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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Michael Lacey, *et al.*,

Defendants.

NO. CR-18-00422-PHX-SMB

**DEFENDANTS' MOTION TO
DISCLOSE GRAND JURY
INSTRUCTIONS ON PROSTITUTION**

(Oral argument requested)

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1 **MOTION**

2 Defendants Michael Lacey, James Larkin, John Brunst, Scott Spear, Andrew Padilla, and
3 Joye Vaught (“Defendants”), by and through their undersigned attorneys, move for an order
4 requiring the government to disclose the instructions given to the grand jury concerning the state
5 offenses of prostitution as incorporated in the Travel Act charges. Alternatively, Defendants move
6 for an order requiring the government to disclose those instructions to the Court for *in camera* review.
7 This Motion is based on the following Memorandum of Points and Authorities, the Court’s file, and
8 any evidence or argument presented at the hearing on this matter. Excludable delay under 18 U.S.C.
9 § 3161(h)(1) may occur as a result of this Motion or of an order based on this Motion.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 The Defendants are charged with conspiracy to commit and commission of Travel Act
12 violations for their alleged promotion/facilitation of a particular business enterprise or enterprises
13 involving prostitution in violation of state laws that have yet to be specified by the government. In
14 preparation for trial, the parties have begun to prepare draft jury instructions for this Court’s
15 consideration. As part of that process, defense counsel have reviewed the government’s proposed
16 instructions. Notably, the government’s proposed Travel Act instructions do not include the
17 elements of a prostitution offense or offenses under state law. Because the government did not
18 include the elements of a prostitution offense or offenses in its draft jury instructions, defense
19 counsel believe that the government gave no such instruction to the grand jury when the grand jury
20 made its decision to indict the Defendants. If the government gave no such instruction, or gave an
21 incorrect instruction, the government did not properly advise the grand jury on the law prior to its
22 issuance of the indictment.

23 Defense counsel’s concern about the omission of such an instruction was reinforced by the
24 government’s statements to the Court at the June 7, 2021 teleconference. At that conference, the
25 government advocated for retention of a question on the jury questionnaire that asked generally
26 about prostitution, with no definition of that term. (*See* Jun. 7, 2021 Tr. at 16-17, a true and correct
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1 copy of which is attached hereto as Exhibit A.) Further, the government's comments indicate that
2 its still undefined unlawful prostitution offense or offenses includes legal escort services.¹ (*Id.* at 15.)

3 Under the Travel Act, the government must establish that the Defendants "use[d] the mail
4 or any facility in interstate or foreign commerce, with intent to . . . facilitate . . . unlawful activity . . .
5 and thereafter perform[ed] or attempt[ed] to perform" an act in furtherance. 18 U.S.C. § 1952(a).
6 In this case, the "unlawful activity" at issue is the purported facilitation of a "business enterprise
7 involving . . . prostitution offenses *in violation of the laws of the State* in which they [were] committed."
8 18 U.S.C. § 1952(b)(1) (emphasis added). As relevant here, the Ninth Circuit has explained that,
9 under the Travel Act, "[w]hen the unlawful activity charged in the indictment is the violation of state
10 law, the commission of or the intent to commit such a violation is an element of the federal offense."
11 *United States v. Bertman*, 686 F.2d 772, 774 (9th Cir. 1982). "The government . . . must prove as part
12 of the Travel Act charge that the defendant has or could have violated the underlying state law, and
13 the defendant may assert any relevant substantive state law defense." *Id.* Based on the plain text of
14 the Travel Act and the well-settled holding in *Bertman*, the government was required to provide the
15 grand jury with an instruction on the elements of the State statutes alleged to have been violated by
16 the purported business enterprise(s) facilitated by the Defendants.

17 Moreover, in *United States v. Jones*, 909 F.2d 533 (D.C. Cir. 1990), cited favorably by the Ninth
18 Circuit, the D.C. Circuit vacated a Travel Act conviction pertaining to the facilitation of prostitution
19 because the Travel Act jury instructions failed to inform the jurors as to "what, precisely, constitutes
20 unlawful prostitution in each relevant jurisdiction." *Id.* at 538. In that case, the government
21 prosecuted seven women who worked for an escort service as well as their dispatcher under the

22 ¹ See *Doe ex rel. Roe v. Backpage.com, LLC*, 104 F.Supp.3d 149, 156-57 (D. Mass 2015)
23 ("The existence of an escorts section in a classified ad service, whatever its social merits, is not
24 illegal."); *Backpage.com, LLC v. McKenna*, 881 F.Supp.2d 1262, 1282 (W.D. Wash. 2012)
25 ("[N]umerous states license, tax and otherwise regulate escort services as legitimate
26 businesses."); *Dart v. Craigslist, Inc.*, 665 F.Supp.2d 961, 968 (N.D. Ill.2009) (Sheriff Dart "is
27 simply wrong when he insists that [craigslist's adult services category and related subcategories]
28 are all synonyms for illegal sexual services;" craigslist's "adult services" section "is not unlawful
in itself nor does it necessarily call for unlawful content.").

1 theory that they facilitated prostitution in violation of the Travel Act as prostitution was illegal in
2 Virginia, Maryland, and D.C., where the escort service operated. Rather than provide the jurors with
3 the specific elements of prostitution in each of those jurisdictions, the instruction at issue “implied
4 that the jury could convict if the activities of the escort service violated only some vaguely conceived
5 lay notion of prostitution.” *Id.* “As a result, the jury may have convicted the appellants even though,
6 were its attention so directed, it would not have found that the appellants had the requisite intent
7 specified by the state laws with respect to each element of the escort service’s allegedly unlawful
8 activity.” *Id.* The D.C. Circuit explained that vacating the convictions was necessary because “the
9 Government [had] in effect [been incorrectly] relieved of the duty to prove beyond a reasonable
10 doubt one or more of the facts necessary to constitute an offense under the Travel Act” in violation
11 of the Due Process Clause. *Id.*

12 Further, the Court elaborated that:

13 A proper instruction would make it clear to the jury that in order
14 to convict, they must find that the defendant specifically intended
15 to promote (et cetera) an activity that involves all of the elements
16 of the relevant state offense. Such an instruction would inform
17 the jury that the defendant must have performed or attempted to
18 perform an act in furtherance of the business, with the intent that
19 each element of the underlying state crime be completed, but that
20 they need not conclude that each was in fact completed.

21 *Id.* at 539.

