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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

UNITED STATES OF AMERICA,)
) CERTIFIED
Plaintiff,)
)
vs.) No. 8:15-CR-0060-DOC
)
1) NADER SALEM ELHUZAYEL;)
2) MUHANAD ELFATIH M.A. BADAWI,)
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Pretrial Proceedings
Santa Ana, California
Monday, June 6, 2016

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Federal Official Court Reporter
United States District Court
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1 **SANTA ANA, CALIFORNIA, MONDAY, JUNE 6, 2016**

2 **Jury Selection Volume I**

3 (8:05 a.m.)

08:05 4 THE COURT: All right. Then we're on the record
5 in Mr. Badawi's matter and Mr. Elhuzayel's matter.

08:05 6 **APPEARANCES**

08:05 7 THE COURT: And, counsel, once again, if you make
8 your appearance on behalf of the government.

08:05 9 MS. HEINZ: Good morning, Your Honor. Judith
10 Heinz on behalf of the United States.

08:05 11 MS. ELIOT: Good morning, Your Honor. Deirdre
12 Eliot for the government.

08:05 13 MR. NAM: Good morning, Your Honor, Julius Nam for
14 the United States.

08:05 15 *(Defense counsel present, but do not state*
16 *appearances for the record.)*

08:05 17 THE COURT: Okay. I propose starting with the
18 jurors one by one. I know you may have some stipulations
19 'cause you may have met. But instead of thumbing through
20 all those stipulations to begin with, I'd like it to go
21 through these sequentially. It won't take very long. And
22 make certain that we cover enough so that I know that we
23 have a potential panel without having the jury commissioner
24 call back more jurors today; otherwise, I would just accept
25 your stipulations and move along.

08:06 1 I've been in contact with Marcelino and tried to
2 keep track over the weekend. But would you be kind,
3 marshal, to read in the e-mail that we got from the
4 holding -- or from the jail.

08:07 5 U.S. MARSHAL: Good morning. Marcelino Hazelwood
6 for the marshal service. This morning I received an e-mail
7 from the Santa Ana jail that updated us on how Mr. Badawi
8 did over the weekend as well as his vital signs and what he
9 ate today. And it goes as follows:

08:07 10 *"PT was calm, cooperative. Vital signs:*
11 *BP 102/70. Pulse 41. Weight 129.2. PT*
12 *ate breakfast as follows: Two pieces of*
13 *bread, one bowl of cereal with milk and*
14 *one packet of peanut butter. Requested*
15 *double tray meals. No orange juice."*
16 *End quote.*

08:07 17 THE COURT: Okay. Now, have we obtained the
18 Boost?

08:07 19 U.S. MARSHAL: Yes, Your Honor.

08:07 20 THE COURT: Okay. Ms. Corrigan, I can conduct an
21 *in camera* hearing. I know that you -- well, I know you
22 visited with your client over the weekend.

08:08 23 Do you want to have an *in camera* hearing
24 concerning his well-being at the present time, your
25 observations -- as you requested before -- and if so, I'm

1 happy to do that. If you would like to make whatever
2 representations on the record with counsel present, I'm
3 happy to do that.

08:08 4 MS. CORRIGAN: Your Honor, I think at this time I
5 don't have any particular concerns, although I will say that
6 I'm glad to hear that he ate well over the weekend, but I
7 was not able to have any meaningful meetings over the
8 weekend.

08:08 9 THE COURT: Would you like to have an *in camera*
10 hearing?

08:08 11 MS. CORRIGAN: No. Thank you.

08:08 12 THE COURT: Not at this time?

08:08 13 MS. CORRIGAN: Not at this time.

08:08 14 THE COURT: All right.

08:09 15 There may be eventual challenges for cause, but
16 when I went through these, subject to your input, I started
17 looking at pages 10 and 11 initially because they had the
18 two questions about fairness, and then I looked at the rest
19 of the questionnaire. There will be some challenges for
20 cause, but there may be some automatic, just eliminators
21 that you're both comfortable with; if you're not, we'll just
22 do it when the jury gets here.

08:09 23 **DISCUSSION RE JURY QUESTIONNAIRES**

08:09 24 THE COURT: But I'm going to start with
25 P-E-I-B-E-I, M-I-Y-A-G-I-S-H-I-M-A.

08:10 1 And, Counsel, I didn't see, at least at this time,
2 any reason you'd be making any request but...

08:10 3 MS. CORRIGAN: This is one that -- just so the
4 Court's aware, we all met yesterday. And so this one -- we
5 have certain categories, I guess. And this one, we all
6 agreed that we would like to have further inquiry on this
7 juror.

08:10 8 THE COURT: Yeah. I'm only going to take the
9 obvious ones today.

08:10 10 MS. HEINZ: I think the inquiry was specific
11 'cause she had a concern on page 13 about being able to get
12 her children to school. That was the nature of the further
13 inquiry. It didn't sound to us like cause, but perhaps she
14 needed to explain more about that problem.

08:11 15 THE COURT: Remember, I'm giving you all the time
16 you want.

08:11 17 MS. HEINZ: That's right.

08:11 18 THE COURT: But I'm not willing to start at
19 9:00 o'clock. I would just take one hour a day. If I
20 started at 9:00 like most courts, instead of 8:00 or 7:30,
21 but 8:00, five days, that's almost two-thirds of a day.

08:11 22 MS. HEINZ: Understood, Your Honor.

08:11 23 THE COURT: So this is something you can inquire.
24 You can inquire in front of the jury.

08:11 25 Henry Wong. W-O-N-G.

08:11 1 MS. CORRIGAN: We agreed on further information or
2 further inquiry on this.

08:11 3 THE COURT: Okay. Thank you.

08:11 4 Jesus Ambriz, A-M-B-R-I-Z.

08:11 5 MS. CORRIGAN: No comment on either -- on him.
6 This is not one that we felt was a stip or further inquiry.
7 There will be further inquiry, but --

08:11 8 THE COURT: Put 'em in the category that you're
9 going to ask questions if you choose to.

08:12 10 MS. CORRIGAN: All right.

08:12 11 THE COURT: Now, the next one is Andrew Huang.
12 And here's a gentleman who answers "Yes" on Question 33, and
13 then answers "No" on Question 11. I have no wisdom about
14 that. It could be confusion, or it could be that he's
15 rethought his answer on the next page. I leave that to your
16 discretion.

08:12 17 MS. CORRIGAN: This one we had as further inquiry
18 also.

08:12 19 THE COURT: Further inquiry.

08:12 20 Okay.

08:12 21 Dylan Coonradt.

08:12 22 MS. CORRIGAN: This person we had -- we were gonna
23 suggest further inquiry because it's a little bit odd.
24 Indicates he has poor eyesight; yet he's a dental tech. So
25 we'd like to have some further inquiry as to his eyesight.

08:12 1 THE COURT: Anthony Traviglia.

08:12 2 MS. CORRIGAN: We have no comment --

08:13 3 MS. HEINZ: We didn't have any.

08:13 4 MS. CORRIGAN: -- further on this one.

08:13 5 THE COURT: Darryl Hilliard. And I had
6 consistency in terms of his not being able to evaluate
7 the --

08:13 8 MS. CORRIGAN: This is a proposed stip to excuse.

08:13 9 MS. HEINZ: This is the proposed agreed-upon stip
10 for cause.

08:13 11 THE COURT: So this is stipulated by all counsel?

08:13 12 MS. CORRIGAN: Yes.

08:13 13 MR. LENGYEL-LEAHU: Yes. All counsel, yes,
14 Your Honor.

08:13 15 MS. HEINZ: Yes, Your Honor.

08:13 16 MS. ELIOT: Yes, Your Honor.

08:13 17 THE COURT: This is the first one that we can
18 call.

08:13 19 THE CLERK: Thank you.

08:13 20 THE COURT: Shio Moo, M-O-O. I had the same
21 issue with Mr. Moo.

08:13 22 MS. CORRIGAN: We've agreed -- all parties have
23 agreed to stipulate for cause.

08:13 24 MS. HEINZ: Yes, Your Honor.

08:13 25 MS. ELIOT: Yes, Your Honor.

08:13 1 MS. HEINZ: Government stipulates.

08:13 2 THE COURT: Counsel?

08:13 3 MR. LENGYEL-LEAHU: Oh, yes, Your Honor.

08:13 4 MS. CORRIGAN: Yes.

08:13 5 THE COURT: Okay. I want an absolute record that
6 this is --

08:13 7 *(To the clerk:)* You can call. That person's
8 excused.

08:13 9 Michelle Hutchinson.

08:13 10 MS. CORRIGAN: Just further inquiry as to this
11 person.

08:14 12 THE COURT: Hueson Tran, H-E-U-S-O-N, T-R-A-N.
13 And I had concerns about his consistent answers.

08:14 14 MS. CORRIGAN: This is another one that we've
15 agreed to stipulate for cause -- or to excuse.

08:14 16 THE COURT: I haven't heard --

08:14 17 MS. HEINZ: Government stipulates, Your Honor.

08:14 18 MS. ELIOT: Yes.

08:14 19 MR. LENGYEL-LEAHU: Yes, we stipulate too,
20 Your Honor.

08:14 21 THE COURT: All right. He's excused.

08:14 22 Crystal Morales-Trumbo.

08:14 23 MS. CORRIGAN: This one we have for further
24 inquiry.

08:14 25 THE COURT: Lee Okubo.

08:14 1 MS. CORRIGAN: Same: Further inquiry.

08:15 2 THE COURT: Giovanni Blanco Trujillo.

08:15 3 MS. CORRIGAN: Same: Further inquiry.

08:15 4 THE COURT: William -- I believe it's Haun,
5 H-A-U-N.

08:15 6 MS. HEINZ: Same. Further inquiry.

08:15 7 MS. CORRIGAN: Yes.

08:15 8 THE COURT: Brett Breckenridge. And here I have
9 page 13 was of particular interest because of his night
10 shift work and also his consistent answers on page 10 and 11
11 that he couldn't be fair.

08:15 12 MS. HEINZ: I think we had this for further
13 inquiry, Your Honor, based on sort of inconsistency of
14 answers.

08:15 15 MS. CORRIGAN: Right.

08:15 16 THE COURT: Just a moment.

08:15 17 MS. CORRIGAN: This was a person that we -- the
18 defense had proposed as a stipulated for cause, but after
19 further discussion, there was no agreement by all parties.

08:15 20 THE COURT: Let's be very careful about this.
21 What I'm not going to do is put the defense in the position
22 of asking questions that are damaging. Why? On page 10, he
23 can't be fair. On Page 11, he can't be fair. And on
24 page 13, "I work mostly nights, third shifts, so I may -- or
25 will become difficult for me to stay awake." Now, that's

1 not a disqualifier on page 13. But what changes this
2 gentleman from the prior stipulations?

08:16 3 MS. HEINZ: Your Honor, the difference -- at least
4 the government's viewpoint is the difference between this
5 person and other prior stipulations, and this -- this is
6 sort of a running pattern, I think, in some of these, is
7 that there is very little underneath to understand why the
8 person checks the box that they can't be fair.

08:16 9 For example, on page 10 at Question 33, when
10 asked, "Do you have any strongly held feelings or opinions
11 about people of the Middle East, he says, "no."

08:16 12 "If yes, please explain:" "NA." But then the
13 following question he says he can't be fair. So it raises,
14 for the government, a question about whether he really
15 understood the question or he was checking the box. The
16 government does not want further inquiry about why; just a
17 bald inquiry about whether the person can be fair, to make
18 sure that this person really is saying that they cannot be
19 fair.

08:17 20 MR. LENGYEL-LEAHU: It's our position, Your Honor,
21 I think the government's being a little unfair, because I
22 think the first question, "Do you have anything against the
23 people of Middle Eastern descent," is a question of
24 prejudice.

08:17 25 *(Court reporter requests clarification for the*

1 *record.)*

08:17 2 MR. LENGYEL-LEAHU: I'm sorry.

08:17 3 The first question is whether or not you have a
4 prejudice against, uh, people for their race, but it's the
5 Question 36, where they're actually talking about ISIS and
6 ISIL and can he be fair in judging a case like that. He
7 says, "No."

08:17 8 THE COURT: If either one of you are objecting,
9 I'll take this, but we'll take him out of the presence of
10 the jury. He'll be the twelfth person called.

08:18 11 *(Court reporter requests clarification for the*
12 *record.)*

08:18 13 THE COURT: I'm not going to allow questions to be
14 asked in front of the jury until I'm satisfied. He appears
15 not to be a fair juror, but I'll give the government that
16 opportunity. But it will be separate from the jury.

08:18 17 Alexander Kaloian, K-A-L-O-I-A-N.

08:18 18 MS. CORRIGAN: This gentleman we have a
19 stipulation by all parties for cause.

08:18 20 MS. HEINZ: Yes, Your Honor, that's true.

08:18 21 MR. LENGYEL-LEAHU: That's true, Your Honor.

08:18 22 THE COURT: Marcia Labowitz.

08:18 23 MS. HEINZ: This is just further inquiry.

08:18 24 MS. CORRIGAN: That's correct.

08:18 25 THE COURT: Enrique Mejia.

08:18 1 MS. CORRIGAN: That's the same: Further inquiry,
2 Your Honor.

08:18 3 THE COURT: All right. Nicolette Allen.

08:18 4 MS. CORRIGAN: This is one that we agreed, uh,
5 stip for cause.

08:19 6 MS. HEINZ: Yes, Your Honor.

08:19 7 MS. ELIOT: Yes.

08:19 8 MS. HEINZ: Stip for cause.

08:19 9 MR. LENGYEL-LEAHU: Yes. Stip for cause
10 Your Honor.

08:19 11 THE COURT: Alan de la Rosa Zamora.

08:19 12 MS. HEINZ: This is further inquiry, Your Honor.

08:19 13 MS. CORRIGAN: That's correct.

08:19 14 THE COURT: Ricky Taniguchi.

08:19 15 MS. CORRIGAN: This is a further inquiry,
16 Your Honor.

08:19 17 THE COURT: Laura Johnson.

08:19 18 MS. CORRIGAN: Further inquiry.

08:19 19 THE COURT: Dennis Nguyen.

08:19 20 MS. HEINZ: This is --

08:19 21 MS. CORRIGAN: This is stipulation for cause by
22 all parties.

08:19 23 MS. HEINZ: Yes, Your Honor, stipulation for
24 cause.

08:19 25 MR. LENGYEL-LEAHU: Stip for cause, Your Honor.

08:19 1 THE COURT: Darren Luong.

08:19 2 MS. HEINZ: Government stips for cause.

08:19 3 MS. CORRIGAN: Defense stips for cause.

08:19 4 MR. LENGYEL-LEAHU: Join.

08:20 5 THE COURT: Richard Roberts.

08:20 6 MS. CORRIGAN: Stip for cause, Your Honor, by all
7 parties.

08:20 8 MS. HEINZ: Government stips for cause.

08:20 9 MR. LENGYEL-LEAHU: Fine.

08:20 10 THE COURT: I had it down also. Excused for
11 cause.

08:20 12 Klaus Cieslewicz.

08:20 13 MS. HEINZ: Further inquiry, Your Honor.

08:20 14 MS. CORRIGAN: Correct.

08:20 15 THE COURT: Anita -- is it Montano?

08:20 16 MS. CORRIGAN: Further inquiry.

08:20 17 MS. HEINZ: Further inquiry, Your Honor.

08:20 18 THE COURT: Let me get the next batch.

08:22 19 Okay. Scarlett Rios.

08:22 20 MS. HEINZ: Further inquiry, Your Honor.

08:22 21 MS. CORRIGAN: That's correct.

08:22 22 THE COURT: Jessica Ramirez -- and is it Garcia?

08:22 23 MS. CORRIGAN: Further inquiry, Your Honor.

08:22 24 MS. HEINZ: Further inquiry.

08:22 25 THE COURT: Uyen Nguyen. I had concerns.

08:22 1 MS. CORRIGAN: Stipulated for cause.

08:22 2 MS. HEINZ: Stipulated for cause, Your Honor.

08:22 3 MS. CORRIGAN: Are you joining, Pal?

08:22 4 MR. LENGYEL-LEAHU: Oh, yeah. I'm sorry. Join.

08:22 5 THE COURT: All right. Excused for cause.

08:22 6 Candace Mershon. And this person you've got to

7 hunt for. They didn't put their last name in. It's

8 803420903.

08:23 9 MS. CORRIGAN: That's correct. And we have a stip

10 for cause on this.

08:23 11 MS. HEINZ: Yes, government stips for cause.

08:23 12 MR. LENGYEL-LEAHU: Join.

08:23 13 THE COURT: Excused for cause.

08:23 14 Evelin -- in case the Court has on occasion not

15 stated on the record that there's an excused for cause,

16 every time counsel stipulated, obviously, that's an excuse

17 for cause. So I hope I've said "excused for cause" after

18 each one; but I may have skipped one or two.

08:23 19 Evelin Guevara.

08:23 20 MS. HEINZ: Government stips for cause.

08:23 21 MS. CORRIGAN: Stip for cause.

08:23 22 MR. LENGYEL-LEAHU: Join.

08:23 23 THE COURT: Excused.

08:23 24 Richard Conklin.

08:23 25 MS. HEINZ: Further inquiry.

08:23 1 MS. CORRIGAN: Further inquiry.
08:23 2 THE COURT: Jolin Cox.
08:23 3 MS. CORRIGAN: Further inquiry, Your Honor.
08:23 4 MS. HEINZ: Further inquiry.
08:23 5 THE COURT: Asela Omiligespíritu.
08:23 6 MS. CORRIGAN: Further inquiry.
08:24 7 MS. HEINZ: Further inquiry.
08:24 8 THE COURT: Next one I have concerns about. Jacob
9 Rigel.
08:24 10 MS. CORRIGAN: Stip for cause.
08:24 11 MS. HEINZ: Stip for cause.
08:24 12 MR. LENGYEL-LEAHU: Join.
08:24 13 THE COURT: Excused.
08:25 14 Celine Briemiller.
08:26 15 MS. HEINZ: Further inquiry.
08:26 16 MS. CORRIGAN: Further inquiry.
08:26 17 THE COURT: Lindsay Anderson.
08:26 18 MS. CORRIGAN: Same. Further inquiry.
08:26 19 THE COURT: Rosalinda Jimenez.
08:26 20 MS. CORRIGAN: Further inquiry.
08:26 21 THE COURT: Rosemarie Swatez.
08:26 22 MS. CORRIGAN: Further inquiry.
08:26 23 THE COURT: Shawn Soyinthisane.
08:26 24 MS. CORRIGAN: Stip for cause.
08:26 25 MS. HEINZ: Stip for cause.

08:26 1 MR. LENGYEL-LEAHU: Stip for cause, Your Honor.
08:26 2 THE COURT: All right. Excused for cause.
08:26 3 Melynda Crabtree.
08:26 4 MS. CORRIGAN: Stip for cause.
08:26 5 MR. LENGYEL-LEAHU: Join.
08:26 6 MS. HEINZ: Stip for cause.
08:26 7 THE COURT: Excused for cause.
08:26 8 Rosemary Valdovinos.
08:26 9 MS. CORRIGAN: Further inquiry.
08:26 10 THE COURT: Saul Toscano.
08:26 11 MS. CORRIGAN: For cause.
08:27 12 MS. HEINZ: Stip for cause.
08:27 13 MR. LENGYEL-LEAHU: Join.
08:27 14 THE COURT: Excused for cause.
08:27 15 Le Thanh.
08:28 16 MS. HEINZ: Stip for cause.
08:28 17 MS. CORRIGAN: Stip for cause.
08:28 18 MR. LENGYEL-LEAHU: Join.
08:28 19 THE COURT: Excused for cause.
08:28 20 Tracy Popejoy.
08:28 21 MS. CORRIGAN: Further information.
08:28 22 MS. HEINZ: Further inquiry.
08:28 23 THE COURT: Kyle Alanis.
08:28 24 MS. CORRIGAN: Stip for cause.
08:28 25 MS. HEINZ: Stip for cause.

08:28 1 MR. LENGYEL-LEAHU: Join.

08:28 2 THE COURT: Excused for cause.

08:28 3 Jose Fernando Velez.

08:28 4 MS. CORRIGAN: Further inquiry.

08:28 5 MS. HEINZ: Further inquiry.

08:28 6 THE COURT: Dennis Seel.

08:28 7 MS. CORRIGAN: Further inquiry.

08:28 8 MS. HEINZ: Further inquiry.

08:28 9 THE COURT: Donald Tuleja.

08:28 10 MS. CORRIGAN: Further inquiry.

08:28 11 MS. HEINZ: Further inquiry.

08:28 12 THE COURT: Nicholas Buffum.

08:29 13 MS. CORRIGAN: Further inquiry.

08:29 14 MS. HEINZ: Further inquiry.

08:29 15 THE COURT: Christopher Leon.

08:29 16 MS. CORRIGAN: Further inquiry.

08:29 17 MS. HEINZ: Further inquiry.

08:29 18 THE COURT: Frank Fraga.

08:29 19 MS. CORRIGAN: Further inquiry.

08:29 20 MS. HEINZ: Further inquiry.

08:30 21 THE COURT: Dillon Cassell.

08:30 22 MS. HEINZ: Further inquiry.

08:30 23 MS. CORRIGAN: Further inquiry.

08:30 24 THE COURT: Weihung Tsai.

08:30 25 MS. CORRIGAN: Stip for cause.

08:30 1 MS. HEINZ: Stip for cause.

08:30 2 MR. LENGYEL-LEAHU: Join.

08:30 3 THE COURT: Excused for cause.

08:30 4 Daniel Hayden.

08:30 5 MS. HEINZ: Further inquiry.

08:30 6 MS. CORRIGAN: Further inquiry.

08:30 7 THE COURT: John Gilliard.

08:30 8 MS. CORRIGAN: Further inquiry.

08:30 9 MS. HEINZ: Further inquiry.

08:30 10 THE COURT: Scott Kirby.

08:30 11 MS. CORRIGAN: Further inquiry.

08:30 12 MS. HEINZ: Further inquiry.

08:30 13 THE COURT: Is it he answered both questions "no"?

08:30 14 MS. CORRIGAN: Right.

08:30 15 THE COURT: About being fair?

