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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. CR 21-170 VAP
)
WESTERN DISTRIBUTION, LLC, and)
CARL BRADLEY JOHANSSON,)
)
Defendants.)
_____)
)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. CR 18-114 VAP
)
CARL BRADLEY JOHANSSON,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
CHANGE OF PLEA HEARING
WEDNESDAY, SEPTEMBER 29, 2021
10:04 A.M.
LOS ANGELES, CALIFORNIA

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1 WEDNESDAY, SEPTEMBER 29, 2021; 10:04 A.M.

2 LOS ANGELES, CALIFORNIA

3 -oOo-

4 THE COURTROOM DEPUTY: Calling Item No. 2 and 3,

10:04AM 5 ED CR 21-00170-VAP and ED CR 18-00114(B)-VAP, United States of
6 America versus Carl Bradley Johansson.

7 Counsel, please state your appearance.

8 MR. O'BRIEN: Good morning, Your Honor.

9 Matthew O'Brien and Joe Johns on behalf of the United States.

10:04AM 10 THE COURT: Good morning.

11 MR. WERKSMAN: Good afternoon, Your Honor --

12 morning. Mark Werksman and Karen Sosa on behalf of the
13 defendant who is present in custody.

14 THE COURT: Thank you. Good morning.

10:05AM 15 All right. This matter, I believe, is on the
16 calendar in both the 18 -- excuse me -- the 18-114 case and the
17 21-170 case for a change of plea in the 18-114 case as to
18 Counts 1, 2, and 4 and in the 21-170 case as to Counts 1 and 3.
19 Is that correct?

10:05AM 20 MR. WERKSMAN: That's the purpose for us being here,
21 Your Honor.

22 May I address the Court as to our situation?

23 THE COURT: Certainly.

24 MR. WERKSMAN: And I want to preface this by saying
10:05AM 25 that in my 35 years of practice -- 36 years of practice, I've

1 never confronted a situation like this. And I'm frustrated,
2 but I want to curb my personal frustration and ask the Court to
3 understand the situation and perhaps help us resolve this.

10:06AM 4 THE COURT: All right. Is it a matter of needing
5 more time today to --

6 MR. WERKSMAN: Possibly. But here's the problem,
7 Your Honor.

8 THE COURT: All right.

10:06AM 9 MR. WERKSMAN: I need the Court's help. And the
10 situation is that on August 12th, my client and I met at the
11 Santa Ana City Jail. And we reviewed and finalized what I
12 thought was a final version and signed copy of the plea
13 agreement, which was filed with the Court later that night or
14 early the next morning with the anticipation that we would come
10:06AM 15 to court on Friday, the 13th of August for entry of plea.

16 And it was my intention, when I went to bed on the
17 night of August 12th, to get up on Friday morning, the 13th,
18 and come to court and my client was going to be here and we
19 were going to enter pleas to the case against Mr. Johansson
10:06AM 20 personally in both Indictments and on behalf of Western, which
21 is the entity in the second of the two cases, the reason he's
22 been incarcerated.

23 That morning on the 13th, my client had a medical
24 issue which caused the U.S. Marshals to take him to a nearby
10:07AM 25 clinic. And from that point forward, he has been more or less

1 held incommunicado, deprived of counsel, and deprived of access
2 to legal papers and reading glasses by the U.S. Marshals.

3 I don't want to vent too much on the U.S. Marshals.
4 I know they have a tough job, they perform bravely. But we're
10:07AM 5 in a situation now where the U.S. Marshals are absolutely
6 frustrating my ability to communicate with my client, his
7 ability to receive legal papers, and in some cases his ability
8 to come to court.

9 So what's happened now, Your Honor, is that he's
10:07AM 10 been more or less incommunicado in one form or another of COVID
11 quarantine for about 46 days, ending early this week. I met
12 with him Friday, the -- this previous Friday --

13 THE COURT: So he's now at the MDC.

14 MR. WERKSMAN: He's at MDC. He was finally taken
10:07AM 15 off quarantine Friday, this past Friday, and I met with him.

16 I tried to give him copies of his plea agreement so
17 he could review them. I gave him those copies because he
18 hadn't seen them in 43 or so days. And he wanted to review
19 them in anticipation of today's court appearance.

10:08AM 20 When we left the visiting room, he took these papers
21 with him to his cell, but a deputy U.S. Marshal intercepted
22 him -- or maybe he was an employee of the Bureau of Prisons,
23 one of them -- took his papers away and said you can't take
24 them from the attorney lounge, that or visiting room. You have
10:08AM 25 to be -- they have to be mailed in.

1 They returned them to me on the spot. And I then
2 immediately put them in envelopes. I had to break the papers
3 in two because there's a very thin slot for you to slide legal
4 mail in in the lobby of MDC.

10:08AM 5 I'm telling you all this for a reason, Your Honor.
6 I'll get to the point.

7 THE COURT: That's all right.

8 MR. WERKSMAN: Friday midday my assistant,
9 Rob Pooley, personally put two envelopes in the mail slot
10:09AM 10 containing all the papers, both plea agreements that are --
11 we're here today for my client to agree to.

12 I am told now that the guy who handles mail at the
13 Metropolitan Detention Center has been off this week. So as of
14 this moment, my client reports to me that he has not received
10:09AM 15 copies of his plea agreements.

16 Moreover, he complained to me last Friday and he's
17 complaining again this morning that he can't see because he
18 doesn't have glasses. They took away his glasses a long time
19 ago, and he can't read without glasses.

10:09AM 20 So, Your Honor, I believe that my client intends to
21 enter into these agreements.

22 THE COURT: But he needs more time to read them.

23 MR. WERKSMAN: He needs to read them.

24 THE COURT: All right. Let me -- pardon me for
10:09AM 25 interrupting you, but let me ask a couple of questions.

1 When you say "reading glasses," can those be
2 nonprescription reading glasses?

3 MR. WERKSMAN: I believe so.

4 Dime store reading glasses; right?

10:10AM 5 THE DEFENDANT: Well, I've been severely nearsighted
6 for 25 years. And about five years ago, I've had to start
7 wearing bifocals for magnification because I'm just getting
8 older. And I have corrections for astigmatism. So I have a
9 real -- fairly thick lens and, you know, really specific
10:10AM 10 glasses for my eyes.

11 And when I self-surrendered the first week of July,
12 they took my glasses and I haven't had glasses for three
13 months. Not only for reading, but I can't see three feet in
14 front of me.

10:10AM 15 THE COURT: All right. Well, so we have two
16 questions here. I have to find out what happened to those
17 glasses or the replacements. But for the purposes of simply
18 reading something, it sounds like we could get regular reading
19 glasses for that purpose.

10:10AM 20 MR. WERKSMAN: Mr. Johansson, if we got you some
21 reading glasses from Walgreens, could -- to magnify, could you
22 read with those?

23 THE DEFENDANT: I could try, but I have -- I have
24 corrected for astigmatism. My eyes want to divert out to the
10:11AM 25 side. That's why I need my prescriptions.

1 THE COURT: Right. I understand that we need to get
2 you those prescription glasses.

3 MR. WERKSMAN: May I make a request, Your Honor?

4 THE COURT: Yes.

10:11AM

5 MR. WERKSMAN: We're supposed to be back here at
6 2:00 o'clock this afternoon for entry of the corporate pleas.
7 May I request that the Court -- and forgive me -- seize control
8 of the situation and forbid the marshals from taking away his
9 legal papers and order that my client be allowed to receive in
10 this courtroom right now copies of his plea agreements -- I'll
11 hand them to Your Honor's courtroom deputy, there are no
12 staples in them, there's no contraband in them -- along with a
13 debriefing statement of his co-defendant who is now cooperating
14 and has pled guilty, Cameron Spicer.

10:11AM

15 If I could give these to my client now and perhaps
16 in the next hour I or someone from my staff could return and
17 be -- and be ordered, permitted to give him a pair of Walgreens
18 or CVS reading glasses of the strongest magnification -- but
19 we've got to get through the marshal's skull.

10:12AM

20 THE COURT: All right. I will discuss this with the
21 marshals. We'll put this off until this afternoon. We'll keep
22 the courtroom available to you -- or I'll make sure that you
23 have the opportunity to talk -- let me talk with the deputy
24 marshals in the courtroom to find out what's the best place for
10:12AM 25 you to meet with your client.

1 MR. WERKSMAN: They have -- there are meeting rooms.
2 I just met with him before court.

3 THE COURT: So would you -- well, that's --

4 MR. WERKSMAN: That's not the problem. The problem
10:12AM 5 is I know what's going to happen. I'm going to show up with
6 glasses in an hour and they're going to say we don't take
7 glasses here. And I'm going to say please talk to
8 Judge Phillips, she wants him to have these glasses. And we're
9 going to get a runaround. And we'll be back at 2:00 o'clock no
10:12AM 10 further along in this process.

11 THE COURT: All right. I can sense your
12 frustration, and I share it because we've all -- we've all met
13 here several times trying to get this matter taken care of.
14 But that's why I was going to suggest that you meet with your
10:13AM 15 client in the courtroom.

16 MR. WERKSMAN: I'd prefer that, frankly, if that can
17 be done.

18 THE COURT: So that, I think, would be the ideal
19 thing. Then you can sit there, you can show him the documents,
10:13AM 20 you can answer his questions. The problem with that is I think
21 the marshals would want to be in the courtroom so -- which is
22 obviously not acceptable because you have to have privacy.

23 So let me talk to the deputies and figure out
24 where's the best place that we can accomplish this. And then
10:13AM 25 we'll put it on calendar for -- 2:00 o'clock is fine.

1 MR. WERKSMAN: In the meanwhile, Your Honor --

2 THE COURT: You can hand -- you can hand him those
3 papers.

4 MR. WERKSMAN: Okay.

10:13AM 5 THE COURT: You have to -- I'm sorry. You have to
6 speak to me through your attorney.

7 So in the meantime, Mr. Werksman -- okay.
8 Mr. Werksman.

9 MR. WERKSMAN: Yes, Your Honor.

10:14AM 10 THE COURT: I have -- we have the revocation; right,
11 Christine?

12 THE COURTROOM DEPUTY: Yes, Your Honor.

13 THE COURT: Okay. So I have another matter right
14 now. But if you want to sit back there with your client in the
10:14AM 15 back row right now and get started --

16 MR. WERKSMAN: There's nothing to start with,
17 Your Honor.

18 THE COURT: Because he doesn't have glasses?

19 MR. WERKSMAN: Yes. What I'd like to do, if I may,
10:14AM 20 is just be ordered back at 2:00. If the Court would order the
21 marshals to allow him to receive these papers, which you can
22 examine -- they can examine, they're just legal documents, so
23 he can at least try to read them. We'll come back shortly with
24 glasses for him. Maybe the courtroom deputy can tell me where
10:14AM 25 to bring the glasses and there will be an understanding that he

1 can receive these glasses.

