1 Is that a certification prepared for you by
2 Ms. Kecia Clarke, your attorney that you hired?
3 A. Yes.
4 Q. For this $13,000 that you paid her?
5 A. Maybe more, yes.
6 Q. And isn't it a fact that in that certification that's
7 going to Superior Court of New Jersey and to the mortgage
8 company and the title company that you allege that you paid
9 $30,000?
10 A. Yes, that's what it says, yes.
11 Q. And that the reason that you paid $30,000 is because
12 it was a handyman special and in disrepair; correct?
13 A. That's what I told them.
14 Q. And isn't the fact that you also assert in there that
15 you didn't buy the property from me, but you bought it from
16 a Sulaimun Jenkins?
17 A. Yes.
18 Q. And that's whose name is reflected on the deed that
19 you signed; correct?
20 A. Yes.
21 Q. Now, the house was located on South 12th Street;
22 correct?
23 A. Yes.
24 Q. And what is your association to South 12th Street?
25 A. What do you mean?

1 Q. That's an area that you know very well; correct?
2 A. Incorrect.
3 Q. That's an area -- are you telling us that you're not
4 familiar with the area where the house was?
5 A. Crosstown, no. That's what we considered crosstown.
6 What I consider -- where I'm from is considered down the
7 hill, which is Clinton Avenue, Muhammad Ali Boulevard and
8 all of that.
9 Q. Okay. That's fair. But before you bought the house,
10 you went to look at it; right?
11 A. Yes, you gave me the address to go look at it, yes.
12 Q. And as a matter of fact, you hired someone to do the
13 repairs before you could even sell it to the child's mother;
14 correct?
15 A. Yes, that you took my money and your team left, yes.
16 Q. Now, isn't the fact that you dealt with Sulaimun
17 Jenkins to clear up the title?
18 A. On your instructions, yes.
19 Q. On my instructions?
20 A. Yes.
21 Q. And isn't it a fact that you dealt with Sulaimun
22 Jenkins to prepare a letter and a package to the title
23 company?
24 A. I don't know what -- what you're asking me. Could you
25 break it down a little more?

1 Q. It was Sulaimun that you dealt with; correct? He's
2 the one that attended the closing; correct?
3 A. You lost me, Mr. Bergrin. What are you asking me?
4 Q. I'm asking you if it was Mr. Jenkins who signed the
5 documents at the closing.
6 A. Wasn't at no closing with Mr. Jenkins. Me and
7 Mr. Jenkins fixed the problem that occurred with me and you.
8 We got another deed and we went and recorded it because you
9 backtracked me to him. I never knew Sulaimun Jenkins until
10 you gave each other our numbers and told us to meet.
11 Q. And you're as sure about that as all your testimony in
12 this case; right?
13 A. Yes. I never knew Sulaimun Jenkins until you put us
14 together, yes.
15 Q. Now, I had nothing to do whatsoever with the bad title
16 in this case; correct?
17 A. I don't know. You -- me and you did a deal, a
18 closing, which I would expected that everything was
19 airtight, which it wasn't. And you backtracked and put me
20 in touch with Sulaimun. I don't know what role Sulaimun
21 played in the purchase of it prior between you and him, but
22 that's how Sulaimun came into my life: Through you.
23 Q. Well, you saw the documentation, right, the deed, you
24 saw the affidavit of title in the name of Sulaimun Jenkins;
25 correct?

A. No. When I originally started, it was me and you on a contract with a deed first. Sulaimun Jenkins picked up whatever you didn't do right, and you instructed me to deal with Sulaimun Jenkins.

Q. Now, isn't it a fact that the deed that you signed represented that you were buying the property from Sulaimun Jenkins, the form that you were just shown, for $30,000?

A. Mr. Bergrin --

Q. Isn't it a fact, sir, that that's the deed that you signed? I asked you a question, Mr. Kelly. Please answer it.

A. It's not a fact the way you're pointing and the story is going. You sent me and put me and Sulaimun Jenkins together to fix the problem that occurred. I never knew Sulaimun Jenkins. Whatever we did, we went and got done thinking it was going to alleviate the problem. If it eliminated you out of the loop, it eliminated you out of the loop. But my initial purchase was with you. I never knew Sulaimun Jenkins. You sent me to that house, gave me the address and everything else. You put me with Sulaimun. I never knew Sulaimun Jenkins.

Q. Now, the bad title to the house was because of a lady by the name of Joyce Kirkland; correct?

A. I don't remember that, Mr. Bergrin.

Q. Do you remember testifying or going to speak to the

1 prosecutors in Essex County?
2 A. Yes.
3 Q. And isn't the fact that at that particular time, you
4 spoke to the prosecutors about what was wrong with the
5 transaction and the fraud that was committed on the
6 transaction? Isn't that a fact, Mr. Kelly?
7 A. No. What was told to me and my attorney was that it
8 was something going on, and we couldn't proceed forward
9 until the investigation was over.
10 Q. And it had to do with a Joyce Kirkland, who took out
11 fraudulent mortgages on a whole bunch of properties, and
12 that happened to be one of them; correct?
13 A. I guess so. Yes.
14 Q. Now, you talked about drug transactions, and you
15 talked about drug transactions at my law office; right?
16 A. Yes.
17 Q. And you're saying that you would pull up on Polk
18 Street? Is that -- was that your testimony?
19 A. Yes.
20 Q. And isn't it a fact that my office on Market Street
21 was essentially down the block from the east district police
22 department?
23 A. What does that mean?
24 Q. Isn't it a fact that my office was down the block from
25 the east district police office?

A. Yes.
Q. And isn't it a fact that Polk Street is -- in the back door of my office building is right across the street from a restaurant? Correct?
A. Yes.
Q. And that restaurant is always packed and full of Newark police officers, correct, eating?
A. That, I don't know.
Q. Now, you said that you pulled up on Polk Street; correct?
A. Yes.
Q. And Ramon Jimenez would bring you out drugs?
A. Yes.
Q. And he'd put it into the front seat of your car. That was your testimony; right?
A. Front, back, yes.
Q. And you would drive away with the drugs, 10 to 40 kilograms, on your front seat; right?
A. Yes.
Q. With a large police presence, and not put it into the trunk, not put it into a concealed compartment; correct? That's your testimony, Mr. Kelly; right?
A. Mr. Bergrin --
Q. I asked you a question, Mr. Kelly.
A. Yes.

1 Q. It even gets better than that. You said that this
2 would happen during business hours, right, because you
3 needed to be out of Newark by 3:30 to go home; right?
4 A. Yes.
5 Q. And there were -- I wasn't the only attorney that
6 worked at that office; right?
7 A. No.
8 Q. As a matter of fact, there were attorneys, paralegals,
9 secretaries, receptionists; right?
10 A. Yes, I expect so, yes.
11 Q. And we had clients in the parking lot, correct, that
12 would park on Polk Street and park in the parking lot right
13 on Market Street; right?
14 A. I don't know that.
15 Q. You don't know that?
16 A. No.
17 Q. You've never been inside my office, inside my parking
18 lot?
19 A. Mr. Bergrin, I don't know who was there when I was
20 coming, and it didn't matter. I called you, said I was
21 here, and it happened. Whatever was going on --
22 Q. So you'd pull up -- you'd pull up during business
23 hours; right?
24 A. Yes.
25 Q. Right next to my building; correct?

A. Yes.
Q. At -- it had to be before 3:30, so between -- anywhere between the morning, 3:30 in the afternoon; right?
A. Noon, yes.
Q. And the reason why you stopped doing that is because it was inconvenient to you. That's what you're telling us, right?
A. Yes.
Q. Because you needed to leave Newark by 3:30 to get home to your house because you lived out of state.
A. Yes.
Q. So you're telling these people of the jury that there were no transactions that you conducted, all these meetings at the hotels, all the meetings at Yolanda's house in Belleville, all these meetings at different locations, malls, strip malls, whatever, wherever you met, all occurred before 3:30 in the afternoon.
A. Most of them, yes, and at my discretion. If I felt like waiting around later, I would. Yes, they did, yes.
Q. And you went through telephone conversations; right? Correct?
A. Yes.
Q. And isn't it a fact that a lot of the telephone conversations, you talk about some of them occurred five, six, four o'clock in the afternoon; right?

1 A. Yes, that's possible.
2 Q. It's not possible. You had a chance to look at them,
3 Mr. Kelly; isn't that a fact?
4 A. I ain't gonna say a fact. If I looked at them, and
5 that's what I said, if it's true, then it's there.
6 Q. And isn't it a fact that a lot of the meetings that
7 you had occurred after 3:30?
8 A. Once I was in, it didn't matter what time it was any
9 more.
10 Q. Now, you had what they call traps in your cars; right?
11 A. Yes.
12 Q. And the car that you went to pick up your drugs on
13 Polk Street, at my law office, you had a trap in; right?
14 A. Yes.
15 Q. Yet the drugs were put on the front seat of the car;
16 right?
17 A. Or the back, yes.
18 Q. Now, you said that you paid me for the transaction;
19 right?
20 A. I gave the money to Ramon. I probably gave you
21 maybe -- paid you one or two times, yes.
22 Q. You paid me one or two times.
23 A. Yes.
24 Q. And you can remember those one or two times
25 specifically; right?

A. Yes.
Q. Did you come into the office and pay me?
A. One in the office, yes, and one at the restaurant, yes.
Q. One in the office and one at the restaurant.
Did you ever suggest to me that I -- that you come into the office and pick up the drugs?
A. No.
Q. Did you ever suggest to me that I meet you at any other locations besides my office?
A. No, it was spontaneous. If I called you, you would say come by the office. It wasn't no set plan for me. You were the one running it.
Q. I was running it. And I'm going to run it from my law office, according to you, and have Ramon Jimenez delivering drugs, multi kilograms of cocaine coming out of my law office into your car; right?
A. Me, that's the best --
Q. According to you; right?
A. According to me, that was the best place to get it, yes.
Q. Now, you said -- how many transactions did you conduct at my law office?
A. Maybe five or six, three or four, between something like that. No more than fix.

Q. Maybe five or six, maybe three to four, is that what you're telling --

A. No more than five or six.

Q. No more than five or six. And each time would it be what, you said, 10 kilograms?

A. Yes.

Q. And how much would I charge you a kilogram?

A. 21,000.

Q. 21,000.

And did you ever tell the prosecutors, the F.B.I. different prices of what I would charge you?

A. I'm unsure. Possibility.

Q. Possibility?

Now, you said that there came a point in time when money was missing or I accused you of short?

A. No, that's not what I said.

Q. Okay. What did you say about that?

A. You said money was missing. You didn't accuse me. We both considered it was Ramon taking money out.

Q. But Ramon continued to work at my law office after that; correct?

A. That, I don't know.

Q. Well, you came to my law office on other occasions; right?

A. As we started, yes, he still was there, yes.

Q. So Ramon Jimenez is stealing my money; correct?
A. Yes.
Q. Ramon Jimenez is dealing with you behind my back; correct?
A. No.
Q. Ramon Jimenez is --
A. Helping you, yes.
Q. Helping me?
A. Yes.
Q. Ramon Jimenez is taking money that's allegedly mine without my notice, without my knowledge; right? So he's stealing money from me; right?
A. Yes.
Q. And he remains in my office, the trusty Ramon; right?
A. I don't know what your decision was about Ramon was. I can't say.
Q. Did there ever come a point in time where Ramon said to you words to the effect of, Let me eat?
A. Yes.
Q. New, you didn't tell us that during your direct examination by Mr. Minish. You skipped over that; right?
A. I don't believe he asked me that. If he did, if I missed it, I'm unsure.
Q. Well, he asked you about transactions with Ramon Jimenez; right? Didn't he ask you about transactions with

1 Ramon Jimenez?
2 A. With Ramon Jimenez and with you, yes.
3 Q. And isn't it the fact that you never mentioned the
4 fact that Ramon Jimenez, according to you, told you words to
5 the effect of, Let me eat; right?
6 A. Yes.
7 Q. Now, when Ramon Jimenez said to you, Let me eat, did
8 you at that time begin to supply Ramon Jimenez with cocaine?
9 A. No.
10 Q. Did Ramon Jimenez then supply you with cocaine?
11 A. No.
12 Q. And you're sure about that?
13 A. Ramon Jimenez supplied people where I sent him. It
14 was never personally for me. Small amounts.
15 Q. So you would send Ramon Jimenez -- and where would you
16 send them?
17 A. Where would I send them?
18 Q. Yes, where would you send them to meet Ramon Jimenez.
19 A. No, I would go meet them.
20 Q. You would go meet them? Where would you send the
21 people -- you said you would meet them now. Where would you
22 send the people to meet Ramon Jimenez?
23 A. I was giving Ramon small sales. If somebody want it
24 in smaller amounts, I would go with them and meet Ramon.
25 Q. And that was all behind my back; right?

A. I wouldn't say it was behind your back. It was basically the same product. I don't know if it's behind your back. Just wasn't large quantities, which I was receiving.

Q. So here you are, according to you, buying multi kilograms of cocaine from me; right?

A. Um-h'm.

Q. And then you have a meeting, with Ramon stealing money from me; right? Right?

A. I didn't have a meeting with him stealing money from you.

Q. No. Ramon was stealing from me; right?

A. Yes.

Q. And then Ramon suggests to you after he's stealing money and we have a meeting and a conversation about Ramon stealing money, you then decide to have Ramon supply drugs, according to you, in small quantities, to people that you're sending him; right?

A. Yes.

Q. And how much are those small quantities?

A. I don't remember offhand, but it wasn't no more than maybe a hundred grams or a few ounces, nothing big.

Q. And did you tell this to the F.B.I.?

A. I'm not sure. Probably.

MR. BERGRIN: If I may have just one minute,

1 Judge.
2 (Pause)
3 MR. BERGRIN: Can I have just one minute, Judge?
4 (Pause continues
5 Q. Now, Paul Bergrin called all the shots, right,
6 according to you; right?
7 A. Yes.
8 Q. Paul Bergrin set the prices according to you; right?
9 A. Me and you together, yes.
10 Q. Me and you together.
11 A. Yes.
12 Q. Paul Bergrin is the one who negotiated and was in
13 charge of Yolanda; correct?
14 A. You sent me to them, yes.
15 Q. And Paul Bergrin was the one that was in charge of
16 Alejandro Castro; right?
17 A. Yes.
18 Q. According to you; right?
19 A. Yes.
20 MR. BERGRIN: Judge, I'm sorry. If I may have the
21 Court's indulgence.
22 (Pause)
23 Q. Do you remember speaking to the United States
24 Attorney's Office and the F.B.I. on November 23rd of 2010?
25 A. No.

1 Q. So you just testified that you were supplying Ramon
2 Jimenez; correct? In small amounts; right?
3 A. That's not what I said.
4 Q. Did you testify that Ramon Jimenez was meeting clients
5 of yours or people that you had sent to him?
6 A. Yes.
7 Q. And you would supply them, as you said, a small amount
8 of drugs, and to you, a small amount was approximately a
9 hundred grams; correct?
10 A. Or less, yes.
11 Q. How many dealings did you do with Ramon Jimenez?
12 A. Not many. I don't remember how many.
13 Q. Now, why did you deal with Ramon Jimenez?
14 A. Well, when he said let him eat, I figured I would give
15 him a few small sales to keep him quiet so he wouldn't put
16 all the business out on the street what was going on.
17 Q. And where did you get the drugs to supply Ramon?
18 A. I never supplied Ramon. Ramon had drugs already. I
19 sent him clients who wanted small amounts. I never gave
20 Ramon drugs.
21 Q. And who were some of these clients?
22 A. Whoever was on the street corner. Some of my little
23 cousins, some of my other friends. Whoever wanted small
24 amounts who I was in contact with.
25 Q. Who are these people?

A. Maybe my cousin Jermaine, Tyree, a couple of kids on the block. It didn't matter.

Q. And I'm sure you named these people; right?

A. Named them when?

Q. Did you name these people to the F.B.I. and the U.S. Attorneys?

A. If I was asked that. I don't remember.

Q. Would Ramon supply up to 300 grams, a third of a kilogram?

A. I don't remember giving him a 300-gram sale. I don't remember anything like that.

MR. BERGRIN: May I approach the witness, Your Honor?

THE COURT: Yes. Can you tell us what you're looking at?

MR. BERGRIN: J-04019. I want to see if it refreshes his recollection. It's an investigation on November 23rd, 2010.

THE COURT: Go ahead.

Q. I ask you to look at the next-to-last paragraph.

Does it refresh your recollection about the fact that you said that Ramon would deal maximum of 300 kilograms?

A. Not kilograms.

Q. Three hundred grams. I'm sorry. Three hundred grams.

A. Yes.
Q. And that you would send him friends and members of the family?
A. Yes.
Q. And this was while you're supposedly dealing with me; correct?
A. I wasn't opening, I was selling everything I had as whole kilos. I wasn't attempting to break down --
Q. My question to you is, this is while you were supposedly dealing with me; right?
A. If that's accurate, yes.
Q. What do you mean, "if that's accurate"?
A. If that's what it is, yes.
Q. No, you said if that's accurate.
A. If the timing on that is when Ramon had it as well as when I was dealing with you, yes.
Q. Well, I'm asking you about your timing. You spoke to the United States Government on November 23rd of 2010. You're talking about the period when you're dealing with me; correct?
A. Yes.
Q. So it's not a matter of if it's accurate. So you're dealing with me and buying multi kilograms, according to you; right?
A. Yes.

1 Q. Someone who's stealing money from you, according to
2 you, comes to you and says, Let me also eat; right?
3 A. Yes.
4 Q. And then you start dealing with him and sending him
5 clients and customers, right, for up to 300-gram sales, a
6 third of a kilogram; right?
7 A. A possibility, yes.
8 Q. According to you.
9 A. Yes.
10 Q. Now, there came a point in time when you said that you
11 had a falling-out with me and Yolanda; are correct?
12 A. Yes.
13 Q. And what was that over, according to you?
14 A. Money.
15 Q. Over money?
16 A. Yes, I believe so.
17 Q. And I'm sure that's reflected in the recordings, in
18 the tapes, right?
19 A. It could be.
20 THE COURT: Let me know when it's a good time to
21 break, Mr. Bergrin.
22 MR. BERGRIN: We can break now, Judge.
23 THE COURT: Okay.
24 Ladies and gentlemen, apparently your lunch is
25 here, so let's break for lunch. Forty-five minutes.

A. Yes.
Q. You did.
A. Not with you, but other people, yes, outside of cocaine, yes. Heroin, yes.
Q. Outside of cocaine. But I'm talking about, you know, cocaine transactions.
A. With who?
Q. Did you ever meet with any Hispanic males at the GNC store?
A. And discuss price or anything?
Q. Discuss price, discuss money that might be owed.
A. I don't remember that.
Q. You don't remember that.
Because I was the boss; right? Paul Bergrin was the boss. If there was any problems with sales, you would come to me; right?
A. No, if there was a problem with price, yes.
Q. If there was any money -- any problems with money that was owed, you would come to me; correct?
A. Yes.
Q. There'd be no need for you to meet with Hispanic males, because I'm the boss; right?
A. Yes.
Q. Okay.
Now, do you remember being interviewed by the

1 F.B.I. on April the 27th of 2011?
2 A. No.
3 Q. You don't remember that?
4 A. No.
5 Q. Would it refresh your recollection and memory if you
6 were to see any kind of reports as it reflects on your
7 meeting of April 27th --
8 A. Yes.
9 Q. -- of 2011?
10 A. Yes.
11 Q. Would it, sir?
12 A. Yes.
13 Q. Thank you.
14 I'm going to show you what's been marked J-13783.
15 MR. MINISH: Would you give me that number again,
16 please?
17 MR. BERGRIN: 13783.
18 MR. MINISH: Thanks.
19 Q. Mr. Kelly, sir, I'm going to ask you to look at this
20 exhibit and this paragraph.
21 Tell me when you're ready, sir. I'll wait for
22 you.
23 A. Yes.
24 Q. Isn't the fact, sir, that you told the United States
25 Attorney's Office and F.B.I. that you met with two Hispanic

1 males at the GNC store in Belleville, New Jersey who had
2 accused you of owing them money for cocaine transactions
3 with Yolanda and Alejandro Castro?
4 A. That's what that is, yes.
5 Q. And they accused you of selling their drugs and owing
6 them money; correct, sir?
7 A. I don't remember that.
8 Q. But isn't that what --
9 A. It's right there.
10 Q. You may not remember, but didn't you tell that to the
11 F.B.I. and the U.S. Attorneys on that date?
12 A. If that's what's written, that's what written.
13 Q. But those words would never come out of the mouth of
14 Rondre Kelly because that would be totally false, because
15 Paul Bergrin's the boss; right?
16 A. Yes.
17 Q. Now, I asked you before and I'll ask you for the last
18 time in this area: You said that there came a time when
19 Ramon Jimenez, the individual that you said we agreed, me
20 and you, was stealing money and drug transactions, came to
21 you to sell you drugs or people that you knew drugs;
22 correct?
23 A. Yes.
24 Q. And you testified that after knowing that he's
25 stealing money from me, you dealt with him to deal drugs to

1 friends of yours and other acquaintances; correct?
2 A. Yes.
3 Q. Now, why did you do that with Mr. Jimenez?
4 A. Why did I what? Give him other sales?
5 Q. Yes, why did you give him other sales when you were
6 dealing with me, according to you, and I was the boss and he
7 was stealing money from me and being disloyal to me,
8 according to you.
9 A. I never had to pay the money back, and I gave him
10 sales just to keep him quiet.
11 Q. Just to keep him quiet.
12 A. Yes.
13 Q. Keep him quiet about what? Were you doing something
14 wrong? Were you stealing money with him from drugs?
15 A. No, keep him quiet about what we were doing.
16 Q. Keep him quiet about what me and you were doing --
17 A. Yes.
18 Q. -- so you were going to buy drugs from him to keep him
19 quiet from what me and you were doing.
20 THE COURT: He said now on a number of
21 occasions --
22 A. I gave him sales.
23 THE COURT: -- that he wasn't buying drugs from
24 him.
25 MR. BERGRIN: Okay.

1 THE COURT: And we've been through all this.
2 MR. BERGRIN: Okay, Judge. I have one follow-up
3 question, Judge, that I missed.
4 THE COURT: Well, then, let's get to it.
5 MR. BERGRIN: Okay.
6 BY MR. BERGRIN:
7 Q. Did you ever tell anybody that the reason that you
8 were doing business with Ramon because you wanted to build a
9 good relationship with one of my -- one of my employees?
10 A. I don't remember that.
11 MR. BERGRIN: Can I approach him one last time,
12 Judge?
13 THE COURT: Yes.
14 MR. BERGRIN: Thank you.
15 Q. I show you what has been marked J-04019.
16 I'm going to ask you to look at the fourth
17 paragraph down, the last three sentences, Mr. Kelly, sir.
18 A. I just answered that question.
19 MR. MINISH: Which paragraph?
20 MR. BERGRIN: Like the fourth paragraph down, full
21 paragraph. The last three sentences.
22 THE COURT: And what did you say?
23 THE WITNESS: I told him yes, I said that to keep
24 -- make him -- help keep him quiet from what business I had
25 going on.

1 Q. But you're dealing -- you're dealing in large
2 quantities with his sister; correct?
3 A. No. With you and his sister, who you sent me to, and
4 the other Mexicans, yes.
5 Q. Right. But you have to keep him quiet by doing
6 business with him.
7 MR. BERGRIN: I'll move on, Judge. I'm sorry for
8 repeating myself.
9 Q. Now, you testified yesterday under direct examination
10 by Mr. Minish that I proposed dealing cocaine to you as
11 essentially a consolation, okay, to make up for the house
12 that I sold you; right?
13 A. To make up for the money that I gave out to get the
14 house back that you sold me.
15 Q. Right.
16 A. Yes.
17 Q. Even though you sold it at such a large profit,
18 $130,000. But that's the reason why I proposed doing
19 cocaine deals with you, right, according to you?
20 A. Yes.
21 Q. Now, when I proposed that to you, did you testify
22 yesterday that I asked you how the streets are doing?
23 A. Yes.
24 Q. Okay. Here I am, a big, giant drug dealer, right,
25 multi, multi-kilograms of drugs, setting prices, connections

1 all over the place, a network, an empire of an organization;
2 right?
3 A. I don't know what you was doing outside of me.
4 Q. Now, and I'm going to ask you what the streets are
5 doing, me, the big drug dealer, who is controlling the
6 drugs; correct?
7 A. Yes.
8 Q. And then I'm going to ask you -- did you testify
9 yesterday I asked you what cocaine is going for now on the
10 streets, and you gave me the price? Correct?
11 A. Yes.
12 Q. Now, you testified today that I set the price at
13 21,000 a kilogram; right?
14 A. Yes.
15 Q. Did you tell the F.B.I. that I set it -- on July 9th,
16 did you tell them that I set it at 20,000 a kilogram, not
17 21,000, the original price?
18 A. No, I don't think I said that. I believe I said
19 either -- might be a statement in between 20 and 21, but I
20 wasn't sure at the time.
21 MR. BERGRIN: Can I approach one last time, Judge?
22 THE COURT: Yes.
23 Q. I'll show you what has been marked J-04059.
24 THE COURT: J-zero what?
25 MR. BERGRIN: 4059, sir.

1 Q. I ask you to look at the third paragraph -- one, two,
2 three, four, five, sixth line. Tell me when you've had a
3 chance to read that, sir, please.
4 A. Yes.
5 Q. Did you tell them --
6 A. Yes.
7 Q. -- despite what you just said, 20,000?
8 A. Yes. What's in there, yes.
9 Q. Now, you said that you came to me in reference to
10 Floyd Kelly, your brother; correct?
11 A. Yes.
12 Q. And that's when you began dealing with me, and I
13 proposed the kilograms in reference to the house.
14 A. Yes.
15 Q. Right?
16 A. Yes.
17 Q. Isn't it a fact that Floyd Kelly was not arrested
18 until 2006, sir?
19 A. I don't know the exact date. I don't believe that's
20 true.
21 Q. But isn't it a fact that you didn't deal with me,
22 according to you, until after Floyd Kelly was arrested and
23 you came to me for representation?
24 A. I came to you -- I don't know the day that he got
25 arrested, but I came to you after he was indicted, and when

1 we felt that it was going to Superior Court, then I came to
2 you. His initial arrest, we never thought he needed an
3 attorney because it was only identity theft. But when it
4 went to Superior Court, then we decided we needed an
5 attorney. So I don't know the exact dates.
6 Q. You don't know the exact dates. Do you know what year
7 it was in, without the exact dates?
8 A. No. No.
9 Q. Now, you said that I directed you to Little Street,
10 and you actually identified the house that you went to;
11 right?
12 A. Yes.
13 Q. Now, do you know whose house that was? Did you ever
14 go in that house?
15 A. No.
16 Q. And you said that Alejandro and Yolanda came out, and
17 they -- and Alejandro brought you 10 kilograms; correct?
18 A. Yes.
19 Q. But I had called up there. You called me first when
20 you got there; right?
21 A. Yes.
22 Q. So this would be on a recorded call because you're
23 being monitored at that time; right?
24 A. Maybe not on the other phone I was using, no. Only
25 one of our phones was tapped.

1 Q. So all these calls, these hundreds of calls that you
2 had with Yolanda that you didn't know that you were being
3 recorded; correct?
4 A. Yes.
5 Q. And now you decide the one time that we supposedly
6 have a direct communication where I'm directing you to
7 Yolanda and setting up the transaction, just by coincidence,
8 you happen to use your other phone.
9 A. Don't think my phone was tapped at that time.
10 Q. You never met with me in reference to bad drugs,
11 correct, or drugs that you said was not good quality; right?
12 A. No.
13 Q. Isn't it a fact that you negotiated that with Yolanda
14 as to how much you're going to pay and how many kilograms
15 you're going to return?
16 A. No.
17 Q. So are you denying that you dealt with her in
18 reference to what you allege to be bad drugs or non-quality
19 drugs?
20 A. No, I'm denying that it was a price in that event when
21 I was returning the bad drugs.
22 Q. And it was you and Yolanda who dealt with that;
23 correct?
24 A. The return? Yes.
25 Q. And it was you and Yolanda who negotiated the price on

1 that; right?
2 A. No. Price was already established way before I got
3 into getting into Yolanda and Alejandro. Way beforehand.
4 Q. Did you tell the F.B.I. and the U. S. Attorney's
5 Office that you gave them, meaning Yolanda and Alejandro,
6 7,500 for four to five kilograms?
7 A. Say that again?
8 Q. Did you tell the F.B.I. that you negotiated the price
9 of $7,500 for four to five kilograms with Yolanda?
10 A. No, I don't remember that.
11 Q. When you brought back the bad drugs, did you negotiate
12 a price with Yolanda?
13 A. I'm not sure about that.
14 Q. You testified that I was the one that negotiated
15 prices; right?
16 A. When I brung drug -- bad drugs back, I just called and
17 returned them. There wasn't need for no negotiation. They
18 wasn't no good.
19 Q. So are you telling us that you never negotiated with
20 Yolanda and Yolanda never told you what to give or what
21 price to pay for her; right?
22 A. No.
23 Q. Do you remember telling that to the F.B.I. any time?
24 A. No, don't recall that.
25 Q. Was Yolanda upset in any way?

A. I wouldn't know.

Q. I'm asking you, do you remember that, sir?

A. No. No, I don't.

Q. Do you remember saying that she was upset?

A. No, I don't remember.

Q. Do you remember telling the F.B.I. that she was angry at you, or mad --

A. No.

Q. -- used the word mad?

A. I don't remember that.

MR. BERGRIN: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. Would anything refresh your recollection if you saw a report about that?

A. Yes, if I see it, yes.

MR. BERGRIN: It's J-04028, Your Honor. It's an investigation on September 8th of 2010, sir.

Q. I show you the -- one, two, three, four, five, sixth -- I show you the seventh paragraph on this form, J-04028,

Mr. Kelly.

I ask you to look at the paragraph that starts "She was mad" or "During the conversation." Okay? Please.

Tell me when you're ready, sir.

1 A. Yes.
2 Q. Isn't it a fact, sir, that you told the Government
3 during an interview with them that you and Yolanda agreed,
4 Yolanda told you to return the four to five kilograms, and
5 you paid her $7,500 because they were bad narcotics?
6 A. Yes, that's what it says, yes.
7 Q. But you don't remember those words coming out of your
8 mouth.
9 A. No.
10 Q. Now, were any of Yolanda's family members besides
11 Ramon there during any of your drug transactions?
12 A. Yes.
13 Q. Who?
14 A. I don't know if they was family. Maybe another girl
15 was there, another guy. Nobody I knew.
16 Q. Okay. Did you identify Yolanda's sister as being
17 there during several transactions when you even negotiated
18 deals and money and sold drugs?
19 A. I'm not sure. That could be possible.
20 Q. Did you ever tell the Government that Yolanda's sister
21 was there when you negotiated deals in her presence?
22 A. Not negotiated. I probably picked up stuff from here.
23 Not negotiating anything.
24 Q. So you wouldn't use the word "negotiations" because
25 you never negotiate with Yolanda, according to you; right?

1 A. Well, I wouldn't use -- it depend on what we
2 negotiating.
3 Q. If you had told them that, would that have been a true
4 statement?
5 A. A true statement to what?
6 Q. That Yolanda's sister was there during narcotic
7 transactions and negotiations.
8 A. Well, yes.
9 Q. Did you know if it was her sister?
10 A. No.
11 Q. So if you didn't know of her sister, then you would
12 never say that her sister was present; right?
13 A. She would have never said to me that's her, sister I
14 would have never took her to be her sister.
15 MR. BERGRIN: If I may have one minute, Judge.
16 I'm sorry.
17 (Pause)
18 MR. BERGRIN: If I may have just one minute,
19 Judge. I'm sorry.
20 (Pause continues)
21 MR. BERGRIN: May I approach, Judge, --
22 THE COURT: Yes.
23 MR. BERGRIN: -- with J-12760, Judge? That's a
24 report of 1/11/2012, sir.
25 THE COURT: Give me that number again. I'm sorry.

1 MR. BERGRIN: Yes, sir. J-12760.
2 THE COURT: Okay.
3 MR. MINISH: Towards what end?
4 MR. BERGRIN: I'm sorry, what is your question?
5 MR. MINISH: Why are we approaching with that
6 document?
7 Q. Would it refresh your recollection, sir, in reference
8 to whether Yolanda's sister was identified by you as being
9 at several occasions when she was -- when you were buying
10 drugs from Yolanda?
11 A. When I was accepting drugs from Yolanda?
12 Q. When you were buying drugs from Yolanda.
13 A. When I was accepting drugs from Yolanda, yes, there
14 was a woman with her who she said was her sister, yes.
15 MR. BERGRIN: There's no need to approach, Judge.
16 Q. Now, did you ever have any type of arguments or
17 confrontations with any Hispanic males about your drug
18 transactions with Yolanda and Alejandro?
19 A. No.
20 Q. Did you ever meet an individual name of Pelon,
21 P-e-l-o-n?
22 A. No.
23 Q. Did you ever meet any of Alejandro's family or --
24 family?
25 A. I went to maybe two other residences where I met them

at. There was a woman with babies there. I don't know who -- what relations it was, no.

Q. And I was not present at that meeting; --

A. No.

Q. -- correct?

A. No.

Q. And isn't it a fact that at that residence, you had a confrontation or an argument with the individual and you felt like he disrespected you?

A. No. Don't remember that.

Q. Why did you go to that residence?

A. That was our meeting spot. We just changed wherever we -- wherever we met that's convenient.

Q. And who was there?

A. I don't remember.

Q. You don't remember? Where was it located?

A. Which one are you talking about?

Q. The residence that you went to. That's what we're talking about.

A. I went to so many. I went to the one off of --

Q. I'm talking about the one where the babies were and where the Hispanic male and female were.

A. One was on Camp Street, I believe, close to where I'm from, and one was off of Bloomfield Avenue somewhere.

Q. And who set that meeting spot?

A. Londa did.
Q. Yolonda?
A. Yes.
Q. And did you later learn -- did you ever find out who these individuals were?
A. No, did not.
Q. Now, you talked about telephone conversations; correct?
A. Yes.
Q. And one in particular, you talked about a telephone conversation with me, right, of December 31st?
A. Yes.
Q. And you said that it was a conversation where we talked on a recorded phone call; correct?
A. Yes.
Q. And is it fair to say that I was very upset at that time when I'm talking to you?
A. Hysterical, I guess.
Q. Hysterical, because, isn't it a fact that that call pertained to the fact that it was alleged that you paid $70,000 for the bail and to help get Alejandro Castro out?
A. No. I took it as the opposite way. It was being talked amongst you all that I had $70,000 to bail someone out. Someone was pointing the finger at me that I had actually took the $70,000. And that was --

Q. And isn't the fact -- I'm sorry, I didn't mean to interrupt you. I thought you were finished. I'm so sorry.
A. My only concern was that I didn't have the 70 or whatever amount it was, thousand dollars to bail him out.
Q. And isn't that phone conversation me telling you that I was upset that anybody would go to you behind my back and ask you for any money about Alejandro, and that I did not know about it at all?
A. I don't know.
Q. Isn't that the way the conversation went, Mr. Kelly?
A. I don't know. You can pull it out again and redo it, but I'm not sure that's the way it went.
(Off the record discussion between the Defendant and Government's counsel)
Q. This is the call of 12/31, identified as 4088b.
Now, Mr. Kelly, you have that conversation in front of you; right?
A. Yes.
Q. Isn't it a fact that Yolanda had informed you that I told these individuals who are saying that they paid you $70,000 to get Alejandro back that I don't trust you?
A. Something -- something to that effect, yes.
Q. Something to that effect. And I'm calling you back, isn't that a fact, to tell you that I never used those words and I never said that; correct?

1 A. That's what it says, yes.
2 Q. And isn't it a fact that I told you during that
3 telephone call that Yolanda was dealing with these people
4 behind my back and that Yolanda didn't correct them when
5 they said that they gave you $70,000 for Alejandro?
6 A. That's what you got out of that?
7 Q. Yes, exactly.
8 A. Not what I got out of it.
9 Q. Look at line 11: "I knew fucking nothing about that
10 that. Yolanda didn't correct them. I didn't know whether
11 that was true or not, but...
12 THE COURT: But that's not the question you asked.
13 Go back to the question before he started reading
14 that, and you asked a totally different question, Mr.
15 Bergrin. This is where we're get getting into the same
16 problem again.
17 Let me have Mr. Bergrin's question before he read
18 that.
19 (Record read)
20 MR. BERGRIN: Yes.
21 THE COURT: Doesn't say anything about dealing
22 behind my back in what you just read. It said exactly what
23 he said before.
24 BY MR. BERGRIN:
25 Q. And isn't it a fact that I'm telling you in that

1 conversation that I told them that I don't deal with you?
2 Correct?
3 A. That's what it says, yes.
4 Q. And I'm telling you that I told them that I have
5 nothing to do with essentially what you do as far as drug
6 dealing or words -- or similar to that.
7 MR. MINISH: Judge, instead of "similar to that,"
8 maybe we can go line by line --
9 THE COURT: Well, I don't understand why we're
10 going line by line. It's exactly consistent with what he
11 said. We're just reading the transcript.
12 MR. BERGRIN: I understand, Judge.
13 THE COURT: We've done it.
14 MR. BERGRIN: We've done it with the prosecution.
15 I haven't done it, Judge.
16 THE COURT: Oh, you think I'm going to sit here
17 and we're going to read through all the transcripts again,
18 just read them over again? If you want to point out
19 something that you think there's a mistake or something you
20 want to explain, certainly you have a right to do that,
21 Mr. Bergrin. But then just to read it and then quite
22 frankly not reading it as it's stated is just inappropriate.
23 BY MR. BERGRIN:
24 Q. The conversations that you've gone through, okay,
25 you're negotiating with Yolanda a meeting place; correct?

