  
17 Subsection (a)(4), which would be: Creates a  
18 hazardous or physically offensive condition by any  
19 act which serves no legitimate purpose of the  
20 actor."

21                         So, Officer, I wanted to know why I  
22 was not charged with Section 5503(a)(2), which is,  
23 "Makes unreasonable noise."?

24                   THE COURT: Do you want to object

Sjostrom - cross

1 now?

2 MR. SILOW: Yes, objection.

3 THE COURT: Sustained. This isn't a  
4 question of what you weren't charged with, it's  
5 a question of what you were charged with, so it  
6 doesn't matter why you weren't charged with  
7 other offenses. Next question.

8 BY MR. MARCAVAGE:

9 Q. Sergeant, did I create a hazardous or  
10 physically offensive condition by any act which  
11 served no legitimate purpose of the actor?

12 A. Yes.

13 Q. And in what way did I do that?

14 A. Created a hazardous condition by creating  
15 a hostile crowd towards your physical well-being.

16 Q. And did I create a physically offensive  
17 condition?

18 A. I wouldn't say a physically offensive  
19 condition, no.

20 Q. And would you say that my act had no  
21 legitimate purpose?

22 A. Correct.

23 Q. Did you understand why I was there at the  
24 rally?

## Sjostrom - cross

1 A. Do I understand why you were there?

2 Q. Yes.

3 A. I had an idea.

4 Q. What was I speaking into the megaphone?

5 MR. SILOW: Objection, your Honor.

6 THE WITNESS: I don't recall

7 exactly.

8 MR. SILOW: That would be calling for

9 hearsay, your Honor.

10 THE COURT: Not at all. Why is it

11 hearsay?

12 MR. SILOW: Because it's made by

13 him. If he would like to testify to what he

14 said, your Honor, then he would have the

15 chance.

16 THE COURT: But he's being asked the

17 fact of what was said.

18 MR. SILOW: I thought he asked what I

19 said.

20 THE COURT: Yes. He was being asked,

21 what were the words that were being used. The

22 issue is, what were the words being used, not

23 whether they were true or not, not whether it's

24 a truthful statement, but the issue here would

## Sjostrom - cross

1           be what words were used. That's not hearsay.  
2           Overruled. Do you remember the question? Do  
3           you recall the words that the defendant used?

4                       THE WITNESS: Not exactly, no.

5 BY MR. MARCAVAGE:

6           Q.    Is Reeves Park a public park?

7           A.    Yes, it is.

8           Q.    Officer, obviously, do you agree that we  
9           have a constitutionally protected right of freedom  
10          of speech?

11          A.    That's correct.

12          Q.    Do you remember anything that I was  
13          shouting as you had stated in your previous  
14          testimony?

15          A.    I don't recall exactly what you were  
16          saying.

17          Q.    Did the speakers on the stage use a  
18          microphone to voice their opinion?

19          A.    That's correct.

20          Q.    And why was it that they were not  
21          arrested?

22          A.    They had previous permission from the  
23          Borough of Phoenixville to utilize the park for  
24          their purpose.

## Sjostrom - cross

1 Q. It is a public park?

2 A. That's correct.

3 Q. Did I ever -- let me just rephrase this  
4 question here.

5 Was the person who grabbed the sign  
6 from me arrested?

7 A. At that point we didn't identify that  
8 person, no.

9 Q. Was he still at the rally?

10 A. I don't recall.

11 Q. Is there a reason the police didn't move  
12 in to arrest the gentleman who took the sign from  
13 me?

14 MR. SILOW: Objection, your Honor, I  
15 don't see the relevance of this line of  
16 questioning.

17 THE COURT: Sustained.

18 BY MR. MARCAVAGE:

19 Q. Does the law --

20 THE COURT: Questions are for facts,  
21 not to obtain this witness's opinions of the  
22 law.

23 BY MR. MARCAVAGE:

24 Q. Sergeant, how did you determine that I

## Sjostrom - cross

1 intended to cause a public inconvenience,  
2 annoyance, or alarm? How was that determined on  
3 your behalf?

4 A. When I first approached you, I warned you  
5 that if you continued to disrupt this gathering in  
6 the way that you're doing it, then you would be  
7 asked to leave the park. When I saw you approach  
8 the second time, then I knew you had intentions on  
9 disrupting that meeting.

