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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 746 (MKV)

5 ADEDAYO ILORI,

6 Defendant.

Conference

7 -----x

8 New York, N.Y.
9 October 20, 2022
12:15 p.m.

10 Before:

11 HON. MARY KAY VYSKOCIL,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: JULIANA N. MURRAY

DAVID R. FELTON

17 Assistant United States Attorneys

18 PETER E. BRILL

Attorney for Defendant

19
20 Also Present: Isabel Loftus, Paralegal Specialist

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(Case called)

THE COURT: Good afternoon. Please be seated.

MS. MURRAY: Good afternoon, your Honor. Juliana Murray and David Felton on behalf of the United States, and we're joined at counsel table by our paralegal, Isabel Loftus.

MR. BRILL: Good afternoon, your Honor. Peter Brill --

THE COURT: Hold on one minute.

Good morning to you. Ms. Loftus will be with us for the trial?

MS. MURRAY: That's correct, your Honor.

THE COURT: OK.

All right. Go ahead.

MR. BRILL: Good afternoon, your Honor. Peter Brill on behalf of Mr. Ilori, who is seated to my left.

THE COURT: Good afternoon, Mr. Brill.

Good afternoon, Mr. Ilori.

THE DEFENDANT: Good afternoon.

THE COURT: And good afternoon to our court reporter.

All right. We are here for the final pretrial conference in this case. We're scheduled to start trial on Tuesday morning with jury selection, and we have set aside next week basically, Tuesday through Friday. At the last conference, Mr. Nessim told me that he thought no problem completing the trial with a Tuesday start date.

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1 Is he participating, or no?

2 MS. MURRAY: No, your Honor. AUSA Nessim has a trial
3 conflict next week. He has a trial in front of Judge Rakoff
4 that was rescheduled, so AUSA Felton will be trying the case
5 with me.

6 THE COURT: All right. And you don't have any
7 disagreement with the trial estimate?

8 MS. MURRAY: No, we don't, your Honor.

9 THE COURT: In terms of trial schedule, generally
10 speaking, we'll start around 9 o'clock each day. We'll
11 probably get started with the jury at 9:30, but we'll all
12 assemble around nine in case there are any things we need to
13 discuss. At the end of the court day, you'll tell me if
14 there's anything for tomorrow morning and we may adjust then
15 and say OK, we'll just see you at 9:30 with the jury. But
16 generally speaking, 9:30 and we'll go until around 4:30 each
17 day. If you're in the middle of a witness, we might go until 5
18 o'clock. But generally speaking, we won't go past 4:30 each
19 day.

20 We'll take a lunch break somewhere around the 12:30,
21 12:45 time frame and then a morning and an afternoon break. I
22 like to keep lunch to one hour, although obviously if the
23 jurors are going to go out or you're going to go out for lunch,
24 it's going to make it difficult. We will tell the jurors they
25 shouldn't go to the cafeteria here because you all may be going

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1 to the cafeteria here, although to be perfectly honest, it
2 would be better if you all went to the courthouse next door at
3 40 Foley for lunch and let our jurors go here, because that way
4 they don't all have to clear security again. But you shouldn't
5 both be in the same cafeteria is the point. So I think
6 actually that is the better suggestion.

7 Is there any problem with you all not eating in the
8 cafeteria?

9 MS. MURRAY: No, your Honor. We're happy to stay out
10 of the cafeteria during the entirety of trial.

11 THE COURT: All right.

12 Mr. Brill.

13 MR. BRILL: No, your Honor. I always thought that the
14 jurors had someplace else to go on other trials because I never
15 see jurors in the cafeteria.

16 THE COURT: Because they usually go next door --

17 MR. BRILL: Oh, OK.

18 THE COURT: -- to 40 Foley. That's what we usually
19 direct them to do, but I'm just saying to you I think for
20 efficiency's sake, to keep everything to a one-hour lunch
21 break, it's a lot easier for you to go across the street where
22 there is a cafeteria or go somewhere else or bring your lunch
23 than it is for 12 jurors.

24 MR. BRILL: Yes, your Honor. That's no problem at
25 all.

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1 THE COURT: OK. Perfect. That's what we will do,
2 then.