22 In light of the government’s omission of a proposed jury instruction of any kind concerning
23 prostitution here, notwithstanding the fact that such an instruction is required, as well as the
24 government’s comments at the June 7, 2021 status conference, there is no basis to believe that the
25 government provided such instructions to the grand jury. Under these circumstances, Defendants
26 are entitled to the legal instructions provided to the grand jury and any colloquy between the grand
27 jurors and the prosecutors regarding the applicable law. Although the secrecy of the grand jury is
28 protected as outlined in Rule 6(e) of the Federal Rules of Criminal Procedure, courts in this Circuit
have recognized that instructions on the law that were given to grand jurors “do not fall within the
bar of Rule 6(e) because their disclosure would not reveal the substance or essence of the grand jury

1 proceedings.” *E.g., United States v. Diaz*, 236 F.R.D. 470, 477-78 (N.D. Cal. 2006) (granting
2 defendant’s request for disclosure of grand jury instructions on the law). Indeed, courts have
3 repeatedly ruled that defendants are “entitled to disclosure of . . . [t]he legal instructions given to the
4 grand jury regarding the charges on which they are deliberating . . . even without a showing of
5 particularized need.” *United States v. Belton*, 2015 WL 1815273, at *3 (N.D. Cal. Apr. 21, 2015)
6 (ordering the government to disclose instructions to the defense); *see also United States v. Fuentes*, 2008
7 WL 2557949, at *4 (E.D. Cal. June 24, 2008) (“The government opposes this request on the grounds
8 that the defendants have not made a showing of particularized need. The argument is unpersuasive.
9 The defendants are entitled to the transcript of the instructions and charges to the grand jury.”).

10 Further, under Rule 6(e), courts separately have the independent authority to order the
11 disclosure of “a grand-jury matter” when the material would be used “in connection with a judicial
12 proceeding” or “at the request of a defendant who shows that a ground may exist to dismiss
13 the indictment because of a matter that occurred before the grand jury.” Fed. R. Crim. P.
14 6(e)(3)(E)(i-ii). Here, Defendants have demonstrated that there is as good faith basis to believe that
15 the government has misled or failed to advise the grand jury on a key matter of law. The failure to
16 include an instruction on prostitution with respect to a Travel Act charge concerning the facilitation
17 of prostitution in violation of State law **is reversible error**. *See Bertman*, 686 F.2d at 774; *see also Jones*,
18 909 F.2d at 538-39. Similarly, dismissal of the indictment is appropriate if such an instruction was
19 omitted from the instructions on the law provided to the grand jury. *See, e.g., United States v. Peralta*,
20 763 F. Supp. 14, 21 (S.D.N.Y. 1991) (dismissing indictment and concluding that “defendants
21 were seriously prejudiced by,” among other things, “the government’s misleading statements
22 of law”). Thus, although Defendants are entitled to disclosure of the instructions on the law
23 and any colloquy between the grand jurors and the prosecution concerning the elements of
24 the Travel Act charges without a showing of need, Defendants have amply demonstrated that
25 the disclosure of this material is necessary to prevent a grave injustice and reversible error –
26 proceeding to trial on what may be a faulty indictment.

CONCLUSION

For all these reasons, this Court should order the government to disclose the instructions on the law provided to the grand jury and colloquy between the prosecution and the grand jurors concerning the applicable law. Alternatively, Defendants request this Court to review those materials to determine whether the grand jury was instructed in a manner that respected the Defendants' Due Process rights.

RESPECTFULLY SUBMITTED this 9th day of June, 2021,

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Pursuant to the District's Electronic Case Filing Administrative Policies and Procedures Manual (May 2018) § II (C) (3), Erin E. McCampbell hereby attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized its filing.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,)
) No. CR-18-0422-PHX-SMB
 Plaintiff,)
)
 vs.) Phoenix, Arizona
) June 7, 2021
Michael Lacey,) 4:04 p.m.
James Larkin,)
Scott Spear,)
John Brunst,)
Andrew Padilla,)
Joye Vaught,)
)
 Defendants.)

)

BEFORE: THE HONORABLE SUSAN M. BRNOVICH, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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P R O C E E D I N G S

1
2 COURTROOM DEPUTY: On the record in CR 18-422, United
3 States of America versus Michael Lacey and others, before the
4 Court for a status conference.

5 MR. RAPP: Good afternoon, Kevin Rapp on behalf of the
6 United States. Also appearing for the United States is
7 Reginald Jones, Margaret Perlmeter, Peter Kozinets, Andrew
8 Stone, and Daniel Boyle.

9 MR. CAMBRIA: Good afternoon, Your Honor. Paul
10 Cambria and Erin Paris appearing on behalf of Mr. Lacey. And
11 we waive his appearance.

12 MS. BERNSTEIN: Good afternoon, Your Honor. Whitney
13 Bernstein and Tom Bienert on behalf of James Larkin, who is
14 also present.

15 MR. FEDER: Bruce Feder for Scott Spear, who is
16 appearing digitally. Good afternoon.

17 MR. LINCENBERG: Good afternoon, Your Honor. Gary
18 Lincenberg and Gopi Panchapakesan on behalf of Mr. Brunst, who
19 is present for this hearing.

20 MR. EISENBERG: Good afternoon, Your Honor. David
21 Eisenberg on behalf of Andrew Padilla. We would waive his
22 appearance for the purpose of this hearing.

23 MS. BERNSTEIN: Good afternoon. Joy Bertrand appears
24 for Defendant Joye Vaught. She also waives her appearance for
25 today's hearing.

1 THE COURT: And that should be everybody.

2 Okay. So we're set to discuss the jury questionnaire,
3 because we want to get those sent out so that we can have them
4 back by the final trial management conference to do some
5 screening.

6 I've looked at -- after I discovered that I missed it,
7 I looked at the juror questionnaire that was filed on June 26th
8 of '20. Is that the most recent jury questionnaire submitted
9 by the parties?

10 Mr. Rapp?

11 MR. RAPP: Yes.

12 THE COURT: Okay. So that's the one I'm working off
13 of. And I'll just go through it with you.

14 With respect to the, sort of, instructions to the
15 jurors, on the first page I'm adding a couple of lines just to
16 let the jurors know that this information will be kept
17 confidential. And it reads: Only the Court and the attorneys
18 will use the information that you are -- that you give in
19 response to this questionnaire. Your responses will be kept
20 confidential, and all the parties will be under orders to
21 maintain the confidentiality of any information they learn in
22 the course of reviewing this questionnaire.

23 Is there any objection to adding that from the
24 government?

25 MR. RAPP: Not -- no, Your Honor.

1 THE COURT: Any objection to adding that from -- these
2 aren't in order -- from Ms. Bertrand?

3 MS. BERTRAND: Yes, Your Honor.

4 THE COURT: Do you have an objection to adding that?

5 MS. BERTRAND: No.

6 THE COURT: Okay. Mr. Eisenberg, do you have any
7 objection?

8 MR. EISENBERG: No, Your Honor.

9 THE COURT: Mr. Bienert, any objection -- or, I'm
10 sorry, Ms. Bernstein?

11 MS. BERNSTEIN: No, Your Honor.

12 THE COURT: Mr. Feder?

13 MR. FEDER: No. Thanks.

14 THE COURT: Mr. Lincenberg?

15 MR. LINCENBERG: No, Your Honor.

16 THE COURT: And, Mr. Cambria?

17 MR. CAMBRIA: No, Your Honor.

18 THE COURT: Okay. Then I will also, on page 2 -- the
19 jurors will be filling this out electronically, and you'll be
20 given the questionnaires electronically, usually on a zip
21 drive, so I'm taking out any language that talks about writing
22 on extra pages or using a black or blue pen, but other than
23 those types of things, I'm not making any other edits.

