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(3) that his "whole philosophy was give them what they want;" (P133-145);
(4) He's "their number one CI" and that "The shooting and the shit that I told them about. I don't know what happened afterward"" but that Hak, Rak and Mals "going to jail;" (P165-P166);
(5) "John Gay know everything I did...I don't care if I was a block away looking at it...I don't care if me and Hak was in the car together and another nigger did the shooting. I told him about that too;" (P176)
(6) that he was "going against" Paul to and that they he told them was "12 times" about Paul;
(7) that Young was asked, "Paul told you how to do...Paul told you to do this? Yeah Paul told us to do that. Did he say this? Yeah, Paul said that. Did he say this? Yeah, Paul said that. Yeah because we goth this type of conversation with him and Hak on the phone...Paul going to jail too, unless he turn state on Hak." (P176-P179) | P129-P183 |
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1 meeting, and you said that Bergrin was upset; was upset because
2 he wanted you to go through him in dealing the drugs. Correct?

3 A That is correct.

4 Q Isn't it a fact that on November the 16th when you spoke to
5 the FBI, you specifically told them that Bergrin was upset when
6 he found out that you were dealing drugs because I had told you
7 that Hakeem was under investigation? Isn't that what you said?

8 A What date was that?

9 Q November 16, 2010.

10 A That I said that?

11 I might of have said that, yes. I probably said that.

12 MR. BERGRIN: Could I just have one more minute, your
13 Honor?

14 (There is a pause for Mr. Bergrin.)

15 MR. BERGRIN: Thank you very much, your Honor.

16 THE COURT: All right. No further examination?

17 MR. GAY: No, Judge.

18 THE COURT: All right. Can I see counsel at sidebar?

19 We don't need it on the record I don't think.

20 (Sidebar discussion off the record.)

21 (In open court.)

22 THE COURT: Ladies and gentlemen, we're going to call
23 it a day. Again we'll see you back here Monday at the same
24 time, same place. And again, let me just remind you of a few
25 things. Please don't discuss this at home over the weekend

1 A B D U L W I L L I A M S, resumes, testifies further as
2 follows:

3
4 THE COURT: We'll bring out the jury.

5 THE DEPUTY CLERK: Please rise for the Jury.

6 (Jury present.)

7 THE COURT: All right, everyone, please be seated.

8 Mr. Bergrin, cross-examination, please.

9 CROSS-EXAMINATION

10 BY MR. BERGRIN:

11 Q You keep smiling and laughing. This is a big joke to you,
12 right, Mr. Williams?

13 A Absolutely not a joke, Paul.

14 THE COURT: Mr. Williams, refer to everybody in the
15 courtroom as "Mr." No more first names. Okay?

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you.

18 Q Now, you contacted the FBI in order to cooperate. Correct?

19 A No, I did not.

20 Q Isn't it a fact that on November the 3rd of 2010 your
21 attorney contacted the FBI and said that you wanted to
22 cooperate?

23 A Yes, sir.

24 Q And you met with them at least five times before you said
25 the statement that you just said now. Correct?

1 things relating to drugs with Mr. Williams other than that --
2 what he already admitted, which is, I'm a drug dealer, I think
3 that's coming awfully close to opening the door.

4 MR. LUSTBERG: That's all we were going to do, Judge.
5 I absolutely I totally agree.

6 THE COURT: I agree, I agree, Mr. Gay.

7 You're going to have to be very careful. If you want
8 to open the door for whatever reason you decide to do, Mr.
9 Bergrin, go ahead.

10 MR. BERGRIN: Yes.

11 THE COURT: But I would think your cross-examination
12 here is going to be very limited. But that's up to you.

13 MR. BERGRIN: Yes, your Honor.

14 THE COURT: I'm not dealing with a pro se who is not
15 an experienced trial lawyer, so obviously I'm not going to give
16 you any advice other than you know my ruling, you know the
17 perils of getting into challenging him too much, and go from
18 there.

19 MR. BERGRIN: Yes, your Honor.

20 THE COURT: All right.

21 Let's bring in the witness.

22 (The Witness, Abdul Williams, is escorted into the
23 courtroom by the Marshals.)

24

25

Williams - cross - Bergrin

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1 A Yes, sir.

2 Q As a matter of fact, you met with them in November,
3 December, January, February. The first time you said the
4 statement to them was in -- excuse me -- April of 2011.
5 Correct?

6 A What was statement again?

7 Q The statement that you just testified to that I supposedly
8 made to you back in 2007. You met with the FBI at least -- you
9 met with them five times before you made this statement to
10 them. Correct?

11 A I met with the Government several times. When exactly I
12 made the statement, I'm not sure.

13 Q Well, would it refresh your memory, sir, if I show you what
14 they call a 302, a report dated April 27th of 2011?

15 A Sure. Let me see it, maybe I can help you out.

16 MR. BERGRIN: May I show the witness 04421, your
17 Honor?

18 THE COURT: Yes, go ahead. Just show him --

19 MR. BERGRIN: The date.

20 THE COURT: The date.

21 Q I'm going to show you this date. Is that on April 27th,
22 2011, Statement of Proffer?

23 A That's what's on the paper, yes.

24 Q And on page 2, the next to last paragraph, does that
25 essentially contain the statement that you just said?

Williams - cross - Bergrin

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1 A (After pause) Essentially that's -- that's not my writing,
2 but, yes, that is what we talked about.

3 Q So you had about five meetings before them -- you started
4 in November of 2010. Correct? And the first time you make
5 mention of this is April of 2011. Correct?

6 A Possibly, yes. Like I say, I'm not sure when, but at some
7 point we did discuss several things. So at some point we
8 discussed the Kemo situation, at some points we discussed other
9 things.

10 Q Now, Mr. Williams, you were dealing approximately 150
11 bricks of heroin, correct, as you testified to under direct
12 examination, at the Bradley Street projects. Correct?

13 A At that time, yes, I was.

14 Q And how long were you dealing that heroin?

15 A Maybe a year.

16 Q A year.

17 A A year, year and a half.

18 Q So you dealt a lot of heroin in that year, year and a half.
19 Correct?

20 A Yes, I did.

21 Q And isn't it a fact that the Government never charged you
22 with dealing even one gram, one drop of that heroin?

23 MR. GAY: Judge, can we be heard on this at sidebar?

24 THE COURT: Yes. Let's hear you at sidebar.

25 (At the sidebar.)

Williams - cross - Bergrin

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1 THE COURT: Okay.

2 MR. GAY: Judge --

3 THE COURT: Was he charged for any --

4 MR. GAY: No, he's not, but he was charged with the
5 cocaine that he was dealing with with Paul Bergrin. So if he's
6 going to start --

7 THE COURT: He pled guilty to that. Right?

8 MR. GAY: Absolutely.

9 THE COURT: And he plead guilty before Judge
10 Debevoise?

11 MR. GAY: Judge Debevoise.

12 THE COURT: Right.

13 MR. GAY: So what I'm saying, Judge, is if he's going
14 to start to go down this road with what the Government didn't
15 charge him with --

16 THE COURT: I'll sustain the objection.

17 Withdraw the question.

18 MR. GAY: Another thing, too, Judge. I want to make
19 sure we're clear on this, too. He has now suggested that Mr.
20 Williams didn't mention this statement until April. So now I'm
21 allowed to get into what he did talk about up until that time.
22 He opened the door to that.

23 THE COURT: Okay, wait Mr. Gay. When you say "what he
24 talked about before that" --

25 MR. GAY: Judge, Mr. Bergrin is suggesting that Mr.

Williams - cross - Bergrin

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1 Williams didn't make -- didn't talk about this statement here
2 until April --

3 THE COURT: Did he talk about it before that date?

4 MR. GAY: No, but he talked about the other activity
5 that Mr. Bergrin was involved with.

6 THE COURT: No, I'm not going to let you --

7 MR. GAY: I'm raising it now since we're at sidebar
8 here. I want to make sure. It's my opinion if he's going to
9 go down a road like that, again he's opening the door to us
10 getting in this other evidence. I just want to while we're
11 here, I want to caution you that --

12 THE COURT: I know that's your opinion, but I'm not
13 going to let you get into other conversations unless there were
14 other conversations about the Kemo case, if there were other
15 conversations about the Kemo case.

16 I'll tell you where my problem is here if you haven't
17 figured it out already: The Kemo discussion comes up in April
18 2011 just before this case, you know, getting ready for trial,
19 before your Second Superseding Indictment.

20 MR. GAY: Judge, but --

21 THE COURT: Don't say anything.

22 MR. GAY: I apologize.

23 THE COURT: My concern is, was the topic raised by him
24 voluntarily? Or, yeah, I told you, you know, let me tell you
25 more about Kemo? Or was it by someone saying: Do you know

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1 anything about the Kemo case? Did he ever talk to you about
2 that?

3 And with these kinds of witnesses, Mr. Gay, I'm
4 troubled by all of this stuff, if you haven't figured it out.
5 Okay? I don't have a great deal of confidence in your
6 witnesses. I think they would -- you've seen me get upset
7 before. I don't have a level of confidence.

8 He was interviewed five times and all of a sudden late
9 in the game before this trial he remembers in April of 2011 I
10 had a conversation about the Kemo case.

11 You're not going to get in other conversations unless
12 it's about the Kemo case. Okay?

13 MR. GAY: Okay.

14 THE COURT: And he's allowed to test his -- why did
15 you mention it so late? Who asked -- who asked you about it?

16 MR. GAY: Absolutely, Judge, I agree.

17 THE COURT: Did someone ask you or did you just
18 volunteer this all of a sudden?

19 MR. GAY: No, I agree.

20 THE COURT: Were you aware there was an upcoming
21 trial. You know?

22 MR. GAY: Okay. He can certainly test all that. I'm
23 not suggesting that.

24 THE COURT: Get away from the drugs.

25 (In open court.)

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1 THE COURT: All right. That objection is sustained.
2 The objection is sustained.

3 MR. BERGRIN: I withdraw it, Judge. Thank you.

4 BY MR. BERGRIN:

5 Q Now, at the time that you made this statement, April of
6 2011, you had read articles on this upcoming trial, correct,
7 and you were aware of the upcoming Kemo trial. Isn't that a
8 fact, Mr. Williams?

9 A I don't recall reading articles. I was arrested, but you
10 was arrested before me, Mr. Bergrin, so I knew why you were
11 arrested.

12 Q And you knew why I was arrested; and those articles in the
13 newspaper about why I was arrested in reference to Kemo.
14 Correct?

15 A I guess so. But as far as me reading articles and that
16 making me aware of the case, I don't understand what -- I don't
17 understand your question.

18 THE COURT: Mr. Williams, you're going to have to try
19 to be responsive to the questions. Okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: Go ahead.

22 Q At the time that you made this statement in April of 2011,
23 you had 11 prior -- you had 11 felony convictions. Correct?

24 A Yes, sir.

25 Q You were a career criminal. Correct?

1 A I -- yes, sir.

2 Q As a matter of fact, the Federal Government classified you
3 as a career criminal. Isn't that a fact?

4 A Yes, they did.

5 Q And you were facing a life in prison. Correct?

6 A I don't think my sentence would have been a life sentence,
7 sir, no.

8 Q You were facing up to life in prison. Isn't that a fact,
9 sir?

10 A Maybe in the guidelines. I'm not aware of that, sir.

11 Q Your attorney didn't explain that to you? You weren't
12 aware of the fact that you were facing life in prison, never
13 being released ever on parole and that you would die a natural
14 life (sic) in prison?

15 A When my charges were put in front of me and calculated,
16 sir, Mr. Bergrin -- and you know I know this from you -- that
17 when I look at this stuff, I was able to see that my range put
18 me in between 15 and 23 years, not life.

19 Q Fifteen and 23 years?

20 A Yes, sir.

21 Q And with the Federal Government you do 85 percent of that
22 before you're eligible for parole. Correct?

23 A Yes, sir.

24 Q Now, the Government determines whether to send a letter to
25 the sentencing judge. Correct?

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1 A A letter in reference to a deduction of my sentence?

2 Q Exactly.

3 A Yes.

4 Q They determine whether you're a cooperating witness or
5 whether you gave truthful cooperation. Isn't that a fact?

6 A Yes.

7 Q It's in their sole discretion. Isn't that a fact?

8 A Yes.

9 Q Now, you testified in reference to you receiving drugs from
10 Mr. Curry and Curry receiving drugs from you. Correct?

11 A Absolutely.

12 Q When you spoke to the FBI, isn't it a fact that you said
13 you had no drug relationship with Mr. Curry?

14 A I don't ever recall saying that to the Government, sir.

15 Q I show you 04398.

16 MR. BERGRIN: May I approach the witness?

17 THE COURT: Yes. Just approach him with the document.

18 Q I show you a November 4th -- excuse me -- November 3rd,
19 2010 FBI report. I ask you to look at paragraph -- the first
20 full sentence on the page of paragraph 2.

21 THE COURT: Which page?

22 MR. BERGRIN: It's page 2, your Honor, 04398 it's
23 labeled.

24 THE COURT: Mine doesn't have a label on it. But go
25 ahead. The second paragraph?

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1 MR. BERGRIN: Yes. The first -- I'm sorry, it's the
2 first paragraph. It's not a full paragraph, it's only two
3 sentence, your Honor.

4 THE COURT: Okay.

5 Q Did you tell the FBI: Although they maintain a close
6 friendship, Williams never worked for Curry?

7 A That's correct, I never worked for Curry. I was my own
8 boss and he was his own boss. I never worked for Curry.

9 Q I'm going to show you also J04407, page 5, the third
10 paragraph down.

11 MR. GAY: Is this the same one, Paul?

12 MR. BERGRIN: No, it's the report on November the 12th
13 of 2010.

14 MR. GAY: I'm sorry, which page?

15 MR. BERGRIN: It would be page 5, sir. It's marked
16 J04407.

17 MR. GAY: Thanks.

18 MR. BERGRIN: Okay.

19 MR. GAY: Which paragraph now?

20 MR. BERGRIN: It's the third paragraph down. It's two
21 sentences.

22 MR. GAY: Okay, got it. Thank you.

23 BY MR. BERGRIN:

24 Q Did you tell the FBI: Williams would do small favors for
25 Curry but there was little more than mutual respect as far as

Williams - cross - Bergrin

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1 direct business dealings?

2 A Not in my exact words, but, yes, that is familiar.

3 Q Hakeem Curry and you had a relationship. Correct?

4 A Yes.

5 Q And it was more than a friendship. Correct?

6 A Yes.

7 Q And as a matter of fact, what you told the FBI is that you
8 had a mutual respect but you weren't doing business together
9 and that you never worked for Hakeem Curry. Isn't that what
10 you told them?

11 A Sir, to be clear --

12 Q Please answer my question, Mr. Williams. Is that what you
13 told the FBI?

14 A I'm going to answer your question.

15 THE COURT: Now wait a second, both of you.

16 You try to answer just the question, Mr. Williams, and
17 you don't get argumentative back; and you don't get
18 argumentative with the witnesses, Mr. Bergrin.

19 MR. BERGRIN: Yes.

20 THE COURT: Okay?

21 THE WITNESS: With all due respect, Judge, what he's
22 asking me is tangled, so I was just trying to clear up what he
23 was asking me.

24 THE COURT: Just listen to the question.

25 And be specific with your question, Mr. Bergrin.

1 Q Did you tell the FBI that you had no business relationship
2 with Hakeem Curry but a mutual friendship?

3 A No, I did not tell the Government that.

4 Q And isn't it a fact that that's what the report reflects?

5 THE COURT: He just saw it and he said it does reflect
6 that.

7 Q Let me move on to another area.

8 From the arrest of William Baskerville in November of
9 2003 until this alleged statement was made by me in 2007, you
10 had no contact with William Baskerville. Isn't that a fact?

11 A Yes, that is a fact.

12 Q Isn't it a fact that you had no contact with anybody in
13 William Baskerville's family?

14 A No, that is not a fact.

15 Q Isn't it a fact, sir, that you had known -- because I made
16 it known to the press -- as to what my involvement was in this
17 case. Correct? You had read articles of what I said to the
18 press in reference to the Kemo case? Isn't that a fact?

19 A I don't recall reading articles but I recall you and I
20 speaking about it, yes, I do.

21 Q And isn't it a fact that it was my position that I was
22 hoping William Baskerville would cooperate to clear up this
23 nightmare in my life?

24 You're laughing and you're smiling and wiping your
25 face. Isn't it a fact I made that known to the members of my

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1 office?

2 A I don't know what you made known to the members of your
3 office, Paul -- sir, Mr. Bergrin.

4 THE WITNESS: I'm sorry, sir.

5 Q Now, I never indicated to you that I was guilty in any way
6 in the Kemo murder. Isn't that a fact?

7 A Yes, that is a fact.

8 Q And you knew that Mr. Baskerville had two other lawyers
9 representing him from approximately the end of 2004 until he
10 was going to trial in 2007. Isn't that a fact? You knew that
11 I wasn't representing him?

12 A I know that you wasn't representing him, yes, I do. I
13 don't know who he was representing -- I never knew who
14 represented him.

15 Q But you knew he had other lawyers. Correct?

16 A I knew he had representation but I didn't know who or what.
17 It wasn't my business, Paul -- Mr. Bergrin.

18 Q And you knew that I had contact with those other lawyers,
19 and you knew that those other lawyers, if Mr. Baskerville
20 wanted to cooperate, would have cooperated based upon your
21 experience and your training. Correct?

22 A That is not a fact. Me and you never discussed who you
23 talked to or anything. That is absolutely false.

24 MR. BERGRIN: Your Honor, could I have a moment,
25 please?

1 (There is a pause for Mr. Bergrin.)

2 Q Now, the aliases that you've used, Mr. Williams, you used
3 the name "Mutalib." Correct?

4 A That's not an alias, that's part of my legitimate name, Mr.
5 Bergrin.

6 Q Part of your legitimate name?

7 A You know that, though.

8 Q You used the name Mutalib. Correct?

9 A Yes.

10 Q And you knew Lachoy Walker, also known as "Pooh." Right?

11 A Yes, I did.

12 Q And you knew Anthony Young. Correct?

13 A Yes, sir.

14 Q Now, you used, besides the name Mutalib and Abdul Williams,
15 you've used Eugene Tutler. Correct?

16 A Yes, I did.

17 Q And John Smith?

18 A No, sir. I've never been arrested and used the name John
19 Smith, sir.

20 Q You've used at least six dates of birth. Correct?

21 A I don't remember how many date of births I've used exactly.

22 Q But you've used multiple dates of birth. Right?

23 A Yes.

24 Q And that was with the intent to deceive the police officers
25 from knowing essentially who you are and who they're arresting.

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1 A Yes, that's what we do, Mr. Bergrin. You know that.

2 Q And you used at least three Social Security numbers.

3 Correct?

4 A Possibly, yes.

5 Q And that was with the intent to deceive the police into
6 identifying you also. Correct?

7 A Yes.

8 Q And you talked about your prior record. You have the
9 dum-dum bullets or hollow-point bullets that you were arrested
10 for in 2003, correct, that you were convicted of?

11 A Yes, sir.

12 Q And in 1996, the drug charge and the weapon case. Correct?

13 A Yes, sir.

14 Q 1997, the distribution of heroin and conspiracy to
15 distribute heroin?

16 A Yes, sir.

17 Q In 1998, you were charged and you were convicted of
18 hindering apprehension. Correct?

19 A 1998 hindering apprehension?

20 Q Yes.

21 A I don't recall, sir.

22 What did that involve? I'm not following you.

23 Q If you were to see a copy of your criminal case history,
24 would that refresh your memory and recollection?

25 A Possibly.

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1 MR. BERGRIN: Excuse me.

2 (There is a pause for Mr. Bergrin.)

3 MR. BERGRIN: May I approach the witness, your Honor
4 with J00009, please.

5 THE COURT: Yeah. You're going to have to give me the
6 date. What date is it? Because I don't have the numbers on
7 this one.

8 MR. BERGRIN: Okay. It's a criminal case history --

9 THE COURT: Okay. No, go ahead.

10 MR. BERGRIN: Thank you, your Honor.

11 THE COURT: The Government of course has a copy.

12 Q Was a guilty disposition entered for hindering apprehension
13 on May the 4th of 1998?

14 A That's what it says, yes.

15 Q When you hinder apprehension, what does that mean, Mr.
16 Williams?

17 A That you lied or you participate in a crime.

18 Q That you lied. Correct?

19 A Yes.

20 Q Besides the hindering apprehension, a couple years later
21 you were convicted of a weapon case and possession of that
22 weapon for an unlawful purpose. Right?

23 A Yes, sir.

24 Q And you were sent to State Prison for four years for that.
25 Right?

1 A I was sent to State Prison for aggravated assault, not for
2 possession -- well, I guess possession was part of the charge,
3 yes.

4 Q And the aggravated assault, the shooting somebody.
5 Correct?

6 A Absolutely, yes.

7 Q And then you had eluding police after that. Right?

8 A Yes, I was being shot at and I didn't pull over until I
9 felt safe, yes.

10 Q Now, besides that, besides all your felony convictions, you
11 were involved in multiple, multiple shootings. Right?

12 A Multiple, multiple? Is that --

13 Q Multiple, many shootings.

14 A Yes.

15 Q At least four to six shootings. Correct?

16 A If you're counting, yes.

17 Q And even though you were charged with the shootings --
18 excuse me -- even though you committed these shootings you were
19 only charged with one. Correct?

20 A I was charged with more than one shooting, Mr. Bergrin.

21 Amongst those you're asking me about though --

22 Q Yes.

23 A -- once again, it was shootout of the -- it was exchange of
24 fire, so I wasn't --

25 Q Exchange of fire?

1 A I wasn't arrested. I was never told nobody was shot. I
2 didn't say somebody shot at me. It was a done deal. It
3 happened. It was over.

4 Q But you had a gun. Correct?

5 A Yes.

6 Q And you were a convicted felon that wasn't supposed to have
7 a gun. Correct?

8 A Yes.

9 Q And you shot at other people. Right?

10 A Yes.

11 Q With the intent to take their life. Correct?

12 A No. I was shooting back with the intent to protect my
13 life, sir.

14 Q And to take their life before they took yours?

15 A That's your opinion, you're entitled to it. I cannot
16 answer that.

17 Q Did you shoot in their direction?

18 A Yes, I did.

19 Q Did you know that a bullet could take a life?

20 A Yes, I do.

21 Q So you shot at them with the intent to take their life.
22 Correct?

23 A That's your opinion, Mr. Bergrin --

24 THE COURT: You've asked that, Mr. Bergrin, and he
25 answered it. Go ahead, next question.

1 Q Now, Mr. Gay asked you about the domestic violence and
2 aggravated assault against your -- I guess your girlfriend at
3 the time. Correct?

4 A There was never a domestic violation charge or aggravated
5 assault involving me or a female ever, sir. He asked me about
6 an incident that took place, and I told him the truth -- like
7 I've been doing the whole time I'm sitting here -- about
8 something that took place between me and an ex-girlfriend, yes.

9 Q And it happened more than once. Correct?

10 A Possibly, yes.

11 Q Not "possibly." It happened more than once, didn't it?

12 A People have disputes. Yes, if I grabbed up my female. But
13 did I ever physically punch her in the face or anything?

14 Never.

15 Q But that's what you were accused of. Right?

16 A I was -- again, I was never arrested or charged. What do
17 you mean, "accused?"

18 It was me telling the truth. I was never arrested or
19 charged with domestic violence or aggravated assault upon the
20 female.

21 Q Now, you keep saying you're here to tell the truth, you're
22 here to tell the truth. Correct?

23 A Absolutely.

24 Q You're here for the benefit of Abdul Williams, to prevent
25 yourself from going away for over 20 years to federal prison.

1 Isn't that a fact?

2 A That is take fact in part, yes.

3 Would you like another -- to know another part?

4 THE COURT: There's no question pending, Mr. Williams.

5 THE WITNESS: I'm sorry, sir.

6 MR. BERGRIN: I have no further questions of this man,
7 your Honor.

8 THE WITNESS: I didn't think so.

9 THE COURT: Is there any redirect?

10 MR. GAY: Just one moment.

11 REDIRECT EXAMINATION

12 BY MR. GAY:

13 Q I just have one question.

14 Did Mr. Bergrin ever tell you that he wanted William
15 Baskerville to cooperate?

16 A No.

17 MR. GAY: Okay. No further questions.

18 THE COURT: All right. There's no other questions.
19 Correct?

20 All right.

21 MR. BERGRIN: No, sir.

22 THE COURT: All right. Ladies and gentlemen, we'll
23 just take a very short recess. We just have to call the next
24 witness. It's going to take a couple of minutes, that's all.
25 So please step into the jury room and then we'll be

1 back out in five minutes, I promise you. Okay.

2 THE DEPUTY CLERK: Please rise for the Jury.

3 THE COURT: Mr. Gay, you have another witness. Right?

4 MR. GAY: We do, Judge. We may need just one moment.

5 THE COURT: Go and get him ready. Thanks.

6 (The Jury leaves the courtroom.)

7 (The Witness is excused and escorted out of the
8 courtroom by the Marshals.)

9 THE COURT: Who is your next witness, Mr. Gay?

10 MR. GAY: Judge, Devon Jones would be the next
11 witness. Devon Jones or "Devon." I'm not sure if I'm
12 pronouncing it correctly.

13 THE COURT: All right. Let's call her.

14 MR. GAY: Mr. Minish is getting him.

15 THE COURT: I'll bring the jury back out in five
16 minutes. So let's just stay here. I didn't know -- I was
17 going to try to excuse the witness, that's why I took a break.

18 MR. GAY: I'm just going to go --

19 (There is a pause in the proceedings.)

20 THE COURT: We're going to bring the jury out, Mr.
21 Sanders. Could you see if everybody is out. Thanks.

22 MR. SANDERS: Sure.

23 MR. MINISH: Judge, the witness is going through
24 security downstairs, so it will be a minute for him to come up.

25 THE COURT: Okay. He was outside?

WALTER J. PERELLI, OFFICIAL COURT REPORTER, NEWARK, N.J. P2568

I N D E X

	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
	ABDUL WILLIAMS				
	By Mr. Gay	3/72		105	
	By Mr. Bergrin		86		-
	DEVON JONES				
	By Mr. Minish	108		140	
	By Mr. Bergrin		131		144
	WILLIAM F. GALE				
	By Mr. Minish	146		163	
	By Mr. Bergrin		158		-
	THOMAS S. FENNELLY				
	By Mr. Gay	166		-	
	By Mr. Bergrin		181		-

E X H I B I T S

	EXHIBIT	IN EVID.
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Colloquy Between Court and Counsel
Jury Not Present

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1 November 4, 2001

2 (Trial resumes - Jury not present.)

3 (Prospective witness, Abdul Williams, is escorted into
4 the courtroom by the Marshals.)

5 THE COURT: Good morning, everyone. We're all set.
6 We're going to bring out the jury.

7 THE CLERK: Please rise for the Jury.
8 (Jury present.)

9 THE COURT: Good morning, everyone. Please be seated.
10 Welcome.

11 Do we have another witness, Mr. Gay?

12 MR. GAY: Yes, your Honor.

13 The Government calls Abdul Williams.

14
15 A B D U L W I L L I A M S, having first affirmed,
16 is examined and testifies as follows:

17
18 THE DEPUTY CLERK: Please state your name for the
19 record.

20 THE WITNESS: Abdul Williams.

21 THE DEPUTY CLERK: Thank you. You may be seated, sir.

22 THE COURT: You can proceed.

23 DIRECT EXAMINATION

24 BY MR. GAY:

25 Q If you could please come forward and make sure you're

Williams - direct - Gay

4

1 speaking into the microphone.

2 A Is this good?

3 Q Yes. Thank you.

4 Mr. Williams, how old are you?

5 A 34, sir.

6 Q Where were you born?

7 A Newark, New Jersey.

8 Q What high school did you graduate from?

9 A Bernie L. Edminson, East Orange, New Jersey.

10 Q Did you live various places in Newark?

11 A Yes, I have.

12 Q And can you briefly describe where it was you lived in
13 Newark?

14 A Briefly, from childhood on up, Steller Rights Housing
15 Projects, Prince Street; in '85 we moved up to the Vailsburg
16 area, Bradley Court; and shortly after that -- well, not
17 shortly, but my grandfather passed away and we moved to
18 Berkshire Avenue in East Orange, New Jersey.

19 Q So do you know approximately what year it was that you
20 moved to East Orange, New Jersey?

21 A Approximately, '92, '93.

22 Q Now, after you moved to East Orange, New Jersey, did you
23 continue to frequent the Bradley Court area of Newark?

24 A Yes, I did.

25 Q Can you briefly describe what if any legitimate employment

Williams - direct - Gay

5

1 you've had during your life?

2 A I've had Speedy, of course, out of high school; I worked at
3 Bradleys; briefly at UPS; and I've owned my own barber shop
4 legitimately; and I've also obtained my CDL, Class A Driver's
5 License and drove for East Coast Sanitation.

6 Q And CDL, is that for a truck driver's license?

7 A Yes, sir.

8 Q Besides that, how did you make money?

9 A I hustled, sold drugs.

10 Q When did you begin selling drugs, approximately?

11 A Approximately 12, 13 years old, sir.

12 Q And when was it that you stopped selling drugs?

13 A Up until my arrest of August 2009.

14 Q What drugs was it -- what drugs did you sell?

15 A Heroin and cocaine.

16 Q Do you have a juvenile record?

17 A Yes, I do.

18 Q And have you ever served any jail sentences in connection
19 with the juvenile adjudication?

20 A Yes, I have. I was sentenced to one year in Jamesburg, but
21 due to the living conditions of the youth house at that time,
22 there was a lot of picketing and stuff going on, so I actually
23 did two and a month -- two and a half months and was released
24 because the living conditions were so bad the judge let me go.

25 Q As an adult, were you convicted on April 24th, 2003 for

Williams - direct - Gay

6

1 felony possession of certain bullets stemming from a 1995
2 arrest?

3 A Yes, sir.

4 Q Did you receive a sentence of 18 months imprisonment for
5 that charge?

6 A Yes, sir.

7 Q On January 11th of 1996, were you convicted of felony
8 possession of a controlled substance and felony possession of a
9 handgun?

10 A Yes, sir.

11 Q And did you receive a sentence of probation on that
12 conviction?

13 A Yes, sir.

14 Q On September 16th, 1997, were you convicted of distribution
15 of a controlled substance and conspiracy to distribute a
16 controlled substance?

17 A Yes, sir.

18 Q Did you receive a sentence of probation for that crime as
19 well?

20 A Yes, sir.

21 Q On February 28th, 2000, were you convicted of attempting to
22 elude police?

23 A Yes, sir.

24 Q And on April 3rd, 2000, were you convicted of aggravated
25 assault and felony possession of a handgun?

Williams - direct - Gay

7

1 A Yes, sir.

2 Q Did you receive a sentence, an aggregate sentence of
3 approximately six years of imprisonment on those two charges?

4 A Yes, sir.

5 Q Have you ever used a false name when you were arrested?

6 A Yes, I have.

7 Q Have you ever used any other false information when you
8 were arrested; Social Security number or --

9 A I don't recall Social Security number. Birth dates, yes, I
10 have.

11 Q Now, aside from the crimes that you were charged with that
12 you just spoke about, have you done other -- committed other
13 crimes, without describing --

14 A Yes.

15 Q What they are? Just yes or no.

16 A Yes, I have.

17 Q Okay. Did you ever physically strike a former girlfriend?

18 A Yes, I have.

19 Q And did you ever -- were you involved in any shootings that
20 you were not charged with?

21 A Yes, I have.

22 Q Specifically, do you recall anything regarding an incident
23 in 1994?

24 A 1994? Yes, I do. I was around -- again, I was around 16,
25 15, 16 years old, something like that. And I was outside a

Williams - direct - Gay

8

1 friend of mine's, we were selling cocaine. We was little kids
2 basically, and some older guy who figured he was going to -- he
3 purchased from us, left, came back, and figured he was going to
4 strong-arm me. Lo and behold, I had a .25, and I shot him in
5 his leg.

6 Q Now, did this individual live or die?

7 A He lived.

8 Q Were there any other incidents in which you were involved
9 in a shooting after that?

10 A Yes, sir, there were a couple of incidents.

11 That I can remember right now, there was an incident
12 in which some friend of mine, their family was having a cookout
13 in a different neighborhood of Newark, New Jersey. Some guys
14 from that neighborhood was causing a problem. They gave us a
15 call. They're friends.

16 We came down there, went around the corner where those
17 guys was at that time. They was at, like, one side of the
18 basketball court, we were at another side. They seen us pull
19 up. They pretty much knew what it was. They seen a convoy of
20 cars pull up. They all jumped out. We came out. Guns show
21 up. There was a shootout at the scene.

22 Q You fired shots at them?

23 A Absolutely.

24 Q And they fired shots at you?

25 A Yes.

Williams - direct - Gay

9

1 Q As far as you know, was anybody hit?

2 A Not that I know of, no.

3 Q Were there any other incidents in which you were involving
4 in a shooting?

5 A Yes, sir. There was an incident that took place at a local
6 bar early -- I want to say, this was probably early, you know,
7 1999, maybe early in the year. Anyway, it was an incident to
8 which some older guys again from another neighborhood, we were
9 all in the bar, and one thing led to another inside the bar. A
10 fight spilled outside, guys went to their respective cars, took
11 weapons and a shootout took place there as well.

12 Q So you fired shots at them?

13 A Yes, I did.

14 Q And they fired shots at you?

15 A Yes, sir.

16 Q As far as you know, was anyone hit?

17 A Not that I know of, sir.

18 Q Do you recall whether or not you were involved in a
19 shooting with an individual named Dorian Brailsford Reccie?

20 A Yes, sir.

21 Q Can you briefly describe that?

22 A Briefly, it was a guy from the neighborhood about three,
23 four years older than myself. At this point I was his
24 competition. He took me as a threat. Again, the fight landed
25 into a shooting. He felt as though he could be aggressive. I

Williams - direct - Gay

10

1 was a little guy. He felt as though his aggressiveness would
2 scare me. Again, with the same .25 I shot him in his leg a
3 couple of times.

4 Q And did Reecie live, as far as you know?

5 A Yes, I did.

6 Q What about in approximately 2005, were you involved in
7 another shooting?

8 A Yes, sir.

9 Q Can you briefly, briefly describe that?

10 A If I'm not mistaken, you talking about the shooting that
11 took place with a guy named Corey?

12 Q That's the one.

13 A He was a guy that I knew from the streets. At some point
14 he said some things about me to some -- to the same circle of
15 friends. It got back to me.

16 When I was released from jail, you know, somebody gave
17 a party. I seen him at the party. We spoke, but I guess in
18 the manner that I spoke to him, which wasn't even aggressive --
19 I just let him know, you're a cool dude. Stop talking about
20 me, like, those are my friends as well. You have nothing to
21 prove. Just relax and be cool.

22 But I guess he felt as though I tried to belittle him.
23 And from that point him and his friends attempted to jump me in
24 the club.

25 A couple of weeks later there was a fashion show that

Williams - direct - Gay

11

1 I attended. He was there with those same group of friends who
2 basically excluded him. He went off on his own thing. I guess
3 went to an after-party after the fashion show.

4 He -- he jumped out the car with his hand in his
5 pocket. I had a weapon on me. And when he jumped out the car
6 with his hand in his pocket, I addressed him, like, take it
7 easy.

8 He's like, no, I just want to talk. I just want to
9 talk.

10 Anyway, we begin to talk.

11 And as people, I guess spectators, females -- he was
12 something like a showoff, so I guess he tried to put on the
13 scene for females, whatever, that was walking back-and-forth.
14 And at that time he was raising his voice. And my cousin was
15 with me. And my cousin was: You need to lower your voice.

16 We tried to talk like men.

17 Q Mr. Williams, I'm sorry to interrupt. But was there a
18 point where you and Corey -- where Corey approached you. Is
19 that correct?

20 A Yes, sir.

21 Q And you said he had his hand in his pocket?

22 A Yes, sir.

23 Q Did you believe he had a weapon?

24 A I asked him if he had a weapon in his pocket.

25 His exact words was, you know that. You know that.

Williams - direct - Gay

12

1 Q So at some point did you fire your weapon at him?

2 A Absolutely. When the conversation got heated he begin
3 backing off in the streets with his hand in his pocket like he
4 was attempting to do something, and I felt as though he was
5 going to start shooting, so I shot at him first.

6 Q Where did you hit him, if you remember?

7 A That I recall, he was hit in his stomach or something like
8 that.

9 Q Did Corey live or die?

10 A He lived.

11 Q Now, on June 8th of 2007, were you arrested for possession
12 of a handgun?

13 A Yes, I was.

14 Q And on July 15th of 2008, were you again arrested for
15 possession of a handgun?

16 A Yes, I was.

17 Q And were both of those charges later adopted by the Federal
18 Government?

19 A Yes, they were.

20 Q Were you also charged in Federal Court with conspiracy to
21 distribute 500 grams or more of cocaine?

22 A Yes, I am -- yes -- yes.

23 Q On April 4th, 2011, did you plead guilty to two counts of
24 possession of a handgun by a convicted felon and one count of
25 conspiracy to distribute 500 grams or more of cocaine?

Williams - direct - Gay

13

1 A Yes, sir.

2 Q Did you do so pursuant to a written agreement?

3 A Yes, I did.

4 Q I'm going to show you what's been marked Government Exhibit
5 70 -- excuse me -- 7014 for identification and ask you whether
6 you recognize that?

7 A Yes, sir, that's my Plea Agreement.

8 Q And that is the Plea Agreement for the federal charges of
9 possession of the two handguns and the conspiracy to distribute
10 cocaine?

11 A Yes, it is.

12 Q Did you also enter into what's called a Cooperation
13 Agreement with the Government at that time?

14 A Yes, I did.

15 Q And I'm now going to show you Government Exhibit 7015 and
16 ask you whether you recognize that?

17 A Yes, I do.

18 Q What is that, sir?

19 A That is the Cooperation Agreement.

20 Q Is that the one you entered into in connection with this
21 case?

22 A Yes, it is.

23 Q Now, Mr. Williams, if you could briefly describe, what is
24 your understanding of your obligations pursuant to the
25 Cooperation Agreement?

Williams - direct - Gay

14

1 A My understanding is that I'm expected to tell the truth to
2 both the Government and when being questioned by Mr. Bergrin,
3 to tell the truth. And if I do anything other than that, I can
4 be charged with perjury and my cooperation would be out the
5 window.

6 Q And what has the Government agreed to do, as far as you
7 understand, in exchange for your truthful testimony?

8 A The Government has agreed to -- as far as I understand,
9 they have agreed to put forth a motion to the sentencing judge
10 asking for a deduction in my sentence.

11 Q And what if anything is your understanding of who decides
12 your sentence?

13 A Of course again, the Government just puts forth a motion,
14 but at the end of the day it's up to the sitting judge who
15 basically has the last say as to what amount of time I'm going
16 to receive.

17 Q Now, Mr. Williams, you've pled guilty before a judge. Is
18 that correct?

19 A Yes, sir.

20 Q And is that a different judge than Judge Martini?

21 A Yes, it is.

22 Q And is that the judge who is going to sentence you in this
23 case?

24 A No, it is not.

25 Q I'm saying, not Judge Martini?

Williams - direct - Gay

15

1 A Mr. Martini is not my sentencing judge, no.

2 Q So a different judge will be sentencing you in this case.

3 Correct?

4 A Yes, he will.

5 Q What happens if you tell a lie during any questions that
6 I -- any of my questions as far as you understand pursuant to
7 the agreement?

8 A Again, the agreement will be out the window and I can be
9 charged with perjury.

10 Q What about if you lie during any questioning by Mr.
11 Bergrin?

12 A The same thing applies.

13 Q Now, Mr. Williams, while you were involved in
14 drug-trafficking, did you meet an individual named Hakeem
15 Curry?

16 A I met Hakeem Curry way before drug-trafficking, sir.

17 Q Okay. Now, can you briefly describe how it was that you
18 met Mr. Curry?

19 A Hakeem Curry was a childhood friend, is and still is a
20 childhood friend of mines from my second grade. We all grew up
21 playing Pop Warner baseball when they had baseball leagues.
22 I'm from a different housing unit, he's from a different
23 housing authority or whatever, and he played for his housing
24 project, we played for ours, and from then we were all just
25 friends.

Williams - direct - Gay

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1 MR. GAY: Can I put up Government Exhibit 2258 already
2 in evidence.

3 (An exhibit is published to the Jury.)

4 Q Do you recognize that individual?

5 A Yes, sir.

6 Q Who is that?

7 A Hakeem Curry.

8 Q Now, did there come a time later that you began doing drug
9 business with Mr. Curry?

10 A Yes, sir.

11 Q Can you briefly describe when it was first?

12 A Maybe 1997. At the time I was selling heroin, he was
13 selling heroin, again, in those same neighborhoods that we grew
14 up in. And he had his own thing going on, I had my own thing
15 going on.

16 If I had something better than what he had, he can
17 come to me and get it. If he had something better than what I
18 had, I would go to him and get it.

19 Q Now, did there come a time when your drug relationship
20 changed with Mr. Curry?

21 A Yes, sir.

22 Q Can you briefly describe how it changed and what it was at
23 that point?

24 A In respect to what I just said, if he had something better
25 than I had, I would get it from him. And he was a good

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1 businessman, so to speak, so I kind of went to him a whole lot.

2 Q Okay. So was he supplying you with heroin?

3 A It's safe to say, yes.

4 Q And do you recall approximately what quantities of heroin
5 he was supplying you with?

6 A It wasn't small. I mean, my hands called for maybe a
7 hundred, a hundred fifty bricks a week. And if you don't
8 understand, a brick pretty much is 50 bags of heroin. That
9 would consider like one brick to us. So I don't know if you
10 understand that.

11 Q Okay. And how often was he supplying you with these bricks
12 of heroin?

13 A Once again, I would see him as far as drugs was concerned
14 once a week, give or take.

15 Q And what were you doing with the heroin that he was
16 supplying you?

17 A I would go back to my housing project and sell it. I had
18 people working for me, and I sold -- made sure it got sold.

19 Q And what was your housing project?

20 A Bradley Court, Newark, New Jersey.

21 Q That's in Newark?

22 A Yes, sir.

23 Q Now, do you know --

24 MR. GAY: If we could show Government Exhibit 3500
25 already in evidence.

Williams - direct - Gay

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1 (An exhibit is published to the Jury.)

2 Q Do you recognize that individual Mr. Williams?

3 A That's Jahad.

4 Q Jahad?

5 A Yes, sir.

6 Q And what if any connections did you have to Mr. Curry --

7 A He grew up with Hakeem on the same block, the same
8 neighborhood. That was his partner.

9 Q And he was also involved in the drug business?

10 A Yes, sir.

11 MR. GAY: In we could put up 3061, now.

12 Oh, it's not in evidence? Okay. I'm sorry.

13 Q I'm going to show you Government Exhibit 3061 and ask you
14 whether you recognize that individual?

15 A Yes, I do.

16 Q Who is that?

17 A That is Pooh.

18 Q Do you know Pooh's real name?

19 A I think it's "La" something, Walker.

20 Q Okay. Does this -- is this a fair and accurate picture of
21 Pooh?

22 A Yes, it is.

23 MR. GAY: Can we publish -- oh, I'm sorry, Judge.

24 I would ask that we enter 3061 into evidence.

25 MR. BERGRIN: No objection.

Williams - direct - Gay

19

1 THE COURT: Okay. Without objection it's in evidence.

2 MR. BERGRIN: No, sir.

3 (Government Exhibit 3061 is received in evidence.)

4 MR. GAY: May we publish 3061, please.

5 (An exhibit is published to the Jury.)

6 Q Mr. Williams, do you recognize that individual?

7 A Yes, sir.

8 Q And who is that?

9 A That's Pooh.

10 Q And was he connected to Mr. Curry?

11 A Mr. Walker.

12 Yes. Again, we grew up in the same housing project,
13 and was Hakeem Curry partner as well.

14 Q Partner in the drug business?

15 A Yes, sir.

16 Q Now, are you familiar with any of the Baskervilles?

17 A Yes, I am.

18 Q Okay. And I'm going to show you 2257, already in evidence.

19 (An exhibit is published to the Jury.)

20 Q Do you recognize that individual?

21 A That's Rakeem Baskerville.

22 Q And do you know whether or not he was connected with Mr.
23 Curry?

24 A I know that was his family. I mean, again, I went to
25 prison in 1999, so in between my prison bid and the time I came

Williams - direct - Gay

20

1 home in 2004 things kind of took off in a big way. So for
2 whatever reason, those were -- that is his cousin and he was
3 around as well.

4 Q Okay.

5 MR. GAY: And if we could show a picture, 2255 as
6 well.

7 (An exhibit is published to the Jury.)

8 Q Do you recognize that person?

9 A Yes, sir.

10 Q And who is that?

11 A That's William Baskerville.

12 Q Okay. And again, what if any relationship were you aware
13 of that he had with Mr. Curry?

14 A That was Hakeem's big cousin.

15 Q Now, if we could show exhibit 2263, please.

16 (An exhibit is published to the Jury.)

17 Q Do you recognize that individual?

18 A Yes, I do.

19 Q Who is that?

20 A Ant. Fat Ant.

21 Q Do you know Fat Ant by any other name?

22 A I think it's -- Anthony Young I think it is.

23 Q And how do you know him?

24 A Again, from being around the crew. He was cool with Rakeem
25 Baskerville.

Williams - direct - Gay

21

1 Q Okay. Now, did you know -- did you know Rakeem
2 Baskerville, William Baskerville and Anthony Young to be
3 involved in the drug trade?

4 A Yes.

5 Q Did there come a time where you met Paul Bergrin?

6 A Absolutely.

7 Q And do you see Mr. Bergrin in court today?

8 A Yes, I do.

9 Q Would you please indicate where he is and perhaps describe
10 him by an article of clothing.

11 MR. BERGRIN: Your Honor, I'll stipulate to
12 identification.

13 THE COURT: He's identified the Defendant, Paul
14 Bergrin.

15 Q How did you meet Mr. Bergrin?

16 A I met Mr. Bergrin by Hakeem Curry.

17 Q Do you recall where it was that you met Mr. Bergrin the
18 first time?

19 A The first time I met Mr. Bergrin it was in his office, his
20 old office in Downtown Newark, New Jersey.

21 Q Okay. And do you remember what it was, the reason was that
22 you met Mr. Bergrin on that occasion?

23 A Yes. The reason was because at the time there was an
24 incident concerning my brother and the East Orange Police
25 Department. My current lawyer felt as though there was a

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1 conflict of interest because he lived in the city that the
2 incident took place, and it was kind of like a big deal. So
3 Hakeem advised -- or he basically suggested that we go to Paul
4 and see if Paul would want to take the case.

5 Q And did Paul take the case?

6 A No, he did not.

7 Q Okay. Do you remember the reason why he didn't take the
8 case?

9 A Again, the case was a big deal, and I think the ultimate
10 reason was because Paul's partner at the time, Mr. Pope, was
11 representing the police involved in the case against my
12 brother.

13 Q Now, did you, in discussions with Mr. Curry, learn what if
14 any relationship Mr. Curry had with Mr. Bergrin?

15 A More or less at that time he just let me know that Paul was
16 his boy, more or less.

17 Q And what --

18 A As opposed to more than a lawyer, he was his friend, he was
19 his confidant, somebody he confided in.

20 Q And do you know whether or not Mr. Curry also used Mr.
21 Bergrin as a lawyer?

22 A For the one time Hakeem didn't have an extensive record
23 like that, but yes, I do. Yes, he did use him as a lawyer.

24 Q So -- and can you describe based on your conversations with
25 Mr. Curry what if any attorney services Mr. Bergrin provided

1 for Mr. Curry?

2 A Without getting into -- because I don't recall names or
3 anything like that but, like, again, Hakeem didn't have that
4 kind of history like I do. But being that he was somebody who
5 sold drugs and had people up under him, I guess he went to Paul
6 and had Paul represent these people in case they got in
7 trouble.

8 You know, somebody sell drugs for you, like myself,
9 somebody sell drugs for me and they get arrested, I'm going to
10 make sure that they have representation, good representation so
11 that way they are not going to roll over on me, they're going
12 to be taken care of and get out and we'll be all right. And
13 that's what Mr. Bergrin did for Curry.

14 Q When you say "roll over on you," can you describe what that
15 means?

16 A Tell.

17 Q Tell what?

18 A Cooperate.

19 Q Cooperate with who?

20 A The government, the police, detectives, other than --

21 Q And why would that be a problem for you as leader of the
22 drug business?

23 A Because you can go to jail for a long time. It can -- and
24 you can get hurt if you cooperate. I mean, it would be a
25 problem for me or the person telling.

Williams - direct - Gay

24

1 Q In other words, what I'm asking is: You said that you as
2 the leader of your group, if one of the underlings got arrested
3 you would provide them with a lawyer. Is that correct?

4 A Yes, sir.

5 Q Why would you do that?

6 A Because I don't want nothing coming back on me.

7 Q Okay.

8 A I'm the leader, so I want to make sure that they are taken
9 care of. And if something do happen, they're going to know
10 that without a doubt I'm in their best interest. I mean, you
11 know these things going in, that you can be arrested, that you
12 can get a charge and go to jail. But had these things take
13 place, you will get good representation and know we're going to
14 stick together and see it through pretty much.

15 Q And that was to make sure they don't cooperate. Is what
16 you're referring to?

17 A Yes, sir.

18 Q Now, you said that you were in jail. But were you aware of
19 whether or not Mr. Curry and any of his associates got arrested
20 and prosecuted sometime in March of 2004?

21 A Yes, sir, I was aware of it.

22 Q And do you know whether or not Mr. Curry was sentenced to a
23 lengthy jail sentence?

24 A Yes, I do. I was at the sentencing when it took place. By
25 the time the sentencing took place I was released from prison

1 and I attended the sentencing.

2 Q Now, you indicated that you and Mr. Curry were part -- you
3 worked with Mr. Curry at some point in the drug business. Is
4 that correct? He supplied you?

5 A Yes, sir.

6 Q And why was it that you were not arrested, as far as you
7 understand, when Mr. Curry was arrested?

8 A Again, I was already in police custody so therefore I
9 missed the investigation. I imagine if I was home I would have
10 been a part of that investigation as well. I was already in
11 police custody.

12 Q So you were in jail during the pendency of that
13 investigation?

14 A Yes.

15 Q Is that what you're saying?

16 A Yes, sir.

17 Q After you got out of jail in 2004 -- well actually, did you
18 eventually get out of jail?

19 A Yes, I did.

20 Q Do you recall approximately when it was that you got out of
21 jail?

22 A Summertime 2004, approximately June 2004.

23 Q And did there come a time at some point after you got out
24 of jail that you began to frequent Paul Bergrin's office?

25 A Yes, sir.

Williams - direct - Gay

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1 Q Did you meet a person named Ramon Jimenez there?

2 A Yes, I did, Paul introduced me to Ramon.

3 MR. GAY: If we could show a photo 3066 in evidence.

4 (An exhibit is published to the Jury.)

5 Q Do you recognize that person?

6 A Yes, I do.

7 Q Who is that?

8 A That's Ramon.

9 Q And did you have any conversations -- without going into
10 detail^o-- did you have conversations with Ramon at that time?

11 A At the time Paul represented me -- I mean, introduced me to
12 him, yes -- yes, Paul introduced me to him. Paul asked me, you
13 know, what's going on with you? How are you doing?

14 I said, I'm good.

15 He said, well, I got somebody you may want to meet.

16 I'm going to introduce you to somebody. You have some things
17 in common.

18 Q Okay.

19 A I'm going to let you all talk.

20 And that's when he brought Ramon to me.

21 Q And what did you and Ramon discuss after that?

22 MR. LUSTBERG: Objection, Judge. If we could be heard
23 with respect to this.

24 THE COURT: I'll hear you at sidebar.

25 (At the sidebar.)

Williams - direct - Gay

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1 MR. LUSTBERG: Judge, this is the Court's opinion with
2 respect to Mr. Williams. And one of the things your Honor said
3 was that the Court will not allow the Government to elicit
4 testimony regarding Williams' relationship with him and Jimenez
5 or other persons involved in drug-trafficking as this
6 information is too remote.

7 As I understand, the purpose of the testimony at this
8 point -- obviously, it's not a drug case -- the purpose is to
9 elicit sufficient evidence regarding Mr. Bergrin's relationship
10 with Mr. Williams --

11 THE COURT: Williams.

12 MR. LUSTBERG: -- so as to explain why it is that Mr.
13 Bergrin would ultimately make the statements he does to Mr.
14 Williams. That's the purpose of all this.

15 And the Court has already held that this was beyond --
16 was not necessary for that. And I'm very concerned that
17 there's going to be a tremendous amount of testimony regarding
18 Mr. Williams' relationship with Mr. Bergrin in terms of
19 drug-dealing that's not necessary to establish that.

20 So we're all going to be very mindful of that, but
21 this is one area where the Court has already ruled.

22 THE COURT: I did. And I read that this morning
23 again.

24 MR. GAY: Okay. Judge -- I apologize.

25 THE COURT: No, that's okay.

Williams - direct - Gay

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1 MR. GAY: It's my understanding that Mr. -- the
2 conversation this morning was that this -- the door was now
3 opened to this. If that's mistaken, then I won't go into this.

4 THE COURT: In my decision I did make reference to,
5 you know, as far as -- I don't know how extensive it is.

6 MR. GAY: Well, I don't think anything is coming out
7 yet and I won't ask any further questions about it, so that's
8 fine.

9 THE COURT: Let me ask you this, Mr. Gay: How much --
10 I mean, from this witness, how much do you expect you're going
11 to be asking him to establish some context in which whatever
12 discussion Bergrin had with him? Let me hear a limited bit
13 more about that.

14 MR. GAY: Well, Judge, it's going to be -- what I
15 expect the testimony is going to be is that after this, Mr.
16 Williams goes back to jail. When he comes back out of jail for
17 the -- I guess the second, third or whatever time it is, he
18 begins to work -- actually work, not just visit, but he's
19 working and employed by Mr. Bergrin in Mr. Bergrin's office.

20 Mr. Jimenez and Mr. Williams get reacquainted. They
21 try to strike up the drug business again. When that's
22 unsuccessful, within a couple of days after that, Mr. Bergrin
23 approaches Mr. Williams with largely the same deal that Ramon
24 and Williams had tried to set up, and thereafter Mr. Bergrin,
25 in essence, hires Mr. Williams to be a short-term delivery

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1 service in which he goes -- he introduces him to Alejandro
2 Barraza-Castro. And after that he tells Castro -- "he," being
3 Bergrin tells Castro that Abdul is going to be coming back to
4 pick up drugs from Castro to be delivered to Bergrin's clients.
5 And thereafter -- and there's other details, like Mr. Bergrin
6 gives Mr. Williams a specific phone. And thereafter, Mr.
7 Williams does a series of deliveries for Mr. Bergrin. After
8 each delivery, at least in the beginning, Mr. Bergrin pays Mr.
9 Williams a fee of somewhere between 3,000 and \$4,000 depending
10 on the amounts of drugs that are delivered.

11 So I mean, he's prepared to go into details of the
12 business arrangement and then also some details of some of the
13 sales.

14 THE COURT: When did he come forth and tell the
15 Government about all of this?

16 MR. GAY: When did he?
17 When he initially started cooperating.

18 THE COURT: Which was when?

19 MR. GAY: It was -- I can -- I forget the exact date
20 of the first one, Judge. I can get it for you. But this is
21 all -- he comes forward, and as soon as he decides to
22 cooperate, this is what he says.

23 THE COURT: But I'm trying to get a date, Mr. Gay.
24 I'm just trying to get a date.

25 MR. LUSTBERG: I can grab the 302s. Do you want me

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1 to --

2 THE COURT: Yeah, go ahead.

3 (Mr. Lustberg steps away from sidebar.)

4 THE COURT: And how many 302s are there about all
5 this?

6 MR. GAY: Multiple 302s, Judge.

7 Yes, there are a lot. I mean, he came forward with
8 this immediately. This was -- this is, you know --

9 THE COURT: How did he come forward? You know, I
10 mean --

11 MR. GAY: Well, Judge, he was -- he came forward to --
12 I mean, the same way every other cooperator comes forward.

13 I'm not sure -- I don't understand the question,
14 Judge. Like, he had negotiations with us.

15 THE COURT: Were there charges pending?

16 MR. GAY: Yes, there were charging pending, yes.

17 THE COURT: The gun?

18 MR. GAY: Yeah, the gun charges were pending against
19 him.

20 THE COURT: Were they state charges originally?

21 (Mr. Lustberg returns to sidebar.)

22 MR. GAY: They were state charge originally, but we
23 adopted those charges.

24 MR. LUSTBERG: Judge, it looks like the first
25 interview, if I'm right about this, is November 2010.

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1 Is that right, John?

2 MR. GAY: Probably, yeah.

3 MR. LUSTBERG: That looks like the first 302.

4 I believe it's the second 302 where this courier
5 relationship comes out.

6 THE COURT: The what?

7 MR. LUSTBERG: The second 302, which is -- I'm sorry.
8 These are two-sided because I'm trying to save a little paper.

9 So this 302, which is -- yeah, actually this is the
10 same 302. I'm sorry.

11 MR. GAY: I think it comes out of the first one.

12 MR. LUSTBERG: Does it?

13 November 3rd, 2010, Judge.

14 MR. GAY: When he first discusses it with us he
15 reveals -- and also the thing, too, Judge, that although
16 certain -- I'll wait until --

17 THE COURT: What?

18 MR. GAY: The other thing, too, Judge, is that part of
19 what's going on here, too, is that Mr. Bergrin as was charged
20 in Racketeering Act Six has basically assisted Mr. Williams in
21 tampering with a case, so that was also part of what we had --
22 was part of the discussion with Mr. Williams. And in
23 connection with that, it was -- he discussed basically what the
24 other criminal activity that he had learned.

25 And again, Judge, I know that you had made some --

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1 it's not part of this case, but there are -- there's
2 tape-recorded conversations in jail and other supporting -- not
3 the drug part of it, but the fact that Mr. Bergrin was
4 tampering with this other case with Mr. Williams.

5 So I understand that's not going to be part of the
6 case. But to the extent the Court is concerned about
7 credibility of this witness, there's significant corroboration
8 on a number of areas, including, Judge -- which is not going to
9 be part of this case -- I would say at least four or five other
10 witnesses who are going to testify consistent with Mr.
11 Williams. Again, they're not going to testify in this case
12 because the Court has excluded that testimony about Mr.
13 Bergrin's involvement in selling drugs and exactly the manner
14 that Mr. Williams is going to testify to. So there is
15 significant, significant corroboration of this.

16 THE COURT: The actual testimony that you're seeking
17 to elicit from him regarding the charges in this case are that
18 Paul went to him at some point and said what?

19 MR. GAY: Okay.

20 THE COURT: Paul Bergrin went to him and said what?

21 MR. GAY: Paul Bergrin calls him down -- and, again,
22 you have to remember the context that Mr. Williams is part of
23 Curry's crew, so he's connected to William Baskerville.

24 THE COURT: Right.

25 MR. GAY: We are about a month away before Mr.

Williams - direct - Gay

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1 Baskerville's testimony is about to begin in the Baskerville
2 trial. Mr. Bergrin calls him down, he's very concerned
3 about --

4 THE COURT: It's consistent with what was in your
5 proffer?

6 MR. GAY: Exactly, yeah. Yeah, so that's it.

7 So, Judge, I mean, I can -- I do think it's very
8 important that we elicit testimony about this relationship,
9 including the drugs. Because that is a big reason why Mr.
10 Bergrin feels confident and comfortable having this kind of
11 discussion with him. I can make it somewhat limited, and which
12 I did. I mean, I have, Judge -- I have him prepared to go
13 through as many details as people agree to go through. But I
14 do think at a bare minimum we need to be able to get out the
15 arrangement that was made, Mr. Bergrin's role in it, and that
16 if I'm not going to go through the soup-to-nuts of the
17 transactions, we do at least have to get out the transactions
18 that were made after that, that he did deliver drugs at Paul
19 Bergrin's request and that Mr. Bergrin did pay him in
20 connection with that.

21 And just again, so that we're clear -- and this is not
22 so much for Mr. Bergrin as it is -- I just want to make sure
23 we're not misleading the Court or the Jury -- at some point,
24 Mr. Bergrin agrees that they will -- he's not -- not only is
25 there going to be a taxi service, which is my word for it not

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1 his -- that he's also going to give -- allow Mr. Williams to
2 have kilograms of cocaine on consignment. And so again, I
3 intended to go into that mostly just because I wanted to make
4 sure that the entire relationship was clear and we were not
5 creating a false impression to the jury that Mr. Williams was
6 just simply doing -- had this taxi service and that he himself
7 was not also getting drugs and selling them to his people.

8 MR. LUSTBERG: Judge, the problem with that last bit
9 of testimony and some other bits of his testimony is, the part
10 about him getting drugs on consignment, if I understand
11 correctly, post-dates the statement.

12 MR. GAY: No, that's not true, that absolutely is not.

13 MR. LUSTBERG: The statements --

14 THE COURT: I'm going to ask the jury to go into the
15 jury room.

16 MR. GAY: Okay.

17 THE COURT: And I'm going to try my best -- is this
18 all of them?

19 MR. GAY: I don't know if it's all of them.

20 MR. LUSTBERG: That was my -- did you have a complete
21 set?

22 MR. GAY: I have a complete set.

23 That's what I'm saying; I will make sure I give you a
24 complete set, Judge, of this. I will make sure I get you a
25 complete set of this.

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1 THE COURT: We don't have much time. I'm going to
2 take a break.

3 MR. GAY: I have them right at my desk, so I'll give
4 you my copy.

5 THE COURT: What other witnesses do you have?

6 MR. GAY: Well, we have for this morning --

7 THE COURT: Who's here?

8 MR. GAY: Well, this morning I figured this was going
9 to be him so we don't have anybody else for this morning,
10 Judge.

11 THE COURT: Okay.

12 (In open court.)

13 THE COURT: Ladies and gentlemen, this is going to
14 take a few minutes. It's a legal matter that I have to attend
15 to. So if you would please step into the jury room and be
16 patient with us. Okay?

17 Thank you.

18 THE DEPUTY CLERK: Please rise for the jury.

19 (The Jury leaves the courtroom.)

20 THE COURT: Please be seated.

21 If you just sit tight I just want to spend a few
22 moments looking at these reports.

23 (There is a pause for court.)

24 MR. GAY: Judge, I'm sorry, I'm not sure, I have my
25 packet and I don't know if it's exactly what Mr. Lustberg gave

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1 you, but I do have --

2 THE COURT: Okay, thanks. I'll take a look.

3 MR. GAY: Thank you.

4 (Documents are handed up to the Court)

5 MR. GAY: I know that at least -- there may be
6 additional ones than the one I have but they're definitely the
7 ones that Mr. Lustberg gave you.

8 (There is a pause for the Court.)

9 THE COURT: Mr. Gay, can you refer me to where in the
10 302 reports was the actual discussion between this witness and
11 Mr. Bergrin regarding Baskerville? That's what I was looking
12 for.

13 MR. GAY: Okay, I didn't realize that.

14 THE COURT: No, I wanted to get the sense of
15 everything else because it's rather lengthy.

16 Oh, here it is.

17 MR. GAY: Okay. I think there may have been a
18 couple -- it may be in there a couple of times, Judge. I'm not
19 sure if it's only once.

20 THE COURT: The April 27th, 2011 --

21 MR. LUSTBERG: You have mine, so --

22 THE COURT: Yeah, April 27th, 2011.

23 They're rather lengthy.

24 Is this an extra copy?

25 MR. GAY: That was my copy, Judge. I'm sorry. We

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1 could make an extra copy if you like.

2 THE COURT: If you could make an extra copy, I'll need
3 them anyhow.

4 All right.

5 MR. LUSTBERG: Can I get mine back?

6 THE COURT: Yeah. I put some pencil marks on it
7 but --

8 MR. GAY: I think those are my copies and Mr. Lustberg
9 had those.

10 THE COURT: Make a copy of those, if you would.

11 THE LAW CLERK: Okay.

12 THE COURT: Well, Mr. Gay, I guess my question is:
13 How --

14 MR. GAY: Judge, I'm sorry to interrupt. Should we
15 excuse the witness?

16 THE COURT: I know he's here and I'm going to ask him
17 to step out in a minute.

18 MR. GAY: Okay.

19 THE COURT: The question I have is, how much -- let me
20 ask him to step out.

21 MR. GAY: Okay.

22 THE COURT: If I could ask Mr. Williams to step out,
23 please.

24 (The Witness is temporarily excused and is escorted
25 out of the courtroom by the Marshals.)

1 THE COURT: His interviews with the FBI as accounted
2 for in the 302s are rather extensive. Correct?

3 MR. GAY: Yes.

4 THE COURT: A lot of which is his own involvements,
5 background involvements --

6 MR. GAY: Yes.

7 THE COURT: -- involvements with Mr. Bergrin --

8 MR. GAY: Yes.

9 THE COURT: -- with narcotics and stuff like that.

10 MR. GAY: Yes.

11 THE COURT: But consistent with my ruling with respect
12 to the charges pending before this jury, I'm allowing the
13 Government into the conversation that he had -- he alleges he
14 had with Mr. Bergrin about Mr. Baskerville and whether or not
15 he would hold up as a witness or whether he would hold up or
16 would he cooperate or something along that line.

17 MR. GAY: Yes.

18 THE COURT: And that discussion. And in my ruling I
19 indicated I would give you some leeway with respect to enough
20 context to be able to establish that, you know, that the jury
21 could understand why Mr. Bergrin might ask him that. Okay?
22 Because that conversation itself doesn't appear to be -- I
23 mean, I don't know what he's going to testify to. But from
24 what I've heard by way of a proffer is, he's going to say --
25 what as to that?

1 MR. GAY: Judge, he's going to say, I guess generally,
2 my understanding of what the testimony is going to be is this:
3 He's going to say that Mr. Bergrin called him down to Mr.
4 Bergrin's office --

5 THE COURT: Was he working with him at that time?

6 MR. GAY: He was at that time, Judge. I believe he
7 had -- he was not officially on the books, is my memory of it,
8 Judge.

9 THE COURT: Okay.

10 MR. GAY: But I -- but that he was -- he was working
11 in the sense that he was conducting the drug business but he
12 was not formally working in the office, if that's what the
13 Court's question is.

14 THE COURT: But he was working for him -- well, he was
15 on the, quote, payroll when he was on parole, wasn't he?

16 MR. GAY: Yes. My understanding, Judge, is that he
17 was on Mr. Bergrin's payroll when he was in the Halfway Back
18 Program, as he calls it, the parole program, and that at some
19 point he goes off of that, he's no longer on the books, but at
20 that point he is continuing to work for Mr. Bergrin as a drug
21 courier. And that it's during the course of the time he's
22 conducting business with Mr. Bergrin as a drug courier -- and
23 again, just so we're clear, Mr. Bergrin is paying Mr. Williams
24 for this service -- that it's during that period of time that
25 he calls Mr. Williams down to his office and asks him a series

1 of questions. The first one is about -- and again, this one
2 I'm not sure if it's in a 302 or not -- but he asks him about
3 whether or not Mr. Williams had heard that Hakeem Curry paid
4 Anthony Young \$300,000 to change his testimony, not to testify.

5 And then --

6 THE COURT: And that was before the Baskerville trial?

7 MR. GAY: That was before the Baskerville trial.

8 And what he says after that: Let me ask you
9 another -- this is now Mr. Bergrin -- let me ask you another
10 question -- because Mr. Williams says he hadn't heard about
11 that. Mr. Bergrin says: Let me ask you another question. Do
12 you think Will Baskerville will implicate me, will flip? I
13 don't know if he used the word "flip," I forget exactly the
14 term, but will implicate me and cooperate with the Government
15 and implicate me in the Kemo murder?

16 Mr. Williams says he does not believe that would
17 happen.

18 Mr. Bergrin says that if Mr. Baskerville were to do
19 so, implicate Mr. Bergrin, he would have to implicate himself
20 as well and he did not think that was going to happen, so he
21 wasn't worried about it.

22 Mr. Williams will testify that Mr. Bergrin, when
23 they're having this discussion, appeared to be extremely
24 worried about the prospect of Mr. Baskerville cooperating
25 against him, and that's largely what we would say.

1 And again, Judge, I know this isn't the Court's
2 question, but the point of the drug-trafficking, I mean this
3 is -- this is Mr. Bergrin -- and I understand it's not him
4 saying literally "I did it," but the circumstances of this
5 statement very strongly indicate that Mr. Bergrin was involved
6 in the Kemo murder. There's only one reason he would be having
7 this kind of discussion with -- he's not going to have it with
8 a stranger, he's going to have it with someone that's a
9 criminal with --

10 THE COURT: But the discussion itself is not the type
11 of comment that -- you know, he didn't go: I did it and I'm
12 involved and -- you know, I'm involved. His inquiry was
13 something that could be very understood. Because, first of
14 all, he's been in the drug business, he's admitted that; he's
15 admitted he's known Curry and the Baskervilles; he's admitted
16 that he's had a long-standing relationship with them. You
17 know, I mean, these are his, you know, his guys.

18 We're not trying the drug case here.

19 MR. GAY: I understand that, Judge.

20 THE COURT: You know that. And you know my ruling.
21 And I allowed a certain amount of minimal evidence to establish
22 what you claim is part the motive for why Mr. Bergrin acted the
23 way he did and you have some of that. But it was never the
24 intent here to be trying the whole drug case.

25 MR. GAY: Absolutely.

1 THE COURT: That would have been contrary to my
2 ruling.

3 Now, I don't think you have to get into an extensive
4 relationship between him and Mr. Bergrin -- I'm asking the
5 question then I want to hear from you, Mr. Lustberg -- about
6 whatever their arrangements were with drugs, et cetera.
7 Because he's indicated, you know, I think if you -- I don't
8 know if there's an objection to this but I'll hear if there is
9 and I don't know if it's an objection I'll sustain -- but if
10 you wanted to get into that he did work there for a portion of
11 time, he didn't really do any legal work, he was
12 accommodating -- Bergrin was accommodating him more or less
13 while he was doing the halfway house part -- right? Wasn't
14 that the evidence?