3 Just to update you -- during Covid, by the way, the
4 court was providing lunch for jurors, so that could be part of
5 what you're thinking about too; I don't know. We're not doing
6 that any longer. We do make light breakfast, bagels and
7 muffins, available for anybody who gets here early enough, and
8 we'll tell that to the jurors, but they need to be here, as I
9 say, for us to get started 9:30 at the very latest each day.

10 All right. So just a reminder about the Covid
11 protocols, individuals are no longer required to wear masks or
12 to socially distance in the courthouse, as I think you know.

13 Mr. Ilori should not be wearing a mask during the
14 trial. Right?

15 MR. BRILL: Yes.

16 THE COURT: You'll speak to him about it.

17 It's fine for you to leave it on now if you prefer,
18 but you're not required, at least by the Court, to do that. I
19 don't know whether BOP regulations or the marshals have asked
20 you to leave your mask on, but since you're not speaking today,
21 you might as well just leave it on. But once we start the
22 trial, you should not be masked in front of the jury. They
23 have a right to see you. You have a right to see them
24 unmasked.

25 OK, Mr. Ilori?

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1 THE DEFENDANT: OK. Thank you.

2 THE COURT: All right.

3 There are some restrictions that remain as a result of
4 Covid. You all need to familiarize yourself with those rules.
5 If somebody tests positive, then he or she can't be in the
6 courthouse or in the courtroom, obviously. You need
7 immediately to let us know. If there are any issues about
8 Covid, you all know how to reach my courtroom deputy,
9 Ms. Dempsey, so you should immediately inform her so that we
10 can try to figure out a way forward or know where we stand with
11 things.

12 Yeah, I'm not going to put on the record what all the
13 protocols are. You can read them yourselves on the website.

14 A couple of other just document issues I want to talk
15 to you about. You all had given me agreed-upon proposed voir
16 dire, requests to charge and verdict forms. At the August 6
17 conference, I gave you minor edits that I had made to some of
18 those documents, and Mr. Nessim and Mr. Brill both signed off
19 on them. We've given you this morning, I believe, redlines
20 that show some additional minor edits that I'm making.

21 So let's talk, first, about the voir dire. Really,
22 the only edits that we've made are to update my court staff and
23 maybe a couple of other cleanup-type of things. So let me just
24 again for the record confirm. Are there any objections to the
25 proposed voir dire?

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1 MS. MURRAY: No, your Honor. There are just two
2 additional edits from the government.

3 THE COURT: OK.

4 MS. MURRAY: In now paragraph 19 --

5 THE COURT: Let me just find my copy. OK?

6 MS. MURRAY: Sure.

7 THE COURT: OK. And you said in paragraph?

8 MS. MURRAY: 19 in the redline version, the government
9 is represented here.

10 THE COURT: Yes.

11 MS. MURRAY: We would ask you to replace Daniel Nessim
12 with David Felton.

13 THE COURT: Yes. Thank you.

14 MS. MURRAY: And then in now paragraph 23, which lists
15 the government's anticipated witnesses, Ms. Gontarek's last
16 name has changed to Palmer.

17 THE COURT: OK. Take out Gontarek, or is it --

18 MS. MURRAY: Take out Gontarek, yes, your Honor.
19 And the government no longer intends to call Terry
20 Kim.

21 THE COURT: So delete that name.

22 MS. MURRAY: Correct. Those are the only changes.
23 Otherwise, the government agrees.

24 THE COURT: OK.

25 Mr. Brill.

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1 MR. BRILL: Your Honor, I just noticed that Chris
2 Recamier's name is not in 23, and I'm sure his name will come
3 up.

4 THE COURT: OK.

5 MR. BRILL: To that end, I have a question.

6 THE COURT: Christopher, did you say?

7 MR. BRILL: I think he's known as Chris.

8 THE COURT: Do you know?

9 MS. MURRAY: I've heard both names, your Honor. So I
10 would say, in an abundance of caution, perhaps Christopher
11 Recamier.