A. Yes.
Q. You're negotiating with Yolanda how many kilograms of cocaine would be delivered; correct?
A. Yes.
Q. You're negotiating with Yolanda when the delivery is to be made; correct?
A. Yes.
Q. You're negotiating with Yolanda where the delivery is to be made; correct?
A. Yes.
Q. You're negotiating with Yolanda the times that you're going to meet her; correct?
A. Yes.
Q. And it's Yolanda and Alejandro that are showing up, collecting the money, and meeting with you; correct?
A. Yes, at a point in time, yes.
Q. During all of the conversations, you never say, not one time, I'm going to pay Paul; correct?
A. There's no need for me to say that.
Q. My question to you is, you never say, I'm going to pay Paul; correct?
A. No. No.
Q. And Yolanda never tells you to pay Paul or speak to Paul about any problems; correct?
A. No.

1 MR. BERGRIN: Let me have one minute, Judge. I
2 may be finished.
3 (Pause)
4 Q. You talked about the fact that you never had a
5 confrontation where these individuals, Hispanic males
6 disrespected you; correct?
7 A. I don't remember that, no.
8 Q. You don't remember that.
9 A. No.
10 Q. I want to show you a conversation on the date of
11 December the 9th of 2005 at 5:53 in the evening that you
12 haven't identified, right, and ask you to look at it.
13 MR. BERGRIN: I want to mark it as a Defense
14 Exhibit, Your Honor.
15 THE COURT: Okay.
16 MR. BERGRIN: It's December 9th, 2005 at 5:53
17 between Yolanda Jauregui and Rondre Kelly.
18 (Defense Exhibit 9 marked for identification)
19 Q. Mr. Kelly, I'm going to show you what's been marked as
20 D-9 for identification.
21 I'm going to ask you to look at page two.
22 A. There's no page two here.
23 Q. You have it, sir?
24 A. Um-h'm.
25 Q. Starting with page two.

1 Isn't it a fact, sir, that in the conversation
2 that you're having at 5:53 in the evening on December 9th
3 with Yolanda, you're upset about the way you were
4 disrespected and treated?
5 A. That's what I said. That's what it says here, yes.
6 Q. And that's based upon the meeting that you had with
7 the people that Yolanda and Alejandro do drugs with, and
8 that's that meeting at the house that you talked about where
9 you said you didn't get disrespected; correct?
10 A. I don't think there's no meeting at the house. I
11 don't know when this was or what events happened that day.
12 I'm unsure about that.
13 Q. Isn't the fact that you're telling Yolanda nobody's
14 going to treat you like that?
15 A. Yeah, that's what's underlined, yes.
16 Q. And isn't it a fact that you're saying that -- to
17 Yolanda that she has her restaurant; correct?
18 A. Yes.
19 Q. And that she's in charge of the restaurant, and that
20 you're in charge of what you do; correct?
21 A. Yes.
22 Q. And isn't it a fact that you're telling her that
23 you're not --
24 MR. MINISH: Judge, are we going to read this, or
25 just play the whole recording, or Mr. Bergrin's just going

1 to read parts of it?
2 MR. BERGRIN: He's not going to ever tell me how
3 to conduct my cross-examination.
4 THE COURT: No, but I do think --
5 MR. GAY: Judge, what's the relevance of this?
6 It's not impeachment. I don't understand what this is
7 about.
8 THE COURT: If you want to read a statement for
9 something, Mr. Bergrin, I have no problem with you doing it,
10 but just saying, isn't it a fact that you said this, said
11 this, said this, when he's got a transcript that he said
12 that, well, I don't know where that's going.
13 MR. BERGRIN: It hasn't been admitted into
14 evidence, Judge. I have the right to go through the
15 transcript --
16 MR. MINISH: We have no objection to it going into
17 evidence and playing the whole call to the jury.
18 THE COURT: Well, let's not get into that drill
19 again.
20 MR. BERGRIN: Right.
21 THE COURT: Can't we just get involved with what
22 it is you want to ask?
23 MR. BERGRIN: Yes, Your Honor. I'm asking him the
24 question.
25 THE COURT: Yes, but I'm not just going to sit

here and just read to him the transcript and saying, isn't it a fact that you said this, and isn't it a fact you said that. He said what he said. He read it. It's in the transcript. If you want to have the jury read that transcript, if you want to show it, you want to play it, you have a right to do that. I'm not stopping you from that. But I don't see the sense in just us sitting here and saying, in fact, you said this, and in fact, you said that. He said it. He's acknowledged. He's got a transcript in front of him.

BY MR. BERGRIN:

Q. Mr. Kelly, do you acknowledge, though, as a fact that on that date of December the 9th of 2009 that you had this conversation with Yolanda?

A. Yes.

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

THE COURT: Any redirect?

MR. MINISH: Judge, if we can just go to the transcripts.

Judge, we'd like to hand out the transcripts of December 9th, 5:53 call. We've mark it as Government Exhibit 4035b.

MR. BERGRIN: May I take back my exhibit, sir?

THE COURT: Yes.

MR. MINISH: Judge, we offer both the recording

1 and the transcript into evidence and ask to be able to play
2 it for the jury now.
3 MR. BERGRIN: I have absolutely no objection,
4 Judge.
5 THE COURT: Go ahead. Into evidence.
6 (Government Exhibits 4035 and 4035b marked in
7 evidence)
8 THE COURT: Just so we're clear, this is
9 Government's Exhibit 4035b.
10 MR. MINISH: Transcript is 4035b. The disc would
11 be 4035.
12 THE COURT: Okay.
13 (Recording marked Government Exhibit 4035 played)
14 (Playback ends)
15 REDIRECT EXAMINATION
16 BY MR. MINISH:
17 Q. Mr. Kelly, does that refresh your memory with respect
18 to that conversation?
19 A. Yes.
20 Q. Can you explain to the jury what is going on? What
21 are you two discussing?
22 A. We discussing that Mr. Bergrin wanted to raise the
23 price. It wasn't a argument or any returning drugs. That
24 was a price raise issue. That's all we was saying.
25 Closing, bring your money, it's gonna be more. It wasn't

about returning anything. It was just that the price was being raised. If it wasn't -- she was gonna lose money or I was gonna lose money, well, we just walk away.

Q. And I'm going to direct your attention to page four, line 10.

A. Can I have --

Q. Oh, I apologize, sir. Here, let me -- look at this, page four. Okay, then. I didn't realize you didn't have a transcript. So the record's clear, were you able to follow without the transcript what was going on in that conversation?

A. Yes.

Q. Okay. Now you can look to page four, and line 10:

"I'm making the closing...he is...he is gonna be, uh...uh, charging extra money and...and...it's retarded..."

Who is "he"?

A. Mr. Bergrin.

Q. I have no further questions about that.

Mr. Bergrin asked you some questions about J-13783, and he directed you to a specific paragraph. Do you remember that?

Well, I'll show it to you. This top one here. You were asked to look at that paragraph?

A. Um-h'm.

Q. Now, in spite of what Mr. Bergrin asked you, does it

say anything in that paragraph about it being the Hispanic male's drugs?

A. No.

Q. Does it say anything about you owing them money?

A. No.

Q. Direct your attention to the bottom part. Were you able to talk them out of the fact that you owed them money?

A. Yes.

Q. So you had the meeting, but it turns out you didn't owe them money; right?

A. Yeah.

Q. You made a comment to Mr. Bergrin I'd like you to explain. He asked you that his name wasn't on the recordings, and you said something to the effect of there is no need to say his name on the recording.

Why is that?

A. 'Cause I started with him, and he brung them as a part of a lesser venue to him. I dealt with him first, and they was his helpers, so there was no need.

Q. And when you use words like "he," do the people you're talking about know who you're talking about?

A. Yes.

Q. And who was "he"?

A. Mr. Bergrin.

Q. I'm going to show you another report that Mr. Bergrin

1 -- oh, just so the jury's clear, these reports that you're
2 seeing; did I ever show them to you or any member of the
3 Government show you reports?
4 A. No.
5 Q. Who's the first person to ever show you these reports?
6 A. Mr. Bergrin.
7 Q. I'm going to direct your attention to J-04028, and
8 Mr. Bergrin referred you down to the seventh paragraph on
9 the bottom. All right? And he referred you specifically to
10 a line that said "She was mad." Right?
11 A. Um-h'm.
12 Q. Does that say she was mad that Bergrin never told her
13 about the wiretap, or --
14 A. Yes.
15 Q. -- is it something different?
16 A. That's what it says.
17 Q. Now, later on, she's upset that the money is coming
18 back; right?
19 A. Yes.
20 Q. Why would Mr. Bergrin have asked you about the streets
21 and the price? Was Mr. Bergrin dealing on the streets?
22 A. Well --
23 Q. That you were aware of?
24 A. I'm not -- I wasn't aware of. But any time you gonna
25 negotiate like selling a car or anything, you let the

1 purchaser make a price, and if he's happy with it, there's
2 no need to renegotiate and get less. So whatever you
3 figure, number I gave, if it seemed true and accurate and it
4 was able to make both us money, it would be agreed upon.
5 But you never let the seller dictate -- or the purchaser
6 dictate what you want for something. If he's already paying
7 a high price, you leave him there.
8 Q. So you're making the purchaser make the first offer.
9 A. Yes.
10 Q. And in that case, that's you; right?
11 A. Yes.
12 Q. Now, I apologize for hopping around a little bit. I
13 was trying to keep my notes organized. But there was
14 questions about the heroin that you had in New Jersey.
15 A. Yes.
16 Q. Right? And the fact that you were not charged with it
17 in New Jersey, that you were charged with heroin in
18 Pittsburgh, and you were charged with heroin in New York.
19 A. Yes.
20 Q. Is it the same heroin that was in New Jersey, or is
21 that different heroin?
22 A. Same -- same -- same. I got the -- the same connect I
23 had in New York would bring it to New Jersey for me to send
24 to Pittsburgh. I didn't have -- it wasn't separate.
25 Q. So the Federal charges in Pittsburgh, did that

1 encompass what happened in New Jersey, or was it separate
2 and apart, just what happened in Pittsburgh?
3 A. Got -- actually a little different. What do you mean?
4 Q. I apologize.
5 Were you charged with doing stuff actually -- in
6 the Pittsburgh charges, okay --
7 A. Yes.
8 Q. -- were you charged -- the Pittsburgh heroin charge,
9 were you charged with things that you did in Pittsburgh, or
10 things that you did in New Jersey?
11 A. Things that I did in Pittsburgh.
12 Q. And what exactly did you do in Pittsburgh?
13 A. I really only -- I sent the drugs --
14 Q. From where?
15 A. I sold the drugs to the people in Pittsburgh.
16 Q. So where did you send them from?
17 A. From New Jersey.
18 Q. So you're -- again, I just want to make sure the
19 jury's clear. The things you were charged with in
20 Pittsburgh, are they for actions that you took in
21 New Jersey, or in Pittsburgh? The things you actually did;
22 where did they happen?
23 A. In Pittsburgh. The drugs made it to Pittsburgh, but
24 they came to New Jersey to get them from me.
25 Q. Okay. Did you actually go to Pittsburgh at any point

with the drugs?
A. No.
Q. Now, you were asked by Mr. Bergrin whether or not you believed Kev Horton when he said Mr. Bergrin was his source of supply, and you said no; right?
A. Yes.
Q. Did there come a time when you did change your mind about that?
A. Yes.
Q. And when was that?
A. Maybe when I was dealing with someone else, and we spoke about scheduling, weekly, two weekly, and he said it sound like the same -- same as his, same as his drop, every two weeks, every week.
Q. Okay. Who were you talking to in that conversation?
A. Excuse me?
Q. The conversation you're describing, you have to tell the jury who --
A. Me and Kev. He was talking -- he said it sounded like the same as Paul, and he asked me was I getting it from Paul, but I wasn't.
Q. Okay. Maybe it was just me having trouble hearing you. It's you and Mr. Horton speaking?
A. Yes.
Q. And what did you tell Mr. Horton?

1 A. I basically told him I was going to be having, getting
2 it from someone else, and just gave him a breakdown of the
3 scheduling that I had came upon with these other guys, and
4 when I told him the schedule, maybe a week, maybe every two
5 weeks, he just said it sounded like the same as me and Paul.
6 MR. MINISH: Judge, so I also don't forget, I
7 would like to move into evidence both of Mr. Kelly's plea
8 agreements, 7024 and 7025.
9 THE COURT: Any objection?
10 MR. BERGRIN: No, Judge.
11 THE COURT: In evidence.
12 (Government Exhibits 7024 and 7025 marked in evidence)
13 Q. Mr. Bergrin also asked you some questions about your
14 lawyer, Ms. Kecia Clarke. Do you remember that?
15 A. Yes.
16 Q. Why didn't you tell her about Mr. Bergrin?
17 A. Why didn't I tell her?
18 Q. Yes.
19 A. I just thought it would get resolved without even
20 mentioning him.
21 Q. Why didn't you tell her about the drugs?
22 A. What am I going to tell her about drugs for? She was
23 only to represent me on the house fraud. I would never tell
24 her about drugs. She was not representing me in no criminal
25 element based on what I was trying to do.

Q. Why did you lie in the certification?
A. Just -- just, I ain't want to involve nobody else with it.
Q. Now, you said that you were not upset with Mr. Bergrin. You said it was an issue, but you said you were not upset. Why were you not upset?
A. Why was I not upset? Didn't really matter because at the end of the day, if I got the house back, one way or another, whatever I cleaned up, I was going to clean up off of the house no matter what.
Q. Clean up your money.
A. Yes.
Q. Were you making more with the kilograms Mr. Bergrin was supplied than the 10,- $15,000 of legal fees you were out?
A. Yes.
Q. Now, as briefly as you can, I just want to make sure the jury is clear about Mr. Ramon Jimenez. Okay?
So when you get kilograms, are you breaking those kilograms down?
A. No.
Q. What are you doing with the kilos?
A. Selling it as it came.
Q. Okay. So never opening up the packages.
A. Never open it.

Q. Now, let's compare that to Mr. Jimenez. He said, Let me eat too or something to that effect; right?
A. Yes.
Q. Now, what amount of drugs is he selling?
A. What amount? Small amounts that's broken down into -- kilo consist of a thousand grams, so however many it took for him to sell it, he would to have sell the whole thousand as individually or numerical numbers. Me, it was just one shot.
Q. Okay. At least at the time in Newark when you're selling 100, 200, 300 grams, is that the level you're at, or is that a street level?
A. Street level.
Q. Could you briefly explain that to the jury?
A. It's basics. People who just starting out might afford an ounce, two ounces, three ounces. Once you get to kilos, you're basically at a whole different standpoint.
Q. And the individuals who you helped Mr. Jimenez sell to; where are those people selling?
A. Well, in my area, on Astor Street, from my area.
Q. So those guys are actually on the street selling.
A. Yes.
Q. Now, did Mr. Jimenez or Ramon, did he ever steal any money from you?
A. No, not personally, no.

Q. Did you ever actually have to pay any money for Mr. Ramon --

A. No.

Q. -- excuse me, Mr. Jimenez, what he may have stole?

A. No.

Q. You made a comment about you caring whether he's happy. Could you explain to the jury why that would matter to you one way on the other?

A. If something went wrong with him, if he got jammed up, he would definitely give us up if he knew what we were doing. He knew our business.

Q. Okay, and who is "our business"? Who was involved?

A. Me and Mr. Bergrin' business.

Q. Now, you also said something about why the law office -- you said the law office was the best place for the drugs. Could you explain that?

A. Nobody would expect or believe we was coming out of there with drugs or me going in there with money. For me, perfect.

Q. Now, Mr. Bergrin asked you a number of questions about speaking openly on the wiretap calls. Were you speaking openly about drug trafficking on those wiretap calls?

A. I was talking in code, saying "cars" and other things. It wasn't openly.

Q. As a drug dealer, do you ever speak openly about drug

1 trafficking on the phones?
2 A. Some people do. It's a big mistake.
3 Q. Forget about what other people do. What do you do?
4 A. No, I talk in code.
5 Q. Why is that?
6 A. To conceal what we talking, what we actually talking
7 about.
8 Q. And why would you have multiple phones?
9 A. Just so no one wouldn't -- you don't have a paper
10 trail or a phone record of showing how often you call
11 somebody. If you got a disposable phone, it don't get
12 traced back to you.
13 Q. And do those disposable phones have names associated
14 with them?
15 A. No.
16 Q. So if I had the phone, how would I be able to connect
17 Rondre Kelly with those calls?
18 A. Only way you would be able to connect them is if you
19 had both phones, like I told you.
20 Q. Now, Mr. Bergrin asked you about when the last time
21 you sent him a case, right, or a criminal case, for him to
22 represent somebody. You remember that?
23 A. Yes.
24 Q. With respect to the shootings that you've testified
25 about, you've also testified about your brother's case going

1 to Mr. Bergrin, or you sending a case to Mr. Bergrin; right?
2 A. Yes.
3 Q. Okay. Was that before or after the shootings?
4 A. Probably after the shootings. It was after the
5 shootings.
6 Q. And what is your brother's name?
7 A. Floyd Kelly.
8 Q. And do you recall what the charge was?
9 A. Something with his identity. I don't really know
10 exactly what it was. He got locked up in motor vehicle in
11 Irvington. I don't really know the exact charges.
12 Q. When you say "identity," you mean what?
13 A. He had a fake driver's license or a fake birth
14 certificate or something of that sort.
15 Q. So identity fraud.
16 A. Yeah, identity fraud, yes.
17 MR. MINISH: I have nothing further, Judge.
18 THE COURT: Anything further, Mr. Bergrin?
19 MR. BERGRIN: Yes, Your Honor.
20 RECROSS EXAMINATION
21 BY MR. BERGRIN:
22 Q. Isn't it a fact that Floyd's case was the same time as
23 your shootings?
24 A. No.
25 Q. You're telling us that Floyd's case was after you?

1 Are you sure about that?
2 A. Floyd' case couldn't have been after my -- yes, it was
3 after my shootings, but the exact time, no.
4 Q. It was about the same time as your shootings were
5 going on because you went to trial on your shooting case;
6 correct?
7 A. Yes, I went to trial, yes.
8 Q. And Floyd's case occurred before your case was
9 resolved; isn't that a fact, Mr. Kelly?
10 A. That's incorrect.
11 Q. Now, you talked about the fact that Mr. Minish asked
12 you about the meeting with the Hispanic males; correct?
13 A. Yes.
14 Q. And about the money that was owed or the drugs that
15 you were buying that they asked you to explain about;
16 correct?
17 A. No, I believe it's a mixup. I think that was in
18 reference to the bail money. Yes. There was a meeting,
19 yes.
20 Q. And that was a meeting that you had with them, and
21 they confronted you about money for a drug deal, not a bail;
22 correct?
23 A. I'm not sure about that.
24 Q. Well, you read the --
25 A. Let me read it again.

1 Q. You read the report, correct, sir?
2 A. Let me read it again.
3 Q. Absolutely. 13783. First paragraph.
4 THE COURT: I'm sorry, what was the number?
5 MR. BERGRIN: 13783, Your Honor.
6 Q. They confronted you for money that they believed you
7 owed them for drugs that you bought from them; correct?
8 Cocaine.
9 MR. MINISH: Objection. Judge, it doesn't say
10 drugs from them anywhere in there.
11 A. It says drugs and confronted me about drugs and money.
12 THE COURT: Wait. Why don't you just read the
13 paragraph rather than argue? It does -- I think Mr.
14 Bergrin's correct. It does say drugs.
15 MR. MINISH: Yes, drugs.
16 Q. The drugs and money that you owed them; correct?
17 A. Yes.
18 Q. Now, the words in those reports that I confronted you
19 with and had you read, correct, those are words that
20 supposedly came out of your mouth, correct, during
21 interviews; right, Mr. Kelly?
22 A. Yes.
23 Q. Words that you now forget about very conveniently;
24 right?
25 A. I can't remember everything, but if you have it

1 written down and I read it, it refreshes my memory, yes.
2 Q. But this was only about a year to two years ago;
3 right?
4 A. I don't know.
5 Q. Well, there's dates on there; right?
6 A. There's no date on that.
7 Q. Look at the bottom left-hand corner.
8 A. Yes, there's a date on it, yes.
9 Q. Now, you talked about the conversation of December
10 9th, and you stuck my name in that. I ask you -- I'm going
11 to ask you to look at page three --
12 THE COURT: Hold it, Mr. Bergrin. What are we
13 talking about now?
14 MR. BERGRIN: This is the conversation of December
15 9th, 2005, Defense Exhibit Number 9.
16 THE COURT: The one that the Government just
17 played?
18 MR. BERGRIN: Yes, sir.
19 THE COURT: 4035.
20 MR. BERGRIN: Yes, sir.
21 THE COURT: All right. Now, what date?
22 Q. I'm going to ask you to look at page three, line 22.
23 You knew my relationship with Yolanda at that
24 time; correct?
25 A. Yes.

1 Q. And essentially, she was -- she was my wife, right, or
2 we were close. We were in a relationship; correct?
3 A. Yes.
4 Q. Now, isn't it a fact -- do you have the conversation
5 in front of you? I ask you to look at page three, line 22.
6 A. Yeah.
7 Q. Isn't it a fact Yolanda says, "Yeah, the hell with
8 them, man." "The hell with them"; right?
9 A. Yes.
10 Q. So isn't it a fact that it's impossible to be
11 referring to Paul Bergrin like you stuck my name and said,
12 right, when she says, "the hell with them." These are the
13 people that disrespected you and mistreated you, "the hell
14 with them"; correct?
15 A. Mr. Bergrin, you know --
16 Q. I asked you a simple question.
17 A. I'm trying to answer it.
18 MR. MINISH: He's trying to answer it.
19 A. I'm a answer it the best way.
20 You know well as me her English or her slang is
21 terrible. There is conversations I had, I wouldn't know
22 what the hell she was talking about. Now, giving her full
23 credit for saying "them" or "getting old" or anything is
24 completely pushing me into -- to figure out her
25 understanding and her slang. She's not as fluent in street

1 talk as me, so some of the times, I'm in the shaded area.
2 What's written here is what was written from the recording.
3 I can't sit here and say what she meant or what she didn't
4 meant or not mentioned you. So to me, yes, it was talking
5 about you. Now, what she saying, I don't understand, or
6 know.
7 Q. So if you don't understand, you can't interpret her
8 language --
9 A. All the time.
10 Q. All the time.
11 A. Yes.
12 Q. And as you just said, you went into this long litany
13 and explanation that you don't know what she meant or who
14 she meant; right?
15 A. She said "them." It could be him. I don't know. She
16 said it, not me.
17 Q. The bottom line is, you don't know; right?
18 A. I know what we were talking about, and I know who we
19 were talking about, yes.
20 Q. And the bottom line is, you're talking about you being
21 disrespected; correct?
22 A. No, you asking me is the "them" or him or "getting
23 old" is you.
24 Q. The conversation is about you being disrespected;
25 correct?

A. Yes, little bit of it, yes.
Q. And isn't it a fact that I have never disrespected you?
A. I don't know where you going or what you really asking me, but flat out, I don't feel you disrespected me, but this is a whole different side of the lawyer-client thing. This is here is a -- a push button that was going on. It was raising the price, it was basically telling me, take it or leave it or we not doing no more business. Now what you got out of it, the bits and pieces, it can't get broken down like that. You asked me. I can't answer for nobody else, Mr. Bergrin.
Q. There's conversations before that and there's conversations after that --
A. Yes.
Q. -- that you reviewed; correct?
A. Yes.
Q. And isn't it a fact that they have nothing to do with raising the price and nothing to do with Paul Bergrin whatsoever? Isn't that a fact, Mr. Kelly?
A. No.
Q. Now, Mr. Minish asked you about the New Jersey -- the fact that you were never charged in New Jersey with all your heroin distribution; correct?
A. Yes.

1 Q. The heroin came to New Jersey; isn't that a fact?
2 A. Yes.
3 Q. And you said that you had never transported or you
4 have never been in Pittsburgh with heroin? Is that what you
5 testified to?
6 A. Yes.
7 Q. Weren't you arrested -- where were you arrested for
8 the Pittsburgh charges?
9 A. They came and got me.
10 Q. In New Jersey; correct?
11 A. Yes. No, at my home, yes.
12 THE COURT: Wait. Wait. At your home?
13 THE WITNESS: Yes.
14 THE COURT: And where's your home?
15 THE WITNESS: In Pennsylvania. They came and got
16 me.
17 Q. Now, you said that you lied in the certification that
18 Ms. Kecia Clarke drew up; correct?
19 A. Yes.
20 Q. You lied because you didn't want to get anyone
21 involved. Those are the words that came out of your mouth;
22 right?
23 A. Yes.
24 Q. You got other people involved, isn't that a fact, in
25 your certification, in your talk about the transaction and

1 who you bought the house from and how much you paid and the
2 condition that it was in? And didn't you mention Sulaimun
3 Jenkins? Correct?
4 A. I told her and I told them what was done after the
5 fact after me and you. Yes, I protected you, and hell no, I
6 wouldn't have gave you up. Until this day, I hate this.
7 I'm not gonna sit here and lie on you. What I'm telling is
8 the truth. And Sulaimun and the house, all that stuff came
9 into play afterwards, Mr. Bergrin.
10 Q. You telling the truth. When have you ever told the
11 truth in your life, Mr. Kelly? When have you ever told the
12 truth? You're telling the truth, yet you're sitting there
13 with a life sentence, potentially, over your head; correct?
14 MR. MINISH: Objection, Judge. That's incorrect.
15 He's got 14 years. He's been sentenced.
16 Q. Fourteen years, but your family members haven't been
17 charged in New Jersey for all the heroin and cocaine you
18 distributed, you have not been charged in New Jersey for all
19 the heroin and cocaine you distributed, and if you were, and
20 if you were, there's no doubt in your mind whatsoever that
21 you'd be doing life in prison and never, ever being
22 released.
23 A. I don't know why I wasn't charged in New Jersey.
24 Q. You don't know why you weren't charged?
25 A. No.

1 Q. It has nothing to do with you sitting there, right,
2 and pointing the finger at Paul Bergrin? It has nothing to
3 do -- that's totally out of the realm; right?
4 A. Before even my first New York case, I began to
5 cooperate before New Jersey even came into the picture,
6 Mr. Bergrin.
7 Q. Now, you talked about Ramon Jimenez and the fact that
8 you were trying to appease him so that he wouldn't -- I
9 mean, essentially, you said you're trying to appease him and
10 please him so he wouldn't cooperate against you. That's
11 what you're saying; right?
12 A. Basically, we cut him off, he knew what was going on,
13 he wasn't part of it. The least I could do is let him make
14 a little money.
15 Q. But you cut him off, isn't that a fact? You stopped
16 dealing with him. That's how much you wanted to appease
17 him: You completely cut him off and stopped doing business
18 with him, right?
19 A. You're taking it out of context. We cut up him off
20 from the bigger picture, the more volume. He was out of
21 that.
22 Q. You cut him off and stopped sending clients to him;
23 isn't that a fact, Mr. Kelly?
24 A. That's not what I said. That's not what I said, Mr.
25 Bergrin.

1 Q. But that's what happened; isn't that a fact?
2 A. I only cut him off based on I had began doing my own
3 thing, and I wasn't gonna be risking riding with nobody for
4 500, or 100 or 200 when I could just give up a whole kilo
5 and make some money and keep it mowing. No, I wasn't going
6 to risk myself for that small amount, no.
7 Q. So much for appeasing him and worrying about him
8 cooperating; right?
9 A. Yes, it was short term.
10 MR. BERGRIN: I have no further questions.
11 THE COURT: Anything further?
12 MR. MINISH: Judge, I just want to clear a couple
13 thing up quickly.
14 FURTHER REDIRECT EXAMINATION
15 BY MR. MINISH:
16 Q. You said you were arrested in Pennsylvania at your
17 home; correct?
18 A. Yes.
19 Q. I don't want you to tell us where you lived, the city
20 you lived in, but in relation to Pittsburgh -- Pennsylvania
21 is a big state. Is it close to Pittsburgh or not close to
22 Pittsburgh?
23 A. Four hours, four and a half hours, maybe.
24 Q. And Mr. Bergrin asked you some questions about the
25 sentencing in Pittsburgh that you attended, your sentencing.

1 At that time, did the Government make any motion on your
2 behalf to the judge, the Pittsburgh judge, to have your
3 sentence lowered?
4 A. No.
5 MR. MINISH: Thank you.
6 THE COURT: Anything further?
7 MR. BERGRIN: Just one last question.
8 FURTHER RECROSS EXAMINATION
9 BY MR. BERGRIN:
10 Q. Isn't the fact that your plea agreement states, both
11 your plea agreement that was taken from New York to
12 Pennsylvania and your Western District of Pennsylvania in
13 Pittsburgh says that it's based upon your cooperation with
14 New York, Pittsburgh, and New Jersey? Continued
15 cooperation?
16 A. That might be true, yes.
17 MR. BERGRIN: No further questions.
18 MR. MINISH: Nothing further, Judge.
19 THE COURT: Okay, sir. Well, you know what I
20 think we'll do? We'll take our very short break, and then
21 we'll have our next witness.
22 THE COURT CLERK: All rise.
23 Just place your notebooks on your chairs, please.
24 (The jury exits)
25 (Recess taken)

(Defendant present)

THE COURT CLERK: All rise.

(The jury enters)

THE COURT CLERK: Be seated.

Remain seated.

THE COURT: Okay. Mr. Minish, your next witness.

MR. MINISH: Thank you, Judge.

At this time, the Government calls Kecia Clarke to the stand.

THE COURT: Right up here, ma'am.

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

K E C I A C L A R K E, called as a witness on behalf of the Government, and having been duly sworn, testified as follows:

THE COURT CLERK: Please be seated.

Please state your name, spelling it for the record.

THE WITNESS: Kecia Clarke, K-e-c-i-a, C-l-a-r-k-e.

DIRECT EXAMINATION

BY MR. MINISH:

Q. Good afternoon, Ms. Clarke.

Are you an Essex County resident?

A. Yes, I am.

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 14

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9 Newark, New Jersey
February 11, 2013

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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

22 Pursuant to Section 753, Title 28, United States 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

Q. In each one of those legal paperwork, Mr. Kelly swore that he bought the house from Sulaimun Jenkins, correct, and he paid $30,000; right?

A. Yes.

MR. BERGRIN: I have no further questions. Thank you very much, ma'am.

THE WITNESS: Thank you.

THE COURT: Mr. Minish?

MR. MINISH: I have nothing, Judge.

THE COURT: Thank you, ma'am. You may step down.

(Witness excused)

THE COURT: Next witness.

MR. GAY: The Government calls Ignacio Mendez.

THE COURT: Up here, sir.

Okay. Let's swear the witness, please.

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

I G N A C I O M E N D E Z, called as a witness on behalf of the Government, and having been duly sworn, testified as follows:

THE COURT CLERK: Please be seated.

Please state your name, spelling it for the record.

THE WITNESS: Ignacio Mendez, I-g-n-a-c-i-o, M-e-n-d-e-z.

1 THE COURT: Please keep your voice up, sir.
2 THE WITNESS: Sure.
3 THE COURT: All right. All the jurors have
4 whatever it is that has been handed out?
5 Does Chuck have a copy?
6 All right. Mr. Gay, go ahead.
7 MR. GAY: Thank you, Your Honor.
8 DIRECT EXAMINATION
9 BY MR. GAY:
10 Q. Mr. Mendez, could you please state your name again for
11 the record? I think some of the jurors might have missed
12 it.
13 A. Ignacio Mendez.
14 Q. Sir, were you employed by the Essex County Sheriff's
15 Office?
16 A. Yes, I was.
17 Q. For how many years?
18 A. Twenty-five years.
19 Q. And are you currently retired from that position?
20 A. Yes, I am.
21 Q. What was your rank or what position did you hold at
22 the Essex County Sheriff's Office?
23 A. I was a detective.
24 Q. What if any training did you have in narcotics law
25 enforcement during your career?

A. I have several trainings in the field of narcotics, narcotics evidence, undercover work, surveillance techniques, all provided through different municipalities, different police departments throughout the State of New Jersey.

Q. Now, of your 25 years in law enforcement, approximately how many of those were spent in narcotics law enforcement?

A. Twenty-three years.

Q. Approximately how many long-term investigations have you been involved in during your career?

A. I would say thousands.

Q. And were any of those including wiretap investigations?

A. Yes.

Q. Approximately how many wiretap investigations have you done during your career?

A. Approximately four.

Q. Now, were you assigned to what is known as the Drug Enforcement Task Force in New Jersey during your career?

A. Yes.

Q. And were you assigned there between approximately 2004 and 2007?

A. Yes, I was.

Q. And in early 2005, were you working for the D.E.A.

1 task force?
2 A. Yes.
3 Q. On February 2nd of 2005, were you involved in the
4 arrest of two persons, one of whom was Alejandro Castro and
5 another named Norberto Velez?
6 A. Yes, I was.
7 MR. GAY: If we could show -- I think 3052 is in
8 evidence. If we could put up 3052.
9 Q. Do you recognize who that person is?
10 A. Yes.
11 Q. Who is that?
12 A. Alejandro Castro.
13 MR. GAY: And if we could put up 3076, also in
14 evidence.
15 A. Norberto Velez.
16 Q. Now, could you briefly describe the circumstances
17 leading up to the arrest of Mr. Castro and Mr. Velez on
18 February 2nd, 2005?
19 A. Well, we received -- our group, Group 6, received
20 information from D.E.A. in Los Angeles that they had seized
21 a shipment of 123 kilos of cocaine. Twenty of those kilos
22 were enroute to the area of Paterson, New Jersey.
23 Q. Now, do you know whether or not based on the -- how
24 California had their information that led to the seizure, if
25 you know?

A. Yes. They had a cooperating witness.
Q. Okay, and do you know -- did that person -- are you familiar with the term "controlled delivery"?
A. Yes.
Q. Okay. Can you briefly describe what a controlled delivery is?
A. A controlled delivery is when either an undercover officer or a witness that cooperates with law enforcement makes the delivery to suspects who are awaiting that delivery.
Q. So just so we're clear, you had obtained information or your group had obtained information from California that they had seized a shipment of cocaine?
A. Yes.
Q. Is that correct?
A. That's correct.
Q. And that an individual decided to cooperate with law enforcement in connection with that?
A. That's correct.
Q. And did that person agree to cooperate and perform this controlled delivery that you discussed?
A. Yes.
Q. And who are the recipients of those 20 kilograms of cocaine?
A. Alejandro Castro and Norberto Velez.

1 Q. And based on that information that you received, was
2 there any kind of a plan developed that you recall?
3 A. Yes. After we received that information, we all
4 responded to Paterson and we established a surveillance in
5 the area where the cooperating witness was delivering this
6 cocaine to the two suspects.
7 Q. And do you know whether or not Mr. Castro and
8 Mr. Velez showed up in a vehicle that day?
9 A. Yes, they did.
10 Q. And ultimately, do you know whether or not they
11 received the 20 kilograms of cocaine from the informant at
12 that point?
13 A. Yes.
14 Q. Were they subsequently stopped?
15 A. Yes, they were.
16 Q. And do you know what, if anything, was recovered in
17 connection with that stop?
18 A. Twenty kilos of cocaine and I believe approximately
19 $18,000 in cash.
20 Q. Now, do you know where specifically the cocaine was
21 recovered from, if you recall?
22 A. The cocaine was in the trunk of the vehicle.
23 Q. Do you know who was driving the vehicle?
24 A. Norberto Velez.
25 Q. And if you know, do you know whose vehicle it was?