10 Q. Did you speak to me prior -- you said you  
11 spoke with me. And what did I say to you during  
12 that --

13 A. At which point?

14 Q. After you had said that you had spoke with  
15 me and I stopped using the megaphone, I wanted to  
16 know what did I say to you in return? You said I  
17 created, you said, some kind of argument? I was  
18 arguing with you? What did I argue with you on?

19 A. You refused to, at first, step down and  
20 stop talking on the loud speaker. It took me  
21 several times to get your attention for you to step  
22 down. When I asked you to stop using the loud  
23 speaker and stop disrupting the meeting, or the  
24 gathering, you continued to explain that you had



## Sjostrom - cross

1 your specific rights of speech and that you were  
2 there for a specific purpose. And I advised you  
3 that was fine, that's not my intention. My  
4 intention was for you to do it peacefully and so it  
5 does not affect other people.

6 Q. So according to your own testimony you  
7 would say that I did inform you what my intent  
8 was.

9 THE COURT: He said what he said.  
10 That's not a question. That's an argument. Do  
11 you have any more questions of this witness?

12 MR. MARCAVAGE: Yes, I do, Your  
13 Honor.

14 THE COURT: How many?

15 MR. MARCAVAGE: Well, I do have  
16 several more here.

17 THE COURT: You have a few more  
18 minutes, at most, to cross-examine the  
19 witness.

20 BY MR. MARCAVAGE:

21 Q. You said you heard Mr. Rendell offer me  
22 the microphone; is that correct?

23 A. That's correct.

24 Q. Well, according to Section 5503, talking

Sjostrom - cross

1 about creating a hazardous or physically offensive  
2 condition, do you think Mr. Rendell saw it that  
3 way? If he would offer me a microphone --

4 MR. SILOW: I would have to object.

5 THE COURT: Sustained. This witness  
6 can't know what someone else is thinking.  
7 Again, sir, if you want to question the  
8 witness, the purpose of questioning is to  
9 elicit facts. So you can ask him facts about  
10 what happened, if you have any more questions  
11 about that.

12 BY MR. MARCAVAGE:

13 Q. Did Mr. Rendell tell you or advise you  
14 that he was annoyed or alarmed?

15 A. No.

16 Q. If Governor Rendell was annoyed or  
17 alarmed, why would he ask --

18 MR. SILOW: Once again, objection,  
19 your Honor.

20 MR. MARCAVAGE: I didn't finish the  
21 question, but we'll just skip that one.

22 BY MR. MARCAVAGE:

23 Q. How did you determine that I was  
24 physically offensive when the governor asked me to

Sjostrom - cross

1 speak for 60 seconds and handed me the microphone?

2 A. Besides the fact that the crowd was  
3 becoming hostile towards you, Mr. Rendell's  
4 expressions at that point in time.

5 Q. So you made the determination based on  
6 expressions?

7 A. He interrupted -- you interrupted him, he  
8 stopped. He gave an expression of disgust. At  
9 that point we approached.

10 Q. Did you consider that Mr. Rendell was  
11 physically offensive when he asked me to come and  
12 take the microphone and then I waited for his  
13 response? Why did you perceive Mr. Rendell's  
14 actions to be in a manner of physically offensive,  
15 he was physically offended by them?

16 MR. SILOW: I believe this has  
17 already been asked and answered, your Honor.

18 THE COURT: Sustained.

19 BY MR. MARCAVAGE:

20 Q. If the Governor Elect, now Governor, gives  
21 me permission to speak on his platform, how,  
22 Officer, did you determine the governor's  
23 permission for me to speak serves no legitimate  
24 purpose?

Sjostrom - cross

1 MR. SILOW: Objection, your Honor.

2 THE COURT: Sustained.

3 MR. SILOW: Thank you, your Honor.

4 BY MR. MARCAVAGE:

5 Q. Do you believe that my acts served no  
6 legitimate purpose?

7 A. I don't understand your question.

8 Q. I'm just asking if you believe my acts  
9 served no legitimate purpose?

10 A. The purpose that appeared to me was the  
11 purpose of disrupting this meeting. So that was,  
12 to me, your purpose.

