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A Wink, A Smile: How Gold Club Defendants Bonded With Jury

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After the Gold Club trial, a juror wrote former club owner Steven E. Kaplan to tell him the child she had conceived during the trial was a boy.

"I guess his middle name will have to be Steven," wrote juror Tiffany Felker, an Atlanta second-grade teacher who was an alternate on the panel.

She was dismissed when the jury began deliberations on Aug. 2.

After the trial, Felker wrote to Kaplan, "Even though the trial was a terrible thing for you to go through, I am blessed that during that time is when [my husband and I] created our little one. I guess all that talk about sex in the club sparked something since we'd been trying for a year before."

Felker's letter was one of seven written by members of the Gold Club jury that defense lawyers submitted to U.S. District Judge Willis B. Hunt Jr. before Kaplan was sentenced.

Felker wrote to Kaplan personally but said recently that she was glad her letter had been forwarded to the judge.

The other six letters, all addressed to Hunt, asked for leniency-and no prison time-for Kaplan. On Jan. 8, Hunt disregarded prosecutors' recommendation for a three-year prison sentence, and instead sentenced Kaplan to 16 months.

Kaplan, who pleaded guilty to one count of racketeering, also had to pay a \$5 million fine, \$300,000 in restitution to the club's credit card fraud victims, and forfeit ownership of the Gold Club. When he is released, he will have to perform 400 hours of community service.

Kaplan was the only Gold Club defendant to be sentenced to prison. Thirteen others pleaded to lesser charges and received probation. Charges against

a fourteenth defendant were dismissed. Two were acquitted.

Empathy for Defendants

The letters and interviews with the jurors after the trial suggest that the jury developed an unusual empathy for the defendants and their lawyers.

One juror says he nicknamed the defense team "The Magnificent Seven."

Over the course of the four-month trial, played out in a small, crowded courtroom amid international publicity, jurors say they began to feel as if they knew the defendants, their wives, mothers and sisters who came to court day after day, as well as the judge, lawyers and the media.

This feeling of intimacy was built not so much on conversation as it was on appearances, on the impressions left by small courtesies witnessed, and by casual remarks that were either exchanged or overheard.

Some of those unofficial contacts pushed the limits of court rules that bar all contact with jurors. During the trial, defendant Michael DiLeonardo would occasionally glance at jurors and smile and wink, jurors say. Kaplan once talked politely with two of the jurors during a lunch break at a downtown Subway restaurant.

After the trial, six jurors felt comfortable enough to join DiLeonardo, Kaplan, other defendants and their lawyers at a victory party at Maggiano's in Buckhead. For months, some jurors continued to stay in contact with DiLeonardo and were his guests at subsequent dinners in Atlanta, one at an upscale Brazilian restaurant the night before Kaplan was sentenced. Half the jury attended Kaplan's sentencing in a demonstration of support. Assistant U.S. Attorney Arthur W. Leach, who prosecuted the case, says that in 20 years as a federal prosecutor, he has never seen a jury ally so closely with a defendant.

The degree to which the jury came in contact with defendants in the court, in the halls, in the elevators and in the basement cafeteria always concerned him as potentially improper. His formal protests to the judge, he says, were ignored. Leach says he didn't know during the trial that DiLeonardo winked at jurors or of the casual exchanges outside the courtroom with Kaplan.

Defense's Jury Strategies

Steven H. Sadow, Kaplan's attorney, says the defendants didn't get such a sympathetic jury by accident. He says jury selection was a painstaking process that he and defense lawyers Bruce S. Harvey and Donald F. Samuel refined to an art during the 2000 murder trial of Baltimore Raven Ray Lewis.

The defense began with the assumption that they wanted to eliminate white women from the jury pool, he says. Conversations with the defense lawyers' wives and white female colleagues led Sadow to conclude, "White women were just strongly, vehemently opposed to the strip industry. It seemed to be because, more than any other reason, it took advantage of women." African-American men were considered the best jurors because many "have had experiences themselves, or through friends and family, with law enforcement, and they have been negative experiences," Sadow says. In general, they tend to be more skeptical of law enforcement officers and less willing to accept that they are telling the truth, he says.

If white women would make the worst jurors, and African-American men the best, it was a toss-up between open-minded white men and African-American women, who in the end comprised most of the jury.

"My general feeling was that if I had to choose between them, I would go with an African-American female with an open mind," Sadow says, because they would have likely been influenced if a black man had been profiled, stopped or harassed by police.

When the jury was empaneled, "There was no one on that jury that had a closed mind on the strip club industry or the mob," he says. "The mere subject matter of our case was not going to convict the defendants."

The original jury was a predominantly white jury of eight men and four women.

During the four-month trial, four were removed and replaced with alternates.

The final jury consisted of five white men, one African-American man, five African-American women and one white woman.

Jury Not Intimidated

Jurors confirm that they weren't intimidated by the sometimes seamy subjects discussed in the trial—sexual encounters, strip clubs and the mob. Rather,

they seem to have been fascinated by the cast of characters who came to court each day either to testify or to watch the proceedings.