A. It belonged to him, Norberto Velez.
Q. Now, subsequent to that stop -- were Mr. Castro and Mr. Velez placed under arrest once the kilograms were recovered?
A. Yes, they were.
Q. And after that, did you have an opportunity to speak to Mr. Velez?
A. Yes, I did.
Q. And at some point, did he agree to consent to a search of his residence?
A. Yes, he did.
Q. Do you recall what the address of that residence was?
A. 361 Little Street in Belleville, New Jersey.
Q. Belleville, New Jersey?
A. Yes.
Q. And that was his residence; is that correct?
A. That was his residence.
Q. Do you know what, if anything, was recovered inside the house based on that consent search?
A. There was approximately $400,000 in cash, I believe, seized from the house.
Q. Is there anything that might refresh your memory about the exact amount of cash that was recovered inside the residence?
A. Yes. There's a report.

Q. Okay. I'm going to show you J-14495.

MR. GAY: Paul, have you got that one?

MR. BERGRIN: What was that?

MR. GAY: J-14494. Okay?

Q. And, Detective, just let me know if your memory is refreshed, or when it is refreshed.

A. Yes.

Q. And approximately how much money was recovered inside the house?

A. $463,513, and there was another one where there was $26,780.

Q. And that was cash?

A. Yes, all cash.

Q. Okay. And that was inside Mr. Velez's residence.

A. That's correct.

Q. And do you know what date that search was conducted? I'm sorry, I should have asked you that before.

A. I'd have to refer to --

Q. Okay. Please do so. I think it was -- if you go to -- sorry.

I think that's the document we're looking at.

A. Yes.

Q. And what date was that?

A. February 3rd.

Q. Okay. So the following day.

A. Yes.
Q. Thank you.
Now, Detective Mendez, did you also work on a wiretap investigation with your group at some point in 2005?
A. Yes.
Q. And was one of the targets of that wiretap an individual known to you as Yolanda Bracero, also known as Yolanda Jauregui?
A. That's correct.
Q. And was one of the numbers that your group wiretapped a number, 973-715-1048?
A. Yes.
Q. And was that phone used by Ms. Jauregui?
A. Yes, it was.
Q. Did you receive court authorization to tap that phone?
A. That's correct.
Q. And was your group working with attorneys from the State of New Jersey, Attorney General's Office to obtain that wiretap?
A. That's correct.
Q. And so was that order signed by a State Court judge?
A. Yes, it was.
Q. Was your group tapping that phone between approximately November of 2005 and the end of February 2006?
A. Yes.

Q. Okay. And you mentioned that the user of the phone was Yolanda Bracero, also known as Yolanda Jauregui?
A. Yes.
MR. GAY: Could we show 3073?
Q. Do you recognize that person?
A. Yes.
Q. Who is that?
A. That's Yolanda Bracero Jauregui.
Q. Was there also another person on the wiretap named Rondre?
A. Yes.
MR. GAY: And if we could show 3069.
Q. Do you recognize that individual?
A. Yes, I do.
Q. And who is that?
A. Rondre Kelly.
Q. Rondre Kelly?
A. Yes.
Q. During the investigation, you learned his full name; is that correct?
A. That's correct.
Q. Okay. And was there also another person intercepted on the wiretap, Paul Bergrin?
A. That's correct.
Q. And do you see Mr. Bergrin in court today?

A. Yes, I do.
Q. If you could point him out, I guess indicating -- perhaps by color of tie?
A. He has a burgundy tie.
MR. BERGRIN: I'll stipulate to the identification, Your Honor.
THE COURT: For the record. Thank you.
Q. Now, was there also another individual captured on the phone named Jesse?
A. Yes.
Q. And did you ever learn the full name of Jesse during your investigation?
A. No.
Q. Now, if you could briefly describe how it was that these wiretapped conversations were recorded, briefly.
A. These conversations are recorded via a computer and then from which they are downloaded into a disc.
Q. And is that disc capable of being overwritten once it's been downloaded onto?
A. No, there's no way you can tamper with that disc.
Q. Now, I want to show you Exhibits 4013, 4015, 4016, 4023, 4024, 4025, 4026, 4027, 4039, 4040, 4041, 4042, 4044, 4047, 4048, 4049, 4051, 4052, 4068, 4070, 4079, 4080, 4088, 4090, 4223, 4224, 4226, and 4230, and ask you, Detective, did you review -- well, first of all, are those exhibits

1 wiretapped calls, recordings of the wiretapped calls, some
2 of the wiretapped calls intercepted in this case that you're
3 talking about now?
4 A. Yes.
5 Q. And did you review each of those exhibits prior to
6 coming here to testify today?
7 A. Yes, I did.
8 Q. And did you confirm that those, in fact, were calls
9 intercepted during the wiretap?
10 A. Yes.
11 Q. And were they fair and accurate recordings of the
12 calls that were intercepted pursuant to this wiretap that
13 you've been discussing?
14 A. Yes.
15 Q. Did you also review any transcripts?
16 A. Yes.
17 Q. And I'm going to show you the booklet which contains
18 the corresponding transcripts for that, and it's right in
19 front of you, Detective.
20 Now, when you reviewed these recordings that we
21 just discussed, did you also look at the transcripts?
22 A. Yes, I did.
23 Q. And were some of the conversations contained on those
24 exhibits in English?
25 A. Yes.

Q. And were some of them in Spanish?
A. Yes.
Q. Do you speak Spanish, sir?
A. Yes, I do.
Q. So were you able to follow the conversations as you were listening and reviewing the transcript as well?
A. Yes.
Q. Now, I'm not going to ask you with respect to the Spanish translations --
MR. GAY: Judge, we have a stipulation with respect to that, that the translations are accurate, and I'll read that in later.
Q. But as far as the parties to the conversation, that's all I'm asking you about now, were they -- did you review the transcripts and did they accurately portray the parties that were speaking in each of the -- each of the transcripts?
A. Yes.
MR. GAY: Judge, I'm going to ask that -- some of these are in evidence already, so I'm only going to read the ones that I want to move into evidence now into evidence.
THE COURT: What are we talking about?
MR. BERGRIN: These are the wiretap transcripts -- or, excuse me, the wiretapped calls that I just reviewed with this agent.

1 THE COURT: Okay. Wait. You're talking about the
2 transcripts now?
3 MR. GAY: Well, first just the calls, the
4 recordings. Then we're going to talk about the transcripts.
5 THE COURT: What are you asking me to do now?
6 MR. GAY: I'm going to ask that certain exhibits
7 be admitted into evidence, those being the recordings now,
8 and then we'll talk about the transcripts --
9 THE COURT: The ones you just read off.
10 MR. GAY: Well, yes. Some of them are already in
11 evidence, Judge.
12 THE COURT: Is there any objection to any of them?
13 MR. BERGRIN: Yes, I have no objection at all to
14 the recordings, Your Honor. It's just a matter of the
15 transcripts going into evidence. Obviously the recordings
16 are evidence, the transcripts are assist.
17 THE COURT: Yes. The transcripts can be looked at
18 as an aid.
19 MR. BERGRIN: Yes, there's no objection to --
20 MR. GAY: Well, Judge, that would be with respect
21 to the English. With respect to the Spanish translations,
22 the transcripts are actually the evidence, and there's a
23 stipulation with respect to that.
24 THE COURT: Well, a stipulation is a stipulation.
25 I'll allow the discs to go in that weren't in

1 evidence already. He said there's no objection. We'll hold
2 off on the transcripts and we'll go through them one by one
3 if it comes to that.
4 MR. GAY: Okay. That's fine, Judge.
5 THE COURT: I don't see a problem because the
6 jury's going to be able to look at them while listening to
7 the tapes if it comes to that.
8 MR. GAY: Correct. Yes.
9 THE COURT: And if it's a stipulation, I don't
10 have to worry about it, do I?
11 MR. GAY: I would think not, Judge.
12 (Laughter)
13 MR. GAY: All right. I'm going to ask that 4013,
14 4016, 4024, 4027, 4040, 4041, 4044, 4049, 4051, 4068, 4070,
15 4079, 4080, 4224, and 4230 be admitted into evidence, and
16 the other ones that he's reviewed --
17 THE COURT: I was trying to avoid having to read
18 them again, but --
19 MR. GAY: Sorry, Judge. Since some of them were
20 already in evidence, I couldn't just move along.
21 THE COURT: Okay.
22 (Government Exhibits 4013, 4016, 4024, 4027, 4040,
23 4041, 4044, 4051, 4068, 4070, 4079, 4080, 4224 and 4230
24 marked in evidence)
25 Q. Now, if we could, I guess let's turn to the first

1 conversation, which is Exhibit 4013, and it's 4013B in your
2 transcript book.
3 Detective, was the call intercepted over the
4 telephone used by Yolanda Jauregui on November 30th, 2005,
5 approximately 9:05 a.m.?
6 A. Yes, it was.
7 Q. And was that called in Spanish or English, do you
8 recall?
9 A. Spanish.
10 Q. Okay.
11 MR. GAY: So, Judge, I'm going to ask now, just so
12 it's clear, this is a Spanish call, so I assume nobody
13 speaks Spanish, so you're going to have to follow the
14 transcript maybe a little more closely than you would
15 with --
16 THE COURT: What's the number?
17 MR. GAY: Judge, it's 4013, and 4013b is the
18 transcript.
19 THE COURT: Okay.
20 Do you want the witness to have the earphones?
21 MR. GAY: Yes, I'm sorry. I thought he had the
22 earphones up there.
23 There's a little green light you have to turn on
24 -- there you go. You're good.
25 (Recording marked Government Exhibit 4013 played)

1 (Playback ends)
2 Q. Detective, I'm just going to highlight a couple of
3 lines in this.
4 If you could, referring to page two, line 19,
5 where Jesse says: "Nothing, nothing. Well, I wanted to see
6 El Apestoso later on."
7 Do you know who based on your investigation El
8 Apestoso was?
9 A. Yes, they're referring to Rondre.
10 Q. Rondre Kelly?
11 A. Yes Kelly, yes.
12 Q. Now, if you go later on page four, line eight -- well,
13 actually starting at line four, where Jesse is asking
14 Yolanda to "call El Apestoso and see what he tells you
15 because El Guapo will be arriving soon," do you know who El
16 Guapo is?
17 A. No.
18 Q. Did you understand him to be somebody who was involved
19 in the business, though?
20 A. That's correct.
21 Q. But he was never identified by name during the
22 investigation; is that correct?
23 A. No, he wasn't.
24 Q. Now I want to go to lines eight and nine, where Ms.
25 Jauregui says, "I don't think," referring to El Apestoso, "I

1 don't think he's around here though. Because he, he's going
2 the fight, in Las Vegas."
3 Do you recall that part of the conversation?
4 A. Yes.
5 Q. And based on -- did that have anything to do with you
6 determining whether or not El Apestoso was a reference to
7 Rondre Kelly?
8 A. Yes, it was.
9 Q. Now let's go if we can to the next call, which is
10 4015b.
11 MR. GAY: And, Judge, this has already been played
12 in its total, but I do want to play just a portion of it and
13 then we'll move on. The ones that have already been played
14 we have to highlight a little bit for the context but, I'm
15 going to try to just do a portion of it and move on since
16 the jury's already heard the entirety of it, if that's --
17 with the Court's permission. And if Mr. Bergrin wants, I
18 can play the whole call all over again. It's okay?
19 MR. BERGRIN: You can do whatever you want.
20 MR. GAY: Okay.
21 THE COURT: Well, no, he can't.
22 (Laughter)
23 THE COURT: I don't want you to play it all over
24 again.
25 MR. GAY: Well, no, no, we're not going to play it

all over again, Judge. There's a portion here that is going to be relevant to what this witness' testimony is going to be. I'm trying to make this as short as possible.

THE COURT: Yes. Keep in mind that we'll be breaking at 3:30.

MR. GAY: Yes, Judge. I think we'll get at least this call in.

So if we can put up 4015b, and then I'm going to cut it off at page four, right about there.

(Recording marked Government Exhibit 4015 played)

(Playback stopped)

MR. GAY: That's good.

Q. Okay. Now, Detective, this call occurs on December 5th -- December 1st, 2005; is that correct?

A. That's correct.

Q. So approximately one day after the call that you just listened to, right --

A. Yes.

Q. -- previously?

Now, this is a call between Yolanda Jauregui and Rondre Kelly; is that correct?

A. That's correct.

Q. El Apestoso?

A. Yes.

Q. Now, in the beginning, page two, lines 16 and 17,

1 Mr. Kelly says, "I'm gonna be going to the fight tomorrow,"
2 and then he -- and line 19, he says, "in Vegas."
3 Is that part of the reason you identified him as
4 being the person referred to in the last call?
5 A. That's correct.
6 Q. Now, I want to turn your attention to page three, line
7 eight, where Mr. Jauregui says, "Yeah, but...did you...did
8 you...did you, did you want the six cars up front of yours,"
9 and then line 11, she says, "Did you want the six cars up
10 front of you?"
11 Mr. Kelly at line 12 says, "Yeah. Definite."
12 Based on your investigation, did you learn whether
13 or not Mr. Kelly and Mr. Jauregui had any legitimate car
14 business that they conducted?
15 A. Not that I know of, no.
16 Q. Okay. Based on your investigation, what did you
17 believe "cars" was a reference to?
18 A. Kilos of cocaine.
19 Q. Let's turn now to the next call, which is 4016b, and,
20 Detective, the called we just listened to, 4015b, took place
21 December 1st, 2005 at approximately 10:15 a.m.; is that
22 correct?
23 A. That's correct.
24 Q. And now this call we're about to listen to takes place
25 December 1st, 2005 at approximately 10:18 a.m.; is that

1 correct?
2 A. That's correct.
3 Q. About three minutes later.
4 A. Yes.
5 Q. Is that a call between Yolanda Jauregui and Jesse?
6 A. Yes.
7 MR. GAY: So if we could now play --
8 Q. And was this call in Spanish?
9 Sorry. Detective? Was this call in Spanish?
10 (The witness removes his headphones)
11 A. Excuse me?
12 Q. Was this call in Spanish, if you know?
13 A. Yes, it was. Sorry.
14 MR. GAY: So if we could play 4016b, then, please.
15 (Recording marked Government Exhibit 4016 played)
16 (Playback ends)
17 MR. GAY: Judge, I do have a few questions with
18 this, but I think given the time I should do that tomorrow.
19 THE COURT: The day after tomorrow.
20 MR. GAY: Or Wednesday, I'm sorry, yes.
21 THE COURT: Okay. Ladies and gentlemen, we're
22 going to break for today.
23 Please don't discuss the case, don't read anything
24 about the case, don't do any research on your own.
25 We will be meeting again at quarter to nine on

1 Wednesday because of the Court holiday tomorrow.
2 Enjoy the day.
3 See you then. See you all in the morning.
4 THE COURT CLERK: All rise.
5 Just place your notebooks on your chairs, please.
6 THE COURT: Detective, you may step down after the
7 jury has passed.
8 (The jury exits)
9 (The witness stepped down.)
10 (Matter adjourned until Wednesday, February 13, 2013,
11 commencing at 8:30 a.m.)
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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 22

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9 Newark, New Jersey
February 25, 2013

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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
an accurate record as taken stenographically in

23 the above entitled proceedings.

24

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

25

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(Defendant present)

(Jury out)

THE COURT CLERK: All rise.

THE COURT: Good morning.

Mr. Lustberg, would this be a good time to talk about the potential witnesses that you've asked to be subpoenaed?

MR. LUSTBERG: If I could just talk to the Court just quickly and lay out what we're going to do. It may not be the best time right now, but if I could just discuss it with Your Honor by myself, it would be -- just as to scheduling.

THE COURT: Does anybody object?

MR. GAY: No, Judge.

THE COURT: This is concerning the ex parte application.

MR. GAY: Yes, I understand. No, no objection from the Government, Judge.

MR. LUSTBERG: This should be off the record.

THE COURT: Yes.

(Sidebar conference held off the record)

THE COURT: All right. Are there any other issues that we need to --

MR. GAY: Yes, just one brief issue, Judge, I want to raise with the Court, and this is something we notified

1 defense counsel of over the weekend.
2 After Mr. Cordova left the stand on Friday, he was
3 interviewed by the Marshals regarding the phoned-in threat,
4 and contrary to what he testified to in court, I guess it
5 was actually Thursday, the day before that --
6 THE COURT: You mean he said something that wasn't
7 true?
8 (Laughter)
9 MR. GAY: Yes, Judge, and we learned of this, and
10 we now want to call him back to clear this up.
11 So the only issue, I think, Judge, is, he's
12 already -- a lawyer's been appointed for him, there's no
13 Fifth Amendment issues because we've worked out an immunity
14 agreement, which the defense has, the defense has a copy
15 of --
16 THE COURT: Does the lawyer agree with that?
17 MR. GAY: The lawyer agrees with it, yes. Yes.
18 Yes. And so the only real question, Judge, I just wanted to
19 raise with the Court is what the -- the scope of direct is
20 going to be very limited, it's going to be --
21 THE COURT: The scope of direct will be limited to
22 that issue, and the scope of cross will be limited to the
23 same issue.
24 MR. GAY: Okay. That's --
25 THE COURT: It's that simple. We're not going to

1 get through with the -- quite frankly, I don't know why
2 defense would want to do much more with him, for a lot of
3 reasons. I don't know how effective he was, to tell you the
4 truth. So it will be very limited as far as I'm concerned.
5 I'm not reopening anything here.
6 MR. GAY: And then, Judge, I just want to make
7 sure the defense is aware of one issue with respect to his
8 testimony.
9 What I expect he would testify to is that the
10 reason he phoned in a threat was because he feared for his
11 life, and that the fear came from two sources. One was the
12 Latin Kings. The second one was that because Mr. Bergrin --
13 he believed Mr. Bergrin had the address of his family
14 members that he also feared Mr. Bergrin.
15 Now, what I intend to do on direct is be extremely
16 careful in my questioning. He's been instructed he is not
17 to discuss Mr. Bergrin in any way, shape, or form with
18 respect to the threat, but if Mr. Bergrin is going to
19 cross-examine him in a way that that is going to come out,
20 I'm just putting him on notice now that that may be one of
21 the answers that comes out if there aren't careful
22 cross-examination about this topic.
23 THE COURT: I understand that. I understand that.
24 But you know, it's very difficult for me to limit or tell a
25 -- it's one thing limiting direct.

MR. GAY: Yes.

THE COURT: It's difficult to limit cross, especially with this witness, by the way, who, quite frankly, I thought on a number of occasions, and I think my rulings support it, he was not always responsive; and he's got to be told about that.

MR. GAY: Yes, and I -- I'm more just putting the defense on notice, Judge.

THE COURT: But, okay. You've made your point to Mr. Bergrin. I think he understands, I'm sure, so he'll have to act accordingly. But you've got to be clear that this guy is not to blurt something out.

MR. GAY: I instructed him, Judge, I can't tell you how many times, that this is not a topic that needs to be -- he should not be discussing this topic at all. My only fear is that if Mr. Bergrin were to literally ask a question that the only answer would be that that he would have to --

THE COURT: You should tell him not to answer it --

MR. GAY: Yes.

THE COURT: -- and ask for a sidebar.

MR. GAY: I will do that, Judge. I will do that.

THE COURT: Anything else, gentlemen?

MR. LUSTBERG: Judge, there's one aspect I just

1 want to make sure I understand when you say that -- the
2 scope of the cross is, of course, limited to direct. There
3 was one other matter, though, which was revealed by Mr. Gay
4 in his conversations with me and correspondence I believe as
5 well over the weekend, which was that after Mr. Cordova got
6 off the stand, he was paid an additional $4,000 by the
7 Government, I'm not a hundred percent sure --
8 MR. GAY: Yes.
9 MR. LUSTBERG: -- perhaps Mr. Gay can clarify.
10 And so Mr. Bergrin certainly ought to be able to get into
11 that. In fact, I think it's kind of outrageous that that
12 happened right after he got off the stand.
13 THE COURT: After he was off the stand here, he
14 got paid another $4,000?
15 MR. GAY: Yes, Judge, and let me explain what the
16 circumstances of that are. Mr. Cordova, in order for his --
17 so is he's not in a position where he has to intermingle
18 with the population, so to speak --
19 THE COURT: What population?
20 MR. GAY: Well, any population, Judge, for that
21 matter. There are safety concerns with Mr. Cordova. The
22 Government addressed those safety concerns, and Mr. Bergrin
23 and Mr. Lustberg are well aware of the monies that have been
24 paid to Mr. Cordova in order to protect his safety. In
25 other words, he was moved to a new area. He's been

1 receiving monies to --
2 THE COURT: We went through all that.
3 MR. GAY: -- for living, all that stuff.
4 THE COURT: We went through all that.
5 MR. GAY: This is simply a payment that furthers
6 that. So obviously I disclosed it to Mr. Lustberg.
7 THE COURT: I think they have a right to point it
8 out.
9 MR. GAY: Absolutely, Judge. We're not contesting
10 that.
11 THE COURT: But we're not going to get back into
12 all the things that he got for testifying. Everything else
13 that came out that was talked about is gone out. But I have
14 to let defense bring that point out.
15 MR. GAY: Oh, absolutely. No, Judge, I'm not
16 objecting to that coming out. I'm simply explaining what
17 happened, that's all.
18 THE COURT: Okay.
19 MR. BERGRIN: Judge -- are you finished, Mr. Gay?
20 MR. GAY: Yes. Well, just one additionally.
21 just so it's clear, too, Judge -- the payment --
22 well, I don't think it's relevant. It's for his safety so
23 it makes no difference.
24 MR. BERGRIN: Judge, first of all, I would have
25 obviously explored that and brought it out, and that we

1 should have known about that during the case-in-chief and
2 during the direct and cross-examination.
3 THE COURT: That happened afterwards.
4 MR. GAY: Yes, it happened afterwards.
5 MR. BERGRIN: No, Judge, you can't -- no one could
6 stand before you with a straight face and state that that
7 wasn't planned and that they didn't know that they were
8 going to give him a payment such as $4,000 until after he
9 left the witness stand. It's inconceivable, Judge. You
10 know that, and I know that.
11 THE COURT: But what's the difference? I'm going
12 to let you bring it out. You already brought out during his
13 cross-examination -- the Government brought out during his
14 direct the various things that he's done and what he was
15 going to get. You brought it out during cross-examination
16 that he got paid and the other things, that he's in witness
17 protection or living at home or whatever. So what is the
18 difference?
19 MR. BERGRIN: The difference is, Judge, you know,
20 but for him being trapped in a perjury conundrum, but for
21 his being trapped in that, we would have never known about
22 it, Your Honor, and we would have never -- were never
23 informed about that. We should have been informed. There's
24 no paperwork that we've received in reference to payment,
25 what it was for, how it was --

1 THE COURT: Okay. What are you asking me to do?
2 MR. BERGRIN: I'm asking you, Judge, to strike his
3 testimony.
4 THE COURT: No. No, I'm going to deny that.
5 MR. BERGRIN: And also because of the statementS
6 that he's blurted out nonstop even after being advised by
7 the prosecutor.
8 THE COURT: Mr. Bergrin, I think that those
9 statements, on a number of occasions, I did direct the jury
10 to disregard them. He did, I agree, do more than he should
11 have with respect to those statements.
12 I would consider a limiting charge to the jury
13 that I will consider. I'm not going to say I'm going to do
14 it, but if you think that's an appropriate thing to do for
15 later on, when I charge the jury, I'll consider that about
16 the comments that he made. But I'm not striking his
17 testimony. I do not think this $4,000 issue is that big an
18 issue in the big scheme of things. I'm going to allow you
19 to bring it out during cross-examination, and I think it's
20 already come out about all the other things that were
21 received, so I don't think it's that big an issue.
22 Anything further, Mr. Bergrin?
23 MR. BERGRIN: There is one thing further, Judge,
24 on the witness that's on the witness stand now, this witness
25 provided a video and an audio statement to members of the

1 D.E.A. Now, essentially, it was a confession, Your Honor,
2 and essentially, what it did --
3 THE COURT: When did he do that?
4 MR. BERGRIN: He did it on May the 29th of 2008,
5 Your Honor.
6 THE COURT: 2008. Okay. Go ahead.
7 MR. BERGRIN: We have never been provided that
8 confession. We have never been provided that videotape.
9 THE COURT: Let me stop you right there.
10 MR. GAY: Judge, we -- this is a Monmouth County
11 case. We asked the Monmouth County Prosecutor for their
12 entire file on this case. What they gave us, we provided to
13 Mr. Bergrin. We did it, I mean, back in June, after he was
14 arrested in 2009.
15 This is the first I'm learning of this.
16 THE COURT: This is the first right now is Mr.
17 Bergrin saying it?
18 MR. GAY: Well, Mr. Bergrin, earlier this morning,
19 about 10 minutes ago, told me about this. I assume he knows
20 about it because he was Mr. Esteves's lawyer.
21 THE COURT: Was this at the time you were
22 representing him?
23 MR. GAY: Yes, it was, Judge.
24 MR. BERGRIN: It was actually before I represented
25 him that he made the statement. He made the statement on

1 the day of his arrest, Your Honor. Essentially, he agreed
2 to cooperate --
3 THE COURT: Did you get copies of it back then?
4 MR. BERGRIN: No, Judge.
5 THE COURT: As his attorney, you never got copies.
6 MR. BERGRIN: No. We knew about it. I got a copy
7 of the D.E.A. 6 immediately, you know, because we obviously
8 had to prepare motions, and Miranda was one issue that we
9 were contemplating. But we got a copy of the D.E.A. 6 which
10 depicted what he had said, but it was only a summarization.
11 I had spoke to the prosecutor on multiple occasions in
12 reference to receiving the actual videotape and the actual
13 audio.
14 THE COURT: Did you ever ask the Government before
15 today for this or bring it to their attention?
16 MR. BERGRIN: Well, we've made discovery requests.
17 I don't know, I don't think we specifically --
18 MR. LUSTBERG: I can check. I don't recall.
19 THE COURT: But the point is, if you've known
20 about this since 2008, why am I waiting -- why am I hearing
21 now while he's in the middle of direct examination about
22 this? Why wasn't this brought to my attention sooner?
23 MR. BERGRIN: Because of statements that he made
24 during direct examination, Your Honor. When I -- just
25 please let me be heard for the record, Judge.

First of all, it should have been provided as far as the discovery's concerned. It's a very important statement, Judge, and you'll see the magnanimous impact of it, you know, during cross-examination as the case develops. But the importance of the statement, Your Honor, we should have been provided a copy of that. This is a Government witness, Your Honor. The Government has the D.E.A. agent as one of its witnesses to be called. The Government has interviewed Mr. Esteves. They have interviewed the D.E.A. agent. They have received a copy of the discovery. This is something that should not have been held back from us, Your Honor. It's a very, very important statement. It's a critical statement in this case.

THE COURT: Let me hear --

MR. GAY: Well, Judge, as far as held back, I want to make sure the record is crystal clear on this. This is a Monmouth County case. We requested --

THE COURT: He said, though, it was to a D.E.A. agent.

MR. BERGRIN: Absolutely.

MR. GAY: Well, but let me explain what I mean by that, Judge.

The D.E.A. was -- D.E.A. and Monmouth County Prosecutor's Office jointly worked this case. When I say it's a Monmouth County case, I'm saying that it's something

1 that was prosecuted by the Monmouth County Prosecutor's
2 Office, so what we did was, we asked D.E.A. and the Monmouth
3 County Prosecutor's Office to give us all the materials that
4 they have for this. What we were provided we gave to
5 Mr. Bergrin. My understanding, at least, is that the
6 Monmouth County Prosecutor's Office is the one who has this
7 statement, and as a matter of fact, as soon as Mr. Bergrin
8 told me about this this morning, I contacted the D.E.A.
9 agent, who contacted the Monmouth County Prosecutor's
10 Office, and they're getting it now.
11 What I'm saying to the Court, Judge, is that this
12 morning is the first time I learned of this video audiotaped
13 statement. Apparently Mr. Bergrin was aware of it, not only
14 because of his representation of Mr. Esteves, but also
15 because of the D.E.A. 6 which he received from us in Jencks
16 material. So -- and what he received back at the time of I
17 guess when he was representing Mr. Esteves.
18 So we are getting this. We are going to provide it
19 to Mr. Bergrin. But, you know, there was absolutely no
20 specific request for this, I can tell you that. If there
21 were, we would not be doing this now, we would have provided
22 this a long time ago.
23 THE COURT: Well a couple of things.
24 I really don't understand why something like this
25 would not have been turned over when the Monmouth County

1 Prosecutor's Office or whomever was turning everything else
2 over. I don't understand that.
3 I certainly take you at your word, your
4 representation, Mr. Gay.
5 I must admit, though, it is troubling to me to
6 continue to get these requests upon something -- if this
7 just came to the defense's attention, that would be one
8 thing; but the defense knew about this recording since --
9 we're in 2013, since 2008, and I'm hearing this as there's
10 somebody on the witness stand testifying, in the middle of
11 his testimony.
12 And I have to start to wonder whether or not this
13 is planned this way rather than -- this is something that
14 should have been brought to my attention when you knew this
15 witness was going to testify before we started this trial.
16 And I made it clear to everybody about that. In fact, we've
17 had motions, we had all kinds of issues since I got this
18 case assigned to me back in August, and this could have been
19 brought to my attention and I could have resolved this
20 without any trouble at all.
21 I'll tell you, I am not going to put the trial off
22 for any reason. If you get that information, turn it over.
23 Otherwise, this case is going forward and I'm not dealing
24 with that any further.
25 Now, anything else?

MR. GAY: No, Judge.

THE COURT: Anything else, counsel?

MR. BERGRIN: Judge, I'm just letting the Court know that this exhibit, which depicted the fact that there was an audio and videotape statement, was marked as a Jencks Exhibit. The's J-11661. It's a D.E.A. 6, filled out by a D.E.A. agent. Okay? This case was investigated by a joint task force.

THE COURT: This should have been brought to my attention months, months or years ago.

MR. BERGRIN: But, Judge, things slip through the cracks just like it slipped through the cracks with -- Judge, you're taking it one-sided, just like the prosecution.

THE COURT: Wait. I'm not taking it one-sided.

MR. BERGRIN: Judge, just please hear me. Please hear me for one minute. Just give me 30 seconds.

THE COURT: But, Mr. Bergrin, I will hear you. I've always allowed you to be heard. But I can't let you make statements that I don't respond to when they're accusatory to the Court.

I'm not hearing one-sided. I've directed him to turn it over to you. But I've got to tell you, this is not just them. This should have been asked for.

Now, continue.

MR. BERGRIN: Judge, just as they should have turned it over, because they have the D.E.A. 6, they've marked an exhibit as a Jencks exhibit, which means they must have read it, they must have read it in order to mark it, and it says clearly in it it was a recorded statement of both audio and video. So it slipped through their cracks and it slipped through my cracks, Your Honor. I mean, why should I be prejudiced and why should I be held to the detriment of not being able to use this statement during my cross-examination when it's very, very important, but, most importantly, Judge, -- I mean, it won't take a long time.

THE COURT: Let me just stop you.

Where is the statement? Do you have it?

MR. GAY: The statement -- I do not have it. The agent, I directed the agent to have the Monmouth County investigator he was working with retrieve that video and speed it up here as quickly as he possibly can.

THE COURT: Mr. Bergrin, we'll deal with it when it comes. We'll see what it shows. Fair enough?

MR. BERGRIN: Yes, Your Honor.

THE COURT: All right. Fair enough.

Scott, is the jury here?

THE COURT CLERK: Yes.

THE COURT: Let's go.

The witness. We've got to get our witness.

Oh, I just wanted to say one other thing. I reversed my ruling with respect to Government's Exhibit 426 last week on Friday. This was an exhibit -- this is the summary of the Esteves investigation, and I had previously kept it out under a number of grounds, 403 being one of them.

I looked at it more closely, and I think I was incorrect on that. That's why I reversed it. This really doesn't deal with Mr. -- I misunderstood. I thought it had something to do, because it's a fairly long exhibit and I didn't review it as closely as I probably should have, but I've now had a chance to look at it, and my reason is that I don't believe that it should be kept out under 403, and that's why I allowed it back in.

Okay. Let's go.

V I C E N T E E S T E V E S, called as a witness on behalf of the Government, and having been previously sworn, resumed the stand and testified as follows:

THE COURT CLERK: All rise.

(The jury enters)

THE COURT: Okay. Be seated.

Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: I hope you all had a pleasant weekend.

We are still in the middle of direct examination

A. Yeah. Yes. It was after.
Q. Yes, it was after that.
A. Um-h'm.
Q. Okay. Now -- all right. Now, Mr. Esteves, you said that you were arrested in Monmouth County; is that correct?
A. That's correct.
Q. And later, at some point in, say, May of 2009, were you also arrested by the Federal Government?
A. Yes.
Q. And were you charged with various crimes, including conspiring to murder witnesses in your case?
A. Yes.
Q. Did you eventually plead guilty to both the state drug charges against you and also the Federal charges that were against you?
A. Yes.
Q. Okay. I'm going to show you first 7029 and ask you if you recognize what that is.
A. This is my plea agreement, when I pleaded out from state.
Q. And that's for the drug case in Monmouth County; is that correct?
A. That's correct.
Q. And what sentence are you -- or did you receive in connection with that?

A. Twenty-five years, with a 12 and a half period of parole ineligibility.

Q. So you've already been sentenced on that; is that correct?

A. That's correct.

Q. Now, with respect to the Federal charges, I'm going to show you 7028, 7030, and 7027.

First, if you could take a look at these two, 7028 and 7030, ask if you recognize those.

A. Yes.

Q. And are those the plea agreements you signed for your Federal case?

A. Yes.

Q. Now, let me take those back for a moment.

Now, with respect to the first plea agreement -- well, actually, let me give it back for a minute.

Is one plea agreement dated August 23rd of 2010?

A. Yes, that's correct.

Q. And is the other one dated February 13th of 2013?

A. Yes.

Q. Okay. Now, with respect to the August 23rd, 2010 agreement, did you agree to plead guilty to conspiracy to travel in aid of drug trafficking business and five substantive counts of travel in aid of drug trafficking business?

A. Yes.
Q. And with respect to the February 13th, 2013, did you agree to plead guilty to violent crime in aid of racketeering, a violation of that statute?
A. Yes.
Q. Okay. Now, in connection with your pleas, did you also sign a cooperation agreement?
A. Yes.
Q. And I'm going to show you 7027, ask you if you recognize that.
A. Yes.
Q. And is that your cooperation agreement?
A. Yes.
Q. Okay. Now, with respect to -- I'm going to show you all of these, 7029, again, too.
Does your signature appear on each of these documents?
A. This one, too?
Q. Yes.
A. Yes.
Q. Okay.
MR. GAY: Judge, I'd ask that these be moved into evidence at this time.
THE COURT: Any objection?
MR. BERGRIN: I don't have -- I don't think I have

1 any objection, Judge.
2 THE COURT: Okay. So that's 7027, 7028, and 7030,
3 correct?
4 MR. GAY: 29 and 30, Judge. 29 is the state
5 agreement.
6 THE COURT: Oh, I'm sorry. Well, there's two --
7 all right. Tell --
8 MR. GAY: All right. So it's 7027, 7028, 7029,
9 7030.
10 THE COURT: Okay. In evidence.
11 (Government Exhibits 7027, 7028, 7029 and 7030 marked
12 in evidence)
13 Q. Now, Mr. Esteves, with respect to your state case
14 first, what is your understanding of what, if anything, the
15 Government -- well, let me back up and put it this way.
16 Pursuant to your cooperation agreement, what are you
17 obligated to do?
18 A. Tell the truth.
19 Q. At this trial.
20 A. That's correct.
21 Q. And at any meetings?
22 A. Everything. Tell the truth.
23 Q. And if you do tell the truth, what is your
24 understanding of what the Government's going to do for you?
25 First, let's talk about your state case. What has the

1 Government agreed to do in your state case?
2 A. They agreed to write a letter to the prosecutor and
3 ask for reconsideration of my sentence.
4 Q. And you're hoping to get a reduction in that sentence;
5 is that correct?
6 A. I'm hoping.
7 Q. But who is it up to whether or not you do get a
8 reduction in that sentence?
9 A. That's up to the judge. Nobody else.
10 Q. What about the prosecutor? When you say "the
11 prosecutor," you're not talking about the United States
12 Government; right?
13 A. No. State.
14 Q. You're talking about the Federal -- the state
15 prosecutor on your state case.
16 A. Well, the state prosecutor has to present it to the
17 judge, so that's why I'm saying, he has to agree, and then
18 at the end, it's up to the judge.
19 Q. Okay. Now, let's talk about your Federal cases. What
20 is it that the Government's agreeing to do in exchange for
21 your truthful testimony with respect to your Federal cases?
22 A. Write me a 5K1 letter to recommend a sentence
23 reduction from the sentence, the Federal, and run my time
24 concurrent with my state time.
25 Q. Okay. And who is it that ultimately will determine

first whether or not you get any reduction in sentence on your Federal case?

A. The judge.

Q. And what about who's going to determine whether or not your Federal sentence will run concurrent to your state sentence?