13 MR. MARCAVAGE: I have no further  
14 questions, your Honor.

15 THE COURT: Any redirect?

16 MR. SILOW: No further questions,  
17 your Honor. The Commonwealth rests at this  
18 time.

19 THE COURT: Thank you, you may step  
20 down. Please watch your step.

21 (Witness excused.)

22 - - -

23 THE COURT: All right. The defendant  
24 has an opportunity to testify. If you have

L. Beckman - direct

1 witnesses you want to call on your own behalf, you  
2 may do that.

3 MR. MARCAVAGE: I would like to call  
4 Linda Beckman to the stand, please.

5 MR. SILOW: The Commonwealth would  
6 like to have an offer of proof of what Miss Beckman  
7 is about to testify to, your Honor.

8 THE COURT: You'll just have to wait  
9 and find out.

10 DEFENDANT'S TESTIMONY

11 ...LINDA BECKMAN, B-E-C-K-M-A-N,  
12 having been duly sworn, was examined and  
13 testified as follows...

14 DIRECT EXAMINATION

15 BY MR. MARCAVAGE:

16 Q. Good morning, Linda.

17 A. Good morning.

18 Q. I would like to ask you if you could tell  
19 the Court briefly what happened on that day in  
20 Reeves Park during the Rendell rally. What was the  
21 purpose you were there and what happened?

22 MR. SILOW: Objection, your Honor.

23 THE COURT: Sustained. Sustained as  
24 to the purpose of why she was there. Who

L. Beckman - direct

1       cares? Well, it could go to bias, but I think,  
2       who cares. If your question is, what did she  
3       observe, she may answer that question.

4 BY MR. MARCAVAGE:

5       Q.     What did you observe in the park?

6       A.     Well, I observed not -- you know, there  
7       were other people there, Casey supporters in the  
8       back yelling also. They weren't talked to about  
9       disturbing the peace, or whatever, disorderly  
10      conduct. And I observed that Mr. Rendell did hand  
11      you the microphone, and you asked him a question,  
12      and then you stood back, you handed the mike back  
13      to him and stood back, and then waited for his  
14      response, which he didn't give you, and then the  
15      police just came on and dragged you away.

16      Q.     Did the police ever approach you and say  
17      you can't be here with your message? Did they ever  
18      tell you anything?

19                   MR. SILOW: Objection, your Honor, I  
20      don't see what the grounds --

21                   THE COURT: Sustained.

22                   MR. MARCAVAGE: Just one moment, your  
23      Honor.

24                   (Pause.)

L. Beckman - direct

1 BY MR. MARCAVAGE:

2 Q. Do you remember what Mr. Rendell said when  
3 he offered the microphone, anything of what he was  
4 saying?

5 A. He said, to my knowledge, let's give him a  
6 chance. Give him --

7 MR. SILOW: Objection, your Honor,  
8 this is hearsay.

9 THE COURT: No, it isn't.  
10 Overruled.

11 THE WITNESS: Give him a chance.

12 THE COURT: You'll have to brush up  
13 on hearsay. I'll give you a little course  
14 later, but we don't have time right now. When  
15 the issue is what words were spoken, whether  
16 they were true or not, when the issue is  
17 simply, as in a disorderly conduct case  
18 particularly, are the words offensive, it  
19 doesn't matter if they're true or not, it's  
20 just, what words are spoken.

21 If the fact at issue is what were the  
22 words that were used, then it is not hearsay  
23 because they're not being offered for the truth  
24 of the statement. So if the witness is being

L. Beckman - direct

1       asked to say what did somebody say not because  
2       what they said was true or not true, but  
3       because the issue in the case is what words  
4       were used or what words were used is relevant  
5       -- for instance, here the prosecution is  
6       contending that the words that were used had an  
7       incendiary effect. That's part of what you're  
8       trying to say here. Therefore, the words that  
9       are used is the relevant fact. And, as such,  
10      they're not being offered for the truth of what  
11      is being said. And, therefore, it's not even  
12      -- it's not hearsay. It's not a question of  
13      finding an exception, it's simply not hearsay  
14      because it's not being offered for the truth of  
15      the content of the words.