08:30 16 MS. HEINZ: Wait a minute. Where are we?

08:30 17 MS. CORRIGAN: I think that the -- on Mr. Kirby.

08:30 18 I think that the government wanted to further

19 inquire 'cause they didn't feel that there was enough

20 information.

08:30 21 THE COURT: Remind me that that will be out of the

22 presence of the jury.

08:31 23 MS. CORRIGAN: I'll make a note of that.

08:31 24 THE COURT: When I see two of those, I'll be

25 gracious, but I'm not gonna let the panel to voir dire or to

1 be poisoned by a question. Not that you'd intentionally do
2 that, counsel. I don't know what the answer is.

08:31 3 Jose (*sic*) Ortiz.

08:31 4 MS. CORRIGAN: Further inquiry.

08:31 5 MS. HEINZ: Further inquiry.

08:31 6 THE COURT: Robert Hyder.

08:31 7 MS. CORRIGAN: Further inquiry.

08:31 8 MS. HEINZ: Further inquiry.

08:31 9 THE COURT: Nancy Hampton.

08:31 10 MS. CORRIGAN: Stip for cause.

08:31 11 MS. HEINZ: Stip for cause.

08:31 12 MR. LENGYEL-LEAHU: Join.

08:31 13 THE COURT: Excused for cause.

08:31 14 Carmen Floresarroyo.

08:31 15 MS. HEINZ: Further inquiry.

08:31 16 MS. CORRIGAN: Further inquiry.

08:32 17 THE COURT: Richard Ramirez.

08:32 18 MS. HEINZ: Further inquiry.

08:32 19 MS. CORRIGAN: Further inquiry.

08:32 20 THE COURT: Victor Sevilla.

08:32 21 MS. CORRIGAN: This is one where the government
22 would like further inquiry.

08:32 23 THE COURT: Why?

08:32 24 MS. HEINZ: Because there is not, uh, sufficient
25 information.

08:32 1 THE COURT: Okay. I'm going to do this, but I'm
2 telling you, if you get an answer in front of the panel, I'm
3 starting over again. I want to be clear. So you're going
4 to be equally aware of me asking these questions right to
5 begin with outside the presence of the jury. I'm not going
6 to take very long. Then we'll keep him in. Fair warning.

08:33 7 Waleed Nasr.

08:33 8 MS. CORRIGAN: Further inquiry.

08:33 9 MS. HEINZ: Further inquiry.

08:33 10 THE COURT: Julia Salisbury.

08:33 11 MS. CORRIGAN: Stip for cause.

08:33 12 MS. HEINZ: Stip for cause.

08:33 13 MR. LENGYEL-LEAHU: Join.

08:33 14 THE COURT: Excused for cause.
Ricardo Gallegos.

08:33 15

08:33 16 MS. CORRIGAN: We have Daisy Garcia.

08:33 17 MS. HEINZ: Number 59.

08:33 18 MR. LENGYEL-LEAHU: 68.

08:33 19 THE COURT: I apologize. Daisy Garcia.

08:33 20 MS. CORRIGAN: Stip for cause.

08:33 21 MS. HEINZ: Stip for cause.

08:33 22 MR. LENGYEL-LEAHU: I join. I'm sorry.

08:33 23 THE COURT: All right. Thank you very much.
Excused for cause.

08:33 24

08:33 25 Ricardo Gallegos.

08:33 1 MS. CORRIGAN: This is another one where the
2 government wants further inquiry.

08:34 3 MS. HEINZ: Yes, further inquiry.

08:34 4 THE COURT: Robert (*verbatim*) Macias.

08:34 5 MS. CORRIGAN: Stip for cause.

08:34 6 MR. LENGYEL-LEAHU: Join.

08:34 7 MS. ELIOT: Government joins, Your Honor.

08:34 8 THE COURT: All right. Excused for cause.
9 Linda Buhlerstone.

08:34 10 MS. CORRIGAN: Stip for cause.

08:34 11 MS. HEINZ: Stip for cause.

08:34 12 MR. LENGYEL-LEAHU: Join.

08:34 13 THE COURT: Excused for cause.
14 Marina del Rosario Sanchez.

08:34 15 MS. CORRIGAN: Further inquiry.

08:34 16 MS. HEINZ: Further inquiry.

08:35 17 THE COURT: Carlos Martindelcampo.

08:35 18 MS. CORRIGAN: Stip for cause.

08:35 19 MS. HEINZ: Stip for cause.

08:35 20 MR. LENGYEL-LEAHU: Join.

08:35 21 THE COURT: Excused for cause.
22 Robert Roy.

08:35 23 MS. CORRIGAN: Further inquiry.

08:35 24 MS. HEINZ: Further inquiry.

08:35 25 THE COURT: Patricia Austria.

08:35 1 MS. CORRIGAN: Further inquiry regarding child
2 care issues.

08:35 3 THE COURT: Saeed Mortazavi.

08:35 4 MS. CORRIGAN: Further inquiry.

08:35 5 THE COURT: Rita Wisco.

08:35 6 MS. CORRIGAN: Stip for cause.

08:35 7 MS. HEINZ: Stip for cause.

08:35 8 MR. LENGYEL-LEAHU: Join.

08:35 9 THE COURT: Excused for cause.

08:35 10 Cheryl Warr.

08:35 11 MS. CORRIGAN: Further inquiry.

08:36 12 MS. HEINZ: Further inquiry.

08:36 13 THE COURT: Allyson Hiers.

08:36 14 MS. CORRIGAN: Further inquiry.

08:36 15 MS. HEINZ: Further inquiry.

08:36 16 THE COURT: Cam Lu.

08:36 17 MS. CORRIGAN: Further inquiry.

08:36 18 MS. HEINZ: Further inquiry.

08:36 19 MS. CORRIGAN: Unclear as to whether she can --
20 understands English.

08:36 21 THE COURT: Why?

08:36 22 MS. CORRIGAN: I have her as a "no," but I think
23 the government would like further inquiries, what my notes
24 indicate.

08:36 25 THE COURT: Why?

08:36 1 MS. CORRIGAN: She's the lady that, um --

08:36 2 MS. HEINZ: Wait a minute.

08:36 3 MS. CORRIGAN: She consistently says she can't be
4 fair, but you had concerns whether she understands English.

08:36 5 MS. HEINZ: Yes. Your Honor, to be sort of --

08:36 6 THE COURT: She can't be fair and can't understand
7 English. Counsel, we'll leave her in. Thank you very much.
8 Kenneth Visser.

08:36 9 MS. CORRIGAN: Further inquiry.

08:36 10 THE COURT: Marisela Machorro Sandoval.

08:37 11 MS. HEINZ: Further inquiry.

08:37 12 MS. CORRIGAN: Yes. Although that was one --

08:37 13 THE COURT: Why?

08:37 14 MS. CORRIGAN: I think this is one where the
15 defense and the government disagreed, but the government
16 wanted further inquiry.

08:37 17 THE COURT: Why?

08:37 18 MS. HEINZ: Because although he's checking -- I
19 think he -- she is checking the box "can't be fair." When
20 asked if there are strong feelings, she consistently says
21 "no." When asked what the feelings are, she says, "NA", and
22 then she checks "can't be fair." So to the government,
23 there is a disconnect and a question about whether or not
24 she is really answering that she can't be fair.

08:38 25 THE COURT: All right.

08:38 1 Now, let me help you both with the inquiry. This
2 isn't going to be a lengthy inquiry about whether a person
3 can speak English or not. I'm going to go right to the
4 heart of the question: Are these answers true: Did you
5 answer the following? "Yes." Excused. You may not even be
6 asking any questions.

08:38 7 MS. HEINZ: Understood, Your Honor, and that is
8 precisely what government would like.

08:38 9 THE COURT: Thank you.

08:38 10 Raymond Rubio.

08:38 11 MS. HEINZ: Further inquiry.

08:38 12 MS. CORRIGAN: Further inquiry.

08:38 13 THE COURT: Evelyn Lillie.

08:38 14 MS. CORRIGAN: Stip for cause.

08:38 15 MS. HEINZ: Stip for cause.

08:38 16 MR. LENGYEL-LEAHU: Join.

08:38 17 THE COURT: Excused for cause.

08:38 18 Nicholas Stallings.

08:38 19 MS. CORRIGAN: Further inquiry.

08:38 20 MS. HEINZ: Further inquiry.

08:38 21 THE COURT: Elizabeth Kappes.

08:39 22 MS. CORRIGAN: Stip for cause.

08:39 23 MS. HEINZ: Stip for cause.

08:39 24 MR. LENGYEL-LEAHU: Join.

08:39 25 THE COURT: Excused for cause.

08:39 1 Louise Sherikar.

08:39 2 MS. CORRIGAN: Further inquiry.

08:39 3 MS. HEINZ: Further inquiry.

08:39 4 THE COURT: Amanda Johnson.

08:39 5 MS. HEINZ: Further inquiry.

08:39 6 MS. CORRIGAN: Yes.

08:39 7 THE COURT: Josif Sharfman.

08:39 8 MS. CORRIGAN: Stip for cause.

08:39 9 MS. HEINZ: Stip for cause.

08:39 10 MR. LENGYEL-LEAHU: Join.

08:39 11 THE COURT: Excused for cause.

08:39 12 Vito Ranieri.

08:39 13 MS. CORRIGAN: Stip for cause.

08:39 14 MS. HEINZ: Stip for cause.

08:39 15 MR. LENGYEL-LEAHU: Join.

08:39 16 THE COURT: Excused for cause.

08:40 17 Katherine Harrell.

08:40 18 MS. CORRIGAN: This is further inquiry as to her
19 schedule. She's indicates she's a teacher with school
20 ending June 23rd.

08:41 21 THE COURT: Stephen Herrschaft.

08:41 22 MS. CORRIGAN: Further inquiry.

08:41 23 THE COURT: Darryl Soliz.

08:41 24 MS. CORRIGAN: Stip for cause.

08:41 25 MS. HEINZ: Stip for cause.

08:41 1 MR. LENGYEL-LEAHU: Join.

08:41 2 THE COURT: Excused for cause.

08:41 3 Joan Jefferies-Row.

08:41 4 MS. HEINZ: Further inquiry.

08:41 5 MS. CORRIGAN: Further inquiry.

08:41 6 THE COURT: Esperanza Torres.

08:41 7 MS. CORRIGAN: Stip for cause.

08:41 8 MS. HEINZ: Stip for cause.

08:41 9 MR. LENGYEL-LEAHU: Join.

08:41 10 THE COURT: Excused for cause.

08:41 11 Gabrielle Martinov.

08:41 12 MS. CORRIGAN: Stip for cause.

08:41 13 MS. HEINZ: Stip for cause.

08:41 14 MR. LENGYEL-LEAHU: Join.

08:41 15 THE COURT: Excused for cause.

08:41 16 Kori Rieman.

08:41 17 MS. CORRIGAN: Further inquiry.

08:41 18 MS. HEINZ: Further inquiry.

08:41 19 THE COURT: Antonio Castaneda.

08:41 20 MS. CORRIGAN: Further inquiry.

08:41 21 MS. HEINZ: Further inquiry.

08:41 22 THE COURT: Why?

08:41 23 MS. CORRIGAN: The government I think wanted

24 further information on it. It appeared, at least from my

25 notes from a meeting yesterday, it's kind of a mixed bag on

1 fairness and not enough information. Is that correct?

08:41 2 MS. HEINZ: Yes. It's the same pattern where they
3 express they have no strong feelings, where they say -- when
4 asked about their feelings, they say "NA."

08:42 5 THE COURT: Question 31. That's not true. "Do
6 you have strong feelings about opinions about Muslim Islamic
7 faith?" So they answered "Yes." And they said, "They are
8 smart." Is that --

08:42 9 MS. HEINZ: Yes, but "They are smart" does not
10 indicate a lack of fairness.

08:42 11 THE COURT: Okay. I'll give you that opportunity,
12 Counsel.

08:42 13 Guadalupe Ortega.

08:42 14 MS. CORRIGAN: Stip for cause.

08:42 15 MS. HEINZ: Stip for cause.

08:42 16 MR. LENGYEL-LEAHU: Join.

08:42 17 THE COURT: All right. Excused for cause.

08:43 18 MS. CORRIGAN: Your Honor, after we get past
19 No. 100, we'll all join in a request for a break 'cause we
20 need to have about a half an hour to have some discussions.

08:43 21 THE COURT: Absolutely. Sure. All of you will
22 guide me.

08:44 23 Rosalie Iniguez.

08:44 24 MS. CORRIGAN: Further inquiry.

08:44 25 THE COURT: Yesica Galvez.

08:44 1 MS. CORRIGAN: At this point, we'd like to confer.

08:44 2 THE COURT: Ivy Denton.

08:44 3 MS. CORRIGAN: Same issue, Your Honor. These --

08:44 4 THE COURT: Should I just stop here?

08:44 5 MS. CORRIGAN: If we could, that'd be great.

08:44 6 THE COURT: It appears that I'm stopping, counsel.

7 When would you like to meet?

08:44 8 MS. CORRIGAN: I think 30 minutes would be fine.

9 We've got a well-oiled machine.

08:44 10 THE COURT: I know you do, in fact, my

11 compliments. I want to put that on the record, my

12 compliments. Thank you for getting it together this

13 weekend. It's saving you a lot of time. How you spend your

14 days and nights will be up to you. Hopefully, we can get

15 you out of here today.

08:44 16 You tell me.

08:44 17 9:15, 9:30?

08:44 18 MS. CORRIGAN: That'd be great, 9:15.

08:44 19 MS. HEINZ: 9:15.

08:44 20 THE COURT: We'll go through every one of them

21 eventually.

08:45 22 I'll just call this last batch beginning with

23 Rosalie, and it was -- again, I'm going to start off -- well

24 strike that.

08:45 25 Rosalie Iniguez was -- you want further

1 questioning.

08:45 2 I'm going to start off with Yesica Galvez and ask
3 what's your pleasure.

08:45 4 MS. CORRIGAN: Thank you, Your Honor.

08:45 5 MS. HEINZ: Thank you, Your Honor.

08:45 6 THE COURT: Gentlemen, if you want to take the
7 gentlemen back downstairs so they can rest.

08:45 8 U.S. MARSHAL: Yes, Your Honor.

08:45 9 *(Recess held at 8:45 a.m.)*

09:31 10 *(Proceedings resumed at 9:31 a.m.)*

09:31 11 THE COURT: All right. We're back on record. All
12 counsel are present. The parties are present.

09:31 13 Yesica Galvez.

09:31 14 MS. HEINZ: Stip for cause.

09:31 15 MS. CORRIGAN: Yes, stip for cause.

09:31 16 MR. LENGYEL-LEAHU: Join.

09:31 17 THE COURT: Excused for cause.

09:31 18 Ivy Denton.

09:31 19 MS. CORRIGAN: Stip for cause.

09:31 20 MS. HEINZ: Stip for cause.

09:31 21 MR. LENGYEL-LEAHU: Join.

09:31 22 THE COURT: Excused for cause.

09:31 23 Cynthia Davis.

09:31 24 MS. CORRIGAN: Further inquiry.

09:31 25 MS. HEINZ: Further inquiry.

09:31 1 THE COURT: Dawn Ustick.
09:31 2 MS. CORRIGAN: Further inquiry.
09:31 3 MS. HEINZ: Further inquiry.
09:31 4 THE COURT: Luong Tran.
09:31 5 MS. CORRIGAN: Stip for cause.
09:31 6 MS. HEINZ: Stip for cause.
09:31 7 MR. LENGYEL-LEAHU: Join.
09:31 8 THE COURT: Excused for cause.
09:31 9 Brian Moya.
09:31 10 MS. CORRIGAN: Further inquiry.
09:31 11 MS. HEINZ: Further inquiry.
09:31 12 THE COURT: Thomas Cook.
09:31 13 MS. CORRIGAN: Further inquiry.
09:31 14 MS. HEINZ: Further inquiry.
09:31 15 THE COURT: Lisa Mora.
09:31 16 MS. CORRIGAN: Further inquiry.
09:32 17 MS. HEINZ: Further inquiry.
09:32 18 THE COURT: Shannon Swanson.
09:32 19 MS. CORRIGAN: Further inquiry.
09:32 20 MS. HEINZ: Further inquiry.
09:32 21 THE COURT: Brenda Williams.
09:32 22 MS. CORRIGAN: Stip for cause.
09:32 23 MS. HEINZ: Stip for cause.
09:32 24 MR. LENGYEL-LEAHU: Join.
09:32 25 THE COURT: Excused for cause.

09:32 1 Jonathan Suter.

09:32 2 MS. CORRIGAN: Stip for cause.

09:32 3 MS. HEINZ: Stip for cause.

09:32 4 MR. LENGYEL-LEAHU: Join.

09:32 5 THE COURT: Is this because of page 13?

09:32 6 MS. CORRIGAN: On Suter, Your Honor, it would be
7 his mother's having surgery.

09:32 8 THE COURT: Not page 13.

09:32 9 MS. CORRIGAN: Yes.

09:32 10 MS. HEINZ: Yes.

09:32 11 THE COURT: Okay. Excused for cause.
12 Jimmy Trinh.

09:32 13 MS. CORRIGAN: Stip for cause.

09:32 14 MS. HEINZ: Stip for cause.

09:32 15 MR. LENGYEL-LEAHU: Join.

09:32 16 THE COURT: Excused for cause.
17 Paul Blackwell.

09:32 18 MS. CORRIGAN: Further inquiry.

09:32 19 MS. HEINZ: Further inquiry.

09:32 20 THE COURT: Brenda Powers.

09:32 21 MS. CORRIGAN: Further inquiry.

09:32 22 MS. HEINZ: Further inquiry.

09:32 23 THE COURT: Marjorie Camarillo.

09:32 24 MS. CORRIGAN: Further inquiry.

09:32 25 MS. HEINZ: Further inquiry.

09:33 1 THE COURT: Zulaikha Brosdal.
09:33 2 MS. CORRIGAN: Further inquiry.
09:33 3 MS. HEINZ: Further inquiry.
09:33 4 THE COURT: Elvia Mejia, M-E-J-I-A.
09:34 5 MS. CORRIGAN: Stip for cause.
09:34 6 MS. HEINZ: Stip for cause.
09:34 7 MR. LENGYEL-LEAHU: Join.
09:34 8 THE COURT: Excused for cause.
09:34 9 Richard Maciel.
09:34 10 MS. CORRIGAN: Stip for cause.
09:34 11 MS. HEINZ: Stip for cause.
09:34 12 MR. LENGYEL-LEAHU: Join.
09:34 13 THE COURT: Excused for cause.
09:34 14 Truc Tran.
09:34 15 MS. CORRIGAN: Stip for cause.
09:34 16 MS. HEINZ: Stip for cause.
09:35 17 MR. LENGYEL-LEAHU: Join.
09:35 18 THE COURT: Excused for cause.
09:35 19 I think we're gonna have quite a run here.
09:35 20 Benjamin Canfield.
09:35 21 MS. CORRIGAN: Further inquiry.
09:35 22 MS. HEINZ: Further inquiry.
09:35 23 THE COURT: Matthew Mirmak.
09:35 24 MS. CORRIGAN: Further inquiry.
09:35 25 MS. HEINZ: Further inquiry.

09:35 1 THE COURT: Baldev Jhita.
09:35 2 MS. CORRIGAN: Further inquiry.
09:35 3 MS. HEINZ: Further inquiry.
09:35 4 THE COURT: Dangying Chizkov.
09:35 5 MS. CORRIGAN: Stip for cause.
09:35 6 MS. HEINZ: Stip for cause.
09:35 7 MR. LENGYEL-LEAHU: Join.
09:35 8 THE COURT: Excused for cause.
09:35 9 Candie Lopez.
09:35 10 MS. CORRIGAN: Stip for cause.
09:35 11 MS. HEINZ: Stip for cause.
09:35 12 MR. LENGYEL-LEAHU: Join.
09:35 13 THE COURT: Excused for cause.
09:35 14 William Steck.
09:35 15 MS. CORRIGAN: Further inquiry.
09:35 16 MS. HEINZ: Further inquiry.
09:35 17 THE COURT: Steve Ziskin.
09:35 18 MS. CORRIGAN: Further inquiry.
09:35 19 MS. HEINZ: Further inquiry.
09:35 20 THE COURT: Counsel, I'll get the next batch.
09:36 21 Jacqueline McQuade.
09:36 22 MS. CORRIGAN: Stip for cause.
09:36 23 MS. HEINZ: Stip for cause.
09:36 24 MR. LENGYEL-LEAHU: Join.
09:36 25 THE COURT: Excused for cause.

09:36 1 Sean Pham.
09:37 2 MS. CORRIGAN: Further inquiry.
09:37 3 MS. HEINZ: Further inquiry.
09:37 4 THE COURT: Bertha Green?
09:37 5 MS. CORRIGAN: Stip for cause.
09:37 6 MS. HEINZ: Stip for cause.
09:37 7 MR. LENGYEL-LEAHU: Join.
09:37 8 THE COURT: Excused for cause.
09:37 9 Christina Cox (*sic*).
09:37 10 MS. CORRIGAN: Further inquiry.
09:37 11 MS. HEINZ: Further inquiry.
09:37 12 THE COURT: Walter Rountree.
09:37 13 MS. CORRIGAN: Stip for cause.
09:37 14 MS. HEINZ: Stip for cause.
09:37 15 MR. LENGYEL-LEAHU: Join.
09:37 16 THE COURT: Excused for cause.
09:37 17 Lawrence Cohen.
09:37 18 MS. CORRIGAN: Further inquiry.
09:37 19 MS. HEINZ: Further inquiry.
09:37 20 THE COURT: Sheridan Posadas.
09:37 21 MS. CORRIGAN: Stip for cause.
09:37 22 MS. HEINZ: Stip for cause.
09:37 23 MR. LENGYEL-LEAHU: Join.
09:37 24 THE COURT: Excused for cause.
09:37 25 Alaa Abdallah.

