

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

* * * * *	*	
UNITED STATES OF AMERICA	*	Case No. 8:21-cr-348
vs.	*	December 2, 2022
JEREMY BROWN	*	
* * * * *	*	

ZOOM PRETRIAL CONFERENCE

Heard via Zoom Videoconference
Sam M. Gibbons United States Courthouse
801 N. Florida Avenue
Tampa, FL
December 2, 2022

BEFORE THE HONORABLE SUSAN C. BUCKLEW

UNITED STATES DISTRICT JUDGE

Official Court Reporter:	Tana J. Hess, CRR, FCRR, RMR U.S. District Court Reporter Middle District of Florida Tampa Division 801 N. Florida Avenue Tampa, FL 33602 813.301.5207 tana_hess@flmd.uscourts.gov
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computer-aided transcription software.

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9:06 AM 1 THE COURT: We're having a hard time getting

9:06 AM 2 Mr. Brown on. Pinellas County is not responding, and the

9:06 AM 3 courtroom deputy called the sergeant. He's -- what?

9:06 AM 4 COURTROOM DEPUTY: Looks like they're joining.

9:06 AM 5 THE COURT: Okay. There we go. Okay. Got it.

9:07 AM 6 THE DEFENDANT: Can hear me, Your Honor?

9:07 AM 7 THE COURT: All right. The matter that is set for

9:07 AM 8 pretrial conference this morning is United States of America

9:07 AM 9 versus Jeremy Brown, and the case number is 21-348. Let me

9:07 AM 10 begin by asking counsel to state their appearances, starting

9:07 AM 11 with counsel for the United States.

9:07 AM 12 MR. MARCET: Good morning, Your Honor. Daniel Marcet
9:07 AM 13 on behalf of the United States.

9:07 AM 14 THE COURT: Good morning.

9:07 AM 15 MR. GOEDMAN: Good morning. Menno Goedman on behalf
9:07 AM 16 of the United States.

9:07 AM 17 THE COURT: Okay. Good morning.

9:07 AM 18 MR. FUTERMAN: Good morning, Your Honor. Roger
9:07 AM 19 Futerman on behalf of Jeremy Brown.

9:07 AM 20 THE COURT: Okay. Good morning, Mr. Futerman.

9:07 AM 21 Mr. Brown, boy, you look like a different
9:07 AM 22 person. What?

9:07 AM 23 THE DEFENDANT: Can you hear me, Your Honor?

9:07 AM 24 THE COURT: Yes, I can hear you.

9:07 AM 25 THE DEFENDANT: We just lost the feed, Your Honor.

9:08 AM 1 We're back in, Your Honor. What were you saying, Your Honor?

9:08 AM 2 THE COURT: I said you look like a different person.

9:08 AM 3 THE DEFENDANT: Well, you know, I'm getting ready for
9:08 AM 4 the big game, so I've got to look my best.

9:08 AM 5 THE COURT: Okay. All right. Let me just tell you
9:08 AM 6 what I hope to accomplish in this pretrial conference.

9:08 AM 7 Obviously the case is set to go to trial at 9:00 on Monday
9:08 AM 8 morning.

9:08 AM 9 I want to, first of all, just talk to you a
9:08 AM 10 little bit about where the case is going to be tried, the
9:08 AM 11 number of jurors and all that kind of thing and then scheduling
9:08 AM 12 a little bit, and then I want to ask about the stipulations
9:08 AM 13 that you filed. I then want to talk about the -- the silent
9:08 AM 14 witness rule as it applies to Count 10 and the trip report, and
9:09 AM 15 then finally I want to talk about the defense's Motion to
9:09 AM 16 Introduce, under 807 to introduce the tape that Mr. Brown made
9:09 AM 17 with the two agents at the time they came out and spoke to him
9:09 AM 18 in December of 2020.

9:09 AM 19 And if there's anything else you need to
9:09 AM 20 accomplish, we certainly will do that.

9:09 AM 21 Mr. Futerman, the first thing, Judge Moody's
9:09 AM 22 courtroom deputy contacted us and said you have a sentencing at
9:09 AM 23 5:00 on Monday; is that correct?

9:09 AM 24 MR. FUTERMAN: Judge Jung. I filed a motion --

9:09 AM 25 THE COURT: Judge Jung. Sorry.

9:09 AM 1 MR. FUTERMAN: I filed a motion to continue that
9:09 AM 2 sentencing that was originally set at 2:00. My client is one
9:09 AM 3 of two defendants. The other client I believe is being
9:09 AM 4 sentenced in the morning. I co-counsel the case with
9:09 AM 5 Mr. Brunvand. I did file a motion to continue. Just checking
9:10 AM 6 on that, Judge Jung continued it to 5:00 and said when I'm
9:10 AM 7 released with Your Honor, I would go over there.

9:10 AM 8 THE COURT: Okay. That's good. And that's Monday,
9:10 AM 9 and I try to stop promptly at 5:00 on Monday, especially so the
9:10 AM 10 jurors will get into the normal routine, so that we should be
9:10 AM 11 able to work that out fine.

9:10 AM 12 The other thing I have is December 6th, which is
9:10 AM 13 Tuesday, and I have a function in Pinellas County for Judge
9:10 AM 14 Kovachevich that I agreed long, long ago to go to, and so I'm
9:10 AM 15 probably going to have to recess between 4:00 and 4:15,
9:10 AM 16 probably 4:15 on Tuesday. But other than that, I think we can
9:10 AM 17 keep pretty much the schedule of starting at 9:00 in the
9:10 AM 18 morning and ending at 5:00 in the afternoon.

9:10 AM 19 Let me ask the Government, six to eight days is
9:10 AM 20 still a good estimate of the trial?

9:10 AM 21 MR. MARCET: Yeah, Judge. I think that's
9:10 AM 22 conservative. I think we can -- we have, you know, a fair
9:11 AM 23 number of witnesses for what's a pretty simple search warrant
9:11 AM 24 case, but a lot of them are very fast. So I think we could
9:11 AM 25 hopefully finish our case by Friday, and then I think the

9:11AM 1 defense says they have about a day, and we may have a day or a
9:11AM 2 half a day of rebuttal case.

9:11AM 3 THE COURT: Okay. Thank you very much. And,
9:11AM 4 Mr. Futerman, any disagreement with that time --

9:11AM 5 MR. FUTERMAN: No. I think that's accurate.

9:11AM 6 THE COURT: Okay. Ms. Black, let me just ask -- I
9:11AM 7 should have done this before we came in. How many jurors are
9:11AM 8 we going to bring up?

9:11AM 9 COURTROOM DEPUTY: 45.

9:11AM 10 THE COURT: All right. We're going to bring up 45
9:11AM 11 jurors from the jury assembly room. That's a lot more than I
9:11AM 12 would normally bring up, but, you know, it's the Christmas
9:11AM 13 holidays, and nobody wants to be serving on a jury in December,
9:11AM 14 but -- so that's one reason.

9:12AM 15 Obviously if January 6th gets inserted in any
9:12AM 16 way, I need to ask questions about that. That may cause a
9:12AM 17 little bit of a concern as well.

9:12AM 18 It's also -- you know, for schools, it's also a
9:12AM 19 difficult time because many of them are giving exams, and
9:12AM 20 teachers don't like to be away.

9:12AM 21 So anyway, December is just a hard time, and
9:12AM 22 that's why I'm bringing 45 up. It may seem overkill, but I
9:12AM 23 think it's important, and there are other judges picking as
9:12AM 24 well, so in case we run out, there will be other judges.

9:12AM 25 Right now we're going to try the case in the

9:12 AM 1 courtroom I'm sitting in now, 10B. I had hoped we could try
9:12 AM 2 the case in 17 which is a much bigger courtroom, but our
9:12 AM 3 audiovisual technology is not working well up there, and it's
9:12 AM 4 not going to be fixed by December 5th. In fact, it's not going
9:13 AM 5 to be fixed until next year, and if you've got a trial that
9:13 AM 6 doesn't have things that you need to either show on the
9:13 AM 7 document camera or plug your computer in and show or play, then
9:13 AM 8 it's okay, but if you're going to rely on technology, it's not
9:13 AM 9 okay, and I know -- I've looked at your exhibit list, so 17
9:13 AM 10 would not be an option. So right now it's going to be 10B.

9:13 AM 11 The only change might be -- and we certainly
9:13 AM 12 will let you know -- is that -- courtrooms are -- one courtroom
9:13 AM 13 is another courtroom. They're all alike, but if Judge
9:13 AM 14 Scriven's trial pleads out or gets continued or settles, that
9:13 AM 15 would put us in 7A, but -- and that's just more convenient for
9:13 AM 16 me because it's right outside of my office, but right now we're
9:13 AM 17 in 10B. I'll let you know if anything changes.

9:14 AM 18 I think I said that if we bring 45 jurors up,
9:14 AM 19 we're going to occupy not only the jury box, but the entire
9:14 AM 20 courtroom, and so there's not going to be any -- any ability to
9:14 AM 21 have visitors or people from the Government or people from the
9:14 AM 22 defense in the courtroom during jury selection. As soon as we
9:14 AM 23 get the jury selected, obviously then we certainly have room
9:14 AM 24 for people to sit down and observe if they want to.

9:14 AM 25 I hope, as I said, to pick 14 jurors. You know,

9:14 AM 1 if we're lucky enough to get an additional alternate, I might
9:14 AM 2 stick -- I might even pick 15, but I hope to get at least two
9:14 AM 3 alternates, because it's been my experience, especially
9:14 AM 4 recently, that somebody gets sick, and so we have to
9:15 AM 5 substitute.

9:15 AM 6 Let me see what other things that are on my --
9:15 AM 7 on my list here that I wanted to talk about. Looking at the
9:15 AM 8 wrong list.

9:15 AM 9 Okay. The stipulations. You all have entered
9:15 AM 10 into a number of stipulations. Anything I ought to know about
9:15 AM 11 any of those before the trial starts?

