

THE FOLLOWING IS THE PDF OF AN OFFICIAL
TRANSCRIPT. OFFICIAL TRANSCRIPTS MAY ONLY BE FILED IN CM/ECF
BY THE OFFICIAL COURT REPORTER AND WILL BE RESTRICTED IN
CM/ECF FOR A PERIOD OF 90 DAYS. YOU MAY CITE TO A PORTION
OF THE ATTACHED TRANSCRIPT BY THE DOCKET ENTRY NUMBER,
REFERENCING PAGE AND LINE NUMBER, ONLY AFTER THE COURT
REPORTER HAS FILED THE OFFICIAL TRANSCRIPT; HOWEVER, YOU ARE
PROHIBITED FROM ATTACHING A FULL OR PARTIAL TRANSCRIPT TO ANY
DOCUMENT FILED WITH THE COURT.

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 -VS-) DOCKET NO. 1:20-CR-00296
7)
8 TELDRIN FOSTER,)
9)
10 DEFENDANT.)

11
12
13 TRANSCRIPT OF PRETRIAL HEARING PROCEEDINGS
14 BEFORE THE HONORABLE J.P. BOULEE
15 UNITED STATES DISTRICT JUDGE
16 JANUARY 24, 2024

17 APPEARANCES:

18 ON BEHALF OF THE GOVERNMENT:

19 TAL C. CHAIKEN, ESQ.
20 SAMIR KAUSHAL, ESQ.
21 BABASIJIBOMI MOORE, ESQ.
22 ASSISTANT UNITED STATES ATTORNEYS

23 ON BEHALF OF THE DEFENDANT - TELDRIN FOSTER:

24 LEIGH ANN WEBSTER, ESQ.
25 SARALIENE DURRETT, ESQ.

ON BEHALF OF THE DEFENDANT - JOHN GAINES:

DEANA TIMBERLAKE-WILEY, ESQ.

ON BEHALF OF THE DEFENDANT - CARLA JACKSON:

DAVID D. MARSHALL, ESQ.

ON BEHALF OF THE DEFENDANT - JERRY BAPTIST

DOUGLAS W. GILFILLAN, ESQ.
ADITYA SHRIVASTAVA, ESQ.

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

1 (PROCEEDINGS HELD IN OPEN COURT AT 1:04 PM., ATLANTA, GEORGIA)

2 COURTROOM DEPUTY CLERK: The Court has set aside time
3 for a pretrial conference in the United States v. Carla
4 Jackson, John Gaines, Jerry Baptiste and Teldrin Foster. Case
5 Number 1:20-CR-296.

6 Counsel, would you please announce yourselves for the
7 record.

8 THE COURT: And I think just any counsel with a
9 speaking role today should introduce themselves.

10 MS. CHAIKEN: Good morning, your Honor. Tal Chaiken
11 for the United States. I'm with my co-counsel Samir Kaushal
12 and Siji Moore.

13 MS. WEBSTER: Leigh Ann Webster on behalf of
14 Mr. Foster, who is here. And Saraliene Durrett is at counsel
15 table. Thank you.

16 MR. GILFILLAN: Good afternoon, your Honor. Doug
17 Gilfillan. I'm here with Mr. Jerry Baptiste and my associate
18 Aditya Shrivastava.

19 MR. MARSHALL: David Marshall here for defendant
20 Carla Jackson.

21 MS. TIMBERLAKE-WILEY: Good morning, your Honor.
22 Deana Timberlake-Wiley. I represent defendant John Gaines.
23 I'm here with my assistant Alyssa Daniels.

24 THE COURT: Thank you very much.

25 All right. This is our pretrial conference for a

1 trial that is set for February 5th. I just want to go over a
2 few logistics and then talk about voir dire issues and then
3 jump into some of the myriad motions that were filed. I don't
4 know how many of those we will get through today. And then
5 we'll have to figure out when we meet again to get through the
6 rest of them.

7 Every time I think I've got them done and I'm ready
8 to go, I get an e-mail from my law clerk telling me there's
9 three new ones. So I have to concede to you that at the
10 beginning of the day yesterday I had read everything that had
11 been filed, but I can't say that this afternoon because a
12 bunch of other stuff was filed yesterday that I haven't yet
13 gotten through.

14 So we'll get through as much as we can today and then
15 we'll figure out how to get through the rest. But I would
16 think all concerned should try to be available in the next
17 week or two as we march towards trial.

18 As far as, Mr. Gilfillan, you and your client and the
19 motion that was filed, it may have been sent in a day or two
20 before that but it hit the docket yesterday or so. I want to
21 make sure that we address that. And I'm not sure when we're
22 going to be able to address that, so I may have you and your
23 client just sit by and be here and watch these proceedings.
24 And I'm going to actually handle some of the motions filed by
25 everyone else first, and then we'll look into when we can

1 handle that issue and then the other motions that were filed.

2 That's perhaps not the most efficient way of doing
3 it, but what I don't want to do is get sidetracked on that for
4 however long that might last us and keep all the attorneys and
5 all the clients for everyone else in the case waiting on us.
6 But I'm aware of the issue, we'll get it addressed one way or
7 the other, and then we'll make sure that we address your
8 motions as well. But my thinking is I'll put you probably
9 behind some of the other things we're doing.

10 MR. GILFILLAN: Totally fine, your Honor. Thank you.

11 THE COURT: Thank you for understanding.

12 First off for trial logistics, as I think you're
13 already aware, given the number of defendants and attorneys,
14 we're going to try this case up in the Ceremonial Courtroom on
15 the 23rd floor.

16 This is specially set, so it will be reached. I
17 would like to hear from you as to how long you think this
18 trial is going to take.

19 So, Ms. Chaiken, let me hear from you from your
20 perspective, and then I can hear from the defendants, get an
21 idea.

22 MS. CHAIKEN: Your Honor, at this time we're
23 expecting to call around 20 witnesses. We have,
24 unfortunately, not been able to reach stipulations with the
25 defense about matters as simple as whether a bank is FDIC

1 insured or where servers are located, which is necessitating
2 us to call more witnesses than we think are really going to be
3 needed to testify about issues that are in dispute.

4 We're hopeful that the trial can wrap in less than
5 two weeks, in ten trial days, but our understanding from the
6 defendants is that they are each planning to do their own full
7 cross-examination of every witness and not to coordinate that
8 in any way. So it's hard for us to estimate given the number
9 of defendants and given that it seems like the anticipated
10 length of cross would be four times as long as what it would
11 be in a one-defendant trial. You know, we hope it doesn't go
12 longer than two weeks, but that's kind of all I can say right
13 now.

14 THE COURT: All right. Let me hear from defense
15 counsel.

16 MS. WEBSTER: Your Honor, I think we have, obviously,
17 at least the expert witness that we have noticed. So I think
18 we would anticipate that any witnesses we would call would
19 last less than a day.

20 THE COURT: Okay. Thank you.

21 Don't everybody rush to stand up at once and talk.

22 MR. GILFILLAN: Your Honor, I'm assuming from our
23 conversation you're not looking for anything from me, is that
24 correct?

25 THE COURT: That's correct.

1 MR. MARSHALL: Sorry, Judge.

2 I estimate the full trial to be about two weeks
3 probably, Judge. On our side if we present any testimony or
4 evidence, it would be probably half a day, if that.

5 MS. TIMBERLAKE-WILEY: Your Honor, that would be the
6 same for Mr. Gaines, it would be half a day. I do anticipate
7 extensive cross on some of the government witnesses that we're
8 anticipating will be called, that may last a full day for one
9 in particular.

10 THE COURT: Okay. Well, it sounds like it's going
11 to be mostly government witnesses and time on their directs
12 and/or cross than with potentially a few witnesses from
13 various defendants.

14 You know, as far as stipulations are concerned, I'm
15 not going to force a stipulation on anyone. You know, I would
16 just encourage folks to think through, you know, if they're
17 not stipulating about something, why, and just give that some
18 thought and discuss it with your teams and with your clients.
19 Again, I'm not going to force it on anyone, but I hope that
20 we'll all move as efficiently as we can.

21 You know, as far as cross-examinations from each of
22 the defense attorneys as to a various government witness,
23 again, that's certainly their prerogative, but probably goes
24 without saying no one wants to bore a jury with asking the
25 same question twice just to hear your own voice. So, again,

1 I'll let you make your own decisions for yourself and for your
2 client, but hopefully we won't have much of that. That would
3 be odd.

4 Let's move to voir dire and in tandem with voir dire
5 Foster's motion number 791 to play the implicit bias videos.
6 And for a lot of these I've already spent a good bit of time
7 reading your materials and researching them, so I'm just going
8 to give you my rulings. And for some other ones, I may want
9 to hear more from you.

10 And, obviously, if I rule on something and you think
11 I'm just dead wrong and you feel so strongly about it you want
12 to be heard on it, you're always free to stand up and tell me
13 I've got it wrong.

14 On this first one, I'm going to deny that motion to
15 play either of the implicit bias videos. I'm not convinced
16 that that sort of what essentially would be training is
17 appropriate. And I don't think we need to do that to weed out
18 any potential jurors that could be bias in this case.

19 I also followed the *Caldwell* case from the Eighth
20 Circuit, 81 F.4th 1160 from 2023, stating that it wasn't an
21 abuse of discretion for another judge in this district not to
22 play one of those two videos.

23 And I take this up in tandem with the voir dire
24 because I think -- unless I've missed something, really the
25 only voir dire objections were the government's objections to

1 four of Mr. Foster's proposed questions. Those are
2 Document 79 -- Document 789, questions -- and I'm on page 4 of
3 7 and 5 of 7, questions 30, 31, 33 and 34.

4 Let me ask you, Ms. Webster, looking at 30, the first
5 couple -- the first two lines of that, The term implicit bias
6 refers to the attitudes or stereotypes that affect our
7 understanding, actions and decisions in an unconscious manner,
8 kind of just your definition of what you think implicit bias,
9 that term represents. Then you've got the follow-up actual
10 question in 30, and then another question in 31.

11 You know, although I denied your motion to play the
12 video, I'm not sure I'm wholly opposed to you at least
13 breaching this topic and mentioning it. But I'm a little
14 confused about the questions here that follow on -- at 30 and
15 at 31. And what I don't want to do and what I don't think is
16 necessary for after you ask these 2 questions, you know, 17
17 people raise their hands on 1 and 12 people raise their hands
18 for another, and then we have a 15-minute conversation with
19 every single juror that's raised their hand about how they
20 feel about implicit bias, you know, did they want to wear a
21 hair shirt about this or do they think it's a bunch of bologna
22 or are they somewhere in the middle. I don't think that's a
23 productive use of our time. And I don't think it's necessary
24 to weed out bias.

25 But is there a way after you give your definition

1 here you could ask a question that would help serve whatever
2 need you think you have on this, that you can at least get
3 some hands up and get an answer to a question that would help
4 you without needing two questions and without needing a lot of
5 follow-up on implicit bias? Because, again, I'm not going to
6 entertain opening up a can of worms and the door to a lot of
7 back-and-forth with you talking about implicit bias in front
8 of the jury, potential jury.

9 MS. WEBSTER: Your Honor, I think that we could
10 fashion something that would address the Court's concerns.
11 And if you want me to do that now, I would just need a minute.

12 THE COURT: Sure. Why don't you take a minute
13 because I would like to address this and put it behind us. We
14 have 70 other things to handle.

15 MS. WEBSTER: Sure.

16 (Pause in proceedings.)

17 MS. WEBSTER: Your Honor, are you opposed to like if
18 we don't ask both of the questions, the question in 30 and the
19 question in 31, to define it and then just ask the question in
20 31? Because I'm not sure how else we -- the idea is to ask if
21 they're familiar with this or willing --

22 THE COURT: And you would just ask that question and
23 you would be fine without additional follow-up?

24 MS. WEBSTER: We want to read the definition.

25 THE COURT: I understand. You want to read the

1 definition, the first 2 lines of 30, and then the entire
2 question of 31, correct?

3 MS. WEBSTER: Yes.

4 THE COURT: Let me hear from the government about
5 that.

6 MR. MOORE: Yes, your Honor. Here we don't believe
7 that implicit bias is going to be an issue in this case. If
8 she wants to explore whether they have any general biases, you
9 know, we think that is appropriate. But here, sort of I think
10 as other courts have found, educating people on implicit bias
11 in a two-line definition and then asking them to apply this
12 definition in short order I don't think is going to be
13 effective in rooting out implicit bias or the use of the
14 Court's time. But if there's direct biases against any
15 individuals or anything like that, that's a proper area for
16 them to explore. So we would object to that, your Honor.

17 THE COURT: Thank you.

18 I share your concerns on both counts but,
19 nevertheless, in an abundance of caution I'm going to allow
20 Mr. Foster's counsel to ask the question as framed, the first
21 two lines of 30 and then the question of 31. And, again, I'm
22 not inclined to allow follow-up questions and further
23 discussion about implicit bias. I, frankly, was a bit loathed
24 to allow any of this, and I think I could exercise my
25 discretion not to based on the precedent that I've read, but I

1 will at least allow you to see who thinks this is an issue and
2 is willing to explore it and who might not be to the extent
3 that may help you find a fair and impartial jury panel.

4 MS. WEBSTER: Thank you, your Honor.

5 THE COURT: Now, talk to me about -- well, on 33 and
6 34, I looked at these and I think it's really -- I think
7 they're confusing because I assume what perhaps you would like
8 to know is do we have anybody who's a member of the KKK or do
9 we have anybody who thinks Black Lives Matter is total BS,
10 right? But the way your questions are asked, I think probably
11 everybody might raise their hand.

12 Like, for instance, does anyone -- you know, question
13 33, does anyone have any knowledge of or experience with
14 groups like Black Lives Matter either through personal
15 experience, social media or news reports? Well, if you look
16 at that, does anyone have knowledge about Black Lives Matter
17 through news reports, I mean, unless our 40, 50 jurors,
18 however many they bring up for us, have been living under a
19 rock the last five, ten years, I would think everyone would at
20 least have knowledge of Black Lives Matter from a news report
21 or something. So then we're going to have 45 people raise
22 their hand and you're going to want to ask a follow-up
23 question, oh, do you have experience with that group, are you
24 a member of that group.

25 Same thing with white nationalist groups, does anyone

1 have knowledge of white nationalist groups through social
2 media? Yeah. I would think, again, unless somebody's a
3 hermit, they've -- you know, for the last -- I don't know,
4 gosh, the last 400 years they've probably heard about that
5 type of thing. So I just -- you know, I think this is just
6 going to be a mess.

