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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
	)	
-VS-	)	DOCKET NO. 1:20-CR-00296
	)	
TELDRIN FOSTER,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF PRETRIAL HEARING PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
JANUARY 24, 2024

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:
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SAMIR KAUSHAL, ESQ.
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ON BEHALF OF THE DEFENDANT - TELDRIN FOSTER:
LEIGH ANN WEBSTER, ESQ.
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ON BEHALF OF THE DEFENDANT - JOHN GAINES:
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ON BEHALF OF THE DEFENDANT - CARLA JACKSON:
DAVID D. MARSHALL, ESQ.

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STENOGRAPHICALLY RECORDED BY:

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

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

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

Counsel, would you please announce yourselves for the record.

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

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

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

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

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

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

THE COURT: Thank you very much.

All right. This is our pretrial conference for a

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

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

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

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

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

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

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

THE COURT: Thank you for understanding.

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

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

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

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

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

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

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

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

THE COURT: Okay. Thank you.

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

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

THE COURT: That's correct.

MR. MARSHALL: Sorry, Judge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

But is there a way after you give your definition

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

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

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

MS. WEBSTER: Sure.

(Pause in proceedings.)

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

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

MS. WEBSTER: We want to read the definition.

THE COURT: I understand. You want to read the

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

MS. WEBSTER: Yes.

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

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

THE COURT: Thank you.

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

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

MS. WEBSTER: Thank you, your Honor.

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

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

Same thing with white nationalist groups, does anyone

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

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

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

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

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

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

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

MS. WEBSTER: Thank you, your Honor.

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

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

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

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

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

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

Off the record for a moment.

(Off-the-record discussion.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. CHAIKEN: Will do, your Honor.

THE COURT: Thank you very much.

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

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

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

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

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

(Off-the-record discussion.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

couple of our motions in limine?

THE COURT: Uh-huh (affirmative).

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

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

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

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

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

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

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

object and then we'll deal with it then.

MS. CHAIKEN: Okay.

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

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

MS. CHAIKEN: Number five.

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

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

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

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

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

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

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

Anything else?

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

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

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

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

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

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

when they do. When and if they do.

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

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

MS. WEBSTER: Your Honor.

THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

MS. WEBSTER: Thank you.

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

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

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

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

THE COURT: Okay. All right.

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

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

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

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

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

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

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

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

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

MS. CHAIKEN: Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Anything else from the defense on this?

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

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

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

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

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

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

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

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

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

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

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

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

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

its prejudicial effect.

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

That's a reference to Gena Pyfrom-Foster.

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

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

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

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

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

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

And they asked, What's his usual password?

She said, player34.

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

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

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

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

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

THE COURT: Let me hear from the defense.

MS. DURRETT: Thank you, your Honor.

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

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

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

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

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

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

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

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

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

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

THE COURT: Thank you.

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

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

THE COURT: All right. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Is that right, Ms. Chaiken?

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

THE COURT: All right.

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

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

of the notice, I agree with the government.

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

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

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

THE COURT: Thank you. All right.

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

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

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

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

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

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

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

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

relevance to that.

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

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

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

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

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

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

THE COURT: All right. Thank you.

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

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

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

And the Eleventh Circuit has recognized the general

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

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

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

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

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

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

MS. WEBSTER: Sorry.

THE COURT: That's okay.

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

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

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

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

THE COURT: Any defendants?

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

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

THE COURT: Okay. All right. Okay.

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

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

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

COURTROOM DEPUTY CLERK: Yes.

THE COURT: Thank you all for giving us those.

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

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

MS. WEBSTER: Thank you, your Honor.

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

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

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

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

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

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

MS. WEBSTER: Thank you, your Honor.

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

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

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

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

THE COURT: All right. Give me one moment.

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

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

So you want 16 total instead of 10?

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

THE COURT: Okay.

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

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

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

THE COURT: Sure.

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

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

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

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

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

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

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

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

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

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

we've covered.

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

Does that -- hopefully I'm making sense.

MS. WEBSTER: Yes.

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

MS. WEBSTER: Thank you, your Honor.

And just the start and end times for trial.

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

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

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

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

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

What other questions?

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

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

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

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

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

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

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

MS. WEBSTER: Understood. Thank you.

THE COURT: Ms. Chaiken, yes.

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

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

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

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

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

MS. CHAIKEN: We'll have him here.

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

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

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

MS. CHAIKEN: Okay.

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

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

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

How long would everyone like for openings and closings?

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

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

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

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

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

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

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

Is that right, Leigh Ann.

MS. WEBSTER: It is.

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

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

THE COURT: Thank you.

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

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

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

MR. KAUSHAL: Yes, your Honor.

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

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

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

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

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

MS. WEBSTER: Yes.

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

MS. CHAIKEN: Yes.

THE COURT: Go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Right.

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

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

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

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

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

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

What else?

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

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

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

MR. MARSHALL: Yes, Judge.

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

MR. MARSHALL: That's fine, Judge.

THE COURT: What else from anyone?

(No response.)

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

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

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

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

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

prerogative.

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

Thanks, everyone.