16               MR. SILOW: My belief was it was  
17      offered for the proof of what was said.

18               THE COURT: No, no. It is being  
19      offered for the proof of what was said, but not  
20      for the truth of the underlying statement. In  
21      other words, if the statement is, the sky is  
22      blue, and the issue is, what did the witness  
23      say, it doesn't matter if the sky is blue or  
24      isn't blue, it's what did the witness say.



L. Beckman - direct

1 Good article in this month's ABA Journal.  
2 Commend it to your attention. I don't know  
3 that this witness has much more of relevance to  
4 add, however.

5 MR. MARCAVAGE: Can she answer that  
6 question?

7 THE COURT: Who knows what the  
8 question was?

9 MR. MARCAVAGE: I had asked what do  
10 you remember Mr. Rendell speaking?

11 MR. SILOW: And may I object to the  
12 relevance of that line of questioning.

13 THE COURT: What is the relevance of  
14 what Mr. Rendell said?

15 MR. MARCAVAGE: Well, I think it's  
16 important for the Court to understand this was  
17 an invitation on behalf of Governor Elect  
18 Rendell, and I am not able to produce  
19 Mr. Rendell to testify for himself, therefore  
20 the Court --

21 THE COURT: What is the relevance of  
22 what was said?

23 MR. MARCAVAGE: Well, it gives  
24 evidence to the fact that I was offered to

L. Beckman - direct

1 speak. It wasn't I interrupted anything.

2 THE COURT: That's not in dispute.

3 The officer already testified. Does this

4 witness have something different than what the

5 officer testified to about that part of the

6 incident? The testimony thus far is that the

7 then candidate handed you the microphone, said,

8 Here, say what you have to say, and you did,

9 and you gave the microphone back to

10 Mr. Rendell. Now, is this witness going to say

11 something different than that?

12 MR. MARCAVAGE: Well, I don't know.

13 THE COURT: Well, do you expect it?

14 MR. MARCAVAGE: I will just withdraw

15 the question, and we'll just proceed.

16 THE COURT: Good.

17 MR. MARCAVAGE: I have no further

18 questions of this witness.

19 THE COURT: Any questions of this

20 witness?

21 MR. SILOW: May I have one moment,

22 your Honor?

23 (Pause.)

24 MR. SILOW: No questions,

M. Marcavage - direct

1           your Honor.

2                   THE COURT:   You may step down.

3                   (Witness excused.)

4                                 - - -

5                   THE COURT:   Any other witnesses?

6                   MR. MARCAVAGE:  I'm going to call  
7 myself.

8                   THE COURT:   Yes, besides that,  
9 anything else?

10                  MR. MARCAVAGE:  No.

11                  THE COURT:   Please take the stand.

12                  ...MICHAEL MARCAVAGE,  
13 M-A-R-C-A-V, as in Victor, A-G-E, having been  
14 duly sworn, testified as follows...

15                  THE COURT:   Go ahead.

16                  DEFENDANT'S TESTIMONY

17                  THE WITNESS:  Your Honor, I'm here  
18 today to defend myself in this matter, as you  
19 know.  I have some facts I need to provide  
20 first, and that is the Pennsylvania Crimes  
21 Code, Section 5503 --

22                  MR. SILOW:  Objection, your Honor, he  
23 is arguing the law here, I believe.  It can go  
24 toward argument, not during his testimony, your

M. Marcavage - direct

1 Honor.

2 THE COURT: Well, it's a little hard  
3 to know what he's testifying to at this point.  
4 Overruled. Go ahead.

5 THE WITNESS: I'll just briefly  
6 describe why I'm stating this. I was charged  
7 with Section 5503, Subsection (a)(4) of the  
8 Disorderly Conduct. I wasn't charged with  
9 any --

10 THE COURT: I understand what the  
11 charge is and I understand of what the offense  
12 occurred, of what the offense consists. Do you  
13 want to testify to facts.

14 THE WITNESS: In the public park, my  
15 purpose and intent was to preach the gospel of  
16 Jesus Christ. I am a street evangelist, and I  
17 have done this on many different occasions, and  
18 I was in a public park, in the back of the  
19 park, and was called to preach the gospel there  
20 on that day where the rally was.

