

1 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

23-CR-146 (DG)

4  
5 -against-

United States Courthouse  
Brooklyn, New York

December 10, 2024  
10:30 a.m.

6 RACHEL CHERWITZ and NICOLE  
7 DAEDONE,

8 Defendants.

9 -----x

10 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
11 BEFORE THE HONORABLE DIANE GUJARATI  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES

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9 Proceedings recorded by mechanical stenography. Transcript  
10 produced by computer-aided transcription.

11 \* \* \* \* \*

12 (In open court.)

13 THE COURTROOM DEPUTY: All rise.

14 Honorable Diane Gujatari now presiding. You may be  
15 seated.

16 United States of America against Rachel Cherwitz and  
17 Nicoel Daedone.

18 Is the government ready?

19 MS. KASSNER: Yes, Your Honor.

20 Good morning. Gillian Kassner, Kayla Bensing, Sean  
21 Fern and Nina Gupta for the United States. Joined by our  
22 paralegal specialists, Liam McNett and Marlane Bosler.

23 THE COURT: Good morning to everyone.

24 And if you could just make sure that everybody has  
25 given the correct spelling of their names to the court

1 reporter, I would appreciate that.

2 MS. BENSING: Yes, Your Honor.

3 THE COURT: Thank you.

4 THE COURTROOM DEPUTY: For the defendants.

5 MS. BONJEAN: Jennifer Bonjean, B-O-N-J-E-A-N, of  
6 the Bonjean Law Group on behalf of Ms. Dadeone.

7 MR. AIDALA: Arthur Aidala. Good morning, Your  
8 Honor.

9 MR. ANSARI: Imran H. Ansari for the defendant  
10 Rachel Cherwitz. Good morning, Your Honor.

11 MR. JACCARINO: Michael Jaccarino for Ms. Cherwitz.  
12 Good morning.

13 THE COURT: And good morning to all the defense  
14 attorneys, and to the two defendants as well.

15 We're convened today for a conference. I'll start  
16 by taking a status update on the parties' discussions with  
17 each other in an effort to narrow issues in dispute. And I  
18 know, based on one of the filings, that the parties are going  
19 to be, I believe, meeting further later today.

20 Is that correct?

21 MS. KASSNER: That's correct, Your Honor.

22 THE COURT: Okay. After I get the status update,  
23 I'll turn to the motions filed by the parties last week and  
24 this week, including as late as last night.

25 So why don't I take a status update, and I have no

1 preference as to who starts, so whatever the parties think is  
2 most efficient.

3 MS. KASSNER: So, Your Honor, I'm happy just to  
4 share from the government's perspective where, although  
5 defense counsel can let me know if I'm missing anything.

6 There are a number of issues that came to light very  
7 recently, either last night or in the past couple of days.  
8 Those issues I expect that we're going to meet and confer on,  
9 including a motion that was filed last night to preclude  
10 certain government exhibits.

11 We are taking a look at that and we are happy to  
12 meet and confer with defense counsel about that. And then  
13 after that, we're happy to submit whatever issues there are to  
14 the Court.

15 THE COURT: Sorry, let me just make sure I'm clear  
16 on which motion you're talking about.

17 Are you talking about the motion relating to  
18 exhibits depicting sexual content?

19 MS. KASSNER: That's correct, Your Honor.

20 THE COURT: Okay. And that's filed at ECF Number  
21 224?

22 MS. KASSNER: Yes, Your Honor.

23 THE COURT: Okay. And have you spoken to the  
24 defendants about wanting to talk to them further?

25 MS. KASSNER: Not yet, Your Honor. We just reviewed

1 the motion. We're actually reviewing the exhibits  
2 contemporaneously with this court appearance, so we will  
3 attempt to meet and confer on those exhibits with them.

4 THE COURT: Okay, I have some questions about that,  
5 but I'll take the rest of your status update first.

6 MS. KASSNER: There have been a number of discovery  
7 requests made by the defense, both by letter to us and in a  
8 separate filing to the Court.

9 We are meeting and conferring on those as well  
10 directly after the status conference. And we'll also be doing  
11 a review of some electronic evidence directly after this  
12 status conference.

13 THE COURT: Okay, let me stop you there as well.

14 Are you referring now to the motions -- it's really  
15 one motion that was filed publicly at 213, and under seal at  
16 214, and just as a general category, relates to certain  
17 journals?

18 Is that the motion you're talking about?

19 MS. KASSNER: Yes, Your Honor.

20 THE COURT: Okay. All right, go ahead.

21 MS. KASSNER: Your Honor, there are a number of  
22 issues that were raised at the last status conference,  
23 including, among other things, trying to reach a stipulation  
24 as to the government's request to admit evidence regarding a  
25 settlement agreement with the victim of the charged offense.

1           We are in the process of continuing to meet and  
2 confer on that, but we have not reached a resolution yet.

3           THE COURT: Thank you for the update. I appreciate  
4 that.

5           Is there anything else?

6           MS. KASSNER: I believe that's everything on our  
7 list that I can think of at this moment, Your Honor, that  
8 we're still conferring on.

9           THE COURT: Let me ask you mostly, you mostly were,  
10 I think, referring to requests by the defense, but I think you  
11 had made a request in response to one of the defendants'  
12 motions. And your response was at ECF 218 asking for 26.2  
13 material.

14           Is that part of the discussions you're planning on  
15 having?

16           MS. KASSNER: Your Honor, I'm not sure we've  
17 requested it, and we have, so far, not received any indication  
18 that more materials will be forthcoming.

19           So I'm actually not sure at this moment if we're  
20 continuing to meet and confer, or if that process has ended,  
21 which is why we raised it to Your Honor.

22           THE COURT: Okay, that's fine.

23           Let me hear from the defendants, just as to the  
24 status update, and then, of course, we'll talk in more detail  
25 about some of the motions.

1 MS. BONJEAN: Thank you, Your Honor. So as to a  
2 number of status updates, we did file or proposed sending a  
3 letter to government on November 25th, 2024 regarding  
4 outstanding discovery.

5 I believe they responded, in part. There were a  
6 number of materials, including materials related to the  
7 journals, I will call them, the hard drive, and the jump  
8 drive. Those are sort of three different materials.

9 I understand from the government we're going to  
10 continue to meet and confer on that today.

11 But that continues to be an ongoing issue. That is  
12 continuing to develop, by the way. We are getting 3500  
13 material, even I think as recently as yesterday, maybe the  
14 week before.

15 It is a fluid issue that I suppose could change.  
16 But I don't -- since you're just asking for an update at this  
17 point, I won't belabor that point.

18 I will, however, point out that the government,  
19 since the last court date, has produced about 6,000 pages of  
20 302s, 5,000 exhibits that they've identified, 73 potential  
21 witnesses.

22 And while they're at liberty to try their case the  
23 way they wish to, it is very hard to put issues in focus when  
24 we don't know exactly what's going to transpire. So we are  
25 going to have to keep filing motions to preserve our record as

1 we get information.

2 THE COURT: Why do you need to keep filing motions  
3 as opposed to making objections at trial as to specific  
4 evidence?

5 I mean, certain issues you may want to flag if they  
6 are particularly unusual, but, you know, in the typical case,  
7 as you all are aware, not every evidentiary issue is  
8 addressed. That's what the trial is for.

9 MS. BONJEAN: Absolutely. And that is the  
10 uniqueness of this case, that we are not on the same page  
11 about what this case is about. I'm just going to lay that out  
12 there. We're not.

13 Our position is they want to make this case about  
14 the character, not only of the defendants, but the character  
15 of the organization.

16 If you look at their exhibit list, we have multiple,  
17 maybe even a terabyte of OMs on video. We don't think that's  
18 what this case is about. That's what they think the case is  
19 about.

20 So when they -- at least that's our perception. So  
21 what I fear will happen is that a witness will be called to  
22 the stand, and it's not just a matter of a finite evidentiary  
23 issue, our position will be this person has no business at all  
24 being on the stand. The whole scope of their testimony is not  
25 related to the charged offense.



1           The Court has already indicated that it's not --  
2 does not care to do sidebars, which is understandable, I know  
3 a lot of judges don't, but we may end up being in a position  
4 where we are objecting about more fundamental things such as  
5 should this person be on the stand at all, what is the scope  
6 of their testimony, not just identifying evidentiary issues.

7           So I feel like we are battling a very -- this is a  
8 12-year alleged conspiracy. Much of the evidence that they  
9 believe should come in I see as 404(b) evidence, but I can't  
10 even nail down, as I speak, what they are trying to actually  
11 introduce that they believe goes to the charged offense versus  
12 some other elusive evidentiary purpose like, you know, which  
13 did they, you know, have indicated to some degree their  
14 proposed jury instructions. That's one problem that I  
15 foresee.

16           And I know the Court wants this trial to go  
17 smoothly. We want this trial to go smoothly. But it feels a  
18 little unmanageable at the moment, and we don't want to be in  
19 a position of having to make really meaning substantive  
20 arguments at sidebar --

21           THE COURT: There are different options than  
22 sidebar. We raise them the day before, if you think a  
23 particular witness is completely irrelevant. You can raise  
24 them in the morning. You can raise them during the break.

25           MS. BONJEAN: Fair enough. And we probably will be

1 doing that, fair warning. Because we just yesterday, for  
2 instance, got a letter from the government regarding a number  
3 of, I think, proposed witnesses that wish to proceed  
4 anonymously.

5 And the Court had ordered the government to sort of  
6 lay out a factual basis for that. They provided us with  
7 their -- I think to the Court as well, their factual basis for  
8 that.

9 A number of those witnesses, as an example, are  
10 detailing conduct that predates 2009. Our position is that's  
11 just -- that's just straight 404(b) evidence. That is not  
12 evidence that goes to the conspiracy because --

13 THE COURT: What about background to the conspiracy?  
14 How are the participants, I mean if there -- other reasons.

15 MS. BONJEAN: I mean, I guess that's, you know --  
16 the devil is in the details. I'm not exactly sure yet, we  
17 just got it yesterday. Those are the types of issues -- we  
18 just -- we want it to go smoothly. I am just raising it for  
19 Court that we're dealing with a lot of material.

20 As to the 26.2, yes, we are interested in continuing  
21 to confer on this. Some of the materials that they have  
22 sought is really material that is in the possession of  
23 OneTaste, not the defendants, that they believe somehow we  
24 have an obligation to produce.

25 THE COURT: Well, they are asking for information in

1 the possession of Kevin Williams and Rachel Caine, who you  
2 have represented are part of the defense team; is that  
3 correct?

4 MS. BONJEAN: Well, they are part of -- they  
5 represent OneTaste. They don't represent the defendants.

6 THE COURT: No, I understand that. I didn't say  
7 they represent the defendants, but I think in connection with  
8 the protective order proceeding that you had before  
9 Judge Levy, there was discussion about those two individuals.

10 MS. BONJEAN: They were -- the way we see it is they  
11 are, for purposes of the protective order, defense counsel.

12 Now, I'm not suggesting, I'm not trying to play  
13 games about 10 over 26.2, because it's with OneTaste, but we  
14 need to have further discussions, because the bigger problem  
15 is our 26.2 obligations are triggered based on who our  
16 witnesses are.

17 THE COURT: Correct.

18 MS. BONJEAN: And there is -- I don't -- we don't  
19 know -- our witness lists look exactly the same, frankly at  
20 this point. It's a little difficult. And it's a burden, it  
21 just is.

22 THE COURT: Right. You may not have any witnesses.

23 MS. BONJEAN: If they don't meet their burden, you  
24 know, we don't have to do anything. Now, I can let the Court  
25 know I suspect that's not what's going to transpire.

1           So part of the 26.2 discussion would be a lot easier  
2 if there was some -- and I'm not saying they're not being  
3 candid, but I'm saying they're not -- they want to keep their  
4 cards close to the vest, I get it, but it would be much easier  
5 to get through these things if we had a better sense of who  
6 they know they're not calling.

7           If they're not calling someone, they should tell us.  
8 It would make things go so much easier. And we will be able  
9 to respond, because we might be able to say, you know what,  
10 we're calling them, and have the 26.2. But again, you know,  
11 that's one of the obstacles in all of this.

12           In terms of any other updates, as it relates to  
13 the -- I guess the status of discovery, couple things.

14           On this, I guess hard drive, the government has  
15 identified about 2500 pages of so-called privileged material  
16 of this witness, who, frankly, I don't even know if she's  
17 testifying at this point, but that would be certainly helpful.

18           THE COURT: I think the government referenced in one  
19 of your submissions that you expect a particular witness to  
20 testify under that witness' true name, which I took you to be  
21 indicating that witness would indeed be testifying.

22           Do I have that right?

23           MS. KASSNER: Yes, Your Honor, we currently plan to  
24 call this individual.

25           THE COURT: Okay. And I think we're talking about

1 the same.

2 MS. BONJEAN: Are we allowed to say her name?

3 THE COURT: I want to get into some of these issues  
4 in more depth, I really just wanted the general status update.  
5 We will be getting into that, yes.

6 MS. BONJEAN: Okay. So assuming that this witness  
7 is going to be called, there's about 2500 pages of material  
8 that I assume is marked privileged because it's communications  
9 as it relates to maybe her lawsuit against OneTaste. I'm  
10 making assumptions at this point.