12 THE COURT: OK. We'll add that then.

13 Any other edits by you, Mr. Brill?

14 MR. BRILL: No, your Honor.

15 THE COURT: All right. So the voir dire will be as
16 we've distributed it to you. My practice is that I give --
17 obviously, I have some comments that I make at the beginning.
18 Then there are some instructions once we have a jury impaneled
19 and all, but the actual questions, and that's the document, I
20 think, that we gave to you. Right? So that's questions 1
21 through 43 and then the one page of individual questions, my
22 practice is to hand that document out to the venire so that
23 when we sit the prospective jurors in the box and in the front
24 rows of the galley area so that we have a sufficiently large
25 enough pool, people can follow along and I don't then have to

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1 repeat the whole list of questions over and over again. I ask
2 people to follow along and make a note if they have a "yes"
3 answer to anything so that if and when they get asked to come
4 up and take a seat that's vacated, they can just tell me do you
5 have any "yes" answers and we can try to move through things
6 more expeditiously. All right?

7 OK. *In limine* motions have all been ruled upon,
8 correct?

9 MS. MURRAY: Yes, that's right, your Honor.

10 MR. BRILL: Your Honor, I believe that you reserved
11 judgment on a lot of it, but yes, you did issue rulings.

12 THE COURT: Yeah, because a lot of them were dependent
13 on how the evidence unfolds at trial, which I often find
14 happens, frankly, with *in limine* motions.

15 All right. Jury selection, I started to explain a
16 little bit to you how I'm going to do things or how I do
17 things. Under Rule 24, I think you all know, the government
18 has six peremptory challenges and the defendant has ten, so in
19 order to seat 12 jurors, we need to clear 28 potential jurors
20 for cause or for hardship. And then in terms of alternates,
21 given the length of the trial, I think two alternates are more
22 than sufficient.

23 Any disagreement?

24 MS. MURRAY: That's fine, your Honor.

25 MR. BRILL: No, your Honor.

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1 THE COURT: OK.

2 So for two alternates we need to clear, then, four
3 potential alternates for cause and for hardship because each
4 side gets, under Rule 24, one challenge to the pool of
5 alternates. Agreed?

6 MS. MURRAY: Yes, your Honor.

7 MR. BRILL: Yes, your Honor.

8 THE COURT: OK. And then what we do, once we have the
9 pool of potential jurors, we hand out a form to you, to both
10 sides, take a brief break, you write down the names of, in the
11 government's case, the six people and the one alternate; in
12 your case, the ten people and the one alternate whom you wish
13 to strike. You hand them to Ms. Dempsey when you're ready. I
14 go back and compare them, and we figure out who the actual
15 jurors are and we put the jurors in the seats and we get going.

16 MR. BRILL: Can I ask a question about that, your
17 Honor?

18 THE COURT: Sure.

19 MR. BRILL: I've done this both ways. I want to
20 clarify.

21 THE COURT: That's why I'm telling you how I do it.

22 MR. BRILL: If the government and the defense have the
23 same name on both of our lists, that's still a challenge for --
24 counts as a challenge for both under your --

25 THE COURT: Person is gone.

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1 MR. BRILL: Right, but -- I get it. Thank you.

2 THE COURT: It doesn't really -- I don't really know
3 what you mean.

4 MR. BRILL: So, a lot of the times, just as an
5 example, my last trial, last week, there would be a round of --

6 THE COURT: We're not doing rounds. That's the point.

7 MR. BRILL: Right.

8 THE COURT: We're doing simultaneous striking.

9 MR. BRILL: That's what I meant. Thank you, your
10 Honor.

11 THE COURT: OK.

12 All right. Proposed requests to charge. As I said at
13 our last conference --

14 Do you need a moment? Go ahead.

15 MR. BRILL: Yes. Thank you.

16 Thank you.

17 THE COURT: Ready?

18 MR. BRILL: Yes.

19 THE COURT: At our last conference, both sides
20 indicated there were no objections to the requests to charge as
21 I had modified them, so since that time we've only made really
22 very, very minor edits. I think there was a "him" that should
23 have been a "her." I don't think we handed those out, so let
24 me just walk through with you what I did.