09:37 1 MS. CORRIGAN: Further inquiry.
09:37 2 MS. HEINZ: Further inquiry.
09:37 3 THE COURT: Desiderio Hernandez.
09:37 4 MS. CORRIGAN: Further inquiry.
09:38 5 MS. HEINZ: Further inquiry.
09:38 6 THE COURT: Melissa Lander.
09:38 7 MS. CORRIGAN: Stip for cause.
09:38 8 MS. HEINZ: Stip for cause.
09:38 9 MR. LENGYEL-LEAHU: Join.
09:38 10 THE COURT: Excused for cause.
09:38 11 Michael McNamara.
09:38 12 MS. CORRIGAN: Stip for cause.
09:38 13 MS. HEINZ: Stip for cause.
09:38 14 MR. LENGYEL-LEAHU: Join.
09:38 15 THE COURT: Excused for cause.
09:38 16 Alexa Malasavage.
09:38 17 MS. CORRIGAN: Stip for cause.
09:38 18 MS. HEINZ: Stip for cause.
09:38 19 MR. LENGYEL-LEAHU: Join.
09:38 20 THE COURT: Excused for cause.
09:38 21 Kenneth Schutte.
09:38 22 MS. CORRIGAN: Further information.
09:38 23 MS. HEINZ: Further inquiry.
09:38 24 THE COURT: Jay Moffett.
09:38 25 MS. CORRIGAN: Further inquiry.

09:39 1 MS. HEINZ: Further inquiry.
09:39 2 THE COURT: Roberto Sanchez.
09:39 3 MS. CORRIGAN: Stip for cause.
09:39 4 MS. HEINZ: Stip for cause.
09:39 5 MR. LENGYEL-LEAHU: Join.
09:39 6 THE COURT: Excused for cause.
09:39 7 Osvanna Magdesyan.
09:39 8 MS. CORRIGAN: Stip for cause.
09:39 9 MS. HEINZ: Stip for cause.
09:39 10 MR. LENGYEL-LEAHU: Join.
09:39 11 THE COURT: Excused for cause.
09:39 12 Alexandra Kreisberg.
09:39 13 MS. CORRIGAN: Further inquiry.
09:39 14 MS. HEINZ: Further inquiry.
09:39 15 THE COURT: Lynn Tommie Kozlov.
09:39 16 MS. CORRIGAN: Stip for cause.
09:39 17 MS. HEINZ: Stip for cause.
09:39 18 MR. LENGYEL-LEAHU: Join.
09:39 19 THE COURT: Excused for cause.
09:39 20 Nancy O'Neill.
09:39 21 MS. CORRIGAN: Further inquiry.
09:39 22 MS. HEINZ: Further inquiry.
09:39 23 THE COURT: Josue Estrada.
09:39 24 MS. CORRIGAN: Further inquiry.
09:39 25 MS. HEINZ: Further inquiry.

09:39 1 THE COURT: Victoria Salas.
09:39 2 MS. HEINZ: Further inquiry.
09:39 3 MS. CORRIGAN: Further inquiry.
09:39 4 THE COURT: Mahmoud Ghafouri.
09:39 5 MS. CORRIGAN: Further inquiry.
09:39 6 MS. HEINZ: Further inquiry.
09:39 7 THE COURT: Jorge Salgado.
09:39 8 MS. CORRIGAN: Stip for cause.
09:39 9 MS. HEINZ: Stip for cause.
09:40 10 MR. LENGYEL-LEAHU: Join.
09:40 11 THE COURT: Excused for cause.
09:40 12 Andri Belmont.
09:40 13 MS. CORRIGAN: Further inquiry.
09:40 14 MS. HEINZ: Further inquiry.
09:40 15 THE COURT: Jose Ramirez.
09:40 16 MS. CORRIGAN: Stip for cause.
09:40 17 MS. HEINZ: Stip for cause.
09:40 18 MR. LENGYEL-LEAHU: Join.
09:40 19 THE COURT: Excused for cause.
09:40 20 Rachel Cueva.
09:40 21 MS. CORRIGAN: Further inquiry.
09:40 22 MS. HEINZ: Further inquiry.
09:40 23 THE COURT: Rebecca Quevedoprastein.
09:40 24 MS. CORRIGAN: Further inquiry.
09:40 25 MS. HEINZ: Further inquiry.

09:40 1 THE COURT: Laura Giannetti-Mercer.
09:40 2 MS. CORRIGAN: Further inquiry.
09:40 3 MS. HEINZ: Further inquiry.
09:40 4 THE COURT: David Sandvig.
09:40 5 MS. CORRIGAN: Stip for cause.
09:40 6 MS. HEINZ: Stip for cause.
09:40 7 MR. LENGYEL-LEAHU: Join.
09:40 8 THE COURT: Excused for cause.
09:40 9 Stephaniejean Hinojosa.
09:40 10 MS. CORRIGAN: Stip for cause.
09:40 11 MS. HEINZ: Stip for cause.
09:40 12 MR. LENGYEL-LEAHU: Join.
09:40 13 THE COURT: Excused for cause.
09:40 14 Chad Shade.
09:40 15 MS. CORRIGAN: Stip for cause.
09:40 16 MS. HEINZ: Stip for cause.
09:40 17 MR. LENGYEL-LEAHU: Join.
09:40 18 THE COURT: Excused for cause.
09:40 19 Tom Ditter.
09:40 20 MS. CORRIGAN: Further inquiry.
09:40 21 MS. HEINZ: Further inquiry.
09:40 22 THE COURT: David Mayfield.
09:40 23 MS. CORRIGAN: Stip for cause.
09:41 24 MS. HEINZ: Stip for cause.
09:41 25 MR. LENGYEL-LEAHU: Join.

09:41 1 THE COURT: Excused for cause.
09:41 2 Michael Gerard Gibbs.
09:41 3 MS. CORRIGAN: This is a further inquiry.
09:41 4 MS. HEINZ: Further inquiry.
09:41 5 THE COURT: Alexis Bicomong.
09:41 6 MS. HEINZ: Further inquiry.
09:41 7 MS. CORRIGAN: Further inquiry.
09:41 8 THE COURT: And Ross Krewenka.
09:41 9 MS. CORRIGAN: Further inquiry.
09:41 10 MS. HEINZ: Further inquiry.
09:42 11 THE COURT: Tien Le.
09:42 12 MS. CORRIGAN: Further inquiry.
09:42 13 MS. HEINZ: Further inquiry.
09:42 14 THE COURT: Noe Anaya.
09:42 15 MS. CORRIGAN: Further inquiry.
09:42 16 MS. HEINZ: Further inquiry.
09:42 17 THE COURT: Maria Demateo.
09:42 18 MS. CORRIGAN: Stip for cause.
09:42 19 MS. HEINZ: Stip for cause.
09:42 20 MR. LENGYEL-LEAHU: Join.
09:42 21 THE COURT: Excused for cause.
09:42 22 John Strapp.
09:42 23 MS. CORRIGAN: Stip for cause.
09:42 24 MS. HEINZ: Stip for cause.
09:42 25 MR. LENGYEL-LEAHU: Join.

09:42 1 THE COURT: Excused for cause.
09:42 2 Colleen Marubayashi.
09:43 3 MS. CORRIGAN: Further inquiry.
09:43 4 MS. HEINZ: Further inquiry.
09:43 5 THE COURT: Dana Bowdle.
09:43 6 MS. CORRIGAN: Further inquiry.
09:43 7 MS. HEINZ: Further inquiry.
09:43 8 THE COURT: Marcus Molina.
09:43 9 MS. CORRIGAN: Stip for cause.
09:43 10 MS. HEINZ: Stip for cause.
09:43 11 MR. LENGYEL-LEAHU: Join.
09:43 12 THE COURT: Excused for cause.
09:43 13 Kim Davis.
09:43 14 MS. CORRIGAN: Further inquiry.
09:43 15 MS. HEINZ: Further inquiry.
09:43 16 THE COURT: Roger Lopez.
09:43 17 MS. CORRIGAN: Further inquiry.
09:43 18 MS. HEINZ: Further inquiry.
09:43 19 THE COURT: Vivian Tang.
09:43 20 MS. CORRIGAN: Further inquiry.
09:43 21 MS. HEINZ: Further inquiry.
09:43 22 THE COURT: Candice Johnson.
09:43 23 MS. CORRIGAN: Further inquiry.
09:43 24 MS. HEINZ: Further inquiry.
09:43 25 THE COURT: Olga Carranza.

09:43 1 MS. CORRIGAN: Stip for cause.
09:43 2 MS. HEINZ: Stip for cause.
09:43 3 MS. CORRIGAN: Join.
09:43 4 THE COURT: Excused for cause.
09:43 5 Judy Eastman.
09:43 6 MS. CORRIGAN: Further inquiry.
09:43 7 MS. HEINZ: Further inquiry.
09:43 8 THE COURT: Vanessa Dominguez.
09:43 9 MS. CORRIGAN: Stip for cause.
09:43 10 MS. HEINZ: Stip for cause.
09:43 11 MR. LENGYEL-LEAHU: Join.
09:43 12 THE COURT: Excused for cause.
09:43 13 Jill Schwab.
09:43 14 MS. CORRIGAN: Further inquiry.
09:43 15 MS. HEINZ: Further inquiry.
09:43 16 THE COURT: Todd Stitt.
09:43 17 MS. CORRIGAN: Further inquiry.
09:43 18 MS. HEINZ: Further inquiry.
09:43 19 THE COURT: Scott Tinker.
09:44 20 MS. CORRIGAN: Further inquiry.
09:44 21 MS. HEINZ: Further inquiry.
09:44 22 THE COURT: Diana Wolverton.
09:44 23 MS. CORRIGAN: Stip for cause.
09:44 24 MS. HEINZ: Stip for cause.
09:44 25 MR. LENGYEL-LEAHU: Join.

09:44 1 THE COURT: Excused for cause.
09:44 2 Khanh Bui.
09:44 3 MS. CORRIGAN: Further inquiry.
09:44 4 MS. HEINZ: Further inquiry.
09:44 5 THE COURT: Is that because on page 10 the answer
6 is "yes" and page 11, 36, "no"?
09:44 7 MS. CORRIGAN: This one has some mixed answers.
09:44 8 THE COURT: Has mixed answers?
09:44 9 MS. CORRIGAN: Yeah.
09:44 10 THE COURT: Ariana Barnaba.
09:44 11 MS. CORRIGAN: Further inquiry.
09:44 12 MS. HEINZ: Further inquiry.
09:44 13 THE COURT: Ethan Ponce.
09:44 14 MS. CORRIGAN: Further inquiry.
09:44 15 MS. HEINZ: Further inquiry.
09:45 16 THE COURT: Why?
09:45 17 MS. CORRIGAN: On Ethan Ponce, I believe that the
18 government wants further inquiry -- or maybe -- did we all
19 agree on that?
09:45 20 MS. HEINZ: No, I believe the defense wanted --
09:45 21 MS. CORRIGAN: That's right. This is one the
22 defense -- or at least from my perspective -- I don't know
23 about co-defendant's counsel -- I want to ask some -- have
24 further inquiry on him. But I could maybe look at his --
09:45 25 THE COURT: I'm not second-guessing either one of

1 you. I'm giving you the latitude, but on this one -- can't
2 be fair as far as Question 33's concerned, can't evaluate
3 fairness, Question 36 is concerned (*verbatim*). Maybe it's
4 the fact that Question 31 has no opinions about the Muslim
5 faith. I'll pay you the same courtesy I'm giving the
6 government. You can inquire.

09:45 7 MS. CORRIGAN: Thank you.

09:45 8 THE COURT: Maria Bernalcordon.

09:45 9 MS. CORRIGAN: Stip for cause.

09:45 10 MS. HEINZ: Stip for cause.

09:45 11 MR. LENGYEL-LEAHU: Join.

09:45 12 THE COURT: Excused for cause.

09:45 13 Sharon Miller.

09:45 14 MS. CORRIGAN: Further inquiry.

09:45 15 MS. HEINZ: Further inquiry.

09:45 16 THE COURT: Kenny Jung.

09:45 17 MS. CORRIGAN: Further inquiry.

09:45 18 MS. HEINZ: Further inquiry.

09:45 19 THE COURT: So I have inconsistent answers in
20 33 and 36.

09:46 21 MS. CORRIGAN: Correct.

09:46 22 THE COURT: Benicia Watkins.

09:46 23 MS. CORRIGAN: Further inquiry.

09:46 24 MS. HEINZ: Further inquiry.

09:46 25 THE COURT: Teresa Fuerte.

09:46 1 MS. CORRIGAN: Stip for cause.
09:46 2 MS. HEINZ: Stip for cause.
09:46 3 MR. LENGYEL-LEAHU: Join.
09:46 4 THE COURT: Excused for cause.
09:46 5 Adam Reyes.
09:46 6 MS. CORRIGAN: Stip for cause.
09:46 7 MS. HEINZ: Stip for cause.
09:46 8 MR. LENGYEL-LEAHU: Join.
09:46 9 THE COURT: Excused for cause.
09:46 10 Liza Pacheco.
09:46 11 MS. CORRIGAN: Pacheco?
09:46 12 THE COURT: Pacheco.
09:46 13 MS. CORRIGAN: Stip for cause.
09:46 14 MS. HEINZ: Stip for cause.
09:46 15 MR. LENGYEL-LEAHU: Join.
09:46 16 THE COURT: Excused for cause.
09:46 17 Alicia Mamer.
09:46 18 MS. CORRIGAN: Stip for cause.
09:46 19 MS. HEINZ: Stip for cause.
09:46 20 MR. LENGYEL-LEAHU: Join.
09:46 21 THE COURT: Excused for cause.
09:46 22 Sarali Chin-Moo.
09:46 23 MS. CORRIGAN: Further inquiry.
09:46 24 MS. HEINZ: Further inquiry.
09:46 25 Anthony Bonilla.

09:46 1 MS. CORRIGAN: Further inquiry.
09:46 2 MS. HEINZ: Further inquiry.
09:46 3 THE COURT: Fredrick De Pontee.
09:46 4 MS. CORRIGAN: Further inquiry.
09:46 5 MS. HEINZ: Further inquiry.
09:46 6 THE COURT: Magdalena Avila.
09:47 7 MS. CORRIGAN: Stip for cause.
09:47 8 MS. HEINZ: Stip for cause.
09:47 9 MR. LENGYEL-LEAHU: Join.
09:47 10 THE COURT: Excused for cause.
09:47 11 Matthew Vandercook.
09:47 12 MS. CORRIGAN: Further inquiry.
09:47 13 MS. HEINZ: Further inquiry.
09:47 14 THE COURT: Francisco Raymundo.
09:47 15 MS. CORRIGAN: Stip for cause.
09:47 16 MS. HEINZ: Stip for cause.
09:47 17 MR. LENGYEL-LEAHU: Join.
09:47 18 THE COURT: Excused.
09:47 19 Now, just a moment.
09:48 20 Robert Hayes.
09:48 21 MS. CORRIGAN: Further inquiry.
09:48 22 MS. HEINZ: Further inquiry.
09:48 23 THE COURT: Javier Marcial.
09:48 24 MS. CORRIGAN: Further inquiry.
09:48 25 MS. HEINZ: Further inquiry.

09:48 1 THE COURT: Benjamin McDaniel.
09:48 2 MS. CORRIGAN: Further inquiry.
09:48 3 MS. HEINZ: Further inquiry.
09:48 4 THE COURT: John Kincaid.
09:48 5 MS. CORRIGAN: Stip for cause.
09:48 6 MS. HEINZ: Stip for cause.
09:48 7 MR. LENGYEL-LEAHU: Join.
09:48 8 THE COURT: Excused for cause.
09:48 9 Lori Pangborn.
09:48 10 MS. CORRIGAN: Further inquiry.
09:48 11 MS. HEINZ: Further inquiry.
09:48 12 THE COURT: Lisa Cavallaro.
09:48 13 MS. CORRIGAN: Stip for cause.
09:48 14 MS. HEINZ: Stip for cause.
09:48 15 MR. LENGYEL-LEAHU: Join.
09:48 16 THE COURT: Excused for cause.
09:49 17 Richard Magana.
09:49 18 MS. CORRIGAN: Further inquiry.
09:49 19 MS. HEINZ: Further inquiry.
09:49 20 MS. CORRIGAN: There's mixed bag of answers.
09:49 21 THE COURT: David Sibrel.
09:49 22 MS. CORRIGAN: Stip for cause.
09:49 23 MS. HEINZ: Stip for cause.
09:49 24 MR. LENGYEL-LEAHU: Join.
09:49 25 THE COURT: Excused for cause.

09:49 1 Cassidy Littleton.
09:49 2 MS. CORRIGAN: Further inquiry.
09:49 3 MS. HEINZ: Further inquiry.
09:49 4 THE COURT: Thomas Waldron.
09:49 5 MS. CORRIGAN: Stip for cause.
09:49 6 MS. HEINZ: Stip for cause.
09:49 7 MR. LENGYEL-LEAHU: Join.
09:49 8 THE COURT: Excused for cause.
09:49 9 Christian Gonzalez.
09:49 10 MS. CORRIGAN: Stip for cause.
09:49 11 MS. HEINZ: Stip for cause.
09:49 12 MR. LENGYEL-LEAHU: Join.
09:49 13 THE COURT: Excuse for cause.
09:49 14 Jacob Lee.
09:49 15 MS. CORRIGAN: Stip for cause.
09:49 16 MS. HEINZ: Stip for cause.
09:49 17 MR. LENGYEL-LEAHU: Join.
09:49 18 THE COURT: Excused for cause.
09:49 19 Trevor Kennedy.
09:49 20 MS. CORRIGAN: Further inquiry.
09:49 21 MS. HEINZ: Further inquiry.
09:49 22 THE COURT: Chad Lucas.
09:49 23 MS. CORRIGAN: Further inquiry.
09:49 24 MS. HEINZ: Further inquiry.
09:49 25 MS. CORRIGAN: This is one I think the government

1 wants further inquiry on.

09:50 2 THE COURT: Stephanie Lum.
09:50 3 MS. CORRIGAN: Further inquiry.
09:50 4 MS. HEINZ: Further inquiry.
09:50 5 THE COURT: Angela Jarman.
09:50 6 MS. CORRIGAN: Further inquiry.
09:50 7 MS. HEINZ: Further inquiry.
09:50 8 THE COURT: Dustin Tran.
09:50 9 MS. CORRIGAN: Further inquiry.
09:50 10 MS. HEINZ: Further inquiry.
09:50 11 THE COURT: Craig Pugh.
09:50 12 MS. CORRIGAN: Further inquiry.
09:50 13 MS. HEINZ: Further inquiry.
09:50 14 THE COURT: Alejandro Lopez.
09:50 15 MS. HEINZ: Further inquiry.
09:50 16 MS. CORRIGAN: Yes.
09:50 17 THE COURT: Terry Brewer.
09:50 18 MS. CORRIGAN: Stip for cause.
09:50 19 MS. HEINZ: Stip for cause.
09:50 20 MR. LENGYEL-LEAHU: Join.
09:50 21 THE COURT: Excused for cause.
09:50 22 Kathleen Gutierrez.
09:50 23 MS. CORRIGAN: Further inquiry.
09:50 24 MS. HEINZ: Further inquiry.
09:50 25 THE COURT: Maria De la Cueva.

09:50 1 MS. CORRIGAN: Further inquiry.
09:50 2 MS. HEINZ: Further inquiry.
09:50 3 THE COURT: William Clark.
09:50 4 MS. HEINZ: Further inquiry.
09:50 5 MS. CORRIGAN: Correct.
09:50 6 THE COURT: Diana Perez.
09:51 7 MS. CORRIGAN: Stip for cause.
09:51 8 MS. HEINZ: Stip for cause.
09:51 9 MR. LENGYEL-LEAHU: Join.
09:51 10 THE COURT: Excused.
09:51 11 Andrew Green.
09:51 12 MS. CORRIGAN: Further inquiry.
09:51 13 MS. HEINZ: Further inquiry.
09:51 14 THE COURT: Elisha Zepeda.
09:51 15 MS. CORRIGAN: Further inquiry.
09:51 16 MS. HEINZ: Further inquiry.
09:51 17 THE COURT: Probably have 150, about.
09:51 18 MS. HEINZ: 142, I think we counted.
09:51 19 THE COURT: 142. I'm just sizing it up.
09:52 20 I think that's more than sufficient.
09:52 21 MS. CORRIGAN: I think it is. I know that
22 Mr. Heinz and I spoke yesterday -- or communicated and
23 spoke, but we think that we have enough. Given the number
24 of peremptories that we have, we believe that there's enough
25 here.

09:52 1 THE COURT: Okay. Let's walk through it again.
2 Twelve in a box. Ten, six.

09:52 3 MS. CORRIGAN: You mean six, ten.

09:52 4 MS. HEINZ: Six, ten.

09:52 5 MS. CORRIGAN: Government six, defense ten.

09:52 6 THE COURT: Six, ten.

09:52 7 MS. CORRIGAN: Thank you.

09:52 8 THE COURT: It's 28.

09:52 9 MS. HEINZ: Six alternates.

09:52 10 THE COURT: Six alternates. Thirty-four. Do you
11 want one peremptory per side for each alternate?

09:52 12 MS. CORRIGAN: Yes.

09:52 13 MS. HEINZ: Yes, Your Honor.

09:52 14 THE COURT: Twelve more, so's that's 46.
15 Twenty people will discover a bias between now and
16 tomorrow, trust me. Couple won't show.

09:52 17 Ten of these appear to be, on the face of them,
18 suspect. Yeah, about right. Hopefully, we'll send -- in
19 fact, I'm not too worried about jury statistics. I don't
20 want to reread the Indictment, and I don't want either one
21 of you having jurors angry because they're having to watch
22 the process again. So I'd rather have too many jurors
23 coming in than too few.

09:53 24 Okay. In a moment, we're going to go over some of
25 the pretrial motions again. But before we do, is there

1 anything that any of you want to bring up before we go
2 through some of these pretrial motions once again? Let me
3 turn to the government.

09:54 4 MS. HEINZ: I think we just had a couple of
5 housekeeping questions.

09:54 6 THE COURT: Sure.

09:54 7 MS. HEINZ: Your Honor, we have -- we have one
8 agent that we need to call twice or we would like to call
9 twice as a witness because he has to talk about -- or
10 testify about two very different things, and I think it
11 would be confusing for everyone if he were to have to
12 testify to all of that at one time.