7 MS. WEBSTER: Sure. I think -- the concerns we have
8 are what you said initially, like does anyone feel strongly
9 about Black Lives Matter. And so I think we can change the
10 question to say, Does anyone have any strong feelings against
11 Black Lives Matter, or the movement, and then that was more
12 narrowly tailored to, one, strong feelings and, two, being
13 anti-Black Lives Matter.

14 And then as to the second question, I think we could
15 say, Does anyone belong to a white nationalist group, like the
16 KKK, or have strong feelings in favor of those sorts of
17 groups.

18 THE COURT: Very well. Let me hear from the
19 government about those narrower, more direct questions.

20 MR. MOORE: Black Lives Matters is not an issue in
21 this trial. We think it would be inappropriate to sort of
22 insert that as an issue to the jury. If they want to ask
23 about if people are members of any type of hate group, I think
24 that that is a fair question. But anything sort of beyond
25 that of -- you know, if people have strong feelings about them

1 or -- you know, I think members or supporters of any type of
2 hate group, that seems like a fair question, but it should be
3 narrowly tailored to that, not just sort of a general
4 question.

5 THE COURT: I'm going to overrule the objection and
6 allow the defense to ask those two narrower questions just
7 discussed.

8 MS. WEBSTER: Thank you, your Honor.

9 THE COURT: All right. Let me now move on to some of
10 the discovery and disclosure-type motions.

11 I guess first off there was the -- and I'm not
12 intending to get into this one in detail but I was wondering
13 if recent developments might have affected it. 829 is the
14 government's motion to compel expert discovery and exclude
15 certain opinion testimony. The response is 831. Reply is
16 833. But I saw that there was a supplemental expert report
17 from that same expert. And, you know, I think in sum and
18 substance the motion was about these scripts and the
19 government not knowing what the scripts were. And now it
20 looks like there's a new report where instead of using custom
21 secret expert scripts that the expert didn't want to give
22 us -- or give the government, he's now using more vanilla
23 scripts.

24 So I was wondering if -- fingers crossed, if this is
25 one we can strike off of our list at this point.

1 MS. CHAIKEN: Your Honor, we agree that the
2 supplemental report moots our requests for the custom scripts;
3 however, we still have the second portion of that motion
4 that's related to the hearsay statement that Mr. Foster is
5 seeking to get in through his expert.

6 THE COURT: Okay. Wonderful. I'm glad to hear
7 that's one off of my list and certainly applaud counsel for
8 finding a way to get us around that one.

9 I'll come back to the other piece of that later.

10 Off the record for a moment.

11 (Off-the-record discussion.)

12 THE COURT: All right. Let's move to 790. Motion
13 seven -- Docket Number 790, which is Foster's motion to compel
14 material. It's actually 790 and also 803. I'll discuss both
15 of those.

16 As to the request for the sentencing memo, that's in
17 790 -- and, everyone, please bear with me while I flip around
18 and find things.

19 All right. For that part of that motion, I'm going
20 to deny that motion as moot because I'm going to unseal the
21 sentencing memorandum in all but one part. I believe that
22 that sentencing memo was sealed.

23 And, Ms. Chaiken, I'm going to have you be my
24 scrivener and my producer of that. And if you could just send
25 it around to -- although I know Ms. Webster was the only one

1 that requested it, if you will just send it around to the
2 other defendants as well.

3 It is -- and, Ms. Chaiken, I'll give you a second or
4 somebody on your team a second to pull up that document if
5 someone has it. It's going to make more sense if you pull up
6 the document first. It was the sentencing memo that was the
7 subject of that 790. It was sealed Document 13 from
8 23-CR-164.

9 MS. CHAIKEN: Your Honor, he's not going to be able
10 to pull it from the docket because it's sealed, so we can't
11 pull it right now.

12 THE COURT: Let me just tell you the parts that I
13 want to have you redact before you send it around to the
14 defense. At the bottom of page five there's one line that
15 starts with "additionally." And then there are three lines
16 that carry over from that paragraph on to page six. Those
17 three lines start with "as a result" and "due to" and
18 "hemorrhage."

19 And then there's a footnote ten. I want all four of
20 those lines redacted. I want footnote ten redacted.

21 And I want the medical information redacted that's
22 the attachments, which are Document 13-3, and that's a
23 five-page medical document.

24 So just so it's clear to defense counsel, the only
25 thing I'm redacting is references to a child's medical

1 condition both in the body of the sentencing memorandum and
2 the attachments thereto. If any defense counsel thinks they
3 need that for any reason, they can let me know, but that's why
4 it was sealed.

5 Moving on to the PSR. In *State v. Gomez*, an Eleventh
6 Circuit case from 2003, 323 F.3d 1305 at 1308, the Eleventh
7 Circuit discussing other cases noted that in courts outside
8 the Eleventh Circuit there's been a determination that third
9 parties requesting disclosures of PSRs must demonstrate a
10 compelling particularized need for disclosure. And even when
11 that need is demonstrated, the district court should take
12 care, usually by in-camera review, to ensure that the
13 disclosure is limited to those portions of the report which
14 are directly relevant to the demonstrated need.

15 Based on that and my in-camera review of this PSR at
16 issue, I'm going to grant in part and deny in part the request
17 for the report. I don't think that standard's met as to the
18 entirety of the document. I don't think there's a showing of
19 the compelling need. But I will allow production of a portion
20 of that PSR. And that portion is the objections that were
21 filed, especially in that many of those do discuss Mr. Foster
22 and where the responsibility lies vis-a-vis Mr. Foster or
23 Ms. Foster. So I think that should be produced.

24 Let me -- again, Ms. Chaiken, you or someone on your
25 team, I'll let you be the scrivener and producer and let me

1 tell you what parts I think that the defense is entitled to.

2 What I've attempted to do here is capture the
3 paragraphs with the objection and the relation to Mr. Foster.
4 And I think I'm, frankly, probably erring on the side of
5 overinclusiveness because to the extent one paragraph is
6 talking about the paragraph above it or below it, I'm giving
7 probably a little bit more in an abundance of caution.

8 So, anyway, the paragraphs I think should be produced
9 start on page 11 of the PSR. That's paragraphs 26 and 27.
10 And then 29 and 30. Paragraphs 55 through 59. One moment.
11 And those are the paragraphs. All right.

12 MS. CHAIKEN: So you didn't add any more after 59?

13 THE COURT: I did not. No. Sorry. I originally had
14 27 and 30, so I was looking to see if I had missed something,
15 and then I realized I added 26 to 27, I added 29 to 30, hence
16 my delay and confusion there.

17 MS. CHAIKEN: Will do, your Honor.

18 THE COURT: Thank you very much.

19 Let's move next to -- and I'm sorry to everyone else
20 that it seems that Mr. Foster's motions here are monopolizing
21 our time, it's just the order that I was looking at things. I
22 promise we'll get into some other stuff here before long.

23 803 is Mr. Foster's motion to compel additional
24 discovery. That is -- yeah, that's related to this. This
25 essentially goes to the IRS testimony script.

1 I've looked through that and I have hesitations
2 because I don't know that there's a lot in there that's going
3 to be of much, if any, use. But I'm going to err on the side
4 of overinclusiveness and grant that and say that the defense
5 has shown how the material might alter the quantum of proof.

6 And, again, I'll say that was a difficult decision.
7 And if the government thinks I've got it wrong and maybe erred
8 on the side of overinclusiveness there, I might stand rightly
9 accused of that. It's just -- I thought it was a close one,
10 so I'm going to allow the defense to have that. But, again,
11 having read through all that, I just don't know that there's a
12 whole lot there, so...

13 Let's move to the remaining part of -- well, let's
14 just go off the record for one moment.

15 (Off-the-record discussion.)

16 THE COURT: Let's move onto the government's motion
17 in limine which I think is Docket 796.

18 MS. WEBSTER: I'm sorry, your Honor. Did you address
19 the Document 803, the request for the other -- I know you
20 addressed the part about the IRS transcript, but in that
21 motion we had also requested information about the PSRs for
22 non-testifying co-defendants.

23 THE COURT: I'll have to go back and take a look at
24 that.

25 MS. WEBSTER: Okay. Thank you, your Honor.

1 THE COURT: Well, why don't you tell me what you need
2 and why. Actually let's deal with it now.

3 MS. DURRETT: Your Honor, I think this is also
4 related to -- I know the Court denied the request for -- I
5 should say the Court granted the government's request to
6 provide some redacted PSRs for us for the testifying
7 co-defendants. And there's not a lot of information there.
8 But in addition to that, for the non-testifying co-defendants
9 we can't tell what loss amount people have been held
10 accountable, if they've received some benefit from making --
11 initially being -- you know, the probation office finding that
12 they should be accountable for an intended loss but getting
13 the benefit of actually getting the actual loss in their PSR.
14 We can't tell what role people are alleged to have, whether
15 probation felt like they had a larger role in the case than
16 they were ultimately held accountable for.

17 And this is true not only for the testifying
18 co-defendants, even in the PSRs that have been disclosed to
19 us, but also for the non-testifying co-defendants. And so
20 we're at a loss in kind of figuring out the roles of the
21 people in the case and how they may have received benefits.

22 THE COURT: All right. Thank you. I now remember
23 that, that portion of it. Let me check my notes on that at
24 the break and we'll circle back to that one. I have a pretty
25 good idea of where I meant to go on that one, but I just want

1 to double-check my notes before I announce my ruling on it.

2 Moving back to 796. There are basically 11 motions
3 embedded in that motion, or 11 topics. And I'm going to sound
4 like a bit of a broken record here, but the first nine of
5 those I'm going to treat all essentially the same way, and
6 that is essentially either -- look at it either way you want
7 to, but either defer it until it comes up or deny it without
8 prejudice to renew when it comes up.

9 But that's as to number one, admission of their own
10 self-serving statements. And I guess that one is a little
11 different because there is the follow-on as to Foster's
12 response to that request that the Court order the government
13 to disclose the portions of the statement, and I'm going to
14 deny that request and handle that on a case-by-case basis as
15 we get to them at trial.

16 Number two, government's motion to exclude Bern
17 Benoit's hearsay statements, again, deferred or denied without
18 prejudice to renew.

19 Obviously, as we get into motions in limine, the
20 whole idea here is for y'all to have guidance what's likely to
21 happen at trial. And any of these you can move to renew it
22 once I have more color about what's going on, but these are my
23 rulings based on what's in front of me. And, frankly, for a
24 lot of them I'm just going to defer and deny it without
25 prejudice to renew if and when it comes up.

1 The government's third motion as to victim blaming.
2 Again, you know, and it's not that I don't agree with these
3 principles generally in one through nine, they're all fair
4 statements of the law, it's just -- I don't know how they're
5 going to come up, so I'm not going to rule in advance you
6 can't do X, Y or Z or you can do X, Y or Z. So there, again,
7 I'm going to defer, deny without prejudice to renew when it
8 comes up.

9 Fourth is permit penalty evidence or argument.
10 Again, just like the others, it's a fair statement of the law,
11 but I'm going to defer and deny without prejudice to renew if
12 and when it comes up.

13 Same thing with the fifth motion as to precluding
14 selective prosecution evidence, defer or deny without
15 prejudice to renew.

16 The sixth motion is precluding evidence or argument
17 about the Fourth Amendment issues. You know, and here
18 especially, I just need the context, so I'm going to defer
19 and, you know, deny that without prejudice to renew.

20 Seventh motion -- or seventh topic in the motion
21 regards ignorance of law. Again, I'm going to defer that,
22 deny it without prejudice to renew when it comes up.

23 Eighth motion as to defendants putting forth evidence
24 of good character, specific instance of good conduct, like a
25 lot of these, fair statement of the law, but I'm just going to

1 defer that and deny without prejudice to renew when it comes
2 up.

3 Ninth motion, nullification. Same, I'm going to
4 defer that and deny without prejudice to renew when it comes
5 up.

6 A little bit different as to 10 and 11. The 10th
7 part of this motion is self-authentication evidence subject to
8 determination about relevance. Here I'm going to grant that
9 as unopposed except as to the documents provided by
10 Transportation Management. And, obviously, all defense
11 counsel reserve the right to object on relevance grounds if
12 they feel like they need to or if there's a particular
13 document where they don't think the standard has been met.

14 Finally, the government's 11th motion in regards
15 Rule 1006. Here I think the better course is based on the
16 representations that the government has made about what these
17 are and what -- you know, it seems pretty vanilla to me under
18 1006. So I'm going to grant but that's going to be without
19 prejudice of a defendant that thinks they don't need the 1006
20 standards to object at trial, whether it's relevance grounds
21 or -- you know, as Jackson has noted, or some other basis, as
22 Foster has noted. But, again, based on what the government's
23 said about these, it seems they would meet 1006.

24 So I think that handles that motion. As to --

25 MS. CHAIKEN: Your Honor, may I be heard as to just a

1 couple of our motions in limine?

2 THE COURT: Uh-huh (affirmative).

3 MS. CHAIKEN: As to the victim blaming motion, I
4 think a couple of the responses by the defendants suggested
5 that they intend to do at trial exactly what is prohibited by
6 the case law. And I would direct the Court to defendant
7 Jackson's response, it's on page three, where she says,
8 Ms. Jackson should be allowed to question government witnesses
9 about the PPP loan program and the application process for
10 those persons seeking loan proceeds. If the responses of
11 government witnesses reveal application process deficiencies
12 to a jury or show a lack of proper due diligence in screening
13 these loans, that is not victim blaming.

14 We called our motion victim blaming to summarize the
15 case law, but what the case law says is negligence by a
16 victim, and we're not saying there was negligence here, but
17 negligence by a victim is not a defense to fraud. And so in
18 our view what she is saying she wants to do, which is ask
19 about the level of due diligence that was applied or
20 deficiencies in reviewing the loan, is exactly what the case
21 law prohibits.

22 What they are allowed to ask about is materiality.
23 They can ask, you know, did it matter to you that it said this
24 business had 66 employees? Would you have still approved the
25 loan if the business said they had zero employees? That's a

1 materiality question. But a question about what did you do to
2 verify if the business actually had 66 employees, that's not a
3 question that's relevant to the determination of whether the
4 application was fraudulent or whether the defendant intended
5 to commit fraud. It's intended to show that the victim was
6 negligent and should have discovered the fraud, and that's
7 prohibited by the case law.

8 So we would ask the Court to reconsider its decision
9 as to --

10 THE COURT: Let me be clear. I haven't really ruled
11 against you. What I've said is I'm deferring my ruling on it
12 and, therefore, just denying without prejudice to renew at
13 trial. I just -- I can't in advance say, you can't ask any
14 questions, defense. I don't know how far they're going to go.
15 If they go to a point where you think they've crossed that
16 line, that's when you need to stand up and renew your
17 objection. I can't -- it's impossible for me to rule on that
18 in advance competently.