24 On page 3, with respect to the jury service and length
25 of trial, the first paragraph, I'm changing it -- obviously, I

1 need to change the dates -- I'm changing it -- I'm crossing out
2 Tuesday through Friday, and what I plan to do is insert a
3 proposed calendar so that the jurors can actually see in the
4 months of August, September, October, November, what days we
5 anticipate them being in trial. I've found that's more helpful
6 than listing out the days. I guess I'm a visual person. But
7 if they were in person, I would put a calendar up on the Elmo
8 for them to look at while they were answering, so I wanted to
9 include that.

10 So let me ask you -- I did ask Elaine to send you an
11 updated trial calendar. I understand that there was some
12 concern about trying to use every potential day, and so I
13 reduced it to mostly four-day weeks except for a couple weeks
14 before and after that long break.

15 But, from the government's perspective, did you have
16 any objection to the updated trial calendar or were there any
17 additional days that you want to be blocked?

18 MR. RAPP: No. We don't have any objection to the
19 calendar, the most recent calendar, and we don't require any
20 days to be blocked.

21 THE COURT: Okay. Mr. Cambria, did you get that
22 calendar and do you have any additional days you want blocked?

23 MR. CAMBRIA: I did and I do not, Your Honor. We do
24 not object to it.

25 THE COURT: Okay. Mr. Feder?

1 MR. FEDER: No objection. I appreciate the
2 modification.

3 THE COURT: Mr. Lincenberg?

4 MR. LINCENBERG: Your Honor, I have no objection. I
5 do want to advise the Court that both Mr. Bienert and
6 Ms. Bernstein and I have a trial set in San Diego, and the
7 Court set the trial date overlapping with our current trial.
8 At the time we advised the Court that we had -- I believe we
9 had a stipulation pending before Your Honor. We fully expected
10 it to be signed and have an August trial date. I don't expect
11 there will be a problem with Judge Curiel in moving that date,
12 but the government is now opposing our moving that date. I
13 will let you know if it doesn't get worked out. I think it
14 will get worked out, I just feel obligated to let the Court
15 know that.

16 THE COURT: And did you say that was supposed to be in
17 August?

18 MS. BERNSTEIN: November. It's November.

19 THE COURT: All right. Well, let me --

20 MR. LINCENBERG: We had alerted Judge Curiel at the
21 time that we had a stipulation the trial was likely to go
22 through December, and he was just trying to figure out a date
23 to set, I think. I believe he'll go our way and understand
24 that. We just needed to alert the Court.

25 THE COURT: Okay. I appreciate that.

1 So, let's see, Ms. Bernstein, other than that, any
2 other objections to the trial calendar?

3 MS. BERNSTEIN: No, Your Honor. No, Your Honor.

4 THE COURT: Mr. Eisenberg?

5 MR. EISENBERG: I have reviewed it, Your Honor. I
6 don't have any objections to it, but I would say that as time
7 goes on, sometimes other judges will set a time, for example,
8 for a sentencing or a hearing on another matter, and I will
9 bring those to the attention of Your Honor.

10 Typically, the judges I know will work with the Court
11 in terms of trying to set those dates around our trial, but as
12 of right now I don't anticipate or have not heard of any
13 conflicts in my calendar.

14 THE COURT: Okay. All right. Thank you.

15 Ms. Bertrand?

16 MS. BERTRAND: No objection, Your Honor. I have
17 reviewed the calendar as well.

18 THE COURT: Okay. All right. Let's see. Okay. On
19 page 5 I have removed question 9 where you ask for the juror's
20 full name. Their name will not be anywhere on this
21 questionnaire.

22 Question 15 and 16 where we ask: Have you been tested
23 for COVID or have you been diagnosed, I'm just adding the --
24 I'm narrowing the time frame, because I don't want to know if
25 they've ever been tested. I want to know if they've been

1 tested within the 14 days prior to them filling this out. And
2 the same with diagnosis or a positive test, I'm just adding
3 within the last 14 days.

4 On page 8, question 31, where you ask about a spouse,
5 partner, or close family member in the military, where it says
6 who, I'm just going to qualify that by saying, no names,
7 relationship only. So they can tell us if it's their spouse or
8 their brother, but we -- I'm not going to ask them for their
9 relatives' names.

10 On page 12 I don't understand the objections, to be
11 quite frank.

12 So, Mr. Rapp, it says the government objects to United
13 States Citizenship and Immigration Services and ICE.

14 MR. RAPP: Right. So, you know, that particular
15 federal agency is not involved in this case in any respect. In
16 other words, they're not one of the investigating agents on the
17 case, those three agencies, the United States Postal Service,
18 the FBI, and the IRS. They do not factor into any of the
19 investigations of the trafficking cases that will be presented
20 at trial.

21 There is one case that involves Homeland Security
22 investigations, and so all we asked was that the -- that
23 particular agency be substituted for Homeland Security, because
24 they're not going to hear any evidence about the U.S. Customs
25 Enforcement, ICE.

1 THE COURT: Okay. And the defense -- it's written
2 defense objects to replacing USCIS and ICE with Homeland
3 Security. Does someone from the defense want to answer what
4 that objection means?

5 MS. BERNSTEIN: Your Honor, as best I recall, and,
6 forgive me, because this was about a year ago, but as best I
7 recall, we just wanted all of the federal law enforcement
8 agencies listed, felt that that was what we were targeting for
9 the jurors. I don't know that there aren't instances where ICE
10 was later involved, or UC -- USCIS was later involved, I don't
11 know, and perhaps Mr. Rapp can proffer if anyone ever sought or
12 obtained any type of visa or anything as a result of any of the
13 allegations, if so, that might be relevant.

14 THE COURT: Okay. Anyone else?

15 (No response.)

16 THE COURT: Okay. I'm inclined -- as I read the
17 question, the goal is to find out if anybody has any experience
18 in law enforcement. So I'm not sure that it -- just because
19 United States Citizenship and Immigration Services might not be
20 involved in this case, it still could be a relevant answer to
21 their experience with law enforcement, because the question
22 asks about state and local police officers, sheriffs, troopers,
23 military police, so I'm inclined to leave United States
24 Citizenship and Immigration Services in, as well as Homeland
25 Security.