11 It's our position that when she handed that hard  
12 drive to her sister, and then later that sister handed it over  
13 to an FBI agent, that those privileges -- we're back to the  
14 privilege world -- were waived.

15 There obviously is a rule that -- so that's a  
16 forthcoming motion, I suspect, because we believe we're  
17 entitled to that material. We believe we're entitled to a  
18 number of things as it relates to that hard drive, including a  
19 clone of it. But we can get into the substance of those  
20 arguments.

21 Other status issues. I think the Court is aware of  
22 the filings that we have made.

23 THE COURT: Yes, I'm going to get into each of  
24 those.

25 MS. BONJEAN: Anybody else want to add as to the

1 status?

2 Oh, one other issue, is that the government has  
3 indicated they're not going to be calling Agent McGinnis. I  
4 reached out to the counsel -- at the direction of U.S.  
5 Attorneys, I reached out to counsel, I guess the FBI counsel,  
6 and so they are asking us to file a *Touhy* motion, et cetera.  
7 You know, that's fine, we'll do what we need to do.

8 It just seems a little strange that, you know, the  
9 lead agent would not be available. I assume he's available,  
10 but they're going to want us to make us litigate that.

11 THE COURT: Have you spoken to these prosecutors  
12 about that or did you go --

13 MS. BONJEAN: They referred me to the FBI.

14 THE COURT: Okay.

15 MS. BONJEAN: So, I think that's --

16 THE COURT: Okay, any defense attorney for  
17 Ms. Cherwitz who wishes to be heard right now before we get  
18 into specifics?

19 MR. ANSARI: No, Your Honor, Ms. Bonjean recapped  
20 the status pretty accurate.

21 THE COURT: Okay.

22 So let's start, and we talked about this a little  
23 bit, the motion at ECF 213. Again, the sealed version is at  
24 214. And that relates to the journals.

25 So what I'm hearing is that the parties are going to

1 be talking about this more, but it would be helpful for me to  
2 hear from the government a bit more about what exists, what's  
3 been produced, in what format, and what are the real key  
4 issues that exist still on this issue?

5 If you think that makes sense, if you think you can  
6 resolve this all by dealing with your adversary, then maybe  
7 you don't need to give me a proffer, but let me know where  
8 things stand.

9 MS. KASSNER: Yes, I think it would be helpful, Your  
10 Honor.

11 So there are -- I think as background for Your Honor  
12 which is laid out in our response on this issue, there are two  
13 parallel actions that have been going on. One is the civil  
14 action against, and I'll name her, Ayries Blanck, and the  
15 other one is this criminal case.

16 THE COURT: You mean the civil action in California?

17 MS. KASSNER: In California, correct.

18 My understanding is the civil action is currently  
19 stayed, but that action remains pending.

20 In this case, the government has a few items that  
21 relate to journals that Ayries Blanck wrote. One is we have  
22 hard copy journals, so physical hard copy journals that are  
23 handwritten. Those have been scanned and produced in  
24 discovery, and they have been -- and we've indicated  
25 throughout the case that all discovery is available for

1 inspection but we've also repeatedly indicated that the  
2 journals are available --

3 THE COURT: The original journals?

4 MS. KASSNER: The original journals, the ones that  
5 we currently have, and they're available to defense counsel,  
6 should they wish to inspect them.

7 The other thing that we produced in discovery are  
8 two PDF documents which contain typewritten excerpts from the  
9 journals. Our understanding, which we laid out in our filing,  
10 is that Autymn Blanck, the sister of Ayries Blanck, was the  
11 one who actually created the initial documents. She was the  
12 one in possession of the original journals at the time.

13 THE COURT: Sorry, let me stop you there so I'm very  
14 clear on this.

15 She created the PDFs, not the handwritten journals;  
16 is that correct?

17 MS. KASSNER: Yes. The handwritten journals were  
18 created by Ayries Blanck, this is --

19 THE COURT: Exclusively?

20 MS. KASSNER: Our understanding is exclusively by  
21 Ayries Blanck with the caveat that they were physical journals  
22 that possible at various points, someone might have written a  
23 note here or there, and so I'm just cabining it to, you know,  
24 our understanding is those were her journals. The way a  
25 person typically uses a journal.



1           But that they were in the possession of her sister  
2 and left at her sister's residence and that her sister  
3 subsequently took them out of the place where they were stored  
4 and transcribed portions of them in a -- in a typewritten  
5 document. Our understanding is that document was maintained  
6 on Google Drive.

7           We don't intend to admit that document. It's a  
8 document that we understand widely disclosed to defense  
9 counsel in our 3500 files and otherwise. As we learned more,  
10 we updated them with everything we've learned.

11           We do understand that those typewritten documents  
12 have been edited, but we don't intend to produce them, they  
13 were created for, our understanding, for a limited purpose.

14           THE COURT: You produced them, right, you don't  
15 intend to offer them?

16           MS. KASSNER: That's correct, Your Honor, thank you.

17           The one other thing I do want to flag, though, is  
18 there's been repeated requests for the government to produce  
19 alternate versions of these document.

20           We don't have alternate versions of these documents.  
21 We have the versions that Ayries Blanck provided to us and  
22 that's it. We don't have any other versions that may exist.

23           We do understand from the defense that in the civil  
24 litigation this was an issue and there were various versions  
25 that were provided to OneTaste in connection with discovery in

1 that case. We've asked them for copies of that so we can --

2 THE COURT: Asked who?

3 MS. KASSNER: Copies of --

4 THE COURT: No, who have you asked?

5 MS. KASSNER: Apologies. We asked defense counsel  
6 in the case for copies of those materials, for two reasons.

7 One, they're 26.2 materials for Ayries Blanck, who  
8 they are subpoenaed, and so they should have been produced by  
9 the deadline.

10 And, two, to the extent that there are claims that  
11 are being made about the authenticity of the journals, we want  
12 to evaluate those. We want to make sure we understand exactly  
13 what happened here. But we've asked them for the basics for  
14 these claims, which we don't have, and so far we've only  
15 received them in a filing to Your Honor.

16 And so we find ourselves -- you know, we produced  
17 everything to date that we have in connection with these  
18 journals, and we've invited them to look at whatever metadata  
19 there might be on the FBI servers, or whatever. We have we  
20 can only produce --

21 THE COURT: So you have offered a review of the  
22 metadata; is that correct?

23 MS. KASSNER: Multiple times, Your Honor. We're  
24 scheduled to do that right after this conference.

25 THE COURT: And that is metadata as to which

1 documents exactly?

2 MS. KASSNER: It's metadata as to, frankly, any  
3 documents that we have.

4 So our understanding is that these materials were  
5 provided to the FBI through a Google -- a link to a Google  
6 Drive that the agent downloaded the document and they're  
7 stored in evidence at the FBI.

8 We only have what we have, so they can look at the  
9 transmittal email, and they can look at the documents that  
10 have been stored. That's what we have and that's what we can  
11 share with them.

12 THE COURT: Okay, that's helpful for me to better  
13 understand what materials exist.

14 Let me turn to counsel for the defendants on this  
15 issue, and I -- you filed a motion, I understand why you did  
16 that, but it sounds like even since the motion was filed, you  
17 have some information, and maybe later on you might be getting  
18 more.

19 But you can let me know what remains that you're  
20 seeking that you think the government has that you don't have.

21 MS. BONJEAN: Yes, Your Honor. We started off with  
22 kind of really putting this into focus.

23 We don't believe, and we have good reason to  
24 believe, that what they're calling the original journals are  
25 not the original journals.

1 THE COURT: You're going to have to be more clear  
2 with me. Do you mean the handwritten --

3 MS. BONJEAN: We do not believe the handwritten --  
4 we do not believe, and we have good reason to believe, and  
5 our -- I think our motions sets out at least on some level why  
6 we believe that, although we don't have the metadata that the  
7 handwritten, the final version --

8 THE COURT: Let me make sure. I don't understand  
9 the reference to "metadata" for handwritten journals.

10 MS. BONJEAN: Okay. What's handwritten were written  
11 from a final curated version of the electronic version.

12 THE COURT: But still the handwritten journals are  
13 standalone documents that don't have any metadata themselves,  
14 of course, they're handwritten, so you have that.

15 MS. BONJEAN: We have that.

16 THE COURT: Okay.

17 MS. BONJEAN: Well, the government is taking the  
18 position that the handwritten journals are the original,  
19 meaning they were written in 2015.

20 Our position is that, and it's supported, is that,  
21 no, that handwritten journal was written actually after the  
22 electronic versions, after it was curated by a number of  
23 individuals, including her sister and a the film maker, and we  
24 have an expert declaration that suggests as much, because if  
25 you look at the final electronic version, after it's gone

1 through a year of edits, 54 edits, substantively, that you can  
2 see. And I want to be clear, we don't have the original data  
3 of that, we have like a snippet that was able to be provided  
4 to us. We're not under protective order in the civil case,  
5 just so the Court is clear, we're working with limited  
6 information, too. But the handwritten journals match the  
7 final March 9, 2023 final edit of the typed journals. That  
8 makes no sense.

9           If it was written in 2015 and she was transcribing,  
10 as the government claims, that they apparently claim, the  
11 entry in the handwritten journals should not be word for word  
12 a mirror of --

13           THE COURT: Okay.

14           MS. BONJEAN: -- the final version, which is why  
15 there's still an issue of these electronic journals.

16           THE COURT: Okay, that helps to clarify.

17           So -- but you're being offered to inspect the  
18 metadata, which I assume you'll take the government up on  
19 today, right?

20           MS. BONJEAN: Yes, but I want to be very clear. We  
21 did not have -- until we just heard this, it was not clear to  
22 us that they had metadata or a history.

23           THE COURT: Okay, great. I do think this issue  
24 has -- is going to be resolved, I think, because you're going  
25 to have access to whatever the government has access to by way

1 of metadata.

2 Can the government confirm that?

3 MS. KASSNER: Yes, Your Honor.

4 THE COURT: And that's going to happen today?

5 MS. KASSNER: Yes, Your Honor.

6 THE COURT: Okay.

7 Is there anything else on that issue?

8 MS. BONJEAN: I also want to be clear that we have  
9 provided to the government at least another version. It's  
10 actually provided as an exhibit.

11 We also were able to provide to the government and  
12 to the Court the original transcription that the Autymn, the  
13 sister, did into the Google Drive.

14 So if you're following their theory, she sits down  
15 and she takes her sister's handwritten journal and she starts  
16 transcribing into a Google document.

17 THE COURT: No, I understand. This is very clear  
18 now, this was not -- and this is not faulting the parties, but  
19 this was not laid out as clearly in the papers as it is now.  
20 That's why we have conferences.

21 MS. BONJEAN: You know, so in any event, I'm  
22 optimism, but I do want to let the Court know that after our  
23 meet and confer, if this issue is not resolved, obviously --

24 THE COURT: Okay, why don't you do this. Why don't  
25 you withdraw, without prejudice, the existing motion at ECF

1 Number 213, and the sealed version at 214, because some of  
2 that sounds like it's already moot. And if there are  
3 remaining issues, then you'll raise them.

4 MS. BONJEAN: That's fine, Your Honor. Obviously,  
5 as we get more information, we will fine tune our request, if  
6 necessary.

7 THE COURT: Okay, let me make sure, I know that the  
8 two defendants' attorneys have been working together, but, of  
9 course, there are two separate defendants. And to the extent  
10 that any defense attorney on behalf of Ms. Cherwitz wants to  
11 be heard, you can always speak up.

12 But I want to just confirm that you are going to  
13 withdraw, of course, without prejudice, the motions at 213 and  
14 214?

15 MS. BONJEAN: Yes, Judge, without prejudice, we will  
16 do that. And after our meet and confer today, hopefully it  
17 will be a resolved issue; and if not, we will raise our motion  
18 with a finer --

19 THE COURT: And counsel for Ms. Cherwitz, can you  
20 confirm that as well?

21 MR. ANSARI: Yes, Your Honor.

22 THE COURT: Okay.

23 Let me turn -- well, we already discussed a bit  
24 about the 26.2 material. I don't know that there's more to be  
25 done there, but maybe the government wants to be heard

1 further.

2 MS. KASSNER: Yes, Your Honor.

3 Actually we do want to be heard further, and it's  
4 because I don't think we're going to resolve through a meet  
5 and confer the issue and the serious concerns the government  
6 has about this.

7 Kevin Williams and Rachel Caine are members of the  
8 defense team. They are added to the protective order so they  
9 can fully and freely confer with the defense counsel in this  
10 case about the defense of these individuals.

11 That was an explicit statement was made both in  
12 court and in filings, and it was a carve-out to the protective  
13 order because of that.

14 THE COURT: My understanding from review of the  
15 proceeding before Judge Levy is that the -- I think it was  
16 Ms. Bonjean, represented that she did not think she could  
17 really represent her client without having access to a lawyer  
18 or multiple lawyers at OneTaste. And so my understanding is  
19 that she is consulting with those people.