09:54 13 THE COURT: Who is that?

09:54 14 MS. HEINZ: That would be Special Agent Nicholas
15 Valencia.

09:54 16 THE COURT: And what's the first portion of his
17 testimony?

09:54 18 MS. HEINZ: The first portion of his testimony
19 is -- he's scheduled to be the first witness up, and he will
20 talk about the arrest at LAX and will introduce some of the
21 LAX surveillance videos.

09:54 22 THE COURT: And the second portion?

09:54 23 MS. HEINZ: The second portion, he would walk
24 through some of the bank fraud evidence and some of the
25 evidence with respect to the financial aid fraud. So

1 essentially follow a lot of the bank fraud witnesses and
2 testify.

09:55 3 THE COURT: When you get to that portion?

09:55 4 MS. HEINZ: When we got to that portion.

09:55 5 MS. CORRIGAN: We've discussed this, and I have no
6 objection.

09:55 7 THE COURT: Okay.

09:55 8 MR. LENGYEL-LEAHU: No objection.

09:55 9 THE COURT: All right. That resolves it.

09:55 10 MS. HEINZ: Thank you, Your Honor.

09:55 11 THE COURT: Okay. What else?

09:55 12 MS. HEINZ: Excuse me, Your Honor, if I could just
13 confer briefly.

09:55 14 THE COURT: Take your time. There's no rush
15 today.

09:55 16 *(Government counsel confer.)*

09:55 17 MS. CORRIGAN: And just for recordkeeping today, I
18 would note that my client is not shackled. He's present in
19 the courtroom, and he's dressed out in civilian clothing.

09:55 20 THE COURT: Okay.

09:56 21 MS. HEINZ: Yes, Your Honor. We have filed the
22 notice of the 90211 custodian of record, and we have also
23 given notice to defense counsel. We've conferred with
24 defense counsel, and defense counsel, I believe, is -- is
25 fine with the government introducing business records

1 through the 90211 procedure with the custodian of record
2 declaration.

09:56 3 The government did want to inquire about
4 Your Honor's preferred procedure with that as to exactly how
5 Your Honor would prefer that to come in.

09:56 6 THE COURT: It depends upon the agreement that you
7 reached. Anytime counsel reach an agreement, I'm probably
8 going to accede to it. Tell me what your thoughts are and
9 what the agreement is.

09:56 10 MS. HEINZ: I believe the thoughts are that
11 counsel was fine with the business documents coming in
12 pursuant to the 90211 custodian of record declarations, in
13 which case then we would -- the government would just ask
14 Your Honor to -- when we get to that point in the trial --
15 to deem those to be admitted pursuant to, of course, a
16 showing of relevance.

09:57 17 THE COURT: Okay.

09:57 18 MS. CORRIGAN: And I have reviewed each of the
19 declarations. They do comport, in my opinion, with the
20 rules, and so I don't have any viable opposition to those.
21 And I think that what Ms. Heinz is indicating would be
22 appropriate under the law.

09:57 23 THE COURT: Mr. Lengyel-Leahu.

09:57 24 MR. LENGYEL-LEAHU: We agree and join, Your Honor.

09:57 25 THE COURT: Okay. Resolved.

09:57 1 MS. HEINZ: Thank you, Your Honor.

09:57 2 Other than that, we have continued to confer with
3 counsel about various charts that we would like to use to
4 present, quite frankly, some voluminous evidence in a very
5 expeditious manner. For example --

09:57 6 THE COURT: Summary charts, et cetera, through an
7 expert, I'm assuming. But they need to have access to the
8 underlying documentation.

09:58 9 MS. HEINZ: And they do. For example, Your Honor,
10 on the translator, rather than having the translator go
11 through every single translation, we have prepared a chart.

09:58 12 THE COURT: I see.

09:58 13 MS. HEINZ: And we have shown that to defense
14 counsel, so we would basically just have the translator have
15 the chart, introduce the chart, and have the translator
16 testify this chart as accurate as to a list of all the
17 translations and these are all accurate, in a sense, rather
18 than flipping through every single translation.

09:58 19 THE COURT: Okay.

09:58 20 MS. HEINZ: So that's the way we would propose to
21 proceed, and I believe that defense counsel is fine with
22 that.

09:58 23 MS. CORRIGAN: Yes. In that regard, Your Honor, I
24 have reviewed the chart that was provided to me, and I have
25 matched it up against what I expect will be -- the

1 government will seek to bring before the jury during the
2 trial and admit as evidence. And I think that I would agree
3 for economy of time 'cause, otherwise, we will probably
4 spend several hours just having someone go through each one
5 of 'em to lay that foundation. And I think, from my view
6 and my review of the evidence, that it's appropriate.

09:59 7 THE COURT: Mr. Lengyel-Leahu.

09:59 8 MR. LENGYEL-LEAHU: I agree. I join.

09:59 9 THE COURT: All right. What else? Then I have a
10 couple things I want to raise, but I want you to finish with
11 your issues. And then I want to turn to the defense.

09:59 12 MS. HEINZ: Just a small procedural issue and
13 question about Your Honor's preference. When we have moved
14 a piece of evidence into -- when we have moved an exhibit
15 into evidence, does Your Honor want us to ask permission to
16 publish or should we just publish?

09:59 17 THE COURT: It depends what you're publishing.
18 I'm not inclined to let you publish every exhibit that you
19 think you might want to just because it's been received into
20 evidence. By the same token, I don't know your case well
21 enough to start chopping up your case. But the minutia and
22 time consumption of some items of evidence that are, quite
23 frankly, something that the jury can see later on that's not
24 critical to their understanding, I'm not supportive of that.

10:00 25 So I think the best thing to do is simply leave

1 that to your discretion to begin with. In other words,
2 let's see how that goes. But the idea of just because an
3 item's received, it now goes up on the ELMO for show, or
4 I've got 32 pictures of the same airport, no, absolutely
5 not.

10:00 6 And so I don't want to be in a position of ever
7 cutting you off, especially in front of the jury. But that
8 kind of redundancy and time consumption, while I'll give you
9 all the time in the world, that's not the way they'll spend
10 their time. And you know, a lot of courts don't even allow
11 exhibits to go to the jury. They don't even allow
12 transcripts to be read back. I think that's foolish, quite
13 frankly.

10:01 14 So I'm gonna trust your discretion. You start by
15 putting up the exhibits you think are necessary. But if I
16 see, rote, you know, Exhibit 1 through 100, and we get into
17 four or five, unfortunately, then I'll cut you off. Once I
18 cut you off, it isn't that you come back now. So just be
19 careful. We'll talk a lot about it along way. But I trust
20 your discretion.

10:01 21 MS. HEINZ: Okay.

10:01 22 THE COURT: All right.

10:01 23 All right. Now, my concerns.

10:01 24 Unless there's a stipulation and the counsel for
25 the defense has seen your opening statement and anything

1 that you believe you're putting up on an ELMO, there's
2 nothing going up. What I won't do is I won't have an
3 opening statement -- and this may not be your situation; I
4 don't know. We haven't raised this yet. I won't have an
5 opening statement where one side has a prepared opening
6 statement with exhibits that haven't been received yet and
7 they get put up during the opening statement like they're a
8 piece of evidence, and then the defense is objecting because
9 they haven't been received into evidence or there's a
10 question about their evidentiary value. And then we're in a
11 back-and-forth for a day or two over the value and also the
12 admissibility of that evidence.

10:02 13 What does your opening statement look like? Are
14 you proposing to put exhibits up? Do you have a prepared
15 opening statement with items of evidence? And if so, have
16 you shown those to the defense, and is there an objection?

10:02 17 MS. ELIOT: Your Honor, we don't plan to show any
18 exhibits during the opening.

10:02 19 THE COURT: You're going to --

10:02 20 MS. ELIOT: Just going to talk.

10:02 21 THE COURT: Orally present. Okay.

10:02 22 How long will your opening statement be,
23 approximately? I'm not setting a time limit. It can be
24 five minutes. It can be five hours.

10:02 25 MS. ELIOT: Maybe 20. Twenty minutes thereabouts.

10:03 1 THE COURT: So two hours.

10:03 2 MS. ELIOT: About 20 minutes, maybe a half hour.
3 I'll have to time it.

10:03 4 THE COURT: But 20, 30, 40 minutes someplace in
5 that range.

10:03 6 MS. ELIOT: Yes, Your Honor.

10:03 7 THE COURT: Who'll be making that opening
8 statement?

10:03 9 MS. ELIOT: I will.

10:03 10 THE COURT: Who would like to make an opening
11 statement first or reserve first? Who do I call upon on the
12 defense side?

10:03 13 Ms. Corrigan, just because you're seated in the
14 first seat doesn't mean you're the first batter up in a
15 sense.

10:03 16 MS. CORRIGAN: And I think I'd like to be second
17 batter up. I think it's more appropriate since co-defendant
18 is number one on the indictment. I think he gets top of the
19 heap here.

10:03 20 THE COURT: Now, I've seated you this way because
21 of your acquiescence. I can change the seating very easily.
22 In other words, I can put Mr. Elhuzayel in the first table,
23 but I thought that Mr. Lengyel-Leahu wanted to be at the
24 second table, and I wanted to confirm that.

10:04 25 Is that second table comfortable for you, sir?

10:04 1 MR. LENGYEL-LEAHU: I believe the second table was
2 because of the belly chain.

10:04 3 THE COURT: No. I can move that very easily to
4 the first table. I thought you'd chosen the second table,
5 but I'm happy to move you to the front table if you'd like.

10:04 6 MR. LENGYEL-LEAHU: We're fine with the current
7 conditions, Your Honor.

10:04 8 THE COURT: Okay. Then I'll start in the back and
9 call upon counsel.

10:04 10 And I'll explain to the jury that it's entirely
11 appropriate and proper if the defense reserves an opening
12 statement or if you make an opening statement. In other
13 words, I don't want there to be prejudice and a
14 misunderstanding of the process by the jury if you decide
15 not to make an opening statement and you reserve. I'll
16 leave that to you and your decision tomorrow.

10:04 17 Tuesday is an election day. And what time are the
18 jurors due in, Deb?

10:04 19 THE CLERK: 8:30, I believe. We're going to have
20 them up here at 8:30.

10:05 21 THE COURT: Yeah. Could we find out what time
22 they're ordered to report to jury services by calling down
23 and confirming that?

10:05 24 So I'd like to propose the following: If you get
25 a jury in a day, which we oftentimes have with a

1 questionnaire, I'm proposing that you don't make your
2 opening statement that day. That you don't get shoved into
3 the afternoon. So if it's noon, we recess and your opening
4 statement has a date certain, and that's Wednesday morning.

10:05 5 And if you don't get a jury on Tuesday, I'd like
6 to let the jurors go about 4:30 so they can get out of the
7 Civic Center and vote. It's a voting day, and I don't want
8 them anxious about that. So if we need to bring jurors
9 back, so be it.

10:05 10 MS. CORRIGAN: I think that would be appropriate,
11 and I have no objection to alerting them early in the day
12 about that, so no one rushes off during the lunch break and
13 maybe gets in a car wreck or something trying to get back
14 here.

10:06 15 THE COURT: So voting day, we'll recess at 4:30.
16 If we have a jury, fine; if we don't, fine.

10:06 17 Let's assume that we have twelve jurors that we've
18 selected because there's a very good likelihood. I'm going
19 to allow some questions, but once I've given that
20 questionnaire, they're pretty pointed. You won't be going
21 very long.

10:06 22 Do you want me to excuse the twelve sitting
23 jurors, keep the panel, and try to get the alternates? Or
24 do you want me just to send everybody home and bring
25 everybody back the next day.

10:06 1 MS. CORRIGAN: If we hit the 4:30 mark, you mean?
2 I think we should let everybody go, because I think then the
3 alternates, whoever is still sitting here, may be stressed
4 about voting.

10:06 5 THE COURT: Bring 'em back the next day.

10:06 6 MS. HEINZ: Government would agree, Your Honor.

10:06 7 THE COURT: All right.

10:07 8 Are there any witnesses that are being presented
9 that cause any concern to either one of you in terms of
10 approaching without having to ask the Court? And, by the
11 way, I really appreciate the courtesy, but on each occasion,
12 you have to ask the court, "Judge, may I approach the
13 witness?" My memory of trial work when I was practicing was
14 it always took my focus off the piece of evidence that I had
15 in my hand and wanted to show the witness. It's a nice
16 formality. I appreciate it. You're all well trained and
17 excellent counsel. But as far as I'm concerned, you don't
18 have to ask to approach the witness.

10:07 19 Now, I know you're trained that way, and if you
20 want to, thank you for the courtesy, but I'm not going to
21 come unglued or say something if you decide not to.

10:07 22 Only thing I care about is that Debbie can hear
23 you. I actually don't care where you stand in the
24 courtroom. I don't view that lectern as -- well, a monument
25 or pillar of anything other than the audio system.

10:08 1 So if you move around a little bit, I'm not going
2 to be concerned. But I would encourage you to make sure
3 that Debbie knows because she'll just stand up.

10:08 4 Debbie, would you stand up.

10:08 5 *(The reporter complies.)*

10:08 6 THE COURT: When you see that, you know you don't
7 have a record. Okay? Because I'd like not to say,
8 "Counsel, would you step back to the lectern." It takes
9 away a little bit of your ability to move around and just be
10 comfortable.

10:08 11 Second, I really don't care if you examine from
12 the seats that you're in. I know that that's shocking in
13 federal court, but quite frankly, you have all the documents
14 on the seat you occupy.

10:08 15 So if you're going to do that, though, let me
16 know, so I don't fall into what I call the "federal
17 practice." But you want to examine from that seat with your
18 documents in place, so be it. If you want to go to the
19 lectern, so be it. But whatever we do, I want to do that
20 consistently. So in other words, if the government's going
21 to the lectern, then I want the defense at the lectern. I
22 don't want it to appear that this is a sign of disrespect.

10:09 23 MS. CORRIGAN: I have a preference of the lectern.
24 I don't know about other lawyers.

10:09 25 THE COURT: Lectern? Let's keep it the lectern,

1 then. We're all used to that in federal court. It's not
2 state court. So lectern?

10:09 3 MR. LENGYEL-LEAHU: Lectern, with the opportunity
4 to stroll if we need to.

10:09 5 THE COURT: Strut.

10:09 6 MR. LENGYEL-LEAHU: Strut.

10:09 7 THE COURT: Strut and stroll. But the only time
8 you'll hear me is when we can't hear you. So I want that
9 freedom of movement if it makes counsel feel more
10 comfortable. But just make sure we can hear you.

10:09 11 There's a rule and it sounds harsh, but it's not.
12 There's one of you, one of me, one of you, and there's a
13 whole bunch of people milling around, and it's hard to get
14 them to court. They're call witnesses. And they have
15 schedules. Somebody along the way is going to tell you that
16 they're so important that they can't come to court on the
17 date and time you've asked them to. The pressure's really
18 on the government in that regard. And so I apologize for
19 this, but unless the next witness is available in the
20 hallway, even if you have to send 'em home, I'll rest your
21 case. I know you don't believe it. So I'll say it one
22 time. 'Cause I did it in 1986. I rested the government's
23 case in the middle of it. So I mean it.

10:10 24 If there are three people stacked up in the
25 hallway and we have to call 'em back the next day, that's

1 the way it is. But we're not wasting time.

10:11 2 As far as your experts are concerned, they're here
3 when you ask them. If you need my help in that regard, I'm
4 happy to help you. Okay? I want your case to flow smoothly
5 just like the defense sometimes. People give you a little
6 bit of difficult time about when they can appear.

10:11 7 I want one of you to put up an exhibit right now
8 on the ELMO for me. Okay? Just pick an Exhibit. Go show
9 me how you operate that ELMO. Either one of you. Defense?
10 Government?

10:11 11 MR. LENGYEL-LEAHU: Here you go.

10:11 12 THE COURT: 'cause this is above my pay grade, by
13 the way. I'm very impressed.

10:12 14 MR. LENGYEL-LEAHU: I'm gonna watch her,
15 Your Honor. I'm gonna get trained here.

10:12 16 THE COURT: I would suggest that.

10:12 17 *(Document displayed.)*

10:12 18 THE COURT: Now, the reason we're doing that is
19 there is another television down there that isn't set up at
20 the present time, because tomorrow, when we reread that
21 indictment, my image will be going back down to the jury
22 room. But when we're done, we're going to disassemble that
23 large TV with the camera on it that is used for the jury
24 room, and we're going to use another television and set it
25 up at the end of the jury box facing this way. And that's

1 the television. Okay?

10:12 2 Okay. All right. The jurors have been ordered to
3 be here at 7:30 tomorrow, which means they're not voting in
4 the morning. So you've got to remind me, 'cause I'll
5 forget, 4:30 is the absolute time period for them to leave.
6 I need to tell them that so they're not anxious. I thought
7 it was 7:30 not 8:30.

10:13 8 Okay. Deb, now you're gonna go out in the
9 hallway, and you're going to set up the chair, and you're
10 going to clear all those documents off that table, and we're
11 going to pretend that we have a sidebar. We're going to
12 pretend that Juror No. 12, who there's some discussion about
13 cause, and others have to be questioned outside the presence
14 of the jury. And I want that chair set up permanently. I
15 want that table cleared. And I'm going to wait here until
16 it's satisfactory for you.

10:15 17 *(Pause in the proceedings at 10:13 a.m.)*

10:18 18 *(Proceedings resumed at 10:18 a.m.)*

10:18 19 THE COURT: All right. Before we go back and we
20 walk -- just walk through it, just an *in camera* proceeding
21 for a moment, if we had a juror who's being questioned for
22 cause. Is there anything else that the government needs to
23 make your case flow smoothly?

10:19 24 MS. HEINZ: I did remember a couple of other
25 questions, Your Honor.

10:19 1 The first one is -- involves your procedure with
2 respect to the exercise of peremptories.

10:19 3 THE COURT: One at a time, alternating. In other
4 words, I don't do the Arizona strike method, because I think
5 the jury changes just like the Supreme Court. You take one
6 justice away, it's a whole new court. And if you take one
7 juror away, it's a whole new jury. That's why I think the
8 Arizona strike method goes too quickly. It's an
9 "efficiency" process, which I have no criticism of; but in
10 complex litigation, I think the counsel are looking at the
11 remaining jurors in the audience at the same time as in the
12 box.

10:20 13 MS. HEINZ: And if either party passes?

10:20 14 THE COURT: That's the exercise of that
15 peremptory. That way nobody can load at the end.

10:20 16 MS. HEINZ: Understood. And because the defense
17 has, obviously, ten and the government has six, at some
18 point does the defense exercise two in a row?

10:20 19 THE COURT: Yes.

10:20 20 *(To the clerk:)* In fact, Deb, why don't we give
21 them a copy of the jury sheet.

10:20 22 THE CLERK: I was gonna ask you about that.

10:20 23 THE COURT: Give it to them now. Let me have one.
24 Let me see one.

10:20 25 We're gonna give you one now, so you can see the

1 order also. It's the same order set out by code, but I'm
2 just going to show that to you, and the boxes are right
3 there so you can't make a mistake. So we'll print it and
4 give it to you.

10:20 5 MS. HEINZ: Understood, Your Honor.

10:20 6 Can I raise -- should I raise the next issue now,
7 or should we wait?

10:21 8 THE COURT: Sure.

10:21 9 MS. HEINZ: Okay.

10:21 10 We -- the government does not think this is going
11 to happen, but it is always possible in a case like this;
12 that an inquiry by the defense on cross-examination, if the
13 witness were to answer it completely, might involve
14 classified information. And so the government proposes that
15 if the government believes that that is the position that
16 the witness is in, that the government would object, saying,
17 "Objection. Section 8."

10:21 18 THE COURT: Okay. Now, you'll alert me to that
19 prior to that witness taking the stand.

10:21 20 And is that your first witness?

10:21 21 MS. HEINZ: No, Your Honor, it wouldn't be the
22 first witness.

10:21 23 THE COURT: Okay. So call that to my attention
24 before that witness, who has that kind of information,
25 testifies.

10:21 1 MS. CORRIGAN: And, Your Honor, this -- if this
2 issue is covered in their trial brief, which -- and I'm -- I
3 have no objection to that process.

10:22 4 THE COURT: Okay. But just remind me, because I
5 won't know why the objection's coming. I may not relate
6 that if it's the 14th witness, for instance. So all I'm
7 saying is just remind me when that might be a problem.

10:22 8 MS. HEINZ: Understood, Your Honor. Understood.

10:22 9 And then our next question would be -- we at the
10 moment have set up the procedure where we have the exhibits
11 in folders and the folders -- we will have a person up there
12 next to the witness chair to hand the folders to the
13 witness.

10:22 14 THE COURT: Wait. Now, you want me to pay
15 attention. You should be giving me a copy at the same time.

10:22 16 I'll show you how that works. You're probably
17 going to give me a whole bunch of folders, and you're going
18 to expect me to listen to the witness, to take notes, to
19 look at realtime, and to look through the binder, whichever
20 binder's in front of me. If I'm paying attention, I won't
21 be able to do that. I'll be listening to the witness,
22 taking notes, watching realtime, and, in fact, I'll probably
23 watch realtime 80 percent of the case. And the reason for
24 that is you retain a lot more if you can see it as well as
25 hear it. Plus I can mark and scroll back. So you'll see me

1 looking at realtime.

10:23 2 Let's just say you presented Exhibit 14. There's
3 nothing wrong with the person, or any person, giving me that
4 exhibit also at the same time. In other words, I've got one
5 exhibit in front of me. I'm not looking through binders.
6 And if you want to do that, that's fine. It's as simple as
7 putting it right there on the corner, and I'll take it.
8 Okay? So I leave that to you.

10:24 9 But as far as paying attention to a case, when a
10 judge is looking through voluminous binders, he or she is
11 not paying attention to the case; they're just going through
12 exhibits.

10:24 13 And the first day is always rough, I promise you.
14 Second day, we start to settle in.

10:24 15 Some cases it takes as long as two weeks to get a
16 rhythm. Most of the time it's within two or three days.

10:24 17 Okay. Other questions?

10:24 18 Okay. Now, this needs to be redone, but we're
19 gonna have six alternates.