A. The judge.

Q. Now, what would happen to you if you tell a lie during my questioning?

A. Everything gets voided. It doesn't -- that's a no deal.

Q. And what about if you tell a lie during Mr. Bergrin's questioning?

A. Same thing.

MR. GAY: Just one second, Judge.

No further questions at this time, Judge.

THE COURT: Mr. Bergrin.

CROSS-EXAMINATION

BY MR. BERGRIN:

Q. You knew that I had never met Oscar in my life; correct?

A. That's correct.

Q. You knew that I had never seen or known anything about Oscar in my life; correct?

A. Say it again?

1 discovery that Hector Rodriguez had cooperated; correct?
2 A. Yeah, not on me, though. It say Slim.
3 Q. But Slim owed Vincent Esteves hundreds of thousands of
4 dollars; correct?
5 A. 200,000.
6 Q. $200,000, and it mentions the name --
7 THE COURT: Wait. Wait. 200, or 200,000?
8 THE WITNESS: 200,000.
9 THE COURT: 200,000.
10 Go ahead.
11 Q. Almost a quarter of a million dollars. And it
12 mentions the name of Vincent Esteves; correct?
13 A. That's correct.
14 Q. Now, you knew that the discovery was essentially a
15 public document; correct? That all the -- it was a public
16 document; right?
17 A. Yeah.
18 Q. And you knew that all the Defendants in your entire
19 case had also received discovery just like you; right?
20 A. Yes.
21 Q. Now, that includes Michael Lopez; right?
22 A. Yes.
23 Q. That includes Tineo; right?
24 A. Yes.
25 Q. Paulino Tineo; correct?

A. Yes.
Q. Ivan Miguel Paulino Tineo; correct?
A. That's correct.
Q. That includes the truck driver, Noyola; correct?
A. Correct.
Q. That includes Mark Andrews; correct?
A. Edwards?
Q. Is it Mark Edwards? Mark Edwards. I'm sorry.
A. Yes.
Q. And Mark Edwards was your contact at the airports, correct, one of them, right?
A. One of them, yes.
Q. That includes Mr. Chen-Pui, also known as Junior the Panamanian; right?
A. Yes.
Q. So essentially all the Defendants involved in your case received discovery just like Vincent Esteves does; correct?
A. Yes.
Q. Now, Mr. Esteves, on the date of March 28th, when you were arrested, --
A. May 28th.
Q. May 28th, I'm sorry. You're right, I'm sorry. Well, you know the dates, you remember that date; right?
A. Of course.

1 Q. You'll never forget that date; right?
2 A. No.
3 Q. They came and arrested you and your wife, Chantal;
4 right?
5 A. Yes.
6 Q. And they came in like blockbusters into your house;
7 right?
8 A. Actually, they came in real respectful. They knocked.
9 Q. They knocked. And then they arrested you and cuffed
10 you and your wife; correct?
11 A. That's correct.
12 Q. Now, on that date, do you remember being advised of
13 your rights?
14 A. That's correct.
15 Q. And do you remember saying -- being told that you have
16 the right to remain silent?
17 A. Yes.
18 Q. The right to an attorney; right?
19 A. Yes.
20 Q. And Vincent Esteves on this date of May the 28th, the
21 date of his arrest, agreed to talk to members of the Drug
22 Enforcement Administration as well as members of the
23 Monmouth County, State Police, and other task force;
24 correct?
25 A. That's correct.

Q. As a matter of fact, you even agreed to be videotaped; right?

A. That's correct.

Q. And you agreed to cooperate with law enforcement authorities; correct?

A. That's right.

Q. And as a matter of fact, as part of your cooperation -- who is Cesar Cuebas?

A. As part of my cooperation? My brother-in-law.

Q. He's your brother-in-law; right?

A. That's correct.

Q. He's married to your wife's sister; right?

A. That's correct.

Q. Your wife's twin sister; right?

A. Fraternal twin, yes.

Q. Who was taking care of your infant son while you were locked up; right?

A. That's correct.

Q. Not only did you give up and tell them about your operation, but you gave up your own brother-in-law on that date when you were arrested; correct?

A. That's correct.

Q. Now, you confessed to essentially everything that you did; right, Mr. Esteves?

A. Yes, then some.

1 Q. Now, you told them on May 29th, members of Group 5,
2 members of the Drug Enforcement Administration, members of
3 the Monmouth County Prosecutor's Office in a videotaped and
4 recorded statement, Mr. Esteves, your entire role in the
5 trafficking of narcotics; correct?
6 A. Yes.
7 Q. And you told them that you know lots of people in
8 different circles and had lots of contacts in different
9 countries; correct?
10 A. Yes.
11 Q. You told them that you using these contacts, you're
12 able to coordinate the transportation of loads of narcotics
13 throughout the world, including the United States of
14 America; correct?
15 A. Can you rephrase that? Throughout the world like
16 what?
17 Q. You told them that based upon your contacts, you,
18 Vincent Esteves, in your role as a narcotic trafficker, that
19 you know lots of people in different circles; correct?
20 A. Yes.
21 Q. And you told them that you have lots of contacts in
22 different countries; correct?
23 A. Yes.
24 Q. And you told them that using these contacts, you're
25 able to coordinate the transportation of loads of narcotics

1 throughout the world, including the United States; correct?
2 A. Again, the world, I mean, the only place I ever sent
3 was over here, and we started to send to Europe, so --
4 Q. Well, you're telling us that you didn't mention the
5 word "world" or told them you had contacts throughout the
6 world?
7 A. I just -- I don't recall mentioning the world, you
8 know.
9 MR. BERGRIN: Well, may I approach the witness
10 with J-11661, Judge?
11 THE COURT: Yes.
12 Q. I ask you to look at paragraph three.
13 A. Okay. It says "world"? All right.
14 Yeah. That's what it says. It says "world."
15 Q. Not only that, Mr. Esteves. You even told them that
16 you transported not only cocaine, but you also moved some
17 heroin; correct?
18 A. Quite some, yes.
19 Q. And you also told them that you arranged for the
20 transportation of cocaine loads as large as 1,000 kilograms
21 at a time; right?
22 A. Yes.
23 Q. And you told them that you were currently coordinating
24 a transportation of cocaine, and you told them how you're
25 transporting it and what lines you're using, correct;

1 Mr. Esteves?
2 A. Yes.
3 Q. And you told them your routes, that they are Mexico,
4 the Dominican Republic, two lines in Colombia, and
5 Venezuela; correct?
6 A. Yes.
7 Q. And you also told them about the primary investment
8 that was in a start-up line to Europe via the Netherlands;
9 right?
10 A. Excuse me?
11 Q. You told them that you also have a start-up line and
12 that your primary investment now is in a start-up line to
13 Europe via the Netherlands; correct?
14 A. Yes.
15 Q. So you told them about how in the future you intend to
16 move large amounts of narcotics through different countries
17 and eventually into Europe; right?
18 A. Yeah.
19 Q. You also told Mr. Esteves that you have multiple
20 contacts in Colombia; right?
21 A. A few, yes.
22 Q. And you told them that your primary line is through a
23 Colombian male named David; right?
24 A. One of them, yes.
25 Q. And you gave up David; right, Mr. Esteves?

A. Yeah.

Q. And you told them that -- you said that David is not a source of supply but has a role similar to you in that David has lots of contacts at the airports and within commercial airlines; right?

A. Yes.

Q. And you told them that you could move large amounts of narcotics from Colombia to other countries on behalf of different organizations; correct?

A. Organizations?

Q. Yes.

A. I don't understand.

Q. Did you tell them, the Drug Enforcement Administration and members of the task force, that David has a lot of contacts at the airports and within commercial airlines and can move large amounts of narcotics from Colombia to other countries on behalf of different organizations? Did you say that, Mr. Esteves?

A. If it says -- if that's what the D.E.A. reported, I guess I said it.

Q. Did you also tell them that -- you stated that the narcotic loads are usually transported -- you even told them how you transport the narcotic, correct, through commercial airlines and through catering facilities, like you told this jury, right, through the food carts; right?

A. Yes.
Q. And you told them also that you knew a Dominican male called Bori; right?
A. Say that again.
Q. Did you tell them that you had stated a Dominican male called Bori is one of your main contacts in the Dominican Republic?
A. Bori? I don't know Bori. Boy, you mean?
Q. Are you telling us that you don't know a Bori --
A. Not a Bori, no.
Q. B-o-r-i?
A. Bori?
Q. Yes.
A. Bori, he's somebody I know, yes.
Q. Who is that?
A. A Puerto -- somebody that -- right before I was arrested, I met him over there in Santo Domingo.
Q. And he's an individual that moves narcotics with you; correct?
A. We started -- that's when we started doing, to send stuff to Amsterdam.
Q. So you gave up David, correct, in Colombia; right?
A. Yes.
Q. You gave up this guy, what's his name, Bori?
A. Bori, yes.

1 Q. Bori, correct, in the Dominican Republic; correct?
2 A. Yes.
3 Q. You also told them that Bori has lots of contacts at
4 Dominican airports and in commercial airlines; correct?
5 A. Yes.
6 Q. You also gave up your contact called Flaco; correct?
7 A. That's correct.
8 Q. And that's in the Dominican Republic also; right?
9 A. That's correct.
10 Q. You also stated the Dominican Republic is primarily a
11 transport point for loads of narcotics coming out of
12 Venezuela and Colombia; right?
13 A. Yes.
14 Q. And you also told them about the cities in Europe and
15 the Dominican Republic that you deal with; correct?
16 A. Cities in Europe, we just started.
17 Q. You also -- not only that, Mr. Esteves. You gave up
18 your Netherlands contact called Edward; correct?
19 A. I don't recall the name.
20 MR. BERGRIN: May I approach, Your Honor?
21 THE COURT: You can approach.
22 MR. BERGRIN: I approach with 11662.
23 A. Yes, Edward's his name.
24 Q. So you even gave up your contacts in Europe, Edward in
25 Netherlands that you were going to deal with; correct?

A. That's correct.

Q. And you told them how you met Edward; correct?

A. Yes.

Q. You told them -- you gave even a physical description of Edward; correct?

A. Yes.

Q. Six feet tall, 44, 40 to 45, blond hair, blue eyes. You told them the languages Edward speaks; correct?

A. Yes.

Q. And you said Edward came to meet you because he heard that you moved -- that you had a lot of contacts and was capable of transporting large quantities of narcotics throughout the world; correct?

A. That's correct.

MR. GAY: Objection.

Q. And you also told them that --

THE COURT: Wait a second. I'm not just going to have you sit here and read the entire -- Mr. Bergrin, you're just reading the entire report that he gave to the D.E.A. or the F.B.I. or whatever. You can't just sit here and keep reading it and saying, didn't you say this line, this line, this line. Come on.

Q. Did you tell them about your contacts in Mexico?

A. That's correct.

Q. And you also told them about --

1 THE COURT: Well, wait a second. I just said to
2 stop that.
3 MR. BERGRIN: Judge, can I be heard at sidebar,
4 please?
5 THE COURT: No. No. I've let you go on and on
6 and on. The guy has already testified that he gave up
7 everything he knew. I think I know where you're going with
8 this, but get to the point. You're not just going to read
9 the entire thing on the guy, that you said this, you said
10 this, and then read it. That's not what --
11 Q. You also gave Pepe; correct?
12 A. Yes.
13 Q. And that's one of your main contacts that you
14 described as the boss himself; right?
15 A. The cartel Zeta, yes.
16 Q. So you gave up the leader and the boss of the Zeta
17 cartel in Mexico that you get your supplies from; correct?
18 A. Yeah. I'm a cooperating witness.
19 Q. No, this is back in May, the date of your arrest by
20 the Prosecutor's Office in Monmouth as well as the Drug
21 Enforcement Administration; correct?
22 A. That's correct. The same day I got arrested, I
23 started cooperating.
24 Q. And not only that, Mr. Esteves. You told them about
25 the fact that the 75 kilograms that was headed with the drug

1 driver, Noyola, you told them and admitted that it was sent
2 by Pepe and Martinez and that was your drugs; correct?
3 A. They were my drugs?
4 Q. Yes.
5 A. No, they weren't my drugs.
6 Q. Didn't you state that you're waiting for a load of
7 cocaine to be delivered by Pepe and Martinez, that being the
8 75 kilograms?
9 A. It would have been delivered to New Jersey, not to
10 Pittsburgh.
11 Q. No, to you, sir.
12 A. No, he was delivering that drugs special from Atlanta
13 to Pittsburgh, not New Jersey. When anything comes -- I
14 never been in Pittsburgh.
15 Q. Did you tell them that you were waiting -- no, I'm not
16 saying anything about Pittsburgh. Forget about Pittsburgh.
17 A. That's where the drugs were going.
18 Q. Are you saying that you were waiting for the load, the
19 75 kilograms that were coming for you?
20 A. No, I wasn't waiting for that load.
21 Q. Did you tell the D.E.A. and the Monmouth County
22 Prosecutor's Office that you were currently waiting for a
23 load of cocaine to be delivered by tractor trailer later
24 that same day?
25 A. I received a call that morning, the day, May 28th, in

1 the morning, from the cartel and from the driver that the
2 load was coming -- coming in.
3 Q. And that was the 75 kilograms that was seized;
4 correct?
5 A. That was seized in Atlanta. I didn't know that. So,
6 again, from Atlanta to Pittsburgh, that truck was supposed
7 to be going, I didn't know. I think it's going to be coming
8 directly to me. So I'm thinking, you know, according to the
9 discovery, what I explained to the D.E.A. was that that
10 drugs was not for me intentionally, but they used it to --
11 to -- pretty much to get me on the phone. That's how I
12 really got arrested -- arrested.
13 Q. But that was the 75 kilograms that Noyola --
14 A. Was driver.
15 Q. -- Brigilio Carlos Noyola was transporting; correct?
16 A. That's correct.
17 Q. And you let them know, the police, law enforcement
18 authorities, that it was sent by Pepe and Martinez; correct?
19 A. Yes.
20 Q. And Martinez was an individual who was so powerful,
21 he's on the D.E.A.'s most wanted list; correct?
22 MR. GAY: Objection, Judge. How does he know
23 that?
24 THE COURT: I don't know if he knows it. He can
25 say no if he doesn't know it. This isn't --

1 You're not reading from a statement of his;
2 correct?
3 MR. BERGRIN: No, Judge.
4 Q. Didn't you tell the D.E.A. that Esteves stated that
5 Martinez is currently among D.E.A.'s most wanted and where
6 he's living in Reynosa, Mexico?
7 A. I know he was wanted, but I didn't know he was the
8 most wanted for D.E.A. I know it was for some murders or
9 something like that.
10 Q. Did you tell the D.E.A. that he was on the D.E.A.'s
11 most wanted?
12 A. Again, I don't recall saying he was on D.E.A.'s most
13 wanted.
14 Q. If you were to see a copy of the report, would it
15 refresh your memory?
16 A. Maybe it would.
17 Q. I show you what has been marked 11663 and ask you to
18 look at paragraph nine.
19 A. That's what D.E.A. says.
20 THE COURT: Well, wait. He asked you if that
21 refreshed your recollection. Does that refresh your memory
22 that you said that?
23 THE WITNESS: No.
24 THE COURT: Okay. Next question.
25 Q. So, essentially, on the day that you were arrested,

1 you told them about everything that you were involved in;
2 correct?
3 A. Yes.
4 Q. And you told them about the individuals that you dealt
5 with; correct?
6 A. Yes.
7 Q. And this is a document that was part of the discovery,
8 correct, that we received; right?
9 A. The one you just showed me?
10 Q. Yes.
11 A. Yes.
12 Q. So you knew, you knew, Mr. Esteves, that all these
13 individuals involved in this case would know that on the day
14 Vinny Esteves was arrested, he cooperated with Federal and
15 state law enforcement authorities and essentially gave up
16 everything that he knows and that Vinny Esteves is connected
17 to.
18 A. No.
19 Q. You knew that the discovery was being disseminated to
20 all the individuals involved in this case; correct?
21 A. Yes.
22 Q. Now, on the day that you talked to the Federal
23 authorities, the statement was recorded and the statement
24 was also videotaped; correct?
25 A. That's correct.

1 MR. BERGRIN: Judge, could we take our break, our
2 morning break now?
3 THE COURT: All right. Ladies and gentlemen,
4 we'll take our morning break now.
5 Fifteen minutes, Scott.
6 THE COURT CLERK: All rise.
7 Place your notebooks on your chairs.
8 (The jury exits)
9 (Recess taken)
10 (Defendant present)
11 (The witness resumed the stand.)
12 THE COURT CLERK: All rise.
13 (The jury enters)
14 THE COURT: Be seated.
15 Okay. Mr. Bergrin?
16 MR. BERGRIN: May I proceed, Judge?
17 THE COURT: Yes.
18 BY MR. BERGRIN:
19 Q. Now, Mr. Esteves, Cesar Cuebas was your
20 brother-in-law; correct?
21 A. Yes.
22 Q. And he was the one that essentially was responsible
23 for loading monies into the trunks of cars; correct?
24 Amongst other things.
25 A. No.

Q. What did Cesar do in the organization?
A. Excuse me.
Q. What does Cesar do for your organization?
A. He works for Diamond Builders. Whatever I told him to do.
Q. Cesar was involved in the drug conspiracy also; correct?
A. I don't recall.
Q. What do you mean, you don't recall? He was charged -- he was part of --
A. He got probation, so I don't recall.
Q. He was part of your indictment; correct?
A. Yes.
Q. And he was charged with drug conspiracy with you; right?
A. Um-h'm.
Q. And he pled guilty to drug conspiracy; correct?
A. He plead guilty to something. I don't know what.
Q. Are you telling us that you don't remember and you don't know what your brother-in-law pled guilty to, your own brother-in-law? Is that what you're saying?
A. Yeah, exactly what I'm saying.
Q. Now, Cesar was involved in Diamond Builders, according to you.
A. That's correct.

A. No, I don't. I don't recall.
Q. Would it refresh your memory if you were to see --
A. Yeah.
Q. -- a D.E.A. report on that?
I show you what has been marked 11688, paragraph two.
A. Okay.
Q. You had a chance to listen to the wiretaps and the interceptions in your case --
THE COURT: Well, wait a minute. So what's the question and answer with respect to that?
Q. Isn't it a fact that you told them that Cesar was part of your drug organization?
A. No.
Q. Now, you had a chance to listen to the wiretaps and the interceptions; correct?
A. Again, some of them, not all of them. Like you said, there were thousands and thousands of hours.
Q. And you don't remember any conversations involving you and Cesar.
A. I remember exactly the ones you said. I was in the Dominican Republic, and he asked me about some lumber or supplies or something like that. I wasn't even in the United States when I spoke to him.
Q. Now, isn't it a fact that you told the D.E.A. that

1 Cesar was part of your organization?
2 MR. GAY: Objection, Judge. He's already answered
3 it. He's been refreshed with a document. It was asked and
4 answered.
5 THE COURT: I'll let you answer the question one
6 last time.
7 A. That I told the D.E.A. that he's part of the
8 organization?
9 Q. Yes.
10 A. No, I don't recall that, no.
11 Q. Now, we just went through the statement that you made
12 to the Drug Enforcement Administration; correct?
13 A. Yes.
14 Q. And we went through the statement and who you gave up
15 and what you said about your organization; correct?
16 A. Yes.
17 Q. And when we went through the statement, it reflected
18 the fact that you were dealing thousands of kilograms of
19 cocaine; correct?
20 A. Yes.
21 Q. And it reflected all the members that you were dealing
22 with overseas in Colombia, Mexico, Dominican Republic;
23 correct?
24 A. Most of them.
25 Q. And it also talked about the fact that you were

(Luncheon recess taken)

AFTERNOON SESSION

(Defendant present)

(Jury out)

THE COURT: All right. Counsel, you need to see me?

MR. LEVY: Yes, Your Honor, quickly.

Two things related to Mr. Moran, who we anticipate we'll get to this afternoon.

One is, we both had submitted letter briefs about one issue related to his testimony.

The second is, Your Honor -- the Government's not a party to this -- we had issued a 17(c) subpoena to the Hudson County Prosecutor's Office for the criminal file relating to Mr. Moran. They just today filed a motion to quash that subpoena, so we would ask the Court to issue an order ordering them to comply with the subpoena and turn over the file.

THE COURT: Who did they file a motion to quash with?

MR. LEVY: With this Court, I believe.

MS. PROTESS: For the record, that's what they represented to me, Your Honor.

MR. LEVY: They represented to me they filed a motion to quash.

1 MS. PROTESS: With this Court. Correct. We just
2 received it a few moments ago.
3 THE COURT: When did you serve this subpoena?
4 MR. LEVY: Several days ago, Your Honor. I'm not
5 -- we can get you the exact date.
6 THE COURT: And this is a -- well, I'd have to see
7 the -- before I can just order it, I'd have to see what
8 they're filing, and I haven't seen it. I don't know
9 anything about it.
10 MR. LEVY: And this frankly may be mooted by
11 Mr. Moran's testimony. Stated differently, if he concedes
12 the points Mr. Bergrin wants to make on --
13 (Off the record discussion)
14 MR. LEVY: I withdraw that. Mr. Bergrin
15 anticipates he's going to deny it.
16 THE COURT: What's the content of that subpoena?
17 What did you subpoena?
18 MR. BERGRIN: A copy, Judge, of his -- he has an
19 open Hudson County Prosecutor's case, a second-degree case,
20 Your Honor, and it's been open for approximately -- over
21 five years, Your Honor, and essentially, it's a benefit to
22 Mr. Moran to have the case remain open because that would
23 have been his second conviction for a very serious offense,
24 a second-degree offense.
25 He also testified at the prior proceeding,

1 Your Honor, that they had made him a noncustodial offer
2 when I know for a fact that when I was involved in the case,
3 there was a state imprisonment offer that was made to him.
4 THE COURT: Okay. You couldn't get this when you
5 had the last case? Did you try, or wasn't it --
6 MR. BERGRIN: Well, what happened was, Judge, we
7 had subpoenaed it, and then he was on the witness stand, and
8 it just -- it was never answered, Your Honor.
9 THE COURT: What's the Government's position on
10 it?
11 MR. GAY: Judge, we have no position. I mean,
12 it's their motion to quash. I have no idea what the grounds
13 are. I don't know what they've -- I mean, I can't -- I
14 don't know.
15 MR. LEVY: It's the Hudson County Prosecutor's
16 motion to quash. It's our understanding Mr. Moran's
17 attorney did not join in the motion. It's strictly a motion
18 by the County Prosecutor's Office.
19 MR. GAY: If there's something in the file that --
20 THE COURT: Could I ask you, Mr. Gay, perhaps,
21 Mr. Sanders, or Mr. Minish, who's not going to be --
22 whoever's available, maybe you can contact the Prosecutor's
23 Office. Sometimes the local Prosecutor's Office have a
24 standard procedure that they'll never give up their files
25 without a court order. There may be other good reasons.

1 But the point is, I'm just not comfortable with just signing
2 a blanket order.
3 Now, I guess I can tell them I want it in camera,
4 but I'm not really in the mood to start looking at things in
5 camera in the middle of a trial. That could stop the trial
6 as much as anything else. So maybe you could just check
7 with them and find out what the problem is --
8 MR. GAY: Absolutely, Judge. We will do that.
9 THE COURT: -- and maybe it will alleviate it
10 somehow.
11 That's one thing. And what about the other one?
12 MR. LEVY: The Government had submitted a letter
13 brief related to Mr. Moran's testimony, and we had submitted
14 a reply, which was sent --
15 THE COURT: This was about the issue of a prior
16 statement and whether or not -- about the Jenkins case?
17 MR. LEVY: Yes.
18 THE COURT: About whether or not something stated
19 in the -- by an attorney, not necessarily adopted by the
20 witness themselves, would be admissible as like a prior
21 inconsistent statement.
22 MR. SANDERS: Right, Your Honor. And I actually
23 am surprised by the defense's position on that because they
24 had agreed in our pretrial motion on Rule 618 that it was
25 improper for Mr. Bergrin to cross people on statements and

1 302s that are not the witness'. This is a statement in the
2 bail motion which is essentially attorney advocacy, and
3 without any direct quotes or statements from Mr. Moran, it's
4 improper to attribute them to Mr. Moran.
5 THE COURT: Right, under 613. I think I agree
6 with the Government's position on this, that it's got to be
7 the witness', and I understand it's not the witness'
8 statements, it's the attorney's, that have not been adopted
9 by the witness.
10 MS. PROTESS: Well, Your Honor, there is something
11 troubling to say that they haven't been adopted,
12 particularly if you go to these statements, they are
13 specific, they do appear to be specific to Mr. Moran --
14 THE COURT: I read the statements, and I didn't
15 get that impression, to tell you the truth.
16 MS. PROTESS: And our position would not be
17 inconsistent with our earlier position that to some
18 extent, the 302 would be not necessarily in violation of
19 Rule 613 cross because these are actually pleadings, which
20 the case law, as we submitted, are --
21 THE COURT: I think there's going to have to be a
22 demonstration that the witness has adopted the statements
23 before I would allow that to happen. So I'm going to grant
24 the Government's application.
25 MR. SANDERS: All right, and just on that subject,

1 Your Honor, there may be attorney-client privilege issues.
2 I know Mr. Moran's lawyers are going to be in court.
3 THE COURT: Who are his lawyers?
4 MR. GAY: Anthony Iacullo, Judge.
5 MR. SANDERS: But I mean, the questioning has to
6 be done in a way where -- because it's one thing if a client
7 supplies something to an attorney with the knowledge it's
8 going to be repeated in a court-filed pleading. I agree
9 those aren't privileged because you have no expectation of
10 confidentiality. But there has to be some careful
11 questioning about what was discussed with the attorney in
12 order to prepare a document because that would infringe --
13 THE COURT: You can talk about it, but I'm
14 agreeing with you, so that's not going to be an issue.
15 MR. SANDERS: Okay.
16 MR. BERGRIN: Judge, how is that attorney-client
17 privilege, and how can't I cross-examine?
18 THE COURT: Wait. I'm not sure if I understand
19 what you're talking about.
20 I'm saying with respect to -- this was this issue
21 about statements that are allegedly made in a bail
22 application.
23 MR. SANDERS: That's correct.
24 MR. BERGRIN: Yes, Your Honor.
25 THE COURT: By the attorney.

1 MR. SANDERS: That's correct.
2 THE COURT: But I'm saying unless they were
3 adopted by the alleged declarant, then under 613, I don't
4 think that they're appropriate, and I'm granting what the
5 Government is saying.
6 Now, what are you talking about beyond that?
7 MR. BERGRIN: Are you -- so your position, Judge,
8 and your order and your ruling is that I am precluded from
9 asking him about what his attorney put in the bail
10 application on behalf and of, for the benefit of Thomas
11 Moran, who was an attorney at the time also and was cc'd a
12 copy of all the documents. I mean, how can that be,
13 Your Honor? How can you preclude me from cross-examining
14 him and asking him about representations that an attorney
15 made on his behalf? The attorney is an agent of Thomas
16 Moran.
17 THE COURT: But that doesn't necessarily mean that
18 he made those statements.
19 MR. BERGRIN: They're representations made --
20 THE COURT: Well, here's what we're going to do.
21 We're going to finish with this witness, and then we'll deal
22 with that. Let's go.
23 MR. BERGRIN: Okay, Judge.
24 THE COURT: Can we get the witness ?
25 (The witness resumed the stand.)

1 THE COURT: We're breaking at 3:30 today.
2 THE COURT CLERK: All rise.
3 (The jury enters)
4 THE COURT: Be seated.
5 Okay. Continue, Mr. Bergrin.
6 MR. BERGRIN: Thank you.
7 CROSS-EXAMINATION (CONTINUED)
8 BY MR. BERGRIN:
9 Q. Mr. Esteves, did Chantal Esteves have the capacity to
10 introduce Oscar to any of your connections?
11 A. Could she have?
12 Q. Yes.
13 A. Yes.
14 Q. And Chantal was out in what month of 2008?
15 A. I'm not a hundred percent sure. Maybe November.
16 Q. In approximately November. But she got out on bail,
17 and she met with Oscar Cordova; correct?
18 A. Yes, she did.
19 Q. And isn't it a fact that based upon the meeting that
20 Chantal Esteves had with Oscar, Oscar was never introduced
21 to any of your connections, connects, or anybody that could
22 provide drugs to Oscar based upon you; correct?
23 MR. GAY: Objection. Assumes that he knows there
24 was a meeting between Oscar and Chantal.
25 MR. BERGRIN: He just testified to that, Judge.

(Laughter)

THE COURT: 3:30.

MR. GAY: Judge, my understanding is there's a person still in movement now over to the -- to get up to the --

THE COURT: Going to take a little while?

MR. GAY: About five minutes.

THE COURT: All right. Why don't we take our afternoon break?

(The jury exits)

(Recess taken)

(Defendant present)

O S C A R C O R D O V A, called as a witness on behalf of the Government, and having been previously sworn, resumed the stand and testified as follows:

THE COURT CLERK: All rise.

(The jury enters)

THE COURT: Be seated.

Mr. Gay?

MR. GAY: Your Honor, the Government recalls Oscar Cordova.

THE COURT: Okay. Mr. Cordova, you're still sworn.

Continue.

MR. GAY: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. GAY:

3 Q. Mr. Cordova, before you testified in this case, did

4 you have a conversation with me about a telephone call in

5 which a person made a -- reported a threat to your life?

6 A. This is correct, Mr. Gay.

7 Q. And were you aware that there was an ongoing

8 investigation into that threat, including the identity of

9 the person who made that telephone call reporting the

10 threat?

11 A. This is also correct, Mr. Gay.

12 Q. And did I question you about that reported threat?

13 A. Yes, you did, sir.

14 Q. Did you tell me that you were not involved in making

15 that telephone call reporting that threat?

16 A. Yes, I did, Mr. Gay.

17 Q. On last Thursday, February 21st, 2013, do you recall

18 testifying under oath to this jury?

19 A. Yes, sir.

20 Q. And do you recall being asked the following question

21 by Mr. Bergrin and giving the following answer to this

22 jury --

23 A. Yes, sir.

24 Q. "Mr. Cordova -- " --

25 MR. BERGRIN: He answered the question already.

He said "Yes, sir."

MR. GAY: He's acknowledging he remembers the question he was asked, I believe, Judge.

THE COURT: I think that's exactly what he was doing.

go ahead.

Q. Question by Mr. Bergrin: "Mr. Cordova, isn't it a fact, sir, that you were connected to a false death threat that was made against you by an individual who you had called and contact Federal authorities?"

Answer by you: "That is not true, sir. That is not true. I was aware that there was a threat, but for me to call in the threat on myself, come on, Paul."

Do you remember being asked that question and giving that answer?

A. Yes, sir.

Q. Was that response truthful?

A. No, it was not, sir.

Q. Did you call the threat in on yourself?

A. Yes, sir.

Q. Do you recall approximately when it was that you called this threat in on yourself?

A. I don't have an exact time for you, Mr. Gay, but, yes, I did make the call.

Q. Okay. Now, would it be -- would it have been sometime

1 close to the beginning of the trial in this case?
2 A. No, sir.
3 Q. Okay. That you called in the threat, I'm saying.
4 A. Yes, sir. I'm sorry. Excuse me. Yes.
5 Q. Okay. So let me rephrase the question and make sure
6 you understand it.
7 You're saying you don't remember exactly when you
8 called in the threat; is that correct? You don't remember
9 the exact date that you called in this threat; is that
10 correct?
11 A. That's correct, Mr. Gay.
12 Q. But was it sometime either immediately before or
13 sometime surrounding the beginning of the trial in this
14 case?
15 A. The beginning of the trial in this case, sir.
16 Q. Now, when you called in this threat, can you explain
17 how it was that you called in the threat? What did you do?
18 A. I picked up a throwaway phone that I had purchased and
19 I made a call and said that I believe my life was in danger,
20 threat, against the almighty Latin Kings, it had nothing to
21 do with Mr. Bergrin.
22 Q. Okay, and did you disguise your voice in any fashion
23 when you phoned in this threat?
24 A. Yes, I did, sir. Yes, I did.
25 Q. And did you say there was a $250,000 contract out on

your life by the Latin Kings?

A. This is correct, Mr. Gay.

Q. Was there actually a threat to your life from the Latin Kings that you're aware of?

A. There is a threat. I just don't know how much, sir.

Q. So the false part of the report was that there was a contract for $250,000?

A. Correct, Mr. Gay.

Q. Now, when was it that you learned of the actual threat, if you recall?

Do you understand my question, sir?

A. Yes.

Q. Not the reporting of it by yourself, but the actual threat. When did you learn that there was a threat by the Latin Kings on you?

A. It was an ongoing, sir, ongoing. It was a secondhand information. So, I mean, me being involved in a gang and stuff -- I'm out of the gang -- that was my concern. I was scared, sir, for my safety.

Q. So based on your life in the gang previously, what is your understanding of --

MR. BERGRIN: Objection to the leading questions to this man, Judge.

THE COURT: I'll sustain the objection.

Q. Okay. You testified that you were in a gang; is that

1 correct?
2 A. This is correct, Mr. Gay.
3 Q. And what happens to gang members who cooperate?
4 A. You die, sir.
5 Q. Now, do you remember when you learned of this ongoing
6 threat? Did you tell anyone in law enforcement about it?
7 If you recall. Not saying the reporting. I'm saying back
8 around the time.
9 A. Yes, I did, sir.
10 Q. Now, what was the reason that you -- you said there
11 was this ongoing threat; is that correct?
12 A. This is correct, Mr. Gay.
13 Q. What was the reason that you telephoned in the threat
14 at the time you did rather than previously?
15 Do you understand the question, sir.
16 A. Yes, I do. I did understand it, I do understand the
17 question.
18 Q. Would you explain that?
19 A. My answer would be that it was getting closer for me
20 to come here and to testify, and I was scared for myself as
21 well as my family, sir.
22 Q. Now, what was the reason you lied on the witness stand
23 and said you did not make the phone call reporting the
24 threat?
25 A. I was embarrassed, sir.

1 Q. Can you explain that, please?
2 A. Embarrassed meaning that --
3 Q. Why were you embarrassed?
4 A. Because I know that I did it and I lied about it, sir.
5 Q. Now, you swore to tell -- you swore an oath to tell
6 the truth before you gave that answer; is that correct?
7 A. This is correct, sir.
8 Q. And you understood when you gave that answer that you
9 were not telling the truth; is that correct?
10 A. This is also correct, Mr. Gay.
11 Q. Now, after you left the witness stand on Friday,
12 February 22nd, 2013, did the United States Marshals question
13 you?
14 A. Yes, they did, sir.
15 Q. And they questioned you about the reported threat on
16 your life; is that correct?
17 A. This is correct, Mr. Gay.
18 Q. And did you admit to them that you had made the
19 telephone call reporting the threat on your life?
20 A. Yes, sir, I did, sir.
21 Q. Now, what was the reason that you admitted that to the
22 United States Marshals when you had failed to admit that on
23 the witness stand?
24 A. I just -- I just wanted to -- I just -- I just wanted
25 to tell them I did it, it was, you know, it was me who did

it, you know, it was not Mr. Bergrin, who was against the Latin Kings, sir.

Q. Okay. And after that interview with the United States Marshals, did you leave and go to the airport to fly back to your whatever location you're now residing at?

A. This is correct, Mr. Gay.

Q. And prior to you actually leaving and getting on the plane, were you approached by agents of the Drug Enforcement Administration?