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

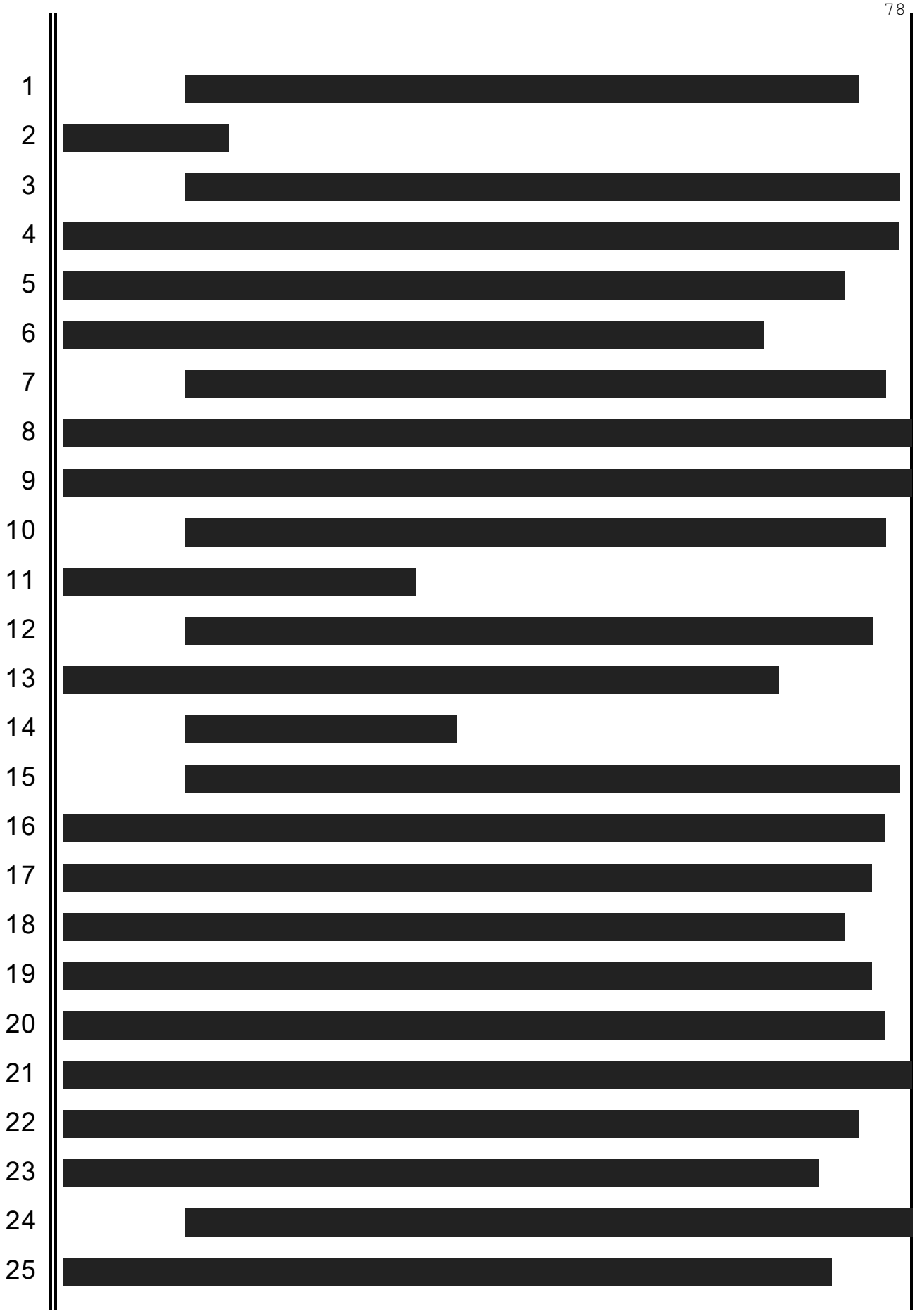
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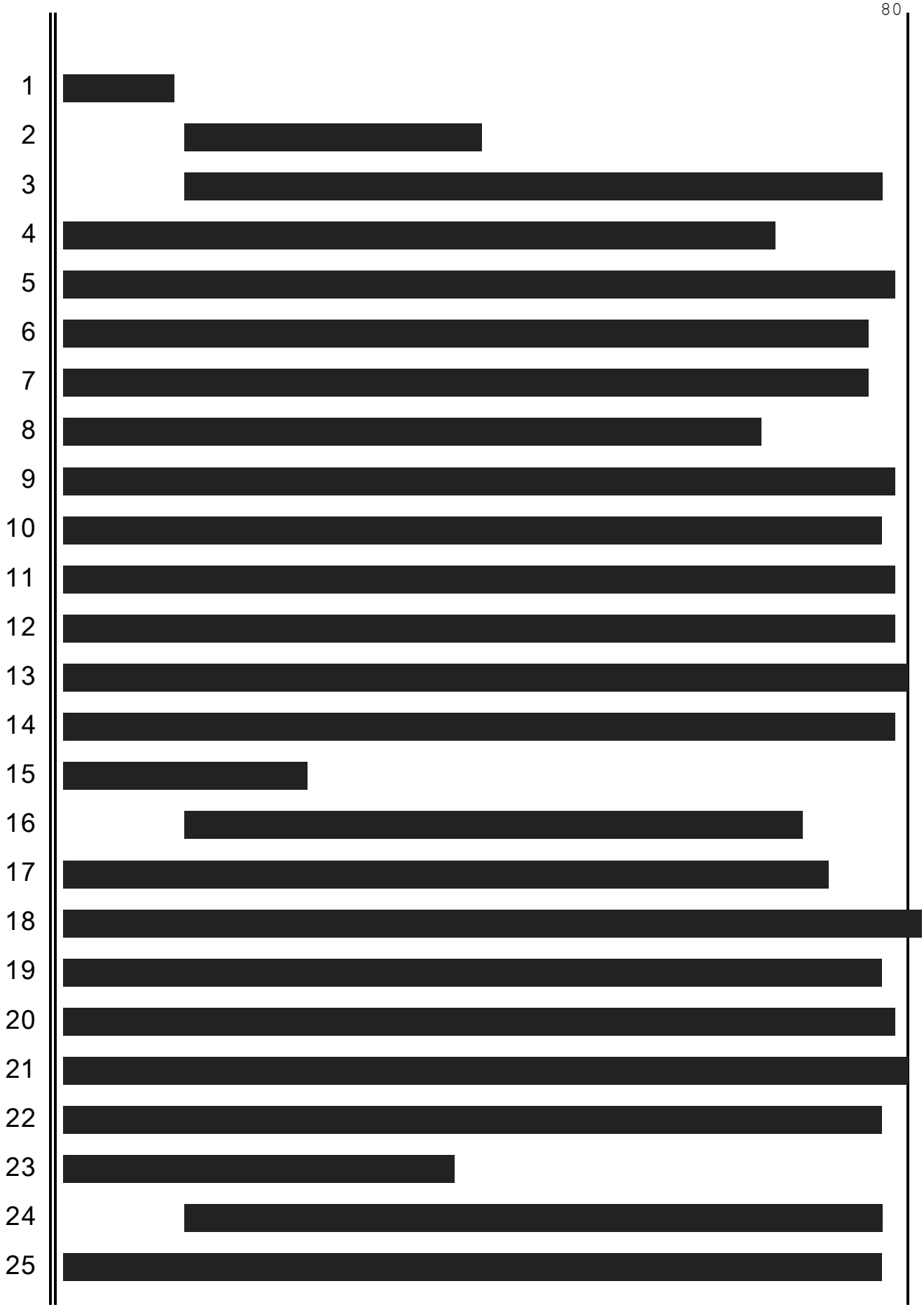