20 Is that consistent with your understanding?

21 MS. KASSNER: That's our understanding, which means  
22 that, you know, those individuals have access to whatever is  
23 in OneTaste's files that are statements by any witness that  
24 the defense counsel in this case might call.

25 THE COURT: Okay. But what I think I heard from



1 Ms. Bonjean earlier is that they don't know who they're going  
2 to call. A lot of those decisions will be made based on  
3 exactly what the government puts on. They indicate you've  
4 listed many, many, many witnesses as potential witnesses.

5 But I'm hearing -- I'm not hearing that -- anything  
6 that's giving me cause for concern as to the good faith  
7 conduct of Ms. Bonjean or counsel for Ms. Cherwitz on  
8 Rule 26.2 materials.

9 Do you have a real concern there?

10 MS. KASSNER: I have a concern -- I want to be very  
11 clear about what the concern is.

12 THE COURT: Yes.

13 MS. KASSNER: First of all, the witness lists in  
14 this case are not identical. They have -- they've given us  
15 some 26.2 material for a collection of witnesses indicating  
16 that they, at present, plan to call those people.

17 If they are not currently collecting for production  
18 26.2 material for these individuals who were at OneTaste for a  
19 long time, who have exchanged I don't know how many emails, I  
20 don't know how many chat messages, I don't know how many text  
21 messages, yet alone other communications about their  
22 testimony, made other statements. There are video interviews  
23 of these people that are readily accessible to anyone at  
24 OneTaste.

25 If they're not collecting that material, I do not

1 expect that we are going to get it. It is voluminous. It  
2 will take us a lot of time to go through it. And so saying up  
3 until trial we have no idea who we're going to call, that  
4 raises as a real concern because if they are not making every  
5 effort to at least collect this material to ensure it will be  
6 made available to us, then we are going to have to move to  
7 strike every single one of these witnesses, if they don't  
8 produce material to us, and we cannot effectively  
9 cross-examine any of them.

10 THE COURT: I think that might be overstating.

11 But let me turn to Ms. Bonjean for response.

12 MS. BONJEAN: Your Honor, we are doing exactly what  
13 the government has indicated that we're not doing. We are.  
14 It's either -- there is a great deal of material. But, again,  
15 we have some idea of who our likely witnesses in the defense's  
16 case in chief.

17 Counsel's correct, there's not exact overlap. We  
18 actually did precisely what she suggested. She went through  
19 and said is this person like really someone we would call?  
20 You know, we did that work.

21 There is material. We are still going to make a  
22 26.2 production.

23 THE COURT: When do you anticipate doing that?

24 MS. BONJEAN: Well...

25 THE COURT: Sooner rather than later.

1 MS. BONJEAN: Yes, I understand. We're wanting the  
2 same thing from each other.

3 And I would say in the next -- I would like some  
4 clarity about a couple of people, though, and if they can give  
5 that to us --

6 THE COURT: I'm sorry, clarity from the government?

7 MS. BONJEAN: Clarity from the government. There  
8 are a lot of people that sort of re getting mixed bags, and  
9 they have indicated they are calling them.

10 I don't think our 26.2 obligations are triggers.  
11 And so they can talk about striking people, but they want us  
12 to go and do an exorbitant amount of work for people that may  
13 or may not ever take the stand. So there is a finite number  
14 of hours in the day, and I think we all know this.

15 But it really is their burden and they -- you know,  
16 we're two months before trial, you cannot even begin to  
17 imagine what was dumped on us, 5,000 exhibits. So we're doing  
18 the best we can, too. They say they're doing the best. But  
19 if we can have a more transparent conversation, I think this  
20 will be go more quickly, and I do think it can get resolved.

21 We want them to have what we have. But I'm not  
22 going to just do a document dump on them for people that we're  
23 not even calling, and they're not even calling. And so that  
24 seems like it's an exorbitant amount of time that none of us  
25 have.

1 THE COURT: Can the government prioritize the  
2 particular witnesses you're most concerned about having a  
3 large volume of information? I don't mean you have to do it  
4 now, but can you prioritize it for the defense in your  
5 discussions?

6 MS. KASSNER: Yes, Your Honor. And for what it's  
7 worth, the people they've already produced 26.2 material for,  
8 none of them are on our witness list, none of them are people  
9 we intend to call. They've obviously identified them to the  
10 extent that they've produced some 26.2 material for them.

11 All of those people participated in video interviews  
12 with a Kevin Williams and others about the facts that are  
13 directly relevant to their anticipated testimony.

14 And so we just want to make sure, we will work with  
15 defense counsel to see what information they really believe  
16 they need from us in order to make sure they comply with their  
17 obligations. But that's just something that I'm raising, and  
18 I expect we will raise, because as we get closer to trial, it  
19 starts to concern the government.

20 MS. BONJEAN: Just so the Court is aware, there are  
21 videos. We acknowledge that.

22 THE COURT: Right.

23 MS. BONJEAN: Kevin Williams wasn't sitting in every  
24 interview. There was outside counsel actually who did a  
25 number of those interviews that was representing OneTaste at

1 the time. And this was -- yeah, this was many years ago, kind  
2 of more in response to the -- when there was all this media, I  
3 guess criticism, if you will, and OneTaste took some  
4 affirmative action to do an internal audit, if you will. I  
5 guess that's the way to put it.

6 We are in the process of getting some of that  
7 material, and we're not going to withhold it. We are not  
8 trying to withhold it.

9 But as the government pointed out, there is a great  
10 deal of material. We're going through it as best we can. And  
11 it is not the case that Kevin Williams was in every single  
12 interview. We have -- there's other outside counsel that we  
13 have been getting this information from as well.

14 THE COURT: Okay. And I think we can -- go ahead.

15 MR. JACCARINO: Judge, Mike Jaccarino for Rachel  
16 Cherwitz. I just want to add two quick points.

17 There are at least two potential witnesses that we  
18 identified that we have provided some 26.2 material for, that  
19 since we provided it, they have received trial subpoenas from  
20 the government. So there is overlap there.

21 If they are intending on calling certain witnesses  
22 that we have identified as potential defense witnesses, we're  
23 not going to continue to provide 26.2 material if they are  
24 going to be government witnesses. So that's another issue.  
25 There is significant overlap there.

1           And then the other, really, primary issue for us is  
2 that there's still a motion pending before the Court regarding  
3 the, what we see as, critical relevance of the substance,  
4 which these witnesses will testify to.

5           We don't know yet if Your Honor is going to  
6 permit --

7           THE COURT: We're going to have a discussion about  
8 that shortly.

9           MR. JACCARINO: Okay, so we're still waiting for  
10 that ruling before we can identify which witnesses fall into  
11 which buckets.

12          THE COURT: Okay.

13          MR. JACCARINO: Thank you.

14          THE COURT: We've discussed already the lack of the  
15 need at this point to use Jane Doe 1 for Ms. Blanck. But for  
16 record clarity, I am going to direct the parties: One, to  
17 meet and confer as to the universe of previously filed  
18 documents that can now be filed without redaction of her name.  
19 Two, to file a letter containing a list of the documents in  
20 which her name was redacted. And three, as attachments to  
21 that letter, file copies of those documents without the  
22 redactions of her name. And the deadline for doing all of  
23 this is one week from today, December 17th.

24          So I just want to have you confirm that you know  
25 what I'm asking for. I think it's important that the record

1 now contain the unredacted documents.

2 MS. BONJEAN: Judge, just for clarity. So some of  
3 those documents were filed under seal, and then a redacted  
4 version.

5 Do you want us to move -- once we identify those  
6 documents that have her name that are no longer not necessary  
7 to be redacted, do you want us to move to strike the redacted  
8 version or?

9 THE COURT: I think we can leave everything on the  
10 docket as is, and I think it would be easiest -- the method  
11 I'm proposing is to have essentially a cover letter that lists  
12 the documents and then as exhibits to that, the unredacted  
13 versions.

14 I think that's the cleanest. If the parties think  
15 there's some other way to do it, but I think that, for record  
16 clarity, that probably works best.

17 Government?

18 MS. KASSNER: That's fine, Your Honor.

19 THE COURT: Okay. And defense?

20 MS. BONJEAN: Yes, Your Honor.

21 And do you want that jointly?

22 THE COURT: That would be the best.

23 MS. BONJEAN: Okay. I assume that we're fine.

24 THE COURT: Okay.

25 Let me turn to the government's motion filed at ECF

1 Number 225 that relates to the names and identifying  
2 information with respect to the government's anticipated  
3 victim witnesses.

4 That motion, which is an 18-page letter, was filed  
5 last night, I have read it and intend to spend more time with  
6 it, but I'll hear any response defendants may have now.

7 MS. BONJEAN: Your Honor, we had obviously just  
8 received it last night. And I still would like the  
9 opportunity to file a response in written form.

10 But I will continue to point out, and I have done so  
11 in a number of different filings, our position about the  
12 absolutely, for transparency in this proceeding or any  
13 proceeding, and that is the First and the Sixth Amendments,  
14 and that, although I understand, that some of the issues that  
15 are being discussed are sensitive in nature, it is also the  
16 nature of the case here that, you know, there is going to be  
17 an open courtroom, these people are going to be asked to  
18 testify about these issues, and being able to do so  
19 anonymously from our position --

20 THE COURT: Well, they're not anonymous to you, you  
21 will know exactly who these people are, correct?

22 MS. BONJEAN: Yes, that's right, Your Honor, but we  
23 believe that the anonymity is really about to the public.  
24 That is a safeguard on the truth.

25 It's much easier to know you're going into a



1 courtroom and testifying, and whatever you say there is going  
2 to be only known by a small group of people. And this is not  
3 a matter of harassment --

4 THE COURT: Well, it's going to be known by  
5 everybody. It's public. It's just the name is not going to  
6 be known, necessarily.

7 I haven't ruled on this, of course, yet.

8 MS. BONJEAN: Your Honor, again, yet.

9 THE COURT: You can put in a written submission.

10 MS. BONJEAN: I can put in a written submission.  
11 And I'm going to let Mr. Aidala take it from there.

12 THE COURT: Go ahead.

13 MR. AIDALA: Good morning, Your Honor.

14 It has to do with the jury. That's who the jury is.  
15 Why are these other witnesses, when you know their first name  
16 and their last name, and this particular witness you're going  
17 to instruct them that you've decided that they deserve not to  
18 have their last names are what, because they're afraid of  
19 them? The Luccheses, the Gambinos?

20 THE COURT: Or that they recognize that these are  
21 sensitive issues.

22 Look, there are jury instructions on this. You  
23 know, you can -- please know that I know where you're coming  
24 from. I'm happy to look at your written material.

25 MR. AIDALA: Your Honor, prejudice to our clients is

1 much more severe. They're the ones on trial. If they  
2 choose -- under the Sixth Amendment, if they choose to  
3 confront, as Justice Scalia made so clear about the  
4 confrontation clause, if they choose to confront, then they  
5 need to come here and tell you their first name and their last  
6 name. They need to tell the jurors who they are as human  
7 beings before they accuse other human beings of crimes that  
8 could put them in jail.

9 THE COURT: Okay, Mr. Aidala, there's no jury here  
10 today, but I hear you.

11 MR. AIDALA: Judge, one more thing, if I may.

12 THE COURT: You may.

13 MR. AIDALA: The whole thing with the protective  
14 order, and the anonymity, they're making it out like this is  
15 some kind of gang. This is some kind of -- there's violence  
16 involved.

17 This is a conspiracy case, Your Honor. There's no  
18 violence involved here. Even the coercion was not violence.  
19 They're not stating there were threats to their physical harm.  
20 But they're trying to make this into a case that Ms. Bonjean  
21 referenced earlier, it's different than what the indictment  
22 charges. It's different than what the crimes actually are.

23 There's no fear of violence. There's been no  
24 threats to anybody here, hence the protective order being so  
25 draconian, and now this new motions, it's just ridiculous.

1 And I ask the Court to step in and fix that, please.

2 THE COURT: Ms. Bonjean and Mr. Aidala, well, my  
3 question, you said you wanted to put in something in writing.  
4 I don't know whether you intended that to be for both  
5 defendants.

6 MR. AIDALA: Yes, Your Honor.

7 THE COURT: Okay, I don't think you need much time  
8 to do that. I will give you -- also until the 17th to do  
9 that, which is one week from today.

10 Okay, let's turn --

11 MS. BONJEAN: 5:00, Judge?

12 THE COURT: Yes, 5:00 for all submissions. When I'm  
13 giving you a date, 5 p.m. Thank you for reminding me.

14 Turning to, and we talked about this a bit, the  
15 motion at ECF Number 224 relating to the exhibits depicting  
16 sexual content. And I know the government has said they would  
17 be discussing this further with the defendants.

18 I will let the government know that the defendants  
19 raised some persuasive arguments. Usually parties can come to  
20 some agreement, either on particular exhibits of this nature,  
21 or a narrowing of the number of exhibits. I'll leave it to  
22 the parties to engage in that.

23 I decline at this time to issue a blanket ruling. I  
24 will, of course, address any objections that arise as to any  
25 specific exhibits the government seeks to offer.

1           But I have seen some of the exhibits. I haven't  
2 spent much time with them yet, but they are quite explicit,  
3 some of them, and I would, you know, encourage the government  
4 to think about whether any of these are exhibits the  
5 government really seeks to offer; if so, what is the  
6 relevance? How many you seek to offer, you know, really for  
7 what purpose? Again, that goes to relevance.