9:15 AM 12 MR. MARCET: No, Your Honor. I think they're -- one
9:15 AM 13 is just a stipulation that'll be read to the jury to in essence
9:15 AM 14 speed along the introduction of the forensic testimony so we
9:15 AM 15 don't have to call all the lower scientists who did the
9:15 AM 16 preparatory work, and the other is just a stipulation that
9:15 AM 17 we're going to introduce certain logs in exchange for the
9:16 AM 18 defense withdrawing their request to call certain witnesses.

9:16 AM 19 THE COURT: Okay. All right. Let me -- let me ask
9:16 AM 20 at some point, there might have been an issue regarding
9:16 AM 21 Count 10 or the trip report. The Government intends to use the
9:16 AM 22 silent witness rule for all of -- as I understand it, all of
9:16 AM 23 the classified documents.

9:16 AM 24 So, Mr. Futerman, what about you and Count 10?

9:16 AM 25 MR. FUTERMAN: So I think the procedure will

9:16 AM 1 essentially be the same for those documents. Mr. Brown -- the
9:16 AM 2 jury will have the documents in front of them. Mr. Brown when
9:16 AM 3 he testifies will talk about that document. He will not name
9:16 AM 4 the soldier, but they're going to see the name of the soldier
9:16 AM 5 in the document or they're going to see specifics, but he's not
9:17 AM 6 going to put it on the record.

9:17 AM 7 THE COURT: Okay.

9:17 AM 8 MR. FUTERMAN: He's agreed to say "unnamed soldier"
9:17 AM 9 or whatever words without -- they're going to see it. They're
9:17 AM 10 going to have the document back with them in jury selection
9:17 AM 11 (verbatim), so he recognizes the difference between the jury's
9:17 AM 12 finding, his need to express the reason why he would have that
9:17 AM 13 document as opposed to why he wouldn't have those other four
9:17 AM 14 documents without specifically naming the very nuances that the
9:17 AM 15 jury can see.

9:17 AM 16 THE COURT: Okay. All right. So as far as any kind
9:17 AM 17 of classified document issue right now as we sit here today,
9:17 AM 18 there's not an issue, is that correct, both sides?

9:17 AM 19 MR. FUTERMAN: I think that's absolutely correct.

9:17 AM 20 THE COURT: All right.

9:17 AM 21 MR. MARCET: That's my understanding, Judge, unless
9:17 AM 22 the -- I believe the CISO is on the call, if she has anything
9:17 AM 23 to add.

9:17 AM 24 THE COURT: Okay. All right.

9:17 AM 25 I think those are my only issues other --

9:18 AM 1 outside of the 807 notice and the -- and I want to talk about
9:18 AM 2 that, ask some questions about that.

9:18 AM 3 But let me see if you have any other just
9:18 AM 4 general issues. Mr. Marcet?

9:18 AM 5 MR. MARCET: Judge, I just had a few questions about
9:18 AM 6 your practices. Is now a time to ask that?

9:18 AM 7 THE COURT: Yeah. Go right ahead.

9:18 AM 8 MR. MARCET: So for expert witnesses, does Your Honor
9:18 AM 9 expect us to tender them to Court or just go straight through
9:18 AM 10 the qualifications into the --

9:18 AM 11 THE COURT: No. I don't think -- I don't think
9:18 AM 12 unless -- unless Mr. Futerman is going to have an objection to
9:18 AM 13 the expertise, I don't think that's an issue.

9:18 AM 14 MR. MARCET: Okay. In terms of responding to
9:18 AM 15 objections, does Your Honor prefer that we wait for you to ask
9:18 AM 16 for a response, or should we cite the rule once the objection
9:19 AM 17 is raised?

9:19 AM 18 THE COURT: You mean like if you object, do I want
9:19 AM 19 you to say anything else other than objection?

9:19 AM 20 MR. MARCET: No. If the defense objects, do you want
9:19 AM 21 us to say, you know, Rule 801(d)(2), co-conspirator statement,
9:19 AM 22 or do you want us to wait for to you ask for a response?

9:19 AM 23 THE COURT: Wait for me to ask for a response.

9:19 AM 24 MR. MARCET: In terms of during the trial for us and
9:19 AM 25 for our witnesses, is there anything we should avoid, anywhere

9:19 AM 1 we should avoid going? In the Southern District, for example,
9:19 AM 2 we were not to use the bathrooms on the floor wherever the
9:19 AM 3 trial was to avoid the jurors. We weren't to go to the
9:19 AM 4 cafeteria at certain times. Is there anything like that here?

9:19 AM 5 THE COURT: Well, we don't have a cafeteria, so
9:19 AM 6 that's really not an issue unfortunately. And the jurors --
9:19 AM 7 once the jury is selected, they have two bathrooms in their
9:19 AM 8 jury room, so they'll use those, and that's really not an
9:19 AM 9 issue.

9:19 AM 10 The only time it may be an issue and you may
9:20 AM 11 want to go to another floor is when we're selecting the jury
9:20 AM 12 because I anticipate I'm going to have to recess sometime
9:20 AM 13 during jury selection. I mean, we've got too many jurors or
9:20 AM 14 too many questions and too many issues, so that would be
9:20 AM 15 Monday. But other than that, I don't think there's an issue
9:20 AM 16 with using the restroom because you won't -- I'd be shocked if
9:20 AM 17 you ran into a juror in the restrooms since they have two back
9:20 AM 18 there.

9:20 AM 19 We have -- the clerk points out that we do have
9:20 AM 20 a room that has lots of machines with, you know, drinks and
9:20 AM 21 chips and all that kind of thing, but obviously it's not a --
9:20 AM 22 as you say, a cafeteria or sitdown place.

9:20 AM 23 MR. MARCET: Understood. Judge, in terms of
9:20 AM 24 in-custody witnesses, we do have one. Is there any -- we will
9:21 AM 25 coordinate with the marshals. If we're going to call them,

9 : 2 1 A M 1 they'll be here. Is there anything else Your Honor has in
9 : 2 1 A M 2 terms of special preferences?

9 : 2 1 A M 3 THE COURT: No. Who's that witness that you may
9 : 2 1 A M 4 call?

9 : 2 1 A M 5 MR. MARCET: His name is Joshua Reilly.

9 : 2 1 A M 6 THE COURT: No, I don't have any special preferences.
9 : 2 1 A M 7 I just would like to know who it is in advance, and you just
9 : 2 1 A M 8 told me, so --

9 : 2 1 A M 9 MR. MARCET: And then in terms of the Court
9 : 2 1 A M 10 information -- the Classified Information Security Officer, we
9 : 2 1 A M 11 had spoken with Charmaine yesterday. Do you want her there the
9 : 2 1 A M 12 entire trial or only when the classified information is
9 : 2 1 A M 13 potentially an issue?

9 : 2 1 A M 14 THE COURT: I think she plans to be here the entire
9 : 2 1 A M 15 trial. I mean, we talked to her yesterday, and that's what she
9 : 2 1 A M 16 said, but it makes no difference to me if she's in the
9 : 2 1 A M 17 courtroom when we're not talking about anything that has to do
9 : 2 1 A M 18 with the classified documents.

9 : 2 1 A M 19 MR. MARCET: Okay. I know we have some Department of
9 : 2 1 A M 20 Defense personnel who will be in the courtroom at various times
9 : 2 2 A M 21 during the trial to -- you know, both to monitor the -- make
9 : 2 2 A M 22 sure there's no spillage of classified information and just to
9 : 2 2 A M 23 monitor the case. Would you like us to give their name to
9 : 2 2 A M 24 Charmaine so that -- I would hate to have them come in after
9 : 2 2 A M 25 jury selection and then a juror recognizes someone or something

9 : 2 2 A M 1 to that effect.

9 : 2 2 A M 2 THE COURT: Well, they're not going to be witnesses,
9 : 2 2 A M 3 right?

9 : 2 2 A M 4 MR. MARCET: No, no, no, no.

9 : 2 2 A M 5 THE COURT: Well, I don't think that's really an
9 : 2 2 A M 6 issue. I don't ask them if they know the marshals or that kind
9 : 2 2 A M 7 of thing, so --

9 : 2 2 A M 8 MR. MARCET: Perfect. Thank you, Judge. That was
9 : 2 2 A M 9 all I had.

9 : 2 2 A M 10 THE COURT: Okay. Mr. Futerman, I know we've tried a
9 : 2 2 A M 11 case -- at least one, maybe more than one -- together, but let
9 : 2 2 A M 12 me ask if there's anything you want to ask, just general
9 : 2 2 A M 13 questions.

9 : 2 2 A M 14 MR. FUTERMAN: Just one. The -- you saw from my
9 : 2 2 A M 15 exhibits a lot of my exhibits are photographs --

9 : 2 3 A M 16 THE COURT: Yes.

9 : 2 3 A M 17 MR. FUTERMAN: -- that have been -- virtually all of
9 : 2 3 A M 18 them have been provided to me by the Government from different
9 : 2 3 A M 19 times and investigation. Of course, because of the nature of
9 : 2 3 A M 20 this case, a lot of these photographs I'm not exactly sure who
9 : 2 3 A M 21 took them or there may be some questions who took them. We
9 : 2 3 A M 22 gave up our Touhy request to bring in unnecessary witnesses
9 : 2 3 A M 23 just to verify these pictures. And so I think Mr. Marcet is
9 : 2 3 A M 24 not going to have an objection to the pictures coming in
9 : 2 3 A M 25 because he knows they're reliable. He knows someone took them.

9 : 2 3 A M 1 I don't know how you would like to proceed through that. In
9 : 2 3 A M 2 other words, it would be helpful to have the early witnesses be
9 : 2 3 A M 3 able to talk about those pictures rather than recalling them or
9 : 2 3 A M 4 something like that.