A. Yes, I was, sir.

Q. Did they tell you that you needed to remain in New Jersey?

A. Yes, they did, sir.

Q. And did you agree to remain in New Jersey?

A. Yes, I did, sir.

Q. Did agents serve you with a subpoena requiring you to appear in court and testify today?

A. Yes. Yes, sir.

Q. Did the Court later appoint you a lawyer after you were served with the subpoena?

A. This is correct, Mr. Gay.

Q. Did you speak to your court-appointed lawyer on Sunday, February 28th, 2013? This past Sunday, yesterday.

A. February -- what did you say, Mr. Gay?

Q. Let me rephrase the question.

A. Yes, please.
Q. Did you speak to your lawyer before you came here to testify today?
A. Yes, I did.
Q. And was that yesterday, Sunday, February 24th, 2013?
A. That is correct.
Q. Were you aware that you had a Fifth Amendment right to refuse to testify and provide testimony that would incriminate yourself?
A. Yes, sir.
Q. And did you discuss any type of an agreement with your lawyer when you met with him on February 24th, 2013?
A. Yes, sir.
Q. I'm going to show you Government Exhibit 7013 and ask you to please take a look at this.
A. Yes, sir.
Q. Is that the agreement you discussed with your lawyer yesterday?
A. Yes, sir.
Q. Okay. If you could turn to the next page and ask whether or not your signature appears on that.
A. Yes, sir, Mr. Gay.
Q. And what is the date that that was signed by you?
A. 2/24/2013.
Q. Is there a time indicated on that that you signed that

1 agreement?
2 A. Yes, sir, 12:45 p.m., sir.
3 Q. And is your lawyer's signature also on that?
4 A. Yes, sir.
5 Q. Okay. Is a signature from a representative of the
6 Government on that, myself?
7 A. Yes, sir.
8 MR. GAY: Judge, I'd ask that 7031 be entered into
9 evidence.
10 MR. BERGRIN: No objection, Judge.
11 THE COURT: Into evidence.
12 (Government Exhibit 7031 marked in evidence)
13 Q. Okay. Now, Mr. Cordova, you indicated that you
14 understood you had a Fifth Amendment right not to
15 incriminate yourself during testimony; is that correct?
16 A. This is correct, Mr. Gay.
17 Q. And based on this agreement -- I'm going to give it to
18 you again -- did you through your lawyer indicate to the
19 Government that you intended to assert your Fifth Amendment
20 privilege and not testify and invoke the Fifth Amendment?
21 A. This is correct, Mr. Gay.
22 Q. And after that, did the Government come up with an
23 agreement that you reviewed and signed with your lawyer?
24 A. This is also correct, Mr. Gay.
25 Q. And that's what this agreement is here; is that

1 correct?
2 A. This is correct, sir.
3 Q. Okay. So what is it, what is your understanding of
4 what is the benefit of this agreement? Well, first of all,
5 what did you agree to do pursuant to this agreement?
6 A. To tell the truth, sir.
7 Q. Come here and testify.
8 A. This is correct.
9 Q. And what is it that the Government did for you so that
10 you would come here and testify and waive your Fifth
11 Amendment?
12 A. Can I read it, sir?
13 Q. Sure. It's in evidence.
14 A. Yes.
15 It says "You have -- " --
16 THE COURT: Well, wait. We're going to have to go
17 through all the --
18 MR. GAY: No, no, just one particular line, that's
19 all. Not the whole thing. It's just going to be one line.
20 THE COURT: Okay.
21 Q. Go ahead.
22 A. It says "You have advised us, however, that if asked
23 about the phone call, Cordova would invoke the Fifth
24 Amendment right not to incriminate himself."
25 Q. Okay. And then is there another section down at the

1 bottom?
2 A. Yes, there is, sir.
3 Q. And if you could read what -- so that's what you
4 intend to do?
5 A. Yes, sir.
6 Q. And what is it that the Government is going to do in
7 exchange for you testifying here today?
8 A. "To ensure that the Bergrin jury will hear Cordova's
9 further testimony concerning the phone call, the Government
10 therefore will not use -- " -- key word being use -- " --
11 against Cordova the testimony and any statements by him to
12 the Government following his execution of this agreement."
13 Q. Okay, and again, if you could turn to the next page,
14 what's the date and time that the agreement was executed?
15 A. 2/24/2013, sir.
16 Q. At what time?
17 A. 12:45 p.m., sir.
18 Q. So any statements made prior to that, the Government
19 could use to prosecute you; is that correct?
20 A. This is absolutely correct, Mr. Gay.
21 Q. Now, you have not been charged as you sit here today;
22 is that correct?
23 A. This is correct, Mr. Gay.
24 Q. What is your understanding about whether or not you
25 can be charged in connection with phoning in the threat and

1 not telling the truth to the jury on Thursday of last week?
2 A. That it could be possible that I could be persecuted,
3 sir.
4 Q. Prosecuted?
5 A. Prosecuted, sir.
6 MR. GAY: No further questions, sir.
7 THE COURT: Mr. Bergrin?
8 MR. BERGRIN: Thank you.
9 CROSS-EXAMINATION
10 BY MR. BERGRIN:
11 Q. Mr. Cordova, when you testified in the trial here, you
12 put your hand on the bible and you swore to tell the truth,
13 the whole truth, and nothing but the truth; correct?
14 A. That's correct, Mr. Bergrin.
15 Q. And you deliberately, intentionally lied with the
16 purpose to deceive the jury about the threat; correct?
17 A. Yes, sir.
18 Q. Now, you put your head down; you're somber. The only
19 reason you ever came forth with this information is because
20 the United States Marshals caught you, trapped you in a lie
21 based upon their investigation; correct, sir?
22 A. That is not correct, sir.
23 Q. Well, let's take it step by step.
24 You knew that you had called in a false death
25 threat; correct?

A. Correct, sir.
Q. You knew that you had called it in and you had used what they call a throwaway phone; correct?
A. Correct, Mr. Bergrin.
Q. If you were worried about a threat, if you were worried about your life, then you wouldn't have used a throwaway phone. You would just come to the United States Attorney's Office or the United States Marshals or the F.B.I. and said, my life is in jeopardy, I need protection. Isn't that a fact, sir?
A. Yes, sir, Mr. Bergrin.
Q. Instead, you used a fake, throwaway phone, you disguise your voice as a woman; right?
A. Yes, sir.
Q. And you say there's a $250,000 bounty on the head of Oscar Cordova by the Latin Kings in The Bronx; correct?
A. Correct, sir.
Q. A complete fabrication, a complete lie; right?
A. Correct, Mr. Bergrin.
Q. You say that Mr. Gay questioned you and said that he asked you if you -- he asked you if you made the threat in his office; correct?
A. This is correct, Mr. Bergrin.
Q. And you denied it to Mr. Gay; correct?
A. This is correct, Mr. Bergrin.

1 Q. Cooperating witness Oscar Cordova receives over
2 $50,000 from the United States Government for his
3 cooperation, lies to the face of the United States Attorney;
4 correct?
5 A. This is correct, Mr. Bergrin.
6 Q. Was Shawn Brokos from the F.B.I. present in that
7 meeting with you?
8 A. No, sir.
9 Q. Who was present?
10 A. Myself and Mr. Gay.
11 Q. Did Mr. Gay ever ask you for your telephone and to see
12 the number or to power it on?
13 A. No, sir.
14 Q. That's what the Marshals did; correct?
15 A. Correct, Mr. Bergrin.
16 Q. Did Shawn Brokos during all the meetings you've had
17 with her, did she ever power your phone on and look at the
18 numbers and your contacts in there?
19 A. No, sir, Mr. Bergrin.
20 Q. You knew that you had no choice but to make an
21 admission. There was over 50 calls to a number that was
22 Oscar Cordova's; correct?
23 A. That's correct, Mr. Bergrin.
24 Q. There were over 40 text messages to that same number
25 that called in the threats; correct, sir?

1 A. Correct, Mr. Bergrin.
2 Q. So you were caught directly with your hand in the
3 cookie jar; right?
4 A. Correct, Mr. Bergrin.
5 Q. And isn't it a fact that the Marshals who questioned
6 you, they told you that the U. S. Attorney's Office had no
7 interest in charging you for this offense? Correct?
8 A. Correct, Mr. Bergrin.
9 Q. So you were going to get a free ride for committing
10 perjury, knowing and intentionally swearing on that witness
11 stand during a major Federal trial; correct?
12 A. Correct, Mr. Bergrin.
13 Q. The Marshals had told you that they had spoke to the
14 U. S. Attorney's Office and you have nothing to worry about,
15 Mr. Cordova, you have nothing to worry, but even though you
16 lied, even though you lied and deliberately and
17 intentionally committed perjury, rank perjury, that Oscar
18 Cordova's got a free ride; right?
19 A. Correct, Mr. Bergrin.
20 Q. And even though they told you that, you still didn't
21 admit it to them; right?
22 A. Correct, Mr. Bergrin.
23 Q. Then they turned to you, they asked you where your
24 cell phone was; right?
25 A. Correct, Mr. Bergrin.

1 Q. And they powered it on; correct?
2 A. Correct, Mr. Bergrin.
3 Q. And then you were finished and cooked at that point;
4 right?
5 A. That's correct, Mr. Bergrin.
6 Q. Now, you talk about the fact that you were scared and
7 there was a threat out for you and that's why you called.
8 That's not why you made that call, Mr. Cordova;
9 isn't that a fact, sir?
10 A. That is not true. That is the reason why I made the
11 call.
12 Q. You already had protection; correct?
13 A. Correct, sir.
14 Q. Hundreds of thousands of dollars were paid to secure
15 you based upon the fact that you told them that you have a
16 $250,000 false threat, a $250,000 bounty on your head by the
17 Latin Kings; right? You had protection around the clock;
18 right?
19 A. This is correct, Mr. Bergrin.
20 Q. From the time that you made this threat; right,
21 Mr. Cordova?
22 A. Correct, Mr. Bergrin.
23 Q. Do you have to pay back that money that you cost the
24 United States taxpayers?
25 A. I'm not really sure, sir. I don't know how that

1 works.
2 Q. And then they give you this agreement knowing that you
3 deliberately and intentionally lied, to deceive, to deceive
4 for the benefit of Oscar Cordova, they give you this
5 agreement; right?
6 A. That's correct, Mr. Bergrin.
7 Q. And when they give you this agreement, they tell you
8 that it doesn't matter that you lied, it doesn't matter,
9 we're not going to prosecutor you anyway, the same thing
10 that the United States Marshals told you after they spoke to
11 these people sitting at this table; right?
12 A. Correct, Mr. Bergrin.
13 Q. But you want to get the truth out; right, Oscar?
14 A. That's why I'm here, sir.
15 Q. That's why -- you're here because you have no choice;
16 isn't that a fact, sir? Isn't that a fact?
17 A. Yes, sir.
18 Q. If you didn't testify, we would have subpoenaed the
19 United States Marshals, and they would have proven that you
20 lied.
21 A. Yeah, correct, Mr. Bergrin.
22 Q. So when Mr. Gay asks you in front of this jury and
23 tries to give the impression that, oh, we're not -- you're
24 here for the interests of justice, for the truth, and for
25 justice, after all, you're here because you don't want to be

1 prosecuted; correct?
2 A. Look, Mr. Bergrin, I made a mistake, and I'm here to
3 say I'm sorry, I made a mistake. Yes, I lied. Yes.
4 Q. Now, not only do you get away with committing perjury,
5 Mr. Cordova, but you get paid -- they give you a $4,000
6 check, right, for your testimony; right?
7 A. That's not for my testimony, sir. That's for
8 subsidies and for living and for security.
9 Q. For subsidies, for living, and for security.
10 You get $4,000 for a few days' testimony after you
11 committed perjury; correct?
12 Right?
13 A. Correct, Mr. Bergrin.
14 Q. Did you give back that check for all the money that
15 you cost?
16 A. No, Mr. Bergrin.
17 Q. Who was Marisol Colon?
18 A. What does that got to do with this? Here we go again,
19 huh?
20 THE COURT: Hold on.
21 What about it, Mr. Bergrin? What's that got to do
22 -- this was a very limited reason to come back.
23 Q. Now, even the agreement that you made with the
24 Government, even as you take the witness stand and continue
25 to lie, they agree not to prosecute you; right?

1 THE COURT: Now, look, we've just been over this.
2 We're not going to just keep going over it.
3 Q. I want to go over just a last time -- these are the
4 last questions I'll ask you. Mr. Gay went over it with you,
5 but I want to read it to you.
6 You were asked the question during
7 cross-examination:
8 "Mr. Cordova, isn't it a fact, sir, that you were
9 connected to a false death threat that was made against you
10 by an individual who you called and contacted Federal
11 authorities?"
12 And do you remember how animated, do you remember
13 the show that you put on before this jury when you answered
14 that question?
15 A. Yes, sir, Mr. Bergrin.
16 Q. Remember saying: "That is not true, sir. That is not
17 true. I was aware that there was a threat, but for me to
18 call in a threat on myself? Come on, Paul."
19 That's the way you responded; right?
20 A. Correct, Mr. Bergrin.
21 MR. BERGRIN: Thank you.
22 THE COURT: Anything further, Mr. Gay?
23 MR. GAY: Just very briefly, Judge.
24
25

1 REDIRECT EXAMINATION

2 BY MR. GAY:

3 Q. Mr. Cordova -- and this exhibit's in evidence,

4 obviously -- Mr. Bergrin was asking you some questions about

5 whether or not this agreement, 7031, indicates that the

6 Government has agreed not to prosecute you for either

7 calling in the false threat or perjury.

8 A. Correct, Mr. Gay.

9 Q. Okay. Does that agreement indicate that the

10 Government will not use your statements here today to

11 prosecute you?

12 A. Correct, Mr. Gay.

13 Q. So the Government did not agree not to prosecute you;

14 is that correct?

15 A. This is also correct.

16 Q. So you can still be prosecuted for the perjury and for

17 calling in the false threat; is that correct?

18 A. Correct, Mr. Gay.

19 Q. All the Government did was agree that they're not

20 going to use your testimony here today to do that; isn't

21 that correct, Mr. Cordova?

22 A. Correct, Mr. Gay.

23 MR. GAY: No further questions.

24 THE COURT: Anything further?

25

1 RECROSS EXAMINATION

2 BY MR. BERGRIN:

3 Q. Just like they agreed not to prosecute you, correct,

4 when they found that you had lied completely to them; right?

5 THE COURT: I don't know if I'm following that

6 question.

7 MR. GAY: Judge, that's not --

8 Q. They agreed not to prosecute you at the time that they

9 asked you questions, the Marshals; correct?

10 A. I don't understand your question, Mr. Bergrin.

11 Q. There was never the intent of the United States

12 Government to prosecute you.

13 MR. GAY: Objection to what the intent of the

14 United States Government was.

15 THE COURT: How would he know that?

16 MR. BERGRIN: Because he was told by the United

17 States Marshals that they had no intent to prosecute him.

18 MR. GAY: Judge, that's not the United States

19 Attorney's Office. They're not in charge of deciding who

20 gets prosecuted and who doesn't.

21 THE COURT: You're going beyond this redirect.

22 Let's finish this.

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

24 THE COURT: All right. Thank you.

25 (Witness excused)

THE COURT: Next witness.

MR. GAY: The Government calls Thomas Moran.

We need about two minutes, Judge, to get -- bring him up.

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

T H O M A S J. M O R A N, J R., called as a witness on behalf of the Government, and having been duly sworn, testified as follows:

THE COURT CLERK: Please be seated.

Please state your name, spelling it for the record.

THE WITNESS: Thomas J. Moran, Jr., M-o-r-a-n.

THE COURT: Go ahead, Mr. Gay.

MR. GAY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. GAY:

Q. Sir, how old are you?

A. Forty-six years old.

Q. Where were you born?

A. Jersey City, New Jersey.

Q. Where have you -- briefly, where have you lived during your life?

A. I've lived in Paramus, New Jersey, and North Bergen, New Jersey.

1 Q. What is your educational background?
2 A. Graduated high school, received a Bachelor's of
3 Science from St. Peter's College in economics, received a
4 juris doctorate from New York Law School.
5 Q. Are you admitted to practice law in any states, or
6 have you been?
7 A. I was admitted to practice in both New York and
8 New Jersey.
9 Q. Let's talk a little bit about, have you ever used any
10 illegal drugs during your life?
11 A. Yes, I have.
12 Q. Have you used marijuana?
13 A. I have.
14 Q. Can you briefly describe your use of marijuana during
15 your life, again, very briefly?
16 A. Yes. I started smoking --
17 THE COURT: Wait just one second.
18 Most of the witnesses, we had to tell them to
19 speak up. I think you're a little too close.
20 THE WITNESS: Oh, sorry, Judge.
21 (Laughter)
22 THE COURT: So if we need you to do it further --
23 maybe just back up a little bit. But keep your voice up,
24 just back up a little bit.
25 THE WITNESS: Okay, Judge.

A. During my 20's, I experimented with marijuana. It became a daily habit in my 30's. I also used cocaine in my 20's.

MR. BERGRIN: That wasn't the question. The question was about marijuana, Judge. It's beyond the question.

THE COURT: I thought it was about drugs. But, okay, go ahead.

Q. Any other drugs? Well, did you finish your marijuana use, and then we'll -- or if you haven't, finish your brief description of your marijuana use.

A. Yes. Marijuana use was a daily usage up until the time of my arrest.

Q. You also mentioned cocaine.

A. Yes. Cocaine, I began using cocaine in my 20's, infrequently. I continued infrequently in my 30's. It reached its apex of use, I would say, in my late 30's, where I would maybe use it once a month to four times a month, and sometimes no times a month. So it was an infrequent, intermittent usage.

Q. Any other drugs, illegal drugs that you used during your life that you recall?

A. Yes. I experimented with ecstasy in my 30's. When I was about 19, 18 or 19, I experimented with acid and mescaline.

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 32

---x

8

9 Newark, New Jersey
March 11, 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
an accurate record as taken stenographically in

23 the above entitled proceedings.

24

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

25

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

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

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

THE COURT: All right.

A DEPUTY MARSHAL: The jury is here.

THE COURT: The jury is here?

All right. Hold onto the jury for a minute.

Speak to him right there, Mr. Bergrin.

Ms. Cimino was brought in as counsel.

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

THE COURT: Do you think it's necessary?

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

THE COURT: Okay.

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

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

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3

4 UNITED STATES OF AMERICA : Criminal No. 09-cr-369-DMC

5 v. :

6 PAUL W. BERGRIN, : TRANSCRIPT OF TRIAL PROCEEDINGS

7 Defendant. : VOLUME 29

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8

9 Newark, New Jersey
March 6, 2013

10

11

12

13 BEFORE:

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

15

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

25

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BRUCE LEVY, ESQ.
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1 (Defendant present)
2 (Jury out)
3 THE COURT CLERK: All rise.
4 THE COURT: Be seated.
5 Good morning.
6 Somebody wanted to see me?
7 MR. GAY: Yes, Judge.
8 I just want to address a couple of issues with the
9 Court.
10 We received yesterday morning a list of
11 approximately 34 witnesses from the defense, 14 of which are
12 scheduled to testify today.
13 At about seven o'clock last night, we received
14 materials from the defense on the witnesses. I assume that
15 was relating to all 34 witnesses.
16 So what the Government has now, Judge, is some
17 documents relating to I would say a handful of those
18 witnesses. There are a number, and I'm just going to say,
19 for example, today, of the 14 witnesses on the list, we have
20 materials for six of them. So there are eight witnesses we
21 don't even understand what the relevance of their testimony
22 is. We don't have a date of birth. We can't run a criminal
23 history on them. We have literally no information except
24 the name.
25 So we are in a difficult position here, Judge. We

1 believe it's -- we have a standing objection on relevance
2 grounds to every single witness that he's calling except for
3 the ones that we have information for, and even some of
4 those, we have relevance objections as well, but we'll raise
5 those with the Court, but we can't even begin to analyze
6 anything here without this information.
7 THE COURT: All right. Well, let me say one thing
8 right off the bat.
9 Giving a list of 14 witnesses doesn't really help
10 matters. You know, I mean, the purpose of this is so that
11 the other side can appropriately prepare, and to give that
12 many, I mean, it doesn't really -- you might as well give
13 50. And so that is a bit troubling.
14 Aside from that -- well, go ahead, Mr. Lustberg.
15 MR. LUSTBERG: Judge, if I might, the rules -- we
16 have obeyed the rules, and Your Honor's ruling, which is, we
17 have provided the reverse Jencks that we have. That is to
18 say, if we had a statement from these witnesses, then we
19 turned it over. If material was not turned over, that's
20 because it didn't exist. There was literally nothing that
21 we held back that we had in our files.
22 Now, we also offered to Mr. Gay and Mr. Minish
23 repeatedly throughout the day yesterday -- by the way, I
24 don't think it was seven o'clock. I think it was in the
25 late afternoon. But be that as it may.

1 MR. GAY: Six at least.

2 MR. LUSTBERG: Repeatedly during the day yesterday
3 we offered to speak to them, the same way Mr. Gay would
4 speak to us if we had questions. During the trial, if they
5 had a witness, sometimes disclosure was made late, sometimes
6 there was not a 302, we would ask Mr. Gay, what's the
7 witness going to say, so that we could, you know, make
8 objections if we wanted to. Mr. Gay would tell us orally.
9 Early in the day yesterday, we through an e-mail
10 by Mr. Levy offered -- I think the e-mail exchange was with
11 Mr. Minish -- to meet, to talk to them and give an oral
12 proffer as to what the witnesses would say to the extent
13 that we knew. You understand that we're not counsel, we're
14 standby counsel, and there are cases in which Mr. Bergrin
15 knows and we don't; but to the extent we do, we offered to
16 provide them with an oral proffer as to what the witnesses
17 would say. As the evening went on and we had not heard, and
18 they kept on saying we want a written proffer -- and let's
19 be clear: There is no rule, no Federal Rule of Criminal
20 Procedure, no rule of this Court and Your Honor has not
21 required and there would be no basis to require that we
22 spend the time to write out a written proffer as to what
23 they're going to say. It simply is not the way the system
24 works. Maybe Congress should do that, but they haven't.
25 So --

1 THE COURT: Maybe Congress should do it?
2 MR. LUSTBERG: I mean, that's how we have to be.
3 The rules are the rules.
4 And so -- however, having said that, and even
5 though the rules also do not require that we do an oral
6 proffer, as a matter of collegiality, and we've been working
7 with the Government in this case a long time, we offered to
8 have a conversation with them. As the evening wore on,
9 Mr. Levy said, here's my cell phone number; call me if you
10 want to know what the witnesses are going to say. There was
11 no call forthcoming.
12 You know, respectfully, and I have the greatest
13 respect for the whole prosecution team, they just didn't --
14 I understand why they want this. But I want the day to be
15 nice; sometimes, you don't get what you want.
16 THE COURT: Well, yes, but I just want things to
17 be run properly.
18 As to why Mr. Gay or Mr. Minish or whomever,
19 Mr. Sanders, didn't take you up on your offer, I can't say.
20 I agree with you that I don't think that it's
21 necessary that you write out a proffer for everybody.
22 That said, I do think that the Government has a
23 right to at least know the basis upon which somebody's going
24 to be testifying; also, I guess, whether or not they have a
25 criminal record, to the extent you know it. I mean, that

1 would go to credibility issues, and I think that that's
2 something that -- and if you don't know, quite frankly, I'll
3 give the Government the opportunity to flat-out ask that
4 question on the stand, whether they have a proper foundation
5 for it or not, only because they haven't been told anything.
6 Now, I'm not going to do that -- I see the first
7 one here is Peter Willis. I know Willis.
8 MR. LUSTBERG: He's tomorrow.
9 THE COURT: Oh. But I'm talking about people
10 who -- some of these individuals are in jail. I mean, we've
11 had a lot of people that we've discussed in this trial who
12 have somewhat of an unsavory background.
13 MR. LUSTBERG: Right.
14 THE COURT: Now, who are the people that are going
15 to be coming today? Give me the list and the order.
16 MR. LUSTBERG: Ms. Protess has it.
17 MS. PROTESS: Yes, Your Honor.
18 Today will be Paul Feinberg --
19 THE COURT: Hold on one second. He's number one?
20 MS. PROTESS: Correct, Your Honor.
21 MR. LUSTBERG: He's in court and prepared, and the
22 Government knows what he's going to say because he testified
23 in the last trial.
24 THE COURT: Okay. Go ahead.
25 MS. PROTESS: Beth Bergrin.

THE COURT: Okay. Go ahead.

MS. PROTESS: Rashidah Tarver.

THE COURT: Rashidah Tarver.

And do you know what --

MR. GAY: We do know. We know of Mr. Feinberg, and we know Rashidah Tarver. She testified at the last trial. That's not -- no issues with that, Judge.

THE COURT: Okay. Go ahead.

MS. PROTESS: Ana Aviles DeStefano.

THE COURT: Wait a second.

MR. BERGRIN: No prior record whatsoever, Judge.

THE COURT: Okay.

MS. PROTESS: And, Your Honor, for the record, we did provide these materials at 5:16 yesterday, and we have provided the Government with BOP numbers for incarcerated defense witnesses when they've asked.

THE COURT: Okay. Well, I think they've asked. But go ahead. Next?

MS. PROTESS: Norberto Velez.

THE COURT: Okay. Next?

MS. PROTESS: Julio Izquierdo.

THE COURT: Mr. Gay, are you familiar with --

MR. GAY: No. Well, I would assume I'll wait for the whole list and I can address each one of these afterwards, if you like.

1 THE COURT: Okay. Go ahead.
2 MR. GAY: Or I can do it now.
3 THE COURT: Go ahead.
4 MS. PROTESS: Javal Davis.
5 THE COURT: Go ahead.
6 MS. PROTESS: Robert Vannoy.
7 THE COURT: Go ahead.
8 MS. PROTESS: Rasheem King.
9 THE COURT: Go ahead.
10 MS. PROTESS: And we expect pursuant to the writs
11 of habeas Jamal McNeil and Edward Peoples.
12 THE COURT: Okay.
13 Now, Mr. Gay, let's start off with the first name,
14 Paul Feinberg. Any issue?
15 MR. GAY: No issues with Mr. Feinberg.
16 THE COURT: Okay. Two, Beth Bergrin.
17 MR. GAY: Well, Judge, there are -- we did get an
18 oral proffer from Mr. Bergrin yesterday, and I expressed
19 that I have relevance objections and hearsay objections to
20 certain things, so I think to make this move a little more
21 quickly, when she actually takes the stand, I think we
22 should have a little more, what is she actually going to
23 testify to. Because, again, Judge, here's my concern, or
24 one of my concerns is this.
25 He mentioned yesterday that he's going to have her

1 testify about his visitation to Chicago. There is no issue
2 there, Judge. That's -- if he visited her and she's going
3 to have firsthand knowledge of that. But then what he said
4 on top of that was, he was going to ask questions about
5 certain things that he asked her to do.
6 THE COURT: No. There is not going to be -- and
7 this was said yesterday, and I mentioned this, and I'll make
8 it clear. Mr. Bergrin is not going to be able to testify
9 through the mouth of another witness. He is not going to be
10 able to ask questions such as, Didn't I say to you X, Y and
11 Z, and what did you do as a result. That's testifying, and
12 I'm not going to allow it. So we said that yesterday. I'm
13 working under the assumption that Mr. Bergrin, who is an
14 experienced trial attorney, understands those rules and he's
15 not going to do that. To the extent he does, I'm sure I'll
16 hear an appropriate objection, and I'll rule on it
17 accordingly.
18 MR. GAY: Okay, Judge. My only request in that
19 regard is, in the beginning of the question, it's going to
20 be clear he's trying to elicit hearsay, and once the
21 question is out --
22 THE COURT: If I get the impression that somebody
23 is flouting the rules and attempting to do that, I will
24 consider -- they will have to consider the consequences, one
25 of which would have me take the witness out of here, off the

1 stand.

2 Now, I don't expect Mr. Bergrin to do that. If he

3 does, there are consequences.

4 MR. GAY: Okay.

5 MR. LUSTBERG: Judge, if I might, just the one --

6 of course, he should not elicit hearsay, but it may depend

7 on what the statement is, because there are certain

8 statements that go to his state of mind that are not being

9 admitted for truth, so he can't say -- he certainly can't --

10 THE COURT: We'll deal with it.

11 MR. LUSTBERG: That's all I'm saying, is that

12 hearsay, right, but there are exceptions.

13 THE COURT: We'll deal with it.

14 MR. GAY: I understand, but let's be clear, Judge.

15 His own self-serving statement to a third party being

16 admitted for the truth has nothing to do with his state of

17 mind. The hearsay objection, Judge, relates to the state of

18 mind of the listener, not the state of mind of the speaker.

19 THE COURT: We are getting ahead of ourselves. He

20 doesn't hasn't done that yet. Let's see what the question

21 is. And if one question comes out like that, we will deal

22 with it, and then they will stop. But let's give him the

23 benefit of the doubt here. I'm not so sure he's going to do

24 that. So if you think it's inappropriate questioning, I

25 assume I'll hear a proper objection. And I'm sensitive to

1 your concern about letting the cat out of the bag.
2 All right. Next. That was number two.
3 Three, Tarver.
4 MR. GAY: Three is Rashidah Tarver. Judge, we
5 already know what she's going do testify to. No issues.
6 THE COURT: Okay. Four, Aviles.
7 MR. GAY: Aviles, we have no idea who that is,
8 Judge.
9 THE COURT: Who is Aviles and what are they going
10 to testify to?
11 MR. GAY: No idea what relevance that testimony
12 could possibly provide.
13 MR. BERGRIN: She is a witness, Judge, that -- do
14 I have to give an oral proffer, Judge?
15 THE COURT: What is the basis of her testimony?
16 MR. BERGRIN: The basis of her testimony, Judge,
17 is that --
18 THE COURT: The subject.
19 MR. BERGRIN: The Latin Kings, Judge.
20 MR. GAY: How is that relevant, Judge?
21 THE COURT: I don't know.
22 MR. GAY: Well, that's the point, then. We have
23 to have a little more --
24 MR. BERGRIN: I know the Rules of Evidence, and I
25 believe it's very relevant --

1 MR. GAY: Judge --

2 MR. BERGRIN: Please let me -- you keep

3 interrupting me. Give me the opportunity to be heard.

4 MR. GAY: I apologize, Mr. Bergrin. I apologize.

5 THE COURT: Go ahead.

6 MR. BERGRIN: It's extremely relevant because it

7 goes toward my state of mind, Judge, when hearing Oscar

8 Cordova make certain statements, which is really the entire

9 basis of my defense in the Esteves Monmouth County case.

10 MR. GAY: If Mr. Bergrin wants to get his state of

11 mind out, he could take the witness stand, swear an oath,

12 and testify.

13 THE COURT: Yes.

14 MR. GAY: This is exactly what I'm saying to the

15 Court he's trying to do.

16 THE COURT: I understand.

17 who is Ana Aviles?

18 MR. BERGRIN: She is an individual whose son is a

19 Latin King. She's an individual, Your Honor, who I asked to

20 do certain research, and she did, and reported it back --

21 she was going to report back to me the research that she did

22 in reference to Lord Gino and Oscar Cordova.

23 THE COURT: Now, what would that -- and what's

24 that going to do for us in this trial?

25 MR. BERGRIN: Judge, I mean, you're making me give

1 up my entire defense and really my summation. If you want
2 me to be heard, I respectfully request I be heard ex parte.
3 THE COURT: Wait a minute. How is that hurting
4 you? They're going to be testifying and they're going to
5 have a chance to discuss it. This testimony is going to
6 come out long before your summation.
7 MR. BERGRIN: Judge, the crux of her testimony is
8 that she researched the fact that, one, Oscar is not the son
9 of Lord Gino; two, she researched the fact that Lord Gino
10 renounced his affiliation with the Latin Kings in 2007.
11 Oscar's claiming that he's the head of the Latin Kings, that
12 he's giving him orders as the director of the Latin Kings.
13 So it goes toward my belief and whether I believed ever that
14 Oscar was a hitman, Oscar was taking the orders of his
15 father.
16 THE COURT: And when did she give you this
17 information?
18 MR. BERGRIN: She gave me this information, Judge,
19 back in July of 2008, when I first met Oscar, when he made
20 representations to me that he's being sent here by Lord
21 Gino, the head of the Latin Kings, and a plethora of other
22 information that I didn't believe right away.
23 MR. GAY: All right.
24 THE COURT: Norberto Velez, you know about.
25 MR. GAY: Yes.

1 Can we deal with this witness now, Judge, because
2 based on what Mr. Bergrin just said, we have an objection on
3 relevance grounds.
4 THE COURT: Which witness? Aviles?
5 MR. GAY: Ana Aviles.
6 What he is saying, Judge, is, I want to get out
7 hearsay, blatant hearsay information from this witness.
8 THE COURT: What makes you think I'm going to
9 allow that?
10 MR. GAY: Okay. Well, I'm sorry, Judge, then,
11 I --
12 THE COURT: I understand the Rules of Evidence.
13 MR. GAY: Okay. All right.
14 THE COURT: I'm well aware of this. What makes
15 you think I'm going to let that happen, Mr. Gay? You've
16 made your --
17 MR. GAY: All right, Judge. I apologize, Judge.
18 I didn't realize I had made my point on that.
19 THE COURT: I'm aware of this. I understand the
20 argument.
21 MR. GAY: Okay.
22 THE COURT: All right.
23 MR. GAY: Norberto Velez, I can speculate about
24 what he's going to testify about, relating to -- he's the --
25 THE COURT: I know who he is.

MR. GAY: -- the person Mr. Bergrin -- I assume that's what he's going to testify about.

THE COURT: The knife. Well, we'll deal with that.

How about Julio Izquierdo?

MR. GAY: We have no idea who that is.

THE COURT: Who is that, Mr. Bergrin?

MR. BERGRIN: Judge, he was a witness in the Norberto Velez trial. He was a witness in the Norberto Velez trial, that essentially he's going to dispute the position of Marilu Velez and Carolyn Velez in reference to Marilu Velez Bruno parked where she parked, where she -- when she got out of the car and she went into the house. He's the next-door neighbor, no prior record whatsoever, no motive to fabricate, and he actually observed Marilu Bruno get out of the car in the driveway, not across the street, like she alleged, go into the house on the morning of November 19th of 2001, which she completely denied, and come out of the house. And this is a fast witness.

THE COURT: All right.

All right. Javal Davis.

MR. GAY: I mean, I know who he is. I don't understand what the relevance of his testimony is.

THE COURT: Who is he?

MR. GAY: He is the person that Mr. Bergrin

1 represented in the Abu Ghraib --
2 THE COURT: Mr. Bergrin?
3 MR. BERGRIN: He's an individual who will testify,
4 Judge, in reference to the amount of documentation that we
5 received, that it was extraordinary, and that --
6 THE COURT: Documentation in what?
7 MR. BERGRIN: In the Abu Ghraib case.
8 THE COURT: What possible relevancy is that?
9 MR. BERGRIN: It goes toward -- it goes toward the
10 issue, Judge, of my state of mind, and it goes toward the
11 issue --
12 THE COURT: No, I'm not allowing him. That's out.
13 MR. BERGRIN: You haven't even heard the proffer,
14 Judge.
15 THE COURT: I just heard the proffer.
16 MR. BERGRIN: No, you didn't. I haven't finished
17 Judge.
18 THE COURT: But you've gone into this Abu Ghraib
19 subject on a number of occasions. I've stopped you each
20 time. There's been objections each time. Now I'm going to
21 let you bring on a witness to talk about exactly that which
22 I've tried to keep out of this trial that I find to be
23 totally irrelevant?
24 MR. LUSTBERG: One second, Judge?
25 (Off the record discussion)

1 MR. BERGRIN: It also goes to the fact that I was
2 with him, okay, during time periods that they allege that I
3 did certain things.
4 Also, it goes toward the fact that --
5 THE COURT: You're saying he's an alibi witness?
6 MR. BERGRIN: No, I'm not saying he's an alibi
7 witness. It goes to the amount of time that I spent on that
8 case, so I couldn't be -- it also goes to the fact of using
9 Jason Itzler, Your Honor, which they've completely presented
10 a plethora of evidence --
11 THE COURT: I'm not allowing it. He's out.
12 Next, Robert Vannoy.
13 MR. GAY: Judge, just with respect to -- okay.
14 Well, let's deal with Robert Vannoy. I believe we know who
15 he is, and we did get a statement from him, so --
16 THE COURT: Is there an objection?
17 MR. GAY: I mean, Judge, I -- well, I mean, he's
18 -- to the extent he's going to testify that -- about his
19 independent, direct observations on Little Street, I guess
20 not; but if he's going to be testifying about things that
21 Mr. Bergrin said to him, which --
22 THE COURT: Why do we keep going back to that?
23 What makes you think I'm going to allow that?
24 MR. GAY: Well, the only thing I can say, Judge,
25 is what -- the materials we gave -- we received seemed to

1 indicate that that's something Mr. Bergrin wants to elicit.
2 So I'm not suggesting -- I'm sort of --
3 THE COURT: Well, I will stop it.
4 So there's no objection.
5 Number nine, Rasheem King.
6 MR. GAY: Again, I can speculate about what he's
7 going to testify about, but I'm not a hundred percent sure,
8 so --
9 THE COURT: Who was King, again?
10 MR. GAY: He was one of the individuals that was
11 involved with tampering with witnesses in the Edward Peoples
12 case.
13 THE COURT: Right. All right.
14 MR. GAY: Again, Judge --
15 THE COURT: That's all of them.
16 MR. GAY: Yes.
17 THE COURT: That's all of them. All right.
18 MR. GAY: I do just want to go back to Javal Davis
19 for one moment, Judge.
20 THE COURT: You just won that. You want to go
21 back?
22 MR. GAY: Yes, I know, Judge, but I do think that
23 there is a very limited relevance to his testimony if he's
24 simply limited to the time Mr. Bergrin spent with him at a
25 particular time.