2 THE COURT: Okay. Let me talk to the deputy
3 marshals.

4 MR. WERKSMAN: Thank you, Your Honor.

10:14AM 5 (Off-the-record discussion between
6 the Court and the U.S. Marshal.)

7 THE COURT: Okay. So what we'll do,
8 Deputy Stovall -- that's the deputy's name.

9 MR. WERKSMAN: Stovall?

10:16AM 10 THE COURT: Stovall.

11 So they're going to make the third floor -- a
12 conference room available to you. When someone else from your
13 office arrives there with the glasses, there shouldn't be a
14 problem. But if there is, Deputy Stovall will make sure that
10:16AM 15 he gets the glasses.

16 MR. WERKSMAN: Very well. So --

17 THE COURT: And we're going to look into what
18 happened to the prescription pair.

19 MR. WERKSMAN: So is he going to be taken there and
10:16AM 20 held there until 2:00 o'clock?

21 THE COURT: Yes.

22 MR. WERKSMAN: All right. So my -- my associate,
23 Ms. Sosa, who's here, we can get him some glasses, bring them
24 back here, and then spend some time with him on the third
10:16AM 25 floor.

1 THE COURT: Yes.

2 MR. WERKSMAN: Mr. Stovall, thank you for
3 accommodating us.

4 U.S. MARSHALL STOVALL: No problem.

10:17AM 5 THE COURT: All right. So we'll see you back at
6 2:00 o'clock.

7 MR. WERKSMAN: Thank you, Your Honor.

8 THE COURT: I'm going to be here. If there's any
9 problems, you can get in touch with Ms. Chung and we will make
10:17AM 10 sure that your client has -- gets the glasses. He can hang on
11 to the -- he can hang on to those legal papers.

12 U.S. MARSHALL STOVALL: Yeah, that's fine.

13 THE COURT: All right. Thank you very much.

14 MR. WERKSMAN: Thank you.

10:17AM 15 THE COURTROOM DEPUTY: All rise. This court is in
16 recess.

17 (Proceedings adjourned at 10:17 a.m.

18 and reconvened at 2:14 p.m.)

19 THE COURTROOM DEPUTY: Calling Item No. 2 and 3,
02:14PM 20 ED CR 21-00170-VAP and ED CR 18-00114(B)-VAP, United States of
21 America versus Carl Bradley Johansson.

22 Counsel, please state your appearance.

23 MR. O'BRIEN: Good afternoon, Your Honor.

24 Matthew O'Brien and Joe Johns on behalf of the United States.

02:14PM 25 THE COURT: Thank you. Good afternoon.

1 MR. WERKSMAN: Good afternoon again, Your Honor.

2 Mark Werksman and Karen Sosa on behalf of the defendant who is
3 present in court in custody.

4 THE COURT: Thank you.

02:14PM

5 MR. LURYA: Alan Lurya. I'm appearing on behalf of
6 the corporate defendant Wholesale.

7 THE COURT: Thank you.

02:14PM

8 MR. WERKSMAN: Your Honor, I can represent to the
9 Court that Mr. Exum and Mr. Grech are here. They're in the
10 conference room working out some final details on the corporate
11 case, which we do expect to enter this afternoon.

12 THE COURT: So we're going ahead right now with the
13 plea for Mr. Johansson, individually, and also in the 21
14 case -- right? -- is it Wholesale?

02:15PM

15 MR. WERKSMAN: Western, Your Honor.

16 THE COURT: Western.

17 MR. WERKSMAN: Western Distribution.

18 THE COURT: All right.

02:15PM

19 MR. WERKSMAN: And I want to thank Your Honor and
20 the courtroom staff for the assistance. The marshals were
21 excellent. They let us meet with my client. He got glasses.
22 We brought him glasses. We covered everything. So I'm
23 content, Your Honor, that we had an ample opportunity to review
24 the materials and be prepared for this.

02:15PM

25 THE COURT: Thank you. I'm glad to hear that.

1 All right. Why don't you and Mr. Johansson stand at
2 the lectern. Because, first, I want to take your client's
3 waiver on the joint representation.

4 All right. Mr. Johansson.

02:16PM

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You are charged in Counts 1, 2 -- let me
7 see. Let me start with the 21-170 case.

02:16PM

8 In Case No. ED CR No. 21-170, you are charged in
9 Count -- wait a minute. I'm sorry. Oh. Okay. In Count 1
10 with conspiracy to commit bank fraud while on pretrial release,
11 in violation of Title 18, United States Code, Section 1349 and
12 3147, and with bank fraud -- in the second count, also bank
13 fraud while on pretrial release, in violation of Title 18,
14 United States Code, Section 1344(2) and 3147.

02:17PM

15 You understand what you're charged with in Case
16 No. 21-170?

17 THE DEFENDANT: Yes, Your Honor.

02:17PM

18 THE COURT: And then in Case No. 18-114, you're
19 charged with -- in Count 1 with conspiracy, in violation of
20 Title 18, United States Code, Section 371; in Count 2, welding
21 without the required certificate, in violation of Title 49,
22 United States Code, Section 5124, and 49 -- Title 49 of the
23 Code of Federal Regulations, Section 180.413(a)(1); and then in
24 Count 4, you are charged in that case with tax evasion, in
02:18PM 25 violation of Title 26, United States Code, Section 7201. All

1 of these are felonies.

2 Do you understand what you're charged with?

3 THE DEFENDANT: Yes.

4 THE COURT: In both cases?

02:18PM

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Now, I understand that you
7 are being represented today by Mr. Werksman in connection
8 with -- that you individually are being represented by
9 Mr. Werksman. And in the 21-170 case, Mr. Werksman is also
10 representing the defendant Western Distribution, LLC. Is that
11 right?

02:19PM

12 THE DEFENDANT: Yes.

13 THE COURT: All right. In any criminal case, each
14 defendant has a right to have independent counsel or
15 representation. Do you understand that?

02:19PM

16 THE DEFENDANT: Yes.

17 THE COURT: And under the Constitution, of course,
18 each defendant has the right to receive effective assistance of
19 counsel. So when one lawyer represents two defendants in a
20 case, that can present a conflict of interest. The lawyer may
21 have trouble representing all of the defendants with the same
22 fairness.

02:19PM

23 Have you and Mr. Werksman discussed this?

24 THE DEFENDANT: Yes.

02:19PM

25 THE COURT: Now, you signed a document waiving or

1 giving up any right to complain later about this conflict of
2 interest. Do you recall that?

3 THE DEFENDANT: Uh, yes.

02:20PM

4 THE COURT: All right. Did you discuss this with
5 Mr. Werksman before you signed it?

6 THE DEFENDANT: Yes.

02:20PM

7 THE COURT: The conflict of interest between -- for
8 a lawyer representing both you as an individual defendant and
9 the company could result in a situation where the defendant is
10 denied his right to effective assistance of counsel because, in
11 any case, defendants may have different degrees of involvement
12 in the matter. So that's what leads to a conflict of interest.

02:21PM

13 For example -- and these are just examples, and they
14 may or may not apply in your case. But when a lawyer
15 represents more than one defendant in a case, a disadvantage
16 for you is that the attorney-client privilege, for example, may
17 prevent your lawyer from communicating to you about information
18 about the other defendant, which in this case is your
19 corporation.

02:21PM

20 Do you understand that?

21 THE DEFENDANT: Yes.

02:21PM

22 THE COURT: And in certain cases, the Government
23 might offer a lesser sentence to a defendant if he or she
24 cooperates against a co-defendant. So that could be a
25 disadvantage. You understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: And the Government may let a defendant
3 who is not as involved as other defendants plead guilty to a
4 lesser charge.

02:21PM 5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: These are examples of the conflicts of
8 interest that could arise.

9 THE DEFENDANT: Yes.

02:22PM 10 THE COURT: All right. Let's see. If the case were
11 to go to trial -- which, of course, if I accept your guilty
12 pleas, it would not go to trial. I just have to tell you all
13 of the potential reasons why there's a conflict of interest
14 here.

02:22PM 15 So if the case proceeds to trial, then dual
16 representation, that means your lawyer representing both you
17 and the corporation, could affect how, for example, he
18 exercises his challenges to jurors who might sit on your case.

19 So, for example, there could be a juror who might be
02:22PM 20 favorable to you but perceived or seen as unfavorable to the
21 corporation and then the attorney would have a conflict of
22 interest in deciding whether to challenge that juror.

23 Do you understand that potential conflict?

24 THE DEFENDANT: Yes.

02:23PM 25 THE COURT: All right. And the best defense for one

1 defendant is often that another defendant is guilty. And so if
2 a lawyer represents two defendants, then that argument becomes
3 difficult to make.

4 Do you understand that?

02:23PM

5 THE DEFENDANT: Yes.

6 THE COURT: Evidence that helps one defendant in a
7 case might harm the other defendant. So the lawyer might have
8 a conflict of interest in deciding what evidence to put on in a
9 case.

02:23PM

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: When it comes to sentencing, dual
13 representation, meaning a lawyer representing both clients,
14 would prevent the lawyer from engaging in post-trial
15 negotiations with the Government as to full disclosure by one
16 defendant against the other and prevent the lawyer from arguing
17 that one of the defendants he represents is more culpable or
18 guilty than the other.

02:23PM

19 Do you understand that?

02:24PM

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Do you have any questions
22 about the conflict of interest and what you're waiving or
23 giving up?

24 THE DEFENDANT: No.

02:24PM

25 THE COURT: All right. And are you prepared to

1 waive any conflict of interest that's posed by Mr. Werksman
2 representing both you and Western?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. If you have any questions

02:24PM

5 about that as we go along, please let me know. If you need to
6 talk to your lawyer or if you have a question for the Court,
7 please let me know.

8 THE DEFENDANT: Yes.

9 THE COURT: All right. I understand that you have

02:24PM

10 signed a written plea agreement that was negotiated on your
11 behalf with the United States Attorney's Office. So you're
12 here today because you want to withdraw your earlier plea of
13 not guilty as to Counts 1, 2, 4, and 18 through 114. Those are
14 the tax evasion counts -- correct? -- 118 through 114? No, I'm
15 sorry. I'm sorry. That's the case number, excuse me.