25 Do you have the versions that you all signed off on?

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1 MS. MURRAY: We do, your Honor, yes.

2 THE COURT: Mr. Brill.

3 MR. BRILL: I don't have it with me, your Honor, no.

4 THE COURT: OK. Let me just tell you what they are.

5 There was a charge about the superseding indictment. That's
6 charge five for the government, since you have your copy. I
7 think it's page 9. It read, "The defendant is not charged with
8 committing any crime other than the offense in the superseding
9 indictment," and we've changed that to make it plural. All
10 right?

11 The next change, on page 35, charge 16, it read as
12 follows: "Second, the government must establish beyond a
13 reasonable doubt is that the defendant devised or participated
14 in the fraudulent scheme knowingly, willfully, and with the
15 specific intent to defraud," and I took out the word "is"
16 because it's just grammatically incorrect.

17 And then the final edit -- I told you these were all
18 not very material, but I want sign-off before we leave today.
19 The last edit is in charge No. 55. The third paragraph, first
20 sentence, read, "If the government has failed to establish the
21 defendant's guilt beyond a reasonable doubt, you must acquit
22 her," and I changed that to "him."

23 OK? Those are the only additional edits I've made to
24 the requests to charge, so I assume your consent to the
25 requests to charge stands.

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1 MS. MURRAY: Yes, your Honor. Thank you.

2 MR. BRILL: Yes, your Honor.

3 THE COURT: All right. Thank you.

4 And obviously, as we go through trial, if there are
5 updates or additional charges that you think are appropriate,
6 you should make note of them. As we get closer to the end,
7 we'll have a date or a time for you to submit those to the
8 Court, and needless to say, we'll hold a charging conference at
9 which any objections to the charges can be lodged if you so
10 wish before we actually go into charging the jurors. All
11 right?

12 Now, it is my practice to give the jurors a written
13 copy of the charges as I'm delivering them. I think it's just
14 easier for people to follow along.

15 Any objection?

16 MS. MURRAY: No, your Honor.

17 MR. BRILL: No, your Honor.

18 THE COURT: OK. Finally -- actually, not finally, but
19 next, the proposed verdict form that you gave me -- this is
20 probably the most substantive change that we're proposing to
21 the otherwise consensual materials that you gave to us. The
22 verdict form that you submitted, I believe, on consent said
23 that -- had a question, with respect to each count, is the
24 defendant -- how do you find the defendant, not guilty or
25 guilty? And then a follow-up question: If guilty, do you find

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1 that the defendant committed the offense after he was released
2 on bail on or about March 6, 2020? Because there is, as I
3 understand it, a statutory enhancement, in effect, that would
4 be applicable.

5 It's my understanding that committing the offense in
6 whole or in part invokes that enhancement, and so we are
7 proposing, you'll see, to each question the edit that adds the
8 words "in full or in part."

9 Do you each have a copy?

10 MS. MURRAY: Yes, your Honor.

11 THE COURT: All right. Anything from the government?

12 MS. MURRAY: No, your Honor. We agree with your Honor
13 that that is how the statute works, so we consent to that
14 change.

15 THE COURT: Mr. Brill.

16 MR. BRILL: No, not at this time, your Honor. Thank
17 you.

18 THE COURT: No. What does that mean? I said is there
19 any comment?

20 MR. BRILL: It means that I would want to look a
21 little bit farther at it, but based upon my knowledge at this
22 moment, I don't see a problem with it.

23 THE COURT: OK. So I would want to know Tuesday
24 morning if you have any objection.

25 MR. BRILL: Yes.

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1 THE COURT: Mr. Brill, you had at one point raised
2 with me the issue of your desire to call Mr. Recamier. Are you
3 still wanting to discuss that issue?