19 I get where you think they don't want to go. And I
20 get perhaps you're thinking that they're going to push the
21 envelope and you want to make sure that you don't let them or
22 you argue for me not to let them. I think the law is clear.
23 I think from the briefs everybody knows the law. I would hope
24 that defense counsel would stay within the bounds of the
25 authority. When they don't, I expect you to jump up and

1 object and then we'll deal with it then.

2 MS. CHAIKEN: Okay.

3 Your Honor, the only other area where I just think
4 some clarification and guidance from the Court would be
5 helpful is as to the charging decisions aspect because the
6 defendants that have filed responses have suggested that they
7 want to ask questions about who was charged and who was not
8 charged --

9 THE COURT: Which number was that just so I can go
10 back in my notes?

11 MS. CHAIKEN: Number five.

12 THE COURT: One moment. Selective prosecution is how
13 I might have termed it.

14 MS. CHAIKEN: Yeah. And the responses from some of
15 the defendants have suggested that they want to ask questions
16 about whether or not people are charged as a way of
17 questioning the reliability of the investigation. And my
18 concern there is, as the Court knows, this is a case in which
19 24 defendants have been charged, 20 of them have pleaded
20 guilty. Nobody has been charged who has not pleaded guilty.
21 To suggest to the Court -- to the jury that the investigation
22 was in some way unreliable or not thorough because a certain
23 person involved in the investigation was not charged or a
24 certain person whose name appears on a document was not
25 charged would not be an accurate reflection of the

1 investigation. But at the same time I recognize the authority
2 that the jury should not consider someone else's guilty plea
3 in order to decide whether this particular defendant or these
4 defendants are guilty.

5 But I think it would be helpful for the parties to
6 have some guidance about how that's going to play out because
7 in our view questions that suggest the investigation was not
8 reliable or not thorough or not deep enough would open up the
9 door to testimony that the investigation was extensive, and,
10 in fact, you know, charged 24 people, each of whom were
11 involved in at least \$800,000 or so worth of fraudulent PPP
12 loans. And that's just my concern based on the responses of
13 where --

14 THE COURT: I get it. I've read your motion. I've
15 read Foster's response. I've read Baptiste's response, which
16 I'm not getting into at the moment. I've read Jackson's
17 response. I don't think the law is that controversial. I
18 can't -- I'm not going to try to rule in advance. I don't
19 know what their questions are going to be. It may be that
20 their questions are allowed. It may be that their questions
21 are disallowed. I don't know yet.

22 I mean, I would love to help you and all the counsel
23 in this room, give you more definition going into trial but
24 that's one I just -- I think I've got to defer. I don't know
25 what they're going to ask, how it's going to come up, and I

1 can't tell you in advance, you know, where the limit is. I'm
2 sorry.

3 Anything else?

4 MS. CHAIKEN: No, your Honor. Thank you.

5 THE COURT: Let's move on to 788, which is
6 Mr. Foster's motion in limine.

7 There are five pieces to this one. The first
8 involves statements made by the government. I'm going to deny
9 that motion without prejudice to renew at trial if and when
10 the defense believes that the government makes an inconsistent
11 statement.

12 So I'm going to follow the guidance of the *DeLoach*
13 case, Eleventh Circuit from 1994, 34 F.3d 1005 to 1006.

14 The second motion involves excluding allegations of
15 domestic violence. I'm going to, you know, just defer that or
16 deny it as premature without prejudice to renew if it comes
17 up. The government's said they're not going there, so renew
18 it if the government goes there for some reason.

19 The third is exclude proper -- improper -- general
20 topics excluding improper agent testimony. There, again, I'm
21 going to deny that as premature but without prejudice to renew
22 it if and when the defense believes the government's violating
23 the Rules of Evidence. Just like with a lot of the
24 government's motions, this is just -- they haven't done it yet
25 and if they do it, stand up, object and we'll deal with it

1 when they do. When and if they do.

2 The fourth motion is involving the government
3 introducing testimony of untruthful witnesses. Here, again,
4 I'm just going to defer that or deny without prejudice to
5 renew. I assume that the government and the defense for that
6 matter won't elicit false testimony from any of its witnesses.
7 Of course, to the extent someone says something at trial and
8 they've said something inconsistent before trial, that would
9 seem like fodder for cross-examination. As to --
10 cross-examination and impeachment.

11 The fifth motion involved requests for a pretrial
12 hearing. I'm going to deny that. I don't think Mr. Foster's
13 presented the Court a compelling enough reason to assert those
14 judicial resources and conduct a *James* hearing. I can deal
15 with those issues at trial and cross those bridges when we
16 come to them. So the motion's denied but without prejudice to
17 renew it as to any statements that they seek to admit.

18 MS. WEBSTER: Your Honor.

19 THE COURT: Yes.

20 MS. WEBSTER: Sorry. I just would like to be heard
21 briefly on the domestic violence issue.

22 Specifically, I understand that it's premature
23 because the government has said that they're not going to
24 introduce it at this point. However, they have said that in
25 sort of vague and general terms, well, maybe, if you open the

1 door to it by, for example, putting his relationship with
2 Ms. Pyfrom-Foster at issue, then we're able to bring it in.

3 And so we, I think, need some additional clarity
4 about what would potentially open the door to it from the
5 government's perspective, and certainly from the Court's
6 perspective, because I think to say that we can't discuss
7 their relationship or to discuss their interactions or
8 Ms. Pyfrom-Foster's involvement in the case goes to his
9 constitutional right to present a defense.

10 And so I want -- I would prefer to have some clarity
11 if the Court is willing on what opens the door so we can make
12 sure that we either don't do that or that we have the ability
13 to address it before we try and present evidence relevant to
14 the -- relevant to those topics.

15 THE COURT: I get the need. I mean, it's just -- I
16 think it's almost an impossibility for me to tell you in
17 advance what -- I don't know. Obviously I know this case a
18 lot better than I know most cases at this stage because I've
19 had, you know, a dozen-plus sentencing hearings of
20 co-defendants. But even with that knowledge, I mean, I don't
21 know exactly where the government's going to go, why they're
22 going to go there, if they're going to cross the line or not
23 until I hear the questions, until I have the context for the
24 questions. They may be able -- you may be able to ask stuff,
25 they may be able to ask stuff, I just -- a lot of times on

1 these motions in limine, it's -- I can't tell you in advance.
2 I don't know.

3 You know, I think everyone's -- y'all have obviously
4 read up the law on this. I've read it in your motion and
5 responses. I think the law is pretty clear. I think it's up
6 to you as counsel now to stay on the side that you think is
7 going to get the evidence in that's helpful to your clients,
8 whether that's the government or the defense, and not cross a
9 line that's going to hurt you.

10 I can't tell you exactly where that line is until I
11 hear the questions and understand where we are. I'm sorry.

12 MS. WEBSTER: I understand. I just want to put on
13 the record that we like completely deny that there's actually
14 any domestic violence, and that I don't think the government
15 can actually prove that it happened. And so as far as -- I
16 think the government put it in their notice or their 404(b)
17 notice as in a footnote that maybe this could come in under
18 404(b). But I think -- I just want to be clear, we don't
19 think they can meet their burden to prove that it happened, so
20 it shouldn't be admitted for those reasons either.

21 THE COURT: All right. Thank you. And it sounds
22 like the government doesn't plan to go there. I'm sure the
23 government is aware of 403 as well as you are, even if they
24 get through the 404(b) factors and 403 and the prejudice that
25 might attach to domestic violence-type issues. So, you know,

1 we'll see where we end up. But right now the government's
2 saying they're not intending to go there. So it may not be
3 something we ever address.

4 MS. WEBSTER: Thank you.

5 THE COURT: Let's move to -- and, obviously, some of
6 these motions in limine overlap with the government's 404(b)
7 and so I -- if we end up being repetitive -- or if I end up
8 being repetitive, I apologize. I'll try not to do that.

9 But let's move -- I'm going to skip 771 for now, but
10 772 and 773, docket numbers, go to these same 404(b) issues.

11 One moment. 772 involved Mr. Gaines, so I'm happy to
12 now be moving on to Mr. Gaines, at least for a moment. I
13 think essentially that was withdrawn, though, so that's a
14 mooted issue or --

15 MS. CHAIKEN: Only as to the auto loans, your Honor,
16 but the first part of our notice related to other PPP loans.

17 THE COURT: Okay. All right.

18 And, again, I'm going to continue to bounce around a
19 little bit because I'm trying to handle the things that I felt
20 like we either had -- that I had either decided and wanted to
21 share with you my rulings or just crossing things off the list
22 that I thought were off the table. So I'll circle back to
23 that one.

24 773 is that -- the notice as to Foster. There were a
25 couple pieces there. And I think -- again, this is kind of

1 where we're just circling back to things that overlap with the
2 motion in limine, but I just want to mention them for the
3 record. That notice involved the auto loans, was part of it.
4 And, again, that portion is withdrawn, so that part of the
5 notice is off the table, correct?

6 MS. CHAIKEN: Except to the extent that some evidence
7 may be inextricably intertwined with evidence we present.
8 Like if there's bank records that show auto loans on them or
9 if there's communications where people are referencing auto
10 loans, but we don't intend to affirmatively present any
11 evidence that any auto loan was fraudulent.

12 MS. DURRETT: Ms. Durrett, if I can address that.
13 The government's response to our objection, it's Document 815.
14 It kind of gives that statement saying we're going to withdraw
15 this as 404(b) evidence but we still intend basically to admit
16 this evidence. And they don't tell us exactly what the
17 evidence is or why it would be relevant if it's outside the
18 time frame of the charged crimes. But what they've basically
19 said is we don't want to call it 404(b) evidence anymore but
20 we do still intend to admit it, and I think that puts us in a
21 bad position because --

22 THE COURT: I understood it as it's -- they're not
23 moving it in as 404(b), it's part of the -- extrinsic to
24 the -- excuse me, intrinsic to the rest of the case.

25 MS. CHAIKEN: Your Honor, we're not going to have any

1 witness or any document that we're going to contend shows that
2 any auto loan was fraudulent or anything fraudulent about it.
3 What we are going to do is put in communications between
4 Mr. Foster and Mr. Thomas that do go back before the time
5 period of the charged conspiracy because that evidence is
6 highly relevant to showing the nature of their relationship
7 and the existence of that relationship predating the charged
8 conspiracy. And there may be references in those
9 communications to vehicles or to VIN numbers or to other
10 matters like that, but we are not going to have anybody say
11 anything about those communications relating to fraudulent
12 auto loans.

13 THE COURT: Right. So you're not moving forward
14 under 404(b) at all anymore as I understand it, correct?

15 MS. CHAIKEN: Correct.

16 MS. DURRETT: So, your Honor, I would argue then if
17 they're trying to say it's intrinsic evidence, that they have
18 to meet the standard to admit intrinsic evidence and show that
19 it somehow completes the story of the charged crime or that
20 it's inextricably intertwined within this charged crime, and I
21 don't think they've done that.

22 So what they did is they initially filed a motion
23 saying we're going to use this as 404(b) evidence, this
24 particular evidence, text messages, WhatsApp messages, other
25 things like that. When we objected, they said, we're no

1 longer calling it 404(b) evidence but we still plan to admit
2 it.

3 THE COURT: I don't think that's a correct
4 characterization of what happened based on my review of the
5 documents. I think what happened was they were originally
6 going to be going forward with showing what they alleged were
7 fraud as to auto loans. You objected. They thought about it
8 and they decided, yeah, you know, we're actually not going to
9 do that anymore, but there still might be some documents on
10 the periphery. That's what I understand.

11 But, Ms. Chaiken, is my understanding different
12 than --

13 MS. CHAIKEN: No, your Honor, that's correct. And we
14 had always maintained that the evidence in any event was
15 intrinsic, that was the first argument in our 404(b) notice.
16 So we did not change our minds about what the evidence was
17 based on the objection. But the Court is correct, that we
18 were initially intending to explicitly present evidence that
19 Darrell Thomas and Teldrin Foster together committed an auto
20 loan fraud or participated in an auto loan fraud, and we are
21 no longer doing that, we're trying to streamline our case, but
22 we are still going to put in evidence of the length and
23 existence of Mr. Foster's relationship with his co-conspirator
24 before this conspiracy began, and that's highly critical for
25 the jury's understanding of the crime that's been charged

1 because evidence of how conspirators met and how long they've
2 known each other under well-established Eleventh Circuit
3 precedent is relevant.

4 MS. DURRETT: Your Honor, if I could just be heard.
5 I don't know that the evidence that they're suggesting they
6 want to admit shows how Mr. Thomas and Mr. Foster met. They
7 haven't said that. They keep saying it's relevant to showing
8 how they met, but they haven't said that that's what the
9 evidence shows.

10 And I'll just note, you know, if it's necessary,
11 we'll stipulate that they knew each other before this, if
12 that's what they're -- what they're wanting to get in is that
13 they knew each other before these PPP loans occurred, we can
14 stipulate to that. But if that is not what they're wanting to
15 do and they're wanting to admit this evidence, I would ask the
16 Court to make a ruling specifically about the factors that
17 would show that it's inextricably intertwined or intrinsic
18 evidence, and that's outlined in Document 792, at page four,
19 it's those factors to say this evidence is inextricably
20 intertwined.

21 And so if the Court intends to admit these things
22 surrounding auto loans and VIN numbers and things like that, I
23 would ask the Court to make a specific finding that it's
24 inextricably intertwined if that's the basis of the Court's
25 decision to admit that evidence.

1 THE COURT: Ms. Chaiken, I thought that's what you
2 are going forward on. Are you going forward on necessary to
3 complete the story, inextricably intertwined or both?

4 MS. CHAIKEN: Well, necessary to complete the story
5 is one thing that makes evidence inextricably intertwined.
6 And I think it fits under all of it. I don't really
7 understand the argument that evidence of the relationship
8 between a defendant and their co-conspirator is not relevant.
9 It's relevant to the nature of their relationship, the things
10 they talk about, the fact that -- in our view the messages are
11 going to show that they had a business relationship, that's
12 what they talked about, business. They didn't talk about
13 social things. They weren't friends. They were people who
14 did business together.

15 And the length of time that those communications
16 continued is also highly relevant, especially given
17 Mr. Foster's defense that he didn't know anything about what
18 Mr. Thomas was doing and it was actually his wife who did
19 everything. It's extremely important for the jury to
20 understand that it was Mr. Foster who had a long-standing
21 relationship with Mr. Thomas, not his wife.