9 : 2 3 A M 5 THE COURT: Oh, yeah, I agree. I -- if you're asking
9 : 2 3 A M 6 me can you introduce essentially evidence through the
9 : 2 3 A M 7 Government's witnesses and -- I did look at your exhibit list,
9 : 2 3 A M 8 and I realize they're mostly photographs -- I certainly have no
9 : 2 4 A M 9 objection to that; in fact, would encourage that. That just
9 : 2 4 A M 10 keeps a witness have having to be recalled.

9 : 2 4 A M 11 Mr. Marcet, do you have any objections to that?

9 : 2 4 A M 12 MR. MARCET: No. Defense counsel and I had discussed
9 : 2 4 A M 13 that previously. I just said I didn't know what Your Honor's
9 : 2 4 A M 14 preference was in terms of whether they just lay the foundation
9 : 2 4 A M 15 and then introduce it in their case or whether they introduce
9 : 2 4 A M 16 it in ours. I don't have -- I don't have an issue either way.

9 : 2 4 A M 17 THE COURT: Yeah. If you want to ask that witness
9 : 2 4 A M 18 about that photograph, go ahead and introduce it, and that's
9 : 2 4 A M 19 fine so you don't have to call that witness again, and you can
9 : 2 4 A M 20 ask --

9 : 2 4 A M 21 MR. FUTERMAN: And, you know, maybe -- my only
9 : 2 4 A M 22 concern is if some of the pictures were taken by witnesses that
9 : 2 4 A M 23 are not being called by the Government and just see how we'll
9 : 2 4 A M 24 address that because they are from the search. There's no
9 : 2 4 A M 25 mystery to them. I just don't want several witnesses saying,

9 : 2 4 A M 1 "I don't remember," or, "I'm not sure," and I have not called
9 : 2 4 A M 2 the other witnesses that maybe were the actual photographer,
9 : 2 4 A M 3 and then I'm stuck with these pictures and witnesses that say,
9 : 2 5 A M 4 "I don't remember," but we all know that --

9 : 2 5 A M 5 THE COURT: Okay. Mr. Marcet, have you looked at all
9 : 2 5 A M 6 the defense's photographs that are exhibits -- proposed
9 : 2 5 A M 7 exhibits in this case?

9 : 2 5 A M 8 MR. MARCET: I have not. Well, I haven't, like,
9 : 2 5 A M 9 individually gone through every photograph to see -- you know,
9 : 2 5 A M 10 we're introducing over 100 pictures from the search, so I'm
9 : 2 5 A M 11 imagining most of them we are introducing, and I've asked
9 : 2 5 A M 12 Mr. Futerman if there's any specific ones that are important,
9 : 2 5 A M 13 if he flags them for me, I can tell him if they're one of the
9 : 2 5 A M 14 ones we're introducing or, you know, if one of our witnesses
9 : 2 5 A M 15 will be able to recognize them.

9 : 2 5 A M 16 I mean, we are calling the woman who was with
9 : 2 5 A M 17 the photographer the entire time, so I -- she should be able to
9 : 2 5 A M 18 authenticate any photograph, even if she doesn't remember the
9 : 2 5 A M 19 specific photograph, because there's I think over 200. You
9 : 2 5 A M 20 know, the photo log is one of the documents that will be
9 : 2 6 A M 21 introduced, and each photograph has a number corresponding to
9 : 2 6 A M 22 the log. So I don't foresee that as a problem if we're talking
9 : 2 6 A M 23 about pictures from the search.

9 : 2 6 A M 24 MR. FUTERMAN: Okay. And -- here's an example of my
9 : 2 6 A M 25 one concern. That particular lady that was with Photographer

9 : 2 6 A M 1 Munn --

9 : 2 6 A M 2 THE COURT: Okay. Let me ask, is that Ms. Gonzalez?

9 : 2 6 A M 3 MR. FUTERMAN: Yes, Your Honor.

9 : 2 6 A M 4 THE COURT: Okay.

9 : 2 6 A M 5 MR. FUTERMAN: So in her report that was given to me,
9 : 2 6 A M 6 she indicates that she does not remember seeing the classified
9 : 2 6 A M 7 CD, and there's a picture of the CD, the classified -- there's
9 : 2 6 A M 8 a secondary picture of it with their expert that I'll be able
9 : 2 6 A M 9 to introduce through their expert when it's sent to the expert
9 : 2 6 A M 10 to give a download of a date and time, but there's a secondary
9 : 2 6 A M 11 picture -- or a primary picture that was taken of the CD, and
9 : 2 6 A M 12 if she's going to say, "I don't remember seeing the CD," then
9 : 2 6 A M 13 she's not going to remember seeing the picture of the CD. So
9 : 2 7 A M 14 there is a picture of that CD, and that's the type of picture
9 : 2 7 A M 15 that I'm concerned about because I don't know who took it. I
9 : 2 7 A M 16 don't know when it was taken, and I don't want to be standing
9 : 2 7 A M 17 there with what I think is an important picture --

9 : 2 7 A M 18 THE COURT: Well, these are all photos that were
9 : 2 7 A M 19 provided to you, is that correct, by the Government?

9 : 2 7 A M 20 MR. FUTERMAN: Yes, Your Honor.

9 : 2 7 A M 21 THE COURT: Yeah. Well, there shouldn't be any
9 : 2 7 A M 22 objections. They're photos that were taken at the search,
9 : 2 7 A M 23 right?

9 : 2 7 A M 24 MR. MARCET: The pictures that he's talking about
9 : 2 7 A M 25 right now were taken after the search, but we're introducing

9:27AM 1 those pictures, so that's not going to be a problem. The photo
9:27AM 2 of the CD, and then the second photo of the CD are -- that's
9:27AM 3 Exhibit 16 and Exhibit 17S in our exhibit list, so both of
9:27AM 4 those are -- we will introduce them.

9:27AM 5 MR. FUTERMAN: So as long as the Government
9:27AM 6 essentially stipulates all the pictures they've given me I can
9:27AM 7 bring in in one form or another, I guess it's not an issue.

9:27AM 8 THE COURT: Mr. Marcet?

9:27AM 9 MR. MARCET: The pictures from the search and
9:27AM 10 relating to the search, yes. There's a lot of other pictures
9:28AM 11 in the discovery about January 6th and things that I don't
9:28AM 12 think should come in.

9:28AM 13 MR. FUTERMAN: Either the first search or the CD or
9:28AM 14 the second search. I'm not putting in pictures of (audio
9:28AM 15 fades).

9:28AM 16 THE COURT: Okay. Then I think we're good.

9:28AM 17 MR. FUTERMAN: Consistent with your trial order, I
9:28AM 18 did ask Mr. Marcet who he's calling on Monday afternoon,
9:28AM 19 because he did indicate with some of the witnesses there may be
9:28AM 20 Jencks material, but there's not with these three. And for
9:28AM 21 Court's knowledge, Mr. Marcet says that he would indicate his
9:28AM 22 first three witnesses would be Belvin Sanchez, Chris Nicolussi,
9:28AM 23 and Christopher Franck, all agents, and there's no additional
9:28AM 24 Jencks material on them. So I just wanted the Court to know
9:28AM 25 and Mr. Brown.

9 : 2 8 A M 1 THE COURT: Okay. Mr. Marcet, is that correct?

9 : 2 8 A M 2 Those are your first three witnesses?

9 : 2 8 A M 3 MR. MARCET: Yes, Your Honor.

9 : 2 8 A M 4 THE COURT: All right.

9 : 2 8 A M 5 MR. FUTERMAN: And I don't have anything else. That
9 : 2 8 A M 6 was my last issue.

9 : 2 8 A M 7 THE COURT: Okay. All right.

9 : 2 9 A M 8 MS. RODRIGUEZ-FEO: Your Honor, Carli Rodriguez-Feo.
9 : 2 9 A M 9 Is it okay if I address the Court with a couple of questions as
9 : 2 9 A M 10 well?

9 : 2 9 A M 11 THE COURT: Sure.

9 : 2 9 A M 12 MS. RODRIGUEZ-FEO: Okay. I just wanted to
9 : 2 9 A M 13 confirm --

9 : 2 9 A M 14 THE COURT: Ms. Rodriguez, why don't you identify
9 : 2 9 A M 15 yourself so we have a record of this?

9 : 2 9 A M 16 MS. RODRIGUEZ-FEO: Yes, Your Honor. It's Carli
9 : 2 9 A M 17 Rodriguez-Feo, the Classified Information Security Officer.

9 : 2 9 A M 18 THE COURT: All right. Go ahead.

9 : 2 9 A M 19 MS. RODRIGUEZ-FEO: I just wanted to confirm
9 : 2 9 A M 20 logistics, and I can speak separately with the parties about
9 : 2 9 A M 21 the details, but I know that we are saying that the silent
9 : 2 9 A M 22 witness rule is going to be invoked, which normally in my
9 : 2 9 A M 23 experience -- which this doesn't happen very often and is
9 : 2 9 A M 24 always case by case on the logistical side of the court
9 : 2 9 A M 25 procedure. So my understanding is that certain witnesses will

9:29 AM 1 be identified as the witnesses that are going to essentially
9:30 AM 2 involve a particular binder or a particular document. So my
9:30 AM 3 first question just relates to the production of those
9:30 AM 4 classified binders or classified documents. Are both parties
9:30 AM 5 going to be responsible for creating an individual set of 12 or
9:30 AM 6 14 or however many you require, and then how many do you
9:30 AM 7 require of the actual classified material, the one you
9:30 AM 8 presented to the jury?

9:30 AM 9 THE COURT: Okay. Well, perhaps I just assumed it
9:30 AM 10 would be the Government's responsibility to do that, and I
9:30 AM 11 don't know who in the Government, but Mr. Marcet or
9:30 AM 12 Mr. Goedman, you're the people that are going to be in court,
9:30 AM 13 so what I -- how I thought this was going to happen is that you
9:30 AM 14 would make -- you make copies of the documents, the classified
9:30 AM 15 documents that you're going to ask about, and a copy is
9:31 AM 16 presented to the witness. A copy is presented to the 14 jurors
9:31 AM 17 that are in the courtroom.