10:24 20 THE CLERK: Six. Okay.

10:24 21 THE COURT: So two, three, four, five, six, but
22 give them a copy for the time being.

10:24 23 THE CLERK: I did.

10:24 24 THE COURT: Okay. Counsel, let's go over that.
25 Look down at the bottom, you'll see government, defense,

1 government, defense, defense, government, defense, defense,
2 government, defense, defense, government, defense, defense,
3 government, defense.

10:25 4 MS. HEINZ: Yes, Your Honor.

10:25 5 MS. CORRIGAN: Yes.

10:25 6 THE COURT: Ten, six; defendant has the last
7 preemptory.

10:25 8 If we get close and if you've decided to exercise
9 all of your peremptories and now you're in the bind of
10 having exercised six and ten, the way we'll resolve that so
11 that the jury doesn't know you've just run out is I'll call
12 a brief recess and say to you back in the hallway, "Counsel,
13 when I go back into court, would you like me to say that
14 each of you are accepting the jury?"

10:25 15 Now, in reality, you just ran out of preempts, but
16 the jury doesn't know you've run out of preempts. And
17 that's just a courteous way that both of you look good, in a
18 sense, in front of the jury without having exhausted your
19 six or exhausted your ten, and you're forced into that
20 position begrudgingly. Okay? And we'll talk about that.
21 It's just a courteous way that each of you appear to be
22 accepting a jury when, in fact, you've run out of preempts.

10:26 23 I doubt that that's gonna happen. I think you
24 both are going to be exercising your judgment along the way
25 and probably not getting to that point. But I could -- you

1 may decide to use all ten and all six. I don't know.

10:26 2 All right. Right now, we haven't numbered these
3 yet. Deb was talking to me, and I said to Debbie, even
4 though I've been through a number of complex litigation
5 cases, that doesn't mean I've done them correctly. And so
6 I've encouraged my clerk and my court reporter once again to
7 tell me what I'm doing wrong. Just because we have done it
8 one way one time doesn't mean we're doing it correctly or
9 there isn't a better way.

10:27 10 *(To the clerk:)* Debbie, would you take a yellow
11 piece of paper and write "1" on it -- I know this is
12 complicated -- and go stick it on that top chair in the very
13 corner for a moment.

10:27 14 Now, this sounds silly what we're about to talk
15 about, but you will be amazed how much trial time is wasted
16 in front of a jury, so we're gonna just walk through the
17 numbers today.

10:27 18 And then, Deb, would you take another -- better
19 yet, see that nice -- no, you've already got it. My
20 apologies. See that one right there on that chair. Take
21 that one and put it over there.

10:27 22 *(The clerk complies.)*

10:27 23 Now, let's take two, three, four, five, six in the
24 top row.

10:28 25 THE COURT: Okay. You see where Seat No. 1 is

1 right now?

10:28 2 MS. CORRIGAN: Yes.

10:28 3 THE COURT: Do you notice that where Debbie is
4 sitting is unoccupied?

10:28 5 MS. HEINZ: Yes.

10:28 6 THE COURT: What that means -- and it sounds
7 silly -- is that if we number 'em this way and we get twelve
8 jurors finally selected, they're walking over the top of
9 each other. They're just going down one extra seat, but
10 it's simple. Seat No. 1 never changes. And eventually,
11 when you get twelve, we'd like to hold them in this
12 position; but in reality, it's not the best position. The
13 twelve jurors deciding this case, if we had a perfect world,
14 would be seated -- where Seat No. 2 is, that would be No. 1,
15 and your two alternates would be down at the end and four
16 here. And the reason is -- "here" being in front of the
17 jury box.

10:29 18 And the reason for that is I don't want six chairs
19 here. I want to start reducing my chairs from six.

10:29 20 So this is the way it's tentatively going to look,
21 subject to your thoughts.

10:29 22 And I'm inclined just to leave it the way it is so
23 that there's no confusion. One through six; seven through
24 twelve.

10:30 25 These seats remain vacant. And when you finally

1 get those twelve jurors, that's the way they would be
2 seated, and I would move two alternates here, and four would
3 remain here.

10:30 4 But if you like, I can do this.

10:30 5 Debbie, this is higher math. Would you go down
6 and get No. 1 and put it on chair No. 2.

10:30 7 *(The clerk complies.)*

10:30 8 THE COURT: Thanks. And would you take No. 8 -- I
9 can seat them this way. In other words, right at the
10 beginning of jury selection, No. 1 can be the second chair
11 in from the top, and No. 7 can be the second chair in from
12 the bottom. Which means nobody's climbing over each other.
13 But now your two alternates are those last two chairs
14 closest to the audience. And I don't care. It sounds
15 simple, but you tell me what you'd like.

10:31 16 MS. CORRIGAN: Your Honor, does the door work on
17 the jury box?

10:31 18 THE CLERK: Yes.

10:31 19 THE COURT: Well --

10:31 20 MS. CORRIGAN: Maybe.

10:31 21 THE COURT: Maybe. I had to lift that blue chair
22 over today because we couldn't get it unlocked.

10:31 23 MS. CORRIGAN: Okay.

10:31 24 THE COURT: So you tell me what you like. It's a
25 small thing, but once we're in place, that's the way it

1 remains.

10:32 2 MS. CORRIGAN: I can go either way, although it
3 would probably be more appropriate for the twelve jurors to
4 be closest so they can make sure they can hear the
5 witnesses. But I don't have a preference one way or the
6 other. But I have no objection to four seats being up
7 front. Frankly, I think it's more comfortable for the
8 two -- two of the alternates to be up in the box than
9 sitting down below here.

10:32 10 THE COURT: And I want to reduce the number of
11 alternates. I'm being extra cautious with six. Just don't
12 want to take a chance of starting over.

10:32 13 MS. CORRIGAN: Right.

10:32 14 THE COURT: So I want to get two of them up off
15 the floor.

10:32 16 What would you like?

10:32 17 MS. HEINZ: The government would definitely prefer
18 as many alternates as can fit in the box. I think it's more
19 comfortable to have the alternates in the box for them.

10:32 20 THE COURT: Two of the six.

10:32 21 MS. HEINZ: That would be the government's
22 preference.

10:32 23 THE COURT: What configuration?

10:32 24 MS. HEINZ: The government really does not have a
25 preference of the arrangement up here. So this arrangement

1 would be fine with the government with -- starting with
2 number one the second chair over, rather than the furthest
3 one to the back of the courtroom.

10:33 4 THE COURT: Counsel, what would you like?

10:33 5 MR. LENGYEL-LEAHU: No preference, Your Honor.

10:33 6 THE COURT: Deb, what would you like?

10:33 7 THE CLERK: That works for me.

10:33 8 THE COURT: That's what we'll do, then. We'll
9 leave these two seats blank for the selection of the twelve
10 jurors. Okay? It stops the travel time. But when we get
11 the alternates, we'll take two of the six and move them to
12 these last two seats. Fair enough?

10:33 13 MS. CORRIGAN: Yes.

10:33 14 THE COURT: Deb, if you would, 1, 2, 3, 4, 5, 6,
15 7, 8, 9, 10, 11, 12. Can we do them in white with black
16 lettering?

10:33 17 THE CLERK: I have a question about the
18 alternates.

10:33 19 THE COURT: What's the question?

10:33 20 THE CLERK: Are they numbered? Will they be
21 numbered?

10:34 22 THE COURT: Yes. Debbie has a question about the
23 alternates. They'll be numbered; in other words, when we
24 get the alternates, I'm going to have six chairs sitting
25 here. I'm not going to run them up into the box. And

1 they'll be called as Alternate 1, 2, 3, 4, 5, and 6. You
2 each have one preempt per alternate.

10:34 3 The statute says that the alternates are supposed
4 to be called sequentially; so Alternate 1 should be the
5 alternate who takes the place of a sitting juror. I would
6 encourage you to not do that. I would encourage you to
7 stipulate to the following:

10:34 8 That if a sitting juror can't sit for a good legal
9 reason or cause, that in your presence, Debbie randomly
10 draws one of the six names.

10:34 11 MS. CORRIGAN: That's my preference.

10:34 12 THE COURT: Yeah. And the reason -- just let me
13 make that record, though. The reason for that is that means
14 Alternate No. 6 needs to be equally alert to the evidence as
15 Alternate No. 1. And it makes all of us, as a judge and
16 trial counsel, pay attention to these alternates. We can't
17 say that we got to Alternate 1 and 2 and 3 and get a little
18 tired with 4, 5, and 6. You're still exercising your best
19 judgment.

10:35 20 So it keeps those alternates alert and engaged.
21 Because Alternate 5 and 6, I promise you, will start
22 thinking, "Why am I here? It's the fourth week." And once
23 we get a grumbling alternate who says, with coffee down in
24 the cafeteria, "You're never gonna get to me," Alternate No.
25 3 is thinking, "Yeah, they may not get to me either." Okay?

1 So that's just the real world.

10:35 2 Would that be acceptable to all of you that we
3 randomly draw in your presence -- it's very exciting, by the
4 way.

10:35 5 She's puts six numbers, and draws one. Would that
6 be acceptable to the government?

10:35 7 MS. HEINZ: Yes. The government would stipulate.

10:35 8 MS. CORRIGAN: I agree.

10:36 9 MR. LENGYEL-LEAHU: I agree and join.

10:36 10 THE COURT: Okay. So, Debbie, does that answer
11 your question?

10:36 12 THE CLERK: Yes.

10:36 13 *(Clerk and Court confer.)*

10:36 14 THE COURT: Okay. Then, counsel, would you come
15 with me for a moment. We're going to pretend for a moment.
16 We're going to walk through it. We have a motion for cause.

10:37 17 *(At sidebar.)*

10:38 18 THE COURT: We're going to be back here a number
19 of times.

10:38 20 MS. HEINZ: I think that's good.

10:38 21 MS. ELIOT: Yeah.

10:40 22 *(In open court.)*

10:40 23 THE COURT: All right. Counsel, we're back on
24 record.

10:40 25 What we're going to do is we're going to set up

1 the camera in a few moments. And after Adrian gets that set
2 up, I'm going to have you go to the lectern, and your
3 co-counsel's going to go downstairs, or whatever, and see
4 what you look like. Because we can't get a frontal view of
5 you. We can't put you over here. So when you're asking
6 questions of a juror, about the best we can do is get a full
7 court. You'll see that. We'll see you. Maybe we'll see
8 the juror. I'm not sure yet. We'll see how well we do.

10:41 9 We could put the camera over there for the time
10 being, but we'll move it around until you're satisfied.

10:41 11 Okay. Anything else on behalf of the government
12 before I turn to counsel for the defense?

10:41 13 MS. HEINZ: Nothing further from the government.

10:41 14 THE COURT: Okay. Let me start with
15 Mr. Lengyel-Leahu and Mr. Elhuzayel. What would make this a
16 smooth presentation from your standpoint?

10:41 17 MR. LENGYEL-LEAHU: I'm pretty comfortable,
18 Your Honor, and we've all conferred about some of your
19 procedures. I think we're pretty good.

10:42 20 THE COURT: I'm pretty flexible, actually. You'll
21 find if counsel come to me with an idea or thought and you
22 all agree, I'm not rote in the sense of following the same
23 process and procedure that I did on another trial. This is
24 a whole new trial, so I can always improve. Trials are
25 never perfect. So if something comes up, let me know right

1 away.

10:42 2 MR. LENGYEL-LEAHU: Yes, sir.

10:43 3 *(Pause in the proceedings.)*

10:57 4 THE COURT: All right. We're back on record.

10:57 5 The court took a recess just to make certain that
6 the parties could see the witness and they were satisfied
7 with the coverage of the courtroom.

10:57 8 So this would be the image that's being seen down
9 in the jury room. And would one of you like to step to the
10 lectern and make your opening statement. Would one of you
11 like to step to the lectern and question one of our
12 perspective jurors.

10:58 13 Now, that's what you're going to look like.

10:58 14 But if you notice, we can't capture the juror.

10:58 15 We can move that to the other side of the
16 courtroom temporarily.

10:58 17 See if you can pick up the jury box. Now, there's
18 the audience. Bring back around, all the way around. See?

10:58 19 Do you want us to move that camera so we capture
20 the juror who's being questioned as well as the questioner?
21 And I'm sorry for being so, you know, picky, but you'll be
22 amazed at how much time this actually saves tomorrow.

10:58 23 In other words, any preference is fine. What I
24 don't want Adrian to do is to have to, on his own, start
25 manipulating back and forth question and answer. I want it

1 set.

10:59 2 MS. CORRIGAN: I think my preference would just be
3 to have the camera aimed at the lecturn where the attorney
4 is. I think, frankly, some of the jurors may feel
5 uncomfortable with the camera just spotted on 'em. And if
6 the camera is going back and forth, someone's going to feel
7 like they're gonna get vertigo. But I think that the
8 focus -- so long as they can hear everything, I think that
9 the lectern's fine. I don't know how everybody else feels
10 about it.

10:59 11 THE COURT: That's the next question. I'd like to
12 get out that microphone, Deb, and make sure it works for a
13 change with a battery in it.

10:59 14 Okay. Now, can you lower that a little bit. I
15 want to see more of her. There you go.

10:59 16 Now, can you blow that up?

10:59 17 Can we make her bigger? There we go.

10:59 18 Can you center her a little bit more? Let's stop
19 right there.

11:00 20 *(IT technician complies.)*

11:00 21 THE COURT: Okay. Now, counsel, is that
22 satisfactory or not?

11:00 23 MS. CORRIGAN: Yes.

11:00 24 MS. ELIOT: Sure, Your Honor.

11:00 25 THE COURT: Good for the government?

11:00 1 MS. HEINZ: That's fine with the government.

11:00 2 MS. CORRIGAN: That's fine with me, Your Honor.

11:00 3 MR. LENGYEL-LEAHU: Fine with me, Your Honor.

11:00 4 THE COURT: Okay. Adrian, that's without exact
5 precision, that's the way it will remain for the jurors
6 downstairs tomorrow.

11:00 7 TECHNICIAN: Okay.

11:00 8 THE COURT: Do you want to leave that set up
9 overnight, Adrian?

11:00 10 TECHNICIAN: Sure.

11:00 11 THE COURT: Okay. What else do you have before I
12 start quickly through these trial motions and probably
13 excuse you for the rest of the day, unless you have business
14 for the Court.

11:00 15 MS. CORRIGAN: Are you finished with your inquiry?

11:00 16 MR. LENGYEL-LEAHU: Yes.

11:00 17 MS. CORRIGAN: Okay. I have three brief issues,
18 Your Honor.

11:00 19 One, I want to make sure that at the conclusion of
20 the government's case and at other appropriate times, that
21 we can -- that I can make a rule -- at least reserve the --
22 make an oral Rule 29 motion and then follow it up in
23 writing. I'm assuming there's no opposition by the
24 government.

11:01 25 THE COURT: We'll see how that goes in terms of

1 timing for the next couple weeks.

11:01 2 MS. CORRIGAN: Yes, yes, please.

11:01 3 THE COURT: You'll have time.

11:01 4 MS. CORRIGAN: No opposition?

11:01 5 MS. HEINZ: No opposition.

11:01 6 MS. CORRIGAN: All right.

11:01 7 THE COURT: Now, what I may do is I may decide it
8 at that moment. I may what I call "bookmark" it. So let's
9 just see where we're at. But I'm assuming you're going to
10 make a motion at the end of the government's case. If
11 you're successful, it's resolved. If you're not successful,
12 you'll make it again at the end of the defense case.

11:01 13 MS. CORRIGAN: Correct.

11:01 14 THE COURT: You can also make it after the
15 conclusion of all the arguments before it's submitted to the
16 jury.

11:01 17 MS. CORRIGAN: Correct. I usually make three.

11:01 18 THE COURT: Okay. Fair enough.

11:02 19 MS. CORRIGAN: The second issue is just I want to
20 make sure that the all witnesses will be out -- will be
21 asked to stay outside the courtroom during the testimony of
22 any other witnesses, with the exception --

11:02 23 THE COURT: Is there a formal motion? Because I
24 haven't heard that, and, of course, I'm going to grant that
25 if you make the motion. But here's the issue. I don't know

1 if any members of the family are testifying. So it's
2 co-equal. And I don't want them excluded from the court.
3 So --

11:02 4 MS. CORRIGAN: Understood. But I think, in
5 particular, a lot of the witnesses that the government has
6 can be just stacked up in the conference room if they're
7 gonna be stacked, and they shouldn't be in here listening to
8 each other's testimony. I understand the family.

11:02 9 THE COURT: That applies to everybody except an
10 expert.

11:02 11 MS. CORRIGAN: Understood.

11:02 12 THE COURT: An expert's allowed to be in the room.
13 Beyond that, I would grant that motion unless there's an
14 objection by the government.

11:03 15 MS. HEINZ: Your Honor, the government certainly
16 wouldn't have the witnesses here before they testify. Some
17 of the witnesses have expressed an interest in watching the
18 trial after their testimony.

11:03 19 THE COURT: After they've testified. That depends
20 upon whether you're going to call them back or not.

11:03 21 MS. CORRIGAN: Or if they're subject to recall by
22 anybody.

11:03 23 THE COURT: If it's an expert witness, normally in
24 the real world, they're not called back if they're a
25 government expert.

11:03 1 Who would like to attend and watch the rest of the
2 proceedings? Is it your expert?

11:03 3 MS. HEINZ: No, Your Honor. They are largely FBI
4 agents who have worked this case and who understand that
5 they should not be in the courtroom and cannot be in the
6 courtroom before they testify.

11:03 7 THE COURT: It's afterwards.

11:03 8 MS. HEINZ: But after they're finished testifying,
9 they very much would like to watch the rest of the trial.

11:03 10 THE COURT: I have no objection to that as long as
11 that witness isn't being called back.

11:04 12 MS. HEINZ: Understood, Your Honor. The one
13 witness we anticipate would be called back would not be
14 here.

11:04 15 THE COURT: Why don't we take that witness by
16 witness?

11:04 17 MS. CORRIGAN: That's fine.

11:04 18 THE COURT: There may be some witnesses, Counsel,
19 that you just know aren't being called back, and having them
20 sit in the audience is just like having the family sit here.
21 It's fine.

11:04 22 Others know that might be in question if it's a
23 true -- a representation that they might be called back.
24 Let's wrestle with that at the time. I think it's gonna
25 resolve itself, frankly.

11:04 1 MS. CORRIGAN: And then the third thing, which is
2 just a friendly reminder to everybody that in light of the
3 fact that the co-defendant, at least at this point, is still
4 belly-chained, that no one stand up when the jurors come in
5 and out. And if perhaps the Court could indicate to the
6 jurors that we're not being rude or anything like that, but
7 we're just -- it's at the instruction of the Court that
8 we're asked to not stand up.

11:04 9 THE COURT: Remind me.

11:04 10 MS. CORRIGAN: I will. Thank you. I know the
11 Court has done that before, and you have an appropriate way
12 of addressing the jury.

11:05 13 THE COURT: And sometimes I'll stand up. I have
14 to break myself of that habit. For instance, I may stand up
15 when I ask the jurors to stand and raise their right hand.
16 You remain seated. But I may be asking them. 'Cause when
17 Debbie swears them, I usually stand behind her with my hand
18 raised to indicate to them what they're supposed to do.
19 Okay. Anything else?

11:05 20 MS. HEINZ: Your Honor, I'm sorry. I want to be
21 crystal clear. If we make an objection to a question, we
22 stay seated?

11:05 23 THE COURT: Stay seated. I know that's a hard
24 habit to break.

11:05 25 MS. HEINZ: It is, Your Honor. We will do that.

11:05 1 THE COURT: We've been involved in six-month
2 trials, and we still on occasion have that occur. It's just
3 the best we can do.

11:05 4 MS. CORRIGAN: That's fine. I agree.

11:05 5 THE COURT: Okay.

11:05 6 MS. CORRIGAN: That's it from my end.

11:05 7 THE COURT: Ms. Corrigan and Mr. Lengyel-Leahu,
8 anything else?

11:05 9 MS. CORRIGAN: No, Your Honor.

11:05 10 MR. LENGYEL-LEAHU: No, Your Honor.

11:05 11 THE COURT: Okay. Then let's go over these
12 pretrial motions for just a moment.

11:06 13 MS. HEINZ: I'm sorry, Your Honor. There was one
14 other thing that came up on the break that I talked to
15 defense counsel about that I just wanted to bring up with
16 the Court.

11:06 17 We have -- as you know, we have transcripts of
18 recordings and videos in the government's case-in-chief, and
19 those transcripts contain both English -- and in most of the
20 cases, they contain Arabic -- English language translations
21 of Arabic words, phrases, and sentences that are used.

11:06 22 So what we had planned to do to present those was
23 have them running on Trial Director as sort of subtitles and
24 running -- as we show the -- as we play the audio or show
25 the video.

11:06 1 We had also thought that we would introduce -- I
2 mean, that we would ask that those transcripts be moved into
3 evidence, particularly so that if there is any appeal, that
4 the Circuit would have a copy of the transcript 'cause they
5 won't have a copy of the Trial Director presentation.

11:07 6 However, in discussing this with defense counsel,
7 the thought was that those transcripts would not go back to
8 the jury room. So that was, I believe, our joint plan.

11:07 9 THE COURT: Okay. So let me repeat that.

11:07 10 Transcripts never go back to the jury room unless
11 there's a stipulation by counsel. The best evidence is
12 always the video. The unique thing about your presentation
13 is that your video is not only a video, but it also has the
14 wording, if you will, running across the bottom, like a CNN
15 news show with that strip going across the bottom. And so
16 the transcripts are received into evidence so that the
17 Circuit has a full record, but those transcripts are not
18 going back into the jury room.

11:08 19 Now, let me ask you, why, then, are they getting
20 transcripts? And I'm not being difficult. But if you have
21 a tape and the words and the transcript is running across
22 the bottom, why are they being given an additional folder or
23 binder? They can't take them with them into the jury room.
24 And they're going to get confused and try to make notes on
25 them.

11:08 1 MS. HEINZ: Your Honor, the government is not
2 planning to hand the jurors a binder of transcripts.

11:08 3 THE COURT: Oh, Okay.