22 And so I think that it is evidence that explains the
23 relationship of the co-conspirators here. And the Eleventh
24 Circuit has upheld admission of that type of evidence even
25 when that evidence is in the form of very prejudicial prior

1 crimes that the co-conspirators have engaged in and said, you
2 know, if the prior -- if the co-conspirators met by
3 participating in drug deals, that evidence becomes relevant
4 because it's relevant to showing the relationship between the
5 co-conspirators and how they've met. And here the evidence is
6 very sanitized. It's just their prior communications in the
7 approximately I think nine months leading up to the time of
8 the charged conspiracy. And I don't think the defense has
9 identified anything prejudicial about it. And it's highly
10 relevant to the jury's understanding of their relationship.

11 THE COURT: How much evidence are we talking about
12 because, I mean, I get -- you know, I thought this part was
13 frankly pretty easy, and I think it does -- to the extent you
14 want me to be clear on the record, I think it does meet that
15 standard, arising out of the same transaction or series of
16 transactions completes the story and is inextricably
17 intertwined. But I guess -- and I think you're allowed to
18 explore the depth of that relationship, not just say, oh,
19 yeah, they're willing to stipulate they knew each other before
20 this thing happened.

21 But I do think there are probably some limits, and
22 that may be -- Ms. Durrett didn't say it this way and it
23 probably brings us to 403 and something overly cumulative.
24 How much evidence on this -- do you have one or two e-mails or
25 do you have 400 e-mails about how they knew each other when

1 they were working on auto loans together? I might see a
2 problem as you go too far down the road.

3 MS. CHAIKEN: It's one set of WhatsApp
4 communications. So it's just one exhibit that's the entirety
5 of their WhatsApp communications from Mr. Thomas's phone.
6 We're not going to go through those communications in detail.
7 We're going to ask our agent questions about what in general
8 those messages show about the nature of their relationship or,
9 you know, what they did or didn't talk about, but we're not
10 going to be going through, you know, what did he say, what did
11 he say.

12 THE COURT: Are you going to try to admit that
13 document or just use it --

14 MS. CHAIKEN: Yes, we are. It's relevant. It's not
15 hearsay. It's the defendant's statements. It's also not
16 being offered for the truth of anything that's asserted in
17 there, but I think it's highly relevant that there are dozens
18 and dozens and dozens of messages between them to show what
19 the nature of their relationship is and the frequency of their
20 communication.

21 THE COURT: Nature of the relationship that you want
22 to prove is what?

23 MS. CHAIKEN: Well, for example, that it's not a
24 social relationship. So if Mr. Foster wants to deny that he
25 was involved in any way in PPP loans despite the fact that his

1 phone includes extensive communications with Mr. Thomas about
2 PPP loans, I don't know if he's going to claim his phone was
3 stolen, his wife hacked into it, I don't know what he's going
4 to say, but the fact that for nine months before that period
5 Mr. Thomas and him were regularly communicating on that phone.

6 And the fact that they did not talk about their
7 families, their friends, going out, is relevant to explaining
8 that when they were calling each other, when they were texting
9 each other during the time period of the PPP fraud, that was
10 not about anything else, it was about PPP fraud, which is the
11 only thing they talked about during that time period. And I
12 think that's highly relevant.

13 THE COURT: Anything else from the defense on this?

14 MS. DURRETT: Your Honor, I do have a couple of
15 things.

16 One, I understand that document, at least the
17 messages we've seen, could be 450 pages long, so it's not just
18 one set of messages that they're talking about. They're
19 talking about hundreds of pages of documents my understanding.

20 And the second thing I'll just note is the government
21 keeps saying it's going to show the nature of their
22 relationship, which I really think is just a code word for
23 character evidence, that they're trying to show that they did
24 something bad in the past, so they must have done something
25 bad in the future. And they keep saying that over and over

1 again, that this is going to show the nature of their
2 relationship.

3 I think it's very clear, at least from what we've
4 seen from Darrell Thomas's PSR, that we're going to delve into
5 the fact that he actually did do auto loan fraud and that he
6 was held responsible for auto loan fraud, so that's going to
7 come out in front of the jury. So the government wants to be
8 able to present 450 pages of documents and suggest that
9 Mr. Foster talked to Mr. Thomas about automobiles and also
10 Mr. Thomas did auto loan fraud and then try to connect those
11 dots. And I think it's really just an attempt to diminish his
12 character in front of the jury.

13 THE COURT: All right. I'm not persuaded from what
14 Ms. Chaiken's said that's anywhere near what the government
15 intends to do with these materials. I think it seems highly
16 relevant to establish their relationship and a relationship
17 beyond just social but a business relationship before the PPP,
18 the alleged PPP fraud. So I just -- I disagree.

19 Ms. Chaiken has stated why they want to use this
20 material. And I don't take issue with what they're saying
21 they want to do. Now, if they go down another road and are --
22 you know, as you just said, try to say that they were doing
23 auto fraud together, that's the part of this that they've
24 withdrawn and we're not even getting into. That was the --
25 that was the withdrawn part of their motion.

1 So I don't agree with what you've said about where
2 they're going with this, I don't see that based on what I have
3 heard, but you can certainly renew it when we get there if
4 they are putting a different spin on it than they maintain
5 they're going to.

6 I think it might be a good time for us to take a --
7 maybe a ten-minute comfort break. All right.

8 (After a recess, the proceedings continued at 2:41 PM
9 as follows:)

10 THE COURT: I know there's probably a lot else, but
11 the next three things I want to discuss are -- the one piece I
12 didn't get to on the government's motion 829, to exclude
13 expert testimony, moving back to 772 in Gaines and the other
14 PPP alleged fraud evidence, and then the request I think by
15 Mr. Foster for the other non-testifying defendants' PSRs in
16 toto.

17 So 829, let me hear from the government on that.

18 MS. CHAIKEN: Your Honor, as our motion lays out,
19 Rule 703 of the Federal Rules of Evidence says that an expert
20 can base an opinion that they have on a -- on inadmissible
21 evidence if that inadmissible evidence is of the type that's
22 reasonably relied on by experts in that field. And even if
23 the expert is permitted to do so, the inadmissible evidence
24 itself can only be disclosed to the jury if the probative
25 value of that inadmissible evidence substantially outweighs

1 its prejudicial effect.

2 And here the specific statement at issue is on page
3 seven of Mr. Persinger's report. And the full paragraph is, I
4 was provided a copy of an interview conducted between Agent
5 Stites and Ms. Foster.

6 That's a reference to Gena Pyfrom-Foster.

7 Starting on page 117 and ending on page 118 I read
8 where Ms. Foster had access to Mr. Foster's password at some
9 point. Accessing one device can give you access to another
10 device, especially if Apple continuity was used or if the
11 person used the same password for all devices.

12 So there's no dispute here that the statement by
13 Ms. Foster that she had access to Mr. Foster's password at
14 some point is hearsay. It's an out-of-court statement that
15 they would offer for the truth of the matter asserted which is
16 that she did have Mr. Foster's password at some point. And
17 none of Mr. Persinger's opinions are in any way based on her
18 saying that.

19 So even as to the first aspect of Rule 703, that an
20 expert can base their opinions on a hearsay statement, there
21 is no opinion that's based on that. The very following
22 sentence that accessing a device can give you access to
23 another device has nothing to do with whether or not Gena --
24 he could offer that opinion completely irrespective of whether
25 Gena Pyfrom-Foster said she had his password or not. If the

1 jury hears evidence that someone had access to his device,
2 then maybe that opinion would become relevant, but the opinion
3 is not in any way dependent on Ms. Pyfrom-Foster saying that
4 she has access to his password.

5 So right there Rule 703 does not apply because there
6 is no opinion based on the hearsay statement. Even if there
7 was an opinion that was based on that statement -- a statement
8 by a third party to law enforcement, especially a statement by
9 someone who is later convicted of fraud, is not the type of
10 statement that a forensic analyst who analyzes digital devices
11 like computer hard drives relies on in reaching opinions about
12 who used a computer.

13 And we attached to our motion a couple of exhibits of
14 prior testimony that Mr. Persinger himself has given where
15 he's explained that his role as a forensics expert is to
16 review data and to look at computer hard drives. And the
17 specific statement here was Ms. Pyfrom-Foster had said that
18 she had one of Mr. Foster's devices in her home. The agents
19 asked if she could access it. She said, I've tried to access
20 it but it's not his usual password.

21 And they asked, What's his usual password?

22 She said, player34.

23 It was not in reference to any specific device. It
24 was not in reference to any specific account. It was not in
25 reference to the device Mr. Persinger examined. It was a

1 generic statement that the usual password Mr. Foster uses is
2 player34.

3 And there has been no showing that a digital
4 forensics expert relies on those kinds of statements in doing
5 a forensic analysis. That's the exact opposite of what
6 forensic analysts do because forensic analysts look at data
7 and nothing else. So that's the second reason why Rule 703
8 doesn't apply.

9 And the third reason, your Honor, even if this was
10 the type of data that experts reasonably rely on in this
11 field, it has such minimal probative value because it is not
12 in any way connected to anything that he says. He doesn't
13 offer the opinion that based on my analysis and based on her
14 statement X she had access to his device or she did this or
15 she did that. There's nothing based on that. And instead all
16 it is is just trying to put before the jury a statement that
17 would not otherwise be in evidence because it's hearsay.

18 And so we think it fails every single part of
19 Rule 703. And there's clear Eleventh Circuit case law on
20 this, that you cannot introduce hearsay through an expert in
21 this manner.

22 THE COURT: Let me hear from the defense.

23 MS. DURRETT: Thank you, your Honor.

24 Your Honor, just quickly to respond to the
25 government's claim that it's not in regards to a specific

1 device, Ms. Pyfrom-Foster does say that that's how I got into
2 his phone. So she says, here's the password, this is how I
3 got into his phone. I can't do it anymore because he's not
4 using his normal password. So that's in the transcript.

5 But I think it is the type of statement that
6 Mr. Persinger could reasonably rely upon when we're asking him
7 is it possible that someone else could be accessing this
8 information. And the answer to that is yes. If she had
9 access to his password, she could log in on one device and see
10 this information. That is consistent with his opinion, which
11 is, I searched through the drive that I was provided and I
12 found documents that -- on Darrell Thomas's computer I found
13 documents where someone was accessing Teldrin Foster's e-mails
14 at the same time that they were accessing these other
15 fraudulent documents. Some of these fraudulent documents had
16 metadata, the data inside the document that says who creates
17 them, that shows they were created by Ms. Pyfrom-Foster.

18 And I know the Court is well aware of the facts of
19 the case and the Court understands there's a lot of evidence
20 in the case that Ms. Pyfrom-Foster was creating fraudulent
21 documents in connection with Darrell Thomas, your Honor.

22 So for the government to stand up and say there
23 wouldn't be evidence to support this or link this up, that's
24 just not the case. There's evidence that she was creating
25 fraudulent documents. There's evidence that documents she

1 created were found on Darrell Thomas's computer at the same
2 time that someone was accessing Teldrin Foster's e-mails. And
3 then later she tells the government in an interview, I had
4 access to his password, this is the password I used, I can't
5 use it anymore because it's not the same password, this is the
6 password I used to access his phone.

7 So certainly that type of information is the type of
8 information that Mr. Persinger could rely on when he's
9 answering our questions about is it possible that someone else
10 was accessing this device with a different device or with this
11 password, he could rely on that statement to answer that. And
12 I think that's -- if the government has a question or they
13 doubt the credibility of those statements, then the case law
14 tells us that they can cross-examine him about that and they
15 can challenge him on that, but there's no reason to believe
16 that he can't rely on that statement because it's certainly
17 part of the evidence that he studied and the evidence that
18 he's presenting in his report.

19 THE COURT: All right. Thank you. Anything else
20 from the government?

21 MS. CHAIKEN: I will just say, your Honor, that the
22 defense still has not pointed to anything in his report that's
23 an actual opinion that he's expressed that's in any way based
24 on that statement and that requires the jury to hear that
25 statement in order to understand his opinion.

1 He can be asked those questions about whether it's
2 possible somebody else was using Darrell Thomas's device,
3 which is the only device he has offered any opinions about,
4 without telling the jury that Gena Pyfrom-Foster at some point
5 told agents that at some unidentified time she accessed some
6 unidentified phone of Foster's, which is a completely
7 different device than the one he's offering opinions about.

8 THE COURT: Thank you.

9 MS. DURRETT: Your Honor, we would just ask if the
10 Court has questions about it, that Mr. Persinger be able to
11 testify about it and to testify about how he reasonably relied
12 on that statement.

13 And the government just mentioned, oh, she is saying
14 she accessed his information on one device but not this
15 device, that's the whole point of what he's opining about,
16 about Apple continuity, is that you can access information --
17 if you know the password on one device, you're able to access
18 information on another device. So he did reasonably rely upon
19 it.

20 THE COURT: All right. Thank you.

21 I agree with the government. I'm going to grant the
22 motion. This to me seems like rank -- you know, seems like
23 this expert just is rankly pulling a hearsay statement to get
24 that in and then tacking on an opinion about the same subject.
25 I agree with Ms. Chaiken's argument, and the motion is

1 granted. That's only as to, of course, Ms. Foster's initial
2 statement that he wants to quote.

3 As far as the admissibility of his opinion about
4 whether or not if you have one password you have all the
5 passwords or if you have it, you can use it on other devices,
6 that may still come in. That's a different story. And we'll
7 wait and see for the testimony when we get there.

8 The next issue is moving back to 772 and the notice
9 as to Gaines. And I guess I was about to address that, but
10 was there an objection to that notice?

11 MS. TIMBERLAKE-WILEY: No, especially now that the
12 government has withdrawn the auto loan portion of that notice,
13 we did not --

14 THE COURT: But as to evidence of alleged fraud
15 regarding Charles Smith University, Roadrunner Automotive,
16 there's no objection to that piece?

17 MS. TIMBERLAKE-WILEY: Your Honor, we're still
18 waiting for the actual evidence that would actually come in.
19 We would ask the Court to do what the Court has been doing,
20 which is to defer without prejudice on your ruling. But as
21 far as the actual witness or how any of that evidence would
22 come in, we're not -- that has not been made available to us
23 yet.

24 THE COURT: Ms. Chaiken, do you want to be heard on
25 that?

1 MS. CHAIKEN: Your Honor, just to be clear, all of
2 the evidence that's at least documentary evidence has been
3 provided to the defense on these matters. And so we filed our
4 notice in compliance with the rules so that the defense would
5 be on notice that we do intend to present this evidence. And
6 if there's some argument that we should not be allowed to
7 present this evidence, we think that should be addressed now
8 so that we can prepare our case.

9 MS. TIMBERLAKE-WILEY: And -- I'm sorry.

10 THE COURT: Go ahead, Ms. Timberlake-Wiley.

11 MS. TIMBERLAKE-WILEY: As the Court knows, my client
12 had an attorney that was replaced by me four months ago. And
13 so we've done everything that we could possibly do to bring
14 our case up to speed as to not to delay the actions in this
15 matter, including reaching out to the government when we have
16 questions, which I have to say the government has acted in
17 very good faith as far as providing us with what we've asked
18 for.