02:25PM

16 So you want to change your plea from not guilty to
17 guilty as to Counts 1, 2, 4 in Case No. 18-114 --

18 THE DEFENDANT: Yes.

19 THE COURT: -- correct?

02:25PM

20 And then in the 21-170 case, you want to change your
21 plea to a plea of guilty to Counts 1 and 3. Is that correct?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. I'm going to ask my

24 courtroom clerk to swear you in as a witness and that means

02:25PM

25 that your answers to my questions will be made under penalty of

1 perjury. If you answer untruthfully or falsely, you could
2 later be charged with a separate crime of perjury. Do you
3 understand what that means?

4 THE DEFENDANT: Yes.

02:26PM

5 THE COURT: What "perjury" means?

6 THE DEFENDANT: Yes.

7 THE COURT: All right.

8 THE COURTROOM DEPUTY: Is Carl Bradley Johansson
9 your true and correct name?

02:26PM

10 THE DEFENDANT: Yes.

11 THE COURTROOM DEPUTY: Please raise your right hand.

12 Do you solemnly swear that your answers to the
13 Court's questions regarding your plea shall be the truth, the
14 whole truth, and nothing but the truth, so help you God?

02:26PM

15 THE DEFENDANT: Yes.

16 THE COURTROOM DEPUTY: Thank you.

17 THE COURT: All right. Mr. Werksman, the plea
18 agreement was signed by you -- it's a consolidated plea
19 agreement. It was signed by you and your client on August the
20 12th, 2021. Did he sign the plea agreement in your presence?

02:26PM

21 MR. WERKSMAN: Yes, he did.

22 THE COURT: Did you discuss the contents of the plea
23 agreement with your client before he signed it?

24 MR. WERKSMAN: At great length.

02:26PM

25 THE COURT: And have you discussed it again with him

1 today?

2 MR. WERKSMAN: Yes, I have.

3 THE COURT: Does the plea agreement, the
4 consolidated plea agreement, represent the entire disposition
02:26PM 5 of both of these cases so far as you, your client, and the
6 U.S. Attorney's Office are concerned?

7 MR. WERKSMAN: Yes, it does.

8 THE COURT: Have there been any other promises,
9 guarantees, or representations made to you or your client other
02:27PM 10 than what's contained in the written plea agreement?

11 MR. WERKSMAN: No.

12 THE COURT: Thank you.

13 All right. Mr. Johansson, was your lawyer with you
14 when you signed the plea agreement?

02:27PM 15 THE DEFENDANT: Yes.

16 THE COURT: Did you discuss everything in the plea
17 agreement with him before you signed it?

18 THE DEFENDANT: Uh, everything that was in the
19 agreement.

02:27PM 20 THE COURT: Yes. Everything in the agreement you
21 discussed with Mr. Werksman?

22 THE DEFENDANT: Yes.

23 THE COURT: And you've discussed it again today with
24 him; is that correct?

02:27PM 25 THE DEFENDANT: Correct.

1 THE COURT: Did you have a chance to ask your lawyer
2 all of your questions about the plea agreement before you
3 signed it?

4 THE DEFENDANT: Um, whatever I could think of.

02:27PM

5 THE COURT: So you asked -- you asked him all the
6 questions you could think of. Is that right?

7 THE DEFENDANT: Yes.

8 THE COURT: Did he answer your questions to your
9 satisfaction?

02:27PM

10 THE DEFENDANT: Yes. I -- yes.

11 THE COURT: All right. Does this plea agreement
12 cover everything you've been told about what's happening in
13 your case?

14 THE DEFENDANT: I believe so.

02:28PM

15 THE COURT: In other words -- well, what I'm asking
16 you is: Has anyone made you any promises or told you anything
17 about what's going to happen in your case other than what's in
18 the plea agreement?

19 THE DEFENDANT: No.

02:28PM

20 THE COURT: So the plea agreement covers everything?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Mr. O'Brien or Mr. Johns, is
23 this the written plea agreement, the consolidated plea
24 agreement filed as Docket 264 in Case No. 18-114 the written
02:28PM 25 plea agreement the Government extended to the defense?

1 MR. O'BRIEN: Yes, Your Honor.

2 THE COURT: Apart from what's contained in the
3 consolidated plea agreement, has the Government made any other
4 promises, representations, or guarantees to the defendant or
02:28PM 5 his counsel?

6 MR. O'BRIEN: No, Your Honor.

7 THE COURT: Thank you.

8 All right. Mr. Johansson, how old are you and how
9 far did you go in school?

02:29PM 10 THE DEFENDANT: I just started my 64th year, and I
11 went to college.

12 THE COURT: Are you a citizen of the United States?

13 THE DEFENDANT: Yes.

14 THE COURT: And have you received a copy of the
02:29PM 15 Indictment in both cases, the charges against you?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you thoroughly discussed the
18 charges against you with your lawyer?

19 THE DEFENDANT: Yes.

02:29PM 20 THE COURT: You understand that the offenses to
21 which you're offering your guilty plea are felonies?

22 THE DEFENDANT: Yes.

23 THE COURT: If I accept your guilty pleas today,
24 you'll be judged guilty of these felonies. A person who has
02:29PM 25 been judged guilty of a felony loses the right to vote, the

1 right to hold public office, the right to sit on a jury, and
2 the right to own or possess a firearm and ammunition of any
3 sort.

4 Do you understand that?

02:29PM

5 THE DEFENDANT: Yes.

6 THE COURT: You have a number of rights that are
7 guaranteed to you by the laws and the Constitution of the
8 United States in connection with this case.

02:30PM

9 Mr. Werksman, does your client need to sit down
10 while we go through this?

11 MR. WERKSMAN: Would you like to sit?

12 THE DEFENDANT: I'm just a little dizzy, yeah.

13 THE COURT: Why don't you take a seat.

02:30PM

14 MR. WERKSMAN: He's a little dizzy. It might be
15 more convenient.

16 THE COURT: That's fine. Certainly.

17 You can adjust the microphone so that it reaches
18 him.

19 MR. WERKSMAN: I'll go sit next to him, Your Honor.

02:30PM

20 THE COURT: And you said you're a little dizzy. Do
21 you feel you can go forward today, Mr. Johansson?

22 THE DEFENDANT: Yes. I -- I -- I get this vertigo
23 every once in a while.

24 THE COURT: But you're thinking clearly?

02:30PM

25 THE DEFENDANT: As clearly as I can, yes.

1 THE COURT: Well, have you been able to understand
2 all of my questions so far?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. At any time if you can't
02:30PM 5 hear me or if you don't understand any question, let me know, I
6 will be happy to reword the question.

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand? All right.

9 So if you answer the question, I'm going to assume
02:30PM 10 that you understood me.

11 THE DEFENDANT: Yes.

12 THE COURT: All right. You have -- going back to
13 the constitutional rights that you have in connection with this
14 case.

02:30PM 15 First of all, you have the right to be represented
16 by a lawyer at all stages of the case. If you can't afford a
17 lawyer, the Court will appoint one to represent you.

18 You have the right to plead not guilty and to
19 continue pleading not guilty.

02:31PM 20 You have the right to a speedy and public trial
21 before a jury at which the Government would have the burden of
22 proving your guilt beyond a reasonable doubt. In other words,
23 a defendant never has to prove his innocence. It's always the
24 burden on the Government to prove guilt beyond a reasonable
02:31PM 25 doubt.

1 You have the right to see and hear -- well, I'm
2 sorry.

3 You have the right to a speedy and public trial and
4 at that trial you'd have the right to see and hear the evidence
02:31PM 5 that the prosecution introduces against you.

6 You have the right to confront and cross-examine any
7 witness the Government calls to testify against you.

8 You have the privilege against self-incrimination,
9 that means you have the right to remain silent and that means
02:31PM 10 that the Government cannot force you to testify against your
11 self-interest.

12 You have the right to put on a defense at trial, put
13 on evidence, call witnesses to testify on your behalf, use the
14 Court's subpoena power to make witnesses come to court to
02:32PM 15 testify on your behalf, and you have the right to testify at
16 trial if you voluntarily decide to do so.

17 If you're convicted after a trial, then you have the
18 right to appeal your conviction and your sentence to a higher
19 court, a Court of Appeals.

02:32PM 20 Do you understand these rights?

21 THE DEFENDANT: Yes.

22 THE COURT: Any questions for me or your lawyer
23 about any of these rights?

24 THE DEFENDANT: No.

02:32PM 25 THE COURT: The first right that I mentioned to you

1 just now is your right to be represented by a lawyer. You're
2 not giving up that right by pleading guilty. But you are
3 giving up all of the other rights that I described, including,
4 to a large extent, your right to appeal your conviction and
02:32PM 5 your sentence.

6 So in the plea agreement that you signed, on
7 page 16, in paragraph 27, you've agreed that, with the
8 exception of an appeal based on a claim that your guilty pleas
9 were involuntary, so with the exception of that, by pleading
02:33PM 10 guilty, you are giving up any right to appeal your convictions
11 on these offenses.

12 Do you understand what that means?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. And in the next paragraph,
02:33PM 15 paragraph 28, you've agreed that, so long as I sentence you to
16 no more than the statutory maximum as to these counts and --
17 well, let me back up.

18 Have you been told about what the statutory maximum
19 sentence is for each of these counts?

02:33PM 20 THE DEFENDANT: I believe so.

21 THE COURT: It's in the plea agreement. But I'm
22 going to ask the prosecutor to state those on the record now.

23 MR. O'BRIEN: Your Honor, do you want me to go count
24 by count --

02:34PM 25 THE COURT: Yes.

1 MR. O'BRIEN: -- or just the total?

2 THE COURT: No. Count by count.

3 MR. O'BRIEN: Your Honor, the statutory maximum
4 sentence that the Court can impose for a violation of Title 18,
02:34PM 5 United States Code, Section 371, is five years' imprisonment, a
6 three-year period of supervised release, a fine of \$250,000 or
7 twice the gross gain or gross loss resulting from the offense,
8 whichever is greatest, and a mandatory special assessment of
9 \$100.

02:34PM 10 The statutory maximum sentence that the Court can
11 impose for a violation of Title 49, United States Code,
12 Section 5124, is five years' imprisonment or ten years in any
13 case in which the violation involves the release of a hazardous
14 material that results in death or bodily injury to any person,
02:35PM 15 a three-year period of supervised release, a fine of \$250,000
16 or twice the gross gain or gross loss resulting from the
17 offense, whichever is greatest, and a mandatory special
18 assessment of \$100.