15 MR. GAY: Well, Judge, it's really -- it's -- yes,
16 that's part of it. But he's also --

17 THE COURT: Didn't Bergrin represent him on that or on
18 anything else?

19 MR. GAY: Well, he does represent him on certain
20 things, yes.

21 THE COURT: Right.

22 MR. LUSTBERG: On the parole revocation, there was a
23 parole issue.

24 MR. GAY: But that's on a separate -- my
25 understanding, Judge -- and I could be wrong about this -- that

1 he did not represent him on this -- on what -- when he asks him
2 to come out and work in his office, he, being Mr. Bergrin, he
3 had not represented him on the underlying charge.

4 MR. LUSTBERG: That's correct.

5 MR. GAY: That's my understanding of it.

6 MR. LUSTBERG: That's correct.

7 MR. GAY: So when Mr. Bergrin asks him to come out and
8 work for him and he does --

9 THE COURT: No. But I'm saying, what was Mr. Bergrin
10 representing him on; that violation?

11 MR. GAY: No.

12 MR. LUSTBERG: There was no -- not at that time.

13 MR. GAY: He was not.

14 THE COURT: I thought he was working there as part of
15 his program at the halfway house.

16 MR. GAY: He was, but that's not -- and this is I
17 think a fairly significant fact, Judge. What happens is, at
18 some point in the early relationship before Mr. Bergrin hires
19 Mr. Williams, Mr. Bergrin says -- and again, I know we're not
20 going to be getting into this but this is in connection with
21 Mr. Bergrin hooking up Mr. Williams with Ramon Jimenez to sell
22 drugs which, by the way, they end up conducting a couple of
23 transactions. At some point Mr. Bergrin says to Mr. Williams:
24 Hey, if you ever need anything, basically let me know about it.

25 So Mr. Williams goes back into jail in this halfway

1 house program, and that's -- and it's in connection with that
2 that Mr. Bergrin says, why don't you come and work for me.

3 Because again, if he's in this program and he's
4 working he can get out during the day. And that's sort of what
5 happens.

6 So the way it's working is that Mr. Williams is
7 actually working -- I'm going to put it in quotes -- in Mr.
8 Bergrin's office. But what he's really doing is, it's an
9 excuse for him to get out of the halfway house so he can go --
10 now, I'm not saying he spends no time in Mr. Bergrin's office,
11 he absolutely does. But Mr. Bergrin is giving him a check so
12 that Mr. Williams can show it to the parole people, but in fact
13 what's going on is Mr. Williams is paying Mr. Bergrin the
14 equivalent amount of money, so it's really kind of a sham. At
15 around that same time, Judge, that's when Mr. Bergrin enlists
16 Abdul Williams to be a courier.

17 I do want to point back to the Court's order on 404(b)
18 and say that, again, this includes evidence that Williams
19 engaged in drug-trafficking with Bergrin, Curry and other
20 persons who may have been part of the charged conspiracy and
21 evidence that Williams acted as drug courier for Bergrin.

22 So I do think that you did --

23 THE COURT: No, no.

24 MR. GAY: And I think that I can make it very tight, I
25 can make it short, which I will do.

1 THE COURT: Well, let me -- no, let me -- when did
2 he -- when did he sign the cooperation agreement? What's the
3 date on that?

4 MR. GAY: The date of the cooperation agreement,
5 Judge, is -- let me just get it out here -- December 22nd of
6 2010.

7 THE COURT: All right. December 22nd. But he had
8 come into the FBI before then. November 3rd.

9 MR. GAY: Yes, he had come into the FBI prior to that.

10 THE COURT: November 3rd?

11 MR. GAY: I believe it was November 3rd, Judge. I
12 don't have it in front of me -- oh, I do have it in front of
13 me.

14 THE COURT: What were the circumstances in which he
15 came to the FBI? I mean, did he come in or did the FBI go and
16 contact him?

17 MR. GAY: No, no. Judge, it was a -- Mr. Williams had
18 outstanding charges before the Federal Government at that
19 point, and Mr. Williams through his lawyer indicated he wanted
20 to come in and speak to the Government, that he had
21 information. And he thereafter --

22 THE COURT: There were pending federal charges?

23 MR. GAY: Correct.

24 THE COURT: I mean, the reason I'm asking this is, it
25 would appear the first time he presents all of this is in

1 November of 2010 to the Government.

2 MR. GAY: Yes, that's correct, Judge.

3 THE COURT: I know. And how many years after his --
4 how many years after the discussion with Bergrin was that?
5 When was that discussion with Bergrin? Do we have a date?

6 MR. GAY: Judge, my understanding is the discussion
7 would have occurred in approximately March of 2007.

8 THE COURT: '7?

9 MR. GAY: Yes.

10 THE COURT: Was that just before the Baskerville
11 trial?

12 MR. GAY: It was before the Baskerville -- testimony
13 was to begin in Baskerville in April of 2007, and we're placing
14 this in March based on a particular date or a particular event
15 that Mr. Williams remembers the discussion being around that
16 time.

17 THE COURT: What was the event?

18 MR. GAY: The event is there was a home invasion -- I
19 don't know if you would call it a home invasion -- there was a
20 robbery and murder at 710 Summer Avenue in the apartment
21 upstairs, and that that made -- there was some news coverage of
22 that, and that that's what his memory is, is that the
23 conversation occurred shortly after that, after he learned of
24 that in the news.

25 Now I'm not saying there is a connection between that

1 event and this event, but it simply is to show how -- and the
2 time frame of that -- if my memory serves correctly, Judge,
3 that event occurred on March 7th of 2007, if I recall
4 correctly.

5 THE COURT: And you're going to ask him about that?

6 MR. GAY: Well, Judge, I wasn't going to ask him about
7 anything other than, you know, what was the reason he
8 remembered this date, to place it in the context of when the
9 event occurred. I wasn't going to go into any details. He
10 just heard a story about this happening and that's why he
11 remembers this conversation taking place around that time
12 frame.

13 THE COURT: Well, it also was just prior to the
14 Baskerville trial. Correct?

15 MR. GAY: Correct.

16 THE COURT: A month before the Baskerville trial.

17 MR. GAY: Yeah.

18 THE COURT: And he knew, he was aware Baskerville was
19 going to trial. Right?

20 MR. GAY: I think he does. But he certainly is not
21 going to have a memory that it was a month before trial or
22 anything like that. I think to really put this in context and
23 give it a date, the only real way to do it would be that based
24 on his memory of this home invasion -- I think that's what his
25 term was -- home invasion/robbery over 710 Summer Avenue --

1 THE COURT: But 710 Summer Avenue, what's the
2 relationship here to that? I mean to --

3 MR. GAY: Judge, it's --

4 THE COURT: That's one of the -- yeah, go ahead.

5 MR. GAY: Judge, it's simply -- again, the only
6 purpose of this -- and perhaps there's a way we can work this
7 out without introducing that evidence. The only reason I want
8 to get it in, Judge, is because I think the date this
9 conversation took place is important, that it was a month
10 before, or approximately a month before testimony was going to
11 begin in the Baskerville trial.

12 THE COURT: Right.

13 MR. GAY: And I don't know of any other way for us to
14 place that time frame without going through that --

15 THE COURT: Was it that incident which triggered Mr.
16 Bergrin to go to him? Does he say that?

17 MR. GAY: No, I don't believe he's going to say that's
18 what triggered it. He doesn't know why -- he doesn't know what
19 triggered it other than that Mr. Bergrin was concerned about
20 the Baskerville trial. I don't know if -- but again, the
21 point, Judge, is simply that we have to find a way to be able
22 to get this date down and that's the only way that we can do
23 that.

24 THE COURT: Well, yeah. But it's a way that -- I
25 don't want that coming into this case, that there was a murder

1 at some premise --

2 MR. GAY: He's not going to testify that there was a
3 murder, Judge. His memory is that it was a home
4 invasion/robbery. Listen, I can say --

5 THE COURT: No, wait. That's not -- I'm not going to
6 allow that to come in, a murder or something.

7 MR. GAY: I'm not --

8 THE COURT: I'm not going to allow that.

9 Mr. Gay, as you know, we're not trying -- quite
10 frankly, one of the concerns I have is that, you know, all of
11 these people have come forward very late in time and have made,
12 you know, allegations that are, you know, corroborated only by
13 other witnesses who have made allegations, and some of them may
14 or may not be corroborated. We're not here trying all the --
15 you know, what he's charged with in a drug case.

16 And for him to have credibility in terms of context
17 about this limited discussion, I don't think we have to get
18 into what his involvement was in terms of drugs and Mr.
19 Bergrin, if at all, frankly. I mean, the fact that he knew the
20 Currys, he knew Baskervilles, he had a relationship with
21 Bergrin in some way, both, he might have represented him at
22 times.

23 Now if Bergrin gets into it and challenges him a lot
24 on his credibility as to this conversation, then that's a
25 different story, you know? But, you know, I'm willing to

1 listen to you more, but I -- you know, my biggest concern all
2 along was that he would be getting tried on a drug case for
3 this alleged -- you know, for this charge of murder.

4 MR. GAY: Well, Judge, I guess I'll just say a couple
5 of things.

6 THE COURT: Look, I have to say it, I'm just -- look,
7 you know, my concerns are -- what we have here is Mr. Young
8 making some statement that is the beginning of all this, and
9 the statement is, as it's been referred to repeatedly both in
10 the press and everywhere else, "No Kemo, no case," and some
11 other details that he testifies Paul Bergrin said, and that
12 triggers the whole investigation of Paul Bergrin about this
13 murder case.

14 MR. GAY: That's actually not true, Judge.

15 THE COURT: What else --

16 MR. GAY: I would say, what happened in this case --
17 and again, I'm glad that we're able to raise this because I
18 want to make sure that this is crystal clear.

19 Judge, the day that the conversation between Mr.
20 Bergrin and Mr. Curry takes place, there is a wiretap.
21 Unfortunately, that wiretap was not sealed properly and the
22 Government could not use it. So that is absolutely not true.
23 The day that Mr. Bergrin passed on the information and said on
24 the phone that the name of the informant -- that he had learned
25 the name of the informant from William Baskerville and that he

1 was a guy named "Kamo," not "Kemo" but "Kamo," that's what came
2 over the wiretap.

3 Now, unfortunately as I said, that tape was not
4 properly sealed. But again, that's when the investigation
5 started, on the actual day that that conversation took place.

6 THE COURT: But --

7 MR. GAY: There was also additional information,
8 Judge, that the Government had at that time through informants
9 that didn't testify here today that -- or didn't testify in
10 this trial and won't, not necessarily linking Mr. Bergrin but
11 establishing the fact that there was an ongoing plot to kill
12 Mr. McCray at that point. So we --

13 THE COURT: Mr. Gay --

14 MR. GAY: -- so the investigation did begin literally
15 on the day that Mr. Baskerville was arrested, is the date that
16 the investigation began.

17 THE COURT: Okay, okay. I don't think that's
18 really -- look, the Defendant may take issue with that, you
19 know, and obviously, you know, whether or not that was even
20 said, you know.

21 MR. GAY: It's a wiretap call, just to be clear,
22 Judge.

23 THE COURT: I'm accepting -- you know, let's say --

24 MR. GAY: Yeah.

25 THE COURT: -- that was on the wiretap, that he

1 provided the name of the informant.

2 MR. GAY: Correct.

3 THE COURT: If a lawyer representing Mr. Baskerville
4 calls Curry --

5 MR. GAY: Yes.

6 THE COURT: -- and in that conversation you have it
7 recorded, you say -- and I'm not doubting that it was
8 recorded -- but that, you know, he says it's Kamo --

9 MR. GAY: Correct.

10 THE COURT: -- does he say, "No Kamo, no case" on that
11 recording?

12 MR. GAY: No, he doesn't say that on the tape. That's
13 that conversation there.

14 THE COURT: All right. So he says the informant on
15 the Baskerville case is -- he says it's "Kamo."

16 The lawyer saying that, I don't think you even would
17 say that's evidence of a conspiracy to go murder Kamo. That
18 that kind of a conversation --

19 MR. GAY: Judge, I would say that the question the
20 Court had was when the investigation began. I'm telling you
21 that --

22 THE COURT: No. What I said --

23 MR. GAY: -- I think that --

24 THE COURT: What I said was that the investigation and
25 this prosecution is largely dependent on Mr. Young.

1 MR. GAY: That, I would agree with, Judge.

2 THE COURT: Okay. And it begins largely -- and you've
3 told me about the tape. But that doesn't -- you know, that
4 doesn't surprise me that much, that there's a tape of the
5 Defendant calling Curry and saying -- now Curry we know is his
6 relative, too, we know that.

7 MR. GAY: And he's -- yeah.

8 THE COURT: And he's the head of -- you know, and I
9 don't think there's any dispute really, he may, I don't know --
10 but that Curry was close to or Bergrin represented Curry or
11 whatever, Baskerville was part of this group. And so Bergrin
12 tells him on the phone: A guy by the name of Kamo is the
13 informant.

14 MR. GAY: Correct.

15 THE COURT: Okay. And then from there we now have
16 Young nine months later --

17 MR. GAY: Approximately.

18 THE COURT: -- coming to the Government and saying
19 more. He says, "No Kamo" -- he said "No Kamo, no case."

20 MR. GAY: Yeah.

21 THE COURT: And he said some things more.

22 MR. GAY: That's correct.

23 THE COURT: At the four-day later meeting or five-day
24 later meeting.

25 MR. GAY: Yes.

1 THE COURT: Okay.

2 But what I'm getting at is, this is the basis of this
3 case. It's Mr. Young primarily -- you don't have the tape --
4 and it's Mr. Young. Okay?

5 MR. GAY: Correct.

6 THE COURT: And then, you know, we have a lot of
7 other -- and I've allowed you to get into some of it originally
8 with, you know, with Jimenez and with --

9 MR. GAY: Walker, Judge?

10 THE COURT: Yeah, Walker, you know. So I allowed you
11 to bring in -- and Castro. Well, Castro is different, that's
12 different.

13 MR. GAY: Yes.

14 THE COURT: But I allowed you to get into some
15 background about Paul's alleged involvement with Curry with
16 some drugs. Okay?

17 Allowing you to get into some context, however, with
18 this witness is just to give it some context for the jury to at
19 least understand why Paul Bergrin might go to him and ask him
20 about Baskerville. And I don't think you need to get into a
21 whole lengthy, if at all, testimony about their drug
22 involvement to elicit that statement, which is not a terribly
23 incriminating statement.

24 MR. GAY: Well, Judge, I would disagree with the Court
25 on that. But --

1 THE COURT: No, it's not an admission of guilt.

2 MR. GAY: I --

3 THE COURT: You can argue -- it's not an outright
4 admission: Well, yeah, I was part of killing Kemo. We all
5 knew we were going to kill the guy. It's not that.

6 I agree, you could argue, and justifiably argue that
7 that clearly shows state of mind that he was worried about, he
8 knew. Right? I mean --

9 MR. GAY: That's correct.

10 THE COURT: -- that he was concerned and had that
11 worry, and he went to a very close associate of that
12 organization who was in his office doing -- you know, who he
13 knew and had worked with, and asked him: Do you think
14 Baskerville is going to hold up?

15 But he didn't give him an admission of, you know, an
16 outright admission that -- you know, then I think the jury
17 might need to have a better context as to why he would give
18 such an incriminating statement, you know?

19 In other words, oh, yeah, you know, Abdul, we all
20 planned to kill the guy. You knew that, something. It's not
21 like that.

22 I'm trying to find the right balance here.

23 MR. GAY: I understand, Judge.

24 THE COURT: Because, frankly --

25 MR. GAY: I understand.

1 THE COURT: -- there's going to be a drug charge at
2 some point, and there's a drug charge pending and there's
3 another whole line of cases that -- you know that.

4 MR. GAY: No, I agree.

5 THE COURT: And I don't want to try the drug case here
6 other than very limitedly.

7 MR. GAY: I agree, Judge.

8 If I could make a suggestion.

9 I think that certainly at least on direct examination
10 the Government should be able to elicit that they had this drug
11 relationship. I understand the Court is loathed to have us go
12 into details of it, but I think that at a minimum that's
13 important. And then if Mr. Bergrin chooses to --

14 THE COURT: All right.

15 MR. GAY: -- challenge his credibility on this, then
16 we can get into more. But --

17 THE COURT: When you say okay, if you lead in this
18 area, how would you lead and what do you propose that you would
19 elicit?

20 MR. GAY: Well, Judge, I can tell you --

21 THE COURT: And I agree with you, that if the
22 Defendant gets into challenging him extensively in any way,
23 then I would be more willing to listen to more.

24 MR. GAY: Okay. Well, Judge, what I would say is that
25 if you would allow it, would be that Mr. Bergrin approached Mr.

1 Williams, that he offered him a deal. That Mr. Williams was to
2 act as a courier, taking drugs from Alejandro Barraza-Castro
3 and delivering them to Mr. Bergrin's clients, and that Mr.
4 Bergrin paid Mr. Williams a fee for each time he made the
5 delivery, and that, in fact, deliveries were thereafter made.

6 Now again, the details of the conversation I would
7 like to get into, but if that's -- but again, I just want to
8 make sure we're clear on this, Judge. The reason why I would
9 like to get into the details is simply I want to give the jury
10 the picture. But if the Court rules that we can't get into
11 details, I mean obviously we'll accept the ruling of the Court.
12 But I do feel very strongly that the fact that there is this
13 relationship of criminal activity is a very significant factor
14 in Mr. Williams' credibility, and I am certain that Mr. Bergrin
15 is going to be attacking his credibility mightily, as he has
16 every witness in this case.

17 THE COURT: Well, I don't know.

18 Go ahead, Mr. Lustberg, let me hear you.

19 MR. LUSTBERG: Before we get to that --

20 MR. GAY: I'm sorry. I just want to say, Judge, it is
21 absolutely consistent almost letter for letter with what the
22 Court's 404(b) ruling is.

23 THE COURT: I know. But, Mr. Gay --

24 MR. GAY: Okay, sorry, Judge.

25 THE COURT: -- I've reflected on that. To be very

1 frank with you, as I've told you earlier, I'm reflecting on
2 another part of my ruling as to another witness in a 404(b)
3 situation, so I didn't want to surprise you on that either.

4 Go ahead, Mr. Lustberg.

5 MR. LUSTBERG: Judge, just one thing before we get to
6 the question of credibility, which is, just look at page 4 of
7 the 302 dated November 3rd.

8 THE COURT: Page 4?

9 MR. LUSTBERG: Yes, your Honor.

10 At the bottom of the page, Mr. Gay has stated -- and I
11 take him that it's correct -- that the conversation between Mr.
12 Bergrin and Mr. Williams which is here at issue occurred during
13 the first week of March of 2007 that is, and he can place it
14 that way because it was a month before the Baskerville trial
15 and that was based upon this home invasion at 710 Summer.

16 The 302 says that in the spring of 2007, which
17 actually technically would begin March 21st, but certainly
18 thereafter --

19 THE COURT: Okay.

20 MR. LUSTBERG: -- is when this drug courier
21 relationship begins.

22 And so if that is the case, then all of this entire
23 relationship that's been described is not, in fact, the context
24 for Mr. Bergrin's remarks to Mr. Williams. And so therefore it
25 really is not part of this case, it's part of the drug case

1 that comes after.

2 MR. GAY: Okay, Judge, I will address that. I can't
3 speak to the date in the 302, I can only speak to what it is
4 that Mr. Williams has said to me during proffer sessions and
5 what he's going to testify to. And what he's going to testify
6 to is that this relationship began, the drug relationship began
7 soon after he began working with Mr. Bergrin, and that that was
8 approximately in October of 2006.

9 THE COURT: You mean that's going to be a mistake, the
10 spring of 2007?

11 MR. GAY: I don't think -- Judge, I can't speak --

12 THE COURT: That's going to be another mistake that's
13 in an FBI report he's going say?

14 MR. GAY: I don't know whether he's going to say --

15 THE COURT: I don't want to get into that again.

16 MR. GAY: Judge, I understand.

17 I don't know what he's going -- he hasn't seen this
18 report, I haven't asked him about this date in the report. I
19 don't know what he's going to say, frankly, about it. But I
20 can tell you what he's testified, what he's going to testify to
21 and what he has said on numerous occasions.

22 THE COURT: All right.

23 Mr. Lustberg, I'm going to give you a chance. Go
24 ahead.

25 MR. LUSTBERG: That's really -- look, the date of this

1 conversation and the date when the drug-dealing that's being
2 described here begins, the relationship between those two dates
3 is absolutely critical to this Court's ruling. Your Honor's
4 ruling was very clear; that he would allow a limited amount of
5 testimony regarding drug-dealing in order to set the context
6 for this conversation which we now know is March of 2007.

7 MR. GAY: Judge, that's not -- I'm sorry,
8 Larry, I apologize. I apologize. Go ahead.

9 MR. LUSTBERG: No, I mean, the Court in essence has to
10 make a determination as to when that drug-dealing began by at
11 least a preponderance of the evidence before it determines
12 whether the drug-dealing evidence is admissible. That seems to
13 be a fact precedent to any admissibility ruling.

14 I understand Mr. Gay's proffer today, but that is very
15 clearly at odds with what we're saying in the 302 that was from
16 last year. So that was part of -- that certainly is part of
17 our argument here.

18 Beyond that -- I mean, so the Court has to make that
19 determination initially. I also don't think that it's
20 necessary -- that if Mr. Bergrin merely attacks his credibility
21 as a witness, that that opens up the entire line of --

22 THE COURT: I'm not saying -- it might. I don't know.
23 It depends on --

24 MR. GAY: Judge, I will say this, too --

25 THE COURT: But I have to listen to his cross and make

1 a determination there.

2 MR. LUSTBERG: Certainly. He's aware there are
3 door-opening issues here.

4 MR. GAY: If you're going to look at -- again, I was
5 not at -- I don't believe I was at the 11/4 proffer, Judge, but
6 I can tell you I was at the 11/12 proffer --

7 THE COURT: 11?

8 MR. GAY: During that 11/12 of 2010, the very next
9 proffer approximately, you know, two weeks later --

10 THE COURT: I have it as an 11/3 proffer.

11 MR. GAY: Okay. Well, this is now, Judge, November
12 12th. And in that he states: Williams conducted
13 approximately --

14 MR. LUSTBERG: What page?

15 MR. GAY: It's on page 1. He's talking about the
16 transactions that he conducted with Bergrin, and that they
17 happened prior to his -- prior to the office Christmas party of
18 that year; and that was the year that Mr. Bergrin moved to Park
19 Place in Newark.

20 And that the move in Park Place, Newark, the Christmas
21 party would have been in -- he moved in August of 2006. So
22 we're clearly talking about the December -- by December of 2006
23 he has been conducting transactions with Mr. Bergrin. That's
24 in the 302 dated 11/12 of 2010.

25 So I can't speak -- again, I wasn't at the first

1 proffer session, Judge, but I can tell you that he has
2 consistently said this, beginning on 11/12 of 2010, that this
3 is the time frame.

4 MR. LUSTBERG: I'm sorry. Where is that statement?

5 MR. GAY: If you look at -- Larry, page -- the 11/12,
6 2010 -- it's the first page -- right here. That's it.

7 (Counsel confer off the record.)

8 MR. GAY: Again, the move to the office was August of
9 2006, the Christmas party would have been December presumably,
10 December 2006.

11 THE COURT: I know, but --

12 MR. LUSTBERG: Our understanding was that the move was
13 January 1st, 2007.

14 MR. GAY: That's absolutely not true, Judge. We have
15 records --

16 THE COURT: All right, Mr. Gay, Mr. Gay, no. Listen,
17 I'm going to direct that you elicit direct from him without
18 getting into any drugs. Let's see what he says about, you
19 know, this statement. You can bring out whatever other
20 relationship he had with Mr. Bergrin. After that, before
21 cross, I'll see -- you know, because after -- maybe we'll take
22 a recess and I'll see how it comes out and the context in which
23 it comes out without reference to drug-dealing, et cetera, that
24 he has with Mr. Bergrin.

25 There's issues about the date -- there are some issues

1 that would be about the dates when this first occurred, whether
2 his involvement with drugs was at or around the time that this
3 conversation was made or was earlier --

4 MR. GAY: Judge, I will -- I'm sorry. I interrupted
5 you.

6 THE COURT: Go, go ahead.

7 MR. GAY: Judge, even if you take the first 302 --

8 THE COURT: Right.

9 MR. GAY: -- and it's the spring 2007, that still is
10 the exact same time frame that this conversation is taking
11 place. So even by the first one, the drug transactions are
12 going on during this time frame. So I don't -- and again, I'm
13 not saying I'm accepting that it happened during then because I
14 know what the testimony is going to be. But even accepting
15 that, the drug activity is going on during the time frame that
16 this conversation takes place.

17 THE COURT: Was this drug activity directly related
18 with the Curry people? No. No.

19 MR. GAY: Well, other than it being him who is a Curry
20 associate.

21 THE COURT: But Baskerville was in jail then, Curry
22 was --

23 MR. GAY: Correct.

24 THE COURT: -- was in jail by then.

25 MR. GAY: Correct.

1 THE COURT: No matter how you look at it, they were
2 all off the streets by then.

3 MR. GAY: Correct, Judge. But again, the purpose --

4 THE COURT: Okay.

5 MR. GAY: -- the purpose was not -- I understand --

6 THE COURT: Because I allowed evidence of -- no, I'm
7 sorry, Mr. Gay, I interrupted you.

8 But I did allow evidence as to some drug involvement
9 prior to the murder to show motive as you allege, that part of
10 the motive was to cover up Bergrin's involvement. You know,
11 the motive that he had was -- to do any of this was to -- he
12 was concerned about the Curry organization. Okay?

13 And with respect to this conversation that he had with
14 Williams, I don't think the jury will have a hard time
15 understanding that the conversation -- he went to him for that
16 conversation because he knew Baskerville, he knew Curry, he was
17 a drug guy, he was on the streets, and he was in his office
18 doing some -- you know, you don't even have to get into "work."

19 Did he come there as part of a halfway house program?
20 And was that part of a -- you know, just to help him out, or a
21 sham or something? You know, however you want to develop that
22 is fine. Then we'll go from there. Then we'll see after your
23 direct and/or after some cross how much further we're going to
24 go into it.

25 MR. GAY: Judge, I would just say that -- and again,

1 I'm reiterating I guess two things: The first is that it is
2 extremely important, and I understand the Court's opinion about
3 the statement itself. But Mr. Bergrin is making a statement
4 which is at least -- you know, there's a strong argument that
5 he is implicating himself in a murder, and he's not going to do
6 that to somebody who is not a fellow criminal. He's just not,
7 Judge. And that's not going to make sense to the jury. Mr.
8 Bergrin is certainly going to be arguing something like that.
9 He's going to be arguing either --

10 THE COURT: Well, part of your case is that he did
11 that to Mr. Castro. Right?

12 MR. GAY: That he did -- I'm sorry?

13 THE COURT: Part of your case is that he went to Mr.
14 Castro to hire him to go kill the guy. Right?

15 MR. GAY: Correct.

16 THE COURT: I mean, you know, and what was their
17 involvement at that point?

18 MR. GAY: Well, he's house counsel for Castro's
19 organization, Judge.

20 THE COURT: House counsel? You know --

21 MR. GAY: Judge, again --

22 THE COURT: Let me hear what the statement is. Let me
23 hear how -- you know -- if this is --

24 MR. GAY: Judge ---

25 THE COURT: Go ahead, Mr. Gay.

1 MR. GAY: I would make -- my request, Judge, is that I
2 be permitted to lead in this area and that I bring out nothing
3 more, or very little more than what the letter of the Court's
4 prior ruling was; that is, you know, did you act as a drug
5 courier for Mr. Bergrin prior to the time frame that you got
6 this?

7 And I think, Judge, with a proper limiting instruction
8 which the Court will give, that that is going to provide the
9 necessary context at least initially. And my request is that
10 we be permitted to do that, and again, in that fashion. And
11 again, if Mr. Bergrin decides to cross him on that, then the
12 Government should be permitted to go into additional things.
13 But it is critical that they are engaged in this activity in
14 order for the jury to understand why it is that Mr. Bergrin
15 would --

16 THE COURT: I think that's where we disagree. I don't
17 think it is critical. I think the fact that he is a street
18 guy, that he knew Curry his whole life, that he knows the
19 Baskervilles, that he had some relationship with Mr. Bergrin,
20 we know he had some relationship with Mr. Bergrin before their
21 drug-dealing. They didn't just sit in the car one day and he
22 said, let's do drugs together. They had to have some --

23 MR. GAY: They did. And, Judge, and I'll just point
24 out that some of that prior activity is actually -- part of the
25 reason why -- and again, what's being lost here I think is the

1 following: There is a history of criminal activity between Mr.
2 Williams and Mr. Bergrin. The Court has not allowed us to go
3 into that history, and I understand why and I'm not saying
4 otherwise. I'm putting this out for context.

5 That, number one, that there was a prior incident in
6 which Mr. Bergrin introduces Ramon Jimenez to Abdul Williams to
7 sell drugs; that there are prior instances in which Mr. Bergrin
8 has tampered -- tampered with witnesses on behalf of Mr. -- or
9 suggested witness tampering type activity in connection with
10 Mr. Williams. None of that is coming in because the Court said
11 that was too prejudicial. But you can't -- I mean again, the
12 context of some criminal activity is absolutely essential here,
13 and the Court has really gone out of its way -- and I'm not
14 saying improperly or anything, Judge -- but to limit this
15 testimony. And you've done that. You've given Mr. Bergrin the
16 fairest of fair trials here.

17 THE COURT: Well --

18 MR. GAY: But this is something that is absolutely
19 essential, and in the limited fashion that I have suggested --

20 THE COURT: All right. Mr. -- listen, Mr. Gay, here's
21 my ruling: I want you to speak to him. I want you to tell him
22 you're going to go right into a conversation that he had. If
23 you want to develop a little bit more about he knew Curry, he
24 knew the Baskervilles and he knew the trial was coming up and
25 he knew Paul and they had a long-standing relationship through

1 legal matters and -- you know, or just however, and get into
2 the conversation. Let's hear the conversation.

3 At that point I may even before cross-examination say,
4 now get back into how, you know, this conversation you said
5 occurred on this day. Did you have a prior relationship, you
6 know, some kind of a deeper relationship with Mr. Bergrin?
7 Tell us about that. You can lead him in that area. But first
8 let me hear what the actual conversation was.

9 Because if the conversation -- depending upon what it
10 was, I'll make a further determination, and I think that's the
11 fairest way you can go right now.

12 And then, you know, of course if I don't allow you to
13 go any further, then Mr. Bergrin is going to have to be
14 extremely careful as to how he's going to cross, if at all, on
15 that conversation. Let me -- you can proceed that way. It's
16 not prejudicial --

17 MR. GAY: I can certainly proceed that way.

18 THE COURT: You know, you can do a few more questions
19 in this area without getting into any of their, you know,
20 alleged other activities, and then get into, you know -- and
21 then get into the conversation itself: Did Paul Bergrin ever
22 discuss with you the Baskerville case? What did he say? You
23 know. Or what did he say? What did you say?

24 You know, they know he knows the Baskervilles, he
25 knows the Currys, he made it pretty clear about that. So let's

1 MR. LUSTBERG: This way there's no details.

2 THE COURT: All right. Why don't we do that.

3 Mr. Gay, proceed the way I --

4 MR. GAY: Absolutely, Judge.

5 THE COURT: I know you will. And if you want to bring
6 out more about how he knew the Baskervilles and how he knew
7 Curry and that he had dealings with them and that therefore he
8 knew their operation and he was, you know -- go ahead.
9 Because -- and then I'll hear how it comes out.

10 MR. GAY: I agree, Judge. But I'll just say this --

11 THE COURT: You don't agree, I understand.

12 MR. GAY: No, no, no, no, no.

13 THE COURT: But you'll do it.

14 MR. GAY: Correct.

15 THE COURT: I want to make -- I know you don't agree,
16 but I want to be sure, you know, I know what you're saying.

17 MR. GAY: I will absolutely follow.

18 The only thing is, that with respect to the
19 involvement with Curry and Baskerville, again, he's in jail for
20 a period of time when a good deal of this is going on, and what
21 happens is that Mr. Bergrin does mention on a number of
22 occasions that he's bringing Abdul -- these are my words, not
23 his -- he brings him into the inner circle because of his
24 connection to Curry. And I would elicit that. But I don't
25 know that I'll be eliciting the significant facts relating to

1 proceed that way.

2 Why don't we take a 10-minute break, and ten of 11
3 we'll be right back. Okay? Let's rush, please.

4 (A recess is taken.)

5 (Proceedings resume - Jury not present.)

6 (Mr. Bergrin not present.)

7 THE DEPUTY CLERK: Bring Mr. Bergrin in.

8 THE COURT: Go ahead.

9 MR. LUSTBERG: Thank you, Judge. With respect to one
10 of the issues that was --

11 THE COURT: You don't have a microphone. That's okay,
12 keep your voice up. I can hear you.

13 MR. LUSTBERG: Thank you.

14 With respect to one issue, we've reached an agreement,
15 which was, Mr. Gay I think reasonably wants to try to
16 ascertain, particularly in light of the colloquy, the date of
17 the conversation. And to the extent that the witness actually
18 recalls it because of some -- this home invasion, what Mr. Gay
19 will elicit is he recalls it as a result of a significant
20 event, which will not be described, and then I will stand up
21 and stipulate that we -- that it is our understanding that
22 event occurred on March 7th of 2007.

23 (Mr. Bergrin is escorted into the courtroom by the
24 Marshals.)

25 THE COURT: All right.

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1 (Jury present.)

2 THE COURT: Ladies and gentlemen, thank you for your
3 patience. We have been working, and we didn't have much of a
4 break. But that's part of our job. So thank you, though.

5 I told you in the beginning, sometimes there will be
6 some lengthy matters we have to attend to. But we might have
7 shortened some things up, too.

8 Go ahead, Mr. Gay.

9 MR. GAY: Thank you, your Honor.

10 DIRECT EXAMINATION CONTINUES

11 BY MR. GAY:

12 Q Mr. Williams, I want to ask you first about, you testified
13 previously that you were convicted and you served a jail
14 sentence of approximately -- well, a six-year jail sentence
15 some time in 2000. Is that correct?

16 A Yes, sir.

17 Q And that thereafter you got out of jail. Is that correct?

18 A Yes, sir.

19 Q And were you on parole at that time?

20 A Yes, I was.

21 Q And some time after you got out of jail were you violated
22 on parole?

23 A Yes, I was.

24 Q And do you recall, was that some time in late 2005 to early
25 2006?

1 the dealings between Abdul and Curry because for the period of
2 time leading up to Curry's arrest Mr. Williams was in jail.

3 THE COURT: All right.

4 MR. GAY: Okay.

5 THE COURT: Let's proceed that way.

6 MR. GAY: Okay.

7 THE COURT: Let's bring out the jury, please,

8 THE DEPUTY CLERK: The witness?

9 THE COURT: First bring out the witness, yeah.

10 (The Witness, Abdul Williams, is escorted into the
11 courtroom by the Marshals.)
12

13 A B D U L W I L L I A M S, resumes, testifies further as
14 follows:
15

16 MR. GAY: Judge, I'm sorry. The jury is coming out
17 Could we just have a very brief sidebar? I just want
18 to double-check on one thing to make sure that it's in line
19 with the Court's ruling. I apologize.

20 (Off the record discussion at the sidebar.)

21 (In open court.)

22 THE COURT: Go ahead, you can bring the jury out,
23 please.

24 THE DEPUTY CLERK: Please rise for the Jury.

25 Okay.

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1 wear your own clothes and stuff like that, you just can't go
2 out. They give you opportunity to find work, and if you find
3 work then you can go to work, put in your hours and come back
4 to the program until your sanction is up. Then you go -- once
5 your sanction is up, you get out and report to parole and you
6 continue to work.

7 So, yes, at some point, maybe 60 days, somewhere in
8 between 30 and -- after 30, somewhere between 60 days of my 180
9 day sanction I was allowed to go to work.

10 Q Okay. And did you, in fact, go to work?

11 Well, let me rephrase the question.

12 Did you gain employment somewhere?

13 A Yes, Mr. Bergrin put me on his payroll.

14 Q Okay. And without going into any details of that, was
15 that -- did that allow you then to get out during the day?

16 A Yes, it did.

17 Q Do you remember when it was that you first gained
18 employment in Mr. Bergrin's office, approximately?

19 A To the best of my memory, it would have been August 2006
20 maybe.

21 Q Now, and then did you continue to, in connection with your
22 employment and then even after you ceased your employment on
23 the books with Mr. Bergrin, did you continue to spend time in
24 Mr. Bergrin's office?

25 A Absolutely.

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1 A Yes, I was. Yes.

2 Q Did you receive any type of a sentence on that parole
3 violation?

4 A Yes, on the parole violation I was given a sanction to 180
5 days of Halfway Back Program.

6 Q Can you explain what a Halfway Back Program is?

7 A Halfway Back Program is a situation where you're released
8 from prison and you're out in the world, and if you catch a
9 violation for, say, a dirty urine, failure to report, which was
10 my case, if you get a failure to report, then instead of going
11 back to prison for the duration of your parole, which
12 hypothetically for me it was two years, but instead of them
13 sending me back to prison for two years, they only gave me a
14 sanction for 180 days in, I guess you want to say, a monitored
15 area that they control, a halfway back, like a building. And I
16 had to do my sanction there before I was released to do the
17 rest of my parole time, it is.

18 Q Okay. So now, at this point after you're violated you get
19 the sanction, you're actually in this Halfway Back Program. Is
20 that correct?

21 A Yes, sir.

22 Q So you are at some point at least, you are incarcerated?

23 A Yes, sir.

24 Q Now, does there come a time when that changes?

25 A Yes. At some point in the Halfway Back Program you can

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1 occurred immediately prior to that discussion?

2 A Yes, sir, there was.

3 MR. LUSTBERG: Your Honor, we would stipulate that
4 that event occurred on or about March 7th, 2007.

5 THE COURT: All right. Ladies and gentlemen, the
6 parties agree that there was an event. It had nothing to do
7 where this case, but it was an event that this witness
8 remembers and puts in context what he's going to testify to
9 now. Okay?

10 Q Now, Mr. Williams, you briefly described the circumstances
11 leading up to the conversation. What I mean by that is, how
12 did you actually get to Mr. Bergrin's -- how did you actually
13 set up the meeting with Mr. Bergrin?

14 A I received a phone call from Mr. Bergrin himself. He
15 called me and asked me if I was around or if I could come down
16 some time this evening, he would like to talk to me.

17 Q And did you -- what did you tell him?

18 A I told him, sure, I be down there.

19 Q Did you in fact later go down and see Mr. Bergrin?

20 A Yes, I did.

21 Q And do you recall where it was that you visited Mr. Bergrin
22 at that time?

23 A Yes, I do. It was at his office, his second office at 60
24 Park I think it is, Downtown Newark.

25 Q All right. Okay. That was a different office than the

1 Q And would you say that you spent a lot of time in Mr.
2 Bergrin's office or a little time in Mr. Bergrin's office?

3 A I spent a lot of time in his office.

4 Q During that time, again, without getting into any of the
5 substance, did you have any conversations with Mr. Bergrin?

6 A Yes, we did.

7 Q Okay. And during that time frame, did you and Mr. Bergrin
8 discuss your relationship -- yes or no -- with Mr. Curry?

9 A Yes, we did.

10 Q And was Mr. Bergrin aware of your associations with Mr.
11 Curry?

12 A Absolutely.

13 Q Did you also discuss again, without getting into any
14 substance, your own criminal activity and criminal history with
15 Mr. Bergrin?

16 A Absolutely.

17 Q And was Mr. Bergrin aware of your criminal activity and
18 criminal history?

19 A Absolutely.

20 Q Now, while you were with Mr. Bergrin in the office during
21 this time frame that you just discussed, do you recall whether
22 you had any conversations with him about William Baskerville's
23 case?

24 A Yes, I do.

25 Q And do you recall, was there a significant event that

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1 office that you had gone to previously when you first gotten
2 out of -- when you had gotten out of jail prior to that.

3 Right?

4 A Yes.

5 Q Okay. So now, do you remember where, in particular, within
6 Mr. Bergrin's new office this conversation took place?

7 A The conversation took place in his -- in his personal
8 office.

9 Q Was there anybody else in the room besides you and Mr.
10 Bergrin?

11 A No, sir.

12 Q Was the door opened or was the door closed?

13 A The door was closed.

14 Q And can you briefly describe what happened after you
15 entered the room?

16 A After I entered the room, Paul was on the telephone at the
17 moment. I was standing at his window looking out at the park.
18 Once he hung up we had a conversation pertaining to William
19 Baskerville.

20 Q Okay. Well, do you remember how the conversation began?

21 A Yes. The conversation began, that I can remember, it
22 started off, first it was, how are you doing? Everything good?

23 Yeah, I'm good.

24 It was casual. Then it led to, have I heard from
25 Hakeem?

Williams - direct - Gay

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1 Because he was hearing rumors that Hakeem was willing
2 to pay \$300,000 to have Ant change his story or something to
3 that extent. And he made some type of derogative statement
4 about Hakeem right then and there like, does he even have that
5 kind of money still?

6 Like, that was bull crap. Excuse -- I don't mean to
7 curse. I almost cursed.

8 Then --

9 Q Then what happened after that?

10 A Excuse me?

11 Q Then what happened after that?

12 A Oh. Then the conversation turned into: Have I heard from
13 his cousins or anything like that.

14 And it went to William Baskerville, and do he think --
15 he end up asking me: Do I think William Baskerville would
16 implicate him in the Kemo case?

17 And I'm looking like, no, I don't think he will. Why?
18 What's up?

19 He's like, I don't know. I'm just hearing all this
20 talk.

21 He seem to be worrying, like.

22 And I guess because of the situation that took place
23 at the time that I was called down there for, knowing Mr.
24 Bergrin being the sharp lawyer that he is, he was covering his
25 tracks making sure everything was good.

Williams - direct - Gay

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1 So he asked me if I think the guy would tell on him
2 basically.

3 And I'm, like, no, I don't think he would.

4 Why? Are you worried about it?

5 And he was like -- he seemed -- obviously he was
6 worried about it, but at some point we talked a little bit more
7 and it turned into, well, he would be incriminating himself.
8 That would be stupid of him. I'm not going to worry about it.

9 Q Okay. So when he said he would be incriminating himself,
10 that would be stupid, was that something he said or you said?

11 A That was something Paul said.

12 Q Okay. And can you discuss, describe Mr. Bergrin's demeanor
13 when he's having this conversation with you?

14 A Worried, agitated, annoyed, concerned.

15 Q And what conclusions did you draw from that?

16 A Just from me being around him, he's always real poised and
17 confident, chest out. But this time he was flustered and, you
18 know, he was -- he was a little worried that somebody going to
19 expose him.

20 Q Now, did the conversation end some time after that?

21 A Yes, the conversation did end shortly after that.

22 Q Okay. And did you then leave the office?

23 A Yes, I did.

24 Q Okay.

25 THE COURT: All right. Ladies and gentlemen, we're

Williams - direct - Gay

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1 just going to take a short recess. Okay? There's one more
2 issue I have to attend to. So if you could please step into
3 the jury room, we'll take a short recess.

4 THE DEPUTY CLERK: Please rise for jury.

5 (The Jury leaves the courtroom.)

6 THE COURT: Please have the witness step outside.

7 Everyone, be seated, please.

8 (The Witness is temporarily excused and escorted out
9 of the courtroom by the Marshals.)

10 THE COURT: Mr. Gay, where in the 302 reports is there
11 anything about this conversation that he and Mr. Bergrin had?
12 Is it in here?

13 MR. GAY: It's --

14 THE COURT: I don't --

15 MR. GAY: Yes, it's in there, Judge. I'm not sure --

16 THE COURT: I'm trying to find -- I mean, I've only
17 had this a little bit, so -- do you know where it is, Mr.
18 Lustberg?

19 MR. LUSTBERG: Yes, I do. I will try to find it.

20 THE COURT: I didn't find it.

21 MR. LUSTBERG: Actually, I think I got most of it from
22 the Government's proffer when they --

23 THE COURT: I don't see it related in any of the 302s.

24 MR. GAY: I know it's in one of the 302s.

25 THE COURT: Okay. Maybe I don't have the one.

1 MR. LUSTBERG: I was mistaken, Judge. I was
2 remembering the conversation on page 2 of the November 19th
3 2010 302, which actually had to do with whether Mr. Young --

4 THE COURT: I don't see it. I don't see there's
5 any...

6 Mr. Bergrin, did you find any?

7 MR. LUSTBERG: No, your Honor.

8 MR. BERGRIN: I believe it's in the 302. I read it in
9 the 404(b) materials.

10 THE COURT: You're talking about the proffer by the
11 Government?

12 MR. LUSTBERG: Yes.

13 THE COURT: I'm talking about whether he mentioned
14 this to any FBI agent before the proffer, and when did he make
15 this -- when did he first bring this conversation to anybody's
16 attention.

17 We have 302s all the way up to August of 2011, and my
18 reading of them doesn't have anything in here about this
19 conversation. I can't -- you know, we'll bring out the jury.

20 I don't see it.

21 MR. GAY: Okay, Judge.

22 THE COURT: If I have all the 302s -- obviously if the
23 Government doesn't have it in a 302 report either --

24 MR. GAY: I'm not saying I don't have it, Judge. I'm
25 saying --

1 be opening the door.

2 MR. BERGRIN: What about his prior involvement in
3 drugs and the fact he wasn't charged essentially with heroin
4 distribution?

5 MR. LUSTBERG: In other words, Judge, this has come
6 out of the trial before, that he was a heroin dealer and the
7 Government did elicit that, that he was dealing heroin for Mr.
8 Curry prior to this.

9 MR. GAY: Judge, I just want to say one thing about
10 this, too, which is, if he's going to elicit -- in his opening
11 statement Mr. Bergrin vigorously attacked the credibility of
12 this witness, and I expect he's going to do the same thing
13 here. If he's going to suggest that Mr. Williams only dealt in
14 heroin and therefore could not have possibly dealt in cocaine,
15 that's just wrong.

16 MR. LUSTBERG: No.

17 MR. GAY: If he's going to say that and he's going to
18 argue that somehow --

19 THE COURT: I agree with you.

20 MR. GAY: -- then I think that that is going to open
21 the door. If he's simply going to say: Were you a drug
22 dealer?

23 Yeah.

24 Then, you know, he's already said that, and that's
25 that. But if he's going to make any types of suggestions about

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3

4 UNITED STATES OF AMERICA : Criminal No.
 : 09-cr-369-DMC

5 v. :

6 PAUL W. BERGRIN, : TRANSCRIPT OF
 : TRIAL PROCEEDINGS

7 Defendant. : VOLUME 29
-----x

8

9 Newark, New Jersey
10 March 6, 2013

11

12

13 BEFORE:

14 THE HON. DENNIS M. CAVANAUGH, U.S.D.J.,
15 AND A JURY

16

17

18

19 Reported by:
20 CHARLES P. McGUIRE, C.C.R.
 Official Court Reporter

21

22 Pursuant to Section 753, Title 28, United States
23 Code, the following transcript is certified to be
 an accurate record as taken stenographically in
 the above entitled proceedings.

24

25 s/CHARLES P. McGUIRE, C.C.R.

CHARLES P. McGUIRE, C.C.R.

P2652

1 (The following takes place in open court)

2 THE COURT: All right. Mr. Bergrin, next witness,
3 please.

4 MR. BERGRIN: Rashidah Tarver, Your Honor.

5 THE COURT: Up here, ma'am.

6 Up here, please.

7 THE COURT CLERK: Placing your left hand on the
8 bible, raising your right hand:

9 R A S H I D A H T A R V E R, called as a witness on behalf
10 of the Defendant, and having been duly sworn, testified as
11 follows:

12 THE COURT CLERK: Please be seated.

13 Please state your name, spelling it for the
14 record, both first and last.

15 THE WITNESS: Rashidah, R-a-s-h-i-d-a-h, Tarver,
16 T-a-r-v-e-r.

17 THE COURT: Okay. Mr. Bergrin?

18 MR. BERGRIN: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. BERGRIN:

21 Q. Ms. Tarver, how old are you, ma'am?

22 A. Thirty-five.

23 Q. And where do you live, what city and state?

24 A. Newark, New Jersey.

25 Q. And where were you raised, ma'am?

1 A. Newark, New Jersey.

2 Q. Now, what is your educational background, ma'am?

3 A. Bachelor's degree in education.

4 Q. And where'd you get it from?

5 A. Virginia State University.

6 Q. How long have you -- have you been employed? Are you
7 employed?

8 A. Yeah.

9 Q. Where do you work?

10 A. I work at IEP.

11 Q. And what is that?

12 A. A preschool, early childhood center.

13 THE COURT: You're going to have to keep your
14 voice up a little bit so all the jurors can hear you.

15 THE WITNESS: Okay.

16 Q. Where do you work?

17 A. IEP Early Childhood Center.

18 Q. And how long have you worked there?

19 A. This week, nine years.

20 Q. And what do you do there?

21 A. Preschool teacher.

22 Q. Now, have you had any other employment, ma'am?

23 A. Yes. Newark public schools.

24 Q. And how long did you work for the Newark public
25 schools?

1 A. 1993 until now, until I started working for the
2 preschool.

3 Q. And what did you do for the Newark public schools?

4 A. Working as a teacher, substitute.

5 Q. Now, do you have any criminal history at all?

6 A. No.

7 Q. Now, besides an appearance at the other -- at another
8 trial, had you ever met me in your life?

9 A. No.

10 Q. Do you have any kind of relationship with me
11 whatsoever?

12 A. No.

13 Q. Do you know one Anthony Young?

14 A. Yes.

15 Q. How do you know him?

16 A. He's my ex-boyfriend.

17 Q. And how long did you date Mr. Young? How well do you
18 know him?

19 A. I dated him for about a year.

20 Q. And do you know what time period that was from, ma'am?

21 A. In May 2003 until February, January, 2005.

22 Q. And what was your relationship with him?

23 A. That was my boyfriend.

24 Q. Now, did there come a time when you broke off your
25 relationship?

1 A. Yes.

2 Q. And what was the purpose of that?

3 A. Because --

4 Q. Why?

5 A. Because he was violent, destroyed my car, he set my
6 house on fire.

7 Q. When you say he set your house on fire, what did he
8 do?

9 A. He used lighter fluid, and he set my house on fire.

10 Q. And as a result of that, what happened to your house?

11 A. Gone.

12 Q. Destroyed?

13 A. Destroyed. It was rebuilt, but I don't have it any
14 more.

15 Q. Now, had he ever made any threats against you?

16 A. Yes.

17 Q. Can you explain that, please?

18 A. Two weeks before he set my house on fire, he kicked
19 open my door and told me he was going to kill both of us.

20 Q. When you say both of you, who do you mean?

21 A. Myself and him.

22 Q. And did he have any kind of weapon with him?

23 A. Yes, he did.

24 Q. What kind of weapon did he have?

25 A. It was a gun.

1 Q. Are you sure about that?

2 A. Well, my sister is sure about it because he showed it
3 to her.

4 THE COURT: Well, wait a minute. Wait. Wait.
5 Your sister is sure about it?

6 THE WITNESS: Well, yes.

7 THE COURT: Well, did he show you the gun?

8 THE WITNESS: Well, I had my eyes closed, I was
9 praying the whole time, so I -- no, he did not show me the
10 gun.

11 THE COURT: So you did not see the gun.

12 THE WITNESS: No, I did not.

13 THE COURT: Go ahead, Mr. Bergrin.

14 Q. And what did he threaten to do when he came into the
15 house?

16 A. He was going to kill me and then he was going to kill
17 himself.

18 Q. Do you know when this occurred?

19 A. It was two weeks before the fire, in January 2005.

20 Q. January 2005?

21 A. Yes.

22 Q. Early January 2005?

23 A. Yes.

24 Q. And is that when the threats also occurred?

25 A. There were threats before then.

1 Q. Were you with Mr. Young when he was arrested in
2 approximately July of 2004?

3 A. Yes.

4 Q. And what was he arrested for?

5 A. A gun.

6 Q. And where was the gun?

7 A. It was on him.

8 Q. Now, Mr. Young was arrested?

9 A. Yes.

10 Q. At any time, did Mr. Young ever mention my name?

11 A. No.

12 Q. Did he ever ask you to contact me?

13 A. No.

14 Q. And he never told you he was going to hire me or go to
15 me as a lawyer; correct?

16 A. No.

17 Q. Now, in reference to the arson, it had nothing to do
18 with Mr. Young's girlfriend; correct?

19 A. Girlfriend?

20 MR. GAY: Objection, Judge. How does she know
21 this?

22 THE COURT: Well, yes. I think that's a leading
23 question. Rephrase the question.

24 Q. The arson that occurred at your house where Mr. Young
25 burnt down your house -- correct?

1 A. Yes.

2 Q. -- do you know if Mr. Young had a girlfriend at that
3 time besides yourself?

4 A. Well, yes, someone called me and said she was his
5 girlfriend.

6 Q. Excuse me?

7 A. Yes, someone called me and said she was his
8 girlfriend.

9 Q. And was she present at the time that the fire was set?

10 A. No. Not to my knowledge.

11 Q. Now, what kind of vehicle did you own back in November
12 of 2003 through January of 2005?

13 A. November -- I had a white BMW 325i.

14 Q. And at any time, this white BMW, at any time, did you
15 ever drive Mr. Young or Rakim Baskerville in that car at the
16 same time?

17 A. No, not at the same time. It's impossible.

18 Q. Did you ever drive Mr. Young and Rakim Baskerville to
19 one Frame Tech Auto Shop on 12th Street in Newark?

20 A. To -- I drove Anthony Young there before.

21 Q. Have you ever driven him and Rakim Baskerville ever to
22 that --

23 A. Never. Ever.

24 Q. Now, you talked about Mr. Young crashing in your car.
25 Can you explain what happened with that?

1 A. He stole the truck and he backed into it. That was as
2 a result of the girlfriend.

3 Q. And when was that?

4 A. That was in I believe November, December. I'm not
5 sure around the time, but it was before the fire.

6 Q. Of 2004?

7 A. Yes.

8 Q. 2003?

9 A. 2004.

10 Q. Okay. And whose car did he damage?

11 A. He damaged mine's, my neighbor's, and my mother's, and
12 also the truck, which was in my name.

13 Q. Now, did there come a point in time when Mr. Young
14 called you in reference to the Kemo murder case?

15 A. Yes.

16 Q. Now, how many versions -- did he talk to you about the
17 Kemo murder case?

18 A. He -- yes, he spoke about it.

19 MR. GAY: Judge, I'm going to object on hearsay
20 grounds.

21 THE COURT: Well, he didn't ask what he said yet.
22 He just said did he talk to her about it.

23 MR. GAY: Okay.

24 Q. And when was this; do you remember?

25 A. This was after -- this was after the fire, so it was

1 late January or early February. I'm not sure.

2 Q. And do you know where he was at the time that he
3 called you?

4 A. I don't know exactly where he was.

5 Q. Was he incarcerated? Was he in jail?

6 A. I don't know if he was in jail. No, he didn't call me
7 collect or anything, so I don't think he was in jail.

8 Q. And do you know how he called you, where you were at
9 the time that he called you?

10 A. I was at my aunt's house. He called me on my cell
11 phone.

12 Q. And when he called you on your cell phone, what was
13 your relationship with him at that time?

14 A. There was no relationship. He set my house on fire.
15 There was no relationship.

16 Q. Did he at any time tell you about the incident?

17 A. Yes, he did.

18 Q. And how many versions did he give you?

19 A. He gave me --

20 MR. GAY: Objection, Judge, to the hearsay. Calls
21 for hearsay.

22 A. He gave me three different versions.

23 THE COURT: Hold on. Hold on. Hold it.

24 No, he didn't ask what she said yet.

25 Did he give you more than one version?

1 THE WITNESS: Yes, he did.

2 THE COURT: How many versions?

3 THE WITNESS: Three.

4 THE COURT: Go ahead.

5 Q. And when he gave you these three versions, do you
6 remember what those versions were?

7 A. First, he told me --

8 THE COURT: No. No. No.

9 MR. BERGRIN: Judge, it goes into --

10 THE COURT: Now we're getting into hearsay.

11 MR. BERGRIN: Could I be heard, Judge, in
12 reference to this?

13 THE COURT: Yes.

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1 (The following takes place at sidebar)

2 THE COURT: Yes?

3 MR. BERGRIN: Judge, I'm going into the prior
4 inconsistent statements of Anthony Young. He vehemently
5 denied that he ever said that Hakeem Curry did the murder.
6 He denied that he gave her three different statements. So
7 it's a prior inconsistent statement of Anthony Young, Your
8 Honor.

9 MR. LUSTBERG: Goes to credibility only. This
10 wouldn't be admitted for truth, just to go to his
11 credibility.

12 MR. BERGRIN: Absolutely, Judge.

13 THE COURT: Well, but if it's going to his
14 credibility, why do you have to get the statements out? You
15 just already got the fact that there are three statements.

16 MR. LUSTBERG: Right.

17 THE COURT: If there's three versions, why do we
18 have to get involved in what they are? That's the hearsay.
19 And you got the point across that he gave three versions.

20 MR. LUSTBERG: It's not hearsay.

21 THE COURT: Why is it not hearsay?

22 MR. LUSTBERG: Because it's not being admitted for
23 the truth of what he said. It's being admitted to show that
24 he's telling different stories.

25 THE COURT: You've already got that. She's

1 already said there were three versions. Now, if you get
2 what she said, what was said, then that's the hearsay.

3 No, I'm going to sustain the objection. That's
4 the hearsay. You've got the fact out that he gave three
5 separate versions.

6 MR. BERGRIN: But the prior inconsistent statement
7 is very important because he accuses -- and let me just tell
8 you why, Judge, please, because it's very important. It
9 proves that he --

10 MR. LUSTBERG: Keep your voice down.

11 MR. BERGRIN: I'm sorry.

12 It proves that he accused other individuals of
13 other -- of committing the offense, which goes toward,
14 directly toward, you know, the crux of our defense. He's
15 accusing other individuals of committing the crime, of the
16 offense.

17 MR. GAY: Well, Judge, as far as the -- my
18 understanding of the first statement that he gave is,
19 Malsey, and that's something that's -- he's already
20 admitted, he admitted over and over again. So that's not
21 inconsistent with what he said previously. The Hakeem
22 Curry, I don't recall exactly what the testimony was when he
23 testified, but that is the only arguable one that's
24 inconsistent, because the third version he gives is that, I
25 did it. So, I mean -- so that's it. So the only one --

1 THE COURT: I'm going to sustain the objection.
2 It's hearsay, and I'm not getting into what he told her.

3 (The following takes place in open court)

4 THE COURT: Next question, Mr. Bergrin.

5 BY MR. BERGRIN:

6 Q. Without getting into the content of what he said, you
7 testified that he said he -- he gave you three different
8 versions; correct?

9 A. Yes.

10 Q. Did he accuse three different people of doing the
11 murder?

12 A. Two different people as well as himself.

13 Q. Now, did he ever at any time tell you that he was
14 standing outside as a spectator?

15 A. Yes.

16 Q. Did he ever under any circumstance mention my name in
17 reference to being involved in the Kemo case at all?

18 A. Yes.

19 Q. Did he mention my name, Paul Bergrin?

20 A. He said Paul. He didn't give me a last name.

21 Q. And is this one of the versions that he gave?

22 A. Yes.

23 Q. Now, did he also -- did he say anything to you about
24 witness protection?

25 A. Yes.

1 Q. And did he ask you to go with him?

2 A. Yes.

3 Q. And what did he say to you about that?

4 MR. GAY: Objection to hearsay, Judge.

5 THE COURT: Sustained.

6 Q. Did he tell you whether he was going to go to jail or
7 not?

8 MR. GAY: Objection; leading.

9 THE COURT: Well, it's leading, and it's also
10 containing hearsay. I'll sustain it.

11 Q. The time that he spoke to you, did he ask you to do
12 anything with him?

13 A. He asked me to go with him.

14 Q. And did he ask you to bring anybody else with you?

15 A. When I told him I wasn't going to leave my mother and
16 my family.

17 Q. Did Anthony Young ever expect to go to jail at any
18 time?

19 MR. GAY: Objection, Judge.

20 THE COURT: How would she know that?

21 I'll sustain the objection.

22 MR. BERGRIN: Because -- Judge, can I be heard
23 again?

24 THE COURT: No. No. I'll sustain the objection.

25 Q. When Anthony Young gave you the version, the third

1 version, okay, about him being involved, did he mention
2 anything about him -- there's no way he's ever going to go
3 to jail even if he did the shooting?

4 MR. GAY: Objection; hearsay.

5 THE COURT: It's the same thing. I'll sustain the
6 objection.

7 Q. Do you know a Jamal Baskerville?

8 A. Yes.

9 Q. Who is Jamal Baskerville?

10 A. That's my best friend's husband.

11 Q. And did Anthony Young ever tell you about the shooting
12 of a Nut's girlfriend?

13 A. No.

14 Q. Are you sure about that?

15 A. No.

16 Q. Did he ever mention that Jamal Baskerville and Jamal
17 McNeil or Malsey shot Nut's girlfriend by accident?

18 A. No. No, he -- he told me about -- he said that --
19 well, I don't know if I -- he said that when he wasn't going
20 back to jail, he was gonna tell them that Mal shot that
21 girl. That's the only thing about -- I don't know about
22 Irvington or anybody else's name.

23 Q. And did you at any time ever tell Jamal Baskerville or
24 his wife about that?

25 A. No.

1 Q. You sure about that? You never mentioned it to Jamal
2 Baskerville or Jamal Baskerville's wife; correct?

3 A. No.

4 Q. What Anthony Young told you; correct?

5 A. About -- no. About that, no.

6 Q. When Anthony Young told you he's not going back to
7 jail, do you know what he meant?

8 THE COURT: Wait. Wait. Wait. Wait. We already
9 went through this and I sustained the objection. And I
10 don't think that's what she said.

11 Q. What did you mean when you said that Anthony Young's
12 not going back to jail?

13 MR. GAY: Objection, Judge.

14 MR. BERGRIN: This is the area I meant. That's
15 part of her testimony, Judge.

16 THE COURT: But you're just getting around the
17 same thing about what he said to her. I'm going to sustain
18 the objection.

19 Q. Did you ever tell Agent Brokos that you were afraid of
20 Jamal Baskerville or the Baskervilles?

21 A. No.

22 Q. Did you ever tell Agent Brokos that you have any fear
23 of the Baskervilles?

24 A. No.

25 Q. Did you ever tell Agent Brokos that you don't want to

1 talk to her or testify because you were afraid of the
2 Baskervilles and you have to return to your neighborhood?

3 A. No.

4 Q. Did you ever see Rakim Baskerville in possession of a
5 gun in your car?

6 A. No.

7 Q. Did Anthony Young ever ask you to -- when you drove
8 Anthony Young to Ben's shop, do you know when that was?

9 A. The dates? No, I don't remember.

10 Q. By March of 2004, were you in a relationship with him
11 any more?

12 A. In March two thousand- -- yes.

13 Q. Did you ever remember driving him and Rakim
14 Baskerville to Ben's in March of 2004?

15 A. No, I have never taken them there.

16 Q. When you drove Anthony Young to Ben's, did he ever
17 have a bag in his hand?

18 A. No.

19 Q. Did you ever see him get out of the car and go to a
20 dumpster with a bag in his hand?

21 A. No.

22 Q. When you spoke to the -- how many times did you speak
23 to the F.B.I.?

24 A. Once on the phone, she asked to speak to me, and in
25 the car when she came to pick me up.

7800

1 Q. And when you saw her in your car, were you emotional
2 and distraught and crying?

3 A. I was upset, but I wasn't emotional or distraught, no.

4 Q. Were you hysterical?

5 A. No.

6 Q. If you had been subpoenaed to testify, would you have
7 shown up and testified?

8 A. If I --

9 MR. GAY: Subpoenaed to testify for what?

10 Q. For the Government, for the prosecution. If you were
11 subpoenaed, would you have shown up and testified?

12 A. If I was subpoenaed?

13 Q. Yes.

14 A. Yes, I would have to.

15 Q. And would you have testified truthfully?

16 A. Yes.

17 MR. BERGRIN: One second, Your Honor, please.

18 Thank you very much. No further questions.

19 THE COURT: Cross-examine.

20 MR. GAY: Yes, Judge.

21 CROSS-EXAMINATION

22 BY MR. GAY:

23 Q. Ms. Tarver, you mentioned that you grew up in Newark;
24 is that correct?

25 A. Yes.

1 Q. And where have you lived specifically in Newark?

2 A. Where?

3 Q. Yes.

4 A. I've lived on -- every place I've lived?

5 Q. Well, how about as an adult?

6 A. As an adult, I've lived on 17th Street, and I lived on
7 Avon Avenue, I've lived on Vassar Avenue. Everywhere? I
8 lived on Lyons Avenue.

9 Q. No, that's fine.

10 A. Okay.

11 Q. Just briefly and generally, that's all.

12 A. Okay.

13 Q. And between 2003 and 2005, you were dating Anthony
14 Young?

15 A. Yes.

16 Q. And during that time, where were you working?

17 A. I was working in IEP. I started in 2004, and -- first
18 I was working for Newark public schools also when I first
19 met him, in Madison Avenue School.

20 Q. So around that time, how much money were you making,
21 approximately, around that time frame?

22 A. I don't know. I guess 20, -, 30,000? I don't -- a
23 year.

24 Q. Okay. Where do you live now?

25 A. Where do I live now?

1 Q. Yes.

2 A. Actually, I live in Union.

3 Q. Okay. Now, how was it that you met Anthony Young?

4 A. I met him through my best friend's in-laws.

5 Q. And who would that be?

6 A. That was her husband, Jamal Baskerville.

7 Q. Jamal Baskerville. Okay. So you met Anthony Young
8 through Jamal Baskerville.

9 A. His brother, just the family in general.

10 Q. Okay. So you know the Baskerville family?

11 A. Yes.

12 Q. And who is it that you know in the Baskerville family?

13 A. I know -- I know their mother, the brothers. I know
14 all of them.

15 Q. Okay. Which brothers do you know?

16 A. All of them.

17 Q. Do you know Rakim?

18 A. Rakim, William.

19 Q. William? Okay.

20 A. Hakeem. The sister. You know.

21 Q. Obviously Jamal as well.

22 A. Jamal, yes.

23 Q. And you said you now live in Union, but was there a
24 time when you lived close to the Baskervilles?

25 A. Yes. I live in Newark. I moved to Union because I --

1 I'm staying with -- I didn't want -- I didn't want to come
2 back here.

3 Q. Okay. All right. Well, I can certainly appreciate
4 that.

5 What I'm asking, though, is, did there -- was
6 there any period during your life that you lived --

7 A. Near.

8 Q. -- near the Baskervilles?

9 A. Yes. We all grew up in the same neighborhood, yes.

10 Q. All right, and when was it that you left that area?
11 If at all.

12 A. I left that area in 2003. I moved, but my house was
13 still in Newark. But they -- as an adult.

14 Q. Okay. But in the 2003, 2004, 2005, where was it that
15 you lived then? I'm a little confused.

16 A. 2003, I lived on 19th Street in Newark, New Jersey.

17 Q. And that was close to the Baskervilles.

18 A. That was my house.

19 They -- I don't know exactly where they were
20 living at at that time. I don't remember their address.
21 But, no, it was not near them, but it was around the same
22 neighborhood.

23 Q. The same neighborhood.

24 A. The central ward. Yes.

25 Q. Okay. All right.

1 All right. Now, you met Anthony around when,
2 would you say?

3 A. May 2003.

4 Q. And do you recall whether or not you went to a wedding
5 with Mr. Young sometime in June of 2003?

6 A. Yes.

7 Q. And do you remember whose wedding that was?

8 A. That was Hakeem -- Hakeem's wedding.

9 Q. Hakeem's wedding

10 A. Yes.

11 Q. And where was the wedding?

12 A. In Vegas.

13 Q. Vegas?

14 A. Las Vegas, yes.

15 Q. And how did you get to the wedding?

16 A. Plane.

17 Q. And who did you travel with?

18 A. Anthony Young and Rakim.

19 Q. Rakim Baskerville?

20 A. Yes.

21 Q. And what about, did Rakim Baskerville either have a
22 wife or a girlfriend that traveled with you?

23 A. Yes, he had a girlfriend.

24 Q. Do you remember her name?

25 A. Yes.

1 Q. And what was her name?

2 A. Terrene.

3 Q. And when you traveled out there, did you stay in a
4 hotel or --

5 A. Yes.

6 Q. And who did you stay with?

7 A. I stayed in the room with Anthony.

8 Q. And what about -- did Rakim and his girlfriend stay,
9 not in the same room, but in the hotel?

10 A. Yeah, I believe they were in the same hotel.

11 Q. What about, any of the other Baskervilles at the
12 wedding that you remember?

13 A. No. No, I don't remember if any -- no.

14 Q. Okay. Now, where was the wedding, if you remember?

15 A. It was in the same -- in the Bellagio, in the same
16 hotel.

17 Q. And was it a big wedding, a small wedding? If you
18 remember.

19 A. I don't remember if it was big. I don't know.

20 MR. BERGRIN: Judge, it's beyond the scope, Judge,
21 the wedding.

22 THE COURT: It is. What is --

23 MR. GAY: Well, she was -- it's not beyond the
24 scope because her relationship with Anthony Young was
25 something that was explored on direct. I am continuing to

1 explore her relationship with Anthony Young.

2 THE COURT: And that has something to do with
3 whether they went to a big wedding or a small wedding or --
4 whatever a big or small wedding is.

5 MR. GAY: I won't ask any further questions about
6 the size of the wedding, Judge.

7 Q. Ms. Tarver, I'm going to show you Government Exhibits
8 2320, 21, 22, 23 --

9 THE COURT: Are these in evidence?

10 MR. GAY: Yes, they are --

11 Q. -- 22, 23, 24, 25, 26, 27, 28, and 29 and ask you --

12 MR. BERGRIN: Judge, I have to object. They're
13 wedding pictures, Judge.

14 THE COURT: So what?

15 MR. GAY: What's the objection?

16 THE COURT: I'll allow it.

17 Q. Can you take a look at those, please?

18 THE COURT: You can look.

19 All right. Mr. Gay?

20 Q. Yes. Okay. If we could, 2320; do you see that one,
21 ma'am?

22 A. Yes.

23 Q. And do you recognize what that's a photograph of?

24 A. Yes. That's me in the front and Terrene.

25 Q. Okay. And that was on the trip to the wedding, the

1 flight out?