19 When it comes to this 404(b), yes, there is not a
20 folder that says this is the evidence of 404(b) for
21 Mr. Gaines. It's among the, you know, million other documents
22 that we've received in the hard drive and on USAfx and
23 otherwise. And so we would ask that the Court take that into
24 consideration as we're asking for it to be deferred at this
25 time, or as it sounds like we're going to have an additional

1 hearing allow us to further brief it and be prepared to argue
2 it at the next hearing.

3 THE COURT: All right. And I actually thought on
4 this one the government was -- I guess it's labeled 404(b),
5 the -- it's labeled as intrinsic or 404(b). I think what I
6 understood, at least on this piece, was really the government
7 was going forward on the intrinsic argument.

8 Is that right, Ms. Chaiken?

9 MS. CHAIKEN: It's both, your Honor. We believe it
10 is intrinsic evidence because this all happened during the
11 same time frame with the same co-conspirator, Mr. Thomas,
12 involving some of the same documents and some of the same
13 people. But, again, in an abundance of caution, we filed it
14 as a 404(b) notice so that if there were a question as to
15 whether any of the evidence was intrinsic, we could proceed
16 under that rule as well.

17 THE COURT: All right.

18 Well, I'm convinced that it is indeed intrinsic as
19 argued in 772. And I think in the alternative it's 404(b) as
20 argued in 772. And I don't hear the defense with any specific
21 objection to that.

22 But, Ms. Timberlake-Wiley, if you do upon review of
23 the documents take issue with anything, certainly let the
24 Court know and we can revisit that issue, but otherwise, you
25 know, without any specific objection and based on the merits

1 of the notice, I agree with the government.

2 MS. TIMBERLAKE-WILEY: Your Honor, can I just ask for
3 the record to have the government clarify that we're talking
4 about EIDL loans when it comes to that notice, or are we
5 talking about PPP loans?

6 MS. CHAIKEN: They're PPP loans, your Honor.

7 MS. TIMBERLAKE-WILEY: Thank you, your Honor.

8 THE COURT: Thank you. All right.

9 Let's now move back to I think it was Mr. Foster's
10 motion, I don't know if anyone else joined it, as to the PSRs
11 of other non-testifying witnesses. Happy to hear from you on
12 that.

13 MS. DURRETT: Your Honor, it's the same logic that we
14 were discussing earlier, which is that there are multiple
15 defendants in this case and we can't tell, you know, the roles
16 that people had or the roles that the government is alleging
17 they had. We can't tell if they've received a benefit in this
18 case based on what their guidelines were initially calculated
19 at and how those things changed. So we've asked to be able to
20 review that information so that we can help develop our
21 defense in this case.

22 We've also asked for information about whether
23 Mr. Thomas was untruthful with some of those people. And
24 because I think that's part of our defense in this case, which
25 is it's clear that there's evidence that Ms. Pyfrom-Foster and

1 Mr. Thomas were working together and there's evidence that
2 they were trying to hide the things they were doing from
3 Mr. Foster. And so we think that's part of how Darrell Thomas
4 was operating was maybe not revealing the truth to all the
5 people he was involved with.

6 So I think if the PSRs contain that type of
7 information, then we should be entitled to see that so we can
8 properly cross-examine Darrell Thomas.

9 THE COURT: Thank you. Let me hear from the
10 government.

11 MS. CHAIKEN: Your Honor, I first want to be clear
12 that the evidence in this case which is summarized in those
13 defendants' PSRs, has all been turned over to all of the
14 defendants in this case. So, for example, not being able to
15 determine what someone's role was, the PSR just summarized
16 evidence that has already been provided and that shows what
17 their role was.

18 Whether there was any benefit to any of the other
19 co-defendants is completely irrelevant because they're not
20 testifying and this request is specifically for the PSRs of
21 non-testifying co-defendants. And whether or not a
22 co-defendant was in some way benefitted in his or her
23 sentencing has no bearing at all on the jury's determination
24 as to whether Mr. Foster is guilty of the crimes he's charged
25 with in the indictment or not. There's just absolutely no

1 relevance to that.

2 Again, as to whether Mr. Thomas was untruthful, we
3 have given the defense every interview that was conducted in
4 this case with every person, whether that person is
5 cooperating, is a witness, is a defendant, is not a defendant.
6 They have every interview where someone has made statements to
7 us. And we will continue a rolling production as we continue
8 to have conversations in preparation for trial.

9 We've also given all written communications that we
10 have collected in the course of our investigation, that people
11 had with Mr. Thomas. We gave Mr. Thomas's entire phone. For
12 all of the devices that we seized from Mr. Thomas, we gave the
13 entire devices. For every business that produced subpoena --
14 a response to us in response to a grand jury subpoena, some of
15 those included written communications between various
16 co-conspirators, all of that has been turned over.

17 So at this point what the defense is really asking
18 for is a probation officer's summary of evidence they already
19 have. There's nothing in the PSRs that is in any way relevant
20 to people who will not testify at trial.

21 And the only other place, you know -- I mean, the
22 request here is more of an interrogatory-style request, like
23 give us information or evidence showing that co-conspirators
24 were not aware of the full scope of Darrell Thomas's scheme.
25 That's not a request for a specific category of document or a

1 specific thing. It requires us to think about what might show
2 that and then think about how we could turn that over. In
3 that sense, I'm not sure what it's asking but the only other
4 place we can think of are in statements that defendants would
5 have made to the Court in allocution or through their lawyers
6 in 3553(a) arguments to the extent that they were not as
7 culpable as Mr. Thomas or that they were misled by him or
8 other people.

9 And, again, I don't think that arguments by
10 non-testifying co-defendants to try to mitigate their sentence
11 is in any way material to the preparation of Mr. Foster's
12 defense or relevant to the jury's determination of whether
13 or not he committed the crimes charged in the indictment.

14 THE COURT: All right. Thank you.

15 Just dropping back more generally, presentence
16 reports are not public records but rather confidential reports
17 to the trial judge to use in his effort or her effort, I would
18 add, in a fair sentence.

19 *US v. Martinello*, 556 F.2d 1215 to 1216, Fifth
20 Circuit from 1977.

21 And as the US Supreme Courts recognize, courts have
22 been very reluctant to give third parties access to
23 presentence investigation reports prepared for some other
24 individual. That's *DOJ v. Julian* 46 (sic) US.1 at 12, 1988.

25 And the Eleventh Circuit has recognized the general

1 presumption that courts will not grant third parties access to
2 presentence reports of other individuals regarding the --
3 because of the chilling effect that that could cause.

4 Further from the *Martineello* court, The PSRs from one
5 defendant aren't generally provided to co-defendants.

6 And here, again, as I stated earlier, the *Gomez*
7 court, 323 F.3d at 1305, has cited some other courts that talk
8 about the compelling particularized need test. Although I
9 thought it was a -- perhaps a close call, I did find earlier
10 that as to Ms. Foster the defense has made that showing, but
11 here there's no showing of any compelling particularized need
12 that warrants disclosure. So I'm going to deny that request.

13 Let me go over what else I think is on --

14 MS. WEBSTER: Your Honor, we had just spoken to the
15 government about some additional unredacting on the
16 Darrell Thomas's PSR --

17 THE COURT: Why don't we talk about that later when I
18 ask y'all if there's anything else you want to address.

19 MS. WEBSTER: Sorry.

20 THE COURT: That's okay.

21 There is -- in addition to Mr. Baptiste's motion
22 regarding counsel and his motions in limine and motions to
23 sever, another motion I haven't yet reached was 830, a motion
24 to exclude expert testimony in response to 839. That's one
25 that I think is very recent, which I have not yet had a chance

1 to study, so we'll have to deal with that one at a later date.

2 Are there other motions on the table that I have not
3 yet addressed other than, you know, any ex parte or whatever
4 type motions that might be out there?

5 MS. CHAIKEN: No, your Honor, not that we're aware
6 of.

7 THE COURT: Any defendants?

8 MS. TIMBERLAKE-WILEY: Not that I'm aware of, your
9 Honor.

10 MR. MARSHALL: Judge, I had proposed voir dire. I
11 had a response to the government's motion in limine. And I
12 think I filed an initial motion on disclosure of the PSRs, but
13 the Court's addressed that already.

14 THE COURT: Okay. All right. Okay.

15 As far as circling back, I know we talked about
16 objections to voir dire questions, but I would ask that you
17 look and there's -- they're on the Northern District website,
18 just the standard questions that I'll ask all the jurors. And
19 to the extent your own questions kind of repeat the same
20 thing, try to cull through those and perhaps delete them. It
21 always looks silly if I ask something and you ask the same
22 exact question, all the jurors kind of look around at each
23 other like, wait, weren't we already asked that? So just to
24 give you a little note about that. It will keep you from
25 having the potential jurors thinking you haven't been paying

1 attention and it will also save all of us some time. So
2 please do that.

3 I know that -- I think the request to charge and for
4 those verdict forms, they came in, is that right?

5 COURTROOM DEPUTY CLERK: Yes.

6 THE COURT: Thank you all for giving us those.

7 You're reminded about providing the courtroom deputy
8 exhibits and witness lists at the start of the trial.

9 And that's what I had on my list. Now I'm happy to
10 hear first from Ms. Webster about a follow-up question she
11 had. And then I'm going to open it up for other questions or
12 issues. And then I'll turn back to Mr. Baptiste.

13 MS. WEBSTER: Thank you, your Honor.

14 Specifically I know the Court had disclosed some
15 portions of the testifying co-defendants' PSRs pursuant to the
16 government's motion. We've had additional discussions with
17 the government about disclosing some additional paragraphs.
18 For example, what was disclosed were like Mr. Thomas's
19 objections to being held responsible, for example, the EIDL
20 loans, for additional EIDL loans. So we have his objections
21 but not the paragraphs that they were objecting to.

22 So we have just asked the government if they would
23 agree that we could have access to the information that he was
24 objecting to. And I think our request would go to all the
25 co-defendants. My understanding is the government does not

1 object to that, but we wanted to ask the Court, obviously, if
2 it was -- if it would agree with that position.

3 THE COURT: Unless there's anything from the
4 government?

5 MR. KAUSHAL: Your Honor, that is correct. The
6 defense has identified I believe two charts from Darrell
7 Thomas's PSR that we don't believe is *Giglio*, but just in the
8 interest of just working it out, we don't have any issue with
9 providing the information they've requested. But we do not
10 want to continue to have a back-and-forth horse trading
11 situation about PSR information because that is information of
12 the court, and we don't want to have a situation where we're
13 having to repeatedly come to your Honor about can we show the
14 defense this or that. But for these specific requests, we
15 don't have an objection.

16 THE COURT: All right. Very well. That seems fine.
17 And, frankly, that's the same type of issue that I ran into
18 when I was looking at Ms. Foster's PSR a few days ago and
19 trying to figure out, well, if this comes in, I guess they
20 need the context from that paragraph up above it. So
21 that's -- I understand the issue and that's fine.

22 MS. WEBSTER: Thank you, your Honor.

23 The other request that we have, and we have not filed
24 a motion on this, but the defense -- all defendants are asking
25 for additional peremptory strikes under Federal Rule of

1 Criminal Procedure 24(b). I think that they're allowed
2 because there are additional defendants. We are asking to
3 have four strikes each. And my understanding is that the
4 government doesn't object to that.

5 MS. CHAIKEN: Your Honor, our position is we don't
6 object to that so long as there are enough jurors on the panel
7 after all of the for cause and other dismissals are made for
8 us to actually pick a jury.

9 Under Rule 24(b) the Court has discretion to allow
10 additional strikes or not when there are additional
11 defendants. So if there are enough jurors for each defendant
12 to have 4 strikes for a total of 16 instead of 10, that's fine
13 with us, we just don't want to be in a situation where we
14 can't pick a jury because -- especially given the anticipated
15 length of trial and whatever other issues may arise that
16 causes some jurors not to be able to serve, that's our only
17 concern.

18 THE COURT: All right. Give me one moment.

19 MS. CHAIKEN: Your Honor, I have some case law I
20 can provide the Court, too, just from the Eleventh Circuit
21 regarding the Court's discretion not to give additional
22 strikes or to give additional strikes as it chooses.

23 THE COURT: Thank you. I would like to hear about
24 that in just one moment.

25 So you want 16 total instead of 10?

1 MS. WEBSTER: Yes, your Honor, that's what we're
2 requesting.

3 THE COURT: Okay.

4 Ms. Chaiken, you were going to state some law
5 briefly.

6 MS. CHAIKEN: If the Court wants it, *United States v.*
7 *Lopez*, 649 F.3d 1222, Eleventh Circuit, 2011, is a case where
8 the Court said, The district court is not required to give the
9 defense side any extra peremptory challenges in
10 multiple-defendant trials. In that case, the district court
11 did give -- gave 20 peremptory challenges to 4 defendants, so
12 5 each.

13 But that's -- you know, we would suggest that, again,
14 we don't have an objection to 16 so long as at the end of
15 for-cause strikes and any other dismissals based on hardship
16 or anything there are enough jurors for 16 strikes to be
17 exercised and for there to still be a big enough panel and
18 alternates.

19 THE COURT: Sure.

20 Ms. Lee, do we know how many they're going to send
21 us?

22 COURTROOM DEPUTY CLERK: Let me double-check the
23 request. We've requested 50, but I don't have confirmation on
24 a number yet.

25 THE COURT: Okay. Yeah, I just ask you to renew

1 that issue when we get to voir dire. I don't want to make a
2 promise to anybody I can't keep based on strikes for cause or
3 hardships or whatnot. So we'll just have to see where we are.

4 I mean, I'm open to it. The government doesn't
5 object either. I don't have a problem with it other than if
6 it means we don't have enough jurors. So we'll see.

7 MS. WEBSTER: Okay. Thank you, your Honor.

8 I had some additional questions, which are can you
9 tell us how you do voir dire, just sort of what that process
10 is in terms of you asking questions and what sort of
11 follow-ups we get?

12 And also just for planning purposes sort of like when
13 you start trial, when you try and wrap up, those sort of
14 things.

15 THE COURT: So for those of you who haven't had a
16 trial with me before, I just ask the -- obviously after I ask
17 the standard questions, I have my list of questions that are,
18 again, on the website, and then I ask those. I have all the
19 jurors answer questions about -- just one by one, you know,
20 about employment, about their children and activities,
21 whatever, those sorts of things. Those questions are on the
22 website as well for you to review.

23 After that I'll let each of you ask the questions
24 that you submitted pretrial that we went over earlier, most of
25 which weren't objected to but a handful of which were that

1 we've covered.