9:31 AM 18 MR. MARCET: Your Honor, if I may, we've already
9:31 AM 19 taken care of this. We have 20 binders with the --

9:31 AM 20 THE COURT: Okay.

9:31 AM 21 MR. MARCET: -- classified exhibits, 6 through 10.
9:31 AM 22 So we have redacted copies of Exhibits 6 through 10 that have
9:31 AM 23 been provided to Mr. Futerman that will initially be introduced
9:31 AM 24 through the witnesses who found the CD and the documents, and
9:31 AM 25 then we have 20 binders with the unredacted versions which we

9:31AM 1 have put line numbers next to so -- to facilitate the silent
9:31AM 2 witness rule so that the jurors -- you know, so the 14 jurors
9:31AM 3 will get their binders. The witness will have a binder.
9:31AM 4 Defense will have a binder. We'll have a binder, and then the
9:31AM 5 witness can refer to line numbers instead of reading the actual
9:31AM 6 classified material.

9:31AM 7 THE COURT: Okay. And Court will have a binder,
9:31AM 8 right?

9:32AM 9 MR. MARCET: Yes, of course. Of course.

9:32AM 10 THE COURT: All right. Thank you.

9:32AM 11 MS. RODRIGUEZ-FEO: And, Mr. Marcet, just to follow
9:32AM 12 up, the 20 binders are going to be provided on a daily basis to
9:32AM 13 and from secure locations by the Government? So the defense
9:32AM 14 counsel are not going to be responsible for the production of
9:32AM 15 any classified in the courtroom; is that correct?

9:32AM 16 MR. MARCET: Yes, we can do that. They're at the FBI
9:32AM 17 right now, and we can make sure to do that.

9:32AM 18 MS. RODRIGUEZ-FEO: And certainly we can offline
9:32AM 19 coordinate the assistance of our office with that process too.
9:32AM 20 I just want to be clear since it is done differently every
9:32AM 21 time. I just want to make sure that I'm clear on where the
9:32AM 22 classified material is going to be coming to and from as it
9:32AM 23 enters the courthouse and where it's going to be going back to,
9:32AM 24 so that will help with us keeping up with the Court, you know,
9:32AM 25 responsibility as well.

9 : 3 2 A M 1 So when the binders are done for the day,
9 : 3 2 A M 2 they'll be returned to the Government to then be returned to
9 : 3 2 A M 3 secure locations by the Government, or they'll be maintained by
9 : 3 3 A M 4 the Court throughout the entire trial? What's the plan by the
9 : 3 3 A M 5 Government for that?

9 : 3 3 A M 6 MR. MARCET: I had understood that the CISO was
9 : 3 3 A M 7 responsible for that, but it's not a problem. We can do that.
9 : 3 3 A M 8 We will have -- we can have agents standing by to do that.

9 : 3 3 A M 9 MS. RODRIGUEZ-FEO: Well, I mean, there's nothing --
9 : 3 3 A M 10 like I said, there's nothing -- that's the reason I'm asking,
9 : 3 3 A M 11 and I don't want to take up too much time on the record, but I
9 : 3 3 A M 12 think it is important to establish it just because it's not --
9 : 3 3 A M 13 I -- as I think maybe Mrs. King mentioned, I am in Miami for
9 : 3 3 A M 14 classified hearings on Monday and Tuesday. Patrice will be
9 : 3 3 A M 15 covering -- Patrice King, my colleague, will be covering the
9 : 3 3 A M 16 representation of our office as the CISO throughout the trial,
9 : 3 3 A M 17 so the Court will have a CISO present for the need to move
9 : 3 3 A M 18 classified around or answer classified questions or deal
9 : 3 3 A M 19 directly in terms of logistics that come up with the jury.
9 : 3 3 A M 20 Monday and Tuesday, Mrs. King will be there. I will be there
9 : 3 4 A M 21 on Wednesday, Thursday, and Friday, and then we will come up
9 : 3 4 A M 22 with a plan the following week.

9 : 3 4 A M 23 But why don't we offline separately, Mr. Marcet,
9 : 3 4 A M 24 about logistically where those binders are going to be stored,
9 : 3 4 A M 25 if they're going to be stored on site at the courthouse or if

9 : 3 4 A M 1 they're going to be stored off site? Does the Court have a
9 : 3 4 A M 2 preference, Your Honor, on that, where the classified material
9 : 3 4 A M 3 binders that are being accessed by the jury need to be during
9 : 3 4 A M 4 the course of the trial?

9 : 3 4 A M 5 THE COURT: I have no -- I have no preference. We do
9 : 3 4 A M 6 have the ability, though -- it's my understanding you all --
9 : 3 4 A M 7 meaning those of you that are responsible for the classified
9 : 3 4 A M 8 documents -- have a room and a safe in addition to the safe
9 : 3 4 A M 9 that's in my chambers, so we -- certainly we have the ability
9 : 3 4 A M 10 to store them on site. So --

9 : 3 4 A M 11 MS. RODRIGUEZ-FEO: Right.

9 : 3 4 A M 12 THE COURT: -- that may be easier for the Government.
9 : 3 4 A M 13 You just need to let us know or let Ms. Rodriguez know.

9 : 3 5 A M 14 MS. RODRIGUEZ-FEO: Okay. Thank you, Your Honor. I
9 : 3 5 A M 15 will speak with the Government. Patrice and I will speak with
9 : 3 5 A M 16 the Government separately, and we'll come up with just a
9 : 3 5 A M 17 logistical plan to make sure we have, you know, A to B planned
9 : 3 5 A M 18 out on where the material is going to be coming from on a daily
9 : 3 5 A M 19 basis and where it's going to be stored on a nightly basis.
9 : 3 5 A M 20 And then while we're on site, if we need to deal with how
9 : 3 5 A M 21 that's going to look during deliberations, we can talk about
9 : 3 5 A M 22 that later. I think those are my -- that was just my main
9 : 3 5 A M 23 question and concern, about the storage and the delivery.

9 : 3 5 A M 24 THE COURT: Okay.

9 : 3 5 A M 25 MR. GOEDMAN: Your Honor, if I may, while we're on

9:35 AM 1 the topic of logistics for the silence witness rule, the way
9:35 AM 2 I've seen this done in other cases is the binders of classified
9:35 AM 3 information, they're only going to be out and given to the jury
9:35 AM 4 and frankly the Court and defense for the witnesses who are
9:35 AM 5 testifying about those documents. They're more or less
9:36 AM 6 testifying sequentially. My plan had been that after we call
9:36 AM 7 the first of those witnesses up, to ask permission Court to
9:36 AM 8 distribute the binders to the jury. But I wanted to just
9:36 AM 9 confirm with you whether that was acceptable practice, whether
9:36 AM 10 there was any further instruction or explanation that you
9:36 AM 11 thought it was appropriate to offer at that time.

9:36 AM 12 THE COURT: No. You can distribute them. I might --
9:36 AM 13 I might give an instruction regarding they're not to open the
9:36 AM 14 binders until they're instructed to do so, and they're only to
9:36 AM 15 look at what they're instructed to look at. But no, I don't
9:36 AM 16 think there's anything else that you want to -- you need to do.

9:36 AM 17 The witnesses, the first three witnesses that we
9:36 AM 18 were talking about earlier -- and I'm not even sure we
9:36 AM 19 identified them by name -- are any of those witnesses witnesses
9:36 AM 20 pertaining to the classified documents?

9:36 AM 21 MR. MARCET: No, Your Honor.

9:36 AM 22 THE COURT: When is it that you expect to get to
9:36 AM 23 witnesses that might pertain to the classified documents?

9:36 AM 24 MR. MARCET: It's our last five witnesses.

9:37 AM 25 THE COURT: Okay. So the first part of the trial

9:37 AM 1 will not be -- will not relate to the classified documents,
9:37 AM 2 other than what they might have found --

9:37 AM 3 MR. MARCET: Correct, only in their redacted form,
9:37 AM 4 correct.

9:37 AM 5 THE COURT: Okay. All right.

9:37 AM 6 Ms. Rodriguez, anything else?

9:37 AM 7 MS. RODRIGUEZ-FEO: That's all, Your Honor. I think
9:37 AM 8 that works out well timing-wise if the witnesses are at the
9:37 AM 9 latter part as well, because I'll be arriving in Tampa on
9:37 AM 10 Wednesday -- or on Tuesday afternoon.

9:37 AM 11 THE COURT: Okay.

9:37 AM 12 MS. RODRIGUEZ-FEO: Okay. Thank you.

9:37 AM 13 THE COURT: You're welcome.

9:37 AM 14 All right. Before we get to the issue that
9:37 AM 15 we're going to have to have a little discussion about, which is
9:37 AM 16 the issue about the hearsay tape and the introduction of the
9:37 AM 17 hearsay tape under Rule 807, I want to save that for last,
9:38 AM 18 because that might take us a little more time. Anything else?
9:38 AM 19 Any questions or any concerns or anything that we need to talk
9:38 AM 20 about?

9:38 AM 21 MR. MARCET: Nothing on behalf of the United States.

9:38 AM 22 THE COURT: All right. Mr. Futerman?

9:38 AM 23 MR. FUTERMAN: No, Your Honor. Just understanding
9:38 AM 24 your preference on opening and closing, unless there's
9:38 AM 25 permission from the Court, is to stay behind the lectern; is

9:38 AM 1 that correct, Your Honor?

9:38 AM 2 THE COURT: That is correct. And I really have no
9:38 AM 3 time limits on opening. You can take as much time as you would
9:38 AM 4 like to take on your opening. What I'll do with closing
9:38 AM 5 arguments is I'll talk with you in advance about how much time
9:38 AM 6 you want for closing arguments, but with opening statements --
9:38 AM 7 I might have said opening arguments. With opening statements,
9:38 AM 8 you know, you're welcome to use whatever time you think is
9:38 AM 9 necessary to lay out what you believe the evidence will be, and
9:38 AM 10 I don't put any time frame on that.