19 The statutory maximum sentence that the Court can
02:35PM 20 impose for a violation of Title 26, United States Code,
21 Section 7201, is five years' imprisonment, a three-year period
22 of supervised release, a fine of \$250,000 or twice the gross
23 gain or gross loss resulting from the offense, whichever is
24 greatest, and a mandatory special assessment of \$100.

02:35PM 25 Defendant understands that the statutory maximum

1 sentence that the Court can impose for a violation of Title 18,
2 United States Code, Section 1349, is 30 years' imprisonment, a
3 five-year period of supervised release, a fine of \$1 million or
4 twice the gross gain or gross loss resulting from the offense,
02:36PM 5 whichever is greatest, and a mandatory special assessment of
6 \$100.

7 The statutory maximum sentence that the Court can
8 impose for a violation of Title 18, United States Code,
9 Section 1344(2), is 30 years' imprisonment, a five-year period
02:36PM 10 of supervised release, a fine of \$1 million or twice the gross
11 gain or gross loss resulting from the offense, whichever is
12 greatest, and a mandatory special assessment of \$100.

13 The statutory maximum sentence that the Court can
14 impose for a violation of Title 18, United States Code,
02:36PM 15 Section 3147, is ten years' imprisonment to be served
16 consecutive to the underlying offense.

17 Therefore, the total maximum sentence for all
18 offenses to which defendant is pleading guilty is 100 years'
19 imprisonment, a five-year period of supervised release, a fine
02:37PM 20 of \$2,750,000 or twice the gross gain or gross loss resulting
21 from the offense, whichever is greatest, and a mandatory
22 special assessment of \$500.

23 THE COURT: Thank you.

24 All right. So do you understand what the attorney
02:37PM 25 for the Government just stated?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. So going back to my question
3 to you a moment ago, paragraph 28 of the plea agreement

02:37PM

4 provides that, so long as I sentence you to no more than the
5 statutory maximum, which has just been read into the record,
6 you're giving up your right to appeal the way I calculated your
7 sentence, the length of your sentence, any fine that's imposed,
8 as long as it's within the statutory maximum, the -- to the
9 extent that's allowed, the constitutionality or legality of

02:38PM

10 your sentence, again, provided that the fine is within the
11 statutory maximum, and the term of imprisonment is ten years or
12 less.

13 The amount of any restitution -- you're giving up
14 your right to appeal the restitution order. I'll order you to
15 pay restitution. So long as -- you're giving up the right to
16 appeal the restitution order so long as it doesn't require you
17 to pay more than \$2.5 million.

02:38PM

18 And after someone serves their sentence, they are on
19 supervised release. And you're giving up your right to appeal
20 the terms and conditions of any supervised release, including
21 the drug testing condition.

02:38PM

22 Do you understand all of that?

23 THE DEFENDANT: Yes.

24 THE COURT: Any questions so far?

02:39PM

25 THE DEFENDANT: No.

1 THE COURT: All right. You have -- have you
2 discussed with your lawyer your appeal rights and what you're
3 giving up?

4 THE DEFENDANT: Yes.

02:39PM

5 THE COURT: All right. Keeping in mind all the
6 rights that I explained to you a moment ago, your right to a
7 jury trial and so forth, do you want to give up those rights by
8 pleading guilty?

9 THE DEFENDANT: Yes.

02:39PM

10 THE COURT: Have you told your lawyer everything
11 about your involvement in this matter?

12 THE DEFENDANT: Yes.

13 THE COURT: And has he advised you about the nature
14 of the case, the nature of the charges against you and possible
15 defenses that might apply?

02:39PM

16 THE DEFENDANT: Yes.

17 THE COURT: Are you on parole or probation with any
18 other court at this time?

19 THE DEFENDANT: No.

02:39PM

20 THE COURT: And you have now been advised about the
21 maximum sentence that you're facing and the mandatory -- the
22 ten-year mandatory consecutive sentence on one of the counts.
23 And you understand that; correct?

24 THE WITNESS: Um --

02:40PM

25 THE COURT: You understand that that's the longest

1 possible sentence you could get, what Mr. O'Brien stated on the
2 record a moment ago?

3 THE DEFENDANT: Yes.

02:40PM

4 THE COURT: And in the federal system, we don't have
5 parole. So as I said a moment ago, when you've served your
6 sentence, you'd be released on supervised release. And that
7 means there are rules and conditions that apply about where you
8 can live and what kind of work you can do and so forth. If you
9 violate any of those conditions, you can be returned to prison.

02:40PM

10 Do you understand that?

11 THE DEFENDANT: Yes.

02:40PM

12 THE COURT: Federal judges are required to consider
13 a number of different factors in deciding what sentence is
14 reasonable in any case. One of the things to be considered by
15 me -- one of the things I consider is the United States
16 Sentencing Guidelines.

17 Have you and your lawyers talked in general terms
18 about the Sentencing Guidelines and how they might apply in
19 your case?

02:41PM

20 THE DEFENDANT: Yes.

21 THE COURT: So after today, you'll be interviewed by
22 a probation officer who will then do an investigation into your
23 background and into this offense -- these offenses and then the
24 probation officer prepares a written report.

02:41PM

25 You have the right to see that report and have the

1 opportunity to discuss it with your lawyer before sentencing.

2 After the report's been issued, then your lawyer and
3 the lawyer for the Government will each file their sentencing
4 briefs with the Court, making their arguments and
02:41PM 5 recommendations as to what sentence I should give.

6 I consider all of those things before I make a
7 decision. But it's important that you understand that it is
8 the judge who decides what your sentence should be, not the
9 probation officer and not the lawyers.

02:41PM 10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: If your sentence is -- well, back to the
13 guidelines. The guidelines are advisory. So in most cases,
14 the judge can impose a sentence that's either shorter than
02:42PM 15 what's called for under the guidelines or longer.

16 If your sentence is different than what you hoped
17 for or expected, you'll still be bound by your guilty plea and
18 you won't have the right to withdraw it.

19 Do you understand that?

02:42PM 20 THE DEFENDANT: Yes.

21 THE COURT: Are you feeling all right,
22 Mr. Johansson?

23 THE DEFENDANT: Um, I'm as good as I felt in the
24 last few months, yeah.

02:42PM 25 THE COURT: All right. So you're still able to go

1 forward today?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Let me know if you're not
4 feeling well.

02:42PM 5 All right. Has anybody made any threats against you
6 or anyone in your family or anyone else in order to get you to
7 plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone threatened you?

02:42PM 10 THE DEFENDANT: No.

11 THE COURT: Other than what's in the consolidated
12 plea agreement and other than what we've discussed here in
13 court today and other than the general discussion that you told
14 me you had with your lawyer about the Sentencing Guidelines,
02:43PM 15 has anyone told you -- or made you any promises about what
16 sentence you would receive if you pled guilty?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone promised you a certain
19 sentence if you pled guilty?

02:43PM 20 THE DEFENDANT: No.

21 THE COURT: Has anyone promised you anything of any
22 kind in order to get you to plead guilty?

23 THE DEFENDANT: No.

24 THE COURT: Do you feel that you understand
02:43PM 25 everything that we have discussed here today?

1 THE DEFENDANT: I believe so.

2 THE COURT: Do you feel that you understand the
3 consequences to you of pleading guilty to these charges?

4 THE DEFENDANT: Yes, I've come to terms with this.

02:43PM 5 THE COURT: And you understand what the consequences
6 are, as we've discussed?

7 THE DEFENDANT: Yes, I -- I understand.

8 THE COURT: Do you feel that you're competent and
9 able to make the decision to plead guilty to these charges?

02:43PM 10 THE DEFENDANT: Yes.

11 THE COURT: And is your decision to plead guilty
12 entirely voluntary on your part?

13 THE DEFENDANT: Yes.

14 THE COURT: You have the right to have these charges
02:44PM 15 read out loud to you at this time. Do you wish to have the
16 charges read to you again?

17 THE DEFENDANT: No.

18 THE COURT: You have read them yourself in the
19 Indictment --

02:44PM 20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: -- the two Indictments?
22 You understand exactly what you're charged with?

23 THE DEFENDANT: I believe so.

24 THE COURT: All right. I'm going to ask as to each
02:44PM 25 count -- I'm going to take your plea individually as to each

1 count.

2 All right. Starting with Case No. ED CR 18-114, how
3 do you plead to Count 1 in the Indictment, charging you with
4 conspiracy, in violation of Title 18, United States Code,
02:44PM 5 Section 371, guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: And how do you plead to Count 2,
8 charging you with welding without the required certificate, in
9 violation of Title 49, United States Code, Section 5124, guilty
02:45PM 10 or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: How do you plead to Count 4 of the
13 Indictment, charging you with tax evasion, in violation of
14 Title 26, United States Code, Section 7201, guilty or not
02:45PM 15 guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: And in Case No. 21-170, how do you plead
18 to Count 1 in that Indictment, charging you with conspiracy to
19 commit bank fraud while on pretrial release, in violation -- in
02:45PM 20 violation of Title 18, United States Code, Section 1349, guilty
21 or not guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: And how do you plead to Count 3 --

24 THE DEFENDANT: Guilty.

02:45PM 25 THE COURT: -- in the Indictment, charging you with

1 bank fraud while on pretrial release, in violation of Title 18,
2 United States Code, Section 1344(2) and 3147, guilty or not
3 guilty?

4 THE DEFENDANT: Guilty.

02:45PM

5 THE COURT: Are you pleading guilty because you did
6 the things charged in the Indictments?

7 THE DEFENDANT: I -- I've come to terms with this,
8 yes.

02:46PM

9 THE COURT: Well, my question is: Are you pleading
10 guilty because you did the things that you are accused of?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. I'm going to ask the
13 attorney for the Government to state on the record as to each
14 of these counts what the elements are in general.

02:46PM

15 Now, the Government -- if the case went to trial,
16 the Government would have to prove the elements of each of
17 these counts with certain facts and they have to prove their
18 case beyond a reasonable doubt.