11:08 4 MS. HEINZ: We're only going to present the
5 transcripts visually on the television screens.

11:08 6 THE COURT: I see. So they can take notes off of
7 that. They've got the best evidence. They've got the
8 video. They've got the transcript at the bottom, but the
9 actual printed transcript is received into evidence, but the
10 jury's not going to get a copy of this paper transcript.
11 It's just for the Circuit.

11:08 12 MS. HEINZ: That's correct, Your Honor.

11:08 13 MS. CORRIGAN: That's correct. And I think that's
14 an appropriate measure.

11:09 15 THE COURT: Okay. Mr. Lengyel-Leahu.

11:09 16 MR. LENGYEL-LEAHU: I agree, Your Honor.

11:09 17 THE COURT: Okay. Then it's resolved.

11:09 18 Anything else? All right. Then the pretrial
19 motions are as follows.

11:09 20 On March -- or strike that -- May 31st, so I
21 complete this record, the Court heard argument on the
22 following pretrial motions:

11:09 23 The parties' motions in limine.

11:09 24 Defendant Badawi's motion to exclude statements of
25 Defendant Badawi during interrogation by agents on May 21st,

1 2015.

11:09 2 Defendant Badawi's motion to sever.

11:09 3 Defendant's and Badawi's motion to remove
4 shackles.

11:09 5 Mr. Elhuzayel joined in all of Mr. Badawi's
6 motions.

11:09 7 I'd made the following final rulings for
8 everybody's memory:

11:09 9 First, I've denied Defendant Badawi's motion to
10 sever.

11:09 11 Second, I've granted Defendant Badawi's motion to
12 remove shackles during trial.

11:09 13 Concerning Defendant Elhuzayel's restraints, I've
14 ruled that only a belly chain would be used to restrain
15 Mr. Elhuzayel. His hands and feet will be unrestrained.
16 And today we're going to have a camera come up, and we're
17 going to take a photograph of the court. In fact, I'm going
18 to have defense counsel go with the camera person, and we're
19 going to take any photographs you'd like. If there's any
20 improvement we can make, rather than granting the motion to
21 remove the belly chain at this time, I want you to note that
22 for me. Okay?

11:10 23 MR. LENGYEL-LEAHU: Thank you, Your Honor.

11:10 24 THE COURT: I'm also going to take a picture of
25 the complex courtroom to show any reviewing court where the

1 parties could be tried or presided over, and I just think
2 this is a more human and normal setting, quite frankly, with
3 two defendants, and I'd like not to use the complex
4 courtroom if possible.

11:11 5 I've also offered to place Mr. Elhuzayel in an
6 unrestrained condition in the complex courtroom because of
7 the narrow channeling constraints and the ability of the
8 marshals to sit behind him without waiving any of his rights
9 concerning the belly chain. Counsel's indicated this is a
10 more comfortable or better situation.

11:11 11 Is that still true, sir, or do you want to go back
12 to the complex courtroom, and I'm happy to unrestrain your
13 client?

11:11 14 MR. LENGYEL-LEAHU: It's still true, Your Honor.

11:11 15 THE COURT: Okay.

11:11 16 Concerning government's Motion in Limine No. 1, I
17 want to indicate to you I gave you a tentative thought, but
18 I have not made a final ruling.

11:11 19 Ms. Corrigan did not join in this motion. I
20 stated on May 31st the government was moving to preclude the
21 defendants from raising the defense that their conduct was
22 legally permissible on the grounds their constitutionally
23 guaranteed right to practice their religion permitted them
24 to provide personnel, especially -- or specifically
25 Defendant Elhuzayel, to ISIL.

11:12 1 Mr. Lengyel-Leahu indicated he does not think he
2 is arguing the application of the provision on providing
3 material support to terrorism under 18 U.S.C.,
4 Section 2339(b) to Elhuzayel violates Religious Freedom and
5 Restoration Act, commonly known as RFRA. However, in the
6 argument, counsel stated the government is improperly
7 presupposing the factual conclusion that Mr. Elhuzayel
8 sought to travel to the Middle East to provide material
9 support to terrorists.

11:12 10 Mr. Lengyel-Leahu has also offered or has sought
11 to offer to the jury an alternate explanation as to why
12 Elhuzayel was traveling to the Middle East. And the
13 government wants a jury instruction as to this issue.

11:13 14 First, I don't think, Counsel, that your client,
15 Mr. Elhuzayel, should be precluded from arguing why he went
16 to the Middle East.

11:13 17 However, he cannot assert his right to the free
18 exercise of religion under RFRA and the First Amendment
19 excusing him from compliance with 18 U.S.C. 339(b).

11:13 20 In other words, he cannot use as a defense the
21 argument that his conduct is lawful on the grounds that his
22 religion obligated him to join ISIL.

11:13 23 So I'm not going to preclude that testimony, if
24 you choose to present that.

11:13 25 But then the government is calling for a jury

1 instruction. And so I'm going to simply let that develop.
2 But you have a pretty strong tentative thought, which is on
3 this Court's part, about no preclusion, but a jury
4 instruction that in all likelihood would follow.

11:14 5 Concerning government's Motion in Limine No. 2, I
6 also had not conclusively or finally ruled on that motion.

11:14 7 Counsel for Mr. Elhuzayel, Mr. Lengyel-Leahu,
8 conceded that he cannot argue about whether ISIS or ISIL is
9 a foreign terrorist organization; however, counsel does seek
10 to challenge that the Islamic State was designated as a
11 foreign terrorist organization, and it's been asserted that
12 it should be up to the jury to decide whether ISIL, ISIS,
13 and the Islamic State are the same organization.

11:14 14 The government stated that it intended to
15 introduce expert testimony that ISIL goes by different
16 names. This suggests that there's some ambiguity
17 surrounding whether the Islamic State was designated as a
18 foreign terrorist organization.

11:15 19 I am going to think about it one more time this
20 evening, but my belief is, and you should expect that the
21 court is going to grant the motion as follows:

11:15 22 That defendants are precluded from challenging the
23 designation of ISIL as a foreign terrorist organization;
24 however, this does not preclude Mr. Elhuzayel from arguing
25 that the Islamic State is not the same as ISIL and that the

1 Islamic State was not a foreign terrorist organization at
2 the time of the arrest. So give me one more evening to
3 think through that, but I'm a little concerned about
4 chilling that kind of presentation, Mr. Lengyel-Leahu, if
5 you decide to make it.

11:15 6 Government Motion in Limine Number 3. The
7 government asserts the "Law Enforcement, Sensitive,
8 Qualified" evidentiary privilege. However -- or primarily,
9 the government has sought to preclude the defense from
10 asking questions about certain law enforcement techniques
11 and methods.

11:16 12 Ms. Corrigan, on behalf of Mr. Badawi, indicated
13 that at this juncture, she does not think that there will be
14 an issue and stated that if the issue arises, the parties
15 will notify the Court so the parties can litigate the issue
16 outside the presence of the jury. And again today, counsel
17 for the government raised the same concern and will object
18 and notify the Court that this could be a problem with the
19 forthcoming witness, whenever that occurs, on Day 1 or 14 or
20 whatever.

11:16 21 Concerning government Motion in Limine No. 4, the
22 government has moved to preclude defendants from introducing
23 any expert evidence relating to a mental condition.
24 Mr. Lengyel-Leahu has indicated he does not intend to
25 introduce "mental competence" evidence and, therefore, the

1 motion was denied and is denied as moot as to Mr. Elhuzayel.

11:17 2 Now, I delayed with Mr. Badawi, and that is
3 because Dr. Hope needed to evaluate him last week. And the
4 case is still developing. I'm a little hesitant to make a
5 blanket motion right now concerning Mr. Badawi because we've
6 been going through this process and there's still a
7 possibility that this issue could be alive with respect to
8 Mr. Badawi.

11:17 9 So I'm gonna reserve the ruling on that issue as
10 to Mr. Badawi at this time.

11:17 11 MS. CORRIGAN: Thank you.

11:17 12 THE COURT: Concerning government Motion in Limine
13 No. 5, the government moved to preclude the defendants from
14 introducing any portion of their out-of-court hearsay
15 statements at trial.

11:17 16 The government indicated that it does not intend
17 to use any post-arrest statements in its opening statement.
18 And the government and Ms. Corrigan indicated that they
19 reached an agreement as to In Limine No. 5. And at this
20 juncture Ms. Corrigan is okay with what the government
21 intends to introduce.

11:18 22 The government indicated it would provide
23 Mr. Lengyel-Leahu with the six specific excerpts from
24 Mr. Elhuzayel's arrest statement it intends to use.

11:18 25 I want to ask the parties whether this exchange

1 has taken place and the discussion has occurred between you.
2 Because this is where we were left at the last hearing.

11:18 3 MS. HEINZ: Yes, the excerpts have been provided,
4 and a discussion has taken place. And my understanding is
5 that there is no objection.

11:18 6 THE COURT: Sir.

11:18 7 MR. LENGYEL-LEAHU: That's correct, Your Honor.

11:18 8 MS. CORRIGAN: And, Your Honor, just for the
9 record, I have also reviewed those, and it didn't appear
10 that there's any *Bruton* issue from my perspective.

11:18 11 THE COURT: Okay. Then that matter's been
12 resolved, at least for the present time.

11:18 13 Mr. Badawi's motion in limine to exclude
14 government experts Braniff and Ahmed.

11:19 15 Ms. Corrigan withdrew the portion of the motion
16 concerning Ahmad, and the parties agree there's no longer a
17 need for a *Daubert* hearing, and that the aspect of Badawi's
18 motion in limine thereafter is denied as moot. But I
19 reserved the ruling on the rest of the motion. And I
20 thought, as the case developed, that could be called back to
21 the Court's attention. That if we needed the expert in one
22 night early or one day early, we would see that developing.
23 Because I didn't think he'd be presented until, minimally,
24 the second week, at best. So we've got some time.

11:19 25 And there was, finally, Mr. Badawi's motion to

1 exclude statements of Defendant Badawi during the
2 interrogation by the evidence (*sic*) on May 21st, 2015.

11:19 3 I had tentatively denied Defendant Badawi's motion
4 to exclude statements of Defendant Badawi during
5 interrogation by agents on May 21st, 2015, and I'm making
6 that ruling final at this time.

11:19 7 Now, is there any other clarification that you
8 need to help you with your opening statements? Is there any
9 ruling that the Court hasn't made that's leaving you
10 dangling without clarification so that you can make a full
11 and complete opening statement?

11:20 12 MR. LENGYEL-LEAHU: Yes.

11:20 13 THE COURT: I'm sorry. Mr. Lengyel-Leahu, please.

11:20 14 MR. LENGYEL-LEAHU: The three and five, the
15 hearsay motions and the out-of-court hearsay. Those kind of
16 blended together for me when you were discussing them.

11:20 17 We believe, obviously, the government has made a
18 blanket statement that nothing comes in, in the post-arrest
19 interview, other than what they've cherrypicked from that
20 interview.

11:20 21 THE COURT: Right.

11:20 22 MR. LENGYEL-LEAHU: And we suggest that's, one,
23 unfair because they haven't identified what statements they
24 want to try to exclude; and secondly, that would be
25 important in an opening statement, because if we are allowed

1 to bring that evidence in through cross-examination of the
2 government's witness, then that would be something I would
3 like to tell the jury during opening statement.

11:21 4 THE COURT: Let me repeat that back.

11:21 5 That you don't know at this point what the
6 government intends to produce concerning questions that law
7 enforcement asked your client.

11:21 8 MR. LENGYEL-LEAHU: No, Your Honor, that's not
9 what I'm saying. I'm sorry, I must have misspoke.

11:21 10 THE COURT: Is it Motion in Limine No. 5, then,
11 the post-arrest statements?

11:21 12 MR. LENGYEL-LEAHU: Yes, Your Honor.

11:21 13 THE COURT: I'm sorry. My apologies.

11:21 14 MR. LENGYEL-LEAHU: And with --

11:21 15 THE COURT: And you're worried, so I understand,
16 that you don't know what portions of the post-arrest
17 statements the government's going to refer to in their
18 opening statement.

11:21 19 MR. LENGYEL-LEAHU: No.

11:21 20 THE COURT: I'm missing it, then. I apologize.

11:21 21 MR. LENGYEL-LEAHU: I must have been unclear.

11:21 22 THE COURT: No, I'm unclear.

11:21 23 MR. LENGYEL-LEAHU: We know what the government
24 wants to introduce; they provided us with excerpts. And
25 that's what they're -- is gonna be in their

1 evidence-in-chief. I think it's just the six or eight
2 excerpts out of the three hours -- or plus -- that he was
3 interrogated.

11:22 4 THE COURT: Right.

11:22 5 MR. LENGYEL-LEAHU: And my response to their
6 motion, I suggested there was a number of areas that we
7 would like to cross-examine the FBI agent on. One in
8 specific, that my client intended to get married; that
9 that's the reason he was traveling to, um -- to Israel.

11:22 10 THE COURT: It has to be a nexus to the statement
11 that they're presenting; and if that's an entirely different
12 subject matter, it's hearsay.

11:22 13 MR. LENGYEL-LEAHU: It's not an entirely different
14 subject matter, because the reason that they're introducing
15 their picked statements is to attempt to prove motive and
16 knowledge of my client and the operative act for the
17 conspiracy, as well as the act itself of the attempt to
18 provide material support.

11:23 19 But if he's going over there for the purposes of
20 getting married, which is what he told them, and there is
21 other evidence to that effect, then it goes to impeach the
22 motive issue and my client's state of mind, which does come
23 in under 803.

11:23 24 I even suggested that into (*sic*) my, uh, reply to
25 their motion in limine. And their response was "that's what

1 we were afraid of." Since I don't know what they're trying
2 to exclude -- I know what they're trying to admit, but I
3 know what I also want to admit through cross-examination of
4 the government witness: Issues involving motive and issues
5 involving his state of mind at the time and the subsequent
6 actions that he did in furtherance of that state of mind.

11:23 7 THE COURT: What I don't know, because I wasn't
8 present during any of your discussions with the government,
9 is what areas you intend to cross-examine on.

11:24 10 I have a general idea. You refer to intent,
11 et cetera. But I would need some specificity to try to make
12 a ruling whether it's hearsay or whether it's part and
13 parcel there's a nexus to the statement that they are
14 bringing in.

11:24 15 And so the first problem I hear is that the
16 government's going to try to show that your client has made
17 some statement about going overseas to join ISIL for some
18 nefarious purpose. And you'd like to show that he's going
19 there for the purpose of getting married. And the
20 government is objecting to that.

11:24 21 MR. LENGYEL-LEAHU: Among others, but my problem
22 is --

11:24 23 THE COURT: Just a moment. "Among other things"
24 is the problem. I need that laid out between the two of you
25 with specificity. It's kind of like the government always

1 saying, and in good faith, first thing they learned,
2 government's complied with their *Brady* obligations.

11:24 3 MR. LENGYEL-LEAHU: Always.

11:24 4 THE COURT: And that's kind of what I'm hearing
5 from you right now, also, and that is, there's a whole bunch
6 of things I'd like to cross-examine on. And I don't know
7 that we're going down that road until I know very
8 specifically what those are.

11:25 9 MR. LENGYEL-LEAHU: That's why in our reply brief
10 we say -- and I believe if I was to make a motion in limine,
11 just a blanket motion in limine, and not told the Court what
12 I'm trying to exclude, that would be improper and denied
13 outright. Now what I'm suggesting is, and I suggested in my
14 reply, tell me what you what me not to cross-examine on, and
15 we can have a specific discussion. I even suggested two
16 areas that I did, and their response was "That's exactly
17 what we're talking about."

11:25 18 THE COURT: See, there's the mystery because I
19 wasn't there. These kinds of motions just float around.

11:25 20 I think that the beginning is really with you, and
21 that is, you need to be hopefully telling the government the
22 areas that you intend to cross-examine on and see if they
23 object or not.

11:25 24 In other words, they're going to present evidence
25 wherein they try to tell the jury or show the jury your

1 client's going to join ISIL for some nefarious purpose.

2 They're going to object almost categorically to anything

3 they don't believe has a direct nexus to that.

11:26 4 And so their first objection will be, "Well, the
5 marriage has nothing to do with that," and your response
6 will be, "Well, you brought up his motive and intent to join
7 ISIL. We ought to be able to show from the defense
8 perspective that he had another motive for going there."

11:26 9 How do I resolve that without specifics? In other
10 words, that's one specific, but then in the next statement,
11 you've said, "and other things." I don't know what those
12 other things are.

11:26 13 MR. LENGYEL-LEAHU: And that really puts us in a
14 bind, because now I'm in a situation where I'm telling them
15 how I'm going to impeach their own witness before he's taken
16 the stand. Because this is all impeachment. I know what
17 he's going to say because I've seen the six statements, but
18 now I have to telegraph.

11:27 19 THE COURT: You see, it's easily resolved.

11:27 20 What I'm really hearing is a tactical bind you're
21 in. So let's just talk about the real world.

11:27 22 The real world is that if you can get statements
23 that you believe are appropriate in front of the jury, your
24 client may or may not be testifying and may be not
25 testifying and subject to cross-examination.

11:27 1 And if you can't get those statements before the
2 jury, then in the real practical world of trial litigation,
3 your client may have to testify to get those statements in
4 front of the jury. I can't make a decent ruling unless I
5 know what those areas are. And so that kind of,
6 "Your Honor, we've always complied with our *Brady*
7 obligations" is nonsense. And your motion isn't nonsense,
8 but it leaves this broad umbrella right now where I can't
9 make a decent ruling.

11:28 10 So of course I don't want to cut you off from an
11 opening statement. And I don't know that I would preclude
12 you from that opening statement. The problem's going to be
13 if you can back it up. You see, you don't know what I'm
14 going to rule, and I can't foresee every question asked by
15 the government and every area, nor have I heard specifics
16 from you as defense counsel other, than, "Judge, this goes
17 to intent."

11:28 18 Now, you've got options. You can put your client
19 on the stand also.

11:28 20 MR. LENGYEL-LEAHU: Which I don't think we need to
21 bargain his constitutional --

11:28 22 THE COURT: No, you --

11:28 23 MR. LENGYEL-LEAHU: -- rights --

11:28 24 THE COURT: You don't.

11:28 25 MR. LENGYEL-LEAHU: -- for the purposes of a

1 ruling under the Federal Rule of Evidence under 803.

11:28 2 THE COURT: You don't. I'm happy to make the
3 ruling, but you've got to give me specifics, and right now
4 I'm not precluding you from making an opening statement.

11:28 5 MR. LENGYEL-LEAHU: Here's my suggestion.

11:28 6 THE COURT: But what I'm saying is, you can't
7 expect a ruling from the Court.

11:28 8 I'm not precluding you from making the opening
9 statement that your client went for the purpose of getting
10 married. But be forewarned, you could get a ruling from the
11 Court that doesn't find that to be an appropriate portion of
12 the cross-examination. So I'm not bargaining whether your
13 client takes the stand or not at all.

11:29 14 But what you can't get from me is a definitive
15 ruling on something that's so broad and without laying out
16 those specific categories to me.

11:29 17 MR. LENGYEL-LEAHU: Here's my suggestion.

11:29 18 THE COURT: I'm not barring you from your opening
19 statement. Do you hear that?

11:29 20 MR. LENGYEL-LEAHU: I totally heard you, and I get
21 it.

11:29 22 THE COURT: Good.

11:29 23 MR. LENGYEL-LEAHU: But here's, again, my
24 suggestion. You have in our responsive, uh, brief to their
25 motion in limine a couple of areas that I specifically

1 identified. If we could get a ruling just on those based on
2 what you have in the motions presently in front of you.

11:29 3 THE COURT: I'm not barring you from making an
4 opening statement in any area. I'm not making a ruling
5 prematurely, though, until I've heard the direct examination
6 in my court.

11:30 7 MR. LENGYEL-LEAHU: Okay. Am I -- I see what
8 you're saying.

11:30 9 The direct examination. Will we have an
10 opportunity to break on the -- not in the presence of the
11 jury --

11:30 12 THE COURT: Yes.

11:30 13 MR. LENGYEL-LEAHU: -- and discuss specifically
14 the issues that I want to cross-examine the witness without
15 giving 'em an opportunity --

11:30 16 THE COURT: Absolutely.

11:30 17 MR. LENGYEL-LEAHU: -- to confer with counsel when
18 I cross and impeach?

11:30 19 THE COURT: You'll have a break, and we can
20 resolve those after the direct examination, if you'd like.

11:30 21 MR. LENGYEL-LEAHU: Yes.

11:30 22 THE COURT: But what I'm not giving you is a
23 dispositive ruling, because I haven't heard the direct yet.

11:30 24 MR. LENGYEL-LEAHU: Okay. But I still would like
25 a dispositive ruling on the areas that I identified in my

1 brief. And how can we come to that before opening
2 statement?

11:30 3 THE COURT: I'm not precluding you from making any
4 opening statement you'd like to, Counsel.

11:30 5 MR. LENGYEL-LEAHU: Understood.

11:30 6 THE COURT: You want to say that he went to ISIL
7 or to the Middle East to get married; I'm not precluding
8 you.

11:31 9 MR. LENGYEL-LEAHU: Just so I'm clear, you're not
10 going to rule on whether or not I can cross-examine him on
11 that until after he's taken the stand?

11:31 12 THE COURT: That's correct.

11:31 13 MR. LENGYEL-LEAHU: Even though we know what he's
14 going to say, because we've already got the six excerpts.
15 I've got the six excerpts, and in response to the six
16 excerpts, I can even provide you with the exact questions
17 and answers that my client said, "I'm going to get married,"
18 even though they've got their expert that says, "No, you're
19 going to go join the Islamic State."

11:31 20 I know what they're gonna ask. And he's gonna
21 presumably testify, based on the excerpt that they've given
22 us -- and I can show you in the transcript that wasn't the
23 reason that he told 'em. I think we've made the record. We
24 should have the record there that --

11:31 25 THE COURT: Why is a court making those kinds of

1 rulings? I don't understand. I'm not precluding you from
2 the opening statement. I get to actually hear what is
3 presented on direct examination. I'm not guessing. It's
4 not speculative. I'm giving you time to bring this issue to
5 the Court's attention before any cross-examination.