9:38 AM 11 MR. FUTERMAN: Thank you.

9:39 AM 12 MR. MARCET: And, Your Honor, is it permissible for
9:39 AM 13 the Government to split its -- like, Mr. Goedman gives the
9:39 AM 14 first close and I give the second close?

9:39 AM 15 THE COURT: Closing?

9:39 AM 16 MR. MARCET: Yes.

9:39 AM 17 THE COURT: Yeah, that's fine. Not opening, but
9:39 AM 18 closing, right?

9:39 AM 19 MR. MARCET: Closing, correct.

9:39 AM 20 THE COURT: So one of you would be the -- do the
9:39 AM 21 opening and the other the rebuttal?

9:39 AM 22 MR. MARCET: Yes, Your Honor.

9:39 AM 23 THE COURT: Yeah, that's fine.

9:39 AM 24 Okay. All right. Then let's go to -- let's go
9:39 AM 25 to the issue that really has not yet been resolved, and that's

9:39 AM 1 the notice of the potential use of hearsay under Federal Rule
9:39 AM 2 of Evidence 807. And this is an audio recording between the
9:39 AM 3 federal agents Lindsey and Ura, U-r-a -- I may be
9:39 AM 4 mispronouncing that -- and Mr. Brown in December of 2020. I
9:40 AM 5 don't have any -- I don't have any particular concern that --
9:40 AM 6 about the trustworthiness under 807. I think the real issue is
9:40 AM 7 really its relevance and whether it's more probative of what
9:40 AM 8 it's being offered for than other evidence, and I think that's
9:40 AM 9 really the issue.

9:40 AM 10 So let me -- Mr. Futerman, let me make sure I'm
9:40 AM 11 clear on this. In the -- in the pleading that you filed, which
9:40 AM 12 was a response -- or a reply to the United States' response to
9:40 AM 13 the notice of potential use of hearsay, you said this. And you
9:40 AM 14 said, you know, it's important for your theory of defense, and
9:40 AM 15 your theory of defense is that the federal agents planted --
9:41 AM 16 and I'm just reciting what you said. Federal agents planted
9:41 AM 17 the contraband charged in Counts 3 through 9 during the search
9:41 AM 18 of the Defendant's home. The motivation for planting the
9:41 AM 19 contraband was retaliation against Mr. Brown because on
9:41 AM 20 March 5th, 2021, he publicly played the recorded conversation
9:41 AM 21 with the agents during a video interview with Brandon Gray that
9:41 AM 22 was broadcast on a video streaming site, and he and Gray went
9:41 AM 23 through the recorded conversation criticizing the agents'
9:41 AM 24 attempts to solicit Mr. Brown to act as a CI.

9:41 AM 25 The public broadcast of the recorded

9 : 4 1 A M 1 conversation in an interview in which Mr. Brown allegedly --
9 : 4 2 A M 2 and I certainly haven't heard that streaming conversation, so
9 : 4 2 A M 3 I'm just repeating what you said; in which Mr. Brown disparaged
9 : 4 2 A M 4 the Government is the basis to support the defense theory of
9 : 4 2 A M 5 retaliation. The FBI and the federal government were angry
9 : 4 2 A M 6 about the Defendant's revelation of the recording to the public
9 : 4 2 A M 7 and his comments.

9 : 4 2 A M 8 So are you going to play any part of the
9 : 4 2 A M 9 March 5th interview, or --

9 : 4 2 A M 10 MR. FUTERMAN: No. No, I was going to have Mr. Brown
9 : 4 2 A M 11 testify about kind of the chronology of the events. The agents
9 : 4 2 A M 12 come to him in December. They ask to recruit him and pay him.
9 : 4 2 A M 13 They talk about his need to talk on January 6th, that there's
9 : 4 2 A M 14 something going on on January 6th, and it starts off as a
9 : 4 3 A M 15 fairly cordial meeting. Mr. Brown says, "Can I record?" And
9 : 4 3 A M 16 they say, "Oh, yeah, you can record it. We'll pay you. We'll
9 : 4 3 A M 17 work with you." Well, that cordial meeting turned south quick
9 : 4 3 A M 18 because Mr. Brown not only doesn't work for Government as they
9 : 4 3 A M 19 had hoped, he doesn't give them information for the Government
9 : 4 3 A M 20 as they hoped, but he goes initially in March, chastises the
9 : 4 3 A M 21 agents, names the agents, and played the recording. I don't
9 : 4 3 A M 22 know if the FBI ever got -- those agents ever got in any
9 : 4 3 A M 23 trouble for allowing a witness to record an interview. It's
9 : 4 3 A M 24 certainly something that I cannot imagine it was something they
9 : 4 3 A M 25 look back and think this was a good thing.

9 : 4 3 A M 1 So those witnesses are not going to be
9 : 4 3 A M 2 cross-examined, even though Agent Lindsey was the lead case
9 : 4 3 A M 3 agent, because the Government is choosing not to call them. So
9 : 4 3 A M 4 I don't know what happened as a result of direct consequences
9 : 4 3 A M 5 to him, if anything.

9 : 4 3 A M 6 But he criticized them. At least Mr. Brown
9 : 4 4 A M 7 believes there was a large audience in March, and there seemed
9 : 4 4 A M 8 to be a lot of evidence to support that. But he then
9 : 4 4 A M 9 continues, by the way, to broadcast it. It's not a one-time
9 : 4 4 A M 10 thing. People actually send that interview to the FBI link. I
9 : 4 4 A M 11 think they take it down, but he continues to talk about it and
9 : 4 4 A M 12 do interviews and other podcasts.

9 : 4 4 A M 13 THE COURT: Meaning Mr. Brown?

9 : 4 4 A M 14 MR. FUTERMAN: Yes.

9 : 4 4 A M 15 THE COURT: Okay.

9 : 4 4 A M 16 MR. FUTERMAN: And continues to criticize the
9 : 4 4 A M 17 Government, criticize the agents, talks about how they wanted
9 : 4 4 A M 18 him to infiltrate the Oath Keepers, pay him. They knew
9 : 4 4 A M 19 something was going on January 6th, went on and on and on about
9 : 4 4 A M 20 this. He goes on for many, many months.

9 : 4 4 A M 21 Then we have this search in September. The
9 : 4 4 A M 22 agents are the same arresting agents, Lindsey and Ura, who then
9 : 4 4 A M 23 arrest Mr. Brown, and Mr. Lindsey is involved in a lot of
9 : 4 4 A M 24 things during this investigation we put in this motion.
9 : 4 4 A M 25 They're not calling them. He's actually interviewing witnesses

9 : 4 5 A M 1 as recently as I think it was November of this year and
9 : 4 5 A M 2 September of this year. I've got 302s from that. He's
9 : 4 5 A M 3 responsible for the September search warrant to a degree. He
9 : 4 5 A M 4 was at the December search warrant. He took Mr. Brown's buccal
9 : 4 5 A M 5 swab in court, and he did a lot of things involved if the
9 : 4 5 A M 6 Government not calling him.

9 : 4 5 A M 7 It certainly gives a little more credence to
9 : 4 5 A M 8 Mr. Brown's theory, without naming who because I have no way of
9 : 4 5 A M 9 knowing who. And there's other evidence I could tell the Court
9 : 4 5 A M 10 if necessary in camera that supports his position about this
9 : 4 5 A M 11 planted evidence.

9 : 4 5 A M 12 But obviously if there was a way that I could
9 : 4 5 A M 13 show which agents actually did this or who did this, and the
9 : 4 5 A M 14 Government were satisfied by that, they would drop those
9 : 4 5 A M 15 counts. They have the different position that this wasn't
9 : 4 5 A M 16 planted evidence, that Mr. Brown is lying about it, and they're
9 : 4 5 A M 17 going to have witnesses to say, "We found it," and then other
9 : 4 5 A M 18 circumstantial evidence to support their theory. They're going
9 : 4 5 A M 19 to have the ability to cross-examine Mr. Brown at length, and
9 : 4 5 A M 20 so the jury can then decide the credibility or the weight of
9 : 4 6 A M 21 the evidence.

9 : 4 6 A M 22 But to completely exclude it -- it's a hard
9 : 4 6 A M 23 enough pill for a jury to swallow that evidence was planted.
9 : 4 6 A M 24 It's even harder for me not to put a theory as to why it was
9 : 4 6 A M 25 planted and to not be able to at least give some context to

9 : 4 6 A M 1 what Mr. Brown is saying is accurate. There was a recording.

9 : 4 6 A M 2 As I said, Your Honor, I don't intend to focus
9 : 4 6 A M 3 on January 6th. I don't really think it's going to be
9 : 4 6 A M 4 mentioned beyond what I indicate, the chronology of events, and
9 : 4 6 A M 5 after the event, Mr. Brown discussing his anger about it and
9 : 4 6 A M 6 him not being able to work about it -- not being able to work
9 : 4 6 A M 7 for the Government to try to prevent that. That's it. Very,
9 : 4 6 A M 8 very limited.

9 : 4 6 A M 9 But, again, if I keep out the potential
9 : 4 6 A M 10 motivation for this retaliation and don't give some credibility
9 : 4 6 A M 11 to what he's saying, "Look, here is the actual recording," then
9 : 4 6 A M 12 I think a large part of his defense is completely torpedoed.
9 : 4 7 A M 13 And if we weigh out everything, as I've said, if you exclude
9 : 4 7 A M 14 that, it's taken away from the jury.