4 MR. BRILL: Yes, your Honor.

5 After our conference, I'm going to be going down to
6 the clerk to get new subpoenas stamped. I've spoken to his
7 counsel. They will accept service. They are continuing to
8 assert that Mr. Recamier will plead the Fifth, but as we
9 discussed previously here, that would still have to be in open
10 court, which we are still asking the Court to allow. And
11 speaking to the government, it's just a question of who
12 post-sentencing is responsible for Mr. Recamier's appearance,
13 but --

14 THE COURT: What do you mean who is responsible for
15 his appearance?

16 MR. BRILL: Whether it's the marshals or the BOP.

17 THE COURT: Oh, OK. I see. I'm not getting involved
18 in that.

19 MR. BRILL: No. We discussed that, and that will be
20 worked out.

21 THE COURT: All right. Just so you know, then, the
22 procedure I'm going to follow is the following: If you
23 subpoena Mr. Recamier, he will be called to the stand outside
24 the presence of the jury. You can put your questions to him.
25 Mr. Recamier -- or through his counsel -- can tell me whether

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1 he's pleading the Fifth or not. If he invokes his Fifth
2 Amendment right, I need to determine whether, in fact, his
3 explanation establishes that he has a basis to believe he could
4 be potentially incriminating himself. If I find there's no
5 reasonable basis for the privilege, I will compel him to
6 testify. If, however, there is a potential for incrimination,
7 then I will not compel him to testify and he can stand on his
8 constitutional right not to incriminate himself.

9 So I've done a lot of work and research on this issue,
10 and I will tell you, Mr. Brill, that my strong expectation
11 is -- you've told me already that he's going to invoke -- that
12 I likely will not be compelling him to testify, because while
13 he was sentenced, I guess, earlier this week -- Monday of this
14 week -- he still has time to appeal. He could potentially face
15 other issues, including perjury. So I think you have an uphill
16 battle here, but obviously, he will presumably show up if you
17 properly subpoena him, and we'll take it from there.

18 MR. BRILL: Thank you, your Honor.

19 THE COURT: All right?

20 MS. MURRAY: Thank you, your Honor.

21 On that point, we have coordinated with the marshals
22 regarding the production of Mr. Recamier, since he is in
23 custody, and we understand that they just need at least 24
24 hours' notice. So we'll be in close coordination with
25 Mr. Brill on this point to ensure that we're aware of the

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1 timing of when he would be expected to be called and close
2 court for that.

3 THE COURT: OK. That does raise the next question I
4 have for all of you or the next series of questions, which
5 really is about trial logistics. I assume you're telling me
6 that the government is not intending to call Mr. Recamier.

7 MS. MURRAY: That is correct, your Honor.

8 THE COURT: All right.

9 But you are, Mr. Brill, in the defense case.

10 MR. BRILL: Yes, your Honor.

11 THE COURT: OK.

12 Have the parties talked about providing each other a
13 certain amount of notice in advance of what witnesses are going
14 to be up when?

15 MS. MURRAY: We have talked about the witnesses, your
16 Honor. We've provided 3500 materials to Mr. Brill. We can
17 certainly discuss witness order. In any event, we'll have all
18 of our witnesses prepared so that there's no gap in testimony
19 to the extent that some go slower or more quickly than others.

20 THE COURT: OK. But I do think Mr. Brill is entitled
21 to notice of who you're calling and in what order.

22 MS. MURRAY: Yes. We're happy to discuss that with
23 Mr. Brill.

24 THE COURT: All right.

25 Mr. Brill, why don't you do that when we break today.

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1 If there's any issue, call it immediately to my attention. I'm
2 not available tomorrow, so please do it promptly. But I really
3 do think, at a minimum, you need to give advance notice of who
4 is going to be up really for the first, I would suggest -- you
5 know, the night before is a little late to give notice.

6 MS. MURRAY: No. We certainly will, your Honor.

7 I would note that the witness order almost entirely
8 tracks the order of the witnesses as listed in the voir dire,
9 but we will confirm again with Mr. Brill just so that he is
10 aware of the order of the witnesses.

11 THE COURT: OK.

12 Mr. Brill, anything from you on that?

13 MR. BRILL: In terms of witness order, not to give
14 away the store, your Honor, but Mr. Recamier is the only
15 witness at this point that we intend to call, so there
16 shouldn't be an issue on our side, and I'm sure the government
17 will, based upon our discussions, give me plenty of notice.

