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(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)
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.  
09-cr-369-DMC  
v. :  
TRANSCRIPT OF  
PAUL W. BERGRIN, : TRIAL PROCEEDINGS  
Defendant. : . VOLUME 32  
-----x

Newark, New Jersey  
March 11, 2013

BEFORE:

THE HON. DENNIS M. CAVANAUGH, U.S.D.J.,  
AND A JURY

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.

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1       **APPEARANCES:**

2               **JOHN GAY, Assistant United States Attorney,**  
3               **STEVEN G. SANDERS, Assistant United States Attorney**  
4               **970 Broad Street**  
5               **Newark, New Jersey 07102**  
6               **On behalf of the Government**

7               **PAUL W. BERGRIN, ESQUIRE**  
8               **Defendant pro se**

9               **GIBBONS, PC**  
10              **One Gateway Center**  
11              **Newark, New Jersey 07102**  
12              **BY: LAWRENCE S. LUSTBERG, ESQ., and**  
13              **AMANDA B. PROTESS, ESQ.,**  
14              **Standby counsel for Defendant**

15       **ALSO PRESENT:**

16              **CIMINO LAW**  
17              **376 Hollywood Avenue**  
18              **Fairfield, New Jersey 07004**  
19              **BY: ALYSSA A. CIMINO, ESQ.**  
20              **On Behalf of Lemont Love**

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1 (Defendant present)

2 (Jury out)

3 THE COURT: Good morning.

4 Be seated.

5 You wanted to see me?

6 MR. GAY: Yes, Judge, briefly.

7 We sent a letter to the Court yesterday regarding  
8 the testimony of Lemont Love.

9 THE COURT: I haven't seen it.

10 MR. GAY: I apologize, Judge. Let me hand up a  
11 copy of it now. It's relatively short, and I can summarize  
12 the issues for you now --

13 THE COURT: Go ahead.

14 MR. GAY: -- which is, basically, Mr. Love is a  
15 witness for Mr. Bergrin. We received Jencks or reverse  
16 Jencks for him about what the substance of his testimony was  
17 going to be.

18 A large portion of that testimony appears to be  
19 his conversations with Richie Roberts, which Mr. Bergrin  
20 wants to introduce presumably for their truth.

21 That's rank hearsay, as explained in our letter,  
22 and if Mr. Bergrin wants to elicit this testimony, he should  
23 call Mr. Roberts, is the Government's position on that.

24 There are also in there -- there are statements by  
25 Mr. Love that he observed Richie Roberts I believe sneaking

1 cell phones into jail and selling marijuana to inmates in  
2 the jail.

3 THE COURT: He saw Richie Roberts?

4 MR. GAY: Allegedly. That's what his statement  
5 is, Judge.

6 So I don't believe that's in any way, shape or  
7 form relevant. Mr. Roberts is not a witness. He's not  
8 involved in this case in any way, shape or form. Mr. Love  
9 is certainly not a witness for the Government. So I don't  
10 understand how this could possibly be relevant.

11 Additionally, Judge, what Mr. Love appears to be  
12 testifying about is a statement or a conversation he  
13 allegedly had with F.B.I. agents in which they allegedly  
14 told him to lie. Although I guess there's an argument that  
15 he could say that that wasn't hearsay, we're not sure what  
16 the relevance of that is, since Mr. Love was not a witness  
17 for the Government.

18 So on those grounds, we're objecting to those  
19 portions of Mr. Love's testimony.

20 THE COURT: Mr. Lustberg?

21 MR. LUSTBERG: Judge, before you rule on this, did  
22 you have --

23 MR. GAY: It's attached to the letter.

24 MR. LUSTBERG: -- Mr. Love's statement, which  
25 might be useful.

1 THE COURT: No.

2 MR. GAY: It's attached to the letter, Judge.

3 THE COURT: I haven't read it. It's just been  
4 handed to me.

5 MR. LUSTBERG: The Government served this  
6 yesterday.

7 THE COURT: How about the first issue, as to the  
8 hearsay statements of Roberts?

9 MR. LUSTBERG: Okay. No, no, Mr. Bergrin will not  
10 elicit hearsay regarding what Roberts told him. Not only is  
11 it not relevant, it's hearsay, I mean, it's clear.

12 THE COURT: Okay.

13 MR. LUSTBERG: He's going to elicit a couple of  
14 types of statements that are nonhearsay. The first -- and I  
15 think some of this has been discussed with Your Honor  
16 before -- is verbal commands.

17 THE COURT: By the way, why did we wait until nine  
18 o'clock for this? We come here at 8:30 to do this. I've  
19 got the jurors sitting upstairs.

20 MR. LUSTBERG: Mr. Sanders did e-mail the Court  
21 over the weekend saying we wanted to --

22 THE COURT: Okay, but why didn't somebody say they  
23 wanted to see me at 8:30? Now, again, the jury is sitting  
24 upstairs, and I'm sitting here fooling around with this  
25 stuff while the jury is waiting.



1       served with a subpoena. We asked him to come down, and he  
2       voluntarily came down to do this, realizing that he would  
3       probably -- he would get a subpoena when he was down here.  
4       So I don't want to make it seem like he's trying to be  
5       evasive in any way, shape or form.

6               THE COURT: No, I'm not taking it that way.

7               MR. GAY: Okay.

8               THE COURT: But we're not putting this off any  
9       more.

10              MR. GAY: No, I'm not -- I was just informing the  
11      Court, Judge.

12              THE COURT CLERK: All rise.

13              (The jury enters)

14              THE COURT: You may be seated.

15              Good morning, ladies and gentlemen.

16              THE JURY: Good morning.

17              THE COURT: Had a very nice weekend, I hope. Nice  
18      weather.

19              We're ready to proceed, hopefully uninterrupted  
20      today.

21              Your next witness, Mr. Bergrin?

22              MR. BERGRIN: Detective Badim from the Newark  
23      police department, Your Honor.

24              Good morning, ladies and gentlemen.

25              THE JURY: Good morning.

1 THE COURT: Right up here, sir.

2 THE COURT CLERK: Would you stand right there?

3 Placing your left hand on the bible, raising your  
4 right hand:

5 A N T O N I O J. B A D I M, called as a witness on  
6 behalf of the Defendant, and having been duly sworn,  
7 testified as follows:

8 THE COURT CLERK: Please be seated.

9 Please state your name, spelling it for the  
10 record.

11 THE WITNESS: Detective Antonio J. Badim,  
12 B-a-d-i-m.

13 THE COURT: Go ahead, Mr. Bergrin.

14 MR. BERGRIN: Thank you.

15 DIRECT EXAMINATION

16 BY MR. BERGRIN:

17 Q. Good morning, Detective Badim.

18 A. Good morning.

19 Q. Are you employed, sir?

20 A. Yes, I am.

21 Q. Who are you employed with?

22 A. Newark police department, ballistics lab.

23 Q. And how long have you been employed by the Newark  
24 police department?

25 A. Approximately 19 years.

1 Q. And what assignments have you had as a Newark police  
2 officer?

3 A. I was a police officer, started in 1995. Then I ended  
4 up being transferred to Safe City Task Force, then  
5 robbery-homicide, and then to the ballistics lab.

6 Q. Sir, I'm going to call your attention to the period  
7 when you were in robbery-homicide and approximately January  
8 of 2004, as a matter of fact, within the first two weeks of  
9 January 2004. Were you working in robbery-homicide?

10 A. I believe so.

11 Q. I'm going to call your attention to a call that you  
12 received from me in reference to threats that were made on  
13 my life.

14 Did you have an occasion to respond to 572 Market  
15 Street in Newark, New Jersey?

16 A. As from what I recall, I did respond to that location,  
17 yes, I did.

18 Q. And do you have a report in reference to the report  
19 that was made on that date?

20 A. I conducted a report, but I don't have -- I haven't  
21 seen that report since I've been transferred or ever since  
22 this investigation happened.

23 Q. Do you know where the report is?

24 A. I have no idea, Your Honor.

25 Q. Did you try to look for it?

1 THE WITNESS: Sorry, Your Honor.

2 THE COURT: Close enough.

3 (Laughter)

4 Q. Did you try to look for it at any time?

5 A. No, I have not.

6 Q. Now, were you provided a microcassette, a recording of  
7 a telephone call or a threat that was received?

8 A. Yes, I did.

9 Q. And you had a chance to listen to that recording with  
10 me; correct?

11 A. Yes, I did.

12 Q. And can you describe to the ladies and gentlemen of  
13 the jury, I mean, I know it's a long time, to the best of  
14 your recollection, Detective, what the recording said?

15 A. Believe it or not, I mean, till this day, I mean, the  
16 only thing I recall was that you were threatened on the  
17 recording, but other than that, I don't -- I don't  
18 recollect.

19 Q. Do you recall the threats not only to me, but to my  
20 daughter, Ashley, and them knowing, you know, where she goes  
21 to school at Good Shepherd Academy, and calling them and  
22 contacting them also?

23 A. There was a threat onto your daughter, and from what I  
24 remember, that's about it.

25 Q. And the threat was to kidnap my daughter and to kill

1 me because I'm representing an individual?

2 MR. GAY: Judge, objection to leading questions  
3 here.

4 THE COURT: I'll sustain --

5 MR. GAY: He should ask him what he remembers and  
6 that's it.

7 THE COURT: I'll sustain. I think you can just  
8 ask him what he remembers.

9 Q. Do you remember who the threats were made by? Was it  
10 made by the Latin Kings against me?

11 MR. GAY: Objection, Judge, again. Leading  
12 question.

13 THE COURT: I think you are, Mr. Bergrin.

14 MR. BERGRIN: All right, Judge. I'm just trying  
15 to refresh his recollection. It's so long ago.

16 MR. GAY: No, he's trying to testify, Judge.

17 THE COURT: I'll give you a little leeway. Go  
18 ahead.

19 MR. BERGRIN: Thank you, Judge.

20 Q. Was there threats by the Latin Kings against me  
21 because I was representing Jeffrey Castro, who killed one of  
22 the Latin Kings, one of the leaders in Newark, New Jersey?

23 A. I haven't -- I don't recall. I don't recall who the  
24 threats were made by.

25 Q. And as you sit here today, you haven't reviewed your

1 report? You haven't reviewed your report in the case?

2 A. I haven't been made aware of this -- just as of  
3 Friday, that's when I was made aware of this -- this  
4 testimony here today.

5 Q. When you were made aware of your testimony, did you  
6 look for your report at any time?

7 A. No, I did not, because I was never subpoenaed.

8 Q. Do you have any recollection at all in reference to  
9 who made the -- who made the threats or who made the  
10 complaints against me?

11 A. No, I do not.

12 Q. Do you have any recollection at all as to who I was  
13 defending and who the person allegedly killed that I was  
14 defending?

15 A. No, I do not.

16 MR. BERGRIN: I have no further questions, Judge.

17 THE COURT: Ladies and gentlemen, just so you  
18 know, under normal circumstances, when a police officer  
19 comes into court, there are procedures they have to go  
20 through, as you can well imagine. Police get called to  
21 testify a lot of times, and they spend a lot of time. But  
22 this gentleman apparently was not, through no one's fault,  
23 but he was not subpoenaed, and he came in here voluntarily  
24 today. So I don't want the inference being -- because  
25 you've heard me chastise other witnesses who should have had

1 reports and should have reviewed them before they came in  
2 here, knowing full well they were coming in. This officer  
3 apparently had no idea he was coming in, so that's why, to  
4 be fair to him, he had no opportunity to review a report or  
5 anything else of that long ago. So I think that's a fair  
6 thing to say of him. And he testified as he testified.

7 Mr. Gay?

8 MR. GAY: I have no questions, Judge.

9 MR. BERGRIN: Judge, could we be heard at sidebar  
10 before we release this witness?

11 THE COURT: Yes.

12 (The following takes place at sidebar)

13 THE COURT: Yes?

14 MR. BERGRIN: Judge, obviously you know where I'm  
15 located and the position that I'm in as far as -- I had  
16 instructed my investigators well over a month ago to  
17 subpoena this witness, and -- I'm just putting this on the  
18 record.

19 THE COURT: Go ahead.

20 MR. BERGRIN: I want this Court to know.

21 THE COURT: I tried to make it clear that I wasn't  
22 blaming anyone.

23 MR. BERGRIN: No, but let me place this on the  
24 record.

25 THE COURT: Go ahead.



1           MR. BERGRIN: And to subpoena duces tecum the  
2           recording that he seized as well as his police report, okay?

3           I would only respectfully request, Judge, that I  
4           be able to ask him to go back to robbery-homicide to see if  
5           he could pull the report and pull the recording and have a  
6           chance to recall him within the hour. It's five minutes  
7           away.

8           THE COURT: Hold on. Hold on.

9           (The following takes place in open court)

10          THE COURT: Officer, Detective, do you have any  
11          idea as to how difficult it would be or easy it would be to  
12          find that report from 2004, or if it exists?

13          THE WITNESS: To tell you the truth, Your Honor, I  
14          have no idea where to even start to look for it. I mean, I  
15          was transferred out of that unit probably about six years  
16          ago, five years ago. I don't know if that unit is still up  
17          there or if they've moved around to different locations. I  
18          don't even know the case number, so I wouldn't even know how  
19          to start to begin with that.

20          (The following takes place at sidebar)

21          THE COURT: I was going to ask him to try to find  
22          it, but it's like probably trying to find a needle in a  
23          haystack. It's almost 10 years ago.

24          MR. BERGRIN: I know it is, but maybe he could at  
25          least make the effort, and, if he finds it, he can report



1 back to us?

2 THE COURT: All right. No further questions?

3 MR. GAY: Nothing, Judge, no.

4 THE COURT: All right.

5 (The following takes place in open court)

6 THE COURT: Detective, I know this may not be  
7 feasible or possible, but -- first of all, we appreciate the  
8 fact that you came in here as you did. I'm going to ask you  
9 if you would make an inquiry of the department -- I have no  
10 idea how the internal workings are or how difficult or easy  
11 it is to do this, but I would ask you to make an inquiry as  
12 to this incident and report back to Mr. Creegan -- he'll  
13 give you a phone number; he's my courtroom deputy -- just as  
14 to whether or not you made any headway and if there's any  
15 possibility you could locate either the recording or the  
16 police report.

17 THE WITNESS: Okay.

18 THE COURT: Would you just try to do that?

19 THE WITNESS: No problem, Your Honor.

20 THE COURT: I'd greatly appreciate it.

21 Scott, give the detective a phone number for him  
22 to call.

23 And if you could get back to us within a short  
24 period of time, like just within a couple hours, I'd  
25 appreciate it.

1 THE WITNESS: Yes, I'll try to --

2 THE COURT: I'm not saying you have to come back  
3 with something. I'd just like to know what the inquiry said  
4 and if there's any possibility of finding this. Fair  
5 enough?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Thank you.

8 THE WITNESS: Is there a case number or is there a  
9 date?

10 THE COURT: You know, this is why you're a  
11 detective.

12 THE WITNESS: Yeah, I know.

13 (Laughter)

14 THE WITNESS: If I go back to the records room  
15 and --

16 THE COURT: Mr. Bergrin, do you have a better  
17 date?

18 MR. BERGRIN: I have the case number of State v.  
19 Jeffrey Castro, and I have the date, Judge.

20 MR. GAY: But that's --

21 THE COURT: That's not the case, though. I'm  
22 talking about the --

23 MR. BERGRIN: Your Honor, I don't have the --

24 THE COURT: Do you have the date of when the  
25 alleged --

1 MR. BERGRIN: It was January of 2004, Your Honor.

2 THE COURT: Paul Bergrin, January 2004.

3 THE WITNESS: Okay. Can you write that down for  
4 me?

5 THE COURT: Okay?

6 THE WITNESS: I'll make an attempt.

7 THE COURT: Thank you. You may step down, sir.

8 THE WITNESS: Thank you. I appreciate it.

9 THE COURT: Next witness.

10 MR. BERGRIN: Detective Sergeant Joseph  
11 Conzentino, Judge.

12 THE COURT: And, Scott, maybe if you take the  
13 detective's number so you know him to reach him.

14 THE WITNESS: Your Honor, I have a death in the  
15 family, so -- and I will be -- Wednesday, I'll probably --  
16 tomorrow, I won't be here, but --

17 THE COURT: Just let us know how you do.

18 THE WITNESS: Okay, great.

19 (Witness excused)

20 THE COURT: All right. Next witness?

21 Up here, sir.

22 THE WITNESS: Good morning, Your Honor.

23 THE COURT: Good morning.

24 THE COURT CLERK: Please remain standing.

25 Placing your left hand on the bible, raising your

1 right hand:

2 J O S E P H C O N Z E N T I N O, called as a witness on  
3 behalf of the Defendant, and having been duly sworn,  
4 testified as follows:

5 THE COURT CLERK: Please be seated.

6 THE WITNESS: Good morning, everyone.

7 THE JURY: Good morning.

8 THE COURT CLERK: Please state your name, spelling  
9 it for the record.

10 THE WITNESS: My name is Joseph Conzentino,  
11 C-o-n-z-e-n-t-i-n-o.

12 THE COURT: Go ahead, Mr. Bergrin.

13 DIRECT EXAMINATION

14 BY MR. BERGRIN:

15 Q. Good morning, Detective.

16 A. Good morning.

17 Q. How are you, sir?

18 A. I'm doing well, thank you.

19 Q. Are you presently employed, sir?

20 A. Yes, I am.

21 Q. Who are you employed with?

22 A. I'm employed by the City of Newark police department.

23 Q. And how long have you been employed by the City of  
24 Newark police department?

25 A. I start my 25th year the 17th of this month.

1 Q. Congratulations.

2 A. Thank you.

3 Q. What rank do you presently hold?

4 A. Detective sergeant.

5 Q. And what squad are you assigned to?

6 A. I'm assigned to the narcotics and gang enforcement  
7 division.

8 Q. And how long have you been assigned to that division,  
9 sir?

10 A. Approximately 10 years.

11 Q. I'm going to call your attention to May of 2008, sir.

12 Do you know me, sir?

13 A. Yes, I do.

14 Q. And how do you know me, sir?

15 A. I know you're an attorney. I know you represented the  
16 police union. And I know you through different encounters  
17 with the different trials, different things of that effect.

18 Q. Sir, I'm going to call your attention to approximately  
19 May of 2008 on Bloomfield Avenue in Newark.

20 Did you have an occasion to witness a --  
21 essentially an assault upon me by an Alejandro Castro?

22 A. I can't recall the date. I do recall there being an  
23 altercation, which I thought was more of a heated verbal  
24 altercation to my observation, but I do recall an encounter  
25 with a Hispanic individual, but it was more, like I said, in

1 my presence, I thought it was more heated verbal. Upon  
2 being alerted by yourself that it was your client and that  
3 there was no further police involvement, I left.