2 A. Yes.

3 Q. And do you know who took that picture?

4 A. No.

5 Q. Okay.

6 A. It had to be Anthony because it looks like he's next
7 to me.

8 Q. Okay. How about 2323; do you see that one?

9 MR. BERGRIN: Judge, I don't know what the
10 relevancy is, Judge.

11 THE COURT: Yes. Where are we going with this?

12 MR. GAY: Judge, this is relevant to her
13 relationship with Anthony Young.

14 THE COURT: She already said that she went to a
15 wedding with him in Las Vegas for one of the Baskervilles.

16 MR. GAY: It was actually Hakeem Curry, Judge.

17 THE COURT: Pardon?

18 MR. GAY: It was actually Hakeem Curry.

19 THE COURT: Curry. I'm sorry.

20 I don't understand. She's acknowledged that. Why
21 are we going through all of this again?

22 MR. GAY: Well, Judge -- okay. I guess we won't
23 go through each photo.

24 THE COURT: I just don't see the relevancy. Get
25 to the point of what you want to do. She's acknowledged

1 that she went to Las Vegas with Young for the Curry wedding.

2 Showing a picture of them, I don't know what that does.

3 MR. GAY: Okay. I'll move on, then, Judge.

4 BY MR. GAY:

5 Q. Who paid for the flight out?

6 Well, let me ask you this. Did you pay for the
7 flight out, or did Mr. Young?

8 A. I gave him money.

9 Q. You gave him money.

10 A. Yes.

11 Q. Did you pay for yourself and for him?

12 A. No, I paid for myself.

13 Q. Okay. And what about for the hotel?

14 A. I guess he paid for it. I'm not sure. I thought it
15 was a package.

16 Q. Okay. Now, while you were actually at the wedding,
17 are you sitting with Rakim and Terrene, Rakim Baskerville
18 and Terrene?

19 A. At the wedding?

20 Q. Yes.

21 A. I'm not sure.

22 Q. Now you mentioned that you grew up with the
23 Baskervilles; is that correct?

24 A. Yes. In the same neighborhood.

25 Q. Same neighborhood. Yes. Yes, yes. I understand

1 that.

2 A. Okay.

3 Q. And you said that you are best friends with Jamal
4 Baskerville's wife?

5 A. Yes.

6 Q. And you know Rakim Baskerville; is that correct?

7 A. Yes.

8 Q. And William Baskerville?

9 A. Yes.

10 Q. Now, what was Anthony Young's relationship to Rakim
11 Baskerville?

12 A. I -- they were best friends.

13 Q. How about, did he also know Jamal Baskerville?

14 A. Yes.

15 Q. And what about William Baskerville?

16 A. Yes, he knew him.

17 Q. And would you say that they were all friends as well?

18 A. They were friends, yes. I don't think they were best
19 friends, but...

20 Q. Now, what about Hakeem Curry?

21 A. I only know of him from the wedding. I don't know
22 him.

23 Q. Okay. But obviously he was close enough to go to
24 Hakeem Curry's wedding.

25 A. He was. Yeah. He was.

1 Q. Now, you mentioned that you grew up with -- or in the
2 same neighborhood as the Baskervilles. Do you know what
3 Rakim Baskerville did for a living?

4 A. No. I never asked.

5 Q. Never asked? Okay.

6 Do you know where he is now?

7 A. In jail.

8 Q. For what?

9 MR. BERGRIN: Objection, Your Honor.

10 THE COURT: What's the objection?

11 MR. BERGRIN: The relevancy as to what Rakim
12 Baskerville did.

13 THE COURT: No. If she knows.

14 A. I don't know exactly what he's in jail for.

15 Q. What about William Baskerville; do you know what he
16 did for a living?

17 A. No.

18 Q. Okay. Do you know where he is now?

19 A. In jail.

20 Q. What about Hakeem Curry; did you know what he did for
21 a living?

22 A. I knew nothing of him but his name.

23 Q. Do you know where he is now?

24 A. In jail, so I hear.

25 Q. What about Jamal Baskerville; did you know what he did

1 for a living?

2 A. Do I know what he does for a living now?

3 Q. Did you know -- let's say back in the 2003 through
4 2005 time frame, when you were dating Anthony Young, do you
5 know what Jamal Baskerville did for a living around then?

6 A. Yes.

7 Q. And what was it that he did?

8 A. He was working -- he was working at Shop-Rite, I
9 believe.

10 Q. Okay. Anything else that he did?

11 A. That's it.

12 Q. Anything else he did to make money at that time, if
13 you know?

14 A. That was it.

15 Q. Okay. Now, did you know what Anthony Young did for a
16 living?

17 A. I found out, yes.

18 Q. Okay. So what was it you found out he did for a
19 living?

20 A. That he was selling drugs.

21 Q. Okay. And how did you learn he was a drug dealer?

22 A. When I moved out of my house with him into Belleville.

23 Q. Okay. So -- and when did that happen, approximately?

24 A. That was two thousand- -- it was 2004. I don't
25 remember exactly what month, but --

1 Q. This is while you're still dating him; is that
2 correct?

3 A. Yes.

4 Q. All right. So now how is it that you learned he was a
5 drug dealer when you moved out of your house? That was the
6 time frame you learned about it, but how did you actually
7 learn about it?

8 A. When I came home from work and I actually saw it for
9 myself.

10 Q. Okay, and what was it that you saw?

11 A. I saw drugs in my house.

12 Q. Okay, and did you ever know him to carry a gun?

13 A. To -- yes.

14 Q. At the same time? Did he always carry a gun, pretty
15 much?

16 A. No, not that I know of.

17 Q. Okay. So you saw drugs in the house; is that correct?

18 A. Yes.

19 Q. And how often did you see drugs in your house? Once,
20 twice?

21 A. I saw once.

22 Q. Once? Okay.

23 A. Yes.

24 Q. Did you talk to him about it?

25 A. There was nothing to talk about.

1 Q. Did you say, what are you doing bringing drugs into
2 your house?

3 A. Yeah, I asked him about it, yes.

4 Q. Okay, and what was his response?

5 A. This is what he -- this is what I do.

6 Q. Okay. And do you know whether or not -- did you ever
7 see any cash on Mr. Young many money?

8 A. Any -- yes.

9 Q. And did he -- a lot of money, a small amount of money?
10 How much money did you see on him?

11 A. No, I didn't see a lot of money.

12 Q. Okay. You said you were living in Belleville, is that
13 correct, with Mr. Young?

14 A. Yes.

15 Q. Who was paying for the bills at that time?

16 A. Me.

17 Q. You paid for everything.

18 A. Yes.

19 Q. Okay. Now, you also mentioned that you had a vehicle
20 back then, right, a BMW?

21 A. Yes.

22 Q. Any other vehicles that you owned at that time?

23 A. That -- no, I didn't own them, no.

24 Q. Okay. Well, can you explain what you mean by that,
25 you didn't own them?

1 A. Well, he actually had a car in my name.

2 Q. Okay, and what car was that?

3 A. That was -- what year are you talking about?

4 Q. Well, 2003 to 2005.

5 A. There was several vehicles in my name that I've
6 learned about.

7 Q. Okay. That you learned about.

8 A. So I don't know -- yeah. The one that he was driving
9 was a Cadillac Escalade.

10 Q. Okay. I see. But there were a number of vehicles
11 that were in your name?

12 A. Yes.

13 Q. Did you learn about a -- well, let me ask you this.
14 You said that vehicles were put in your name, or you put
15 them in your name?

16 A. No. Well, there was a couple of vehicles, two
17 vehicles that were put in my name.

18 Q. Okay. By you, though.

19 A. With me, yes.

20 Q. When you say put in your name, can you describe what
21 you mean by that?

22 A. He asked me -- he asked me to put the cars in my name,
23 yes.

24 Q. And you agreed to do so.

25 A. Yes, I did.

1 Q. Okay. And was one of those a 1999 Mercedes-Benz?

2 A. Was it a '99? Yes. I don't know if it was a '99. I
3 don't remember the year. But it was silver? Yes.

4 Q. Okay. How about a 1996 Ford? Did you put a 1996 Ford
5 in your name as well?

6 A. No.

7 Q. How about a 2002 Cadillac?

8 A. Escalade?

9 Q. The Escalade, yes.

10 A. Yes.

11 Q. Okay. That one was in your name, too?

12 A. Yes.

13 Q. How about a 1999 Pontiac? Did you put that in your
14 name as well?

15 A. No, I don't remember a Pontiac.

16 Q. All right, how about a 1996 Cadillac? Not the
17 Escalade, a different Cadillac.

18 A. No.

19 Q. How about a 1995 Nissan?

20 A. Excuse me?

21 Q. 1999 Nissan?

22 A. '99 Nissan?

23 Q. Yes.

24 A. No. I had a '95 Nissan Ultima before I got the BMW.

25 Q. Okay, and would that have been in 2003?

1 A. Yes.

2 Q. How about a 2000 Chrysler?

3 A. 2000 LHS?

4 Q. I believe so, yes.

5 A. Yes.

6 Q. You put that one in your name, too?

7 A. Yes, I did.

8 Q. And that was his vehicle.

9 A. Yes.

10 Q. How about a 2000 Chevrolet?

11 A. No.

12 Q. How about a 1995 Chrysler?

13 A. Sebring?

14 Q. I believe so.

15 A. Yes.

16 Q. So that was also his car that you --

17 A. No, that was my car.

18 Q. Oh, that was your car.

19 A. The Sebring, the two-door, 1995 two-door, black.

20 Q. Okay. All right. The Sebring, and that would have
21 been a car that you also owned in 2003?

22 A. Yes.

23 Q. All right. So you owned three vehicles in 2003?

24 A. Not all at the same time.

25 Q. Okay. And what about a 1995 -- a 1999 Pontiac?

1 A. No.

2 Q. Remember? Okay.

3 All right. But the cars you've mentioned, about
4 four or five cars that were Anthony's cars that you put in
5 your name; is that correct?

6 A. Two -- two cars that he drove that were in my name.

7 Q. Okay. But when you say "he drove," who paid for those
8 cars?

9 A. The Escalade?

10 Q. Yes.

11 A. He made one payment, and I made the rest of the
12 payments.

13 Q. Okay. So you owned that vehicle? Is that what you're
14 saying?

15 A. And I -- I just sold that vehicle last year. Yes.

16 Q. Okay. So you -- at that time, you're paying on a
17 BMW --

18 A. The BMW was paid for. There was no payments on the
19 BMW.

20 Q. I see. All right. So you're saying you owned the
21 Cadillac Escalade.

22 A. I didn't own it then. I was making payments. It was
23 financed.

24 Q. And Mr. Young wasn't providing you the money to make
25 the payments?

1 A. No, he was not.

2 Q. Okay. So on a \$20,000 salary, you're making payments
3 on an Escalade?

4 A. I wasn't making exactly \$20,000 that year. I said
5 between 20,000 to 30,000.

6 Q. Okay. I apologize. I thought you said 20.

7 A. Okay.

8 Q. Okay. And what about these other vehicles that you
9 talked about?

10 A. He paid for them.

11 Q. The Sebring and the --

12 A. He paid for that, yes.

13 Q. But they were in your name.

14 A. Yes.

15 Q. So what was the reason that you put these in your
16 name, that they were his vehicles?

17 A. He asked me to put them in his name. He didn't have a
18 license. He didn't have a driver's license.

19 Q. Okay. So you knew he was driving these vehicles,
20 though, without a license?

21 A. Yes.

22 Q. Okay.

23 A. Stupid. Yes.

24 Q. Now, Mr. Bergrin asked you some questions about what
25 if any conversations you had with the F.B.I.

1 A. Yes.

2 Q. Do you remember those questions? Okay. So why don't
3 you tell the jury about -- do you remember having a
4 conversation with an F.B.I. agent?

5 A. Yes.

6 Q. Okay, and do you remember -- let's talk about the --
7 not the phone call, but the one that you said was in the
8 vehicle.

9 A. Yes.

10 Q. Can you describe for the jury what happened?

11 A. She came to pick me up from my job, and we drove
12 downtown here, to Green Street, and she asked me questions
13 about Young, Mr. Young. She asked me did he give me any
14 information.

15 Q. Okay. So at that time -- I'm sorry.

16 So you were picked up at your job. Do you
17 remember what kind of vehicle it was that you got picked up
18 in?

19 A. It was a van.

20 Q. And was it a van with tinted windows?

21 A. I don't remember if it was tinted. I don't know.

22 Q. Do you remember telling the agent that you were
23 concerned that somebody was going to see her picking you up
24 at your job, and therefore, you didn't want to -- you didn't
25 want her to come in a regular F.B.I. vehicle?

1 A. No, I never told her that I didn't want her to come in
2 a regular F.B.I. vehicle, but I did say I don't want people
3 to keep seeing people come to see me. I have nothing to do
4 with anything.

5 Q. Okay. All right. So this meeting that took place,
6 you drove down, was that right very close down here that you
7 had the meeting?

8 A. Yes. Green Street.

9 Q. Green Street.

10 A. Yes.

11 Q. Okay. And that meeting took place inside the van, the
12 F.B.I. van?

13 A. Yes.

14 Q. And was there anybody else there besides you and the
15 agent, if you remember?

16 A. No, but when she wanted me to come inside the Federal
17 Building, I didn't want to go inside the building, and a guy
18 came outside.

19 Q. Okay. So why didn't you want to go inside the Federal
20 Building?

21 A. For what? That's what I was asking. What else do you
22 want me to do?

23 Q. Okay. Now, at the time, did you provide them with any
24 information about Anthony Young or anything that you knew?

25 A. Yes. I told them what he said to me and what he had

1 already done to me.

2 Q. Okay. And what he said to you meaning what? About
3 the murder?

4 A. Yes.

5 Q. All right. Do you remember saying anything about
6 driving Anthony Young and Rakim Baskerville in your car to
7 Ben's shop to the F.B.I. agent?

8 A. I never said anything about driving them to a shop.

9 Q. Okay. Now, as far as the -- you said that you were
10 upset during direct examination during this meeting. You
11 said you weren't hysterical or anything like that, but you
12 were upset. Can you describe why you were upset?

13 A. I was upset because I had nothing to do with anything,
14 and he keep saying that I was there or I know, he keeps
15 putting me involved -- Anthony Young keeps involving me in
16 the case, and I have nothing to do with it.

17 Q. Okay. But you did have some information about the
18 case; right?

19 A. Just the stories that he told me, and --

20 Q. He had told you he murdered somebody; is that correct?

21 A. In the -- after he told me two different stories in
22 the beginning.

23 Q. Okay. So he told you about somebody else murdering
24 somebody, then.

25 A. No. He told me about somebody else being involved in

1 the same murder.

2 Q. Okay. So he did confess to you about his own
3 involvement in a murder; is that correct?

4 A. Yes.

5 Q. And he also at other times told you about somebody
6 else's involvement in that same murder; is that correct?

7 A. Yes, that somebody else did it.

8 Q. Okay. So you did have information about the murder;
9 is that correct?

10 A. From his three different stories? I mean, if you want
11 to say that's information, yes.

12 Q. Yes. So in other words, Anthony Young confessed to
13 you that he had committed a murder; is that correct?

14 A. Yes, correct.

15 Q. And that's what the F.B.I. was asking you about --

16 A. Yes. Okay.

17 Q. -- right, in this meeting.

18 A. Yes.

19 Q. And that was upsetting to you?

20 A. Of course it was upsetting to me, because now he --
21 everything he's done to me, it's like he's just trying to
22 make it go away. But it's okay, I mean, I'm fine.

23 Q. Okay. No, I understand. And I just want to make
24 sure.

25 So at the time, you were upset; is that correct?

1 A. Yes. You saving his butt, and I'm -- me, what am I
2 supposed to do? So, yes, I -- understandably, I should be
3 upset.

4 Q. Okay. Now, did you express any concern to the F.B.I.
5 about your own safety during that meeting?

6 A. About --

7 Q. About your own safety. Did you have any concerns for
8 your safety?

9 A. No, I wasn't -- no.

10 Q. I didn't -- let me make sure you understand the
11 question, ma'am, and I apologize if I didn't say it
12 properly.

13 A. Okay.

14 Q. My question is, did you express to the F.B.I. during
15 that meeting any concerns you had about your safety?

16 A. My safety?

17 Q. Yes.

18 A. No.

19 Q. You never said anything about your safety?

20 A. No.

21 Q. Okay. Do you remember saying anything to the F.B.I.
22 like, You get to go home at night, and I have to go back and
23 live with these people?

24 A. No.

25 Q. Never said anything like that?

1 A. No.

2 Q. Okay. All right. Just one second.

3 Do you remember, Ms. Tarver, whether or not at
4 that meeting, during that meeting, did you get driven back
5 to your job, or how did you get back to your job, if you
6 remember?

7 A. She took me back to my job.

8 Q. Okay. You didn't walk back to the job, didn't storm
9 out of the van after that?

10 A. No. You know how far that is?

11 Q. Okay. You didn't say you were going to take a bus?

12 A. I would. I would have. I told her I would have taken
13 the bus.

14 Q. Okay. But you're sure you got a ride back to your
15 job.

16 A. Yes.

17 MR. GAY: Okay. No further questions at this
18 time.

19 MR. BERGRIN: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. BERGRIN:

22 Q. Ms. Tarver, Mr. Young kept accusing other people of
23 doing the murder; correct?

24 A. Yes.

25 Q. And you didn't believe any version that he gave you;

1 correct?

2 A. No.

3 Q. And why not?

4 A. Because he lied already from the beginning.

5 Q. Did Mr. Young put vehicles in your name without your
6 knowledge also?

7 A. Yes, he did.

8 Q. Did you consider him to be an honest person, a
9 truthful person?

10 A. No.

11 MR. BERGRIN: No further questions. Thank you.

12 THE COURT: Anything further?

13 MR. GAY: Nothing, Judge.

14 THE COURT: Thank you, ma'am. You may step down.
15 Don't forget your purse.

16 THE WITNESS: Thank you.

17 (Witness excused)

18 THE COURT: Who is our next witness?

19 MR. BERGRIN: Julio Izquierdo, Judge.

20 MR. GAY: Judge, can we have a brief sidebar
21 before this witness?

22 THE COURT: Yes.

23

24

25

1 (The following takes place at sidebar)

2 THE COURT: Yes?

3 MR. GAY: Judge, this is one of the witnesses for
4 which we have no date of birth, we have no anything. We
5 have no way of finding a criminal history on this person.

6 THE COURT: Isn't this the neighbor?

7 MR. BERGRIN: Yes, Your Honor.

8 THE COURT: Does he have a criminal history?

9 MR. BERGRIN: No. He's a C.P.A. and CFO for a
10 corporation. As far as I know, he has never been arrested
11 in his life.

12 THE COURT: I'll let you ask him the question.

13 MR. MINISH: Judge, I'm sorry to interrupt, but if
14 he testifies, we have no Jencks on this guy. Apparently he
15 testified on this very subject, and we don't have it.

16 THE COURT: What do you mean, he testified?

17 MR. GAY: He testified -- this is according to
18 what Mr. Bergrin's representation was this morning. He was
19 a witness in the Norberto Velez trial. We don't have any of
20 that stuff.

21 THE COURT: What stuff?

22 MR. GAY: Whatever his prior testimony was.

23 THE COURT: Well, neither does Mr. Bergrin.

24 MR. BERGRIN: That's correct. We applied to the
25 Court for funds to order his testimony, but the Court denied

1 it.

2 THE COURT: That's right.

3 MR. GAY: There's a little difference, though,
4 Judge. Mr. Bergrin was actually present during that. We're
5 in a different position. He was the one that questioned him
6 at this trial, so he knows exactly what he said. We have no
7 idea what he said. We need materials.

8 MR. BERGRIN: I made a proffer. There is no
9 statements, Judge.

10 THE COURT: Well, what do you want to do?

11 MR. MINISH: Order the testimony.

12 MR. GAY: Yes. I mean, if we were -- if we knew
13 who this person was, we could have done something to order
14 this testimony. But we get this literally at the last
15 minute, we can't do anything with this, Judge.

16 THE COURT: As I understand it, he's going to
17 testify for the limited purpose of just saying what you told
18 me this morning --

19 MR. BERGRIN: Yes.

20 THE COURT: -- about Ms. Velez going into the
21 Hughes and parking in the driveway rather than on the
22 street, and that's it.

23 MR. BERGRIN: Yes, sir.

24 THE COURT: Okay. Well, I'm going to allow it.

25 MR. BERGRIN: Thank you.

1 THE COURT: That's what it's going to be limited
2 to.

3 MR. BERGRIN: Yes, sir.

4 (The following takes place in open court)

5 THE COURT CLERK: Please stand.

6 Placing your left hand on the bible, raising your
7 right hand:

8 J U L I O I Z Q U I E R D O, called as a witness on behalf
9 of the Defendant, and having been duly sworn, testified as
10 follows:

11 THE COURT CLERK: Please be seated.

12 Please state your name, spelling it for the
13 record.

14 THE WITNESS: Julio Izquierdo, J-u-l-i-o,
15 I-z-q-u-i-e-r-d-o.

16 THE COURT: Go ahead, Mr. Bergrin.

17 MR. BERGRIN: Thank you.

18 DIRECT EXAMINATION

19 BY MR. BERGRIN:

20 Q. Mr. Izquierdo, where do you live, sir?

21 A. I live at 357 Little Street in Belleville.

22 Q. You have to speak up. Every juror has to hear what
23 you say.

24 A. 357 Little Street in Belleville.

25 Q. And how long have you lived there, sir?

December 2, 2015

Larry and Charlotte:

I have meticulously scrutinized the Hakeem Curry transcripts and there are none that inculcate me. On the contrary, there are a multitude of recordings which unequivocally prove Anthony Young was testifying falsely, that eviscerate the government's theory and position, that at the alleged Kemo street meeting, Bergris informed Jamal Baskerville, Jamal McNeil, Hakeem Curry, Anthony Young and Rakeem Baskerville, that:

- (1) Will Baskerville was facing life in prison;
- (2) That if they got rid of Kemo the gov't. would have no case;
- (3) No Kemo No Case;
- (4) That the group trusted Paul and Paul was their advisor; and
- (5) They acted to get rid of ~~Paul~~ Kemo, so Paul could try the case and Will would be acquitted.

The gov't buried - intentionally these recorded conversations with approximately 40,000 other recordings. Most importantly, they knew Young's testimony was false, they knew it was wholly inconsistent with the recordings and they were obligated to not only supply the recordings, but specifically

and explicitly make these exculpatory recordings known to defense.

Larry: please give me your legal opinion on my position and whether I have a convincing Brady, possibly Napue, Due Process legal argument for 2255.

Moreover, keep in mind that we need to transcribe these recordings AND that Young testified and got it posited that this non-existent meeting occurred on 12-4-03 or thereafter.

(1). 11-25-03 - Call 1,339,406, at 13:22:12.

Curry tells caller he is going to a concert that evening, leaving for North Carolina for 3-4 days on 11/26/03. So when AT testified at Barker/Kille trial meeting occurred 3-4 days after Will's arrest, they knew it was false.

(2). 11-25-03, call 711475. Harif Barker/Kille calls Curry at 13:31:36, to inform him Will was arrested. Curry did not know, so Curry could not have attended any meeting at the Barker/Killes on the morning of 11/25 as AT testified.

(3). 11-25-03, call 986,037. I called Curry after Debra Barker/Kille called me to let him know Will was arrested. Curry did not have any idea why; so again AT 2671

lied about any meeting.

4. 11-25-03, call 346671 at 17:05:02.

Curry calls Rakeem Bosterville to inquire of him as to who is Kemo. This call occurs after I came from U.S. Mag. Ct on Intel Ap.

This proves AY lied when he testified at Willis trial that RB was in the front seat of H.C.'s car and that RB figured out who Kemo was. RB says, "I think he's from Irvington."

5. 11-25-03, call 4461206 at 17:34:44 -

H.C. calls Al Hamid Bosterville and says "I aint seen you nor talked to you. who the fuck is Kemo or some shit. Proves again, Kemo was not identified in Curry's car as AY stated & testified to; also, that AY lied about Al Hamid being present at meeting that morning."

1-26 6. 11-26-03, call ²³¹⁴⁷⁵~~454195~~, 15:28:02 16:29:45
my after
rest:

H.C. tells Al Hamid he is going to lawyer's office to find out what the fuck is going on. I tell H.C. in call 127781 at 15:00:24 that I will be back in 15 minutes & we will meet at office. No Street meeting as AY testified and lied about.

*

(7). 18:40:52, call 995 926. Rally at 17:38.33.

HC is leaving my office after we met. Not on the street with the others as AY testified. This is on 11-26.

HC calls Jarvis Webb and informs him he just came from Paul's office and he asked me what Will was facing. Paul said 20 years and HC then said, "What's he really facing and Paul said about 12. HC said Paul said he said about 100 grams and Webb said on 12 he does 10.

Gov't knew I never attended any meeting on the street, said Will would get life if Kemo testified and that we were going to trial.

(8). Again, at 18:56:53, call 244,900. 11-26.

Curry confirms he is going tonight to North Carolina for Thanksgiving. So no meeting could have occurred 3-4 days after arrest as Young Swane is testifying.

(9). December 4, 2003 7:13 p.m. Proves no meeting on street as gov't alleged, on this date.

(a). I called H.C. to advise him I was disappointed that Will was not given bail at today's detention hearing.

(b). Curry asks me what Will is facing and

after detention hearing I say 18 years; but if he pleads I could get it down to 13 years.

This is 2d time I quoted 12-13 years.

HC would not be asking me these questions if we had a meeting as AT testified and I told them will would be doing life, unless we got rid of Kemo.

I also told Curry "I would do my best and Curry told me to fight for him - No discussion about Kemo-trial. We talked plea and I fully advised on case. This proves AT lied about meeting - what I supposedly said. I told HC I would speak to him tomorrow! It also proves the govt lied in their summation & they knew AT lied when they told jury the meeting was on 12-4-03.

(10) 12-7-03 - (3 DAYS LATER)

H.C. + Rakeem Bostwick have a recorded conversation.

R.B. is very upset with me and tells H.C. I am a "dumb motherfucker" because I let someone read a file in my office and that he is not going to deal with me anymore and he is,

finding another lawyer.

Obviously, there was no meeting up to this date or it would've been mentioned + they did not trust me; so they are not going to involve me in a murder.

& This is why gov't hid + buried recordings in an avalanche of conversations.

We know there was no meeting prior because of call - 1261893 at 13:36:42 wherein Curry told a B/m he did not even come out yesterday. (12-6-03).

(11) On 12-8-03, I called H.C. at 19:43:46, call 433370 and tell him I need to speak to him tomorrow, 12-9-03 at around 4pm.

Again, proves we never met on street.

(12) On 12-9-03, call 2182372, at 14:48:46, Curry asks me what time I will be in the office - No street meetings and I tell him after 4pm because I am on trial and am summing up at 2pm.

(13) I knew H.C. was under investigation and being watched. I would never meet him on the street nor participate in the murder of an

informant.

On 12-10-03, call 659940, at 15:44:53, I tell H.C. to be very careful; that he is under investigation and not to trust anyone. I tell him "not to come back to me and tell me I didn't ^{warn} him."

On 12-12-03, call 327472, at 14:35:38, I tell H.C. he is under investigation.

On 12-12-03, calls 914,555 at 23:17:37 and 1,364,264 at 23:23:19, H.C. tells mother police are watching him.

(13) On 2-18-04, - 2 weeks before Kemo, Curry is telling a B.F. not to use me as a lawyer, in call 1032806, at 13:26:31.

If I was involved in murder or had knowledge, there's no way they would alienate me.

at 14:33:14, call 296807, H.C. tells another B.M. not to use me as the attorney.

at 235663, time 14:35:44, H.C. tells a B.M. that Scott Berlin will take care of care. That Paul is full of shit.

at 16:57:20, call 580272, H.C. tells B.M. that Jihad said go see Paul, but Paul's not going to do anything. Paul's full of shit.

* at 17:14:08, call 941, 941 -
 Very critical - This is again on 2-18. Two
 weeks prior to Kenos murder -

H.C. tells B.M. Scotty Berlin will
 take care of his case. That he's not using me.

Paul don't listen to shit, I aint messing with
that man, meaning Paul. He don't listen.

This is proof they would not trust me with
 a murder.

* at 22:06:44, call 1143 277 H.C.
 talks again about me and states, Paul is playing to
 many games. Paul be doing some crazy shit. He
 don't go to court. I aint fucking with that nigger
 (ME) anymore. I DON'T FUCK WITH
 PAUL anymore. DON'T FUCK WITH PAUL.
 I DON'T RECOMMEND THAT GUY.

This proves I was not part of a
 murder on 3-4-04. They have nothing to do with
 me and I am no longer part of their group.

* 23:47.35 - Call 575 4186

Curry says I aint never taking
 anyone up there to Paul's anymore. HE AINT
 27/74

gonna listen to what I say anymore. Paul's crazy.

This chronology of calls proves my innocence.

Please show to Kirk & Lavinia and give me your opinions. This is why the gov't buried the calls.

Paul

P.S. I missed this important call!

(2-20-04), call 1203305, at 16:34:13.

HG calls me crazy and most importantly - Paul's about "copping out" - Taking money and pleading guilty. Curry wants me fired + new lawyer on case. He says he is not fucking with me.

Different lawyers, one goal: Clear convicted tank commander

Paul Bergin and Thomas Roughneen have little in common, except the criminal law and the Army.

But they are using their knowledge of both to help James Parker, 33, a court-martialed sergeant the lawyers say is a hero made scapegoat for a friendly-fire incident that killed another American soldier in Iraq.

Bergin, defense counsel for Abu Ghraib defendant Javal Davis, of Roselle, is a brash, provocative and often controversial criminal defense attorney from Newark who accused political leaders of covering up the prison scandal.

Roughneen, an Essex County prosecutor, is a quiet, self-effacing Iraq combat veteran who devotes most of his spare time to trying to help the families of National Guard troops



**BOB
BRAUN**

deployed to the war and urges his friends to pray for fellow soldiers.

"I shouldn't even be talking about this case," says Roughneen, a captain in the Army Reserve whose three brothers also have served in Iraq.

"No, we should be yelling about this case," insists Bergin. "Never mind just talking about it. This is just another incident in which a poor but brave young soldier has been

blamed for the mistakes of his superiors in the Army."

Parker, a decorated career soldier and

tank commander from Nashville, was convicted Thanksgiving Day in a court-martial in Germany of negligent homicide in the Jan. 13, 2005, death of Gunnar Becker, a 19-year-old member of his crew.

According to prosecutors, Parker failed to follow regulations requiring him to clear his tank's .50-caliber machine gun of ammunition before entering a forward operating base. When crew members tried to detach the gun, it went off, killing Becker. Parker, as tank commander, was held responsible.

Roughneen was appointed Parker's defense counsel. Parker was acquitted of two charges related to the soldier's death but was convicted of one, and that was enough to send him to the brig in Mannheim, Germany.

"It was, at worst, an accident," Roughneen insists.

The reserve officer wanted to appeal the case but was removed from it by his commanders. But not before he sent long descriptions of what happened to military newspapers, including Stars and Stripes, which has published two stories on the case.

Roughneen knew Bergin — they were adversaries in criminal cases in the courts in Essex County — and he also followed the defense lawyer's work in Abu Ghraib.

"Tom knew my interest in military justice," says Bergin, also a former Army lawyer, "so he talked to me about it. I was outraged. I wanted to know what I could do."

So Bergin took the case, flying to Germany. (See BRAUN, Page 19)



James Parker's trial "was a travesty," his attorney said.

BRAUN

CONTINUED FROM PAGE 15

many to assure Parker's wife she didn't have to pay him. The Parkers have six children, ranging in age from four months to 14.

"It was like a miracle," DelBessia Parker said in a telephone interview. She and the children live in Army housing. "I hope he can do something."

What Bergin has done is file a clemency petition with Parker's commanding officer. In such cases, a hearing for a conventional appeal is not automatically granted. Bergin says he will try a formal appeal if the clemency request is denied.

The petition paints a starkly dif-



commander had done.

"He was listening to the screams of American soldiers under fire and getting ready to go back into the fight," Bergin says.

But his crew members saw the other commander shut down his tank for the night and, despite Parker's orders, decided to dismount the tank's guns. That's when it fired, killing Becker, a resident of Forestburg, S.D.

"No one was eager to go back, but James Parker was a true warrior," Bergin says. "For that, he was court-martialed and punished."

Bergin contends others who were culpable conspired to shift all the blame on Parker. "They created an avalanche of lies that consumed him," Bergin says.

Bergin's petition also contains

BRAUN

CONTINUED FROM PAGE 15

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The petition paints a starkly different picture of what happened that day near Mosul in northern Iraq. Parker's tank and another were engaged in a firefight with insurgents. The other tank — commanded by a senior NCO — broke off and headed toward the base, ostensibly for refueling. Parker was required to accompany the other tank, Bergrin contends, but he expected both tanks to return to the fighting immediately after refueling.

The lawyer says Parker ordered his inexperienced crew — he was supposed to have been given more experienced soldiers, but wasn't — not to handle the weapons because they were going to return to the fight. Meanwhile, Bergrin says, the other tank commander, more experienced and higher-ranking than Parker, got out of his vehicle and went back to his tent to go to sleep.



The Parker family, clockwise from bottom: son James, 5; daughters Jameesha, 14, and ReShays, 10; James Parker, son Damien, 11; daughter Jarassia, 8; and mom DelRes-sia. The couple's 4-month-old is not pictured.

Because Parker, in his first fight as a tank commander, was in radio contact with units under attack, he did not know what his fellow tank

commander had done.

"He was listening to the screams of American soldiers under fire and getting ready to go back into the fight," Bergrin says.

But his crew members saw the other commander shut down his tank for the night and, despite Parker's orders, decided to dismount the tank's guns. That's when it fired, killing Becker, a resident of Forestburg, S.D.

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Bergrin contends others who were culpable conspired to shift all the blame on Parker. "They created an avalanche of lies that consumed him," Bergrin says.

Bergrin's petition also contains a number of legal points, including the alleged bias of the judge, the withholding of evidence and a rushed trial.

"The trial was a travesty," says Bergrin.

Parker's sentence was light — only six months. He also was demoted to private and, says Bergrin, will not be allowed to re-enlist despite his wish to be a career soldier.

"His life was destroyed," says his wife, who says she doesn't have the money to visit her husband as often as she wants to — it's a three-hour drive. "His children miss him. His new daughter doesn't even know him."

Bob Braun's columns appear Monday and Thursday. He may be reached at (973) 392-4281 or at bobbraun@verizon.net.

The New York Times
nytimes.com



January 11, 2007

A Tough Defense Lawyer Finds He's in Need of One

By ANEMONA HARTOCOLLIS

Back in the 1980s, Paul W. Bergrin was a hard-hitting prosecutor in Essex County, N.J., who then became an assistant United States attorney in Newark.

Later, as a defense lawyer, he was known for taking on unpopular causes, including defending a sergeant convicted of abusing prisoners in Abu Ghraib and an American soldier accused in the murders of three Iraqi men.

But yesterday, he found himself on the opposite side of the law, as prosecutors charged him with money laundering and with running a call-girl service in Manhattan after its owner, who was his client, had been arrested.

Mr. Bergrin was accused of running \$800,000 in credit card receipts through two shell companies over six months in 2004 and 2005 to disguise the fact that the money was the proceeds of a TriBeCa-based call-girl service called NY Confidential, prosecutors in Manhattan said.

They said that when the owner of the escort service, Jason Itzler, was arrested in January 2005, Mr. Bergrin, who was Mr. Itzler's lawyer, and two associates took over the business, keeping it going for two months before business flagged and the company was dissolved.

Eugene Hurley, an assistant district attorney, said at a news conference yesterday in Manhattan that one indication that Mr. Bergrin controlled the escort service was "the frequency with which he and friends he brought to the agency were given free sex."

Prosecutors also charged that Mr. Bergrin was receiving as much as \$5,000 a week in cash payments from the proceeds of the escort service.

John Edwards Tiffany, Mr. Bergrin's lawyer and friend of 15 years, said yesterday that he was shocked at the charges, and could not help wondering whether Mr. Bergrin had invited some kind of retaliation by stepping on too many toes as an aggressive defense lawyer.

"Sometimes you're very good at what you do, you can rankle a few individuals," Mr. Tiffany said. "There are prosecutors out there that may have very distinct opinions about Mr. Bergrin. They should worry less about getting their names in the paper, and focus on their job, which is to prosecute crimes, not to attempt to tarnish or belittle the reputation of an attorney."

Mr. Tiffany said that Mr. Bergrin, 51, is a retired Army Reserve officer and the married father of two children, and has represented military personnel in more than 100 courts-martial. He was the lawyer for

Sgt. Javal Davis, who was sentenced to six months in a military prison in 2005, after he admitted abusing detainees at Abu Ghraib.

He is currently the lawyer for Pfc. Corey R. Clagett, one of a group of soldiers accused of killing three Iraqi men last May.

In 2004, the United States attorney's office in Newark tried to have Mr. Bergrin removed from a drug case, saying that he had passed along the name of a government informant, who was later killed, to a drug gang, The Associated Press reported at the time. Mr. Bergrin, who lives in Morganville, N.J., said he passed on the name as part of his duty to evaluate evidence.

NY Confidential became notorious in July 2005 when Natalie McLennan, who said she was one of its call-girls, posed for the cover of New York Magazine.

Prosecutors said Mr. Bergrin, his law clerk, James Cortopassi, Mr. Itzler and others laundered prostitution receipts through two shell companies, Gotham Steak and TriBeCa Models. They said Mr. Bergrin also had falsely claimed that Mr. Itzler was a paralegal on the Abu Ghraib case.

Mr. Bergrin and Mr. Itzler went to the same law school in Florida, prosecutors said, although Mr. Itzler was not a practicing lawyer. Mr. Itzler has pleaded guilty to money laundering and attempted promotion of prostitution, and is expected to be sentenced to up to three years in prison, prosecutors said.

New York prosecutors are trying to extradite Mr. Bergrin from New Jersey, where he was arrested yesterday and later released on \$500,000 bail, his lawyer said.

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Pair linked to hookers

Lawyer, Marlboro neighbor indicted



Lawyer Paul W. Bergrin (above left) and James Cortopassi (above right), both of Marlboro, are accused of running an escort service that featured Natalie McLennan (shown on magazine cover). (AP PHOTOS)

By **JAMES A. QUIRK**
STAFF WRITER

MARLBORO — For 10 years, James Cortopassi had a mentor other aspiring lawyers could only dream of.

Just next door to the Cortopassi family, in a secluded cul-de-sac tucked within the affluent Hamptons development, lives Paul W. Bergrin, a former assistant U.S. attorney and Essex County assist-

ant prosecutor who rose to become one of New Jersey's more prominent criminal defense lawyers.

Bergrin took his young neighbor under his wing, allowing Cortopassi from the age of 17 to work as a law clerk in his prestigious Manhattan office.

But according to Manhattan District Attorney Robert M. Morgenthau, Bergrin, 51, was much more than just a friendly

neighbor showing his young pupil the ropes of the legal world. He was also the majordomo of an upscale Manhattan brothel, and Cortopassi, now 27, acted as his eager right-hand man.

On Jan. 10, Bergrin was indicted on charges that he was at the helm of the glitzy escort agency, whose star hooker earned

See **Lawyer**, Page A5

P267581

Lawyer, neighbor charged in probe of N.Y. brothel

FROM PAGE A1

\$2,000 an hour and was featured on the cover of New York magazine in July 2005 with an "N.Y.'s #1 escort reveals all" exclusive.

Cortopassi was charged with actively running the brothel, known as NY Confidential, while pretending to be a paralegal working with Bergrin's high-profile Abu Ghraib scandal case, and posing as an attorney to help get another manager of the brothel out on parole.

Admired Bergrin

James Cortopassi now could face a future much different than what his parents dreamed for him. Last week, Stephen Cortopassi put up his home to post the \$150,000 necessary for his son to be free on bail. James Cortopassi flew to New York City from Michigan State University College of Law, where he is a second-year student, to surrender to authorities on the charges against him.

"He really idolized Paul Bergrin," said James DiPietro, Cortopassi's attorney. "Mr. Bergrin has a very good reputation as being a top-flight criminal defense attorney. This young lad looked up to him as Superman, and believed that whatever he was told to do, if Mr. Bergrin told him to do it, it was OK."

Cortopassi has since entered a not guilty plea and will take semester off, his lawyer said. Bergrin has also pleaded not guilty and is free on \$1 million bail.

DiPietro dismissed the charges against his client as an unfortunate matter of working with the wrong person, in the wrong place, at the wrong time.

"I spoke to his law school and told them to be very supportive of Jim Cortopassi and stay with him," DiPietro said. "We all read about other cases with other students in other universities, and often the truth is not what is accused at the start. I'm very hopeful that will be the case with my client — that this will be the last chapter of his involvement in this case."

The charges against Bergrin

and Cortopassi read like the script of a sleazy, made-for-late-night TV movie, and are all the more bizarre because of the stature of its central figure.

Stellar legal career

Born in Brooklyn in 1955, Bergrin worked for the Broward County State Attorney's Office in Fort Lauderdale, Fla., and the U.S. Army as a special assistant to the U.S. attorney in U.S. Magistrates Court in Virginia. In 1983, he became an Essex County assistant prosecutor and was assigned to the criminal trial division and homicide squad — a position he held for four years. In 1987, Bergrin joined the Office of the U.S. Attorney for New Jersey. Once again, he was assigned to the criminal division, and for three years handled numerous matters pertaining to the racketeering statute.

Bergrin left public service in 1990, when he became a partner in the Pope, Bergrin & Verdesco law firm. For the next 15 years, according to the biography on his company Web site, Bergrin handled 25 murder cases, three death penalty cases, and represented the Newark PBA, several other municipal police departments and high-profile rappers such as Queen Latifah and Naughty By Nature.

Through all of this, from 1980 to 2003, Bergrin served 11 tours of duty with the U.S. Army, on active duty and in the reserves, reaching the rank of major. Bergrin's military career brought him his biggest cases: representing a New Jersey Army reservist implicated in the Abu Ghraib abuse case and an American soldier accused of killing three Iraqis.

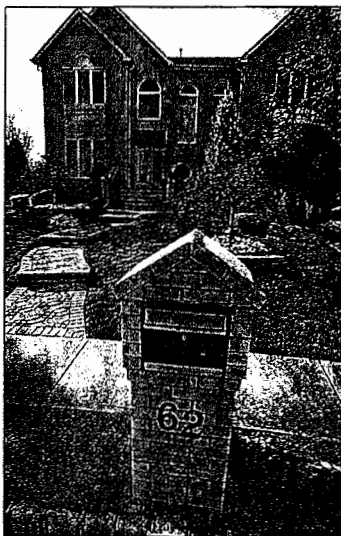
The indictments

Now, Bergrin and Cortopassi face charges in two indictments. The first charges both men with engaging in money laundering, promoting prostitution, conspiracy and misconduct by an attorney between July 27, 2004, and Jan. 11, 2005. The second indictment contains similar charges for actions taken between Jan. 12, 2005, and March 2, 2005.

Also indicted was Hiram



James Cortopassi lived with his family in the house at left, while lawyer Paul W. Bergrin's house (right) was on the same cul-de-sac in Marlboro. (STAFF PHOTOS: MICHAEL J. TREOLA)



Ortiz, a former New Jersey state trooper and owner of a tavern in Bloomfield.

Bergrin and Cortopassi are accused of running NY Confidential, which was managed by Jason Itzler, 39, a man who left law school to run the brothel, flaunted his self-proclaimed status as "the king of New York pimps" and bragged to the New York Post that he was untouchable. Itzler's girlfriend was Natalie McLennan, the \$2,000-an-hour hooker whose services Itzler described as "Rocket Fuel for Winners."

Itzler's fortunes changed when he was arrested Jan. 10, 2005. He later pleaded guilty to money laundering and the attempted promoting of prostitution, and was sentenced to 1½ to 3 years in prison.

Itzler first retained Bergrin as his attorney for another matter in early 2005. It's not clear what relationship Itzler and Bergrin had prior to this; Itzler's attorney, Barry Agulnick, said his client most likely chose Bergrin to represent him based on reputation alone.

A paralegal job

According to the indictment, Bergrin, Cortopassi, Itzler and others laundered more than \$800,000 in credit card proceeds from prostitution "dates" arranged by NY Confidential. The money flowed through several shell companies — Gotham Steak LLC and Tribeca Models LLC — before landing in the managers' pockets. Checks from Tribeca Models were written to pay escorts and employees — the rest went to Itzler, Bergrin and Cortopassi.

"The investigation also revealed that Bergrin received large cash payments from the escort business," the indictment states.

While Itzler was on parole for another matter, Bergrin claimed that Itzler worked as a paralegal on one of his Abu Ghraib military prosecutions, in which Bergrin defended New Jersey Army Reservist Sgt. Javal Davis. Bergrin did this, the indictment states, to get Itzler a more relaxed curfew on his parole. This would allow

Itzler to continue to manage NY Confidential at night.

Itzler told his parole officers that he was working as a paralegal, and Bergrin corroborated it with fake paychecks and letters. And, when Itzler was arrested for a curfew violation, Cortopassi went to the parole office posing as an attorney and helped back up Itzler's false claims, the indictment states.

This fraud continued in January 2005, when Bergrin falsely claimed in Itzler's bail application that his client had been working with him for 12 to 14

hours a day for months, the indictment states.

Itzler's Jan. 10, 2005, arrest did nothing to shut NY Confidential down; prosecutors claim Bergrin simply took the helm of the brothel, conspiring with Cortopassi and Ortiz to keep the entire operation afloat.

Keeping it going

The three men met with Itzler's stable of hookers and "convinced them to keep on working," the indictment states. To avoid scrutiny from the police, the men moved the brothel's location from its old digs — three blocks away from City Hall — to a posh apartment at 247 East 32 St., which Itzler had leased previously to use as a location for his hookers, the indictment states.

Prosecutors say it was Ortiz and a former escort who handled the telephone bookings for the "dates." Most of these liaisons were paid for in cash, even though the average price of an NY Confidential hooker was \$1,000 an hour. Some were paid for with a credit card, which Ortiz would run through using his merchant processing account for his tavern, Scores Sports Cafe, as though the payments were for routine charges incurred there, the indictment states.

Bergrin and Cortopassi's next scheduled appearance in New York State Supreme Court in Manhattan is Feb. 8. Both men face a combined maximum of 38 years in prison.

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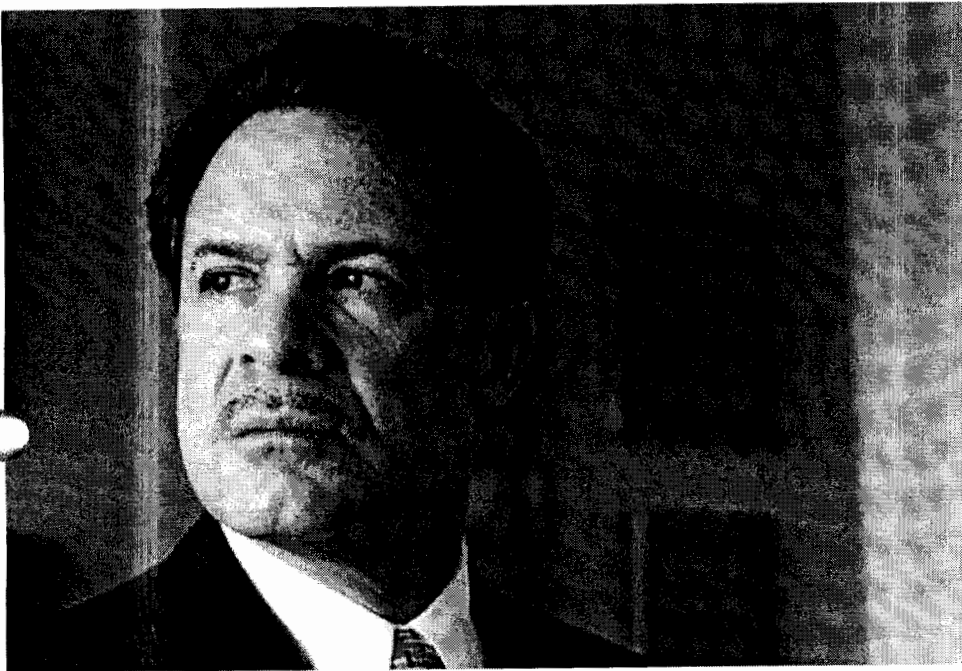
N.J. lawyer pleads guilty to helping run N.Y. prostitution ring

Joe Ryan/The Star-Ledger By Joe Ryan/The Star-Ledger

on May 04, 2009 at 7:29 PM, updated May 04, 2009 at 7:41 PM

A former federal prosecutor who became one of New Jersey's brashest and best-known criminal defense lawyers pleaded guilty today to helping run an exclusive Manhattan call-girl ring.

Paul Bergrin, 53, of Marlboro Township, admitted in New York State Supreme Court to conspiracy to promote prostitution through NY Confidential, a now-defunct \$1,000-per-hour escort service founded by Jason Itzler, who once proclaimed himself "King of all Pimps."



Sarah Rice/For The Star-Ledger

2007 photo of Paul Bergrin, a former federal prosecutor who today pleaded guilty to helping run an exclusive Manhattan call-girl ring.

Bergrin, a former Army major with a thin mustache, wore a dark grey pinstriped suit and red tie today as he stood before Judge Thomas Farber in lower Manhattan. Afterward, he expressed relief at pleading guilty to a misdemeanor.

"I'm just glad all the felonies have been dismissed," said Bergrin, whose former clients include rap stars, gangsters and a former soldier accused of abusing detainees at Iraq's Abu Ghraib prison.

A former New Jersey state trooper also pleaded guilty in the case today. Hiram Ortiz, 43, admitted to attempted money laundering.

Based in a TriBeCa loft, NY Confidential was among Manhattan's highest-profile prostitution services. Itzler advertised on titanium business cards and was a mainstay of the city's tabloid pages.

His former star prostitute - dubbed the "incomparable Natalia" -- once appeared on the cover of New York Magazine as Gotham's top escort.

Itzler also claims to have launched the call-girl career of Ashley Youmans. The Jersey native is better known as Ashley Alexandra Dupre, the escort allegedly at the epicenter of the scandal that derailed ex-New York Gov. Eliot Spitzer.

Bergrin grew up in Brooklyn, the son of a New York City police officer. After a stint in the Army, he worked homicide cases for the Essex County Prosecutor's Office before becoming an assistant U.S. attorney in Newark.

As a defense lawyer, Bergrin had a reputation as a hard-charging and outspoken litigator who represented the famous and infamous. His clients included Queen Latifah, Newark drug dealers, rap mogul Lil' Kim, and Heather "Hedy" DiCarlo - the former Mrs. New Jersey accused of bouncing more than \$70,000 in checks.

Bergrin and Itzler met in 2001, when the alleged ex-pimp called the lawyer after being arrested at Newark Liberty International Airport for trying to smuggle the drug Ecstasy into the country. He served seven months in jail and was released in 2003, according to state records.

Within months of being freed, Itzler launched NY Confidential out of a building at 54th and Sixth Avenue.

But Itzler, who was on parole, needed a legitimate job. Authorities say Bergrin provided the cover by fraudulently listing him as a paralegal in his office.

NY Confidential later moved to TriBeCa and imploded in 2005, when authorities raided its headquarters. They arrested Itzler days later at the Gansevoort Hotel in Chelsea.

Itzler pleaded guilty to money laundering and promoting prostitution in 2006. He was sentenced to 18 months in prison.

Authorities say that's when Bergrin took over the business. The lawyer was arrested in 2007, charged in indictments with money laundering, conspiracy, promoting prostitution and misconduct by an attorney.

But in the end, prosecutors agreed to much lesser charges. Bergrin faces up to three years probation and must forfeit \$50,000 when sentenced Sept. 15. He did not plead guilty to a felony and, consequently, will not automatically lose his right to practice law, said his attorney, Gerald Shargel.

Ortiz faces up to one year conditional discharge, which is similar to probation, said his lawyer, John Tiffany. The former state trooper is already on five years probation in New Jersey after pleading guilty to receiving stolen Rolex watches in a unrelated crime linked to a jewelry-theft ring.

As he walked out of the courthouse yesterday, Bergrin's lawyer said attorneys must walk a fine line when representing clients who break the law. Ultimately, he said, Bergrin's transgression was trivial.

The New York Times

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IN THEATERS JULY 29

May 21, 2009

Lawyer's Ways Spelled Murder, U.S. Is Charging

By DAVID KOCIENIEWSKI

NEWARK — He spent a decade as a top prosecutor, trying murder cases in New Jersey, drug cases in federal court and a wide range of offenses in the military justice system.

He went on to become one of the state's most prominent defense lawyers, representing clients as varied as Abu Ghraib defendants, the rap stars Lil' Kim and Queen Latifah and members of Newark's notorious street gangs.

But federal authorities charged Wednesday that the success their former colleague, Paul Bergrin, had in defending drug dealers and gang leaders was based on a brutal calculus that he had boiled down to a phrase he repeated like a slogan: No witnesses, no case.

In an indictment unsealed on Wednesday in United States District Court in Newark, prosecutors accused Mr. Bergrin, 53, of orchestrating the murder of a confidential witness by leaking his name to drug dealers who shot him in broad daylight on a Newark street corner; of traveling to Chicago to hire a murderer to kill a witness in another case; of coaching some eyewitnesses to lie; and of paying others to change their stories or leave town on the day they were to testify.

The charges, which left Mr. Bergrin in federal custody and facing a possible death penalty, were a stunning development for a flamboyant man who owned a Mercedes and a Bentley, hobnobbed with movie stars and boasted of beach homes in New Jersey and the Caribbean.

To prosecutors, the charges are the latest example of the deadly challenge they face protecting witnesses at a time when the criminal justice system has few resources to shield them and the prevailing street code in many cities urges civilians to "stop snitching."

Ralph Marra, the acting United States attorney for New Jersey, said he and other law enforcement officials felt a profound sense of betrayal to see Mr. Bergrin — a lawyer who had once taken an oath to uphold the sanctity of the court system — act like a "one-man crime spree" by conspiring to kill, encouraging perjury, arranging drug deals and laundering narcotics money for leaders of street gangs like the Bloods and the Latin Kings.

"Mr. Bergrin operated as an outlaw, as sort of a mob leader," Mr. Marra said during a news conference on Wednesday in Newark.

Mr. Bergrin stood impassively during his appearance at a court hearing later Wednesday. His lawyer, Gerald L. Shargel, said that Mr. Bergrin would plead not guilty to all 14 counts in the indictment. Four other people who either worked for Mr. Bergrin or with him were also indicted.

Mr. Bergrin was raised in Brooklyn, the son of a New York City police officer. After law school, he served seven years on active duty in the Army — some of that time in the jungles of Central America, some as a lawyer in the judge adjutant general's office.

During his subsequent rise to power and prominence, he liked to remind those around him that he still considered himself “a street kid,” according to his statements in news interviews.

As a state prosecutor in Essex County, one of New Jersey's most crime-ridden, he never lost any of his nearly two dozen murder cases. He moved on to the United States attorney's office, but his service as a federal prosecutor ended in controversy in 1989, when he appeared as a defense witness for two county investigators accused of corruption.

His early years as a defense lawyer were rocky: he was accused of witness tampering by the authorities, but those charges were dropped. With his tireless work ethic and hard-charging style, Mr. Bergrin gradually built a reputation on the street as one of New Jersey's most effective advocates.

In late 2003, however, a wiretapped conversation between Mr. Bergrin and one of his clients led prosecutors to view him as not just a legal adversary but a potential defendant.

According to court records, the conversation captured him telling his client's cousin, one of Newark's most powerful drug lords, the identity of a confidential witness: Deshawn McCray, known as Kemo. A few days later, the authorities say, Mr. Bergrin met with his client's cousin again and told him “No Kemo, no case.”

Mr. McCray was shot to death three months later in a brutal ambush. Mr. Bergrin's client, William Baskerville, was nonetheless convicted of drug trafficking and conspiring to murder a federal witness.

Although the authorities had testimony accusing Mr. Bergrin of providing both the inducement and identity that led to Mr. McCray's killing, the case could not be prosecuted after a judge ruled — and the prosecutors acknowledged — that they mishandled the wiretap tapes, rendering them inadmissible as evidence.

But as they began examining Mr. Bergrin's legal work, they now say, they noticed what appeared to be a pattern; in at least four other cases, his clients had been cleared after witnesses were either killed or changed their stories.

The indictment that was opened on Wednesday charged that several witnesses told investigators that during the 1990s, Mr. Bergrin either coached them to lie or paid them to do so.

One of those cases is that of Norberto Velez, a Newark man accused of murdering his wife by stabbing her 27 times in front of their 8-year-old daughter. The child changed her story between the time of her mother's killing and the day she testified at her father's murder trial, and later acknowledged in court that Mr. Bergrin had coached her to lie on the stand, according to the indictment.

The most substantial portion of the new evidence in the indictment involved the prosecutor's contention that Mr. Bergrin hired a hit man in 2008 to murder a witness against Vincente Esteves, a man charged by Monmouth County officials with running a narcotics ring.

The indictment says that investigators secretly taped Mr. Bergrin and an associate during numerous

conversations in which they tried to hire a killer to murder a witness known as Junior the Panamanian before he could testify. In one of the conversations, investigators say, Mr. Bergrin ordered the gunman to rob his target's apartment so that the killing would appear to be part of a burglary.

"Make it look like a robbery; this can't look like a hit," court papers quote Mr. Bergrin as saying.

Law enforcement officials said that unlike many of the cases Mr. Bergrin is accused of trying to tamper with, which hinged on the testimony of a single witness, the charges against Mr. Bergrin and his four co-defendants were pieced together using a wide assortment of documents, recorded conversations and testimony from numerous witnesses.

"He liked to say 'No witnesses, no case,' but we have witnesses, we have evidence and we have a good case," said Weysan Dun, special agent in charge of the New Jersey office of the F.B.I.

This article has been revised to reflect the following correction:

Correction: May 25, 2009

An article on Thursday about the indictment of Paul Bergrin, a New Jersey lawyer, on charges of conspiracy in the fatal shooting of a confidential witness who was preparing to testify against William Baskerville, a client of Mr. Bergrin's, misstated the outcome of the case. Despite the death of the witness, Mr. Baskerville was convicted of drug trafficking and conspiring to murder a federal witness; prosecutors were not in fact forced to drop the charges against Mr. Baskerville.

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11/4/11

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ABDUL WILLIAMS				
By Mr. Gay	3/72		105	
By Mr. Bergrin		86		-
DEVON JONES				
By Mr. Minish	108		140	
By Mr. Bergrin		131		144
WILLIAM F. GALE				
By Mr. Minish	146		163	
By Mr. Bergrin		158		-
THOMAS S. FENNELLY				
By Mr. Gay	166		-	
By Mr. Bergrin		181		-

E X H I B I T S

EXHIBIT	IN EVID.
Government Exhibit 3061	19
Government Exhibit 7013b	171
Government Exhibit 7013	172

Sidebar Discussions

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Colloquy Between Court and Counsel
Jury Not Present

Starting Page	Ending Page
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80	85
192	196

11/6/11 US v Bergin
1 little switch is on. That little light -- by the way, I think
2 if the light's on --

3 MR. GAY: I should be working, Judge. I just don't
4 want to have any malfunctions here.

5 (Audio test conducted.)

6 THE COURT: You all hear anything?

7 Okay. they're working.

8 MR. GAY: Thanks.

9 Your Honor, the Government calls Thomas Fennelly.

10 If you could turn the dot in front of the green off.
11 Because there's going to be a little bit of testimony before we
12 need the headphones, so I don't want to wear out the batteries.

13 THE DEPUTY CLERK: Over here, sir.

14 THE COURT: Please pay attention to the oath,
15 everyone.

16

17 T H O M A S S. F E N N E L L Y, called as a witness, having
18 been first duly sworn, is examined and testifies as
19 follows:

20

21 THE DEPUTY CLERK: Please state and spell your name
22 for the record.

23 THE WITNESS: Thomas S. Fennelly. T-h-o-m-a-s;
24 F-e-n-n-e-l-l-y.

25 THE DEPUTY CLERK: Thank you. You may be seated, sir.

00012 v 20 11/3/11

P2723

1 MR. GAY: May I inquire, your Honor?

2 THE COURT: Yes, you can.

3 MR. GAY: Thank you.

4 DIRECT EXAMINATION

5 BY MR. GAY:

6 Q Mr. Fennelly, by whom are you employed?

7 A The Essex County Prosecutor's Office.

8 Q How long have you been a member of the Essex County
9 Prosecutor's office?

10 A A little bit less than 21 years.

11 Q What is your current position?

12 A I'm Chief Assistant Prosecutor overseeing several of the
13 investigative units.

14 Q Can you briefly describe what your prior positions have
15 been with the Essex County Prosecutor's office?

16 A I started out as a regular Assistant Prosecutor, I was in a
17 screening unit; then assigned to Juvenile Unit; and then
18 General Trial Section; and then assigned to the narcotic --
19 Major Narcotics and Narcotics Task Force; and then my current
20 position, overseeing the Homicide Unit and the Narcotics Unit
21 and a couple of the other investigative units.

22 Q Were you a supervisor in the Narcotics Unit?

23 A Yes, I was.

24 Q Can you briefly describe your educational background?

25 A I have a law degree from Seton Hall University and a

1 bachelor's degree from St. Peter's College.

2 Q Are you admitted to practice law in any state?

3 A New Jersey.

4 Q Were you working as prosecutor on January 15th, 2009?

5 A Yes, I was.

6 Q Were you the person, the prosecutor assigned to prosecute
7 the case of Alberto Castro and others?

8 A Yes.

9 Q Who was Mr. Castro's lawyer at the time, if you recall?

10 A Mr. Bergrin.

11 Q Had you seen Mr. Bergrin prior to that? Did you know Mr.
12 Bergrin --

13 A Yes, I did.

14 Q -- prior to that time?

15 A Yes, I did.

16 Q And do you see Mr. Bergrin in court today?

17 A Yes, I do.

18 Q Can you indicate an article of clothing he's wearing?

19 MR. BERGRIN: I'll stipulate identification, your
20 Honor.

21 THE COURT: All right. The Defendant is identified.
22 Go ahead.

23 Q Now, did you attend a plea hearing on January 15th of 2009?

24 A Yes, I did.

25 Q Was a, what's known as a plea bargain, worked out prior to

1 that plea hearing?

2 A Yes, at some point, yeah.

3 Q Can you briefly describe how the plea bargain is worked
4 out? Again, briefly.

5 A Generally speaking, once a matter gets into court -- this
6 was a post-indictment matter. After the initial court
7 appearance there's arraignment. Then there are several -- one
8 or more status conferences set, and there are usually
9 discussions between the prosecutor -- the prosecution and the
10 defense side. The matter is set for a status -- I believe a
11 status conference probably on that day, and we had come to an
12 agreement as to a plea.

13 Q Now, do you recall as you sit here today exactly what
14 charges Mr. Castro was willing to plead to on that date?

15 A There were numerous charges in the Indictment. I believe
16 there were several narcotics -- possession, what we call
17 possession of CDS -- actually possession of narcotics with
18 intent to distribute; there was conspiracy charge; two weapons
19 charges; and an aggravated assault charge.

20 Q Okay. Now, had Mr. Castro been charged with an attempted
21 murder --

22 A Yes, he had.

23 Q -- initially?

24 And you mentioned that during the plea bargain there
25 was an assault charge?

1 A Yes. He was -- that charge was amended to a charge of
2 aggravated assault by pointing.

3 Q Now, is that a more serious or less serious charge than the
4 attempted murder?

5 A Less serious. It's a lower degree.

6 Q Now, when this plea was worked out, did anyone from the
7 Federal Government contact you or in any way influence your
8 plea bargain decisions for the plea that you offered Mr.
9 Castro?

10 A No.

11 Q Why did you give him a plea to a reduced charge?

12 A Well, there were numerous counts in that indictment, and it
13 had been worked out that he was to receive a 15-year -- what we
14 call 15 with five; a 15-year sentence in pleading to a first
15 degree drug count -- two first degree drug counts.

16 As the evidence was reviewed and looked upon, and the
17 officer, fortunately, wasn't injured in that particular case,
18 the charge of aggravated assault by pointing a firearm was
19 the -- may have been the more appropriate charge and it still
20 carried what we call the Graves Act offense.

21 Q Now, you mentioned that you did actually attend a plea
22 hearing on January 15th of 2009. Is that correct?

23 A Yes.

24 Q Do you recall who else was present for that plea hearing?

25 A The defendant at the time, Mr. Castro; Mr. Bergrin, defense

1 attorney; and Judge Bernstein; and several other court staff
2 members.

3 Q Just so it's clear, can you describe what happens at a plea
4 hearing, just generally speaking?

5 A All right. Generally speaking, the case will be called by
6 the court or the court clerk. The attorneys approach the
7 table. In that particular case I believe Mr. Castro was in
8 custody so he was brought out by the Sheriff's Officers.

9 The judge calls the case. They call it by the name,
10 State v. Albert or Alberto Castro. The attorneys enter their
11 appearance for the record, they say their names, and then the
12 judge normally says: What are we doing here today, or
13 something to the effect: Is this a plea?

14 The lawyers answer, yes, or you know, appropriately.
15 And then the terms of the plea agreement are put on the record.

16 Q Now, are these proceedings recorded; and, in fact, was this
17 proceeding recorded?

18 A Yes, it was.

19 Q And is it an audio recording?

20 A That particular day was an audio recording.

21 Q I'm going to show you Government Exhibit 70113b and 7013
22 and ask you first: With respect to 7013b, do you recognize
23 that?

24 A Yes. This is -- it's actually an envelope containing --
25 well, it's a CD, an audio disk inside an envelope, and I do

1 recognize it and my initials are on it.

2 Q Did you listen to that audio disk before coming here today?

3 A Yes, I did.

4 Q And what is contained on that audio disk?

5 A It is a recording -- it's the recording of the courtroom
6 proceedings that day pertaining to the Albert Castro matter.

7 Q If you could take a look at 0713 also in front of you, if
8 you recognize that.

9 A Yes. This is a printed transcript pertaining to the same
10 matter; the plea agreement, and it's the written transcript of
11 what's on the audio.

12 Q And when you listened to the audio did you compare it to
13 what's in the transcript?

14 A Yes, I did.

15 Q And first of all, is the recording itself a fair and
16 accurate recording of what occurred during that plea hearing?

17 A Yes, it is.

18 MR. GAY: Judge, I'd ask that 7013b be entered into
19 evidence at this time.

20 THE COURT: All right.

21 MR. BERGRIN: There is absolutely no objection, your
22 Honor.

23 THE COURT: No objection? It's in evidence.

24 (Government Exhibit 7013b is received in evidence.)

25 BY MR. GAY:

1 Q Also 7013, did you look at that as well as you were
2 listening to the tape?

3 A Yes, I did.

4 Q And is that a fair and accurate transcription of what
5 occurred?

6 A Yes, it is.

7 Q Okay. And does that include -- by the way, people were
8 speaking on this tape. Is that correct?

9 A Correct.

10 Q And were you able to recognize the voices?

11 A Right, I recognized -- yes, I was. I recognized my voice,
12 I recognized Mr. Bergrin's voice, Judge Bernstein, the Judge's
13 voice, Judge Bernstein, as well as Mr. Castro.

14 Q And in the transcript, does it fairly and accurately
15 attribute the person speaking as it appears on the tape
16 recording?

17 A Yes, it does.

18 MR. GAY: Judge, this is actually a certified
19 transcript so I think this could come into evidence.

20 THE COURT: There's no objection to the transcript, is
21 there?

22 MR. BERGRIN: There is none at all.

23 THE COURT: So it's in evidence.

24 (Government Exhibit 7013 is received in evidence.)

25 Q Now, Mr. Fennelly, before we listen to this tape, is there

1 a portion of the plea hearing known as the "factual basis"?

2 A Yes.

3 Q Can you briefly describe what the factual basis portion of
4 the plea hearing is?

5 A That is where the defendant, in this case Mr. Castro, or in
6 any matter, when a defendant is entering a plea where he or she
7 has to give a factual basis establishing that they are, in
8 fact, guilty of the -- that they can make out an adequate --
9 tell what happened and establish the fact that they're guilty
10 of the charges they're pleading guilty to.

11 Q And is the judge present for this factual basis
12 questioning?

13 A Yes, he or she presides over it.

14 Q Do you recall who did the questioning for factual basis in
15 this plea?

16 A The initial -- as to the factual basis, the initial
17 questioning was done by Mr. Bergrin.

18 Q And did you at some point also ask some questions?

19 A Yes, I did.

20 MR. GAY: Okay. I guess -- Judge, first I'm going to
21 hand out the transcript.

22 THE COURT: All right.

23 (Documents are distributed to the Jury.)

24 MR. GAY: Everybody have one?

25 BY MR. GAY:

1 Q Now, Mr. Fennelly, do you have a copy of the transcript?

2 A Yes, I do.

3 Q Okay. If you could take -- if you could take a look at
4 7013, if you could turn to page 12, lines 19 through 21.

5 A Yes.

6 Q Is that where the factual basis portion of the plea takes
7 place?

8 A Yes.

9 MR. GAY: Okay. I'm going to ask if everybody can
10 turn to page 12 beginning on lines 19, 19 through 21, and give
11 you a moment to put on your headsets because we're going to
12 play this tape now.

13 And if I can, make sure everybody turns on the green
14 button, so the green button is on. Okay.

15 (Audiotape is played; audiotape is stopped.)

16 BY MR. GAY:

17 Q Now, Mr. Fennelly, I want to ask you a couple of questions
18 about what was going on during the transcript here during the
19 recording.

20 If you could turn to page 12, lines 19 through 21.

21 When the Court said: "With the assistance of your
22 attorney, I'm going to ask that you give a factual basis." Is
23 that what happened, do you recall happening?

24 A Yes. Yes, I do.

25 Q And then you described what the factual basis is after

1 that. Is that correct?

2 A Correct.

3 Q And who was doing questioning initially during the factual
4 basis?

5 A Mr. Bergrin.

6 Q Okay. I'm now going to refer you to page 14, beginning on
7 line 25 at the bottom, and then going to the next page, page
8 15, lines 1 through 9.