1 Does anybody have anything else they want to put on
2 the record about that question?

3 MR. RAPP: No, Your Honor.

4 THE COURT: Okay. Page 13, which is the end of
5 question 41, it says, defendants object to the use of the word
6 victim. The government objects to the used phrase other
7 interested parties as a substitution for victim.

8 I'm going to leave victim in there only because it
9 talks about test -- family or close friends testifying in court
10 proceedings. I would think it would be relevant to know
11 whether, if it was a criminal case, they were testifying as a
12 victim or just a witness, so I'm going to leave the word victim
13 in and strike other interested party.

14 Question 43, which has three parts, I'm striking the
15 entire question, only because I don't like the way it's
16 phrased. I think it's set up to -- to not be a fair question,
17 because there is nothing in here explaining to the jurors or
18 asking them if they understand the rights that govern a
19 criminal trial.

20 I would suggest including something like this -- and
21 I'm taking this from a different questionnaire -- that reads:
22 The law requires the government to prove defendant guilty
23 beyond a reasonable doubt. Each defendant is presumed by law
24 to be innocent until proven guilty beyond a reasonable doubt.
25 This means the defendant is not required to produce any

1 evidence or prove innocence.

2 Then a follow-up question: Do you understand those
3 principles of law?

4 And a follow-up question: Do you agree with this
5 principle -- these principles? Yes or no? If no, please
6 explain.

7 What's the government's position?

8 MR. RAPP: No objection to that question as read.

9 THE COURT: And, let's see, for the defense, let's
10 start with Ms. Bernstein?

11 MS. BERNSTEIN: Your Honor, I think that preamble
12 makes sense. And after what the Court read, we would request
13 that we still include those three questions, A, B, and C, to
14 follow what the Court read in the initial questions that the
15 Court read.

16 THE COURT: Okay. Mr. Lincenberg?

17 MR. LINCENBERG: I agree with what Ms. Bernstein just
18 stated, Your Honor.

19 THE COURT: Okay. Mr. Feder?

20 MR. FEDER: Same, Judge. We would request what
21 Ms. Bernstein recommended and with the Court's preamble that
22 you stated.

23 THE COURT: Okay. Mr. Cambria?

24 MR. CAMBRIA: Yes, I agree with that as well, Your
25 Honor.

1 THE COURT: Mr. Eisenberg?

2 MR. EISENBERG: I agree as well, Your Honor.

3 THE COURT: And, Ms. Bertrand?

4 MS. BERTRAND: Agreed. Thank you.

5 THE COURT: Okay. So I'll add A, B, and C, however,
6 I'm not going to do this: Agree strongly; agree somewhat;
7 disagree strongly; disagree somewhat. It's either just going
8 to be agree or disagree, but I'll include the questions. Okay.

9 MS. BERNSTEIN: Thank you, Your Honor.

10 MR. FEDER: You're going to keep the why question,
11 though, right, Judge?

12 THE COURT: Yes. Do you agree with these principles,
13 and, if no, please explain, yes.

14 MR. FEDER: Okay. Sure. Thank you.

15 THE COURT: Okay. Page 16, question 50, the
16 defendants object to the term victims. In this question I
17 agree with that objection, so I'm going to take out the term --
18 the word victims. And so it will read: Organizations that
19 advocate for human trafficking, sex trafficking awareness, or
20 the prevention of sexual exploitation of women.

21 51, the defendants object to the inclusion of the term
22 child exploitation. I agree in this context. I think the
23 context in which it's involved in this case is through either
24 prostitution, sex trafficking, or human trafficking, and child
25 exploitation really doesn't add anything, so I'm going to

1 strike that one.

2 On page 18, question 63, the government objects to the
3 use of the term escort services.

4 Mr. Rapp, can you tell me why you object to that in
5 the context of this question.

6 MR. RAPP: Well, so, you know, it's really
7 prostitution services. I think escort is sort of a misnomer.
8 So we would -- we would ask that it's -- because it suggests
9 that escort services is somewhat legal. And, as we know, it's
10 only legal in a very a small county in Nevada, so it's really
11 prostitution services is really the right. And so it should
12 really just read: Do you have strong feelings about people
13 working in legal adult entertainment industry, or has someone
14 close to you ever been affected by this type of service?

15 THE COURT: Okay. Does anyone from the defense want
16 to respond?

17 MS. BERNSTEIN: Yes, Your Honor. Escort services are,
18 in fact, a legal and -- legal and regulated form of adult
19 entertainment. There are restrictions in your state of Arizona
20 that regulate adult escort services. For Mr. Rapp to insinuate
21 that it is synonymous is, unfortunately, not true, and we are
22 trying to establish whether any jurors do have strong feelings
23 about the fact that it is a lawful, legal, regulated industry.

24 THE COURT: So I guess I did think there was a
25 distinction between escort services and prostitution services,

1 so I guess that's the main thing, or one of the issues involved
2 in the case, so I'll leave it as is.

3 The government's objection is overruled.

4 Page 19, it just says defendants object, under
5 question 67, so I'm assuming that's just a -- you don't want
6 the question asked.

7 Ms. Bernstein, do you know why?

8 MS. BERNSTEIN: I apologize, Your Honor, I'm not
9 entirely sure what the objection was related to. And if anyone
10 else does, they can jump in, but I think it was just to the
11 entirety of the question.

12 And, Your Honor, I'm sorry, as I look at this, I mean,
13 it's a question that seems to -- we object to the entirety of
14 the question.

15 THE COURT: Okay. And I'm guessing because the
16 defendants object, the prosecution wanted it, so Mr. Rapp.

17 MR. RAPP: We think it's fair to ask a potential jury
18 and -- juror in this particular case whether they think
19 prostitution should be legalized.

20 THE COURT: Okay. Anyone else from the defense on
21 that?

22 (No response.)

23 THE COURT: I'm going to allow question 67.

24 MR. LINCENBERG: Your Honor, if I may add argument
25 here. I think that the argument here was -- and I apologize, I

1 don't think we knew that we were going to go through these at
2 today's hearing question by question.

3 But the objection here is that the jurors shouldn't be
4 allowed to speculate here as to what prostitution is.
5 Prostitution is defined differently in different states and the
6 like, and this question as worded, I think is vague and can be
7 misleading.

8 THE COURT: Okay. And just as a follow-up, I'm --

9 Elaine, can you get me the text order setting today's
10 hearing. Didn't it say we were going over the questionnaire?

11 Okay. While she's looking that up, we'll go on.

12 Question 68, defendants object to references to child
13 prostitution or trafficking of children. I think I know why
14 the defendants object, but I don't want to put words in
15 anyone's mouth, so does anyone want to expound on that
16 objection?