1 THE COURT: Well, saying that, I'm going to
2 reverse my ruling.
3 MR. GAY: I'm just saying, on that limited thing,
4 Judge.
5 Let me let Mr. Sanders take it.
6 THE COURT: I don't think I need to hear any
7 further. I'll reverse my ruling.
8 MR. SANDERS: All right, but I just want to point
9 out, we had a pretrial motion about vindictive prosecution
10 issues and selective prosecution issues going before the
11 jury, and that's our concern about that, that it's going to
12 be used to further this. I tried to subpoena --
13 THE COURT: If that's the case, I'll hear an
14 objection.
15 Gentlemen, I can't give advisory opinions and rule
16 in advance on things I haven't heard and I don't know if
17 they're going to be there. I'll say it again: If something
18 comes out that I believe is improper under the Rules of
19 Evidence, the Rules of Court, I'll hear an objection and
20 I'll deal with it. I can't just keep on dealing with these
21 in advance. Mr. Bergrin hasn't done this yet. I can't do
22 that.
23 And if you're saying that you believe now that
24 there's any portion of Davis's testimony that's relevant,
25 then I'm going to let him bring him on.

1 I'm not going to let him get into the whole Abu
2 Ghraib thing, I'll tell you right now.
3 Let's get the jury.
4 Mr. Lustberg, I notice that Mr. Pedicini is here.
5 MR. LUSTBERG: Yes.
6 THE COURT: Which witness were we concerned about
7 that I had Mr. Pedicini --
8 MR. GAY: Jamal McNeil, certainly, Your Honor, and
9 Edward Peoples are two individuals that clearly have in the
10 Government's eyes Fifth Amendment issues. McNeil is
11 implicated in the murder, the Kemo murder.
12 THE COURT: I know what they are.
13 MR. GAY: Okay. So clearly --
14 THE COURT: Mr. Pedicini.
15 MR. PEDICINI: Yes, Your Honor.
16 THE COURT: First of all, I appreciate you coming
17 in on such short notice. Thank you.
18 MR. PEDICINI: It's not a problem, Your Honor.
19 THE COURT: Does your schedule permit you to
20 remain here this morning? Because I'm assigning you as a
21 C.J.A. irrespective of what happens.
22 MR. PEDICINI: I can be here all day, Your Honor.
23 THE COURT: You're okay?
24 MR. PEDICINI: I've heard everything, so I can be
25 here all day.

1 THE COURT: Okay, fine.
2 MR. GAY: Judge, I just realized one other thing,
3 and that is, the individual that testified in the Norberto
4 Velez trial that Mr. Bergrin just talked about, we don't
5 have any -- there's obviously something relating to him --
6 THE COURT: Izquierdo?
7 MR. GAY: -- and we don't have it.
8 MR. LUSTBERG: The Court might recall, we actually
9 tried to -- we asked Your Honor to approve that we could get
10 transcripts from that trial, and the Court denied that
11 request.
12 THE COURT: Yes, because I think that has nothing
13 to do with this. I still believe that.
14 MR. GAY: Okay. Well, then -- yes, all right.
15 Then we have a standing relevancy objection to that witness
16 as well, so...
17 THE COURT: Well, I don't know about standing
18 objections.
19 MR. GAY: Well, we have an objection to that
20 witness testifying, Judge. We don't think it's relevant.
21 THE COURT: Well, we'll hear what he has to say
22 and then we'll move on.
23 MR. LUSTBERG: Judge, just one thing, because I'm
24 very mindful about the value of Mr. Pedicini's time.
25 It may be that we can be alerted when those

1 witnesses arrive down at the lockup, and he can go down and
2 consult at that time, if the Court wishes.
3 THE COURT: All right. I would ask the Marshals
4 if they find out that -- I'm still not sure: Does McNeil
5 have a lawyer?
6 MR. LUSTBERG: Not that we know of. I think
7 Mr. Peoples -- Mr. Sanders sent an e-mail that Mr. Peoples
8 does have a lawyer, a state Public Defender.
9 THE COURT: State Public Defender.
10 MR. LUSTBERG: Yes.
11 MR. SANDERS: Peoples has -- his conviction is not
12 yet completely final. I believe he appealed the conviction.
13 Most of it was affirmed. It was remanded for a limited
14 hearing. I don't know that that hearing's taken place. But
15 he has counsel at the state Public Defender's Office.
16 THE COURT: Has anybody contacted counsel?
17 MR. SANDERS: I've tried to.
18 THE COURT: Who is it?
19 MR. SANDERS: It's I think Susan Friedman in the
20 trial division. And I have friends in the appellate section
21 who I'm reaching out to try to get her to call me back. I
22 left a message last night and couldn't get anybody.
23 THE COURT: Okay. Well, try again, and we'll do
24 what we have to do.
25 Okay. Let's get the jury.

THE COURT CLERK: All rise.

(The jury enters)

THE COURT: Be seated.

Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: Okay. Fortunately, we made it through without too much bad weather yet.

Mr. Bergrin, are you ready to proceed, sir?

MR. BERGRIN: I am, Judge.

THE COURT: Please call your first witness.

MR. BERGRIN: The defense calls Paul Feinberg, please, Your Honor.

Good morning.

THE JURY: Good morning.

THE COURT: Up here, sir.

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

P A U L F E I N B E R G, called as a witness on behalf of the Defendant, and having been duly sworn, testified as follows:

THE COURT CLERK: Please be seated.

Please state your name, spelling it for the record.

THE WITNESS: Paul H. Feinberg. P-a-u-l, middle initial H, F-e-i-n-b-e-r-g.

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 9

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9 Newark, New Jersey
February 1, 2013

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12

13 BEFORE:

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

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17

18

19 Reported by:
CHARLES P. McGUIRE, C.C.R.

20 Official Court Reporter

21

22 Pursuant to Section 753, Title 28, United States 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

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(Defendant present)

(Jury out)

THE COURT CLERK: All rise.

THE COURT: Good morning.

MR. SANDERS: Good morning, Judge.

THE COURT: All right. I want to place a ruling on the record with respect to the issue of the tape of Carolyn Velez.

This matter comes before the Court upon request by the Government to admit the entirety of the videotape recording of the July 9, 2003 interview of Carolyn Velez by the Essex County Prosecutor's Office. On Tuesday, January 29, 2013, Mr. Bergrin played sections of the video during his cross-examination of Ms. Velez. Before the videotape was played, the Government stated on the record that it "has no objection to the entire video going into evidence. The jury can view it at their leisure later on and make whatever assessment they wish of the video. She's authenticated it. It's just whether or not Mr. Bergrin would like it to go into evidence," close quote. The Court did not make a ruling as to the videotape's admissibility as a whole at that time, and Mr. Bergrin continued his cross-examination utilizing portions of the video.

At the conclusion of Mr. Bergrin's cross-examination of Ms. Velez, the Government sought to

1 introduce the videotape into evidence as Exhibit 627, under
2 the Rule of Completeness. Mr. Bergrin stated that he
3 believed that that would be unfair, saying, and I quote:
4 "You limited us, and if I don't have the chance to ask her
5 and have her explain certain things, I don't think it's fair
6 to have portions --." The Court then responded: "I don't
7 think that is the test at all. I'll allow it." The
8 videotape was then marked into evidence as Government
9 Exhibit 627. The Government then performed its redirect, in
10 which it pointed out a particular videotape clip, but did
11 not play it, and asked Ms. Velez whether Mr. Bergrin had
12 told her that her father's trial would be, quote, "the kind
13 of case you can't tell the truth," close quote. Mr. Bergrin
14 then completed a brief recross, in which he mentioned video
15 but did not play any further clips. After Mr. Bergrin had
16 completed recross of Ms. Velez, Mr. Lustberg voiced his
17 disagreement with the Court's ruling on the admission of the
18 tape as a whole. The Court informed the parties that they
19 could make arguments at 8:30 a.m. on January 30.
20 Upon consideration of the oral arguments and the
21 respective letters submitted by the parties, it is this
22 Court's decision to reverse its ruling admitting into
23 evidence the entirety of the videotape of the July 9th, 2003
24 interview of Carolyn Velez by the Essex County Prosecutor's
25 Office. The videotape will not be admissible further.

1 Ms. Velez had an opportunity to testify fully and
2 Mr. Bergrin and the Government were given the opportunity to
3 perform a full direct examination, cross-examination,
4 redirect, and recross, respectively. The jury was able to
5 hear and process Ms. Velez's extensive testimony, which does
6 not require supplementation by the entire videotape.
7 Although the Government asserts that Mr. Bergrin
8 mischaracterized the overall contents of the videotape, the
9 Government was given an opportunity during redirect to
10 address purported mischaracterizations and point out where
11 Mr. Bergrin's questions invited counter-arguments. The
12 Government has had an opportunity to pick portions of the
13 videotape, which it did to the extent that it questioned
14 Ms. Velez about the point in the video where Mr. Bergrin
15 told her that "this is the kind of case you can't tell the
16 truth in," to refute Mr. Bergrin's characterization of
17 Ms. Velez's statements as exculpatory.
18 The case the Government brought to the Court's
19 attention, United States v. Harvey, is inapposite here. In
20 Harvey, the 6th Circuit upheld the District Court's
21 admission of the entirety of a taped interview of the
22 Defendant with two Alcohol, Tobacco & Firearms agents under
23 the Rule of Completeness. In finding that the admission was
24 proper, the 6th Circuit specifically cited to the District
25 Court's repeated warnings to counsel that cross-examining

1 the Government's witnesses about Harvey's recorded statement
2 would result in the admission of the entire recording. The
3 same is not true here. Mr. Bergrin was not warned that the
4 video would be admitted in its entirety if he chose to
5 cross-examine Ms. Velez based on part of its contents. The
6 Government had the opportunity during redirect to address
7 any discrepancies or inaccuracies that may have been existed
8 in Mr. Bergrin's line of questioning and the Court does not
9 find it necessary to supplement Ms. Velez's extensive trial
10 testimony with the entirety of the videotape of the 2003
11 interview.
12 In addition, the Rule of Completeness is not
13 applicable here. Federal Rule of Evidence 106 reads: "If a
14 party introduces all or part of a writing or recorded
15 statement, an adverse party may require the introduction, at
16 that time, of any other part - or any other writing or
17 recorded statement - that in fairness ought to be considered
18 at the same time. The 3rd Circuit has noted that
19 "additional portions of a recording may be played if it is
20 necessary to, (1) explain the admitted portion, (2) place
21 the admitted portion in context, (3) avoid misleading the
22 Trier of Fact, or (4) insure a fair and impartial
23 understanding. U.S. v. Hoffecker, 530 F.3d 137, 192
24 (3d. Cir. 2008). Here, the Government was permitted to pick
25 out portions of the videotape to call to the jurors'

1 attention, and did so to a certain extent during redirect.
2 However, the Rule of Completeness does not allow for the
3 admission of the videotape in its entirety.
4 Accordingly, the Court will reverse its ruling
5 admitting the entirety of the video into evidence. The
6 video will not be entered into evidence or be admissible
7 further.
8 MR. SANDERS: Can I ask a question about that,
9 Your Honor?
10 THE COURT: Can you ask a question?
11 MR. SANDERS: Yes.
12 THE COURT: Yes.
13 MR. SANDERS: In seeking reconsideration,
14 Mr. Lustberg indicated that if admission of the entire
15 videotape was improper, then a proper use would have been,
16 then, for us to play a clip.
17 THE COURT: I'm not responding to it further.
18 I've made my ruling. There will be no clips. There will be
19 nothing further about it.
20 MR. SANDERS: Okay.
21 THE COURT: Are we all ready to proceed, then,
22 counsel?
23 MR. LEVY: No, Your Honor. A couple of things,
24 Your Honor.
25 I have an application based on events that

has been rung. I think I did sustain the objection when we went to sidebar because, quite frankly, I found the statement that was read and where Mr. Minish was going, I found it to be somewhat confusing to me not, being familiar with all of the other background. But upon our discussion at sidebar out of the presence of the jury, I specifically said when I agreed that, what does this have to do with anything, and I specifically directed that they do not go into any matter or mention of Mr. Bergrin's representing anybody. And they didn't.

MR. LEVY: Understood. I've made my point on that.

THE COURT: I'm denying your application there for a mistrial. Next.

MR. LEVY: In the alternative, Your Honor, we would request a limiting instruction that you remind the jury that questions are not evidence and that's true for both parties --

THE COURT: I have no problem making such a limiting instruction. If you prepare one and show it to the prosecution, and you're in agreement on it, I'll be happy to read that.

MR. LEVY: I'm not sure if there's much more than what I just said, but --

THE COURT: You know my problem? When I'm giving

1 limiting instructions, I want to see it in writing, and I
2 want it on the record that they're agreed to by both sides.
3 MR. LEVY: Understand.
4 THE COURT: Because I know what I'm going to hear
5 down the road.
6 Now, what's your next issue?
7 MR. LEVY: Second, there was questioning by
8 Mr. Bergrin on cross-examination of Agent Brokos about
9 Mr. Hahn, who, you will recall, worked in this body shop,
10 and the line of questioning involved the polygraph.
11 Mr. Bergrin had questioned the witness that no polygraphs
12 were given. So Your Honor understands the background to
13 that, the defense had made a request in discovery by letter
14 dated December 3rd that the Government disclose "results of
15 any polygraph examination administered to any witness as
16 well as a list of questions asked," et cetera.
17 In response, on December 14th, on behalf of the
18 Government, Mr. Gay replied, quote: "No polygraph tests
19 have been administered to any government witness pertaining
20 to the subject matter of their testimony."
21 Bearing in mind, of course, that Mr. Hahn is not a
22 Government witness, or doesn't appear to be, nevertheless,
23 it's our position that that evidence that, in fact, a
24 polygraph was given, the fact that it was shown to be
25 deceptive, as the agent testified, was material to the

1 defense. Mr. Bergrin rightfully relied on the disclosure by
2 the Government, and he walked right into it and was
3 completely blindsided by the response and the answer, and
4 it's prejudicial.
5 And again, Your Honor, there's no way to unring
6 that bell as well and on that ground, respectfully, we move
7 for a mistrial as well.
8 MR. SANDERS: A couple of things, Your Honor.
9 I think, as Mr. Levy said, the question was about
10 any witness who took a polygraph. Mr. Hahn's not a witness
11 in this case, number one.
12 Number two, the question itself was improper
13 because Mr. Bergrin shouldn't have been asking about
14 polygraphs. I think it's settled that they are inadmissible
15 in Federal Court. That's another thing.
16 And, number three, he was offering that, I
17 believe, again for its truth and not on the theory that he
18 was impeaching the investigation or showing the
19 unreliability of the investigation.
20 So on those grounds, I don't see that there's any
21 unfairness.
22 I'll provide you the text of the letter. We have
23 a much bigger discovery letter coming to Your Honor which
24 will probably be filed Monday addressing all of the concerns
25 that have been raised over the first two weeks, but we can

1 make that part of it. But I think a fair characterization
2 and a fair understanding of that letter is that it did not
3 ask for polygraph results of people like Mr. Hahn.
4 THE COURT: Well, I certainly can't fault the
5 Government here, because it's talking about two different
6 things. I can understand Mr. Levy's concern about it; but,
7 quite frankly, I can't expect the Government to be
8 responding to what other witnesses may or may not have done
9 that aren't going to be -- or other individuals that might
10 be mentioned but not called as witnesses throughout the
11 course of this trial. We're having lots of witnesses and
12 lots of things.
13 I don't see any unfair prejudice here. The
14 question was asked and answered, and I don't think there's a
15 violation of the discovery.
16 MR. BERGRIN: Judge could I respectfully request,
17 then, could we get a copy of the polygraph, since we weren't
18 provided it? We weren't provided a copy of the polygraph
19 exam, the pretest interview, or the interview, a very
20 critical witness to the case that was interviewed by the
21 F.B.I. I believe that it's important material. I want a
22 copy, Your Honor, of the polygraph, the pretest interview,
23 and the post-test interview of Mr. Ben Hahn.
24 I'd also respectfully request, Your Honor, a copy
25 of the Horatio Joines, which is -- we've talked about

1 Ray-Ray extensively from the beginning of this trial. I
2 want a copy that -- Brokos testified that she went to the
3 hospital and procured the hospital records of the girlfriend
4 of Horatio Joines, who was in the hospital, and it's a very,
5 very important issue in this particular case.
6 THE COURT: What's the important issue there?
7 MR. BERGRIN: Well, the important issue is as to
8 whether Anthony Young falsely implicated Horatio Joines --
9 THE COURT: No, no, I meant about the hospital.
10 As I recall that testimony, you were trying to demonstrate
11 that the witness was at the hospital at that time.
12 MR. BERGRIN: That's correct.
13 THE COURT: And I think the agent testified that
14 she did indeed find out that the girlfriend or wife of the
15 individual was in the hospital, was having some kind of
16 pre-pregnancy medical issues. I don't think she was totally
17 sure as to what they were, but she as I recall it said that
18 the records didn't demonstrate who was visiting, but she
19 acknowledged that at the time you were talking about, the
20 lady in question was indeed at the hospital. So I don't
21 know what else she's supposed to do.
22 Why do I care about the medical records? If
23 you're saying -- if they have records showing visitation --
24 MR. BERGRIN: I want the chance to review those
25 records that the Government --

1 THE COURT: What records? You're talking about
2 the medical records?
3 MR. BERGRIN: The medical records of the wife or
4 girlfriend of Horatio Joines that were seized, Your Honor.
5 We have a right to have those.
6 THE COURT: What does that have to do anything,
7 the fact that this lady was in the hospital? What possible
8 relevance can that have on this matter?
9 MR. BERGRIN: I'll tell you why, Judge. There's a
10 302 wherein Horatio Joines was arrested on March the 5th, a
11 few days after a homicide, and he gave a statement to the
12 F.B.I. saying that he was not at the scene, was not involved
13 in this case, and he was at the hospital with his
14 girlfriend, Your Honor.
15 THE COURT: What difference does it make what the
16 medical condition was? The issue is whether it was true
17 that the girlfriend was at the hospital, and the agent has
18 acknowledged that's so. They just said that they couldn't,
19 as I recall it, they couldn't determine through the records
20 whether or not -- who the -- what visitation occurred. So I
21 don't see what relevance the medical records of this woman
22 have. If there are records demonstrating who visited her,
23 then I'll ask them to give you that if those exist. But I
24 thought that the agent said they didn't have any such
25 records.

1 But as far as the medical records as to the
2 condition, that's totally irrelevant to our issues, and I'm
3 not going to get involved in that. I'm not going to order
4 that.
5 I will, though, tell them that if they have
6 records demonstrating who visited to show whether or not
7 these individuals you're talking about visited, I'll ask
8 them to turn those over if they exist and they have them.
9 Okay, Mr. Bergrin?
10 MR. BERGRIN: And the last thing, Judge -- yes,
11 sir. And the last thing is the police reports and the
12 records of the shooting for -- it was the motivation for
13 Anthony Young coming to the F.B.I. Brokos testified that
14 she did an investigation and has the records of, the police
15 reports of the shooting and the homicide investigation.
16 THE COURT: Police reports: Newark police, or --
17 MR. BERGRIN: It's actually Irvington police
18 department, Your Honor, in reference to Anthony Young's
19 allegation that his reason for going to the police
20 department is because Jamal McNeil and Jamal Baskerville
21 were involved in the murder of a girl, and that was the
22 reason for going to get -- they were going to go after her
23 based upon the revelation --
24 THE COURT: Let me ask them, do you have those
25 police reports?

1 MR. MINISH: No, Judge, we don't.
2 If I can just address these issues.
3 One, with respect to Mr. Joines and the medical
4 records, I know Your Honor has made your ruling. I just
5 want to supplement a couple of things. One, he was not a
6 witness in the last case; he's not a witness in this case.
7 Mr. Bergrin is well aware of that. And, in fact, I believe
8 during the questioning of Agent Brokos, he specifically said
9 something to the effect of well, medical records wouldn't
10 have who visited him, would they.
11 THE COURT: Well, whether he said it or she said
12 it, I think my understanding is that should be the case, and
13 I think that the agent said she didn't have any information
14 regarding who visited.
15 So to that extent, if it exists, I'm saying to
16 turn that over.
17 MR. MINISH: Absolutely.
18 THE COURT: As far as the medical records
19 themselves, that's irrelevant and I'm not getting into it.
20 How about the police reports?
21 MR. MINISH: They do not exist, those visitation
22 records.
23 THE COURT: Okay.
24 MR. MINISH: With respect to the reports, my
25 memory of what Agent Brokos testified to was that she

1 provided the information that Anthony Young had provided her
2 to whoever was investigating that murder, not that --
3 THE COURT: I'm not asking you to go out and find
4 those reports. If the agent has them in her file, the
5 reports that Mr. Bergrin just asked for, I'll ask you to
6 turn those over.
7 MR. MINISH: Absolutely.
8 THE COURT: I'm not asking you to go get them. If
9 you don't already have them in your file -- because, quite
10 frankly, the defense could have got those reports as well as
11 anybody else. But if you have them, turn them over.
12 MR. MINISH: Judge, I just checked with the agent.
13 She said we do not have them.
14 THE COURT: Okay. That's it.
15 MR. MINISH: And with respect to Mr. Hahn, again,
16 this individual was not a witness in this case, was not a
17 witness in the last case. Mr. Bergrin is well aware of it.
18 And I believe it was an issue earlier in the case during his
19 opening when Mr. Bergrin made some mention of Mr. Hahn is
20 going to say blah-blah-blah, whatever it was, Mr. Gay stood
21 up and objected and said he's not going to be a witness in
22 this case, and Mr. Bergrin said, yes, I think he is.
23 He's not going to be a witness in this case,
24 Judge. That's who he's talking about with this polygraph
25 issue. It's the same guy. He was never going to be a

1 witness. He wasn't a witness in the last case. He's not a
2 witness in this case.
3 THE COURT: I'm not directing you to turn that
4 over.
5 MR. MINISH: Excuse me, Judge. I just wanted to
6 supplement the record.
7 And one last thing, Judge, from the Government,
8 very briefly. We provided this morning Mr. Levy and counsel
9 with information related to two witnesses who will testify
10 today with respect to money and a promise that they were
11 provided with regard to their safety, a Mr. Eric Dock and
12 Mr. Hosten. Mr. Hosten was promised if his testimony causes
13 a safety issue, he will be provided financial help from the
14 Government in relocating. Mr. Dock since the last trial ran
15 into a safety issue and was, in fact, provided with money
16 for relocation. All we want to know is whether or not they
17 choose to bring -- we'll bring that up, because, if they
18 will, we're going to bring it out first, but if they're not,
19 we will not, we're not going to go into the area.
20 MR. BERGRIN: We're not going to go into that.
21 THE COURT: Okay?
22 MR. GAY: Sorry, Judge, I just want to put one
23 more thing on the record.
24 When Dr. Shaikh, who is going to be the next
25 witness, showed up this morning, he provided me with a copy

of his report in which he has some handwritten notes on it so I'm now providing -- I just got this early this morning.

THE COURT: You've already turned over the report?

MR. GAY: The report has been turned over.

THE COURT: This is with the notes.

MR. GAY: This has a couple of handwritten notes on it.

THE COURT: All right. Turn it over.

MR. GAY: I'm handing it to Mr. Bergrin right now.

MR. LEVY: Your Honor, related to Dr. Shaikh, Your Honor, the first witness, apparently the Government intends to use pictures. I don't want to take up court time. There are a series of pictures --

THE COURT: Are these the autopsy?

MR. LEVY: Yes. I think some of them are cumulative. I'd like the opportunity to talk to Mr. Gay. Perhaps we can reach some agreement without taking up the Court's time on this, if we could have a minute.

THE COURT: Well, you can have as much time as it takes before I get the jury down.

Are they all here?

(Off the record discussion)

THE COURT: All right. Want to get the jury?

MR. BERGRIN: Judge, if I could have about five or 10 minutes to review the notes?

THE COURT: We're going to bring the jury down.

MR. BERGRIN: I just received them, Judge, but -- all right.

THE COURT: We're bringing the jury down. If before cross-examination, if you think it --

MR. BERGRIN: Sir?

THE COURT: After direct, if you think you need a little time to review them, I'll give it to you.

MR. BERGRIN: Thank you, Judge. Thank you very much.

THE COURT: I just don't want this jury waiting each morning.

MR. BERGRIN: No, I understand. I agree with you, Judge. Thank you.

MR. LEVY: Your Honor.

THE COURT: Yes.

MR. LEVY: The Government intends to use exhibits -- I'll read them off, but a series of pictures, and we are -- I have no problem with the use of some of these pictures, but our position is that there are too many of them. They're cumulative, they're unduly prejudicial, they're gory, they're, you know, all the things one would expect from autopsy photos, and it's not necessary to introduce each and every one of these.

THE COURT: How about it, Mr. Gay?

1 MR. GAY: Judge, I think it's important to see the
2 photographs we're talking about here.
3 THE COURT: Let me see them.
4 MR. GAY: Not any of them are particularly gory.
5 THE COURT: Well, it's an autopsy.
6 MR. GAY: Well, each one demonstrates the wounds,
7 and they were -- all of these were admitted at the last
8 trial. So I don't -- and it's important because, you know,
9 there are a couple different shots. There are entrance
10 wounds, there are exit wounds. Mr. Bergrin previously
11 challenged and I believe is going to continue to challenge
12 the direction --
13 THE COURT: I've got to tell you, Mr. Levy, I do
14 not find these -- while they're not pleasant, I do not find
15 these inflammatory in any way.
16 I'll allow it.
17 MR. GAY: And those are the ones that were -- now,
18 there are some additional ones, too, Judge, that are not
19 among those that we introduced at the last trial Mr. Levy
20 hasn't brought to anybody's attention, but I'm assuming -- I
21 mean, those are not the only one I intend to introduce. So
22 if there are others in there --
23 MR. LEVY: Defense was being judicious in its
24 objection, Your Honor.
25 MR. GAY: No, that's fine. No, I just wanted to

1 make sure, if there is something else, we should do it now.
2 Now, again --
3 THE COURT: Well, the jury's coming in, gentlemen.
4 MR. GAY: Yes.
5 THE COURT: By the way, just so the record is
6 clear, any motions on the mistrial were denied.
7 MR. LEVY: I think it was clear, Your Honor.
8 THE COURT: I didn't know if I'd ruled on the
9 second one.
10 MR. LEVY: So the record is complete on the basis
11 for a motion, is the Court okay with our submitting the
12 discovery letters I referenced in my application?
13 THE COURT: Yes.
14 MR. SANDERS: It's going to part of our submission
15 Monday.
16 MR. LEVY: Thank you.
17 THE COURT CLERK: All rise.
18 (The jury enters)
19 THE COURT: Be seated.
20 Good morning.
21 THE JURY: Good morning.
22 THE COURT: I want this record to indicate how
23 prompt our jury has been. I'm very appreciative.
24 Are we ready to proceed?
25 MR. GAY: Yes, Judge.

1 THE COURT: Okay. Mr. Gay, your next witness.
2 MR. GAY: The Government calls Dr. Junaid Shaikh.
3 THE COURT: Up here, sir.
4 THE COURT CLERK: Just remain standing.
5 Place your left hand on the bible.
6 THE WITNESS: I affirm.
7 THE COURT CLERK: Raising your right hand:
8 J U N A I D S H A I K H, called as a witness on behalf of
9 the Government, and having been duly sworn, testified as
10 follows:
11 THE COURT CLERK: Please be seated.
12 Please state your name, spelling it for the
13 record, both first and last.
14 THE WITNESS: Junaid Shaikh, J-u-n-a-i-d,
15 S-h-a-i-k-h.
16 THE COURT: Okay, sir. I'd just ask you to keep
17 your voice up so everybody at the end of the jury can hear
18 you.
19 THE WITNESS: Yes, sir.
20 THE COURT: Thank you.
21 Go ahead, Mr. Gay.
22 DIRECT EXAMINATION
23 BY MR. GAY:
24 Q. And, Dr. Shaikh, there is a microphone in front of
25 you, so you can pull that close to your mouth if you'd like.

1 MR. GAY: Thank you, Your Honor.
2 Q. Dr. Shaikh, by whom are you employed?
3 A. I'm employed by the Union County Medical Examiner's
4 Office as a county medical examiner.
5 Q. And how long -- prior to that -- well, in what
6 capacity are you employed at this time?
7 A. As a medical examiner and forensic pathologist.
8 Q. And prior to that, were you a medical examiner
9 elsewhere?
10 A. Yes, sir.
11 Q. Where were you a medical examiner before that?
12 A. I worked as a medical examiner in different capacities
13 at the Northern Regional Medical Examiner's Office in Newark
14 for 14 years, until I resigned and then joined the Union
15 County Medical Examiner's Office.
16 Q. So on March 3rd of 2004, who were you working fore?
17 A. The Northern Regional Medical Examiner's Office.
18 Q. Can you briefly describe what your duties were as a
19 medical examiner at the Regional Medical Examiner's Office?
20 A. Yes. I was one of the senior medical examiners for
21 that facility. The Regional Medical Examiner's Office
22 covers four counties, Essex, Hudson, Passaic and Somerset
23 Counties. The medical examiners are responsible for the
24 medical-legal death investigations in those counties.
25 Q. Can you briefly describe your educational background?

1 A. I'm a graduate of Dow Medical College in Karachi,
2 Pakistan, where I received my M.B.B.S. degree, which is
3 Batchelor's of Medicine and Surgery, in 1980. Subsequent to
4 that, I took a year of residency training in an affiliated
5 hospital, which is Civil Hospital of Karachi, and worked as
6 a family physician with my father, who was also a family
7 doctor in Pakistan, in Karachi.
8 In '82, I came to the United States, passed the
9 requisite exam that international medical graduates have to
10 take, which is called ECFMG, which stands for Educational
11 Commission For Foreign Medical Graduates. This examination
12 makes us at par with the American grad.
13 Subsequently, I took the FLEX, which is the
14 Federal licensing exam, which entitles you to practice
15 medicine in the United States.
16 I then worked as a house doctor in Mt. Carmel
17 Hospital in Columbus, Ohio, and also as an extern in
18 hospital pathology. This is a path most international
19 medical graduates take to get into a residency program,
20 which I was able to do. So in 1994, I was accepted in
21 residency training at Case Western Reserve and its
22 affiliate, Mt. Carmel Medical Center in Cleveland, Ohio. So
23 I successfully completed that residence training, which was
24 a four year residency. After that, I did a year in
25 transitional medicine at Frankford Hospital in Philadelphia,

1 then joined the office of the chief medical examiner as a
2 medical forensic pathology fellow in forensic pathology in
3 Baltimore, Maryland. I did my fellowship there, stayed on
4 as junior staff, and in 1993 joined the Eastern Medical
5 Examiner Office, in Newark where I've been since for 14
6 years, and as you heard me say, I resigned in 2007 and
7 joined the Union County Medical Examiner.
8 Q. Okay. Are you familiar with the term forensic
9 pathology?
10 A. Yes.
11 Q. And can you briefly describe what that term means?
12 A. Forensic pathology is a subspecialty of pathology,
13 pathology itself being a specialty of medicine. So in
14 general understanding, physicians have different
15 specialties. The most common that we hear of is a family
16 physician or internist. They're clinical doctors. Well,
17 there's a specialty known as pathology, which deals with the
18 disease and the effect of disease. A pathologist is usually
19 a doctor who works in the pathology laboratory of a
20 hospital. They are responsible for -- there are two aspects
21 to their work in the hospital. One is known as surgical
22 pathology or anatomical pathology, and the other is clinical
23 pathology. Anatomical pathology relates to, for example,
24 when a surgeon performs surgery, he removes a lesion from
25 the body, from the colon or any part of the body, it is

1 submitted to the pathology laboratory. It is the
2 pathologist who looks at it under the microscope, does a
3 frozen section, and then gives a diagnosis as to whether
4 that lesion or whether that tissue that he has removed or
5 she has removed is either benign or malignant.
6 So that's one of their functions. The other
7 function is in the laboratory setting, where all the bodily
8 fluids that are taken from patients, like urine, blood,
9 et cetera, are given to the pathologist. They look at it
10 and then also issue reports as to the clinical findings.
11 So that is in the hospital setting.
12 One of their functions also is to perform
13 autopsies in the hospital setting. So if there's an
14 in-house death, meaning a patient admitted to the hospital
15 dies and the doctors want to know what they died of and want
16 to have an autopsy done, it is the hospital pathologist who
17 does it.
18 My subspecialty is forensic pathology, which we
19 receive specialized training to do medical-legal death
20 investigations. So people who die in circumstances which
21 are suspicious, which happen outside the hospital setting,
22 violent death, infant deaths, et cetera, come under the
23 purview of the medical examiner, who has a mandate to
24 perform those autopsies or examinations. So we would either
25 do an autopsy, do an external examination, and the whole

1 Q. Okay. What would -- can you -- this is not -- how is
2 this not consistent? Can you describe for the Court?
3 A. Because the wound track goes from the left side to the
4 back of the head.
5 Q. Okay. So more like this, then.
6 A. Yes, it should be pointing slightly backwards.
7 Q. Okay. Got it. So this -- so approximately here --
8 maybe, is this better, if you can see it?
9 THE COURT: Well one problem is, the doctor can
10 see it, but the jurors can't.
11 MR. GAY: All right. I'm going to show it to him
12 first and then I'll show it to the jury.
13 Q. So about like this would be consistent?
14 A. Yes.
15 MR. GAY: So I'm now going to show -- can everybody
16 see that now?
17 Okay. All right.
18 Thanks, Steve. Sorry.
19 I have no I have no further questions at this
20 time, Judge.
21 THE COURT: Mr. Bergrin?
22 MR. BERGRIN: Thank you very much, Your Honor.
23 THE COURT: Did you have time to go over the
24 handwritten notes?
25 MR. BERGRIN: Could we have five minutes to go

1 over the handwritten notes that we got this morning? Just
2 five minutes, that's all.
3 THE COURT: You know what I'll do? Mr. Bergrin
4 was handed some new notes this morning that he hadn't seen,
5 so we didn't want to make you wait, but what I'm going to do
6 now, before his cross-examination, I told him I'd give him a
7 couple of minutes.
8 So you can go on upstairs to the jury room. I'm
9 going to give him five minutes to look at those notes.
10 MR. BERGRIN: Thank you, Your Honor.
11 THE COURT: You can stay there, Doctor, just for a
12 minute, until the jury goes out.
13 (The jury exits)
14 THE COURT: All right. Ten minutes, gentlemen?
15 MR. BERGRIN: That's fine, Judge. Thank you.
16 (Recess taken)
17 (Defendant present)
18 (Jury out)
19 MR. GAY: Maybe we can do something briefly at
20 sidebar? It has nothing to do with this witness, but I
21 wanted to raise a brief issue with the Court so we can keep
22 this moving with relation to the next witness.
23 (The following takes place at sidebar)
24 MR. GAY: Judge, I expect that the next witness,
25 Eric Dock -- one of the things that happens is, he's in jail

with William Baskerville, and William Baskerville makes certain admissions to him.

THE COURT: Right.

MR. GAY: One of the things that prompts him to then take action on that is, he reads an article in the newspaper about Curry being arrested, about two informants being killed, and at that point, he realizes that Will Baskerville is not just talking trash, that this is for real, and then he writes a letter to the U. S. Attorney's Office.

The article's important not for the truth, obviously, but to show what it is he learned from the article and why he took the steps he took. And again, the article has nothing about Mr. Bergrin, has nothing about anything, but it is -- I expect he is going to be questioned about, you know, his motivations and other things. And what is contained in the article also is important because then he makes note of certain other things while he's writing his log and things like that.

So I intend to offer it in not as proof of anything, but simply to have it as, this is what he saw, this is what he learned, this is what he knew at the time, and this is why he took the following steps. Again, this says nothing about Mr. Bergrin.

MR. BERGRIN: May I be heard, Your Honor?

1 THE COURT: Sure.
2 MR. BERGRIN: Judge Martini ruled on this already
3 and he found it extremely prejudicial. It talks about
4 Hakeem Curry being involved in this murder, talks about
5 Hakeem Curry being involved in the Derek Berrian murder the
6 day before. It outlines, completely explains the Derek
7 Berrian murder that has already been mentioned in this case.
8 There has already been a smell of an influence of me
9 representing the person --
10 THE COURT: Is Mr. Bergrin involved in this case?
11 MR. GAY: No.
12 MR. BERGRIN: It has no relevance to this
13 proceeding. I'm not questioning Eric Dock about the
14 article. And I think it's extremely prejudicial. It's
15 already been ruled on.
16 MR. GAY: I will tell you what, Judge, if he is
17 going to question Eric Dock in a certain way that implies
18 that Malik Lattimore killed Kemo, then the article comes in
19 because I can -- Dock knows there are two informants.
20 THE COURT: But you're kind of asking me for
21 advisory opinions. Why don't we do what we're doing and see
22 where we go?
23 MR. GAY: Well, I'm just letting the Court know,
24 trying to give you a heads up, not asking for an advisory
25 opinion, Judge. I'm sorry.