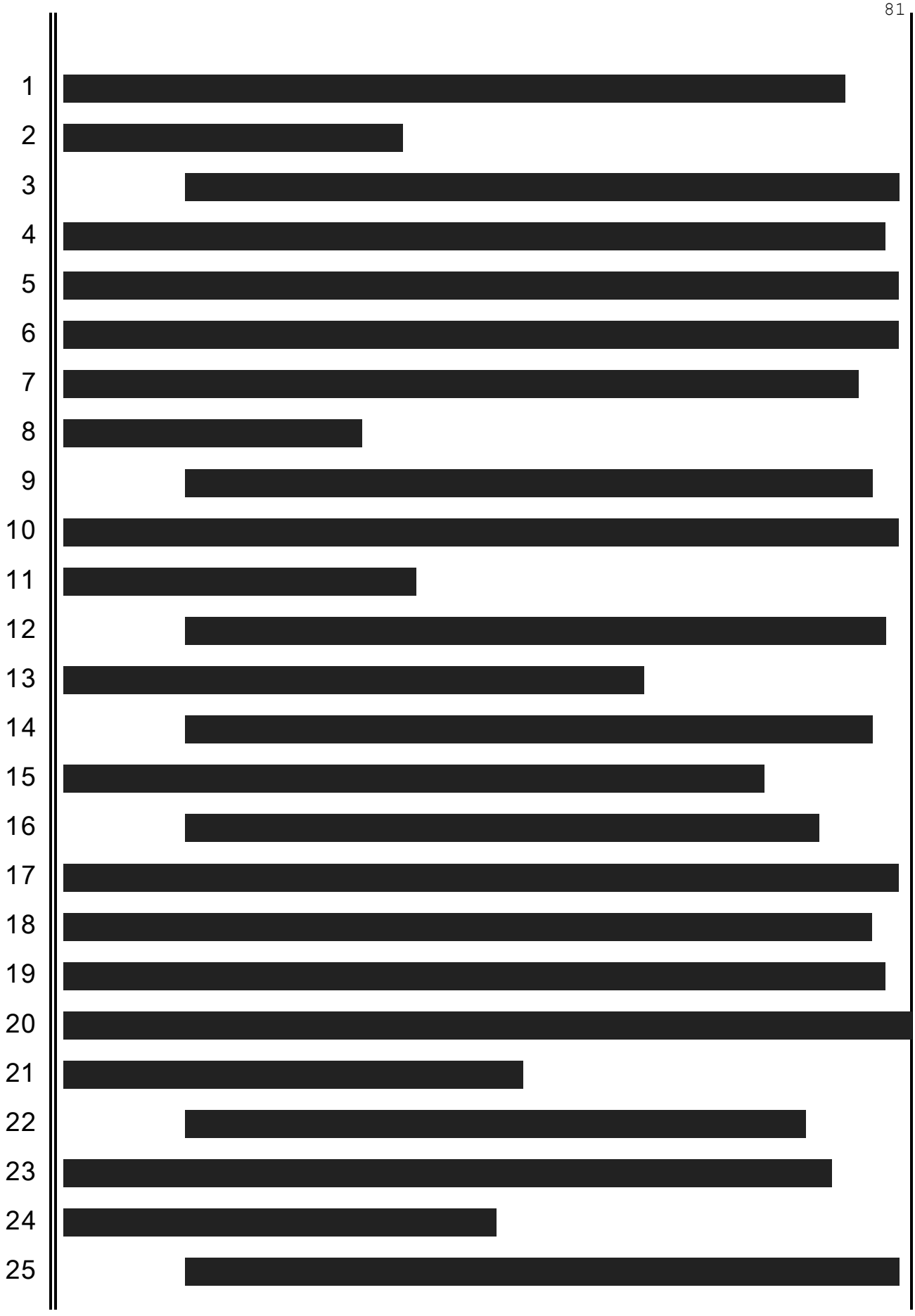




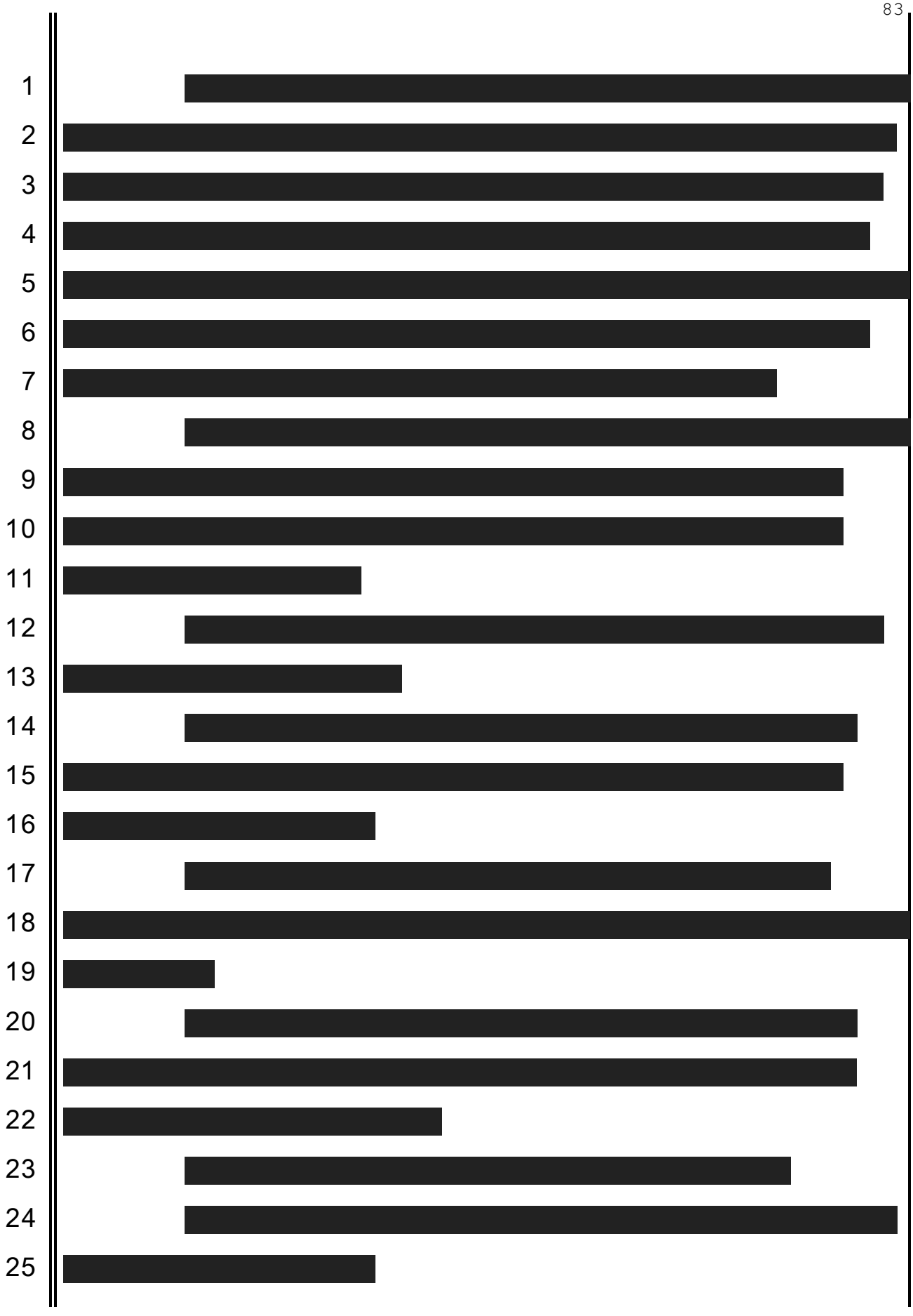


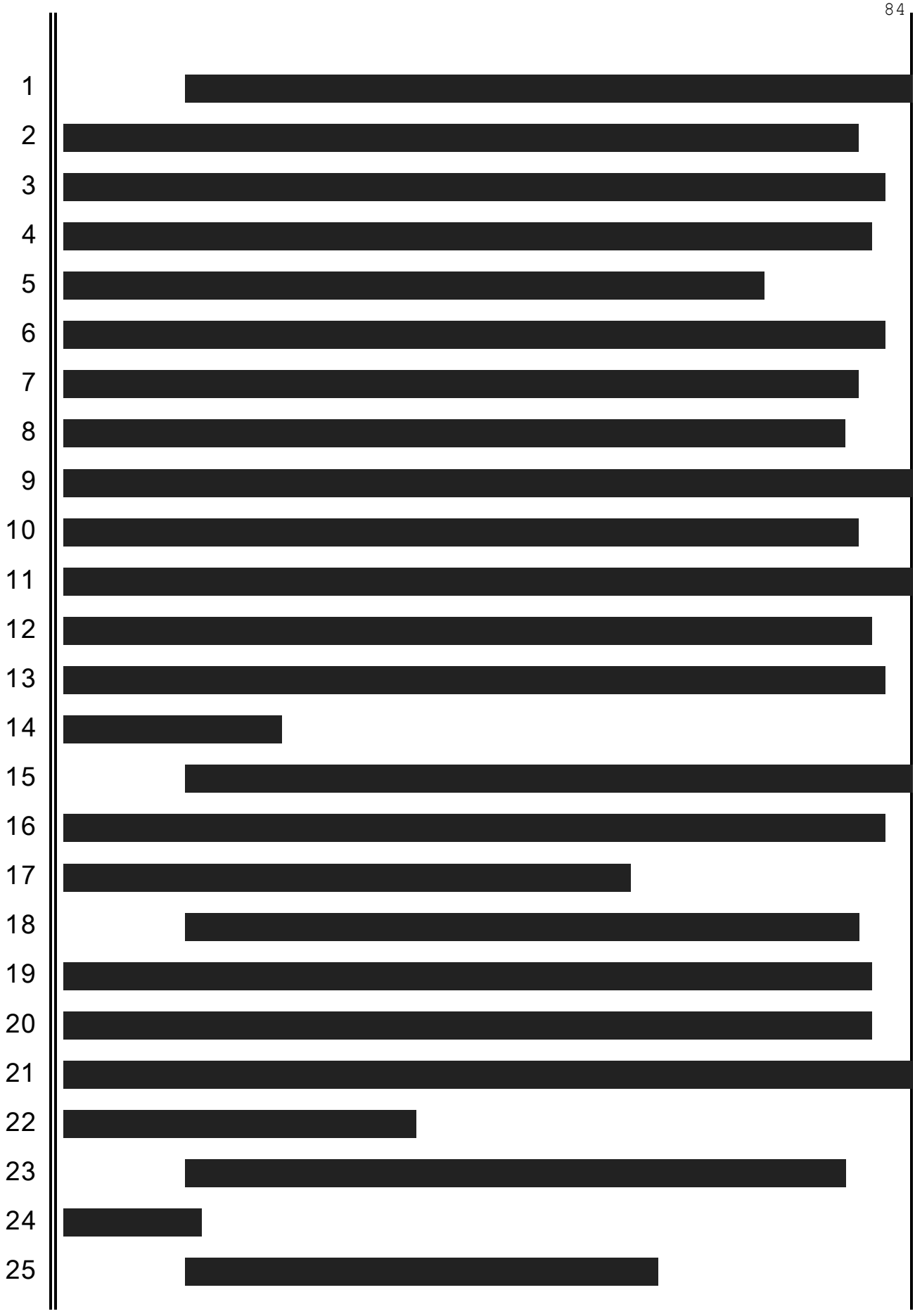


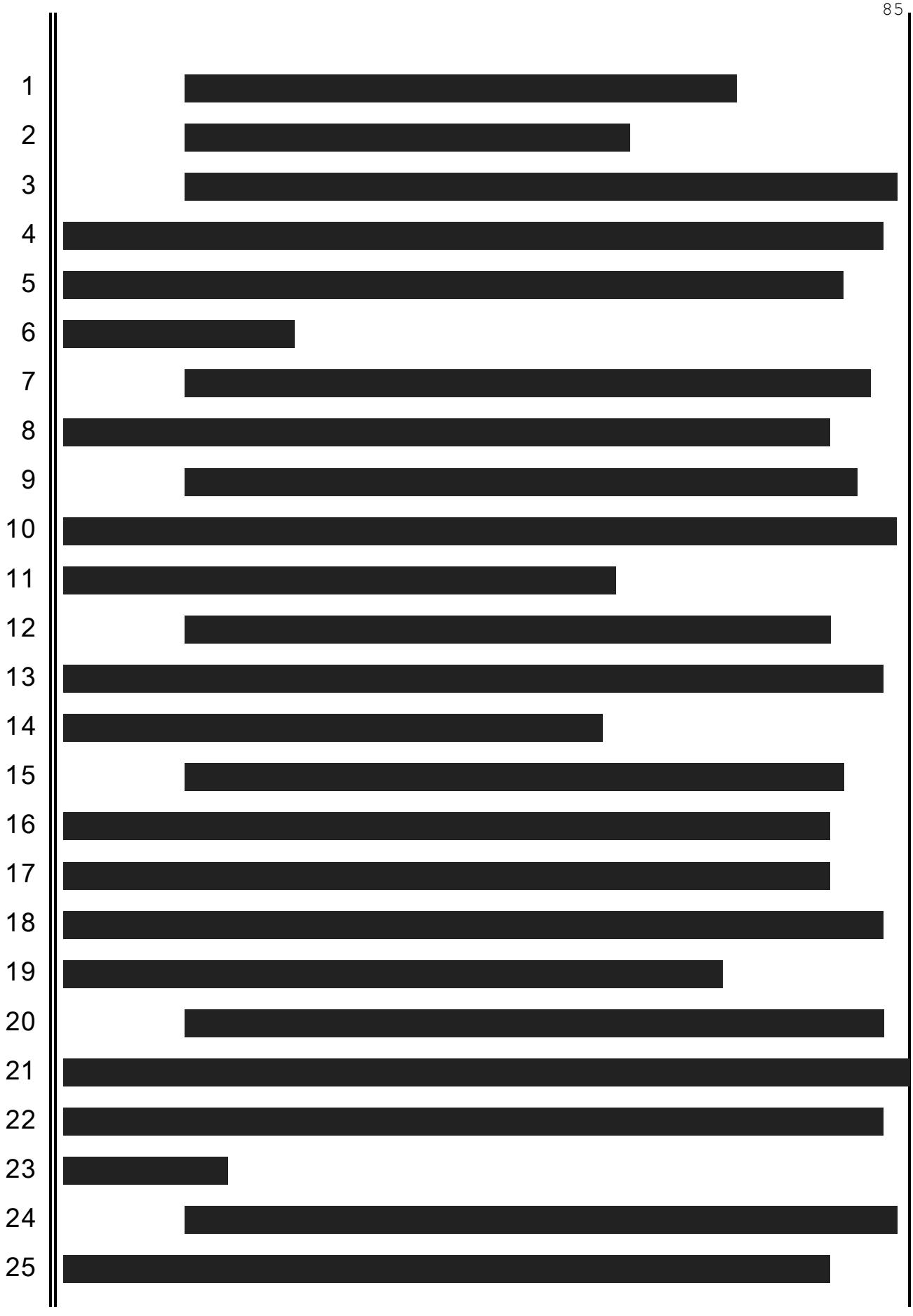




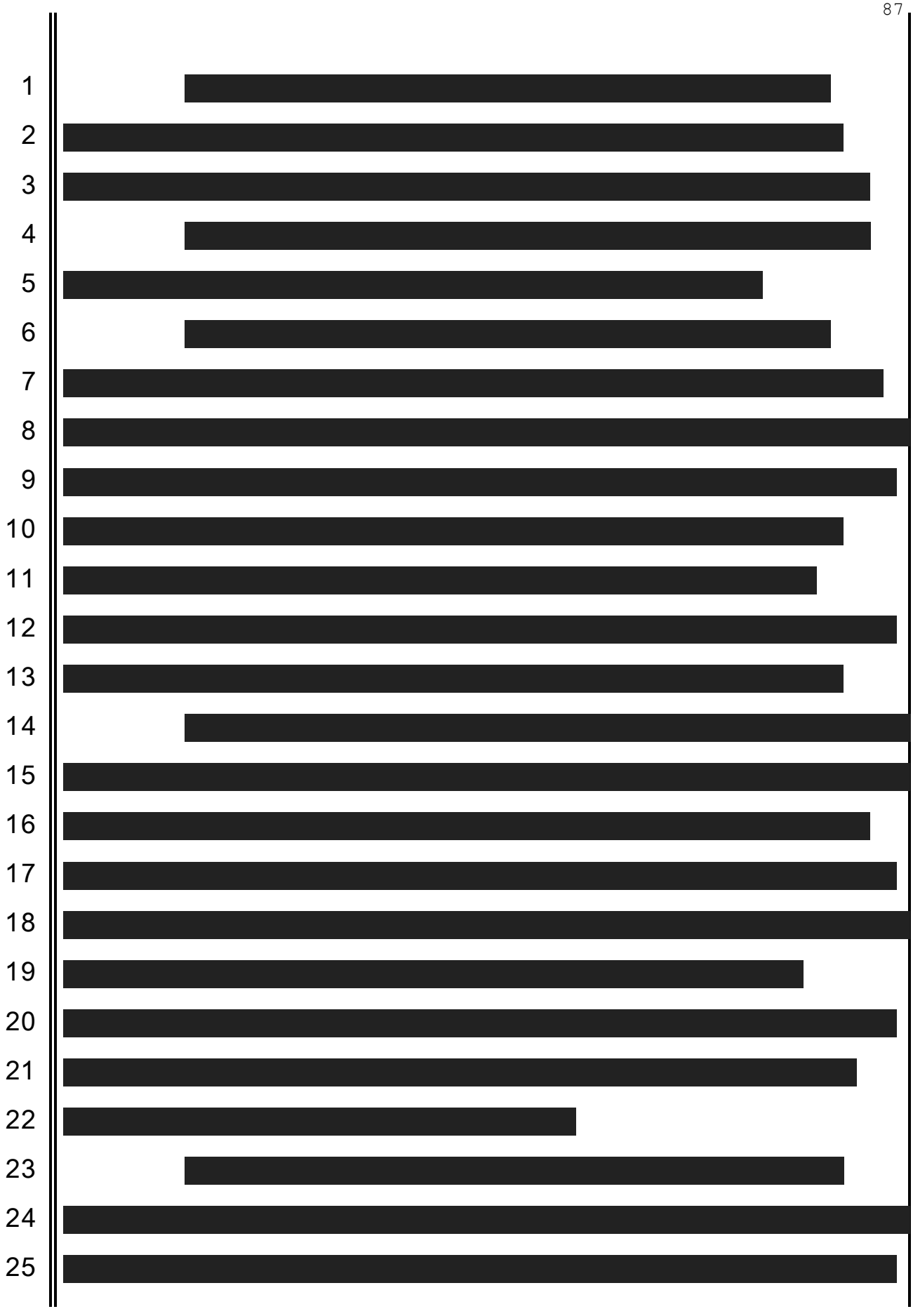