18 THE COURT: OK. And you heard what counsel said, that
19 she's intending to call, the government is intending to call
20 the witnesses largely in the order set forth in the proposed
21 voir dire.

22 MR. BRILL: Yes, your Honor.

23 THE COURT: OK. How are you intending to handle
24 exhibits? Are you giving me binders of exhibits? Are you
25 going to have witness binders? What are we doing?

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1 MS. MURRAY: Yes, your Honor.

2 We do have a full set of exhibit binders and 3500 to
3 date for the Court here. We also have a set for the defense
4 here of those materials in hard copy. We will update those on
5 a rolling basis as soon as either exhibits are marked or 3500
6 is created for both the Court and for the defense.

7 We spoke with your clerk and deputy in advance of
8 today's conference and understand that your Honor would like a
9 set of hard copy admitted exhibits to go back to the jury, but
10 that to the extent that there are any video or audio clips, we
11 could put those on a flash drive --

12 THE COURT: Correct.

13 MS. MURRAY: -- electronically for the jury.

14 THE COURT: Yes.

15 MS. MURRAY: During trial, we expect to put exhibits
16 up electronically primarily through Trial Director. We're
17 going to be doing a tech check to make sure that that works.

18 THE COURT: OK.

19 MS. MURRAY: We're going to also do a tech check on
20 the Elmo just in the event that the technology doesn't work so
21 that we have --

22 THE COURT: OK. Great. Do you have that scheduled?

23 MS. MURRAY: Yes, we've talked to Ms. Dempsey.

24 THE COURT: OK. Perfect.

25 MS. MURRAY: And we're also going to do a tech check

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1 on the audio because that doesn't work within Trial Director,
2 so we're just going to make sure that everything is
3 operational. But we will, for some of the witnesses who are
4 expected to introduce a large number of exhibits, have a
5 separate either exhibit binder or folder so that they can flip
6 through those quickly. They can authenticate all of those
7 exhibits, and then we can seek to introduce those as a set
8 rather than having to introduce one at a time.

9 THE COURT: All right. Well, that's one of the next
10 questions that I have. Have you all talked about objections?

11 MS. MURRAY: With respect to the exhibits, your Honor?

12 THE COURT: Yeah.

13 MS. MURRAY: So, we have a number of stipulations
14 between the parties --

15 THE COURT: Oh, you do.

16 MS. MURRAY: -- as to admissibility.

17 THE COURT: OK. Great.

18 MS. MURRAY: Mr. Brill has reviewed those; he
19 previously signed them. We've updated them with Mr. Felton's
20 name, but we do have -- those are stipulations to the
21 admissibility of the stipulations, which are in some cases
22 testimonial, in some cases documentary.

23 THE COURT: OK.

24 MS. MURRAY: But also to the underlying exhibits that
25 are reflected in those stipulations.

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1 THE COURT: Oh, great. OK. Good. I appreciate your
2 working together on this in advance.

3 MR. BRILL: There's really only one set of exhibits
4 that we've been arguing about.

5 THE COURT: All right. If that's something I'm going
6 to need to rule on, it might be the kind of thing that you want
7 to call to my attention in advance. You know, give me a letter
8 with authority, a letter, because it has to be on the docket,
9 with both of your positions, and then I can just rule on it so
10 that we don't have to have down time with the jury here.

11 MS. MURRAY: Understood, your Honor.

12 We have been speaking with Mr. Brill about this issue
13 at length, and we are currently trying to find a witness to
14 call --

15 THE COURT: OK.

16 MS. MURRAY: -- to testify as to those materials. If
17 we are unable to or if reach some other discussion, we will
18 notify the Court very promptly and certainly well in advance of
19 trial.

20 THE COURT: All right. Well, most importantly what I
21 want to know is if there are things I have to rule on. OK?

22 MS. MURRAY: Yes. Understood.

23 THE COURT: All right.

24 Mr. Brill, any issues from you with respect to
25 exhibits or AV or anything like that?

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1 MR. BRILL: Just that I, if I recall correctly,
2 Ms. Dempsey provided us wi-fi access shortly before the trial,
3 some sort of information about that that I haven't seen yet,
4 but hopefully that will come through. Is that accurate?