11:32 6 You may get it in, in the context of the
7 interview; you may not. Your client may testify; he may
8 not.

11:32 9 But why am I putting myself in a position with
10 having, you know, a piece of it, and also, why am I putting
11 myself in a position of examining a portion, like the
12 wedding? Well, there's other areas also that you'd like to
13 get in, and all of those or many of those are under the
14 request that I allow them for motive or intent.

11:32 15 Okay. I'm not so sure about that. I don't know
16 yet. As far as precluding you from your opening statement,
17 absolutely not.

11:32 18 MR. LENGYEL-LEAHU: It just changes the opening
19 statement slightly. And to be clear, I didn't bring the
20 motion; they did. In response to the motion, I was the one
21 that sug- -- again, they didn't tell us what they were
22 trying to preclude. A blanket preclusion of everything,
23 which is clearly not anticipated by the rules. So the rules
24 of evidence allow me to inquire, and I would prefer to say
25 in my opening statement the FBI will admit that he told them

1 that it was a wedding he was going to.

11:33 2 THE COURT: Fine.

11:33 3 MR. LENGYEL-LEAHU: Well, if you don't let me
4 cross-examine -- if you're telling me up front that I may
5 not have that opportunity to cross-examine, I don't wanna
6 misspeak in my opening statement because that's not good
7 practice.

11:33 8 So I would prefer a ruling at least on those
9 issues, the ones that we've already addressed. And if the
10 Court would like me to show you specifically in the
11 transcript what I'm talking about in order to determine if I
12 can in advance cross-examine, because, again, it's their
13 motion; I'm responding. That's why I need clarification
14 from the Court now unless the motion's denied.

11:34 15 THE COURT: Okay. All right. Any thoughts?

11:34 16 MR. NAM: Your Honor, in the government's reply,
17 we addressed some of the issues that Mr. Lengyel-Leahu has
18 raised in the opposition and he has just pointed to.

11:34 19 And the government's position is that the
20 particular rule that the defense wants to point to, 803(3),
21 with regard to then existing state of mind, is not a rule
22 that is applicable as to the post-arrest statements that the
23 defendant provided to the FBI agents, because what
24 Mr. Elhuzayel stated as to whatever his intent was, uh, in
25 going to the Middle East is not a -- an existing state of

1 mind as to his -- as to what his intent was when he was
2 attempting to leave the United States. That only represents
3 what the defendant's state of mind was at the time of the
4 interview, not at the time when Mr. Elhuzayel was intending
5 to leave the United States.

11:35 6 So the government's position is that those
7 statements given during the post-arrest interview fall under
8 statement of memory and statement of belief to the extent
9 that the defense -- the defendant was saying that he did not
10 believe, for example, that, uh, Islamic State was a
11 terrorist organization or something to that effect. That
12 would be a statement of belief or a statement of memory that
13 is specifically excluded by Rule 803(3).

11:35 14 So the particular rule that Mr. Lengyel-Leahu
15 seeks to invoke to have those post-arrest statements that he
16 identified in the opposition, those statements would be --
17 would not be admissible by invoking 803(3).

11:36 18 THE COURT: Okay. Counsel.

11:36 19 MR. LENGYEL-LEAHU: Well, he just misstated the
20 rule.

11:36 21 THE COURT: I can't hear you.

11:36 22 MR. LENGYEL-LEAHU: I believe he just misstated
23 the rule. It has nothing to do with belief; it has to do
24 with motive and intent, which F.R.E. specifically talks
25 about, which is what we're talking about here.

11:36 1 And it's a contemporaneous statement because he
2 was arrested at the airport, and they asked him why he's
3 traveling, that goes -- we've got a conspiracy case and
4 we've got an overt act and got an attempt case, but an
5 attempt to provide material support. And the only -- the
6 only illegal act that the government is bringing in is the
7 travel.

11:36 8 THE COURT: Okay. So let's go over each area.
9 Let's make it very simple.

11:36 10 First area is that you'd like to include, when the
11 agent is on the stand, cross-examination that your client
12 gave an explanation that he was going to get married.

11:37 13 MR. LENGYEL-LEAHU: Correct.

11:37 14 THE COURT: What else? I don't want to hear now,
15 "It's in my brief," et cetera. We're going to go through it
16 one by one. What else?

11:37 17 MR. LENGYEL-LEAHU: Can you give me one second,
18 Your Honor?

11:37 19 THE COURT: See, if you can remember, I can't
20 remember. So you go get your brief now. Each specific
21 area.

11:38 22 Take your time now, and I want you to be specific;
23 help me.

11:38 24 What's your second area?

11:38 25 MR. LENGYEL-LEAHU: I didn't mean for this to be

1 it, Your Honor. What I meant for this --

11:38 2 THE COURT: I can take a recess, and you can get
3 organized, then, and come back right after lunch and lay out
4 those areas so I hear an absolute record of what specific
5 area the government has told you that they are introducing
6 that you want to rebut.

11:38 7 I've heard one already. I've heard one already.
8 You want to cross-examine the agent that your client also
9 said, "I'm going to the Middle East to get married." I'm
10 asking you simply, what else?

11:38 11 MR. LENGYEL-LEAHU: The other area pretty sure
12 that I identified was --

11:38 13 THE COURT: Well, why don't you just go get your
14 brief?

11:38 15 MR. LENGYEL-LEAHU: It's not easily accessible.

11:38 16 THE COURT: Well, sure it is. You've got it. You
17 wrote it. Go get it. And I'll wait. We can come back at
18 1:30 if you need to go find it. In other words, I want a
19 record. I want to hear from you. And let's get this
20 resolved for you.

11:39 21 MR. LENGYEL-LEAHU: I guess I wasn't prepared to
22 litigate the issue today, Your Honor. I didn't realize that
23 we were gonna be dealing with this, and I apologize.

11:39 24 THE COURT: Don't worry about that. Let's get it
25 resolved. You don't have to apologize. I'm just not

1 floating around with general statements now from either
2 side.

11:39 3 So 1:30, is that convenient? Two o'clock? Five
4 o'clock? You tell me the time.

11:39 5 MR. LENGYEL-LEAHU: Right. I don't know.

11:39 6 THE COURT: Because your brief isn't as clear as
7 you think.

11:39 8 MR. LENGYEL-LEAHU: Understood.

11:39 9 THE COURT: In other words, it says motive,
10 intent; it leaves this whole speculative area where all of a
11 sudden I'm getting an objection from the government in front
12 of the jury, and that's going to disturb your
13 cross-examination. I'm trying not to do that. So this is
14 the ultimate courtesy.

11:39 15 MR. LENGYEL-LEAHU: Agreed.

11:39 16 THE COURT: And so what are you concerned
17 about? -- that the government is producing in their direct
18 examination of this witness? And one of those is his
19 explanation that he was going to join ISIL or whatever. And
20 you want to show that he also stated that he was going to
21 the Middle East to get married.

11:40 22 MR. LENGYEL-LEAHU: And the second one, if I'm not
23 mistaken, was that he was immigrating and he was going to go
24 to the Middle East to live forever.

11:40 25 THE COURT: Immigrating and going to the Middle

1 East to remain forever. Where is that in your brief?

11:40 2 MR. LENGYEL-LEAHU: I think that was the second
3 point that I raised. I think.

11:40 4 THE COURT: Okay. Do you have your brief with
5 you?

11:40 6 MR. LENGYEL-LEAHU: No, sir, I don't. Like I
7 mentioned, I did not come prepared to litigate those.

11:41 8 THE COURT: Does anybody have a copy of his brief?
9 Ms. Corrigan?

11:41 10 MS. CORRIGAN: I can pull that up, Your Honor.

11:41 11 THE COURT: Okay. Ms. Corrigan's going to pull it
12 up for you, Counsel.

11:41 13 MR. LENGYEL-LEAHU: Thank you.

11:41 14 THE COURT: What's the third area?

11:41 15 MR. LENGYEL-LEAHU: I think those are the major
16 areas.

11:41 17 THE COURT: These are the two areas?

11:41 18 MR. LENGYEL-LEAHU: These are the two, and I
19 believe that we agreed that after he testifies that we could
20 actually litigate the other areas I want to cross-examine
21 him on.

11:41 22 THE COURT: Well, as long as I don't have a record
23 that somehow you're being precluded from giving an opening
24 statement, I don't mind waiting. If you have any concern
25 about your opening statement, then I want to get these

1 resolved.

11:41 2 MR. LENGYEL-LEAHU: As far as the opening
3 statement goes, absolutely, we covered these two.

11:41 4 As far as the opening statement goes, if we can
5 cover just these two, I'm tickled pink, and then we'll deal
6 with other ones at the appropriate time.

11:41 7 THE COURT: Okay. All right.

11:41 8 And the government's objection, again, is under
9 803?

11:42 10 MR. NAM: That's correct, Your Honor.

11:42 11 THE COURT: So let me understand that you don't
12 believe there's a nexus -- and that's a bad word "nexus."
13 But if the defendant's making a statement that he's going to
14 go join ISIL; that in the same conversation, if he said he's
15 going to go get married, that should be precluded.

11:42 16 MR. NAM: That's correct, Your Honor, because that
17 represents a statement of memory, which is specifically
18 excluded by 803(3).

11:42 19 THE COURT: That's his memory? Wouldn't that be
20 his intent? -- like if, I'm gonna go join ISIL or I'm going
21 to get married? I'm having trouble sorting that out.

11:42 22 MR. NAM: The defense raised that under 803(3)
23 such a statement that he intended to go to the Middle East
24 to marry a woman comes in as the defendant's then existing
25 state of mind. The defendant's words as to what his intent

1 was at the time he was attempting to travel was given after
2 he was attempting to travel during the interview; so
3 therefore, it represents what his memory was as to whatever
4 his intent was prior, and that occurred after -- after the
5 time he had a chance to reflect.

11:43 6 THE COURT: Why isn't the same reasoning that he's
7 going there to fight for ISIL?

11:43 8 MR. NAM: Because that is an admission that is
9 given by the defendant, which is permitted under 801,
10 Your Honor.

11:43 11 THE COURT: Okay. Perhaps I haven't paid enough
12 attention to this, and I need to do some research. Okay.

11:43 13 What about his immigrating to the Middle East and
14 he's going to remain? The same reasoning?

11:43 15 MR. NAM: The same reasoning, Your Honor. And I
16 would point Your Honor to the government's reply in which we
17 cite the Ninth Circuit case of *Emert (phonetic)*, in which it
18 states that the exclusion of the statements of memory or
19 belief in Rule 803(3), if that is to have any effect, it is
20 to narrowly limit those admissible statements to
21 declarations of condition. For example, I am scared and not
22 believe -- for example I am scared because someone
23 threatened me. And so the second portion explaining the,
24 uh, feeling of scaredness that a person is expressing would
25 be barred under 803(3). And the government's position,

1 Your Honor, is that what the defendant seeks to have
2 admitted is very similar to that.

11:45 3 THE COURT: So you believe that it's 803(3); is
4 that correct?

11:45 5 MR. NAM: That's the provision under which the
6 defendant is seeking to have his statements admitted,
7 Your Honor. And the government's position is that he may
8 not introduce those additional statements under that
9 particular rule.

11:45 10 THE COURT: No memory or belief, but he can
11 introduce an intent, a plan, a motive, design, a mental
12 feeling, pain, or health.

11:45 13 MR. NAM: That's correct, Your Honor. That which
14 the defendant is expressing as an expression of what he is
15 feeling or intending at that moment, and when he was giving
16 a post-arrest interview, that moment had passed. It was no
17 longer contemporaneous with that intent. He had a chance to
18 reflect and also misrepresent his intent, which is -- which
19 is a standard that the Circuit has used to limit the
20 application. And the government, Your Honor, when we
21 present, uh, the defendant's excerpts --

11:46 22 THE COURT: Is that true? -- during the same
23 interview? In other words, I don't know. I'm humbly
24 asking. It would seem to me that you would be absolutely
25 right if a statement was made and then a person came back

1 subsequent and then made an additional statement. I have no
2 disagreement with that.

11:46 3 When it comes during the same interview, is that
4 the kind of memory that is precluded?

11:46 5 MR. NAM: During the interview he was describing
6 what he was intending earlier when he was attempting to
7 travel outside of the United States.

11:46 8 And so when he was describing what his intent was
9 back then, he was -- it was no longer contemporaneous. He
10 was describing a past condition, past intent. Which is --
11 which the government submits is excluded by the rule and
12 also case law supports such a reading that there -- um, the
13 reasons for which the defendant was leaving the country
14 would be the type of statement of belief or memory that
15 would be barred by the rule because this post-arrest
16 interview was taking place after he had made the attempt to
17 leave the country.

11:47 18 THE COURT: I'm going to go back and do some more
19 research. Apparently I'm not knowledgeable enough to make a
20 ruling, and I will be knowledgeable by the time we
21 reconvene.

11:47 22 What else? What other area -- well, you can have
23 as many pop-ups as you like, but what else? What other area
24 would you like me to look at?

11:47 25 I've heard two things so far. You'd really like

1 to be able to cross-examine and say to the witness on the
2 stand, "Didn't he also say to you that he was going to get
3 married? And didn't he also say to you that he was going to
4 immigrate and remain in the Middle East forever?"

11:48 5 MR. LENGYEL-LEAHU: Exactly right, Your Honor.

11:48 6 THE COURT: Anything else?

11:48 7 MR. LENGYEL-LEAHU: Not at the present time.

11:48 8 THE COURT: There we are. There's my problem.

9 I'm gonna ask you again, and I'm going to press on you now a
10 little bit. Is there anything else that you want to state
11 during your opening statement? Because your claim has been,
12 Judge, you really have to make this ruling now, because I,
13 as defense counsel, need to know can I, with credibility,
14 make an opening statement and say, "By the way, Agent,
15 didn't he also say the following to you?"

11:48 16 I understand that.

11:48 17 MR. LENGYEL-LEAHU: I'm sorry. I will get better
18 at understanding your questions. We just don't know each
19 other well enough yet. And I apologize because I
20 misunderstood. For the purposes of the opening statement,
21 those were the two areas that I wanted to tell the jury that
22 the FBI were told of these reasons for traveling.

11:49 23 THE COURT: Okay.

11:49 24 MR. LENGYEL-LEAHU: And I want to make sure before
25 I say those words that I --

11:49 1 THE COURT: (To U.S. Marshal:) Marcelino, I need
2 to talk to you.

11:49 3 MR. LENGYEL-LEAHU: -- that I'm going to be
4 allowed to ask those specific questions on cross, and then
5 we'll deal with the other ones after he's testified at the
6 appropriate time.

11:49 7 THE COURT: So I'm going to keep repeating back to
8 you like a broken record. There's no prejudice to you in
9 the Court delaying any of those other rulings until after
10 the witness testifies on direct examination.

11:49 11 MR. LENGYEL-LEAHU: Exactly right.

11:49 12 THE COURT: And then I can hear that direct
13 examination, and I'm in a better position to decide if
14 there's -- I'm gonna use a bad word -- nexus, a relation, if
15 you will. But these two areas are of particular concern to
16 you.

11:49 17 And what I'm hearing you don't want the prejudice
18 in front of the jury of making that kind of opening
19 statement, that he also told the FBI that he is going to the
20 Middle East, and then it doesn't come in. And you don't
21 wanna bargain away your constitutional right of your client
22 testifying or not testifying. In other words, it's part of
23 the decision that would go into, frankly, to your client
24 eventually testifying or not.

11:50 25 MR. LENGYEL-LEAHU: Exactly.

11:50 1 THE COURT: Fair summary?

11:50 2 MR. LENGYEL-LEAHU: Exactly right.

11:50 3 THE COURT: Do you mind if I go back and look at
4 803(3) again?

11:50 5 MR. LENGYEL-LEAHU: Yes.

11:50 6 THE COURT: Okay. Do you want to go to lunch?

11:50 7 MR. LENGYEL-LEAHU: Sure.

11:50 8 THE COURT: Okay.

11:50 9 MR. NAM: Your Honor, if I may, this may assist
10 the Court in resolving this. The government's mode of
11 presentation is going to be we're going to be presenting
12 five clips, as provided to the defense, without --

11:50 13 THE COURT: How long are they?

11:50 14 MR. NAM: They're maybe a minute or two each.

11:50 15 THE COURT: Would it be better if I looked at
16 those five clips personally?

11:50 17 MR. NAM: We can provide that to Your Honor. Also
18 we can provide a written transcript. That may be easier.

11:50 19 THE COURT: No, no, we can show it in court.
20 They're five clips, right? Takes a few minutes after lunch.

11:51 21 MS. HEINZ: I'm sorry, Your Honor. I just don't
22 know if we have the technology right now.

11:51 23 THE COURT: Counsel will get his brief, and you'll
24 get the clips. I'm just joking.

11:51 25 MS. HEINZ: We certainly have the -- we actually

1 have the transcript excerpts, but I'm not sure we actually
2 have the clips.

11:51 3 THE COURT: We do. It's just how long it takes to
4 get the brief for defense counsel and the clips for you.
5 We've got all the time in the world.

11:51 6 MS. HEINZ: Yes, Your Honor.

11:51 7 THE COURT: How long will it take you to get the
8 clips?

11:51 9 MS. HEINZ: I guess we have them.

11:51 10 THE COURT: Perfect.

11:51 11 How long will it take you to get the brief?

11:51 12 MR. LENGYEL-LEAHU: I've already got the brief.
13 I've already read it.

11:51 14 THE COURT: There we go.

11:51 15 MS. ELIOT: May I add for the record just so it's
16 complete, I have spoken with defense counsel last week, and
17 I just wanted to be clear that in addition to those excerpt
18 clips we're talking about, that I did "front" with the
19 defense and there had been no objection that in the course
20 of the direct, there were a few additional points from the
21 statement that the agent would testify about without playing
22 a clip. I didn't want it to seem that the only thing we
23 were eliciting about the post-arrest statement --

11:52 24 THE COURT: So --

11:52 25 MS. ELIOT: -- and we've talked about these.

11:52 1 THE COURT: -- we're gonna watch clips after
2 lunch; right? What's convenient for you?

11:52 3 MS. ELIOT: Is 1:30 okay?

11:52 4 THE COURT: How about 2:00?

11:52 5 MS. ELIOT: 2:00 is fine. 2:00 o'clock.

11:52 6 MR. LENGYEL-LEAHU: Um...

11:52 7 THE COURT: Excellent. Good. Well, 2:00 o'clock.
8 That's perfect.

11:52 9 All right. Then, Counsel, you're all ordered back
10 at 2:00 o'clock, and we'll watch the clips. I'll go do some
11 more research on 803(3).

11:52 12 Thank you very much.

11:52 13 *(Lunch recess held at 11:52 a.m.)*

02:14 14 *(Proceedings resumed at 2:14 p.m.)*

02:14 15 THE COURT: Then, Counsel, we're back on the
16 record. The parties are present and counsel are present.

02:14 17 Do you have those portions of the tape, Counsel?

02:14 18 MR. NAM: Yes, Your Honor.

02:14 19 THE COURT: Okay.

02:14 20 MR. NAM: We have the -- we intend to use four
21 videos of Mr. Elhuzayel's post-arrest interview. We are
22 unable to have the video play on the Court's screen, but the
23 audio was coming through. It appears to be some kind of a
24 connection issue with the court's system, Your Honor.

02:15 25 THE COURT: You mean if we were in session right

1 now with the jury, we couldn't play it?

02:15 2 MR. NAM: We would not be using this particular
3 computer, Your Honor.

02:15 4 THE COURT: I'm going to take a recess. I want to
5 see this tonight.

02:15 6 Also, I want to see the entire conversation. I
7 want to see and hear it tonight.

02:15 8 I'll tell you why. It makes a difference if it's
9 contemporaneous. And you may be correct under Rule 803, I
10 don't know yet, but I don't know that you're correct under
11 the rule of completeness. And there's a big difference.

02:15 12 Let me give you an example. I understand that the
13 government's entitled to take those portions and hearsay
14 unless there's an exception to the hearsay rule on the
15 defense part that they shouldn't be submitted. But I don't
16 think you're entitled to use it as a sword and a shield.
17 And I don't know enough about your statement yet. So I'm
18 going to hear the entire conversation this evening.

02:16 19 For instance, if Mr. Elhuzayel said in a portion
20 of it, "I'm going to fight for ISIS," and then half an hour
21 or 45 minutes went away or went by, or he came back in
22 another interview the same day, I have no doubt that you're
23 correct on 803.

02:16 24 But if, in fact, he's making a statement saying,
25 "I'm gonna go fight for ISIS, and, oh, I'm gonna get married

1 and I'm gonna stay forever," I'm not certain you're correct.
2 If you're correct under 803, you're not correct under the
3 rule of completeness under 106.

02:16 4 So it makes a difference to me when and how those
5 statements are made during the interview. And I'm not
6 getting that from either one of your briefings. So I'm not
7 fault-finding. I want to see this tape, and I want to see
8 it on my screen. Okay?

02:16 9 How long will it take? Do we need MIS up here?

02:17 10 THE CLERK: I just asked help to come up.

02:17 11 THE COURT: I'm going to see it tonight. I'm
12 going to see it on my screen, so I'm going to see it in
13 court. That's our fault. We'll get our MIS people up and
14 moving on that for you.

02:17 15 What else would you like to do while we're
16 waiting?

02:17 17 MR. LENGYEL-LEAHU: *(No response.)*

02:17 18 THE COURT: Just wait, apparently; right?

02:17 19 MR. LENGYEL-LEAHU: I'm sorry. I didn't hear you,
20 Your Honor.

02:17 21 THE COURT: What would you like to do while we're
22 waiting? In other words, I'm going to take a recess, and
23 you're sitting until I can get my screens operating. And
24 I'm going to hear the complete statement.

02:17 25 MR. NAM: Your Honor, if I may note, as to the

1 question of rule of completeness, the parties have come to
2 an agreement as -- that that rule is not implicated. That
3 is, the portions that the government has presented to the
4 defense, the defense has agreed that rule of completeness
5 question is not implicated. And so the only question that
6 is before the Court, we believe, is 803(3). And during the
7 break that the Court gave us, the parties have come to an
8 agreement as to how we should proceed. And so the
9 government's, uh, request of the Court is to --

02:18 10 THE COURT: I don't understand. What are you
11 saying?