1 (The following takes place in open court).
2 (Jury in)
3 THE COURT: Okay. Mr. Gay, continue.
4 MR. GAY: Judge, I turned the witness over to
5 Mr. Bergrin.
6 THE COURT: Mr. Bergrin. I'm sorry.
7 CROSS-EXAMINATION
8 BY MR. BERGRIN:
9 Q. Good morning, Dr. Shaikh.
10 A. Yes.
11 Q. Now, you've been a medical examiner pathologist for
12 over 15 years; correct?
13 A. Yes, sir.
14 Q. And as you testified to, you've performed over 4,000
15 autopsies; correct?
16 A. Yes, sir.
17 Q. And you've qualified over a hundred times in state and
18 Federal Court as a -- really an eminent qualified forensic
19 pathologist; correct?
20 A. Yes, sir.
21 Q. And you explained to this jury what forensic pathology
22 is; correct?
23 A. Yes, sir.
24 Q. And one of the things that you explained is a doctor
25 trained as an expert in death investigations, correct, and

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 34

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9 Newark, New Jersey
March 13, 2013

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12

13 BEFORE:

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

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19 Reported by:
CHARLES P. McGUIRE, C.C.R.

20 Official Court Reporter

21

22 Pursuant to Section 753, Title 28, United States Code, the following transcript is certified to be

23 an accurate record as taken stenographically in the above entitled proceedings.

24

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

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1 (Defendant present)
(Jury out)
2 THE COURT CLERK: All rise.
3 THE COURT: Be seated.
4 Good morning.
5 MR. BERGRIN: Good morning, sir.
6 THE COURT: Yesterday, after we dealt with the
7 jury charge, Mr. Lustberg -- who I was calling Mr. Bergrin
8 for most of the afternoon -- reminded me that he did not
9 recall whether or not I dealt with the issue that was
10 brought up by the defense regarding the testimony of
11 Gutierrez, the prosecutor and Government's Exhibit 644.
12 I thought I had placed this on the record, but you
13 know what, I can't remember. I'll do it again.
14 Mr. Lustberg filed a letter on March 6th, 2013 on
15 Mr. Bergrin's behalf requesting that a portion of the
16 testimony of New Jersey prosecutor Tony Gutierrez and
17 Government Exhibit 664 be stricken from the record. On
18 January 23, 2013, Mr. Gutierrez testified that Mr. Bergrin
19 asked for a continuance in the case of his client, Norberto
20 Velez, due to an issue with Mr. Bergrin's health. This is
21 the State Court case. The letter Mr. Bergrin wrote to the
22 State Court requesting the adjournment was introduced into
23 evidence as Government Exhibit 644.
24 Mr. Bergrin expressed his objection to testimony
25 on the Velez adjournment during sidebar. The Government

1 represented that Ms. Velez would testify that, after she
2 gave her truthful statement to the Essex County prosecutor,
3 Mr. Bergrin needed more time to again rehearse the version
4 of the story that would be favorable to her father. The
5 record shows that the Government did elicit testimony from
6 Mr. Gutierrez and Ms. Velez that Ms. Velez changed her story
7 between the time she spoke to the Essex County Prosecutor's
8 Office in April of 2003, where she admitted she told the
9 truth, and the beginning of the the Velez trial on June 24,
10 2003, after the adjournment. Ms. Velez also testified that
11 after she spoke to the prosecutor, her father and
12 Mr. Bergrin told her that she, quote, "couldn't...tell the
13 truth," close quote, and warned her of the importance of
14 keeping Mr. Velez out of jail.
15 Federal Rule of Evidence 401 provides that
16 evidence is relevant "if it has any tendency to make a fact
17 more or less probable than it would be without the evidence"
18 and "the fact is of consequence in determining the action."
19 It is clear that the evidence is relevant to the witness
20 tampering charge.
21 The Defense argues that pursuant to 403, the
22 relevance of the evidence is substantially outweighed by the
23 danger of unfair prejudice if the jury connected the
24 adjournment in the Velez trial with the delay in the start
25 of this trial.

1 Upon reviewing the transcript, this Court
2 instructed the jury only that, quote, "things happen that we
3 don't expect all the time. Sorry there was a brief bout of
4 influenza, and through no one's fault, obviously, but that's
5 why there was a slight delay." That was my recollection and
6 what the transcript showed I told the jury, that the delay
7 of this trial beginning with Mr. Bergrin unfortunately
8 suffering from the flu.
9 The Court finds that the relevance of the evidence
10 of the adjournment in the Velez case is not substantially
11 outweighed by the danger of unfair prejudice, as there was
12 no blame or implication of blame placed upon Mr. Bergrin for
13 the delay in trial. The Court will deny the defense request
14 to strike the testimony of Mr. Gutierrez relating to the
15 adjournment and Government Exhibit 644 from the record.
16 All right. Are we ready to proceed? Anything
17 else that we have to do?
18 MR. GAY: Judge, I just had a couple of brief
19 things that I wanted to I guess remind the Court.
20 THE COURT: One thing, by the way, I didn't
21 mention the judicial notice of that date.
22 MR. GAY: Yes.
23 THE COURT: The calendar.
24 .MR. GAY: Yes. Yes. Do you want me to remind the
25 Court of what the dates were? August 5th, 2008 --

1 THE COURT: What I'll do is, I'm going to tell
2 them that I will take judicial notice of the following
3 facts, and then I'll ask you to give the facts.
4 MR. GAY: Okay. Sure.
5 THE COURT: What else?
6 MR. GAY: Judge, just with respect to some
7 anticipated potential arguments by Mr. Bergrin, I just want
8 to make sure I'm laying out and discussing what I understood
9 to be the Court's rulings on these various things.
10 Obviously the Court's not saying Mr. Bergrin can't make
11 whatever arguments he wants to make that's consistent with
12 the evidence, but there were a couple of things I wanted to
13 address.
14 The first is that with respect to the Carolyn
15 Velez videotape that did not come into evidence, my
16 recollection is that obviously Mr. Bergrin used that to
17 impeach her credibility. Therefore, since it was only
18 admitted for that purpose, he cannot stand up here and make
19 an argument that anything on that videotape is affirmative
20 evidence of his innocence in this case. That was the ruling
21 at the time, and the Government I believe at the time also
22 said that if he intends to make such an argument that we
23 would seek to reopen and introduce that into evidence. I
24 just want to remind Mr. Bergrin of that before he gets up
25 and makes arguments.

1 The second thing, Judge, is, with respect to the
2 -- what I'll just call the Abu Ghraib argument, I know that
3 that was -- there's no evidence in any way, shape or form of
4 anything --
5 THE COURT: I've ruled on the irrelevancy of that
6 from the beginning --
7 MR. GAY: Yes.
8 THE COURT: -- and I'm assuming that will not be
9 -- I can't assume -- I have to assume that Mr. Bergrin is
10 going to abide by the Court's rulings, and he will comment
11 on that which is evidence in this trial, and that's it. I
12 can't anticipate that he's going to do something wrong.
13 If you believe during the course of his summation,
14 just as the defense should during the course of Mr. Minish's
15 summation, if you believe that something is inappropriate, I
16 guess I'll hear an objection, and I'll deal with it.
17 MR. GAY: Yes, Judge.
18 And the only other thing I'd like to remind the
19 Court and Mr. Bergrin of is that my understanding or my
20 memory of the Court's ruling with respect to the guilty plea
21 in the New York case as well as the indictment, which we had
22 a stipulation for, was that if Mr. Bergrin seeks to argue in
23 any way that's inconsistent with the stipulation and the
24 guilty plea and the indictment will rebut that, that that is
25 the -- the Government left that option open that we could --

1 THE COURT: Colloquy from the plea.

2 MR. GAY: -- colloquy from the plea that we can

3 then introduce that as well. So I'm just sort of laying

4 this out here so that Mr. Bergrin's on notice of what the

5 Government may seek to do.

6 THE COURT: Again, I'm working under the

7 assumption that Mr. Bergrin is on notice of all of this, and

8 I have to work under the assumption that he's going to abide

9 by the rulings, just as I'm sure Mr. Minish will.

10 MR. MINISH: Yes.

11 THE COURT: And if anyone doesn't, I'm assuming

12 I'm going to hear about it.

13 MR. GAY: Okay. Thank you, Your Honor.

14 MR. BERGRIN: Judge, one thing --

15 MR. GAY: Oh, I'm sorry. There's one other final

16 thing, I'm sorry, Mr. Bergrin. One final thing, and that

17 is, in his opening statement, Mr. Bergrin continued to use

18 this recitation here, Judge, to explain reasonable doubt:

19 "When a case is proven to you beyond the exclusion of every

20 reasonable doubt." That's not an accurate statement of the

21 law, and we would request that he doesn't use that statement

22 during his closing.

23 THE COURT: That is not an accurate statement of

24 the law.

25 MR. LUSTBERG: No, it's not accurate. We have

1 prepared for him the reasonable doubt instruction that we
2 agreed upon yesterday. He has that, and he'll use that
3 formulation. If he doesn't -- if he -- and this happens
4 frequently -- if counsel misstates the instructions, you're
5 going to instruct the jury to that extent.
6 THE COURT: Well, that's true.
7 MR. LUSTBERG: But he has that. We've tabbed it.
8 The Government expressed their concern, and Mr. Bergrin will
9 have that with him.
10 THE COURT: I do recall that. I do recall it.
11 Again, I have to work under the assumption that
12 Mr. Bergrin will abide by my rulings.
13 Mr. Bergrin?
14 MR. BERGRIN: Judge, I just want to clear up one
15 thing.
16 James Cortopassi testified in reference to
17 Abu Ghraib in reference to the amount of documentation,
18 in reference to the amount of time that was spent, including
19 his lack of knowledge as to who prepared the binders, who
20 went through the materials, and to the fact that, I remember
21 you flying back and forth. The prosecution brought out in
22 direct examination the fact that he drove down there to Fort
23 Hood, Texas by himself at his own expense.
24 So there was testimony, Your Honor, and I intend
25 to comment on the testimony --

1 THE COURT: The only --
2 MR. BERGRIN: -- and all reasonable inferences
3 that can be drawn from the testimony.
4 THE COURT: The only testimony that I remember
5 from Mr. -- what was his name?
6 MR. GAY: Cortopassi, Judge.
7 THE COURT: -- Cortopassi was testimony that you
8 brought out during your cross-examination, and then I think
9 that the Government came back on redirect and talked about
10 that trip down to Texas. They didn't bring that out.
11 I will rule again: I don't think that that
12 Abu Ghraib issue has any relevance to this case at all, and
13 I do not want you dealing with it in your summation. It has
14 no relevance.
15 Now, if you want to say that evidence came out
16 about another large case you happened to be working on and
17 you were taking a fair amount of time, that's fine; but I'm
18 not getting into this whole Abu Ghraib issue. It's got
19 nothing to do with this case.
20 So that's the ruling.
21 Now, anything else?
22 MR. SANDERS: I wanted to just put on the record,
23 I had discussions with Mr. Lustberg this morning, the
24 defense has agreed to a redacted indictment that -- and I
25 think we've discussed omits some of the predicates and

1 counts that related to a co-defendant, and that deletes some
2 of the overt acts that we chose not to prove in this trial.
3 So I'm going to prepare it and then give it to the Court. I
4 hope it will be e-filed as, you know, copy of redacted.
5 THE COURT: Right.
6 MR. SANDERS: And I think we need to have a
7 colloquy to make sure that Mr. Bergrin agrees to that, that
8 there will be no claim that that's a violation of his rights
9 in the grand jury clause.
10 THE COURT: Mr. Bergrin?
11 MR. LUSTBERG: I've advised Mr. Bergrin of that
12 for the record. And he does agree.
13 Paul, do you --
14 MR. BERGRIN: I have no objection.
15 THE COURT: Okay. Thank you.
16 There was one other issue that we wanted to put
17 off because Mr. Bergrin was not present and I didn't want to
18 deal --
19 MR. SANDERS: Well, the forfeiture issue.
20 THE COURT: Oh.
21 MR. LUSTBERG: And I've discussed that with
22 Mr. Bergrin as well.
23 We agree that the issue of the forfeiture can be
24 decided by Your Honor.
25 THE COURT: So it won't be something that the

1 Court -- in the event we get to that position, it won't be
2 something that the jury will have to decide.
3 MR. LUSTBERG: And more to the point, we don't now
4 have to do jury instructions on it.
5 THE COURT: Right. That's fine.
6 By the way, the jury instructions; do you have
7 them?
8 MR. SANDERS: I have them, but I sent them to
9 Mr. Lustberg last night after I got through integrating all
10 the changes, and I think he to be fair to him needs a chance
11 to look over my work to make sure that they accurately
12 incorporate --
13 THE COURT: I would like to have a copy. Can you
14 get me a copy during the course of these summations?
15 MR. GAY: Absolutely, Judge.
16 MR. SANDERS: Sure.
17 MR. LUSTBERG: And I just want to double check,
18 but I have no problem with your getting a copy now.
19 THE COURT: I just want to look at them also.
20 I'll give you your opportunity.
21 MR. LUSTBERG: Yes, no problem.
22 THE COURT: And the last thing was, I asked both
23 sides to make sure that those things entered into evidence
24 are correct, that we're not omitting anything or adding
25 something that wasn't put into evidence. I think you were

1 supposed to check out yesterday --

2 MS. PROTESS: I believe that we're in agreement.

3 MR. GAY: And, Judge, what I was going to do is, I

4 have a list, because I think there may have been a couple

5 things that might not have been accurately portrayed in the

6 record, but I'm going to have a list --

7 THE COURT: Well I have no problem with that.

8 Just speak to Defense and make sure there's no issue about

9 that.

10 MR. GAY: Yes. No, we have done that. So I think

11 what I'll do is, I'll read a laundry list or maybe I'll just

12 introduce something --

13 THE COURT: We'll just put that into the record.

14 The jury is not going to remember this.

15 MR. GAY: No, no, I don't mean the jury, I just

16 mean at some point, Judge, for the record itself.

17 THE COURT: If you have a list of it, give it to

18 the Defense, have them look at it, and give it to Chuck and

19 let him put it in.

20 Anything else, counsel?

21 MR. GAY: Not from the Government, Judge.

22 THE COURT: Okay. Now, at about -- assuming that

23 you're going to use up all your time for summations, I will

24 ask Scott to advise you when you're getting within maybe 20

25 minutes, a half hour toward the end so you can be acting

1 accordingly, because at the end of the three and a half
2 hours, the summation will end.
3 I don't yet know what we're going to do about any
4 rebuttal, assuming that the Government will want that.
5 Let's see where the summations go and what time it is. If
6 necessary, the rebuttal can be first thing tomorrow morning
7 before I read the charge.
8 MR. GAY: Okay. Judge, just, as far as the
9 scheduling, is there going to be the typical midmorning
10 break or --
11 THE COURT: I would guess. I don't think I'm
12 going to impose upon the jury anything more, so I would
13 probably -- it might be, Mr. Minish, an appropriate thing to
14 do to let me know when it would be an appropriate break
15 time, and I'll ask Mr. Bergrin to do the same thing come
16 afternoon so I don't break up at a strategic point in your
17 -- and I will probably like to do that about two hours in,
18 an hour and a half, two hours into the summation.
19 MR. GAY: All right. Thank you, Judge.
20 THE COURT: Okay? Anything else, gentlemen?
21 All right. The jury, I don't know if they're all
22 here yet, but as soon as they come down, we will start our
23 summations.
24 MR. LUSTBERG: Thank you, Your Honor.
25 (Recess taken)

1 (Defendant present)
2 THE COURT CLERK: All rise.
3 (The jury enters)
4 THE COURT CLERK: Be seated.
5 THE COURT: Good morning.
6 THE JURY: Good morning.
7 THE COURT: I hope you enjoyed your day yesterday.
8 We are ready now for our closing arguments. I've
9 put limitations on them but they're going to take the better
10 part of the day, maybe until about 4:30, depends, and then I
11 plan to, in the event there is a rebuttal, short rebuttal
12 from the prosecution, that will occur tomorrow, and I will
13 charge you tomorrow. So hopefully by noon tomorrow, you
14 will have the case and be able to begin your deliberations.
15 Before that, we have closing arguments, which
16 obviously are very important. So we will begin those now.
17 Mr. Minish.
18 MR. MINISH: Thank you, Judge.
19 Counsel, Members of the jury, good morning.
20 THE JURY: Good morning.
21 MR. MINISH: Paul Bergrin is guilty of every
22 single charge in the indictment, everything from failing to
23 file the form 8300, that $20,000 he received from Oscar
24 Cordova, the Federal form, to conspiring to distribute
25 cocaine with Hakeem Curry, with his girlfriend, Yolanda

1 Jauregui, with Alejandro Barraza-Castro, with Rondre Kelly,
2 with Abdul Williams, with Eugene Braswell, to maintaining a
3 drug-involved premises, three separate ones, his restaurant
4 at 710 Summer Avenue, his law firm, Pope, Bergrin & Verdesco
5 at 572 Market Street, his newer law firm at 50 Park Place,
6 the Law Office of Paul Bergrin, to traveling in the aid of
7 prostitution, sending those letters, those phony letters on
8 Jason Itzler's behalf so Jason Itzler could get out of
9 probation requirements -- excuse me, parole requirements, to
10 driving his car into New York for that reorganization
11 meeting, where he took over New York Confidential, to
12 traveling in the aid of a drug trafficking business, that's
13 Vinny Esteves's business, the flights in and out of Chicago,
14 the phone calls with Oscar Cordova, and, finally and most
15 significantly, for conspiring to murder Kemo Deshawn McCray,
16 to aiding and abetting the murder of Kemo Deshawn McCray, an
17 actual man actually killed in this very city as a direct
18 result of the work done by Paul Bergrin, and doing so, all
19 of that while running his business, providing illegal
20 services and legal services.
21 Now, the Judge told you he's going to charge you
22 tomorrow on the law, and one of the things he's going to
23 charge you on is that the Government has to prove its case
24 beyond a reasonable doubt, and that's true.
25 So it's clear, though, that's the same standard

1 that's used in every case in every courthouse throughout
2 this country for anyone who's charged in any criminal
3 matter.
4 In this case, it's a burden that's easily met.
5 The evidence is overwhelming that Paul Bergrin is, in fact,
6 guilty beyond a reasonable doubt of every charge in the
7 indictment.
8 Now, the indictment, as you're aware, contains the
9 charges. It's a fairly substantial document. I want to
10 discuss it with you briefly, all right?
11 So if we can put up that chart.
12 What you're going to see there is that there's 23
13 counts, each one alleging a different crime. Even if it's a
14 similar statute, each crime -- excuse me -- each count is
15 for different criminal conduct.
16 There's a total of 23 counts. Now, you see
17 they're numbered to 26. There are three that are missing.
18 Counts 6, 7 and 11 you'll see don't exist there.
19 So even if it's the same or a similar statute,
20 it's for different conduct.
21 So, for example, there are three different counts
22 pertaining to that drug-involved premises, right, 710 Summer
23 Avenue, 572 Market Street, 50 Park Place, the restaurant,
24 law firm one, law firm two, each of it for different
25 conduct, each of it relates to different times drugs were

1 kept in his premises.

2 Now, Count 1 of the indictment alleges a RICO

3 violation, and within that count is what's called

4 racketeering acts.

5 Now, the Judge is going to explain to you tomorrow

6 that in order to find Mr. Bergrin guilty of that RICO count,

7 you have to find at least two of those acts.

8 Now, Count 1 is broken down, so I'm going to show

9 you --

10 If we can put up the verdict form.

11 And this is a court-approved verdict form. This

12 is what you guys are going to have tomorrow.

13 And what you can see on the screen is Count 1, the

14 Racketeering Act 1, and then underneath Racketeering Act 1

15 there are a series of crimes, A, going down to the next

16 page, B, C, D, and you're asked questions, was this proven

17 or not proven. And the Judge will explain to you that you

18 need to find, although there is evidence of all of them, you

19 need to only find one to then find the racketeering act, and

20 then two of the racketeering acts need to be found to find

21 Count 1. The Judge will explain it to you, but just so you

22 have an idea of what the verdict sheet is going to look like

23 and how you're going to get into it.

24 Now, members of the jury, this, as the Judge told

25 you, is the Government's opportunity to discuss the

1 evidence. And that sounds obvious, but it's an important
2 idea, because, keep in mind as I speak with you, as
3 Mr. Bergrin speaks with you later today, as Mr. Gay speaks
4 with you either I guess later today or in the morning, our
5 jobs as attorneys is to discuss the evidence, to make
6 arguments based on the evidence: This is evidence;
7 therefore, this fact. We're not allowed to make evidence up
8 and then argue baseless theory.
9 So let's talk about -- well, before we talk about
10 what is evidence, let's talk about what's not evidence.
11 What is not evidence is what the lawyers say. No
12 matter how passionately it's said, no matter how
13 emphatically something is said doesn't make it true, and it
14 doesn't make it evidence. If stated by a lawyer in an
15 accusatory tone, it doesn't make it true, and it doesn't
16 make it evidence. No matter how sarcastically a question
17 may be asked, it's not evidence. Even if when asking a
18 question a lawyer turns to the jury and nods his head, that
19 doesn't make it evidence, and, as you saw throughout the
20 trial, likely not true. But, regardless, it's certainly not
21 evidence.
22 What is evidence is the testimony from the witness
23 stand, the documents that were received into evidence by the
24 Court, other items, like recordings, the photos, the
25 stipulations, all of which you will be able to review, and

1 that's what you must base your verdict on.
2 So let's talk about that evidence, all right?
3 Now, of course, you've heard the term "enterprise"
4 used numerous times during the trial, and you'll see in the
5 indictment the -- and as you've heard, the indictment sets
6 forth the enterprise as the Bergrin Law Enterprise. So when
7 "enterprise" is referred to, that's the enterprise we're
8 talking about.
9 Let's talk about that evidence.
10 Paul Bergrin, as you know, is a lawyer. He
11 specialized in representing gang members, handling homicide
12 cases, high-level drug trafficking. And all of that is
13 okay. There's no crime. There's many honorable lawyers
14 that make a living doing that.
15 The issue is how he used his position as part of
16 that enterprise, whether it was to gather information that
17 the public would not have otherwise had, like in Vinny
18 Esteves's case, when he had the discovery that only law
19 enforcement, that Vinny Esteves had through his counsel,
20 whether it was to gain access to locations that could not be
21 recorded, where conversations were beyond the ability of law
22 enforcement to hear, again, like with Vinny Esteves in the
23 Monmouth County Jail in the special attorney rooms.
24 Now, there were others that participated in this
25 enterprise, and you heard from some of them. Thomas Moran,

1 for instance, he worked for the law office. He was involved
2 in the witness tampering with Vinny Esteves. Yolanda
3 Jauregui, you heard a lot of testimony about her,
4 Mr. Bergrin's girlfriend, who owned businesses with Mr.
5 Bergrin and helped with legal cases. She was also a member
6 of the drug conspiracy, supplied kilos of cocaine to the
7 drug customers of the enterprise.
8 Alejandro Barraza Castro. You heard testimony
9 from him -- excuse me, about him. He was a client of the
10 law practice, he rented space at 710 Summer Avenue, you
11 heard, and he would get drug customers for kilograms of
12 cocaine from the enterprise. He was a member of the drug
13 conspiracy, and he supplied kilos to that drug enterprise.
14 Ramon Jimenez, Yolanda Jauregui's brother. You
15 heard testimony he was an employee at the firm also. He was
16 a client to the law practice, and he assisted in the drug
17 distribution.
18 Abdul Williams, also an employee of the law
19 practice, also a client of the law practice, assisted in the
20 drug distribution. He was a customer of the drug traffic,
21 and he was involved in witness tampering.
22 Norberto Velez. He was a client of the law
23 practice and worked at the firm, although he didn't
24 remember, at least according to one of the secretaries who
25 was employed at the firm also. He was involved in witness

1 tampering and involved in the drug distribution.
2 Finally, James Cortopassi, also an employee of the
3 law practice, and was involved in the prostitution business.
4 You also heard evidence that Mr. Bergrin used his
5 companies to assist in the criminal activity of the
6 enterprise, using these businesses as a means to help commit
7 the crimes. At Pope Bergrin & Verdesco, the first law firm
8 that you heard about, he represented clients by tampering
9 with witnesses. That includes William Baskerville, Norberto
10 Velez, and he talked about it with Richard Pozo. He was
11 involved with drugs with clients back then, too, Rondre
12 Kelly, Eugene Braswell, Abdul Williams, and also the
13 beginning of the prostitution business, representing Jason
14 Itzler, that started in the old firm also.
15 Then when he moved to his new firm, the Law Office
16 of Paul Bergrin, there was still witness tampering, the plot
17 to kill Vinny Esteves -- excuse me, Vinny Esteves's
18 witnesses. He had the 8300, the failure to report that
19 money, and again, more drugs, this times, Abdul Williams,
20 Eugene Braswell, Rondre Kelly, Alejandro Barraza-Castro,
21 Norberto Velez, and the balance of the prostitution
22 business.
23 You heard testimony about Premium Realty
24 Investment Corp., Inc. That's the company that the checks
25 were written out, or five of the six checks, Jason Itzler's

1 checks, remember, when he had to prove that he was working
2 for Mr. Bergrin? That's where those checks came from, the
3 checks that were never negotiated, never cashed, never
4 deposited.
5 And the real estate transaction with Rondre Kelly,
6 the one where Rondre Kelly was trying to launder his drug
7 proceeds? That was used -- that was done through Premium
8 Realty.
9 Now, from the group of people that were employed
10 by Mr. Bergrin, you heard testimony from Thomas Moran, Abdul
11 Williams, James Cortopassi. They have taken responsibility
12 for their acts. They took the stand and they explained to
13 you their position within the organization, within the
14 enterprise.
15 But Mr. Bergrin has sort of a theme that he's
16 trying to convince you of. He wants you to believe about
17 these guys and, in fact, about all the Government
18 cooperators that they're really bad guys: They have prior
19 records, so, you know what, you can't believe them.
20 The thing that's left out is that prior to
21 becoming cooperators for the Government, when they were out
22 on the street, when they were actually involved in criminal
23 activity, they were part of Paul Bergrin's organization. He
24 wants this to reflect poorly on the Government, that these
25 guys are involved in crime after crime after crime. But it

1 was his choice, Mr. Bergrin's choice to make them part of
2 his organization.
3 And logically, who else would he put in his
4 organization but people who do commit crimes, if that's the
5 purpose of your enterprise?
6 And the ultimate, I guess the end of that theory
7 of Mr. Bergrin's is that somehow the Government took all
8 these people and made them take the stand and lie to you.
9 Right? Because, clearly, if they told the truth, Mr.
10 Bergrin is guilty of everything he's charged with.
11 But remember, members of the jury, when you're
12 balancing things, because these are decisions you're going
13 to have to make, who do I believe, who do I think is being
14 straight with me, what is the evidence that I find, that the
15 links of these individuals are not to each other. They're
16 either through or from Mr. Bergrin.
17 Now, Paul Bergrin as an attorney had a choice to
18 make. He could have represented individuals accused of a
19 crime, followed the rules, be an honorable attorney.
20 Instead, he chose to commit crimes with his clients, chose
21 to become a criminal himself, chose to sell drugs,
22 intimidate witnesses, conspire to kill the witness, and to
23 plan to kill additional witnesses. He provided legal and
24 illegal services with other -- using other people and his
25 companies. He used his law license to disguise the fact

1 that he was a drug dealer and a murderer.
2 His position as a lawyer was invaluable. He had
3 people believe his declarations just because it was on his
4 letterhead. Again, a simple example is Jason Itzler, those
5 letters: He works for me.
6 The information getting about who the cooperator
7 was in William Baskerville's case when he sat across the
8 table from William Baskerville and was told by
9 Mr. Baskerville the cooperator in this case is Kemo.
10 Paul Bergrin had it all figured out: Be a lawyer,
11 get away with murder, connecting drug dealers to drug
12 buyers, all undercover.
13 And he was successful for a while. But that
14 success was paved with kilograms of cocaine, the emotional
15 scars left on Carolyn Velez, and the body of Kemo Deshawn
16 McCray.
17 Let's talk about Carolyn Velez briefly.
18 Now, in the indictment, this is what's called a
19 manner and means section of the indictment, which basically
20 means it's not a crime unto itself, it just sort of explains
21 in the indictment and through the evidence how the
22 enterprise worked, that this is how they operated, an
23 example, evidence of the type of things that they did.
24 Now, obviously as you heard the testimony both in
25 the beginning and the end, we have two stories that can't be

1 rectified, right? Someone is lying to you. This is not a
2 matter of, I saw it gray, I saw it a different color of
3 gray. This is black and white.
4 So, initially, let's just talk about what
5 Mr. Bergrin offered to you.
6 Mr. Bergrin offered to you Norberto Velez and the
7 neighbor who didn't remember seeing anything as a
8 counterbalance to Carolyn Velez, Marilu Bruno, Dr. Hinfey,
9 Detective McAloon. And ultimately, it will be your
10 determination to see which you believe.
11 But let's talk about Norberto Velez a little bit.
12 Early in the trial, you heard his name, you heard
13 about what he did to his daughter, you heard about what he
14 did to his wife. Then you finally got the opportunity to
15 see him. And what you saw was a man that was completely
16 lacking in credibility, what I submit to you is a man who
17 did not take his oath seriously, who sat before you and told
18 lie after lie, from small ones, whether or not he worked at
19 Mr. Bergrin's law office, to large ones, where he didn't
20 remember anything on that transcript: Paul, I don't know
21 who Paul is, I don't remember people telling me about the
22 cooperators and who they were, to ultimately even changing
23 his answers right in front of you on the stand.
24 Do you remember the question about, Did they call
25 you Jason?

1 Yes, that's what they call me.
2 And then shortly after that, there was an
3 objection from Mr. Bergrin -- oh, I'm sorry. No, it was,
4 they call you Jason, and I said, Why, is it because of the
5 movie, the horror movie, and he said yes. Then there's an
6 objection, and then Mr. Velez's answer becomes, Well, I
7 don't know why they call me that, you'd have to ask her.
8 Now, in and of itself, the fact that they called
9 him Jason isn't a huge point, but it does certainly go to
10 his credibility, the way he was answering questions to you.
11 I submit to you that you knew right then and there
12 this guy was not here to tell you the truth. He had an
13 agenda. He was trying to slide one by you, plain and
14 simple.
15 Although I guess the fact that he is referred to
16 as Jason, either by they or just Ms. Jauregui, Yolanda, is
17 pretty indicative of what actually happened to Marilu Bruno,
18 right? Now, Jason in the movies did not have to take a
19 knife from his victim. Jason in the movies was not acting
20 in self-defense.
21 Mr. Velez didn't even remember telling -- or
22 testified to you, anyway, that he didn't remember telling
23 the F.B.I. that he didn't remember anything about the case.
24 Maybe if Mr. Bergrin had asked the questions he might have
25 remembered better because, again, if you recall, when we

1 went through the transcript the first time, he didn't
2 remember anything, and then suddenly, somehow, Mr. Bergrin
3 asked him the questions, it all came back to him, and then
4 finally, to close the loop, when I went back and asked him
5 again, So Paul is Mr. Bergrin, memory suddenly disappeared
6 again.
7 Now, Mr. Velez, besides talking about his daughter
8 and claiming that there was no manipulation, no
9 brainwashing, he also made some comments about the drug
10 case, and I want to deal with Alejandro Barraza-Castro
11 specifically, his testimony about Mr. Castro. He denied
12 that he was going to plead guilty -- and I'm going to quote
13 here: "I'm going to plead guilty so Alejandro can get out
14 okay. They'll let him get out because if I'm guilty."
15 But when Mr. Bergrin asked him, Did I tell you to
16 do that, did anybody tell you to do that?
17 No.
18 Were you doing it to help Alejandro?
19 No.
20 But the thing I want you to keep in mind about
21 that transcript and those questions is the difference
22 between how the Government presented its case and how
23 Mr. Bergrin did on the cross-examination. When Mr. Velez
24 was asked questions about his transcript -- prior to being
25 asked questions about his transcript, he was provided with

1 the transcript, he read the transcript, it was translated
2 for him, he was shown the dates, he was shown the time, and
3 then he was given the opportunity to ask questions -- excuse
4 me -- answer questions about it.
5 This was not a case of a lawyer standing here like
6 Mr. Bergrin did and saying, Didn't you say on this day this
7 exact quote four years ago, and the witness saying, Well,
8 I'm not sure exactly, can you show me the transcript, and
9 get an answer?
10 We'll get to that. We'll get to that.
11 So if Mr. Bergrin in his argument uses those sort
12 of situations to tell you, members of the jury, oh, this
13 person can't be trusted because, well, he got this word
14 wrong, or he said he didn't remember this exact phrase, bear
15 in mind the difference in the process and what is reality of
16 what you could possibly remember exactly word for word from
17 years prior.
18 Now, I'm sorry, to get back to Mr. Castro, there's
19 two things that he said that are important for you to pay
20 attention to: Paul Bergrin was not involved in drugs, and
21 Alejandro Barraza-Castro is a very dangerous guy. All
22 right?
23 Now, the problem, though, for Mr. Velez's
24 testimony is that reality directly contradicts what he said.
25 Norberto Velez when he is arrested tells the

1 police, I don't know anything about these drugs, I have no
2 involvement with these drugs, I don't know what happened, I
3 just gave the guy a ride.
4 Which is all well and good, except if you want to
5 say, well, Mr. Bergrin had nothing to do with it, you can't
6 know that unless you say, oh, I was involved.
7 So after he was arrested, he comes here and he
8 says, No, no, no, that was wrong, I was really involved, and
9 that's how I can tell you that he wasn't.
10 Then number two: Alejandro Barraza's a very
11 dangerous guy. Remember the talk of, oh, the Mexican
12 cartel, these guys are very dangerous, he gave a, "Thank
13 God," all of these comments.
14 Now, members of the jury, let's walk back to again
15 what happened in reality.
16 He's arrested with Mr. Castro. He voluntarily
17 provides -- signs a search -- excuse me -- a document so
18 that the officers can search for drugs and for money. He
19 even says, anything that's there in those suitcases, not
20 mine, it's Castro's.
21 As it turns out, you heard the testimony.
22 Officers went there, they took in excess of $450,000 from
23 those suitcases.
24 Now, Norberto Velez and Alejandro Castro lived
25 together for a period of time. Mr. Castro lived where

1 Norberto Velez lives, and again, I'm saying "lives" as in he
2 still lives in the exact same spot today, eight-plus years
3 later, with his new wife and his young child, and yet this
4 Mexican cartel can't find him, can't hurt him, because he
5 told you himself, I've never been threatened, I've never
6 been harmed.
7 But somehow or another, Mr. Castro -- excuse me --
8 Alejandro Barraza-Castro is this super-dangerous guy.
9 Now, again, members of the jury, with this as a
10 backdrop, what sort of credibility does Norberto Velez have
11 when he comes in here and he tells you, with Carolyn Velez,
12 I never did anything, I never -- I never harmed her, it was
13 in self-defense, he told you, that was Marilu's blood on my
14 hands, if I didn't take the knife from her, I wouldn't be
15 sitting here today.
16 Because, again, it is what it is, right?
17 Mr. Velez told you this. Carolyn Velez told you the exact
18 opposite.
19 Someone is lying to you.
20 And it's up to you, members of the jury, to judge
21 their credibility. Those are the sort of decisions you're
22 going to have to make as jurors.
23 So let's discuss who told the truth.
24 Carolyn Velez as a child testified to was
25 manipulated by Mr. Bergrin, by her father, by Mr. Bergrin's

1 girlfriend, that she lied to the jury in the state case,
2 which is certainly not good, although understandable,
3 admitted her mistake the day after the verdict came down,
4 went to the Essex County Prosecutor's Office and told them
5 everything. She lied because of Paul Bergrin, her father,
6 and Paul Bergrin's girlfriend. But on that day, she came
7 clean, at that point about age 11. It was too late to do
8 anything about that in the stabbing case. It was over. But
9 she did what she could and provided the proper information
10 to law enforcement.
11 A few days ago, though, let's compare that to
12 Norberto Velez, who came as a full-grown adult into this
13 courtroom and lied to you again and again, and did so for
14 the man who beat the attempted murder case for him and who
15 got him out of jail when he was caught with 20 kilos of
16 cocaine with Alejandro Barraza-Castro.
17 And if we could, just briefly, about Marilu Bruno,
18 the woman who was stabbed, Mr. Bergrin in his opening said
19 the eyes are the windows to the soul, something like that.
20 Now, you saw Ms. Bruno testify. I know it's a
21 long time ago now, she was the -- second witness?
22 Everything from when she closed those eyes to think back
23 about a memory, actually play it back in her head, to when
24 she was asked questions about her wounds, and looked at her
25 body, and pointed at the locations of the scars and where

she was injured, did she seem like someone who was trying to slide one by you, who's being dishonest with you, or who was here simply just to tell you what happened?

Mr. Bergrin also predicted in his opening that you would hear about the dark side of justice. And he was right: Sometimes, when a system is manipulated, a guilty man goes free.