21 There are, amongst myself, other  
22 people protesting various things, along with  
23 Casey supporters, in addition to that.

24 The police, I do not recall them

M. Marcavage - direct

1       approaching me, I'm not denying that they did  
2       to tell me that I needed to stop doing so, and  
3       they did say I did stop when they asked.  
4       Sergeant Sjostrom did state that in his  
5       testimony.

6               The other purpose and intent which  
7       I'm trying to describe to the Court today, my  
8       intent was to preach the word of God, to be  
9       obedient to God in accordance with my Christian  
10      faith, and to get a brief verbal message across  
11      to Governor Elect Rendell, now Governor. So  
12      the only intent I had there was not to cause  
13      public inconvenience. I wasn't trying to cause  
14      an annoyance or alarm, but these things did  
15      occur when the police engaged in violating my  
16      First Amendment rights to free speech.

17             In fact, even Mr. Rendell did offer  
18      me the opportunity, and since he's not here  
19      today, I cannot ask what he did say after I  
20      left the area, but I'm going to say what I  
21      remember him saying, and that is that the  
22      democratic party believes in free speech, and  
23      that is why we gave this young man an  
24      opportunity to speak here today. So

M. Marcavage - cross

1 Mr. Rendell, himself, even acknowledged this as  
2 a First Amendment activity.

3 I have to say that I was not in  
4 violation of Section 5503, Subsection (a)(4)  
5 because my act did serve a legitimate purpose,  
6 to preach the gospel of Jesus Christ. And that  
7 is all, your Honor.

8 THE COURT: Cross-examine.

9 CROSS-EXAMINATION

10 BY MR. SILOW:

11 Q. Mr. Marcavage, on that day in question you  
12 were using a bull horn to so-call preach your  
13 message; is that correct?

14 A. Yes, that is correct.

15 Q. And you said you don't deny that the  
16 officers asked you to stop using the bull horn  
17 because you were causing a disturbance with the  
18 other listeners of the rally; is that correct?

19 A. Yes. I was in the back, and they did  
20 approach me, I believe. I'm not denying that it  
21 did not happen.

22 Q. And after you stopped for awhile, you  
23 continued to use the bull horn to preach your  
24 message of Jesus Christ; is that correct?

## M. Marcavage - cross

1           A.    No, I did not continue to use it.

2           Q.    Did you continue to voice your opinion in  
3 a very loud manner of your belief in Jesus Christ?

4           A.    During an opening, when Mr. Rendell was  
5 speaking, I did pose a question to him. That was  
6 part of my intent.

7           Q.    Did you happen to see the other people  
8 that were listening to now Governor Rendell's  
9 speech, did you happen to see what they were doing  
10 at this time?

11          A.    No, I did not. I did not see what they  
12 were doing.

13          Q.    You were asked to stop again, and you  
14 continued; is that correct?

15          A.    No, I wasn't asked to stop again.

16          Q.    When you were up at the stage?

17          A.    No, I wasn't asked to stop again. In  
18 fact, I just finished, and that's when the police  
19 came up and arrested me, after I gave the  
20 microphone back to Mr. Rendell, waited for his  
21 response, and as I waited for his response, the  
22 police came in and arrested me.

23          Q.    Isn't it true that after you gave  
24 Mr. Rendell back his bull horn or his microphone

M. Marcavage - cross

1 that you continued to speak; is that correct, up  
2 front, without the microphone?

3 A. I asked him to answer my question, and  
4 there was nothing else that was said, other than  
5 waiting for his response.

6 MR. SILOW: No further questions at  
7 this time, your Honor.

8 THE COURT: Anything further in  
9 response to the questions that were just asked  
10 of you?

11 THE WITNESS: No.

12 THE COURT: Thank you, you may step  
13 down.

14 (Witness excused.)