9 : 4 7 A M 15 And I think even the cases that the
9 : 4 7 A M 16 Government -- the case that the Government cites gives us some
9 : 4 7 A M 17 very good language that Courts shouldn't do that. I know
9 : 4 7 A M 18 you've read that, but I just wanted to harp on a couple of
9 : 4 7 A M 19 phases because the Government filed this case in response, and
9 : 4 7 A M 20 they use phraseology under United States v. Lankford, in the
9 : 4 7 A M 21 case they've talked was reversed, where the Defendant should be
9 : 4 7 A M 22 allowed to provide even circumstantial evidence of quote --
9 : 4 7 A M 23 they also quote United States v. Word. The jury did not hear
9 : 4 7 A M 24 the whole story about a relationship. There was no means to
9 : 4 7 A M 25 defend his (audio fades), and they vacated the case on a

9 : 4 7 A M 1 collateral matter.

9 : 4 7 A M 2 That was a collateral matter. This is a key
9 : 4 7 A M 3 matter. This is the motive for the Government to potentially
9 : 4 7 A M 4 plant evidence, and completely excluding that recording means
9 : 4 8 A M 5 that the jury could just say, "Oh, Mr. Brown is making it up.
9 : 4 8 A M 6 We don't have the agents. We don't know if there was a
9 : 4 8 A M 7 recording. How do we know anything was ever recorded?" And
9 : 4 8 A M 8 this just gives credibility to his theory.

9 : 4 8 A M 9 THE COURT: My question to you is this: It seems
9 : 4 8 A M 10 like we're missing some connecting points here.

9 : 4 8 A M 11 First, I certainly have read the transcript of
9 : 4 8 A M 12 the recording. There's nothing -- there's no sign of anger.
9 : 4 8 A M 13 Nobody is upset. You know, as you described it, it's a very
9 : 4 8 A M 14 cordial meeting and that sort of thing. So I'm not sure that
9 : 4 8 A M 15 particular tape -- it's got to be something more. Yet we're
9 : 4 8 A M 16 not going to hear the streaming on the March 5th, 2021. We're
9 : 4 9 A M 17 not -- you're not calling Brandon Gray as a witness. I don't
9 : 4 9 A M 18 know how you're going to get out-of-court statements in that he
9 : 4 9 A M 19 might have made on -- meaning your client -- on March the 5th,
9 : 4 9 A M 20 and I don't even know -- we don't even have any evidence that
9 : 4 9 A M 21 the agents or anybody heard the March 5th interview. I mean,
9 : 4 9 A M 22 these -- your theory is not necessarily that those two
9 : 4 9 A M 23 particular agents planted it, but that the Government --
9 : 4 9 A M 24 somebody from the Government planted it; is that -- am I
9 : 4 9 A M 25 understanding that correctly?

9:49 AM 1 MR. FUTERMAN: Correct. Exactly right, Your Honor.

9:49 AM 2 THE COURT: Okay.

9:49 AM 3 MR. FUTERMAN: And what the Court says gives more
9:49 AM 4 reasons for retaliation because they start off very cordially.
9:49 AM 5 I think 38 seconds in, they say, "Will you work for us? We'll
9:50 AM 6 pay you." And Mr. Brown almost like played along with them.
9:50 AM 7 "Sure. Everything's fine." Then instead of doing that, he
9:50 AM 8 blasts them and discusses them and discusses what they want him
9:50 AM 9 to do over and over and over again. And that I certainly
9:50 AM 10 could, if the Court wished for me to, bring in a witness for
9:50 AM 11 that statement.

9:50 AM 12 But that was the extent of how this was going to
9:50 AM 13 come in, and I thought to completely exclude this would be very
9:50 AM 14 unfair.

9:50 AM 15 THE COURT: Well, here is the problem. And, you
9:50 AM 16 know, as far as the reliability that he recorded it, I don't
9:50 AM 17 think the Government has any concerns about it is what it is.
9:50 AM 18 It's not been doctored or that sort of thing, but -- and it
9:50 AM 19 certainly wouldn't have some of the things in there if it had
9:50 AM 20 been doctored. But I don't -- you have to leap through,
9:50 AM 21 number 1, that anybody heard the March 5th streaming. You
9:50 AM 22 would have to -- then it would have to be that information was
9:51 AM 23 attributable to those people that were at the search. We would
9:51 AM 24 have to get in -- Mr. Brown is going to have to talk about what
9:51 AM 25 he said on March the 5th, and I'm not sure how you're going to

9:51 AM 1 get that in.

9:51 AM 2 So I'm just saying that there's -- I don't -- I
9:51 AM 3 don't know -- there's just a lot of steps that I think are
9:51 AM 4 missing.

9:51 AM 5 Wouldn't you have to show that somebody heard
9:51 AM 6 it, that the agents heard it or somebody at the scene heard it
9:51 AM 7 in order to -- in order get that in?

9:51 AM 8 And I know Mr. Brown has his hand up, but I'm
9:51 AM 9 not going to call on him unless you want me to, Mr. Futerman.

9:51 AM 10 MR. FUTERMAN: No, Your Honor. If he wanted to
9:51 AM 11 represent himself, he could have represented himself.

9:52 AM 12 THE COURT: All right.

9:52 AM 13 MR. FUTERMAN: All respect to Mr. Brown, but he's
9:52 AM 14 retained a lawyer, and it doesn't work both ways. Either he
9:52 AM 15 hires me, or I'm stand-by counsel and he does all the talking.
9:52 AM 16 I've had this discussion with Mr. Brown.

9:52 AM 17 I understand that -- you know, he may want to
9:52 AM 18 talk to me in the breakout room, and I'll come back to the
9:52 AM 19 Court. That's a different scenario.

9:52 AM 20 But in terms of arguing the Court's direct
9:52 AM 21 question, do I have to show that -- I can show that someone
9:52 AM 22 from the Government has listened to the recording. I mean, he
9:52 AM 23 can certainly testify about some things that he's seen, such as
9:52 AM 24 that Mr. Brown saw that it was placed on the FBI site and taken
9:52 AM 25 down. People had it going up on the site and taken down before

9 : 5 2 A M 1 were sending it to the FBI site and coming down. That's an
9 : 5 2 A M 2 illustration of how I think there's a good-faith belief that
9 : 5 2 A M 3 people saw it because they kept taking it down from the site,
9 : 5 2 A M 4 the actual podcast.

9 : 5 2 A M 5 THE DEFENDANT: Your Honor, may I request a breakout
9 : 5 3 A M 6 room with my attorney, please?

9 : 5 3 A M 7 THE COURT: Sure. That's fine. I don't mind doing a
9 : 5 3 A M 8 breakout room.

9 : 5 3 A M 9 THE DEFENDANT: Thank you, Your Honor.

9 : 5 3 A M 10 THE COURT: You're welcome. Can we do that,
9 : 5 3 A M 11 Charmaine?

9 : 5 3 A M 12 COURTROOM DEPUTY: Yes, Your Honor.

9 : 5 3 A M 13 THE COURT: We'll give you a chance to talk. Let's
9 : 5 3 A M 14 just make this quick though. Five minutes, all right?

9 : 5 3 A M 15 THE DEFENDANT: Yes, ma'am.

9 : 5 3 A M 16 THE COURT: Okay.

9 : 5 3 A M 17 MR. MARCET: Your Honor, do I mind if I address
9 : 5 3 A M 18 Mr. Goedman?

9 : 5 3 A M 19 THE COURT: No. You want a breakout, too?

9 : 5 3 A M 20 MR. MARCET: I don't mind.

9 : 5 3 A M 21 THE COURT: You might just -- why don't you just call
9 : 5 3 A M 22 him on the phone off camera?

9 : 5 3 A M 23 MR. MARCET: Sure. I'll mute it. That's fine.

9 : 5 3 A M 24 THE COURT: All right. We'll let them use the
9 : 5 3 A M 25 breakout room.

9:53 AM 1 MR. FUTERMAN: Are you just calling my office?

9:53 AM 2 THE COURT: We're trying to do --

9:53 AM 3 MR. MARCET: No, that's not us.

9:53 AM 4 MR. FUTERMAN: Oh, you're going to speak to
9:53 AM 5 Mr. Goedman. I'm sorry.

6 (Recess from 9:53 a.m. to 9:58 a.m.)

9:58 AM 7 MR. FUTERMAN: Your Honor, can the Court hear me?

9:58 AM 8 THE COURT: Yes, I can hear you fine. We don't have
9:58 AM 9 Mr. Brown back yet.

9:58 AM 10 MR. FUTERMAN: While he's coming back, he just wanted
9:58 AM 11 to make sure that some factual points were brought to the
9:58 AM 12 Court's attention that I was in the process of making. I will
9:58 AM 13 just add those.

9:58 AM 14 THE COURT: Okay. He's back.

9:58 AM 15 MR. FUTERMAN: Your Honor, I don't think -- first of
9:58 AM 16 all, I don't think the Government in good faith will disagree
9:58 AM 17 that they were fully aware of this recording. And how do we
9:59 AM 18 show that? Number 1, Thomas Munn will admit that, although
9:59 AM 19 they're not calling him. Number 2, they have -- they have --
9:59 AM 20 they're aware of it being taken down from the FBI site.
9:59 AM 21 Number 3, Mr. Brown is going to testify when he was arrested by
9:59 AM 22 Mr. Ura and Mr. Lindsey, that they specifically told him in the
9:59 AM 23 conversations when they're being arrested, "We have comments in
9:59 AM 24 our room. We've talked about these comments. We've discussed
9:59 AM 25 these comments." He actually has the specific comments of

9:59 AM 1 people commenting on this interview plastered all over his
9:59 AM 2 office. So he's going to -- you know, Mr. Brown is going to
9:59 AM 3 testify about it, and I don't think the Government is going to
9:59 AM 4 dispute for a second that part of their agency or several
9:59 AM 5 agents knew about this interview. And I don't think Mr. Ura
9:59 AM 6 would dispute, for example, if they asked him -- and he's on a
9:59 AM 7 may be called -- that that interaction happened with Mr. Brown.

9:59 AM 8 So there are multiple avenues to, number 1, know
9:59 AM 9 that the Government knew about this interview, the context of
10:00 AM 10 the interview, the public's reaction to the interview.