17 MS. BERNSTEIN: Sure, Your Honor. And I'd also like
18 to just reference by incorporation all of the motions and
19 motions in limine that we filed similarly objecting to these
20 phrases. They're prejudicial. They assume a conclusion that
21 has not yet been established, and we think that it's very
22 prejudicial and inflammatory to include in the questionnaire
23 these types of phrases.

24 THE COURT: Anyone else?

25 (No response.)

1 THE COURT: Okay. I'm going to -- I'll sustain the
2 objection, remove question 68.

3 All right. The next objection is on question 79,
4 defendants object to the use of the term victim and child in
5 this context. So let me reread the question.

6 Okay. So I've already ruled on the fact that the term
7 victim can be used in the trial with respect to some of the
8 charged counts, so I'm overruling the objection to that. I do
9 think that the question is just as informative if the second --
10 I'm sorry, third sentence, if we take out the word child, so
11 that it reads: Victims and witnesses may testify about their
12 experiences with prostitution, sex trafficking, and may
13 describe their experiences using vulgar or sexually graphic
14 language. So I would propose taking out -- sustaining their
15 objection and taking out child.

16 Does the government want to be heard?

17 MR. RAPP: Well, I would just say that five of our
18 witnesses who will testify were under age at the time they were
19 trafficked on Backpage, and so I think it would be important to
20 know if -- if a potential juror would find that to be something
21 they couldn't sit through or make a fair and impartial
22 determination based on that.

23 MR. LINCENBERG: And, Your Honor --

24 THE COURT: Yes.

25 MR. LINCENBERG: Your Honor, Gary Lincenberg. Both

1 with regard to the word child, as well as the word victim, and
2 I understand that the Court ruled on use of the term victim,
3 which we strongly believe is an erroneous ruling, and I think
4 it's very important for the Court to again consider this,
5 because this is the first opportunity at which this jury pool
6 and these jurors are going to be prejudiced. Because from this
7 questionnaire they will assume that the Court agrees with the
8 prosecution that customers of Backpage who voluntarily came to
9 Backpage and placed ads are now going to claim to be victims of
10 the fact that Backpage ran an ad.

11 It assumes a conclusion. It assumes that somebody
12 who -- there is no evidence that any of these people engaged in
13 prostitution because Backpage pushed somebody into it. There
14 is no evidence that Backpage told some prostitute or pimp to
15 lie or do whatever they did with their ads. And to come in
16 with questionnaires saying, you're going to be hearing from
17 victims, which basically is saying victims of the crimes of
18 which these defendants are charged, is highly prejudicial, and
19 it's going to set a tone for this entire trial which puts the
20 defendants in a position where they have to prove their
21 innocence. And it should not be permitted during the trial, it
22 should certainly not be permitted in a jury questionnaire where
23 jurors are -- are from the get-go, basically, told that these
24 people who are going to take the stand are, quote, victims, or
25 assuming -- and it's going to assume as well that Backpage knew

1 that somebody was a child, that they weren't lied to, and that
2 they were somehow involved in child sex trafficking, of which
3 there is no evidence and it assumes a conclusion. And it
4 really assumes it with the child portion of it, something
5 that's not even relevant to the elements of the offense. So on
6 behalf of my client, we strongly object to these terms being
7 used in the questionnaire.

8 THE COURT: Okay.

9 MR. BIENERT: Your Honor this is Mr. Bienert. If I
10 could just add. I think it's implied in what my colleague
11 said, but I didn't hear anybody expressly say it.

12 The biggest issue I have with this is, even assuming
13 the government is right on any or all of their prostitution
14 charges, prostitution -- if someone who purposefully was a
15 prostitute and purposefully placed an ad on Backpage, they're
16 certainly not necessarily a victim. They're probably a
17 coconspirator, but there are -- you know, it's a bigger social
18 issue, of course, Your Honor, but everyone has different takes
19 on whether a person who is an adult, who knowingly and
20 voluntarily engages in prostitution is a victim or not. I
21 think under the law they're not. They're a person who engaged
22 in an illegal act of prostitution.

23 So I think to add to what Ms. Bernstein said and
24 Mr. Lincenberg said, this isn't a case about people who are
25 necessarily victims. It's a case that's charged about

1 prostitution. And if these people were prostitutes, then
2 they're coconspirators. But labeling them victims, as
3 Mr. Lincenberg says, is already telling the jury that everybody
4 here is a victim when, at least facially, they're not at all.
5 So it's just unduly prejudicial. And it's very hard for us to
6 climb out of that hole if, right out of the box, everyone who
7 supposedly advertised on Backpage, according to the government,
8 is a victim.

9 THE COURT: Mr. Rapp, do you want to be heard?

10 MR. RAPP: Well, again, there will be five women that
11 will take the stand. Most of them were trafficked on Backpage
12 by a pimp, and they were either 14 or 15 years old. They are
13 victims, sorry, they're not a coconspirator. And the question
14 is if you are chosen as a juror, you must be able to discuss
15 the evidence and those sexually explicit topics with your
16 fellow jurors as you deliberate on the evidence.

17 I think my -- defense counsel is missing the point of
18 the question. This is going to be high -- you know, it's going
19 to be difficult testimony for them to hear, and so we should
20 know if they are going to be able to deliberate on these type
21 of topics. And so, for that reason, we should have -- we
22 should include the question.

23 So, you know, these cases, they're victims, they've
24 been -- most, if not all, of their cases were prosecuted at the
25 state or federal level. Somebody went to prison, in most

1 cases, for trafficking them and posting their text and images
2 on Backpage so...

3 MR. LINCENBERG: A more neutral way of stating this,
4 and it would achieve the same purpose that Mr. Rapp wants to
5 achieve, would be to say: Prostitutes may testify about their
6 experiences with prostitution.

7 MR. FEDER: Or advertisers.

8 MR. RAPP: Judge, we don't view child sex trafficking
9 victims as prostitutes. They are child sex trafficking
10 victims. They're not prostitutes.

11 MS. BERNSTEIN: Your Honor, if I may be heard for a
12 quick second?

13 THE COURT: Yeah.

14 MS. BERNSTEIN: I do agree with Mr. Rapp that it is
15 important to get the potential jurors, we do need to know if
16 they are okay looking at sexually explicit images, which is
17 what Mr. Rapp said, and that's what this question is designed
18 to achieve. Whether we label someone a victim or not is really
19 part of what this trial is about and so it does seem overly
20 presumptive to do that at this stage.

21 I also just want to suggest that the third, or fourth
22 sentence, excuse me, the one that reads: Sexually provocative
23 images of victims and witnesses may be introduced into
24 evidence, I think if we just say sexually provocative images
25 may be introduced into evidence, that that's exactly what we're

1 trying to establish with this question.

2 So I think that -- you know, I understand the Court's
3 ruling on that first phrase, I think the second part there can
4 be struck while we're all getting at what we want with this
5 question.