4 Q. Did any -- were you told anything by me in reference  
5 to who this individual was?

6 A. I really can't recall, I'll be honest.

7 Q. Were you told anything in reference to his immigration  
8 status?

9 A. I can't recall that either.

10 Q. Were you told anything by me in reference to what he  
11 did for a living?

12 A. I can't recall. It's 2008.

13 Q. Do you remember speaking to my investigators,  
14 Detective Sergeant Conzentino?

15 A. No. When would I have spoken to your investigators?

16 Q. Did you ever speak to any investigators in reference  
17 to this case?

18 A. Today. Just now.

19 Q. Did you ever speak to anybody before this?

20 A. About this case?

21 Q. Yes.

22 A. No. Just the F.B.I. agent that I called for guidance  
23 as to when I had to appear. That was it.

24 Q. Did you ever speak to any investigators in reference  
25 to what I had told you about this individual?

1 MR. GAY: Judge, objection. This is asked and  
2 answered.

3 THE COURT: I think he said no, but I'll let him  
4 answer the question.

5 A. I really can't recall speaking to anyone regarding  
6 this.

7 MR. BERGRIN: No further questions, Judge.

8 THE COURT: Anything, Mr. Gay?

9 MR. GAY: Just one question.

10 CROSS-EXAMINATION

11 BY MR. GAY:

12 Q. Detective, you said during Mr. Bergrin's questioning  
13 that Mr. Bergrin told you that this individual he was in the  
14 dispute with was his client? Is that correct?

15 A. That is correct.

16 Q. And then after that, that Mr. Bergrin didn't want any  
17 further police action at that point; is that correct?

18 A. That is correct. To my knowledge.

19 MR. GAY: Okay. No further questions.

20 THE COURT: Anything further?

21 MR. BERGRIN: No. Thank you.

22 THE COURT: Detective, thank you. Appreciate it.

23 THE WITNESS: Thank you, Your Honor. Have a good  
24 day.

25 (Witness excused)



1 MR. BERGRIN: May we approach one more time,  
2 Judge?

3 THE COURT: Yes.

4 (The following takes place at sidebar)

5 THE COURT: Yes?

6 MR. LUSTBERG: Let me give you an update, Judge.

7 The last witness is Lemont Love, who's the subject  
8 of this application that the Government made over the  
9 weekend. He was supposed to be here, but the Marshals have  
10 told me that for some reason, there was some delay getting  
11 him here, and he's not going to be here until 11.

12 THE COURT: Well, how long is he going to testify?

13 MR. LUSTBERG: Very briefly. I assume. I mean,  
14 you've seen the proffer, and it's --

15 THE COURT: Okay. Well, then, I have a question:  
16 What do we do then?

17 MR. LUSTBERG: Well, we just filed, because you  
18 had asked us to, there were four witnesses that were writted  
19 for the 14th and the 19th. You had asked us to do a proffer  
20 so you can make a judgment as to what to do. We've  
21 eliminated two of them from the list --

22 THE COURT: So there's two.

23 MR. LUSTBERG: -- so there's now two left. I just  
24 literally a minute ago, because I didn't know, just sent a  
25 letter to the Court giving you a proffer as to the other two



1       so you could make your call on that. And that will be that.

2               THE COURT: Okay. Well, then, what -- then are  
3       you going to rest?

4               MR. LUSTBERG: Well, we really -- yes, I mean,  
5       there's no --

6               THE COURT: Is Mr. Bergrin going to testify?

7               MR. LUSTBERG: That's his choice.

8               THE COURT: But I've got to know because we have  
9       an open day. He can testify now. I'm not putting the case  
10      off again. If he's going to testify, we're going to do  
11      that. I could have made him testify Friday, and I did not,  
12      purposely; I wanted to give him time to think about it, and  
13      he had the weekend. But I'm not going to send this jury  
14      home again after 10 minutes' worth of testimony and then  
15      come back and say we're going to start again tomorrow.  
16      We're going through today.

17              So, Mr. Bergrin, if you plan on testifying, you  
18      can start right now.

19              Do you want to take a minute and talk to  
20      Mr. Lustberg about it?

21              MR. BERGRIN: There's no need to talk, Judge. I'm  
22      not going to testify.

23              THE COURT: You're not going to testify.

24              MR. BERGRIN: No.

25              THE COURT: And you say this witness --

1 MR. LUSTBERG: He was supposed to be here.

2 Apparently, there was some -- I can't explain what the delay  
3 was. He's just in Northern State Prison, so he's right  
4 here, but --

5 THE COURT: Which Marshals told you that?

6 MR. LUSTBERG: Lisette.

7 THE COURT CLERK: The delay isn't with the  
8 Marshals. It's with Northern State Prison.

9 MR. LUSTBERG: It's the Department of Corrections.  
10 It's not their fault.

11 THE COURT: I just want to get on the record as to  
12 what's going on.

13 MR. LUSTBERG: They're going to text her as soon  
14 as they get here.

15 And, I mean, they're awesome. They're awesome.  
16 The Marshals are fantastic.

17 THE COURT: I know. They've been great.

18 Marshal, I just wanted to get on the record what  
19 happened to this guy that they didn't deliver him.

20 A DEPUTY MARSHAL: He was scheduled to be here.

21 THE COURT: This is Mr. Love?

22 A DEPUTY MARSHAL: Yes. The writ was originally  
23 for tomorrow. When they called central transport to change  
24 it for today, central transport usually takes more notice,  
25 but the earliest they could get him here was 11 o'clock, and

1       they're the ones that do the transportation.

2               THE COURT:   He should be here by 11?

3               A DEPUTY MARSHAL:   He should be here by 11.

4               MR. LUSTBERG:   Judge, this will give us a chance  
5       to hash out those issues that we raised in the Government's  
6       letter.

7               THE COURT:   Okay.

8               (The following takes place in open court)

9               THE COURT:   Ladies and gentlemen, from the looks  
10      of it, we have one more witness.   There was an issue of  
11      getting him here.   He was supposed to have been at nine  
12      o'clock.   It looks like he won't be here till 11 o'clock.

13              The clock's wrong.   We pushed our clocks ahead, so  
14      now it's an hour and 10 minutes off.

15              (Laughter)

16              THE COURT:   So anyway, I apologize, but I think  
17      you're going to have to go upstairs and relax a little bit  
18      until the witness gets here, and then we're going to be  
19      close to the end.   Okay?

20              Please don't discuss the case.

21              THE COURT CLERK:   All rise.

22              Just place your stuff on your chairs, please.

23              (The jury exits)

24              THE COURT:   Be seated.

25              All right.   Since we have a little bit of a break

1 believe that Mr. Bergrin has been diligent in endeavoring to  
2 secure the attendance of these witnesses.

3 See Young v. U.S., 223 F. 941 (C.C.A. 4th Cir. 1915).

4 This is not a question of a short delay, and the Court is  
5 not persuaded that the materiality of the witnesses requires  
6 such a continuance. Additionally, the Court notes that  
7 various witnesses called by the defense, at great  
8 inconvenience to the Marshal Service and the Court, have  
9 been produced at this Court only to plead their Fifth  
10 Amendment right and not testify. While there is no  
11 guarantee that these witnesses too would plead the Fifth,  
12 the Court will not grant the continuance on the chance the  
13 two witnesses do decide to testify. I also believe that  
14 this would be an improper imposition on the jury, who have  
15 been very good so far and have put up with a number of  
16 delays because of witnesses failing to show up on time.

17 As the continuance is neither appropriate nor  
18 necessary at this time, the Court denies the motion.

19 All right. Would you knock on that door and see  
20 if my clerk is there?

21 MR. BERGRIN: Judge, could I have five minutes  
22 with the witness?

23 THE COURT: Five minutes with what witness?

24 MR. BERGRIN: With Mr. Love, Judge.

25 THE COURT: I thought he was -- you gave me a

1 two-page statement of what he's going to testify to. What  
2 do we need five minutes for?

3 MR. BERGRIN: Yes, Your Honor. My investigator  
4 spoke to him, but I haven't spoke to him, Judge. I mean,  
5 obviously you know I can't speak to him. Obviously I didn't  
6 go see him.

7 I'm just asking for a slight indulgence with the  
8 Court. We've waited this long. Just give me five minutes,  
9 please, Judge.

10 THE COURT: All right.

11 A DEPUTY MARSHAL: The jury is here.

12 THE COURT: The jury is here?

13 All right. Hold onto the jury for a minute.

14 Speak to him right there, Mr. Bergrin.

15 Ms. Cimino was brought in as counsel.

16 MS. CIMINO: I did speak to him, Judge. I just  
17 want to know if you want me here during this conversation,  
18 or it's not necessary?

19 THE COURT: Do you think it's necessary?

20 MS. CIMINO: I would just like to be here.

21 THE COURT: Okay.

22 MS. CIMINO: I have read the affidavit as well.

23 (Off the record discussion between the Defendant and  
24 the witness with Alyssa Cimino, Esq., appointed counsel for  
25 the witness, present)

1 MR. BERGRIN: Thank you.

2 THE COURT: Would you ask Scott to bring the jury  
3 in?

4 MR. BERGRIN: Thank you, Judge.

5 THE COURT: Okay.

6 MR. BERGRIN: Thank you very much.

7 THE COURT CLERK: All rise.

8 (The jury enters)

9 THE COURT: Be seated.

10 Okay. Scott, please swear in the witness.

11 THE COURT CLERK: Placing your left hand on the  
12 bible, raising your right hand:

13 L E M O N T L O V E, called as a witness on behalf of the  
14 Defendant, and having been duly sworn, testified as follows:

15 THE COURT CLERK: Please be seated.

16 Please state your name, spelling it for the  
17 record.

18 THE WITNESS: Lemont Love, L-e-m-o-n-t, Love,  
19 L-o-v-e.

20 THE COURT: Go ahead, Mr. Bergrin.

21 MR. BERGRIN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. BERGRIN:

24 Q. Mr. Love, how old are you, sir?

25 A. I'm 32.

1 Q. And are you presently incarcerated?

2 A. I am.

3 Q. Sir, where are you incarcerated?

4 A. Northern State Prison. It's in Newark, New Jersey.

5 Q. And how long have you been there, sir?

6 A. Since 2011.

7 Q. For the benefit of the jury, can you just go through  
8 your prior criminal history? I don't have a rap sheet on  
9 you. I'm sorry.

10 A. In 2001, I lost a trial for --

11 THE COURT: You're going to have to stay closer to  
12 the mike. I don't think they can hear you. Keep your voice  
13 up, please. Thank you.

14 THE WITNESS: Yes, Your Honor.

15 A. In 2001, I received a conviction, I lost a trial for  
16 an eluding charge.

17 Q. And based upon that eluding -- was that a  
18 second-degree eluding?

19 A. It was a second-degree eluding.

20 Q. And how much time did you get?

21 A. I had a six flat.

22 Q. When you say "a six flat," you mean six years in state  
23 prison?

24 A. Six years in state prison, that's correct.

25 Q. And was that your first criminal offense?



1 A. Yes, it was my first criminal offense.

2 Q. Okay. What happened after that?

3 A. In 2007 -- I mean, 2006, I caught another charge with  
4 the police, it was for resisting arrest. And 2007, January,  
5 I got another eluding, and in 2007 again, I got a drug  
6 charge, and 2009, I had another drug charge, which I'm  
7 currently serving a 10 flat, 10-year sentence for that.

8 Q. And what is your present sentence that you're serving,  
9 sir?

10 A. I'm serving, for those four convictions, I got 10 with  
11 a five, and then I got a 12 with an 85 for robbery, second  
12 degree.

13 Q. Do you know me, sir?

14 A. Yes, I do.

15 Q. Can you explain to the ladies and gentlemen of the  
16 jury how you know me?

17 A. Paul Bergrin is an attorney, criminal attorney, and I  
18 retained him to represent me in several cases.

19 Q. And did I represent you at one point, sir?

20 A. Yes, you represented me.

21 Q. And what was that for?

22 A. It was for the four --

23 Q. Try to speak up, Mr. Love.

24 THE COURT: Yes, you're going to have to speak up  
25 more.



1 THE WITNESS: Yes, Your Honor.

2 MR. BERGRIN: Can everybody hear him?

3 I'm sorry. Okay.

4 A. It was for the four charges I outlined I'm currently  
5 serving a 10-year sentence for.

6 Q. And when did you meet me, Mr. Love?

7 A. I met you in 2008.

8 Q. Now, I'm going to call your attention to approximately  
9 2009, March 8th of 2009.

10 Did you have an opportunity to come to my office  
11 at 50 Park Place on the 10th floor in Newark, New Jersey?

12 A. I did.

13 Q. And is that the Robert Treat Center?

14 A. The Robert Treat Center.

15 Q. And did you meet one Thomas Moran at the office?

16 A. I met him -- he was there that day, but that wasn't  
17 the day I met him, I don't believe.

18 Q. Okay. Was he at the office when you went there?

19 A. He was.

20 Q. Can you explain to the ladies and gentlemen of the  
21 jury what happened when you met him? What happened in his  
22 office?

23 A. Actually, I was in Mr. Bergrin's office, and we were  
24 discussing my charges, and when I had left his office,  
25 Mr. Bergrin had told me to talk to Thomas Moran about a

1 witness in the case who was actually the confidential  
2 informant in my case.

3 I sat -- I went to Mr. Bergrin's -- I mean,  
4 Mr. Moran's office, and while I was in there, I observed him  
5 reach into his pocket, and he retrieved a silver case, and I  
6 thought it contained cigarettes at first, but then when he  
7 opened it up, I seen it was -- it was -- he had a knotted  
8 bag of cocaine in there, and -- keep going?

9 Q. What else happened?

10 A. All right. He bit the knot off the bag, sprinkled a  
11 little of the cocaine onto the case, the flat part of the  
12 case, and he proceeded to sniff it.

13 Q. Did he offer you any?

14 A. Yes, he did, he offered me some.

15 Q. Did he say anything about me?

16 A. Well, he declined -- well, I declined his offer, and  
17 then --

18 MR. GAY: Objection. Calls for hearsay, Judge.

19 THE COURT: How about it, Mr. Bergrin?

20 MR. BERGRIN: Doesn't go -- it doesn't go to the  
21 truth of the matter asserted, Judge.

22 THE COURT: No, I'll sustain the objection.

23 Q. Did you inform me about that?

24 A. I was told not to.

25 Q. Now, did there come a time that I was no longer your

1 attorney?

2 A. Yes.

3 Q. And do you remember when that was?

4 A. Yes. That was May of 2009.

5 Q. And who did you hire as your attorney?

6 A. Richard Roberts.

7 Q. And by the way, once I was arrested in May of 2009,  
8 who took over, who went into my office and is leasing that  
9 space now in the same office?

10 A. Richard Roberts.

11 MR. GAY: Judge, I'm going to object to relevance  
12 on this. What's the relevance of this?

13 THE COURT: What's the difference?

14 MR. GAY: Okay.

15 Q. Now, after meeting Mr. Roberts, did Mr. Roberts set up  
16 a meeting with you and the F.B.I.?

17 A. He had sent me to. He tried to get me to -- to make  
18 up stories about you.

19 Q. Did you meet with --

20 MR. GAY: Judge.

21 Q. Did you meet with the F.B. --

22 MR. GAY: Judge, I'm going to object to this.

23 THE COURT: Object to what?

24 MR. GAY: This is what we discussed previously,  
25 and this is rank hearsay that he's asking for.

1 THE COURT: Yes, you can't tell us what somebody  
2 told you. Okay? You can't tell us conversations. Okay?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Go ahead, Mr. Bergrin.

5 Q. Did you meet with members of the F.B.I.?

6 A. They came to see me, yes.

7 Q. And where did they come see you?

8 A. When I was in the CRAF facility in Trenton,  
9 New Jersey.

10 Q. And what, if anything, happened when you met with them  
11 at CRAF in Trenton, New Jersey?

12 A. Well, like Mr. Roberts, they were trying to get me to  
13 give false testimony against Mr. Bergrin, and I declined to  
14 do so, and they offered me complete immunity from the cases  
15 that I'm doing time for now if I was willing to tell on --  
16 make up a story or lie on Mr. Bergrin. And I told them that  
17 I wasn't going to lie for them.

18 Q. Do you see any of those agents in court today that  
19 tried to get you to lie against me and make up stories  
20 against me?

21 A. I wouldn't know what they looked like.

22 Q. Was one of them a female, blond female, thin, that you  
23 described to my investigators ?

24 A. Yes, one was a blond, thin female, and the other guy  
25 was a young male, look like he was probably new on the

1 force, but he was young.

2 Q. Now, when was the last time that you and I had any  
3 conversation at all, Mr. Love?

4 A. Two thousand and -- personal conversation?

5 Q. Yes, any conversation really at all.

6 A. 2009.

7 Q. And when the F.B.I. agents told you that, and they  
8 tried to get you to do that, what did you do? How did you  
9 respond?

10 A. I said I wasn't willing -- I said I'd be willing to  
11 testify, but whether I testified for Mr. Bergrin or against  
12 Mr. Bergrin, I'm going to testify to the truth, I'm not  
13 going to lie on him, and I don't care if you offer me  
14 complete immunity from my cases, which Mr. Bergrin has  
15 nothing to do with, I wasn't going to lie on Mr. Bergrin.

16 Q. And did we have any kind of personal relationship that  
17 I -- did I know you before I started to represent you on  
18 these cases in Middlesex County?

19 A. No, never met him a day in my life.

20 Q. Did the agents ever come back to you? Was there a  
21 second meeting with the agents?

22 A. I made it clear at the first meeting that I wasn't  
23 willing to lie on Mr. Bergrin, and they never came back, no.

24 Q. Do you know Yolanda Jauregui? Do you know Yolanda?

25 A. Yes.

1 Q. How did you meet Yolanda?

2 A. Through -- there was a person who was a drug dealer,  
3 and he used to purchase large quantities of cocaine from  
4 Yolanda. And I knew him, and --

5 Q. Do you know if I had any knowledge of that or I was  
6 involved in that?

7 A. No, Mr. Bergrin had no knowledge of any of that, any  
8 of the drug dealings.

9 Q. How do you know that?

10 THE COURT: You can't say what somebody told you.

11 Is it your testimony to the best of your knowledge  
12 Mr. Bergrin had no knowledge of it?

13 THE WITNESS: I know he had no knowledge of it.

14 THE COURT: Okay.

15 A. He had no knowledge of it.

16 THE COURT: Go on to the next questions.

17 Q. How do you know I had no knowledge of it?

18 MR. GAY: Judge, I think you sent a clear -- to  
19 make sure he doesn't testify to hearsay about this. I don't  
20 understand what this -- he answered the question. Obviously  
21 this is going to call for a hearsay response.