10:00 AM 11 And so the reason I think that the recording is
10:00 AM 12 important is to just to -- as you indicated, the cordiality of
10:00 AM 13 the meeting gives more credence to the adverse reaction.

10:00 AM 14 THE COURT: I'm sorry. Say that again.

10:00 AM 15 MR. FUTERMAN: The initial -- December, all this
10:00 AM 16 stuff happened. The cordial tone of the meeting and the effort
10:00 AM 17 to recruit Mr. Brown as essentially one of them, because he's a
10:00 AM 18 paid informant for them, gives more credence than when the
10:00 AM 19 anticipated reaction is not what they anticipated. Quite the
10:00 AM 20 converse; that instead of working for them, he goes out and
10:00 AM 21 blasts them and names them. Then the adverse reaction is much
10:00 AM 22 more likely. You start out cordially, and you expect somebody
10:00 AM 23 to do something, it's much more likely that it's an adverse
10:00 AM 24 reaction.

10:01 AM 25 And so I just think it will be -- and we've

1 cited that case about it always uses the word "potential
2 exculpatory" or "motive" or "could." In the Gonzalez case, we
3 caution trial courts against establishing too high a threshold,
4 establishing too high a threshold for any potential evidence.
5 Some factual basis could. This is motive. This is motive to
6 find evidence, and I just can't prove that they planted
7 evidence. Obviously if I could, the Government would dismiss
8 the counts, but I can certainly show a reason for it. That's
9 all I'm suggesting to the jury, and they can then decide how
10 much weight to give it.

11 And then the secondary, of course, issue for the
12 Court is when the Government's saying does it all come in or
13 does some of it come in?

14 THE COURT: Well, and I -- and that may make a
15 difference in how you want to handle this, but I agree with the
16 Government, with the exception of page 4 of 13 where he talks
17 about the false claims made by his wife and he's lost custody
18 of his children. I think the rest of it comes in. So if it
19 gets played with that exception, which I believe is page 4 of
20 13, 113 through 133, the rest of it comes in, because that's
21 all interrelated. The wife thing, I think, was just thrown in
22 by Mr. Brown, and it really has no relation at all, but the
23 rest of it does. And, I mean, if you want it in, it all comes
24 in with that one exception.

25 MR. FUTERMAN: Okay. I understand that. That's what

1 I'll do. I will prepare the redacted version to that, and
2 then -- that's what we'll do.

3 THE COURT: All right. So just so we're clear, again
4 that's page 4 of 13, lines 113 through line 133, which you kind
5 of marked as 2.

6 Well, you know, I'm still not convinced -- I
7 mean, I don't disagree. You're entitled to present your theory
8 of the defense, and this is your theory of defense, and, you
9 know, it is very hard to prove that evidence got planted, and
10 if there is a motive for planting the evidence, then I think
11 that's certainly -- certainly something the jury should be able
12 to hear. I just think there's so many hurdles you've got to
13 get over before you can even say this comes in, but you're not
14 going to introduce it until your case in chief, so maybe you'll
15 get there.

16 I haven't heard from the Government, and so -- I
17 can't remember who wrote the response. Mr. Marcet, I'll start
18 with you.

19 MR. MARCET: Thank you, Your Honor. I think Your
20 Honor is hitting the nail on the head. United States v. Hurn,
21 the published Eleventh Circuit decision, tells us that the
22 evidence has to either be directly relevant to an element of
23 the offense, which I don't think anyone is contending that it
24 is, or relevant to a collateral issue, which could be the
25 motive of someone to do something, and if it is not, then the

1 Court has to exclude it. It's a simple instruction we get from
2 the Eleventh Circuit.

3 The case that the defense cites, the unpublished
4 Eleventh Circuit decision in Gonzalez, falls into that first
5 category. That's evidence directly relevant to the element of
6 the offense. It involved the Government's sole witness, and it
7 involved evidence that the Government's sole witness was lying
8 to protect a third party who had really committed the crime.
9 So that case is -- really underscores the point that we're
10 making, is that these witnesses that allegedly had motive are
11 not only not being called by either party -- and, you know, I
12 know the defense continues to disparage us as though we're
13 doing something unethical by not calling these witnesses. I
14 would call them if they had anything relevant to offer, Judge.
15 They do not have any relevant testimony. They were not present
16 at the search. They were gone by that time.

17 So if we look at why the defense is linking this
18 to the evidence found during the search, they cite seven
19 different facts relating to Special Agent Lindsey in an attempt
20 to bridge that nexus, and it just doesn't make any connection
21 to what the jury is going to be asked to find.

22 So first they say that he's the lead case agent.
23 Well, for anyone who knows anything about how we conduct
24 investigations and prepare for trial, the lead agent is someone
25 who is not a fact witness. That's why they're the lead agent

1 because they can sit in on witness preparation, help us abide
2 by our discovery obligations without potentially affecting
3 their testimony. And so here, the fact that he's the lead case
4 agent, yes, of course, he's selected to help us prepare for
5 trial because he wasn't present during the search.

6 The next two points they make -- this is at
7 pages 7 and 8 of their response, that he conducted the 2020
8 interview. That kind of begs the question, and that he texted
9 the defendant on January 6th. Again, you know, these are his
10 actions unrelated to the evidence that we're going to be
11 introducing at trial.

12 Then they say that he arrests the defendant on
13 September 30th. That's absolutely true, but as the Defendant's
14 well aware, that's why he wasn't present at the search because
15 he was with the Defendant on the way to jail.

16 They say that he authored a search warrant in
17 December 2021. That's true, but this is not a motion to
18 suppress. The alleged motive or bias of someone writing a
19 search warrant is not an issue in this case, particularly where
20 the evidence of the December 2021 search is not in dispute.

21 They say he took a buccal swab of the Defendant.
22 Again, that has nothing to do with the items recovered on
23 September 30th, 2021, and we're not disputing -- we're
24 stipulating that the buccal swab comes in. There's no
25 allegation of any impropriety with the swab.

10:07AM 1 And then last they say he interviewed witnesses
10:07AM 2 in preparation for trial. Well, he wrote reports of our trial
10:07AM 3 preparation so we could abide by our discovery obligations, but
10:07AM 4 those reports are not going to be an issue in trial. Those are
10:07AM 5 hearsay. That's just giving the defense notice of what the
10:07AM 6 witnesses are going to say.

10:07AM 7 So none of these seven issues that they've cited
10:07AM 8 are going to be in evidence or in issue during the trial, and
10:08AM 9 there's nothing linking the alleged motive of Special Agent
10:08AM 10 Lindsey and Special Agent Ura to the evidence that was found
10:08AM 11 during the case. And, you know, that's our position, that
10:08AM 12 there's just not that link.

10:08AM 13 THE COURT: Mr. Marcet, let me ask -- let me ask you
10:08AM 14 a slightly different question.

10:08AM 15 The time frame here, if -- if the planting did
10:08AM 16 not become an issue -- according to the theory that Mr. Brown
10:08AM 17 is proposing, the planting did not become an issue until
10:08AM 18 March 5th or sometime thereafter when the FBI agents became
10:08AM 19 aware allegedly -- I mean, I don't know -- I don't have any
10:08AM 20 evidence of this, but became aware of the stream and whatever
10:08AM 21 Mr. Brown said -- and I don't know what that was, so I can't
10:09AM 22 comment on that, but at any rate -- and then the search
10:09AM 23 occurred in what, December of that year? So the timing -- you
10:09AM 24 talked about the timing and it was too attenuated, but I'm not
10:09AM 25 sure that I think that is really an issue, the attenuation.

1 It's the concern that I have -- I mean, you know, I don't think
2 the tape itself is really damaging to the Government in any
3 way, and I don't think that the fact that they approached
4 Mr. Brown about using him as a confidential source or a
5 confidential informant and that they called him even on
6 January 6th to see if he could help them, I mean, I just don't
7 see that as being damaging to the Government. I just find
8 that -- I think you have to make the leap that somehow that
9 agents, probably agents -- it would have to be agents unless
10 they snuck into his house sometime. Agents other than the two
11 agents that were there in December of 2020, other agents had to
12 have done it when they were searching the residence, and they
13 would have had to have heard, and they would have had to have
14 been mad. I just think there are a lot of hurdles to get
15 through with this.

16 MR. MARCET: Your Honor, may I clarify one point?

17 THE COURT: Yeah.

18 MR. MARCET: Candidly, I agree with you. The reason
19 I filed this was not because I was concerned it was damaging to
20 us. I think probably it -- I don't know if it helps us, but I
21 certainly agree with you that it's not damaging to us. The
22 reason I filed this was to just apprise the Court that once we
23 go down this road, it is going to implicate a lot of other
24 things, right? Because the suggestion here is that this was
25 all -- the search, the planting of evidence, was all motivated

1 by this publishing of this December 2020 interview which
2 allegedly embarrassed these agents and somehow provided motive
3 to someone else or possibly to those agents to plant evidence.

4 THE COURT: Well, I think it's -- I think it's more
5 than that. I think it's whatever -- and I don't know what that
6 is, but whatever Mr. Brown said when he was on the streaming
7 show and being interviewed or speaking with the person that's
8 not going to be a witness.

9 MR. MARCET: Correct.

10 THE COURT: He may have made some disparaging
11 remarks. I don't know what those are, but I think that's
12 coupled with the tape itself separate. You know, it's just --
13 it's just hard right now for me to make a determination as to
14 whether this should come in. If that connection is made, I
15 mean, I don't think it's damaging. I do think it brings up
16 January 6th, which I had hoped to avoid as much as possible.