6 MR. CAMBRIA: Your Honor, if I might add something.
7 Paul Cambria.

8 I think that by saying that conclusion to the jury,
9 and the Court saying it, it sounds like the Court agrees that
10 the government has already proven that somebody is or was a
11 victim, and that's the part that bothers me. And I think that
12 the real goal on the part of the government is to have
13 everybody labelled as a victim, and that tells the jury that
14 something has already happened that's violated the law. And I
15 think that that's unfair to the defendants here.

16 If the government feels that's their truth, then they
17 should prove it, but we shouldn't start right off by telling
18 the jury they're already there. They've already accomplished
19 demonstrating that somebody has been victimized. That's a
20 matter of proof at the trial.

21 THE COURT: Okay. Anyone else?

22 MR. FEDER: I join.

23 THE COURT: Mr. Feder, did you want to say something?

24 MR. FEDER: I join in those comments. This is not the
25 typical case where you've got a pretty well understood victim

1 and a pretty well understood defendant. And what the
2 government's trying to do is create a presumption here that
3 there are victims, when that's really what the case is about.

4 THE COURT: Okay. I'm not changing my earlier ruling,
5 however, I will take Ms. Bernstein's suggestion to change that
6 one line to read just: Sexually provocative images may be
7 introduced into evidence.

8 Okay. On page 22 there is objections to the word
9 victim again. I do agree in the context of these questions the
10 goal is to find out whether because someone is an ethnic
11 minority or of a low socioeconomic status or have experienced
12 homelessness, whether those issues would affect a juror's
13 evaluation of them, so the fact that they're a victim wouldn't
14 really be -- or shouldn't be relevant to that issue. So I'm
15 going to strike question 82. I'm going to keep 83, 84, and 85,
16 but take out the words victims and, so it will just read: Some
17 of the witnesses in this case in each of those.

18 Does the government want to be heard on that since it
19 was you who wanted the word victim in?

20 MR. RAPP: Well, again, victims are going to testify
21 in the trial. They were underage at the time they were
22 trafficked. Their cases were prosecuted. They were viewed in
23 a criminal prosecution as a victim. They will testify as being
24 victims of a pimp and who posted them on Backpage, and so,
25 obviously, we feel strongly the child sex trafficking victims

1 are victims and should be referred to that in the
2 questionnaire.

3 THE COURT: Okay. Thank you. So those are the only
4 changes or rulings that I had to comment on.

5 Does the government have anything else about the
6 questionnaire that you want me to consider?

7 MR. RAPP: No, Your Honor.

8 THE COURT: Ms. Bernstein?

9 MS. BERNSTEIN: Your Honor, we would like to suggest
10 that in light of the fact that the world has changed
11 dramatically in the past year, and even the past month, there
12 were a couple of additional questions that we had hoped to
13 propose that we think are important to touch on since we are in
14 a different political and social climate than we were a year
15 ago. We'd like if we could have a couple of days, whatever
16 meets the Court's schedule -- I'm not sure when the Court is
17 sending this out -- a couple of days to put those together,
18 confer with the government, and resubmit that to the Court.

19 THE COURT: Let's see. Our final trial management
20 conference is July 16th. I need to have this to the jury
21 office four weeks before that. So we're at the 7th, so we have
22 a couple of days.

23 Let me just talk with Elaine for a second.

24 (Off-the-record discussion we held between the Court
25 and the courtroom deputy.)

1 THE COURT: Okay. If you can get it to me by the end
2 of the day Thursday, I know that's not a lot of time, but then
3 I have to look at it and try to incorporate it and get it to
4 the jury office. So I can give you until then.

5 MS. BERNSTEIN: Thank you, Your Honor.

6 THE COURT: Okay. Mr. Lincenberg, anything --

7 MR. LINCENBERG: No. I was agreeing. I was saying
8 thank you as well. Thank you.

9 THE COURT: Okay. And was there anything else you
10 wanted to bring up?

11 MR. LINCENBERG: No, Your Honor. I think that
12 Ms. Bernstein covered that point. That's what we had been
13 discussing beforehand, and I appreciate the Court's indulgence
14 on it.

15 THE COURT: Okay. Mr. Feder, anything to add or
16 request?

17 MR. FEDER: No. Thanks, Judge.

18 THE COURT: Ms. Bertrand, anything to add?

19 MS. BERTRAND: Judge, may I ask the Court to clarify.
20 Is the Court saying it is not going to collect the names of the
21 potential jurors? Maybe I misunderstood the Court.

22 THE COURT: I am not collecting the names.

23 MS. BERTRAND: Okay. In that -- at that point, Your
24 Honor, I would object. I would be happy to submit briefing on
25 it. I don't know that either side has asked for an anonymous

1 jury, and the bar for that is quite high. And I don't know
2 that we got any notice of that, otherwise I would have been
3 prepared to discuss it today, but I would --

4 THE COURT: Well, I'm not saying you're not getting
5 their names. Their names are not going to be on the
6 questionnaire.

7 MS. BERTRAND: Okay.

8 THE COURT: Sorry.

9 MS. BERTRAND: Sorry, Judge.

10 THE COURT: Once we screen the questionnaires and we
11 get our final random list, it will have the names.

12 MS. BERTRAND: Okay. Thank you. I apologize. I --
13 my --

14 THE COURT: No. That's okay.

15 MS. BERTRAND: -- I heard that. Thank you for that
16 clarification.

17 THE COURT: Mr. Eisenberg.

18 MR. EISENBERG: Yes, Your Honor. I assumed that we'd
19 be able to relate the juror -- jury -- juror questionnaire to a
20 number given to each juror, and that way we will be able to
21 tell which juror has filled out -- by name, which juror has
22 filled out that questionnaire.

23 THE COURT: Yes.

24 MR. EISENBERG: And, Your Honor, with respect to the
25 mechanics of how this will work, is it going to be the Court's

1 procedure to assemble the responses, disseminate them to all
2 counsel, and then we -- on the final management conference, we
3 will be addressing Your Honor on the basis of strikes for
4 cause, or will the Court hold off on strikes for cause until
5 such time as the venire actually is assembled and is brought
6 into the courtroom?

7 THE COURT: No. At the final -- okay. Here's the
8 process.

9 So the day before the final trial management
10 conference, unless there is an issue, everybody will have
11 available to pick up a flash drive with the responses to the
12 jury questionnaires. I will get them as well that same day.

13 I will go through them that night, and in the morning
14 I'll have my list of people that I believe should be struck for
15 cause, for financial hardship, or some health reason or
16 whatever. I'll go through my list and get any objections
17 anyone might have or any agreements.

18 Then once I'm done telling you the people that I
19 thought should be struck right off, I'll ask if you have
20 anybody you want me to consider striking. I'll hear from both
21 the prosecution and the defense. And then we'll end up with a
22 number of jurors.