9 Can you describe, what did that -- what were those
10 questions related to, if you know?

11 A I'm sorry. Starting at what line, please?

12 Q Starting at line 25 on page 14 where the question is:

13 "In reference to the May 2nd, 2008, were you in
14 possession of the 9 millimeter handgun?

15 "ANSWER: Yes, I was.

16 "QUESTION: Did you have a permit to have possession
17 of that weapon?

18 "ANSWER: No.

19 "QUESTION: At the time that you had possession of
20 that weapon, did you point it at or in the direction of a
21 police officer that was entering the premises?

22 "ANSWER: Yes."

23 A Right.

24 Q Do you know what those related to?

25 A Oh, yes, I do.

1 Q And what counts did those relate to?

2 A The numbers I believe now were 26, 27, 28, but the counts
3 had to do -- were the amended charge of the aggravated assault
4 by pointing, the unlawful possession of a weapon, and
5 possession of a weapon for unlawful purpose.

6 Q So those questions established the basis for those charges?

7 A Yes.

8 Q Now, I'm going to turn your attention now to page 19, and
9 again, we're going to go through, beginning on lines 13 where I
10 believe you're doing the questioning at this time. Is that
11 correct? Again, we'll start at I guess line 10, page 19, line
12 10. And that's when you're doing some questioning.

13 Is that correct?

14 A Yes, that is correct.

15 Q And you ask the question:

16 "Front of the house on that. So, if you, in fact, you
17 that -- if the police were coming, you would be aware of that
18 fact. Correct?"

19 And the answer is: "I'm not going to stand here and
20 admit that the surveillance system was for police because it
21 was for the protection of my family and it was through ADT and
22 it was a monthly payment. So you're not going to get me to
23 stand here and admit to that. It had nothing to do with
24 selling narcotics."

25 And then you questioned: "Did you know that was a

1 police officer who entered your house on that day, the 18th?".

2 The answer: "Did I know it was the police? Yeah,
3 when he broke down the door."

4 "QUESTION: And then you pointed the gun at him after
5 that point?

6 "ANSWER: Yes.

7 "Why don't you get the -- why don't you subpoena the
8 surveillance system and then you can see what happened.

9 "Come on, I'm not acting like an ass hole but you want
10 me to stand here and say something that's not true."

11 And you said, "Can I have a moment with counsel, your
12 Honor?"

13 And the court said, "Sure. Off the record."

14 Do you remember that?

15 A Yes.

16 Q And do you remember, you were asking questions about him
17 pointing the gun during that time frame?

18 A Yes, initially, and also questions about the video,
19 establishing -- so if we were going to establish the fortified
20 premises charge --

21 Q Was it your opinion that he was having difficulty
22 admitting --

23 MR. BERGRIN: Objection, your Honor. I request he be
24 able to finish his answer.

25 MR. GAY: I'm sorry. I apologize. I apologize for

1 that, Judge.

2 THE COURT: Go ahead. Did you finish the answer, Mr.
3 Fennelly?

4 THE WITNESS: Sure.

5 A (Continuing) I was initially -- I believe he was -- I was
6 going at the cameras to establish the fortified premise charge,
7 and then work right into the fact that he still knew it was an
8 officer coming in and he still pointed the gun at him. So
9 further establishing the pointing charge and the weapons
10 possession.

11 Q And is it your opinion from being present there that he was
12 having difficulty admitting that he pointed a weapon at the
13 police at this time?

14 A Not -- no, I don't believe, because he mentioned it, he had
15 alluded -- he had answered "yes" to that when his attorney had
16 questioned, and then he was still admitting it now. He said,
17 "I had it."

18 I think he may have been, in my opinion -- questioning
19 the circumstances as to how the officer -- you know, get the
20 video, look and see how it really happened. But I don't think
21 he was denying that he had the gun that day or that he pointed
22 it in the direction of the officer.

23 Q Okay. Pointed it in the direction of the officer?

24 A Correct.

25 Q Not at the officer?

1 A Correct. I mean, the statute that he pled to, the
2 aggravated assault by pointing, I believe -- I don't have it in
3 front of me -- but I believe indicates that the pointing --

4 Q Is there anything to refresh your memory about the statute?

5 MR. BERGRIN: Please let him finish the answer.

6 THE COURT: Yes. Let him finish, Mr. Gay.

7 A I believe, without having the statute in, front of me, it
8 indicates that you have -- you can be held responsible or
9 guilty of that statute if you point a gun at or in the
10 direction of a person.

11 Q Okay. Okay, fine.

12 Now, after this colloquy you say: "Can I have a
13 moment with counsel, your Honor?"

14 And do you remember what happened after that? This is
15 again now if you turn to page 20, lines 6 and 7.

16 A I don't remember specifically what words were said or
17 exactly what happened. I believe Mr. Bergrin and I spoke, and
18 as a result of that I agreed to drop -- or take Count 25, the
19 fortified premise count out of the requirement that he plea to
20 that.

21 Q Now I'm going to turn your attention to -- I'm sorry --
22 it's now page 23, and this is just on the transcript, lines 18
23 through 22.

24 Where the Court says: "Counsel, are you satisfied the
25 defendant's plea of guilty is voluntary and that he set forth a

1 factual basis for the plea?"

2 Mr. Bergrin says, "Yes, your Honor."

3 And the Court says: "Mr. Fennelly?"

4 And you say, "Yes, your Honor."

5 Did that happen at the plea, as far as you recall?

6 A Yes, it did.

7 Q Now, was Mr. Castro later sentenced, as far as you know?

8 A Yes, he was.

9 Q Do you remember approximately when it was that he was
10 sentenced?

11 A The plea took place in January 2009, and he was sentenced I
12 believe some time in May 2009.

13 Q Okay.

14 MR. GAY: Just one second.

15 (There is a pause for Mr. Gay.)

16 Q Just one more thing.

17 Mr. Fennelly, when you said that you accepted the
18 factual basis, what did that mean, as far as you understood it?

19 A It meant that I believe that a sufficient -- he laid out a
20 sufficient ground -- where the defendant laid out a sufficient
21 groundwork that the plea would withstand scrutiny if the
22 defendant attempted to pull back his plea or appealed for
23 whatever reason.

24 Q Okay.

25 MR. GAY: I have no further questions at this time.

1 THE COURT: All right. Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. BERGRIN

4 Q Mr. Fennelly, we had spent a good amount of time
5 negotiating this plea. Correct?

6 A Yeah. I don't remember exactly the -- how much time, but,
7 yes.

8 Q But we went over the charges together. Correct?

9 A Yes.

10 Q We went over the allegations against Mr. Castro?

11 A Yeah.

12 Q And this was your best offer after negotiations and after
13 bargaining and after time spent reviewing it. Correct?

14 A Correct.

15 Q It wasn't a fast or hasty decision; it was done over
16 several months. Correct?

17 A Yes. Probably either -- as when the indictment came down
18 to the point that we got to the plea day.

19 Q And Mr. Castro was charged in a 41-count indictment.
20 Correct?

21 A Yes.

22 Q And you had a chance -- you were the supervisor of the
23 particular unit that made the entry into the house that day of
24 Mr. Castro. Correct?

25 A I believe the Newark -- I was the supervisor of the County

1 Prosecutor's Narcotic Task Force. The actual entry was made by
2 I believe the Newark Police Department.

3 Q And there were other agencies also involved in the entry
4 and the investigation of this case. Correct?

5 A It was primarily the Newark Police. Most of the officers
6 involved were the Newark Police. There may have been
7 detectives from other -- detached from other agencies involved.

8 Q The allegation was -- and you had a chance to review the
9 reports in this case. Correct?

10 A Yes.

11 Q The allegation was that at the time of the entry there was
12 a surveillance system that could observe the police entering
13 the house. Correct?

14 A It was my understanding that there was a surveillance
15 system there, yes.

16 Q And at the time of the entry, the allegation was that Mr.
17 Castro took a 9 millimeter handgun, put it underneath the
18 bullet-proof vest of the entering police officer, I believe it
19 was Detective Smith, and pulled the trigger and the gun
20 misfired. Correct?

21 A I believe it was Officer Orby, but --

22 Q Officer Orby, you're correct. I'm sorry.

23 And there were several other officers who observed
24 that action. Correct?

25 A There were several officers involved. Officer Orby, my

1 recollection, was not part of the investigation, he was more on
2 the entry team, the raid.

3 Q Correct.

4 A The ERT entry team, emergency team.

5 He went in. They have a whole procedure, a form how
6 they go into a building, how they raid a building. I don't
7 know what other officers saw; who was where when he went
8 through the door.

9 Q But the allegation in the police report and the allegation
10 that the police officers were willing to swear to on the
11 complaint and testified at the -- testified at grand jury, even
12 at trial if it went that far, was that Castro pulled out a gun
13 or had a gun in his possession at the time the team entered,
14 and he put the gun underneath the bullet-proof vest, pulled the
15 trigger, and the gun misfired. Correct?

16 A Yes.

17 Q And you had no reason to doubt that officer's allegation
18 pertaining to that. Correct?

19 A No.

20 Q Now, we bargained or we negotiated for the pointing.
21 Correct?

22 A Yes.

23 Q And before you gave a negotiated plea in this case of 15
24 years with five years of parole ineligibility, you had an
25 opportunity to review the charges as well as consider Mr.

1 Castro's prior criminal history. Correct?

2 A Yes.

3 Q Do you remember what his criminal history was?

4 A I know he had been arrested a number of times. I do not
5 know right now exactly the extent or, you know, what the number
6 of prior convictions were. But I know he was arrested numerous
7 times.

8 Q This was not the only case that was negotiated for
9 disposition at that particular time either. Correct?

10 A As to Mr. Castro?

11 Q Yes.

12 A Correct. He was -- after he was arrested on this charge,
13 the narcotics case that he pled to, he was released on bail at
14 some point, and there was -- I believe he was charged with a
15 robbery or related -- either conspiracy or relating to a
16 robbery that was being planned.

17 Q And the plan was recorded, correct, by an informant or an
18 agent of the Essex County Prosecutor's Office. Correct?

19 A I believe there was a recording at some stage. There were
20 other defendants in that matter. I know at some point
21 something was recorded.

22 Q And one of the conditions of this particular plea was that
23 he also enter a plea to that particular charge. Correct?

24 A Yes.

25 Q And there was also another indictment for a second degree

1 criminal attempt, second degree conspiracy, third degree
2 possession of CDS, third degree possession of CDS with the
3 intent to distribute, and third degree possession with intent
4 to distribute within a thousand feet of a school. Correct?

5 A I'm not sure. I know there was -- on the day that he pled,
6 he pled to the indictment -- charges in the indictment for the
7 narcotics case as well as conspiracy on the robbery. There was
8 another indictment I believe -- I don't know what that -- I
9 don't have that in front of me, I don't know. I thought that
10 was a convicted felon. I'm not sure.

11 Q There was a convicted felon indictment.

12 MR. BERGRIN: May I approach the witness, your Honor?

13 THE COURT: Yes. Go ahead.

14 Q Would a Request to Recommend Disposition signed by yourself
15 refresh your recollection, sir (handing document)?

16 A I'm sure.

17 (After pause) All right. I believe that the second
18 matter that you spoke to was included in -- when he was
19 arrested on the robbery or the planned robbery, that is the
20 criminal attempt charge listed here, and that's actually not an
21 indictment, that's under an accusation number, which I believe
22 is 09010061. And that included charges of second degree
23 criminal attempt, which would have been the robbery; the second
24 degree conspiracy; and third degree possession of CDS.

25 I believe -- I do not have those reports in front of

1 me. I believe he may have been charged with some possessory
2 CDS offenses when he was arrested in connection with the
3 planned robbery.

4 Q And what is an accusation as compared to an indictment?

5 A Yeah, it was accusation.

6 Q What is an accusation? Can you explain that to the jury,
7 please?

8 A An accusation is generally a charging document. Normally
9 when a person in state court is arrested, he or she is often
10 charged by way of criminal complaint. The matter will then be
11 presented to a grand jury, and if the grand jury determines if
12 there's evidence to go forward they return what we call --
13 what's known as an indictment.

14 In the event that somebody worked out a charge
15 pre-indictment or prior to it going to the grand jury, what is
16 drafted in the state system is what's known -- a document
17 that's known as an accusation. It's effectively the same as
18 a -- it becomes a charging document. And in it there's
19 documents -- the person waives his right to have the matter
20 presented to the grand jury and it's a mechanism in which
21 somebody can plea out pre-indictment.

22 Q Mr. Fennelly, who put the plea through, Paul Bergrin or
23 Richard Roberts?

24 A Paul Bergrin. You did, sir.

25 Q And did Richard Roberts have anything to do with putting

1 the plea through and negotiating that plea?

2 A No.

3 Q Now, the home of Mr. Castro, did you also find
4 multi-kilograms of cocaine at a second home?

5 A There were three locations tied to the investigation.
6 There were two addresses on Tichenor Place or Tichenor Street,
7 and one --

8 Q Pulaski.

9 A Pulaski, in the Ironbound, yes.

10 There were items found at different -- all three
11 locations and --

12 Q Who lived at the other locations? You have Mr. Castro's
13 house. Isn't it a fact that his daughter, his youngest
14 daughter, lived at another location?

15 A I know a daughter lived at one of the locations on
16 Tichenor. I'm not sure if she was the youngest daughter or
17 how -- where she fit in that. But I believe she may have been
18 in a separate apartment or separate house on Tichenor. I
19 believe there were two houses, 42 and 44 probably right next
20 door to each other.

21 Q And there were narcotics found in that house, correct, the
22 daughter's house? Do you remember that at this particular
23 time?

24 A I believe -- there were narcotics found on Tichenor. My
25 best recollection is they were found in both locations on

1 Tichenor.

2 Q And do you remember who represented the daughter? Was it
3 Dana Scarillo?

4 A It quite possibly could have been. I know that Dana
5 Scarillo, an attorney, represented the daughter, a Stephanie
6 Castro at some point. It may have been in connection with the
7 second incident, I'm not sure. It could very well have been
8 Dana Scarillo.

9 Q Now, several of the comments that Mr. Castro made, the
10 recording in the court was put on and the recording was shut
11 off during several stages of this proceeding. Correct?

12 A At least at the one stage when we're trying to get -- when
13 he was being questioned and the issue of the videotape came up.

14 Q Do you remember what his attitude or demeanor was -- Mr.
15 Castro -- when the recording was shut off or in front of the
16 judge or when being led out of the court? Do you have a
17 independent recollection of that now?

18 A I believe -- he was not -- as I was questioning him about
19 the surveillance system and the videotape and he could see the
20 police coming in, and his voice was raised or his demeanor did
21 appear to change, and he was -- you could say he was becoming
22 hostile.

23 Q And when he left the court, do you remember what he said to
24 the judge? Do you remember his comment: "This is bullshit,"
25 and slamming his hand on the table?

1 A I do not -- I remember him being upset. I don't remember
2 specifically. I believe -- I thought he was actually
3 handcuffed so I don't know if he could slam his hand. But I
4 know he was muttering -- he was saying something. The exact
5 words, I don't know. But he was -- he was not happy.

6 Q And he was not respectful either. Isn't that a fact?

7 A No, he was not.

8 Q Did there come a time during this investigation when money
9 was seized, to your memory, from Mr. Castro?

10 A Yes.

11 Q Do you remember approximately how much money? Not to a
12 specific dollar, approximately.

13 A I believe it was over a hundred thousand dollars. I
14 believe it was -- I would -- a substantial amount of money.

15 Q Your Request to Recommend Disposition may refresh your
16 memory.

17 A Actually on the copy I have I don't believe it does -- oh,
18 I stand -- yeah. The defendant agree -- on the Request to
19 Recommend Disposition there's a mention of \$700,000.

20 Q Now, do you know if Mr. Castro made any allegations against
21 the police involved in this investigation, the entry or the
22 seizure of the money?

23 A Do I specific -- specific allegation?

24 I did not hear that from Mr. Castro. I believe at
25 some point during or -- there may have been an allegation.

1 Q And did you believe the allegations that he made? Did you
2 have any evidence to support the reliability of the allegations
3 that he made?

4 A No.

5 Q Now, did Mr. Roberts -- there came a point in time when Mr.
6 Roberts substituted in for me and Mr. Castro fired me.
7 Correct?

8 A I know Mr. Roberts substituted in. Whether Mr. Castro
9 actually fired you, I wasn't privy to that. But I know Richard
10 Roberts did substitute in on the case.

11 Q At any time did Mr. Roberts ever file a motion to withdraw
12 the plea of guilty?

13 A At some point, and I'm not sure if it's when you were
14 representing him or when Mr. Roberts was, but there was -- I do
15 have a recollection of some motion -- some talk at least of a
16 motion to withdraw the plea.

17 Q Was a motion ever filed, to the best of your memory and
18 recollection?

19 A I don't -- I don't recall. I know it was definitely spoken
20 of and the sentence was put off.

21 I don't know. Actually I don't have that in front of
22 me, but I don't know.

23 Q The judge in this particular case you say was Judge
24 Bernstein?

25 A Yes, that's correct.

1 Q Isn't it a fact that Judge Bernstein made an independent
2 finding on the record that he was satisfied and finds the
3 defendant understands the nature of the charges?

4 A As part of the --

5 Q As far as the plea acceptance.

6 A Yes.

7 Q And that Mr. Castro understood the consequences?

8 A Yes, the judge did make that finding.

9 Q And he also found that he had -- that he was satisfied the
10 defendant had the benefit of competent counsel and legal
11 advice. Correct?

12 A I believe that finding was made in the course, and that's
13 in the transcript.

14 Q And Mr. -- Judge Bernstein also found that Mr. Castro made
15 a knowing, intelligent, understanding, and voluntary plea.
16 Correct?

17 A Correct.

18 MR. BERGRIN: I have no further questions.

19 Thank you very much.

20 THE COURT: Mr. Gay, any redirect?

21 MR. GAY: Nothing, Judge.

22 THE COURT: All right. Thank you.

23 Mr. Fennelly, thank you, you can step down.

24 (Witness excused.)

25 THE COURT: Ladies and gentlemen, we'll take a break

1 and we'll see you back here in about 15 minutes. Okay?

2 Please don't discuss anything about the case.

3 THE CLERK: Please rise for the Jury.

4 (The Jury leaves the courtroom.)

5 THE COURT: All right, everyone, be seated.

6 Mr. Gay.

7 MR. GAY: Judge, that is my last witness for the day.

8 I'm sorry. I apologize.

9 THE COURT: All right. But you know the schedule that
10 we're trying meet now.

11 MR. GAY: I do. I think we're on schedule to be where
12 we --

13 THE COURT: But let's try next week to make sure you
14 have -- you know, you can't predict --

15 MR. GAY: Yeah.

16 THE COURT: -- you can't rely on cross-examination.

17 MR. GAY: I know, Judge.

18 THE COURT: Be sure Monday, Tuesday and Wednesday
19 we're going to have witnesses, that you're going to be using
20 those days in full. Will you be using those days in full?

21 MR. GAY: Yes.

22 THE COURT: Give me an idea; who do you have on
23 Monday?

24 MR. GAY: Well, I'm going to go back to double-check
25 on the exact witness order and I'll discuss it with Mr.

1 Lustberg. But we will have a full day on Monday, I guarantee
2 that.

3 THE COURT: Do you have an idea of how many more
4 witnesses you have?

5 MR. GAY: Judge, we have -- well, let me put it this
6 way: We have probably three that are going to be substantial
7 witnesses, and then a number of other witnesses that are going
8 to be much shorter we believe. So that's --

9 THE COURT: Three substantial witnesses would be who?
10 Mr. Moran maybe?

11 MR. GAY: Mr. Moran would be one; Mr. Dock, and then
12 also Mr. Pozo which I know we have to discuss. And then other
13 than that, I expect there will be some -- a couple of law
14 enforcement witnesses that are going to establish, you know,
15 certain --

16 THE COURT: Everybody can be seated, I'm sorry,

17 MR. GAY: That would be establishing certain facts.
18 We have a couple of witnesses that we don't have stipulations
19 for so we have to introduce some records through them, but
20 largely they will be relatively short witnesses and I would not
21 expect there will be significant cross-examination of those
22 witnesses.

23 THE COURT: I'm not sure Mr. Moran is going to be very
24 long.

25 MR. GAY: Yeah, I don't know if he will. I don't

1 morning at 9 o'clock.

2 THE DEPUTY CLERK: Please rise for the Jury.

3 (The Jury leaves the courtroom.)

4 THE COURT: All right, everyone, be seated, and we're
5 in recess. We'll see you promptly back here on Monday. We'll
6 start up at 9:00 and we'll see you then.

7 MR. LUSTBERG: All right, Judge. Have a good weekend.

8 THE COURT: Okay.

9 MR. GAY: Thank you.

10 (At 3:10 p.m., an adjournment is taken to Monday,
11 November 7, 2011, at 9:00 a.m.)

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I N D E X				
	WITNESS	DIRECT	CROSS	REDIRECT
	PHILLIPE STREICHER			
	By Mr. Gay	4		-
	By Mr. Bergrin		21	
	JOHN MARTIN			
	By Mr. Gay	38		-
	By Mr. Bergrin		46	
	WAYNE PARRY			
	By Mr. Gay	54		-
	By Mr. Bergrin		60	
	ERIC DOCK			
	By Mr. Gay	105		160
	By Mr. Bergrin		128	
	GEORGE SNOWDEN			
	By Mr. Gay	180 (recalled)		-
	By Mr. Bergrin		188	

E X H I B I T S		
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	Colloquy Between Court and Counsel	
	(Jury not Present)	
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	191	208

1 Thank you.

2 MR. GAY: Your Honor, the Government calls Eric Dock.

3 THE COURT: Please pay attention to the oath.

4

5 E R I C D O C K, called as a witness, having been first duly
6 sworn, is examined and testifies as follows:

7

8 THE DEPUTY CLERK: Please state and spell your name
9 for the record.

10 THE WITNESS: Eric Dock. E-r-i-c; last name is
11 D-o-c-k.

12 THE DEPUTY CLERK: Thank you. You may be seated right
13 there.

14 MR. GAY: May I inquire, your Honor?

15 THE COURT: Yes, go ahead.

16 DIRECT EXAMINATION

17 BY MR. GAY:

18 Q Mr. Dock, if you could just pull your chair forward and
19 make sure you're speaking into the microphone, please. Thank
20 you.

21 Mr. Dock, how old are you?

22 A 51.

23 Q Where were you born?

24 A Timmonsville, South Carolina.

25 Q And at some point after you were born did you move to New

1 Jersey?

2 A Yes.

3 Q Approximately what age were you when you moved to New
4 Jersey, if you know?

5 A Probably before I was 1.

6 Q Did you spend most of your life in New Jersey?

7 A Yes.

8 Q Where, approximately, in New Jersey did you spend most of
9 your life?

10 A Paterson, New Jersey.

11 Q What is the highest grade you completed in school?

12 A Eleventh grade.

13 Q In 1982, were you sentenced to five years for committing
14 three burglaries?

15 A Yes.

16 Q In March of 1983, did you also receive a sentence of six
17 months for false swearing to the Paterson Police Department
18 about an incident in which a man was beaten and robbed and
19 ultimately died?

20 A Yes.

21 Q Did you later spend some time in California in the late
22 1980s?

23 A Yes.

24 Q During that time in 1989, did you receive a six-month
25 sentence for providing false identification to a police

1 officer, transporting drugs, and possessing drugs for sale?

2 A Yes.

3 Q Also in California in December of 1988, did you receive a
4 45-day sentence for providing false identification to a police
5 officer?

6 A Yes, I did.

7 Q Finally, in California in November of 1992, were you
8 sentenced to five years for possession and purchase of drugs
9 for sale?

10 A Yes, I was.

11 Q Thereafter, did you move back to New Jersey?

12 A Yes.

13 Q And in April of 2002, were you arrested and charged with
14 conspiracy to distribute drugs and using identification --
15 false identification with intent to commit bank fraud?

16 A Yes, I was.

17 Q Were those federal charges?

18 A Yes.

19 Q Were you detained in jail on those charges?

20 A Yes, I was.

21 Q Do you remember where initially you were detained?

22 A Passaic County Jail in Paterson.

23 Q While you were in the Passaic County Jail did you meet an
24 individual named Troy Bell?

25 A Yes, I did.

1 MR. GAY: Let me just publish Exhibit Number 3071.

2 (An exhibit is published to the Jury.)

3 Q Do you recognize that individual?

4 A Yes.

5 Q Who is that?

6 A Troy Bell.

7 Q Did you know Mr. Bell by any other names?

8 A Yeah, I call "Self"

9 Q Did you and Mr. Bell become friends in the Passaic County
10 Jail?

11 A Yes, we did.

12 Q Did you later get transferred to Hudson County Jail?

13 A Yes.

14 Q Did Mr. Bell also later get transferred to the Hudson
15 County Jail?

16 A Yes, he did.

17 Q While you were in Hudson County Jail, at some point did a
18 person named William Baskerville come to the Hudson County
19 Jail?

20 A Yes, he did.

21 MR. GAY: If we could show Exhibit 2255, please.

22 (An exhibit is published to the Jury.)

23 Q Mr. Dock, do you recognize that individual?

24 A Yes, I do.

25 Q Who is that?

1 A That's Baskerville.

2 Q Now, do you recall approximately when it was,
3 approximately, that you remember Mr. Baskerville coming to
4 Hudson County Jail?

5 A Some time in January 2004.

6 Q And at that point were you already in Hudson County Jail?

7 A Yes.

8 Q After Mr. Baskerville arrived in Hudson County, did you
9 have any conversations with him?

10 A Yeah, we had a couple of conversations.

11 Q And do you recall approximately how long after he arrived
12 that you began to have conversations with him?

13 A Maybe -- maybe a couple of days, something like that.

14 Q Do you remember the first conversation you had with him?

15 A Yeah. We was talking about conspiracy, me and Troy Bell.
16 And Baskerville said he had a question. And he asked, could a
17 person be indicted, you know, in a conspiracy by himself?

18 And I told him, yeah, if the government was
19 superseding the indictment.

20 Q Okay. Mr. Dock, do you remember Mr. Baskerville's first
21 name?

22 A Will.

23 Q Okay. That conversation you just described, how did it
24 end, if you recall?

25 A I don't recall exactly how did it end. He just said -- you

1 know, I told him he could be indicted if the government
2 superseded the indictment. He looked puzzled and he just
3 walked away.

4 Q And did there come a time when you had other discussions
5 with Mr. Baskerville about his case?

6 A Yeah. He came back I think some time later that day or the
7 next day and he said he found out that you can't -- one person
8 can't be in a conspiracy. He said, you know, he found out that
9 it has to be two or more people, and you can't conspire with an
10 agent or an informant.

11 And so I asked him, did he know who the informant was,
12 because, you know, everybody in the system tries to find out
13 would set them up.

14 Q And what, if anything, did he say in response to that?

15 A He said he had an idea who the informant was but he said he
16 wasn't sure. He said after he got his complaint he had an
17 idea, but he couldn't figure it out. He said he talked to his
18 buddy that lived next door to him, a guy named Rick, and him
19 and Rick had the same informant because they figured out they
20 had the same agents that arrested them both, so he figured out
21 who the informant was from that.

22 Q He had a discussion with Rick?

23 A Yes, he had a discussion with Rick.

24 Q And this is what he's telling you?

25 A Yes.

1 Q Now, do you know who he was talking about, who Rick is?

2 A Yes, Rick slept upstairs next door to him.

3 Q So he was another person in Hudson County Jail?

4 A Yes.

5 MR. GAY: If I could show Exhibit 3067, please.

6 (An exhibit is published to the Jury.)

7 Q Do you recognize that person?

8 A Yeah, that's Rick.

9 Q Who is that?

10 A That's Rick.

11 Q So he had discussed about how he learned about his
12 informant?

13 A Yes.

14 Q The identity of his informant. Correct?

15 A Yes.

16 Q Did he have any other conversations with you relating to
17 his informant?

18 A He said they was -- after he figured out who set him up, he
19 said he called his brother. And after he called his brother he
20 made his brother understand who the person was, because the
21 same person was trying to set his brother up. So he said they
22 had --

23 MR. BERGRIN: Judge, with all due respect, could you
24 ask him to talk a little slower? I'm sorry.

25 THE WITNESS: I can't help it.

1 THE COURT: If you could just go a little slower, sir.

2 THE WITNESS: Okay.

3 A (Continuing) He said, after he figured out who he was he
4 said he called his brother. And after he called his brother he
5 said, you know, they had been looking for him, this guy,
6 because they couldn't find him so they thought the Government
7 had him in hiding.

8 Q When you say "they couldn't find him," who was he referring
9 to?

10 A The informant, they couldn't find him.

11 Q You said that he told you they were looking to find him,
12 referring to the informant. Is that correct?

13 A Yes.

14 Q Did he say --

15 A Yes.

16 Q -- anything else relating to the informant during that
17 confers?

18 A Yes. He said they were looking for him to put a hole in
19 his melon. Like he said, they couldn't find him.

20 Q When he said "a hole in his melon," what did you understand
21 that to me?

22 A Well, in street terms, it means shoot you in the head.

23 Q Was there anything else that he talked about during that
24 conversation?

25 A No. He left after that.

1 Q Now, do you remember whether you had any other
2 conversations with Mr. Baskerville after that -- again,
3 specifically relating to his case or the informant?

4 A Yeah. He went to a legal visit. And he came back from the
5 legal visit, and we were sitting outside the cells. And he
6 came back. He said -- he said, the Government came to see him,
7 agents came to see him and they told him that he was -- he
8 was -- he was a career offender, which mean he was facing life.
9 And they had, they could indict him for -- for something he
10 could get the death penalty for. And he was being -- like, he
11 didn't know what they was talking about.

12 Q Okay. So was there any other discussion during that
13 conversation --

14 A He told me he'd call Paul later on, he'd call the lawyer.

15 Q We'll just not go into that at this point.

16 A All right.

17 Q But okay. So now do you recall any additional
18 conversations you had with Mr. Baskerville relating to the case
19 after that?

20 A Yeah. It was a couple more. It's been a long time so, you
21 know.

22 Q Okay. Well, let me ask you this: Do you -- is there
23 anything that might refresh your memory?

24 A Yeah. I kept a logbook of it.

25 Q Okay. I'm going to show you Government Exhibit --

1 MR. GAY: I apologize, Judge.

2 I'm sorry. 2317.

3 Q And, sir, do you recognize what that is?

4 A Yeah, it's a log I kept.

5 Q Okay. And we're going to talk a little bit more about that
6 in a minute. My only question for you now is: I may ask you
7 from time to time to refer to it to refresh your memory if you
8 need it. Okay?

9 A Okay.

10 Q All right. So, now, do you remember any conversations you
11 had with Mr. Baskerville after the conversation we talked about
12 with the agents?

13 A After the conversation with the agent, I think it was -- I
14 forget exactly when, we was talking in the day room, and he
15 said his man got busted with a bunch of keys in the hotel. I
16 think about five of them.

17 Q And did he say anything about who "his man" was?

18 A At that time, no. Later he did.

19 Q Okay. And who did he say his man was later?

20 A He said a guy -- it's a guy, name is Jarvis. A guy
21 named -- twin brothers named "The Twins."

22 Q Okay.

23 A And Jarvis and somebody else. They got busted in a hotel
24 with about five keys.

25 Q Okay. Now, do you recall whether or not he ever had any

1 conversations about an individual named Hak?

2 A Yeah, we had a couple of conversations about Hak.

3 Q Okay. And do you recall any specific instances of
4 conversations about Hak; and in particular, anything relating
5 to an arrest or anything of that nature?

6 A Yeah. He said Hak is his cousin. He'd like to brag about
7 him because he was, like, a big drug dealer. He said Hak ran a
8 building in Newark, an apartment building and him and a bunch
9 of other people ran the block called Avon Ave.

10 Q Now, when you said he and a bunch of other people ran the
11 block, who is "he"?

12 A Will was telling me that.

13 Q Was he referring to himself when he said he ran Avon?

14 A Yeah, him and a bunch of other people.

15 Q Okay. And what did he say about Mr. Curry then -- or this
16 Hak, this guy Hak? I'm sorry.

17 A Hak. Hak is, like, the boss in the -- you know, he's the
18 boss. And Hak had, like, according to Will, he had two
19 other -- two or three partners, a guy named Sheik, a guy named
20 Jarvis and a guy named -- I think it's Jihad.

21 Q Now, did you ever learn who Hak was, a full name for Hak?

22 A Yeah, Hakeem Curry.

23 Q Now, in addition to that conversation that you just talked
24 about, did you ever have any conversations with Mr. Baskerville
25 about Mr. Curry being arrested?

1 A Yeah. He said, Will told me one time he talked to his
2 brother, and his brother told him the DEA had arrested Hak, The
3 Twins and some other people, and a guy named Pooh was the guy
4 that set them up.

5 Q Now, you said "sod" him up. What does that mean?

6 A That mean, you know, working with the cops.

7 Q After that conversation, do you recall whether or not you
8 had any additional conversations with Mr. Baskerville?

9 A Yeah, I had a couple more.

10 Q Okay. And, in particular, I'm going to direct your
11 attention to any conversations you had about any newspaper
12 articles.

13 A Yeah. After we had been talking to him for a while about
14 the, eventually the informant got killed. So some time in
15 March a newspaper article came out, and everybody in the
16 complex was talking about the newspaper article. It had a
17 bunch of drug busts and murders in it.

18 And anyway, the cop brung the newspaper article in to
19 another guy, an Italian guy named Joey Merlino because Joe
20 Merlino had a big article in the paper out of Philly, so the
21 cop gave it to Joey Merlino. And the second article was also
22 in the paper. So, you know, after we got a hold of the paper,
23 the paper had said two guys --

24 MR. BERGRIN: Objection, your Honor, as to what the
25 paper said.

1 THE COURT: Sustained.

2 Q Okay. If you can just -- don't worry about what the
3 article says, Mr. Dock.

4 First of all, if I can show you 2213 and ask you if
5 you recognize that individual?

6 A Yeah, that's Joe Merlino.

7 Q Now, what I want to focus on, Mr. Dock, first is, I'll ask
8 you: Did you yourself read the article, without saying what's
9 contained in the article?

10 A Yes.

11 Q And did you have any conversations with Mr. Baskerville
12 after you read the article?

13 A Yes.

14 Q And briefly describe any conversation you had with him
15 after you read the article. Again, the first conversation that
16 you had with him.

17 A Well, after we read the newspaper article, Baskerville came
18 over. It was my by cell, which is 110, and he was real nervous
19 so we went in the cell. And he said that was his man that got
20 busted, and he had said, yo, that he finally got that dude, you
21 know, that handled it. That was his exact words.

22 Q When he said "they handled it," and "they got that dude,"
23 who was he referring to?

24 A The informant.

25 Q And when he said "they handled it," what was your

1 understanding of what he was referring to?

2 A They shot him.

3 Q Now, after that conversation with Mr. Baskerville, what if
4 anything did you decide to do?

5 A Well, at first me and Troy Bell was -- you know, Troy
6 thought it was just a lot of talk, but we knew after we seen
7 the article in the paper, you know, we knew he was the real
8 deal.

9 So we went to Troy Bell's cell and we sat in there
10 talking about this, me and him. And we still had the article.
11 So we had decided to write a letter.

12 So, you know, Troy Bell sat at a little desk in the
13 cell and he was writing the letter while I looked out the
14 window. And I was watching in case anybody was coming because
15 we was going to tell somebody that what we had just found out.

16 So we eventually addressed the letter, and we said we
17 had information about we know who committed the murders. And
18 we forwarded the letter to the U.S. Attorney.

19 Q Was there a particular U.S. Attorney you sent it to?

20 A Yeah, you, John Gay.

21 Q And what was the reason you sent it to me?

22 A Because we knew it was the real deal and, plus, we knew it
23 could help.

24 Q Okay. Let me ask you this: Why did you send it to me as
25 opposed to somebody else in the U.S. Attorney's Office?

1 A Well, you was the person listed in the article so it was
2 only natural that we send it to you.

3 Q Now, and what was it that you hoped to gain by writing this
4 letter to the U.S. Attorney's Office?

5 A Well, in the Federal system, if you -- if you cooperate and
6 you tell the truth, the judge could give you a break in your
7 sentence.

8 Q So you were hoping to get a break in your sentence?

9 A Yeah.

10 Q Now, you testified about Mr. Bell writing a letter and you
11 watching him.

12 A Yeah.

13 Q Describe the purpose of that.

14 A Well, I was watching -- I was actually telling him what to
15 say in the letter because, you know, we was like real nervous.
16 So I'm looking out the window. And the purpose I'm looking out
17 the window, because Will comes up a lot to your cell and just
18 walks in, and you don't want to be sitting there writing a
19 letter like that in jail. So, you know, that was the main
20 reason.

21 Q Why not? Why would you not want to be caught writing a
22 letter like that?

23 A That would get you kind of hurt, you know.

24 Q Now, after that time, did any agents come to see you?

25 A No, they came to see Troy Bell first. And Troy Bell was,

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1 you know, he told them, well, go see Mr. Dock first. And then
2 come back. They came to see me next.

3 Q Then what happened when they came to see you?

4 A I told them I wasn't going to talk to them unless the
5 lawyer was present.

6 Q When you say "the lawyer," who are you referring to?

7 A My lawyer, a guy named Richard Phillips.

8 Q And did there come a time after that that you did speak to
9 the agents with the lawyer?

10 A Yeah.

11 Q Now, did you decide to do anything else at that time other
12 than write the letter to the U.S. Attorney's Office?

13 A Yeah. We had been having conversation with Will since
14 January, so -- the informant conversations being, going all the
15 way back to January, so after we had -- after we wrote the
16 letter we thought about trying to remember everything that was
17 said up until the point that the articles came out. So after
18 that we just started going back trying to remember the
19 conversation, and we kept a log on it.

20 It's -- so I backdated the log going backwards coming
21 forward.

22 Q When you say you backdated coming forward, can you explain
23 what that means?

24 A Because the first conversations happened in January, and we
25 were all the way in March. So we had to go back to the initial

1 conversations and try to remember what we was talking about.

2 And we just kept a log on it, and eventually the log got caught
3 up all the way to some time in March or something like that.

4 Q All right. And then what happened? Did you have
5 additional conversations with Mr. Baskerville after March,
6 after the log came up-to-date, as you said?

7 A Yeah.

8 Q And what did you do for those additional conversations, if
9 anything, with respect to the log?

10 A Well, once the log was caught up some time after March,
11 we -- you know, the conversations are current, you know?

12 Q So if you had a conversation, for example, with Mr.
13 Baskerville on a day after the log was current, what if
14 anything did you do with respect to the log?

15 A I would -- late night I would just make a note of what we
16 talked about. And you do it, you make the note during count
17 time when everybody is locked up. You can't start writing,
18 like, a few pages like that because you have a cell and you're
19 writing kind of, like, stuff, like I said before, would get you
20 hurt.

21 So you wait to late night. You make a note so you
22 remember, and then late night when we in the cell and my
23 cellmate asleep, I be on the bottom bunk writing, so by morning
24 it's finished and put away and go to the next day.

25 Q Now, did you have any additional conversations with Mr.

1 Baskerville after you began filling out the log?

2 A Yeah. One time --

3 Q Without saying what they are, just yes or no: Did you have
4 additional --

5 A Yes.

6 Q Okay. Now, did you have any conversations with Mr.
7 Baskerville either before or after you began filling out the
8 log relating to his drug operation?

9 A Yeah. He told me one time, he said -- he said, you know,
10 when you run around setting people up and telling on people, if
11 you think you just going to do it and just get away with it, he
12 said it's wrong. He said as long as you got a get away driver,
13 a stash spot, you could ride up on a person in broad daylight
14 and shoot him with some hot cookies in the face, and he said
15 after that all you had to do was just drive off, park the car
16 in the location, leave the gun inside the stash spot and just
17 walk away.

18 Q Now, what did you understand "hot cookies" in the face to
19 mean?

20 A That mean bullets, shooting in the face.

21 Q Now, did he discuss anything with you about -- you
22 mentioned that he told you about running the block on Avon
23 Avenue. Is that correct? Did he say anything else about who
24 was with him, operating this?

25 A Yeah, this is about 13 of them.

1 Q Okay. Do you remember any names?

2 A I can't recall all of them but I can remember it's --
3 there's Paul, Newman, it's a guy named Paul, a guy named
4 Newman, it's Jihad, Herman. It's -- it's a bunch more of them
5 but I can't remember all the names.

6 Q You can't remember them now. Do you remember him about
7 discussing any brothers?

8 A Yeah, his brother name is Rak.

9 Q What I want to do is I want to go back to a conversation
10 you testified about earlier in which he said something to the
11 effect of, they were out looking for the informant.

12 A Yeah, he said --

13 Q Did he say who was out looking for the informant?

14 A Yeah, he said his brother was and a guy named Lik.

15 Q His brother; did he mention the name of the brother?

16 A All I know him is Rak. I think his -- they call him Rakeem
17 or Rak or something to that effect. It's in the notes though.
18 But I know it's Rak.

19 Q All right. Now, did there come a time -- well, let me
20 rephrase the question.

21 These conversations you talked about, they took place
22 while you were in Hudson County Jail. Is that correct?

23 A Yes.

24 Q And they took place while you were in Hudson County Jail on
25 federal charges?

1 A Yes.

2 Q Did there come a time when you decided to plead guilty and
3 cooperate on your federal drug -- federal drug and bank fraud
4 charges?

5 A Yes.

6 Q Okay. And did you do so in a written agreement?

7 A Yes.

8 Q I'm going to show you what's been marked Government Exhibit
9 7016 and 7017 and ask you if you recognize those (handing
10 documents)?

11 A Yes, I do.

12 Q Okay. Can you tell the jury what they are?

13 A Plea Agreements and Cooperation Agreement.

14 Q Okay. Now, the first one is a Plea Agreement for which
15 case?

16 A The first one would be the fraud case.

17 Q And what about the second one?

18 A The first one is a conspiracy.

19 Q Conspiracy what --

20 A To distribute drugs.

21 Q So you had two charges. Is that correct?

22 A Yes.

23 Q So you had agreements to plead guilty on both of them?

24 A Yes.

25 Q And you mentioned that one of them was a cooperating

1 agreement?

2 A Yes.

3 Q Can you briefly describe what your understanding of the
4 cooperating agreement was, particularly starting with what your
5 obligations were under the agreement?

6 A The agreement was, if I was to cooperate and be truthful,
7 the Government will write a letter and it would be up to the
8 judge to decide whether or not I was truthful and if the
9 cooperation was granted.

10 Q And did you, in fact, after that, begin to cooperate?

11 A Yes.

12 Q Did you eventually testify at a trial against William
13 Baskerville?

14 A Yes.

15 Q And what was your understanding of what would have happened
16 to you at that trial if you told a lie during the prosecutor's
17 questions?

18 A It would result in the judge saying no.

19 Q No to what?

20 A No, you will not be granted no leniency or nothing.

21 Q And what was your understanding of what would have happened
22 during that trial if you told a lie during the defense
23 attorney's question?

24 A The same thing.

25 Q Now, that trial, the William Baskerville trial was before a

1 different judge, not Judge Martini sitting here. Is that
2 correct?

3 A Yes.

4 Q And what about the judge that your case was actually
5 before, the one that you pled guilty. Was that a third judge?

6 A Yes.

7 Q Okay. So the judge who actually sentenced you on your
8 charges was not the same judge that heard the testimony at
9 trial?

10 A No, it was a different judge.

11 Q And it was not Judge Martini here?

12 A No.

13 Q Now, after your testimony, did you go before the judge for
14 sentencing?

15 A Yes.

16 Q And did you, in fact, get a reduction in sentence?

17 A Yeah, he gave me five years.

18 Q Did you serve that sentence?

19 A Yes.

20 Q And since getting out on that sentence, have you committed
21 any additional crimes?

22 A No.

23 Q Okay.

24 (Mr. Gay and Mr. Minish confer off the record.)

25 MR. GAY: No further questions at this time, Judge.

1 THE COURT: All right. Cross-examination.

2 MR. BERGRIN: Yes. Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. BERGRIN:

5 Q Now, you testified, Mr. Dock -- good morning, sir. Almost
6 to the afternoon. You testified that the judge decides whether
7 you're truthful?

8 A Yes.

9 Q Isn't it a fact that the prosecutor decides whether you're
10 truthful? The judge makes no determination whatsoever whether
11 your truthful or not, they rely upon the letter written by the
12 Office of the United States Attorney?

13 A Yes, that's correct.

14 Q So it's not the judge that decides whether you're truthful.
15 As a matter of fact, your Plea Agreement says it's in the sole
16 discretion -- that's the words they use, correct?

17 You've been around for a while, right, Mr. Dock?

18 A (No response).

19 Q You have to answer, sir.

20 A Well, I said "yes."

21 But my understanding is the person that imposes the
22 sentence is the one decides what you get. And that's what's my
23 understanding.

24 Q Right. The judge decides what you get as far as the
25 sentence. But in order to actually get before that judge for a

1 reduction in sentence, the U.S. Attorney has to decide whether
2 they're going to send a letter. Correct?

3 A Yes, that's correct.

4 Q And the U.S. Attorney has to make the decision in their
5 sole discretion whether you were honest or not. Correct?

6 A Well, I don't know who makes the decision who's being
7 honest. But I think the U.S. Attorney writes the letter and
8 the judge imposes the sentence. So...

9 Q Right.

10 A I don't --

11 Q The judge decides the sentence. But in order to get before
12 the judge, the U.S. Attorney has to write the letter. Correct?

13 A Yes, the U.S. Attorney have to write the letter.

14 Q Now, prior to you cooperating in the Baskerville case, you
15 attempted to cooperate on at least two other occasions.
16 Correct?

17 A Yes.

18 Q And it didn't work out. Right?

19 A Correct.

20 Q You weren't accepted as cooperator. Right? As a matter of
21 fact, you tried cooperating in October of 1982 in a robbery in
22 a murder case. Correct?

23 A I don't remember that.

24 Q Well, didn't it involve the murder of a shoe repairman that
25 was killed during a robbery in Paterson, New Jersey?

1 A Yes.

2 Q And you attempted to cooperate. This guy was beaten to
3 death and died. Right?

4 A Yes.

5 Q And you were questioned by homicide detectives and you gave
6 multiple statements. Right?

7 A I don't recall. I gave a statement, yes.

8 Q And do you remember telling them that your statements were
9 not truthful, and they gave you a polygraph and you failed the
10 polygraph exam?

11 A I don't remember that either.

12 Q Well, do you remember testifying to that back in April of
13 2007, and being asked questions about that?

14 A Yes, I remember that, yes.

15 THE COURT: Mr. Gay and Mr. Bergrin, can I see you at
16 sidebar?

17 We don't need Mr. Perelli.

18 (Off the record discussion at the sidebar.)

19 (In open court.)

20 MR. BERGRIN: May I proceed, your Honor, in a new
21 area?

22 THE COURT: That's fine.

23 BY MR. BERGRIN:

24 Q Mr. Dock, in 2002 when you were charged with the fraud and
25 the drug offenses -- that's what you were charged with.

1 Correct?

2 A Yes.

3 Q You attempted to cooperate on a weapons case with the
4 Office of the United States Attorney in New Jersey. Correct?

5 A Yes.

6 Q And that didn't work out either. Correct?

7 A Correct.

8 Q Now, when you wrote the letter with Troy Bell to the Office
9 of the United States Attorney, isn't it a fact that you were
10 facing approximately 22 years in federal prison for your
11 narcotic convictions?

12 A I think it was 15.

13 Q Fifteen? Do you remember telling the court that you were
14 facing approximately, between the two cases, approximately 22
15 years? From 15 to 22 years?

16 A Okay, yeah. I'll go with that.

17 Q That's a fair statement. Right, sir?

18 A That's a fair statement.

19 Q And when you do those 15 to 22 years in federal prison, you
20 have to do approximately 87 percent before you're even eligible
21 to be released. Correct?

22 A Correct.

23 Q Now, at the time that you began cooperating here in this
24 particular case, you were considered what they call a career
25 criminal. Correct?

1 A Yes.

2 Q Which means you were the highest level of the criminal
3 history category. Correct?

4 A No.

5 Q It was based upon your prior convictions and your prior
6 record. Right?

7 A Yes.

8 Q Now, at the time that you began cooperating here, you had
9 two open cases. Right?

10 A Yes.

11 Q You had an open narcotic distribution trafficking case.
12 Correct?

13 A Correct.

14 Q And you had an open fraud case. Right?

15 A Correct.

16 Q And in the fraud case it was a case involving up to a
17 million dollars in fraud. Right?

18 A Correct.

19 Q And the fraud case involved up to 49 separate and different
20 victims. Correct?

21 A Forty-nine different victims? I don't recall that, that
22 number.

23 Q There were a number of multiple victims. Is that a fair
24 statement?

25 A A fair statement, yeah.

1 Q Now, while you were out in California after the shoe
2 repairman death in 1989, you were convicted of drug-trafficking
3 again. Correct?

4 A Correct.

5 Q And you were convicted of providing a false identification
6 to a law enforcement officer?

7 A Yes.

8 Q And obstructing justice; deceiving the police in order to
9 hide your identity. Correct?

10 A Correct.

11 Q And then again in December of 1988 in California, you were
12 convicted of a separate obstruction of justice case. Correct?

13 A Correct.

14 Q Again, you provided false information to law enforcement
15 officers. Right?

16 A Correct.

17 Q And again, in California, in 1992 you were convicted of
18 another offense that involved drug-trafficking, and that's when
19 you received the five years in California State Prison.

20 Correct?

21 A Yes.

22 Q Now, the reason that you were out in California is because
23 you fled from New Jersey authorities who issued a warrant for
24 your arrest. Correct?

25 A Yes.

1 Q So you were a fugitive from justice in the State of New
2 Jersey. Correct?

3 A Yes.

4 Q Now, when you got to California, you also had another
5 conviction for false swearing, lying under oath to a law
6 enforcement officer. Correct?

7 A Lying under oath to -- I don't recall that. You have to
8 refresh me with that one.

9 Q So you had multiple obstruction of justice, multiple
10 providing false informations. Correct?

11 A Yes.

12 Q Now, when you left New Jersey, you left on a drug case --
13 correct?

14 A No.

15 Q -- where a warrant was issued?

16 What kind of case did you leave on, sir?

17 A Parole violation.

18 Q Parole violation.

19 And you were facing additional time in New Jersey on
20 the parole violation. Correct?

21 A Yes.

22 Q And that's why you left. Right?

23 A Yes.

24 Q When you were at the Passaic and even the Hudson County
25 Jail, you were considered one of what they call the paralegals,

1 or you were considered an individual who had more knowledge
2 than other inmates on the law. Correct?

3 A No.

4 Q Inmates came to you, right, for information? They came to
5 you for advice on cases. Right?

6 A No.

7 Q Are you denying that, sir?

8 A Yes.

9 Q Are you denying that you and Mr. Bell used to hold
10 yourselves out as individuals who had a higher degree of
11 knowledge than an average inmate on a case?

12 A Yeah, I'm denying that.

13 Q And you've never testified before about that. Correct?

14 A I think I testified to that we'd be talking about legal
15 stuff. Now there's a difference from somebody being a
16 paralegal and talking about legal situations that we were in.
17 There's a difference.

18 Q I'm not saying that you were a paralegal, but you used to
19 constantly talk with Mr. Bell and others about legal issues.
20 Correct, sir?

21 A Me and Mr. Bell used to talk about legal issues, yeah.

22 Q And you had talked loud enough where other inmates could
23 hear you. Correct?

24 A I guess if somebody was listening, I guess.

25 Q And you would go to the library a lot with Mr. Bell?

1 A Once or twice. Bell used to go often, but not as a
2 paralegal, he was trying to fight his case.

3 Q And you were trying to fight your case also. Correct?

4 A Yeah.

5 Q Now, how long were you at the Hudson County Jail?

6 A Oh, maybe about a year, somewhere like that.

7 Q And you're an individual who's familiar with the system.
8 Correct?

9 A Yes.

10 Q And you're an individual that's familiar with how the
11 Federal system works. Correct?

12 A Well, I wasn't familiar with the Federal system, I was
13 learning it.

14 Q You were learning the Federal system. Correct?

15 A Yeah, like everybody else.

16 Q I'm sorry, I didn't mean to interrupt you.

17 A Fine.

18 Q Continue with your comments.

19 A I said I was learning it.

20 Q You were learning it. Correct?

21 A Yes.

22 Q And you were familiar with the State system. Correct?

23 A Yes.

24 Q And at the Hudson County Jail there are a lot of people,
25 what they call "cooperators." Right?

1 A Yes.

2 Q And what's a cooperator? Explain that to me, please.

3 A A cooperator is a person that decides he's going to tell
4 what happened.

5 Q And there's also cooperators that you learned while being
6 at the Hudson County Jail that made statements to prosecutors,
7 law enforcement officers about what they learned from other
8 individuals. Correct?

9 A Yes.

10 Q And you know based upon your experience at the Hudson
11 County Jail there are cooperators who make facts up and say
12 they've learned it from individuals --

13 A Yes.

14 Q -- after reading like an article in the newspaper or
15 reading that person's discovery and make it up. Correct?

16 A Yes.

17 Q And they essentially lie what they've learned about the
18 other individuals. Correct?

19 A I ain't understand what you said.

20 Q They essentially say they got the information from the
21 other individual, meaning the defendant, when they've learned
22 it from another source and they lie to the prosecutor saying
23 that the person, the defendant gave them that information.
24 Correct?

25 A I haven't seen anybody do that.

1 Q Well, you just testified that you are familiar with that as
2 a means --

3 A I've heard of it but I haven't seen anybody do it.

4 Q You haven't seen anybody do it. You've heard about that.
5 Correct?

6 A Yeah.

7 Q And it was known among the inmates. Correct?

8 A Well, I don't know what the inmates know. I just said, you
9 know, I've heard it before. And I said I haven't seen it
10 before.

11 Q Now, you knew that one thing you had to do at the Hudson
12 County Jail -- and I'm sure you did it -- is you guarded your
13 legal materials. Correct?

14 A Yeah.

15 Q And the reason that you guarded your legal materials is
16 because you didn't want somebody to end up reading it and
17 saying that they told -- you told them about it when they
18 actually learned about it from reading the materials, correct,
19 and get cooperation?

20 A No, all it is, is reading somebody's legal material.

21 Q Have you ever heard of individuals reading other people's
22 reading materials?

23 A No.

24 Q You've never seen that at the Hudson County Jail?

25 A No.

1 Q You've never seen that at other institutions?

2 A No.

3 Q In your fraud case, you wanted to cooperate with the United
4 States Government. Correct?

5 A Yes.

6 Q And as a matter of fact, you pled guilty to fraud charges.
7 Right?

8 A Yes.

9 Q When you pled guilty to fraud charges you went before a
10 United States District Court judge. Correct?

11 A Yes.

12 Q A judge similar to the Honorable Judge Martini. Right?

13 A Yes.

14 Q In a Federal courthouse in Newark. Right?

15 A Yes.

16 Q When you went before this judge, you essentially answered
17 questions that were posed to you by the judge. Correct?

18 A Yes.

19 Q Questions that were prepared by the prosecutor about the
20 extent of your involvement in the fraud. Correct?

21 A I don't know who prepared no questions. I don't know that.

22 Q Well, you answered a multitude, a lot of questions about
23 the fraud. Right?

24 A Yeah, but the judge was asking the questions.

25 Q The judge was asking the questions.

1 And when you pled guilty, isn't it a fact that there
2 was some questions that you answered "yes" to that you really
3 weren't sure that you were involved in to that extent?

4 Correct?

5 A I don't know what you just said.

6 Q Well, do you remember making the statement that the fraud
7 was somebody else's program?

8 A Yes. I was --

9 Q Do you remember making the statement that you said things
10 during your plea of guilty that you had to say, that you
11 weren't sure about that you did, or you were involved in?

12 A I still don't know -- you have to rephrase that. I didn't
13 understand how you saying that.

14 Q When you pled guilty to the fraud, did you admit to things
15 that you did not do?

16 A The only thing I did -- when I pled to the fraud, I
17 admitted to my role in the fraud. That's what I did.

18 Q Did you -- what was your role in the fraud?

19 A Gather -- to get -- to give another guy bank statements and
20 IDs.

21 Q And what did you admit to?

22 A I admitted to doing that.

23 Q And did you admit that the actual fraud -- did you ever say
24 that the fraud was somebody else's program, I was just really
25 there, really like a participant?

1 A It was somebody else's -- somebody else's program, yes,
2 because it was several people in the fraud conspiracy. I
3 wasn't the main guy. I was somebody working for the main guy.

4 Q Did you ever say that you just pled guilty as prescribed in
5 the plea agreement, that's all you did?

6 A I -- I don't recall that.

7 Q Well, let me see if the transcript refreshes your memory
8 and recollection.

9 I ask you to look at page 5362, starting at lines 18
10 and 19.

11 MR. GAY: Which transcript are you talking about?

12 MR. BERGRIN: It's a transcript dated April 23rd of
13 2007.

14 (Counsel confer off the record.)

15 MR. BERGRIN: May I approach the witness, your Honor?

16 THE COURT: Yes. What's the date of the transcript
17 again?

18 MR. BERGRIN: April 23, 2007.

19 THE COURT: He's using it to refresh his recollection
20 right now.

21 MR. BERGRIN: Yes, your Honor. I'm just going to open
22 up to the page.

23 MR. GAY: What was the page?

24 MR. BERGRIN: 5362.

25 MR. BERGRIN: I'm showing this individual the

1 transcript dated April 23rd of 20007.

2 Q I actually have opened it to the page that I'm talking
3 about, and I would ask you to start reading from line 18 to 25,
4 and then on page 5363, lines one and two. Okay, please?

5 A Okay.

6 Q Thank you, Mr. Dock.

7 A (After pause) Okay.

8 Q Have you had a chance the review that?

9 A Yes.

10 Q Now, when you plead guilty to a case as a cooperator, as
11 you did in your fraud case, there are things that you have to
12 admit to. Correct?

13 A If -- yes, you have to admit, yes.

14 Q You have to essentially admit that you were involved in the
15 fraud. Correct?

16 A Yes.

17 Q And you have to answer the questions that are posed to you.
18 Correct?

19 A Yes.

20 Q And that's what you did. Right?

21 A Yes.

22 Q Now, you had made a statement that you were merely there in
23 the fraud case. Correct? Is that the words that came out of
24 your mouth: "I was merely there"?

25 A Yes, they're right there, yes.

1 Q It's in the transcript. Correct?

2 A Yes.

3 Q But when you pled guilty you never said you were merely
4 there. Correct?

5 A No. You have to admit to all the details.

6 Q And there are certain details that you admitted to that you
7 did not do. That's my point. Correct, Mr. Dock?

8 A You said there were certain details --

9 Q That you admitted to. You didn't just say and tell the
10 judge that you pled guilty before that you were only there.
11 Correct?

12 A No, it's more detailed than that. So, yes. The answer is
13 yes.

14 Q And the details that you admitted to, some of them involved
15 you and some of them didn't. Correct?

16 A Yes.

17 Q And you admitted to things that you didn't do, but in order
18 to get the plea agreement you said that you did them. Correct?

19 A Yes.

20 Q And this is before a federal judge. Right?

21 A Yes.

22 Q And that was mandated or ordered to you in order to get the
23 plea agreement by the U.S. Attorney's Office. Correct?

24 A Yes.

25 Q Now, it's not the same judge that sentenced you, it's the

1 same judge -- excuse me -- that sentenced you that you went
2 before when you pled guilty. Correct?

3 A Say that again.

4 Q You pled guilty before a judge. Correct?

5 A Yes.

6 Q And when you pled guilty before that judge, that was the
7 judge that sentenced you. Right?

8 A No.

9 Q It wasn't? It was a different judge?

10 A Yes.

11 Q Now, you didn't get between 15 and 23 years as -- as the
12 guidelines show that you were eligible to receive. Right?

13 A Yes.

14 Q You received a five-year sentence. Right?

15 A Yes.

16 Q As a matter of fact, it amounted to just about a time
17 served sentence. Right?

18 A I guess it depends on how you look at it. I guess.

19 Q Well, how much time had you had in custody at the time you
20 went for sentencing?

21 A A little over five years.

22 Q A little over five years. Right?

23 A Something like that, yeah.

24 Q So at the time you went for sentencing, you didn't do 15 or
25 20 years. Correct?

1 A Correct.

2 Q You did the amount of time that you had already put in.
3 Correct?

4 A Correct.

5 Q And that's based upon your testimony in the Baskerville
6 case and your cooperation. Right?

7 A Yes.

8 Q Now, you and Mr. Baskerville -- excuse me -- you and Mr.
9 Bell, do you consider yourself a good friend of his?

10 A Yes.

11 Q And you guys became close, right, because you were at the
12 Passaic County Jail together. Right?

13 A Yes.

14 Q And then you came over to the Hudson County Jail. Correct?

15 A Yes.

16 Q And have you ever heard the statement, "a big 5K"?

17 A Yeah, I heard that statement before, yes.

18 Q And isn't it a fact that you were asked that question,
19 because Troy Bell said that William Baskerville to you and him
20 was a "big 5K." Right?

21 A Yes.

22 Q Was William Baskerville a "big 5K" to you?

23 A That's kind of like a hard one to answer because it's like
24 over a time period. So I think what Will was to us -- you
25 know, at least myself, I think he was somebody that was doing

1 things and, you know, he made us aware of it. And we -- I
2 don't think we thought in terms of him being some big 5K, I
3 don't think we thought like that.

4 Q Well, you had -- I'm sorry. You had attempted to cooperate
5 on multiple occasions, starting back in 1982, and you were not
6 accepted as a cooperator. Right?

7 A In 1982?

8 Q It started in 1982 when you attempted to cooperate in the
9 murder case of the shoe repairman. Isn't that a fact?

10 A No. I chose not to cooperate. I chose not to. Somebody
11 didn't accept me. I just chose not to do it.

12 Q And you attempted to cooperate multiple times -- well, you
13 attempted to cooperate -- isn't it a fact that you went down to
14 the homicide unit and you gave statements. Correct?

15 A Went down to the homicide unit. You mean in 1982?

16 Q In 1982.

17 A In 1982 went to homicide -- I think so. I think so.

18 Q And as a matter of fact, you gave more than one statement.
19 Isn't that a fact?

20 A No, only one.

21 Q And isn't it a fact that based upon your credibility,
22 that's why you were not a cooperator back then?

23 A Absolutely not true.

24 Q Now --

25 A Basically --

1 Q You attempted to cooperate additional times before
2 Baskerville. Correct?

3 A You mean in the Federal system?

4 Q In the Federal system.

5 A You mean in the fraud case, in my own case?

6 Q And in the weapons case and in the fraud case, yes.

7 A Well, I only had the fraud case and the drug case was all I
8 had, so...

9 Q Well, you tried giving information on a weapons case and
10 you weren't accepted. Correct?

11 A No, that's not true either.

12 Q Isn't it a fact that you tried cooperating several times
13 before the Baskerville case, and you were not accepted as
14 cooperator?

15 A Still not true.

16 Q Isn't it a fact that you had meetings with the Office of
17 the United States Attorney and you were not getting a
18 cooperative plea agreement based upon those meetings?

19 A No, not true.

20 Q Isn't it a fact that you had meetings with Sam Koren, an
21 Assistant United States Attorney, and you weren't accepted by
22 him as a cooperator?

23 A Not true.

24 Q Isn't it a fact, sir, that you had meetings at the Office
25 of the United States Attorney, and until you talked about the

1 Baskerville case you were not accepted as a cooperating
2 witness?

3 A Not true.

4 Q We'll get back to those questions.

5 Now, you said that you met William Baskerville in
6 January of 2004?

7 A Yeah, something like that, yeah.

8 Q And when you met William Baskerville, where did you meet
9 him?

10 A In the day room.

11 Q When you say "day room," what do you mean?

12 A Well, it's -- it's a jail setting and it's got cells on the
13 first floor, cells on the top floor, metal tables in the
14 middle, and the day room is in middle where the tables is
15 located.

16 Q When you first met Will Baskerville, is that when he asked
17 you the question about a conspirator?

18 A Yeah.

19 Q And essentially he said to you -- he's inquiring to you.
20 Correct?

21 A Yes.

22 Q He's asking you questions, legal questions about
23 conspiracy. Correct?

24 A Well, I guess you could call them a legal question. They
25 was just a question, could a person be indicted, you know, by

1 himself.

2 Q And he made it clear to you that he didn't know. Right?

3 A I guess, yes.

4 Q You don't have to guess. He made it clear to you, Mr.

5 Dock --

6 A Yes.

7 Q -- that he didn't understand conspiracy and he didn't
8 understand whether he could be indicted and charged by himself.
9 Correct?

10 A Yes.

11 Q And he made it clear to you that he didn't understand what
12 would happen if there is no other witness. Correct?

13 A Made it clear -- I guess, yes.

14 Q And this was in January of 2004. Correct?

15 A Yes.

16 Q And he talked to you, and he talked to also Mr. Bell about
17 the same issues. Right?

18 A Yes.

19 Q And he asked you those same questions on several occasions,
20 more than once. Right?

21 A Yes.

22 Q And that's in January and even into the middle of January.
23 Correct?

24 A Yes.

25 Q Now, you talked about, during direct examination, that

1 William Baskerville came to you and said that he, being William
2 Baskerville, figured out who the informant was. Correct?

3 A Yes.

4 Q And he told you that when he, William Baskerville, figured
5 out who the informant was -- as a matter of fact, you used the
6 name, "sod" him up?

7 A Set him up?

8 Q "Sod" him up. Did you ever use the words, "sod him up"?

9 A No. That's probably how somebody -- I don't know, but the
10 word is "set" him up.

11 Q Look at page 5263 of the transcript.

12 A I seen it in there. But, you know, that's probably the
13 person typing. Though I don't know, because the word is
14 actually "set" him up.

15 Q "Set him up."

16 But the transcript refers multiple times to you using
17 the words, "sod him up." Correct?

18 A I guess.

19 Q And as a matter of fact, you were asked a question:

20 "What does 'sod him up' mean?"

21 And you responded, "Essentially, set him up."

22 Correct?

23 A Yes.

24 Q So you used the words "sod him up." Correct? S-o-d, him
25 up? Not "set him up." Right?

1 A Well, it's not -- it's not s-o-d, you know, it's s-e-t.

2 Q But you remember being asked the question: "What does 'sod
3 him up' mean?" Right?

4 A You mean under oath when I was asked the question?

5 Q Yes.

6 A Well, when I was asked the question under oath, my response
7 was, "set him up." That's different from "sod him up." You
8 know, which it's like two different words.

9 Q What's "sod him up"?

10 A I don't know what "sod him up" mean. But "set him up" mean
11 somebody working with law enforcement.

12 Q Do you know if you ever used the words "sod him up"?

13 A I think just the way the person that's typing it probably
14 heard it.

15 THE COURT: it's been answered.

16 MR. BERGRIN: I'll move on. It's not important
17 anyway.

18 Q Now, William Baskerville told you that his brother was out
19 there looking to put a "hole in the melon" of the person?

20 A Yes.

21 Q What you left out during direct examination is William
22 Baskerville told you about another person that was out there
23 looking to put a hole in the melon.

24 Isn't it a fact that William Baskerville told you
25 about another person -- not only his brother that was out there

1 looking to put a hole in the melon -- but another person?

2 Isn't that a fact?

3 A Yes.

4 Q And that other person is Malik Lattimore. Correct?

5 A Yes.

6 Q And this was in January, this was February again. Correct?

7 A January and some time in February, probably two
8 conversations, yes.

9 Q And did you know Johnny Davis at that time or an individual
10 by the name of Johnny Davis?

11 A Not by that name. If I know him, not by that name.

12 Q Now, William Baskerville told you that his brother did not
13 know who the informant was. Correct?

14 A Yes.

15 Q And he said that he, being William Baskerville, had
16 explained and remind his brother who the informant was.
17 Correct?

18 A Yes.

19 Q That he, William Baskerville, had to remind his brother
20 that it was the dude that kept coming at him trying to get
21 drugs from him. Correct?

22 A Correct.

23 Q Or words to that effect. Right?

24 A Correct.

25 Q And that it was he, William Baskerville, who let his

1 brother know who the informant was. Correct?

2 A Yes.

3 Q And it was he, William Baskerville, who gave the order as
4 to what to do to this informant. Correct?

5 A Yes.

6 Q And it was he, William Baskerville, who told you that it
7 was his brother, Rakeem, as well as Malik Lattimore, not
8 anybody else, who did the informant. Correct?

9 A No. That's not entirely true. See, that's not true.

10 Q Isn't it a fact that William Baskerville told you and made
11 it clear to you that Malik Lattimore was looking to put the
12 hole in the informant's melon?

13 A Well, I don't know who was doing shooting. I don't know
14 that. What I know is he told me that it was his brother, a guy
15 named Lik, and --

16 Q And you took that and you knew that to be Malik Lattimore,
17 isn't that what you testified to --

18 A I heard the name Malik Lattimore, yes.

19 Q And Malik Lattimore was the individual who William
20 Baskerville talked to you about in both January as well as
21 toward the end of February of 2004. Correct?

22 A I believe so. I'm not sure the way you -- because it was
23 many conversations between those times. But at some point that
24 conversation occurred, yes.

25 Q And the reason Will Baskerville said that Lattimore as well

1 as his brother were looking to put a hole in the informant's
2 head, according to you, was because this individual, the
3 informant, set him up. Correct?

4 A Yes.

5 Q Now, you never heard William Baskerville mention the name
6 Anthony Young. Correct?

7 A No.

8 Q And you never heard him mention the name Fat Ant or Ant.
9 Correct, ever?

10 A No.

11 MR. BERGRIN: If I could have just a minute, Judge.
12 I'm looking at the notes of his testimony.

13 Q Now, did there come a time -- and as a matter of fact,
14 didn't there come a time that on or about February 27th, which
15 you diaried in your log that you kept, that William Baskerville
16 told you that Malik had found the informant. Correct?

17 A No, I don't recall Malik finding anybody.

18 Q Do you remember William Baskerville telling you that Rakeem
19 and Malik had found him back in February of -- February 27th of
20 2004?

21 A Said they found him in February? No.

22 Q Well, do you remember testifying before a Federal Grand
23 Jury on February the 11th of 2005?

24 A Yes.

25 Q If you were to see your Grand Jury testimony, would that

1 refresh your memory?