17 But anyway, I'm sorry, Mr. Marcet. I'm thinking
18 out loud. I interrupted you.

19 MR. MARCET: No, Your Honor. I appreciate that, but
20 my point was really just to apprise the Court that once this
21 door is opened, in our view, a lot of other evidence is going
22 to have to come in to put this interview and the Defendant's
23 comments, including, you know, his false comments during this
24 interview into context. And so, you know, it may mean that we
25 need to call witnesses about what the Defendant was, in fact,

1 doing at this time when he was interviewed, what the subsequent
2 investigation revealed about the Defendant's involvement with
3 the Oath Keepers in January 6th and training individuals, and
4 then -- and as well as, you know -- in order to explain that
5 that's what the search was about; that it wasn't some
6 retaliatory action by some angry agents. It was a methodical
7 investigation that uncovered evidence that the Defendant had
8 been to the Capitol, that he had transported explosives and
9 firearms to the riots, and that he had been a leading member of
10 a group that was organizing a seditious conspiracy.

11 And, you know, I don't think we would present
12 the entire Oath Keepers' trial, but we are talking about at
13 least a couple of witnesses who have to explain why this search
14 really took place. It wasn't -- you know, and that's why
15 generally search warrant trials are limited to the search.
16 They're not -- you don't get into why there was a search
17 because you then start opening the door to all of these -- all
18 of these collateral issues. So that's my concern is, you know,
19 once we do this -- and I do agree, I'm not -- I don't think
20 I've heard this March interview, so I can't comment on what is
21 said, but I do agree that that would have to be played as well
22 and -- in order to have any basis for there to be a motive.
23 And then I think, you know, we're entitled to rebut the
24 Defendant's false statements made during these interviews and
25 during this March statement in order to, you know, disabuse the

1 jury of any notion that there wasn't a real criminal
2 investigation going on here, that this was all just some ginned
3 up retaliation.

4 THE COURT: Mr. Futerman, do you have a copy of the
5 March 5th -- I mean, you've said that it was up on the FBI
6 website or someplace. I mean, have you heard it or seen it
7 or --

8 MR. FUTERMAN: Yes, both. I think it may still be up
9 there. I will definitely provide it if Mr. Marcet has not seen
10 it. I'm surprised by that, so I will definitely -- I've
11 watched it. I've listened to it. Mr. Brown goes over blow by
12 blow in this interview, and so --

13 THE COURT: Okay.

14 MR. FUTERMAN: I can definitely list it as an
15 additional exhibit, file it, and --

16 THE COURT: Well, I was going to say, if you send it
17 to him, send it to me too because I'm having a hard time
18 connecting the dots, and maybe that would help me connect the
19 dots.

20 Well, look --

21 MR. FUTERMAN: One thing, just so the Court is
22 aware -- I think the Court is aware, but in Mr. Lindsey's role,
23 Mr. Lindsey was there at the time of the search. I just wanted
24 to be clear. Lindsey and Ura arrived with all of the other
25 agents at the beginning of the search. They then arrest

1 Mr. Brown. They have this discussion about his comments he had
2 made over the last six months, and they ultimately return back
3 to (audio fades), just so the Court's aware.

4 And so, you know -- and Agent Lindsey's role is
5 a little bit more than a tangential witness. He's a lead case
6 agent. I outlined some it. He did a lot more in this
7 particular case, so it was a surprise that they're not calling
8 him. I know the Government said we think there's been
9 something nefarious. I'm not suggesting that. I'm just saying
10 tactically it seems odd to me that an agent that's probably the
11 most involved out of everybody from start to finish, they're
12 not calling, nor are they calling Mr. Ura.

13 But I will provide the Court -- I understand the
14 Court would potentially allow me to modify my exhibit list and
15 put this exhibit in or potentially allow me to add that
16 additional witness to get the context, and so you would hear to
17 check the level of criticism by Mr. Brown.

18 THE COURT: Okay. Well, I don't know about the
19 others, but I would like to be able to look at the March 5th
20 because it seems -- you know, if I just look at what you're
21 seeking to introduce, I mean, that's a very cordial
22 conversation. So I don't know why there would be any
23 retaliation for that, but, you know, I haven't seen the other.

24 Look, let me ask you a question, Mr. Futerman.
25 Can I defer ruling on whether this comes in until after the

10:17 AM 1 Government's case?

10:17 AM 2 MR. FUTERMAN: Well, as long as everyone is in
10:17 AM 3 agreement that I can certainly bring up in opening --

10:17 AM 4 THE COURT: Wait, certainly bring up what?

10:17 AM 5 MR. FUTERMAN: In opening that -- the chronology of
10:17 AM 6 events without specifying, you know, too much specificity in
10:17 AM 7 the December interview, that I can say that Mr. Brown is going
10:17 AM 8 to testify that agents approached him in December; that they
10:17 AM 9 wanted him to cooperate in December regarding January 6th; that
10:17 AM 10 he didn't cooperate; and then in March, he then discussed that
10:17 AM 11 discussion, and that he continued to discuss that interaction;
10:17 AM 12 and then in September he was ultimately arrested as a
10:17 AM 13 consequence of the search warrant. And he's going to tell you
10:17 AM 14 that certain pieces of the evidence, Count 3 through 9, they
10:18 AM 15 were not in his possession, and they were planted by somebody.
10:18 AM 16 I'm not necessarily going to be able to prove who planted them,
10:18 AM 17 but it wasn't him, and be allowed to say that in opening.

10:18 AM 18 THE COURT: Yeah, well, that doesn't have -- I mean,
10:18 AM 19 you could say that without anything coming in as far as this
10:18 AM 20 particular tape is concerned because I don't think that there's
10:18 AM 21 any question that they approached him, and I don't think
10:18 AM 22 there's any question that they asked him to act as a CI, and
10:18 AM 23 there wouldn't seem to be any dispute that they called him
10:18 AM 24 again on January 6th. So --

10:18 AM 25 MR. FUTERMAN: If I'm allowed to do that in opening,

10:18 AM 1 then that's great, Your Honor.

10:18 AM 2 THE COURT: All right. Well, I'm going to defer
10:18 AM 3 until I can -- until I can maybe see the -- or hear the
10:18 AM 4 March 5th interview and then also perhaps see how the evidence
10:18 AM 5 shakes out in the Government's case.

10:19 AM 6 MR. FUTERMAN: Thank you.

10:19 AM 7 THE COURT: All right. Anything else?

10:19 AM 8 MR. MARCET: Your Honor, just one point on the rule
10:19 AM 9 of completeness. So the lines that you're wanting to take out,
10:19 AM 10 as I understand it, are, "Um, but see there's actually a
10:19 AM 11 history of false claims made by my ex-wife. In fact, I
10:19 AM 12 recently lost visitation with my five daughters over bullshit
10:19 AM 13 like that;" is that correct?

10:19 AM 14 THE COURT: Lines -- I'm sorry. Let me just say
10:19 AM 15 this. Lines 113, where he starts out, as you said, "Um, but
10:19 AM 16 see there's actually a history of false claims made by my
10:19 AM 17 ex-wife. I've lost visitation with my five daughters," down
10:19 AM 18 to, "We know about the scorned wife." "Right." Yes.

10:19 AM 19 MR. FUTERMAN: Mr. Marcet, end of 132, I think is
10:19 AM 20 right --

10:20 AM 21 MR. MARCET: Oh, 132.

10:20 AM 22 THE COURT: 133 where he says -- meaning Mr. Brown --
10:20 AM 23 says, "Right," because he's responding to the comment above.
10:20 AM 24 So 113 through 133.

10:20 AM 25 MR. MARCET: So, Your Honor, I mean, once Mr. Brown

1 takes the stand and testifies at trial, his credibility is
2 going to be an issue, and in my view, there's multiple false
3 statements in those 19 lines that I think we would be entitled
4 to question him about. You know, he lost visitation with his
5 five daughters over not false allegations by his wife, but
6 certainly conduct by him. He -- in terms of the costing him
7 \$50,000, he is currently being sued by his lawyers who allege
8 that he defrauded them, you know, and so that's a false
9 statement in addition to, you know, other impeachment that's
10 going to be relevant. And so to me it's just, you know, once
11 this comes in and the defense is alleging -- putting
12 Mr. Brown's credibility in issue and alleging that the agents,
13 you know, are conspiring against him and have some motive, I
14 think to me the fact that the federal agents are telling them
15 about their personal life -- "I have an ex-wife. I know how
16 that --" you know, this all just shows that there was no ill
17 motive during this conversation, and it's also going to be very
18 relevant to Mr. Brown's credibility.

19 THE COURT: I just think it's -- I don't agree with
20 that. I think it's personal, I don't know what it has to do
21 with anything, and, you know, I think you can attack his
22 credibility other ways than that. So I still think that comes
23 out. Okay. I mean, there's plenty of other stuff in there
24 that's not too attractive, so -- but -- okay. My decision
25 would still be the same if it does come in, if that 113 through

1 133 should be redacted.

2 MR. MARCET: Okay.

3 THE COURT: Okay. Well, any other concerns that
4 anybody else wants to talk about before Monday morning?

5 MR. MARCET: Nothing on behalf of the United States.

6 THE COURT: Okay. Well, Mr. Futerman?

7 MR. FUTERMAN: No. You just want us to appear just
8 before 9:00 in 10B?

9 THE COURT: Okay. All right. Is that really your
10 office, Mr. Futerman, or is that some sort of background?

11 MR. FUTERMAN: That's my office. That's where I
12 spend the majority of my life.

13 THE COURT: There's an Assistant United State's
14 Attorney -- no, it's a Federal Public Defender that uses Ruth
15 Bader Ginsburg's office as her backdrop. And so you look at
16 her, and she's got this magnificent office, and I'm thinking,
17 "Wow, that's really nice. Is that your home, or is that your
18 office at the Federal Public Defender's Office?" But anyway,
19 it was, you know, a fake background.

20 All right. I will see you all in the morning --
21 or Monday morning at 9:00 in the morning and start with jury
22 selection. I anticipate jury selection will be at least all
23 morning because -- and we're not going to start the opening
24 statements until after lunch, probably not until about 2:00, I
25 would imagine, somewhere in there. All right. Thank you.