8           If you want to be heard on any of this now, I don't  
9 know whether you were being just over inclusive in producing  
10 all of these, but you did identify them as potential exhibits.

11           So maybe you want to tell me a bit more about that,  
12 but I will leave to the parties to really discuss in more  
13 detail.

14           MS. KASSNER: Yes, Your Honor, we expect to narrow.  
15 I mean, we're not going to admit all of the exhibits on the  
16 list at trial, we're going to narrow substantially our  
17 exhibits, including in this category, so I believe it might be  
18 fruitful to give us an opportunity to look at the particular  
19 exhibits. I can confer with the defense.

20           THE COURT: Ms. Bonjean, do you want to be heard on  
21 that?

22           MS. BONJEAN: No, Your Honor. I'll let Mr. Ansari  
23 address that.

24           MR. ANSARI: Your Honor, I just want to make a point  
25 on that. It goes to the volume of exhibits that Ms. Bonjean

1 pointed out to the Court.

2           Upwards of 5,000, specifically 4,909. It's given  
3 the defense a tremendous task of going through these exhibits  
4 and trying to figure out exactly what the government will  
5 offer. I understand that going towards trial, closer to trial  
6 they are going to whittle that down, but we're talking about  
7 almost 5,000 exhibits.

8           I think the motion that was filed, and we'll confer  
9 about the sexually explicit content of some of those exhibits,  
10 really speaks to the heart. But what we're trying to find out  
11 what exactly the government is going to be trying here.

12           They said that they are not going to be putting the  
13 practice of orgasmic meditation on trial. They are not  
14 necessarily attacking that, but yet these exhibit offer  
15 nothing more than to inflame the jury, sensationalize it.

16           THE COURT: Well, that's why I said to the  
17 government they need to be thinking what are they trying to do  
18 with these, what are they relevant to?

19           We can hear from the government now, but I had that  
20 question when I saw some of these videos and images.

21           MR. JACCARINO: And, Your Honor, I raise this point  
22 because we're headed to trial within two months. One month  
23 now. Time is flying, Your Honor. Yet it's indicative that  
24 the way the case is being presented to us by the prosecution,  
25 by the amount of witnesses that they put on their witness

1 list, by the volume of exhibits, it's grossly inhibiting the  
2 defense from focussing on exactly what the government is going  
3 to be trying here.

4           The prejudice is voluminous, just like their  
5 exhibits. I think it's indicative that the government doesn't  
6 even know what they're going to trying here.

7           So all fair is fair. That may be an advantage for  
8 the defense when we cross-examine and go for an acquittal.  
9 But right now we need to know exactly what we're doing,  
10 because we're heading into the holidays, we all have families,  
11 we are working around the clock, largely so, and my firm came  
12 into this late.

13           But it appears that none of this material was  
14 provided earlier, and none of the narrowing that should be  
15 going on on the prosecution's side has happened previously.

16           So here we are in a situation where we're going to  
17 be filing motions, most likely, I know that was addressed with  
18 Ms. Bonjean. We are tirelessly working to figure out who  
19 they're going to call, what 26.2 material we're going to have,  
20 and what exactly is a constitutionally survivable charge here  
21 at trial.

22           So I raise this with some passion, because before  
23 trial, Your Honor, I'm not sure how many conferences we're  
24 going to have where we get to voice out our concerns from the  
25 defense table, put it out there on the record, and make sure

1 it's preserved for the record.

2           So although we're talking about sensational  
3 exhibits, the sexual content, it's a larger problem with the  
4 prosecution's case in the way they are providing this  
5 information. And I just want to let the Court know that it's  
6 a real concern from our side.

7           And if there's any ability for the Court to somehow  
8 focus them, so we can focus, and so this trial can be a lesson  
9 of expediency, but more so a fair trial for the defendants, we  
10 would appreciate that, Your Honor, respectfully.

11           THE COURT: Let me turn to the government on the  
12 issue of the sexually explicit exhibits.

13           If you can give me some sense of how you anticipate,  
14 if at all, using these at trial?

15           MS. BENSING: Your Honor, we haven't had a chance to  
16 review all of the exhibits that they identified, but what I  
17 can say as to the videos of orgasmic meditation, just to take  
18 that category as an example.

19           The government is not putting the practice of  
20 orgasmic meditation on trial, as we said repeatedly and as  
21 defense counsel just noted. That being said, many of the  
22 witnesses are going to testify that some of the labor and  
23 services that they provided was orgasmic meditation. And so I  
24 think the jury needs to understand what it is. I think we can  
25 do that in a much more limited fashion, we don't need --

1 THE COURT: Do you think that can't be done by  
2 testimony? It doesn't sound particularly complicated.

3 MS. BENSING: Your Honor, there's a -- I think  
4 probably two exhibits that depict orgasmic meditation that I  
5 think we would like to show --

6 THE COURT: Videos? Still images? What are they?

7 MS. BENSING: Videos, Your Honor.

8 And some have particulars including like investors  
9 coming up to touch the body of one of the persons who is doing  
10 orgasmic meditation.

11 Like there's some evidentiary points that we really  
12 want to --

13 THE COURT: Why did you list so many exhibits? Why  
14 did you list these as exhibits? We are getting close to  
15 trial.

16 MS. BENSING: Yes, Your Honor. And we are available  
17 to the defense. If they have concerns about a particular  
18 exhibit, we're happy to go through with them and indicate to  
19 them whether or not we intend to put on.

20 We're happy to meet and confer with them.

21 THE COURT: Okay, I think that would be very useful  
22 to everyone.

23 And I think in light of that, I'll ask you what I  
24 asked you with respect to your other motion. Do you want to  
25 withdraw the motion, without prejudice, filed at ECF Number



1 224, which, of course, was relating to lots of exhibits you're  
2 anticipating, given what the government has said, and what I  
3 said to the government about what it needs to be thinking  
4 about?

5 MR. JACCARINO: Your Honor, we don't wish to  
6 withdraw that motion at this time. Of course, you know, we'll  
7 meet and confer, but we're not confident just based on the  
8 volume of exhibits and what the government has just stated  
9 right now that we will come to a -- so in the interest of  
10 time, since we are moving towards trial rather quickly, we  
11 would like to keep that motion on the docket.

12 THE COURT: Okay. Well, again, as I said, I'm  
13 declining to issue a blanket ruling, and I will address any  
14 objection that arises as to any specific exhibit.

15 One moment, please.

16 (Pause in the proceedings.)

17 THE COURT: Okay, I'm going to leave it to the  
18 defense to come back to the Court on that particular motion,  
19 if there are any specific exhibits as to which the parties  
20 cannot resolve the disputes among themselves.

21 MS. BONJEAN: Your Honor, we have flagged one other  
22 sort of related issue, either now or at some point.

23 THE COURT: Go ahead.

24 MS. BONJEAN: I did communicate with the government  
25 about co-conspirator statements to the Court on the last court

1 date, and they pointed out that motion *in limine* kind of  
2 showed that there were examples of co-conspirator statements  
3 but not actually identified co-conspirator statements.

4 THE COURT: Right, every statement is going to have  
5 to be analyzed individually.

6 MS. BONJEAN: Right. So I have asked the government  
7 to identify them for me, and I was referred back to 6,000  
8 pages of 3500 material. And so I guess we just have a  
9 different understanding about what the Court was asking.

10 There are so many statements that could be construed  
11 as a co-conspirator statement. So I'm asking them to identify  
12 what they intend to try to introduce the co-conspirator  
13 statement. I think we're entitled to know that and file a  
14 motion to argue either it wasn't a co-conspirator, or goes  
15 into further in the conspiracy, all things that not even the  
16 Court can even rule without actually having the details of the  
17 statements.

18 THE COURT: Well, that would -- at the very latest,  
19 it would happen at trial, right?

20 MS. BONJEAN: Well, I mean it would happen at trial,  
21 but I think that would be helpful -- again, I don't know that  
22 the Court -- I'm sure the Court is getting a sense of the  
23 mountain of evidence that we're looking at and 302s. So I  
24 think it would be helpful if they can identify what they  
25 intend to introduce because it won't go quickly then,

1 obviously. I know the Court wants to run a trial in the way  
2 that's a speedy as possible, and I think we want do that, too.

3 THE COURT: I just want efficiency. That doesn't  
4 mean necessarily speedy. It means doing things in an  
5 efficient manner.

6 MS. BONJEAN: And so we're asking that the  
7 government identify the co-conspirator statements before the  
8 first day of trial; and if they won't, then I will take it up  
9 when they come up, but it is -- it is going to be a pretty  
10 monumental task, and there will be a lot of litigation of  
11 things at the 11th hour as well.

12 MS. BENSING: Your Honor, if I can just respond.

13 THE COURT: Go ahead.

14 MS. BENSING: I don't think that the government has  
15 any kind of obligation to like bullet point every single  
16 co-conspirator statement for defense counsel.

17 We are also happy to meet and confer if they have  
18 concerns about a particular witness' testimony or a  
19 particular -- you know, and give them more guidance on whether  
20 or not we do, in fact, call that individual.

21 We're -- we've indicated to them that we're happy to  
22 do that, and we'll continue to be happy to do that, but I  
23 don't think it's practical or an obligation of the government  
24 to sort of outline every single co-conspirator statement prior  
25 to trial.

1 THE COURT: But as the government knows, and we  
2 discussed it last time, there are requirements for admission  
3 of these types of statements, and I assume if the government  
4 is going to be seeking to admit them, the government will be  
5 complying with those requirements.

6 MS. BENSING: Yes, Your Honor, as we expect to.

7 THE COURT: All right, I think we can move on to the  
8 next issue, which is defendants' motion at ECF Number 215 and  
9 that's -- and this is a shorthand for it -- but that's the  
10 motion relating to the reasonable person issue.

11 I want to hear the defendants out on this more. I  
12 also noted that something you said in your third motion to  
13 dismiss could be read to indicate that you changed your  
14 position somewhat on this issue, but I wasn't quite sure about  
15 that.

16 So why don't I hear you out, and what I'm most  
17 interested in hearing from the defense on is what I flagged at  
18 the last conference, which is case law supporting your  
19 position on the evidentiary issue. And I don't see that in  
20 your briefing at all. So I want to hear you out on that, and  
21 then I will hear the government out as well.

22 Who is going to take the lead, Mr.?

23 MR. JACCARINO: Judge, can I ask the Court to, I'm  
24 not so sure what you mean about the evidentiary --

25 THE COURT: I think you weren't here last time; is

1 that right?

2 MR. JACCARINO: Correct.

3 THE COURT: Okay. So I understand your position,  
4 and you'll correct me if I'm wrong, is that there's an  
5 objective standard at play here. And your view is that that  
6 entitles you to put on certain evidence, in the form of  
7 testimony of certain people, who are -- had affiliation with  
8 OneTaste.

9 Do I have that right so far?

10 MR. JACCARINO: Yes.

11 THE COURT: Okay. And what I asked last time was,  
12 putting aside whether it's a standard, objective, subjective  
13 or a hybrid, and just taking your position that it's  
14 objective, what does that allow you to do, from an evidentiary  
15 standpoint? And you have not provided case law on that.

16 MR. JACCARINO: Well, I think it allows us to  
17 introduce evidence in the form of testimony from individuals  
18 who were present during the course of this conspiracy who, I  
19 guess, were subject to the same, as the government would  
20 claim, were tactics.

21 So who also went into debt, paid for these courses,  
22 who were encouraged to do certain things. You know, basically  
23 were in the same exact position, who had traumatic histories  
24 in their past. Who were in basically the identical position  
25 of many of the witnesses who the government will claim were

1 victims, although who will come and testify that they weren't  
2 forced to do anything. That they weren't coerced.

3 And, Judge, that goes to this hybrid standard.

4 THE COURT: So, what I'm asking you again is what  
5 case law do you have to support that? Because I don't see  
6 that in your papers. I'm not aware of case law that supports  
7 that. I think the government has indicated they're not aware  
8 either.

9 But if you have some case law, now is the time.

10 MR. JACCARINO: Well, there aren't a lot, if any, of  
11 previously charged forced labor conspiracies.

12 THE COURT: It doesn't have to be in the forced  
13 labor conspiracy context. I mean, analogous.

14 MR. JACCARINO: One of the cases we did site was, a  
15 Second Circuit case --

16 THE COURT: Involving the expert witness?

17 MR. JACCARINO: Yes.

18 THE COURT: Okay. Different, very different.

19 MR. JACCARINO: Very different case, but analogous,  
20 because it does deal with the reasonable person standard. And  
21 there are only certain ways, certain types of testimony that  
22 can come in to elucidate a jury as to what a reasonable person  
23 in a certain circumstance would be.

24 In that case, it's a reasonable investor. In this  
25 case it's a reasonable person who belongs to this organization

1 and who has a certain type of history, I suppose, and who  
2 dealt with the same types of circumstances that the witnesses  
3 that the government will call.