2 A Yes.

3 Q I show you what's been marked as your Grand Jury testimony,
4 I ask you to look at page 17, and I ask you specifically to
5 look at lines 11 through 18. That's page 17 of the Grand Jury
6 testimony.

7 MR. GAY: Yes.

8 MR. BERGRIN: May I approach, your Honor? I'm sorry.

9 THE COURT: Go ahead.

10 A (After pause) Okay.

11 Q Does that refresh your recollection about the fact that
12 Malik Lattimore and Rakeem had found the informant?

13 A Yes, it does.

14 Q And is that what you testified to before a federal grand
15 jury?

16 A Yes.

17 Q And you told the truth. Correct?

18 A Correct.

19 Q Now, you testified under direct examination about William
20 Baskerville being called down to a legal visit and federal
21 agents or the Government coming to see him. Correct?

22 A Yes.

23 Q And isn't it a fact that William Baskerville told you or
24 made it very clear to you that under no conditions would he
25 ever cooperate with the Government and the FBI?

1 A Yes.

2 Q Now, you began preparing a log, when, Mr. Dock, sir?

3 A Some time -- some time after the article in the paper in
4 March.

5 Q So after the first week in March of 2004?

6 A Yes.

7 Q Now, when you began preparing the log, you said you
8 backdated or recreated it. Can you explain that one more time,
9 sir?

10 A Yes. All that means -- see, after we seen the article, we
11 seen all the murders, you know, I kind of knew Will was --
12 Baskerville was the real deal. So we had a lot of
13 conversations. So what I tried to do, me and Troy Bell tried
14 to do was to go back to January where this all informant thing
15 starts and try to remember what was said as accurately as
16 possible, and that's what all that means.

17 Q Well, isn't it a fact that you prepared this log because
18 you believed the prosecution would be more interested if you
19 had a log?

20 A No, I didn't think like that. I took -- I thought about
21 trying to remember all that was said.

22 Q Do you ever remember testifying to the fact that you
23 believed that the prosecution would be more interested in your
24 cooperation if you gave them a log?

25 A I don't remember testifying to that, no.

1 Q I ask you to look at page 5367, starting at line 16 to line
2 21, please, sir.

3 A You said 53?

4 Q I'll give you the page, start at line 16 and I'll ask you
5 that question again after you've had a chance to review that.

6 Please let me know when your finished, sir.

7 A (After pause) Yeah. My response was, "I guess." under
8 cross-examination.

9 I remember under cross-examination the other lawyer
10 was asking me that question, and I responded with "I guess,"
11 the same as I'm saying here. "I guess."

12 Q So you guessed and you believed that by preparing a log you
13 would be accepted, more accepted as a cooperator with the
14 Government. That was your response: "I guess." Correct?

15 A No. You're misleading it.

16 When the other lawyer asked me that question, the only
17 response I could give him was, "I guess."

18 When I was writing the log, it ain't have nothing to
19 do with the word "I guess," it had nothing to do with that.

20 Q Now, when did -- when did you decide -- excuse me. You
21 decided to prepare a log. Correct?

22 A Yes.

23 Q And did you have any notes up to that point of these
24 conversations?

25 A Not up to that point. Until after.

1 Q When you prepared the log you said you prepared it after
2 the newspaper article came out. Correct?

3 A Right, right.

4 Q But yet you backdated the log, the conversations back in
5 January. Correct?

6 A Yes.

7 Q Without notes. Correct?

8 A Yes.

9 Q And Mr. Bell kept a log and notes, too. Correct?

10 A Yes.

11 Q As a matter of fact, what Mr. Bell did is he tore up his
12 log and he tore up his notes and threw them in the garbage,
13 correct, or flushed them down the toilet? Excuse me.

14 A I believe so, yes.

15 Q Now, were you first to cooperate or was it Mr. Bell?

16 A Actually they came to see Bell first, not me.

17 Q And when they came to see Bell, he directed them to you.
18 Right?

19 A Well, that's what the agents said when they came back, yes.

20 Q Now, when you began to cooperate, had you ever sent any
21 letters to any U.S. Attorneys in reference to the fact that you
22 wanted to cooperate?

23 A Yeah, I think I -- I think I told -- I think I sent Sam
24 Koren a letter, too.

25 Q What about an AUSA by the name of Acker, A-c-k-e-r?

1 A I think so.

2 That's a long time ago. I think so, yeah. I think
3 that's the same one though, isn't it, or it's not? I know I
4 sent one back --

5 Q So you sent a letter to Sam Koren asking if you could be a
6 cooperator. Correct?

7 A Yes.

8 Q And then you sent -- and Sam Koren didn't respond to you.
9 Isn't that a fact?

10 A No.

11 Q And then you sent a letter to AUSA Acker asking for you to
12 cooperate and if you could get out on bail. Correct?

13 A Yes.

14 Q And you didn't get out on bail. Correct?

15 A No.

16 Q And you weren't a cooperator for Mr. Acker. Correct?

17 A That's not so either.

18 Q Now, again, the first conversations that you ever had with
19 Mr. Baskerville, as you testified, was in January of 2004.

20 Correct?

21 A Yes.

22 MR. BERGRIN: I have no further questions.

23 THE COURT: Any redirect?

24 MR. GAY: Brief, Judge.

25 REDIRECT EXAMINATION

1 BY MR. GAY:

2 Q Mr. Bergrin asked you some questions, first about what you
3 believed was going to happen with your cooperation agreement,
4 and particularly what the judge was going to do.

5 What did you believe was going to happen if the judge
6 did not think you were telling the truth?

7 A Well, I was told that the judge would reject it. That it
8 was solely up to the Court, it wasn't up to anybody else.

9 Q Now, Mr. Bergrin also asked you some questions about a
10 prior plea that you took in connection with the federal case.
11 Is that correct?

12 A Yes.

13 Q Did you tell the truth during the answers to those
14 questions?

15 A Yes, I did.

16 Q Mr. Bergrin also asked you some questions about cooperators
17 getting information from articles, newspaper articles. Do you
18 recall those questions?

19 A Yes.

20 Q I want to have you take a look at 2216. Is that the
21 article that you testified that you read before the Baskerville
22 case?

23 A Yes, it is.

24 Q I mean when -- I shouldn't say "before the Baskerville."
25 Let me rephrase the question.

1 That's the article that you say you read in jail. Is
2 that correct?

3 A Yes, this is the article.

4 Q And in that article does it say anything about any of the
5 information that you have in your log?

6 A No.

7 Q Any of the conversations that Mr. Baskerville had with you
8 that you put in your log?

9 A No.

10 Q Is there any information in that article about any of the
11 things that Mr. Baskerville told you about?

12 A No.

13 Q I'll take that back.

14 Now, Mr. Dock, you had a lawyer on your federal case.
15 Is that correct?

16 A Yes.

17 Q And you got advice from your lawyer on your federal case.
18 Is that correct?

19 A Yes.

20 Q But you also independent of your lawyer, while you were in
21 jail, took the time to do your own research on your own case.
22 Is that correct?

23 A Yes.

24 MR. GAY: One second, Judge.

25 (There is a pause for Mr. Gay.)

1 MR. GAY: Nothing else, Judge. Thanks.

2 THE COURT: Nothing else?

3 MR. BERGRIN: I have nothing else, Judge. Thank you.

4 THE COURT: All right. Mr. Dock, you're excused.

5 Thank you.

6 (Witness excused.)

7 THE COURT: Ladies and gentlemen, we'll take a lunch
8 recess until 1:45, and please don't discuss anything about the
9 case. We'll see you back here at 1:45.

10 Thank you.

11 THE DEPUTY CLERK: Please rise for the Jury.

12 THE COURT: All right, everyone, be seated, please.

13 Just a moment, I'm just reading something.

14 (There is a pause for the Court.)

15 THE COURT: All right. Mr. Gay, we have detective
16 Stockton. Right?

17 MR. GAY: Snowden, your Honor.

18 THE COURT: Snowden. And then?

19 MR. GAY: After that would be Mr. Pozo, Judge.

20 THE COURT: But then who else?

21 MR. GAY: Well, that is who we have for today, Judge.

22 And I will say that we have a couple of other witnesses for
23 tomorrow, they were not available today. But I do expect that
24 by the close of business tomorrow we will probably be resting.

25 THE COURT: Who do you have tomorrow? Let's find out.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.
09-cr-369-WJM
v. :
TRANSCRIPT OF
PAUL W. BERGRIN, : TRIAL PROCEEDINGS
Defendant. :
-----x

Newark, New Jersey
November 9, 2011

BEFORE:

THE HON. WILLIAM J. MARTINI, U.S.D.J.

Reported by
CHARLES P. McGUIRE, C.C.R.
Official Court Reporter

Pursuant to Section 753, Title 28, United States
Code, the following transcript is certified to be
an accurate record as taken stenographically in
the above entitled proceedings.

s/CHARLES P. McGUIRE, C.C.R.

CHARLES P. McGUIRE, C.C.R.

P2812 J-10327

1 A. I had called her to get in touch with her to tell her
2 there is a possibility that she could be a witness for the
3 Government in United States v. William Baskerville. The
4 trial was coming up. And I explained to her that we needed
5 to talk to her and ask her questions regarding what she
6 knew.

7 Q. And what was her response to that?

8 A. She was very upset, and she said that she refused to
9 meet with us, she did not want to meet with the Government.
10 She did not want to cooperate.

11 Q. At some point, did you can actually meet with her?

12 A. I did. I explained to her that we could issue a
13 subpoena to compel her to testify, but really what we just
14 needed to know was what information did she have.

15 And after talking to her, this exchange went back
16 and forth over probably two or three different phone calls,
17 and after that, she was willing to -- to meet with me.

18 So I explained that I would pick her -- that I
19 could come meet her at her job, and she asked that I don't
20 come to her job, that I don't identify myself to anybody
21 that she works with, and I agreed. So I said, I will come
22 to where you work in an unmarked car, in one of our vans,
23 pick her up, and we could just go for a quick ride so that
24 she could meet the Federal prosecutor who I was working
25 with. And she agreed to do that.

1 Q. And who was the Federal prosecutor that you were
2 talking about then?

3 A. That's Assistant United States Attorney Joe Minish.

4 Q. Did you, in fact, pick her up?

5 A. I did. I picked her up at the day care -- it was
6 either a preschool or a day care facility where she was
7 working in Newark, and I drove her downtown, and we met
8 somewhere in the area of -- I want to say Green Street or
9 one of the side streets, and A.U.S.A. Minish, who worked at
10 the Federal Building, came out and met us, and we talked in
11 the -- in the surveillance van that I was in with tinted
12 windows.

13 Q. And can you briefly describe what conversation you had
14 with her at that time?

15 A. She was -- she was very upset and she was crying, and
16 she said that she did not want to get involved in this
17 matter at all.

18 I said I just had to ask her a couple questions,
19 we just need to know what information she has, if any.

20 And she said that she did not want to get
21 involved, she said, that we, meaning myself and Joe Minish,
22 get to go home at night. She said, when I go home, I have
23 to go home to these people, meaning the Baskervilles. She
24 explained that she lives near them and that her best friend
25 is married to Jamal Baskerville, so that she was not in a

1 position to cooperate because she has to go home to -- to
2 these very people.

3 Q. Did she say anything about Anthony Young?

4 A. She did. At that point, I had asked her if she'd
5 spoken to Anthony Young. She said she hadn't spoken to him
6 in -- close -- close to a year, and that she had had no
7 contact with him, and she explained that she had been the
8 victim of a domestic violence matter.

9 Q. Did she say anything about whether Mr. Young had
10 talked to her about the Kemo murder?

11 A. He had told her that he had been involved in the
12 murder, but she added that he had changed his story, so she
13 didn't know what to believe. When I asked her what stories
14 did he tell you, and she said, I don't know, he just told me
15 that he was involved in the murder.

16 Q. Did she mention anything about driving to a shop?

17 A. Well, we asked her if she had ever driven Anthony and
18 Rakim to Ben's shop, and she initially denied it, and then
19 she said that -- that she did drive Anthony to Ben's shop,
20 and that she would take him there every now and then to go
21 pick up a car.

22 So we again asked her and said, Look, we have
23 information that you took Anthony and Rakim to the shop.

24 And eventually she said, I do remember an
25 instance, it was in the evening, not late in the evening,

1 but in the evening, she had come home from school, and she
2 had changed her clothes, I believe she said she was in her
3 pajamas, and she was in for the evening, and Anthony asked
4 her to drive Anthony and Rakim to Ben's shop. And she
5 really did not want to do it because she was in for the
6 night. But she ultimately agreed, and she drove them to
7 Ben's shop and waited outside the shop.

8 She said what they did in the shop, she has no
9 information, she did not know.

10 I asked if she had seen them with a gun, and she
11 said that she did not recall seeing that they had a gun.
12 But she said it was not unusual to see Anthony with a gun,
13 but on that particular instance, she could not recall if
14 they had a gun or not.

15 Q. Now, did you see Ms. Tarver again today?

16 A. I did.

17 Q. And where was it that you saw her?

18 A. I initially saw her before she testified out in the
19 hallway with Jamal Baskerville and Jamal Baskerville's wife
20 and I believe Jamal Baskerville's father.

21 Q. And did you see her after that as well today?

22 A. Yes, during the break, she was out on the -- I think
23 she was sitting on the bench with Jamal Baskerville's wife
24 and, again, Jamal Baskerville.

25 MR. GAY: No further questions, Judge, at this

1 time.

2 THE COURT: All right. Cross-examination, please.

3 CROSS-EXAMINATION

4 BY MR. BERGRIN:

5 Q. And I'm sure you prepared a report, an F.B.I. what
6 they call 302 on this; correct?

7 A. What I did is, I documented it in a memo format.

8 Q. My question to you is, did you prepare a report of
9 what the interview consisted of with you and Ms. Tarver?

10 A. I did not prepare a report. I prepared a memo
11 documenting the meeting.

12 Q. And does your memo say, "Synopsis, Meeting with
13 Rashidah H. Tarver on June 14th, 2006. Details. On June
14 14th, 2005, Special Agent Manson, A.U.S.A. Joseph Minish met
15 with Rashidah Tarver, date of birth, former girlfriend of
16 Anthony Young. Tarver is currently employed as a teacher
17 at, and her cell phone number."

18 Is that what your report consisted of totally?

19 A. Yes, totally.

20 Q. Where are your notes of the interview?

21 A. I did not take notes during this interview.

22 Q. Where is your recording of the interview?

23 A. Mr. Bergrin, we don't do recordings. In the Federal
24 system, we do not record interviews.

25 Q. So you took no notes, you prepared no 302 as to what

1 she told you; correct?

2 A. I did not take notes because Ms. Tarver was upset
3 during the interview, was crying. I was comforting her, and
4 I was providing her with tissues.

5 Q. So after you provided her with tissues and after you
6 comforted her, you didn't take down a memorandum of what she
7 told you on that date. Isn't that a fact, Ms. Brokos?

8 A. What I took down was the fact that we had met. I got
9 her place --

10 Q. You could answer my question: You didn't take down
11 what she had told you; isn't that a fact?

12 A. I did not take down what she told me.

13 Q. The only thing that you put into this supposed
14 memorandum is exactly what I read, nothing more whatsoever;
15 correct?

16 A. Absolutely correct, yes.

17 Q. Now, you said that you asked her about the versions of
18 what Anthony Young told her about the murder; correct?

19 A. Yes, I asked her to explain that in more detail.

20 Q. And she told you in more detail that he gave several
21 versions; correct?

22 A. She said that he's given two stories.

23 Q. Two stories. And you didn't think that was important
24 to put down in a memorandum form of a murder that you were
25 investigating of a Federal informant?

1 A. Absolutely, but she would not elaborate as to what
2 this information was.

3 Q. So you didn't think it was important to put down into
4 a memo that Ms. Young (sic) stated that Anthony Young gave
5 several versions of what occurred.

6 A. She's not providing anything of detail other than,
7 yes, he told me it was involved, but I don't know exactly
8 what his involvement is.

9 Q. So she told you -- excuse me. She told you he's
10 involved and he gave several versions, and you absolutely
11 put nothing down as far as notes, a memorandum to even the
12 prosecutor or defense counsel that may read about it in the
13 future. You put nothing down; you documented nowhere.
14 Isn't that a fact?

15 A. The prosecutor was with me during this interview.

16 Q. Isn't the fact that you did not memorialize it
17 whatsoever?

18 A. Yes, that is absolutely a fact, yes, it is.

19 Q. Did you speak to her about the aggravated assault
20 against her?

21 A. I didn't at that point because I had spoken to her
22 previously about it.

23 Q. And when you spoke to her previously about it, did you
24 document it in a report?

25 A. I did not. I spoke to her briefly about it, and she

1 told me what had happened. I then called the assistant
2 prosecutor in Essex County who was handling the
3 investigation -- or handling the prosecution.

4 Q. Excuse me. And who was that prosecutor?

5 A. I can't recall her name.

6 Q. When did you speak to that prosecutor?

7 A. In -- this would be subsequent to January 14th, 2005.

8 Q. Did you memorialize what that prosecutor told you?

9 A. I -- I don't know if I did or not. I can tell you the
10 conversation. She --

11 Q. My question is, did you memorialize that for whether
12 it be defense counsel, prosecution, or anybody else, did you
13 memorialize who you spoke to, the date you spoke to her, and
14 what that prosecutor told you?

15 You could answer my question yes or no.

16 A. My answer is I don't recall. I may have memorialized
17 it, I may not have.

18 Q. Well, let me show you a copy of your memo dated June
19 14th, 2006.

20 MR. BERGRIN: May I approach this witness, Your
21 Honor?

22 THE COURT: Yes.

23 MR. BERGRIN: It's J-03122.

24 THE COURT: Yes.

25 THE WITNESS: Okay. Thank you.

1 Q. Is that a copy of your memorandum of what you did when
2 you spoke to Rashidah Tarver?

3 A. I may be getting confused. Are you talking about when
4 I had spoken to the prosecutor?

5 Q. No. Is that your memorandum of what -- your
6 interviews of Rashidah Tarver in both 2005 and in 2006?

7 A. No. No, this is -- this memorandum that you're
8 showing me is from the time I met with her in June -- on
9 June 14th, 2006.

10 Q. Why is the date June 14th, 2005 in there?

11 A. That's what I --

12 Q. Excuse me -- of you and Mr. Minish meeting with her?

13 A. Right, correct. That's a typo. At the top, it says
14 June 14th, 2006, and in my synopsis, it also says June 14th,
15 2006. So in the details, where it says on June 14th, 2005,
16 that's a typo, that's an error.

17 Q. Where is the memorandum of the aggravated assault
18 interview? Where is the 302 report? Where is a
19 memorialization of what she told you about the aggravated
20 assault committed against her by Anthony Young?

21 A. I -- I don't -- I did not do a 302. It was not an
22 interview of her. I was calling to confirm -- what I was
23 doing was corroborating Anthony Young.

24 Q. Just -- excuse me --

25 THE COURT: Just --

1 THE WITNESS: Sorry.

2 THE COURT: Agent, try to just respond to the
3 questions.

4 THE WITNESS: I apologize.

5 Q. You testified that you spoke to Ms. Tarver and you
6 interviewed her about the aggravated assault; correct?

7 A. If I said interview, I misspoke. What my purpose in
8 talking to Ms. Tarver at that point was to confirm that she
9 had been a victim of a domestic violence incident.

10 Q. Did you document that you had spoken to her and she
11 confirmed that she had been the victim of domestic violence
12 and aggravated assault? Did you document that?

13 A. I don't believe that I documented that. I may have.
14 I don't believe that I did, though.

15 Q. Did you speak to her about the arson that was
16 committed against her and her home and her family?

17 A. I did speak to her very briefly about it.

18 Q. Very briefly.

19 A. Yes.

20 Q. Did you document and memorialize this very brief
21 conversation with her?

22 A. I don't know if I -- to be honest, Mr. Bergrin, I
23 don't know if I documented it. I can tell you exactly what
24 happened because I then called the assistant prosecutor, who
25 asked --

1 Q. Excuse me. What prosecutor did you call?

2 A. I know it's a female. I just can't recall her name.

3 Q. What date did you call her?

4 A. Anthony Young first came to us in January 14th of
5 2005, so I imagine it was probably that day or shortly
6 thereafter.

7 Q. I'm not asking you to imagine, ma'am. What date did
8 you call her?

9 A. Well, I'm giving you my best estimation. I would say
10 within days of Anthony Young coming to us, because I was
11 trying to corroborate the information he had provided.

12 Q. Did you memorialize the conversation with this
13 prosecutor?

14 A. I -- again, Mr. Bergrin, I don't know. I don't know
15 if I did or not.

16 Q. Well, we haven't been provided any 302s or any reports
17 whatsoever on that. I'm asking you a question. It's not
18 that long ago, according to your memory. Did you
19 memorialize any meetings with Ms. Tarver and what she told
20 you? Did you memorialize anything that any prosecutors told
21 you?

22 A. I can tell you that --

23 Q. You could answer my question.

24 A. Well, I --

25 THE COURT: All right. Wait. Whoa. Both of you.

1 THE WITNESS: Okay.

2 THE COURT: Mr. Bergrin, don't raise your voice as
3 much.

4 MR. BERGRIN: I'm sorry, Your Honor. I really
5 apologize.

6 THE COURT: Just respond to the question. Okay?

7 THE WITNESS: Okay. Well, there were multiple
8 questions in there, so --

9 THE COURT: I know. It's going too fast, so try
10 to slow it down.

11 THE WITNESS: Okay.

12 MR. BERGRIN: Yes, Your Honor.

13 THE COURT: Go ahead.

14 Q. Did you memorialize in any report whatsoever the arson
15 or the aggravated assault?

16 A. I don't believe I did. But that being said, I can't
17 say that with 100 percent certainty. I remember speaking to
18 her on the phone. Whether or not I memorialized it, I can't
19 tell you. But I do not believe I did.

20 Q. Now, you talked about the fact that she told you that
21 she had driven to Ben's garage; correct?

22 A. Yes.

23 Q. Where is the report which memorializes or says
24 anything whatsoever about Rashidah Tarver drove Anthony
25 Young to Ben's garage? I want to see that report right now,

1 please.

2 A. This is that report.

3 Q. I want you to read what that report says about
4 Rashidah Tarver driving Anthony Young to Ben's garage.
5 Please read it to the ladies and gentlemen of the jury so
6 they can see it and they can hear it for their own selves.

7 A. Okay.

8 The synopsis reads: "Meeting with Rashidah H.
9 Tarver on June 14th, 2006," and then in the details of my
10 report, it says "On June 14th, 2005, S/A Manson, A.U.S.A.
11 Joseph Minish met with Rashidah H. Tarver, date of birth,"
12 which is redacted, "former girlfriend of Anthony Young.
13 Tarver is currently employed as a teacher at," and again,
14 it's redacted. "Her cellular telephone number is," and it's
15 redacted.

16 Q. I want you to read to me about what Ms. Tarver told
17 you about Ben and going to Ben's garage.

18 A. You're not going to find that in my report because she
19 specifically asked not to be involved. And when I went back
20 and spoke --

21 Q. Excuse me. Please answer my question. You as an
22 agent, one of your obligations and your duties, your sworn
23 duties, is to document and make sure it's an accurate
24 document what a witness tells you about an important
25 incident; correct?

1 A. This was for trial preparation purposes to determine
2 if she would be a witness for us.

3 THE COURT: Let me just ask her a couple of quick
4 questions, if I can.

5 You went to meet with her for that purpose on that
6 day?

7 THE WITNESS: To see if she could be a witness for
8 us in United States v. William Baskerville, yes.

9 THE COURT: Okay. And at the time that you went
10 with her, you were aware already that Anthony Young had told
11 the Government when he first came in that one of the reasons
12 he came in was he was concerned that the Baskervilles and
13 others were unhappy with him because he had confided with
14 Ms. Tarver about another murder --

15 THE DEFENDANT: Yes.

16 THE COURT: -- and that they were upset that he
17 did that with Ms. Tarver, and she apparently had told that
18 to someone else.

19 THE WITNESS: Yes.

20 THE COURT: So you knew about that in early 2005,
21 I think it was.

22 THE WITNESS: Yes.

23 THE COURT: January.

24 THE WITNESS: Um-h'm.

25 THE COURT: Okay. So when you interviewed her on

1 June 14th, that was the whole motivation for Anthony Young
2 to come to the Government according to Anthony Young;
3 correct?

4 THE WITNESS: That, and --

5 THE COURT: He was afraid of that --

6 THE WITNESS: Yes, right.

7 THE COURT: -- because -- when you interviewed
8 her, isn't that an important fact that you would want to
9 know from Ms. Tarver when you interviewed her, whether or
10 not he had ever shared that information with her?

11 THE WITNESS: This was a -- this was not what I
12 would call an interview. She did not --

13 THE COURT: No, no. You're not answering my
14 question.

15 THE WITNESS: Okay.

16 THE COURT: In other words, you were preparing for
17 the Baskerville murder case.

18 THE WITNESS: Right.

19 THE COURT: Anthony Young was testifying in it.

20 THE WITNESS: Right.

21 THE COURT: He would testify that he went to the
22 Government then because of his concern about this leaking by
23 allegedly Ms. Tarver because that's what he said.

24 THE WITNESS: Um-h'm.

25 THE COURT: And so when you went to speak with

1 her, weren't you trying to find out if she, in fact, did
2 that?

3 THE WITNESS: Our main focus was to see not so
4 much that, but to see if she had a memory of driving Anthony
5 Young and Rakim Baskerville to Ben's shop to melt down the
6 murder weapon.

7 THE COURT: Okay. Okay. Well, no, no, my
8 question is, yes, so you went there with that purpose, and
9 she told you something about that, but it's not memorialized
10 in any F.B.I. 302 report.

11 THE WITNESS: Right.

12 THE COURT: Isn't that an important fact that an I
13 agent would typically put down into a report?

14 THE WITNESS: This -- if you were doing an
15 interview, yes. This was to see if she would be a witness
16 for trial, and it was determined right after this meeting in
17 my conversations with the prosecutor that there's no way she
18 would be a viable witness. She was clearly the victim of
19 domestic violence and she was very upset about cooperating.
20 So --

21 THE COURT: You've experienced that before with
22 witnesses, haven't you, that witnesses are reluctant to
23 cooperate, and there's the power of subpoena --

24 THE WITNESS: There is.

25 THE COURT: -- and there's protection and things

1 like that.

2 THE WITNESS: Yes.

3 THE COURT: And you were trying to find out an
4 important detail about whether she drove the car with two
5 people up there to the gun shop, and you're testifying about
6 it today, but you're saying back then it wasn't that
7 important enough to put down into a 302 memorial.

8 THE WITNESS: We knew we were not going to be
9 calling her as a witness because of her reticence to become
10 involved. We had no way to compel her to testify to that.

11 THE COURT: It's a subpoena. If she decides not
12 to testify after a subpoena, you know that, you have the
13 power of subpoena.

14 And also, it wasn't important to find out if
15 Mr. Young had shared with her in pillow talk, supposedly,
16 about this other murder, which was what precipitated
17 Mr. Young coming to the Government, and he said that early
18 on to you and said he's afraid and because -- on the street,
19 because of Ms. Tarver, this is what happened?

20 THE WITNESS: Oh, absolutely.

21 THE COURT: Okay.

22 THE WITNESS: We were not able to get that far in
23 the interview.

24 THE COURT: All right.

25 THE WITNESS: The interests -- she was very upset,

1 and the interview stopped.

2 THE COURT: Okay. She didn't relate that to you
3 on June 14th, 2006?

4 THE WITNESS: I didn't even have the opportunity
5 to ask her during the interview.

6 THE COURT: All right. Okay. All right. Thanks.

7 BY MR. BERGRIN:

8 Q. Isn't it a fact that it's not documented because it
9 affects the credibility of Anthony Young?

10 A. If anything, it would bolster the credibility of
11 Anthony Young.

12 Q. Well, then you should have prepared a memorandum to
13 that effect and you could have subpoenaed and compelled her
14 to testify; isn't that a fact, Agent Manson?

15 A. It absolutely is, and maybe there's a better way I
16 could have done that, I'm not going to argue the point, but
17 the fact is, I can tell you what she told me, and to the
18 best of my memory.

19 Q. And from June of 2006, you've never memorialized it;
20 correct?

21 A. No, no, I have not.

22 THE COURT: Ladies and gentlemen, let me just
23 explain for a moment.

24 The fact that the Court asks questions, I have a
25 right to do that to clarify and to get more detail. Because

1 I ask the question, it's of no greater weight, and whatever
2 the answers are, or the fact that I'm asking questions, it's
3 of no greater weight than when the prosecutor or the defense
4 attorney asks those questions. Okay? But I do have a right
5 to do that when I feel there's a need to at least ask
6 certain questions to get to certain details. And so you
7 shouldn't give it any more weight than any other answer or
8 any other question that's asked in this courtroom. Okay?

9 BY MR. BERGRIN:

10 Q. Do you remember testifying before this jury back on
11 October the 19th of 2011?

12 A. Yes.

13 Q. Do you remember being asked the question on page --
14 and I'm citing page 189, sir -- starting with question 10:
15 "Did you...interview Rashidah Tarver? And your answer,
16 "Yes, I did." Do you remember saying that?

17 A. Yes, I do.

18 Q. Do you remember being asked the question "When did you
19 interview her," and remember answering "Shortly after we
20 began talking to Anthony Young. But the dates I
21 specifically can't tell you, again, without my reports. But
22 I did speak to her." Do you remember that?

23 A. Yes, I do.

24 Q. Do you remember being asked questions about your
25 memorialization into a memorandum or report about what

1 Rashidah Tarver told you?

2 A. Yes.

3 Q. And isn't it a fact that you told this jury that you
4 did memorialize what Rashidah Tarver had told you?

5 A. Yes.

6 Q. But you didn't memorialize anything that Rashidah
7 Tarver told you; isn't that a fact, ma'am?

8 A. I -- all I did was document our meeting.

9 Q. You didn't memorialize anything that Rashidah Tarver
10 told you, material, important facts; isn't that a fact?

11 A. That is a fact, yes.

12 MR. BERGRIN: No further questions of her.

13 THE COURT: Do you have any redirect?

14 MR. GAY: Just very brief, Judge.

15 REDIRECT EXAMINATION

16 BY MR. GAY:

17 Q. Special Agent Brokos --

18 A. Yes.

19 Q. -- what is the reason that you documented this meeting
20 in the manner that you did?

21 A. After this meeting concluded, I spoke to A.U.S.A.
22 Minish, and we decided that she was not -- we could not use
23 her as a witness because she is so visibly upset about
24 cooperating with the Government because this is family to
25 her, and for her to go against family and to put herself

1 out, we decided that she would not be a -- we would not be
2 able to utilize her as a witness.

3 We also were trying to -- I mean, in a nutshell,
4 that's essentially what we decided.

5 Q. Now, you obviously would have the power to subpoena
6 and compel somebody to take the stand; is that correct? Or
7 not you personally, but a subpoena could be issued; is that
8 correct?

9 A. Yes, we could issue a subpoena, true.

10 Q. When somebody is expressing concern over their safety
11 with cooperating with the Government, are there any other
12 factors that you take into account regarding whether you
13 call that person as a witness?

14 A. Yes. We have to look at her safety, and by exposing
15 her, we would have to relocate her, move her away from her
16 family, move her away from her job. She was, I believe, a
17 teacher, a schoolteacher or preschool teacher in Newark, and
18 we would have had to have taken many steps to secure her and
19 her safety, and again, this is -- this is her family that we
20 would be taking her away from.

21 Q. And as far as -- you mentioned what you could do.
22 Would it be up to her to decide whether she would accept
23 that? In other words, --

24 A. Oh, absolutely.

25 Q. -- you couldn't force her to move, could you?

1 A. No. No.

2 Q. Did you have any indication about whether she wanted
3 to move at that time?

4 A. No. I mean, the indication we had is that she did not
5 want to be involved.

6 Further, she had no criminal knowledge. She could
7 not tell us that they went there to melt a gun. She could
8 tell us they went there, but as far as her being involved in
9 criminal activity, we could not -- it was my opinion she was
10 not involved in criminal activity. So we would not be
11 taking any further steps.

12 THE COURT: Special Agent, let me ask you, you
13 don't just document, when you do your 302 reports and you're
14 doing an investigation, you don't just document
15 conversations because they're incriminating themselves; you
16 document whatever you think is necessary or important to put
17 in a document when you do your 302 report, correct? It's
18 not just, well, we only document people who are
19 incriminating themselves. When you do a criminal
20 investigation, you go and document when you interview
21 somebody what they say and what important information, if
22 any, they provided you; isn't that true?

23 THE WITNESS: That is absolutely true, but this
24 wasn't a -- this wasn't an interview per se. When I go on
25 an interview, I go with myself or another agent. I don't

1 take the assistant with me. This was to prepare for trial.

2 THE COURT: Well, there's no record from Mr.
3 Minish about this, is there?

4 THE WITNESS: No. No.

5 THE COURT: Okay.

6 Is there any more redirect? No?

7 Is there any more recross?

8 MR. BERGRIN: Yes, Your Honor.

9 MR. GAY: Well, Judge, I have just a couple of
10 brief questions. I'm sorry.

11 THE COURT: No, go ahead.

12 BY MR. GAY:

13 Q. You had also mentioned that you had spoken to a
14 prosecutor about the domestic violence incident; isn't that
15 correct?

16 A. Yes, on like two or three occasions, yes.

17 Q. And what was it that the prosecutor told you with
18 respect to you speaking to Ms. Tarver about the domestic
19 violence incident?

20 A. She confirmed that there was, in fact, instances of
21 domestic violence, and she asked that I not speak to the
22 victim, meaning Rashidah Tarver, at all because it was an
23 ongoing investigation, and she asked that I do not speak to
24 the victim until the case has resolved itself.

25 MR. GAY: No further questions, Judge.

1 THE COURT: All right. Is there any recross?

2 MR. BERGRIN: I have some questions, Your Honor.

3 RECROSS EXAMINATION

4 BY MR. BERGRIN:

5 Q. Do you remember testifying again on October the 19th
6 of 2011, ma'am?

7 A. Yes.

8 Q. Remember being asked the question -- page 192, sir --
9 page 192, line 22: "Did you ever ask Rashidah Tarver when
10 you interviewed her whether she was in fear for her life?"

11 Remember being asked that specific question by me
12 word for word?

13 A. Yes.

14 Q. And remember responding: "I did not interview her
15 immediately. I interviewed her somewhat after the fact, and
16 she explained that Anthony Young had told her what he had
17 done to make him in fear of his life and she was aware of
18 it." Do you remember saying that?

19 A. Yes.

20 Q. And remember being asked the question: "Was Rashidah
21 Tarver ever in fear of her life?" And then remember your
22 response: "I don't believe she was"? Do you remember
23 saying that?

24 A. I'm not -- if I said it, I'm not going to dispute
25 that. I'm just not sure what context that --

1 Q. Well, let me show it to you --

2 A. Yeah.

3 Q. -- because it's important, and I'd like you to be
4 sure.

5 A. Okay.

6 MR. BERGRIN: Page 193, Mr. Gay, lines three and
7 four.

8 Q. And I'd like you to look at that, and I'd like you to
9 read the question and the response to the jury.

10 Can you please read the question and the response
11 for the jury?

12 A. Yes, I'm just trying to find out where we're at.

13 "Did you ever -- and he said he was asking for
14 protection for him and Rashidah Tarver. Correct?"

15 And I said "Yes."

16 "Did you ever ask Rashidah Tarver when you
17 interviewed her whether she was in fear for her life?"

18 And my answer was: "I did not interview her
19 immediately. I interviewed her somewhat after the fact, and
20 she explained that Anthony Young had told her what he had
21 done to make him in fear of his life and she was aware of
22 it."

23 And you asked: Was Rashidah Tarver ever in fear
24 of her life?"

25 And I answered: "I don't believe she was."

1 Q. What did you say? I'm sorry?

2 A. "I don't believe she was."

3 THE COURT: You heard her, Mr. Bergrin. You just
4 heard it.

5 Q. Please, ma'am. Thank you.

6 And then were you asked the last question as a
7 follow-up:

8 "As a matter of fact, is all this contained in a
9 302 by you?"

10 And then did you say to this jury under oath: "It
11 should be, yes"?

12 A. Yes, because that was my memory at the time. Again, I
13 remember having this conversation with her. I --

14 Q. Ma'am, my question was, is it contained in the 302
15 report?

16 A. And my answer was, it should be, yes.

17 Q. And is it contained in your 302 that you read to this
18 jury?

19 A. This is not a 302. This is a memorandum.

20 THE COURT: There is no 302.

21 THE WITNESS: That's right.

22 MR. BERGRIN: No further questions.

23 MR. GAY: Judge, I just have one brief --
24
25

1 FURTHER REDIRECT EXAMINATION

2 BY MR. GAY:

3 Q. If you recall, Agent Brokos, the testimony that
4 Mr. Bergrin just cited back to you, were you discussing at
5 that point whether Ms. Tarver was in fear of her life from
6 Jamal Baskerville the same way Anthony Young was?

7 A. No -- yes. Was I discussing that?

8 Q. Yes. During that part of the testimony --

9 A. Right.

10 Q. -- that Mr. Bergrin just read back to you, was that
11 what the discussion that -- was that the topic you were
12 discussing there?

13 A. Yes.

14 Q. Not about whether she was afraid to cooperate and
15 testify on behalf of the Government at trial; is that
16 correct?

17 A. Exactly.

18 Q. Okay.

19 A. Yes.

20 MR. GAY: No further questions.

21 FURTHER RECROSS EXAMINATION

22 BY MR. BERGRIN:

23 Q. Ms. Manson, you were asked a broad question concerning
24 whether Rashidah Tarver had any fears whatsoever. Nobody
25 expressed it in terms of Jamal Baskerville, Anthony Young,

1 the neighborhood, her friends, her new boyfriend; you were
2 asked a simple question during cross-examination on October
3 the 19th, was Rashidah Tarver ever - ever - in fear of her
4 life. That was the question. You said you don't believe
5 so. That was your response; correct?

6 A. Yes, but in the line of questioning, it was in context
7 with what Anthony Young had done to get himself to us. So
8 as a result of that, was she in fear of her life.

9 Q. Ever; correct? That was the question. It was a
10 simple question, and you said you don't believe so. You had
11 a chance to answer that question, I believe so from Jamal
12 Baskerville, or, I believe so from Anthony Young. You said
13 you don't believe so. That was your response to my
14 question. It was a broad question. Is that a fact?

15 A. That is a fact. That's why I reread it very
16 carefully, because, in context, what I meant was, as a
17 result of Anthony coming to us because of his fear of the
18 Baskervilles, was that why she was in fear of her life. And
19 I said no, I don't believe so. I don't think I took it in
20 the broader context. That's why I sat here and reread it,
21 because, in context, that is exactly what I meant.

22 MR. BERGRIN: I have no further questions.

23 THE COURT: Did you only speak to Ms. Tarver on
24 the one occasion, June 14th of 2006?

25 THE WITNESS: In person, Your Honor?

1 THE COURT: Yes.

2 THE WITNESS: Yes, that's my sole -- my only
3 interview with her in person, yes.

4 THE COURT: All right.

5 I think you might have answered this, the question
6 I asked before, but it's a question I want to ask.

7 In this interview with her, did you ever bring up
8 the question or about, did Mr. Young ever share with her his
9 involvement in another murder that she then told one of the
10 Baskervilles or somebody else about? Did you ever ask her
11 that question when you had the chance in that van to speak
12 with her?

13 THE WITNESS: I did not have the chance because
14 she was upset, she said she wanted to leave, she no longer
15 wanted to speak to us, and she got out of the van, in fact,
16 so much so that I couldn't even drive her back. She got the
17 bus. She took the bus downtown back to her job. So there
18 was no more talking I could do. I was trying to console her
19 and trying to get her to talk to us but she clearly did not
20 want to cooperate.

21 THE COURT: Okay. I have nothing further.

22 MR. BERGRIN: I have a question based upon yours.

23 FURTHER RECROSS EXAMINATION

24 BY MR. BERGRIN:

25 Q. Did you ever subpoena her and compel her or force her

1 to testify at a Federal grand jury?

2 A. We were going to, and I told her that --

3 Q. My question was, did you ever subpoena her.

4 A. We never had to because she -- no, we did not.

5 Q. And from June the 14th of 2006 until this date today,
6 did you ever try to interview her?

7 A. No, I did not.

8 MR. BERGRIN: No further questions.

9 THE COURT: All right.

10 All right. Thanks, Agent. You can step down.

11 THE WITNESS: Thank you, sir.

12 (Witness excused)

13 THE COURT: All right. Mr. Bergrin?

14 MR. BERGRIN: I have nothing further, sir.

15 THE COURT: Go ahead. Is there any rebuttal? I'm
16 sorry.

17 MR. GAY: No, that was the final witness for the
18 Government, Your Honor.

19 THE COURT: All right. Okay.

20 The Government rests their case in full, and there
21 is --

22 MR. GAY: Yes, Judge.

23 THE COURT: All right.

24 What that means, ladies and gentlemen, is that all
25 of the evidence is here, but that doesn't mean you should

1 begin to formulate opinions or make any judgments yet.
2 You'd be violating your oath if you did that. There's still
3 some very important proceedings that have to take place,
4 including the summations and arguments of counsel based on
5 the evidence as well as the law that you should apply to the
6 case. So you should not be prejudging this case, even
7 though the evidence is now here, nor discussing it amongst
8 yourselves or with anyone else at home. It's very
9 important. You've come a long way and you've all been very
10 good in terms of, I trust, abiding by the sworn oath that
11 you've taken not to do any of those things.

12 Here's the schedule.

13 Because we have a holiday on Friday, we're not
14 going to break up the summations and start summations
15 tomorrow, and then they will probably take a day or two, so
16 we're going to have you come back on Monday. Monday morning
17 at nine o'clock, we'll begin summations. We expect they'll
18 take at least all day Monday, maybe into Tuesday, and either
19 way, I'm going to give you the law on Tuesday. At least
20 that's what we're projecting.

21 So you're free. We'll dismiss you now with a few
22 other very strong directions and orders, actually: Do not
23 read anything in the paper about this case for the reason I
24 told you repeatedly. You know, the newspapers report a
25 summary of what took place today. You're the only ones that

1 hear the entire thing, and you're the only ones that can
2 look at the witnesses and make judgments based on what you
3 see here in this courtroom.

4 So we don't want you influenced by anything on the
5 outside. Of course, if there's anything on the television
6 or radio, not to listen to it, if it starts to sound
7 familiar. Also, most important -- well, it's all important,
8 but no Internet research. That would be inappropriate.

9 And again, don't start discussing this case at
10 home. You'll have plenty of time to do that next week when
11 you begin your deliberations after you have the law and
12 after you hear the summations.

13 So you'll have plenty of time to actually start to
14 talk amongst the jurors as to what this all means to you.

15 With those strong advisements and orders, please
16 remember you did take an oath.

17 We'll see you back here at nine o'clock on Monday
18 morning, and we'll have full days after that, Monday,
19 Tuesday, with summations and charge. Okay?

20 So thank you very much, and we'll see you Monday
21 morning at nine o'clock.

22 THE COURT CLERK: Please rise for the jury.

23 (The jury exits)

24 THE COURT: Okay. Is there any -- counsel,
25 everybody can be seated.

1 We'll see you tomorrow morning. We'll start at
2 10, and we'll do the requests to charge, we'll go through --
3 it shouldn't take us too long, I don't think. I hope I'll
4 have a draft to work from. But certainly by Monday morning.
5 I mean, I have a draft already, and we'll go through it
6 tomorrow.

7 So we'll see you at 10 o'clock tomorrow.

8 That's it. Have a nice afternoon.

9 MR. GAY: Thank you, Your Honor.

10 MR. BERGRIN: Thanks, Your Honor.

11 (Matter adjourned until Thursday, November 10, 2011,
12 commencing at 10 a.m.)
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
 Criminal No. 2:09-cr-00369-WJM

3 UNITED STATES OF AMERICA, :
 :
4 v. :
 :
5 PAUL W. BERGRIN, :
 :
6 Defendant :
 - - - - -X

Newark, New Jersey
November 14, 2011

9 B E F O R E:

10 THE HONORABLE WILLIAM J. MARTINI,
11 UNITED STATES DISTRICT JUDGE,
 and a Jury

12 A P P E A R A N C E S:

13 UNITED STATES ATTORNEY'S OFFICE
14 BY: JOHN GAY
 JOSEPH N. MINISH
 STEVEN G. SANDERS
15 Assistant U.S. Attorneys
16 For the Government

17 PAUL W. BERGRIN, Defendant, Pro Se
 - and -
18 GIBBONS PC
 BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel
 AMANDA B. PROTESS, ESQ.
19 For Defendant Paul W. Bergrin

21 Pursuant to Section 753 Title 28 United States Code, the
22 following transcript is certified to be an accurate record as
 taken stenographically in the above entitled proceedings.

23 S/WALTER J. PERELLI
24 WALTER J. PERELLI, CCR, CRR
25 OFFICIAL COURT REPORTER

WALTER J. PERELLI, OFFICIAL COURT REPORTER, NEWARK, NJ

P2846

WALTER J. PERELLI, OFFICIAL COURT REPORTER, NEWARK, NJ

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Summation by Mr. Minish.....4

I N D E X

1 November 14, 20011

2 (Trial resumes - Jury not present.)

3 THE COURT: Good morning, everyone. Please be seated

4 MR. BERGRIN: Good morning.

5 MR. LUSTBERG: Good morning, your Honor.

6 THE COURT: Everyone, be seated, please.

7 Before we get started, let me just -- Mr. Minish, do
8 you have an idea how long you'll be, a better idea? I'm not
9 holding -- I wonder -- if you need a break, if you do need a
10 break, then whenever you think it's appropriate, indicate that
11 and we'll break.

12 MR. MINISH: Okay, Judge, I will.

13 THE COURT: If you feel like you need a break, just
14 turn to me, and if that's an appropriate time we'll break,
15 okay? Don't make it after a half hour.

16 MR. MINISH: I will not, Judge.

17 THE COURT: And if there's nothing further we'll get
18 started.

19 If everyone in the courtroom would please remember to
20 turn off your cell phones, including myself, or any other
21 electronic equipment.

22 All right. With that said, then we'll bring out the
23 jury.

24 THE DEPUTY CLERK: Please rise for the Jury.

25 (Jury present.)

WALTER J. PERELLI, OFFICIAL COURT REPORTER, NEWARK, NJ

P2848

1 THE COURT: All right, everyone, please be seated and
2 welcome back.

3 In a moment we're going to be having what's called
4 summations. These are the arguments by the respective counsel.
5 Under the rules of law, the Government proceeds first with
6 their closing summation, their closing arguments to you. After
7 that, the Defendant has an opportunity to do his closing
8 address to you, and then after that, the Government has a
9 chance to do what's called a short rebuttal remarks, which is
10 also part of the closing address to you, and then after that I
11 have an opportunity to provide you with the law of the case.
12 Okay?

13 You should remember again that whatever is said by
14 attorneys in summations is not evidence. It's their arguments
15 to you that what they believe the evidence has proven or not
16 proven or not shown; either way. And so it's important, but
17 again, your best recollection of the evidence, what you heard
18 from the witness stand and what the exhibits will show to you
19 is what the jurors, yourselves, will have to consider. But
20 listen closely to the arguments of counsel. They're important,
21 but don't confuse them with the evidence. Okay?

22 And with those opening remarks, Mr. Minish -- you're
23 giving the opening, the closing address for the Government?

24 MR. MINISH: I am, Judge.

25 THE COURT: All right. Please step forward.

1 MR. MINISH: Thank you, your Honor.

2 Counsel, members of the Jury: Good morning.

3 On March 2nd, 2004, at approximately 2:00 p.m. on
4 South Orange Avenue and 19th Street, right here in Newark, Kemo
5 DeShawn McCray was gunned down in a brutal attack. He was
6 grabbed by Anthony Young and he was shot in the head and died,
7 lay bleeding in a pool of his own blood on 19th Street with his
8 stepfather strides away from him.

9 Now, it was not a random killing. This was not a
10 robbery. This was an execution.

11 In the Government's opening, Mr. Gay said to you, at
12 the time of the murder it begged the question: Why?

13 Now you know why.

14 Kemo DeShawn McCray was killed because he cooperated
15 with the Government.

16 There were a number of people who were involved in
17 this conspiracy, there were a number of people who were
18 involved in this murder. What you've learned is that William
19 Baskerville wanted it done, figured out who the cooperator was
20 and told Paul Bergrin.

21 You heard Jamal Baskerville after months of searching
22 by the group finally locating Mr. McCray. Then on the day of
23 the murder, on March 2nd, Hakeem Curry and Jamal -- excuse
24 me -- and Jamal McNeil acted as lookouts, and on that day
25 Anthony Young put a gun to his head and fired, and Rakeem

1 Baskerville drove the getaway car.

2 But what did Paul Bergrin, what did Paul Bergrin do?

3 Well, what Paul Bergrin did was informed the gang that
4 the cooperating witness, the individual referred to only as the
5 "cooperating witness" in the complaint was, in fact, Kemo.
6 Remember, they thought it was somebody else.

7 He did the legal analysis on William Baskerville's
8 case, the strength of the Government's case, whether they
9 would -- whether Mr. Baskerville would be successfully
10 prosecuted, whether he would be convicted, and then he
11 developed a strategy to win the case. And the strategy, you
12 learned, he shared with the gang when he met with them, that
13 the only way to win the case was to kill Kemo. And knowing
14 that the members of the gang wanted William Baskerville to come
15 home, wanted him to get out of jail, made a promise: If you
16 kill Kemo, William Baskerville will come home. I will get it
17 done.

18 Now, that was not just a boast from anybody, that was
19 a legal analysis from their lawyer, from their house counsel,
20 from a trusted advisor. And, in fact, as you learned also,
21 from a member of the drug-trafficking chain. And it was those
22 statements that sealed Kemo's fate.

23 When Paul Bergrin said William Baskerville is not
24 coming home if Kemo testifies, but if you get rid of him, he
25 would, that became the only option. The die was cast. It

1 wasn't a matter at that point of whether Kemo would be killed,
2 it was just a matter of when.

3 Members of the Jury, that's the facts. Not because I
4 told you so. As the Judge told you, evidence doesn't come from
5 what the lawyers say, not myself, not Mr. Gay, not Mr. Bergrin.
6 Evidence comes from the witness stand. The witness' testimony.
7 It's that and the various objects and documents that you will
8 bring back to the jury room with you to look at. And that
9 evidence, the evidence you've heard, the evidence that you'll
10 have shows beyond a reasonable doubt that Paul Bergrin was a
11 member of the conspiracy to kill Kemo DeShawn McCray and his
12 actions aided and abetted the murder of Kemo.

13 The evidence shows, members of the Jury, that not only
14 was Paul Bergrin a member of the group, but also why. We
15 discussed house counsel, we discussed the personal -- excuse
16 me. You heard evidence of the personal stake that Paul Bergrin
17 had in Kemo being murdered because he was part of the
18 drug-trafficking chain. But in order to understand the
19 evidence, you do have to understand the law. And the Judge
20 will tell you, as he indicated, he'll give you very specific
21 instructions, and obviously that's what you have to follow.
22 But there's a few things I would like you to keep in mind when
23 you're listening to the summations today about the law.

24 Now, the Judge is going to tell you that one of the
25 charges is for a conspiracy to murder and that the Government

1 has to prove a couple of elements, which are just sort of parts
2 of the charge.

3 And it's largely that two or more persons, Element
4 One, reached an unlawful agreement to murder Kemo, knowingly
5 and with the intent to prevent Kemo from testifying at an
6 official proceeding.

7 Now, how do you know that there's more than a couple
8 of people involved in the case?

9 Well, from a number of sources. Right? Anthony Young
10 tells you as an insider in the group what everybody's job was.
11 Eric Dock, who just was someone else in jail with William
12 Baskerville tells you that William Baskerville is involved and
13 that his people were involved. Even Thomas Moran at the end
14 tells you that, well after the conspiracy, Paul Bergrin tells
15 him that after he passed the name along, William Baskerville's
16 people killed him. So I think the evidence is pretty clear
17 that you're not talking about the act of one man. There are
18 multiple people for the purposes of the conspiracy. And I also
19 submit to you that the part about whether they did it on
20 purpose, knowingly, is also pretty clear.

21 And with respect to whether or not they did it for
22 stopping him from testifying; just recognize that the Judge
23 will instruct you as a matter of law that United States vs.
24 William Baskerville, the prior trial is, as a matter of law, an
25 official proceeding. So I submit to you that's also not an

1 issue.

2 Now, there's a couple of other terms you're going to
3 hear that I want to discuss with you. One of them is called
4 "premeditation," which again is largely about planning and
5 deliberation. And the evidence for that is quite obvious.
6 Paul Bergrin had time to reflect prior to taking any of the
7 steps he took. Certainly before he passed the name along, that
8 it's Kemo, Will said it's Kemo, certainly in the days between
9 those conversations on the phone to the actual meeting, doing
10 the legal analysis, figuring out the various angles, trying to
11 figure out if there was anything to do besides kill Kemo. He
12 had time to consider, before he counseled, again, to kill Kemo,
13 and then again, the gang over the period of time, months,
14 searching, planning the murder. This was certainly not done
15 (snapping fingers) on the spur of the moment.

16 The second term I want to tell you about is "malice
17 aforethought," which means willfully, or with respect to
18 willfully taking the life of a human being.

19 Again, fairly obvious that this was not accidental.
20 Kemo was killed because they planned to kill Kemo. They went
21 up to kill Kemo with the intent to kill him, and, in fact, did.
22 This, again, was not an accident, this was not some random spur
23 of the moment event.

24 Now, the final -- the second element for conspiracy is
25 a decision that you'll have to make: Whether or not during the

1 life of the conspiracy Paul Bergrin intentionally joined that
2 conspiracy, that he took actions to further the conspiracy.

3 Now again, similar evidence. Mr. Bergrin told the
4 gang that the cooperating witness was Kemo; he did the legal
5 analysis on William Baskerville's case; he developed the
6 strategy, that the only winning strategy was to kill Kemo. He
7 passed that information along to the gang that that was the way
8 they had to go, and then made the promise that if they followed
9 through on his strategy, William Baskerville would come home.

10 The second count is an aiding and abetting of the
11 murder.

12 Now, with respect to the aiding and abetting there's
13 also a number of elements. One of the elements being that
14 someone actually murdered Kemo. And I submit to you also not
15 much of an issue unto itself; that Paul Bergrin knew that
16 someone was going to kill Kemo. And as I will discuss with you
17 later, that he knew the members of the gang, he knew them
18 intimately, he knew what they would do when he passed along the
19 information and, in fact, when he counseled them they would
20 kill Kemo, he knew it would happen.

21 And the third and fourth elements, that he did some
22 act for the purpose of aiding, facilitating, encouraging
23 another to commit the murder, and that those acts did, in fact,
24 facilitate, encourage someone to actually do the murder.

25 Members of the Jury, again, those four or five points

1 is the same evidence for all of these counts -- excuse me --
2 for all of these elements: Passing along the name, doing the
3 legal analysis, making the decision that the only way William
4 Baskerville gets out of the Government's case is to kill Kemo,
5 passing that information along to the gang and telling them
6 that's what has to happen, and then making the promise that if
7 it did happen, William Baskerville would come home.

8 Members of the Jury, what the Judge is going to tell
9 you is that this has to be proven, these elements, beyond --
10 excuse me -- beyond a reasonable doubt. And that's true. The
11 Defendant has the presumption of innocence.

12 So it's clear, that standard is the same standard that
13 is used in every courthouse in every state in the country for
14 every criminal case.

15 Now, let's talk about the evidence. There certainly
16 was a conspiracy to kill Mr. McCray, but before we get to that
17 let's talk about the drug conspiracy. You've learned that
18 Hakeem Curry sold drugs, a lot of drugs for a long time,
19 cocaine and heroin, made a lot of money. But he didn't do it
20 by himself, he had many people in the organization. And you
21 heard from members of that organization. You heard from
22 Anthony Young, from Lachoy Walker, and you heard from Abdul
23 Williams that there was at least -- well, quite a few members
24 that we discussed: Ishmael Pray; Al-Quan Loyal; Abdul
25 Williams; Maurice Lowe; Al-Hamid Baskerville; Keet; Akmoon;

1 Al-Quaadir Clarke; Rakeem Baskerville; William Baskerville;
2 Jamal Baskerville; Malsey, Jamal McNeil; Kenneth Sutton; Atif
3 Amin; Norman Sanders; Justin Hannibal; Jason Hannibal; Tyheed
4 Mitchell; Jarvis Webb; Ray-Ray; and Anthony Young.

5 Now, that group made a ton of money, and Hakeem Curry
6 especially. What you heard testimony about was that he was the
7 leader of the group, not because he was the toughest, but
8 because he had the connections to the drugs, the sources of
9 supply. Because what you learned is that's where the power
10 comes from. The power comes from being able to get the kilos
11 to the group. If you're the one with the connection, you're
12 the one on top.

13 And the power flows from there down to the rest of the
14 members of the gang. The closer you get to the source of the
15 drugs, the more power you have, the more money you make. The
16 further away from the chain -- excuse me -- the further up the
17 chain from the guys on the street, the more money you're
18 making.

19 You heard testimony about Mr. Bergrin and Hakeem
20 Curry's relationship. And what most people in the group didn't
21 know was that the relationship went well beyond that of mere
22 lawyer or even house counsel. For the group, Paul Bergrin gave
23 Hakeem Curry a source of cocaine, a connect, and that didn't
24 just help Hakeem Curry. For Mr. Bergrin, that put him in the
25 drug chain. If the organizational chart, if there was an

1 organizational chart for the Hakeem Curry organization,
2 certainly Hakeem Curry would be at the top, but beyond him were
3 his connections, and between at least one of those connections,
4 Jose Claudio, was Paul Bergrin.

5 Because in the drug chain, what you learned was that
6 all people who sell drugs have two concerns: Number one, that
7 they personally will be caught by law enforcement selling
8 drugs, passing drugs, receiving money; and number two, that
9 someone immediately below them on the drug chain will get
10 caught. And when that person is caught, will that person
11 cooperate and then provide information about the next link up
12 the chain.

13 Anthony Young told you, he explained that if someone
14 under him gets caught, he's worried. Abdul Williams told you,
15 if someone under him gets caught and they cooperate, he will be
16 in trouble. You also heard about it from the law enforcement
17 side. You heard testimony from Special Agent Shawn Brokos as
18 well as from Detective George Snowden. And what they told you
19 was that the drug traffickers are right, that is how they do
20 the operations; they try to go from the bottom, the guys on the
21 street, and work their way up the chain to their suppliers, to
22 the distributors, and further and further and further until
23 they can get no farther.

24 That's why, members of the Jury, when William
25 Baskerville was arrested, everyone wanted to know who else was

1 caught in the trap, because law enforcement had reached the
2 management level of the Hakeem Curry organization. This was
3 not a street arrest. They had reached management. Remember
4 what Lachoy Walker told you, what Eric Dock told you: William
5 Baskerville was a manager, he controlled a section of Newark, a
6 block where he sold the drugs and had people working for him,
7 that he was in the Curry gang and he received cocaine directly
8 from Hakeem Curry.

9 Remember also, this was not any members of law
10 enforcement that made the arrest, this was the feds, and they
11 explained to you, you heard the evidence, the testimony, what
12 that meant. That meant this was not just going to be one guy
13 grabbed. They were worried that a bunch of people were coming.
14 And you heard that Anthony Young and the rest of them were
15 correct, because not three and a half months later, after
16 William Baskerville was arrested, Hakeem Curry was arrested and
17 many of his associates. They didn't just pick off one or two
18 guys. The group was decimated, destroyed.

19 So let's talk about that concept. You heard about it
20 from both sides of the drug-trafficking. You heard about it
21 from law enforcement and you heard about it from the drug
22 traffickers themselves. And I'm certain that the strategy,
23 while the strategy makes sense to you, perhaps you didn't even
24 need to hear it, that obviously when you're doing any sort of
25 investigation you try to move as far up the chain as you can.

1 So, for example, if I was involved in illegal drug-trafficking
2 and I supplied Mr. Gay, Mr. Gay supplies drugs to Ms. Santos,
3 then Ms. Santos gets arrested. Who's worried? And what are we
4 worried about? Well, certainly Mr. Gay is worried that Ms.
5 Santos may provide information about him. What am I worried
6 about? I'm worried about stopping the dominoes from falling.
7 I can't have Ms. Santos cooperate to get to Mr. Gay, because
8 then I'm next. In that scenario I have the vested interest in
9 stopping those dominoes from falling. If I can prevent law
10 enforcement from prosecuting Ms. Santos, I don't have anything
11 to worry about because they can never get to John Gay, so I'm
12 safe.

13 And that's exactly the situation that you heard about
14 here. Hakeem Curry had a vested personal interest in stopping
15 law enforcement from being able to prosecute William
16 Baskerville.

17 Now, you heard that he was a family member.

18 That's true, he's his cousin. They had a group, they
19 had been together for many years so there was some degree of
20 loyalty I'm sure. But beyond that, beyond that, what they had
21 was a practical reason, a business reason, personal survival.
22 William Baskerville could give law enforcement Hakeem Curry.
23 Hakeem Curry knows that.

24 Paul Bergrin in the situation, the example I just gave
25 you, is in my position. He knows if those dominoes start

1 falling and they get to Hakeem Curry, the person they're going
2 to be asking him about is Paul Bergrin.

3 Now, while there's always some trust, members of the
4 Jury, I'm certain amongst the guys that commit crimes with one
5 another, there also has to be a worry. What would your
6 co-conspirators do when the rubber meets the road? What would
7 they do when actually faced with long, long, long periods of
8 time in jail? Everybody can talk tough, everybody can say,
9 "no, I'd never tell" when they're out on the street, when
10 they're out with their friends. Anthony Young told you he
11 never cooperated. He did his time on a number of occasions and
12 came back to the gang.

13 But at some point when the rubber meets the road, when
14 that guy is one link away from you in the drug chain, is
15 sitting in a law enforcement interrogation room of the FBI, of
16 the DEA, is sitting at a table across from that agent, sitting
17 at a table across from Special Agent Shawn Brokos and Agent
18 Brokos explains the process, you got two options: You can
19 either say nothing, face the consequences of your action and
20 get whatever time you face; or you can give us information, try
21 to cooperate, try to help yourself.

22 At that point, members of the Jury, the concern is:
23 Will that person stand up, will that person stand up to the
24 pressure, or will that person cooperate? Will that person call
25 their lawyer and will that lawyer recommend to their client to

1 cooperate because they have a strong case, or say, no.

2 Now, if the lawyer only has his client's interest at
3 heart and the Government has a strong case against that client,
4 what sort of advice would you expect that lawyer to give at
5 that moment?

6 Let's put aside what you'd expect and let's talk about
7 what William Baskerville was told the day he was arrested.
8 Again, you heard he was arrested on November 25th, 2003. He
9 was brought to the FBI. There was a period of time where he
10 sat there waiting for Agent Brokos to appear. He sat in an
11 arrest room. And then finally she arrived, and Agent Brokos
12 told him those two options: Face his charges and huge jail
13 time, or give the Government information and try to help
14 yourself.

15 He was given time to consider his options. And after
16 he had sufficient time to think, he said, Agent Brokos tells
17 us, and I'm quoting: (Reading) He said that he is interested
18 in talking but has concerns about talking because he would
19 implicate other family members and that he would feel more
20 comfortable talking in the presence of an attorney. His
21 attorney.

22 Agent Brokos told you she understood that statement to
23 be that he would like to talk, meaning he would like to
24 cooperate.

25 So what happens?

1 Agent Brokos did the appropriate thing: Gave him time
2 to contact his attorney, and after a series of back-and-forths,
3 eventually Agent Brokos hears William Baskerville say: Hi,
4 Paul. So she walks out of the room and closes the door and
5 allows him privacy to talk with his attorney, again, as is
6 appropriate.

7 And this, members of the Jury, is where the wheels
8 start moving. This is where the plan starts in motion.
9 Because after that call, after William Baskerville spoke to his
10 attorney, Mr. Bergrin, he said he's not interested in
11 cooperating. That William Baskerville said, Paul Bergrin told
12 him -- again, quoting, "To not cooperate, to keep his mouth
13 shut and not cooperate."

14 Now, members of the Jury, was that advice from an
15 independent lawyer? Was that advice from someone looking out
16 for his client's interest? Or was that advice from someone who
17 was representing a drug organization? Someone who was
18 concerned or had concerns beyond that merely of his client;
19 concerns about the organization which, in fact, he was part of?

20 Now, you've heard a lot about the relationship between
21 Paul Bergrin and Hakeem Curry, and we should talk about that.
22 And it's important because it explains one of the reasons why
23 Mr. Bergrin was involved in the murder to kill Mr. McCray.

24 You heard testimonial evidence from the witness stand,
25 people saying things. Anthony Young referred to Paul Bergrin

1 as, quote, Curry's boy; a lawyer that be around; they good
2 friends.

3 Abdul Williams said that Hakeem Curry himself told him
4 more or less at that time, he just let me know that Paul was
5 "his boy." As opposed to more than a lawyer, he was his
6 friend, he was his confidant, someone he confided in.

7 Ramon Jimenez was told by Paul Bergrin himself that
8 he's one of his best clients, one of the big guys in Newark, a
9 big drug dealer and he saw him in the office once every two
10 weeks or so.

11 That's important, members of the Jury, too because
12 you'll have -- one of the things you're going to have back in
13 the jury room is a statement, a stipulation from the Defendant
14 and the Government that says the last time Mr. Bergrin
15 represented Hakeem Curry in any criminal case was December
16 12th, 2002. So after that, no representation in any criminal
17 case. Yet, as Ramon told you, every couple of weeks while he's
18 working there he sees Hakeem Curry there.

19 You also heard from Mr. Bergrin's girlfriend, Yolanda
20 Jauregui, that Paul Bergrin told her about Hakeem Curry, and
21 again I'm quoting, he, meaning Mr. Bergrin, said that he would
22 represent him, meaning Curry; that he was the biggest drug
23 dealer in Newark and controlled some part of the Newark area.
24 He was a good client, like a brother to him.

25 You also heard out of Hakeem Curry's own mouth,

1 remember that very short recording you heard of the telephone
2 call? How did he refer to Mr. Bergrin? When his wife was --
3 seemed a little upset that Hakeem Curry seemed to be rushing
4 her off of the phone, he explained he had to get off because:
5 "I'm talking to my man."

6 From Paul Bergrin's own mouth in his opening
7 statement, he told you: "Hakeem Curry was a client of mine.
8 He referred business to me. He did refer business to me."

9 But more importantly than any of those statements, you
10 have objective evidence. You have information that you will
11 see back in the jury room and you will be able to review.
12 Again, recognizing that stipulation and remembering those
13 dates, December 12th, '02, no more criminal case work between
14 Paul Bergrin and Hakeem Curry. There are still many phone
15 calls; phone calls between Paul Bergrin and Mr. Curry. Why?
16 What could they have been talking about?

17 Now, that chart, that was just page 1 of it that
18 you'll have in the back. It shows between just over a
19 two-month period, October 4th, '03 to December 16th, '03,
20 connections between a phone used by Mr. Bergrin and a phone
21 used by Mr. Curry. In that little over two months, 116
22 connections, at least ten months after his last representation
23 of Mr. Curry in a criminal case.

24 Now, what could they have been talking about?

25 Members of the Jury, what I submit to you is that it's

1 simple: If you look at that time period, about half of it, or
2 maybe a little less than half is after the time when William
3 Baskerville is arrested. Are they talking about that? Or as
4 you learned, the continuing drug business with Changa? But we
5 certainly know what it's not: It's not about a criminal case
6 that Hakeem Curry was involved in.

7 Then what you have is other objective evidence.
8 You're going to have two exhibits in the back with you, 920 and
9 921, and those are visitation records from the Monmouth County
10 Jail.

11 Now, the Monmouth County Jail is where Hakeem Curry
12 was housed after he was arrested and, again, Mr. Bergrin not
13 representing him. For the time period from May 4th, 2004
14 through October 19th, 2004, you'll see up on the screen ten
15 visits, Paul Bergrin to Hakeem Curry. Was he worried that Mr.
16 Curry might cooperate now that the link right below him in the
17 chain was sitting in jail? Again, what we do know is it wasn't
18 about a criminal case.

19 Remember, members of the Jury, Paul Bergrin knew
20 Hakeem Curry very well, and as we all know, everybody's got
21 their price, everybody has their limit. And for Hakeem Curry,
22 remember what Anthony Young told you: I'm going to quote from
23 Anthony Young's testimony: (Reading) And we had a thing we
24 used to always talk about, we used to say that when we do get
25 there, he's telling.

1 And there's a question asked: Meaning?

2 And the answer was: Hakeem Curry. And turned out, he
3 was the one to stand and never told, but we used to say that.
4 We used to say that, when the feds get us, Hak will tell. But
5 it was a joke. But we were serious, because we always thought
6 he was soft. But he was one of the guys that stood up and
7 didn't tell.

8 Now, if Anthony Young knew that, do you think Paul
9 Bergrin knew? If Anthony Young had those concerns, the rest of
10 the gang had those concerns about Hakeem Curry.

11 Do you think Mr. Bergrin did? Do you think that had
12 anything to do with those visits, those phone calls?

13 Now, you've also heard the term "house counsel" a
14 number of times. And why it's important, members of the Jury,
15 is because it explains one reason why Paul Bergrin is involved
16 in this criminal conspiracy involved in the murder of Kemo
17 McCray. Now, Paul Bergrin said to you, well, he sent me a lot
18 of clients.

19 That's not what we're talking about as house counsel.
20 It's not even about the close relationship, one to the other.
21 What it is, is about representing the underlings of the boss
22 that came in. Having an interest not for your client, but for
23 the organization. That's what we mean by "house counsel."
24 Having your services paid for by the boss, not by the client,
25 and having an interest in the boss and the organization, not

1 your client.

2 Abdul Williams explained it to you, how a leader of an
3 organization uses lawyers. You get the lawyer to represent
4 your underlings so that they know you're taking care of them,
5 because you don't want them to cooperate. The leader could
6 face a lot of jail time if things start going in the wrong
7 direction, meaning if that person who gets arrested starts
8 cooperating and the dominoes start falling.