02:18 12 MR. NAM: We believe and we've conferred with
13 Mr. Lengyel-Leahu prior to reappearing this afternoon,
14 Your Honor. The government intends to, as a matter of trial
15 strategy, introduce through the testimony of the agent that
16 in the post-arrest statement that Mr. Elhuzayel gave as part
17 of his interview, uh -- the government is going to introduce
18 through the testimony of an agent that the defendant
19 intended to marry in Israel and that that -- and that's --
20 and then, secondly, that the defendant intended to live in
21 Israel and not come back.

02:18 22 THE COURT: Are you going to bring that out in
23 your direct examination?

02:18 24 MR. NAM: That's correct. As --

02:18 25 THE COURT: Now, just a moment. Slow down. I

1 didn't hear that before I left. I'm not fault-finding. Is
2 this new?

02:18 3 MR. NAM: That's correct, Your Honor.

02:18 4 THE COURT: This has occurred over the lunch hour.
5 So I didn't miss anything.

02:19 6 MR. NAM: That's correct, Your Honor.

02:19 7 THE COURT: Okay. Now, does that mean that
8 counsel for the defense can make the statement in his
9 opening statement that his client said that he was going to
10 get married and leave forever, basically?

02:19 11 MS. HEINZ: Yes.

02:19 12 MR. NAM: That's not -- we would not object to
13 that, yes, Your Honor.

02:19 14 THE COURT: Is that a complete statement, though?

02:19 15 You see, what can't happen is that each of you
16 can't take a portion. What is objectionable, maybe not
17 legally so, is that if there's a nexus, if there's a
18 continuing flow of thought like "I'm gonna join ISIS; I'm
19 gonna leave the country forever, and I'm gonna get married,"
20 and that comes in close proximity in time, I don't know that
21 the government can use that as a sword and shield under 106.
22 I think that is the rule of completeness or incompleteness.
23 Okay? Now, tentatively.

02:19 24 But, by the same token, I'm reminding you that it
25 might not be if it's made in a different time period,

1 et cetera, and so you may be absolutely right on 803.

02:20 2 I thought we left with this lengthy break because
3 counsel for the defense wanted to make a statement that
4 he -- his client said to the FBI, as well as "I was going to
5 go fight for ISIS," that "I was gonna get married and stay
6 away."

02:20 7 What I don't think counsel can do, though, is make
8 an incomplete statement either. In other words, neither one
9 of you can.

02:20 10 That's kind of chopping it up. So if you're gonna
11 make that statement, it would seem to me it's a complete
12 statement, whatever he said during the interview -- and
13 apparently he said all these things. What leaves me in a
14 quandary is I haven't seen this tape yet, the whole tape. I
15 don't know when he made the statement in context to the
16 other statements he made. I don't know if it's one
17 sentence. I don't know if it's two sentences. I don't know
18 if it's separated by a half hour. I don't even know if it's
19 a subsequent interview the same day, 'cause nobody's shown
20 it to me.

02:20 21 MR. NAM: Apologize. The rule of completeness
22 question is not implicated because the parties, I believe,
23 both agree that the statements that are to be presented to
24 the Court, to the jury is going to be a fair representation
25 of the interview. And so both questions on --

02:21 1 THE COURT: So that's resolved, then.

02:21 2 MR. NAM: Yes, Your Honor.

02:21 3 THE COURT: So it's resolved.

02:21 4 MR. NAM: I believe so, Your Honor.

02:21 5 THE COURT: So it's resolved.

02:21 6 MR. NAM: Yes.

02:21 7 THE COURT: It's resolved.

02:21 8 MR. NAM: Yes, Your Honor.

02:21 9 THE COURT: Excellent.

02:21 10 Okay. Now, what have we been doing for the last

11 two and a half hours, then?

02:21 12 MR. NAM: Government's position is that, as a

13 matter of strategy, we have come to this decision.

02:21 14 THE COURT: I need him back in here. I don't know

15 where he went. I want these screens operating. We're not

16 leaving until everything is set up and ready to go.

02:21 17 THE CLERK: He's coming back.

02:21 18 THE COURT: Everybody's just sitting here.

02:21 19 THE CLERK: He's coming back.

02:21 20 THE COURT: Counsel?

02:21 21 MR. NAM: There's nothing further, Your Honor.

02:21 22 THE COURT: Okay. Counsel?

02:21 23 MR. LENGYEL-LEAHU: I just want to make sure that

24 the record is clear, Your Honor. What we have resolved is

25 the issue that we were discussing prior to the lunch break,

1 which was specifically that I wished to inform the jury in
2 my opening statement that the FBI will testify that my
3 client indicated that he was going to get married and that
4 he was going to immigrate and live there forever.

02:22 5 THE COURT: Okay.

02:22 6 MR. LENGYEL-LEAHU: And that's what we've agreed
7 to. Other things counsel said I don't know if we've
8 necessarily agreed to. We'll have a chance to talk, and I
9 think we can probably resolve some of the other issues we
10 have regarding cross-examination at the appropriate time.

02:22 11 THE COURT: So I'm not ruling on 803 this evening.

02:22 12 MS. HEINZ: That's correct, Your Honor.

02:22 13 MR. NAM: Yes, Your Honor.

02:22 14 THE COURT: All right.

02:22 15 And under the rule of completeness, this is going
16 to be allowed at least as to these two sections: Getting
17 married --

02:22 18 MS. HEINZ: Yes, Your Honor.

02:22 19 THE COURT: -- and leaving forever.

02:22 20 MS. HEINZ: Yes, Your Honor.

02:22 21 THE COURT: Okay.

02:22 22 Okay. Where's Adrian?

02:22 23 Gentlemen, not your fault, but I want these
24 machines operating tonight. So we're sitting. Get them
25 operating with a tape recorder. I want to see a portion of

1 a tape tonight. And also I'm going to need a camera. We're
2 sitting here until I get a camera. I just heard that the
3 Southern Division doesn't have a camera.

02:23 4 COURT TECHNICIAN: We don't have one at the
5 moment.

02:23 6 THE COURT: I was told last week when I asked for
7 a camera -- not from you gentlemen, but from somebody in our
8 bureaucracy that our camera was being charged, so I
9 patiently waited for our camera to be charged. And today I
10 hear that we don't even have a camera. So the Southern
11 Division of the Central District doesn't have a camera?

02:23 12 I'm sitting here waiting. We're not going
13 anyplace until I have a camera tonight. Taxpayer dollars.
14 That's not your fault. Get Ellen downstairs. Call Kathy.
15 Call Kiry, or I will. But a camera will appear in my court.
16 Okay.

02:23 17 So we're sitting.

02:24 18 *(Court and clerk confer.)*

02:24 19 MS. HEINZ: Your Honor, in order to play the full
20 interview, I need to go upstairs and get some discs.

02:24 21 THE COURT: Sure. Go get it.

02:24 22 MS. HEINZ: May I be excused?

02:24 23 THE COURT: Sure. We're sitting here. Go get it.

02:25 24 *(Ms. Heinz exits the courtroom.)*

02:29 25 THE COURT: Now, you've got the snippets playing

1 now, correct?

02:29 2 MR. NAM: That's correct.

02:29 3 THE COURT: And we can see 'em on the screen.

02:29 4 MR. NAM: Yes, Your Honor.

02:29 5 THE COURT: Does that mean you're able to play the
6 full tape? In other words, I don't need to see the full
7 tape as long as you both have entered into this agreement
8 concerning 106. I just want to make certain our equipment
9 is ready to go.

02:29 10 MR. NAM: Yes, Your Honor. We tried with the
11 computer that we will be using during trial before today,
12 and everything was working fine, Your Honor.

02:29 13 THE COURT: So I'm not going to have to stop the
14 trial for this; is that correct?

02:30 15 MR. NAM: Yes, Your Honor.

02:30 16 THE COURT: Okay. Now, I'm waiting for the
17 camera. Where's our camera?

02:30 18 COURT TECHNICIAN: I'm going to go downstairs and
19 see what's going on.

02:30 20 THE COURT: Okay. We'll sit and wait.

02:30 21 And while we're waiting, Ms. Corrigan, Marcelino
22 brought to my attention just a moment ago a conversation
23 apparently your client had had. Would this be a good time
24 to have an *in camera* hearing concerning that, or should that
25 be with other counsel present?

02:30 1 MS. CORRIGAN: I'm assuming it's just as to the
2 soy issue.

02:30 3 THE COURT: It's as to the soy issue. I didn't
4 know what your preference was.

02:30 5 MS. CORRIGAN: I don't have an issue with having
6 it in public unless my client does.

02:30 7 *(Counsel and client confer.)*

02:31 8 THE COURT: Okay. Marcelino, would you relate to
9 me or to all counsel what you told me and what
10 Ms. Corrigan's now aware of.

02:31 11 MS. CORRIGAN: Just for the record, my client's
12 indicated he has no objection. And I have spoken with
13 Mr. Hazelwood about this issue.

02:31 14 U.S. MARSHAL: So Mr. Badawi informed me at
15 lunchtime that the Boost that he's been consuming has
16 contained ingredient of soy, which makes him ill; so
17 therefore he's requested not to take those. Instead, what
18 he's preferred to do is he's asking for double meals in lieu
19 of not taking the Boost.

02:31 20 THE COURT: If you'll eat, I won't have you use
21 Boost.

02:31 22 But that means you have to eat. I've got to make
23 sure you keep your strength up so you remain cognitive and
24 aware of the proceedings.

02:31 25 And if that's acceptable to you, then we'll

1 continue with the same process with -- I'll allow food every
2 day for you.

02:32 3 MS. CORRIGAN: Your Honor --

02:32 4 THE COURT: But I want to make certain that's
5 really what the gentleman's going to do.

02:32 6 MS. CORRIGAN: I heard him say okay. I don't know
7 if the court reporter picked it up.

02:32 8 THE COURT: Mr. Badawi, is this what you want to
9 do?

02:32 10 DEFENDANT BADAWI: Yeah. I'll just eat.

02:32 11 THE COURT: Okay. You'll just eat. Okay.

02:32 12 Will he be fed before he comes to court, and then
13 he'll have the afternoon and evening meals in court?

02:32 14 U.S. MARSHAL: That's correct, Your Honor.

02:32 15 THE COURT: I'll make sure it's *halal* food.

02:32 16 There's a great place across the street, which you
17 probably don't know about, but it's *halal* food, and I'll
18 make sure I honor that for you. Okay?

02:32 19 MS. CORRIGAN: So I think, however, just to make
20 sure we're all clear, though, because tomorrow Ramadan
21 starts. My understanding is my client will not be taking in
22 solid food between sunrise and sunset.

02:33 23 THE COURT: I was mistaken, then.

02:33 24 MS. CORRIGAN: I think we need to be sure that
25 we're clear.

02:33 1 THE COURT: Let me talk to Mr. Badawi. I may have
2 jumped to a conclusion that's not appropriate.

02:33 3 I'm not going to let you stop the Boost, quite
4 frankly, and then dissipate in weight during the trial.
5 I'll try to honor your wishes concerning Ramadan, your
6 religious preference. But the idea of you not taking Boost
7 or supplementing your intake in some way with sustaining
8 liquid is not acceptable to the Court. Because then you're
9 going to dissipate in weight again.

02:33 10 And I'm trying to balance your religious needs
11 against your well-being. And you and I both know that there
12 are exceptions in the Quran and Muslim faith for Ramadan,
13 and one of those is health and well-being.

02:34 14 Now, if you're not going to take Boost, then, once
15 again, you're putting me back in the position of having to
16 take some kind of action. So if you and counsel can come up
17 with any alternative, please tell me.

02:34 18 MS. CORRIGAN: Your Honor, I'm just doing a little
19 bit of Google research here to see if there's an alternative
20 Boost type of drink without soy, if the Court can give me a
21 moment. I'm not familiar with these drinks.

02:34 22 It looks that perhaps Ensure does not have soy,
23 but maybe I could just take a look at that.

02:36 24 Your Honor, it looks like Ensure does have soy in
25 it, but Mr. Hazelwood suggested perhaps he can check with

1 the jail medical staff to see if there's something that can
2 counter the upset stomach.

02:36 3 THE COURT: Let's call over now, then.

02:36 4 U.S. MARSHAL: I did earlier. My suggestion was
5 just inquire with Mr. Badawi: Would giving him something
6 that would treat -- say if it was an upset stomach is what
7 the soy was causing, the jail would simply give him
8 something to sort of counter that.

02:36 9 THE COURT: I want to know what that was. I don't
10 want the trial disturbed.

02:36 11 So, Mr. Badawi, you and your counsel are going to
12 talk. You're going to come up with a solution for me.

02:36 13 DEFENDANT BADAWI: I'll just drink it.

02:36 14 THE COURT: I'm sorry, sir?

02:36 15 DEFENDANT BADAWI: I'll drink it.

02:37 16 THE COURT: If there's something that settles your
17 stomach with the soy, maybe we can give that to you also;
18 but I don't know. So we're gonna find out from the jail.
19 And Marcelino's going to place a call over. And we're going
20 to do all this today. Try to make you as comfortable as
21 possible, sustain your weight, obtain your cognitive
22 ability, try to honor your religious privileges, and keep
23 you healthy.

02:42 24 *(Pause in the proceedings.)*

02:44 25 THE COURT: Okay. We're back on the record and

1 all counsel are present.

02:44 2 **COURTROOM 9D DOCUMENTED WITH PHOTOGRAPHS**

02:44 3 THE COURT: Counsel, as counsel for your client,
4 would you go back with my court technicians. I want you to
5 take a picture from anyplace in the courtroom.

02:44 6 If you can see those belly chains in any picture,
7 I want you to record that for me.

02:44 8 I don't believe you can, and if you can, we're
9 going to change it until it's absolutely pristine and
10 nothing can be seen.

02:44 11 You can move around. You snap the pictures for
12 us. The record should reflect I'm having counsel make
13 certain that his client and the belly chain, leaving his
14 feet and his hands operable, is not able to be seen.

02:44 15 Counsel, you're going to take the picture,
16 actually.

02:44 17 MR. LENGYEL-LEAHU: Oh, I thought -- you want me
18 to take a picture if I saw something?

02:45 19 THE COURT: No. I'm going to take pictures anyway
20 for the Circuit.

02:45 21 I want them to see. And then we're going to go
22 next door and take pictures.

02:45 23 In other words, if a jury can see anything or you
24 can see anything, I want you to let me know and take the
25 pictures.

02:45 1 Can you see that chain?

02:45 2 MR. LENGYEL-LEAHU: *(Counsel complies.)*

02:45 3 THE COURT: Make sure you get back to the second
4 row also. The record should reflect you're in the first
5 row. If I need to block out that row, I'll happy to do that
6 for you.

02:45 7 Counsel, were you able to see anything?

02:45 8 MR. LENGYEL-LEAHU: No, Your Honor.

02:46 9 THE COURT: Okay. I just wanna make sure you're
10 satisfied.

02:46 11 Now you're in the second row.

02:46 12 *(Photographs taken.)*

02:46 13 THE COURT: Why don't you go back to the third row
14 just to be certain that we get all the angles.

02:46 15 *(Additional photographs taken.)*

02:47 16 MR. LENGYEL-LEAHU: Got all the rows, Your Honor.

02:47 17 THE COURT: Okay. Were you able to see that chain
18 in any way? If you were, I want to change the configuration
19 and make sure you're satisfied.

02:47 20 MR. LENGYEL-LEAHU: No, sir, I was not able to see
21 the chain.

02:47 22 THE COURT: Okay. Now I want to take a couple
23 more pictures. Bring the camera with the extension, if you
24 would be so kind.

02:47 25 I'm going to order these be developed, made part

1 of the record, but sealed for security purposes so we have
2 them on record. That way we'll demonstrate, although
3 there's a belly chain, there's complete access, hands, foot,
4 and the chain is completely unobtrusive and not able to be
5 seen.

02:49 6 Now I'd like Mr. Badawi and Mr. Elhuzayel
7 transported next door to the complex courtroom.

02:50 8 I'd like them placed in the seats where we had
9 them situated in before. And the head marshal, counsel, I'm
10 going to ask -- which means order -- you to come next door.
11 You're going to be seated. I want the Circuit to see what
12 that would look like if there were no restraints on your
13 client. So they'll know what you're talking about.

02:50 14 And the family's welcome to come next door also.
15 We're going to open the courtroom also.

02:50 16 *(Further proceedings reported in the complex*
17 *courtroom as follows:)*

03:03 18 **COMPLEX COURTROOM 9C SETUP DOCUMENTED WITH PHOTOGRAPHS**

03:03 19 THE COURT: All right. We're on the record and
20 all counsel are present.

03:03 21 And what I'd like to do is take some photographs
22 of Mr. Wolfsen. I'm just joking. Mr. Wolfsen, if you will
23 have a seat, sir. It's a pleasure. Thank you.

03:04 24 I'd like to take some photographs of this
25 courtroom for a moment. Just so the Circuit knows what

1 we're talking about. So would you be kind enough to take a
2 photograph of counsel and with the marshal seated up there.

03:04 3 Okay. If you be kind enough to take a picture of
4 the gentlemen and the counsel.

03:04 5 COURT TECHNICIAN: *(Complies.)*

03:04 6 THE COURT: And then would you step back and get a
7 broader view of the entire complex for the high security
8 courtroom just because I think we're trying to avoid this
9 courtroom if possible.

03:04 10 Let the record reflect if we had more than two
11 defendants, I certainly would consider holding it here. I
12 just think it's more humane, a better image to try to get
13 back to what I call a normal court than this particular
14 court with two defendants.

03:04 15 Now, for the record, I've offered to take the
16 belly chain off your client, and I want you to come down and
17 I want you to take a picture from this location for any
18 reviewing court of why I'm willing to take the belly chain
19 off here. And the reason for that is so I perfect my record
20 that there's no access to the public; there's no loss
21 proximity; and that the marshals are seated behind the
22 defendants and would be seated standing off to
23 Mr. Elhuzayel's right side. So there's no place the
24 gentlemen could go, including down a long narrow aisle.

03:04 25 So I want this photograph right here.

03:04 1 COURT TECHNICIAN: *(Complies.)*

03:04 2 THE COURT: And here.

03:04 3 COURT TECHNICIAN: *(Complies.)*

03:04 4 THE COURT: And then a broad sweep of the
5 courtroom.

03:04 6 COURT TECHNICIAN: *(Complies.)*

03:04 7 THE COURT: If you would be so kind to go up on
8 the bench and take a nice picture. Just get a broad view of
9 the courtroom.

03:04 10 COURT TECHNICIAN: *(Complies.)*

03:04 11 THE COURT: Okay. I'm going to order these
12 pictures are developed and then sealed just so that the
13 security is kept in place. And I want to thank you very
14 much.

03:04 15 COURT TECHNICIAN: Thank you.

03:04 16 THE COURT: All right. Counsel, then is there
17 anything further this evening, any other business with the
18 court; otherwise, I'm going to let you go.

03:04 19 MS. HEINZ: Nothing from the government,
20 Your Honor.

03:04 21 MR. LENGYEL-LEAHU: Nothing on my behalf,
22 Your Honor.

03:04 23 MS. CORRIGAN: Nothing on my behalf, Your Honor.

03:04 24 THE COURT: All right. Let me just perfect my
25 record, though, because of that past activity in relation to

1 the marshal. I'll make the record on your behalf that your
2 client has been well behaved since that time and your claim
3 is it was the medication. I can't take that chance when
4 there's any kind of altercation or violence.

03:04 5 By the same token, obviously, your client's going
6 to be unrestrained, arms, feet. I've got him in a belly
7 chain in the other court, which can't be seen. I'm willing
8 to take that belly chain off in this court, but I'm not
9 willing to take that belly chain off if we move to that
10 court. Do you truly want to be in that other court or
11 remain in this court, which is the complex courtroom?

03:04 12 MR. LENGYEL-LEAHU: We want to stay in this
13 courtroom, Your Honor.

03:04 14 THE COURT: You're not waiving any rights or
15 concerns. That's understood by me. By the same token, I'd
16 like to humanize this as much as possible. I think this is
17 an overwhelming court with the two defendants in it. It was
18 built for the Aryan Brotherhood, and Mexican Mafia, and a
19 number of defendants, not just two. It's a court I prefer
20 not to be in with just two clients.

03:05 21 Tomorrow's voting day. We asked the jury to come
22 in at 7:30. I like to get them here as quickly as possible
23 and start that process.

03:05 24 I'm going to read the Indictment again, and I'm
25 going to emphasize again that it's a charging document.

03:05 1 I'm going to give you some period of time to
2 question jurors individually or collectively. I'm not
3 setting a time limit on it, but I will suggest it's not more
4 than 20 minutes. I do not expect questions such as, "If the
5 evidence showed... what would you think or do?" That's
6 going to meet with my disapproval immediately. I don't want
7 any pre-indoctrination. I don't want any instruction on the
8 law. I think I've been extraordinarily generous in
9 providing this questionnaire and giving you some questions
10 and time with it.

03:05 11 We'll take Juror No. 12 almost immediately outside
12 the presence of the jury and discuss with Juror No. 12
13 whether they can be fair and impartial and move on from
14 there.

03:05 15 Remind me to let the jury go at 4:30 'cause it's
16 voting day, and I made a mistake bringing them in that early
17 on the voting day.

03:05 18 May I talk with Ms. Corrigan on another unrelated
19 matter about the CJA panel, with your permission, Counsel?

03:05 20 MS. HEINZ: Yes, Your Honor.

03:05 21 THE COURT: It has to do with CJA.

03:05 22 MR. LENGYEL-LEAHU: Of course.

03:05 23 THE COURT: Okay. 7:30 tomorrow morning.

03:05 24 MS. HEINZ: Thank you, Your Honor.

03:05 25 THE COURT: All right. Have a good evening now.

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MS. CORRIGAN: Thank you, Your Honor.

MR. LENGYEL-LEAHU: Thank you.

(Proceedings adjourned at 3:05 p.m.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, 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.

Date: March 2, 2017

/s/ Debbie Gale

DEBBIE GALE, U.S. COURT REPORTER
CSR NO. 9472, RPR, CCRR