2 And I think it would be most efficient to just have
3 all of you ask those initial questions and just take
4 cumulative notes about the various panel members and their
5 responses. And then after everyone's gone through those
6 initial questions, then do the follow-up as opposed to each
7 of you doing your follow-up one after the other before the
8 general questions are asked because it may be that after
9 everybody's asked their general questions, there's a lot of
10 the same thing.

11 Does that -- hopefully I'm making sense.

12 MS. WEBSTER: Yes.

13 THE COURT: So that's basically how I do it.

14 MS. WEBSTER: Thank you, your Honor.

15 And just the start and end times for trial.

16 THE COURT: Oh, yeah. I think that's kind of
17 dependent on, you know, our jurors, you know. If we have
18 somebody who has childcare and can't be here until 9:15, we
19 won't start until 9:15.

20 Likewise, at the end of the day if somebody has a
21 childcare pickup at a certain time, we'll leave according to
22 that. I try to ask you at the end of every day do you
23 anticipate any issues that we need to discuss outside the
24 presence of the jury and kind of budget for that for the
25 mornings so that we don't all get here at whatever time and,

1 oh, your Honor, one thing we need to discuss, and we end up
2 taking an hour while they're just sitting back there waiting
3 on us. So I try to be efficient.

4 So to the extent you're asking when will we start and
5 when will we finish each day, I don't really know that yet
6 until we hear from the jurors. I haven't had a lot of luck
7 having the jury come any earlier than 9:00 when I've tried to
8 do that, so I don't think we'll probably ask them to be here
9 any earlier than 9:00. I may ask y'all to be here a little
10 earlier than that if we're running slow and have things to
11 address.

12 I usually don't go past 6:00 because I think it's
13 just hard on everyone, and I think the jurors might become
14 frustrated if it's after 6:00 and we're still going with them.
15 And it may be that we stop even before 6:00. I don't know. A
16 lot is going to depend on how quickly we're moving. If we're
17 at day three of this trial and we've only had one witness, you
18 know, are we going to start earlier and go later, probably so.
19 But if you tell me on Thursday morning, gosh, we're way ahead
20 of schedule, we told you a couple weeks, it's only going to be
21 six days, I might say in response for a request to leave early
22 on Thursday afternoon, sure, take the afternoon off. We'll
23 have to see how it goes.

24 What other questions?

25 MS. WEBSTER: I have one last thing. I had a

1 response to the government's response to our motion to exclude
2 their witness. I didn't know if the Court wanted me to put
3 that in writing or be prepared to address it at --

4 THE COURT: Is that 830 -- the 830, 839 series
5 motion?

6 MS. WEBSTER: I believe so, your Honor. Yes, the 830
7 motion.

8 THE COURT: Okay. Happy for you if you just want --
9 so you're saying you have a reply, it's brief and can I just
10 say it now versus filing a reply?

11 MS. WEBSTER: Yes. I'm happy to file the reply, it
12 would be like two pages, but I can do whatever the Court
13 prefers.

14 THE COURT: It might be -- if it's just as easy --
15 well, if it's not a whole lot harder for you to file the reply
16 maybe by noon tomorrow, that way I'll have it, we'll get to it
17 later, because I -- frankly, I know that you filed that
18 motion, I know the topic of the motion, I've flipped through
19 it, but I haven't studied it yet. So if you verbally give me
20 your reply right now, you might be over my head quickly.

21 MS. WEBSTER: Understood. Thank you.

22 THE COURT: Ms. Chaiken, yes.

23 MS. CHAIKEN: Just a few questions, your Honor.

24 We do anticipate calling as our first witness someone
25 who is out of town. So for purposes of scheduling we just

1 wanted to get some guidance on whether the Court would expect
2 us to start immediately on the afternoon of the first day or
3 whether we should plan to have our witness here first thing
4 the following morning?

5 THE COURT: Yeah. I always -- thank you for the
6 question. I always hate the question, as you might guess,
7 because, you know, I really -- I try to be optimistic, I do,
8 but this is something where I've grown pessimistic over time
9 because if what I say right now is, Ms. Chaiken, that witness,
10 tell them to chill out and have a nice steak dinner at Bones
11 Monday night and we'll just get to them first thing Tuesday
12 morning, if I say that, we're going to be done with voir dire
13 at 2:00 and all the jurors are going to be like, what, you're
14 sending us home until tomorrow?

15 And if I say, you know, yeah, you've got to have him
16 here, sorry, voir dire will go the whole day and he'll -- he
17 or she will be sitting around going, why did the darn judge
18 have me come, it's bogus.

19 MS. CHAIKEN: We'll have him here.

20 THE COURT: It's a lose-lose for me.

21 MS. CHAIKEN: We'll just plan to be ready to proceed.

22 THE COURT: Yeah. Maybe on call from the hotel and
23 if they need 30 minutes to get over here, you can gauge it
24 based on how voir dire is going.

25 MS. CHAIKEN: Okay.

1 THE COURT: But I think there's some steakhouses
2 downtown.

3 MS. CHAIKEN: Does the Court impose any time limits
4 on opening statements?

5 THE COURT: Yes. Yes, I do. Openings and closings.
6 And I don't have those notes with me.

7 How long would everyone like for openings and
8 closings?

9 MS. CHAIKEN: I think -- for openings I don't think
10 we would go this long but I think a 30-minute time limit would
11 be appropriate. Again, I know that a 30-minute opening is
12 often too long, and I'm not saying we'll do that, but I think
13 that would be appropriate.

14 And for closings, I mean, we have to address four
15 defendants and they each only have to address one, so I think
16 the government may require some additional time. I was hoping
17 to request 90 minutes. Again, I don't know that we would go
18 that long, but that's what I would request.

19 THE COURT: Okay. Let me hear from the defense.

20 MS. WEBSTER: We agree with the 30-minute request for
21 opening. For closings, about 45, your Honor, we think, but
22 we'll aim to be more concise.

23 THE COURT: Okay. Let me hear from the other defense
24 counsel.

25 MR. MARSHALL: Judge, probably the same. No more

1 than 30 minutes on openings. Probably going to be less than
2 that. And I think if -- Mr. Foster's counsel mentioned 45
3 minutes.

4 Is that right, Leigh Ann.

5 MS. WEBSTER: It is.

6 MR. MARSHALL: That's probably about right, Judge,
7 45 minutes to no more than maybe an hour.

8 MS. TIMBERLAKE-WILEY: On behalf of Mr. Gaines we
9 agree, your Honor, to both.

10 THE COURT: Thank you.

11 And, Mr. Gilfillan, we'll cover this question as to
12 you down the road.

13 MR. MARSHALL: Judge, I did have an additional
14 question if the Court -- are you finished with questions from
15 counsel or no?

16 THE COURT: No, I was just sitting here actually
17 mulling over the requests. And I was trying to do the math on
18 45 plus 45 plus 45 plus 45 plus 90 and I was thinking, gosh,
19 that's a long time. So let me let the super computer add that
20 up. I think it's four-and-a-half hours of closings, if I'm
21 right. Am I right?

22 MR. KAUSHAL: Yes, your Honor.

23 THE COURT: Tell you what, I think 30 minutes a
24 side -- or 30 minutes a party for openings is fine. I hope
25 that perhaps you don't need that long because even that gets

1 to be -- gets to be long. But we'll have to see on the
2 closings. What you've requested may well be fine, but we'll
3 just have to revisit that issue as we get a little further
4 down the road. I just -- you know, each individual request
5 seems reasonable, but then when I think about a whole day of
6 closing arguments almost, that seems like a lot. So we'll
7 see.

8 MS. CHAIKEN: Just one last issue, your Honor, that
9 we would appreciate some guidance on before trial is that -- I
10 don't know when the Court last reviewed the indictment but the
11 indictment was anonymized. So the financial institutions and
12 the banks that are listed in the indictment were listed as
13 Financial Institution 1, Financial Institution 2, et cetera,
14 Bank 1, Bank 2.

15 So, for example, as to one of the money laundering
16 charges, the count says, you know, defendant so-and-so
17 transferred this amount of money from Bank 1, account X, to
18 Bank 5, account X.

19 THE COURT: Right. And I've got the -- I guess it's
20 Doc. 290, the second superseding indictment --

21 MS. WEBSTER: Yes.

22 THE COURT: -- there's a lot of Company 1, Bank 1,
23 et cetera.

24 MS. CHAIKEN: Yes.

25 THE COURT: Go ahead.

1 MS. CHAIKEN: So obviously in order to determine
2 whether that transaction occurred as charge and whether the
3 defendants engaged in that transaction as charged, that the
4 jury needs to know what Bank 1 is and what Bank 5 is in real
5 life.

6 We had proposed a stipulation to the defendants that
7 was a chart that just said what the institution was and what
8 it corresponded to, but that was not agreed to. And our
9 understanding from -- we then put it in a jury instruction
10 where the Court would just tell the jury this is what each
11 entity corresponds to.

12 Mr. Foster objected to that request to charge and my
13 understanding is contends that this is a matter for evidence.
14 We just want to understand the Court's position on that before
15 trial so if the Court's position is we need to put on evidence
16 of what the indictment says and which entity corresponds to
17 which anonymized entity, that we can do that at trial.

18 In our view that's not a matter of evidence and it's
19 not a question of fact to be determined by the jury. In our
20 view the jury is not going to be asked to determine is Bank 1
21 Bank of America or whatever it corresponds to, they just need
22 to know what the indictment says. But whatever -- if it is
23 something we need to put up evidence on, we just want to know
24 that in advance so we can put on evidence of it.

25 THE COURT: All right. Let me hear -- is Mr. Foster

1 the only defendant who had -- took issue with this?

2 MS. CHAIKEN: At least as to the jury instruction.
3 We don't know who took issue as to the stipulation.

4 THE COURT: Let me hear Mr. Foster's objection to
5 that.

6 MS. WEBSTER: Well, I don't think it's appropriate
7 for a jury instruction because I think it's instructing the
8 jury as to the facts in the indictment which I don't think is
9 the proper role of the Court, the jury has to decide that.

10 I mean, the agent, I assume, testified to what
11 financial institutions were at issue at the grand jury. I'm
12 not sure what the problem is saying Financial Institution 1
13 refers to this. I don't understand the problem having the
14 agent testify to it.

15 So that's our position, is that it's not proper for
16 the Court to instruct the jury as to facts that are at issue,
17 including which financial institutions are at issue, and that
18 they can present evidence --

19 THE COURT: Tell me what your issue -- fine as to a
20 jury instruction, but I guess -- what's the problem with just
21 a document that lists who's who?

22 MS. WEBSTER: Are you talking about in terms of a
23 stipulation, your Honor?

24 THE COURT: Right.

25 MS. WEBSTER: I will -- we can discuss that again, a

1 potential stipulation. I can't remember who -- there are four
2 co-defendants' attorneys who are discussing it, so I'm not
3 sure, I can't remember if it was -- who objected to it, if it
4 was just us or if it was someone else, but we can discuss
5 that.

6 And so I think we could probably be in a position to
7 reconsider that request for a stipulation, especially as
8 opposed to a jury instruction. But I think it's appropriate
9 for stipulation and evidence and not a jury instruction.

10 THE COURT: Why don't y'all relook at that issue and
11 see if you can work out a stipulation on it. You know, I
12 would hope you could. I don't see how it would be prejudicial
13 and it seems like it would serve efficiency. But if there's
14 some remaining objection, we can see what that is. Again, I'm
15 not in the business of forcing stipulations on folks, but
16 unless I'm missing something this seems kind of silly.

17 And if that doesn't work itself out, you know, I
18 guess the government would just have another 1006 document and
19 present the document to whoever and seek to admit it, and we
20 would do it that way or however else.

21 But, yes, it would seem that -- seem prudent if we're
22 going to bring, you know, 12 or 14 citizens of the Northern
23 District of Georgia in here to spend what could be two full
24 weeks or more with us we would want them to know which banks
25 we're talking about.

1 What else?

2 MS. CHAIKEN: That was all I had, your Honor. Thank
3 you.

4 MR. MARSHALL: Judge Boulee, I think I know the
5 obvious answer to this, but unless it's agreed to otherwise by
6 the parties, I'm assuming that the order that each defendant
7 will, you know, address voir dire, opening statements,
8 cross-examination and closing arguments will track the order
9 of the defendants in the indictment, is that correct?

10 THE COURT: If y'all can't figure that out amongst
11 yourselves, let me know. That falls into the category of
12 things that I hope that you can work through and if you can't,
13 if I need to decide, I will.

14 MR. MARSHALL: Yes, Judge.

15 THE COURT: What else? And I didn't mean to be short
16 with you, I just -- that's a big category of things and that's
17 definitely in it, so I hope you can work it out. If you
18 can't, let me know.

19 MR. MARSHALL: That's fine, Judge.

20 THE COURT: What else from anyone?

21 (No response.)

22 THE COURT: Okay. I think there's just that one
23 motion, other than Mr. Baptiste's motions, left. And I'll
24 circle back with you on that one. It may be I do a short
25 written order, or it may be that I bring y'all back in, or it

1 may be that I just handle it after we do voir dire or in
2 conjunction with the start of the case when we're waiting to
3 bring the jurors up or something.

4 What I'm going to do next is circle back to
5 Mr. Baptiste's motion regarding counsel and then his various
6 motions. I anticipate that for part of that I will be with
7 just Mr. Baptiste and his counsel, but part of it I might want
8 the government to have ready for me the exact list of the
9 charges and the exact list of potential punishments. So if
10 the government's team could put that together for me, I may
11 need it.

12 But then for -- once I address the issue about him
13 and his counsel, I would then intend to proceed to addressing
14 his other various motions potentially depending on how the
15 first part of that conversation goes. And anyone, any other
16 defendants and counsel that want to be here for that are
17 certainly welcome to stick around.

18 So I guess that's my way of saying, Mr. Gilfillan,
19 Mr. Baptiste, and other counsel for Mr. Baptiste, stick
20 around. And I may need to take a break here. And if I can
21 have at least someone from the government stick around for a
22 piece of that conversation, I'll probably want to bring you in
23 or get some information from you. And then everyone else,
24 happy to have you stick around for when I get to
25 Mr. Baptiste's other motions, if I do, today or that's your

1 prerogative.

2 Having said that, I do want to take a little time
3 and look at the motion regarding counsel. I've reviewed it
4 yesterday. I would like to spend a little more time on it
5 before we discuss it. So it's 3:35. Why don't we take a
6 longer than usual break and everyone that needs to be here for
7 that, the three of you, if you will be back at 4:00, we'll
8 have that discussion then, okay.