15 - - -

16 THE COURT: Any other witnesses?

17 MR. MARCAVAGE: No, your Honor, there  
18 are no other witnesses.

19 THE COURT: All right. You rest,  
20 then?

21 MR. MARCAVAGE: Yes.

22 THE COURT: Any rebuttal testimony?

23 MR. SILOW: No, your Honor.

24 THE COURT: All right.



1 MR. MARCAVAGE: I would like to make  
2 a closing statement, if that's permissible.

3 THE COURT: I had no doubt you  
4 would. You have three minutes. Go ahead.

5 MR. MARCAVAGE: Your Honor, my intent  
6 that day was to preach the word of God, to be  
7 obedient to God in accordance to my Christian  
8 faith, and to get a brief verbal message across to  
9 Governor Elect Rendell, now Governor. I believe  
10 that I have a constitutionally protected right to  
11 preach in the open air and to exercise my religious  
12 beliefs as a preacher of the gospel of Jesus  
13 Christ. I have a God-given responsibility that  
14 exceeds just mere public speech, because I am a  
15 minister of the gospel.

16 I'm going to read from Isaiah,  
17 Chapter 58. "Cry aloud, spare not, lift up thy  
18 voice like a trumpet, and show my people their  
19 transgression and the house of Jacob their sins."

20 Preaching is not mere speaking or  
21 talking, it is a forceful verbal delivery of a  
22 specific religious truth. By public preaching I am  
23 called to cry out loud. It is like sounding an  
24 alarm and a warning that compels people to accept

1 or reject my message.

2 I'm going to now read from Romans,  
3 Chapter 10. "How shall they hear? How then shall  
4 they call on him in whom they have not believed?  
5 and how shall they believe in him of whom they have  
6 not heard? and how shall they hear without a  
7 preacher? and how shall they preach, except they  
8 be sent? as it is written. How beautiful are the  
9 feet of them that preach the gospel of peace, and  
10 bring glad tidings of good things."

11 The Commonwealth must offer evidence  
12 to show that the defendant's actions showed no  
13 legitimate purpose, and has failed to do so today.  
14 My First Amendment right to exercise free speech  
15 was violated. Even Mr. Rendell saw my act as a  
16 matter of free speech, as he stated to the people  
17 there at the rally, and also quoted in the  
18 Phoenixville newspaper. I ask that I be acquitted  
19 based simply on a matter of law on these charges.  
20 I have nothing else, your Honor.

21 MR. SILOW: Your Honor, the  
22 Commonwealth would ask --

23 THE COURT: Mr. Silow, now that  
24 you're an expert on the law of hearsay, let's see

1     how your First Amendment knowledge is.

2                   MR. SILOW:   Your Honor, we'll see how  
3     that is, yes.

4                   THE COURT:   Excuse me?

5                   MR. SILOW:   I said, we will see how  
6     my First Amendment knowledge is.

7                   THE COURT:   You know where we're  
8     going.

9                   MR. SILOW:   Your Honor, the  
10    Commonwealth has shown, by testimony from Sergeant  
11    Sjostrom, that he's created a hazardous condition.  
12    He was annoying the listeners of Governor Rendell's  
13    speech.  They were getting verbally --

14                   THE COURT:   That's what he was there  
15    to do.  That's exactly what he wanted to do, isn't  
16    it?

17                   MR. SILOW:   Yes, your Honor; however,  
18    there is a section --

19                   THE COURT:   He would have been  
20    disappointed if they weren't annoyed.

21                   MR. SILOW:   He was asked numerous  
22    times to stop speaking because he was hindering  
23    people's listening of the speech.  It is a  
24    misdemeanor under 5508, disrupting a meeting or

1 session, that if he continued to do so he would be  
2 found --

3 THE COURT: Under (a)(4)?

4 MR. SILOW: Well, this is actually  
5 5508, actually.

6 THE COURT: But he's not charged with  
7 a violation of 5508.

8 MR. SILOW: Well, that's correct,  
9 your Honor, but there is --

10 THE COURT: He's charged with a  
11 violation of 5503(a)(4). Indeed that actually sort  
12 of cuts against you, doesn't it, because if you  
13 have a specific crime, you should be charged with  
14 that. And the fact that a specific offense exists  
15 implies that another charge is not intended to  
16 cover that same specific offense. I wasn't aware  
17 of 5508, but, what are you arguing, he violated  
18 5508 so he should be found guilty of 5503?

19 MR. SILOW: Well, 5503, your Honor,  
20 (a)(4), Creates a hazardous or physically offensive  
21 condition, as also testified by Sergeant Sjostrom  
22 that --

23 THE COURT: Well, maybe you want to  
24 quickly address the main defense, which is that the

1 defendant contends it served a legitimate purpose.