23 And depending on how many are left on the list, when
24 -- we'll let the jury office know who was struck. And then the
25 morning of in-person jury selection, we will get a random list

1 from the remaining jurors. And I haven't -- I'm not sure if
2 I've decided how many we actually need to call in that final
3 day, but it's usually around 55 or something --

4 Did we say 60?

5 Elaine just reminded me I said 60. So maybe
6 potentially we'll have -- so, for instance, if at the final
7 trial management conference after we do our strikes, there is
8 80 people left on the list, only 60 are going to be called back
9 in, and you'll get the random list the morning of.

10 And then when people come in person, I'll have
11 everybody introduce themselves in person. I know we kind of
12 ask them if they know everybody, but now that they're in the
13 courtroom, I'd like them to actually see your faces and see if
14 they know who you are. And then I just allow counsel to ask
15 follow-up questions based on the questionnaire. Because this
16 questionnaire is pretty thorough, so you won't be allowed to
17 ask, like, a general question of the whole panel. This is for
18 follow-up on the questionnaires.

19 Does that help?

20 MR. EISENBERG: Yes, it does, Your Honor. I wonder
21 how many questionnaires will be mailed out to the original
22 venire?

23 THE COURT: I don't have an answer for that.

24 You do.

25 Hold on. I know we've talked about it, and Elaine may

1 have gotten an answer from the jury office. Let me check.

2 Well, let me just tell you, the past two trials that
3 I've just done, the prescreens, we had 114 questionnaires
4 returned the last time. I think they asked more people, but
5 there is always a couple that just don't fill them out.

6 MR. EISENBERG: The reason I ask, Your Honor -- I
7 don't mean to cut Your Honor off -- but let's assume there are
8 going to be more than 100 questionnaires returned, if we are to
9 get them the day before, that's pretty tight in terms of each
10 one of us looking them over, and then -- at least with respect
11 to defense -- perhaps sharing our thoughts in order to
12 streamline what would happen the next day. And that's one
13 question I have -- or observation I have.

14 The other is there is a standard bulletin board type
15 questionnaire that is not sent out to the jurors, it's usually
16 asked during voir dire, and I think a lot of that has been
17 subsumed within this questionnaire, things like: Are you a
18 member, or a member of your family a member of law enforcement,
19 et cetera. So when Your Honor says we'll only be able to ask
20 questions based upon the responses to the questionnaire, will
21 that -- is that actually -- we're going to be limited solely to
22 the four corners of the answers of the questionnaire? Am I
23 hearing that correctly?

24 THE COURT: Yes.

25 MR. EISENBERG: And if a juror, for example, offers

1 something in response to such a question that takes it outside
2 of the four corners, I assume that we would still be able to
3 follow-up on our questions?

4 THE COURT: You mean follow-up with that juror on
5 their answer?

6 MR. EISENBERG: Correct.

7 THE COURT: Yes. And then if -- okay. So I generally
8 trust the lawyers will not abuse my order, so that's my limit.
9 However, I also have been doing this long enough that I
10 understand there are situations that might come up where -- and
11 I didn't pounce on an attorney for following up by saying, does
12 anyone else feel that way, for instance, which is a general
13 question of the panel, but it's related to some specific
14 answer. So I don't know if that helps.

15 MR. EISENBERG: Yeah, it does, Your Honor.

16 And how many strikes for -- not for cause, but
17 strikes, peremptory, are -- are you going to allocate among the
18 defense and the government?

19 THE COURT: Didn't bring in that piece of paper, but I
20 did do the math the other day. But I assume we're having 16
21 jurors, just because of the length of the trial I want to have
22 enough alternates, and I believe that meant each side got an
23 extra three peremptory strikes, so I had it at 9 and 13. Off
24 the top of my head, that's what I'm thinking.

25 MR. EISENBERG: 13 to be divided among all six

1 defendants?

2 THE COURT: Yes. But if you have another proposal and
3 you have some authority for that, I'm happy to consider it.

4 MR. EISENBERG: Right now I don't, Your Honor, but I
5 think that is an issue that comes to my mind, given the fact
6 that we have six different defendants who may have different
7 views, or their counsel may have different views, and their
8 clients, too, may have different views on who should be struck
9 and who shouldn't.

10 THE COURT: Uh-huh.

11 MR. EISENBERG: And this is difficult to calibrate
12 because we haven't seen the questionnaires or the answers to
13 the questionnaires.

14 THE COURT: Okay. So with respect to the timing, yes,
15 it is difficult to get them the day before and have to go
16 through all of them, but I've done it by myself. I will see,
17 once we get Thursday to see what additional questions, assuming
18 I can get it edited and to the jury office Friday, I'll ask if
19 we can get it two days in advance, but I think we're getting
20 pretty close to the four-week limit, but I'll talk with them
21 about getting it two days before.

22 MR. EISENBERG: I think that would be good, Your
23 Honor, if the Court can do that. I think all defense counsel
24 would appreciate an extra day.

25 THE COURT: And we'll be doing this at the final trial

1 management conference, so at that time is when I really need to
2 sort of firm up the numbers. So if you have any information
3 about the peremptory strikes that you want me to consider, if
4 you just get it to me even, you know, a day or two before the
5 final trial management conference, then we can talk about it
6 then.

7 MR. EISENBERG: Thank you, Your Honor.

8 THE COURT: Okay.

9 MR. LINCENBERG: And, Your Honor -- this is Gary
10 Lincenberg. I -- we can put it -- talk about it then, but I
11 will raise it now as well. We would request that if the Court
12 is going to be giving the government, I guess, 9 instead of 6
13 or so, that the Court give the defense 15 instead of 10, both
14 in terms of the -- some type of traditional balance, and really
15 also because this is such a lengthy trial, there are six
16 defendants who are going to have some different views on the
17 jurors, so that would be our request.

18 THE COURT: Okay. All right. And we'll firm that up
19 at the final trial management conference.

20 MS. BERNSTEIN: And, Your Honor, is that conference
21 occurring in person or by Zoom, if you know, because many of us
22 are out of state, so if it's occurring by Zoom, we'll just need
23 to also factor in getting the thumb drive from the Court, or
24 from the jury office.

25 THE COURT: So I have a note to talk about that,

1 because the special proceedings courtroom is not going to be
2 modified for our purposes on July 16th. They're not going to
3 start setting it up for our trial until sometime, like, two
4 weeks before. So I prefer to have it in person, but we would
5 have to be accommodating and not everybody could sit up at one
6 of the nice conference tables. So, because of that, I'm
7 willing to do it on Zoom -- yeah, I guess that's what I would
8 say.