02:46PM

19 So we'll start with what the elements are in
20 general.

21 Mr. O'Brien.

22 MR. O'BRIEN: Your Honor, the elements for Count 1
23 in the 18-114 case, that is, conspiracy, in violation of
24 Title 18, United States Code, Section 371, are:

02:47PM

25 1. Beginning on or about a date unknown and ending

1 on or about April 15th, 2018, there was an agreement between
2 two or more persons to defraud the United States by obstructing
3 the lawful functions of the United States Department of
4 Transportation efforts to investigate and enforce the federal
02:47PM 5 laws and regulations related to out-of-service orders,
6 reincarnated carriers --

7 THE COURT: I'm sorry. Mr. O'Brien, are you reading
8 the elements or the factual basis?

9 MR. O'BRIEN: The elements, Your Honor. I'm sorry.
02:47PM 10 Did I misunderstand your question?

11 THE COURT: No. The elements. Go ahead.

12 MR. O'BRIEN: Okay. The regulations related to
13 out-of-service orders, reincarnated carriers, and the R stamp
14 and purging requirements for cargo tank repair work by
02:47PM 15 deceitful or dishonest means;

16 Second, defendant became a member of the conspiracy
17 knowing of at least one of its objects and intending to help
18 accomplish it; and

19 Third, one of the members of the conspiracy
02:48PM 20 performed at the least one overt act for the purpose of
21 carrying out the conspiracy.

22 The element for Count 2 in the case of 18-114, that
23 is, welding without required certifications, in violation of
24 Title 49, United States Code, Section 5124, and 49 CFR,
02:48PM 25 Section 180.413(a)(1) are:

1 1. Defendant violated or caused the violation of a
2 federal hazardous materials regulation; and

3 2. Defendant had knowledge of the facts giving rise
4 to the violation and had knowledge that his conduct or the
02:48PM 5 conduct that he caused to take place was unlawful or defendant
6 displayed a deliberate indifference or conscious disregard to
7 the consequences of his conduct.

8 The elements for Count 4 in the 18-114 case, that
9 is, tax evasion, in violation of Title 26, United States Code,
02:49PM 10 Section 72 -- 7201, are:

11 First, defendant owed federal income tax for a
12 calendar year;

13 Second, defendant made an affirmative attempt to
14 evade or defeat such income tax; and

02:49PM 15 Third, in attempting to evade or defeat such tax,
16 the defendant acted willfully.

17 For Count 1 in the second case, 21-170, which is
18 conspiracy to commit bank fraud while -- committed while on
19 pretrial release, in violation of Title 18, United States Code,
02:49PM 20 Sections 1349 and 3147, are:

21 First, there was an agreement between two or more
22 persons to commit bank fraud as charged in the Indictment;

23 Second, defendant became a member of the conspiracy
24 knowing of at least one of its objects and intending to help
02:50PM 25 accomplish it;

1 Third, one of the members of the conspiracy
2 performed at least one overt act for the purpose of carrying
3 out the conspiracy; and

02:50PM 4 Fourth, during the commission of the felony offense,
5 defendant was on pretrial release in the criminal case of
6 United States versus National Distribution Services, Inc.,
7 5:18-CR-114(B)-VAP, in the United States District Court for the
8 Central District of California.

02:50PM 9 The elements of the crime charged in Count 3 of the
10 second case, that is, 21-170, which is bank fraud committed
11 while on pretrial release, in violation of Title 18,
12 United States Code, Sections 1344(2) and 3147, are:

02:51PM 13 First, defendant knowingly carried out a scheme or
14 plan to obtain money or property from a bank by making false
15 statements or promises;

16 Second, defendant knew that the statements or
17 promises were false;

02:51PM 18 Third, the statements or promises were material,
19 that is, they had a natural tendency to influence or were
20 capable of influencing a financial institution to part with
21 money or property;

22 Fourth, defendant acted with the intent to defraud;

23 Fifth, the bank was federally insured; and

02:51PM 24 Sixth, during the commission of the felony offense,
25 defendant was on pretrial release in the criminal case of

1 United States versus National Distribution Services, Inc.,
2 5:18-CR-114(B)-VAP, in the United States District Court for the
3 Central District of California.

4 THE COURT: Thank you.

02:52PM

5 All right. Mr. Johansson, did you understand what
6 Mr. O'Brien just said about the elements as to each of these
7 charges?

8 THE DEFENDANT: Yes.

02:52PM

9 THE COURT: And as I said a moment ago, the
10 Government has to prove -- if your case went to trial, the
11 Government would have to prove each of those elements with
12 facts to prove their case beyond a reasonable doubt.

13 So, next, I'm going to ask Mr. O'Brien -- well,
14 let's see. The length -- the factual basis is quite lengthy.

02:52PM

15 MR. O'BRIEN: Yes, Your Honor.

16 THE COURT: And it's set forth in a separate exhibit
17 to the plea agreement; correct?

18 MR. O'BRIEN: Yes, Your Honor.

19 THE COURT: And it's Exhibit 1.

02:52PM

20 Do you have a copy of that to show to your client,
21 Mr. Werksman?

22 MR. WERKSMAN: I do, Your Honor. He's seen it.

23 THE COURT: Okay. So there is a document that's
24 attached to the plea agreement that's Exhibit 1, which is

02:53PM

25 17 pages. And it describes the facts that the Government is

1 representing that it could prove beyond a reasonable doubt if
2 your case went to trial.

3 Have you read this exhibit?

4 THE DEFENDANT: Yes.

02:53PM

5 THE COURT: And have you discussed it with your
6 attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you wish to have it read to you out
9 loud now?

02:53PM

10 THE DEFENDANT: No.

11 THE COURT: All right. And do you agree that, if
12 your case went to trial, the Government could prove each of
13 those facts beyond a reasonable doubt?

14 THE DEFENDANT: Yes.

02:53PM

15 THE COURT: Do you understand my question?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. And, Mr. Werksman, do you
18 join in agreeing that the Government has the evidence to prove
19 the facts set forth on Exhibit 1 to the consolidated plea
20 agreement beyond a reasonable doubt?

02:53PM

21 MR. WERKSMAN: Yes, I do.

22 THE COURT: All right. Thank you.

23 Excuse me one moment.

24 (Pause in the proceedings.)

02:54PM

25 THE COURT: All right. Next, Mr. Johansson, I'm

1 going to ask you some questions about your medical treatment.
2 So usually at this point is when I would ask any defendant if
3 you're under the care of any doctor, other medical
4 professional. But you have been; is that correct?

02:54PM

5 THE DEFENDANT: I -- I have my own doctors that I
6 see, not in -- in the prison here.

7 THE COURT: All right. Well, let's start there.

8 What conditions are you -- or conditions or
9 illnesses or injuries were you regularly treated for by your
10 doctor?

02:54PM

11 THE DEFENDANT: Um, asthma for about 30 years. And
12 more recently, in the last ten years or so, it's just
13 A-fibrillation of my heart and then uncontrolled blood
14 pressure, high blood pressure, and COPD. And then I've had a
15 couple of bouts with skin cancer.

02:55PM

16 THE COURT: Okay. So the COPD, that's the pulmonary
17 disease.

18 THE DEFENDANT: Yes.

19 THE COURT: Congestive -- all right.

02:55PM

20 Are you currently taking any medicines for any of
21 these conditions?

22 THE DEFENDANT: Yes. I -- I take about eight pills
23 a day and my asthma inhalers.

24 THE COURT: Okay. Do you -- let's start with the
25 hypertension, or the high blood pressure. Do you take

02:55PM

1 medication for that?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you know the names of the
4 medications?

02:55PM

5 THE DEFENDANT: There's two of them. Lotresamine
6 and then I -- I've just been taking them so long, I just know
7 what the pills look like and what colors they are.

8 THE COURT: Okay. When's the last time you took
9 those?

02:56PM

10 THE DEFENDANT: Yesterday.

11 THE COURT: Do they interfere with your ability to
12 think clearly and understand everything that's happened here
13 today?

14 THE DEFENDANT: I don't think so.

02:56PM

15 THE COURT: All right. And then you said the heart
16 condition. Do you take medication for that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you know the name of the medication
19 you take in connection with that?

02:56PM

20 THE DEFENDANT: Um, I would probably mispronounce
21 it. It's a beige pill. It's round.

22 THE COURT: Okay. Now, do you take that every day
23 or only as needed?

24 THE DEFENDANT: No, I take eight -- eight
02:56PM 25 prescriptions a day and then my inhalers.

1 THE COURT: Okay. So that's something that you take
2 for the heart condition every day?

3 THE DEFENDANT: The asthma inhaler?

02:56PM 4 THE COURT: No, no. I'm sorry. I'm asking about
5 the medication that you told me that you take for your heart
6 condition.

7 THE DEFENDANT: Yes. Yes.

02:57PM 8 THE COURT: And does that interfere with your
9 ability to think clearly and understand everything that's
10 happening here today?

11 THE DEFENDANT: I -- I don't think so.

12 THE COURT: All right. The other medications -- you
13 said you take eight medications. Do you know the names of any
14 of the other medications that you're taking?

02:57PM 15 THE DEFENDANT: Simvastatin, um --

16 THE COURT: Is that for the high blood pressure?

17 THE DEFENDANT: No. That's for cholesterol, high
18 cholesterol.

02:57PM 19 Honestly, Your Honor, I -- I've been taking these
20 pills so long, I just -- I can't remember the names of them.
21 They've got long medical names. And sometimes they'll change
22 over to a generic one with a different name or whatnot. And
23 the pills that the prison's giving me, they look different but
24 they said they're the same, but I don't know what they call
02:57PM 25 them.

1 THE COURT: All right. But they're all for one or
2 more of the conditions that you told me about?

3 THE DEFENDANT: Yes, Your Honor.

02:57PM

4 THE COURT: And do any of them affect your ability
5 to think clearly?

6 THE DEFENDANT: I don't believe so.

7 THE COURT: All right. And I understand -- are
8 there any other conditions or injuries, anything else that
9 you're suffering from?

02:58PM

10 THE DEFENDANT: Other than my eyesight and just
11 getting old.

12 THE COURT: That affects many of us.

13 All right. Now, you were quarantined because of the
14 COVID pandemic while you've been incarcerated. Is that right?

02:58PM

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: But you have never been diagnosed with
17 the COVID virus. Is that right?

18 THE DEFENDANT: No.

19 THE COURT: I'm sorry. I asked my question badly.

02:58PM

20 No, you haven't been diagnosed. Is that -- is that
21 what you meant?

22 THE DEFENDANT: No, I've not gotten coronavirus.

23 THE COURT: Okay. Thank you.

24 All right. Are you receiving any psychological or
25 psychiatric care of any kind?

02:58PM

1 THE DEFENDANT: No, but I -- I've been in solitary
2 confinement for almost three months. And there's no one to
3 talk to and no one to listen to you. And all you have is just
4 your anxiety and your depression and just a crushing sense of
02:59PM 5 loneliness. I was only allowed out one hour a week for almost
6 three months.

7 THE COURT: All right. So do you feel that you need
8 to receive and get some psychiatric or psychological care at
9 this time? Because I can recommend that you be evaluated right
02:59PM 10 away for that.