5 (Discussion off the record)

6 THE COURT: You have to fill out a form, and then we
7 just sign it, authorizing it.

8 MR. BRILL: Yes. I think it went more smoothly last
9 time. Thank you.

10 THE COURT: I should note on the record as well we
11 received your proposed order for street clothes, in effect, for
12 Mr. Ilori, which should be on the docket or it will be shortly
13 if it's not there yet.

14 MR. BRILL: It is, your Honor.

15 THE COURT: OK.

16 MR. BRILL: May I raise -- I don't know if you're
17 done. I wanted to raise just two questions.

18 THE COURT: I think I'm finished. Yeah. Go ahead.

19 MR. BRILL: OK. Thank you.

20 No. 1, Mr. Ilori informs me that due to a death
21 yesterday at the jail and some other short staffing and
22 security issues, that he hasn't really been able to get to the
23 library. I think that's important during trial especially. I
24 understand you're out tomorrow, but if I get something on the
25 docket today allowing him access to the library that I can get

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1 over to MDC legal tomorrow --

2 THE COURT: That's fine. It would be good for you to
3 submit it today because you do want to get it to legal tomorrow
4 so that they have a little bit of lead time.

5 MR. BRILL: Right.

6 THE COURT: And by the way, I didn't say I'm out. I
7 said I'm unavailable, but I'm available for things like that,
8 for authorizing entry of an order.

9 MR. BRILL: Thank you.

10 THE COURT: I'm just not available to have a
11 conference with you tomorrow.

12 MR. BRILL: Understood.

13 And then kind of one almost advisory opinion question.
14 It's not going to be a surprise to anyone, I think, that much
15 of the defense rests on blaming Mr. Recamier, and I wanted to
16 see if the Court has any opinion on mention of
17 Mr. Recamier's -- the fact that he is now convicted, should I
18 not say anything about him being sentenced? To what extent is
19 the Court --

20 THE COURT: You certainly shouldn't say anything about
21 his sentence.

22 MR. BRILL: Not the actual sentence, but that he was
23 sentenced. Just I want to know where I should go and where I
24 shouldn't go ahead of time on that.

25 THE COURT: Have you talked to the government about

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1 this?

2 MR. BRILL: I haven't, your Honor, no. It just
3 occurred to me as I was sitting here. So I'd be happy to talk
4 to the government and get back to the Court if there are any
5 concerns, where we disagree. I didn't know if the Court had an
6 opinion.

7 THE COURT: Do you want to be heard?

8 MS. MURRAY: Your Honor, we would propose to speak
9 with Mr. Brill just to understand what exactly he is asking the
10 Court to permit or not permit.

11 THE COURT: Yes. I agree with that. I don't really
12 know. You'd have to tell me exactly what it is you're asking,
13 but I mean I would imagine -- I could be wrong, but I would
14 imagine the government might agree for the jury to learn that
15 Mr. Recamier has admitted his guilt. I don't know, but why
16 don't you talk to each other.

17 MR. BRILL: Absolutely. Thank you.

18 THE COURT: OK?

19 All right. Does anybody have anything else that we
20 should talk about in advance of trial?

21 MR. BRILL: Could I have one moment, your Honor?

22 THE COURT: Sure.

23 MR. BRILL: No. Thank you, your Honor.

24 MS. MURRAY: Nothing from the government. Thank you,
25 your Honor.

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1 THE COURT: All right. Then thank you both very much.

2 I thank our court reporter for being here, and I will
3 see everyone on Tuesday. I think it would be good if you got
4 here around 9 o'clock Tuesday. They'll begin sending us the
5 jurors, I would imagine, around 9:30-ish, maybe a little later.
6 But I think everyone ought to just be here and be ready to go
7 and we can talk through if there are any of these last-minute
8 issues. OK?

9 MR. BRILL: Thank you, your Honor.

10 THE COURT: All right?

11 MS. MURRAY: Thank you, your Honor.

12 THE COURT: Have a good day and nice weekend,
13 everyone. Thank you again.

14 (Adjourned)