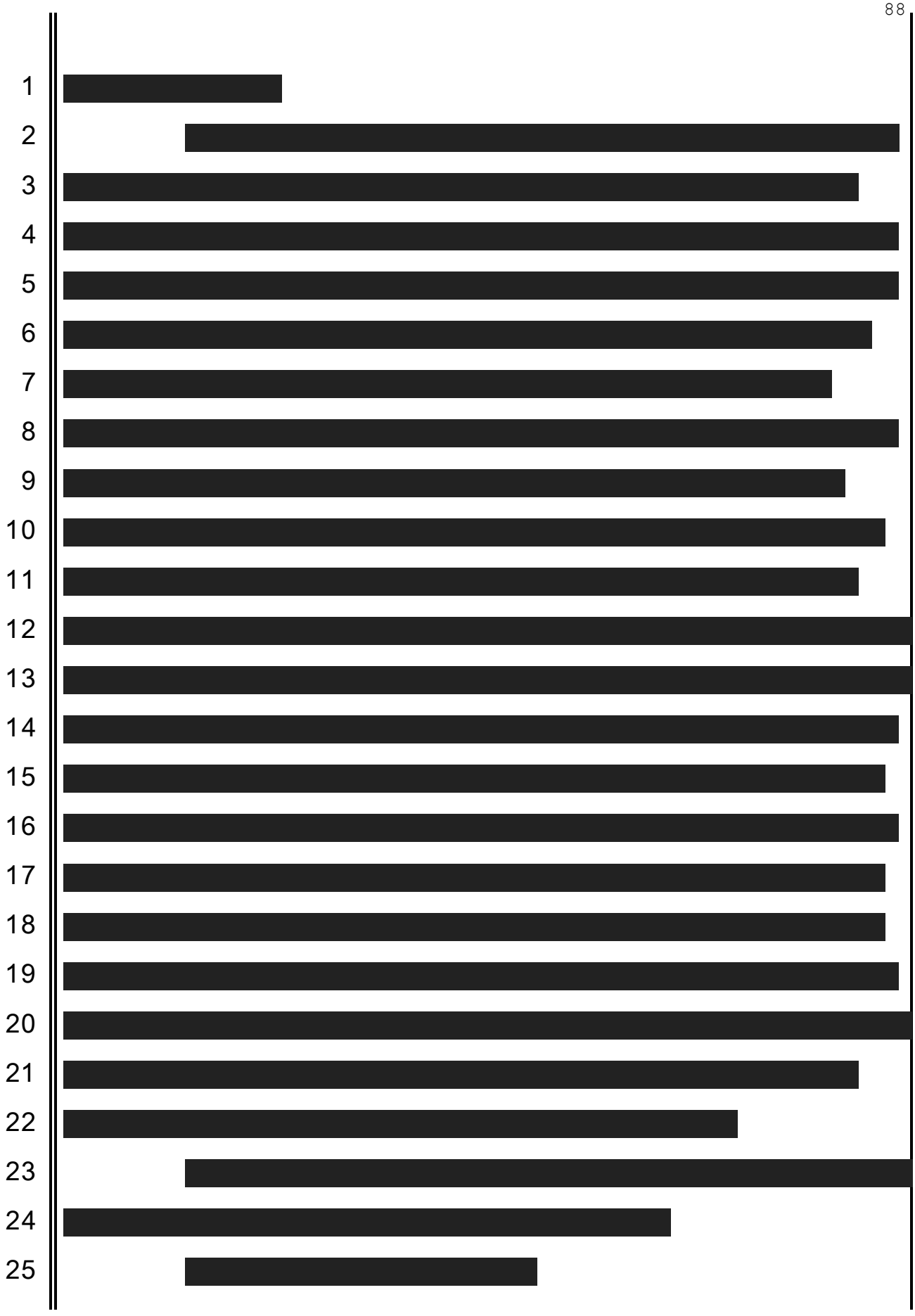


















[redacted]

(Prosecution present in the courtroom)

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

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

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

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

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

again --

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

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

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

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

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

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

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

(Defendant Baptiste was duly sworn)

THE COURT: Sir, thank you.