11 THE DEFENDANT: I would just like to -- if I can
12 just pet my dogs, I'd feel a lot better.

13 THE COURT: Well, I'm afraid I can't control that.
14 But it sounds to me, if you're suffering -- you say you're
02:59PM 15 suffering from this anxiety and depression. And I think
16 that -- I am going to direct that you be evaluated for any
17 treatment for those conditions. All right?

18 Do you -- again, do you feel that -- what you're
19 suffering from, does that prevent you from understanding what's
03:00PM 20 going on here today?

21 THE DEFENDANT: I don't think so, but I just -- if I
22 could just hug my dogs, I'd be fine.

23 THE COURT: Well, I -- I understand. I understand
24 very well the comfort power of one's pets, one's dogs.

03:00PM 25 All right. Do you -- do you understand that if I

1 accept your guilty plea today, the only thing left in your case
2 is for you to be sentenced? You will not have a trial. Do you
3 understand that?

4 THE DEFENDANT: Yes.

03:01PM

5 THE COURT: Okay. And do you know of any reason why
6 I should not accept your guilty plea today?

7 THE DEFENDANT: No.

8 THE COURT: All right. Thank you.

03:01PM

9 And, Mr. Werksman, has your client been competent
10 and able to -- you may remain seated. Has your client been
11 competent and able to cooperate with you?

12 MR. WERKSMAN: Yes, Your Honor, with the exception
13 of his physical unavailability, which I've addressed on the
14 record. Yes, in answer to your question.

03:01PM

15 THE COURT: So there was a period of time that you
16 were not able to communicate with your client. But when you
17 have communicated with your client, are you of the opinion that
18 he is competent to proceed today?

19 MR. WERKSMAN: Yes, Your Honor.

03:01PM

20 THE COURT: Has he been able to cooperate and assist
21 in his defense?

22 MR. WERKSMAN: Very much so.

23 THE COURT: Have you discussed the facts of both of
24 these cases in detail with your client?

03:01PM

25 MR. WERKSMAN: Yes, I have.

1 THE COURT: Are you satisfied as to the counts to
2 which he's offering his guilty plea, that there are no
3 meritorious defenses that might apply?

4 MR. WERKSMAN: Yes.

03:02PM

5 THE COURT: Are you satisfied that your client's
6 constitutional rights have been observed in this case?

7 MR. WERKSMAN: Yes.

03:02PM

8 THE COURT: Are you -- have you advised
9 Mr. Johansson about the legality or admissibility of any
10 statements, confession, or other evidence in the Government's
11 possession?

12 MR. WERKSMAN: Yes.

03:02PM

13 THE COURT: Is your client pleading guilty because
14 of any illegally obtained evidence in the Government's
15 possession that you're aware of?

16 MR. WERKSMAN: No.

17 THE COURT: Are you of the opinion that your client
18 understands the nature of the proceedings and the consequences
19 of his guilty pleas?

03:02PM

20 MR. WERKSMAN: Yes.

21 THE COURT: We had a long -- well, not a long but we
22 had a detailed discussion with your client just now about the
23 medications and his mental health. Has he told you anything
24 about medication, drugs, or other factors that might affect his
03:02PM 25 actions or judgment today?

1 MR. WERKSMAN: No.

2 THE COURT: Other than the proceedings here in open
3 court, the contents of the written plea agreement, the
4 consolidated plea agreement, and a general discussion about the
03:03PM 5 Sentencing Guidelines and the 3553(a) factors, have you
6 conveyed any promise of a particular sentence to your client?

7 MR. WERKSMAN: No.

8 THE COURT: Based on your analysis of the law, your
9 own investigation of the facts, and after consulting with your
03:03PM 10 client, do you believe it's in his best interest to plead
11 guilty to these charges?

12 MR. WERKSMAN: Yes.

13 THE COURT: All right. Thank you.

14 And, Mr. Johansson, do you feel that you've had
03:03PM 15 enough time to discuss your case and your decision to plead
16 guilty with your lawyer?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you satisfied that your lawyer has
19 fully considered any defenses that you may have to these
03:03PM 20 charges?

21 THE DEFENDANT: Yes.

22 THE COURT: And are you satisfied -- can you turn
23 the microphone back to him?

24 Are you satisfied with the representation you've
03:03PM 25 received and the advice you've been given by your lawyers?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. I'm going to make certain
3 findings. Please listen carefully. And if there's anything I
4 say that you don't understand or that you disagree with, please
03:04PM 5 interrupt me right away and tell me. All right?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. The Court has questioned the
8 defendant and his lawyers on the offer of the defendant's plea
9 of guilty to Counts 1, 2, and 4 in Case No. 18-114 and I
03:04PM 10 believe it's counts -- I believe it's Counts 1 and 3 in Case
11 No. 21-170, again, all felonies; and the defendant and his
12 lawyer having told the Court that they have thoroughly
13 discussed all aspects of these charges against the defendant
14 and any defenses that might apply; and the Court having
03:04PM 15 observed the defendant as he answered my questions, and I've
16 had the opportunity to observe his demeanor and manner while he
17 answered questions, as well as his intelligence, and having
18 inquired several times during the proceedings as to whether the
19 defendant feels he is competent to proceed; and the Court also
03:05PM 20 having observed that the defendant does not appear to be under
21 the influence of any medicine, drug, or other substance or
22 factor that would affect his actions or judgment in any manner;
23 the Court finds that the defendant's offer of his plea of
24 guilty to the counts aforementioned in the two Indictments,
03:05PM 25 that the pleas have a factual basis, are free of any coercive

1 influence of any kind, are voluntarily made with full knowledge
2 of the charges against him and the consequences of his guilty
3 pleas, that no promises of any kind have been made to the
4 defendant by anyone, and no coercion or threats of any kind
03:05PM 5 have been exerted upon him in any manner.

6 So it is ordered that the pleas of guilty to
7 Counts 1, 2 -- 1 and 3 -- I'm sorry -- 1, 2, and 4 in Case
8 No. 18-114 and Counts 1 and 3 in Case No. 21-170 be accepted
9 into the Court's record, entered today's date.

03:06PM 10 And I understand the parties have agreed upon a date
11 next year for sentencing.

12 MR. WERKSMAN: Yes, Your Honor. Just briefly,
13 because there are the tax counts, we have to do a closing
14 agreement with the IRS, which is very time-consuming.

03:06PM 15 Therefore, we're requesting May 9th as a sentencing date for
16 both Mr. Johansson and I will set that for the date for the
17 corporation as well.

18 THE COURT: All right.

19 MR. WERKSMAN: If that's okay with Your Honor.

03:06PM 20 THE COURT: That's fine. May 9th at 9:00 a.m.

21 MR. O'BRIEN: That's fine with the Government,
22 Your Honor.

23 Your Honor, I have one very minor clarification to
24 make.

03:06PM 25 THE COURT: Yes.

1 MR. O'BRIEN: May I do that now?

2 THE COURT: Go ahead.

3 MR. O'BRIEN: And, Your Honor, excuse me, I may have
4 misunderstood the Court. But I just want to make clear for the
03:07PM 5 record that the maximum sentence under Title 18, U.S.C., 3147,
6 is ten years and it must be consecutive, but it's not a
7 mandatory ten-year sentence.

8 THE COURT: Oh, I'm sorry. It is a mandatory
9 consecutive sentence, that's correct.

03:07PM 10 MR. O'BRIEN: Thank you, Your Honor.

11 THE COURT: Thank you.

12 All right. So the defendant and counsel are ordered
13 to appear on that date and time for sentencing. Sentencing
14 papers must be filed at least three weeks before the date of
03:07PM 15 sentencing.

16 All right. Now, do we want to move on to the entry
17 of a plea as to Western?

18 MR. WERKSMAN: Yes, Your Honor.

19 THE COURT: All right. Mr. Johansson, Western
03:07PM 20 Distribution, LLC, is a defendant in Case No. 21-170.

21 Are you authorized to appear on behalf of Western
22 Distribution, LLC?

23 THE DEFENDANT: Yes.

24 THE COURT: And I'm going to ask you questions in
03:08PM 25 connection with your -- with the corporation's guilty plea. Do

1 you understand that you are going to be answering questions on
2 behalf of Western Distribution?

3 THE DEFENDANT: Yes.

4 THE COURT: What is your position with Western
03:08PM 5 Distribution?

6 THE DEFENDANT: Manager.

7 THE COURT: Do you have an ownership position?

8 THE DEFENDANT: No.

9 THE COURT: You're the manager?

03:08PM 10 I understand that, before today, you were given a
11 statement of rights that are your rights in connection -- or
12 the company's right -- if I say "you," I mean the company -- in
13 connection with this case. Did you read and sign that?

14 THE DEFENDANT: I think so.

03:08PM 15 THE COURT: All right. Do you have a copy of it?
16 You could hand it to -- do you have a copy of it there? We
17 have a copy here.

18 MR. WERKSMAN: I'll bring that to Mr. Johansson.

19 This is the form that we reviewed and he signed,
03:09PM 20 Your Honor.

21 THE COURT: All right. It is being showed to you
22 now, Mr. Johansson.

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Do you recall now that you
03:09PM 25 read and signed that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And discussed -- did you discuss it with
3 your lawyer?

4 THE DEFENDANT: Yes.

03:09PM

5 THE COURT: Have you -- have you, that is, the
6 corporation, received a copy of the Indictment in Case
7 No. 21-170?

8 THE DEFENDANT: Yes.

03:09PM

9 THE COURT: Do you wish to have the Indictment read
10 out loud to you at this time?

11 THE DEFENDANT: No.

12 THE COURT: Do you understand what you're charged
13 with, "you" meaning Western Distribution, what the
14 corporation -- or the company is charged with?

03:09PM

15 THE DEFENDANT: Yes.

16 THE COURT: And how do you intend to plead to
17 Counts 1 and 3, charging in that Indictment -- charging -- on
18 behalf of Western Distribution, charging the company with
19 conspiracy to commit bank fraud, in violation of Title 18,
20 United States Code, Section 371, guilty or not guilty?

03:10PM

21 THE DEFENDANT: Guilty.

22 THE COURT: And how does the corporation intend to
23 plead to Count 3, charging it with bank fraud, in violation of
24 Title 18, United States Code, Section 1344(2), guilty or not
25 guilty?

03:10PM

1 THE DEFENDANT: Guilty.

2 THE COURT: And I may have asked you this -- I'm not
3 sure I did ask you this already. Has the Board of Directors
4 for the company authorized you to enter this guilty plea?