22 THE WITNESS: That's not true, Judge.

23 THE COURT: Can you answer the question without  
24 telling me what somebody said?

25 THE WITNESS: Yes, I can.

1 THE COURT: Go ahead.

2 A. I know he had no knowledge of it because he was never  
3 around, and -- I've never seen him with any dealings of it,  
4 he's never made mention of anything, and Mr. Bergrin's not  
5 even aware that I knew Yolanda.

6 Q. Is everything you've testified to the truth, Mr. Love?

7 A. Yes, it is.

8 MR. BERGRIN: I have no further questions.

9 THE COURT: Cross-examine?

10 MR. GAY: Yes, Judge.

11 CROSS-EXAMINATION

12 BY MR. GAY:

13 Q. Mr. Love, you mentioned that the 2001 conviction for  
14 eluding was your first conviction; is that correct? Is that  
15 what you said? During Mr. Bergrin's direct testimony?

16 A. I think I had a -- a contempt of court --

17 Q. Okay.

18 A. -- fourth degree. I think I got probation.

19 Q. Okay, and an harassment maybe, too, before that?

20 Harassment as well?

21 A. Possibly. I think it was a municipal charge, I'm not  
22 sure, small time.

23 Q. Okay. All right. Now, let's talk a little bit about  
24 your relationship with Mr. Bergrin. You said that he  
25 represented you on the four cases that you're currently



1       incarcerated on; is that correct?

2       A.     Yes.

3       Q.     And one of those is a drug distribution charge?

4       A.     That's correct.

5       Q.     Then there's a second drug distribution charge?

6       Correct?

7       A.     That's correct.

8       Q.     And there's also one that is an obstruction of  
9       justice; right?

10      A.     That's correct.

11      Q.     And then on top of that, you've got a burglary, armed  
12      and caused injury charge? Is that another one he  
13      represented you on at the time?

14      A.     No. I'm not sure what that charge was for.

15      Q.     Okay. An assault with or attempt to cause bodily  
16      injury and a robbery in the second degree?

17      A.     This was in 2010. Mr. Bergrin was incarcerated then.

18      Q.     Okay. So the ones he represented you on were the drug  
19      charges.

20      A.     Yeah.

21      Q.     Okay.

22      A.     And there's the two other ones.

23      Q.     There were two other ones besides that two?

24      A.     Yes, that he represented me.

25      Q.     Which ones were those, now?



- 1       A.       There was two drug charges that he represented me for.
- 2       Q.       Okay.
- 3       A.       There was the eluding, and the obstruction.
- 4       Q.       Okay. All right. Now, you testified about a
- 5       conversation you had with the F.B.I. Do you remember that?
- 6       A.       Yes.
- 7       Q.       With agents from the F.B.I.? And you said that you
- 8       told them that you were not going to lie on Mr. Bergrin; is
- 9       that correct?
- 10      A.       That's correct.
- 11      Q.       Okay.
- 12               Mr. Love, do you remember having a conversation
- 13      with somebody you referred to as your little brother on or
- 14      about December 15th of 2011, telephone conversation while
- 15      you were in jail?
- 16      A.       I don't know.
- 17      Q.       Okay. Mr. Love, you're aware that your telephone
- 18      conversations in jail are recorded, right? You know that?
- 19      A.       Yes.
- 20      Q.       Okay. Do you remember telling little brother that the
- 21      F.B.I. came to speak to you in February of 2011? Do you
- 22      remember telling them that, sir?
- 23      A.       (The witness shakes his head in the negative)
- 24      Q.       No?
- 25      A.       No.

1 Q. Do you remember telling little brother that you had  
2 information that could bury Mr. Bergrin?

3 A. No, I don't recall that.

4 Q. Do you remember telling him that you were not going to  
5 tell that to the F.B.I. because you're not a snitch?

6 A. I don't recall that.

7 Q. And do you remember telling that because you felt if  
8 you could help Mr. Bergrin win his case, he would help you  
9 win your case?

10 A. I don't recall that.

11 Q. And do you remember telling him that if you helped  
12 Mr. Bergrin win his case, he would owe his life to you?

13 A. I don't -- no.

14 Q. Okay. Now, just so we're clear, are you saying you  
15 don't remember having that conversation with little brother,  
16 or the conversation didn't happen?

17 A. I'm not sure. I don't see how it could happen because  
18 in 2011, I was in prison at the time, and the only way I  
19 could speak to him would be -- we're not allowed to put cell  
20 phone numbers on our pin list, so he only had a cell phone.  
21 That's the only way I would have been able to spoke to him.  
22 So I'm not sure what you're referring to.

23 Q. Okay, sir. If I played a -- that recording for you,  
24 do you think it would refresh your memory about what you  
25 said to little brother?

1       A.       No.

2       Q.       It wouldn't refresh your memory?

3       A.       I mean, it might.

4       Q.       Okay.

5               MR. GAY:  Maybe we should play it for him now.

6               Is there any way we can get it just on his  
7       headphones up there?  Not to the jury at this point, because  
8       this is just to refresh his recollection.

9               Are there headphones up there, sir?

10              THE COURT:  Yes, right there, next to you.  Turn  
11       the little button on the side until the green light goes on.

12              Am I going to be able to hear this?

13              MR. GAY:  I don't know, Judge.  I assume if we get  
14       it so it's on everybody's except the jury at this point.

15              THE COURT:  Well, the jury is not listening yet.

16              MR. GAY:  No, I understand, Judge.  That's what  
17       I'm saying, Judge.

18              THE COURT:  Okay.  Go ahead.

19       Q.       Mr. Love, can you --

20              THE COURT:  You've got to put your headphones on.

21       Q.       You've also got to put on -- let me give you a hand,  
22       if you don't mind.

23              This has to go on -- okay.  You've got it.

24              (The witness donned headphones.)

25              THE COURT:  What's the problem?

1 THE WITNESS: That was it.

2 THE COURT: All right. Go ahead.

3 (Recording played)

4 (Playback stopped)

5 THE COURT: Was that all of it?

6 MR. GAY: No, it was just working, Judge -- it's  
7 not working right here.

8 THE COURT: Well, I could hear some of it.

9 MR. GAY: No, I know. It's relatively short, but  
10 at least on my version, it was skipping around a whole  
11 bunch.

12 Wait a minute. Maybe it was my headphones.

13 Sorry.

14 Can we just replay it one more time?

15 (Recording played)

16 (Playback ends)

17 MR. GAY: Okay. That's it.

18 I don't know if that was the same exact thing you  
19 heard the first time, Judge.

20 THE COURT: Go ahead.

21 BY MR. GAY:

22 Q. Mr. Love, does that refresh your memory about the  
23 conversation you had with little brother?

24 A. Absolutely.

25 Q. Okay. So in that conversation, I'll ask you again,

1       sir: Did you tell little brother that you had information  
2       about Mr. Bergrin?

3       A.     No, you're -- no, you're saying it out of context.  
4       What I was saying was, because the Feds came to me and asked  
5       me to lie on him, I could bury him by making up a bunch of  
6       lies that they asked me to make up, which I wasn't willing  
7       to do.

8               THE COURT: Wait, wait, wait, wait. You're saying  
9       that's what was just on this tape? You heard that on this  
10      tape just now?

11             THE WITNESS: No, that's the context -- that's  
12      what I was saying when I was talking to my little brother.  
13      What was said on the tape was, I said I could bury him.  
14      What I meant by that was, I could bury him because the Feds  
15      had just came to see me and asked me to lie on him, which I  
16      didn't do.

17             THE COURT: But none of that's on the tape.

18             THE WITNESS: That's what I was -- that's why I  
19      was saying that.

20             MR. GAY: Judge, I think we should play this tape  
21      for the jury at this point.

22             THE COURT: So do I.

23             THE WITNESS: Play it.

24             THE COURT: I'll allow it.

25             (Recording played)

1 (Playback ends)

2 Q. Okay. Mr. Love, that's your voice on that tape; is  
3 that correct?

4 A. It is.

5 Q. And those are the words you said on that tape; right?

6 A. Those are the words I said.

7 Q. Okay. We'll let the tape speak for itself.

8 A. Okay.

9 Q. Now, let's talk a little bit about this information  
10 that you have against Mr. Bergrin that could bury him.  
11 Describe it to the jury.

12 A. It was whatever the Feds wanted me to make up. The  
13 information I could bury him, they told me I could give them  
14 a story and I'll get complete immunity for my case. Now, if  
15 I was willing to do that, I could bury him, make up a story,  
16 I could say anything I wanted to say. That was all they was  
17 interested in getting was a story. They don't want the  
18 truth. The truth is, Mr. Bergrin is not guilty of the  
19 crimes you're trying to pin on him.

20 Q. Of course not, sir.

21 Now, you talked a little bit about a discussion  
22 you had with Mr. Moran, correct, about an informant in your  
23 case? Is that correct? Do you remember, is that what you  
24 were talking about? Is that what you talked about on direct  
25 examination with Mr. Bergrin?

1       A.     I said I had a discussion with Mr. Bergrin about the  
2       confidential informant in --

3       Q.     Oh, confidential informant.  Would that have been  
4       Tyree Cole, sir?

5       A.     No, he's not a confidential informant.  Tyree Cole is  
6       what people call snitches.

7       Q.     He's a snitch.  Okay.

8       A.     Confidential --

9       Q.     Let's talk a little bit about Tyree Cole now.  And he  
10      was a snitch that Mr. Bergrin represented you on; right?

11      A.     Mr. Bergrin -- when Mr. Bergrin came --

12      Q.     No, sir, please answer the question.

13               MR. BERGRIN:  Wait, Judge.  Wait, wait, wait.  
14      He's trying to answer the question.

15               MR. GAY:  No, he's not trying to answer the  
16      question.

17               MR. BERGRIN:  No.

18               THE COURT:  Hold on.  Hold on.  Let me have the  
19      question --

20               MR. BERGRIN:  Let him answer the question.

21               THE COURT:  Let me have the question read back.

22               (Record read)

23               THE COURT:  Okay.  Can you answer that question?

24               THE WITNESS:  I can.

25               THE COURT:  Go ahead.



1       A.       He represented me on that case.

2       Q.       Okay. But what I'm saying is, Tyree Cole is a snitch  
3       on the case that Mr. Bergrin represented you on; right? One  
4       of the cases?

5       A.       Yes.

6       Q.       Okay. Now, did you have plans to kill Tyree Cole to  
7       prevent him from testifying against you, sir?

8       A.       Absolutely not.

9       Q.       Okay. Do you remember any e-mails that you sent to  
10       anyone or text messages indicating Tyree was your only  
11       problem?

12       A.       No.

13       Q.       Or any e-mails like that, sir, or text messages?

14       A.       No.

15       Q.       Do you remember talking about somebody else named  
16       Crystal, that you were going to knock her teeth out if she  
17       was going to snitch on you?

18       A.       No.

19       Q.       Don't remember anything like that, sir?

20       A.       No.

21       Q.       Do you remember sending other e-mails threatening to  
22       kill somebody else named Julia Shah?

23       A.       No.

24       Q.       How about threatening to rape somebody named Julia  
25       Shah? Any text messages relating to that, sir?



1 A. No.

2 Q. Do you remember sending any text messages indicating  
3 you were going to kill Julia Shah and her whole family if  
4 she didn't give you some tonight?

5 A. No.

6 Q. How about any text messages saying, I can rape you  
7 whenever I want to? Do you recall sending any text messages  
8 like that, sir?

9 A. No.

10 Q. How about, I'll rape you 'cause I can? Do you  
11 remember sending any text messages like that, sir?

12 A. I haven't sent a text message in three years. I don't  
13 remember any text messages.

14 Q. All right. Well, if I showed you something, do you  
15 think it would help you remember? These would have been  
16 text messages back in August of 2009 or thereabouts, sir.

17 A. Julia Shah is my fiancée, so if those messages exist,  
18 I'm sure I was messing around with my fiancée.

19 Q. Okay. So this is just messing around with your  
20 fiancée.

21 A. If they exist, that's exactly what they would be.

22 Q. Okay. So these are just like you're having fun? Is  
23 that what you're saying?

24 A. If they exist, I was joking with my fiancée. Julia  
25 Shah is my fiancée.

1 Q. Oh, joking. Okay. Okay.

2 Now, what about the -- was it joking about Tyree  
3 Cole as well, killing Tyree Cole? Is that a joke?

4 A. I don't know anything about that.

5 Q. You don't know anything about that. Okay.

6 But you did say he was a snitch on your case; is  
7 that correct?

8 A. Well, you asked if he was a confidential informant.  
9 He wasn't a confidential informant. There's a difference  
10 between a snitch and confidential informant.

11 Q. Okay. Well, now I understand that, sir. But you --  
12 the snitch was the word that came out of your mouth; right?  
13 You referred to him as a snitch?

14 A. Yes, because you referred to him as a confidential  
15 informant, which he's not.

16 Q. I understand. I appreciate it. I can appreciate it  
17 the distinction between the two.

18 A. It was Mr. Bergrin who told me not to do anything to  
19 him.

20 Q. Not to what? I'm sorry?

21 A. Mr. Bergrin came to -- when I got locked up in April  
22 2009, they put me and Tyree Cole on the same tier.

23 Q. Okay.

24 A. It was Mr. Bergrin came to see me, he said, don't do  
25 anything to him. I let Mr. Bergrin know that, that he was

1       there.

2       Q.       So why would he say that? Because -- was there some  
3       concern you would do something to him, sir? If Mr. Bergrin  
4       didn't tell you not to do something to him, would you have  
5       done something to him?

6       A.       Would I have?

7       Q.       Yes.

8       A.       I mean, would I have killed him? Absolutely not.

9       But --

10      Q.       Something short of that, maybe? What would you have  
11      done to him?

12      A.       Would I have gotten into a fight with him if he wanted  
13      to fight?

14      Q.       Okay. But killing him's out of the question.

15      A.       I was advised by my attorney --

16               THE COURT: Well, forgetting what you were advised  
17      about, was killing him out of the question?

18      A.       I have no intentions of killing him. I don't --  
19      that's not what I do. I don't kill anyone.

20      Q.       Okay. So now you mentioned that Mr. Bergrin told you  
21      to leave him alone? Is that what you're saying?

22      A.       Mr. Bergrin said he'll beat him up in court, don't do  
23      nothing to him.

24      Q.       Okay. I see. Do you remember Mr. Bergrin ever  
25      telling you to do what you have to do regarding Tyree Cole?

1 To do what you have to do, sir? Do you remember him saying  
2 anything like that?

3 A. No, I don't. He never said anything like that.

4 Q. Okay. But if he did say something like that, that  
5 would mean do whatever you want to, right --

6 MR. BERGRIN: Objection, Your Honor.  
7 Hypothetical --

8 Q. -- like kill him or --

9 THE COURT: Hold it.  
10 I'll sustain the objection.

11 MR. GAY: Okay.

12 No further questions at this time.

13 REDIRECT EXAMINATION

14 BY MR. BERGRIN:

15 Q. Who was Julia?

16 A. My fiancée.

17 Q. And how long has she been your fiancée?

18 A. We got engaged December 30th, 2009.

19 Q. Have you ever raped her?

20 A. Absolutely not.

21 Q. Have you ever even been accused of raping her?

22 A. No.

23 Q. In reference to Tyree Cole, he was placed on the exact  
24 same tier and the floor as you at the Middlesex County Jail;  
25 correct?

CHARLES P. MCGUIRE, C.C.R.

23 Q. You said you had -- you told someone about saying --  
24 Paul Bergrin. What did you mean?

25 THE COURT: He's answered this now --

CHARLES P. MCGUIRE, C.C.R.

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1 testified, would have stated that:

2 "In 2004, he owned Frame Tech Auto Collision on  
3 South 12th Street and Woodland Avenue in Newark, New Jersey;

4 "Sometime between August and November 2004, around  
5 six or seven o'clock, Anthony Young and Rakim Baskerville  
6 brought Mr. Hohn a handgun to melt down. Mr. Hohn did not  
7 melt the gun but later learned that Devon Jones and another  
8 individual melted the gun, and in fact saw the remnants of  
9 the melted gun as well as the marks on the floor from the  
10 welding torch.

11 "Mr. Hohn knew Anthony Young and Rakim Baskerville  
12 as he had previously repaired cars for them, and in fact  
13 identified photographs of Young and Baskerville as the  
14 persons who brought the gun to be melted.

15 "Mr. Hohn heard Young discuss paying \$200 for  
16 having the gun melted.

17 "The last time Mr. Hohn saw Young was in December  
18 2004. At that time, Young came to Mr. Hohn and asked him to  
19 test-drive a black Monte Carlo SS that Mr. Hohn was  
20 repairing for Mr. Young; among other things, Mr. Young had  
21 asked Mr. Hohn to install a 'trap' in the car, which  
22 Mr. Hohn had refused to do. Mr. Young took the keys, drove  
23 the car away and did not pay the \$1,300 he owed Mr. Hohn for  
24 the repairs. Mr. Hohn has never seen Young since that time.

25 "Mr. Hohn has told both the F.B.I. and

1 investigators for Mr. Bergrin that he believes he is Jesus  
2 Christ."

3 And it's signed by myself and John Gay.

4 THE COURT: Okay. Is that it, gentlemen?

5 MR. BERGRIN: That is, Judge.

6 THE COURT: All right.

7 Ladies and gentlemen, you've heard all the  
8 testimony in this case.

9 MR. GAY: Oh. Well --

10 THE COURT: Is there going to be a --

11 MR. GAY: Well, there are a couple brief things,  
12 Judge, so I don't want to --

13 THE COURT: Okay. What were you going to do?

14 MR. GAY: Well, it's really I think more some  
15 records that, if we can -- certified records we want to  
16 introduce.