Sir, how old are you?

DEFENDANT BAPTISTE: Rephrase that again. How old I

am?

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

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

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

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

THE COURT: Are you a lawyer?

DEFENDANT BAPTISTE: I'm not a lawyer.

THE COURT: Have you studied the law?

DEFENDANT BAPTISTE: No, I have not.

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

DEFENDANT BAPTISTE: I can read English, yes.

THE COURT: And understand English?

DEFENDANT BAPTISTE: Yes.

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

DEFENDANT BAPTISTE: No.

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

important decisions?

DEFENDANT BAPTISTE: I have not.

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

DEFENDANT BAPTISTE: No, I have not.

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

DEFENDANT BAPTISTE: In a working capacity or --

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

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

THE COURT: I'm sorry?

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

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

DEFENDANT BAPTISTE: Yes.

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

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

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

DEFENDANT BAPTISTE: I do not understand the actual

question, sir.

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

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

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

DEFENDANT BAPTISTE: Correct.

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

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

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

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

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

You understand those are the charges against you?

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

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

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

THE COURT: Very well.

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

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

THE COURT: I'm sorry?

DEFENDANT BAPTISTE: Based on those charges.

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

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

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

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

MR. KAUSHAL: It's A --

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

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

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

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

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

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

For Count 9 it's 30 years imprisonment;

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

Special assessment of $100;

Full restitution can be ordered;

And up to five years supervised release may be imposed.

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

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

Special assessment of $100;

Full restitution can be ordered;

And up to five years supervised release may be imposed.

Count 11 for wire fraud, 20 years imprisonment;

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

Special assessment of $100;

Full restitution can be ordered;

Up to three years supervised release can be imposed.

Count 38 is false statement to a federally-insured branch under 18 USC, Section 1014, 30 years imprisonment;

A million dollar fine or twice the gain or twice the

loss, whichever is greatest;

Special assessment of $100;

Full restitution can be ordered;

And up to five years supervised release may be imposed.

Count 48 is concealment money laundering, 20 years imprisonment;

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

Special assessment of $100;

Full restitution may be order;

And up to three years supervised release may be imposed.

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

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

A special assessment of $100;

Full restitution may be ordered;

And up to three years supervised release may be imposed.

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

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

involved in the transaction, whichever is greater;

Special assessment of $100;

Full restitution may be ordered;

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

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

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

DEFENDANT BAPTISTE: That is correct.

THE COURT: And you understand those, correct?

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

THE COURT: It's a criminal case.

DEFENDANT BAPTISTE: It is a criminal case?

THE COURT: Right.

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

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

And if you're ready with those elements.

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

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

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

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

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

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

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

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

And, finally, the fourth element is that the

financial institution needs to have been federally insured.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: All right. Thank you.

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

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

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

THE COURT: Sure.

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

THE COURT: All right. Thank you.

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

MR. GILFILLAN: Absolutely, your Honor.

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

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

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

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

DEFENDANT BAPTISTE: Can you rephrase that question, please.

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

DEFENDANT BAPTISTE: I'm clear.

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

DEFENDANT BAPTISTE: Yes, I am.

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

DEFENDANT BAPTISTE: Yes, I do.

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

DEFENDANT BAPTISTE: Yes.

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

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

DEFENDANT BAPTISTE: I understand, sir.

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

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

THE COURT: I'm sorry?

DEFENDANT BAPTISTE: I'm not.

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

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

DEFENDANT BAPTISTE: No, I do not.

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

DEFENDANT BAPTISTE: I understand.

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

you were prepared to proceed and move forward, correct?

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

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

DEFENDANT BAPTISTE: Okay.

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

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

Do you understand that this afternoon I've tried to

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

DEFENDANT BAPTISTE: Yes, I did.

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

DEFENDANT BAPTISTE: You did make that clear.

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

DEFENDANT BAPTISTE: Yes, I do.

THE COURT: Is your decision voluntary?

DEFENDANT BAPTISTE: Yes, it is.

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

DEFENDANT BAPTISTE: No.

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

DEFENDANT BAPTISTE: That is correct. And I would

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

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

DEFENDANT BAPTISTE: That is correct.

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

DEFENDANT BAPTISTE: Correct.

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

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

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

I will, however, appoint standby counsel who can

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

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

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

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

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

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

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

a common conspiracy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

repeat them here.

Citing from the *Ford* case, 784 F.3d 1386 at 1393, and to headline upfront, I'm going to allow that evidence. Evidence is intrinsic if it's an uncharged offense which arose out of the same transaction or series of transactions as the charged offenses necessary to complete the story of the crime or inextricably intertwined with the evidence regarding the charged offenses.

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

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

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

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

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

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

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

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

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

DEFENDANT BAPTISTE: Your Honor?

THE COURT: Yes.

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

THE COURT: I'm sorry?

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

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

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

THE COURT: Okay. Thank you.

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

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

Thanks, everyone.

DEFENDANT BAPTISTE: Your Honor, one more thing.

THE COURT: Yes.

DEFENDANT BAPTISTE: Couple things.

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

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

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

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

THE COURT: I'm sorry?

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

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

Thanks, everyone.

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

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

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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