2 MR. SILOW: We believe that the only  
3 purpose that he was sent there -- there was no  
4 legitimate purpose to his speaking out, your  
5 Honor.

6 THE COURT: Whoa, whoa, whoa, what  
7 basis do you argue that, you personally don't find  
8 it to have been legitimate, or the sergeant, or  
9 me?

10 MR. SILOW: No, the sergeant did not,  
11 and also based upon the fact that he was given his  
12 opportunity to speak and also continued on  
13 afterwards, as testified, and created a hindrance  
14 to now Governor Rendell's ability to speak.

15 THE COURT: Don't you think that's  
16 enough punishment for the man, Rendell got  
17 elected?

18 MR. SILOW: I don't believe so, your  
19 Honor.

20 THE COURT: He's got to live with  
21 that now for at least four years. Anything else?

22 MR. SILOW: No, your Honor.

23 THE COURT: Nice job, but it doesn't  
24 fly. The offensiveness of the speech, if it were,

1 and I'm not called upon to rule upon whether it was  
2 or it wasn't, cannot be used to stifle a person  
3 from speaking. And this evidence doesn't overcome  
4 the latitude that has to be given of somebody  
5 exercising their First Amendment rights in a public  
6 forum. And if other people are annoyed, that's,  
7 basically, they're the ones who ought to be  
8 controlled. It's not that I'm not sympathetic to  
9 the horrendous problems this creates for police at  
10 a public gathering and the potential for terrible  
11 harm. I understand that. But that can't be used  
12 as a mechanism, the criminal law, under these  
13 circumstances, can't be used as a mechanism for  
14 truncating First Amendment rights. The First  
15 Amendment just trumps the law here. And that's the  
16 reason why that phrase is put into the Disorderly  
17 Conduct Statute, to try to save it from  
18 unconstitutionality. And whether one agrees or  
19 doesn't agree with the message, doesn't and can't  
20 control whether it's a legitimate message.  
21 Legitimate has to be given a much broader reading  
22 than that. Is it a message that some rational  
23 person could believe to be a message that ought to  
24 be delivered? I know the defendant apparently

1   skipped over the part about love thigh neighbor.  
2   It's in that book there somewhere, too, and some  
3   other parts, but it really doesn't matter. This is  
4   classic. It's a political rally, and if ever  
5   there's going to be a place where First Amendment  
6   rights have to be protected, this is it.

7                   I just know that too many cases would  
8   say that, under these circumstances, they are very  
9   unrealistic, I'm afraid, in many circumstances,  
10   concerning the limitations on the manpower of local  
11   police departments, but the law would say you just  
12   have to do what you have to do to protect the  
13   combatants from injuring each other. I have to say  
14   that in this case, too, remember that the officer's  
15   testimony was that he was using a bull horn.  
16   There's no testimony to indicate that subsequently  
17   he continued to use that. The officer didn't  
18   remember, the defendant says he did not. And the  
19   offense, if it occurred, was not at the time when  
20   he was using the artificial voice enhancer, because  
21   the officer said, he stepped down, he walked away,  
22   and he hoped it was over. So this was a  
23   continuation, something that happened a little bit  
24   later. There's no evidence that other than when he

1 was handed the microphone by the speaker at the  
2 rally that he enhanced his voice. I won't go on.

3 There also really isn't much evidence  
4 to sustain the fact that probably what the officers  
5 did prevented a situation from getting ugly, and  
6 maybe in that sense it's a good thing they did what  
7 they did, but it doesn't rise to the level of a  
8 criminal charge of disorderly conduct.

9 Accordingly, I find the defendant not  
10 guilty. And, once again, as with Mr. O'Leary, we  
11 have to recognize that the Court is not here to do  
12 what the Court's own personal feelings might or  
13 might not dictate. The Court is here to follow the  
14 law, and that's what we do. The defendant is found  
15 not guilty. If you will hand the yellow sheet to  
16 the District Attorney and the other two to the  
17 defendant.

18

- - -

19

(Hearing concluded at this time.)

20

- - -

21

22

23

24