17 THE COURT: Okay. But as far as testimony, we're  
18 finished?

19 MR. GAY: Well, unless there's some issue with us  
20 getting these records in without a witness is really the  
21 issue, Judge. That's why --

22 THE COURT: And this has never been discussed?  
23 What is it?

24 MR. GAY: Well, it's just -- I mean, we just --

25 THE COURT: What records?

1           MR. GAY: Judge, there is a certified copy of the  
2       Promis Gavel relating to Defendant Rasheem King's case. It  
3       was assigned --

4           THE COURT: Why don't you tell Mr. Bergrin and  
5       Mr. Lustberg what you're talking about.

6           (Off the record discussion between Government's  
7       counsel and the Defendant and standby counsel)

8           MR. GAY: And, Judge, there is one potential fact,  
9       I believe the Court would probably take judicial notice of  
10      it. It's just a particular date, the day of the week was a  
11      Tuesday and another day was a Wednesday.

12           And I think other than that, that would be it for  
13      the Government, Judge.

14           THE COURT: Any problem?

15           MR. BERGRIN: I just don't know what the relevancy  
16      is. It's a motion to dismiss.

17           MR. GAY: No, it's not a motion, it's a Promis  
18      Gavel printout of the case, and it's a certified copy of it,  
19      so, I mean, if you want, we could do a sidebar as to  
20      relevance, Judge.

21           MR. BERGRIN: Judge, let's do a sidebar for  
22      relevance.

23           (The following takes place at sidebar)

24           MR. GAY: It's really only the last page, Judge,  
25      that we would really want to get in just to make the records



1 complete. I believe it's the last page, if I could just  
2 see, make sure I'm pointing the Court to the correct one.

3 THE COURT: What is the purpose of this?

4 MR. GAY: The purpose is to show that Gerald  
5 Saluti, not Paul Bergrin, represented -- was the attorney of  
6 record on this case for Mr. King.

7 MR. BERGRIN: Judge, Gerald Saluti was my  
8 associate. He worked in my office. It's deceptive to the  
9 jury.

10 MR. GAY: Not at this time, he wasn't.

11 THE COURT: Wait a second. Wait, wait, wait.

12 And what is this about?

13 MR. GAY: This is about the individual who came in  
14 and testified that he put a tattoo of Mr. Bergrin on his  
15 arm --

16 THE COURT: Right.

17 MR. GAY: -- based on the work Mr. Bergrin did on  
18 this case. And I want it to be clear that Mr. Bergrin was  
19 not the attorney of record on this case.

20 MR. BERGRIN: It's deceptive, Judge.

21 MR. GAY: How is it deceptive?

22 MR. BERGRIN: It's irrelevant, too.

23 THE COURT: I don't understand "deceptive."

24 MR. BERGRIN: Because Saluti and Barnett worked  
25 for me, Judge, and they left my office in I believe 2009,



1       2010. So, I mean, how does --

2               MR. GAY: Well, this occurred prior to that,  
3       though, Judge. This is what -- what I can say is, there is  
4       -- and again, if we want to get into more details on this, I  
5       can have another witness come in and testify about the W-2  
6       records showing precisely when it was that Gerald Saluti  
7       worked in Mr. Bergrin's office, but it was not during this  
8       time period.

9               MR. BERGRIN: I just don't know what relevancy it  
10      has whatsoever.

11              THE COURT: Well, that's a different argument.

12              MR. GAY: Yes.

13              THE COURT: You don't, Mr. Bergrin, you don't  
14      disagree that these are accurate copies that he's offering.

15              MR. BERGRIN: No, I don't dispute that, Judge. I  
16      dispute definitely a 401 relevancy and a 403 confusion of  
17      the issues before this jury.

18              THE COURT: No, I'll allow them to go in. I don't  
19      see either of those being any kind of confusion.

20              MR. GAY: And, Judge, just while we're over here,  
21      what we're asking the Court to take judicial notice of is  
22      that August 5th of 2008 was a Tuesday and August 6th of 2008  
23      was a Wednesday.

24              THE COURT: Well, that can be easily enough found  
25      out by the Lawyers Diary.

1 MR. GAY: Absolutely.

2 THE COURT: Just show it to me.

3 You have no problem with that; right?

4 MR. BERGRIN: No, Judge.

5 MR. GAY: Okay.

6 (The following takes place in open court)

7 THE COURT: Okay. Ladies and gentlemen, so you  
8 have heard all of the testimony in the case. What is left  
9 is my instructions to you and the summations of the  
10 attorneys. Those will happen tomorrow.

11 So what I'm going to do is to --

12 Is there any problem with that?

13 MR. LUSTBERG: Yes, Judge, we should talk about  
14 scheduling.

15 THE COURT: Talk about scheduling?

16 MR. LUSTBERG: Yes.

17 THE COURT: Now, you mean?

18 MR. LUSTBERG: Yes.

19 (The following takes place at sidebar)

20 THE COURT: What's the problem with scheduling?

21 MR. BERGRIN: Judge, I am most respectfully, Judge  
22 -- I was under the impression that you told us on Friday, I  
23 apologize, but if I could have a full day, if I could have  
24 charges and summation on Wednesday morning, Judge.

25 THE COURT: Why?

1 MR. BERGRIN: Because I need time to prepare for  
2 summation. We just finished the defense case.

3 THE COURT: Well, you're not going to have to do  
4 your summation until --

5 MR. BERGRIN: I know.

6 THE COURT: -- until Wednesday.

7 MR. BERGRIN: But how can I work on summation,  
8 Judge?

9 Please let us have just one day, Judge. It's not  
10 asking for too much.

11 THE COURT: Well, first of all, I'm going to limit  
12 the time of summations. I'm going to limit the time of  
13 summations to three and a half hours each. So start there.

14 MR. BERGRIN: Okay.

15 MR. LUSTBERG: Even more so, it means that he  
16 needs to plan.

17 And we need a -- we're working on these jury  
18 charges, but to have these ready for you to deliver to them  
19 tomorrow, we just need a little time to get done with this.

20 MR. BERGRIN: Just give us one day.

21 MR. LUSTBERG: We're working hard. It's a  
22 162-page jury charge.

23 THE COURT: Well, if you recall, this is why I've  
24 been asking for three weeks about these jury instructions.

25 MR. LUSTBERG: Yes, you have, and I'm telling you

1       we're almost done.

2               THE COURT:   So you want, then, the instructions --  
3       the summations to begin on Wednesday.

4               MR. BERGRIN:   Yes, Your Honor, please.

5               THE COURT:   All right.   I'm rethinking giving the  
6       jury charge first.   I might just use Wednesday to do both  
7       sides of the summations, and that will end on Wednesday.

8               MR. LUSTBERG:   And if we can do the charge  
9       conference, then, tomorrow afternoon, that would be great.

10              THE COURT:   Tomorrow morning.

11              MR. LUSTBERG:   Is there any way we can do it in  
12       the afternoon, because I have something else in another  
13       court tomorrow morning.   We can do it at, you know,  
14       whenever, if we do it tomorrow afternoon.   And you won't  
15       have to have it ready to give to them if you give it to them  
16       after.

17              THE COURT:   How much of the charge is in doubt?

18              MR. LUSTBERG:   Not very much.   I mean, seriously,  
19       not very much.   I think this conference we can do in an  
20       hour, hour and a half, something like that.

21              THE COURT:   What's the earliest you can get here  
22       tomorrow?

23              MR. LUSTBERG:   One o'clock?

24              THE COURT:   Okay.

25              MR. BERGRIN:   Can I waive my appearance for that,

1 Judge?

2 THE COURT: Yes, if you wish, you can waive your  
3 appearance. Mr. Lustberg will handle that.

4 MR. BERGRIN: Yes.

5 THE COURT: All right then I'm going to tell them  
6 we're going to start summations Wednesday morning.

7 Were you trying to show me something?

8 MR. SANDERS: The calendar.

9 What's the dates?

10 THE COURT: Well, don't worry about me. Show  
11 them. If they agree, they agree.

12 MR. LUSTBERG: If you represent that's a Tuesday  
13 and Wednesday --

14 MR. GAY: August 5th and 6th.

15 MR. BERGRIN: Of this year?

16 MR. GAY: No. 2008.

17 MR. LUSTBERG: That's okay. That's okay.

18 THE COURT: All right. Let's go back.

19 (The following takes place in open court)

20 THE COURT: All right. Both sides have requested  
21 that I give them a little bit of time to prepare for their  
22 summation, so I'm going to give them tomorrow. So we are  
23 going to start summations first thing Wednesday morning.

24 And someone has an issue on Thursday about a --

25 A JUROR: I have to leave at 3:30.

1           THE COURT: We'll take care of that. That will be  
2   okay.

3           So please don't discuss the case. You haven't had  
4   everything yet. Don't read about it or watch anything about  
5   it, and certainly don't do any independent research.

6           We will see you for summations Wednesday morning,  
7   quarter to nine.

8           THE COURT CLERK: All rise.

9           Just place your stuff on the chairs.

10          (The jury exits)

11          THE COURT: You may be seated.

12          I am rethinking as to whether I'm going to give my  
13   charge before the summations because I've decided that I'm  
14   going to limit the time of summations to three and a half  
15   hours on each side. So that would be a full day. So I  
16   think what I'll do is have the summations begin tomorrow,  
17   and I'll give my charge after summations rather than before.  
18   So that would be Thursday morning.

19          So tomorrow, we should hopefully finish all of the  
20   charge.

21          I realize that the Government can have a short  
22   rebuttal, and I want to remind the Government that a  
23   rebuttal is just that. It isn't a second shot at a  
24   summation, and if we get into that, I'll stop you. So don't  
25   do that. It's just a rebuttal.

1                   So tomorrow will be the Government -- not  
2                   tomorrow, I'm sorry. Wednesday will be the Government's at  
3                   9 a.m. Then we'll break for lunch, have Mr. Bergrin do his,  
4                   and if there's time left, we've have the rebuttal. If not,  
5                   we'll do that first thing Thursday morning. Then I'll  
6                   charge, and the jury will get the case. All right?

7                   MR. LUSTBERG: May I ask, is there a time limit on  
8                   the rebuttal?

9                   THE COURT: Of course there is. Three minutes.

10                  (Laughter)

11                  MR. GAY: Judge --

12                  MR. LUSTBERG: That's what I was thinking.

13                  (Laughter)

14                  MR. GAY: I just want to make sure the record's  
15                  clear. I don't know that we -- I didn't actually mark the  
16                  exhibit we just talked about, so it's Exhibit 5714.

17                  THE COURT: Which one is this?

18                  MR. GAY: The Promis Gavel.

19                  THE COURT: Okay. That will go into evidence.

20                  MR. GAY: Which is now in evidence.

21                  (Government Exhibit 5714 marked in evidence)

22                  MR. GAY: And then I guess as far as the taking  
23                  judicial notice of the days of the week, I guess maybe you  
24                  can do that for the jury before the summations begin or  
25                  something like that.



1 THE COURT: No problem. It's no problem.

2 MR. GAY: Okay. Judge, the final thing I would  
3 say is that we have gone through the transcripts and gone  
4 through other things, and there is a -- somewhat of a  
5 laundry list of things that we just wanted to clarify that  
6 we're working with the defense now, but I think at some  
7 point before the summations, we're just going to put a  
8 number of things on the record.

9 THE COURT: Tomorrow at one o'clock we're going to  
10 do the jury instructions --

11 MR. GAY: That will be perfect.

12 THE COURT: -- so we'll take care of that at that  
13 time, too.

14 MR. GAY: Perfect.

15 MR. LUSTBERG: That sound great, and we'll  
16 continue -- Ms. Proress will continue to work with the  
17 Government to see if there's any issues with regard to that.

18 THE COURT: And Mr. Bergrin has requested to not  
19 have to be present for the instructions to help him prepare  
20 his summation. Correct?

21 MR. BERGRIN: That's correct, Judge.

22 THE COURT: Okay. Thank you. See you tomorrow at  
23 one o'clock.

24 (Matter adjourned until Tuesday, March 12, 2013,  
25 commencing at 1 p.m.)

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 35  
                                  -----x

8  
9   Newark, New Jersey  
   March 14, 2013  
10

11  
12  
13           BEFORE:

14                           THE HON. DENNIS M. CAVANAUGH, U.S.D.J.,  
                          AND A JURY  
15  
16  
17  
18

19   Reported by:  
   CHARLES P. McGUIRE, C.C.R.  
20   Official Court Reporter

21   Pursuant to Section 753, Title 28, United States  
22   Code, the following transcript is certified to be  
23   an accurate record as taken stenographically in  
   the above entitled proceedings.

24   s/CHARLES P. McGUIRE, C.C.R.  
25

CHARLES P. McGUIRE, C.C.R.

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1       **APPEARANCES:**

2               **JOHN GAY, Assistant United States Attorney,**  
3               **STEVEN G. SANDERS, Assistant United States Attorney**  
4               **JOSEPH N. MINISH, Assistant United States Attorney**  
5               **970 Broad Street**  
6               **Newark, New Jersey 07102**  
7               **On behalf of the Government**

8               **PAUL W. BERGRIN, ESQUIRE**  
9               **Defendant pro se**

10              **GIBBONS, PC**  
11              **One Gateway Center**  
12              **Newark, New Jersey 07102**  
13              **BY: AMANDA B. PROTESS, ESQ., and**  
14              **BRUCE LEVY, ESQ.**  
15              **Standby counsel for Defendant**

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1           (Defendant present)  
2           (Jury out)

3           THE COURT: Good morning.

4           All right. We are here for the issue -- well,  
5 there are two issues.

6           I never got a copy of the plea colloquy with  
7 respect to the prostitution charge that you asked me to take  
8 a look at, so I haven't seen that.

9           As to the other issue with respect to Velez, I did  
10 receive the transcript, which I read, of the summation, and  
11 we also pulled out the transcript or received the transcript  
12 of the original discussion during the trial of the issue of  
13 the videotape.

14           I'll hear you, Mr. Sanders.

15           MR. SANDERS: I'll be brief, Your Honor. I sent  
16 an e-mail this morning --

17           THE COURT: I got that, too.

18           MR. SANDERS: -- where I highlighted the two  
19 portions that we're talking about, and I want to put in  
20 context, one thing I didn't e-mail to the Court was, and I'm  
21 sure Your Honor remembers, yesterday, before summations  
22 began, this is one of the issues that we specifically  
23 raised, and I think we didn't say it at the time of trial  
24 when we moved in the entire videotape, but it was precisely  
25 because we were concerned about an argument like this, and  
when Mr. Lustberg wrote his letter saying, well, it was only

1       used for impeachment purposes, my reaction was, well, it  
2       didn't seem that way at the time, but we'll take him at his  
3       word, and then my response was then Your Honor should admit  
4       it, but with instructions that it's not coming in for its  
5       truth, it's just to put in context what -- the part  
6       Mr. Bergrin had elicited.

7               But now you've seen what Mr. Bergrin argued using  
8       that tape in summation, and he's clearing using it as  
9       affirmative exculpatory evidence, meaning evidence of not  
10      guilt, the statements are, that Carolyn Velez made are true  
11      on the tape and they support his innocence, and I think the  
12      only fair thing to do then is to reverse Your Honor's  
13      ruling, allow the tape to come in, and it's not going to be  
14      any -- nothing's going to be -- let me say it differently.  
15      The jury has no idea that Your Honor excluded the videotape.  
16      The last thing they heard was Your Honor granting the  
17      Government's application to put it in. Your ruling  
18      reversing that was made out of the jury's presence. So we  
19      would request that the tape come in with limiting  
20      instructions regarding, you know, its use. We're all for  
21      that but that --

22              THE COURT: But what would be -- why would there  
23      be any limiting instructions?

24              MR. SANDERS: I don't know if there would be. I  
25      mean, because I think since Mr. Bergrin used it for its

1 truth, then the entire thing should be before them. If the  
2 argument is, Oh, it was only for an impeachment, which I  
3 think it is not supported by the record, then I think we  
4 would go back to the position that the instruction should be  
5 something like, you can consider the other statements she  
6 made in evaluating Mr. Bergrin's argument that this was  
7 somehow inconsistent in her testimony. But that wasn't the  
8 argument that was made on summation.

9 THE COURT: Let me ask you this. Since we did not  
10 have the benefit of listening to the entire tape, is it your  
11 representation to me that there are other parts of the tape  
12 -- yesterday, according to the transcript, Mr. Bergrin  
13 argued that the tapes demonstrate throughout or some  
14 language like that for the total length of the tape at  
15 different places that Ms. Velez never said that Mr. Bergrin  
16 did anything wrong, exculpatory. Are you telling me that  
17 you believe there are parts of the tape that would  
18 contradict that?

19 MR. SANDERS: Not only -- answer to that is yes,  
20 and Mr. Minish, who has watched that tape several times  
21 start to finish, will explain why.

22 MR. MINISH: Yes, Judge, flat out, there are words  
23 in -- Ms. Velez saying, Mr. Bergrin told me this is a case  
24 where I can't tell the truth.

25 THE COURT: So she contradicts herself in the

1       tape?

2               MR. MINISH: No, it's not actually a  
3       contradiction, Judge. What Mr. Bergrin is doing is sort of  
4       mixing the ideas of motive and what Mr. Bergrin said. What  
5       Ms. Velez's point throughout the thing is, I'm doing it for  
6       my father, like, the impetus. What she -- what Mr. Bergrin  
7       is trying to imply is that he's the one who caused it in the  
8       sense of logistics. It's not logistics that her father --  
9       well, her father did both, I guess. But Mr. Bergrin is the  
10      one who was telling her, don't tell the truth, here's what  
11      you have to say, you have to do this. Her desire, I guess,  
12      to do it is to help her father because he has -- well, it's  
13      her father, number one --

14             THE COURT: Are there parts in the tape where  
15      Mr. Bergrin says that?

16             MR. MINISH: No, no, she says that.

17             THE COURT: I mean that she says Mr. Bergrin said  
18      that?

19             MR. MINISH: That -- not to tell the truth? Yes,  
20      absolutely, flat out.

21             THE COURT: And, Mr. Gay, what would be your  
22      intention if I were to allow this in to do in your rebuttal?

23             MR. GAY: Well, Judge, I'd like to get up and  
24      argue that Mr. Bergin's representations that this tape  
25      contains exculpatory material is incorrect, and that the



1 tape, in fact --

2 THE COURT: Well, except it does contain some  
3 exculpatory, but not --

4 MR. GAY: Well, I guess what I would say is,  
5 Judge, then, that his statement that the tape is  
6 exculpatory, because that's really what he's saying, the  
7 tape in its entirety is exculpatory, that that's not  
8 accurate, and therefore, I would probably request -- there  
9 was a very, very short portion of the tape that I've cued up  
10 and I'd be prepared to play for the jury so they -- to  
11 support my point on that.

12 THE COURT: Mr. Bergrin?

13 Mr. Levy?

14 MR. LEVY: Your Honor, first, just to back up a  
15 second, in the course of Mr. Bergrin's three and a half hour  
16 closing, the comments that we're discussing appear briefly  
17 on -- I don't mean to minimize them, they are what they are,  
18 but they appear --

19 THE COURT: Just a couple of pages where he talks  
20 about the Velez matter.

21 MR. LEVY: Right, beginning on page 8700. So, for  
22 example, where Mr. Bergrin says, over the course of --  
23 almost an hour and a half into the conversations,  
24 Mr. Bergrin during closing, appearing at the transcript on  
25 page 8700, he says that "Paul Bergrin never told me to lie

1       for almost an hour and a half into the conversation..."

2               IN fact, if you look at Ms. Velez's testimony on  
3       January the 29th of 2013, on page 1098, there's a question  
4       and answer that goes like this:

5               "Question" -- this is beginning on line 15 on page  
6       1098: "And didn't you tell them for approximately an hour  
7       and 20 minutes that Paul Bergrin never coerced you or  
8       influenced you in any way, that the only reason that you  
9       testified the way you did on behalf of your father on June  
10      24th and 25th is because your father threatened you, not  
11      anything that Paul Bergrin did?

12              "ANSWER: My father threatened me, yes, and you  
13      made up the story."

14              And then it goes on.

15              This is on page 1099:

16              "Isn't the fact that you told the investigator  
17      that you testified the way you did -- and please just answer  
18      my question -- based upon the fact that your father  
19      threatened to kill himself, not because of anything that  
20      Paul Bergrin did?

21              "ANSWER: Yes."

22              And he --

23              THE COURT: But, Mr. Levy --

24              MR. LEVY: My point is, Your Honor, what

25      Mr. Bergrin did on cross, maybe it was inartful in the sense

1       that he didn't --

2               THE COURT: On cross, or on summation?

3               MR. LEVY: On summation, I'm sorry -- and that he  
4       didn't make clear that he was talking about things that  
5       Ms. Velez admitted about the tape on cross-examination,  
6       that --

7               THE COURT: Here's my problem, though. My problem  
8       is that this was brought up before the summation began.  
9       This was an issue that we spent a little bit of time on  
10      during the trial. I made a ruling. There was further  
11      review. I reversed the ruling, I read my opinion into the  
12      record, and it was brought up yesterday, before the  
13      summations started, Mr. Gay brought it up to let it be  
14      known.

15              And inartfully or not, my reading of the summation  
16      is that Mr. Bergrin did exactly what the Government was  
17      arguing that he shouldn't be able to do, and that the Velez  
18      tape and the statements made therein are therefore no longer  
19      merely inconsistent -- offered for inconsistent statements,  
20      as inconsistent statements but are now being offered for the  
21      truth of the content. And he can't have it both ways. That  
22      was the argument that was made to have me keep the tape out,  
23      that it was only for the inconsistencies. But now,  
24      yesterday, Mr. Bergrin argued or stated in his summation  
25      that as a result of the content, it's exculpatory, that the

1 jury should find that he didn't do anything wrong. And I  
2 mean, it's not my guess: It's in black and white in the  
3 statement. I just read it this morning.

4 MR. LEVY: Your Honor, if I may, Mr. Bergrin is  
5 going to add to this, but the argument here is, first of  
6 all, when Mr. Sanders says the only fair thing to do is to  
7 let the whole thing in, I think that's a big ask, and I'm  
8 not sure that what happened here merits what the Government  
9 is asking, but the point that I'm trying to make, maybe not  
10 doing such a clear job of it, is that what Mr. Bergrin did  
11 on cross-examination, although he --

12 THE COURT: What he did, you're saying, was  
13 supported by the testimony of Ms. Velez in January.

14 MR. LEVY: Right, things she said about the tape  
15 in response to questions on cross. So it goes to  
16 credibility.

17 THE COURT: That might be so, but that doesn't  
18 change what occurred yesterday and what Mr. Bergrin did.

19 Mr. Bergrin, what do you have to say?

20 MR. BERGRIN: Judge, what I did, I mean, I read  
21 Carolyn Velez's testimony copiously before I prepared my  
22 summation, and what I did is, I mirrored exactly in my  
23 summation what she said. I never said that it -- I never  
24 used the word "exculpate" through it. What I told the jury  
25 is that this is what Carolyn Velez said, which is completely

1 consistent with the transcript and what she said.

2 I never at any time, under any circumstances,  
3 voided the Court's instruction to me. You told me that I  
4 can't argue that it -- I mean, what I did is, I argued her  
5 credibility. Here, she came into court and said that I  
6 coached her, so forth and so on, when the statement the day  
7 after the verdict repudiates that and affects her  
8 credibility, because what she said in the statement is the  
9 following. And everything that I argued is exactly what is  
10 contained in the statement, Your Honor. There's no  
11 deviation at all. I took the words exactly.

12 THE COURT: What do you say, Mr. Sanders?

13 MR. BERGRIN: And the other thing that's very  
14 important for this Court to consider is the timing as to  
15 when she said it. There's no incriminatory statements of me  
16 until a certain point in the tape after the investigator  
17 goes out of the room for the second time. If they say  
18 anything different, then this Court has to listen to the  
19 tape, because up until that point, there's nothing, Your  
20 Honor.

21 THE COURT: What do you say, Mr. Sanders?

22 MR. SANDERS: I'll let Mr. Minish address the last  
23 point. But the first point Mr. Bergrin made is that -- Your  
24 Honor heard the summation. When Mr. Bergrin wanted to show  
25 inconsistencies or argue that inconsistent statements were

1       made that impeached credibility, it was plain --

2               THE COURT: Let me have the transcript again.

3               MR. SANDERS: -- it was plain as day that he was  
4       doing that.

5               And here, and I'll just start off with the first  
6       excerpt that I sent this morning, right, which is 8699  
7       through 8700: "Carolyn Velez the day after the verdict in  
8       her mother's custody -- " -- okay, the day after the  
9       verdict. "She comes in and gives a recorded statement to  
10      the Essex County Prosecutor's Office, and in that recorded  
11      statement, she says that Paul Bergrin never told me to lie  
12      for almost an hour and a half into the conversation, Paul  
13      Bergrin never coached me."

14              Right?

15              And then the next excerpt is 8702 through 03,  
16      right? He says: "Carolyn Velez's statement to the  
17      investigator during almost the whole recording, the day  
18      after the verdict, that's reasonable doubt."

19              No one can, I think, reasonably interpret that as  
20      an attack on credibility. It's an argument that the  
21      statements on the tape are true, and they exculpate.

22              MR. BERGRIN: That's absolutely insane to even  
23      argue that, Your Honor. When someone's credibility is  
24      affected, that's reasonable doubt. I argued that from the  
25      time that I stood up before the jury about reasonable doubt,



1       credibility, when -- inconsistencies, bias. Your Honor,  
2       that's all I argued in my entire summation. That was the  
3       theme of my summation, how credibility, inconsistencies,  
4       motive, bias affects reasonable doubt, Your Honor. That was  
5       the entire theme of my summation, and there's no way the  
6       jury could not have understood that, Your Honor.

7               MR. MINISH: Judge, if I can just address  
8       factually for a second, Mr. Bergrin is just, one, factually  
9       wrong on his allegations, and clearly that's the reason why  
10      he wants to keep the tape out. If this tape said what  
11      Mr. Bergrin said it would, we wouldn't be having this  
12      argument. The jury could hear the tape, and if all it did  
13      was exculpate Mr. Bergrin, I would imagine he'd be very  
14      happy.

15             What this tape does again and again and again  
16      throughout the whole beginning of the tape the way the  
17      investigation went because, again, it's a young child kept  
18      in a room with a specific investigator is, what happened,  
19      what happened, what happened, and what you hear is Ms. Velez  
20      explaining, Mr. Bergrin told me to do this, Mr. Bergrin told  
21      me to do this, we talked about this, we talked about this,  
22      so did Yolanda, so did my father. And then towards the end  
23      of the tape, Mr. Bergrin is right, did anybody tell you to  
24      lie? Yes, Mr. Bergrin told me this is a case not to tell  
25      the truth, at the end.



1           THE COURT: Well, here's my problem, Mr. Bergrin.

2           I understand what you just argued. However, when  
3 reading your summation from yesterday, that's not what you  
4 said. And I'll read the portion, again, on page 8702, line  
5 23: "Carolyn Velez's statement to the investigator during  
6 almost the whole recording, the day after the verdict,  
7 that's reasonable doubt. Carolyn Velez testified about Paul  
8 Bergrin cursing at her on the telephone, but when she  
9 recounted that incident, when she recounted that incident to  
10 the Prosecutor's Office, when she was cooperating with them,  
11 she says that Norberto Velez grabbed her by the neck, he  
12 punched the cabinet, and that she went to sleep after that.  
13 Nothing about Paul Bergrin."

14           Then it goes on further: "The investigator  
15 questions her at the end of the tape: And Paul Bergrin  
16 didn't do this, I mean, Paul Bergrin didn't coach you on  
17 that.

18           "For almost the whole tape she says Paul Bergrin  
19 never told her to lie. In reference to the certification,  
20 she says that she was in Paul Bergrin's office," et cetera.

21           So, the point is, you're not just talking about  
22 credibility, you're talking about the content of the tape  
23 and the fact that the jury should accept it for what the  
24 statement is, not merely because it shows an inconsistency  
25 in what the witness said.

1           So I understand what you're arguing, but that  
2           which you said yesterday does not support that argument.

3           MR. BERGRIN: But what she said, Your Honor, the  
4           words that came out of her mouth, which is evidence, which  
5           is evidence, clear evidence, Your Honor, supports everything  
6           that I said, Your Honor.

7           THE COURT: But that's not what you said here.  
8           And this was precisely what the prosecution brought to the  
9           Court's attention yesterday before the summation, that being  
10          that they were afraid that you were going to try to use the  
11          content of that tape to demonstrate -- for exculpatory  
12          reasons rather than merely to demonstrate that they were  
13          inconsistent statements from Velez, and quite frankly, upon  
14          reading it, that's exactly what occurred.

15          I'm going to let Mr. Gay play those portions. I'm  
16          not going to put the whole tape into evidence, but I will  
17          let Mr. Gay play the portion that he wants.

18          Which portion do you want to play?

19          MR. GAY: Judge, it's -- we have the clip. I can  
20          -- it's about two minutes long.

21          THE COURT: Let's listen to it.

22          MR. GAY: We can play it now if you like.

23          MR. BERGRIN: Are we going to play the exculpatory  
24          part, too, Your Honor?

25          THE COURT: We're going to play the part that the

1 Government wants to play. I'm not playing the entire tape.  
2 I just said I'm not putting that --

3 MR. BERGRIN: Then I'm going to ask for an  
4 instruction by the Court to tell the jury that there's other  
5 parts that they can consider that were talked about --

6 THE COURT: Mr. Bergrin, quite frankly, this is a  
7 self-inflicted wound. You brought this on. You shouldn't  
8 have said what you said in your summation. Whether you  
9 meant to do it or not, I don't know, but the point is, you  
10 were warned about it, and you did it.

11 I think it's now unfair to the Government to tell  
12 them that they can't bring this out, I'm sorry.

13 MR. BERGRIN: But I think it's misleading to the  
14 jury also because there is parts that affected her  
15 credibility that were --

16 THE COURT: But you've already said that. You  
17 mentioned that.

18 MR. BERGRIN: But I think the Court should  
19 instruct the jury that they're hearing excerpts and that  
20 there were other parts that were played by Mr. Bergrin and  
21 there were other parts that were brought out.

22 THE COURT: Why would I have to give that kind of  
23 instruction? They heard the testimony, and they heard the  
24 argument.

25 MR. BERGRIN: Because it gives the jury the

1 impression, the wrongful impression, Your Honor, and it  
2 leaves them with the wrongful impression. How can you do  
3 that? It's so prejudicial.

4 MR. LEVY: Your Honor, even, if I might point out,  
5 even Mr. Minish, if I heard correctly, just admitted that  
6 yes, there is a part at the end where she says, yes,  
7 Mr. Bergrin didn't tell me to lie.

8 MR. MINISH: No. No, no, no. You heard me  
9 incorrectly.

10 THE COURT: But that was brought out.

11 I don't believe this needs any further limiting  
12 instruction.

13 I want to know what you're going to play, Mr. Gay.

14 MR. MINISH: We'll find the minute mark and we'll  
15 play it, Judge, but just for the record, again, Mr. Bergrin  
16 had the opportunity and did play during cross-examination  
17 the clip he wanted. He played that when she testified.

18 And, number two, for Mr. Bergrin to say, well, we  
19 want the other parts in but we don't want the whole tape in  
20 seems somewhat contradictory.

21 THE COURT: I've made my ruling. Show me the part  
22 you're going to play.

23 MR. BERGRIN: Judge, there's one thing I want to  
24 put on the record, though.

25 This Court precluded me from playing the tape. I

1       wanted to play other portions or a lot of the --

2               THE COURT: I offered to put the entire tape into  
3 evidence.

4               MR. BERGRIN: No, no, I understand that, Judge.  
5 You did.

6               THE COURT: Wait a minute.

7               I offered to let you put the entire tape into the  
8 evidence, which would have allowed you to play any or all of  
9 the parts that you want.

10              So don't say that I precluded you. I did not  
11 preclude you. I allowed -- I was about to let this tape go  
12 into evidence. So --

13              MR. BERGRIN: I understand, Judge.

14              THE COURT: -- the record will support that.

15              All right, show me the part you're going to play.  
16 This is it?

17              (Videotape played)

18              (Playback ends)

19              THE COURT: All right. Let's get the jury.

20              One hour, Mr. Gay.

21              MR. GAY: Yes, Judge.

22              Judge, I apologize. The one additional thing is  
23 the judicial notice of the -- that August 5th, 2008 was a  
24 Tuesday, August 6th, 2008 was a Wednesday. So I don't  
25 know --

1                   MR. GAY: Yes, Judge. That August -- it's  
2 actually two dates: August 5th of 2008 was a Tuesday, and  
3 August 6th of 2008 was a Wednesday.

4                   THE COURT: So we've taken that, you can accept  
5 that.

6                   All right. Mr. Gay.

7                   MR. GAY: Thank you, Your Honor.

8                   Good morning, ladies and gentlemen.

9                   THE JURY: Good morning.

10                  MR. GAY: I want to thank you for your patience in  
11 going through this long case. I'm going to try to be as  
12 brief as possible here, I promise.

13                  As I sat here yesterday listening to Mr. Bergrin's  
14 summation in the afternoon, I couldn't help but wonder  
15 whether I saw the same trial that he was talking about  
16 yesterday.

17                  And so I went back and I looked at the evidence,  
18 and I looked at the transcripts, and I picked out a couple  
19 of -- I'll call them discrepancies between what Mr. Bergrin  
20 told you yesterday and what the evidence was.

21                  I'm not going to go through every single one of  
22 them because I would be here, frankly, for probably five or  
23 six hours if I did that. But I am going to highlight a  
24 couple of them.

25                  Before I do that, though, I want to talk about a



1 couple of things.

2 The first is, Mr. Bergrin criticized the  
3 Government for not calling certain witnesses, like  
4 Edward Peoples, like Jamal Baskerville.

5 Now, Mr. Bergrin told you he's an experienced  
6 lawyer. He knows full well that the Government can't compel  
7 people to come and testify if they have a Fifth Amendment  
8 privilege.

9 MR. BERGRIN: Judge, I have to object.

10 THE COURT: Why's that?

11 MR. BERGRIN: Because the Government has the right  
12 to grant immunity, like they did to Oscar Cordova.

13 THE COURT: That might be so, but they don't have  
14 to do it, and that's irrelevant.

15 MR. BERGRIN: Absolutely, but they have the right,  
16 Judge, and they have that discretion.

17 THE COURT: You've made your point, Mr. Bergrin.  
18 I'm allowing Mr. Gay to get into this because you said it  
19 yesterday.

20 MR. GAY: Now, to be clear, ladies and gentlemen,  
21 the Government has the burden of proof in this case. It  
22 always rests at this table. It never turns to that table  
23 there. We have to prove our case beyond a reasonable doubt.  
24 The Defense doesn't have to prove anything.

25 But with that in mind, ladies and gentlemen, I



1       want you to understand another thing. Any witnesses that  
2       would be available to the Government to call are equally  
3       available to the Defense to call. Just as the Government  
4       has subpoena power, so does the Defense.

5               And so these witnesses that Mr. Bergrin criticized  
6       the Government for not calling, he could have called them,  
7       too.

8               And if there was anything that these witnesses  
9       would have said that would have supported his defense, don't  
10      you think he would have called them?

11              MR. BERGRIN: Judge, again, I have to object  
12      because Defense has no right to grant immunity. The  
13      Government does, Judge.

14              MR. GAY: Judge, we don't have --

15              MR. BERGRIN: The Defense has no right to move for  
16      immunity, but the Government has that discretion and their  
17      right, like they did with Oscar Cordova, Your Honor. So to  
18      make this argument is unfair, unjust and deceptive.

19              THE COURT: No, I don't think it's deceptive. I  
20      think you're correct that the Government does have the right  
21      to grant immunity and you don't; but I also think that  
22      Mr. Gay is correct that you had a chance to call these  
23      witnesses.

24              Go ahead.

25              MR. GAY: The other thing I want to discuss is

1       Mr. Bergrin's concept of the neutral witness.

2               Now, he got up here and criticized and criticized  
3       and criticized the Government witnesses, the ones who came  
4       and took the stand and told you all about their criminal  
5       history, and he told you that the fact that they had a  
6       criminal history, that alone is reasonable doubt.

7               Now, obviously that's something you can and should  
8       take into consideration. But it's not reasonable doubt in  
9       and of itself, ladies and gentlemen, I submit.

10              In his world, in his fantasy world, ladies and  
11       gentlemen, innocent bystanders can somehow be witnesses to a  
12       criminal conspiracy. He wants the Government and says you  
13       shouldn't accept any witness except somebody who is an  
14       innocent bystander coming here telling you about the  
15       internal workings of Paul Bergrin's criminal enterprise.

16              Such a witness does not exist, ladies and  
17       gentlemen. A criminal enterprise is a secret operation.  
18       The only people who are privy to what goes on in there are  
19       the criminals that Mr. Bergrin invited in.

20              He's the captain of the ship. He decides who  
21       comes in, who doesn't come in. And the fact that he invited  
22       criminals in to participate in his criminal enterprise  
23       should not surprise anyone.

24              You can almost hear what he must have been  
25       thinking, ladies and gentlemen. He set this all up, ladies

1 and gentlemen. He's the one who invited Abdul Williams in  
2 to assist. He's the one that invited Eugene Braswell in.  
3 He's the one that invited Rondre Kelly in. He's the one  
4 that invited Vicente Esteves in, Thomas Moran in, Oscar  
5 Cordova in.

6 He is the one who did that.

7 And now he wants to turn around and criticize the  
8 Government for calling the very people he invited into his  
9 conspiracy as witnesses at this trial.

10 The Government cannot choose their witnesses,  
11 ladies and gentlemen. Bot Mr. Bergrin can certainly choose  
12 who he associates with.

13 But I will tell you one other thing, ladies and  
14 gentlemen. There was an innocent bystander that you heard  
15 from in this case. It's called a Hawk recording device.  
16 The Hawk recording device has no bias, it has no agenda.  
17 Innocent bystander.

18 And what did that device tell you?

19 That device told you that Paul Bergrin plotted to  
20 kill witnesses, that Paul Bergrin told Oscar Cordova to make  
21 the murder of Junior the Panamanian look like a home  
22 invasion robbery, that that innocent bystander Hawk  
23 recording device caught Mr. Bergrin discussing drug deals,  
24 how he was going to go into business with Vicente Esteves  
25 and Oscar Cordova, and that innocent bystander told you how

1 Paul Bergrin tried to broker a drug deal between Oscar  
2 Cordova and a five-star general from the Bloods gang.

3 So you did have an innocent bystander who provided  
4 a lot of evidence in this case.

5 Now, let's talk about these discrepancies between  
6 what Mr. Bergrin told you yesterday and the actual evidence  
7 that was presented.

8 He stood here before you yesterday pounding his  
9 fist, indignant, raising his hands, accusing the Government  
10 of wrongdoing; heartfelt pleas for justice.

11 And all the time, the words coming out of his  
12 mouth were nothing but spins and false statements.

13 And I'm just going to point out a couple of those  
14 for you today, ladies and gentlemen.

15 Let's talk about summation Paul Bergrin, saying  
16 Dennis Krousos, the accountant in the Vicente Esteves case,  
17 could not be a forensic accountant. He told you yesterday:  
18 Ridiculous. Dennis Krousos, forensic accountant?  
19 Absolutely ridiculous.

20 But what did Paul Bergrin say, audio Paul Bergrin,  
21 the one that was dealing with Oscar Cordova?

22 If we could put up the clip.

23 "Mr. Bergrin: But, I'm trying -- I -- I got a  
24 legal -- a really good legal point. What I'm going to do is  
25 I'm going to hire him," referring to Dennis, "as a forensic

1 accountant, make him top part of the defense team, and this  
2 way he becomes privileged communication so he doesn't talk  
3 to them."

4 And after that -- we'll skip Cordova's line.

5 "Mr. Bergrin: If I could make him a forensic  
6 accountant, part of the defense team, then they can't  
7 question him. His -- his information is privileged."

8 So, again, what he told you yesterday was not  
9 true. The transcript shows it: Literally, the exact  
10 opposite of what he told you yesterday.

11 Ridiculous to make Dennis a forensic accountant in  
12 this case.

13 And yet that's exactly what he's telling Oscar  
14 Cordova on August 5th of 2008.

15 What about the suggestion yesterday to you that it  
16 would be ridiculous to suggest that Paul Bergrin brought in  
17 lawyers to represent individuals, co-defendants in Vicente  
18 Esteves's case so he could control the case. Remember that?

19 Well, let's go back to Paul Bergrin on the audio  
20 tape. And again, this clip is a little longer, so we're  
21 just going to highlight a few parts for you.

22 In the beginning, Mr. Bergrin talks about how he  
23 "paid out of his own pocket for everybody's fucking lawyer."

24 He paid out of his own pocket. And then he  
25 describes why he did this later.

1 "I had to, I had to because you can't -- you see  
2 there's a lot of fucking retard bastard lawyers that are  
3 fucking punks, you understand?

4 "The first thing they do is walk in there, make a  
5 deal, and turn somebody. Snaps. I could -- we can't afford  
6 that here."

7 Mr. Bergrin continues.

8 Mr. Cordova says: "So you got the best attorneys  
9 that work in your little circle.

10 "Mr. Bergrin: Absolutely."

11 Mr. Bergrin continues: "And I know it -- I know  
12 they won't turn. I'm positive they won't turn anybody."

13 Mr. Bergrin continues: "Yeah, because they  
14 fucking won't get any work for me and I hand out a lot of  
15 work, you know, because I've got people that rely upon me,  
16 that need me, that I know. And the one thing I said, 'you  
17 come in, nobody fucking rats on the other person.'"

18 Huh. Little different than what Mr. Bergrin told  
19 you yesterday, right: That it would be ridiculous for him  
20 to do that, that it didn't happen in the Vicente Esteves  
21 case?

22 What about Mr. Bergrin's statements regarding the  
23 November 18th, 2008 recorded conversation?

24 He told you yesterday that Vicente Esteves on that  
25 recording said, Paul, all you ever want to do is take



1 statements.

2 Well, ladies and gentlemen, I'm not going to play  
3 that entire recording for you now, but if you have any doubt  
4 about whether or not Mr. Esteves mentioned that anywhere on  
5 that tape, you have the transcript, and you have the  
6 recording, and I'm telling you, it does not appear anywhere  
7 on that tape. Nothing even resembling that.

8 But what does appear on that tape, ladies and  
9 gentlemen, is Mr. Bergrin discussing Ivan Tineo, another one  
10 of the witnesses. And if you remember, Ivan Tineo was one  
11 of the guys that they knew was cooperating. I believe "a  
12 fucking rat" or "a major fucking rat" was the way  
13 Mr. Bergrin described him on the November 17th tape.

14 And what he says is that Mr. Tineo was going to be  
15 bailed out and he was going to leave the country and go back  
16 to the Dominican Republic so that he would never be brought  
17 back to testify against Vicente Esteves.

18 And on the 18th, what Mr. Bergrin tells Nelson  
19 Esteves and Oscar Cordova is that Tineo is either going to  
20 leave the country voluntarily or he's going to leave in a  
21 box. Meaning killed.

22 Doesn't sound like he's trying to take statements,  
23 does it, ladies and gentlemen?

24 Now, what about Mr. Bergrin's statements about  
25 Oscar Cordova telling him he had committed a hundred



1 murders. And remember that was a big deal, because  
2 Mr. Cordova saying he had committed a hundred murders,  
3 nobody could possibly believe that.

4 Well, turns out, ladies and gentlemen, that was  
5 not a statement Oscar Cordova made to Paul Bergrin. He made  
6 it to Thomas Moran. And you heard from Thomas Moran: He  
7 bought that hook, line and sinker.

8 And you also heard from Thomas Moran that he never  
9 said that, never communicated that to Mr. Bergrin. That  
10 happens on December 8th, minutes -- well, shortly before  
11 Mr. Bergrin is telling Oscar Cordova to make it look like a  
12 home invasion robbery, killing Junior the Panamanian.

13 So Mr. Bergrin listens to these tape recordings  
14 that he receives after the fact and now wants to recreate  
15 history for you and claim that he had this information, that  
16 he knew this information and it was ridiculous.

17 Well, ladies and gentlemen, he had three and a  
18 half years to review all of this stuff, three and a half  
19 years to come up with whatever his defense was going to be  
20 in this case, three and a half years to explain away things,  
21 three and a half years to recreate history, to claim he had  
22 discovery that he never had at the time, and to claim that  
23 conversations took place between him and Oscar Cordova that  
24 didn't take place.

25 Now, what about the, Oscar Cordova was given

1 immunity from prosecution?

2 Also not true. The agreement between Mr. Cordova  
3 and the Government is in evidence, ladies and gentlemen.  
4 It's Government Exhibit 7031. If there's any questions  
5 about what this agreement says, please take a look at it.

6 And what you'll see is, that agreement does not  
7 give Oscar Cordova immunity from prosecution. What it says  
8 is that Oscar Cordova will agree to waive his Fifth  
9 Amendment privilege against self-incrimination and take this  
10 witness stand and admit to you that he lied about calling in  
11 the false threat on his life, or calling in the threat on  
12 his life, I guess I will say, and that in exchange for that,  
13 the Government agreed not to use his testimony at this trial  
14 against him.

15 Never said we weren't going to prosecute him. He  
16 knows that he is still subject to prosecution for what he  
17 did. We just can't use his actual statements at this trial  
18 against him.

19 And, ladies and gentlemen, as the agreement makes  
20 clear, that's the only way we could get Mr. Cordova to come  
21 here and tell you the truth about that, because the  
22 Government wanted to make sure that you heard the entire  
23 truth.

24 That didn't help our case. But we wanted you to  
25 hear it, so we brought him here and made that deal with him,

1       that we were not going to use his testimony. He's still  
2       subject to prosecution, period.

3               So when Mr. Bergrin told you we gave him immunity:  
4       Complete falsehood.

5               Now, what about --

6               MR. BERGRIN: Judge, I have to object to that,  
7       because -- I have to object to that because that's a form of  
8       immunity, and Mr. Gay knows that, and they're not going to  
9       prosecute him for the statements he makes in court. I mean,  
10      that's absolutely a form of immunity.

11              MR. GAY: If you have any questions, ladies and  
12      gentlemen, look at the agreement.

13              THE COURT: Hold on. Hold on. Hold on.

14              MR. BERGRIN: That's not an accurate statement.

15              MR. GAY: It's an absolutely accurate statement,  
16      Judge.

17              THE COURT: Hold on.

18              I believe that it was explained, and the  
19      document's in evidence. The jury can read it for  
20      themselves.

21              Continue.

22              MR. GAY: Thank you, Your Honor.

23              Now, what about Mr. Bergrin's claim, remember his  
24      discussions about the transfers of properties? You remember  
25      this evidence, how Vicente Esteves owned all these

1 properties that he had bought with his drug money, and he  
2 transferred three of them to Mr. Bergrin, the three Tennent  
3 Avenue or Tennent Road properties.

4 Well, Mr. Bergrin stood up here yesterday and told  
5 you, That was all a transparent transaction; it was  
6 transferred from Vicente Esteves to me, to my corporation,  
7 with my name on it, with my Social Security number on it.

8 Complete falsehood, ladies and gentlemen.

9 Again, these records are in evidence, Government  
10 Exhibit 218, and what you see -- and Thomas Moran testified  
11 about this. This is the corporation we're talking about,  
12 Premium Luxury Resorts, LLC, the sham company that  
13 Paul Bergrin instructed Thomas Moran to create so that they  
14 could hide these properties from the Government.

15 And Mr. Bergrin told you, Well, of course, my name  
16 is on this, right?

17 Well, see, it's not. Mr. Bergrin's name appears  
18 nowhere on here.

19 Well, of course, the Social Security number's on  
20 here, right? He told you that.

21 H'm. No, that's not on here either, ladies and  
22 gentlemen.

23 This corporation does not come back to  
24 Mr. Bergrin.

25 And why is that important?

1           Well, ladies and gentlemen, you heard the reason  
2       why the property was transferred. You heard from Vicente  
3       Esteves, you heard from Thomas Moran. It was to hide this  
4       property from the Government so they would not seize it from  
5       Vicente Esteves. So, of course, you don't want to have your  
6       name linked to that kind of transaction.

7           Of course, Mr. Bergrin didn't have his name linked  
8       to that kind of transaction. No publicly filed document  
9       would have linked Mr. Bergrin to this property.

10          In fact, the only reason we got it is because we  
11       executed a search warrant and found it in his office.  
12       That's it. Otherwise, would have never been able to figure  
13       this out.

14          So what possible legitimate reason could there be  
15       for Mr. Bergrin having properties purchased with drug money  
16       transferred into a shell corporation not in his name?

17          Well, certainly the explanation he provided to you  
18       is ridiculous, that it was for Chantal Esteves's bail.

19          So let me see if I got this straight.

20          Vicente Esteves owns property that he wants to put  
21       up for Chantal Esteves's bail. If this was legitimate, he  
22       could have just done that; right? No need for this  
23       subterfuge of going through this obtaining properties for a  
24       dollar, shifting them over to the sham corporation.

25          MR. BERGRIN: Judge. Judge, I apologize again,

1 but I have to object because Esteves testified to that, that  
2 it was going to be used as collateral for --

3 MR. GAY: Judge, I believe this is my closing  
4 statement and not Mr. Bergrin's.

5 THE COURT: I think that it will be up to the  
6 jury's recollection. I'll allow it.

7 Continue.

8 MR. GAY: Thank you, Your Honor.

9 So, ladies and gentlemen, the only reason that  
10 these properties were transferred to Mr. Bergrin's sham  
11 corporation was to hide them from the Government. If they  
12 were legitimate, there would have been no reason for the  
13 subterfuge, for the sham transaction.

14 Now, let's talk about another thing, too, related  
15 to these properties.

16 Mr. Bergrin made a big deal about, oh, Thomas  
17 Moran is a liar because he said these were beachfront  
18 properties.

19 Well, first of all, Thomas Moran told you he  
20 learned that, he believed that was the case, and he had his  
21 information from Mr. Bergrin, not that he had seen the  
22 properties himself.

23 And even if they were not beachfront properties,  
24 which we're conceding they're not, what difference does it  
25 make?



1           Let's look at what's important here, ladies and  
2 gentlemen. Paul Bergrin obtained over a million dollars in  
3 properties in Manalapan, New Jersey for a total of three  
4 dollars. He does it through the transfer and through a sham  
5 corporation. It may not be beachfront properties, ladies  
6 and gentlemen, but a million dollars' worth of worth in  
7 Manalapan, New Jersey, is not too shabby, especially for  
8 this underfunded case that Mr. Bergrin kept talking about.

9           Mr. Bergrin also made a big deal about Thomas  
10 Moran's bail application, I don't know if you remember that  
11 part of it, where he kept saying, Well, you know, Mr. Moran  
12 in his submissions, his lawyer's submissions to the Court  
13 when Mr. Moran was fighting the case, he said he didn't  
14 think Oscar Cordova was a credible hitman, and words to that  
15 effect.

16           And Mr. Bergrin wants you to believe that Thomas  
17 Moran's lawyer was telling the truth or accurately  
18 describing the evidence in the bail application, and that  
19 Thomas Moran was lying to you on the stand when he said that  
20 the evidence against him was overwhelming and therefore he  
21 decided to take a plea.

22           And I want to quote you exactly what Mr. Moran  
23 said on his cross-examination by Mr. Bergrin:

24           "Defense attorneys do that for a living. They  
25 cast and manipulate the words to the best of their clients'



1 -- best favorable light to defend them. To get them out on  
2 bail, they'll use the best possible perspective or  
3 interpretation even if it's -- it's counter to the truth.  
4 You know that."

5 Sounds familiar, doesn't it?

6 And, of course, Mr. Moran also told you that this  
7 is what his lawyer submitted to his defense when he was  
8 fighting the case, and that after that, he realized after  
9 listening to the tapes or after -- after reviewing some of  
10 the evidence that the evidence against him was overwhelming,  
11 and that's why he took a plea in this case, ladies and  
12 gentlemen, because he realized that he could not fight this  
13 case, that the proof was overwhelming, and he decided to  
14 take a plea.

15 Now, Mr. Bergrin also talks about Mr. Moran's  
16 alleged motive to lie.

17 According to Mr. Bergrin, Mr. Moran has this great  
18 defense, that Oscar Cordova is not really a hitman, that  
19 nobody took him seriously, that he was playacting, and that  
20 Mr. Moran, using that great defense, could have won the  
21 case.

22 The problem with that, ladies and gentlemen, is  
23 that that's not what happened. Mr. Moran -- and again,  
24 Mr. Moran, with this, wanted to get out of jail. That's his  
25 motive for doing this. He wanted to get out of jail.

1           So what does he do, ladies and gentlemen? Does he  
2   fight the case where he has this great defense? No, that's  
3   not what he does. Instead, he pleads guilty. In other  
4   words, to get out of jail, he agrees to do more jail time.

5           That doesn't make a lot of sense, ladies and  
6   gentlemen.

7           What does make sense is exactly what Thomas Moran  
8   told you: That he was initially going to fight the case,  
9   but that when he realized the evidence was so overwhelming,  
10   he decided to take a plea. And that's why he took a plea,  
11   understanding that he was not getting out of jail,  
12   understanding, of course, that he was hoping to get a  
13   benefit for his testimony, but understanding that that under  
14   the circumstances was his best option, to plead guilty.

15          Now, let's also talk about the visits to Oscar  
16   Cordova on August 5th, 2008.

17          Mr. Bergrin told you yesterday that he went to  
18   visit Chicago on August 5th, 2008, not to see Mr. Cordova,  
19   no, no, no, no. He went to see his grandchild, newly born  
20   grandchild, and in support of that, he had his daughter  
21   testify.

22          Now, you heard the tapes. You heard that  
23   Mr. Bergrin was picked up at the airport by Oscar Cordova,  
24   that after that, he spent a significant amount of time with  
25   Oscar Cordova, that Mr. Bergrin after spending the evening,

1 the night, with Oscar Cordova, a good portion of it, went  
2 back to his hotel room, where Mr. Cordova had a prostitute  
3 for him, and that the next morning, Mr. Bergrin now claims,  
4 he got up and went to visit his daughter.

5 The problem, ladies and gentlemen, is that his  
6 daughter testified. His daughter testified that her father,  
7 Mr. Bergrin, came in on a weekend. As the judge just said,  
8 judicial notice: August 5th was a Tuesday, August 6th, the  
9 day Mr. Bergrin flew out, was a Wednesday.

10 And when we asked his daughter, is your memory  
11 correct that this happened, or are the records correct? She  
12 says, no, no, no, my memory is correct, I know for sure, he  
13 came on a weekend, and she described it. We went  
14 sightseeing in Chicago. She had a whole -- a whole  
15 description of what had happened.

16 So, ladies and gentlemen, we're not suggesting  
17 that his daughter is not telling the truth; indeed, quite  
18 the opposite. What we're saying is that it's two different  
19 dates. So when he traveled on August 5th, 2008, it was not  
20 to see his daughter. That was a completely different day.  
21 That was to see Oscar Cordova, and the records back that up,  
22 ladies and gentlemen. He flies in in the evening of August  
23 5th, 2005, approximately six o'clock at night. He then goes  
24 out with Oscar Cordova. The following day, August 6th, he  
25 initially has a flight that's supposed to leave Chicago at

1       6:10 p.m., but he changes it, moves it back, and actually  
2       leaves at 3:55 Chicago time.

3               Doesn't really leave him much time to see his  
4       granddaughter, does it, or his grandchild, does it?

5               But it left him plenty of time to see Oscar  
6       Cordova and talk about killing witnesses and talk about  
7       selling drugs.

8               Now, that leads me to what I'm going to call the  
9       big lie, and that is that Paul Bergrin knew Oscar Cordova  
10      was a cooperator, and that he was just playacting.

11              Now, I could go through every part of every tape  
12      that demonstrates that's not true, but again, that's why we  
13      went through the trial, and you guys patiently listened and  
14      reviewed all those tapes.

15              Instead, I just want to focus on the logic of that  
16      right now.

17              According to Mr. Bergrin, he knows Oscar Cordova  
18      is a cooperator in July of 2008. And knowing that Oscar  
19      Cordova is a cooperator, what does he do?

20              Well, first, he has explicit conversations about  
21      drugs over and over and over again.

22              Secondly, he introduces Oscar Cordova, the guy he  
23      knows is a cooperator, to a five-star general in the Bloods  
24      gang, so that Oscar can supply this Bloods gang member with  
25      cocaine.

1                   It's all on the tape.

2                   He sends prostitutes to Oscar Cordova's hotel room  
3 over and over and over again.

4                   He recruits Oscar Cordova to forcibly collect  
5 money from another one of his clients, Eugene Braswell.

6                   He takes \$20,000 in cash from Oscar Cordova, but  
7 he fails to file an 8300. Mr. Bergrin knows that that's a  
8 violation of the law, because he's filed these before. But  
9 he doesn't file one in this case after taking \$20,000 in  
10 heat-sealed cash.

11                  He has conversation after conversation about  
12 killing at least two people, Danilo Chen-Pui, Junior, and  
13 Carlos Noyola, the truck driver, including telling Oscar  
14 Cordova to make the murder of Danilo Chen-Pui, Junior, look  
15 like a home-invasion robbery.

16                  And remember when all this is taking place:  
17 Between July and December of 2008. At this time, Kemo's  
18 already been killed, ladies and gentlemen. Mr. Bergrin  
19 knows from numerous court -- from court proceedings and  
20 articles in the paper that the Government thinks he had  
21 something to do with did killing Kemo.

22                  Knowing all this, what does Mr. Bergrin do?

23                  Well, instead of avoiding the person he knows is a  
24 Government cooperator, he says and does some of the most  
25 inculpatory things you could possibly imagine: Talks about

1       drugs; takes drug money or what he believes to be drug  
2       money, doesn't file an 8300; talks about murdering witnesses  
3       over and over again.

4               Does that make any sense at all?

5               It makes none at all.

6               It's because it's ridiculous, ladies and  
7       gentlemen.

8               On top of that, here he is, Mr. Bergrin, knows  
9       Mr. Cordova's a cooperator. Does he tell his client,  
10      Vicente Esteves, Hey, by the way, the guy you're planning to  
11      murder witnesses with, he's a cooperator?

12              Nope. Doesn't say anything like that.

13              Does he say anything to Thomas Moran, his partner,  
14      the guy he describes as somebody who would die for him, so  
15      loyal to him he would die for him? Does he tell Thomas  
16      Moran, Oh, by the way, the guy you're plotting to kill  
17      witnesses with, he's a cooperator?

18              Nope. Doesn't even mention it to him.

19              And the reason for that, ladies and gentlemen, is  
20      because he did not know Oscar Cordova was a cooperator.

21              Now, yesterday, his defense morphed just a little  
22      bit in summation into, Paul Bergrin was in control here. He  
23      was the one that controlled what information Oscar Cordova  
24      had. So there was no danger of Oscar Cordova ever killing  
25      anybody because Paul Bergrin was never going to provide him



1 with the information necessary to kill someone.

2 Do you remember that, him saying that to you?

3 Well, if you think about that for even one second,  
4 that's completely inconsistent with him knowing Oscar  
5 Cordova was a cooperator. If Oscar Cordova is a cooperator  
6 and he knows it, why does he have to withhold any  
7 information? Why is he worried about Oscar Cordova,  
8 cooperator, killing anyone?

9 It's because, ladies and gentlemen, he doesn't  
10 know Oscar Cordova is a cooperator. He's up here spinning  
11 and offering excuse after excuse after excuse for his  
12 actions. And when you look at one excuse and compare it to  
13 the other, they're completely inconsistent because they're  
14 both baloney.

15 Now, what about his comments that he was  
16 embarrassed about the things that were on the tape?

17 Embarrassed. Okay. Well, he's embarrassed.

18 Well, I guess we've just wasted our time here.

19 Mr. Bergrin's embarrassed by this. We can all go home now.

20 Of the course he's embarrassed now because he  
21 heard them in court and he knows that they are inculpatory  
22 statements and he knows he shouldn't have said those things  
23 because they make him guilty of the crime.

24 Embarrassed has nothing to do with it.

25 And you heard him talk on those tapes. Didn't



1 really sound too embarrassed on those tapes, did he?

2 And again, think about it for even one more  
3 minute. If he is playacting and he knows it on these tapes,  
4 why is he embarrassed now about it? It makes no sense.  
5 You're only embarrassed about something if you're surprised  
6 by it: Oh, I had no idea. That's when you're embarrassed.  
7 If he's playacting during all of these conversations, why is  
8 he embarrassed now?

9 It's ridiculous.

10 It's because he didn't know. He wasn't  
11 playacting. He didn't know Oscar Cordova was a cooperator.  
12 And now when the tapes are played, he is embarrassed by what  
13 he said. And he should be.

14 Now, let's talk about moving on from the Esteves  
15 case and I want to talk to you about a couple of things in  
16 the Kemo case.

17 First of all, he stood up here and told you that  
18 Hakeem Curry and William Baskerville were not part of the  
19 same drug organization.

20 I'm not sure where that testimony came from,  
21 ladies and gentlemen, because the only testimony I'm aware  
22 of came from Anthony Young and Lachoy Walker on the subject,  
23 and both of them said William Baskerville was part of Hakeem  
24 Curry's organization. Crystal clear.

25 Walker said Curry supplied William Baskerville

1 with cocaine, including the cocaine that Curry had obtained  
2 from Paul's connect.

3 So there's a direct line, again, between  
4 Paul Bergrin and William Baskerville in the drug business.  
5 That's why Mr. Bergrin is trying to get up here and tell you  
6 that these two people, Curry and Baskerville, are not  
7 related, because then he can break that direct line which he  
8 knows exists.

9 The problem is that there's nothing in the record  
10 to suggest that, and the record establishes exactly the  
11 opposite.

12 MR. BERGRIN: Judge, that's --

13 MR. GAY: So when he said that to you --

14 MR. BERGRIN: Again, Judge, that's a complete  
15 mischaracterization of the evidence, Judge.

16 THE COURT: I don't think it's necessarily a  
17 mischaracterization, and I'll allow the jury to use their  
18 own recollection.

19 Continue.

20 MR. GAY: Thank you, Your Honor.

21 If there's any questions, read the transcript,  
22 ladies and gentlemen. Read the transcript.

23 Now, what about Mr. Bergrin's claim that Kemo was  
24 spun when he was shot?

25 Go back, I urge you, go back, read Anthony Young's

1 testimony from start to finish. That is a complete  
2 falsehood. It never happened. Anthony Young never  
3 testified that he spun Kemo.

4 And remember, yesterday, Mr. Bergrin said that, he  
5 had Mr. Levy stand up and he went through all the  
6 machinations and tried to claim that the medical examiner  
7 supported his position, that Anthony Young's description of  
8 the murder was not accurate. All complete fabrication.

9 Anthony Young testified he came from behind Kemo,  
10 left hand, put the gun right behind the ear, and fired  
11 shots. Didn't spin him around. Hand on the shoulder, back  
12 of the head, fired shots. No spinning at all. I'm not sure  
13 where Mr. Bergrin got that from, but it certainly was not  
14 evidence in this case.

15 And the medical examiner also said that it was  
16 consistent, the forensic evidence was consistent with  
17 Anthony Young's account, meaning that somebody from behind,  
18 left hand, gun behind the head, the ear, and fired.

19 So both of those statements by Mr. Bergrin, the  
20 spinning and the fact that the medical examiner didn't  
21 support Anthony Young: Complete fabrication.

22 Now, what about the calls that Hakeem Curry made  
23 -- or that Paul Bergrin made to Hakeem Curry on the day of  
24 William Baskerville's arrest?

25 Mr. Bergrin claims, without any support, that all

1 he did was read the complaint to Hakeem Curry, and he simply  
2 substituted the name Kemo for cooperating witness in the  
3 complaint.

4 There's no evidence of that. It's a complete  
5 fabrication.

6 The evidence, ladies and gentlemen, is that  
7 Anthony Young said there were two calls. In the first call,  
8 Paul Bergrin read off the complaint, drugs, weights, dates,  
9 et cetera. And in the second call, Paul Bergrin tells  
10 Hakeem Curry, I spoke to Will Baskerville, and the  
11 cooperator is a guy named Kamo.

12 That's what the testimony was, ladies and  
13 gentlemen: Two calls.

14 And how do we know that that's true?

15 Well, ladies and gentlemen, we know that the first  
16 -- the call, the one where Mr. Bergrin is reading off the  
17 complaint, that happened before Mr. Bergrin went to court.  
18 And if you have any questions about that, go back, I refer  
19 you to Steve Cline's testimony, Agent Steve Cline, in which  
20 this is discussed, at pages 3014 through 3019.

21 So there's no way Paul Bergrin could have  
22 mentioned Kamo in that first call, because he didn't even  
23 know the name, because the testimony was, uncontested  
24 testimony, that Mr. Bergrin learned the name Kamo from  
25 William Baskerville after he got -- or when he was in court.

1       Okay?

2                   So it's only after court, during the second call,  
3       after Mr. Bergrin has already talked about the complaint in  
4       the first call, that he said that he knows the name Kemo.

5                   Now, what about his statement that Anthony Young  
6       shot Kemo on the sidewalk?

7                   Again, it's just a fabrication. Go back and look  
8       at Mr. Young's testimony. That's not what he said. He said  
9       he grabbed Mr. McCray, Kemo, as he was stepping off the  
10      sidewalk, and that thereafter, he put the gun to his head  
11      and shot him as they were moving forward. He dropped to the  
12      ground.

13                  And if you look at the crime scene photos, that's  
14      exactly what happened here.

15                  Now, what about, another one of my favorites is  
16      the ammunition found at Hakeem Curry's stash house. That's  
17      evidence that it's William Lattimore --

18                  MR. BERGRIN: Judge, most respectfully, on  
19      February 4th of 2003 --

20                  MR. GAY: Oh, wait, wait, wait, wait, wait, wait,  
21      wait, wait.

22                  THE COURT: No, Mr. Bergrin, this is inappropriate  
23      objections to the summation.

24                  Do you have an objection to something he just  
25      said?

1 MR. BERGRIN: Yes, Your Honor.

2 THE COURT: What's the objection?

3 MR. BERGRIN: The objection is --

4 THE COURT: Are you saying he's saying something  
5 that's not in evidence?

6 MR. BERGRIN: Yes. It's right in the transcript,  
7 Judge.

8 THE COURT: I disagree. I'll leave it up to the  
9 jury's recollection.

10 Continue.

11 MR. GAY: Thank you.

12 And, ladies and gentlemen, I want to make this  
13 crystal clear: If there is anything, anything that I have  
14 said that you have any doubt about whether or not it's in  
15 the transcript, go back and look at it. Please do that.  
16 And I'd ask you to do the same for the things that  
17 Mr. Bergrin said.

18 So what about the ammunition in Hakeem Curry's  
19 stash house?

20 Well, remember, he made a big deal out of that.  
21 Three days after the murder, there's ammunition recovered of  
22 the same brand in Hakeem Curry's stash house, the dungeon,  
23 the same ammunition brand that's used to kill Kemo.

24 Well, and he wants you to believe that's  
25 reasonable doubt.



1 Well, think about the testimony for a minute,  
2 ladies and gentlemen. Anthony Young told you he got the gun  
3 to kill Kemo from Hakeem Curry, so the fact that nine  
4 millimeter ammunition, that it was of the same brand as used  
5 to kill Kemo is corroboration for Anthony Young. It's not  
6 reasonable doubt. It's the exact opposite.

7 What about melting the gun?

8 Well, ladies and gentlemen, that's another one  
9 where Mr. Bergrin wants to spin what is clear corroboration,  
10 independent corroboration for what Anthony Young told you  
11 and try to spin it into reasonable doubt.

12 We know Anthony Young, Devon Jones, Ben Hohn, all  
13 completely consistent on the important facts, that Anthony  
14 Young went to Ben's shop with Rakim Baskerville, that he  
15 asked to have a gun melted down, that they melted the gun.

16 Those are the three important facts.

17 So what does Mr. Bergrin want you to focus on?

18 Well, Devon Jones and Ben Hohn don't remember the date as  
19 being the same date that Anthony Young testified to.

20 Frankly, the date is of very little significance.  
21 It's the fact that both Rakim Baskerville and Anthony Young  
22 went in and melted the gun. That's important.

23 But I'm also going to tell you why we know Anthony  
24 Young's date is the accurate date, not Devon Jones, not Ben  
25 Hohn.



1           You heard from Agent Snowden that Rakim  
2       Baskerville went on the run. He fled. They tried to arrest  
3       him on March 8th, 2004. They executed a search warrant on  
4       his house. Again, five, six days after the murder, they  
5       execute a search warrant on Rakim Baskerville's house, and  
6       thereafter -- they don't find Rakim Baskerville, and he  
7       flees, and he is not arrested for nine months after that.

8           So Mr. Baskerville is not around for the nine  
9       months following the murder.

10          If you look at what Ben Hohn and Devon Jones's  
11       memory -- and again, they're not sitting here telling you, I  
12       have a perfect memory of the date or anything like this,  
13       just estimating when the date was. It's not possible that  
14       it could have happened in August or November of 2008 -- or  
15       2004, excuse me, because Rakim Baskerville is on the run  
16       during that time period. He didn't come back to melt a gun  
17       down when he's on the run from law enforcement, because they  
18       were looking for him to arrest him on the charge he  
19       ultimately ended up serving life on.

20          So we know that Anthony Young is correct when he  
21       says they melted the gun down in March. It's the only way  
22       it could have happened.

23          Now, I want to turn to what I'm going to say is  
24       the big lie for the Kemo case, too, and that is, Mr. Bergrin  
25       told you yesterday repeatedly he's an experienced lawyer,

1       and as an experienced lawyer, he would have never tried to  
2       harm Kemo Deshawn McCray because Kemo was irrelevant to  
3       William Baskerville's case.

4               Now, setting aside the illogic of the main  
5       cooperator in a case being irrelevant, we know for a fact  
6       from Mr. Bergrin's own words that that's simply not true.

7               On one hand, he wants you to believe that he  
8       contacted Hakeem Curry, drug boss of the organization, not  
9       to pass on the name so Kemo could be killed, but because he  
10      wanted to have Hakeem Curry go out and do some independent  
11      research and figure out whether Kemo had credibility issues  
12      for the bail application. Remember: It's my duty as a  
13      lawyer to do that.

14              So what he's saying is that the strength of the  
15      case -- and remember, that's exactly what he said -- the  
16      strength of the case, meaning Kemo's credibility impacting  
17      the strength of the case, was part of his duty and was  
18      important to the case for the bail application. Okay?

19              But then all of a sudden, when it comes to trial,  
20      all of a sudden, Kemo's irrelevant. His credibility is not  
21      relevant. He's not needed for the case at all. Relevant  
22      for the bail application, for the strength of the case; not  
23      relevant for trial, when you'd think strength of the case is  
24      even more important.

25              So if Kemo's credibility, impugning his

1       credibility was important for the bail application, don't  
2       you think it would be even more important if Kemo never even  
3       got to testify?

4               How much stronger would that -- or how much weaker  
5       would that make the Government's case? If simply making him  
6       seem incredible would help Mr. Baskerville win his case,  
7       think about it if Kemo was not even there.

8               THE COURT: About 10 minutes, Mr. Gay.

9               MR. GAY: Okay.

10              I want to cover a couple of other, more general  
11       things, ladies and gentlemen, and that is, first, I want to  
12       talk about 81 South 12th Street.

13              Mr. Bergrin stood up here yesterday and told you  
14       that he didn't sell 81 South 12th Street to Rondre Kelly.  
15       That was Sulaimun Jenkins.

16              The only problem is, ladies and gentlemen, we  
17       executed a search warrant on Mr. Bergrin's office, and we  
18       recovered documents that were not publicly filed. Those  
19       nonpublicly filed documents show that Sulaimun Jenkins sold  
20       that property to Paul Bergrin under the name Premium Realty  
21       on August -- or, excuse me, July 9th, 2003 for \$55,000.  
22       They didn't file a deed, so it's not in the public record.  
23       But we have the HUD-1 and we have checks showing that.

24              Two weeks later, on the 24th of July, Paul Bergrin  
25       under the name of Premium Realty sells it to Rondre Kelly

1       for \$30,000 on paper.

2               Again, no deed filed for that transaction, either.

3       But we know what happened because we have HUD-1 and we have  
4       checks, none of which we would have been able to get if we  
5       didn't execute a search warrant on Mr. Bergrin's office,  
6       because they're not publicly filed.

7               Then, the only publicly filed document is the deed  
8       between Sulaimun Jenkins and Rondre Kelly that's filed  
9       November 11th of 2003 and backdated to 7/24 of 2003.

10              So, ladies and gentlemen, Mr. Bergrin stood up  
11       here and told you he didn't sell the property.

12              He absolutely did. He lied to you.

13              What about Paul Bergrin the humanitarian?

14              Remember that, all that discussion about Shelton  
15       Leverett, and he cares for his clients, and he's counseling  
16       him and being a good buddy for him, all that stuff? Trying  
17       to look out for him, telling him, You've got to stay off the  
18       streets, Mr. Leverett, got to stay off the streets.

19              Well, that's the same guy who sent Shelton  
20       Leverett to Abdul Williams to get kilograms of cocaine.

21              That's the guy who's trying to keep him off the  
22       streets.

23              And also, humanitarian Paul Bergrin stole \$20,000  
24       from Shelton Leverett.

25              How do we know that?

1                   Shelton Leverett went to Paul Bergrin's office --  
2                   and this is on the tapes -- delivered \$20,000 to him so  
3                   Mr. Bergrin could hold it in a credenza. Of course, it  
4                   wasn't Shelton's money, it's the F.B.I. money. But  
5                   Mr. Bergrin didn't know that.

6                   What happens? A little while later, State Police  
7                   execute a search warrant. They recover Shelton Leverett's  
8                   \$20,000 from the exact spot that he said he put it. We know  
9                   that the money that Shelton Leverett delivered matches the  
10                  money that was recovered by the State Police because there  
11                  were photocopies of the money before it was given to Shelton  
12                  Leverett, there were photocopies of the money recovered from  
13                  the search warrant. Agent Cline testified he compared the  
14                  two: Exactly the same money.

15                  We know that Shelton Leverett after the money was  
16                  taken goes to Mr. Bergrin, and Mr. Bergrin tells him the  
17                  money was seized in the search warrant. Right?

18                  So what else do we know?

19                  We know that Mr. Bergrin got the \$20,000 back from  
20                  the State Police, returned to owner.

21                  He's the one who actually put that into evidence,  
22                  ladies and gentlemen.

23                  But what did he do with the \$20,000, Shelton  
24                  Leverett's \$20,000? Does he give it back to him?

25                  Nope. Doesn't.

1                   That's humanitarian Paul Bergrin: Stealing  
2                   \$20,000 from the guy he's trying to keep off the streets.

3                   I guess maybe that's what he was going to do. He  
4                   figured Shelton was going to use that to buy drugs, so he  
5                   stole it from him so he couldn't buy drugs.

6                   I want to leave you with one final thing, ladies  
7                   and gentlemen.

8                   He talked about the Carolyn Velez tape and what  
9                   nine-year-old Carolyn Velez told the prosecutor the day  
10                  after the verdict came down in the Norberto Velez case.

11                  I'm going to play this now, and then I'm going to  
12                  sit down.

13                  (Videotape played)

14                  (Playback ends)

15                  MR. GAY: I'll leave you with that, ladies and  
16                  gentlemen.

17                  Thank you for your patience.

18                  THE COURT: Thank you.

19                  Okay. Ladies and gentlemen, you now have heard  
20                  all of the closing arguments. All that's left is to hear  
21                  the jury instructions, which are substantial, I'm telling  
22                  you now.

23                  So what we're going to do is take a short break,  
24                  and then we'll come down and we will have the jury  
25                  instructions. Then we will break, and you will have your



**GIBBONS**

LAWRENCE S. LUSTBERG  
Director

Gibbons P.C.  
One Gateway Center  
Newark, New Jersey 07102-5310  
Direct: (973) 596-4731 Fax: (973) 639-6285  
llustberg@gibbonslaw.com

November 30, 2012

**VIA E-MAIL AND REGULAR MAIL**

John Gay, Assistant U.S. Attorney  
United States Attorney's Office  
970 Broad Street, Suite 700  
Newark, NJ 07102

**Re: United States v. Bergrin  
Case No. 09-369**

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Dear Mr. Gay:

As you know, this firm serves as standby counsel to defendant Paul W. Bergrin in the above-captioned matter. During the defense investigation of the pending charges, Mr. Bergrin has become aware of certain potentially exculpatory documents material to preparing his defense that the government has not yet provided. Pursuant to Federal Rule of Criminal Procedure 16, as well as *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny, Mr. Bergrin now requests, in lieu of immediately proceeding by way of motion, the following discovery:

1. During the 2011 Kemo murder trial, Federal Bureau of Investigation (FBI) Special Agent Shawn Brokos testified that she "asked sources whether or not they had seen" Mr. Bergrin's vehicle in the vicinity of Avon Avenue and 17th Street in Newark, New Jersey during the period of November 26, 2003 to November 30, 2003. Tr. (10/19/11) at 161. Mr. Bergrin now requests all documents and information related to those queries, including the names of any individuals who were questioned in this regard, as well as any reports, notes or statements taken with respect thereto, which are likely to exculpate Mr. Bergrin of involvement in the Kemo murder alleged as substantive offenses in Counts Twelve and Thirteen of the Second Superseding Indictment ("Indictment").

2. During the 2011 Kemo murder trial, Special Agent Brokos also testified that an eyewitness to Kemo McCray's shooting indicated that the shooter was positioned behind Mr. McCray. Tr. (10/20/11) at 39-40. Mr. Bergrin now requests all documents and information related to this potential witness, including the identity of that individual, as well as any statements taken from him or her, and any reports or notes concerning this potential witness, which are likely to exculpate Mr. Bergrin of involvement in the Kemo murder.

3. In that trial, Special Agent Brokos also testified that she took a statement from Stacey Webb Williams, an eyewitness to Mr. McCray's shooting, subsequent to the March 4, 2004 statement taken during an interview with Newark Police Department Detective Rashid Sabur (see J-04470-J-04473). Tr. (10/19/11) at 180-81. Agent Brokos testified that during this interview with Mr. Williams, she may have shown him photographs of potential suspects. *Id.*



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Mr. Bergrin now requests all documents and information concerning this interview, including any and all reports, interview notes, statements taken, or photographs presented in connection with interviewing Mr. Williams, which are likely to exculpate Mr. Bergrin of involvement in the Kemo murder.

4. Finally, Special Agent Brokos testified that some time after June 14, 2006, she spoke with the assistant prosecutor in Rashida Tarver's aggravated assault case against Anthony Young in Essex County, and that she may have memorialized those conversations. Tr. (11/9/11) at 131-133. Mr. Bergrin now requests any existing documentation with respect to those conversations, as well as any reports, notes or memoranda prepared with respect to Special Agent Brokos's June 14, 2006 interview with Ms. Tarver, which information is likely to support the defense theory that Anthony Young's testimony is fabricated, thereby exculpating Mr. Bergrin of involvement in the Kemo murder.

5. During the 2011 Kemo murder trial, government witness Ramon Jimenez testified that he took notes to memorialize his meetings with the FBI, which he relied upon in drafting an Attorney Ethics Grievance form against his attorney alleging that the government pressured him to produce inculpatory information about Mr. Bergrin. Tr. (11/21/11) at 21-22, 55-57, 79, 93, 139, 142, 155, 157, 159-162. He further testified that he may have retained some of these notes. *Id.* at 21-22, 55-5, 79, 93, 139. Mr. Bergrin now requests a copy of any notes that Mr. Jimenez took with respect to his interactions with the FBI and the United States Attorney's Office tending to indicate that he was pressured or enticed to provide information against Mr. Bergrin. These documents are likely to exculpate Mr. Bergrin of involvement in the Kemo murder case and the drug conspiracy alleged as a substantive offense in Count Five ("drug conspiracy"). Should these notes not be in the possession of the government, Mr. Bergrin respectfully submits that the government should request them of Mr. Jimenez.

6. Documentation of several FBI interviews that the government provided in accordance with the Jencks Act, 18 U.S.C. § 3500, shows that unidentified subjects made statements supporting defense theories that may exculpate him of involvement in the Kemo murder case. As a result, Mr. Bergrin now seeks the identity of the informants specifically described in J-02840, J-02866, and J-03126.

7. An FBI report, also provided in accordance with the Jencks Act, states that an unidentified individual reported that on the day Mr. McCray was killed, "the barber from the barber shop on the corner of 19th and South Orange allegedly ran out and tackled the shooter. He also witnessed four males across the street who appeared to be involved in the shooting." J-02707. Accordingly, Mr. Bergrin now requests all documents and information related to this barber, including the barber's identity and any additional reports, statements taken, interview notes, or photographs presented in connection with this potential witness, who is in a position to

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provide a first-hand account of the shooter's appearance consistent with the defense theory, and exculpate him of involvement in the Kemo murder case.

8. An FBI report from December 1, 2004, also provided in accordance with the Jencks Act, states that an unidentified individual recorded Horatio Joines discussing William Baskerville's federal drug case. J-02616. Mr. Bergrin seeks that recording, as well as any and all written or recorded statements made by Mr. Joines concerning William Baskerville's federal drug case or the Kemo murder, which Mr. Bergrin believes may contain evidence consistent with defense theories and exculpate him of involvement in the Kemo murder case.

9. In the Essex County Prosecutor's Office "File Preparation Checklist" for the Kemo murder case, provided in accordance with the Jencks Act, there are notations that a "C. Spruil" identified "Lattimore" from a photographic array, and that "C. Spruill" stated "Shawn McPhall for pulling gun on him. Susp. mentioned prior shooting." J-04455-56. To date, Mr. Bergrin has not received any materials related to these notations, which, consistent with the defense theory that Malik Lattimore and not Anthony Young was the shooter in the Kemo murder case and that Young's testimony is fabricated, tend to exculpate him of involvement in the Kemo murder. *See* Tr. (10/19/11) at 81. Accordingly, Mr. Bergrin requests all documents and information related to the identifications made by C. Spruil (or Spruill), including any reports, notes, statements taken, or photographic arrays presented with regard thereto.

10. On March 4, 2004, Drug Enforcement Administration (DEA) agents seized a 9 millimeter handgun and 9 millimeter ammunition from Lachoy Walker, which Walker stated had been given to him by Hakeem Curry. *See* J-04320, J-04324-25. DEA agent George Snowden also seized Winchester 9 millimeter Luger ammunition from 353 South Center Street, Orange, New Jersey, a/k/a "the Dungeon." *See* J-06679-80. The ammunition used to kill Mr. McCray were also Winchester 9 millimeter Luger bullets. *See* J-04441. Mr. Bergrin seeks all documents and information pertaining to these weapons, including any statements, ballistics or fingerprint records, or other reports comparing the weapons and ammunition seized from these three crime scenes, as such material is likely to be consistent with defense theories that Anthony Young's testimony is fabricated, thereby exculpating Mr. Bergrin of involvement in the Kemo murder.

11. Likewise, during the 2011 Kemo murder trial, DEA Agent George Snowden testified that in February 2004, DEA agents installed a GPS tracking device on a white Range Rover belonging to Hakeem Curry. *See* Tr. (10/26/11) at 104-05. Mr. Bergrin now seeks all documents and information pertaining to any tracking devices placed on any vehicle owned or driven by a member of the Curry drug gang, from any time between November 2003 through March 2004, as such material is likely to contain evidence confirming the defense theory that



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Anthony Young's testimony is fabricated, and thereby exculpating Mr. Bergrin of involvement in the Kemo murder.

12. Mr. Bergrin requests the following additional information with respect to Anthony Young, all of which is likely to contain evidence that is consistent with the defense theory that Mr. Young's testimony is fabricated, and thereby tending to exculpate Mr. Bergrin of involvement in the Kemo murder:

a. The financial affidavit accompanying the appointment of counsel for Mr. Young in 2005 under the Criminal Justice Act, 18 U.S.C. § 3006A.

b. Any psychological records of Anthony Young in the government's possession.

c. Documentation of any additional benefits received by Anthony Young. This material includes any information pertaining to whether Special Agent Shawn Brokos used her influence as a federal agent to facilitate Mr. Young's release from jail when, in around January 2005, he violated a restraining order against him by threatening Rashida Tarver and her sister with a gun. *See* Tr. (11/9/11) at 43.

d. Any recordings of telephone calls between Anthony Young and the FBI, including those that took place on January 14, 2005 to Deputy Agent William F. Gale and Special Agent Brokos, *see* J-02933; Tr. (11/28/11) at 68- 71, as well as the voicemail message Mr. Young left for Special Agent Brokos claiming Jamal McNeil shot Mr. McCray. *See* Tr. (10/28/11) at 37-38.

13. An FBI report, also provided in accordance with the Jencks Act, *see* J-04978-05042, documents that government witness Yolanda Jauregui informed the government that at some time between May 20, 2009 and November 20, 2009, she and Alejandro Barraza-Castro had multiple telephone conversations with Abdul Williams while he was incarcerated at the Hudson County Correctional Center to set up a cocaine transaction with Williams's family members. J-05029-30. Such conversations were certainly recorded in accordance with the policy of the company that administers inmate telephone calls at that facility. *See* Hudson County Department of Corrections, "Visiting, Records, Services and Links," <http://www.hudsoncountynj.org/visiting-records-services-and-links.aspx> (last visited November 30, 2012); *see also* Global Tel\*Link, <http://www.gtl.net/familyandfriends/index.shtml> ("Global Tel\*Link has a policy of recording incoming customer calls to its Customer Service Call . . . . All inmate telephone calls are likely to be monitored and recorded.") (last visited November 30, 2012). Although the government has provided the defense with, for example, the recordings of Abdul Williams's jailhouse calls from the Essex County Correctional Facility in discovery letters dated May 4, 2011 and August 24, 2011, the defense has not received the recordings that

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Jauregui references in J-05029. Accordingly, Mr. Bergrin now requests these recordings, which are likely to impeach the credibility of Abdul Williams and Yolanda Jauregui at the next trial, and which are likely to demonstrate their motives for providing testimony against Mr. Bergrin, thereby tending to exculpate him of involvement in the Kemo murder case, the drug conspiracy, and the drug and bribery schemes alleged as substantive offenses in Counts 17 through 19. *See United States v. Risha*, 445 F.3d 298, 303-06 (3d Cir. 2006) (federal prosecutors have duty to obtain and disclose exculpatory evidence possessed by state agents).

14. Mr. Bergrin requests the attorney visitation records of Anthony Young, Yolanda Jauregui, and Alberto Castro at Essex County and Hudson County correctional centers, which the defense investigation has led him to believe contain evidence supporting the defense theory that the testimony of these witnesses is fabricated, tending to exculpate him of the Kemo murder and the drug conspiracy.

15. Mr. Bergrin requests any and all interviews between the United States Attorney's Office and Abdul Williams that were surreptitiously recorded by his attorney, Wanda M. Akin, which will enable Mr. Bergrin to impeach the testimony of Mr. Williams and which will tend to exculpate Mr. Bergrin of involvement in the drug conspiracy and the drug trafficking and bribery schemes alleged against him in Counts 17 through 19 of the Indictment.

16. Mr. Bergrin requests the following additional information with respect to Thomas Moran, all of which is likely to contain evidence that is consistent with the defense theory that Mr. Moran's testimony is fabricated, and which would therefore tend to exculpate Mr. Bergrin of involvement in the pending charges:

a. Any psychological records of Thomas Moran in the government's possession.

b. Any additional documentation of benefits received by Thomas Moran, including: i) any correspondence, telephone contacts, memoranda, or other communication between the United States Attorney's Office and the Hudson County Prosecutor's Office with respect to Mr. Moran's January 4, 2010 guilty plea in *State v. Moran*, Indictment No. 09-04-00914; and ii) any materials pertaining to the fact that Mr. Moran's father was not arrested after contacting members of the New Jersey State Policemen's Benevolent Association who worked in Thomas Moran's correctional facility.

17. Mr. Bergrin requests additional documents and information, including surveillance recordings, criminal records, plea and cooperation agreements, sentencing materials, and FBI and other investigative reports, with respect to the following witnesses expected to testify for the government at the upcoming trial against Mr. Bergrin: Richard Pozo, Shelton Leverett, Rondre Kelly, and Oscar Cordova.

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a. In addition to the materials the government has already provided with respect to Richard Pozo, Mr. Bergrin now also seeks any existing information concerning any orders of protection placed against Mr. Pozo, or violations of such an order, including any information related to whether Mr. Pozo was permitted to remain on supervised release after violating an order of protection against him. Mr. Bergrin also requests any existing information pertaining to government debriefings of Mr. Pozo in Texas, statements other individuals have made against him, and any additional recordings or wiretaps featuring Mr. Pozo.

b. In addition to the materials the government has already provided with respect to Rondre Kelly, Mr. Bergrin now additionally seeks all transcripts of recordings featuring Mr. Kelly, his grand jury testimony in *United States v. Kirkland*, as well as any recordings, testimony, statements -- by either Mr. Kelly or by other witnesses against him, or documents pertaining to any debriefings in the Pittsburgh investigation, *see* J-03917.

18. Mr. Bergrin requests all documents and information with respect to Tito Cepeda which tend to exculpate Mr. Bergrin of the murder-for-hire plot alleged as substantive offenses in Counts 20 through 26 of the Indictment, including any reports, notes, or statements demonstrating that Mr. Cepeda was not contacted by Mr. Bergrin, or anyone working for Mr. Bergrin, to obtain a weapon.

19. Mr. Bergrin requests all documents and information with respect to Dennis Kousos, which tend to exculpate Mr. Bergrin of the murder-for-hire plot alleged as substantive offenses in Counts 20 through 26 of the Indictment, including any reports, notes, or statements demonstrating that their relationship in the Vicente Esteves case was cordial and professional.

20. Mr. Bergrin requests a transcript of the November 18, 2008 meeting between himself, Oscar Cordova, Nelson Esteves, Jason Nieves and Michael Lopez at the Law Office of Paul Bergrin, which contains exculpatory statements with respect to the charges related to the murder-for-hire plot. *See* CW1-000022.

21. Mr. Bergrin seeks all documents and information pertaining to statements made by Gregory Smith, including his testimony in *State v. Peoples*, Indictment No. 06-08-2643, and any government benefits he may have received.

22. The government has provided documentation of certain records obtained through subpoenas *duces tecum*, *see, e.g.*, Discovery Letter of June 21, 2011, PBTMOBL-000002, however Mr. Bergrin requests the date of every subpoena the government has issued seeking records of Mr. Bergrin's telephone and E-ZPass use, which information is material to Mr. Bergrin's defense that government delays resulted in losses of exculpatory evidence material to his innocence.



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23. Mr. Bergrin requests all documents and information pertaining to communications between the New York Police Department, the New York District Attorney's Office, the FBI, and the United States Attorney's Office for the District of New Jersey concerning Paul W. Bergrin from about November 2011 through May 2009 coordinating when to arrest and charge Mr. Bergrin, including any shared emails, reports, or memoranda, which information is material to Mr. Bergrin's defense that government delays resulted in losses of exculpatory evidence material to his innocence.

24. Mr. Bergrin also seeks the results of any polygraph examinations administered to any witnesses as well as a list of the questions asked, which Mr. Bergrin believes will support the defense theory that the testimony of the government's witnesses is fabricated.

Please feel free to call me if you would like to discuss these requests further. In the meantime, your prompt attention and cooperation with respect to this request will be very much appreciated.

Sincerely yours,  
Gibbons P.C.

By: Lawrence S. Lustberg  
Bruce A. Levy  
Amanda B. Protes

Standby counsel for Paul W. Bergrin

cc: Paul W. Bergrin

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 17  
      -----x

8  
9   Newark, New Jersey  
   February 15, 2013  
10  
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  
24       an accurate record as taken stenographically in  
25       the above entitled proceedings.

s/CHARLES P. McGUIRE, C.C.R.

CHARLES P. McGUIRE, C.C.R.

P3758