03:11PM 5 THE DEFENDANT: Um, I don't know, actually, but I'm
6 a director so --

7 THE COURT: Do you want to take a moment and discuss
8 that with your client? Because I believe I need to have an
9 assurance that he is authorized --

03:11PM 10 THE DEFENDANT: I --

11 THE COURT: Excuse me. I'm sorry.

12 So, Mr. Werksman, he -- as you know, he has to be
13 authorized to speak on their behalf. And if there is a Board
14 of Directors, they must have authorized him to enter a plea of
03:11PM 15 guilty.

16 (Off-the-record discussion between
17 the defendant and his counsel.)

18 MR. JOHNS: If I may, Your Honor, there is also the
19 small matter of the arraignment or the initial appearance.

03:11PM 20 THE COURT: I think I just did the arraignment, the
21 first few questions I asked.

22 MR. JOHNS: Very well.

23 THE COURT: That's my arraignment script or an
24 arraignment script.

03:11PM 25 MR. JOHNS: Okay. Thank you.

1 THE COURT: You're welcome.

2 THE DEFENDANT: I believe I'm authorized.

3 MR. WERKSMAN: Mr. Johansson represents to me that
4 there is not a Board of Directors but that he believes that he
03:12PM 5 is the -- he's the sole director and can agree to this without
6 a meeting because he's the only one who has that authority.

7 THE COURT: All right.

8 MR. WERKSMAN: In other words, he is meeting right
9 now and allowing himself to do this, from what I understand.

03:12PM 10 THE COURT: All right. If he is the sole director,
11 he is representing he's authorized on behalf of the
12 corporation, the company.

13 THE DEFENDANT: Yes.

14 THE COURT: All right. You were previously sworn in
03:12PM 15 as a witness. So you're still under oath, and your questions
16 are made under penalty of perjury -- or your answers are made
17 under penalty of perjury. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. And you have given up -- or
03:13PM 20 voluntarily given up your right to have the charge -- the
21 charges in the Indictment read out loud to you now. Is that
22 right?

23 THE DEFENDANT: Yes.

24 THE COURT: The corporation has the following
03:13PM 25 constitutional rights that it would be giving up if it pleads

1 guilty:

2 The right to be represented by -- in fact, not just
3 the right but the obligation to be represented by a lawyer;

03:13PM

4 The right to plead not guilty and to continue
5 pleading not guilty;

6 To have a speedy and public trial before a jury at
7 which the Government would have the burden of proving guilt
8 beyond a reasonable doubt;

03:14PM

9 The right to confront -- to see and hear the
10 evidence presented at trial against it and to confront and
11 cross-examine any witness the Government calls to testify at
12 trial;

03:14PM

13 The right to put on a defense, call witnesses to
14 testify on its behalf, to use the Court's subpoena power to
15 compel witnesses to come to court;

16 You have the -- the company, again, has the
17 privilege against self-incrimination, so it can't be forced to
18 testify against its self-interest at trial but has the right to
19 testify if it voluntarily decides to do so;

03:14PM

20 And the right, if convicted after a trial, to appeal
21 the conviction and the sentence to a higher court.

22 Has your attorney advised the corporation of all of
23 these rights?

24 THE DEFENDANT: Yes.

03:14PM

25 THE COURT: And do you understand all of these

1 rights?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that if I accept
4 your -- the company's guilty plea, it will have given up its
03:15PM 5 right to a trial and all the other rights that I just
6 described?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you want to give up those rights
9 that I described --

03:15PM 10 THE DEFENDANT: Yes.

11 THE COURT: -- a moment ago on behalf of the
12 company?

13 THE DEFENDANT: Yes.

14 THE COURT: And have you and your lawyers discussed
03:15PM 15 everything about the company's involvement in this case?

16 THE DEFENDANT: Yes.

17 THE COURT: Has your -- have your lawyers advised
18 you about the nature of the charges against the company and
19 possible defenses that could apply?

03:15PM 20 THE DEFENDANT: Yes.

21 THE COURT: I'm going to ask the attorneys for the
22 Government to state on the record the maximum penalties as to
23 the company.

24 Mr. Johns.

03:16PM 25 MR. JOHNS: Yes, Your Honor.

1 The statutory maximum sentence that the Court can
2 impose for a violation of Title 18, United States Code,
3 Section 1349, as charged in Count 1 of the relevant Indictment
4 is: A fine of \$1 million or twice the gross gain or gross loss
03:16PM 5 resulting from the offense, whichever is greatest, a five-year
6 period of probation, and a mandatory special assessment of
7 \$400.

8 With respect to Count 3 of the relevant Indictment,
9 the statutory maximum sentence that the Court can impose for a
03:16PM 10 violation of 18, United States Code, Section 1344(2), is a fine
11 of \$1 million or twice the gross gain or gross loss resulting
12 from the offense, whichever is greatest, a five-year period of
13 probation, and a mandatory special assessment of \$400.

14 Therefore, Your Honor, the total maximum sentence
03:17PM 15 for both of the offenses to which the defendant has agreed to
16 plead guilty is as follows: A fine of \$2 million or twice the
17 gross gain or gross loss resulting from the offenses, whichever
18 is greatest, a five-year period of probation, and a mandatory
19 special assessment of \$800.

03:17PM 20 THE COURT: Those are the penalties, the maximum
21 penalties that the company is facing. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: And, again, as I told you in connection
24 with your individual guilty plea, after today, a presentence
03:17PM 25 report as to the company will be prepared. And you on behalf

1 of the company have the right to see that report, discuss it
2 with your lawyer.

03:18PM

3 The guide -- well, there are no guidelines for when
4 it's a -- when it's a corporation who's pleading guilty. Is
5 that correct?

03:18PM

6 MR. JOHNS: There actually are -- under Chapter 8 of
7 the United States Sentencing Guidelines, Your Honor, there are,
8 in fact, Sentencing Guidelines that apply to the calculation of
9 the culpability score, which then assists the Court in
10 determining the amount of the fine.

11 THE COURT: The amount of the fine. I'm sorry.
12 Thank you.

13 MR. JOHNS: Yes.

03:18PM

14 THE COURT: All right. So there will be a
15 presentence report dealing mainly with the amount of the fine
16 in connection with the company's actions in connection with
17 this case. You have the right to see that report and discuss
18 it with your lawyers before you're sentenced.

03:18PM

19 Has anyone made any threats against the company or
20 anyone else in order to get you to enter a plea of guilty on
21 behalf of Western?

22 THE DEFENDANT: No.

03:19PM

23 THE COURT: Other than the plea agreement, other
24 than what's happened in court this afternoon, and other than a
25 discussion with your lawyer about the Sentencing Guidelines,

1 has anyone -- apart from those things, has anyone promised you
2 what sentence the company would receive?

3 THE DEFENDANT: No.

4 THE COURT: Do you feel that you understand
03:19PM 5 everything that's happened and been discussed today on behalf
6 of the company?

7 THE DEFENDANT: Yes.

8 THE COURT: And you understand the consequences to
9 the company of the guilty plea?

03:19PM 10 THE DEFENDANT: Yes.

11 THE COURT: And do you feel on behalf of the company
12 that you're competent and able to make the decision to plead
13 guilty?

14 THE DEFENDANT: Yes.

03:19PM 15 THE COURT: And, again, on behalf of the company, is
16 your decision to plead guilty entirely voluntary on your part?

17 THE DEFENDANT: Yes.

18 THE COURT: Again, you have the right to have the
19 charges against Western read out loud to you at this time. Do
03:19PM 20 you wish to have the charges in the Indictment read to you?

21 THE DEFENDANT: No.

22 THE COURT: All right. As to Count 1, charging you
23 with a conspiracy to commit -- charging you on behalf of the
24 company with conspiracy to commit bank fraud, in violation of
03:20PM 25 Title 18, United States Code, Sections 371 and 1349, how do you

1 plead, guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: And as to Count 3, charging Western with
4 bank fraud, in violation of Title 18, United States Code,
03:20PM 5 Section 1344(2), how do you plead on behalf of the company,
6 guilty or not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: And are you pleading guilty on behalf of
9 the company because it did what it's charged in Counts 1 and 3?

03:20PM 10 THE DEFENDANT: Yes.

11 THE COURT: All right. Mr. -- is it Mr. Johns?
12 Will you read the elements of the charges, please?

13 MR. JOHNS: Absolutely, Your Honor.

14 Your Honor, with respect to the crime charged in
03:20PM 15 Count 1, that is, conspiracy to commit bank fraud, in violation
16 of Title 18, United States Code, Section 1349, the following
17 must be proven:

18 First, there was an agreement between two or more
19 persons to commit bank fraud as charged in the Indictment;

03:21PM 20 Second, that one or more employees of defendant
21 became a member of the conspiracy, knowing of at least one of
22 its objects and intending to help accomplish it;

23 Third, that defendant's employees that participated
24 in the conspiracy were at that time operating within the scope
03:21PM 25 of their employment with the defendant and motivated, at least

1 in part, by an attempt to benefit defendant's business
2 operations; and.

3 Finally, fourth, one of the members of the
4 conspiracy performed at least one overt act for the purpose of
03:21PM 5 carrying out the conspiracy.

6 Your Honor, with respect to Count 3 of the
7 Indictment, that is bank fraud, charged in violation of 18,
8 United States Code, Section 1344(2), the elements are as
9 follows:

03:21PM 10 First, one or more of defendant's employees
11 knowingly carried out a scheme or plan to obtain money or
12 property from a bank by making false statements or promises;

13 2. Defendant's employees knew that the statements
14 or promises were false;

03:22PM 15 3. The statements or promises were material, that
16 is, they had a natural tendency to influence or were capable of
17 influencing a financial institution to part with money or
18 property;

19 4. Defendant's employees acted with the intent to
03:22PM 20 defraud;

21 5. The employees was or were operating within the
22 scope of his or their employment with the defendant corporation
23 and motivated, at least in part, by an attempt to benefit
24 defendant's business operations at the time the scheme or plan
03:22PM 25 was carried out; and

1 Finally, sixth, Your Honor, the bank was federally
2 insured.

3 THE COURT: All right. Mr. Johansson, on behalf of
4 Western, do you understand what those elements are?

03:23PM 5 THE DEFENDANT: Yes.

6 THE COURT: Again, just as we did with your
7 individual plea, I'm going to ask the attorney for the
8 Government -- well, I'm going to do the same thing.

9 Actually, there's a lengthy statement of facts
03:23PM 10 that's attached to the plea agreement as to -- in Case
11 No. 21-170 as to Western. Have you read that statement of
12 facts?