9 Thanks, everyone.

10 (After a recess, the proceedings continued at 4:17 PM
11 as follows:)

12 (THE FOLLOWING PORTION OF THIS PROCEEDING IS SEALED)

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 (Prosecution present in the courtroom)

4 THE COURT: Ms. Coudriet, just a clarification, we've
5 been on seal up until now. Now I've lifted the seal and
6 invited the prosecution back in and don't see any other
7 attorneys out there. And, of course, I noted for everyone
8 that when I got to any motions, that we would make sure if
9 they wanted to come back in, they could. All right.

10 Just to update the government, I've discussed what
11 was docketed as filing 838 and which is labeled "Notice of
12 Intent to Terminate and Release Legal Services." I've
13 discussed that with Mr. Baptiste and Mr. Gilfillan. And the
14 Court was confused whether or not that was a motion for
15 substitution for counsel or motion essentially to take on
16 representation pro se.

17 I've clarified with Mr. Baptiste that he desires to
18 proceed pro se. He's also stated that he is -- although he
19 wants to obviously do some work on the case, that he's
20 prepared to proceed on February 5th. So I'm going to now
21 conduct a Faretta hearing. The government's asked to be in
22 attendance. Without objection, I'm allowing that.

23 So, Mr. Baptiste, you have indicated that you want to
24 represent yourself in this case, correct, sir?

25 DEFENDANT BAPTISTE: Correct. So, your Honor, I'll

1 again --

2 THE COURT: In the capacity we've been discussing?

3 DEFENDANT BAPTISTE: Right. I don't think counsel --
4 opposing party heard that particular portion of it.

5 THE COURT: If you would like to state for the record
6 in what capacity you're speaking to me, go ahead.

7 DEFENDANT BAPTISTE: I'm here on special appearance
8 for Mr. Jerry Baptiste, the minor in estate. And I'm the
9 natural man, I'm representing that. And I want to represent
10 myself pro per versus pro se and...

11 THE COURT: All right. Very well. Thank you.

12 Sir, I want to advise you when a person accused of a
13 crime tells the Court that he wants to represent himself, the
14 Court must advise the accused of the dangers and disadvantages
15 of self-representation. The Court must also conduct a hearing
16 to ensure that the defendant's decisions -- that decision is
17 made knowingly, voluntarily and intelligently. So I need to
18 ask you a number of questions. You need to respond clearly
19 and truthfully. If at any point you do not understand my
20 question or need clarification, please ask.

21 Ms. Lee, if you can please swear him in.

22 (Defendant Baptiste was duly sworn)

23 THE COURT: Sir, thank you.

24 Sir, how old are you?

25 DEFENDANT BAPTISTE: Rephrase that again. How old I

1 am?

2 THE COURT: How old are you? How many years have you
3 been on this earth?

4 DEFENDANT BAPTISTE: I've been on this earth for
5 46 years.

6 THE COURT: All right. And what level of education
7 do you have, sir?

8 DEFENDANT BAPTISTE: I have an associate's in science
9 degree.

10 THE COURT: Are you a lawyer?

11 DEFENDANT BAPTISTE: I'm not a lawyer.

12 THE COURT: Have you studied the law?

13 DEFENDANT BAPTISTE: No, I have not.

14 THE COURT: Can you read and understand the English
15 language?

16 DEFENDANT BAPTISTE: I can read English, yes.

17 THE COURT: And understand English?

18 DEFENDANT BAPTISTE: Yes.

19 THE COURT: Do you suffer from any health issues,
20 mental or physical, that would affect your ability to
21 understand today's proceeding and make important decisions?

22 DEFENDANT BAPTISTE: No.

23 THE COURT: Have you had any drugs, medications or
24 any other substances within the last 72 hours that would
25 affect your ability to understand today's proceeding or make

1 important decisions?

2 DEFENDANT BAPTISTE: I have not.

3 THE COURT: Have you represented yourself in a
4 criminal action before?

5 DEFENDANT BAPTISTE: No, I have not.

6 THE COURT: What type of interactions have you had
7 with lawyers before today?

8 DEFENDANT BAPTISTE: In a working capacity or --

9 THE COURT: In a working capacity or as a party to a
10 case. Mr. Gilfillan earlier described some of his work on
11 this case and his communications with you. So in addition to
12 that, have you had other --

13 DEFENDANT BAPTISTE: I've worked with several law
14 firms before.

15 THE COURT: I'm sorry?

16 DEFENDANT BAPTISTE: I've worked with several other
17 law firms before in California as clients.

18 THE COURT: Okay. So they were clients of yours?

19 DEFENDANT BAPTISTE: Yes.

20 THE COURT: What type of work did you do for them?

21 DEFENDANT BAPTISTE: Web development and social media
22 marketing, advertisement.

23 THE COURT: Sir, you understand that you're charged
24 with violations of federal law, correct?

25 DEFENDANT BAPTISTE: I do not understand the actual

1 question, sir.

2 THE COURT: You understand that there's an indictment
3 in this case that accuses you of crimes, correct?

4 DEFENDANT BAPTISTE: I understand that, sir. Your
5 Honor --

6 THE COURT: In the capacity that we're -- you've
7 discussed your being here?

8 DEFENDANT BAPTISTE: Correct.

9 THE COURT: And you are charged with five -- I'm
10 sorry, seven counts. Count 9 of the second superseding
11 indictment is conspiracy to commit bank fraud and wire fraud.
12 Count 10 is bank -- that's under 18 USC, Section 1349.

13 Count 10 is bank fraud, 18 USC, Section 1344.

14 Count 11 is wire fraud, 18 USC, Section 1343.

15 Count 38 is false statement to a federally-insured
16 bank under 18 USC, Section 1014.

17 Counts 48, 49 and 50 are concealment money laundering
18 under 18 USC, Sections 1956(1)(1)(B)(1) (sic).

19 You understand those are the charges against you?

20 DEFENDANT BAPTISTE: Yes, your Honor. That's -- as
21 far as again, yeah.

22 THE COURT: In the capacity that you're here?

23 DEFENDANT BAPTISTE: In the capacity as I'm here,
24 yes, correct.

25 THE COURT: Very well.

1 Do you understand that the government must prove --
2 do you understand what the government must prove to convict
3 you of these offenses?

4 DEFENDANT BAPTISTE: Yes, I do, sir. And also can
5 you go into a little bit of detail of what the government must
6 prove based on those counts?

7 THE COURT: I'm sorry?

8 DEFENDANT BAPTISTE: Based on those charges.

9 THE COURT: And I guess I would ask the prosecution
10 to step in, if they could just list the elements of the
11 various charges.

12 MR. KAUSHAL: Yes, your Honor, that will take a
13 moment. I do want to clarify one thing.

14 The statute for concealment money laundering, I
15 mistakenly included an extra 1 in the statute, so it's title
16 18, Section 1956.

17 THE COURT: (1)(1)(b) or just 1(B)(1)?

18 MR. KAUSHAL: It's A --

19 MS. CHAIKEN: It's little (a)(1)(B)(i).

20 THE COURT: Okay. (a)(1)(B)(i), okay. Thank you.

21 MR. KAUSHAL: Your Honor, if I can just have a few
22 moments to gather those materials.

23 THE COURT: Sure. Why don't you gather those while I
24 go over the penalties.

25 Sir, we're going to circle back to the elements and

1 I'll have them list those, but for right now I'm going to go
2 over the penalties for each of those counts.

3 For Count 9 it's 30 years imprisonment;

4 A million dollar fine or twice the gain or loss,
5 whichever is greater;

6 Special assessment of \$100;

7 Full restitution can be ordered;

8 And up to five years supervised release may be
9 imposed.

10 As to Count 10, bank fraud, 30 years imprisonment;

11 \$1 million fine or twice the gain or twice the loss,
12 whichever is greatest;

13 Special assessment of \$100;

14 Full restitution can be ordered;

15 And up to five years supervised release may be
16 imposed.

17 Count 11 for wire fraud, 20 years imprisonment;

18 \$250,000 fine or twice the gain or twice the loss,
19 whichever is greatest;

20 Special assessment of \$100;

21 Full restitution can be ordered;

22 Up to three years supervised release can be imposed.

23 Count 38 is false statement to a federally-insured

24 branch under 18 USC, Section 1014, 30 years imprisonment;

25 A million dollar fine or twice the gain or twice the

1 loss, whichever is greatest;

2 Special assessment of \$100;

3 Full restitution can be ordered;

4 And up to five years supervised release may be
5 imposed.

6 Count 48 is concealment money laundering, 20 years
7 imprisonment;

8 \$500,000 fine or twice the value of the property
9 involved in the transaction, whichever is greater;

10 Special assessment of \$100;

11 Full restitution may be order;

12 And up to three years supervised release may be
13 imposed.

14 49, concealment money laundering is the same,
15 20 years imprisonment;

16 \$500,000 fine or twice the value of the property
17 involved in the transaction, whichever is greater;

18 A special assessment of \$100;

19 Full restitution may be ordered;

20 And up to three years supervised release may be
21 imposed.

22 And, finally, Count 50, again, concealment money
23 laundering, those are the same as the other two, again that's
24 20 years imprisonment;

25 \$500,000 fine or twice the value of the property

1 involved in the transaction, whichever is greater;

2 Special assessment of \$100;

3 Full restitution may be ordered;

4 And up to three years of supervised release may be
5 imposed.

6 And note that the punishment for these crimes may be
7 imposed consecutively. So all those can be added on to each
8 other as far as the maximum penalties. And there are also
9 forfeiture provisions that are identified in the indictment.

10 So, sir, you've heard me list those maximum
11 penalties, correct?

12 DEFENDANT BAPTISTE: That is correct.

13 THE COURT: And you understand those, correct?

14 DEFENDANT BAPTISTE: Your Honor, I want to make sure
15 this is a -- is this a criminal case or is it civil just to
16 make sure?

17 THE COURT: It's a criminal case.

18 DEFENDANT BAPTISTE: It is a criminal case?

19 THE COURT: Right.

20 DEFENDANT BAPTISTE: Note for the record that it is a
21 criminal case.

22 THE COURT: You've made that record, yes.

23 And if you're ready with those elements.

24 MR. KAUSHAL: Yes, your Honor. The first crime we
25 covered, Count 9, conspiracy to commit bank and wire fraud in

1 violation of Section 18 United States Code, Section 1349, has
2 two elements.

3 The first is that -- the first is that two or more
4 persons in some way or manner need to have agreed to try to
5 accomplish a common and unlawful plan to commit bank fraud or
6 wire fraud as charged in the indictment.

7 The second element is that the defendant needs to
8 have known the unlawful purpose of the plan and willfully
9 joined in it.

10 The next offense, which is Count 10 of the
11 indictment, which is bank fraud, in violation of Title 18
12 United States Code, Section 1344. And that crime has four
13 element.

14 The first is that the defendant needs to have
15 knowingly carried out or attempted to carry out a scheme to
16 defraud a financial institution or to get money, assets or
17 other property from a financial institution by using false or
18 fraudulent pretenses, representations or promises about a
19 material fact.

20 The second element is that the false or fraudulent
21 pretenses, representations or promises need to have been
22 material.

23 The third element is that the defendant needs to have
24 intended to defraud the financial institution.

25 And, finally, the fourth element is that the

1 financial institution needs to have been federally insured.

2 The next crime, which is Count 11 in the indictment,
3 is wire fraud in violation of Title 18, United States Code
4 Section 1343. That has four elements.

5 The first is that the defendant needs to have
6 knowingly devised or participated in a scheme to defraud
7 someone by using false or fraudulent pretenses,
8 representations or promises.

9 The second element is that the false pretenses,
10 representations or promises need to have been about a material
11 fact.

12 The third element is that the defendant needs to have
13 acted with the intent to defraud.

14 And the fourth element is that the defendant needs to
15 have transmitted or caused to be transmitted by wire some
16 communication in interstate commerce to help carry out the
17 scheme to defraud.

18 The next crime that's charged is Count 38, which is
19 making a false statement to a federally-insured bank in
20 violation of Title 18 United States Code, Section 1014. This
21 crime has three elements.

22 The first is that the defendant needs to have made a
23 false statement or report.

24 The second is that the defendant needs to have done
25 so knowingly and with intent to influence an action of the

1 institution described in the indictment regarding an
2 application, advance, commitment or loan or a change or
3 extension to any of those.

4 And the third element is that the deposits of the
5 institution need to have been insured by the Federal Deposit
6 Insurance Corporation.

7 And now turning to the final three charges, which is
8 concealment money laundering in violation of Title 18 United
9 States Code, 1956(a)(1)(B)(i), that crime has four elements.

10 The first is that the defendant needs to have
11 knowingly conducted or tried to conduct a financial
12 transaction.

13 The second is that the defendant needs to have known
14 the money or property involved in the transaction were the
15 proceeds of some kind of unlawful activity.

16 The third element is that the money or property needs
17 to have come from a specified unlawful activity, specifically
18 wire fraud.

19 And the fourth element is that the defendant needs to
20 have known that the transaction was designed in whole or in
21 part to conceal or disguise the nature, location, source,
22 ownership or the control of the proceeds. And these elements
23 apply to Counts 48, 49 and 50 of the indictment.

24 THE COURT: All right. Thank you.

25 Sir, you earlier asked, you know, what -- I think you

1 asked what's the effect of what they have to prove, so those
2 are the elements that he's just listed for you, the elements
3 they have to prove for each of those counts. And --

4 DEFENDANT BAPTISTE: Your Honor, can I ask a
5 question?

6 THE COURT: Sure.

7 DEFENDANT BAPTISTE: Yes. You did state that this
8 case is criminal. I never got a chance to see the claim or to
9 validate the actual claim of the injured actual party.

10 THE COURT: All right. Thank you.

11 Mr. Gilfillan, you've provided the defendant with a
12 copy of the second superseding indictment?

13 MR. GILFILLAN: Absolutely, your Honor.

14 THE COURT: So, sir, that's -- I guess if you want to
15 call it a claim, those are the charges against you, that
16 second superseding indictment.

17 And my next question is -- and I think we've
18 discussed the consecutive nature, but do you understand -- do
19 you understand that there are sentencing guidelines that can
20 affect your sentence if you're found guilty?

21 DEFENDANT BAPTISTE: Yes, your Honor. I also
22 understand that I didn't see a sworn statement by the injured
23 party or the actual validity of the actual claim. I didn't
24 verify it. I need to be able to verify that actual claim was
25 actually produced.

1 THE COURT: My next question for you, sir, is do you
2 understand if you represent yourself you are on your own, the
3 Court cannot tell you or advise you how to try your case?