4 THE COURT: That case is not analogous. Do you have  
5 anything else?

6 MR. JACCARINO: Not off of top of my head, Judge, I  
7 don't, but I --

8 THE COURT: Okay, that's helpful.

9 Actually, let me ask you to respond, if you would  
10 like, to the government's response to the motion in which the  
11 government indicates that the indictment does not allege that  
12 everyone at OneTaste was forced to perform labor.

13 MR. JACCARINO: Sure. Again, this is -- they're not  
14 charged with any substantive forced labor counts. So the  
15 introduction of the testimony is not to disprove that forced  
16 labor occurred, or that any specific witness was coerced to  
17 provide labor. That's not what this evidence would be used  
18 for.

19 It would be introduced to show or to -- to negate  
20 that there was a conspiracy to commit forced labor. So they  
21 point to Ranieri, and the difference with Ranieri is that  
22 there were identified victims.

23 THE COURT: But how does that negate the two  
24 elements of conspiracy? I want to hear you out on this more.

25 MR. JACCARINO: Well, if they're alleging that there

1 was some agreement, and this agreement spanned a decade, and  
2 the agreement was to force labor from employees of OneTaste,  
3 then similarly-situated employees or participants, who were  
4 there, who were subjected to the same environment, the same  
5 exact things, who were told the same exact things as the  
6 victims that the government will call to the stand, that is  
7 totally relevant to negate whether or not there was an  
8 agreement, whether --

9 THE COURT: But as to what I just asked you, which  
10 is what do you make of the government's response to you that  
11 the indictment does not charge that everyone, whoever you're  
12 referencing, employees, all employees were forced to do  
13 anything.

14 That's what I'm getting at here. I think the  
15 evidence that you would seek to, it has to be relevant. And  
16 that's the part that I'm focusing on here.

17 And another question I have for you is why is the  
18 reasonableness determination not simply something the jury  
19 decides, without hearing from a parade of people who were not  
20 targeted for forced labor, if you believe the government's  
21 theory?

22 MR. JACCARINO: How can the jury decide what a  
23 reasonable person was in that circumstance if they're not  
24 hearing from a significant portion of the individuals who were  
25 there.



1           The government only want to call the witnesses who  
2 felt subjectively that they were forced, that they were  
3 victims. But the standard is not just subjectively what those  
4 government witnesses felt, it's -- it is a hybrid, and the  
5 hybrid requires, really mandates the jury to be able to  
6 analyze what a reasonable person would feel, which mandates,  
7 really, other participants, other witnesses who were there at  
8 the same time.

9           THE COURT: But that's what I'm asking you. You  
10 said "mandates," but yet you can't come up with a single case  
11 in which that has happened.

12           So do you have anything?

13           MR. JACCARINO: There's no other cases like this.

14           THE COURT: It doesn't need to be in the context --  
15 and, again, I know you weren't here at the last conference --  
16 it doesn't need to be in the context of a forced labor case.  
17 It can be anything analogous. What you gave was not  
18 analogous. An expert testimony in a securities case is not  
19 analogous.

20           But if you don't have any more, that's fine. I  
21 just -- I'm giving you the opportunity to try to convince me  
22 that you should be allowed to put on a parade of people who  
23 will say they were -- did not feel coerced, when the  
24 government may not be arguing that they are.

25           So that's where I leave you with that.

1           MR. JACCARINO: First thing, Judge, I would ask the  
2 opportunity to submit a reply.

3           THE COURT: No, it's your motion. It's your motion.  
4 I teed this up last time that I wanted the case law to support  
5 this.

6           I don't think you have anything here, which is why  
7 you haven't brought it to the Court earlier. Maybe  
8 Ms. Bonjean has some case law, and then I'll hear from the  
9 government.

10          MR. ANSARI: Your Honor, respectfully, there are  
11 times where there are no prior case law.

12          THE COURT: Right.

13          MR. ANSARI: And this is a unique case, in the sense  
14 that this is the first time in the United States of America  
15 where there is a forced labor conspiracy charge with no  
16 substantive crime. No sex trafficking. No nothing. It's  
17 just a forced labor conspiracy charge that spans numerous  
18 years.

19                 And you have a corporation that these two defendants  
20 were once involved in, which had thousands upon thousands of  
21 participants, subscribers, I don't know what you want to call  
22 them, but they went there willingly to OneTaste, because they  
23 wanted to engage in this meditative process.

24                 So now for the government to cherrypick a select few  
25 out of thousands, the defense would be so grossly prejudiced,

1 if they're not able to call witnesses, to bring out some  
2 evidence to show that there were, for every one that they  
3 alleged was coerced, forced to do labor against their will,  
4 there were thousands more, you have a totally different  
5 experience.

6           It's the government's burden, but when you put the  
7 defense in a situation where they are -- and, again, it's  
8 somewhat unprecedented, which is perhaps why we can't point to  
9 a case, which is directly analogous. And we tried to find  
10 cases that somewhat speak to this issue, but perhaps this  
11 could be the case which sets forth the case precedent going  
12 forward, because it's unprecedented in the way the government  
13 has presented this case, the charge, without a substantive  
14 crime, and there has to be some way for the defense to counter  
15 the government narrative when they are selecting a few  
16 individuals, out of thousands, to say they were forced to do  
17 this and that allegedly, yet there's countless others who said  
18 I went to OneTaste, I had a wonderful time. I had  
19 enlightenment. I love it there.

20           And you know what, maybe when I decided to leave, no  
21 one forced me to stay there. I was able to cancel my -- I'm  
22 sorry, the subscription, or whatever it is. And then walked  
23 out, and no one dragged me back, no one shunned me, no one  
24 defamed me once I left.

25           But that's, you know, if we can't somehow get that

1 out and, Your Honor, perhaps I'm speaking to see if there's a  
2 creative way under the law to do so in a proper evidentiary  
3 manner.

4 THE COURT: Well, that's what I've been focusing on,  
5 is the evidentiary manner here.

6 But I think you're misunderstanding the government's  
7 theory of the case, frankly.

8 Let me turn to the government.

9 MS. BENSING: Yes, Your Honor, and I'll just  
10 continue, I think that's accurate. And just for the record,  
11 and we've noticed this in our briefing memo multiple times,  
12 there is case law on this, including binding Second Circuit  
13 law that is very clear.

14 THE COURT: *Rivera*, is that what you're referring  
15 to?

16 MS. BENSING: *Scarpa*, Your Honor. That a defendant  
17 may not seek to establish innocence through proof of the  
18 absence of criminal acts on specific other occasions.

19 The government was very clear in its charging  
20 indictment that this applied to a subset of OneTaste members,  
21 as defined in the indictment. The government has been clear  
22 on its theory of the case all along. The government disagrees  
23 that there's any kind of surprise or novelty in this now. And  
24 I would note that it's been, I believe, three times the  
25 defendants' briefed it in their motion *in limine*, they briefed

1 it in response to a sort of cross motion *in limine* by the  
2 government, and now they briefed, again, and they haven't  
3 found case law, and I submit that's because there isn't case  
4 law, because the fact the case law is to the contrary, Your  
5 Honor.

6 So I can continue to address any other questions  
7 that the Court has, but I think it's, from the government's  
8 perspective, this is a very clear cut issue that is governed  
9 by --

10 MS. BONJEAN: Judge, if I may.

11 THE COURT: Yes.

12 MS. BONJEAN: One aspect that the government has not  
13 mentioned is that they are arguing, in fact, they proposed in  
14 their jury instruction, of a climate of fear within the  
15 organization.

16 Now, the evidence that we -- we have the right to  
17 rebut that there was a climate of fear. That is going to the  
18 culture of the organization. Again, the climate of the  
19 organization. And it is the case that --

20 THE COURT: Okay, but you're raising a different  
21 issue now. I'm really addressing the issue that was raised in  
22 the motion, which was about the particular element, right, the  
23 particular requirement of the reasonable person.

24 MS. BONJEAN: And I want to just point out --

25 THE COURT: I'm not saying -- and I think I was

1 clear last time, too. I'm not saying that there could be no  
2 relevant evidence given by people at OneTaste who did not feel  
3 like they were forced to do anything. There could be a lot of  
4 relevant evidence, right? They could have witnessed things.  
5 They could have, you know, overheard something.

6           So I am not at all saying, and I don't think the  
7 government is even arguing this, that there's nobody at  
8 OneTaste who was not -- did not feel that they were forced to  
9 do something.

10           MS. BONJEAN: Right, but if they are arguing that  
11 the climate of fear is what compelled people to subject or to  
12 give labor under duress and coercion, the climate of fear,  
13 then it kind of goes back to sort of what we are arguing is  
14 that we should be able to present witnesses who say there was  
15 not a climate of fear.

16           THE COURT: But that's a different issue. I hear  
17 you on this. I hear you, but it's not this reasonable person  
18 issue. That's a different issue, and you're making a  
19 relevance argument, but that's not the motion that's before me  
20 now.

21           But I think the government is going to have to think  
22 about that as well.

23           MS. BONJEAN: And just on the reasonableness. The  
24 absence of authority, I do think is not just -- you indicate  
25 what you do in any context, but this is a unique statute in

1 the way that they have defined, you know, a threat of serious  
2 harm. It really is. There aren't going to be -- there's not  
3 going to be an extraordinary amount of case law there where  
4 you have this threat of serious harm that is defined --

5 THE COURT: I think you have a different obstacle,  
6 though, as well, which is you say these people are similarly  
7 situated, right? Are we going to have a mini trial within a  
8 trial on that issue? I mean, you know, there are a lot of  
9 evidentiary problems with the theory that you are suggesting.

10 I can hear the government out on that as well.

11 MS. BENSING: Well, I just want to say, Your Honor,  
12 that based on the 26.2 materials, the things that the  
13 government has received, the government has not seen anybody  
14 who is even close to being a reasonable person of the same  
15 background and in the same circumstances that who was the  
16 subject to the same kind of serious harm.

17 THE COURT: Okay. Give me a moment.

18 (Pause in the proceedings.)

19 THE COURT: Okay. Do you need a moment with your  
20 client, Ms. Bonjean?

21 MS. BONJEAN: No.

22 THE COURT: That's fine. Take a moment, if you need  
23 one.

24 MS. BONJEAN: That's fine, Your Honor.

25 THE COURT: Okay, to the extent that defendants seek

1 to offer evidence that certain witnesses affiliated with  
2 OneTaste other than the government's anticipated victim  
3 witnesses did not feel coerced, I am not likely to allow such  
4 evidence on Rule 401 and Rule 403 grounds.

5 Defendants' relevance argument is not persuasive.  
6 And, again, they have not presented case law to support their  
7 position as to relevance. Moreover, even if relevant, there  
8 is a real danger that the probative value of any such evidence  
9 would be substantially outweighed by a danger of unfair  
10 prejudice, confusing the issues, and misleading the jury.

11 Of course, should they choose to do so, defendants  
12 can present testimony from other witnesses who were affiliated  
13 with OneTaste, but only if that testimony is on issues that  
14 are relevant to issues that the jury will have to decide and  
15 does not run afoul of Rule 403.

16 Although I would not expect testimony from such  
17 witnesses to render relevant their feelings that they were not  
18 coerced, until there is context, I will not be able to conduct  
19 the appropriate analysis and, therefore, cannot give you a  
20 blanket ruling at this stage.

21 Okay, let me turn now to the government's motion to  
22 exclude the defendants' proffered expert testimony. This was  
23 the motion filed at ECF Number 188. And since the time of the  
24 filing of that motion, the defense has provided updated  
25 information with respect to potential defense experts.



1           As I understand it from the defendants' filing on  
2 December 5th at ECF Number 220, defendants might still wish to  
3 call Dr. Leonard. Defendants, however, indicate that his  
4 testimony may prove unnecessary, and perhaps your thinking  
5 will change based on your discussions with the government  
6 about the journals, but we can discuss that a bit more.

7           Defendants, as I understand it, do not seek to call  
8 Dr. Klein, unless the Court allows the government to present  
9 expert testimony on coercive control tactics.

10           Defendants still wish to call Dr. Ley regarding the  
11 potential benefits of orgasmic meditation, the scientific  
12 research examining the practice, and historical background  
13 regarding OM in sexual cultural practices.

14           And defendants may seek to call Dr. Kreigman in  
15 rebuttal to testify about organizational behavior and the  
16 nature and characteristics of pernicious cults.

17           Can you confirm that that is the current state of  
18 thinking by the defendants with respect to experts?

19           MS. BONJEAN: Yes, Your Honor, with just the caveat  
20 that I think Dr. Ley did speak to some of the coercive control  
21 issues. We are not presently going to be relying on him for  
22 that purpose because of the Court's provisional ruling.

23           THE COURT: Okay. Let me hear, now that the defense  
24 has somewhat narrowed its intention with respect to experts,  
25 let me hear from the government in response.

1 MS. KASSNER: So, Your Honor, the government objects  
2 to most of the proposed expert testimony for all the reasons  
3 that it already put in its initial opposition. I don't think  
4 much hasn't changed, frankly.

5 I'll take each of them in turn.

6 For Dr. Leonard, as I flagged earlier, we don't --  
7 we aren't aware of what analysis Dr. Leonard even conducted.  
8 We don't know if we are going to seek to admit the materials  
9 that Dr. Leonard reviewed.

10 The disclosure really doesn't give us much of an  
11 opportunity to even know like what was done by him, and it  
12 doesn't even specify -- it neither specifies here are the  
13 materials, here is the analysis that supports his conclusion.

14 So I think that at this time we really have -- we  
15 would object to the disclosure as incomplete, and we would  
16 oppose any testimony as likely irrelevant.

17 For Dr. Klein, I understand that they don't seek to  
18 call him unless the Court changes its position with respect to  
19 the government's coercive control expert.

20 I'll just note that Dr. Klein is not an expert on  
21 coercive control, so I'm not sure how the Court's ruling on  
22 that issue would change his proper testimony. He was the  
23 individual who was going to testify about memory, even though  
24 the government has pointed out that he has no expertise in  
25 memory, and so the government's objection to him stands.

1           For Dr. Ley, the government's objection also stands  
2 that the scientific benefits of OM are entirely irrelevant to  
3 the issues that the jury has to decide.

4           And also, just any probative value would be  
5 outweighed by the real risk of prejudice or confusion of the  
6 issues before the jury. They are not going to be asked to  
7 determine whether one -- whether OMing is good or bad, is a  
8 spiritual, physical or scientific practice.

9           And then finally, Dr. Kreigman, the government has  
10 noted that there's no objection if Dr. Kreigman wants to  
11 generally outline factors that he believes are indicative of  
12 what a -- technical the technical characterization of a cult  
13 or a pernicious cult. That's fine with the government.

14           It's the testimony about OneTaste in particular that  
15 the government objects to. We have no understanding of what  
16 he reviewed to come to his conclusions. We don't believe he  
17 has any affiliation with OneTaste or any basis to offer a  
18 particular opinion on whether or not OneTaste is or is not a  
19 cult.

20           The government is not going to be furthering, you  
21 know, any kind -- we're not offering any testimony to say that  
22 OneTaste is it officially a cult using any diagnostic  
23 criteria, so we think it would be irrelevant, and also just  
24 based to offer particular opinions as to OneTaste.

25           THE COURT: Do you want or heard?

1 MS. BONJEAN: Briefly, Your Honor.

2 So Dr. Leonard's disclosure laid out an analysis he  
3 did, based on whether or not these journals -- and I'm going  
4 to say the handwritten journals -- because I believe that is  
5 the journals that are still in play, potentially, or from the  
6 government's perspective.

7 Whether or not they were authored by -- solely by  
8 Ayries Blanck, or whether it was a collective effort. And he  
9 did this by comparing whatever forensic work he would do, by  
10 comparing the writings to known samples.

11 Now I would point out that Dr. Leonard's report  
12 might have been a little different had the government produced  
13 the handwritten diaries or journals prior to July of 2024, but  
14 in any event, they have now -- they provided it in July. He  
15 has compared it. It is absolutely relevant to whether the  
16 government can lay a foundation for the introduction of these  
17 journals, and whether or not she fabricated evidence, which I  
18 want to be clear on this, I don't want to be hyperbolic  
19 unnecessarily, but that is our position, and we did not come  
20 to that position lightly.

21 And we have been asking the government long, long  
22 ago, get us the metadata, get us the edit history, maybe we  
23 don't even need Dr. Leonard because that will show the  
24 evolution of the electronic journals, which then, strangely,  
25 ended up matching the original, which just doesn't make any

1 sense.

2           So it may change after we look at, you know, at what  
3 the government is going to show us today. Our preference is  
4 to show the metadata. That's just clear way of showing  
5 information. But Dr. Leonard is the data we have at the time  
6 when we presented the expert disclosures.

7           And if the government believes that his underlying  
8 work that -- there's more information in his underlying work  
9 that they believe they're entitled to, we're happy to meet and  
10 confer about that. I'm sure he has some work products that I  
11 don't know is necessarily discoverable, but I don't think  
12 there's any reason we wouldn't be able to produce that to  
13 them, if that's what they are looking for. But we do believe  
14 it is still relevant given that the government's position that  
15 they may present and in the handwritten journals.

16           I think Dr. Klein at the moment is moot. I  
17 understand their position. But if we did not present  
18 Dr. Klein as a coercive control tactics expert, but he does  
19 have opinions that we offered that we believe rebut the  
20 coercive control expert testimony, and so I'll leave it at  
21 that.

22           As for Dr. Ley, as we laid out in our letter, part  
23 of the issue is the government indicated that they're not  
24 putting the practice on trial. But their exhibits, their 302  
25 disclosures -- I'm sorry, 3500 disclosures, the fact that they

1 have even, on their exhibit list proposed exhibits and  
2 testimony from an alleged in-house scientific adviser in  
3 OneTaste, I think that OneTaste would vehemently disagree of  
4 what his title was and who he was.

5           They are putting it into issue whether or not it  
6 has -- whether it was pernicious activity versus whether it  
7 was an activity as in really Ms. Dadeone's life work. It may  
8 not be your cup of tea, but this was not -- the government  
9 wants, I think, based on their exhibits and proposed evidence  
10 to leave the jury with the impression that this was, again,  
11 just sexual activity disguised as something more that was  
12 turned into forced labor for a financial benefit to her and  
13 this company. And it's our position, at least to offer her  
14 state of mind, and that this was her life's work and belief, a  
15 genuine belief in this activity.

16           Now, if they don't want to put OM on trial, I  
17 suppose it's a different analysis, but they are talking out of  
18 both sides of their mouth, frankly, and we believe Dr. Ley's  
19 testimony, which is really as a teaching expert, he's not here  
20 to talk about specifically OneTaste or specifically any of the  
21 activities, but the practice itself, which at this point  
22 exceeds OneTaste's influence, if you will, and he's a highly  
23 regarded expert, and he's just there to talk the data,  
24 frankly, which I think we can't lose site of the fact that if  
25 you're going to put on videos of people OMing, it's going to

1 hit a jury -- it's not a normal practice in the sense that, I  
2 think -- well, some of us in the courtroom, many of us in this  
3 courtroom, have no experience with.

4           And given Western values about sex, this could very  
5 well result in a prejudicial effect. It could be seen as  
6 inflammatory. It could be seen as scandalous. It could be  
7 prejudice the jury. And we should be able to educate the jury  
8 on the practice and not -- and the government should not have  
9 carte blanche to characterize this practice in the way that  
10 would prejudice the jury against the defendants on the charged  
11 conduct. So that's why we think Dr. Ley's testimony is so  
12 important.

13           And then finally as to Dr. Kreigman, yes, he -- I  
14 think we primarily want to use him as a teaching expert as  
15 well, which I'm hearing that they're not objecting to that  
16 aspect of it, they're objecting primarily to opinions about  
17 OneTaste itself as an organization.

18           My understanding is that we should -- that, you  
19 know, maybe compromise that Dr. Kreigman can be offered as an  
20 expert, as a teaching expert about pernicious cults or  
21 organizational activities. And I've seen the government do  
22 this in a number of cases that entirely resemble this case,  
23 but a hypothetical can be presented to these teaching experts  
24 maybe, you know, that is -- that's fair game, I think, with a  
25 teaching expert, but that is our primary goal for

1 Dr. Kreigman, and the government doesn't object to that, we  
2 had a meeting and at least that aspect of it is not in  
3 dispute.

4 But it kind of depends on to what degree that they  
5 are going to put cults into play, and that's part of the  
6 motion *in limine* that we raised. Again, we're still operating  
7 a little bit the dark on their theory of the case on that.

8 MR. ANSARI: Your Honor, briefly just about Dr. Ley.

9 Another reason why his testimony would be important  
10 here, which it could be background about orgasmic meditation,  
11 the practice, how it came about and the science behind it, is  
12 because the government is suggesting that the defendants  
13 somewhat nefariously preyed on people who are susceptible to  
14 trauma or they were traumatized in the past.

15 But there has to be an analogy here, or the defense  
16 should be able to present that to the jury, that the same way  
17 that someone with trauma would seek more, perhaps,  
18 traditionally-accepted treatment for that therapist, or even a  
19 yoga studio or a regular meditative practice studio is the  
20 same sort of means we're offering that OneTaste, and the  
21 defendants offered to those, again, thousands who approached  
22 them for a therapeutic purpose of -- and seeking trauma --  
23 alleviate trauma, not necessarily that these individuals had a  
24 conspiracy to focus on those who were traumatized in the past.

25 This was a therapeutic organization. This was just



1 like any other meditative practice, they attract those who are  
2 seeking enlightenment or stress relief, or perhaps release  
3 from trauma in the past. That's what was going on here.

4           So to the extent that Dr. Ley would testify about  
5 the practices of orgasmic medication, perhaps in theory behind  
6 OneTaste and OMing, it can also go to that point, Your Honor,  
7 if the government is suggesting that these individuals preyed  
8 specifically on those who were -- had experienced trauma for  
9 some nefarious purpose, that they were targets or some  
10 allegation like that.

11           The therapeutic practice of orgasmic mediation and  
12 why someone with trauma may be attracted to that should be  
13 also heard by the jury by way of expert testimony.

14           MS. KASSNER: Your Honor, if I may just clarify one  
15 thing that might help with respect to Dr. Ley.

16           The government does not, and this might help both  
17 sides, the government does not at present intend to call the  
18 chief scientific officer in its case-in-chief. So we really  
19 are trying to restrict any -- there's not going to be a  
20 presentation in the government's case about whether or not OM  
21 is scientifically sound or not.

22           In fact, I expect that many of the government's  
23 witnesses may say that they found OM to be therapeutic to  
24 them. The reason they'll say that is because it's not -- that  
25 aspect of it is not relevant to the issues before the jury.

1           There are plenty of situations where people do prey  
2 on vulnerable people that offer them generally beneficial  
3 services and then commit forced labor. It's just not the  
4 issue here, that whether or not OM is beneficial to people,  
5 whether or not a scientist versus anybody else. In fact, I  
6 think our lay witnesses will say that they found it to be  
7 beneficial in some ways, it's just not relevant, and it will  
8 really confuse the jury to hear testimony about whether or not  
9 OM is scientifically sound or not.

10           THE COURT: Okay, given that these are potential  
11 defense experts, and given that, I think, the defense may have  
12 a much better sense of what, if anything, they might want to  
13 do in terms of expert testimony, I don't think that this is  
14 really ripe at this time.

15           Do the parties have a different view on that? I  
16 just think that -- go ahead.

17           MS. KASSNER: Sorry, Your Honor. The government  
18 does not have a different view, but there is a disclosure  
19 issue. For some of these witnesses, I think defense counsel  
20 advised us that she might have some work product that might be  
21 discoverable if, in our view, is absolutely discoverable. We  
22 have no 26.2 materials for these individuals.

23           We have -- or at least, Your Honor, and I want to  
24 just be very careful, we have their expert disclosures, but we  
25 don't have the communications, we do have their CVs. But we

1 don't have, for example, any of the materials underlining  
2 Dr. Leonard's analysis. We don't have the documents he looked  
3 at. We don't have whatever he wrote down that got him to the  
4 conclusions.

5 We have what Your Honor has, and we have a CV and we  
6 have a very limited set of other materials. I do think there  
7 needs to be more substantive disclosures of any of these  
8 people if the defense intends to call them.

9 MS. BONJEAN: Your Honor, we'd be happy to make more  
10 extensive disclosures.

11 I just want to be very clear. We were really kind  
12 of -- we're still operating in the dark at this point to  
13 really know what the scope of this testimony would be.

14 But to make this very easy, we will make  
15 supplemental disclosures. I will absolutely go back to  
16 Dr. Leonard and ask him about his email, including that  
17 communication, and produce those to the government.

18 I'm not suggesting that we have those, by the way,  
19 I'm just saying when I mentioned that to the Court I'm just  
20 suggesting that he may, and I don't know the answer to that  
21 question, but I suspect that there may be some underlying data  
22 that might help put this into focus for the government that we  
23 can produce.

24 MS. KASSNER: Your Honor, we just request a  
25 deadline. It is an obligation, it's not a

1 we-can-meet-and-confer, it's an obligation that the defense  
2 has.

3 MS. BONJEAN: We'll do it by the end of the week.

4 MS. KASSNER: Thank you, Your Honor.

5 THE COURT: Okay, so by the 13th.

6 Do you want to withdraw your motion at 188, without  
7 prejudice, now that certain positions of the defendants have  
8 changed and you'll get more information?

9 MS. KASSNER: No, Your Honor, we do object to the --  
10 I think for now our proposal would be to let the motion stand.

11 THE COURT: But it's not all relevant any more,  
12 right, there are parts, I think, that can be carved out.

13 MS. BENSING: Your Honor, perhaps what makes the  
14 most sense is -- I'm not sure it makes sense to withdraw our  
15 motion because some aspects are still relevant, but we could  
16 file like a letter updating Court as to narrow some of the  
17 issues. I understand Your Honor's ruling about how some of  
18 the relevance issues may come into focus more at trial.

19 THE COURT: I think I'm -- I'm really not going to  
20 be able to rule on defense experts' relevance in a vacuum,  
21 right?

22 MS. KASSNER: So, Your Honor, perhaps what we can do  
23 is formally, for the moment, withdraw it with the -- and with  
24 the opportunity to renew it when it becomes relevant during  
25 trial. I think that's probably the next time Your Honor would

1 take this up, but if you have decided, that would be helpful  
2 to you and please tell us now.

3 MS. BONJEAN: I didn't really hear the beginning of  
4 the statement.

5 MS. KASSNER: So, Your Honor, I understand that it  
6 might be that we can only take this up at trial.

7 Our objection on the basis of the deficiencies of  
8 the notice I think stand, but otherwise we can withdraw our  
9 motion formally at the moment and renew it as these issue  
10 present at the trial.

11 THE COURT: I think that makes more sense. Because  
12 I think there may be more nuanced arguments by the defendants  
13 at that time as to exactly what they think their proposed  
14 testimony is relevant to.

15 And, again, after you see what defense has produced  
16 by way of underlying materials, you may have no concerns, you  
17 may have different concerns, you may have -- you know, they  
18 just may inform your position as well.

19 MS. KASSNER: Very well, Your Honor.

20 THE COURT: So I will deem that motion, at ECF  
21 Number 188, withdrawn without prejudice.

22 MS. KASSNER: Thank you, Your Honor.

23 THE COURT: Okay, let me now turn to the defendants'  
24 motion filed at ECF Number 222, which is defendants' third  
25 motion to dismiss.

1           This is not a motion as to which the government has  
2 had a chance to respond yet, I don't believe. It is the one  
3 that was filed last week. But I will give you a chance to  
4 respond now.

5           MS. KASSNER: Yes, Your Honor. I mean, the first  
6 response we have is it's untimely.

7           THE COURT: The defense is making two arguments, as  
8 I understand it, they are raising two bases for the motion, a  
9 B2 and B3, correct?

10          MR. JACCARINO: Yes, Your Honor.

11          THE COURT: And is your argument about timeliness  
12 the same with respect to both of those prongs?

13          MS. KASSNER: Yes, Your Honor. I believe the motion  
14 generally is untimely. I think a lot of these issues have  
15 been known to the defense for quite some time. I think that,  
16 you know, notwithstanding the repeated statements that the  
17 case is unclear to them, these issues have been made very  
18 clear to them throughout the case, and so we would believe  
19 it's untimely.

20          As to the specific -- you know, some of the specific  
21 arguments, I think we do need to -- we're happy to address it  
22 further. I think as to, you know, the claim that our motions  
23 *in limine* alerted them that nonphysical harm was used to  
24 coerce, maybe that was in the indictment, it's laid out very  
25 clearly in the indictment that the defendants procured labor

1 and services of the group of OneTaste members by subjecting  
2 them to economic, sexual, emotional and psychological abuse,  
3 surveillance, indoctrination and intimidation. From the first  
4 day that that was filed, that was made very clear.

5 THE COURT: I know that they, the defense,  
6 references your memorandum at ECF Number 169 in connection  
7 with arguing good cause. I believe that was filed on  
8 October 11th, 2024, which is almost two months ago at this  
9 point; is that correct?

10 MS. KASSNER: That's correct.

11 THE COURT: Okay. Is there anything else you want  
12 to raise now on this?

13 MS. KASSNER: Your Honor, the government is  
14 available to respond in writing on the merits, if that will be  
15 helpful to the Court.

16 THE COURT: I think it would be helpful to the Court  
17 on this particular issue. And I'll ask for that by Friday at  
18 5.

19 Is that possible for you to accomplish that?

20 MS. KASSNER: Would one week be possible, Your  
21 Honor?

22 THE COURT: Monday at 5.

23 MS. KASSNER: Thank you, Your Honor.

24 THE COURT: One week.

25 MS. KASSNER: That's fine.

1 THE COURT: Actually you know what, might as well do  
2 it on the 17th with the other submissions I asked for.

3 MS. KASSNER: Thank you, Your Honor.

4 THE COURT: That is one week.

5 And I'm not going to need a reply on that issue.

6 One moment.

7 (Pause in the proceedings.)

8 THE COURT: Okay, so the deadlines I set were the  
9 17th at 5 p.m. for a few things, and then the 13th.

10 Okay, I just want to make sure that everybody has  
11 the deadlines set.

12 The next, or rather the final pretrial conference,  
13 which is likely to be the next conference, is, again, I'm  
14 reminding the parties of this, it was scheduled quite some  
15 time ago, but it's on January 7th at 11.

16 Is there anything else we need to take up today? I  
17 know the parties are going to be meeting with each other, and  
18 I have every reason to believe that everybody is acting in  
19 good faith in trying to resolve issues that can be resolved,  
20 recognizing, of course, that there are certain significant  
21 issues that cannot be resolved just by the parties themselves.

22 MR. ANSARI: Your Honor, just a --

23 THE COURT: Go ahead.

24 MR. JACCARINO: There won't be an opportunity for  
25 defendants' reply to the motion to dismiss opposition, or will



1 there be?

2 THE COURT: I don't need a reply on that. Unless  
3 there's something you want to add today informed by what the  
4 government said. Your motion was thorough, I understand the  
5 grounds on which you're raising it.

6 MR. ANSARI: Just to respond just to be timeliness  
7 issue.

8 THE COURT: Sure. Go ahead.

9 MR. ANSARI: The indictment, at least from our  
10 perspective, has always been, and still is, barebones.

11 To cite to that paragraph in the indictment and  
12 somehow suggest that the defendants would have been able to  
13 infer the scope of the allegations about the forced labor and  
14 the parameters of what the government is suggesting happened  
15 here, is just not -- I mean, it's incredulous in many ways.

16 There's no way we could have done that. We've been  
17 talking, even before my review of the records, the defense has  
18 been asking, trying to get clarity, we are still trying to get  
19 clarity about exactly what the government's case is.

20 Certainly by the indictment itself could no way  
21 inform us that a motion like this would have been appropriate.  
22 Because we didn't know to what extent the allegations and the  
23 proposed testimony would be defining this charge. We now know  
24 it now. I'm responding to the suggestion that we have always  
25 known it from the time of the indictment.

1           We don't have specific disclosures that we received  
2 from the government. And just on the timeliness issue, I'm  
3 not going to go through the substantive -- other substantive  
4 arguments, but as to timeliness, it's ripe to make this motion  
5 now, because the information that we learned is from the  
6 disclosures.

7           And if we had made this motion by some way of  
8 speculation or inference from the government's case earlier,  
9 then I can certainly tell you that it would have been a much  
10 weaker motion, because we wouldn't have been speculating.

11           We now know exactly what their witnesses intend to  
12 testify to, at least we have an idea, but we could have not  
13 known that certainly at the time of the indictment, and when  
14 those motions to dismiss, the earlier ones, the deadline was  
15 set, Your Honor. So I just wanted to add that.

16           THE COURT: Okay. Go ahead.

17           MS. KASSNER: Your Honor, I don't have a response to  
18 that, but just a few other matters I want to flag for the  
19 Court.

20           THE COURT: Go ahead.

21           MS. KASSNER: One, we discussed this very briefly at  
22 the beginning, but I want to put on the record that the  
23 government notified defense counsel that during the  
24 investigation there were certain documents that were withheld  
25 for potential privilege. So we've explained to the defense

1 counsel that those documents were obtained from three  
2 different parties. One, an individual that is actually the  
3 document he provided has been litigated before the Court,  
4 these, too, were documents provided by a former individual who  
5 worked at OneTaste.

6 Separately, there's a hard drive that was provided  
7 by A. Ling. The government has isolated, including from the  
8 prosecution's team, approximately 2500 files that are  
9 potentially privileged.

10 We don't have access to them, but we have invited  
11 defense counsel to confer with an attorney who represents her,  
12 just because they maintain privilege over those materials. We  
13 cannot disclose them unless there's a privilege waived by  
14 Ms. Ling, or the defendants seek a court order, which we've  
15 told them we won't take a position on. It's just a matter of,  
16 you know, notifying the actual privilege holders so that the  
17 privilege holder has an opportunity to respond.

18 And then separately there's a, I think, a very  
19 small, possibly one or two, documents obtained from a CPA who  
20 did some work for OneTaste, counsel for One Taste withheld  
21 those for privilege. We've also invited defense counsel to  
22 confer with defense counsel -- sorry, counsel for OneTaste, to  
23 see if OneTaste will waive the privilege.

24 We don't know if any of these documents are relevant  
25 to this case. We expect that at least some of them are. But

1 we don't -- the prosecution team doesn't have access to these  
2 material, and so we have invited defense counsel to see if  
3 they want to ask for a court order and have indicated we won't  
4 take a position on that. But I just wanted the record on that  
5 it be clear.

6 MS. BONJEAN: I mentioned that earlier, Your Honor,  
7 about the 2500, I think, documents that are on this hard drive  
8 that we just got like November 15th. And then we received the  
9 disclosure from the government that they had flagged us about  
10 getting those materials that are potentially privileged.

11 That is something that we will -- we're going -- I'm  
12 going to look at what they have today. I will reach out to  
13 Ms. Blanck, probably her civil attorney, I'm not sure, but  
14 maybe the government can remind me about who her attorney is.

15 I suspect it is highly relevant materials because it  
16 probably relates to the lawsuit that she threatened against  
17 OneTaste and that the government wants us to enter into a  
18 stipulation about for the purposes of this case. So there's a  
19 lot of overlap.

20 We believe this hard drive has an extraordinary  
21 amount of material on it because it relates to the time period  
22 when she was at OneTaste. And I need a little more  
23 information before I can bring a motion to the Court about  
24 whether or not she's waiving privilege or whether the Court --  
25 we need a court order regarding this withheld material. But

1 it won't take us long.

2 THE COURT: That's fine.

3 MS. BONJEAN: Okay.

4 THE COURT: I understand the general outline of what  
5 you're telling me but, obviously, I need a lot more  
6 information, but it sounds like there is some stuff that needs  
7 to take place before this will be ripe for me to be thinking  
8 about this in depth.

9 MS. KASSNER: Your Honor, I only have one or two  
10 other --

11 THE COURT: Go ahead.

12 MS. KASSNER: -- you may prefer to do it at our next  
13 conference, but some are just questions about sequestering  
14 witnesses.

15 So we plan to instruct our witnesses that they  
16 should not be attending trial when other witnesses are  
17 testifying, but we wanted to check with Your Honor and see if  
18 you have a rule or a position on.

19 THE COURT: I typically will ask the parties, but  
20 that is very standard. So do the parties have -- want to be  
21 heard on that now?

22 I mean typically witnesses would be sequestered,  
23 unless there's somebody like a case agent or something like  
24 that.

25 MS. BONJEAN: Your Honor, I would like the

1 opportunity to confer with my client on that.

2 THE COURT: This is something that we can take up at  
3 the final pretrial conference, too.

4 MS. KASSNER: And then separately, this also might  
5 go to the final pretrial conference, but hard copies of  
6 exhibits. We have a lot of exhibits. I think it would be  
7 very -- we planned on one hard copy set in the courtroom. If  
8 there's a preference for --

9 THE COURT: I need a hard copy, too.

10 It can be as you hand things up, you will hand me a  
11 copy.

12 MS. BENSING: Your Honor, just to clarify. So the  
13 Court doesn't need an advance, like an entire copy --

14 THE COURT: I mean that would be my preference, but  
15 I'm hearing you that it's a lot.

16 MS. BENSING: It is a lot of material. So if it's  
17 acceptable to the Court, we can make sure that we have like a  
18 hard copy of the exhibits we plan to use that day, and so we  
19 can provide them to the Court that day if that's okay, Your  
20 Honor. That will be work --

21 THE COURT: Okay, it is okay, with the caveat that  
22 if I find that working with the exhibits electronically, as  
23 you provide them, is more cumbersome than I'm expecting, I may  
24 ask you for more hard copies, or ask you for them earlier.

25 MS. BENSING: We appreciate it, Your Honor. Thank

1 you.

2 THE COURT: And the same, obviously, goes for the  
3 defense.

4 Is there anything else? Go ahead.

5 MR. ANSARI: Your Honor, I just want to tee up some  
6 issues that may ripe after our meet and confer, but just so  
7 it's before the Court, just given the time frame of the trial.

8 We talked that hard drive. There's also a thumb  
9 drive that was discovered in the office of the FBI rather late  
10 in the case.

11 THE COURT: This is the subject of some of the  
12 letters, right?

13 MR. ANSARI: Yes, Your Honor.

14 Lastly, the lead agent in the case, Agent McGinnis,  
15 it's our understanding that the government does not intend to  
16 call --

17 THE COURT: Right, I think that was mentioned.

18 MR. ANSARI: Right. So, of course, that strikes us  
19 as somewhat odd, considering the fact that the root of this  
20 investigation was him looking into some press reports and then  
21 developing --

22 THE COURT: But that wouldn't be something that the  
23 jury would be told about, the agent looking at the press  
24 reports necessarily, right?

25 MR. ANSARI: Yes, but there's red flags on our end,

1 and because of those red flags, we would like, and we've  
2 requested, all communications between Agent McGinnis and any  
3 potential witnesses there -- I believe there's been some  
4 communication that's been handed over.

5 But I suspect it's devoid of potentially *Brady*  
6 material, and it doesn't strike us as being a complete fulsome  
7 discovery production of Agent McGinnis' communication with  
8 witnesses, and we would be requesting that.

9 I think we can meet and confer, perhaps after that  
10 we would be teeing up a motion in the event that we don't get  
11 those communications from Agent McGinnis.

12 THE COURT: And you'll be doing that under what  
13 provision? Are you arguing that it is somehow 3500 material  
14 for somebody or -- what's your evidentiary basis?

15 MR. ANSARI: Your Honor, it would be Rule 16 --

16 THE COURT: Okay, I'm just asking you.

17 MR. ANSARI: -- it could very well be *Brady*  
18 material. We're talking about the lead agent in this case.

19 THE COURT: Okay, I agree with you.

20 MR. ANSARI: Based on this agent literally telling a  
21 witness to delete material, cancel their email account,  
22 withhold material, or put into the FBI's possession some  
23 discovery would be frustrated on the civil case.

24 Because there's a lot of alleged misconduct by this  
25 agent, at least what we perceive it to be, and we have every



1 right to flesh that out and gain discovery from the lead  
2 agent.

3 THE COURT: We've been talking about this issue for  
4 a very long time.

5 MS. BENSING: Can I briefly respond, Your Honor?

6 THE COURT: Yes.

7 MS. BENSING: So where there is communications  
8 between Special Agent McGinnis and a witness and those contain  
9 statements of the witness, that has been, and will continue to  
10 be, produced in the government's full 3500 productions, and,  
11 in fact, yesterday's production contained a large number of  
12 that material. The defendants raised this in a letter to us  
13 last week, I think, it's one of the things that we will meet  
14 and confer on. So I don't expect there to have to be motion  
15 practice on this, perhaps we can talk about it.

16 But with respect to the statements by defense  
17 counsel to call Special Agent McGinnis, the government would  
18 be requesting some kind proffer as to what relevant and  
19 admissible evidence he would have to offer. Obviously, he  
20 conducted an investigation by speaking to people who were  
21 actually present at OneTaste, were actually the subject of the  
22 forced labor conspiracy. Special Agent McGinnis was not one  
23 of those.

24 It's the government's position that the defendants  
25 can't just call a witness to impeach him, and I think that we

1 would need some sort of proffer as to the relevance of that  
2 testimony. I don't think that is crystalized that it would be  
3 useful for the parties to meet and confer prior to any filing  
4 of briefs, but, obviously, that's the defendants' prerogative.

5 THE COURT: That also doesn't sound like something  
6 you need to file a brief on. We can take up a lot of these  
7 issues at the final pretrial conference. But I assume that if  
8 the defense is interested in calling Agent McGinnis, they're  
9 going to do so for a relevant purpose, and they will be able  
10 to articulate that quite easily.

11 So I appreciate you raising that, but I think the  
12 defense knows that they can't just call him and, you know, for  
13 no relevant purposes.

14 MR. ANSARI: Yes, Your Honor. And just to the point  
15 of the actual tangible discovery we talked about, we would be  
16 requesting clones of the drive, the hard drive, a clone of  
17 that thumb driver that was discovered, rather than simply the  
18 government inviting us to inspect these documents, especially  
19 at this point, and given some of the concerns of the defense  
20 we have good faith basis to get clones --

21 THE COURT: What's the concern you have about just  
22 being able to --

23 MR. ANSARI: Fabricated evidence, potentially, Your  
24 Honor.

25 THE COURT: But I guess if you're asking for a clone

1 of something, if it is identical to the original, so that  
2 doesn't go to fabrication.

3 MR. ANSARI: If we get a clone, there's -- on the  
4 defense side, in terms of our investigation, there's things  
5 that can be done, right, metadata analysis.

6 THE COURT: Okay. That's why -- I'm trying to  
7 understand why merely inspection is not enough.

8 MR. ANSARI: Correct, Your Honor.

9 MS. KASSNER: Your Honor, we have invited defense  
10 counsel to come and view whatever they need.

11 In terms of clones, I want to just clarify for the  
12 record, there is no thumb drive that the government's aware of  
13 that was discovered that we have. I'm not sure what thumb  
14 drive --

15 THE COURT: Do you mean those two documents that  
16 were the subject of a letter some time ago or something else?

17 MR. ANSARI: If I am wrong, you know, feel free to  
18 correct me. But my understanding is that there was a thumb  
19 drive that was located very late in this case in some drawer  
20 in the FBI. There was privileged documents on that.

21 And that wasn't disclosed to us until very late in  
22 this case. Certainly, I think, either right when we came on,  
23 my firm, in September, but very well into the age of this  
24 case. So that's the thumb drive I'm talking about.

25 And it just belies somewhat common sense how you

1 would expect the FBI and the U.S. Attorney's Office to conduct  
2 themselves in the sense that there's a thumb drive just being  
3 discovered in a drawer somewhere on an active case. So that's  
4 why we have these concerns, and if my concerns are to the well  
5 placed, then so be it, but right now we have a good faith  
6 basis to be asking for this material.

7 MS. KASSNER: Your Honor, I think there is some  
8 confusion but we can clarify it off the record when we meet  
9 and confer.

10 The government, in view of the fact of the issue  
11 that I raised about privileged material, so both of the  
12 specific electronic that they want clones of contain  
13 potentially privileged material, which we've identified for  
14 them.

15 THE COURT: So what were you going to allow them to  
16 look at today?

17 MS. KASSNER: We were -- we have a -- so today the  
18 purpose was mostly about the journals, which is separate. We  
19 can have them -- they can do whatever the prosecution team can  
20 view that is not potentially privileged. So any electronics  
21 that we have in evidence with the FBI, or any other materials  
22 that the FBI has stored that does contain potentially  
23 privileged information will be available to them.

24 To the extent that they want to clone electronics  
25 that have potentially privileged information on them, that I

1 think they would need a court order for or a clarity that the  
2 privilege holder is waiving privilege. So that's why we  
3 raised these issues.

4 THE COURT: Let me ask you one question. This young  
5 gentleman over here who is handing up notes, is he a  
6 paralegal?

7 MR. ANSARI: Yes, he is.

8 THE COURT: If he's a paralegal, he's welcome to sit  
9 at counsel table, he doesn't need to run back and forth with  
10 notes. I'm sorry, he's done that so many times --

11 MR. AIDALA: He's getting his steps in.

12 THE COURT: We don't need to relegate someone, who  
13 might be the hardest working person on this case, to the back.

14 Anyway, I didn't mean to interrupt anyone, but it  
15 struck me that you can have your team member, you just need to  
16 tell us who it is and have it on the record.

17 MR. ANSARI: Your Honor, just -- let me respond to  
18 that. So we're talking about the clones of the hard drives,  
19 and now Ms. Kassner has identified that some of the material  
20 on that is privileged. Well, there's two considerations for  
21 that.

22 First, especially given the upcoming trial date so  
23 soon, there must be a way that we can get a clone. And,  
24 perhaps, if they would identify the folder of the materials  
25 that is privileged, that could be somehow excised from that.

1           But, secondly, you know, and I think we will, once  
2 we have a better idea about what is allegedly privileged  
3 material, we can articulate our response. But more so, this  
4 hard drive that was Ayries Blanck's hard drive was then given  
5 to her sister.

6           I don't think the privilege would run between the  
7 attorney and the sister, and if that hard drive was given to  
8 the sister, and that hard drive was then ultimately given to  
9 the FBI and whatnot, then her privilege is broken.

10           THE COURT: There are some more facts that we need  
11 to know and, obviously, with respect to the lawyer and the  
12 sister, potentially, et cetera, but I hear you.

13           MS. BENSING: Your Honor, just with respect to the  
14 clone request. I think that this will become clearer when  
15 they see the evidence, but some of these documents were  
16 supposedly recovered from the hard drive. So there were  
17 readable files on the hard drive, and there were unreadable  
18 files on the hard drive that FBI's cart team was able to put  
19 into a readable format which we then produced to the defense.

20           So a cloned copy with the unreadable data, some  
21 subset of which, when it becomes -- when it's translated into  
22 readable data then contains privileged material, but that's  
23 the issue with providing the clone is this privilege issue,  
24 which we've already addressed is a process that this would  
25 take to reach out to the privilege counsel and/or the Court,

1 which they have not done yet. I'm sorry, Your Honor, just to  
2 give the Court the background.

3 THE COURT: Okay, that's helpful.

4 MS. BONJEAN: Your Honor, I have a point of  
5 clarification. But first, I also want to point out that in  
6 the 3500 material, there's been multiple references to videos  
7 that the government has done with witnesses, and I think  
8 what's good for the goose is probably what's good for the  
9 gander, in terms of video recordings of their interviews with  
10 witnesses. They want that from us in their 26.2. My  
11 understanding is that there are videos that they have created  
12 with witnesses.

13 If I'm wrong, they can place that on the record, but  
14 it seems like there's reference, in multiple places, and maybe  
15 it's not U.S. attorneys, but maybe it's the federal agents,  
16 but I'm asking -- I'm putting that on the record that we  
17 believe that's certainly fair game of video recordings or  
18 interviews with a witness, that that should be produced.

19 And the other -- this is part of point of  
20 clarification. We did get some recent *Brady* disclosure. As  
21 an example, one of their witnesses, I think, admitted that she  
22 made a false rape allegation against someone at some point.

23 Is that something you want in -- and I know they're  
24 going to object to that line of cross-examination,  
25 potentially.

1 MS. KASSNER: Your Honor, I'm not sure, but I think  
2 there's a chance we're not calling this witness.

3 And another thing I just want to put on the record  
4 is the government did not video record any of its meetings  
5 with any witnesses, so to the extent there's confusion about  
6 that.

7 THE COURT: And when you say "government," are you  
8 including law enforcement agencies?

9 MS. KASSNER: Yes, neither the prosecution or the  
10 FBI video recorded our interactions with witnesses or  
11 interviews with witnesses, so we don't have those recordings.

12 MS. BONJEAN: I'll double check, and perhaps I have  
13 misread something or my paralegal misread something, but that  
14 I take the government at their word on that. I do think it's  
15 probably a misinterpretation, but we'll get clarity.

16 THE COURT: Right. I mean, obviously, a recorded  
17 statement by the witness as to the subject matter of the  
18 testimony would be something that the government I assume  
19 would know that they have to turn over, correct?

20 MS. KASSNER: Yes, Your Honor.

21 THE COURT: Okay.

22 You had another point of clarification, Ms. Bonjean?

23 MS. BONJEAN: Well, if they're not going to call  
24 that witness, that's probably something we wanted to know by  
25 way of a motion in advance of trial.



1 THE COURT: I think I would like to know those types  
2 of issues before a particular witness testifies so that  
3 there's no unnecessary delay.

4 MS. BONJEAN: Would the Court be willing when -- at  
5 trial that if we know in advance, like the day before who the  
6 witness list is, I assume the Court will have the parties --  
7 encourage the parties to give a list in advance, you know,  
8 this is who we're calling tomorrow.

9 THE COURT: Yes.

10 MS. BONJEAN: I know some judges do that. But if  
11 there is an issue that we know is related to that witness,  
12 that we can get a letter on file that night or --

13 THE COURT: You don't need nightly letters, you can  
14 just raise the issue. Something like what you just raised,  
15 you can just raise it. It will take you a minute to raise it,  
16 the government will either have a problem with it or not.

17 If there's something very unusual, but the typical  
18 type of thing, an unsubstantiated allegation against somebody  
19 or something along the lines of what you just said, I think  
20 just, you know, I don't think you need motions on top of  
21 motions, letters on top of letters, I don't think that's the  
22 most efficient. And, again, better to talk to each other  
23 because there may be no need for any discussion about it if  
24 they're not calling a particular witness. But I appreciate  
25 you raising it.

1 I also want to tell the parties that I have not  
2 spent that much time yet with your newest submission on the  
3 jury charge, but I did look at it enough to know that it is  
4 much improved from what you had given before in that it is  
5 more collaborative. Obviously, the parties disagree on some  
6 fundamental issues, but it is helpful to me the way that you  
7 all laid it out, so thank you for working together on that and  
8 getting that to me. Is there anything else?

9 MS. KASSNER: Not from the government. Thank you,  
10 Your Honor.

11 THE COURT: Okay. Beyond today, do you have time  
12 set up to meet with each other, because it sounds like there  
13 are quite a few issues that you need to go over.

14 MS. KASSNER: Not yet, but we'll endeavor to do it.

15 THE COURT: Okay. And keep in mind that we will  
16 probably have some holiday plans, and maybe the U.S.  
17 Attorney's Office is not open, but I'd like you to do as much  
18 as you can behind the scene to resolve issues. Again, there's  
19 certain issues that you're not going to be able to resolve, or  
20 else we wouldn't be having a trial, but there are a lot that I  
21 think you can resolve.

22 Mr. Aidala, is there something else?

23 MR. AIDALA: No, Your Honor.

24 THE COURT: All right, we are adjourned.

25 Thank you, all.

*LINDA D. DANIELCZYK, RPR, CSR, CCR*

I certify that the foregoing is a correct transcript from the  
record of proceedings in the above-entitled matter.

/s/ Linda D. Danielczyk

December 13, 2024