13 THE DEFENDANT: Yes.

14 THE COURT: And discussed it with your attorney?

03:23PM 15 THE DEFENDANT: Yes.

16 THE COURT: Do you wish to have that statement of
17 facts read out loud again now?

18 THE DEFENDANT: No.

19 THE COURT: Do you agree that, if the Government --
03:23PM 20 if your case went to trial, the Government could prove those
21 facts in the statement of facts attached to the plea agreement
22 beyond a reasonable doubt?

23 THE DEFENDANT: Yes.

24 THE COURT: Thank you.

03:23PM 25 Mr. Werksman, do you join in agreeing that the

1 Government has the evidence in this case to prove the facts in
2 Exhibit 1 to the plea agreement for Western Distribution beyond
3 a reasonable doubt?

4 MR. WERKSMAN: Yes, Your Honor.

03:24PM

5 THE COURT: Thank you.

6 Mr. Johansson, I've already asked you in detail in
7 connection with your guilty plea as an individual about the
8 treatment you're receiving from your doctors. Is there
9 anything different that I should know in connection with your
10 guilty plea on behalf of Western?

03:24PM

11 THE DEFENDANT: No. Just I'm not the -- after the
12 three months of solitary confinement, I'm just -- just
13 shattered.

14 THE COURT: All right. And as we discussed earlier,
15 I'm going to direct that you be evaluated for treatment for
16 your mental health conditions of depression, anxiety, whatever.

03:24PM

17 But are you able to think clearly and understand all
18 of my questions?

19 THE DEFENDANT: Yes. It's just that, um, the
20 solitary confinement is -- is really, really bad. I had
21 21 days at one place where there was no light bulb inside the
22 cell. It was dark the whole time. It's just not right.

03:25PM

23 THE COURT: Well, I understand, I believe what
24 you're telling me. My question is: As a result of what you've
25 told me that you suffered, do you -- do you feel that you're

03:25PM

1 able to understand my questions, understand the consequences of
2 your guilty plea, and understand everything that's happening
3 here?

4 THE DEFENDANT: Yes.

03:25PM

5 THE COURT: All right. And, again, on behalf of the
6 company, you understand that, if I accept your -- the company's
7 guilty pleas, there won't be a trial, the only thing left would
8 be sentencing?

9 THE DEFENDANT: Yes.

03:26PM

10 THE COURT: Do you know of any reason why the
11 Court -- why I should not accept Western's guilty plea to
12 Counts 1 and 3 today?

13 THE DEFENDANT: No.

03:26PM

14 THE COURT: And, again, the same questions I asked
15 you earlier, Mr. Werksman, is your client competent and able to
16 cooperate with you?

17 MR. WERKSMAN: Yes.

03:26PM

18 THE COURT: You've discussed the facts of the case
19 in detail with him and you're satisfied there are no
20 meritorious defenses to be raised?

21 MR. WERKSMAN: Yes, Your Honor, that's correct.

22 THE COURT: You're satisfied that his constitutional
23 rights have been observed?

24 MR. WERKSMAN: Absolutely.

03:26PM

25 THE COURT: You have -- have you advised your client

1 about the legality and admissibility of any statement,
2 confession, or other evidence obtained from the company?

3 MR. WERKSMAN: Yes.

03:26PM

4 THE COURT: Is your client pleading guilty because
5 of any illegally obtained evidence in the Government's
6 possession?

7 MR. WERKSMAN: No.

03:27PM

8 THE COURT: And are you of the opinion that
9 Mr. Johansson on behalf of the company understands the nature
10 of the proceedings and the consequences of the company's guilty
11 pleas?

12 MR. WERKSMAN: Yes.

03:27PM

13 THE COURT: Has he -- other than -- has he told you
14 anything about medication, drugs, or other factors that might
15 affect his actions or judgment today?

16 MR. WERKSMAN: No.

03:27PM

17 THE COURT: Other than the proceedings in open
18 court, the contents of the plea agreement, and a general
19 discussion of the Sentencing Guidelines and the 3553(a)
20 factors, have you conveyed any promise of a particular sentence
21 to the corporation?

22 MR. WERKSMAN: No.

03:27PM

23 THE COURT: And based on your analysis of the law,
24 your own investigation of the facts, and after consulting with
25 your client, do you believe it's in its best interest to plead

1 guilty to these charges?

2 MR. WERKSMAN: Yes.

3 THE COURT: Thank you.

4 Mr. Johansson, on behalf of the company, do you feel

03:27PM 5 that you've had enough time to discuss the case in general and

6 the decision to plead guilty with your lawyer?

7 THE DEFENDANT: Yes.

8 THE COURT: You want to turn the microphone back

9 around to him?

03:28PM 10 Are you satisfied that your lawyer has fully

11 considered any defenses the company might have to these

12 charges?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you satisfied with the

03:28PM 15 representation your lawyers have given you and the advice that

16 they have given you?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. The Court -- again, I'm

19 going to make findings. And if you -- Mr. Johns?

03:28PM 20 MR. JOHNS: I may be getting ahead of the Court.

21 Would you like me to cover the waiver of appeal of conviction

22 and the mutual waiver of appeal of sentence?

23 THE COURT: I'm sorry. Did I not go through that?

24 MR. JOHNS: I do not believe you did.

03:28PM 25 THE COURT: Okay. Thank you.

1 You're right, I did not.

2 So turning to the plea agreement for Western
3 Distribution, LLC, page -- starting at page 10, paragraph 18.

4 MR. JOHNS: 9 in paragraph 17, Your Honor.

03:28PM 5 THE COURT: Oh, that's right. Paragraph 17, page 9.

6 All right. On behalf -- the plea agreement that you
7 signed, Mr. Johansson, says that on behalf of the company you
8 have agreed to give up the company's right to appeal its
9 conviction on these two counts and the only exception to that
10 would be an appeal based on a claim that your guilty plea was
11 involuntary.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you agree to that?

03:29PM 15 THE DEFENDANT: Yes.

16 THE COURT: Then in the following paragraph,
17 paragraph 18, page 10, on behalf of the company you've agreed
18 that, so long as the sentence is within the statutory maximum
19 that we described, which involves probation and the fine that
20 the attorneys for the Government put on the record a moment
21 ago, as long as the sentence you receive is within that
22 statutory maximum, you're giving up your right to appeal the
23 way I calculated the sentence, any fine that's imposed on the
24 company, provided it's within the maximum the law provides; to
25 the extent allowed by the law, you're giving up your right to

03:30PM

1 appeal based on the constitutionality or legality of your
2 sentence, and any term of probation, again, provided that it is
3 within the statutory maximum, and the conditions of any
4 probation that are set forth in the Court's Second Amended
03:30PM 5 General Order 20-04.

6 So those are the rights the company is giving up in
7 terms of its appeal rights. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: And you agree to that?

03:30PM 10 THE DEFENDANT: Yes.

11 THE COURT: Thank you, Mr. Johns.

12 All right. The Court has questioned the defendant
13 and his counsel on the offer of Defendant Western Distribution,
14 LLC's plea of guilty to Counts 1 and 3 of the Indictment, both

03:31PM 15 felonies; the defendant and counsel have told the Court that
16 they have thoroughly discussed all aspects of the charges and
17 any defenses that might apply; the Court having observed the
18 defendant while he answered the questions on behalf of the
19 corporations and having observed his demeanor, manner, and

03:31PM 20 intelligence while doing so, having inquired of the defendant
21 his understanding of the Court's questions and his ability to
22 proceed today; the Court having observed that the defendant
23 doesn't appear to be under the influence of any medicine, drug,
24 or other substance or factor that might affect his actions on
03:31PM 25 behalf of the corporation or the company in any manner.

1 Therefore, the Court finds that the defendant's
2 offer of its plea of guilty to Counts 1 and 3 in the Indictment
3 have a factual basis, are free of any coercive influence of any
4 kind, are voluntarily made with full knowledge of the charges
03:32PM 5 against it and the consequences of the guilty pleas; that no
6 promises of any kind have been made to it by anyone, no
7 coercion or threats of any kind have been exerted upon it in
8 any manner.

9 And it is ordered that the plea of guilty to
03:32PM 10 Counts 1 and 3 of the Indictment on behalf of Western
11 Distribution, LLC, are accepted and entered into the Court's
12 record.

13 And the same date for sentencing, which is May 9th,
14 2022, at 9:00 a.m.

03:32PM 15 All right. Anything further?

16 MR. WERKSMAN: Two small housekeeping matters. One,
17 Your Honor, is I received a notification yesterday that one of
18 the U.S. magistrate judges set an arraignment for Western on
19 October 27th. I would simply ask that any other dates be
03:32PM 20 vacated.

21 THE COURT: Yes.

22 MR. WERKSMAN: And finally, there's one other major
23 detail with regard to the first case. His bond needs to be
24 exonerated.

03:32PM 25 THE COURT: Oh, it hasn't been? It should have been

1 exonerated when he was taken into custody.

2 MR. WERKSMAN: But it wasn't, Your Honor. Could the
3 Court just make sure there's an order?

4 THE COURT: That will be so ordered.

03:33PM

5 MR. WERKSMAN: Thank you, Your Honor.

6 With the Court's permission, if we're concluded with
7 this part of it --

8 THE COURT: Yes.

03:33PM

9 MR. WERKSMAN: -- I'm going to go to a doctor's
10 appointment. Ms. Sosa will remain to oversee the pleas on the
11 corporate pleas.

12 THE COURT: And I believe counsel for the
13 corporations are present.

14 MR. WERKSMAN: They're all here.

03:33PM

15 May I be excused?

16 THE COURT: Yes, you are.

17 MR. WERKSMAN: Thank you.

18 THE COURT: So we need to take a recess, I
19 understand.

03:33PM

20 MR. JOHNS: That's correct.

21 THE COURT: And I don't have copies of those plea
22 agreements. So you will provide those to me because I'll need
23 to review them.

24 All right. We'll resume when you're all ready.

03:34PM

25 THE COURTROOM DEPUTY: All rise. This court is in

1 recess.

2 (Proceedings concluded at 3:34 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
STATE OF CALIFORNIA)

I, MYRA L. PONCE, FEDERAL OFFICIAL REALTIME COURT
REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT
TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING
IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY
REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT
THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 12TH DAY OF SEPTEMBER, 2022.

/S/ MYRA L. PONCE

MYRA L. PONCE, CSR NO. 11544, CRR, RDR
FEDERAL OFFICIAL COURT REPORTER