4 DEFENDANT BAPTISTE: Can you rephrase that question,
5 please.

6 THE COURT: Sure. Basically if you represent
7 yourself, you are going to be your own attorney. You'll be in
8 charge of representing yourself. It won't be as if I'm here
9 to help you, to give you advice and try your case for you.
10 You would be your attorney. You would be the one actually
11 trying the case on your own if you elected to proceed as your
12 own attorney. Do you understand that?

13 DEFENDANT BAPTISTE: I'm clear.

14 THE COURT: And are you aware of the possible
15 defenses that you might present in this case?

16 DEFENDANT BAPTISTE: Yes, I am.

17 THE COURT: Do you know how to establish or prove
18 those defenses?

19 DEFENDANT BAPTISTE: Yes, I do.

20 THE COURT: Are you familiar with the Federal Rules
21 of Evidence?

22 DEFENDANT BAPTISTE: Yes.

23 THE COURT: Do you understand that the Federal Rules
24 of Evidence govern what evidence may be or may not be
25 introduced at trial and that in representing yourself you must

1 follow those very technical rules and that they will not be
2 relaxed for your benefit just because you're representing
3 yourself?

4 DEFENDANT BAPTISTE: I understand, sir.

5 THE COURT: Are you familiar with the Federal Rules
6 of Criminal Procedure?

7 DEFENDANT BAPTISTE: Not too much familiar but I can
8 read up.

9 THE COURT: I'm sorry?

10 DEFENDANT BAPTISTE: I'm not.

11 THE COURT: Those rules govern the way a criminal
12 case is tried in federal court and you're bound by those rules
13 and they will not be relaxed for your benefit. And those
14 rules are available online if you don't have a copy.

15 Do you know how to obtain a subpoena and serve
16 subpoenas for witnesses?

17 DEFENDANT BAPTISTE: No, I do not.

18 THE COURT: So that's something that you would need
19 to -- you understand you would need to do that if you wanted
20 to be -- have witnesses attend on your behalf?

21 DEFENDANT BAPTISTE: I understand.

22 THE COURT: Do you understand that if you elect to
23 represent yourself, you will not receive any more time for
24 court proceedings, trial or other deadlines in this case. And
25 I think we actually discussed that earlier but you said that

1 you were prepared to proceed and move forward, correct?

2 DEFENDANT BAPTISTE: That is correct. And if there
3 was a possible way -- if I could get an extension, is that
4 possible, so I can --

5 THE COURT: Well, let see if you're representing
6 yourself or not and then you can move for an extension, if you
7 would like.

8 DEFENDANT BAPTISTE: Okay.

9 THE COURT: I want to advise you that in my opinion
10 you're making a grievous error and that a trained lawyer will
11 defend you far better than you could defend yourself. I think
12 it's unwise for you to try to represent yourself. You're not
13 familiar with the law. You are -- you've mentioned some
14 interactions with attorneys, but as somebody working on their
15 websites. And it sounds like you're not even aware that there
16 are Rules of Criminal Procedure yet. You're at least aware
17 that the Rules of Evidence do exist. But I have to say I urge
18 you very strongly not to represent yourself.

19 Mr. Gilfillan is an experienced criminal defense
20 attorney. I won't go into the details of it that we discussed
21 when we were under seal, but it seems that he has spent a
22 mountain of time preparing your defense in this case and it
23 seems that you would be much better served keeping him as your
24 attorney versus making this decision to represent yourself.

25 Do you understand that this afternoon I've tried to

1 inform you about some of the problems you might have in
2 representing yourself, sir?

3 DEFENDANT BAPTISTE: Yes, I did.

4 THE COURT: Do you understand that it's not possible
5 for me to predict what exact problems and obstacles you might
6 have in representing yourself?

7 DEFENDANT BAPTISTE: You did make that clear.

8 THE COURT: And in light of the penalty you might
9 suffer if you're found guilty, in light of the difficulties of
10 representing yourself, do you still desire to represent
11 yourself and give up your right to be represented by a lawyer
12 and have a lawyer appointed for you?

13 DEFENDANT BAPTISTE: Yes, I do.

14 THE COURT: Is your decision voluntary?

15 DEFENDANT BAPTISTE: Yes, it is.

16 THE COURT: Has anyone threatened or forced you in
17 any way or promised you a benefit by anyone to give up your
18 right to be represented by a lawyer and instead represent
19 yourself?

20 DEFENDANT BAPTISTE: No.

21 THE COURT: All right. You actually said earlier
22 that you were prepared to move forward and could try the case
23 on February 5th, but that if you could have a little extra
24 time you would like it, right?

25 DEFENDANT BAPTISTE: That is correct. And I would

1 like an opportunity to speak to the opposing party, the
2 prosecution, about, you know, privately administrating a
3 remedy before we actually have to go through that
4 particular --

5 THE COURT: All right. So what you need more time
6 for then is to have that conversation -- you're otherwise
7 ready to proceed on the merits, but before you do that, you
8 would like an opportunity to speak with the prosecutors about
9 some type of resolution, is that right?

10 DEFENDANT BAPTISTE: That is correct.

11 THE COURT: So if you're afforded that opportunity
12 before February 5th and if that -- obviously if that worked
13 out, we wouldn't have the trial.

14 DEFENDANT BAPTISTE: Correct.

15 THE COURT: But if it didn't work out, you would be
16 prepared to go on February 5th but you just want to have that
17 communication with the prosecutors before February 5th, you
18 want to make sure that you have the opportunity to do that and
19 you're otherwise ready to move forward?

20 DEFENDANT BAPTISTE: That is correct, sir. Your
21 Honor. Sorry.

22 THE COURT: All right. I find that the defendant has
23 knowingly and voluntarily waived the right to counsel. I'll
24 therefore permit him to represent himself.

25 I will, however, appoint standby counsel who can

1 assist the defendant or replace him if during the trial the
2 defendant can no longer proceed pro se.

3 There's no motion for a continuance here, as I've
4 clarified, but Mr. Baptiste does indeed want the opportunity
5 to communicate with the prosecutors about potential
6 resolution.

7 And I assume, Ms. Chaiken, that you're available for
8 that communication?

9 MS. CHAIKEN: We can do that right after this hearing
10 here in the courtroom, your Honor.

11 THE COURT: All right. Mr. Baptiste, what we'll do
12 is there are some motions that your attorney filed, the motion
13 to sever, there's a motion in limine, and I want to -- I'm
14 going to go ahead and rule on the motion to sever. And then
15 I'll allow those -- you to have those conversations.

16 I'm going to deny the motion to sever. The general
17 rule in the Eleventh Circuit is that defendants who are
18 jointly indicted should be tried together. That's from *United*
19 *States v. Lopez*, 649 F.3d 1222, 1234.

20 Joint trials serve important interests as stated in
21 that case. They reduce the risk of inconsistent verdicts and
22 the unfairness inherent in serial trials, lighten the burden
23 on victims and witnesses, increase efficiency and conserve
24 the scarce judicial resources. And that rule is especially
25 pronounced in conspiracy cases where defendants are charged in

1 a common conspiracy.

2 And I would also note from the *Blasingain* case, if
3 the defendant can demonstrate that a joint trial would result
4 in specific and compelling prejudice to the conduct of his
5 defense, severance can be granted.

6 And to determine compelling prejudice, the Court must
7 assess whether under all the circumstances of a particular
8 case as a practical matter it's within the capacity of the
9 jury to follow the instructions and accordingly appraise the
10 independent evidence against each defendants' own acts,
11 statements and conduct.

12 A defendant can show compelling prejudice by showing
13 the jury would be unable to sift through the evidence and make
14 an individualized determination as to each defendant.

15 Having reviewed the motion, I do not think the jury
16 here would be unable to sift through the evidence and make
17 an individualized determination as to Defendant Baptiste.
18 Although the case involves several separate conspiracies
19 related to multiple different fraudulent loans, evidence of
20 the the overall PPP loan scheme is interconnected and I have
21 confidence that the jury can understand Defendant Baptiste's
22 charges and his role in the alleged scheme and how that might
23 be more limited than other conspirators.

24 If an instruction is requested regarding those
25 issues, I will certainly entertain that at trial.

1 The other motion is the government's motion 771, and
2 the motion in limine for Baptiste is 793.

3 I think we've been going about an hour, let's take
4 a ten-minute comfort break and then we'll finish up as to
5 these last motions and then that will give us some time at the
6 end for those communications that Mr. Baptiste is requesting.

7 We'll take a ten-minute break. Thank you.

8 (After a recess, the proceedings continued at 5:26 PM
9 as follows:)

10 THE COURT: Let me go ahead and rule on some of these
11 additional motions.

12 First off, the Docket 793, Baptiste's motion in
13 limine, there were four portions in that. I'll take them in
14 reverse order.

15 The last part of that motion involved a request for
16 documents from the government. The government's agreed to
17 provide those, so that motion is mooted, that part of the
18 motion is moot at this point.

19 The third part of that motion involved the bank
20 surveillance video with Mr. Benoit and the T-shirt. I've
21 reviewed the materials on that, and I believe that there is
22 relevance to that video that's not outweighed under 403. And,
23 therefore, I'm going to deny that request.

24 And I've said it generally but I'll say it more
25 particularly, I believe that probative value is not

1 substantially outweighed by the danger of one or more of the
2 following: Unfair prejudice; confusion of issues; misleading
3 the jury; undue delay; wasting time; and needlessly providing
4 cumulative evidence.

5 I've listed all of them, and I think the argument was
6 more the unfair prejudice. I don't think that shirt is
7 prejudicial, certainly not substantially outweighing if there
8 is any prejudice whatsoever, which I think is, if any, very,
9 very slight. And I think that it is probative to establish,
10 as the government would say, the actual money laundering.

11 The next piece is the Amanda Chastain materials.
12 That's the second piece of that motion. On that one, it seems
13 pretty clear under 404(b) that it does go to the knowledge
14 intent in the relationship. But what I don't really have a
15 good grasp on is the 403 angle of that. So we'll just address
16 that when we get to it at trial when I can understand better.

17 I mean, I see how the government has linked up why it
18 wants to get it in, but I don't understand enough right now, I
19 feel like, to weigh that -- the other piece of that. So I'm
20 going to defer on that one.

21 Finally, you know, the main part of that motion in
22 limine regarding evidence of the other uncharged PPP loans,
23 and that's the same issue as we have in 771, the government's
24 notice, and we discussed this earlier, some of these standards
25 as to some of the other defendants and other issues, but I'll

1 repeat them here.

2 Citing from the *Ford* case, 784 F.3d 1386 at 1393, and
3 to headline upfront, I'm going to allow that evidence.

4 Evidence is intrinsic if it's an uncharged offense which arose
5 out of the same transaction or series of transactions as the
6 charged offenses necessary to complete the story of the crime
7 or inextricably intertwined with the evidence regarding the
8 charged offenses.

9 The Eleventh Circuit has noted that evidence of
10 uncharged conduct that's part of the same scheme or series of
11 transactions and uses the same modus operandi as the charged
12 offenses is admissible as intrinsic evidence. And that's
13 outside of 404(b).

14 I believe this shows participation and other alleged
15 fraudulent PPP loans during the same time period as the
16 Transportation Management loan, some of the same
17 co-conspirators and the same modus operandi. There's also the
18 spreadsheet that was sent listing the various corporations,
19 listing the same requirements for each of those loans, and I
20 think pretty clearly meets those standards of *Ford* in
21 completing the story.

22 I don't think 403 is an issue there. I think the --
23 I don't think any of the 403 factors substantially outweigh
24 the probative value of that evidence. I know the focus was on
25 misleading the jury or confusing the jury. Again, I don't

1 think they'll be misled or confused by this. And as far as
2 any delay or waste of time, I don't think that will be the
3 case as the government's shown a lot of this is from the same
4 witnesses.

5 But, obviously, if I see that we are or,
6 Mr. Baptiste, if you see that the government's going on and on
7 on these other matters as opposed to the charged offenses, I
8 would encourage you to make a motion that it has gotten
9 cumulative or wasting time or is resulting in delay.

10 I think that covers the motions that Mr. Baptiste had
11 filed. Before we conclude for the day, again, I've appointed
12 Mr. Gilfillan as standby counsel. So, Mr. Baptiste, he's
13 here. I know it sounds like he's already given you the
14 documents you need. You're already familiar with the Rules of
15 Evidence, but he can help you find those Rules of Criminal
16 Procedure if you can't find them online, but I think they're
17 pretty easily online.

18 And anything else from the government or from
19 Mr. Baptiste before we conclude?

20 MS. CHAIKEN: Your Honor, we did speak to
21 Mr. Baptiste during the break, and we were not able to resolve
22 the charges, so our understanding is we're proceeding.

23 THE COURT: Very well. We'll see you all in a couple
24 weeks.

25 DEFENDANT BAPTISTE: Your Honor?

1 THE COURT: Yes.

2 DEFENDANT BAPTISTE: I have a few questions of you
3 actually.

4 THE COURT: I'm sorry?

5 DEFENDANT BAPTISTE: I have a few questions. I
6 wanted to ask you how a criminal case is filed.

7 THE COURT: What are your other questions, what's
8 your second question?

9 DEFENDANT BAPTISTE: The second question is I have a
10 right to actually, you know, receive the actual claim that
11 was -- validate the actual claim to ensure that there's a real
12 criminal case here.

13 THE COURT: Okay. Thank you.

14 As far as how a claim is filed, in this case a grand
15 jury was impaneled, heard evidence and issued an indictment
16 and now we have a second superseding indictment. And
17 I understand you've been given a copy of that. And
18 Mr. Gilfillan has noted that he's given you a copy of that
19 claim or that second superseding indictment.

20 And, Mr. Gilfillan, if you can make sure that he gets
21 another copy of that.

22 Thanks, everyone.

23 DEFENDANT BAPTISTE: Your Honor, one more thing.

24 THE COURT: Yes.

25 DEFENDANT BAPTISTE: Couple things.

1 THE COURT: Last question and any other questions I
2 would ask -- the hour's getting late, but go ahead.

3 DEFENDANT BAPTISTE: I do need to actually ask for
4 more time so I can subpoena the actual accusers.

5 THE COURT: Mr. Gilfillan can help you with the
6 subpoena process.

7 DEFENDANT BAPTISTE: I don't need te help of
8 Mr. Gilfillan.

9 THE COURT: I'm sorry?

10 DEFENDANT BAPTISTE: I don't need his help actually
11 doing that --

12 THE COURT: You're welcome to issue subpoenas. You
13 have two weeks and you can subpoena whoever you like.

14 Thanks, everyone.

15 If there are no other questions, we're adjourned.

16 Thank you.

17 (PROCEEDINGS REPORTED WERE CONCLUDED AT 5:35 PM.)

18

19

20

21

22

23

24

25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true
and correct transcript of the proceedings taken down by me in
the case aforesaid.

This the 1st Day of February, 2024.



PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER