

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MARYLAND

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3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 vs.) CRIMINAL NO.: JKB-17-0106
6 DANIEL THOMAS HERSL,)
7 Defendant.)
8 _____)

Transcript of Proceedings
Before the Honorable James K. Bredar
Tuesday, March 7th, 2017
Baltimore, Maryland

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12 For the Plaintiff:

13 Leo J. Wise, AUSA
14 Derek Hines, AUSA

15 For the Defendant:

16 Peter Goldman, Esquire

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18 Also Present: Special Agent Erica Jensen, FBI

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24 Christine T. Asif, RPR, FCRR
25 Federal Official Court Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

P R O C E E D I N G S

1 THE COURT: Good afternoon. Be seated, please.

2 Mr. Wise, you may call the case.

3 MR. WISE: Thank you, Your Honor. Leo Wise and
4 Derek Hines for the United States, and with us at counsel
5 table is Special Agent Erica Jensen of the FBI. The case is
6 the United States of America versus Daniel Hersl, criminal No.
7 JKB-17-106. And we're here this afternoon on the defendant's
8 motion to review the detention order.

9 THE COURT: Thank you. Thank you, Mr. Goldman.

10 MR. GOLDMAN: Good afternoon, Your Honor. Peter
11 Goldman on behalf of Mr. Hersl, who is present.

12 THE COURT: And, sir, you are Daniel Hersl?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Good afternoon to you.

15 THE DEFENDANT: Good afternoon, Your Honor.

16 THE COURT: We're convened this afternoon pursuant
17 to Title 18 of the United States Code, Section 3145(b). The
18 defendant, through counsel, having filed a motion seeking
19 review of the detention order that was entered by my colleague
20 Magistrate Judge Stephanie Gallagher. When was this, last
21 week? Friday?

22 MR. GOLDMAN: Thursday of last week.

23 THE COURT: Thank you. And in her order of
24 detention, which is paper No. 60, she made certain findings of
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1 fact in relation to the government's request that the
2 defendant be detained without bail and then ordered his
3 detention on the basis of the danger that he poses to the
4 community's safety in her mind. The law is clear in setting
5 out the procedures that we're to follow at this point. This
6 proceeding will function as a de novo reconsideration of what
7 the magistrate judge ordered. And if either of you has a view
8 different from that, you should tell me now. I don't see
9 either one of you standing up, so that's where we're headed.

10 Mr. Wise, does the government wish to proceed by
11 live evidence or by proffer this afternoon?

12 MR. WISE: By proffer, Your Honor.

13 THE COURT: I will entertain your proffer. You may
14 proceed.

15 MR. WISE: Thank you, Your Honor. The United States
16 moves for the defendant's detention under two provisions of
17 3142; 3142(f)(1)(A) because the defendant is charged with
18 committing crimes of violence, and 3142(f)(2)(B) because there
19 is, quote, a serious risk that the defendant will obstruct or
20 attempt to obstruct justice or threaten, injury, or
21 intimidate, or attempt to threaten, injury, or intimidate a
22 prospective witness or juror.

23 In this case, Your Honor, each of the episodes of
24 robbery --

25 THE COURT: So let's talk about some basic things in

1 terms of standards. If you want him detained on dangerousness
2 grounds, what standard do you have to meet? Is that a --

3 MR. WISE: Clear and convincing.

4 THE COURT: Okay. Thank you. And what about on
5 obstruction grounds?

6 MR. WISE: Same, I believe, Your Honor.

7 THE COURT: Okay. Agreed, Mr. Goldman?

8 MR. GOLDMAN: Yes, Your Honor.

9 THE COURT: And then the question of presumptions,
10 if any, that the government invokes.

11 MR. WISE: This is not a presumption case, Your
12 Honor.

13 THE COURT: And I assume you agree with that, Mr.
14 Goldman?

15 MR. GOLDMAN: Yes Your Honor.

16 THE COURT: Thank you. You may continue, Mr.
17 Wise.

18 MR. WISE: Thank you, Your Honor.

19 Your Honor, if this were a case where a series of
20 robberies were charged, the government would be seeking the
21 detention of the defendants engaged in those robberies in
22 order to protect the community. What makes this case and
23 these facts worse is, that in each instance the defendant and
24 his co-defendants engaged in obstruction of justice in order
25 to conceal the evidence of the robberies and extortions in

1 which they participated.

2 In each case they filed false incident reports with
3 the Baltimore Police Department that were relied on by city
4 state's attorneys and judges and other actors in the criminal
5 justice system. Those became, in some cases, statements of
6 probable cause and charging documents that determinations were
7 made about charging individual defendants. They created false
8 property receipts to conceal the money, property, and
9 narcotics they had stolen. They coached one another --

10 THE COURT: If the Court accredits that part of your
11 proffer at the conclusion of this hearing, would that
12 information tend to reflect on the trustworthiness of the
13 defendant?

14 MR. WISE: Absolutely, Your Honor.

15 THE COURT: Does the -- you have not sought his
16 detention on the grounds that he's a flight risk?

17 MR. WISE: No, Your Honor. But we think
18 trustworthiness goes to the heart of supervision, because the
19 task, in this case the very difficult task Pretrial Services
20 would have, would be to have to trust the defendant to abide
21 by conditions, to provide them with accurate information.

22 THE COURT: Sure. I'm not having any quarrel with
23 you about that. I'm just curious why you're not seeking his
24 detention on flight risk grounds if you believe that he's not
25 trustworthy and have the evidence, at least in your proffer,

1 to back up that proposition. And a related question then is
2 whether the Court retains the authority to detain someone on
3 its own motion on flight risk grounds based on the information
4 presented to it.

5 MR. WISE: I believe the Court does to answer your
6 second question first.

7 THE COURT: The Court always retains that. The
8 Court doesn't have the authority to move ahead on its own
9 motion on a dangerousness proposition, that requires a motion
10 from the government.

11 MR. WISE: Right.

12 THE COURT: What about obstruction, does it fall in
13 the first category where flight risk is, which is the Court
14 can make that determination on its own motion, or is that
15 something on which the government has to move? I understand
16 that's moot because you have moved, but I still want to know
17 where it exists in the hierarchy.

18 MR. WISE: I believe the Court or the government can
19 move on the basis of obstruction. I believe that's -- I don't
20 have the statute in front of me, but I believe those sections
21 of (f) (2) can be on the motion either of the government or the
22 Court.

23 THE COURT: Okay. Please continue.

24 MR. WISE: Your Honor raises a central issue, and
25 that is the trustworthiness of the defendant and why the risk

1 of obstruction matters so much to the determination of whether
2 there are conditions that can reasonably assure the safety of
3 the community. If Pretrial Services can't trust the
4 defendant, trust the responses they give to questions, trust
5 that they will abide by the conditions set on them, then
6 Pretrial Services can't protect the community by supervising
7 the defendant.

8 And what we've seen in this case is really almost
9 uniquely these defendants, and this defendant in particular,
10 has had multiple interactions with the criminal justice
11 system, not from the point of view of someone who's been
12 charged with crimes, but on the other side, where they have --
13 and he has taken an oath to uphold the law and to enforce it
14 and instead has sought to undermine the integrity of the
15 criminal justice system by repeatedly making faults
16 presentations to various actors within the criminal justice
17 system. And the defendant's motion now makes the claim that
18 in light of all of that conduct he can be trusted, for no
19 other reason than the fact this he says he can be trusted,
20 going forward to abide by these -- by conditions that are set
21 on him.

22 In our motion we highlight a number of examples of
23 obstructive conduct. A lengthy one is where the defendant and
24 his co-defendants actually engineer -- where the defendant
25 actually engineered the arrest of a defendant in order to

1 prevent him from going to trial the next day, so that one of
2 the defendant's co-defendants wouldn't have to testify,
3 because the defendants had robbed this person.

4 And it was Defendant Hersl's idea, as the
5 intercepted communications make clear, that if they arrested
6 him the night before on an outstanding warrant they had found
7 in Anne Arundel County, prisoner transport couldn't get him in
8 front of Judge Peters the next day. And so the trial would be
9 postponed. And they spent the better part of a day causing
10 this scenario. And working and manipulating other law
11 enforcement officers to effect the arrest of this person to
12 prevent him from having his day in court the next day.

13 And that's when the stakes were not that this
14 defendant was charged in a federal racketeering case. That's
15 when the stakes were only that they wanted to try to shield
16 Defendant Gondo from having to testify for fear that under
17 those circumstances it might expose the defendant's criminal
18 conduct.

19 In our response we also discuss -- again, Your
20 Honor, I have an extra copy of the motion if you'd like me to
21 hand it up.

22 THE COURT: Why don't you do that. We got in here
23 without our hard copy. Thank you.

24 MR. WISE: We also describe, this case involves both
25 robberies and extortion and overtime fraud. And the overtime

1 fraud is relevant for a couple of reasons, one of which is
2 because those are also examples where the defendant provided
3 false information that he certified was true. And as we
4 describe in the motion, in one episode in particular he did
5 that to cover up the fact --

6 THE COURT: You're referring to the motion, but you
7 mean your response.

8 MR. WISE: Yes, I'm sorry, Your Honor.

9 THE COURT: That's what's confused us.

10 MR. WISE: Got it. And ours is Document No. 79.

11 THE COURT: 79.

12 MR. WISE: And as we describe in Document No. 79,
13 the defendant and his co-defendants were involved in a high
14 speed crash and this was --

15 THE COURT: What page are you on?

16 MR. WISE: This is page 8. On August 31st of 2016.
17 We know about this because we had a listening device in the
18 car of -- one of the cars the defendants were operating. They
19 were involved in a high speed crash. They chose not to
20 respond to the scene and instead waited to see who responded.
21 And then the defendant himself volunteered that they could lie
22 about their time and attendance to make it look like they were
23 off duty at the time of the accident.

24 A third episode we described is one in which, also
25 in August, where the Defendant Hersl talks about despite the

1 fact he had been issued a body camera from BPD, he didn't
2 intend to use it. Instead he intended to keep it locked up in
3 his truck. And then as he put it, maybe just one day go out
4 when we're not doing something, since I have it on, and tape
5 some video.

6 These are three, just three examples of where the
7 defendant has engaged in obstructive conduct, again, when the
8 stakes were much, much less.

9 We also cite specific examples where he personally
10 submitted false incident reports in two robberies where he
11 alone among the defendants committed those crimes.

12 In terms of the second factor that the Court is to
13 consider, the weight of the evidence, and as we proffered
14 before Magistrate Judge Gallagher, the FBI in this case
15 intercepted telephone communications, installed a listening
16 device in the BPD vehicle used by these officers, obtained
17 City Watch camera footage for these episodes, and CCTV camera
18 footage for these episodes, interviewed, and these witnesses
19 provided sworn testimony of victims and witnesses, obtained
20 similar testimony from law enforcement officers that were not
21 involved in these episodes but that corroborated the victims,
22 as well as obtaining contemporaneous jail call recordings,
23 where at the time of the arrest, where the robberies occurred,
24 in what the victims thought were private conversations, they
25 relayed to their family members or other associates that they

1 had been robbed by the defendant and the other defendants in
2 this case, including sometimes the specific amounts of money
3 that were taken, which could then be corroborated later when
4 they were interviewed by law enforcement, and when others were
5 interviewed by law enforcement, and gave consistent testimony.

6 This defendant is charged in more racketeering acts
7 than in any other defendant. And he is unique in this regard.
8 All of the defendants are charged in Count 1 with
9 participating in a conspiracy once they joined the GTTF. What
10 investigators learned, to their surprise, was when they looked
11 at Defendant Hersl's conduct before he joined the GTTF, he was
12 also robbing civilians in the previous unit he served with.
13 So in Count 2 he's charged in two episodes of robbing
14 civilians where he's the only officer that participated in
15 that.

16 And I raise that because the racketeering acts that
17 occur within the conspiracy all defendants, and at trial we
18 may see some version of this, will have at least available to
19 them the defense that while I may have been there, but it was
20 the other guy that did it, or if the money is taken on the
21 camera, it wasn't shared with me. That won't be available to
22 Defendant Hersl for these episodes where he is the sole
23 defendant that interacted with these civilians. And in both
24 cases took money that they had earned lawfully and intended to
25 use to pay their rent, and just happened to be in the wrong

1 place at the wrong time when they encountered him.

2 Your Honor, in terms of the nature and serious of
3 the danger to any person or the community, you know, the
4 witnesses in this case are terrified of these defendants.
5 They're terrified they will be retaliated against because
6 they've come forward and brought information against police
7 officers. They're fearful not only of these defendants but of
8 other police officers that they fear may be associated with
9 them or working with them or have sympathy for the position
10 they're in. Witness after witness has testified to that.

11 And it's not unfounded. Members of the conspiracy,
12 as we describe in our response, have threatened witnesses,
13 including threatened to have a witness killed if the witness
14 said anything. And this was confidential informant that in an
15 intercepted communication members of the conspiracy said they
16 would let it be known that this person was a snitch on the
17 street and he would wind up dead if he, quote, "said
18 anything."

19 Members of the conspiracy have also received
20 information from other BPD officers and even from an assistant
21 state's attorney about this investigation. That kind of
22 information and access to those people exists if the
23 defendant, or frankly, any of the defendants are released. If
24 the defendant remains detained, his communications which occur
25 over the jail phone system can be monitored.

1 And as Magistrate Judge Gallagher pointed out, a
2 number of the episodes of obstruction that we've highlighted
3 involve the use of the telephone. And even on the strictest
4 of location monitoring, the government can't monitor this
5 defendant's use of the telephone. So to the extent he would
6 now, facing such greater stakes, attempt to tamper with
7 witnesses or intimidate witnesses or direct others to do that,
8 there's effectively no way to stop him from doing that.

9 We proffered to Magistrate Judge Gallagher that this
10 defendant is uniquely challenging for Pretrial Services to
11 supervise, precisely because he's a law enforcement officer.
12 And throughout this investigation these defendants evidenced a
13 knowledge of counter law enforcement techniques, including
14 evading surveillance and taking other steps to prevent them
15 from being monitored or supervised, and to prevent their
16 conduct from coming to light of -- to the light of not only
17 the Baltimore Police Department, but its internal
18 investigations division and even the Justice Department's
19 civil rights investigation, which was going on and
20 scrutinizing the department while this conduct was going on.

21 And that's what, as we proffered to the magistrate
22 court, you know, that's part of what has to be evaluated here.
23 Can reasonable conditions be crafted when, under all of the
24 scrutiny and oversight that these defendants were under over
25 the last year, they engaged in this conduct? And what chance

1 does the Pretrial Services Department have, with far less
2 resources available to it, to try to effectively monitor him
3 now that the stakes are so much higher?

4 Your Honor, we have in this case not a battle of,
5 well, we predict he will be truthful with the criminal
6 justice -- or they predict he will be truthful with the
7 criminal justice system and we predict he won't. We have his
8 conduct. We have his conduct in interacting with actors
9 within the criminal justice system to look to, and what he's
10 shown again and again, is that he and his co-defendants have
11 engaged in obstructive conduct. And they do so regardless of
12 the audience, whether it's the Baltimore Police Department,
13 prosecutors, judges, pretrial service departments at a state
14 level, regardless of whether the information is truthful. And
15 really in some cases for fairly trivial -- where the stakes
16 are fairly trivial. Here, where the stakes are so much
17 higher, we think there are no conditions that can reasonably
18 assure the safety of the community, and therefore, the
19 defendant should be detained.

20 THE COURT: Thank you, Mr. Wise. Mr. Goldman, do
21 you wish to proceed by proffer, by live evidence, or simply
22 make argument?

23 MR. GOLDMAN: Proffer and argument.

24 THE COURT: Okay. I'll hear you.

25 MR. GOLDMAN: Your Honor, good afternoon. First of

1 all, I think where I want to begin, Your Honor, is by noting,
2 and I don't know how much weight the Court will give this, but
3 the government in their papers really talks about -- it talks
4 about Mr. Hersl has committed crimes of violence, namely
5 robbery and extortion by state of local government office
6 employees. And, in fact, the case is in this court on
7 basically on two RICO charges. I don't know beyond that if
8 this is that important or material for this hearing, but begin
9 parenthetically, Your Honor, I think that this issue of
10 whether this is a RICO case and belongs in federal court is
11 going to be an issue litigated in this case. I think it's of
12 some merit here. I think it's much more of a state law case
13 and has been shoe horned into federal court.

14 Having said that, Your Honor, let's talk a little
15 bit about Mr. Hersl's background.

16 THE COURT: What's the -- well, now what you're
17 doing is raising a question about the Court's jurisdiction,
18 jurisdiction is fundamental. So we need to get to the end of
19 that. What's the problem with the racketeering charge?

20 MR. GOLDMAN: Your Honor, I don't think that they --
21 I'm not prepared to put on a case today about that. But I, in
22 looking at this, there were a series essentially of inter --
23 of individual, basically, robberies. The allegations are
24 robberies, improper actions of criminal suspects, defendants,
25 and submitting inaccurate time sheets by a group of seven

1 officers. If the Court -- I'm sure the Court is familiar with
2 the basic elements of what it takes to have a RICO
3 organization. But I think that this -- I haven't filed papers
4 yet on it. The case is less than a week old. But I think as
5 far as this Court's jurisdiction, these allegations are an
6 enormous stretch and quite dubious.

7 THE COURT: Print the indictment.

8 MR. GOLDMAN: I'm sorry?

9 THE COURT: I was directing my clerk to do
10 something. Go ahead.

11 MR. GOLDMAN: This is an issue that we will take up.
12 If the case remains in federal court, we're going to be
13 challenging whether this is a RICO -- this meets the elements
14 of a RICO organization. I think, and in fact what the
15 government talks about in its paper is not RICO, but they talk
16 about robberies under Maryland state -- Maryland state law and
17 extortion by state or local government officer, employees
18 under state law. Well, Your Honor, those are state law
19 charges, this is --

20 THE COURT: But state law crimes can be RICO
21 predicates.

22 MR. GOLDMAN: They can, Your Honor. I'm just saying
23 initially and parenthetically, I'm not prepared to put on a
24 full case about it today. I think there are serious questions
25 whether this group of seven officers, with the allegations,

1 constitute a RICO organization and RICO enterprise. If the
2 case proceeds in this course, I think that's going to be
3 challenged, I imagine not just by my client.

4 THE COURT: Well, you know, you're either
5 challenging it right now or you're not. If -- and, you know,
6 out of an abundance of caution, I'm going to treat your
7 statements at the opening of your presentation here as a
8 suggestion that the Court lacks jurisdiction in the case,
9 because the underlying indictment doesn't succeed in alleging
10 a federal crime.

11 MR. GOLDMAN: Your Honor --

12 THE COURT: So let's get into it. Where's the
13 indictment?

14 MR. GOLDMAN: Without prejudicing our right to argue
15 it later in the litigation, I think that that would certainly
16 be a good place to start. I think this is a state law case.
17 It's not a federal RICO case, under 18 U.S.C. 1962. They've
18 gotten it past a grand jury, but I don't think that it's --
19 it's a proper federal court RICO case.

20 THE COURT: Well, I don't know -- I'm having a
21 little trouble understanding what your specific allegation is.
22 You can offer that opinion, but all I've heard in the nature
23 of legal argument from you so far is that the RICO predicates
24 alleged are themselves the product of state statutory schemes.
25 But in my experience, in RICO cases, frequently the predicates

1 are exclusively violations of state law.

2 MR. WISE: And, Your Honor --

3 THE COURT: Maryland law bribery of a public
4 official comes prominently to mind as a RICO predicate that
5 has had the Court's attention to a significant extent in the
6 very recent past, very much a state offense. So let's --

7 MR. WISE: Your Honor, if I may 1961(1),
8 specifically defines racketeering activity as any act or
9 threat involving -- as this case is charged -- robbery,
10 extortion, which is chargeable under state law and punishable
11 by imprisonment for more than one year. And both of the
12 Maryland statutes charged as predicates are obviously robbery
13 and extortion statutes. And the term of imprisonment for each
14 of them is for more than one year.

15 In terms of the enterprise, the enterprise charged
16 here is the Baltimore Police Department. I don't think as a
17 factual matter it will be contested that the Baltimore Police
18 Department doesn't exist.

19 MR. GOLDMAN: So is the government charging the
20 entire police department as a RICO organization?

21 MR. WISE: As the indictment clearly articulates,
22 the enterprise in this case is the Baltimore Police
23 Department. And the defendants engaged in a pattern of
24 racketeering activity that affected the conduct of the
25 Baltimore Police Department. This is a case where the

1 enterprise is a legitimate organization, like a business
2 that's infiltrated by the mob, and the conduct are the
3 extortion acts and the robberies and the overtime fraud that
4 are identified in the indictment.

5 THE COURT: Mr. Wise, on what page of this lengthy
6 indictment are the statutory schemes set out that you claim
7 were violated by these defendants in their execution -- in
8 their conspiratorial activities.

9 MR. WISE: In Count 1, Your Honor, at paragraph
10 15.

11 THE COURT: Give me a page?

12 MR. WISE: Page 4.

13 THE COURT: Right. Got it. So you've got wire
14 fraud alleged.

15 MR. WISE: Yes.

16 THE COURT: Then you've got robbery alleged under
17 the Maryland Criminal Article.

18 MR. WISE: Right.

19 THE COURT: And then you've got extortion alleged.

20 MR. WISE: Yes, Your Honor. And then in the
21 substantive count, in each of the racketeering acts, the
22 predicates are repeated. So that starts at page 27, Count 2.
23 And each racketeering act alleges various combinations,
24 depending on whether the racketeering act was engaged in
25 individually, as in the case of Mr. Hersl's two racketeering

1 acts at 1 and 2; or as part of a conspiracy, which is the case
2 with racketeering acts 3 through 10. And the same state law
3 predicates are alleged in each of those. And then the
4 overtime racketeering acts, the time and attendance
5 racketeering acts begin at page 42, and they allege violations
6 of Title 18, Section 1343.

7 THE COURT: So Mr. Goldman, your primary attack
8 seems to be on the way the grand jury described for the Court
9 the enterprise aspect of their accusation.

10 MR. GOLDMAN: Yes, Your Honor.

11 THE COURT: Isn't Mr. Wise correct that otherwise
12 legitimate organizations, whether in his example, a private
13 corporation; say in my example, a state prison; in the case at
14 hand, a police department, can be the enterprise that is at
15 the core of the racketeering charge. It doesn't itself have
16 to be an entirely criminal entity; correct?

17 MR. GOLDMAN: As an organization, Your Honor --

18 THE COURT: I would prefer to use the word
19 "enterprise," because I think that's the language of the
20 statute.

21 MR. GOLDMAN: The enterprise and the participants in
22 the RICO conspiracy have to be linked. There has to be a
23 connection. It's -- let me try to answer your question as
24 best I can. If you have a corporation or business, Your
25 Honor, of 5,000 people, and seven of them are committing

1 indiscriminate robberies and submitting false time sheets or
2 pay vouchers, does that make the whole business a criminal
3 enterprise?

4 THE COURT: By no means. But if they are engaged in
5 that allegedly unlawful conduct, while in service of the
6 enterprise, that is to say functioning as their bit of the
7 enterprise, that has always been my test for whether or not
8 we've got a sufficient nexus between the larger entity and the
9 criminal activity for purposes of whether or not this can be a
10 RICO enterprise.

11 So I would be with you if the allegations in the
12 indictment were otherwise silent as to the association between
13 these individuals and the police department. In other words,
14 yeah, they're police officers, but all of this activity with
15 which they're charged is occurred independent of that.
16 They've got some other whole deal going that, you know, it's
17 really almost a coincidence that they happen to all be police
18 officers. That's when we start to have problems with, well,
19 what's the enterprise for RICO purposes?

20 But in this case, as I read the indictment, the
21 contention of the grand jury is that their criminal activity
22 was completely interwoven with their functioning as police
23 officers or their functioning in their roles as part of this
24 enterprise known as the Baltimore Police Department. So I am
25 open to being persuaded otherwise, but that -- you are coming

1 after a fundamental understanding that the Court has about the
2 RICO statute.

3 MR. GOLDMAN: Thank you, Your Honor. I think Your
4 Honor in my -- I think that the way that the indictment reads
5 is that seven individuals engaged in alleged -- allegedly
6 engaged in criminal conduct, like robbery and extortion,
7 outside of the scope of their duties as -- outside of the
8 scope of their normal functioning and duties as police
9 officers. Whether the -- and furthermore, I think what is
10 completely absent from the indictment --

11 THE COURT: But somebody who is, let's say, a
12 correctional officer in a prison who decides that, look, I'm
13 going to start smuggling contraband into this facility, I mean
14 they're arguably -- that's not in their job description.

15 MR. GOLDMAN: Right.

16 THE COURT: So, you know, that argument could be
17 made that, well, wait a minute, you're on a frolic and detour
18 here, you are no longer functioning as a correctional officer.
19 That's not what the law says. That person is in that position
20 and able to do what they're doing, in terms of smuggling stuff
21 in and out of the prison, because they're correctional
22 officers. Similarly, I understand the contentions here to be
23 that these crimes are in many respects made possible by virtue
24 of the fact that your client, and the others charged, are
25 police officers. And that would supply this necessary

1 integration between their criminal conduct and the enterprise.
2 And it would seem to me, at first blush, that the basic
3 charging prerequisites of RICO have been satisfied.

4 MR. GOLDMAN: Your Honor, my reaction is this, and
5 then unless the Court has questions I'll move on, I think if
6 you want to compare, which I think is fair, to the recent jail
7 cases when you talk about 25, 50 or more co-defendants in
8 those cases, I think there has to be a certain level of --
9 certain level of number of people participating to get it into
10 a RICO conspiracy. And I think as the numbers increase the
11 organization, the detail, the meetings, and sort of the cross
12 referencing among the defendants, increases that breaks the
13 threshold of a RICO enterprise.

14 I think what this indictment says is seven guys who
15 were members of the Baltimore Police at various times,
16 individually or maybe working with a buddy at different times,
17 committed some robberies and submitted false time sheets. I
18 think we'll get into this more in the litigation, Your Honor.
19 I don't think that that's a -- I don't believe that under the
20 law, under RICO law, I don't believe this is -- I don't think
21 this is going to stand up during the litigation as a RICO
22 enterprise. I do not.

23 MR. WISE: Your Honor, the Count 1 that charges a
24 conspiracy charges them for conduct when they were all members
25 of the Gun Trace Task Force. They were the only members of

1 the Gun Trace Task Force. And Sergeant Jenkins was its
2 officer in charge. So Count 1, the conspiracy count, doesn't
3 charge a handful of people who happen to be Baltimore police
4 officers, it charges them when they were all members of the
5 same unit. Count 2 is the substantive count, which does not
6 allege a conspiracy, but rather covers racketeering conduct
7 that occurred both while they were all members of the same
8 unit, and when -- prior to when they joined, where there is no
9 element of them all agreeing or forming a criminal conspiracy.
10 So that's the difference between the two counts.

11 THE COURT: Well, I'm satisfied for purposes of this
12 review of a detention order that the Court has jurisdiction in
13 the matter. I am satisfied for purposes of this hearing only
14 that the indictment adequately alleges the RICO elements, such
15 that we have a credible charge of RICO conspiracy. It passes
16 muster by that sort of initial standard. The Court's raised
17 the question of jurisdiction somewhat on its own. That is
18 satisfied by virtue of the fact that the overall content of
19 the indictment certainly makes out impacts on interstate
20 commerce, which would be the final and ultimate touchstone for
21 jurisdiction over the conduct here. We have to meet the
22 elements of the RICO statute, but we also have to otherwise
23 meet more general requirements in order to trigger the
24 jurisdiction of a federal court. But it's amply demonstrated
25 by the content of this count.

1 So let's move past that issue, Mr. Goldman, to what
2 else do you want to present to the Court.

3 MR. GOLDMAN: Thank you, Your Honor. Your Honor,
4 let me sort of -- I think the Court has raised risk of flight,
5 let me address that as well as danger to the community. First
6 of all, Your Honor, a little background on Mr. Hersl, he is 47
7 years old. He is from this area. He's never lived anywhere
8 else. He has a loving and supportive family. There have to
9 be 15 members here today in support of their brother and
10 uncle. In particular who is here, Your Honor, is Jane Shott
11 she lives in Kingsville, Maryland. I believe she has been
12 approved as a potential third party custodian.

13 And with that in mind, Your Honor, we come to court
14 today -- we recognize the allegations here. We come to court
15 with a -- oh, and my client's 47, he's never been charged with
16 a crime before this. Your Honor, we come with a very specific
17 plan that will allow both his appearance in this court as well
18 as any issues as to danger to the community. And with all due
19 respect, I don't think that the government has proven its
20 case, for reasons I said, by clear and convincing evidence.

21 What we're proposing, Your Honor, is that my client
22 be turned over to the third party custody of his sister Jane
23 Shott to live in her home --

24 THE COURT: When you say you don't think the
25 government has proven it, is it because the charges

1 themselves, as brought by the grand jury, and found to be
2 supported by probable cause, by themselves don't make it? Or
3 is it your position that those charges coupled with what the
4 government has proffered in their papers and in their oral
5 presentation, doesn't amount to sufficient proof that your
6 client was involved in robberies, obstructive activities and
7 that sort of thing, which is it or is it both?

8 MR. GOLDMAN: It's both, Your Honor. And in
9 addition, Your Honor, under 3142(c)(B)(1) (sic) we are
10 proposing --

11 THE COURT: Let me catch up here, 32.

12 MR. GOLDMAN: 3142. Under 3142, your Honor,
13 (c)(B).

14 THE COURT: (c)(1) capital (B)?

15 MR. GOLDMAN: No -- right, I guess, (c)(1)(B)(i).
16 Your Honor.

17 THE COURT: (c)(1)(B)(i), remain in the custody of a
18 designated person who agrees to assume supervision and to
19 report any violation of a release condition to the Court if
20 the designated person is able reasonable to assure the
21 judicial officer that the person will appear as required and
22 are not a danger to the safety of another person or the
23 community. So the classic third-party custody option that
24 magistrate judges frequently invoke.

25 MR. GOLDMAN: Your Honor, let me tell you what our

1 plan is, in light of the -- we understand the allegations and
2 the sensationalism of the case and the news media coverage.
3 My client would live through the third-party custody of his
4 sister Jane Shott, in her home, with electronic monitoring.
5 He would only be allowed to leave that home, step outside that
6 home, for three reasons; come to this court, come to my
7 office, medical attention. In order to go to any one of those
8 three places he would have to clear that with a pretrial --
9 the pretrial officer, letting him know where he was going,
10 what time he was leaving, and when he would be returning --

11 THE COURT: But what you're -- there's no physical
12 restraint on his leaving.

13 MR. GOLDMAN: Well, he would be wearing the ankle
14 bracelet, Your Honor.

15 THE COURT: Yeah, but how long does it take for
16 people to respond to some alarm or trigger that the ankle
17 bracelet sets off.

18 MR. GOLDMAN: That usually does take, Your Honor,
19 probably 24 to 48 hours.

20 THE COURT: Yeah. So where is the assurance that he
21 is not going to simply flee? Where does it come from?

22 MR. GOLDMAN: Well, Your Honor, this is a life-long
23 resident of this area. His entire family is here, his life is
24 here. His son, who he misses terribly, is here. He has pled
25 not guilty. He's here to contest the charges, Your Honor.

1 THE COURT: I understand that.

2 MR. GOLDMAN: If I can point out, even if -- and the
3 Court is free to go there if you want. Even Magistrate Judge
4 Gallagher didn't think this was risk of flight case.

5 THE COURT: I am very aware of her reaction to that.
6 But a person who is released on conditions, even restrictive
7 ones of the sort that you've proposed, has still placed
8 themselves in a position where the Court is trusting them to
9 comply. It's that trust, it's their promise that they will
10 comply that is being substituted for the physical restriction
11 of their liberty that comes with detention. So that leads us
12 to the ultimate question, which is the trustworthiness of your
13 client, in light of what is presented. And I think that
14 that's the kernel of it.

15 MR. GOLDMAN: Your Honor, I was listening to Mr.
16 Wise and I was writing down, in all due respect, I don't
17 believe this is an issue of trust. I would like to approach
18 it a different way. Let's talk -- and this also relates to
19 danger to the community, the allegations of threats to
20 witnesses, and working with other people to do bad things.
21 Your Honor, incarcerated, while phones are monitored, he can
22 have visitors and guests. All the things the government is
23 claiming potentially he could do that are bad to, let's say,
24 obstruct this case, he can do from jail. You mentioned the
25 jail cases, Your Honor, at this point we know through bitter

1 experience that people can conduct all kinds of criminal
2 enterprises and actions within a jail and then direct them for
3 things outside the jail.

4 THE COURT: It's sad that I have to potentially
5 concede that point to you, but even you would concede that
6 there's a difference.

7 MR. GOLDMAN: There is some difference, but here I'd
8 like -- you know, it's sort of, let me argue the different
9 side of the coin. The government talks about his knowledge
10 and experience as a -- first of all, Your Honor, let's
11 remember, this is a 47-year-old man who has been a peace
12 officer for 20 years, who has never been convicted of a crime
13 before. These are allegations. He has the presumption of
14 innocence. But the government says that he knows how to do
15 all these things because he's a police officer.

16 Let me tell you what my client knows, and this takes
17 it out of the realm of a trust question into something I would
18 put a knowledge question. You know, Mr. Wise, and at the last
19 hearing too, he sort of wags his finger and says how can one
20 little pretrial officer supervise this man under the very
21 restrictive plan we've talked about. Oh, Your Honor, let's
22 have a real conversation here. My client is under the
23 scrutiny and supervision of this Court and the most
24 powerful -- which he knows -- the most powerful force, that's
25 the United States Government.

1 I'm very glad that an FBI agent is here in court
2 today, because she represents a team, 10, 20, 30 or more FBI
3 agents that are actively working on this case and have put
4 this case together. There are all kinds of forces, resources,
5 that the United States Government has and continues to devote
6 to this case. There's one FBI agent here, there's more. It's
7 the entire pretrial office. It's the FBI. It's the U.S.
8 Attorney's Office. It's the Court.

9 Let's play this out. Let's bring it into the
10 practical. The government claims that my client is determined
11 that somehow he's going to do harm to witnesses or take other
12 obstructive -- make other obstructive conduct. Your Honor, if
13 these things were to occur, you know what my client knows, if
14 anything were to happen to anyone or anything, the first
15 person they're going -- the door they're going to knock, the
16 first person they're going to see, and probably through
17 surveillance, the first person they're going to know who did
18 it is Daniel Hersl.

19 I'm sorry, Your Honor, but the idea that this
20 involves trust and he's in this situation that's less
21 restrictive, he's going to go out and do these things, I'm
22 sorry it's preposterous, it's ridiculous. He, as a police
23 officer, understands the level of supervision and scrutiny and
24 attention he's under. He won't leave that house unless the
25 pretrial officer tells him. We're willing, Your Honor, to not

1 only put him on third party custodian of his sister, who works
2 out of the house and is there every day, and is literally
3 there to supervise him. But also Your Honor we can limit, he
4 can have no visitors other than family. And there are simply
5 other things we can do to basically, other than live with his
6 sister in that house, to shut down Daniel Hersl and work with
7 me to prepare his defense to this case.

8 THE COURT: Mr. Goldman, I've been a judicial
9 officer for 19 years. 12 of those years as a magistrate judge
10 conducting this sort of proceeding on a daily basis, I admit
11 that it now is in my rear-view mirror for the most part, and I
12 will do two or three of these hearings a year. But I'm
13 sufficiently confident of my memory to say that I don't
14 remember ever letting somebody accused of robbery, armed
15 robbery essentially, out on release. That just doesn't happen
16 in federal court. It never happened in my courtroom.

17 What's different about this from a garden variety
18 street robber, who robs banks? That's who a federal
19 magistrate judge typically sees. Let alone someone who is
20 accused, and for which the grand jury has found probable cause
21 and a magistrate judge apparently has as well, that they're
22 involved in not just an incidental robbery here and there, but
23 effectively organized criminal activity to rob people.

24 MR. GOLDMAN: The difference here, Your Honor, is
25 that we're offering a very restrictive plan, where he remains

1 in his sister's home with an ankle bracelet, under her
2 supervision, and the supervision of the Court and all its
3 resources. This is precisely because it's a very high profile
4 case, with the FBI and the U.S. Attorney's Office and pretrial
5 and the Court, really with an intense amount of scrutiny.
6 What it comes down to, Your Honor, is he understands what he's
7 facing. He understands that if he were to lift a finger to do
8 anything dishonest to violate any release order, or to do
9 anything obstructive, he knows he would be held to account for
10 it almost immediately.

11 THE COURT: The stakes are high, you agree with
12 that. Certainly, Mr. Wise would contend that they're great.
13 Your client has very substantial exposure in the case. Why
14 doesn't that cut in favor of the notion that, A, he's a flight
15 risk; and B, he would be highly motivated to take whatever
16 steps he could to derail his successful prosecution?

17 MR. GOLDMAN: Because, first of all, Your Honor,
18 respectfully, we reject any notion this he's a flight risk.
19 He's lived here all his life. I don't think he has a
20 passport. His family, who all live in Maryland, are here.
21 His son is here. He's going to stay here and fight this case.
22 He's not going anywhere.

23 Secondly, Your Honor, you're asking what are the
24 chances, precisely because he knows he's under the scrutiny
25 and supervision attention that he's getting, that any action

1 that it's going to be brought right back at him. He would be
2 taking an already -- first of all, he knows it's wrong and he
3 wouldn't do it. Second of all, he knows as a practical matter
4 it would be brought right back at him, it would take a
5 difficult situation and would make it worse.

6 You know, Mr. Wise went through a series of
7 obstructive conducts and he gave the Court a series of
8 examples of allegations in the complaint. Under our plan,
9 Your Honor --

10 THE COURT: In the indictment?

11 MR. GOLDMAN: In the indictment. Under that, Your
12 Honor, under the plan we're talking -- the problem is what Mr.
13 Wise gave was a great closing argument. It is not a good
14 argument, Your Honor, in a 3142 hearing, because my client is
15 not going to have the access, he's not going to be able to --
16 the freedom, he's not going to have the flexibility to do any
17 of those things. He's not submitting time reports. He's not
18 participating in arrests. He's not handling paperwork. He's
19 not -- and also he doesn't have a weapon. I mean, he's not
20 wearing a uniform living at his sister's home. So all of
21 those sensational things that Mr. Wise reviewed that are in
22 the indictment, he's not going to have the ability to do any
23 of those things. He simply can't, Your Honor.

24 And as far as witness intimidation, Your Honor, I've
25 talked to him about it. He knows, he doesn't need me to tell

1 him, the minute something goes wrong the minute there's a
2 problem they're going to bring it back to him and they're
3 going to make it -- it's going to make an already challenging
4 situation that much worse. Your Honor, he's -- he knows he's
5 under -- the answer to your question is he knows he's under
6 intense scrutiny, that under the plan that we are proposing
7 he's being watched. And as a practical matter, Your Honor,
8 there's just -- he wouldn't do it in the first place, but in
9 the second instance if he did, Your Honor, it's just going to
10 be brought right to me. He knows this at this point.

11 There are two world here, Your Honor, there's the
12 world of pre March 1, when he was arrested, you have those
13 allegations. But the whole world for this gentleman has
14 changed post arrest, post indictment, and sitting here today
15 when the world is literally looking at him. When the
16 community, the media, this court, pretrial, I don't know 30,
17 40 FBI agents, the U.S. Attorney's Office. You know, he's
18 getting all of this attention. He knows it, Your Honor.
19 Under the very restrictive conditions that we have proposed
20 Your Honor, I think the Court -- it has to be reasonable, the
21 Court can be very reasonably assured that he is not a risk of
22 flight. He is not a danger to the community. It will also,
23 Your Honor, allow him to work with me in a much easier basis
24 to prepare a defense and prepare for trial in this case.

25 But for those reasons, Your Honor, we've offered

1 Your Honor a very reasonable plan, Your Honor. You say, Your
2 Honor, you've never recalled anybody with robbery or armed
3 robbery ever released before. This is a 47-year-old man, Your
4 Honor, with strong ties to the community. He's never been
5 arrested before. He's never been charged before. And he's a
6 Baltimore police officer. And I would argue they talk about
7 him being in a different class, I think he is in a different
8 class, that's right.

9 I think, Your Honor, that the Court can and should
10 release him today under the plan we have proposed with the
11 complete assurance that he will come back to this court for
12 all hearings and that the community is completely safe with
13 him living in his sister's home with an ankle bracelet on,
14 under her supervision, the supervision of all the government
15 resources I've identified, the Court can be assured.

16 And finally, Your Honor, under the section of 3142
17 that I've recited, I believe that that is mandatory in that if
18 the Court can fashion conditions of release that are less
19 restrictive than are required, then the Court is required to.
20 You know, we've come here today --

21 THE COURT: I'm not in the business of locking up
22 people in circumstances, Mr. Goldman, when I don't otherwise
23 feel that I'm required to.

24 MR. GOLDMAN: I'm sorry, Your Honor?

25 THE COURT: That's an offensive suggestion.

1 MR. GOLDMAN: I'm sorry, I'm just trying to -- I
2 didn't mean to offend the Court. I'm just trying, Your Honor,
3 to make the point --

4 THE COURT: The statute has a very coherent logical
5 structure to it. It's not that different from the new
6 sentencing provisions that we apply. You impose a sentence
7 that is sufficient but not greater than necessary. In these
8 circumstances, you don't hold people in custody without having
9 first reached the conclusion, under law, as specified by
10 Congress, that you must, in order to satisfy important public
11 interests. It's not a matter of a court sitting around before
12 a person's ever even been convicted of an offense and just
13 saying, you know, I think I ought to lock this guy up on some
14 whim. I hope you're not suggesting that anything other than
15 religious attention to the statute would govern how the Court
16 exercises its discretion.

17 MR. GOLDMAN: I don't think I argued, Your Honor,
18 the Court would be acting on a whim. My position is I don't
19 believe the record supports the government's position by clear
20 and convincing evidence. What we have done is we have
21 fashioned a very specific plan to address the concerns of the
22 government and the Court about risk of flight and danger to
23 the community. It's very restrictive. Is it foolproof, Your
24 Honor? No. But then, again, being incarcerated is not
25 foolproof in terms of the issues raised by the government as

1 well, as I mentioned earlier, as we've learned from bitter
2 experience.

3 The difference -- this is not a recidivist. This is
4 a 47-year-old man, never been convicted, with tremendous
5 family ties to the community. He knows one place, Your Honor.
6 He knows Baltimore. That's all he knows. His son is here.
7 This man is not going anywhere. He's going to stay and fight
8 these charges. And if the Court is willing to, we think that
9 the Court should allow him to turn him over to his sister as a
10 third-party custodian, to leave that home for only three
11 reasons, to not meet with anyone other than family members,
12 and to work with me to prepare his defense. I don't believe
13 the government has met the clear and convincing burden. I
14 understand the Court's position.

15 I guess my last word, Your Honor, you know Mr. Wise
16 said that this is a unique case because he's a police officer.
17 I agree. That's absolutely right. He understands the system.
18 Understands the process. If he doesn't follow the plan that
19 we have proposed to the Court, he understands that the
20 ramifications will come back at him and they'll be all bad.
21 He understands that, Your Honor. And I think the Court can
22 have -- we're not here to try him today, Your Honor. We're
23 here to see if there are conditions the Court can fashion,
24 conditions that will reasonably allow for his release. I
25 think we proposed them quite responsibly, reasonably. I would

1 ask the Court to adopt them.

2 THE COURT: Thank you, Mr. Goldman. I appreciate
3 your energetic advocacy.

4 In accordance with the relevant provision of the
5 Bail Reform Act, which is 18, U.S.C., Section 3145(b), I have
6 now conducted a de novo hearing upon review of the order that
7 Judge Gallagher entered.

8 Before I get into the formal structure of my ruling,
9 let me make this observation: And that is that any time a
10 court is asked to enter a release order in circumstances where
11 the government has otherwise demonstrated probable cause to
12 believe that the defendant is guilty of offenses that qualify
13 for entry of a detention order, any time that a court is put
14 into that position, the central core issue becomes the
15 trustworthiness of the defendant. And that's true whether
16 we're talking strictly about flight risk, whether we're
17 talking about fear or risk of obstructing justice, it's even
18 true when we're talking about whether or not the Court
19 concludes or feels that the defendant might be a danger. It
20 all ultimately turns on this question of whether the Court
21 ultimately trusts the defendant.

22 And Mr. Goldman's point is well taken in that it's
23 not purely a question of trusting his internal code, it's
24 trusting the overall arrangement that Mr. Goldman has
25 skillfully constructed to include third-party residence with

1 the sister and the other sort of structure that would be
2 around him, would the Court ultimately trust that set of
3 conditions to ensure that the defendant shows up to court in
4 the future when he's required to, doesn't engage in behavior
5 that is going to obstruct justice or intimidate witnesses, and
6 doesn't pose a danger to the community.

7 My problem, plain and simple, is that based on the
8 charges that the grand jury has returned, and then the proffer
9 that the government has supplied in support of those charges,
10 that -- and then the additional information that the
11 government has proffered, which I find to be largely unrefuted
12 both in the hearing before Judge Gallagher and now before me,
13 is that I don't trust the defendant. I don't find him
14 trustworthy.

15 This is an individual who has taken an oath that is
16 of profound significance in our society, this is an individual
17 who's been afforded special powers that are reserved for only
18 a very selected few commissioned law enforcement officers.
19 And for purposes of this hearing only, but based on the
20 information that's been submitted to this Court, I find that
21 he violated that oath. And if someone is willing and prepared
22 to violate an oath in that context, it strikes the Court as
23 powerful evidence of a lack of basic trustworthiness. All of
24 the conditions that Mr. Goldman has proposed still ultimately
25 rely on the defendant being trustworthy. And I don't find

1 that I hold that trust in him.

2 Accordingly, I'll make my more structured findings
3 now. This is a case in which the government may properly seek
4 detention. It's also a case in which the Court may consider
5 ordering detention sua sponte on flight risk grounds. I find
6 secondly, that the defendant is charged under 18, United
7 States Code section 1962(c) and (d). I find that the maximum
8 term of imprisonment, if the defendant is convicted, is 20
9 years per count. I find, based on the government's proffer,
10 that there is probable cause to believe that the defendant
11 committed the offenses charged.

12 Different from Judge Gallagher, I find by a
13 preponderance of the evidence, from the information produced
14 at this hearing and from what has been submitted to me on the
15 papers, that there is a serious risk the defendant will not
16 appear as this was not addressed previously by Judge Gallagher
17 I wish to elaborate, at least slightly. And that is to say
18 that, first of all, the defendant is facing dire consequences
19 if he's convicted in this case.

20 I don't prejudge the outcome of the case, at this
21 point it would be improper to do that. But it is highly
22 appropriate for the Court to look at the charges that have
23 been brought, particularly there having been found to be
24 probable cause to support them. These are extremely serious
25 charges. This, if proven, represents a breach of the public's

1 trust that is extreme, to say the least. And that's just the
2 public's interest. What about the actual individual victims
3 of these crimes, as they're described in the indictment.

4 So the defendant is facing severe consequences if
5 found guilty on these charges. Such consequences can create
6 their own motivations and have to be taken into account when
7 assessing flight risk. Coupling that with what the Court said
8 a moment ago about trustworthiness, and I am persuaded that
9 there is serious risk that the defendant will not appear. The
10 totality of the circumstances create that risk.

11 Next I find by clear and convincing evidence from
12 the information produced at the hearing that the defendant
13 poses a risk to the safety of other persons and to the
14 community. And then I find by clear and convincing evidence
15 that there is no condition, or combination of conditions,
16 including explicitly the proposal submitted by Mr. Goldman,
17 that will reasonably assure the defendant's presence at trial
18 or as otherwise required, or the community's safety.

19 And last of all, I want to note that I agree with
20 the notion that given what has been alleged, and then the
21 proffer in support of the request for the defendant's
22 detention, that I also have concerns and find that there is a
23 substantial and unacceptable risk that the defendant would
24 engage in obstructive behavior. That is behavior that would
25 be calculated to obstruct justice or potentially to intimidate

1 otherwise cooperative witnesses. And that provides its own
2 basis for ordering the defendant detained.

3 Ordinarily, the Court supplies an additional written
4 statement of additional reasons for detention. The Court will
5 simply adopt the written reasons set out by Judge Gallagher as
6 they are entirely consistent with my own sense of these
7 circumstances, with the understanding that where she said
8 additional reasons stated on the record, the additional
9 reasons stated on the record for my purposes are my reasons,
10 not whatever she might have said on the record in her hearing.

11 And so Judge Gallagher's order previously entered,
12 upon review, is affirmed, and the defendant remains committed
13 to the custody of the Attorney General or his designated
14 representative for confinement in a corrections facility,
15 separate, to the extent practical, from persons awaiting or
16 serving sentences or being held in custody pending appeal.
17 The defendant shall be afforded reasonable opportunity for
18 private consultation with defense counsel. On order of a
19 Court of the United States, or on request of an attorney for
20 the Government, the U.S. Marshals shall deliver the defendant
21 for the purpose of an appearance in connection with a court
22 proceeding.

23 Is there anything else from the government?

24 MR. WISE: No, Your Honor. Thank you.

25 THE COURT: From the defendant?

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MR. GOLDMAN: No, Your Honor.

THE COURT: Defendant's remanded to the custody of the Marshal. Counsel are excused. Court's in recess.

(The proceedings were concluded.)

I, Christine Asif, RPR, FCRR, do hereby certify that the foregoing is a correct transcript from the stenographic record of proceedings in the above-entitled matter.

_____/s/_____
Christine T. Asif
Official Court Reporter

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