By the end of the trial, Felker says "We knew pretty much everyone. We knew who the mothers were, who the sisters were, who the media was, the people from upstairs [in the courthouse] who just came down to watch.

We pretty much knew everything. This was our life."

How did they know? Felker wasn't specific. Some members of the media, particularly local television reporters, were easily recognizable, she says. Some of the defendants' families were introduced during opening statements, Felker says, "and we did remember a lot of them."

"Also," she says, "You could tell on days when certain people had testimony about them, certain people would show up. When Norby's [defendant Norbert Calder, a Gold Club manager] ex-girlfriend was testifying about him, his mother came." How did she know it was his mother? "You could kind of tell."

As the testimony grew more redundant, Felker says, "Our attention every now and then would sway. We would focus on other things."

The jury also was aware that the lawyers had assigned someone to watch them. "They were writing down expressions, things we would be doing, when we would giggle, when we would smirk or frown. We didn't like that too much," Felker says.

She and other jurors began watching the watchers, she says. Her observations led her to believe that Kaplan was a "good person," she says. Felker says she observed Kaplan's mannerisms and interaction with people not only in the courtroom, but in the hallway during breaks and at lunch in the cafeteria.

When prosecution witnesses gave derogatory testimony about his employees, Kaplan would pat the employees on the back or otherwise demonstrate "concerns about how they are feeling."

She says she remembers him whispering, "It's OK," to Calder at the defense table "when Norby was getting talked about by his girlfriends."

During lunch breaks, she noticed that Kaplan opened doors for women and acted "like a good guy. You can just tell." She adds: "He was very respectful to us. He never got out of line."

Felker says she and juror Cathy K. Goolsby, who is also a teacher, were eating lunch at a downtown Subway restaurant one day during the trial and noticed Kaplan was also there. "He came up and asked, 'Do I need to leave? Is this uncomfortable for you?' He wanted to make sure that we weren't uncomfortable," she recalls.

Felker also thought DiLeonardo was a gentleman. In her October letter to Kaplan about her pregnancy, Felker wrote, "Please tell Mikey [DiLeonardo] hello and send him my love. I miss seeing him wink over at us."

"Just every now and then, he would smile. He would wink," Felker recalls.

"He was just another person who never did anything out of line where we felt like he was trying to get on our good side. He was very cordial."

In watching DiLeonardo, Felker says she and her fellow jurors noticed

"He was always polite to the ladies. He got things for them. He opened doors. He was always very polite to everyone."

Juror: Sadow Watched Us

Jurors also watched the lawyers closely. Juror Roger A. Winkler remembers that Sadow would sit facing the jury during testimony and, if a witness or a lawyer made a point in his client's favor, he would often nod his head. "He would definitely let the jury know."

Winkler, a Kennesaw resident, has lived in New York and Miami where stories of strip clubs and the Mafia are not uncommon. He used to run a clothing store that catered to professional athletes. Kaplan, he says, struck him as a sharp businessman whose business provided Atlanta with a lucrative tax base.

Winkler soon dubbed the defense counsel "The Magnificent Seven." Whenever federal prosecutors would examine a witness, he says he would often think to himself, "Ha, wait until the Magnificent Seven get up here. They will blow you away."

Jurors also watched Judge Hunt for clues. If a lawyer reached the point where he was asking the same question "seven different ways" Winkler says the jurors would often find the judge "looking over, shaking his head and smiling."

Media Attention

Winkler says he and the other jurors often came in contact with the media during trial breaks at the courthouse elevators.

"We'd go on break. We'd all go down, checking each other out." WSB-TV reporter Lynn Harasin held the elevator door for him one day and he hesitated, unsure whether he should ride with her. "She says, 'Are you coming? Are you going upstairs?' " he recalls. Then, he says, she told him, "Roger, you're a very good juror. You're very attentive. You don't fall asleep."

Once at the cafeteria, WXIA-TV reporter Jeff Dore was in front of him in line. Dore turned to him and said, "What do you think of this case?"

"I didn't say anything," Winkler says. A woman with Dore quickly told him Winkler was a juror. "That's OK," Dore continued. "I don't recognize you."

"But I recognize you," Winkler answered.

That was not the only time Dore attempted to start a conversation, he says. "We would be in the elevator, him and a guy from Channel 11," and they would ask, "How are you guys going to reach a verdict?" Winkler says that jurors responded jokingly that they would fall back on the childhood game of "rock, paper, scissors" to reach a verdict.

"We'd say, 'You guys have got this figured out,'" Winkler recalls. The television reporters responded, "Well, we usually have got the wrong answer."

Harasin, who has worked for WSB since 1974, says, "I have never discussed a case with a juror." Nor did she ever know Winkler's name, although she recognized him as a Gold Club juror because of his distinctive black eyepatch.

She says she did once hold the elevator for him. But she remembers only that Winkler commented, "I don't think they're going to start without me."

That, she says, "is the extent of the conversation as I remember it."

Harasin says that court rules involving the media mainly concern jurors either watching or reading trial coverage. "I don't know that anyone has said people can't be civil to each other," she says. "I never heard a judge tell jurors we can't be civil to each other ... I think things are getting really skewed when somebody can't be polite and hold an elevator door for somebody else without being viewed as suspect."