9 Lachoy Walker took the stand and he explained it to
10 you, too. He said that Hakeem Curry referred underlings to
11 Paul Bergrin. He paid the lawyer's bill. And, in fact, used
12 himself as an example. On two occasions Paul Bergrin
13 represented Lachoy Walker. Hakeem Curry told Lachoy Walker,
14 I'm going to pay the bill.

15 Lachoy Walker told you that Hakeem Curry used Mr.
16 Bergrin as house counsel to keep tabs on the underlings, to see
17 what they were doing, because it helps the boss to know -- and
18 I'm going to quote it again from Lachoy Walker -- that if the
19 boss knows, he can take care of an underling through violence
20 or anything like that.

21 And he told you that he heard specific conversations
22 between Hakeem Curry and Paul Bergrin about that. When Mr.
23 Bergrin cross-examined Lachoy Walker and asked him about it,
24 Mr. Walker went further. He said -- Mr. Bergrin asked him
25 something to the effect of: Well, you don't know if I got

1 paid.

2 He explained simply, Hakeem Curry told me he paid you,
3 and it's not like you would not -- you would do it if you
4 weren't getting paid, two representations of Lachoy Walker for
5 free.

6 In an attempt I assume to deflect some of the
7 attention of being house counsel, that title, Mr. Bergrin asked
8 Mr. Walker about a number of people: Did I represent this guy?
9 Did I represent this guy?

10 Now, remember what Lachoy Walker said. It's the
11 responsibility of the boss to provide counsel for the managers,
12 for the people below him, all right? It's not his
13 responsibility to provide attorneys for everybody and anybody
14 who may or in fact may not be associated with the Curry
15 organization. And the fact that he did not represent a number
16 of people in no way takes away from the fact that he did
17 represent quite a few.

18 Who he did represent? Upper level guys, guys in
19 management.

20 Now, let's put aside those guys that he did talk about
21 and let's talk about the ones he did not, all of whom you heard
22 testimony about as being management, as being members of the
23 Curry organization or management or some upper level position.
24 Lachoy Walker himself; Al-Quan Loyal on three occasions; Jarvis
25 Webb; Rashid Pryor on two occasions; Justin Hannibal; Rakeem

1 Baskerville on two occasions; Abdul Williams; Kenneth Sutton on
2 seven different charges -- eight -- excuse me, eight different
3 charges; Maurice Lowe; Tyheed Mitchell on two different
4 charges; and Hakeem Curry himself, although again, not after
5 December 12th, 2002, on three different occasions; and as you
6 all are very well aware, William Baskerville.

7 And beyond that, members of the Jury, beyond the
8 numbers, the volume, the explanation that you heard from the
9 witnesses, I want to refer you back to what Thomas Moran told
10 you. Remember, he was the lawyer that worked for Mr. Bergrin
11 and testified here. Right? He told you that when
12 multi-defendant cases came into the office that Paul Bergrin
13 had, he would be the lead attorney and then he would farm out
14 the other defendants to various other lawyers, including
15 himself.

16 Paul Bergrin would be the lead attorney for the lead
17 defendant, and the other attorneys would represent the various
18 underlings. Now, we don't have, so it's clear, any evidence
19 about what the other lawyers who handled those cases for those
20 underlings did, the ones that were given to them by Mr.
21 Bergrin. But what we do know is what Thomas Moran did, because
22 he told you. What he said -- and again, I'm going to quote --
23 I reported everything I did to Paul.

24 With that background, with that knowledge of how the
25 drug business works, with that knowledge of what the drug

1 traffickers are concerned about from law enforcement, from
2 their underlings, with that knowledge of what house counsel
3 does, let's move to Paul Bergrin's involvement in
4 drug-trafficking.

5 Now, the drug evidence is important, members of the
6 Jury, because it provides a motive beyond just being house
7 counsel. Paul Bergrin, so it's clear, had a personal stake
8 because of his involvement, his position in the drug chain, of
9 William Baskerville flipping, cooperating against Hakeem Curry,
10 a personal stake in stopping the dominoes from falling.

11 It all really starts with Ramon Jimenez. Right?
12 Ramon told you he was involved in selling drugs for most of his
13 adult life. He had just gotten out of jail and was looking to
14 make some money. He had a connection to a guy who could
15 actually provide significant kilograms of cocaine, an old
16 family friend, Changa. A guy he's known for a long time, and,
17 in fact, had supplied Ramon periodically with cocaine when he
18 could afford to buy it.

19 He also knows that there are people who Mr. Bergrin
20 represents who sell drugs. So what he figures is, I'm going to
21 make a match. I have a guy that sells kilos, and now I have
22 access to the names and information for people who buy and then
23 distribute. So he reads through a file, or reads through a
24 number of files and ultimately settles on Hakeem Curry.

25 Now, again, think about the time that Ramon was there

1 working in 2002. Presumably there would have been a file
2 because Mr. Bergrin was representing Hakeem Curry until
3 December 12th, 2002. What Ramon Jimenez told you is that he
4 approaches Hakeem Curry. He asks him if he's interested in
5 buying "weight." And as you learned, "weight" means kilograms
6 of coke. Not grams; large quantities. Because he explained to
7 you how he planned on making money. Just like in any other
8 business in the supply chain, no matter what it was that's
9 being made, being manufactured, legitimate or not, every step
10 of the way a little bit gets tacked on until it gets to the
11 consumer.

12 Changa would have a price. Ramon would add a little
13 bit for himself, a thousand dollars a kilo. Hakeem Curry would
14 buy it and presumably pass on a larger price for that kilo to
15 everyone below him.

16 So Ramon saw an opportunity to put these two pieces
17 together. He approached Mr. Curry, and Mr. Curry said, yeah,
18 I'm actually looking for a new drug supplier. And he said, I
19 would like, if it works out, 25 kilos, and if it goes well,
20 next time it will be 50, because Hakeem Curry did not deal in
21 grams.

22 After he makes that pitch and Hakeem Curry seems
23 interested, he speaks to Changa and he says, can you really get
24 me 25 kilos?

25 Changa says, yes, I can supply that. He gives him a

1 price.

2 Now again, members of the Jury, these numbers, 25, 50
3 next time, are important because remember what Lachoy Walker
4 told you; that the amounts that Curry was getting from the
5 connect that Paul gave him, 25, 50, up to a hundred.

6 So now again, we're talking about 25, 50. He gets the
7 price. He talks to Curry about the price. Curry tries to
8 negotiate the price a little bit when he's at the office, but
9 Ramon still thinks this deal is on. Curry is negotiating a
10 price. Changa said he's going to make it happen. But Ramon
11 Jimenez made a tactical error. He told Changa the guys on the
12 street call him "Hak" and he's one of Paul Bergrin's clients.

13 Now, why is that a tactical error?

14 It's a tactical error because now they don't need
15 Ramon. Why create and allow Ramon to be involved in this if
16 they don't need to? So Changa has the ability to get to the
17 man that Ramon was trying to set him up with without using
18 Ramon at all.

19 And then we move to the conversation in Paul Bergrin's
20 office. Ramon Jimenez is called in to a closed-door meeting
21 and he, quote, was asked by Mr. Bergrin, he asked me if I spoke
22 to anybody about making any -- any deals.

23 Ramon Jimenez told you he believed he was talking
24 about the Curry deal, about the 25 -- 25 kilos.

25 And then what did Mr. Bergrin follow up with?

1 His, again -- I'm quoting -- meaning Paul Bergrin's
2 response was that if I was to talk to any of his clients, that
3 I had to go through him first.

4 Now, members of the Jury, obviously he didn't say the
5 word "drugs," but in the context that's clearly what he's
6 talking about. Ramon Jimenez is not discussing a loan closing
7 deal with Hakeem Curry, a real estate purchase, some family law
8 matter. And what clearly not from Mr. Bergrin's mouth is: How
9 dare you talk to my clients about drugs? Don't talk to my
10 clients about drugs. Don't bring your drug business into my
11 firm.

12 What it is, is simply: If you want them, you've got
13 to go through me.

14 So Ramon apparently not picking up on it as quick as
15 perhaps he should have still thinks this deal is going to
16 happen for him.

17 He tries to call Curry a number of times to finalize
18 the deal, and he gets blown off. Then he sees Changa in the
19 office who he never saw there before go up and meet with Paul.
20 He asks Changa about it and he says, oh, I'm here for a real
21 estate -- a real estate matter.

22 But now even Ramon is starting to get a little
23 suspicious he tells you, and he goes back and he looks through
24 files and finds nothing with Jose, and he told you that the
25 secretary gave him the last name he didn't remember, and looked

1 through the files and found nothing.

2 But then the suspicion gets even more -- or more
3 suspicious. Excuse me. He is asked by Mr. Bergrin for
4 Changa's number.

5 Why would he need that?

6 He overhears a conversation between Mr. Bergrin and
7 Hakeem Curry. The secretary saying, "Hak's on the phone," and
8 Mr. Bergrin saying, "I'll be at the restaurant."

9 He realizes at that moment, perhaps later than he
10 should have, that he has been cut out of this deal, that it's
11 happening, the players have been put together but he's not part
12 of it and therefore he's not going to make his money. So he
13 finishes up what he has to do, he waits for Mr. Bergrin to
14 leave, gives him some time, and drives over there.

15 And what does he see when he gets there?

16 He sees Hakeem Curry leaving the restaurant, Mr.
17 Bergrin's restaurant -- he sees Mr. Bergrin inside and Changa
18 inside. He told you, he was angry, he felt betrayed.

19 Who was he mad at?

20 He was really mad at Changa, a trusted friend of the
21 family, very close to the family, the man he made the mistake
22 of giving the name to, who he believes cut him out. Because
23 remember, this was not a couple of dollars, this was going to
24 be \$25,000 Ramon expected to make, a thousand dollars per kilo,
25 plus whatever he could have made in the future.

1 Now, he never confronts Hakeem Curry, he never
2 confronts Mr. Bergrin. I think both of those reasons are
3 logical and understandable to you. But for Ramon Jimenez in
4 his position, to create bad blood with Hakeem Curry is probably
5 not the smartest thing to do. He worked at the time for Mr.
6 Bergrin. Confronting your boss when you need the job and
7 you've just been cut out of \$25,000, also probably not the
8 smartest thing to do.

9 So while he doesn't go right at them, what does he do?

10 He goes to speak to a man named Alejandro
11 Barraza-Castro. And in his mind, what he did was confirm that
12 the deal actually did happen.

13 Remember the conversation he had with him. Alejandro,
14 Mr. Barraza-Castro told you -- excuse me -- told Ramon Jimenez
15 that he just completed a 25 kilo deal. He asked -- Ramon
16 asked, was Changa involved?

17 And he said, yeah, Changa was involved.

18 And he asked him the name.

19 And Mr. Castro said he didn't really remember.

20 So Ramon pressed him: Was it -- was it -- was it
21 Curry, Hakeem Curry, Hak?

22 And Mr. Jimenez told you, he said, I'm not sure, but I
23 think that's who it is.

24 But the real kicker is that what Mr. Castro told him
25 was he was now getting ready for a 50 kilo deal. And he

1 explained that he sells cocaine with Changa, with Jose Claudio.

2 So now all of Ramon's suspicions in his mind have been
3 confirmed.

4 He speaks to his sister about it, Mr. Bergrin's
5 girlfriend. Now, she told you she was pretty interested in
6 what was going on that day also, right? She told you she was
7 working at the restaurant. Some time in September, early
8 October 2002 when Hakeem Curry -- who she had met with Mr.
9 Bergrin -- walked into the restaurant, first time she's ever
10 seen him there.

11 She speaks to him and he says either he's waiting for
12 either Paully or P-Diddy, she said. Then a few minutes later,
13 who walks in? Mr. Bergrin. Walks straight to Hakeem Curry.
14 Not to his girlfriend, not to get food, not to get a soda;
15 right to Hakeem Curry.

16 He's leaning in, you know, talking low she says.

17 I asked: Did you try to hear what they were saying?

18 She said, yes.

19 I asked, why couldn't you?

20 Leaning, you know, you know, talking low.

21 Then Changa comes in, the family friend who we know is
22 involved in drug-trafficking through her testimony, through
23 Ramon Jimenez's testimony. He goes over to the group, again,
24 not to get a soda, not to say hi to Ms. Jauregui, right to the
25 group. They start to talk.

1 And she was asked: Could you hear what they were
2 saying?

3 No.

4 Did you try?

5 Yeah, I tried.

6 Why couldn't you?

7 They were talking low.

8 Now, members of the Jury, we're going to show pictures
9 in a minute, but you remember how small that restaurant was.
10 This is not, you know, a room like this. From the counter to
11 those booths is a matter of a few feet and someone who was
12 trying to hear couldn't.

13 Now, why? Why talking low? Why leaning into each
14 other?

15 After the three, Mr. Curry, Mr. Bergrin and Changa,
16 Mr. Claudio talk, what happens next?

17 Mr. Bergrin's girlfriend tells you that Mr. Bergrin
18 walks away from the group with Mr. Curry, more whispering, more
19 head leaning in. Another time Yolanda tries to hear what
20 they're saying but can't. Why? Why the whispering?

21 Then after their brief conversation, what happens?
22 They call Changa over.

23 Now again, in this little area of the restaurant
24 towards the back the conversation takes place. The photograph
25 that's up right now, what you can see is the booths, the

1 distance between the booths and the counter --

2 Could we show the next one?

3 That's the area where they went back to talk.

4 Remember they circled the area with the Smart board?

5 The three of them talk in that area amongst
6 themselves. Ms. Jauregui told you, I was trying to hear what
7 was going on. I was curious. I wanted to know. They were
8 leaning in. And I'm going to quote her: (Reading) They were
9 talking by themselves, whispering to each other, you couldn't
10 hear them.

11 Why? Why is what Yolanda Jauregui said to you
12 important?

13 Not just because it corroborates what Ramon Jimenez
14 thought that went on prior to him showing up, not just because
15 you now have firsthand evidence that this drug meeting actually
16 took place, not just what Ramon Jimenez thought in his mind,
17 but you heard Ms. Jauregui say on a number of occasions she
18 tried to hear but she couldn't hear. If this was about a
19 legitimate meeting, if this was about real estate, some
20 manufacturing, some closing, house closing, why the whispering?

21 The obvious answer, members of the Jury, is it's not
22 about legitimate business. This was about drugs. The same
23 reason that anybody whispers; they whisper because they don't
24 want anybody else to hear what they're saying. They don't want
25 his girlfriend three feet away, four feet away, whatever it is

1 away from him to hear, they don't want to hear any other
2 patrons. You whisper so that no one else will hear what you're
3 saying, period.

4 Now, what you also heard from Ms. Jauregui is that her
5 curiosity was pretty high at this point as to what was going
6 on. She had heard from her brother, she had seen a guy that
7 she knows is a family friend who is involved in
8 drug-trafficking meet with the guy who Mr. Bergrin told her was
9 the biggest drug dealer in Newark, and her boyfriend, all
10 meeting together whispering.

11 So she asked him, she hounded him. What was going on?
12 What was going on?

13 Mr. Bergrin said, nothing, nothing. It was a
14 legitimate, you know, conversation. Don't bother me about it,
15 words to that effect. Right?

16 Then there's a series of back-and-forths, a number of
17 conversations, and then finally she directly confronts him:
18 Was it about drugs?

19 And what does Mr. Bergrin say?

20 He says to his girlfriend, all he did was introduce
21 Hakeem to Changa and he don't know what had happened. Whatever
22 happened, he doesn't know. He didn't have nothing to do with
23 it. He doesn't have nothing to do with them or no drug-dealing
24 with any drug transaction. He's not involved with drugs.

25 So, Mr. Bergrin's explanation is that he introduced a

1 big time drug supplier to a big time drug dealer but he doesn't
2 know what's going on between them.

3 I mean, you have to picture this scene. You have his
4 girlfriend hounding him for information, and when she finally
5 confronts him he doesn't say it's not about drugs, he just
6 says: I have nothing to do with it. And we already know that
7 he does have stuff to do with them, both Mr. Curry and Changa
8 during this period of time. So not only is the logic strained
9 by the idea that he would put these two men together not
10 knowing what's going on, but we know it's just a lie that he
11 had nothing to do with them.

12 We've already gone over the relationship between Mr.
13 Bergrin and Hakeem Curry, so let's talk about the connections
14 to Jose Claudio, to Changa.

15 You'll see a telephone chart. Again, it's number
16 2525. It's a number of pages. That from October 6th, 2003
17 through July 16th, 2004, maybe a little under ten months or so,
18 a phone used by Mr. Bergrin connected with a phone used by Jose
19 Claudio, Changa in that ten-month period 87 times. The guys he
20 said: I don't have anything to do with them, I don't know what
21 they do.

22 And again, so it's clear, I know the dates, it gets a
23 little confusing. This time period is a full year after that
24 meeting and prior -- or at least part or most of it is prior --
25 I guess about half is prior to Hakeem Curry being arrested.

1 Now, what else did Ms. Jauregui tell you? That she
2 saw Curry at the restaurant after the meeting.

3 So now after never having seen him at the restaurant,
4 he's now a regular. Over the period of the next, she said,
5 approximately a year, she seems him there about ten times, and
6 even goes up and talks to him about Changa on that one occasion
7 that she told you. She's also asked about a time period, I
8 guess it's about a year and a half after that meeting when
9 Hakeem Curry gets arrested. You ever see Changa again after
10 that, your family friend, the guy you've known since you were a
11 little girl? No.

12 Not at the restaurant, not anywhere.

13 Why?

14 Because the link below him, Changa, Paul Bergrin,
15 Curry; Curry's in jail. And when he gets locked up she doesn't
16 see Changa anymore, not around the restaurant, not anywhere.

17 But who does see him?

18 Ramon sees him. And what did he tell you?

19 He said that Changa when he saw him already knew that
20 Hakeem Curry had been arrested from some source, and that
21 Changa was concerned. And I'm going to quote again: He said:
22 What do I think about Hakeem Curry?

23 This is Changa asking Ramon.

24 And is he -- meaning Curry -- going to start telling
25 on people now? Or what's -- I mean, do you think they're going

1 to start -- or do you think they're going to start rounding
2 people, you know, arresting people?

3 The same concern that every person at every point in
4 the drug chain has. Are they going to tell when they get
5 picked up and how does that affect me?

6 And in that chain, members of the Jury, if Changa is
7 concerned, remember who's between Changa and Hakeem Curry: Mr.
8 Bergrin.

9 Now, just to sort of finish with that phone chart,
10 that 2525 that you have, in the period of time two months, give
11 or take, two months, 10 days, from 10 -- October 6th, 2003
12 through December 16th, 2003 -- so two months and 10 days --
13 between Changa and Paul Bergrin, 32 calls; between Curry and
14 Paul Bergrin, 116 calls.

15 So for the guy who was never in the firm before Ramon
16 sees him and doesn't have a file, 32 calls. For the guy who he
17 does not represent on a criminal case anymore, 116 calls.

18 And you'll also see calls between Changa and Curry
19 himself on that list. That's all after the meeting. Again,
20 it's just a two-month, or two-month and ten-day period of time.

21 Now, the period of time after Hakeem Curry's arrest,
22 about four and a half months, there's 22 connections between
23 Paul Bergrin and Changa. Again, after the arrest, after the
24 meeting. This is important, members of the Jury, the timing of
25 these phone calls and the number of connections, because again,

1 it's during a time period when the two individuals next in the
2 chain would be worried about what Hakeem Curry is going to do,
3 the guy that everybody thought was soft while he's sitting in
4 Monmouth County Jail.

5 And again, during that time while he's sitting in
6 Monmouth County Jail, during the period of time when these
7 phone calls are being made, Paul Bergrin visits Hakeem Curry
8 four of his ten visits: May 4th, 2004; May 17th; June 7th; and
9 July 6th, all, again, well after he stopped representing him on
10 criminal cases.

11 Now, let's talk about what Lachoy Walker told you. He
12 was the guy who worked very closely with Hakeem Curry, storing
13 and distributing cocaine, dealing with Mr. Curry's money. He
14 tells you that he personally gave Hakeem Curry's cocaine to
15 William Baskerville, Rakeem Baskerville and Al Hamid
16 Baskerville. He also told you that Hakeem Curry got a connect,
17 a drug connection from Mr. Bergrin.

18 Now, what Mr. Walker tells you is important for how it
19 corroborates what Ramon Jimenez told you for a couple of
20 reasons. All right? One, the volume, the numbers, the 50, the
21 25, very specific. But more importantly and even more
22 specific, that conversation that Mr. Walker told you about when
23 Curry turns to him and says: You know who I got this connect
24 from?

25 Walker says, no.

1 He says, Paul, meaning Mr. Bergrin.

2 And what is Lachoy Walker's response?

3 Paul Paul?

4 Yeah. Paul Paul.

5 So it's clear, members of the Jury, when you're
6 thinking about Mr. Walker's testimony, remember, he was shown
7 photographs. He does not know Ramon Jimenez, he does not know
8 Yolanda Jauregui. They never met, they never talked, they
9 never had any discussions. And what he told you largely
10 follows what Yolanda also told you about the shipments, how
11 often Curry is there, right? That all of a sudden he became a
12 regular. Every couple of weeks the waitresses were looking for
13 him for the tips.

14 Mr. Walker tells you he got these shipments
15 approximately every 10 days. He also told you, when he got
16 involved in this section, this part -- because remember he had
17 sort of multiple points where he was involved in the Curry
18 organization -- when these kilos starting rolling in, the 25,
19 the 50, the up to a hundred is approximately the same time that
20 Ramon Jimenez and Yolanda Jauregui tell you that that meeting
21 took place; the fall, late, 2002, at Mr. Bergrin's restaurant.

22 And keep in mind with Mr. Walker, this is an
23 individual who has got no pending charges against him, he's not
24 looking to earn any benefit, not from the Government, not from
25 the court, not from anyone. He's already got whatever benefit

1 he was going to get for testifying at a prior trial. He's out
2 of jail, moved on with his life, and I submit to you, just
3 testified truthfully to the best of his memory what he could.

4 Now, I assume you figured out why that original
5 meeting at Mr. Bergrin's restaurant is so important; because
6 that is what puts Paul Bergrin in the drug-trafficking chain.
7 That's what causes Mr. Bergrin to have a personal interest in
8 William Baskerville's case, not just his interest as house
9 counsel, not just his interest as William Baskerville's lawyer,
10 but his own stake, his own neck.

11 Now, so it's clear, members of the Jury, you've heard
12 limited evidence with respect to Mr. Bergrin's drug-trafficking
13 involvement. There are no drug charges pending against Mr.
14 Bergrin, there's nothing -- no drug charges before you. The
15 drug evidence is not intended to prove a drug conspiracy
16 against Mr. Bergrin beyond a reasonable doubt. As the Judge
17 has told you and will tell you again, this evidence is for a
18 very limited purpose; it's only presented to you as evidence of
19 Mr. Bergrin's motive, his motive to kill Kemo. Nothing more,
20 nothing less.

21 So with that having been said, let's move from Lachoy
22 Walker who, like I said, is not looking for any benefit, let's
23 talk about witness credibility.

24 Now, as you know, members of the Jury, as we all know,
25 no one has a perfect memory. If someone came in here and they

1 claimed they had a perfect memory, I mean, I submit to you,
2 that would probably be indicative of someone would was lying to
3 you. No one remembers everything. We all forget details about
4 certain things. But when it comes to important events, we
5 remember them. When it comes to important events, important
6 conversations, we remember them. Maybe not word-for-word
7 literally, but certainly the substance. And I'm certain that
8 you all can come up with your own examples of things you
9 remember because for whatever reason that conversation, that
10 meeting, that discussion had impact on you. And you may not be
11 able to come back with it word-for-word but you'd be very
12 certain about the substance of those conversations and of those
13 meetings that meant something to you, that were important. We
14 all know that's how the human mind works.

15 And with respect to the credibility of the witnesses,
16 when they tell you "I don't remember that"; or "I made a
17 mistake," the only thing I'd ask you to do is think about the
18 difference between a mistake and a lie. If you were going back
19 and you were being asked about one of those sort of events that
20 I just said, something that happened a couple of years ago that
21 was very important to you and, do you remember?

22 And you said, you know, I was on the left side, she
23 was on the right side. And then later on, you said, oh, no,
24 no, no, she was on the right side, I was on the left side.
25 Things like that and you were quizzed about it, would that be a

1 mistake or a lie?

2 I mean, they're very different. A mistake, so it's
3 clear, is exactly that, just an honest misrecollection: I
4 thought it was that, but I guess it could have been left/right,
5 right/left. It could have been I saw her first, then she sees
6 me, or vice-versa.

7 A lie is very different. A lie is intentionally
8 knowing; knowing that what happened was this: She was the one
9 who was there and saying, no, no, no, she wasn't there.
10 Knowing it and saying something different is a lie.

11 And I submit to you, members of the Jury, besides the
12 very significant lie that Anthony Young told you about Jamal
13 McNeil being the shooter, what you have heard are not lies.
14 You've heard a series of mistakes that randomly came up during
15 the course of various witness' testimony; nothing more, nothing
16 less.

17 Now, in his opening Mr. Bergrin asked you to use your
18 common sense. And the Government agrees, you should when doing
19 your analysis in this case. The Judge will tell you, when
20 you're thinking about the testimony and the evidence you heard,
21 to use your common sense. He will also tell you, the Court
22 will also tell you that when judging the witnesses and the
23 evidence there are various factors you take into account, and
24 he'll explain them to you. But, members of the Jury, it's
25 ultimately not really any different from what you do in

1 decision whether or not to reduce sentences of people who
2 testified before him who are sentenced in his court.

3 Now, this is important again because it's in the
4 witness' own interest to tell the truth, not simply what I or
5 some other member of law enforcement would like them to say.
6 And I'm going to give you specific examples now.

7 What did they say?

8 Anthony Young was asked by Mr. Bergrin: (Reading) The
9 judge does not decide if you're truthful or not. Isn't that a
10 fact, Mr. Young?

11 And his answer: Well, I testified in front of my
12 judge -- referring to the prior testimony -- so I thought it
13 was up to him to know if I was telling the truth or not.

14 Lachoy Walker told Mr. Bergrin during his
15 cross-examination, quote: The judge determines you tell the
16 truth.

17 Yolanda Jauregui was asked on cross: (Reading) So
18 they -- meaning the Government -- determine if you're telling
19 the truth. Correct?

20 And she answered: I always thought it was up to the
21 judge.

22 Ramon Jimenez was asked about it. And what did he
23 say? Not only up to them, the Government. I mean, from my
24 understanding it's also up to the judge.

25 But finally, beyond everything else, besides Anthony

1 Young who's actually been through the process, besides what
2 these witnesses told Mr. Bergrin their understanding of it was
3 during his cross-examination, Tom Moran, a lawyer, a guy that
4 actually knows the procedures explained it. He was questioned
5 by Mr. Bergrin about what's in the sole discretion of the
6 Government. And what did he tell you? I'm going to quote:
7 (Reading) No, actually I have two hurdles to jump. I have to
8 be truthful and the U.S. Attorney's Office has to believe that
9 I'm being honest and truthful, and so does Judge Martini. It's
10 just not solely based on the U.S. Attorney's Office.

11 So, listen, at the bottom line, the Government
12 certainly has to decide whether or not to write a letter,
13 that's indisputable and that's what gets the system going. But
14 the letter does a witness no good, there will be no reduction
15 if the judge does not believe they told the truth. Further,
16 from this I hope what you can take away from it more
17 importantly, is it's clear that the witnesses know, the
18 witnesses know who they have to impress, and it's not me, it's
19 not Mr. Gay, it's not the agents; it's the Court.

20 Now, what Mr. Moran also told you about was he gave
21 you a little bit of an insight into the various meetings that
22 witnesses had with the Government. There were a lot of
23 questions about: When did you say this? How many meetings,
24 this and that.

25 What he explained to you first is, before you do

1 anything, you have to talk about your own criminal conduct, you
2 have to come clean. That's step one before you get to say
3 anything about this person or that person or the other person.
4 After you've done that, as Agent Brokos told you, the
5 Government goes out and tries to vet this information, tries to
6 see if there are some things that could back up that
7 information. And then and only then are you allowed to start
8 talking and pointing fingers at other people.

9 And just so I'm clear, I'm talking about the proffer
10 sessions, those meetings.

11 With Anthony Young, obviously calling on the phone and
12 saying he had information about this and this is different
13 because we're not talking about an individual who at least at
14 the time was charged with something. What I'm talking about
15 are charged individuals who come in and say we want to
16 cooperate. So I don't want you to have the impression I'm
17 talking out of two sides of my mouth.

18 Now, finally, I want to talk a little bit about the
19 corroboration. I know that's a word you've heard me say and I
20 certainly will mention it a number of times after this.
21 Corroboration could have a number of different sources. It's
22 basically what backs up some of the evidence. One witness
23 tells you this; what backs that up?

24 Sometimes it's one witness saying something that
25 another witness said; or two pieces, two different witnesses

1 saying things that piece together; sometimes it comes from
2 records, be it the phone records, some sort of physical
3 evidence, jail visitation records; and sometimes corroboration
4 can come from corroborating, say, one part of someone's
5 testimony. And if you know that they absolutely told the truth
6 about this, then it lends some credibility to what else they
7 told you. If we know they're telling the truth about that,
8 what do you think about the rest of the testimony? And again,
9 just like you would do in everyday life. If you know somebody
10 absolutely told you the truth about one thing, how does that
11 affect their credibility with the other things they tell you?

12 So let's talk about a specific example. Ramon Jimenez
13 told you about a tracking device. All right? A tracking
14 device that was found by Hakeem Curry under his car.

15 Now, why is this tracking device important, members of
16 the Jury? Beyond just that it corroborates Ramon Jimenez's
17 testimony, it also establishes the relationship that Paul
18 Bergrin had with Hakeem Curry, the position as house counsel
19 for the group; an ongoing advisory relationship for Hakeem
20 Curry and the drug organization evading law enforcement. The
21 fact that Hakeem Curry was comfortable enough to walk into Paul
22 Bergrin's office with a tracking device to show him speaks
23 volumes of their relationship.

24 But just going back to corroboration for a moment.
25 What did he tell you?

1 He said one night after hours I'm working at the firm.
2 Hakeem Curry comes in with this thing that looked like a bomb.
3 All right? He went straight into Paul's office. Curry said
4 someone put it on his car. Paul said it's the feds, get it out
5 of my office.

6 Ramon believed it was a tracking device.

7 Now, Ramon doesn't know what the DEA did or didn't do.
8 Ramon does not know what conversations have been recorded or
9 not. He again, I submit to you, just testified about that
10 incident to the best of his memory. I'm sorry, and he also
11 said, this time -- so we're clear -- this event occurred after
12 the meeting that he heard Mr. Bergrin tell Mr. Curry, "No
13 witness, there would be no case," and prior, obviously, to
14 Hakeem Curry being arrested days prior.

15 But what do we know actually happened? Ramon said
16 that to you without any records and without any information.
17 What actually happened?

18 George Snowden took the stand, Detective Snowden, and
19 he told you what was going on in law enforcement. They were
20 having a hard time surveilling Mr. Curry, so they did, they put
21 on a tracking device. It was on for a short period of time
22 until it didn't send a signal anymore, February 23rd, '04 to
23 February 25th '04.

24 So we know days before Hakeem Curry is arrested, that
25 did happen. What Ramon told you is true. We also have a

1 recording which takes place at around 6:00 p.m., after hours,
2 just when Ramon told you it happened. A call from Hakeem Curry
3 to his wife right around the time when a tracker stops
4 transmitting. Now, members of the Jury, I remind you, that's
5 the call that you hear Mr. Bergrin in the background say "real
6 bad" while Hakeem Curry is on the phone with his wife.

7 Then putting aside what law enforcement told you, what
8 did Lachoy Walker tell you?

9 Again, mimicking and matching up with law enforcement,
10 the objective evidence, the tracker existing, the actual phone
11 call. What Mr. Walker told you was that Curry told him that he
12 went to Paul and Paul told Curry what the tracker was. It was
13 a tracker from law enforcement. Mr. Bergrin told him to dump
14 your phone. Don't talk on the phone. Change phones. Just be
15 safe.

16 That's what Mr. Walker told you. Again, he doesn't
17 know what DEA has. He doesn't have a copy of that recording,
18 of that phone call.

19 And to complete the loop, what did George Snowden
20 testify about Mr. Curry's use of that phone? The last call he
21 remembers was the call that you heard recorded. That phone was
22 dumped, members of the Jury. No more calls.

23 Hakeem Curry did what his house counsel advised him to
24 do: Be safe, get rid of the phone.

25 Now, beyond that corroboration, and again, for

1 certainly Ramon Jimenez and, I submit to you, also Lachoy
2 Walker, because he told you largely the same thing that law
3 enforcement told you and the objective evidence tells you,
4 let's just talk about what Yolanda Jauregui and Ramon Jimenez
5 told you. They told you just what they saw, nothing more.

6 Yolanda Jauregui said, I couldn't hear what they were
7 saying. Ramon Jimenez said, I got to the meeting late. I
8 didn't actually see them together, I just saw the aftermath.

9 If they were lying, if they were trying, trying to put
10 the finger on Paul Bergrin, would they have said: Yeah, I'm
11 sorry, I didn't hear what they said? Yeah, I didn't actually
12 see the meeting, I'm just sort of putting pieces together from
13 this other stuff?

14 Why would they lie and then say, no -- you know, why
15 wouldn't Yolanda Jauregui say: I heard them mention cocaine
16 sort of? Somebody said, done deal; or Ramon say: I saw all
17 three of them together? Why?

18 Because it's not the truth. They didn't see those
19 things so they can't testify to those things. You don't get to
20 just make stuff up to make it better.

21 And when you're doing the analysis of what's a mistake
22 and what's a lie, I'd like you to keep that in the back of your
23 mind. Again, when people lie to you they have a reason. All
24 right? If people don't have a reason to lie they would
25 generally tell you the truth. If you walk down the hallway

1 right now and you said to somebody, hey, what time is it, it's
2 likely if they had a watch they would look at their watch and
3 they would tell you, unless that person had a reason to lie to
4 you. And if they have a reason to lie, why would they stop
5 short if they chose to lie?

6 This is where, again, your common sense comes in. The
7 witnesses, all of them, I submit to you, told you just what
8 they saw and they heard; nothing more and nothing less. They
9 didn't try to make stuff up, they didn't try to add facts, what
10 they couldn't possibly have seen, things that might make Mr.
11 Bergrin look more guilty. They didn't lie. They didn't stop
12 short. They didn't lie and then stop short of telling things
13 that were really damning.

14 So now let's move on to what Ramon Jimenez tells you
15 about the no-witness-there-would-be-no-case meeting.

16 THE COURT: Mr. Minish, did you want to take a break
17 at this point?

18 MR. MINISH: That's fine, Judge. Sure.

19 THE COURT: All right. We'll take just a very short
20 15-minute break, please, ladies and gentlemen.

21 THE DEPUTY CLERK: Please rise for the Jury.

22 (The Jury leaves the courtroom.)

23 THE COURT: Be seated, everyone, please.

24 How much longer --

25 MR. MINISH: About a third of the way through. I'm

1 almost halfway through.

2 THE COURT: Okay. Then it's a good thing we took a
3 break. Thanks.

4 We'll be back in 15 minutes. Twenty after, please.

5 (A recess is taken.)

6 (Proceedings resume - Jury not present.)

7 THE COURT: All right. We're going to bring out the
8 jury.

9 THE DEPUTY CLERK: Please rise for the Jury.

10 (Jury present.)

11 THE COURT: All right, everyone, please be seated.

12 Mr. Minish, resume, please.

13 MR. MINISH: Thank you, Judge.

14 Excuse me. When we broke we were talking about Mr.
15 Jimenez, Ramon Jimenez and the other things he talked to you
16 about. And the area I want to discuss right now is the meeting
17 that he observed, the conversation I guess that he observed
18 between Mr. Bergrin and Hakeem Curry when they were discussing
19 no witness, there would be no case.

20 Let's talk about what Ramon Jimenez said. He said
21 he's in Mr. Bergrin's private office organizing files, he's on
22 the phone with his wife. Mr. Curry comes in and sits down and
23 he asks, what's going on in his cousin's case.

24 And again, both from your knowledge of the fact that
25 William Baskerville is Hakeem Curry's cousin as well as the

1 time frame of this, we know the cousin he's talking about is
2 William.

3 Mr. Jimenez finishes up the phone conversation. What
4 he says he hears is, and I'm quoting: If there had been no
5 witness there would have been no case.

6 Putting sort of the syntax of that aside, what's
7 clearly being discussed is something about a witness in Mr.
8 Curry's cousin's case not being around.

9 And what is Mr. Curry's reaction? Ramon told you that
10 he turned and stared at him. Did not seem all that happy about
11 Mr. Bergrin saying that in front of Ramon Jimenez.

12 And what does Mr. Bergrin say?

13 It's not: Why? What's the worry? We're not talking
14 about anything bad?

15 It's: Oh, don't worry. He's okay.

16 And what does in his context "he's okay" -- excuse
17 me -- "He's all right" mean?

18 He's not someone that's going to go to law enforcement
19 with this information. You can trust him.

20 Now, why is this important, members of the Jury?

21 Again, this conversation, one more reason why you know
22 Mr. Bergrin's involved in the murder of Kemo McCray.

23 And to sort of finish with Mr. Jimenez, let's talk
24 about the things which corroborate what he's told you. Okay?

25 With respect to the drugs, he told you Curry is a big

1 time drug dealer. We know that to be so from Mr. Walker, from
2 Mr. Young, from Mr. Williams, George Snowden, all of them
3 talking about the volume, the size of Mr. Curry's organization.

4 That Paul Bergrin knows Hakeem Curry is a drug dealer.
5 His girlfriend told you, that's how he explained who he was,
6 he's a big time drug dealer, he controls a section of Newark.
7 Abdul Williams told you that he had discussions with Mr.
8 Bergrin himself about Hakeem Curry and his drug-trafficking.

9 Mr. Jimenez told you, Changa is a drug supplier.
10 Something also that his sister, Yolanda Jauregui, says the same
11 thing: I've known him since I was a little girl. The whole
12 family, he's a family friend. He's been in drugs since I was
13 little girl.

14 He told you about the meeting that took place between
15 Curry, Mr. Bergrin and Changa at Mr. Bergrin's restaurant.
16 Yolanda, again, Jauregui, confirms the same thing, the speaking
17 in whispers, if you remember.

18 Then the meeting about the drugs also was confirmed by
19 the fact that Lachoy Walker got on the stand and told you that
20 Curry started around this time to get huge shipments of
21 cocaine, later 2003. Kilograms of cocaine from a connect that
22 Paul gave him.

23 And he told you about what he figured out the
24 connection was between Changa, Mr. Bergrin and Hakeem Curry.
25 And you have the phone records now to show exactly that.

1 The tracking device. He's obviously corroborated in
2 many ways about exactly that. We've already discussed it.

3 And now with respect to the meeting, the last thing we
4 just talked about, between -- that he observed -- excuse me --
5 between Mr. Curry and Mr. Bergrin, we know that Paul Bergrin
6 was, in fact, representing William Baskerville at the time. So
7 he was the lawyer, in fact, that Hakeem Curry would go to if he
8 wanted information about his cousin's case. He told you about
9 a couple of files being in the office; the Baskerville file and
10 a Curry file. Again, we know from that stipulation that Mr.
11 Bergrin represented Mr. Curry up to December 12th, 2002.

12 So do you think there was a Curry file there?

13 His terminology, although again, the syntax of it
14 being a little bit different or the tense maybe being a little
15 bit different, mimics what Anthony Young, a guy he does not
16 know, he has not seen says: If they'd be no witness they'd be
17 no case.

18 What does Anthony Young tell you? "No witness, no
19 case." "No Kemo, no case."

20 And finally, just because again, like we discussed
21 earlier, it's important that the source of information actually
22 have the ability to give this information. You know, again
23 you're not going to ask somebody who can't possibly know the
24 answer the question. All right? We know that Ramon Jimenez
25 was, in fact, working at Mr. Bergrin's office during this time

1 period. So he would have that access, he would have been in
2 the office, he would have been in this area, and these are the
3 things we know that corroborate Mr. Jimenez.

4 Now the next area I want to talk about is, I just want
5 to briefly discuss the drug case that you heard testimony and
6 evidence about that's against William Baskerville. Now, you
7 heard extended testimony, recordings, videos. And obviously we
8 are not here to prove the drug case against William
9 Baskerville.

10 The reason why that evidence was presented to you,
11 because it's important for you to take away a few things from
12 the evidence that the Government had against William
13 Baskerville. It was an incredibly strong case. It's important
14 that it was an incredibly strong case -- the video, the audio,
15 the witness, the surveillance, the drug-testing, the number of
16 buys, it's extremely important that it's an incredibly strong
17 case, because in the beginning if they didn't think in the
18 beginning, Mr. Bergrin and the rest of the gang, that William
19 Baskerville was going to be convicted, if Mr. Bergrin didn't
20 know right from the beginning that William Baskerville was
21 going to be convicted and faced a boatload of time, there would
22 be no reason to kill Kemo. And it was also important for you
23 to understand in the context of this case that Mr. McCray, as
24 you heard, provided information that led to arrests of quite a
25 few other people.

1 Now, why is that important?

2 Well, it's not important in volume necessarily, but
3 what is important is that you heard from Agent Brokos that they
4 all pled guilty. And why that's important is it just sort of
5 eliminates perhaps what might be a lingering thought in one of
6 your minds that, oh, it could have been somebody else entirely;
7 it could have been this guy he provided information about, or
8 this guy he provided information about.

9 So what you've heard is, he provided information about
10 a bunch of guys. Everybody pleads guilty. The only one who
11 doesn't, who didn't, William Baskerville, represented by Mr.
12 Bergrin.

13 So with that as a background, let's move to November
14 25th, 2003. This is the day you may remember that Mr.
15 Baskerville actually gets arrested.

16 As Anthony Young told you, he knows Will got arrested
17 and he knows he went to Jamal Baskerville's house but he
18 doesn't remember the exact date until Mr. Bergrin told him the
19 date on the stand. Now, not knowing the date in and of itself
20 isn't important. But again, I submit to you, it lends
21 credibility to all things Anthony Young said. If he was making
22 stuff up, if somebody was feeding him the information, he would
23 have known the date. In fact, it's public information, the day
24 he's arrested. But even as he sits here now, sits there then
25 until Mr. Bergrin told him, he knew it was in -- I forgot how

1 he described it exactly -- but late November.

2 He was not shown, members of the Jury -- and I hope
3 this wasn't lost on you -- anything from the Government,
4 despite repeated questions by Mr. Bergrin that seemed to imply
5 the contrary. He was not shown phone records, police reports.
6 No matter how many times he was questioned, he answered "no."
7 Even, in fact, the Judge asked him at some point: Didn't you
8 see this before?

9 He said: No, your Honor, I did not.

10 So with that in mind, recognize the limitations of
11 anybody's memory to remember a specific day and an exact time
12 about an event as opposed to the substance, what is important
13 of an event.

14 So what does he tell you?

15 He finds out that William Baskerville is arrested. He
16 goes Jamal's house, his brother, and he meets with the other
17 guys. He finds out that the feds got William Baskerville, not
18 the locals, and he explained to you why that's a problem.
19 Because again, if a local police officer in Anthony Young's
20 world arrests somebody, it usually stops there. They see drug
21 activity, they make an arrest. They charge the guy and they
22 move on to the next. Police officers are just charged with a
23 different responsibility. They're to get back out in the
24 street. Right?

25 But when they heard it was the feds it had a different

1 effect, a ripple effect for the gang. What they had learned,
2 members of the Jury, the important part of this, is they had
3 learned that the gang had been infiltrated up to the management
4 level by the Federal Government, by the FBI, and they were
5 desperate to find out the details. Who else was in the chain?
6 Who else was going to get scooped up? Who else was the FBI
7 looking for? That's what they were trying to figure out all
8 morning.

9 And he said he talked, they looked for people, made
10 phone calls, tried to find this guy, tried to find that guy,
11 where is he, why isn't he arrested? All these worries, all
12 these concerns.

13 They initially thought it was a person that Anthony
14 Young told you named Ray-Ray. Right? Now you've also learned
15 his name was Horatio Joines. Why did he tell you they were
16 worried about that? Because he knew how the Federal Government
17 operated. And Ray-Ray sells drugs with Will all the time, is
18 what Anthony Young told you. So he's not arrested. There are
19 one of two premise: Either he's cooperating, right, or the
20 feds are coming back for him, too.

21 So they're desperate to speak to Ray-Ray.

22 They're also worried about a guy named T-Money -- not
23 a name -- I guess known as "T-Money." They couldn't get him on
24 the phone. He's another associate of William Baskerville's in
25 the drug-trafficking sense. They're worried he might have been

1 arrested. If he's arrested, who else?

2 Now, as it turned out that Anthony Young told you,
3 Rakeem Baskerville actually went to T-Money's house and found
4 that he had just been sleeping through the whole morning, so
5 everything was okay.

6 But what is important, members of the Jury, is what's
7 going on in their heads at this time. This is an insight to
8 exactly the concerns we discussed earlier this morning. One
9 guy gets arrested by the Federal Government, we are worried
10 about where that goes.

11 Now, with respect to Ray-Ray, remember what Agent
12 Brokos told you. His information, the testimony he gave you
13 about him selling drugs with William Baskerville was
14 corroborated by the William Baskerville drug investigation
15 itself. Kemo identified a guy in a vehicle during one of the
16 buys as Ray. And what did law enforcement do? It took that
17 information, they turned around, they tried to ID the guy. At
18 some point they pull William Baskerville over in his vehicle.
19 Sitting in the vehicle is Horatio Joines. He provides ID.
20 They get a photograph, they show it to Kemo. Is that the guy?
21 That's the guy. So now we know who Horatio Joines is and we
22 know who Ray is that Kemo told us about.

23 Now, again, what's before you in and of itself is not
24 important, but it's just further corroboration of Anthony Young
25 telling you what was going on that morning. These guys worked

1 with William Baskerville, and we were worried about them, we
2 were worried about what their status was, arrested or not, and
3 we had to find out answers.

4 And it's important also, members of the Jury, I guess
5 finally, that the gang thought that the person who did William
6 Baskerville was someone other than Kemo McCray until Mr.
7 Bergrin told them. Ray-Ray was out there denying it, but what
8 did Anthony Young tell you? We were not sure that we were
9 buying.

10 Now, what does Anthony Young tell you after that?

11 That same day, again although he didn't know the exact
12 time, a call took place between Mr. Bergrin and Mr. Curry. Now
13 the thing is, we know the actual time, it was 2:26 p.m. and
14 you'll see that in the phone chart. On November 25th, the day
15 William Baskerville is arrested, there is a call from Mr.
16 Bergrin to Mr. Curry. Now, this is after Mr. Bergrin has
17 received a copy of the complaint.

18 Can you put that up, please.

19 Okay. That's the first page of the complaint. We're
20 just going to hone in a little on the second page. All right.

21 Now, remember, what did Anthony Young, the guy without
22 the phone records, the guy without the complaint in front of
23 him tell you Mr. Bergrin said during that phone call?
24 Remember, he said, Hakeem Curry had the phone, he was getting
25 information, he's repeating it, repeating it.

1 What did he tell you?

2 The dates of the sales, the amounts of the sales. He
3 thinks it was about three or four. Let's take a look at that
4 complaint. Not a lot of information on the complaint.

5 But what is on there in paragraphs one, two, three and
6 four, four separate dates, four separate transactions, each of
7 them having a weight of crack cocaine associated with them.

8 That's what Anthony Young told you that first
9 conversation had. We know that Mr. Bergrin got the complaint,
10 and we know that information was available, and we know that a
11 phone call was made.

12 We also know from Agent Brokos that when she brought
13 William Baskerville in this building, she said I believe, to
14 the Marshals Service and she was there, she saw Mr. Bergrin
15 have a conversation or meet with William Baskerville.
16 Obviously, she doesn't know the substance of the conversation.
17 But that is prior to now William Baskerville's first court
18 appearance.

19 So let's talk about what happened during that court
20 appearance. Because now at this point, so we're clear, Mr.
21 Bergrin has made one phone call, has the complaint in hand, has
22 met with William Baskerville and is on his way to his first
23 court appearance.

24 Now, during that court appearance, what is learned?

25 The strength of the Government's case. There's audios

1 and videos. The penalties he's facing: Up to 40 years, and
2 that the Government is seeking no bail.

3 So the first thing I'd like to do is direct your
4 attention to the first clip.

5 Please.

6 Obviously, you can tell from the transcript of that
7 hearing, Mr. Gay made an appearance for the Government.

8 (Reading) Yes, your Honor. The Defendant is charged
9 with knowingly and intentionally distributing and possessing
10 with intent to distribute more than five grams of a mixture of
11 substance contained cocaine base in violation of Title 21
12 United States Code, Section 841. The maximum penalty for this
13 charge is 40 years, and \$2 million.

14 Okay. What's the Government's position on bail in
15 this case?

16 The Government requests, your Honor, the Government
17 requests detention in this matter both on the flight risk and
18 the danger to the community. As your Honor can see from the
19 complaint, this is an extremely strong case against this
20 defendant. He's facing a five-year minimum based on the
21 charges. And, however, I would note, your Honor, that by my
22 calculation he is a career offender, which would place him at a
23 Level 37 for this charge given the nature of the case, also the
24 fact that he's failed to appear when ordered to on prior cases.

25 Now, the rest of it is really -- skipping down to:

1 The Government feels that detention is appropriate in
2 this case.

3 Now, so what is learned by Mr. Bergrin in this case,
4 now this hearing?

5 We know he's facing a lot of time; career offender;
6 Government is seeking to have him detained, meaning no bail.

7 Let's skip to what Anthony Young tells you.

8 Anthony Young tells you there is a second phone call.
9 Again, he doesn't know the exact time but it was later in the
10 day. And again, we know the time, and you'll have it in the
11 phone records. It was either 3:59 or 4 p.m. exactly, depending
12 on which record you review.

13 And as Anthony Young told you, he gave the name of the
14 witness at that phone call. Again, remember, at this point Mr.
15 Bergrin has met with William Baskerville, complaint in hand.
16 And as you saw from the complaint, there is no mention of Kemo.
17 There is no mention of DeShawn or Mr. McCray. It says,
18 "cooperating witness." The only person at this point who could
19 have said it was Kemo, who had both access to a complaint and
20 had the information, knew again, considering the source, who
21 had the ability to provide this information is William
22 Baskerville. And just prior to the court appearance, just
23 prior to that phone call, who met with William Baskerville,
24 complaint in hand?

25 Mr. Bergrin.

1 So again, matching up what you heard there, what does
2 Anthony Young tell you?

3 He mentions he's facing a lot of time, he's a career
4 offender, doesn't want to get bail -- or the Government doesn't
5 want to give him bail, and that the cooperating witness' name
6 is Kemo.

7 Anthony Young told you that from the stand. Now you
8 have the line of how the information was received by Mr.
9 Bergrin.

10 Now, beyond that -- I'm sorry -- could you put the
11 chart up.

12 All right. So the full day goes like this. All
13 right? November 25th, the day he's arrested. Paul Bergrin
14 receives a copy of Baskerville's complaint, that's William
15 Baskerville; the first call from Paul Bergrin using his office
16 phone to Hakeem Curry, 2:26; Baskerville's first court
17 appearance; second call from Paul Bergrin using his cell phone
18 this time to Hakeem Curry, 3:59, 4 o'clock. In the middle
19 there is his meeting with William Baskerville.

20 But honestly, you don't even have to go through the
21 trouble of putting the pieces together, one, two, three, four
22 Anthony Young told you. Mr. Bergrin himself told you, or told
23 the reporters -- excuse me -- that he did exactly what Anthony
24 Young said he did. He told you that he gave Hakeem Curry, or
25 the relatives or whatever the quote was, of William Baskerville

1 the name of the cooperating witness, period. You will have --
2 or you will have heard that testimony.

3 And like Thomas Moran told you, when Paul Bergrin
4 passed the name of the witness, he passed it along to William
5 Baskerville's "people," not relatives. And Mr. Moran explained
6 to you what the difference was in Paul Bergrin's world.
7 Relatives: Cousins, aunts, uncles, sisters, brother. "People"
8 means criminal associates. There's a difference. And the fact
9 that Hakeem Curry was also a relative or Rakeem Baskerville,
10 was also a relative is of no consequence.

11 Members of the Jury, so it's clear, at this point in
12 the case or this point in the presentation, if you believe that
13 Paul Bergrin passed this name along to William Baskerville's
14 drug-trafficking associates knowing what would happen to Kemo,
15 he is guilty of both charges. But, we have significantly more
16 evidence of what Mr. Bergrin did and his involvement in the
17 conspiracy. So let's skip ahead to the meeting.

18 Anthony Young, again, said, I don't know the right
19 date. He said four days, he said five days, he said it maybe
20 even up to six, I don't know. But what he does know is there
21 was a meeting. He knows that he and a number of the other
22 Curry associates were, again, by Jamal Baskerville's home. He
23 knows it was some amount of days after William Baskerville was
24 arrested. He knows it wasn't Thanksgiving weekend, but other
25 than that he's not really sure.

1 What do we know?

2 Well, what we know is on December 4th, nine days after
3 William Baskerville is arrested, there's a court appearance
4 number two. We know on that day there are three phone calls
5 between Mr. Bergrin and Mr. Curry: 3:45 in the afternoon;
6 4:47; and finally in the evening at 7:13.

7 Now, why is that important, members of the Jury?

8 Well, what it shows is that during the day, the next
9 significant event in William Baskerville's case: Who is Mr.
10 Bergrin calling? Mr. Curry, three times.

11 And we know that because we know the day of the
12 detention hearing. We have a transcript that we can go
13 through. During that appearance, again, let's discuss what Mr.
14 Bergrin found out. He found out that Mr. Baskerville now faced
15 more significant charges, higher charges, and therefore new
16 penalties, harsher penalties, up to life in jail; 360 months
17 minimum to life because of William Baskerville's record as a
18 career offender for this case.

19 Now, that's important, members of the Jury -- well,
20 let's go through -- excuse me -- let's go through the
21 transcript, first.

22 Do you want to put that up, please.

23 All right. Again, I'm going to quote from the
24 transcript.

25 (Reading) Your Honor -- this is Mr. Gay speaking --

1 the Government's position is that detention is the only
2 appropriate status for the Defendant in this case. I will note
3 that since his appearance in front of Judge Falk we've indicted
4 the Defendant. In addition, it's on actually a higher charge
5 than what's contained in the Complaint. I have the copy of the
6 Indictment for your Honor if you'd like to see it and I've
7 provided to defense counsel, Mr. Bergrin, that is, a copy of
8 the Indictment as well.

9 The Court says, that's very good.

10 And Mr. Gay goes on to say: And, your Honor, the
11 Indictment charges the defendant with six counts of the sale of
12 a controlled substance containing cocaine base, that weighing
13 in excess of five grams; one count of conspiracy to distribute
14 more than 50 grams of a controlled mixture containing cocaine
15 base. On the second charge, your Honor, the defendant is
16 facing a life sentence and a \$4 million fine. In addition, if
17 you look at the Defendant's criminal history, he is considered
18 a career offender. He has a prior robbery conviction as well
19 as other convictions.

20 And we'll skip down to: (Reading continues) And under
21 the current charge, that would make him a Level 37, and he
22 would be looking at a sentence between 360 months and life if
23 convicted of the charge, the charges in the Indictment.

24 This is all laid out in court December 4th, 2003 --
25 Mr. Bergrin is the lawyer, Mr. Bergrin is present -- the same

1 day these three calls go to Hakeem Curry.

2 So, now, what does Anthony Young tell you happened at
3 that meeting?

4 He says he's facing a lot of time because he's a
5 career offender. There is not going to be any bail and the
6 evidence of the video recording and the rest of the stuff that
7 we'll get to.

8 It's important, ladies and gentlemen, that this
9 information was given at the time it was, not just for the
10 motive but exactly what Anthony Young told you Paul Bergrin
11 said to the gang at the meeting. These are the phrases that
12 Anthony Young testifies to you about that Paul Bergrin told him
13 at the meeting.

14 So before Mr. Bergrin gets there, what does he say
15 happens?

16 He saw the gang sitting there, they're talking,
17 they're going over different things. All they know at the time
18 is that the feds are bad news, the feds are the feds, he says
19 something like that. But as far as the amount of jail time, he
20 knows you do 85 percent, but he's not really sure about the
21 sentencing, doesn't really know the laws. Obviously, he as
22 well as all of them, very familiar with the State system.

23 So he's not sure what's going to happen with Will.
24 They know who the informant is, but at this point they're not
25 sure what to do about it.

1 Then Hakeem Curry shows up and he says, quote: My man
2 is on his way. He let us know what's going on, and he be here
3 in a little while.

4 Now, unless Hakeem Curry told Anthony Young that,
5 knowing that Anthony Young did not have any phone records,
6 probably was not receiving Hakeem Curry's phone bills or Paul
7 Bergrin's phone bills, how else would he have known that Hakeem
8 Curry spoke to Mr. Bergrin and that he was on his way?

9 Now remember, that last call, 7:13 p.m. When did
10 Anthony Young tell you that meeting was? Some time in the
11 evening, not sure, it was dark, things along that line.

12 Now, again, the phone records may not prove to a
13 hundred percent certainty that the meeting took place, but what
14 they do prove is that in the second important development in
15 the William Baskerville case, Paul Bergrin calls Hakeem Curry.

16 So what happens?

17 Paul Bergrin eventually shows up, again not sure of
18 the time, in a black Mercedes, Anthony Young tells you. Which
19 when we go back to corroboration, if we could take a step to
20 the side for a second, you'll have EZ Pass records in the back
21 with you to review. You look at the vehicle that is registered
22 to Mr. Bergrin. Mercedes, dark color. It's a little hard to
23 tell from the photographs but it's clearly a dark color. It's
24 corroborated what Anthony Young tells you by independent
25 records, the EZ Pass records. The EZ Pass account is in Paul

1 Bergrin's name at his home address in Morganville. The
2 transponder, the thing that you stick in the window or on the
3 license plate, comes back to a license plate number NPA-22K,
4 and that's the plate, you can't -- while the photo is a little
5 hard to see the color, you can certainly see the license plate.
6 And that photo or the earliest of the photos is January 20th,
7 2004.

8 Remember, William Baskerville arrested the end of
9 2003; these meetings, conversations the end of 2003.

10 And this is also all corroborated by what Detective
11 Snowden told you. We surveilled the office, we saw Mr. Bergrin
12 show up. He exited in a dark colored Mercedes at the end of
13 2004.

14 So he says Anthony Young says he showed up with a
15 Mercedes. We have evidence that he was driving a Mercedes at
16 the time.

17 What does Mr. Bergrin do when he shows up?

18 Shakes everybody's hands, then he gets down to
19 business. He says, as was said during that hearing that we
20 went through: Will is facing life for the little bit of drugs,
21 just like was said during the court appearance. The group was
22 surprised that Will would get life for such a small amount of
23 crack. 100 something grams. Go back and add it up. That's
24 what Anthony Young says Paul Bergrin told him.

25 It's much more than you'd face with the State charges

1 Anthony Young told you. And he said that Paul Bergrin said
2 Will Baskerville is facing this amount of time because of his
3 record, because he is a career criminal.

4 What is in that transcript?

5 Career criminal. 360 to life.

6 And what did that mean to the group, Anthony Young
7 told you?

8 It meant, and I'm going to quote: "Something going to
9 have to happen to get William Baskerville out." He, meaning
10 Paul Bergrin, was just saying Mr. Baskerville wasn't getting no
11 bail.

12 Again, just like was said in the court appearance.

13 And I'm going to flip you to -- I think we skip -- if
14 you could put up --

15 (Mr. Minish confers with Ms. Santos off the record.)

16 MR. MINISH: Now, you heard already that the
17 Government was seeking detention. Right? But inadvertently --
18 apologize -- I skipped over what the judge's ruling was. Look
19 at what the judge says: (Reading) He has now been indicted.
20 The court is aware of the presumption that would, in fact,
21 exist as a result of that indictment. As a result, detention
22 will be ordered at this juncture.

23 So it's not just the Government seeking it, this is a
24 done deal. The judge has made the order the same day, 12/4,
25 same court appearance.

1 So again Anthony Young tells you that Mr. Bergrin
2 said, just like in the court appearance, Mr. Baskerville was
3 not getting a bail.

4 Where else would he get this information from so
5 specific, so accurate?

6 He said, Mr. Bergrin said, "You need not let him
7 testify," meaning Kemo.

8 Can you put up the next clip.

9 And he was asked: (Reading) Now, did Mr.
10 Baskerville -- excuse me -- Mr. Bergrin say anything
11 specifically about Kemo or the witness?

12 He said, if Kemo testify against Will, Will will never
13 see the streets again. He will be sent to prison for the rest
14 of his life. And he said, we need not let Kemo testify against
15 Will. And his words to us, which all five of us, "No Kemo, no
16 case."

17 And what did you take that to mean, sir?

18 Get rid of Kemo.

19 Get rid of Kemo, how?

20 Kill him.

21 Then there's a short conversation between Mr. Curry
22 and Mr. Bergrin, Anthony Young tells you they sort of step away
23 and have a separate conversation. And as he left, he said --
24 if we could put that one up.

25 (Reading) Yes, he told us he see us later, see what he

1 could do. And he said, remember what I said: No Kemo, no
2 case. Don't let that kid testify against Will. And that was
3 it.

4 And truly, members of the Jury, that was it. He gave
5 his hand signal. You know, he said he wasn't sure if it was
6 this or this (gesturing), but he gave a hand signal as he made
7 this statement and walked back to his black Mercedes.

8 But before he left, members of the Jury, he made a
9 promise, he made a promise to the gang. I'm going to show you
10 that clip.

11 (Reading) Had Mr. Bergrin told you anything that would
12 happen if he didn't testify?

13 He said he get Will out if Kemo don't testify, that
14 Will will come home.

15 So, members of the Jury, as we discussed in the
16 beginning of my presentation to you, with that legal analysis,
17 with the advice to murder the witness from Curry's confidant
18 from his house counsel, the die was cast. That was it: Kemo
19 was going to be killed.

20 So at this point we know Mr. Bergrin has passed along
21 the name over the phone, he has done some legal analysis on the
22 quality of William Baskerville's case, or the Government's case
23 against William Baskerville, and he developed a strategy to win
24 the case, not a legitimate strategy but a strategy.

25 He meets with the gang and he tells them the strategy.

1 He advises them, counsels them, tells them: The only winning
2 strategy is to kill Kemo.

3 And knowing that the gang wants Kemo out -- excuse
4 me -- wants William Baskerville out of jail makes them that
5 promise: You take care of your end, I'll take care of my end.
6 You follow my advice, Will will get out.

7 And so it's clear again, members of the Jury, if you
8 believe that Paul Bergrin said those things at that meeting, he
9 is guilty of both charges before you.

10 Now, what happens after the meeting?

11 All right. The group discusses some stuff, they talk
12 about how they're going to find Kemo, because now the die has
13 been cast. As Anthony Young said, that was it.

14 And they explain to you, Anthony Young explains to you
15 why they hadn't done it before, simply they didn't know William
16 Baskerville was facing so much time. They, each of them had
17 been in jail a number of times, Anthony Young especially. He
18 said almost half of his life, right? In and out, in and out, a
19 few years here, a few years there. But if it would have been
20 like State time, Kemo would not have been killed.

21 That's important, members of the Jury, because it's
22 the words out of Mr. Bergrin's mouth that seals Kemo's fate,
23 that seals the deal that Kemo would be murdered.

24 Do you want to show that next clip.

25 Mr. Young was asked in the context of discussing what

1 was going to happen and organizing the murder: (Reading) Why
2 hadn't you done it before? Why hadn't you done that before Mr.
3 Bergrin showed that you?

4 And what did Anthony Young tell you?

5 (Reading) Because we didn't know Will was facing that
6 much time. If he was facing a little bit of time, three years,
7 five years, we -- that plenty of time. You just go do it. But
8 for somebody to try to take the rest of our life from our
9 family, you know, there's consequences.

10 Now, putting aside whether people outside of this
11 Curry world would think three years, five years is no big deal,
12 remember the world you're in when you're listening to this
13 testimony. Remember the world that Mr. Bergrin is in, remember
14 the world that Mr. Bergrin is talking to, the people. Three,
15 five years, you do your time, cost of doing business. 30
16 years, life? There's no other way to get out from under this
17 case. If Kemo testifies, Will goes away for that much time,
18 Paul can't do anything else? There are consequences.

19 Now, they made some decisions, Anthony Young told you,
20 that day. All right? He said that Rakeem Baskerville will be
21 the getaway driver because he was a good driver, that either he
22 or Jamal McNeil would end up being the shooter depending on who
23 was around, and that the shooter was definitely not going to be
24 Hakeem Curry or Jamal Baskerville for whatever reasons, they
25 didn't get involved in shootings unless they had to apparently.

1 Now, before we leave this day I want to discuss one of
2 the points of cross-examination that Mr. Bergrin went through
3 with Agent Brokos. Now, this is important not just because
4 it's inaccurate on the facts, but it's important, members of
5 the Jury, for you to keep in mind, why. Why would Mr. Bergrin
6 have gone to such lengths to try to make this point?

7 Remember, there are phone records that you will have
8 in the jury room that there were three calls after the court
9 appearance. We now know the date of the appearance, we know
10 the date the phone records show. But Mr. Bergrin during his
11 cross-examination of Shawn Brokos with phone records that he
12 marked as Defendant's Exhibit Number 3, all right?

13 Can you put the clip up, please.

14 There's a series of photographs -- excuse me -- a
15 series of phone calls. And he asked, he said: (Reading) There
16 are no calls, he said, between Paul Bergrin and Hakeem Curry
17 from November 26th to December 3rd, 2003.

18 Now, what was Agent Brokos's answer?

19 (Reading) I'm not sure. I -- I don't have all the
20 phone records.

21 She wasn't sure but answered honestly, of course.

22 On the paper that Mr. Bergrin showed her that, in
23 fact, there were no calls.

24 All right. So let's roll through the transcript.

25 This is Mr. Bergrin asking Agent Brokos:

1 (Reading) Are those phone records?

2 These are phone records, yes, she said.

3 From what appear to be your telephone phone, 10/14 to
4 July 3rd.

5 From November 26th --

6 And Hakeem Curry's number appears on that too.

7 Correct, ma'am?

8 If you just give me a minute. I'm reviewing it.

9 Yes, it does.

10 From November the 26th, 2003 'til December 1st, 2003,
11 within that four or five, even six-day time frame, isn't it a
12 fact that there's not one call between me and Mr. Curry on
13 these phone records, on those phone records?

14 "ANSWER: From November?

15 "QUESTION: 26th.

16 "ANSWER: 26th, yes.

17 In 2003.

18 'til October 27th?

19 No, November --

20 I'm sorry.

21 November 26th to November 30th, even December 1st of
22 2000 --

23 And Agent Brokos apologizes, she said there's markings
24 on it.

25 I thought that's what you were directing me to.

1 Then we get down to line 6 where Mr. Bergrin says:

2 (Reading) I'm asking you a specific question.

3 Yes.

4 Are there any calls between me and Mr. Curry from

5 November 26th until even up to December 3rd?

6 And what does the agent say?

7 There does not appear to be, no.

8 And that's approximately a nine-day period. Correct?

9 Yes.

10 Again, this is from your cell phone, this is not from
11 your office line though.

12 Do you have any knowledge that my office was open on
13 Thanksgiving weekend?

14 I do not.

15 You've reviewed the office phone calls, correct, or my
16 phone numbers in my office and records. Correct?

17 Yes, I have.

18 Isn't it a fact that there are no calls from November
19 26th until returning to work in December?

20 And what does the Agent tell you?

21 (Reading) I can't answer that, again, without seeing
22 the records. I just don't recall.

23 As you sit here now you don't recall any phone calls
24 between those two numbers?

25 All right.

1 You remember that?

2 On to the next one.

3 During that period of time?

4 Yes.

5 And again, answering honestly: I can't say whether
6 there were or weren't without looking at the records.

7 Well, you guys will be able to look at the records.
8 And, in fact, in front of you, when Mr. Bergrin said there were
9 no calls between Mr. Curry and himself from November 26th to
10 December 3rd, 2003, it just wasn't true, period. They weren't
11 on that page that Mr. Bergrin showed, but there were phone
12 calls. Because what Mr. Bergrin showed the agent only showed
13 calls from Mr. Bergrin's cell phone to Mr. Curry's cell phone
14 and to Mr. Changa -- or Changa's cell phone, not calls from Mr.
15 Curry to Mr. Bergrin, and not calls from Mr. Bergrin's office
16 to Mr. Curry.

17 So it turns out that the truth is, the full records of
18 the exact same period of time that Mr. Bergrin asked the agent
19 about repeatedly again and again and again, there were, in
20 fact, calls, in fact, a number of calls from Curry to Paul
21 Bergrin and one from Paul Bergrin to Mr. Curry. There was a
22 call on 11/26 from Curry to Paul Bergrin's cell phone; on
23 December 1st from Curry to Paul Bergrin's cell phone; on
24 December 1st from Paul Bergrin's office to Curry; and then as
25 you can see, on December 2nd and again on December 2nd, and

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1 again on December 3rd, the exact period that he's asking the
2 agent about, there are three more calls from Mr. Curry to Mr.
3 Bergrin's cell phone. So remember those records only had the
4 calls from Mr. Bergrin's cell phone.

5 Now, you may ask yourself, well, why, why would he do
6 that?

7 Well, it's not a random date range that Mr. Bergrin
8 was asking about. All right? This is the date range that goes
9 between when William Baskerville is arrested until the day
10 before that second court appearance. The 26th is the day after
11 the arrest; December 3rd, the day before that hearing where
12 William Baskerville found out, no bail. It wasn't a random
13 period of time. Very specific with his question, and he even
14 said: "I'm asking you a specific question."

15 I submit to you, members of the Jury, that these
16 calls, and going into December 4th, were of concern to Mr.
17 Bergrin, and the reason he went after this in
18 cross-examination, albeit incorrectly, is because he knew these
19 phone calls do exactly what I've submitted to you: They
20 corroborate what Anthony Young told you; that on the day of the
21 meeting was the day of the detention hearing, even if Anthony
22 Young does not know the exact date and he thought it was four,
23 five, or six days. It was nine days. It was the day that you
24 know the hearing took place. It was the day where William
25 Baskerville and his attorney found out the information, facing

1 life, 360 to life, no bail because you're a career offender.
2 Three phone calls that day added to the other phone calls along
3 the way.

4 Again, members of the Jury, what we take away from
5 those phone records, we do not know what was said during those
6 phone calls. The only ones we know about are the first two on
7 the day he was arrested because Anthony Young was there. But
8 we don't know, so it's clear, what was said on those days. But
9 from the surrounding circumstances, the date of the detention
10 hearing, the date of that last phone call at 7:13 p.m., the
11 fact that when Mr. Young told you when that meeting took place
12 and that Hakeem Curry had said, "My man is on his way," you do
13 know. And you do know, even more importantly, that that
14 meeting took place and that that information was passed along
15 by Mr. Bergrin. Those demands were made, that counsel was
16 given by Mr. Bergrin to the gang to kill Kemo.

17 Now, the search begins for Mr. McCray some time in
18 December. Right? Anthony Young told you it was after the
19 meeting. They try to run down a few leads. They think it's
20 going to happen a couple of times where they're going to find
21 him. But before we get into the details about the search,
22 let's talk about the actions that Mr. Bergrin took on his own
23 without the gang to make this happen, to further this
24 conspiracy, to aid and abet the murder of Kemo DeShawn McCray.

25 Because during this search time he calls Albert Castro

1 down to his office. Albert Castro shows up. Albert Castro, as
2 you learned, was a big time drug dealer in his own right. No
3 connection to Hakeem Curry, so presumably if he was involved in
4 the murder of Kemo, law enforcement would not be able to put
5 those pieces together. All right? Someone outside of the
6 group.

7 He said he remembered because of something with his
8 daughter that it was about the second week of December. They
9 had a closed-door meeting in a private office, in Mr. Bergrin's
10 private office. There's limited small talk. They get right to
11 the point. Mr. Bergrin asks: Do you want to make \$10,000 to
12 put a hit on someone?

13 Mr. Castro asks him who?

14 He says, Kemo. Or, for something that had been done
15 the either E.T. Hak or someone in E.T. Hak's group.

16 He certainly knows who E.T. Hak is, although he has no
17 personal involvement with the crew. He's a big drug dealer,
18 well-known although he said he never met him.

19 He told you: I've never killed anyone. I'm making
20 20, 25 grand a week selling drugs. I am not getting involved.
21 I thought it was a joke. I said no.

22 There were no hard feelings, no further conversation.
23 He leaves.

24 He said he could have made it happen if he wanted to
25 but he had no interest.

1 He went about his business selling drugs, what he had
2 been doing before, continued to do after -- oh, I'm sorry --
3 and receiving stolen property and selling it, all kind of bad
4 things. And he eventually gets caught on State charges.

5 And who does he call to help him out of his jam?

6 Paul Bergrin.

7 Mr. Bergrin cut a deal for him that you've heard a lot
8 of testimony about. At some point Mr. Castro was angry about
9 this. He has a falling out with Paul Bergrin during his
10 representation.

11 And what did he tell you? Because he didn't think Mr.
12 Bergrin was working hard enough on his case, that he was
13 stealing money from him, and for whatever it was that happened
14 to his daughter with Mr. Bergrin.

15 He decides because he is angry to come and tell on Mr.
16 Bergrin what he knows. He comes to the meeting at the U.S.
17 Attorney's Office, the first meeting, and he doesn't say
18 anything, he clams up, he gets cold feet. He said he was
19 scared; scared of Mr. Bergrin and he decided not to say
20 anything.

21 But then he comes back later and he tells the
22 Government that Mr. Bergrin shopped the murder to him, and he
23 later testifies at the grand jury.

24 He's fairly straightforward, fairly simple testimony.

25 Now let's talk about the cross-examination just

1 briefly.

2 There wasn't much cross-examination about the meeting,
3 when it took place, if it took place, when it took place. Most
4 of the cross-examination was sort of over here, right off to
5 the side, trying to make Mr. Castro look like a liar, that he
6 lied in state court, and worse, that either myself or Agent
7 Brokos had something to do with it.

8 Now even though Mr. Castro said repeatedly, neither
9 myself nor Agent Brokos ever told him to lie, he was asked
10 about it again and again and again and again. He said
11 basically, I maintained, I didn't point the gun at the police
12 officer. I didn't put it under the cop's vest.

13 Now, ultimately I hope that this issue was put to bed
14 by Assistant Prosecutor Thomas Fennelly testifying when he told
15 you that -- and I'm quoting -- well, the question was:
16 (Reading) Now, when this plea was worked out, did anyone from
17 the Federal Government contact you in any way, influence your
18 plea bargain decisions for the plea that was offered to Mr.
19 Castro?

20 No.

21 Now, Mr. Bergrin wanted to make this look like a big
22 Government scheme. And there's many other things that Mr. Gay
23 will get into his rebuttal so I will not be repetitive with you
24 with respect to this. But I hope it was clear from Mr.
25 Fennelly's testimony that the Government -- meaning the Federal

1 Mr. Castro or Mr. Bergrin?

2 Who is trying to pull the wool over your eyes? Who is
3 trying to give you a false impression of what happened?

4 Can you put that up.

5 Then the final part. (Reading) Isn't it a fact that
6 you used Joe Ferrante on your case and received a three-year
7 sentence?

8 Again, Mr. Castro: I don't believe I used him. I
9 gave him a retainer fee. I never went back to retain him as an
10 attorney.

11 Mr. Bergrin: And I'm not listed anywhere on that
12 case, isn't that a fact, in any of the court records anywhere?

13 What did Mr. Castro say? He was looking at that
14 document, right? (Reading) I don't see it on there.

15 Well, funny thing, there are some documents that you
16 will be able to see. They are Exhibits 690, 691 and 692. All
17 right?

18 Let's go to 692.

19 As you can see, members of the Jury, or hopefully you
20 can see if we zoom in a little on the top maybe, that is an
21 Essex County Prosecutor's Office Request to Recommend
22 Disposition. And you can see, '97, a bunch of drug counts and
23 the RSP, receiving stolen property.

24 And if you scan down to the bottom, who's name is
25 listed as the defense attorney?

1 Joseph Ferrante? No.

2 Let's skip to the next document.

3 Now, this one's a little hard to see on the screen, I
4 will grant you, but you will have the -- I won't say the
5 original -- the Essex County copy back with you. The
6 Defendant's name: Albert Castro. This is an official -- the
7 court plea form. Then on the bottom of page 3 and 4, next to
8 the word "Defense Attorney," typed out you will see the
9 signature of Paul Bergrin.

10 And finally, Exhibit 690. You'll have this, which is
11 a State Adult Presentence Report. At the top you will see
12 "Castro, Albert." '97 case. Right? The prosecutor's numbers.
13 You'll be able to see those numbers at the top. You'll be able
14 to match that number that's highlighted as well as the other
15 number on the indictment with the other two documents.
16 Prosecutor's Number 97001011 is their file number, as well as
17 there's Indictment Number 97-04-1827 will be consistent in
18 these three documents, as are the charges if you look down the
19 bottom left: Drugs; drugs; drugs; receiving stolen property.

20 And at the bottom towards the right there's a box
21 called "Attorney's Name." And whose name is in there?

22 Paul Bergrin.

23 Members of the Jury, I ask you to keep one thing in
24 mind when we're going through that. Why would Mr. Bergrin go
25 to such lengths to try to make Albert Castro look like a liar?

1 I submit to you the answer is obvious. If what Mr.
2 Castro said is true, he's guilty.

3 But more importantly, when you're weighing out
4 credibility, in that little scenario -- you guys will have the
5 jury transcripts back there, and you don't to have take my word
6 for any of this -- you'll have the documents, you'll have
7 access to transcripts if you request them and you can read
8 through yourself. But the thought I want you to keep in mind
9 as you're going through that section is: Who is trying to be
10 straight with you and who's trying to pull the wool over your
11 eyes?

12 Did Mr. Bergrin represent Albert Castro exactly how he
13 testified to you in the exact case he testified to, despite Mr.
14 Bergrin showing him what he said were official documents,
15 despite the aggressive cross-examination? There is
16 indisputable proof that Mr. Bergrin, not Joseph Ferrante,
17 represented Mr. Castro on that case, period. I leave you to
18 determine what the implications of that are.

19 Before we leave Mr. Castro, I want to talk about one
20 more thing. Now, he said at some point that there was an issue
21 of stolen money. Right? He accused Mr. Bergrin of stealing
22 money and there were some questions back-and-forth.

23 We're not here to prove a stolen money case against
24 Mr. Bergrin, but again, there's some things that I'd like you
25 to keep in mind when you go back there and you will have this

1 stuff.

2 Can you put that up.

3 Now, that is a check during that period of time that
4 was made payable, very clearly, to Albert Castro from the Essex
5 County -- or excuse me -- the County of Essex, not to Paul
6 Bergrin. He's listed below, "Care of Paul Bergrin," the
7 address, because Mr. Castro was in jail, right? He said, this
8 happened when I was in jail.

9 It's going to be a little hard to see on the screen
10 but we'll zoom in as best we can.

11 Who deposited that check into whose account?

12 What does it say about halfway down?

13 It's a little hard to read, I know. You'll have it in
14 the back with you. It is the Law Office of Paul Bergrin. Not
15 Albert Castro, not signed by even a relative of Albert Castro.

16 So putting aside logistically why the bank would ever
17 have allowed this to happen, the reality is, while Mr. Castro
18 was in jail, a check was sent to Mr. Bergrin in Mr. Castro's
19 name for \$20,000. That check was not given to his wife, was
20 not given to his daughter, was not signed by them in the back
21 to say, oh, we're turning it over to Mr. Bergrin for fees.
22 None of that. Stamp. Bergrin. Deposit.

23 You have a slip, you have the check and you will have
24 the account records that show further that it made it into Mr.
25 Bergrin's account, and then some -- well, it's a little -- the

1 date is a little tricky, but ultimately a \$20,000 check is --
2 although it's postdated, is actually sent out from his firm for
3 a personal matter, unrelated to anything to do with an Albert
4 Castro, for \$20,000.

5 So again, we're not here to prove a case against Mr.
6 Bergrin stealing \$20,000. This is offered to you only in
7 response to what was an aggressive cross-examination of Mr.
8 Castro.

9 Now again, Mr. Bergrin has every right to do an
10 aggressive cross-examination in whatever tone or attitude or
11 questions he wants to ask, and he made a significant attempt to
12 make Albert Castro look like a liar. But at the end of the
13 day, members of the Jury, what you know now is that those areas
14 that he went after, Mr. Castro was being truthful with you.
15 Mr. Castro may not be a great guy, but he wasn't up there lying
16 to you, he was not the one trying to pull the wool over your
17 eyes, he was not the one trying to fool you with records and
18 documents.

19 What you're left with after hearing this is that Mr.
20 Castro is a significant drug dealer. He's angry at Paul
21 Bergrin. Therefore, he decides to do something about it. And
22 what does he do? He comes to the Federal Government to tell us
23 what Mr. Bergrin told him. That was his way of getting back.

24 Judge, I don't know when you want to stop.

25 THE COURT: If you have more to go, why don't you

1 Anthony Young tells you, we need to ask the right
2 people the right questions. We can't just walk up and down the
3 street looking for Kemo.

4 And you know that's logical. You ask people who were
5 in the group, people you would trust. You've got to trust
6 somebody.

7 So he goes over and speaks to this guy: Hey, have you
8 seen the guy with the braids? If you seen him around here, if
9 you know him, let us know.

10 Have you seen this guy -- I'm trying to think who the
11 guys were. It was John-John and Kiki, all right, he said down
12 in Bradley Court. Bradley Court is the big housing complex,
13 where, by the way, as it turns out, you had heard from Agent
14 Brokos Kemo was staying with his girlfriend for part of this
15 period of time, right, when he wouldn't leave and he wasn't
16 taking this seriously.

17 So Rakeem tells Anthony Young at some point prior to
18 Christmas, he thinks that John-John has told him that Kemo is
19 in Bradley Court, the guy with braids -- I'm sorry. First they
20 say no, but then a couple days later they say they have the guy
21 with braids. He's not sure what building.

22 So what do they do? They sit out there and they wait.
23 They can't find him. But again it's important, he was staying
24 there, as Agent Brokos told you.

25 Then we have the tickets for the All-Star game.

1 Anthony Young told you, some time in late December, early
2 January he wants some money for the game.

3 Now, again, why \$30,000 is not enough spending money
4 for a weekend at a basketball game? Anthony Young told you,
5 that's just not the way it is. He wanted some extra money. He
6 wanted \$7500.

7 So at some point when she's showing off his \$10,000
8 Rolex to E.T. Hak, to Hakeem Curry, what does Curry do?

9 He says, listen, I'll give you the 7500 now but that
10 means you got to kill him, or you got to give me the money back
11 if someone else does it. All right?

12 They go back-and-forth. He says, I'm also collecting
13 for the All-Star game. So Anthony Young takes 7500, gives him
14 \$3500 back. He walks away with the \$4,000 and the promise of
15 the tickets to the game and a hotel. He said the airline
16 tickets are on me, I didn't have anything to do -- Hak wouldn't
17 do that.

18 Now, why is that important, ladies and gentlemen?

19 Well, in and of itself, again, it may not be a
20 critical issue, but we have a number of things here. We have
21 corroboration from documents you will have, travel records, a
22 series of names that will sound very familiar to you by now
23 when you look through it, hotel reservations, not plane
24 reservations, and more importantly, this is the time when
25 Anthony Young's position as the shooter has been solidified.

1 All right? He's there, it's going to happen. The only way he
2 told you it wasn't going to happen is if he happened not to be
3 in the area and it had to happen like that (snapping fingers),
4 because he is now half paid.

5 So again, they're looking through January. They're
6 starting to get frustrated. They think the feds have him in
7 witness protection. Rakeem gets information that he's in
8 Irvington. He picks up Anthony Young, he goes to the baby's
9 mother's house, or what he believes to be the baby's mother's
10 house. Anthony Young says he goes in and looks for him, and
11 even bribes a fiend, right, a drug user to try to see, is Kemo
12 here? He's not.

13 February comes. They go to the All-Star game. They
14 come back. They're still looking.

15 Members of the Jury, what I told you originally about
16 sort of the premeditation on those issues, this is again
17 another phase beyond just what Mr. Bergrin did as far as his
18 thought, his analysis, his figuring out of the case and his
19 figuring out of the options that the gang is going through some
20 very well planned conspiracy. Each of these steps are planned,
21 each of these steps are coordinated, and each of these steps
22 they know what they're doing with the exact specific intention
23 of making it happen, that Kemo gets killed.

24 Finally, after a frustrating couple of months they get
25 a break. Jamal Baskerville sees Kemo working at the house on

1 18th Street. He's driving around and he finds him. He
2 contacts Rakeem Baskerville, who contacts Anthony Young.
3 Everybody is contacted, and they all show up.

4 Anthony Young, you're going to be the shooter, Curry
5 says. You already got paid, that's done.

6 Yeah, okay.

7 They come up with their plan of attack. They get a
8 rental car.

9 Why? They explain the logic of it to you, right? It
10 can't come back to anybody, they got a rental car. Curry gets
11 it. They describe the model of it to you. Anthony Young said
12 it's silver, right? Silver or gray Grand Am. The exact color,
13 so we're clear that the eyewitnesses said the car was. They
14 take the plates off. Anthony Young takes off I think it was
15 the back and Rakeem Baskerville takes off the front.

16 Why do they take the plates off?

17 So no one can identify the plate number when they're
18 leaving the murder. This is the getaway car.

19 They have the murder weapon. Where do they get it
20 from? They get it from the trap in the van. You've seen
21 photographs of the van, and there's the trap. Right? Anthony
22 Young tells you there's this trap in this van and, lo and
23 behold, when law enforcement actually seizes the van, there it
24 is. And Agent Streicher told you how they go through the
25 process to even find that was there.

1 Takes out the gun, he describes the process of opening
2 it up; takes out the clip, he fills it with bullets, they wipe
3 the things down, and now he's armed with the gun.

4 And he tells you, there's no big deal me having a gun.
5 Generally when I leave the house I have a gun. But this was a
6 specific gun. Right? This is a gun that was a fully
7 automatic. Not (speaking slowly) bang, bang, bang; but one
8 pull (speaking fast), bang, bang bang. He told you about his
9 clothing.

10 Now, clearly from his testimony, members of the Jury,
11 Anthony Young has no specific memory of his pants. He says he
12 believes they were jeans. He said he was 90 percent sure. Now
13 whether he has a specific memory of that or he's just assuming,
14 I leave that for you to decide.

15 That's what I always wore.

16 Timberlands, the same thing. It was winter, I must
17 have worn timber lands. Okay?

18 I'm not really sure what the issue is with respect to
19 the jeans or the khakis. Again, there's not a witness out
20 there saying, no, no, the shooter had red pants and a -- I
21 don't know -- a white T-shirt on. All right?

22 The only thing that's really contrary for the clothing
23 is that at some point Johnny Davis says, I don't think I
24 remember him having a Yankee hat on.

25 Okay. I submit to you, members of the Jury, that the

1 clothing is just of no issue whatsoever.

2 Now, again, what is Anthony Young not sure of? Pants,
3 shoes.

4 What is he sure of? The things that matter. The
5 things that he had specific memory of.

6 It makes no difference what pants he was wearing that
7 day.

8 What does make a difference? The jacket, right? And
9 the hat. The fleece.

10 Why did that matter? Because that's part of his
11 disguise. Collar up to here, and he pointed to his lip, right?
12 Bottom part of his lip -- I'm sorry. And he zipped it up, and
13 the hat, he pulled it down and he pointed to his eyebrows. So
14 about from here to here you could see, right? Eyebrows to the
15 bottom of his lip.

16 That was part of his disguise, part of his protection.
17 Of course he remembers that. Again, I'm sending you back to
18 the idea that when important events happen there are some maybe
19 side issues we don't remember perfectly, we can make I think it
20 was jeans, it must have been jeans, that's-what-I-usually-wore
21 kind of answers; but when he says it was a fleece, he remembers
22 it was a fleece because that's what he did, because he zipped
23 it up, because he had it here; because he had a hat, it was
24 pulled down.

25 And again to my exact point: What does Mr. Young tell

1 about you the hat? Was he sure it was a Yankee hat?

2 He says, "That's what I always wore."

3 He knew it was a hat because that's important. What's
4 up here. He thinks it was a Yankee hat. He knows it was a
5 dark hat. That's not important. The existence of the hat is.

6 Now, and so we can call the issue, he said his hair
7 was probably not that dissimilar from mine, a little grown in
8 on the side. Certainly not dreadlocks, certainly not anything
9 like that.

10 He explains to you that the fleece is also important
11 because that's what he balls up, that's what the blood is on.
12 That's why remember these things as opposed to the shoes and
13 things like that.

14 What else does he tell you he has very specific memory
15 of?

16 That there were a series of cars, the parade of cars,
17 how they left. Jamal Baskerville first. Why? He knows where
18 they're going and he's going to protect the fact that there's
19 no license plate on the front of the getaway car. Hakeem --
20 the getaway car next; Hakeem Curry third. Why? Getaway car in
21 the middle. You can't see that it has no license plate on
22 either side. Mr. Curry protects the back, Mr. Baskerville
23 protects the front. They drive to the area. They point at the
24 vehicle or he makes them understand that's the house I'm
25 talking about, the one with the dumpster. Jamal Baskerville

1 flees the scene. Anthony Young, Rakeem Baskerville park.
2 Hakeem Curry goes out to South Orange Avenue and sets up there.

3 Because as you've seen from the pictures, if they
4 leave the area you know which way they're going, they're going
5 towards South Orange Avenue because there's nothing in the
6 other direction. There's a cemetery across the street and
7 there's nowhere else to go. And even if there was, behind them
8 on that side is Anthony Young and Rakeem Baskerville. So
9 remember the setup: It's Anthony Young and Rakeem Baskerville
10 in the car; Kemo's car -- or the house Kemo is working at is in
11 front of them to the right and then South Orange Avenue is
12 further from them. All right? And that's where -- excuse
13 me -- that's where Hakeem Curry and Jamal McNeil set up.

14 They're waiting for Kemo to leave the house. Anthony
15 Young tells you he sees the dumpster. Kemo brings the stuff to
16 the dumpster. He sees him with a mask on. He sees him a
17 couple of times.

18 This is corroborated by the medical examiner who told
19 you there's a dust mask there; the crime scene guy who recovers
20 the dust mask there.

21 And what did Johnny Davis tell you, his father tell
22 you about that?

23 Well, first he told you he was scared, Kemo, because
24 he was cooperating against guys that were going to kill him.
25 But also he told you we were working on a house on 18th Street,

1 there was a dumpster. We were throwing stuff in the dumpster,
2 and Kemo was one of the guys throwing stuff in the dumpster,
3 and he had a breathing mask, just like Anthony Young told you.

4 So during this setup you have Curry and Jamal McNeil
5 set up on South Orange Avenue. They're communicating back and
6 forth with their phones. A period of time goes by where Kemo
7 doesn't leave the house. There's a discussion: Should we go
8 in? Should we not go in? It's decided not to.

9 Which hand should we shoot with? I'll shoot with my
10 left hand. That will throw the cops off.

11 And they wait and they wait, and at some point even
12 leave to go get something to eat because they don't want to be
13 out there too long. But after they get back, at some point at
14 approximately 2:00 p.m. a little before, out of the house comes
15 Kemo and his stepfather, Johnny Davis.

16 They see Kemo leave. They contact Curry: He's coming
17 your way.

18 They watch him. Anthony Young even described -- he
19 acted it out for you. Remember?

20 He had to lean out of the car. There were the trees.
21 You could see this. Rakeem really couldn't see it. I could
22 see some of it, and then at some point, at some point they
23 disappear and I couldn't see them anymore. The same way he
24 watched them go on that day he described that for you.

25 Do you think when he was talking to you about that he

1 was going from a memory or he was just making that up?

2 When you looked at him at that moment, could you say
3 to yourself he's making that up, or was he going from his
4 memory? And the only way you have a memory, members of the
5 Jury, as you know, is if you're telling the truth.

6 He said he saw him leave with the other man, the older
7 man.

8 And what did Johnny Davis tell you? Well, we did walk
9 to South Orange Avenue, it was about 2:00 p.m., and we did walk
10 west up South Orange Avenue past 19th Street.

11 And obviously from the photographs you can tell, and
12 from seeing Mr. Davis in person and seeing the photographs of
13 Kemo, Mr. Davis is an older man relative to Kemo.

14 So what happens now?

15 They're out. Kemo is out in the street. The guys are
16 set up. Hakeem Curry is set up, Anthony Young is set up.
17 Rakeem Baskerville drives down to South Orange Avenue and drops
18 off Anthony Young.

19 Anthony Young walks into the area, he told you it was
20 a little cut-out like the door there but deeper on a step and
21 he sets up. He looks out. Then he looks out. And he's
22 waiting and waiting. And what he doesn't know what's going on
23 is, they're getting sandwiches, then they forget to get some
24 cigarettes. They remember. They go back in they get
25 cigarettes and the whole time Anthony Young is waiting

1 (demonstrating).

2 Kemo might have been worried the night before, the day
3 before when he had the conversation with his father, and
4 obviously when they're buying those cigarettes and walking back
5 to 19th Street they have no idea what's going to happen. They
6 have no idea that Anthony Young is waiting in the doorway, they
7 have no idea that Rakeem Baskerville is feet away, half a block
8 away in a getaway car.

9 So Kemo is walking down the street. And as he's
10 coming toward you, his father is on his right, and further on
11 the right is the actual street, South Orange Avenue. The
12 buildings are here on the left. And he's walking, mask around
13 his neck, cigarette in his hand. Remember what Johnny Davis
14 told you, he bought some "looseys."

15 Anthony Young sees him. Sees him coming down the
16 street at him. When he gets close to 19th, Anthony Young comes
17 out. He walks around this way on the street side. Walks
18 around the father gets behind Kemo, and just as he tells you,
19 just as he's about to step onto 19th Street, grabs him.

20 Where did he point to?

21 About here. Grabs him, takes the automatic weapon in
22 his left hand, as he told you. Puts it as close as he can get
23 it as Kemo was moving to the back of his head, and pulls the
24 trigger, and then follows Kemo down to the ground trying to
25 hold the gun as close as he can to his head as Kemo falls

1 lifeless onto 19th Street.

2 His momentum carrying him forward, he said he actually
3 sort of jumped over Kemo. Right? Because what did he care
4 about at that point? He had done what he had promised to do.
5 He had done -- another bad pun -- executed the term that -- the
6 plan that Mr. Bergrin gave him and gave the whole gang. This
7 was the culmination of the advice, of the counsel, of the plan,
8 and now he had to get out of there.

9 And he said, he is looking -- as he's looking at Kemo
10 he's also looking for that car because he does not want to get
11 hung out to dry. And that car pulls in, parks. He is already
12 moving his way. He goes right into the passenger side and that
13 car takes off as fast as they can, no plates in the back, no
14 plates in the front, away from 19th Street, leaving Mr. Davis
15 to turn around and see his son lying dead on 19th Street,
16 leaving Kemo with his work gloves and his mask and his half
17 smoked cigarette in a pool of his own blood on 19th Street.

18 THE COURT: Mr. Minish, maybe this is a good time for
19 us to recess for lunch. Okay?

20 MR. MINISH: That's fine, Judge.

21 THE COURT: All right. We'll resume after lunch.

22 Ladies and gentlemen, please, again, don't begin to
23 discuss anything about the case, you still have more to hear.

24 We'll see you back at 2 o'clock. Have a nice lunch
25 and we'll see you at 2 o'clock. Thanks very much.

1 THE DEPUTY CLERK: Please rise for the Jury.

2 (The Jury leaves the courtroom.)

3 THE COURT: All right, everyone, be seated.

4 We're in recess. Mr. Minish, 2 o'clock we'll resume.

5 How much more do you think you have?

6 MR. MINISH: I would say without making a promise,

7 about an hour.

8 THE COURT: All right. Then we'll get started on the

9 summations this afternoon.

10 MR. BERGRIN: Yes, your Honor.

11 THE COURT: You probably have several hours?

12 MR. BERGRIN: Yes.

13 THE COURT: Okay. All right. We'll go into tomorrow

14 morning then I'm sure. Okay.

15 MR. MINISH: Yes, your Honor.

16 THE COURT: We'll see you back at 2 o'clock, everyone.

17 Thanks.

18 MR. GAY: Thank you, Judge.

19 (A luncheon recess is taken.)

20

21 A F T E R N O O N S E S S I O N

22

23 THE COURT: All right. Bring out the jury.

24 THE DEPUTY CLERK: Please rise for the Jury.

25 (Jury present.)

1 THE COURT: Everyone, please be seated.

2 Mr. Minish, you can resume.

3 MR. MINISH: Thank you, Judge.

4 Members of the Jury, when we broke we were talking
5 about the getaway, Kemo laying in the street, Johnny Davis
6 looking at his son and at the vehicle driving down 19th Street.

7 The important part of not just the murder for you to
8 remember is a little thing; the location of where the getaway
9 car was. Where did Anthony Young tell you the car was? All
10 right?

11 And you have the photos just up past Kemo's body.
12 Right? Kemo is laying here. 19th Street. The car was just
13 ahead sort of to the left side, which is what Johnny Davis
14 tells you also.

15 Johnny Davis' position is somewhere over here looking
16 back at his son. Turns -- again, not a significant point in
17 whether or not Kemo was actually killed but just further
18 corroboration of Anthony Young told you one thing and another
19 independent witness told you the same thing. Also, Johnny
20 Davis told you the same direction, the same color of the
21 vehicle.

22 Now, the vehicle takes off to the prearranged location
23 that they had set up somewhere, he said it was in South Orange
24 or West Orange. They get into that garage, close the door and
25 wait for Hakeem Curry to show up.

1 Now, at this point, members of the Jury, a significant
2 part of the murder conspiracy has been completed, so let's talk
3 about what the various players did.

4 We have Hakeem Curry who got Paul Bergrin to represent
5 him, gets the gang information and counsel from Paul Bergrin.
6 He puts up half of the money for the hit. He sits in the
7 lookout vehicle, he got the getaway car, and he confirmed
8 afterwards that Kemo was dead.

9 Rakeem Baskerville was part -- certainly part of the
10 search. He got the gun for Anthony Young, he drove the getaway
11 vehicle, he helped him destroy the gun when it melted, and he
12 put up \$7500, half of the payment for the murder.

13 Jamal Baskerville assisted in the search and actually
14 located Kemo and drove the lead car protecting the license
15 plate.

16 William Baskerville from jail determines the name of
17 the confidential witness, gave the name to Paul Bergrin and,
18 again, Anthony Young said it was a request, order; he wanted it
19 done certainly.

20 Anthony Young participated in the search for Kemo,
21 agreed to be one of the potential shooters, accepted prepayment
22 of \$7500, ultimately shot and killed Kemo, and then destroyed
23 the weapon, went with Rakeem Baskerville to melt it.

24 What about Paul Bergrin? What did Paul Bergrin do?

25 Well, number one, let's not forget he stops William

1 Baskerville from cooperating the day he's arrested, that's
2 number one. He speaks with William Baskerville, gets the name
3 of the cooperating witness, passes it along to the gang who at
4 this point thinks it probably Ray-Ray. He does his legal
5 analysis. He looks at the case, tries to figure out whether
6 the Government has a good case, bad case and, again, develops a
7 strategy that he needs -- he believes he needs to win the case:
8 Kemo has to be killed.

9 And goes to the gang, meets with them. And as their
10 house counsel, as their lawyer, as the confidant to Hakeem
11 Curry, tells them, this is what must happen, and makes them
12 that promise: I know you guys want him out. If you follow my
13 strategy, Will will come home.

14 Now, the Judge is going to tell you -- again, and you
15 have to listen to him on the law -- but as soon as everybody
16 agrees, makes the agreement to have this conspiracy, they're
17 all guilty of the conspiracy. It ultimately doesn't matter for
18 the conspiracy count whether it actually took place. The
19 agreement is the crime. The second, the murder, assisting the
20 murder is different.

21 So even if they weren't successful Mr. Bergrin would
22 be guilty. Now, unfortunately, they were successful. In
23 reality, Kemo was killed, and he was killed because everybody
24 that we just talked about played their part, and without each
25 of them doing their part in the conspiracy, combining their

1 efforts, it would not have been successful.

2 Now, before we finish with the day of the murder,
3 let's just talk about what a few of the other witnesses told
4 you, and it's important because it corroborates what Anthony
5 Young told you, again.

6 You heard from Peter Gosza, he was the crime scene guy
7 who came in, he used to work in Essex County and now works in
8 Monmouth or Ocean. He told you he was at the crime scene on
9 that day at South Orange and 19th Street. He told you it was
10 so windy that it was actually blowing the shells around.

11 Now, in and of itself again, is it that important that
12 it was that windy? No. But it does go to corroborate Anthony
13 Young telling you how cold it was that day, that the wind was
14 whipping around pretty good up on South Orange Avenue,
15 certainly hard enough to blow the shell casings around on the
16 ground.

17 He told you there were four shell casings found.

18 Anthony Young told you the gun fired three or four
19 times.

20 The caliber of bullets: 9 millimeter. Anthony Young
21 told you it was 9 millimeter bullets.

22 And despite what Mr. Bergrin sort of insinuated during
23 the course of the trial about fingerprints on these bullets and
24 things like that -- excuse me -- exactly, on the bullets, Mr.
25 Gosza explained to you that it just cannot happen. That once

1 the bullet goes through and is ejected, the heat that's created
2 will not allow you to get fingerprints off it, period. He went
3 through how many cases, how many tests, how many weapons that
4 he tried in his career. It's never happened, never can happen.

5 He told about you the particle dust mask, as Anthony
6 Young said, and he told you, again, that a non revolver weapon
7 was used. A revolver, the one with the wheel, because they
8 would not eject cartridges, they would all stay within the gun.
9 So obviously an automatic weapon or semi-automatic weapon would
10 have to have been used. And that Kemo McCray collapsed just
11 off of the curb on 19th Street.

12 And do you want to show that photo.

13 All of that, again, corroborating what Anthony Young
14 told you.

15 Now, moving to the ballistics expert, Louise Alarcon.
16 Again, the bullet size: 9 millimeter. Three or four shells,
17 as Anthony Young said; that an automatic weapon was used, not a
18 revolver. Again, also from the same gun. All things that
19 Anthony Young told you.

20 How about Dr. Shaikh, the medical examiner?

21 Now, obviously the medical examiner told you that Kemo
22 was fatally wounded and killed from gunshot wounds but I assume
23 that wasn't much of an issue. But what he did say was three
24 gunshot wounds, not just any gunshot wounds. He said the
25 location was, again, the left side of the neck, the second was

1 the left side of the neck, and the other one was just above the
2 left ear. All right? So, I mean you saw it, I don't have to
3 act it out for you, and you'll have the things back in
4 evidence. That he had a bandanna and there was a gunshot wound
5 through the bandanna, a "defect" he called it. Remember? It
6 was a hole in the bandanna.

7 And again, despite Mr. Bergrin's cross-examination of
8 Agent Brokos, the extended questioning about front-to-back;
9 back-to-front; bullet here traveling backyards; you're not the
10 expert; you're not a pathologist; all of those questions, what
11 did the medical examiner do when he got on the stand? What did
12 he tell you? They acted it out, right? I played Kemo.

13 That the medical examiner, the expert, the one Mr.
14 Bergrin was questioning Agent Brokos about said, yeah, I mean,
15 I can't tell you it was absolutely a lefty, because who can
16 tell? I wasn't there. But if you're asking me, are the wounds
17 consistent with those facts? He said yes.

18 In fact, so it's clear, members of the Jury, the same
19 stuff he said in the last trial, and anybody who read that
20 transcript would have known that.

21 And Johnny Davis -- oh, I'm sorry, one more thing for
22 the medical examiner. I forgot. Besides the mask, he gave you
23 one other little key bit. It's not a big deal, but there was a
24 smoked, broken, half or half-smoked partially smoked cigarette.

25 What does Anthony Young tell you? As Kemo is walking

1 down the street, cigarette in one hand, what does Johnny Davis
2 tell you? We just bought four or five looseys. So Anthony
3 Young is able to remember he's got a cigarette in his hand, and
4 lo and behold the medical examiner in his report tells us about
5 a half-smoked cigarette.

6 So then completing that thought. Johnny Davis told
7 you, Kemo had cigarettes, that he was walking with him in the
8 same direction with him on the outside towards South Orange
9 Avenue, the same way Anthony Young told you. The location of
10 the body, as Anthony Young described to you. The getaway car
11 being silver; the location of the car when Anthony Young got
12 in; the direction of the car went; and the speed with which the
13 car took off.

14 Now but let's be clear. Johnny Davis also believes he
15 saw a guy with braids, which is different from Anthony Young,
16 the way Anthony Young looked that day. There's no getting
17 around it. But remember what Johnny Davis told you. Now, he
18 takes he said a number of steps away, after he hears the
19 gunshots. All right? He hears the gunshot. He takes -- he
20 wasn't sure -- I think two or three steps and then turns. And
21 I acted out, I said to him: Where do you think -- what was the
22 angle?

23 Remember I stood over here?

24 What was the angle?

25 And I stood facing him. I'll face you, right?

1 I stood facing him. And he said, no. I did a quarter
2 turn. He said no. I kept turning, got to about another eighth
3 away and he said yeah, about that angle, that's what I saw.

4 So he's saying he saw braids back here. Listen, I
5 believe he genuinely believes it.

6 I submit to you that what he probably saw was Anthony
7 Young's collar up, zipped up. He was scared, he had seen a
8 horrific thing. He said he saw it (snapping fingers) for an
9 instance at an odd angle as the man got in the car. I don't
10 doubt that he genuinely believes it. I think Mr. Davis came in
11 here and tried to be as absolutely honest and truthful as he
12 possibly could, he would have no reason not to. But I submit
13 to you, from all the other evidence that we know, that he was
14 mistaken. You know logically the shock that must have been
15 involved and the amount of time you're talking about, from
16 him -- Anthony Young jumping over Kemo's body to the vehicle
17 being steps away, to Johnny Davis saying he took a couple of
18 steps himself. How much time could he actually have had? And
19 was he focused on that, or was he focused on Kemo?

20 Now, the thing that's really important about that is
21 that when he took the stand, what you learned was that despite
22 all the cross-examination questions about: You think it was
23 this guy, do you think it was that guy; despite the efforts
24 that Mr. Bergrin's investigators made prior to trial, that
25 obviously -- I wasn't at that meeting -- but obviously from

1 what you observed, stirred some significant emotions in Mr.
2 Davis about whatever happened at that meeting. But at the end
3 of the day, whether meeting with investigators, testifying in
4 the William Baskerville trial, testifying before you, what did
5 Mr. Davis say, the bottom line? That he is no more sure today
6 than he was, whatever it was, a number of weeks after Kemo was
7 actually killed and he was shown the photo. He said to you, on
8 a 100-point scale, he was a 30. And his quote, and I asked
9 him: How would you characterize 30? His quote today: It's
10 not very accurate and it's not very good.

11 Mr. Davis obviously desperately wants to be right, and
12 I think anybody in his position would recognize that. But he
13 was also honest. 30 percent, not very good.

14 And ultimately, I submit to you, it's really not much
15 of an issue anyway, because at the end of the day all that
16 really speaks to is whether Anthony Young is the shooter.

17 Now, Mr. Bergrin from his opening statement seems to
18 be implying that Anthony Young is just not the shooter, as if
19 this is some sort of big issue.

20 Now, why would he do that? And I submit to you the
21 reason is that he's just simply trying to attack Anthony
22 Young's credibility so ultimately you may have a question about
23 the telephone calls and the meeting.

24 But let's go over what we know to be true. All right?
25 Anthony Young first told law enforcement he was a lookout. He

1 thought he was going home. He thought the FBI would take the
2 version at face value, but the FBI continued its investigation.
3 He realizes he's not going home. He's sitting in jail. So he
4 comes up with a new plan: He wasn't there at all. He tries to
5 avoid all responsibility. And that didn't work either. He was
6 sent back to jail.

7 Comes back and doesn't claim, all right, fine, I was
8 the lookout. Then he comes back and actually takes more
9 responsibility. Not less, more.

10 Why? I submit to you, members of the Jury, there's
11 only one logical reason: Because it's the truth and because he
12 realized playing the game of saying I was only here, or playing
13 the game of, oh, I wasn't there at all, wasn't going to work,
14 that the Government wasn't going for it. And he realized after
15 meeting with his attorney, you heard, Mr. Fusella, that there
16 was one way and one way out, and the only avenue he had was to
17 become truthful and to tell everything. Logically there is no
18 way anybody makes themselves more guilty than they are, more
19 responsible.

20 Ultimately again, members of the Jury, Anthony Young
21 walked into Federal Court before a federal judge and pled
22 guilty to a crime -- and you heard the testimony, we showed it
23 in the Plea Agreement, written in black and white -- a minimum,
24 not a maximum, a minimum sentence of life, no parole, period.
25 That's what he pled guilty to. The only way he gets out from

1 under life, one day under, is if he cooperates and if he's
2 truthful. And I will not go back through all of that again,
3 but I submit to you, members of the Jury, that's as clear and
4 as convincing an argument that it is in the witness' best
5 interest to have everyone, Government, judge, believe he is
6 telling the truth. The only other option if he's not telling
7 the truth is literally life in jail.

8 Now, as we know, he did get a benefit. His lawyer
9 explained it to him, the only way to get out less than life was
10 to cooperate.

11 He did. He testified at the William Baskerville trial
12 and he was sentenced by the judge who presided over that trial
13 to 30 years. He was granted a reduction. And you are allowed
14 to take that into account I guess as you see fit if you believe
15 that affects his reason for testifying.

16 Anthony Young was cross-examined for an extended
17 period of time in this case, and obviously as you learned with
18 the transcripts back-and-forth during the other case, the
19 William Baskerville case, and there are inconsistencies, there
20 are things that Anthony Young said that are slightly different
21 than when he testified before you. There are. Now, part of
22 that, obviously, can be attributed to, he was lying when he
23 first showed up, and he kept the lie going, and it is difficult
24 to keep a lie going.

25 But you have to ask yourself as you're going through

1 this, if you eliminate the part that he told you he lied about,
2 is there anything left of consequence that he might have been
3 mistaken about? Do they actually matter? Do they actually
4 affect your ability to determine whether or not Anthony Young
5 is being credible? Or did he simply just try to tell you from
6 the best of his memory as best as he could the truth?

7 And I submit to you, members of the Jury, if you find
8 these things to be of no particular consequence; someone was in
9 the door; someone was here; this is the time; I spoke to Dedre;
10 nobody asked me about it, I didn't say; things like that, then
11 give it the value that it deserves when you're back in the jury
12 room. If things are of no consequence, don't allow them to
13 have more influence about your opinion of Anthony Young's
14 truthfulness.

15 Now, again, as we said before, Mr. Bergrin certainly
16 has the right to cross-examine as he sees fit, and even
17 cross-examine as aggressively as he sees fit certainly with the
18 Court's permission, and I'm not going to go through the entire
19 cross, but I would like to point out one example for Anthony
20 Young.

21 Now, you remember when Mr. Bergrin asked him a series
22 of questions about how Anthony Young was holding the gun
23 before he shot Kemo? In your pocket; not in your pocket?

24 He directed Anthony Young to a specific page. Took
25 out the transcript, walked up to the table, can I approach?

1 Here we go. All right? And he put it down.

2 He claimed it didn't say, Mr. Bergrin claimed it
3 didn't say, that section, didn't have a gun, Anthony Young
4 didn't say he didn't have a gun in his pocket. And Anthony
5 Young basically answered, sorry if I didn't say that, but it's
6 true, I did have a gun in my pocket.

7 Let's throw that clip up.

8 So let's -- he's directing at the top there you see
9 starting at line 10. Right? (Reading) Look at page 190, Mr.
10 Bergrin directing Anthony Young, to a very specific section.
11 Page 190 starting at line 12.

12 Anthony Young. 190, yes, sir.

13 I opened it up for you, sir.

14 You had it on 103, sir.

15 Oh, I'm sorry. Please forgive me.

16 Starting at you say 18?

17 You can start looking at line 9, that's where the
18 question starts, I believe.

19 I'm looking at it.

20 And Mr. Bergrin's big question: Isn't it a fact that
21 on Thursday you told this jury that you came out of the
22 doorway, I got my hand on the trigger, I got the gun in my hand
23 and my hand -- my finger on the trigger?

24 And what does Anthony Young's answer? I did, sir,
25 inside of my pocket.

1 Oh, inside your pocket?

2 Inside my coat pocket.

3 Put up the next clip.

4 So the question, continuing along this line:

5 (Reading) You told this jury you came out of the doorway, that
6 the gun is in your hand, right, and your hand is on the
7 trigger. You say nothing whatsoever on October 27th that the
8 gun is in your pocket. Correct?

9 Well, I'm sorry I didn't say that, but no, my hand was
10 on the trigger, my hand was on the gun, sir.

11 And Mr. Bergrin again: And there's a difference, you
12 understand, between the gun being out, the gun being in, the
13 gun being in your pocket. Right?

14 And Anthony Young obviously agrees, yes.

15 And finally, and you say nothing whatsoever about the
16 gun being in your pocket. You say the gun is in your hand and
17 your finger's on the trigger. Right?

18 Again, it was, sir.

19 Now, so we can look at -- if we go to the next one --
20 what Mr. Bergrin is referring to is this line on page 190. All
21 right? And it's the top. It says "Young - direct - Minish,"
22 page 190, and I'm going to direct you to 14, line 14. His
23 answer:

24 (Reading) I come out of the doorway. I got the gun in
25 my hand on the trigger. I'm nervous, adrenaline going. It's

1 wintertime.

2 All right? That was what he showed Mr. Young.

3 Let's go back literally one page prior in the
4 transcript, page 189.

5 So again -- do you have it?

6 MR. GAY: She's got it.

7 MR. MINISH: I'm sorry, Judge. Just one second.

8 Okay. Now again, one, literally one page prior in the
9 transcript. After having been asked, you said nothing about
10 that on October 27th, he's asked the question:

11 (Reading) So they're half -- they're halfway between
12 20th and 19th?

13 What is his answer?

14 Yes. So what I do is, I come out off the steps, got
15 my hands in my pocket, I got the gun in my hand, both hands in
16 my pocket.

17 One page apart.

18 "QUESTION: In your left hand?"

19 Mr. Young held up his hand.

20 And I said for the record, "I'm saying for the record
21 he was holding it in his left hand."

22 And then goes on: (Reading) I got the gun my pocket,
23 I got my head low and I start walking towards them, both of
24 them.

25 Now, members of the Jury, again, I ask you: Who

1 during that section is trying to be truthful with you?

2 Anthony Young told you: I don't see it there. If I
3 made a mistake I'm sorry, but it's true, I had my hand in my
4 pocket.

5 Mr. Bergrin cross-examined him, transcript in hand
6 about this page, not the prior page. Never shows Anthony Young
7 the prior page, right? Why?

8 Do you think maybe because it's another case where,
9 like with Albert Castro, Mr. Bergrin realizes that if the jury
10 believes this witness, I'm going to get convicted? If the jury
11 believes this witness, they're going to find me guilty so I
12 want to pull out all the stops?

13 Just ask yourself when you're back there, members of
14 the Jury, when you're thinking about Anthony Young's
15 credibility, which is obviously a significant issue in this
16 case, who is trying to pull the wool over your eyes?

17 Mr. Bergrin said, and I'll quote: "You say nothing
18 whatsoever on October 27th that the gun is in your pocket.
19 Correct?"

20 It's just not true.

21 Now, having discussed the cross-examination to that
22 extent, let's move to what corroborates Anthony Young. Okay?

23 You know what Anthony Young testified to, now let's
24 talk about how the other witnesses interplay with that.

25 Thomas Moran told you that Mr. Bergrin said to him he

1 got the name of the cooperating witness from William
2 Baskerville. Mr. Moran told you that Mr. Bergrin said he
3 passed that name along to William Baskerville's people. And in
4 Mr. Bergrin's world, when he said "people," it meant criminal
5 associates, just like what Anthony Young told you.

6 Abdul Williams, what did he tell you? That Paul
7 Bergrin was worried about William Baskerville flipping, about
8 cooperating with the Government. And there is also testimony
9 about Paul Bergrin asking Abdul Williams about a potential
10 payoff that he heard Curry or might have heard Curry was doing
11 with Anthony Young to change his testimony.

12 The reporters, as presumably as independent as you can
13 get, they learned, Mr. Bergrin told them: I learned the name
14 and I passed it along.

15 The melters. Well, the one who you saw testify, Devon
16 Jones. Now, again, what he told you is that Anthony Young came
17 to his shop and they melted down a gun. He even -- back now I
18 guess it was a couple of years after the incident -- identified
19 Anthony Young out of the lineup. Right? And you guys have
20 this, the photograph in the back, and you can say, he said yes,
21 number 2, I see him there a lot, just as Anthony told you.

22 Now, the second photograph array he was shown, he
23 said: I'm not really sure. I think it was number 3 but I'm
24 not really sure.

25 Well, you'll be able to go back, members of the Jury,

1 and see who number 3 is. Number 3, you'll have the photograph,
2 is Rakeem Baskerville.

3 Who did Anthony Young tell you was with him?

4 Rakeem Baskerville.

5 Out of those six people, and they all, you know, basic
6 features, similar features as all good arrays should, who does
7 he pick out? Again, not a hundred percent sure certainly, but
8 Rakeem Baskerville.

9 Do you think that was random? It's a one in six
10 chance.

11 The phone records corroborate Anthony Young. Two
12 calls on the day that William Baskerville was arrested. He
13 talked about two conversations that Paul Bergrin had with
14 Hakeem Curry. There are records of two calls. There are three
15 calls in the day after the second court appearance, after
16 Anthony Young tells you Hakeem Curry said, "My man's on his
17 way," three calls that day. Ramon Jimenez corroborates him.
18 Ramon says, again, different tense but: If there's no witness
19 they'd be no case.

20 The EZ Pass records, and George Snowden's, Detective
21 Snowden's testimony. Black Mercedes, black Mercedes.

22 What does Anthony Young say he showed up in? Black
23 Mercedes.

24 Lachoy Walker explaining the house counsel and the job
25 that is involved in being a house counsel; to make sure the

1 underlings don't cooperate, to represent the managers. And we
2 know William Baskerville is a manager.

3 And the Defendant called Paul Feinberg to the stand.
4 Now, Mr. Feinberg's memory is obviously exceedingly specific
5 and slightly different than what Anthony Young told you, but
6 the reality is, he did tell Anthony Young: Do not incriminate
7 yourself, that's what Anthony Young said.

8 Anthony Young never at any point says: My lawyer told
9 me to lie. He said, he told me not to incriminate. He never
10 said that. Not anywhere in any question will you see that.
11 And, in fact, when he lied and was asked the question, who's
12 fault is that, whose responsibility is that that you lied? He
13 said, me.

14 So we can parse words however closely you would like,
15 but the reality is, Mr. Feinberg said: I told him to tell the
16 truth, but I told him not to inculcate himself.

17 Well, if you're guilty, that's a difficult trick, and
18 Mr. Young is certainly not a lawyer. And what he took from
19 that is exactly reasonable: I didn't implicate myself. I told
20 the truth about everybody else, but I didn't want to implicate
21 myself. That was my lawyer's advice.

22 And if you go back and you think about what Mr.
23 Feinberg told you, its' really no different.

24 Eric Dock told you, William Baskerville sells drugs.
25 He controls a block on Avon Avenue under Hakeem Curry's drug

1 organization. He said a conspiracy exists, that William
2 Baskerville is involved, just like Anthony Young told you.
3 They're out looking for Kemo. They couldn't find him. They
4 thought the Government had him in hiding, just as Anthony Young
5 told you. And Mr. Dock's quote, "He," meaning William
6 Baskerville "said they were looking for him to put a hole in
7 his melon."

8 And what else did William Baskerville tell Eric Dock
9 about how the drug organization would kill someone?

10 Again, this is a quote: "He said," meaning William
11 Baskerville said, "as long as you got a getaway driver, a stash
12 spot, you could ride up on a person in broad daylight, shoot
13 him with some hot cookies in the face, and he said after that,
14 all you had to do was just drive off, park the car in the
15 location, leave the gun inside the stash spot and just walk
16 away."

17 This is William Baskerville talking about this before
18 Kemo was killed in jail to Eric Dock. Did it sound familiar,
19 that scenario?

20 Pretty much a shortened version of exactly what
21 Anthony Young testified to; what he testified to actually
22 happened on March 2nd.

23 Further corroboration, Anthony Young making that
24 recording where he said the shooter was a lefty. Now, listen,
25 obviously he wasn't doing it to corroborate that he was the

1 shooter, he was doing it to try to put the blame on Jamal
2 McNeil. But the reality was, he was telling the truth at the
3 time, he just wasn't telling anybody he was a lefty. That
4 corroborates the shooter.

5 Lachoy Walker, Detective Snowden, they testified about
6 the makeup of the Curry organization, that they sold drugs for
7 a living, that Curry was the head of the organization and that
8 the Baskervilles, including William, were in the management
9 part of the group.

10 Special Agent Streicher told you about the arrest of
11 Norm Sanders and the seizure of Rakeem Baskerville's van --
12 that was the one we saw the pictures of the traps and the
13 various things -- and that there was a seizure. They found
14 heroin. Remember he said he went through the traps, they found
15 heroin?

16 Now in and of itself is that critical? No. But let's
17 compare it to what Anthony Young said, again, corroborating
18 things that can be corroborated.

19 Anthony Young tells you he drove by that morning, saw
20 the police, kept rolling by, thought they were coming for him,
21 because his father lives down the street. Turns out his father
22 told him they were arresting Norm, and they took the van, which
23 he said it was too bad, because there was heroin in the van.
24 Then lo and behold, what does the agent tell you? Yep, we were
25 arresting Norm Sanders; yep, we got the van; and, yep, there

1 was heroin in it.

2 Further corroboration of the conspiracy is the
3 discovery package that is found in Rakeem Baskerville's home.
4 As you were instructed by the Judge, we do not know exactly how
5 it got to -- from whose hands it got to Rakeem Baskerville's,
6 but we do know that it was originally given to Mr. Bergrin and
7 that it ended up in Rakeem Baskerville's hands. So obviously
8 there are multiple people involved in this. Rakeem Baskerville
9 is not doing any legal analysis, I submit to you, of William
10 Baskerville's case.

11 Richard Hosten testified, he told you that William
12 Baskerville figured out it was Kemo, just like Anthony Young
13 said, and he believes that the feds were trying to get William
14 Baskerville to roll on Hakeem Curry, he also told you that Eric
15 Dock was on there, too, the guy who said all those other
16 things.

17 We have transcripts that show Paul Bergrin actually
18 represented William Baskerville. You can see it for yourself
19 in black and white, just like Anthony Young told you.

20 Now, as far as the specifically, again, the
21 corroboration of the phone calls between Mr. Bergrin and Mr.
22 Curry, all you have to do is look at the phone records. We
23 talked about that I'm not going to go back into that. The
24 corroboration of the meeting. Again, we saw the transcript,
25 the quotes in the transcript, when that information came out,

1 when Anthony Young told you they were told about that
2 information and the phone records that match up with those
3 meetings.

4 So let's skip ahead to the time after the murder. All
5 right? Curry and a bunch of his crew were arrested, some time,
6 a few days, March 5th, a few days after Kemo was killed.
7 Anthony Young finds himself a new supply of drugs because for
8 whatever reason he was not one of the guys that got picked up
9 by the DEA. He's selling drugs, living his life until what?
10 Until he breaks the code. He tells what he calls a female
11 about criminal activity; and not his criminal activity,
12 criminal activity of people in the gang. Which is all well and
13 good if you're treating that female well. But as she told you
14 and as Anthony Young himself told you, he was not. Things were
15 not going well between them. So now armed with this
16 information, she goes and tells Jamal Baskerville's wife. And
17 as you heard, her best friend as she told you, her friend.
18 Right?

19 Jamal Baskerville is not happy. Tries to confront
20 Anthony Young. You heard about the very tense meeting they had
21 in the car. Anthony Young tries to get him to come into his
22 car but Jamal Baskerville will have none of it. No, no, you
23 come in my car. Anthony Young said, yeah, I guess I'll come in
24 but he had his gun ready in his pocket. Right? And he was
25 ready to fire. He said he wasn't that worried about Jamal

1 because without Malsey, without Jamal McNeil, he's not likely
2 to take a shot at me.

3 But even that tense meeting, when it ends he gets a
4 phone call, and it's the message of "the street"; we'll see you
5 in the streets.

6 And listen, Anthony Young knows what it means. He
7 told you what it means. If somebody else said that in a
8 different situation it could be a million things I guess. But
9 Anthony Young knows Jamal. Anthony Young has grown up with
10 this family. Anthony Young is in this gang, he knows what they
11 mean. That's a message. Anthony Young, as he told you
12 himself, listen, he's no punk. He sat on the stand and he told
13 you that, he said, I'm not saying I'm the toughest guy but I'm
14 no punk. He thought he was in over his head, two against one,
15 Jamal McNeil, Jamal Baskerville, and this was a problem.

16 So he tries to figure out how to make himself safe.
17 Starts thinking and makes that fateful decision to go to the
18 FBI.

19 Now, the important part of this, members of the Jury,
20 is that it's not just that he spoke to the FBI, it's that he
21 initiated contact. The FBI didn't go find him, the FBI didn't
22 knock on his door and say, hey, Mr. Young, we have to talk to
23 you and he had ten seconds to put together this story. He had
24 time, he thought about this. What am I going to do? I'm in
25 trouble.

1 He left the Essex County area, he said three hours
2 away. Right? And this is a guy, remember, who refers to five
3 blocks away like it's another planet. This guy goes three
4 hours away and calls the FBI.

5 Let's just talk about this for a minute, set the
6 scene. No one has been charged in the Kemo murder at this
7 point, no one. Curry is arrested, a whole bunch of other
8 people are arrested. Rakeem Baskerville is on the run. By
9 whatever grace of whatever God, Anthony Young is not among the
10 people that the DEA arrested.

11 So what is his decision? He decides to initiate
12 contact with the Federal Government.

13 Is there any reason you can think of besides trying to
14 protect himself why he would do that? To go into the "belly of
15 the beast" to initiate contact? They've just wiped out his
16 gang. You have Rakeem, his best friend, running all over and
17 he's going to say, now I survived this problem, I'm going to
18 talk to the feds, and I'm not going to talk about drugs, I'm
19 going to talk about a murder of one of their witnesses.

20 (knocking on lectern) I got some information for you guys. He
21 gives his real name. All right? And he says, I got
22 information about the murder. Not just any murder again, the
23 murder of a federal witness.

24 Now, make no mistake about it, he also wants to try to
25 get a benefit for his gun case. But the three, four years he

1 thought he was facing for that gun case, as Mr. Feinberg said,
2 you know, theoretically there could have been another count out
3 there. But what he was facing was max, five. Right? Isn't
4 that what Paul Feinberg told you? Max five. Anthony Young
5 said, hey, I plead guilty, I get three or four. Okay?

6 For that he comes to the FBI? No.

7 For his life he comes to the FBI.

8 He told you he had a plan, he was trying to manipulate
9 the system. It is what it is. He was not planning on coming
10 and telling the truth. He was planning on getting what he
11 wanted and letting the chips fall where they may, period.

12 That didn't work out for him. He got involved with
13 the Government. He tried to lie. The Government tried to --
14 the Government continued to investigate his claims. You know,
15 for example, you've heard testimony that Hassan Miller was sent
16 in with a recording device to speak to Anthony Young.

17 That's not what he thought. He thought we were just
18 going to swallow hook, line and sinker what he said, and now
19 you know that's not true.

20 So I'm sorry, I just want to talk briefly about that
21 initial contact. He said he spoke with Mr. Feinberg, decides
22 to go to the FBI. And you heard from Agent Bill Gale. He
23 makes a decision to finally call the agent -- excuse me --
24 finally call the FBI, and he gets Agent Gale who is on duty.
25 Doesn't know anything about the case. He gets some notes

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1 together, he gets a little bit of information. He writes it
2 down and he sent that short little report he told you about, as
3 best he can to figure out who he has to send it to, because
4 he's not going to be the one to investigate it. He writes down
5 some names spelling them phonetically, even misspelling Mr.
6 Bergrin's name. All right? And as Anthony Young told you, he
7 just wanted to get enough information out there to get himself
8 in the door.

9 Let's talk about what he said in the very first time.
10 He's facing gun charges, he wants a deal, he has information
11 about Kemo, the murder. The method of murder: He was shot.
12 The location of the murder is South Orange Avenue and 19th
13 Street. And right from the very first time, again without
14 anyone being charged in the case to an agent who knew nothing
15 about the case, Anthony Young told the FBI that Paul Bergrin
16 was involved. That Paul Bergrin provided info when Kemo -- to
17 determine that Kemo was working for the Government, that Paul
18 Bergrin had said, "No Kemo, no case." First time, first call,
19 agent who knows nothing about it.

20 Also from the beginning, the very first call he tells
21 him he's not happy with the way the subjects and his associates
22 are treating Anthony Young. He's staying three hours away and
23 he's requesting protection for himself and his girlfriend/wife.

24 Now, Mr. Bergrin asked a series of questions: It
25 doesn't say you have any fear of safety in that report, does

1 it? And went through that routine. It doesn't. The word
2 "safety," so it's clear, is not used in there. What is used in
3 there is a request for protection. You could draw whatever
4 conclusion you want from a cross-examination that says it
5 doesn't say "safety" in there when it does say "request for
6 protection."

7 All of this information, as Agent Gale told you,
8 without prompting -- because he didn't know anything about the
9 case -- in a short call to an agent who knew nothing about the
10 case, who had never talked to Anthony Young before, and would
11 never talk to Anthony Young again. But even the agent knew how
12 important this information was, and he immediately shuffled it
13 off to Agent Brokos. He doesn't put it in a memo in the normal
14 course, he puts it in a memo and makes the phone call. And he
15 told you, never done that before, haven't done that since.

16 Now, I'm not going to go through in painstaking detail
17 certainly this -- you've been very patient, I appreciate it --
18 with the reports, but let's call this what it is. Anthony
19 Young was not honest with the FBI when he first came in.
20 Period. No one is debating that. He made contact with the
21 FBI. He tried to execute his plan. He even blamed another, a
22 whole 'nother person, Jamal McNeil for the shooting. He told
23 you, because he wanted him off the street, Jamal Baskerville.

24 He tells you the version of events like he told you on
25 the stand: I tried to tell him this, I tried to tell him this,

1 I tried to tell him this. But from the very beginning, members
2 of the Jury, always consistent about Paul Bergrin from the
3 first call.

4 What he learned, contrary to what he wanted I guess,
5 was that the Government did not take what he said at face
6 value, that there was an investigation, that we did have other
7 witnesses like an Eric Dock, we did look into the medical
8 examiner and what he said, Pete Gosza, the crime scene, the
9 ballistics, the phone records. Johnny Davis was shown arrays.
10 We tried to identify Jamal McNeil. All right? We had the
11 photograph Anthony Young told you. We sent Mr. Miller, Hassan
12 Miller in to record Anthony Young. The melters -- excuse me --
13 Devon Jones told you he was -- he was interviewed, shown photo
14 arrays.

15 So there is an investigation going on, and then during
16 this time it suddenly dawns on Anthony. He's in jail for over
17 a year and it dawns on him, he realizes his plan has not worked
18 very well. This whole get in/get out and blame it on these
19 guys it's going to happen. It doesn't work. He's learned
20 about the conspiracy, what the law is, at least from the guys
21 in jail. And so at this point again it's important for you to
22 note, members of the Jury, the dates of these things. He has
23 spoken to the Government but he has not been given a
24 cooperation agreement. He has had interviews, a number of
25 interviews, but he has not been offered a plea agreement and he

1 has not been offered a cooperation agreement.

2 So if Mr. Bergrin says he was cooperating, he was
3 providing information, but until you get a cooperation
4 agreement you are not a cooperator, period.

5 So he tries a new plan: I wasn't there. I don't know
6 anything about it.

7 You're lying. Back to jail.

8 Has his heart-to-heart with his lawyer. The lawyer
9 tells him to tell the truth. And two important points again
10 about this: He makes himself more culpable when he comes back,
11 not less, and he never changed his story with Mr. Bergrin.

12 Now, if I could just briefly talk about Devon Jones.

13 I submit to you, members of the Jury, Devon Jones
14 tried again to be as honest as he could with you to the best of
15 his memory. And he obviously has a very specific memory of
16 melting the gun. It was a significant event in his life,
17 doesn't happen every day. We have evidence of one. Right? He
18 remembers the handle, or I don't remember exactly how he said
19 it, but where you would hold the gun went very fast. And then
20 on the barrel there was the coating outside. That did not go
21 as quickly. And his buddy said, you don't know what you're
22 doing, and he started to do it, it was pop, pop, pop he kept
23 saying. Some things must have been crackling. And then at the
24 end they got down to the barrel, the actual pipe, and that took
25 a long time. The two guys that were there, said no, no, no,

1 that's what you have to get, you have to get that. They went
2 back-and-forth and chop, and this and that and smaller and
3 smaller, and liquid, until he described it as a soup, right,
4 like sort of a chunky soup. He said something like that?

5 Now, members of the Jury, play that back, what Anthony
6 Young told you. And how much of that in any real fact that
7 matters is exactly what he said? He came there. Rakeem
8 Baskerville. We went through that photo arrow. I will not do
9 that again. He showed up. There were two guys. Anthony Young
10 remembers that Ben, the owner of the shop started it. Devon
11 Jones said no.

12 One way or the other we know they started melting it,
13 and we know a part went fast, then the part went slow, and then
14 they had to kind of brush it together and scoop it up and take
15 it out, which is exactly what Devon Jones said and exactly what
16 Anthony Young said. It became liquidy, they mooshed it
17 together, got it, took it out. All right?

18 Now, Devon Jones admittedly -- well, I won't say
19 "admittedly." Obviously your interpretation will certainly
20 control, but I submit to you, members of the Jury, he had no
21 idea when that thing happened. He said it was about two years.
22 He was initially asked, was it around March?

23 Yes.

24 Then it was, could it have been September or
25 October -- August, September?

1 Yes. Maybe it was December.

2 All I know is my kid was about 9. It was about two
3 years before they came to interview me.

4 Why would he remember that? And I certainly have no
5 quarrel with Mr. Jones and I'm not speaking ill of him, but you
6 know, remember what really matters here.

7 What matters? The date is important to Anthony Young
8 because this is the date he killed another human being. The
9 event of melting a gun is important to Devon Jones, not the
10 date. But that it happened certainly was important, and he
11 remembered that pretty well in pretty excruciating detail.
12 Again, those details, the same as with what Anthony Young told
13 you.

14 Now, some time passes. We're getting closer to the
15 William Baskerville trial. Jury selection started now in 2007.
16 February 13th, 2007 is when jury selection started. You'll
17 have a stipulation that lays those dates out for you so you can
18 put the pieces together if you choose.

19 During that time, what does Paul Bergrin do? You have
20 the hearing for William Baskerville. During this gap -- excuse
21 me -- this gap in time before William Baskerville's trial.
22 There's a hearing for William Baskerville.

23 After the hearing is a call from reporters to Mr.
24 Bergrin. He admits he passed the name along to the criminal
25 associates. William Baskerville gets a new lawyer. And then

1 Mr. Bergrin during that time speaks to both Abdul Williams and
2 Thomas Moran. First to Abdul Williams.

3 Now, you already heard Abdul Williams was a member of
4 the Curry organization, got a job at Paul Bergrin's office and
5 had conversations with him. Right?

6 What did he tell you.

7 Paul Bergrin was no longer William Baskerville's
8 attorney. Abdul Williams with this job, with his relationship
9 with Curry, who was not arrested in the big roundup, not
10 because he wasn't doing anything wrong but because he was
11 actually already in jail he told you, right? So when they had
12 actually rounded up the Curry guys he had already been in jail.
13 So when they go in he's out some time thereafter. So the
14 William Baskerville trial coming up, he's one of the lone
15 connections back to the Curry gang.

16 So what does Mr. Bergrin do? He's no longer able to
17 have the contact with William Baskerville, direct contact, he's
18 not his lawyer anymore. He's got a whole 'nother lawyer. So
19 no more direct contact. He doesn't know therefore what William
20 Baskerville's plans are: Cooperate/not cooperate? Have there
21 been discussions with the Government? He wants to know whether
22 or not William Baskerville would cooperate.

23 Do you think that's just professional curiosity? No.
24 He's worried. And Abdul Williams told you, he was not his
25 usual cocky self. He wanted to know if William Baskerville

1 would roll, meaning would cooperate with law enforcement, which
2 is important because the information, if William Baskerville
3 did cooperate, would point at who? Mr. Bergrin. That's why he
4 cared.

5 He's worried not just about the drug chain any more,
6 not just worried about keeping Hakeem Curry happy anymore, now
7 he's involved in a murder. And if he went to the lengths he
8 did to protect himself from a drug chain and drug charges, do
9 you think maybe he's a little concerned about William
10 Baskerville facing trial? And again, the timing of this is
11 important. It's during jury selection, which went on for, if
12 my memory serves, about a month.

13 Yeah, a month and a half.

14 William Baskerville testified that he gave the name of
15 Kemo to Paul Bergrin and told him to pass it along to his drug
16 people because he wanted Kemo dead, and it happened. Paul
17 Bergrin passed it along, as he admitted to the reporters.

18 Let's move to Thomas Moran.

19 After the William Baskerville trial had occurred there
20 was some media coverage, again, after Anthony Young has
21 testified. Thomas Moran, as you remember, is a lawyer, did
22 criminal work, worked under Mr. Bergrin's practice, handled
23 cases for Mr. Bergrin. I think he said 80 percent of his cases
24 came from Mr. Bergrin. He did a good job, he developed a
25 relationship with Paul Bergrin. He was admittedly star struck.

1 He stuck by his side. Paul Bergrin groomed him, introduced him
2 to clients, he did work for Paul Bergrin's clients. We talked
3 about that multi-defendant situation when Mr. Bergrin would be
4 the lead attorney and Mr. Moran would represent an underling.

5 Anyway, one day in December of 2007, the Baskerville
6 case is now over, he's in Essex County Jail -- we walked you
7 through those pictures, right, the special room walled off that
8 no one can hear you in -- they start to discuss an article that
9 had recently been published. It was published on December
10 21st, 2007 about the Kemo case.

11 It said he had been representing -- Mr. Bergrin had
12 been representing William Baskerville, a major drug dealer.
13 During the attorney visit with William Baskerville, William
14 Baskerville told you -- excuse me, I guess I should say this --
15 Mr. Bergrin told Thomas Moran. There was major drug dealer
16 during the attorney visit, like the one Agent Brokos testified
17 about, William Baskerville told him the name. Mr. Bergrin met
18 with William Baskerville's people. We already discussed what
19 "people" means.

20 And even just to finish the "people" thing, when Mr.
21 Bergrin cross-examined him, what did Mr. Moran say?

22 You don't know people, family?

23 He said, I know how you talk. All right?

24 He told them the name of the informant, and then he
25 explained three months later he was dead.

1 And as an aside, again, Mr. Bergrin tried to elicit
2 from Mr. Moran about, oh, I brought in people to cooperate
3 before, why wouldn't I have done it for William Baskerville?

4 What did the evidence turn out to be?

5 No, one guy, one time. He wasn't paying, that was it.
6 Right?

7 Members of the Jury, as Mr. Gay told you in his
8 opening, after Kemo was killed, after he was laying on 19th
9 Street, the question was why. Now you know. Paul Bergrin got
10 involved with Curry's drug group beyond just representing him
11 and members of the group, beyond being house counsel. He
12 arranged for a source of supply from Changa to Hakeem Curry.
13 He became a link in the chain, and what you've learned what
14 that means: The closer law enforcement gets to the link, gets
15 one link, the next link is worried, the next person is worried.

16 What if they roll? What if they cooperate? William
17 Baskerville, one link from Hakeem Curry, his manager directly
18 got drugs from Hakeem Curry. Hakeem Curry got his source
19 directly from Paul Bergrin. Link, link, link.

20 This was no longer about simply being house counsel,
21 this was no longer simply about trying to keep Hakeem Curry
22 happy, no longer simply about representing his own client,
23 William Baskerville. Paul Bergrin's own neck was on the line
24 and Kemo DeShawn McCray had to be eliminated. If law
25 enforcement could be stopped from getting to William

1 Baskerville, they would never get to Curry and therefore never
2 get to Paul Bergrin. The dominoes would never start falling.
3 Paul Bergrin would be safe.

4 So on March 2nd, as Anthony Young ran from the body to
5 Rakeem Baskerville's car and Kemo lay dying in the street on
6 19th Avenue they all hoped that the assault by law
7 enforcement's investigation into their gang was over.

8 They were wrong. Law enforcement continued to
9 investigate. They found answers to the questions. Why was
10 Kemo killed? Answers that you now know also: Because Paul
11 Bergrin and the rest of the Curry gang made a decision; a
12 decision that Kemo's life was a fair trade for their freedom,
13 freedom to continue to keep the drug business going.

14 Members of the Jury, while this may be a very
15 important case, it's also a very straightforward case. What
16 the case boils down to is, a member of Curry's gang got caught;
17 William Baskerville. Caught by the FBI. Curry and Paul
18 Bergrin knew he would not be released on bail. The Government
19 had a strong case. William Baskerville would be convicted.
20 They knew who the key witness against him was, they knew what
21 they had to do to protect themselves. So Paul Bergrin came up
22 with his five-point plan. All right? He tells the gang that
23 the cooperating rating witness is Kemo. He does his legal
24 analysis. This is a strong case. The Government's going to
25 convict him. He develops a strategy to win the case. He meets

1 with the gang and tells them about that strategy, counsels
2 them, encourages them: The way to win is to kill Kemo. And
3 then finally he makes the promise: If you follow my
4 directions, you follow my advice, you do what I tell you, I'll
5 get Will home. If Kemo is dead, Will will get out.

6 They thought that killing Kemo would save them. Mr.
7 Bergrin was wrong. He now faces not drug-trafficking charges,
8 but charges related to the murder. He faces the responsibility
9 for his actions related to the murder of Kemo DeShawn McCray on
10 March 2nd, 2004.

11 Members of the Jury, you've heard the evidence.
12 You'll take that back with you to the jury room and apply the
13 law that the Judge gives you to that evidence. And when you do
14 that, I'm confident that you will come back with the only
15 verdict that makes sense, the only verdict that the evidence
16 indicates and what you know is true: That the Defendant, Paul
17 Bergrin, is guilty of both conspiring to kill Kemo DeShawn
18 McCray and aiding and abetting in Kemo's murder, because by
19 providing the name of the witness to the gang, by providing
20 that legal advice, the instructions that the only way William
21 Baskerville will come home is if you kill Kemo, he put the
22 wheels in motion. His analysis of William Baskerville's case,
23 his counseling to kill Kemo drew a straight line to Kemo's
24 murder for what Kemo had done to the gang, but more
25 importantly, out of fear of what would happen to the gang if he

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1 was able to continue to testify, what would happen to them in
2 the future, what would happen to Mr. Bergrin in the future.

3 Members of the Jury, again, you know this is true, not
4 because me, a lawyer, tells you it's true, but because the
5 evidence tells you it's true.

6 Thank you.

7 THE COURT: All right. Ladies and gentlemen, I'll see
8 counsel at sidebar, please.

9 (Off the record discussion at the sidebar.)

10 (In open court.)

11 THE COURT: Ladies and gentlemen, because it's 3:20
12 already and Mr. Bergrin's summation is going to take some hours
13 as well, we're going to start tomorrow at 8:30. You've been
14 terrific about getting here on time. We'll probably have a
15 long day tomorrow, until 5:00, 5:30 maybe, so just be patient.
16 But we are at the end of the trial. So if you have to make
17 arrangements at home, no later than 5:00, 5:30, but somewhere
18 around that if we need to. And then of course on Wednesday
19 we'll get in early as well, 8:30, and may have another longer
20 day on Wednesday as well. Okay?

21 We try not to keep you over 5:00, 5:30 even during
22 deliberations. But that is -- probably will be the schedule
23 from now on, from about 8:30 in the morning until 5:0, 5:30
24 every day. Okay?

25 So please don't discuss anything about the case. Of

1 course, you still have to hear the summations of the Defendant,
2 the rebuttal summation and, of course, the law which I have to
3 give to you, so it would be inappropriate to start formulating
4 your final decisions or any decisions at all. Okay?

5 So please don't discuss it at home and don't read
6 anything about it in the newspapers. Okay? But we'll see you
7 promptly and we'll do our best to get started by 8:30. I don't
8 think they'll be anything to delay us tomorrow in getting
9 started at 8:30. Okay?

10 Thanks very much. Have a good safe ride home.

11 THE DEPUTY CLERK: Please rise for the Jury.

12 (The Jury leaves the courtroom.)

13 THE COURT: You can be seated.

14 All right. We'll try -- let's get started at 8:30
15 tomorrow. And, Mr. Gay, especially in view of the lengthy
16 summation we've had so far, in your rebuttal -- I told you this
17 before, I've told all assistant U.S. attorneys -- I don't view
18 rebuttal as another summation to repeat everything. It should
19 be very focused and to the point. And we'll see how long Mr.
20 Bergrin goes, and I may even give you some time frame which
21 I've done in all my cases here. I've always given the AUSAs
22 some indication of what I think is an appropriate amount of
23 time.

24 MR. GAY: I understand.

25 THE COURT: So I'm telling you that tonight. So if

1 you have to adjust your notes any, you know, you have ample
2 warning. Okay?

3 MR. GAY: Okay.

4 THE COURT: And I do this in all the cases I've had,
5 so it's nothing different here than that. Okay?

6 MR. GAY: I understand.

7 THE COURT: I don't view it at another summation.
8 Okay?

9 MR. GAY: Okay.

10 THE COURT: All right. Thanks very much.

11 We'll see you tomorrow morning at 8:30.

12 Marshals, make sure Mr. Bergrin is here on time.

13 Thanks very much.

14 MR. LUSTBERG: Thank you, your Honor.

15 MR. BERGRIN: Judge?

16 MR. LUSTBERG: Your Honor, one quick thing.

17 MR. BERGRIN: Judge, I need to take the pens with me
18 obviously to work on my summation, but I need a Court Order
19 actually for them to be transported to the MDC.

20 THE COURT: You need a written Court Order?

21 MR. BERGRIN: No, it could be oral I guess.

22 A MARSHAL: I just explained to Mr. Bergrin that he's
23 not allowed to have pens during transport between here and MDC.
24 At MDC he can have a million pens, but just downstairs and
25 transport we don't allow it.

1 THE COURT: Mr. Bergrin, you'll have ample time when
2 you get back I guess to use your pens.

3 MR. BERGRIN: I don't intend to use them during actual
4 transport anyway, Judge.

5 THE COURT: Oh, okay.

6 A MARSHAL: As long as you have them on your person,
7 that's fine.

8 MR. LUSTBERG: Can he have them in the folder?

9 A MARSHAL: Sure.

10 THE COURT: We'll see everybody tomorrow morning.

11 MR. BERGRIN: Yes, your Honor.

12 (At 3:25 p.m., an adjournment is taken to Tuesday,
13 November 15, 2011 at 8:30 a.m.)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

February 13, 2007

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defended by the team of attorneys that he had privately retained: James Plaisted, Esq. (of the large defense firm of Walder, Hayden and Brogan), Plaisted's associate counsel, Lin Solomon, Esq., of the same firm, and Vincent Nuzzi, Esq. (hereinafter referred to as the "Plaisted/Solomon/Nuzzi team").

Shortly before trial, an additional adjournment was granted until May 15, 2006, at the request of Messrs. Plaisted and Nuzzi on the grounds that Mr. Nuzzi was not adequately prepared for trial because he had been working on another long trial until April 2006. Mr. Nuzzi's request for more time to prepare was also the subject of a mandamus petition to the Third Circuit Court of Appeals; the petition was filed April 18, 2006 and denied on May 8, 2006.

On May 8, 2006, one week before the trial was finally to commence, this Court received a letter from the United States Attorney's Office, informing the Court that Mr. Nuzzi had a potential dual representation conflict of interest. The potential conflict arose from Nuzzi's prior representation of another client on state criminal charges related to one of the big drug seizures in the Curry case. As Mr. Nuzzi had not informed the Court himself, despite his duty to do so, the United States Attorney's Office notified the Court in order to ensure that an inquiry was made in advance of trial. Dual representation may be waived if counsel has obtained the requisite consents of each client. *See Cuyler v. Sullivan*, 446 U.S. 335, 346-47 (1980) (finding that: 1) defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict arises; and 2) courts necessarily rely in large part upon the good faith and judgment of defense counsel to have received the proper waivers if they accept dual representation); *Holloway v. Arkansas*, 435 U.S. 475, 485-86 (1978) (deferring to the judgment of counsel regarding the existence of a disabling conflict, recognizing that a defense attorney is in

the best position to determine when a conflict exists, that he has an ethical obligation to advise the court of any problem, and that his declarations to the court are “virtually made under oath.”). The Court immediately ordered defense counsel to consult with Curry forthwith and set an evidentiary hearing for May 11, 2006 on the matter.

On May 9, 2006, Nuzzi responded to the letter of the United States Attorney’s office. His letter, received a mere five days before trial, for the first time acknowledged to this Court that he did indeed have a conflict of interest based on dual representation. Of even of greater concern, he added that he had an “actual conflict of interest” with his own client because he believed that he should call himself as a defense witness on a significant substantive aspect of the case. Specifically, he stated that he would testify to rebut the Government’s evidence that Curry led the violent drug gang by, *inter alia*, securing and paying for defense lawyers when his subordinates were arrested. It was well known long before trial that the Government intended to offer evidence to prove Curry’s leadership role by putting up bail money and securing counsel for gang members so that none would cooperate with law enforcement. In return, gang members were controlled by Curry because the gang’s “house counsel,” Paul Bergrin, Esq.’s⁴ loyalty was to Curry, and the gang members owed Curry for the value of drugs seized in any bust.

Two wiretapped calls corroborate the prosecution witnesses’ anticipated testimony on this issue proving leadership and control of the drug organization by Curry. Call #1211 is a phone call between Nuzzi’s client, Curry, and Nuzzi’s former client, Webb, in which Curry tells Webb that he will funnel funds to Nuzzi via his “man” to get Nuzzi paid to defend Webb. Call #1212

⁴ Nothing has been presented to indicate that Bergrin’s recent arrest and indictment for allegedly running a brothel and money laundering its proceeds relate to this case.

is a second phone call between Curry and another co-conspirator in this case in which Curry also talks about getting money to Nuzzi to defend Webb.⁵ As will be discussed below, Nuzzi had these tapes at least a year before trial, and statements made by Nuzzi at that time revealed that he had listened to several involving Curry.

On May 11, 2006, three days before trial, this Court held an evidentiary hearing on this issue. Nuzzi testified that he had an “actual conflict of interest” and moved to be relieved as Curry’s counsel. Nuzzi testified: “I’ve become a witness in this case on behalf of my current client, Mr. Curry, to explain the events relating to my retention by Mr. Webb,” “Somebody has to defend my client with regard to the context of the conversation and my relationship with Mr. Webb,” and “there are other issues besides the two tapes, and that’s the surrounding circumstances where the only person that could be called as Mr. Curry’s witness to explain the surrounding circumstances is my client, Mr. Webb. So there were really two bases [for the

⁵ Nuzzi’s former client Webb had been arrested with Curry co-Defendants Justin and Jason Hannibal following a police chase from a hotel in Elizabeth, NJ; this bust led to a seizure from the Hannibal hotel room of one of the largest caches of drugs and cash in the case. These narcotics and cash, and related testimony, were linked via the Hannibals to Curry, who forced the Hannibals to repay him for the lost drugs and cash by forfeiting their Rolex watches. The Hannibals were charged as co-conspirators in the instant case, and pled guilty to conspiring with Curry and others. Webb was charged in a case in the State of New Jersey in connection with the police chase. Nuzzi testified at the May 11, 2006 hearing that the Hannibal twins could not be called as defense witnesses because their plea allocutions implicated Curry; and he would therefore be considering calling his own former client Webb as a defense witness if the Government introduced at trial this large drug seizure against Curry, which it had every right to do and planned to do. While there might have been solutions to this dual representation issue, such as waivers and requiring co-counsel Plaisted to examine Webb (to avoid use of confidential communications to Nuzzi arising from the prior representation) these solutions became moot after Nuzzi announced that he intended to be a defense witness himself on Curry’s behalf. Nuzzi is an experienced former prosecutor, as is Plaisted. Why these attorney ethics issues were not brought to the Court’s attention by them is inexplicable. When the case was just days away from the jury being empaneled and sworn, the United States Attorney’s Office took on that duty.

withdrawal motion] ... “My testimony, ... if I were called as a witness, my testimony would be to rebut the inference that the Government wishes to draw from those tapes.” Transcript of May 11, 2006, pp. 16, 39, 41. The Court directly asked Mr. Nuzzi if the conflict of interest caused by his intention to be a defense witness was a waivable conflict should Mr. Curry wish to waive it. Nuzzi unequivocally stated that the conflict was not waivable. He was given additional private consultation time with Mr. Curry to discuss the issue, and this Court did not intrude into attorney client communications. Nuzzi’s position remained the same: He was going to be a defense witness for Curry and the jury could not see him in both roles. Nuzzi stated that the conflict was not waivable.

After a lengthy hearing, this Court granted defense counsel Nuzzi’s request to be relieved as defense counsel. Among other reasons, New Jersey RPC 3.7 did not state that such a conflict was waivable, and Nuzzi would thus be conflicted between his own concerns about potential ethics jeopardy himself under RPC 3.7 and his duty to zealously defend Mr. Curry by calling himself as a witness. Both he and Mr. Plaisted would be clearly identified to the jury as the defense counsel team for Mr. Curry, and thus Mr. Nuzzi taking the witness stand under these circumstances would be highly unusual and could damage Mr. Curry, depending on how the jury reacted to Nuzzi, the witness, as contrasted with Nuzzi, the defense counsel. Mr. Curry’s desire to rebut his control of his subordinates’ counsel was important to the defense (as the later trial strategy confirmed when Nuzzi was in fact called by Plaisted as a defense witness).

This Court considered having a waiver colloquy. However, even if Curry said before trial that he wished to waive his right to call Nuzzi as a defense witness, Nuzzi himself did not believe that such a waiver

would be valid. This Court thus had to:

pass on the issue of whether or not to allow a waiver of a conflict of interest by a criminal defendant not with the wisdom of hindsight after the trial has taken place, but in the murkier pre-trial context when relationships between the parties are seen through a glass, darkly. The likelihood and dimensions of nascent conflicts of interest are notoriously hard to predict, even for those thoroughly familiar with criminal trials....A few bits of unforeseen testimony or a single previously unknown or unnoticed document may significantly shift the relationship between multiple defendants. These imponderable are difficult enough for a lawyer to assess, and even more difficult to convey by way of explanation to a criminal defendant untutored in the niceties of legal ethics.

Wheat v. U.S., 486 U.S. 153, 162-63 (1988).

Here, this Court was faced with determining whether a criminal defendant could enter a knowing and voluntary waiver of his right to call Mr. Nuzzi as a defense witness before a three-month trial began. Moreover, defense counsel did not believe that the conflict was waivable. Thus, this Court concluded that it would not engage in a waiver colloquy because a waiver under these circumstances might not be “knowing and intelligent” before trial.

Even if the Court disagreed with Mr. Nuzzi about whether the conflict was waivable, which it did not, it would add yet another problem to effectively force Mr. Nuzzi to remain as a defense counsel when he did not believe that he could do so without further ethics jeopardy to himself. The Rules of Professional Conduct instruct that the mere likelihood of defense counsel being called as a witness raises concerns about the administration of justice. *See Freeman v. Vicchiarelli*, 827 F. Supp 300, 303 (D.N.J. 1993) (noting that RPC 3.7 “begins to operate as soon as the attorney knows or believes that he will be a witness at trial” and that “[o]nce an attorney

recognizes that he is ‘likely’ to be a witness in litigation, he must choose whether he will proceed as advocate or witness”).

It is important to underscore that at *no time* did the Government seek to disqualify or remove defense counsel. Indeed, it was clear to this Court from the letter briefs filed before the May 11, 2006 hearing that the United States Attorney’s Office had offered various redactions and other means to enable Mr. Nuzzi to remain part of the Plaisted/Solomon/Nuzzi defense team. It was solely Nuzzi who desired to be relieved as counsel, and his motion was granted.

While Mr. Nuzzi sought to blame the Government for this situation, it is without basis. *See Cuyler v. Sullivan*, at 346-47. Opposing counsel can reasonably assume that Mr. Nuzzi knows how to obtain waivers from his clients and would not proceed with dual representation absent proper waivers from his clients. *See Cuyler*, 446 U.S. at 346-47. In *Cuyler*, the Supreme Court found that it is defense counsel’s ethical obligation to avoid conflicting representations and to advise the Court promptly when a conflict arises, and that Courts necessarily must rely on the good faith and judgment of defense counsel. Nuzzi’s attempt to blame the Government based on the name on the cover page of the initial draft of the wiretap transcript is spurious.⁶ The two

⁶ In listening to the tapes of his own client, Curry, Nuzzi could hear Curry mention Nuzzi by name to a man named Webb. It makes no difference whether the draft cover page listed Curry talking to Jarvis or Raheem Webb. Once Curry stated Nuzzi’s name in the wiretapped conversation, with either Webb, Nuzzi was obligated to listen to the tape himself and ascertain who was saying what about Nuzzi. Nuzzi had the tapes themselves and transcripts that contained his own name in the conversation for nearly two years, and the final transcripts for a substantial period of time prior to the trial. As the Court advised all counsel on June 15, 2005, a year before trial, it was defense counsel’s duty to listen to all the tapes (“there is a ton of evidence”) in the case (the Court told counsel to “put the earphones on and listen to it themselves”) and look at the rough drafts of the transcripts and decide which were important and how/whether they should be used. Transcript of June 15, 2005, pp. 59-64. It was Plaisted and Nuzzi’s duty to listen to those tapes and raise to the Court any ethics concerns. An attorney’s own ethics burden is not properly shifted to or blamed upon the Government under the facts of this case. Both Nuzzi and Plaisted

tapes had been produced years earlier in June 2004 during discovery. See Transcript of May 11, 2006, pp. 10. A year before trial, this Court told Mr. Plaisted “you have an obligation ... to go through every one of those transcripts yourself, with the assistance of Mr. Nuzzi and Miss Solomon, and all the other persons that you can put together and you figure out which transcripts are important.” Transcript of June 15, 2005, p. 62.⁷

MOTION FOR RECONSIDERATION AND ADJOURNMENT⁸

On May 15, 2006, this Court addressed Mr. Plaisted’s motion to reconsider the Court’s May 11, 2006 decision to grant Mr. Nuzzi’s motion to withdraw as co-counsel. The Court also considered Mr. Plaisted’s request for another adjournment of the trial date so that Mr. Curry could bring in a third attorney to try the case with Mr. Plaisted and Ms. Solomon. Mr. Plaisted effectively withdrew his motion to reconsider the granting of Mr. Nuzzi’s motion to withdraw and stated that he did not wish the Court to conduct a waiver colloquy.

testified on May 11, 2006 that they had actually listened to the tape in which Nuzzi’s two clients were talking to each other about Curry funneling money to Nuzzi to defend Raheem Webb at the latest by April 6, 2006. They thus knew that Nuzzi had a major conflict of interest with a concomitant obligation to bring it to the attention of this Court. They did not. One thing is certain: there is no excuse for this by blaming the Government.

⁷ In fact, it is clear that Curry’s counsel had been listening to the tapes by June 2005, a full year before the trial. At that time, in attempting to obtain certain additional discovery from the Government, Mr. Nuzzi’s comments show that he had listened to tapes of Curry talking about, *inter alia*, the identity of members of a drug task force. See Transcript of June 15, 2005, p. 85.

⁸ Baskerville’s attorney, Mr. Archie, joined the Nuzzi/Plaisted request for an adjournment on April 25, 2006. Mr. Archie stated that he was retained to represent Baskerville in January 2006 and had not had enough time to review the wiretaps with his client. The Court granted a continuance until May 15, 2006, for jury selection for the benefit of all defense counsel, and gave all defense counsel until May 22, 2006 to prepare their opening statements.

This Court granted a short additional adjournment to Mr. Plaisted and took other action designed to assist him in his final preparations for trial but did not grant a long adjournment of the long-delayed trial for a fourth time to facilitate a desire by Curry to hire a third attorney to try the case with Mr. Plaisted and Ms. Solomon. On that date, the Court stated that it would file this Statement of Reasons. In making its decision, this Court balanced many factors, based on its own extensive knowledge of the case and nearly two years presiding at many hearings where Curry's privately-retained counsel, Plaisted, demonstrated his extraordinary grasp of the facts of the case as lead counsel. Mr. Nuzzi was often not even present at these hearings and certainly had not acted in a lead role at any time during nearly two years leading up to the trial, when extensive trial preparatory work had proceeded apace. This Court had also read hundreds of pages of briefs written by Mr. Plaisted and Ms. Solomon, which revealed their deep knowledge of the case.

This Court balanced numerous considerations based on the particular facts of this case in order to ensure that Mr. Curry's Sixth Amendment rights were always protected. This Court has, in this balancing of factors, considered both Mr. Curry's right to pay for privately retained counsel of his choice, as well as Mr. Curry's right to effective assistance of counsel. *United States v. Gonzalez-Lopez*, 126 S. Ct. 2557 (2006). All of Curry's Sixth Amendment rights have always been uppermost in this Court's mind as it balanced, *inter alia*, the following factors: a) the length of the delay that was requested by Mr. Plaisted; b) the actual length of the delay that would be needed for a third counsel of choice to become familiar with the exceptional complexity of this case and its two-year history of protracted pretrial proceedings; c) whether other continuances have been requested and granted; d) the degree of convenience or

inconvenience to other litigants, witnesses, counsel and the court; e) factors related to efficient judicial administration; f) whether there have been other veiled attempts at delaying the trial; g) whether the defendant has other competent counsel retained by him who have acted in a leading role in his defense; h) whether the defendant has counsel retained by him who have the support of skilled associate counsel and paralegals and investigators who are highly knowledgeable about his case; i) whether there will be a Sixth Amendment denial of choice of counsel if the trial proceeds with two chosen retained counsel (Plaisted and Solomon) rather than delaying the requisite time for a third attorney to get “up to speed” to join the defense team and act in a meaningful role in Mr. Curry’s defense; j) the complexity of the case; and k) other factors unique to this case.

This Court’s Balancing of the Above Factors

1. The Plaisted/Solomon portion of the Defense Team was Privately Retained and Prepared for Trial

By May 15, 2006, Mr. Plaisted had been privately retained counsel paid by Mr. Curry for nearly two years to defend him. Plaisted, a leading defense lawyer from a major firm, was zealously and vociferously defending Mr. Curry as an integral part of the Plaisted/Solomon/Nuzzi defense team. Mr. Plaisted is one of a small group of counsel designated as Certified Criminal Counsel by the New Jersey Supreme Court; such designation has special recognition in the New Jersey bar. During nearly two years of numerous pretrial hearings, exceptionally lengthy sets of motions and briefs and oral arguments on a myriad of complex issues, Mr. Plaisted acted in the leading role of all 14 defense counsel and demonstrated that he intimately knew every detail of this case. Mr. Plaisted together with his associate, Ms.

Solomon, and his large firm's paralegals, had spent countless hours reviewing the tapes, the transcripts, and the physical and documentary evidence. It was Mr. Plaisted, Ms. Solomon and their team who scrutinized each and every piece of paper produced by the Government as exhibits in the case and listened to the audibility of each tape, which led Mr. Plaisted and Ms. Solomon to demonstrate an extraordinary command of every facet of this complex case, no matter how nuanced. There had never been any dissatisfaction voiced by Mr. Curry about any of Mr. Plaisted's work on his behalf, throughout many long court proceedings. Nor was Mr. Curry seeking to replace Mr. Plaisted on the eve of trial. As Curry stated on May 11, 2006, he simply didn't want Plaisted to do "all" of the trial by himself. He expressed no displeasure with the quality of Mr. Plaisted and Ms. Solomon's vigorous defense of him, nor of the strategic choices they had made for nearly two years.⁹

Indeed, it was Mr. Nuzzi who was claiming to be unprepared for trial. The Plaisted/Solomon/Nuzzi team took the extraordinary step of bringing a mandamus petition to obtain delay based on Nuzzi's claimed need for more time to prepare for trial.¹⁰ It was clear to the Court that the Plaisted/Solomon portion of the defense team, whom Curry himself had retained, was well prepared to go to trial and had in fact done all of the things that trial counsel

⁹ As the trial progressed, this Court's observation of the relationship between Curry and the Plaisted/Solomon team confirmed its earlier view that Curry was not displeased with his representation by Mr. Plaisted and Ms. Solomon, with whom he clearly had a warm, close and pleasantly communicative relationship both in and out of the presence of the jury.

¹⁰ On April 18, 2006, the mandamus petition was filed with the Third Circuit seeking additional time for Mr. Nuzzi to prepare for trial. As this Court learned on May 11, 2006, the Plaisted/Solomon/Nuzzi team knew by April 6, 2006 that Mr. Nuzzi faced a serious conflict of interest that would result in his withdrawal from the case. Yet, the mandamus papers were silent on this issue, while simultaneously pleading for a delay to prepare Nuzzi for trial.

does, such as scrutinizing evidence. He had stated in his mandamus briefs that he and Solomon would be co-trying the case with Nuzzi.

2. Actual length of Delay that Would be Needed for an Additional Counsel to Be Retained and thereafter Prepared For Trial

The request was for an adjournment until September to enable Curry to hire a third attorney to try the case with the Plaisted/Solomon team. While this Court considered the request, its own knowledge of the history of the case led inexorably to the conclusion that a newly retained third counsel would require a far, far longer adjournment than September 2006, to be properly prepared, while the Plaisted/Solomon team was already highly prepared.

First, based on this Court's extensive experience, it would take, at a minimum, 60-90 days to find counsel both (a) willing to take on such a difficult case and (b) able to free up time on his/her own calendar to prepare for and try a projected three-month trial. Second, based on the amount of time that many of the original 14 defense counsel had stated that they needed to review 2,000 taped calls and volumes of evidence, any adjournment would likely extend to between 9-12 months before a new trial date could again be set. The Defendants had already been in custody for over two years since their arrest in March, 2004, and a trial date in 2007 was inadvisable.

Moreover, any proposed additional counsel's other trial commitments would have had to be taken into consideration, and Mr. Plaisted had already raised concerns about his own calendar and the need to attend to his other legal work. Thus, any adjournment would result in Mr. Plaisted seeking to withdraw from the case. This was not simply conjectural. On April 26, 2006,

at the final status conference before the then-scheduled May 3, 2006 trial date, Mr. Plaisted asked the Court in a letter filed that same day for leave to reduce his time commitments on the Curry case in order to work on his civil cases and appeals. This Court was surprised by this unusual request on the eve of trial, and informed Mr. Plaisted that he had been an “integral part of the trial team” who would remain and maintain his substantial co-counsel role in defending Curry. Even without then knowing that ten days later Nuzzi would move to withdraw, the Court said to Mr. Plaisted, “you’ve been on this trial team for two years ... and we’d be delighted to have your continued presence here to further give Mr. Curry all possible legal advice he could ever need....” Transcript of April 26, 2006, pp. 47-48. After Nuzzi withdrew, the Court certainly did not want an adjournment that would risk losing the Plaisted/Solomon defense team, who were the two privately retained defense counsel with extensive knowledge of how to defend the case, with whom Curry was clearly satisfied, and clearly planned to defend Curry at trial.¹¹ The only issue raised by the last minute request for continuance is what role or function a newly added attorney would have in addition to the Plaisted/Solomon team.

This Court’s own familiarity with the lengthy history of the case at that time also informed its decision to remain on course with the Plaisted/Solomon defense team. All counsel and the Court had agreed early on that a complex case order must be filed to allow sufficient time for defense counsel to review the complex evidence, including thousands of pages of documents and transcripts and to listen to over 2,000 tape recordings. As various defense counsel had explained to this Court during numerous hearings, motions arguments and status conferences, in

¹¹ In his mandamus petition briefs seeking to delay the trial, Plaisted simultaneously stated that he was fully familiar with the Curry case and expected to serve in a significant role as co-counsel at trial, doing all written work and sharing witness examination duties with Nuzzi.

order to defend the case it would be necessary to listen and review the transcripts of not only those tapes that the Government planned to use at trial, but also all the other tapes which might add context or be argued by the defense to show a lack of involvement, a lesser role, or separate conspiracy, etc., by Mr. Curry or any co-Defendant. Various other defense counsel in the case, who were also highly experienced members of the defense bar, informed this Court that they could not be prepared in less than 9 months to a year of preparation. Transcript of October 14, 2004, pp. 13- 24. Thus, it was reasonable to believe, as this Court did, that any newly retained additional counsel would need far longer than September, 2006 to be prepared for trial and such a lengthy delay would likely cause other disruptions, including difficulties for Mr. Plaisted to continue as trial counsel.

3. Other Continuances Had Repeatedly Been Sought and Granted by This Court.

Cognizant of the competing trial schedules of the 14 trial counsel in this case, this Court spent considerable time asking for defense counsel's other trial obligations and setting fair trial dates. Twelve defendants were arrested on February 27 and March 4, 2004.¹² They were originally charged and presented to different judges. On July 16, 2004, a Superseding Indictment charged them jointly in a conspiracy; that case was assigned to this Court and defendants were arraigned on August 4, 2004. An October 19, 2004 trial date was initially set, and the Court invited counsel to review their calendars and the quantum of time needed to prepare and let the Court know if an adjournment was needed. All counsel agreed that a complex case order should be entered, and this Court did so on November 10, 2004. This Court then set a new trial date of

¹² Defendant Baskerville fled and was arrested on November 14, 2005, after being featured on America's Most Wanted.

May 3, 2005. Certain defense counsel then sought another adjournment to accommodate their schedules; the Court offered them the opportunity to meet and confer and suggest mutually agreed trial dates. Thereafter, Mr. Plaisted wrote and stated that counsel were unable to agree on any date.

This Court on April 28, 2005 granted an adjournment of the trial date to September 20, 2005. At a June 2005 hearing on other matters, a different defense counsel objected to the September 20, 2005 trial date as inconvenient, although none had objected when that date had been set by the Court. The Curry defense team convened a meeting of all defense counsel; all defendants jointly petitioned this Court for one last adjournment of the trial date until May 3, 2006.

Thus, after multiple defense petitions to adjourn multiple trial dates, the May 3, 2006 trial date was finally set at the urging of Curry's defense counsel to accommodate Nuzzi's other trial schedules and permit him to be on the trial team. The court granted Curry's request. The Plaisted/Solomon portion of the Curry defense team zealously led Curry's defense for nearly two years, with voluminous sets of pre-trial motions, affidavits, and other applications for relief,¹³

¹³ Plaisted and Solomon filed many motions on behalf of their client during the duration of this case, both pre-trial and during trial:

- * September 8, 2004 - motion for an order granting pretrial release and/or setting bail and/or relocating the defendant to a new facility

- * September 9, 2004 - motion to sever the Defendant's trial, to dismiss the indictment, to suppress evidence, and for an order requiring (1) pre-trial hearings, (2) discovery, and (3) a bill of particulars

- * January 10, 2005 - motion for an order to dismiss the indictment, to suppress all evidence and for a hearing

- * January 10, 2005 - motion for reconsideration of the order denying the motion for pre-trial release

- * January 10, 2005 - motion to extend the time to file an appeal of the denial of pre-trial release motion

- * January 10, 2005 - interlocutory appeal of the denial of the motion for pre-trial release
- * May 23, 2005 - motion to have outstanding discovery and suppression issues assigned to a magistrate judge for resolution and/or hearings
- * June 21, 2005 - application seeking entry of a proposed order resolving certain discovery issues
- * July 13, 2005 - motion to suppress all wiretap and physical evidence and/or dismiss the indictment
- * September 8, 2005 - application for hearings on certain issues
- * April 4, 2006 - motion to compel the Government to disclose electronic surveillance information and to conduct a hearing to determine whether any such information tainted the evidence upon which the charges are based
- * April 4, 2006 - motion to exclude the Government's experts
- * April 10, 2006 - motion *in limine* to bar all R. 404(b) evidence
- * April 10, 2006 - motion *in limine* to preclude expert testimony
- * April 10, 2006 - motion *in limine* to bar all evidence not derived independently of the wiretaps
- * April 10, 2006 - motion *in limine* to preclude unproduced evidence
- * April 10, 2006 - motion *in limine* to preclude all evidence as to violence
- * April 12, 2006 - Solomon filed a motion for release of *Brady* materials
- * April 19, 2006 - application seeking to bar all 404(b) evidence, a *Daubert* hearing, and to bar all Government exhibits not timely produced
- * April 24, 2006 - application joining in Nuzzi's request for adjournment of the trial
- * May 14, 2006 - application seeking the Court to order the Government to provide the defense with one composite copy of the tapes the Government intends to introduce
- * May 21, 2006 - application seeking a stay of the trial, production of certain evidence from the Government, dismissal of the indictment due to alleged *Brady* violations, and severance; the letter also indicated that the defense believed the Government had misused the grand jury and the defense objected to certain exhibits
- * May 23, 2006 - motion to produce discovery and for sanctions and dismissal
- * May 29, 2006 - motion seeking dismissal for prosecutorial misconduct, a mistrial or to stay the trial
- * June 1, 2006 - application to introduce certain tapes through the Government's witness
- * June 4, 2006 - motion for immediate discovery, dismissal, a stay and a limiting instruction
- * June 7, 2006 - motion *in limine* to preclude certain testimony
- * June 7, 2006 - motion *in limine* to preclude records from being admitted
- * June 7, 2006 - application seeking to bar the introduction of a statement made by Defendant
- * June 9, 2006 - motion for reconsideration of this Court's order on Defendant's motion regarding grand jury abuse
- * June 11, 2006 - motion, *inter alia*, for a stay of the trial and relaxation of the trial schedule

which clearly showed that they were getting ready for trial. Most other defense counsel simply joined into the Plaisted/Solomon legal work because it was so thorough, detailed and zealous.

In late April 2006, Nuzzi wrote to ask for an adjournment of the May 3, 2006 trial date because his other trial had continued longer than he had anticipated. The trial phase of that trial ended with summations on April 6, 2006.¹⁴ That permitted Nuzzi time to turn his attention back

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- * June 13, 2006 - motion for a mistrial and to reopen cross
 - * June 14, 2006 - application objecting to expert testimony
 - * June 14, 2006 - motion for reconsideration of this Court's partial denial of his request to strike certain references in the tapes and transcripts
 - * June 18, 2006 - motion seeking various forms of relief, including mistrial, a stay and dismissal of certain counts of the Indictment
 - * June 20, 2006 - motion for disclosure of criminal records
 - * June 20, 2006 - motion to exclude the testimony of the money laundering expert
 - * June 23, 2006 - motion to strike
 - * June 24, 2006 - motion for disclosure of certain criminal records
 - * June 24, 2006 - motion for disclosure of information re: N-178
 - * June 25, 2006 - motion to preclude expert testifying as to similar source of drugs
 - * June 25, 2006 - motion to preclude expert reference to jewelers records
 - * June 25, 2006 - motion to continue cross-examination of Snowden
 - * June 25, 2006 - motion to exclude redirect as to shootings
 - * July 2, 2006 - motion for relaxation of visitation
 - * July 2, 2006 - motion for *Brady* and *Giglio* materials regarding Yarborough
 - * July 2, 2006 - motion to preclude the Government's obstruction of access to witness
 - * July 4, 2006 - motion to make determination regarding trial subpoenas
 - * July 5, 2006 - application requesting permission for Nuzzi and others to visit Defendant and to move Defendant
 - * July 5, 2006 - motion to rule on scope of cross-examination of a witness
 - * July 5, 2006 - motion for a ruling on certain witnesses
 - * July 5, 2006 - motion seeking to not sit on Friday
 - * July 6, 2006 - motion to admit admissions of the Government into evidence
 - * July 10, 2006 - motion for various relief
 - * July 11, 2006 - motion to admit certain admissions
 - * July 11, 2006 - motion to admit certain exhibits
 - * July 17, 2006 - motion *in limine* to strike a reference from a Government Transcript

¹⁴ Mr. Nuzzi actually completed his summation on April 5, 2006.

to refreshing his own work that he had previously done on the Curry case.¹⁵ Notably, Mr. Plaisted and Ms. Solomon had, by their extensive written and oral arguments, demonstrated to the Court that they were highly prepared by late April 2006. Their preparation for trial was reflected by the numerous applications they were filing, *i.e.*, objections to exhibits and *in limine* motions, and statements on the record. However, in order to enable them to have the time to get Mr. Nuzzi back up to speed as a fellow member of the defense team, the Court again granted a final short adjournment of the trial date to May 15, 2006.

Mr. Plaisted and Ms. Solomon were extremely well prepared and had extensive knowledge of the case, and they had divided responsibilities with Mr. Nuzzi with respect to the oral presentation to the jury. After this Court granted Nuzzi's withdrawal motion, the Court wished to give Mr. Plaisted a brief period of time to prepare for the opening statement in the case, in the event that this responsibility had been Nuzzi's.

As he acknowledged in his mandamus brief, Mr. Plaisted certainly expected to do all the motion work at trial, as well as the trial briefing and handling certain witnesses, sharing the witness examination work with Mr. Nuzzi in the orderly way the Court had earlier required.¹⁶ With Mr. Nuzzi's withdrawal from oral presentation in front of the jury, the Court wished to ensure that Mr Plaisted had the benefit of any insights or strategic ideas for case presentation

¹⁵ As early as June 15, 2005, Nuzzi had shown that he was familiar with Curry's tapes. See Transcript of June 15, 2005, p. 85.

¹⁶ During one particularly contentious status conference about discovery in this matter, Nuzzi and Plaisted, both highly experience defense counsel in their own right, were each interrupting each other and the Court repeatedly—one rising to argue a point, and then the other rising a short time later to revisit the same point. See Transcript of June 15, 2005, pp. 85-95. At that time, the Court reminded them about the rules when multiple defense counsel represent a single client, *i.e.*, one trial attorney on his feet per witness, to avoid jury confusion.

from Mr. Nuzzi,¹⁷ and sufficient time to rehearse an opening statement as well as prepare cross-examination.¹⁸ For that reason, the Court granted an adjournment until May 22, 2006 for opening statements, required the Government to identify its first witness so that Mr. Plaisted could ready his cross-examination, and confirmed that Mr. Plaisted would not have to begin the first cross-examination until May 30, 2006, a date more than two weeks after Nuzzi's withdrawal. In sum, this Court granted multiple continuances upon request.

4. Balancing the degree of inconvenience to other litigants and witnesses.

This case has presented exceptional difficulties to the law enforcement agencies charged with protection of pretrial detainees and witnesses: the United States Marshal's Service ("USMS") and the Drug Enforcement Administration. ("DEA"). The United States Attorney's Office was granted leave to file an in camera brief in support of its application for late production of *Giglio* material to the defense because of concerns about the safety of witnesses. One of the manner and means of the Curry Organization's drug conspiracy charged in the indictment was the use of extreme violence including murder, to deter its members from cooperating with law enforcement and silence witnesses who were to testify against its leaders. While the Court limited the number and evidence of murders introduced as proofs, the Court was aware, based on

¹⁷ The Court required Nuzzi to make himself available to Mr. Plaisted to share any insights or strategy that he might have upon request by Mr. Plaisted. Not surprisingly, in light of Mr. Plaisted's preparedness, Mr. Plaisted did not need much, if anything, in terms of strategy or insight from Nuzzi.

¹⁸ Plaisted's opening statement was very well done, and each cross-examination was tenacious and thorough.

highly credible *ex parte*¹⁹ proffers made by the United States Attorney's Office, that several witnesses in various court cases against Curry associates had been murdered. The Curry investigation itself was ended abruptly in March 2004 because the prime witness to a murder committed by Curry's partner was himself murdered. This murder of witness Derrick Berrian on March 1, 2004 was committed after Curry co-conspirators were observed on February 24, 2004 "circling the block" where Berrian lived; and Curry himself was heard on a wire-tapped conversation dated February 24, 2004, saying in the background "where did Tyheed²⁰ put his gun." Transcript of *ex parte* proceedings of May 9, 2006, pp. 45-46.

The Court was apprised of concerns about the violence against witnesses based upon various pretrial events and other events that occurred just as the trial began. Specifically,

- * August 18, 2004 - In support of its application requesting to turnover *Giglio* material later, the Government submitted an *ex parte* brief, filed under seal, which set forth details regarding threats, intimidation and murder of witnesses the Curry organization believed to be cooperating against them.
- * March 30, 2005- Second Superseding Indictment filed alleging violence (threats, intimidation and murder) as part of the manner and means of the conspiracy.
- * April 21, 2006 - Government filed Motion seeking to introduce 404(b) evidence and in a footnote referenced the murders of Derrick Berrian and Darnell Anderson.
- * April 26, 2006 - Court ordered Government to immediately provide to the defense redacted copies of police reports, autopsy reports and witness statements related to the Berrian and Anderson murders to facilitate defense preparation.

¹⁹ While these proffers were *ex parte* when made, they have since been provided to the defense.

²⁰ "Tyheed" refers to Tyheed Mitchell, another of Curry's co-conspirators

- * April 28, 2006 - Court conducted in camera review of redacted police reports, etc. after defense complained they were too redacted and the Court verified the redactions were in accordance with the Court's order of April 26, 2006.
- * May 9, 2006 - Court heard in camera proffer of evidence the Government planned to adduce at trial with respect to certain informants, pursuant to the Court's order of May 3, 2006, in order to determine whether the disclosure of *Jencks* and *Giglio* material during the normal course of trial will result in any delay in the trial.
- * May 22, 2006 - *ex parte* proffer by United States Marshals in chambers - jail inmate hired by Curry to kill a cooperating witness.
- * May 24, 2006 - *ex parte* proffer by United States Marshals in chambers - Baskerville was overheard by a Passaic County Sheriff's Officer telling Curry that "we have a hit on [witness] Walker and we have the hitman already."

Keeping cooperating witnesses²¹ alive and safe was a major concern in light of the modus operandi of the Curry Organization to kill witnesses as a means to secure the dismissal of criminal charges.²²

The cooperating witnesses were in different physical locations, housed by different authorities, some state and some federal. It took extraordinary manpower to protect witnesses in so many different locales in New Jersey, which does not have its own designated federal holding facility for pretrial detainees. The U.S. Marshals in New Jersey must house detainees in state jail, which presents special security concerns.

In the tense events surrounding this case, concerns about witness safety were critical. Events during the first week of trial confirmed this Court's belief that any significant adjournment

²¹ The Court learned of these cooperating witnesses pre-trial during the *ex parte* disclosures described above.

²² A full year earlier, the Court learned that Defendants had already discovered witness Walker's identity as a confidential informant. A defense investigator located Walker, who was housed out of State for his protection. Another cooperating witness would later testify at trial about being hired by Curry to kill Walker.

of the trial would unduly endanger witnesses and prejudice the prosecution's case because the witness identities had been revealed. Among other things, during the first week of the trial, this Court was informed in an *in camera* proffer by the United States Marshals that they had just uncovered a plot by Curry to kill a witness, who was in another New Jersey state jail. Fortunately, the nascent plot was foiled by quick work by law enforcement.

Early in Lachoy Walker's testimony, the United States Marshals again informed this Court of another threat. This time, the Deputy Marshals reported that a sheriff's officer responsible for the transportation of Curry and Baskerville from the detention facility to court overheard Baskerville reporting to Curry that "we have a hit on Walker and we have the hitman already." The Court found the threat credible, in light of the modus operandi of the Curry Organization and the foiled plan uncovered just two days earlier to kill a different jailed witness believed to be cooperating with the prosecution.

These two events relayed by the United States Marshals are two events that confirm that a concern about witness safety, was very real in this case.

Beyond keeping witnesses alive, the prosecution would also be prejudiced by the dimming of witness' memories if another adjournment were granted. The trial date had already been adjourned repeatedly, and witnesses would need to recall events dating back to 2000, when the charged conspiracy began.

5. Factors Related to Efficient Judicial Administration.

As the United States Court of Appeals for the Third Circuit found proper in *United States v. Kikumura*, 947 F.2d 72, 78-79 (3rd Cir. 1991), this Court balanced factors beyond the contours of this case alone in weighing requests for continuances. Factors of efficient judicial

administration and the effect on other litigants may also be weighed. The Court has thus also weighed the fact that there is a public interest in prompt trials in criminal cases, and that this case had been pending for over two years at the time of the last continuance request. This Court had to be taken off the “wheel” and thus could not be assigned to other criminal cases for months preceding the May 3, 2006 start date because it could not offer other defendants a speedy trial in light of the anticipated three-month duration of this case. This put a burden on other judges and other counsel who sought prompt trial proceedings. This Court’s large docket of pending civil cases could not have realistic dates set for court proceedings. An adjournment until September 2006 would render it unfeasible to be put back on the wheel, because this Court would have to be taken off again as soon as the instant trial resumed. Moreover, as stated above, the September date was not realistic because a second trial counsel would need far more time than that to prepare.

6. Whether There have been Veiled Attempts to Delay the Trial or Efforts to Manipulate the Trial Proceedings

This factor is perhaps the most difficult to state because this Court does not wish to impugn the motives of counsel. Thus, this factor is noted but is not weighed heavily in ruling upon the continuance request. Certain of the last-minute events certainly appear to have been designed to disrupt the orderly trial process. Nuzzi’s non-disclosure of his unwaivable conflict of interest was apparently being used to seek suppression of tapes and drugs that were admissible evidence against Curry, when there was no motion to suppress them nor legal ground to suppress.²³ Curry clearly understood the strategy to use the conflict of interest to get suppression

²³ It was clear from reading Nuzzi’s May 9 letter, and listening to his testimony on May 11, 2006, that he sought to use his conflict of interest to force the Government not to use highly

of otherwise proper evidence.²⁴ Nuzzi also did not inform the Court of his “defense witness” conflict until after the U.S. Attorney’s Office wrote its letter about his dual representation conflict. As this Court stated on May 11, 2006, if the Government had not taken the step of informing the Court about Nuzzi’s conflict of interest, a mistrial would have occurred when Nuzzi took the witness stand, as in fact he did on July 7, 2006. Finally, the last minute disruption of this case gave the defense the delay that had been sought unsuccessfully via mandamus petition to the Third Circuit.

7. Whether There will be a Sixth Amendment Denial of Choice of Counsel if the Trial Proceeds with Curry’s Chosen Counsel of Plaisted and Solomon

Curry privately retained Mr. Plaisted and Ms. Solomon for his trial team, just as he also retained Nuzzi. The Plaisted/Solomon portion of the Curry defense team was highly experienced,

relevant evidence that was damaging to Curry.

²⁴ Nuzzi testified on May 11, 2006 that Curry’s “focus was on whether or not the legal ruling Your Honor was going to make as to the admission of those tapes....” Transcript of May 11, 2006, p. 32. This testimony confirmed that Curry knew and understood the defense strategy. Curry and Nuzzi hoped to use Nuzzi’s conflict of interest as a means of suppressing evidence.

Nuzzi also testified that his dual representation conflict would pose a major problem if the prosecution used evidence of the largest drug and money seizure that occurred in the case. Nuzzi had not gotten a waiver from former client Webb, who was arrested with Curry’s co-conspirators (the Hannibal brothers) on December 23, 2003. (Webb was charged only with state offenses). Nuzzi testified: “...whoever represents Mr Curry can’t call the Hannibal brothers,we can’t call the Hannibal brothers based on their plea allocutions [which inculpated Curry].” Transcript of May 11, 2006, pp. 23-24. “If I did not call—if I was not Mr. Webb’s attorney and the Government was going to proceed on the circumstance surrounding what happened...on December 23rd, 2003 [the date of the drug seizure] , and if I couldn’t call either of the Hannibal brothers of course I would like to call Mr. Webb.” Transcript of May 11, 2006, pp. 25-26. Nuzzi also testified that he possessed attorney-client information from Webb that he would expose in cross-examination or refrain from using on behalf of Curry if Webb were called as a defense witness. Transcript of May 11, 2006, p. 24. With Plaisted as sole defense counsel, Webb could be called as a witness for the defense if he had anything helpful to say.

zealous, and had examined every aspect of the case for nearly two years. Plaisted's firm employed the paralegals and other support staff who worked on the defense. Curry never expressed displeasure with the quality of Plaisted's or Solomon's work on his behalf. Nuzzi was not disqualified by the Government or by the Court; rather he brought his own motion to withdraw because he planned to be a defense witness.²⁵

As states above, Curry then sought to add another privately retained lawyer to work with Plaisted and Solomon. The Court has endeavored from the outset to make sure that Curry had the services of retained counsel of his choice, granting multiple adjourned trial dates to accommodate Curry. After Nuzzi's motion to withdraw was granted, Curry continued to have two counsel of his choice but wanted a continuance to retain yet another so that his counsel team of choice could divide up the work exactly as Curry wished.

_____ By May 15, 2006, the Court had observed the interaction of Curry with each member of the Plaisted/Solomon/Nuzzi team. Most often, his interaction was with Plaisted, who had dominated the defense presence in court for two years. Plaisted did virtually all of the courtroom work as well as briefs. Plaisted acted in a leading role for both Curry and the entire group of defense counsel during all pretrial proceedings. Solomon acted as a most thorough, devoted and close confidant of Curry, maintaining close communications by leaning over to speak with him, often touching his arm.

From the earliest stages in the case, Plaisted was clearly acting in a lead role as Curry's chosen counsel. He entered his appearance at the arraignment as follows: "Your Honor, Jim

²⁵ Nuzzi did testify as a defense witness. Other defense counsel were also subpoenaed for Curry's defense, to rebut the proofs that Curry controlled his gang by, *inter alia*, controlling and paying counsel through middlemen.

Plaisted, Chris Adams from my firm, and Vincent Nuzzi and Lin Solomon, all for Mr. Curry....”

Plaisted informed the Court that he had filed motion papers in which all the other Defendants had joined.

Most significantly, this Court had been told that Curry had confidence in both Plaisted and Nuzzi to represent him, either together or each acting separately. At a November 1, 2004 hearing, the Court asked about trial dates. Mr. Plaisted responded on behalf of himself and Mr. Nuzzi, stating that they both wanted an early trial date, had exchanged their respective calendars and that “between Mr. Nuzzi and I, will be available together for most of that time period, and that we will work out so that he’s represented, and stated that they had spoken to Curry “about all of those kinds of issues....”

At that same hearing, Nuzzi stated to the Court during the colloquy about trial schedules: “First of all, just to digress for a moment, you did ask me last Thursday to confer with Mr. Curry, because I raised the point about my particular trial schedule, and I think this Court should be absolutely clear on this, and Mr. Curry and I spoke late into the night on Friday evening. He wants a trial date even if that would mean that I cannot participate....” When this Court said to Mr. Nuzzi, that “...it seemed to me that you yourself were already committed to various clients that would take you for a big chunk of 2005,” Nuzzi responded:

But I just wanted this court to understand, mindful of Your Honor’s request, I did speak with Mr. Curry at length. He is confident in the competency of the Walder Hayden trial team [of Plaisted and Solomon]... as reluctant as I would be to not participate, he wants a trial date, and understands that I might not be able to participate if things go according to my schedule. I want to be absolutely clear.²⁶

²⁶ At that time, counsel sought a September 2005 trial date, which the Court granted. That date was later adjourned to May 3, 2006 again at the specific request of Curry’s counsel.

Thus, while Mr. Curry desired to have Mr. Nuzzi present at his trial, he had confidence in the Plaisted/Solomon team from the Walder Hayden firm and was willing to go to trial with them as counsel in Mr. Nuzzi's absence. This Court was thus mindful of Curry's confidence in Mr. Plaisted to defend him without Mr. Nuzzi's participation.

Mr. Curry never voiced dissatisfaction with either the quality of the work or his ability to communicate with Mr. Plaisted and Ms. Solomon, whom he had privately retained and paid as his chosen counsel for two years of constant work. On May 15, 2006, the Court engaged again in a colloquy with Mr. Plaisted about Curry's request for another continuance, and Mr. Plaisted said for the first time only that Curry was "a little hesitant" about communicating with Mr. Plaisted because he had formerly been an Assistant United States Attorney ("AUSA"). The Court confirmed that he had last been an AUSA over 20 years earlier, and had been a defense lawyer for the past two decades. Transcript of May 15, 2006, p. A.11; see also Transcript of May 11, 2006, p. 54. The Court also knew that Mr. Nuzzi had also formerly been the First Assistant Essex County Prosecutor, and that Curry had no problems with that. Moreover, this Court had seen open, pleasant and continuous communication between Curry and the Plaisted/Solomon team for nearly 2 years. This Court's confidence in Curry's good communications with and confidence in Mr. Plaisted and Ms. Solomon was confirmed as this Court observed them at trial in regular, free-flowing, harmonious communication, whether the jury was present or not. Transcript of July 12, 2006, pp. 31-32. On days when Mr. Plaisted had been vigorously cross-examining a particular prosecution witness, as Curry was leaving the courtroom with his United States Marshal escort, the Court saw him smiling and commenting on how great a job Mr. Plaisted was doing. Curry is, and has always been, zealously represented by counsel of his choice privately retained by him.

CONCLUSION

This Court is ever mindful of Mr. Curry's right to retain his choice of counsel.²⁷ Mr. Curry is represented by a highly zealous, skilled and hard-working team of defense counsel and paralegals privately retained by him years before the trial, in whom he has expressed confidence to try the case in Mr. Nuzzi's absence. Balancing the factors set forth above, in light of this Court's awareness of Mr. Plaisted's deep knowledge of every nuance of this case, the Court knew that a further continuance of the May 15, 2006 trial date to seek a third lawyer to add to the team would in reality mean a nine month to one year continuance, would make it difficult or impossible for Mr. Plaisted to remain defense counsel, would pose prejudice to the Government's witnesses, and would not be in the interest of efficient judicial administration. Mr. Curry had already indicated to the Court that he was confident in being represented at trial by Plaisted's firm alone. Thus, for all of the above reasons, this Court granted a limited continuance from May 15, 2006 to May 22, 2006, to better enable Mr. Plaisted and Ms. Solomon to fully prepare for trial opening statements.

/s/Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.

²⁷ *United States v. Gonzalez-Lopez*, 126 S. Ct. 2557 (2006).



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October 4, 2011

Clerk, United States District Court
District of New Jersey
Martin Luther King Bldg. & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: United States v. Hakeem Curry
Docket No. 04-280

Dear Sir or Ma'am:

This firm represents Hakeem Curry in the above referenced matter. Enclosed please find an original and two copies of Mr. Curry's motion to vacate under 28 U.S.C. § 2255. Additionally, Mr. Curry respectfully requests a briefing schedule in this matter so that he can properly brief the issues involved in his motion. Mr. Curry further requests a copy of the record. Thank you for your time and attention, and if you have any questions, or need anything further, please do not hesitate to contact me.

Sincerely yours,



Andrew B. Smith

Enclosures

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	District: New Jersey
Name (under which you were convicted): Hakeem Curry	Docket or Case No.: Criminal No. 04-280 (FSH)
Place of Confinement: UPS Florence, CO	Prisoner No. 26188-050
United States of America v. Hakeem Curry	

MOTION

1. (a) **Name and location of court that entered the judgment of conviction you are challenging:**

United States District Court, District of New Jersey
 Martin Luther King Building & U.S. Courthouse
 50 Walnut Street Room 4015
 Newark, New Jersey 07101

(b) **Criminal docket or case number (if you know):** Criminal No. 04-280 (FSH)

2. (a) **Date of the judgment of conviction (if you know):** July 24, 2006

(b) **Date of sentencing:** February 7, 2007

3. **Length of sentence:** Life plus sixty (60) years.

4. **Nature of crime (all counts):**

Count One: conspiracy to distribute cocaine and heroin; Count Three: distribution and possession with the intent to distribute heroin; Counts Six through Fourteen: money laundering.¹

5. (a) What was your plea? (Check one):

(1) Not guilty (☒). (2) Guilty (☐). (3) Nolo contendere (no contest) (☐).

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one):

Jury (X). Judge only (☐).

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes (X). No (☐).

Petitioner testified at a pre-trial hearing relating to the removal of counsel of his choice. He did not testify at trial.

8. Did you appeal from the judgment of conviction? Yes (X). No (☐).

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Third Circuit

(b) Docket or case number (if you know): Docket No. 07-1467

(c) Result: Petitioner's conviction was affirmed.

(d) Date of result (if you know): July 30, 2009

(e) Citation to the case (if you know): United States v. Baskerville, 339 Fed. Appx. 176 (3d Cir. 2009)

(f) Grounds raised:

¹ Counts Two, Four and Five of the indictment did not involve Petitioner, but rather alleged co-conspirators.

- (1) THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN DENYING CURRY COUNSEL OF HIS CHOICE AT TRIAL.
 - (2) THE DISTRICT COURT'S DENIAL OF AN EVIDENTIARY HEARING TO DETERMINE WHETHER THE PROSECUTION DERIVED EVIDENCE FROM THE UNSEALED OR ILLEGALLY SEALED WIRETAPS, AND OTHER VIOLATIONS OF WIRETAP AUTHORIZATION ORDERS, WAS A REVERSIBLE ERROR.
 - (3) THE DISTRICT COURT'S DECISION TO ALLOW TESTIMONY ABOUT SEVEN YEARS OF UNCHARGED DRUG DEALING VIOLATED DEFENDANT'S RIGHTS UNDER FEDERAL RULE OF EVIDENCE 404(B).
 - (4) THE DISTRICT COURT'S DECISION TO ALLOW CROSS-EXAMINATION REGARDING SPECIFIC INSTANCES OF TRUTHFULNESS VIOLATED FEDERAL RULE OF EVIDENCE 608.
 - (5) THE DISTRICT COURT ERRED IN ARBITRARILY DENYING COUNSEL THE OPPORTUNITY TO CONDUCT ANY REDIRECT EXAMINATION OF A DEFENSE WITNESS.
 - (g) Did you file a petition for certiorari in the United States Supreme Court?
- Yes (X). No ().
- If "Yes," answer the following:
- (1) Docket or case number (if you know): Docket No. 10-29
 - (2) Result: Certiorari denied.
 - (3) Date of result (if you know): October 4, 2010
 - (4) Citation to the case (if you know): Curry v. United States, 131 S.Ct. 244 (2010)
 - (5) Grounds raised:
 - a. Whether defendants may, under the Fourth Amendment to the Constitution of the United States and Title III of the Omnibus Crime Control and Safe Streets Act of 1968 ("Title III") challenge the admissibility of evidence derived from improperly sealed wiretaps and whether defendants bear the burden of producing specific evidence of

the taint to evidence derived from admittedly unlawful wiretapping in advance of a taint hearing.

- b. Whether under the Sixth Amendment to the Constitution of the United States, a defendant should be allowed a reasonable continuance to obtain counsel of his choice where there was indisputably good cause to remove his previous attorney.
- c. Whether the prosecution should, as has become pervasive practice, be permitted to adduce highly prejudicial, detailed and lengthy testimony about years of uncharged crimes in drug conspiracy cases based solely upon an abstract recitation of the language of Federal Rule of Evidence 404(b).

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes (X). No ().

11. If your answer to Question 10 was "Yes," give the following information:

- (a)
 - (1) **Name of court:** United States District Court, District of New Jersey
 - (2) **Docket or case number (if you know):** Criminal No. 04-280 (FSH)
 - (3) **Date of filing (if you know):** July 28, 2006
 - (4) **Nature of the proceeding:** Motion for a new trial and judgment of acquittal.
 - (5) **Grounds raised:** Insufficient evidence to convict.
 - (6) **Did you receive a hearing where evidence was given on your motion, petition, or application?** Yes (). No (X).
 - (7) **Result:** Denied.
 - (8) **Date of result (if you know):** January 31, 2007
- (b) **If you filed any second motion, petition, or application, give the same information:**
 - (1) **Name of court:** United States Court of Appeals for the Third Circuit

(2) **Docket or case number (if you know):** Docket No. 07-1467

(3) **Date of filing (if you know):** August 13, 2009

(4) **Nature of the proceeding:** Motion for panel rehearing and rehearing *en banc*.

(5) **Grounds raised:** Third Circuit had erred in affirming the conviction, specifically by refusing to consider Appellant's Reply Brief.

(6) **Did you receive a hearing where evidence was given on your motion, petition, or application?** Yes (). No (X).

(7) **Result:** Denied.

(8) **Date of result (if you know):** April 1, 2010

(b) **Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?**

(1) **First petition:** Yes (X). No ().

(2) **Second petition:** Yes (X). No ().

(d) **If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:** N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: PETITIONER'S COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO LIST, IN ADVANCE OF PETITIONER'S REQUEST FOR A TAINT HEARING, SPECIFIC EVIDENCE THAT SHOULD HAVE BEEN SUPPRESSED AS TAINTED BY THE TENS OF THOUSANDS OF ILLEGAL AND IMPROPERLY SEALED WIRETAPS.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The government admitted to illegally and improperly sealing tens of thousands of wiretapped calls intercepted during the four-month period of October 10, 2003 through February 17, 2004² in violation of Title III of the Omnibus Crime Control and Safe Streets Act of 1968. Those illegal wiretaps comprised approximately two-thirds of the total wiretapped calls obtained, with surveillance beginning on September 12, 2003 and continuing until March 1, 2004. As a result, the District Court ordered that the illegal and improperly sealed wiretaps were not admissible at trial, but it did not conduct a taint hearing to determine if any evidence derived from the illegal and improperly sealed wiretaps should have been suppressed.

Petitioner's counsel did request a taint hearing to determine if the prosecution derived any evidence from the improperly sealed or illegally intercepted calls. However, counsel failed to list specific examples of evidence that the defense wanted suppressed. The government responded, without factual support, that it did not use the improperly sealed or illegally recorded wiretaps for any purpose. The District Court did not specifically address the issue in any opinion or order, and Petitioner's counsel failed to further pursue the issue.

There were several pieces of evidence used at trial that should have been suppressed, or at the very least, subject to a taint hearing. In fact, the government provided Petitioner's counsel with a virtual playbook of exactly what counsel should have asked to be suppressed, in the form of the wiretap warrants, which were provided to defense counsel. In a section of the February 17, 2004 wiretap warrant (the "February Affidavit"), entitled "Inadequacy of Normal Investigative Techniques," the government laid out for counsel exactly the evidence it derived from all of the wiretaps, including the tens of thousands of illegal and improperly sealed wiretaps.

The most important evidence derived from the tainted wiretaps was the identities of co-conspirators. More specifically, the February Affidavit noted that the wiretaps: (1) were needed to determine the scope of the organization, the subjects who were participants, and their roles in the organization; (2) helped the government to gather information on the chain of command after Ishmael Pray was shot; and (3) "assisted in the identification of certain Subjects, including Atif Amin and Kareem Herrill." It further made clear that (1) informants could not provide complete information on conspirators; (2) undercover officers could not get close to leadership or otherwise discover the

² The government alleges that the wiretaps on Ishmael Pray's cell phone intercepted between October 10, 2003 and November 8, 2003 were properly sealed, but admitted that the wiretaps on Curry's cell phone during that period were not.

identity of the conspirators; and (3) search warrants would not tell law enforcement anything about the conspiracy. As such, it is clear (and was at the time) that these facts were derived from the tainted wiretaps and Petitioner's counsel accordingly should have moved to have any testimony by any of the co-conspirators, or information regarding them, suppressed on this basis, other than Petitioner, co-defendant Rakim Baskerville and Ishmael Pray, also the subject of the wiretaps. These co-conspirators would have included Lachoy Walker, the government's star witness, and David Lyons, who was also a government witness at trial.

Further, it is clear that there was a reasonable probability such testimony would have been suppressed had a taint hearing been ordered. For example, at trial it was revealed by the head of the DEA Task Force, George Snowden, that the Task Force did not know Walker's true identity until late January or early February 2004, during the time of the illegal wiretaps. It was further revealed at trial that once the Task Force identified Walker, and discovered that he had outstanding warrants, they decided to quietly move in and arrest him with the hope that he would cooperate. As such, had the above testimony been elicited at a taint hearing, Walker's testimony may well have been thrown out, given Snowden's insistence that they didn't discover who Walker was until the time of the illegal wiretaps. And without Walker, there was no case against Petitioner.³

Second, any and all surveillances done during the period of the illegal and improperly sealed wiretaps should have been suppressed. The February Affidavit made absolutely clear that physical surveillance depended on the wiretaps, and the government's witnesses at trial repeatedly noted the link between wiretaps and surveillance, and how wiretaps were essential to surveillance, as did the DEA 6s. There were dozens of surveillances done during the time frame of the illegal and improperly sealed wiretaps which were introduced at trial, and which were harmful to the defense.⁴

Additionally, the February Affidavit noted that the wiretaps had identified residences and a stash house; as such, Petitioner's counsel should have immediately called for the suppression of evidence obtained from the stash house -- the so-called "dungeon." Similarly, any evidence from any residences, such as Walker's, where the 100 bricks of heroin Petitioner was convicted of possessing were found, and the location where arrests were made should have also been the subject of motions to suppress, as the fruits of the concededly tainted wiretaps. There was also ample testimony at trial about sources of supply, customers, locations of operations, and storage facilities, all of which, given the February Affidavit, should have been the subject of motions to suppress or objections by Petitioner's counsel as derived from the illegal and improperly sealed wiretaps.

³ This evidence was critical, as there were never any drugs found on Petitioner, in his residence, or in any car the government alleged he owned.

⁴ In addition to suppressing the surveillances themselves, evidence obtained as a result of those surveillances would have been subject to suppression as well. For example, alleged co-conspirators Jason and Justin Hannibal were arrested in December of 2003, during the time of the illegal wiretaps. Had surveillance aided in their arrest, the evidence obtained as a result of that arrest would have been subject to suppression.

Finally, there were a large number of specific wiretaps that counsel could and should have selected from the more than 14,000 available that could have been the basis for a taint hearing. One such call, intercepted at a time when there was no warrant in place for wiretapping, was listed in Petitioner's Reply Brief to the United States Court of Appeals for the Third Circuit. The Reply Brief also argued, as Petitioner's counsel should have but did not, that all evidence collected from October 10, 2003 on should have been suppressed given the wealth of information obtained through those wiretaps. The illegal and improperly sealed wiretaps gave investigators the location of Petitioner and his alleged co-conspirators around the clock, for the entire period of October 10, 2003 until February 17, 2004, leading inexorably to the conclusion that the entire investigation was influenced by the illegal and improperly sealed wiretaps.⁵

Accordingly, Petitioner's counsel was ineffective for failing to list any specific evidence that should have been suppressed as tainted by the tens of thousands of concededly illegal and improperly sealed wiretaps. As a direct result of such failure, Petitioner was denied a taint hearing, which would have resulted in the suppression of evidence that would certainly have changed the result of the case.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes (). No (X).

(2) If you did not raise this issue in your direct appeal, explain why:

A claim of ineffective assistance must be raised in a motion under 28 U.S.C. § 2255, and may not be raised on direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes (). No (X).

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

⁵ In fact, Petitioner had information that suggested that one of the authors of the wiretap orders would have testified at a taint hearing that the whole wiretapping process was tainted.

(3) Did you receive a hearing on your motion, petition, or application?

N/A

Yes (). No ().

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes (). No ().

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes (). No ().

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND TWO: PETITIONER'S COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO DISCOVER, ANTICIPATE, PREVENT, AND/OR PREPARE FOR THE INEVITABLE CONFLICT OF INTEREST THAT FORCED PETITIONER TO PROCEED AT TRIAL WITH COUNSEL THAT HE DID NOT WANT OR TRUST, AND THAT WAS GROSSLY UNPREPARED TO TRY HIS CASE.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner hired Vincent J. Nuzzi, Esq. ("Nuzzi") because of his skill and reputation as a trial attorney. Petitioner retained the firm of Walder, Hayden & Brogan, P.C. (by James A. Plaisted, Esq.) ("Plaisted") based upon their skill and reputation with regard to legal research and brief writing. It is undisputed and indisputable from the record that Petitioner wanted Nuzzi to try his case; nor is there any question that Petitioner never wanted or intended to have Plaisted act as his trial counsel. However, Nuzzi knew, from the very beginning of his representation of Petitioner, that there was a potential conflict of interest presented by his representation of Petitioner. Specifically, Nuzzi knew that his client Raheem Webb was arrested with Jason and Justin Hannibul in December of 2003 and that the Hannibuls were indicted co-conspirators.

Nuzzi was also aware that part of the alleged conspiracy was the allegation that Petitioner paid the attorneys' fees of his alleged underlings in order to control them, and that Webb was clearly connected to Petitioner. Furthermore, for over a year prior to trial, Nuzzi was in possession of a wiretap recording that contained a conversation in which Petitioner discussed getting an attorney for Webb, and specifically mentioned Nuzzi by name. As such, Nuzzi should have known that he would be disqualified from representing Petitioner in the case and should have taken appropriate action, rather than waiting until the eve of trial to request removal, and leaving Petitioner without a genuine trial attorney, or at least counsel of his choice.⁶ In fact, the District Court made it clear on the record that Nuzzi should have known about and anticipated the conflict well before he brought it to the attention of the Court. Nuzzi's failure to timely identify and act upon the conflict was exacerbated when Nuzzi disappeared at trial, failing to actively assist in the defense as ordered by the Court.

Nuzzi's failure to recognize this conflict and to take action to disqualify himself in a timely manner that would prevent harm to his client, rather than determining, on the eve of trial, that the conflict was unwaivable and then asking to be removed at a time that was too late for Petitioner to obtain alternate trial counsel constituted the ineffective assistance of counsel. Moreover, it prejudiced Petitioner by forcing him to proceed at trial with an attorney that he did not trust and who was, by his own admissions, completely unprepared for trial.

(b) Direct Appeal of Ground Two:

⁶ In fact, Petitioner gave up, to his detriment, his speedy trial rights in order to continue to be represented by Nuzzi.

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes (). No (X).

(2) If you did not raise this issue in your direct appeal, explain why:

A claim of ineffective assistance must be raised in a motion under 28 U.S.C. § 2255, and ought not be included as a claim on direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes (). No (X).

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?
N/A

Yes (). No ().

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes (). No ().

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes (). No ().

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):