9 MS. BERNSTEIN: And that works for us, Your Honor. I
10 just want to account for the fact that if the thumb drive -- we
11 have to get it somehow, so if it is possible to get it a little
12 sooner from the jury office.

13 Also, if I'm calculating right, I think June 18th,
14 next Friday, would be the four-week limit. So I think if we
15 get it -- if we get you proposed edits by Thursday, there might
16 be enough wiggle room to get, perhaps, it mailed or just a bit
17 earlier to defense counsel.

18 THE COURT: I forgot about that. Yeah, you're going
19 to have to figure out how to get that flash drive, and you're
20 going to have to talk to the jury office about how you're going
21 to get that. Yeah, you're going to have to make arrangements
22 to take care of that. I don't know if one person who is local
23 can work with the rest of you to try to get it but --

24 MS. BERNSTEIN: Okay. We'll figure that out, but
25 just, of course, the more lead time we have, the better,

1 because there are just logistics with us being out of town, and
2 we are a large group and it is difficult to reach consensus
3 often.

4 THE COURT: Right.

5 And then I wanted to talk with you all about having an
6 in-person status conference on August 13th at 11:00 for the
7 purpose of going to the special proceedings courtroom, it
8 should be set up by then, so we can discuss the logistics of
9 bench conferences, the witnesses, the jurors, and you can
10 actually see how it's set up. And I wanted to do it far enough
11 in advance that if something needed to be modified, we had time
12 to do that.

13 Does anyone have any objection to that? And I'm in
14 trial the following week, so we couldn't really do it the
15 following week anyway. At least right now I'm in trial.

16 Is there anybody that can't come, or, I guess, if
17 somebody doesn't want to come and you want to leave the
18 responsibility with co-counsel, I don't know.

19 MR. LINCENBERG: Your Honor, this is Mr. Lincenberg.
20 We don't have an objection to that. I do want to alert the
21 Court that Mr. Neuman and I were supposed to start a trial last
22 week. The judge hurt his leg. He has an operation. We're now
23 starting the trial in mid July. We will still be in trial as
24 of August 13th, but I'll make sure somebody from my office is
25 there.

1 THE COURT: Okay. All right. I appreciate that.

2 Ms. Bernstein.

3 MR. FEDER: Judge, do you have -- unless I missed this
4 -- do you have some kind of diagram or written description of
5 what the modifications are going to be to the ceremonial court?

6 THE COURT: I don't yet, because I went down there
7 to -- with some people from the Clerk's Office with their
8 drawing, we made some modifications, and then I just never got
9 the modified diagram, but I'll make a note to try to get that.

10 MR. FEDER: That might be helpful for everybody
11 before -- Mr. Eisenberg and I have been talking about trying to
12 come down to the court to go see. I haven't been there since
13 one of the swearing ins, I think, so -- and I don't recall it
14 being that much bigger for purposes of the lawyers and
15 auxiliary staff, which is concerning.

16 THE COURT: It is, they measured it all out, but
17 you're right, maybe with the diagram you don't need to actually
18 physically come in, I just kind of assumed you'd want to. Plus
19 we need to have you guys try out your electronics to make sure
20 that they function and exhibits can be shown and things like
21 that. And if we have a set date, then I can have the IT people
22 there.

23 MR. FEDER: If you could get us a diagram or tell us
24 who to contact to get us a diagram and a description of what
25 they're going to do as soon as possible, then we can start at

1 least talking about that and maybe making suggestions, if
2 necessary, you know, well before we get that close to trial.

3 THE COURT: Okay. That's a good idea. Thank you.

4 MR. FEDER: I have them every so often.

5 THE COURT: All right. Anyone else?

6 MS. BERNSTEIN: Your Honor, as for August 13th, if we
7 are going to proceed, I would just -- if it's possible to
8 request that it be, sort of, in the middle of the day so that
9 out-of-town counsel could fly in and out that same day.

10 THE COURT: Well, I suggested 11:00 a.m. because I
11 have sentencings in the afternoon and it's later in the
12 morning.

13 MS. BERNSTEIN: That's perfect. Thank you. I'm just
14 selfishly trying to not be away from my daughter too long.

15 THE COURT: Yes, I can imagine.

16 All right. Anyone else? Mr. Cambria, I don't see
17 you, but you're on the line.

18 MR. CAMBRIA: No, that's fine, Your Honor. I'll make
19 arrangements to be there.

20 THE COURT: Okay. All right. That's all I had. So
21 we're at recess and I'll --

22 MR. LINCENBERG: Your Honor.

23 THE COURT: Yes. Who is that? Mr. Lincenberg.

24 MR. LINCENBERG: This is Mr. Lincenberg. I apologize.

25 I did want to ask about one item. We had a lengthy

1 argument on an important motion to dismiss for outrageous
2 government conduct and the Court has yet to rule on that. I
3 saw that the Court had issued an order on an under seal matter,
4 that's not totally unrelated to it today, but the Court may
5 recall that if the Court finds in our favor on the invasion of
6 the privilege misconduct issues, that there is a variety of
7 remedies.

8 THE COURT: Hold on one second, because I -- that
9 ruling went out. I'm having Elaine double check the docket.

10 Has anybody seen it?

11 MS. BERNSTEIN: No, Your Honor.

12 MR. RAPP: We have, Your Honor.

13 MR. CAMBRIA: No.

14 MS. BERNSTEIN: No, Your Honor.

15 THE COURT: It was docketed under seal, because the
16 motion and the response and the reply were all under seal.

17 It went out June 4th.

18 MR. RAPP: It's Docket 1168.

19 MR. LINCENBERG: We have not seen it.

20 MS. BERNSTEIN: None of defense counsel has received
21 that.

22 THE COURT: I don't know why you wouldn't be able to
23 see it.

24 MS. BERNSTEIN: Normally when the Court issues orders
25 or anything under seal, we receive it in the mail, and it does

1 take a pretty significant lag time from when the Court signs or
2 issues something until we can see it. We're never able to see
3 it on the docket. I think that is different for the
4 government.

5 THE COURT: Okay. I apologize, I didn't know that,
6 but the ruling has gone out and the motion was denied.

7 So, with that, Mr. Lincenberg, does that resolve the
8 questions you were going to ask?

9 MR. LINCENBERG: Yes, Your Honor.

10 THE COURT: Okay. Then we're at recess and we'll talk
11 to everybody on July 16th. Thank you.

12 MS. BERNSTEIN: Thank you, Your Honor.

13 MR. LINCENBERG: Thank you, Your Honor.

14 MR. RAPP: Thank you, Your Honor.

15 (Proceedings concluded at 5:04 p.m.)

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C E R T I F I C A T E

I, CHRISTINE M. COALY, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control.

DATED at Phoenix, Arizona, this 8th day of June,
2021.

/s/ Christine M. Coaly
Christine M. Coaly, RMR, CRR