Dore was ill with bronchitis and could not be reached for comment.

Winkler acknowledges that he knew jurors weren't supposed to discuss the case, but when he and two other jurors carpooled daily from Kennesaw they couldn't help but talk about the trial. And with the case having so much prominence in the news, it was hard not to hear about it from other people, Winkler says.

When Kaplan entered a guilty plea to one count of racketeering on Aug. 2, the jury was sent home for a week . When the jury finally returned to court, all of them were aware of the plea.

"You couldn't have missed that," says Steven K. Pennington, one of the jurors who later wrote a letter to Hunt urging leniency for Kaplan. "A couple of people [jurors], folks called them while they were at work and said, 'You don't have to go back, man. It's over. They pled guilty.' "

Winkler adds that it was impossible to miss, "not with that on every channel."

Minus five defendants, including club owner Kaplan, the Gold Club trial lasted another month before it ended in the acquittal of the two defendants who had refused to plead guilty-DiLeonardo and former Atlanta police officer Reginald Burney.

Jury Deliberations

The jury took four days to reach a verdict on Burney after it acquitted DiLeonardo on the first vote. Jury forewoman Freda Welch-who was chosen as forewoman because she was the first juror selected-says the deliberations over Burney became heated and, at times, emotional.

One female juror suggested that she and Welch meet in the parking lot to settle their differences. At one point, a male juror stopped deliberating and began playing games on the small computer he had with him.

Welch says she was the one who broke the deadlock and paved the way for Burney's acquittal by calling for a revote on DiLeonardo. Eleven jurors voted to acquit. Then Welch says, she played "dirty pool." She voted to convict. That tactic, she says, opened a dialogue that ended in Burney's acquittal, as well.

Accused of being a Mafia captain and Kaplan's pipeline to the New York mob, DiLeonardo was charged with racketeering, extortion and money-laundering.

Burney, who worked in the police department's licensing and permits division, was charged with police corruption.

"We all knew" that the government didn't have anything on DiLeonardo, Winkler says.

As for Burney, any violation was, at most, "a nothing misdemeanor," he says. In the permits division of the Atlanta Police Department where Burney work-ed, "Probably what they did for fun was go down and see if they could bust anybody at the Gold Club," Winkler says. "It wasn't any big thing."

Dinner With Defendants

Pennington was one of a half-dozen jurors who joined DiLeonardo at Maggiano's to celebrate his acquittal. "The whole jury was there in the hallway after we got done," Pennington recalls. "They said, 'We'd like to buy you dinner if you care to come.' ... I had been sitting in the same room with those people for four months. I had never gotten to speak with them. With the exception of Mr. DiLeonardo, I had really not gotten to hear their side of the story."

Felker says although she had been dismissed as an alternate juror and wasn't at court to hear the verdict, other jurors called her, and she joined them that night at Maggiano's to celebrate. That's when she was introduced to Kaplan and he told her, "I bet you anything this baby is going to be a boy."

Winkler says he didn't attend the victory party because he didn't think it was appropriate. But when Pennington and juror Mac Collett, who was wounded in the Korean War and now lives in Canton, came by his house that night after the party to retrieve their cars, it was former Gold Club manager and defendant Roy Cicola who gave them a ride.

Winkler invited Cicola in and they talked about the verdict. Cicola asked him then if Winkler thought he was guilty. Winkler told him he didn't think he "had anything to do with it."

Winkler says Cicola called him at least twice more to invite him to dinner with other jurors. Winkler, concerned that such socializing might be inappropriate, says he didn't go.

Welch wasn't at the Maggiano's victory party. But she, Pennington, Collett,

Goolsby, and two other jurors were at Kaplan's sentencing hearing five months later. The night before Kaplan was sentenced, at least six jurors were DiLeonardo's guests for dinner at Fogo de Chao Churrascaria, an upscale Brazilian restaurant in Buckhead, according to Collett.

Six jurors came to court the next day. Two of them, jurors Barbara Hunter and Goolsby, held hands and cried as Hunt sentenced Kaplan.

All hoped that Hunt would take into consideration letters they had written asking for leniency for Kaplan.

"I feel that Mr. Kaplan did not do anything wrong other than run a very successful and financially profitable club," Winkler wrote.

In her letter, Welch told Hunt she would have acquitted Kaplan.

Juror Ronald G. Sanders, the sole African-American man to deliberate, wrote that when he learned that Kaplan "took the plea in order too [sic] help his friends and employees, [it] showed me that the man has some honor about himself."

Goolsby wrote that the \$5 million forfeiture assessed against Kaplan and the loss of the Gold Club to the government "is ample punishment" and added she would have voted for acquittal.

Pennington said in his letter to Hunt that he, too, would have acquitted the strip club owner and he noted the reduction in prison time given to some of the witnesses who testified against Kaplan. "I certainly prefer Mr. Kaplan as a neighbor to these people. ... If they're able to go free, so should Mr. Kaplan." [end]