The stabbing case rose and fell on whether Marilu Bruno brought the knife to her car, right, because everything else sort of falls from that. The other facts, the mother doesn't speak English, this, that and the other, but the reality is that if Norberto Velez -- if Carolyn said no, her mother never went into the house, therefore, Norberto Velez had to bring the knife, if he brings the knife to this meeting in the car, there would probably likely be a different verdict, right?

So Carolyn had to say Marilu went into the house. She lied, she told you about the manipulation, and she told you about the statements she gave afterwards to the Essex County Prosecutor's Office.

It was through her statements that Norberto Velez was found not guilty, again, because of his lawyer, his lawyer's girlfriend, and himself. They conspired to get Carolyn Velez to lie.

Now, what did Mr. Bergrin do specifically?

1 Well, and it's sort of a theme throughout the case
2 and the same thing that's going on again and again. He did
3 the legal analysis of the case, tried to figure out how he
4 could win this case, and when he couldn't win it in any
5 legitimate way, he formulated a plan to do it in another
6 way, an improper way, an illegal way. He made the plan
7 work, he figured out what words to put into Carolyn Velez's
8 mouth and then work with her again and again, week after
9 week, month after month with his girlfriend and her father
10 to make it happen.
11 He was not acting as a legitimate lawyer. He did
12 his part. He was the guy who made this happen, the guy who
13 put the strategy together, the brains of the conspiracy.
14 And Carolyn Velez told you herself, she sat on the
15 stand and she explained the story during this process where
16 she was upset, and Mr. Bergrin knew she was upset, and she
17 said -- he said to her, don't worry, and I'll quote, this is
18 the kind of case you can't tell the truth.
19 Now, I'm going to wrap up with Detective McAloon.
20 Norberto Velez did not receive medical attention.
21 That was a big issue. He didn't receive medical attention
22 because he had no injuries. You saw the pictures, you can
23 look at them, and ultimately, remember, you can look at that
24 print card, and you see exactly underneath that blood, after
25 his hands are cleaned off, what the prints look like,

1 without -- it's not cuts all over his hands.

2 But he attacked -- Mr. Bergrin, that is, through

3 his cross-examination, Detective McAloon, attacked the

4 investigation: You didn't do this, you should have done

5 this, you didn't do that. The same way he attacked Agent

6 Brokos about the William Baskerville investigation, right?

7 Could have, should have, didn't.

8 But the reality is, both, I submit to you, did the

9 good investigation, because the reality is that Detective

10 McAloon, he got the right guy. He arrested Norberto Velez

11 for stabbing his wife, and he did.

12 Agent Brokos got the right guy, too: Anthony

13 Young. Anthony Young shot and killed, as he told you,

14 Kemo Deshawn McCray.

15 So despite all the questions Mr. Bergrin may have

16 asked about how this could have been done different and this

17 could have been done different, the reality is, in real

18 time, in reality, the decisions made by these investigators

19 bore out exactly what they were supposed to: They got the

20 right guy.

21 Now, let's talk a little bit about Mr. McCray's

22 murder.

23 On March 2nd, 2004, at approximately 2 p.m., on

24 South Orange Avenue and 19th Street right here in Newark,

25 Kemo Deshawn McCray was gunned down in a brutal attack. He

1 was grabbed by Anthony Young and shot in the head multiple
2 times. He collapsed on 19th Street and died in a pool of
3 his own blood, with his stepfather mere paces away from him.
4 And you know this was not a random killing, right?
5 This was an execution, plain and simple. And you know why
6 he was executed. Kemo McCray was killed because he
7 cooperated with the Government against William Baskerville.
8 The people who made that happen, it wasn't a
9 one-man operation. It was a lot of people. There was a
10 number of people that were responsible, a number of people
11 involved in this conspiracy. As you've learned, William
12 Baskerville, he wanted it done. He passed along the name.
13 Jamal Baskerville was the guy who finally located
14 Mr. McCray. Hakeem Curry, also known as E. T. Hak, he sat
15 as a lookout up South Orange Avenue with Jamal McNeil.
16 Rakim Baskerville drove the getaway car and Anthony Young's
17 the man who held the gun to Mr. McCray's head and fired.
18 But it was Paul Bergrin, Paul Bergrin's legal
19 advice that wrote Kemo Deshawn McCray's death warrant. The
20 legal analysis from a trusted advisor, from their lawyer,
21 from their gang's house counsel, when Paul Bergrin said, if
22 Kemo testifies against Will, Will was never coming home,
23 when Paul Bergrin said, don't let Mr. Kemo testify against
24 Will, when Paul Bergrin said, if he don't testify, he'll
25 make sure he gets Will out of jail, what their counsel had

1 told the gang was that the only way William Baskerville was
2 ever going to come home was if Kemo Deshawn McCray didn't
3 get on a witness stand. The only option that left the group
4 with was to kill him, to get rid of him. The die was cast.
5 It wasn't a matter of if Kemo Deshawn McCray was going to be
6 killed after that meeting; it was just a matter of when,
7 when they could locate him and when it would happen. The
8 evidence shows that beyond a reasonable doubt that
9 Paul Bergrin was a member of that conspiracy that led
10 directly to Kemo Deshawn McCray's murder.
11 Now, before we talk about the evidence, there's a
12 couple of Mr. Bergrin's theories that he seems to be arguing
13 in his opening and through cross-examination I want to
14 address, starting with number one, that Mr. Bergrin passed
15 along the name Kemo Deshawn McCray to Hakeem Curry because
16 that's what a lawyer is supposed to do, because he had an
17 obligation to check on the strength of the Government's case
18 so he could argue bail for William Baskerville. Right?
19 That's what he said.
20 Now, so it's clear, though, out of the other side
21 of his mouth, what he's telling you is that it's illogical
22 to kill Kemo; I would never be involved in that because Kemo
23 meant nothing to the case.
24 So within his own theories, there's direct
25 contradictions: He was so important I had to look into him;

1 he's so unimportant, why would I bother to kill him ?
2 But beyond that, let's just sort of tease this
3 theory out a little bit. What he wants you to believe is
4 that he was going to determine Kemo's credibility so he
5 could argue in a Federal Court to a Federal Judge that the
6 Government's case is lousy, right? And that would lead to
7 William Baskerville getting out of jail.
8 So how does he do this?
9 He goes to the biggest drug dealer in Essex County
10 to get info on Mr. McCray. Not to his own licensed
11 investigator. He doesn't ask the Government for his
12 criminal history, Kemo's criminal history like he did in the
13 Peoples case. I mean, was Hakeem Curry going to come into
14 court and testify and say -- before, again, before a Federal
15 Judge, hey, I'm a drug dealer, I know bad guys, so that when
16 I tell you you can't believe the Government's case and
17 Kemo's a bad guy, you got to believe me. I know these
18 things. So you should let my drug-dealing cousin William
19 Baskerville, out of jail, Judge.
20 The other and even more fantastic theory that
21 Mr. Bergrin has offered is that Anthony Young is not a
22 member of Curry's gang, asking questions that implied that
23 somehow, he was faking this.
24 Let's eliminate that issue right now.
25 You heard him testify. This is an individual who

1 has been out of jail since approximately the age of 14 a
2 grand total of four years, right? Total. You heard how he
3 spoke about the Baskerville's family, the intimate knowledge
4 of the family members, even the family members not involved
5 in drugs. Remember Mr. Bergrin asked him a question and he
6 said, oh, no, he's the preacher, he's not involved in any of
7 this stuff.
8 Now, that should have been more than enough just
9 to show the relationship. But we have pictures from his
10 cell, that Anthony Young to this day still has in his cell,
11 right, from Mr. Curry's wedding. He knew which Curry -- who
12 was Curry's mother when we went through the photos, his son,
13 his brother. We have the photograph that he still has of
14 his -- with the Baskervilles' brother-in-law. And the best
15 is that the All-Star game, remember when he said he went to
16 the All-Star game and Hakeem Curry got that all organized
17 and he got everybody together? There is an actual document
18 that you guys are going to have back there, 2276E, and it's
19 up on the screen now. Anthony Young's name on the top, and
20 literally, literally, in the -- one, two, three, four, five
21 or so lines down, it says "Currie Group."
22 What Anthony Young told you was that when he got
23 out of jail in 2003 after having been away for a number of
24 years, the gang had gotten much larger and he did not know
25 everybody. He told you who he knew, he told you who he

1 didn't know. It doesn't mean he's not a member of the
2 group.
3 Now, beyond that absurdity, let's talk about logic
4 here. What is the scenario that would cause Anthony Young
5 to come and lie to you about being a member of Hakeem
6 Curry's organization? Work through this with me, all right?
7 Anthony Young is a poser. He's not a real member
8 of the inside circle. He's not a part of the murder. So
9 this lifelong criminal who's not involved with the people or
10 the murder, who never told on anyone in his life, who did
11 his time each and every time and comes home for each of his
12 many, many convictions, decides one day he's going to go to
13 the F.B.I. to tell them about a murder, and not just any
14 murder, the murder of a Federal witness, the murder that no
15 one has been charged with yet. And, again, in Mr. Bergrin's
16 theory, not for his own safety, as Mr. Young told you it
17 was. For apparently no reason at all, he goes in and then
18 decides to point the finger at the wrong guy, again,
19 apparently with no motive. First he claims he's a lookout,
20 and although he's not, he finally admits to a murder, again,
21 that he did not commit.
22 He signs a plea agreement. The plea agreement,
23 which you will also have in evidence, the very last
24 paragraph says, requires mandatory life. The only exception
25 is if he cooperates, the Government writes him a letter if

he testifies truthfully, and then the Judge says, yes, I approve this letter, or I approve this motion and I will grant his -- a lower sentence.

So that requires him to testify truthfully. But, again, in Mr. Bergrin's scenario, that would be impossible if he didn't kill Mr. McCray.

So, hoping to fool both the Government and the Federal Judge so that the Government decides to write a letter on his behalf, then the Federal Judge finds his testimony worthy of a reduction in sentence, he eventually goes and testifies at William Baskerville's trial for the Government against William Baskerville, the family who he apparently worships from afar, for the grand benefit of getting 30 years in jail for a murder he did not commit, just so he could come back in court again here before you to testify against Mr. Bergrin, a guy Mr. Bergrin has argued he has had very little contact with in his life, just so he could see it -- so he could maybe get the Judge to see his way clear to lowering his sentence a little bit more for a murder he did not commit.

Now, how about we try a little reality instead? And let's talk about what Anthony Young told you.

William Baskerville's a lifelong friend. He gets arrested for selling drugs. What Mr. Young told you was that if he was only going to do a few years, the reality is,

1 nobody likes it, but that's the cost of doing business.
2 But Paul Bergrin tells him, No, no, no, this is
3 not the state, this is not a few years, he's facing life.
4 But if you kill Kemo Deshawn McCray, I'll get him out.
5 So Anthony Young decides to kill him, because he's
6 a member of the gang. He's one of the two possible
7 shooters. He accepts cash up front from the boss, Hakeem
8 Curry, and on the day Kemo McCray is located, Anthony Young
9 shoots him. He lays in wait, sneaks up on Kemo, shoots him
10 in the back of the head, and drives in the getaway car with
11 Rakim Baskerville.
12 As you learned, days after the murder, a number of
13 the Curry gang was arrested, right? That was the D.E.A.
14 case that you heard about? But Anthony Young wasn't one of
15 them. So he's out there, still selling drugs, doing his
16 thing. But about eight months later he gets into an
17 argument, he has an issue with two other guys who are out
18 there, Jamal Baskerville and Jamal McNeil. He feels
19 outnumbered and in danger. He as much as anybody knows the
20 danger of being on the wrong side of the Baskervilles.
21 So what does he do? He goes to the F.B.I. and
22 tries to outsmart the law enforcement officers.
23 Doesn't work out for him.
24 So then he finally admits to law enforcement that
25 he personally killed the witness, he pleads guilty -- excuse

1 Now, putting even that aside, what did the
2 investigation into Mr. McCray's murder tell you?
3 Well, you first heard from Detective Sabur, right?
4 He's a very experienced homicide detective here in Newark,
5 and he told you that at the scene, the actual identification
6 of the shooter, he had no leads, just a description, a black
7 male, braids, about five-nine. The getaway car was a gray
8 or silver Grand Am. He told you about the IBIS system, that
9 he sent the projectiles over to see if they would be
10 matched, and he did not hear anything about a match, so he
11 worked on the assumption there was no match.
12 Now, ultimately, again, you saw Sergeant Laterza
13 come in and say, yeah, they were run and they were in there
14 since 2004. There was no match. I ran it again, there's no
15 match. But obviously the detective didn't know at the time.
16 All he knew was, nobody told me. Sergeant Laterza said,
17 well, there was, and we have a whole list of people that
18 we've got to tell when there are matches. So while he
19 couldn't say there was no match, the detective was honest
20 and told you, nobody told me about a match.
21 He also told you that he did a canvass. Now, a
22 canvass is going around, asking various people questions,
23 right, did you see anything, what did you see, what
24 happened, and that he got provided no useful information
25 from the people in the area.

He also told you about Johnny Davis, that he was provided information from Agent Brokos to put together a photo array of Malik Lattimore, and it was shown to Johnny Davis, and there was not a positive ID. He couldn't make the arrest.

Now, Mr. Bergrin made a big deal of the word "resemble": Sabur didn't ask him what it means; he didn't clarify it.

Members of the jury, it's a common English word with a pretty clear meaning: Looks like. Resembles: Looks like.

To attack Detective Sabur on his unwillingness to go back and have Johnny Davis explain what the word "resembles" means to him and then to somehow attack his investigation based on that I submit to you is an argument without any merit at all.

And so it's clear, because there was a lot of back-and-forth on what Mr. Davis said, what did Detective Sabur tell you he said?

Quote: "His hair resemble and his face complexion resemble the same that I saw shoot and kill Kemo."

Also: "I believe shot ex-son Kemo, hair and complexion as the person how shot Kemo," and when he said "how," he told us he probably meant who shot him. But that's what it was, right?

1 Now, granted, if you stop at, "I believe shot
2 ex-son Kemo," that's probably a pretty good ID if you don't
3 read the whole thing. But as you know, he never saw his
4 face. The best he could do was what he did: He gave the
5 information as best he could under difficult situations.
6 Now, Mr. Bergrin was trying to tell you something
7 about the word "sure." Again, so it's clear, he was not
8 sure Malik Lattimore was the shooter. He was sure in his
9 mind the complexion and the hair was the same.
10 But Detective Sabur told you something that was
11 interesting: You don't push to get the answer you want in
12 law enforcement. As a police officer, you don't try to push
13 them into any specific information. It's good, fair police
14 work.
15 The police don't do that. But you know who does?
16 Mr. Bergrin's investigators.
17 Can we put up their pictures?
18 Do you have a copy of these?
19 Now, they interviewed Johnny Davis seven years
20 after the incident. They lied to Mr. Davis about who they
21 were, they lied to Mr. Davis about why they were talking to
22 him, and during that conversation seven years later, he is
23 suddenly more sure about this ID.
24 Do you think maybe he was manipulated a little
25 bit?

1 But here's my favorite thing that they did. They
2 tried to make it look like he read this statement, 7500 --
3 remember Government Exhibit 7500 -- read it so thoroughly
4 that he made corrections, right?
5 Now, that's just simply not true, and I'm going to
6 show you how you know that.
7 Remember when Mr. Bergrin made that big issue:
8 You read it carefully, sir, you're a Muslim, you try to do
9 the right thing and all those things, right? And you even
10 made corrections, and that shows how accurate you were,
11 right?
12 Now, can you put it up on the screen?
13 Thank you.
14 I didn't get it right away, right, because the
15 argument seems reasonable on its face.
16 Can you zoom in on the top of the second
17 paragraph?
18 Now, that's the correction he was talking about,
19 right, where he said the date, on -- underneath, it says
20 August 2nd, then it became March 2nd, 2004, right?
21 Now, that's what Mr. Bergrin would have you
22 believe indicates Johnny Davis read this so carefully that
23 he made this correction.
24 And then it dawned on me as I was looking at it:
25 It's impossible for it to have happened that way because

1 this is not a typewriter. If this was written out
2 completely prior to the mistake being found, the real date,
3 the March 6th, would have been off in the side somewhere.
4 There would not be space for it.
5 This correction was made as they were going along
6 -- August 2nd, March 2nd -- not crossed out later and moved
7 to the side. Right there. There is no other way that could
8 have happened. You don't randomly leave spaces for
9 potential mistakes as you're writing stuff and then
10 hopefully fill it in. That correction was made as the
11 woman, right, Mr. Davis told you the woman was writing it
12 out, that's how that was made, and then Mr. Davis was asked
13 to initial it afterwards.
14 He didn't catch that mistake when he was reading
15 it. It's impossible.
16 So, now, let's talk about Johnny Davis.
17 Now, putting aside what I submit to you under 7500
18 was clearly trying to slide one by you, all right, to make
19 you believe something that wasn't true.
20 Talk about Mr. Davis specifically. He was clearly
21 -- seems like a very nice man who went through a horrific
22 event, about as horrible as can be imagined. I mean, if you
23 think about it, he's walking down the street, he's talking
24 to his son, who's just trying to turn his life around,
25 they're having a conversation, it's the middle of the day,

1 and right there, in an instant, out of nowhere, he is shot
2 in the back of the head and collapses on the ground in the
3 middle of the street.
4 Now, what I submit to you, members of the jury,
5 and this will be for your determination, is that his memory
6 of that event, of that horrible event may not be perfect, he
7 might get mixed up a bit at times, and I leave it to you to
8 access his memory with respect to what happened at the
9 actual shooting. And which, again, in Mr. Davis's defense,
10 could not have lasted, what, 10 seconds? Bang, bang, bang,
11 bang. Mr. Davis said then he took three steps, one, two,
12 three turned around. At that time, Anthony Young, you know,
13 moving at a pretty good clip, he wasn't walking, back to the
14 car. And you can look at the photos. You see where the car
15 was. It was right by the mailbox. You can see where it was
16 in relation to where Mr. McCray's body was and the car.
17 What could he possibly have really seen of
18 Mr. Young? In the best case scenario, remember when I stood
19 over here, he saw, did I turn like this? No. Like this?
20 No. About like this. Right?
21 But so it's clear, listen, again, these are
22 situations that you're going to have to make determinations
23 as jurors, it does contradict what Anthony Young told you.
24 Anthony Young told you, no, I did not have braids. He did
25 tell you that he had his collar up, he had a fleece collar

1 up and he had his dark Yankee hat pulled down. Maybe it
2 looked like braids from that view. But one way or the
3 other, you have to make a determination on who's being
4 accurate.
5 And I submit to you, members of the jury, for
6 whatever reason it was, Mr. Davis is simply mistaken about
7 that fact.
8 And, you know, maybe sort of a side thing puts a
9 little light on it. The tape measure that we asked him
10 about? You're going to see --
11 Can you put the sketch up?
12 There was a tape measure, and I showed him the
13 tape measure that was recovered that day, and I said, Do you
14 recognize this?
15 He said, Yes, that is Kemo's.
16 I said, Are you sure?
17 He said, Absolutely, I'm sure. That is Kemo's.
18 He had it with him that day.
19 Now, if you look, and it's pretty hard -- you see
20 like a box, a little X toward the bottom middle there?
21 That's the -- and it's contains in the pathway, right, the
22 walkway there? That's about where Johnny Davis was when he
23 told you where he went. Right? He was walking down the
24 path, he kept moving in that direction, kept moving in that
25 direction, takes three steps and then turned around.

1 Now, is it possible that that tape measure was
2 Kemo's? It's possible. I mean, maybe from the force of the
3 impact, it bounced and went down there. I know that it was
4 a windy day, but I don't think -- you can see that tape
5 measure. It seems unlikely that it was blown anywhere. It
6 seems unlikely it was a random tape measure that happened to
7 be on South Orange Avenue.
8 What's likely, again, from what the evidence tells
9 you is that whether it was Mr. Kemo McCray's or Johnny
10 Davis's, Johnny Davis had it on him that day and it fell
11 about the area where he was. But members of the jury,
12 again, he was very sure: No, it was Kemo's.
13 I submit to you, members of the jury, he went
14 through a very traumatic event, and simply, there were a few
15 things he got inaccurate. I'm by no means saying he
16 intentionally lied to you. I submit to you that he made
17 exactly every possible effort to be as honest and as
18 forthright as he possibly could with you.
19 Now, what did he tell us besides the day of the
20 murder?
21 Now, Mr. Bergrin tried to get him to speak badly
22 to the F.B.I. and the actions at his house. Mr. Davis said,
23 No. I was upset, but they didn't do anything wrong.
24 He was shown pictures of Malik Lattimore, and to
25 sort of put that thing to rest, he was asked, What is your

1 -- what was -- how do you define your quality, the quality
2 of your ID on that day? Right? And what he did he tell
3 you.
4 And I quote. It's on page 1449.
5 Line 11 starts: "No, I did not. I didn't,
6 because I couldn't. I could barely remember the man's face,
7 so when they showed me the pictures, all I could do was pick
8 out the man closest that I thought was the man that shot
9 him."
10 And then down to line 19: "That was sure that I
11 know he shot him, but if you're asking me could I pick him
12 out on a scale of one to 10, that's like picking him out of
13 the clear blue sky."
14 Now, "clear blue sky" is clearly not one out of
15 10, but I think Mr. Davis was making his point pretty clear
16 that he did not know even at the time. That's Mr. Davis's
17 own assessment of the individual who the officer said, Look
18 here, maybe one of these guys is the shooter. Do you think
19 he took that seriously, the shooter of his own son? Of
20 course. And that's his own assessment.
21 So whatever Mr. Bergrin tells you, just keep that
22 in the back of your mind. Johnny Davis himself told you,
23 it's like picking a man out of the clear blue sky.
24 And I guess this is as good a time as any to
25 discuss the accusations, another series of accusations made

1 by Mr. Bergrin without any evidence. Sometimes he implied
2 it, sometimes he came right out and said it, that the
3 Government is making people say things. All right? He
4 wants you to believe that I told the witnesses what to say,
5 Mr. Gay told them what to say, Agent Brokos, Agent Cline,
6 some combination of us, that we got these guys all in a room
7 and said this is what you're going to say, this is what you
8 got to do, make sure you say this, make sure you don't say
9 that.
10 We apparently worked with these people from all
11 over about all different crimes just to get Mr. Bergrin, to
12 get them to lie. Although apparently we didn't do a great
13 job at it, because we would have them testify one thing and
14 it wasn't a mistake if they remembered something a little
15 differently, it was us telling them, say this and then say
16 that; we couldn't get our own story straight.
17 Now, everyone who took the stand that was asked
18 denied it, they said it wasn't true. So there is literally
19 zero evidence to the contrary. The only thing you have is
20 Mr. Bergrin's baseless accusations.
21 And again, since we're on Johnny Davis,
22 specifically Mr. Davis, who very clearly said something
23 different, the hair, than Anthony Young said. He was not
24 made to say, oh, I made a mistake; oh, it could have been
25 the collar of the fleece zipped up; it could have been the

1 hat pulled down. He testified to his best memory. And when
2 he was asked, Did anybody tell you anything, anybody make
3 you say anything, what did he say? No. And I commend you
4 for that.
5 But in case you still have some concerns, one of
6 the things the Judge is going to tell you about in the
7 series of charges is called under the topic of witness
8 meetings with the Government. And specifically, there's a
9 couple of lines I'm going to read to you, "that no adverse
10 inference should be drawn from that conduct," meaning the
11 meetings; that, quote, "they might have been derelict in the
12 performance of their duties if they had not questioned the
13 witnesses as the investigation progressed and during their
14 preparation for this trial. Indeed, it would be negligent
15 on the part of any lawyer not to interview or attempt to
16 interview a witness whom he or she called to testify."
17 That's not coming from me. That's not coming from
18 the witnesses. That's the law.
19 Now, let's get back to the evidence for a second.
20 Shawn Brokos, Agent Brokos was the F.B.I. agent
21 who was leading the William Baskerville investigation,
22 right? She, with Kemo, as long as he was able to testify
23 and the recordings, she believed she had a strong case,
24 submitted the complaint, had it signed. She explained to
25 you the enterprise theory of the investigation, right? She

1 said you keep working up the chain. She started with these
2 gang members, again, so the record is clear, were unrelated
3 to Mr. Bergrin, the Crips, who was supplying them, got to
4 this guy, got to that guy, and eventually to William
5 Baskerville. And then when she went beyond William
6 Baskerville, or tried to go beyond William Baskerville, she
7 ran into the D.E.A. investigation that was coming from the
8 other side, right? George Snowden came in and he told you
9 about Hakeem Curry. So they were working at it from that
10 side, and the F.B.I. was coming from the other side.
11 So what did Agent Brokos do? She packed up the
12 investigation, William Baskerville is where it's going to
13 end, and he was charged.
14 Now, again, so we're being -- we're covering
15 everything that needs to be covered here, sometime after
16 William Baskerville's arrest, Kemo Deshawn McCray -- or the
17 F.B.I. determined that he had lied to them, right, and
18 therefore he was taken out and no more -- not used any
19 longer operationally.
20 But during the drug investigation, when it was
21 completed on November 25th, 2003, William Baskerville was
22 arrested. Remember he went through the story. He was
23 arrested at home, brought back to the F.B.I., and he had a
24 discussion with Agent Brokos and was considering -- it was
25 an open issue whether he would cooperate. He spoke to

1 Mr. Bergrin on the phone. Agent Brokos left the room. Now,
2 so it's clear, we have no evidence of what was said during
3 that conversation. But what we do know is after that
4 conversation, Mr. Baskerville made it clear, there will be
5 no cooperation.
6 Now, again, we spoke about Kemo McCray no longer
7 being used operationally, but they still had to protect him.
8 Because you make that mistake, Agent Brokos said, doesn't
9 mean they get cut loose and killed. So he didn't want to go
10 into the witness security program, move his life. What did
11 he do? He moved around from location to location to
12 location. And it worked for a while. He would not leave
13 the area. To him, being far away was East Orange, out of
14 the Newark area.
15 Unfortunately and tragically, a few months after
16 Will Baskerville's arrest, on March 2nd, Mr. McCray was
17 murdered. The F.B.I. tried to assist Newark police as best
18 they could, providing them information as they went along,
19 and you heard where the investigation went, and I'm not
20 going to go into the details. I'm confident that you
21 remember.
22 But the next thing we're going to talk about is
23 when Anthony Young walks in the door.
24 Now, during the course of the investigations,
25 eight, nine months after he shot Kemo McCray, Anthony Young

is having problems on the streets himself. He has a gun possession case that's pending in Essex County, he's got the problems brewing with Jamal and Jamal, Baskerville and McNeil. He gets a lawyer, Paul Feinberg, to resolve that bench warrant. He contemplates going to the F.B.I. He broaches that with Mr. Feinberg. And --

Let's put that clip up.

Now, so it's clear, we're going to talk about this. Anthony Young never says Paul Feinberg told me to lie. Right?

There's the question:

"Did he tell you to lie?

"No, he didn't tell me to lie, he just said don't implicate myself or nothing."

So a lot of this is much ado about nothing, but just very briefly, if we could talk about Mr. Feinberg for a second, by no means am I saying he lied to you, but I do think he exaggerated. I submit to you he did exaggerate a bit for his knowledge in this case, all right? He exaggerated first the amount of time Anthony Young was facing. Remember we went through that? Five years for this, 10 years for this, 18 months for this, then the double term. He was up to 20 years, something like that. And at the end when I asked him questions, what was he really going to get, I said to him, five years? And he said, Well, with

his record, about three. So I guess take that for what it's worth, why we had to go through that.

And what did Anthony Young tell you? He was a little more optimistic. When asked the exact same question, he said, no, in the state, I'd probably get two, three years.

So they're really not that off.

But, I guess more importantly, I submit to you he exaggerated his memory of the discussions he had with Anthony Young.

I asked him, did you have a specific memory of this conversation, or is this a situation where you said, listen, I'm a lawyer, I give the same advice in this situation to everybody and I know I must have said that to him?

He said, no, no, no, I have a specific memory of telling Anthony Young. The guy he represented for like a month, two months, who didn't pay him enough money for him to continue to represent him.

Now, let's compare that to what else he said he did not remember.

He didn't remember that specific conversation he had such detail about whether it was in person or on the phone, and he didn't remember much about the case, despite having read the file, previously testified about it, and

1 taken notes prior to coming in here. He didn't remember the
2 date he stopped being the lawyer, the facts of the case,
3 where Anthony Young was stopped, whether he was walking or
4 driving, whether anybody was in the car with him, he didn't
5 even remember the appropriate charge. Remember when I
6 showed him the indictment, I was like, well, that one you're
7 talking about, it's not there.
8 He said Oh, yeah, it's not.
9 But ultimately what matters here is that Paul
10 Feinberg told you he didn't explain the nuances of the Fifth
11 Amendment to Anthony Young. He used the word "implicate."
12 And what did Anthony Young tell you? Exactly what
13 you saw on the screen. Anthony Young followed his advice,
14 actually, pretty closely. Told the truth about Paul
15 Bergrin, told the truth about Hakeem Curry, told the truth
16 about Rakim Baskerville. He told us the name, he gave us
17 the advice, he told us we had to kill him or Will wasn't
18 coming home. Hakeem Curry, right from the beginning, he was
19 the lookout, he paid the money. Rakim Baskerville, yeah,
20 right from the beginning, he was the driver, he was the
21 getaway driver. What he did was he switched his parts with
22 Jamal McNeil. He made himself a lookout, and McNeil, he was
23 the shooter. Everything else that's going on is consistent.
24 Now, he did so by lying, and there's no getting
25 around that. But for Paul Bergrin to argue to you that

1 Anthony Young must be lying because of something that
2 Mr. Feinberg said is, again, just simply without any merit
3 whatsoever.
4 And to sort of wrap this up, let's talk about
5 Mr. Bergrin's other witness with respect to the Kemo murder,
6 Rashidah Tarver.
7 Now, she knew Anthony Young was a drug dealer,
8 and, in fact, most of her testimony really wasn't in any
9 significant conflict with what Anthony Young told you, all
10 right? He carried guns, he put cars in her name, the
11 relationship had deteriorated, they fought a lot. He asked
12 her to go into witsec. She said no. The burning down the
13 house, now, Anthony Young said it was his other girlfriend
14 who did it. She said, not that I know of, it was the other
15 girlfriend; she thinks it was Anthony Young. He gave me
16 multiple versions of the shooting. That's what Anthony
17 Young told you, too.
18 The only real significant difference between her
19 testimony and Anthony Young's testimony is when it relates
20 to the Baskervilles. The family, she said she is best
21 friends with Jamal Baskerville's wife and grew up in the --
22 I forget what she said -- in the neighborhood, not across
23 the street, however she described it.
24 So the differences relating to the Baskervilles.
25 She has no idea what Rakim Baskerville does for a living.

No. Doing life in jail for drugs. No idea. She had no idea what Will Baskerville did for a living. Again, doing life in prison for drugs. For Hakeem Curry, quote, I knew nothing of him but his name, although he is the Baskervilles' cousin and she went to the wedding.

That murder, remember? The girlfriend getting shot accidentally? You know anything about Jamal Baskerville being involved with that?

No.

Rakim Baskerville being involved when the gun was melted, know anything about Rakim?

Nope. I know Anthony Young went. I took him there multiple times.

But nothing involving the Baskervilles.

And as Agent Brokos told you, that's understandable. She told Agent Brokos that she did not want to testify against the Baskervilles because of her relationship with them.

Now, with respect to the melting of the gun, now, despite what Ms. Tarver told you, we should note that besides Anthony Young telling you that they went there to melt the gun. If you go back and think about Devon Jones's testimony and the stipulation regarding Ben Hohn, they both say it was Anthony Young and another guy, who through the evidence you could see is Rakim Baskerville, that they

1 melted the gun, that both of them came in together, and even
2 though, as you heard, Ben Hohn thinks he is Jesus Christ,
3 that, he remembers. Now, he believes it to be a number of
4 months after, but what happened is described pretty much the
5 same by all people.
6 So whether or not Ms. Tarver wants to say so, we
7 know Anthony Young and Rakim Baskerville came to Ben's shop
8 together and melted the gun.
9 Now, whether you want to believe that she was
10 protecting the Baskervilles or not, what you do know is
11 she's not protecting Paul Bergrin.
12 Want to put that clip up?
13 And this is Mr. Bergrin, remember:
14 "Did he ever under any circumstance mention my
15 name in reference to being involved in the Kemo case at all?
16 "Yes.
17 "Did he mention my name, Paul Bergrin?
18 "He said Paul. He didn't give me a last name."
19 Now, from his witness' own mouth, Ms. Tarver made
20 two things very clear: Anthony Young said Paul was
21 involved, and she knew when Anthony Young said Paul, he
22 meant Paul Bergrin. So...
23 Now, so it's clear, again, this is before Anthony
24 Young goes to the F.B.I. He's not looking for a deal on a
25 gun case from Ms. Tarver; he's just telling her what

1 happened. He's not looking to use Paul Bergrin's name to
2 get the attention of Ms. Tarver, like Mr. Bergrin would have
3 you believe he did with law enforcement -- which I have to
4 address just for a second.
5 I mean, Mr. Bergrin wants you to believe that
6 Anthony Young has information on the murder of a Federal
7 witness, but when he calls the F.B.I. in order to get their
8 attention, as if somehow or another, hey, I got information
9 about the Federal witness of yours that was murdered is
10 insufficient, I'm going to sweeten the pot, is with a local
11 attorney that Agent Gale, remember when he testified, told
12 you before he mentioned his name had meant nothing to him,
13 that somehow or another, that's why Anthony Young mentioned
14 Paul Bergrin.
15 Well, now we know again through Mr. Bergrin's own
16 witness that Anthony Young was telling people Paul Bergrin
17 was involved before he even met with someone in law
18 enforcement.
19 And from that very first call, members of the
20 jury, so it's clear, Anthony Young always said Paul Bergrin
21 was involved, never changes. His, Anthony Young's, what he
22 did changes, but never with Paul Bergrin, from the
23 conversations with Ms. Tarver through the very first call,
24 the one that even Agent Gale characterized as a pretty short
25 call, through his time with Agent Brokos, through his

1 testimony in William Baskerville, through his testimony
2 here, never changes. Paul Bergrin is involved right from
3 the beginning.
4 Now, again, at this point, it's probably important
5 to note that Anthony Young goes to the F.B.I., no one is
6 charged. The F.B.I. didn't come to him. The lifelong
7 criminal approaches them, not just local police, remember,
8 the Federal Government, he approaches, and he told you how
9 the drug dealers in the world view the Feds differently from
10 the local police, and literally goes right into their midst.
11 Why? A man who has a pending charge that a
12 super-experienced defense lawyer says he's going to get five
13 years, the guy who since he was 14 has been out of jail a
14 grand total of four years and never once cooperated against
15 anyone? Or is it more likely it's just simply exactly what
16 he told you: I feared for my life. I thought I was going
17 to end up like Kemo. I thought I was going to end up dead
18 on the streets because I had crossed the Baskervilles.
19 Now, we all know what Anthony Young said, right?
20 There's three versions. He lied at first and switched roles
21 with Mr. McNeil, said I was the lookout, Mr. McNeil was the
22 shooter. Then when he realized he was involved in the
23 conspiracy, remember when he got the new lawyer we'll get
24 to, he said, oh, then, in that case, I don't know anything.
25 And then the third version, he came in and said, okay,

1 listen, I'll level with you guys, I'm the one who did it,
2 McNeil was just a lookout.
3 Now, Mr. Bergrin wants you to believe that this is
4 a one-witness case. That's what he's been harping on. But
5 the corroboration of Anthony Young -- of the information
6 provided by Anthony Young is independent corroboration, and
7 we're going to go through this, independent facts that show
8 Anthony Young was being straight with you.
9 And the corroboration of these facts, members of
10 the jury, keep in mind, some of them are important just
11 because only an insider would know this information, that it
12 wasn't in the newspaper, unless you were a member of law
13 enforcement, only someone who was there, only someone who
14 pulled the trigger would actually know these facts.
15 Okay. So let's go through what Anthony Young said
16 and how we know it's true, all right?
17 Anthony Young tells you that the first day when
18 Will Baskerville's arrested, they think it's Ray-Ray. If
19 they can't find Ray-Ray, Horatio Joines, if he's out there,
20 why wasn't he arrested? He deals with William Baskerville
21 every day. He should be arrested. If not, he might be the
22 cooperator. He might be ratting out Ray -- excuse me --
23 ratting out Will. All right?
24 What do you know?
25 Well, from those recordings in the drug

1 investigation, Anthony Young is telling the truth. Horatio
2 Joines is identified during the course of the William
3 Baskerville drug investigation as Will Baskerville's
4 right-hand man dealing the drugs.
5 So Anthony Young corroborated there.
6 Anthony Young tells us that there is contact
7 between Paul Bergrin and Hakeem Curry the day of the arrest,
8 that he provided information about the complaint that was
9 lodged against William Baskerville, multiple dates, multiple
10 amounts, a number of different transactions.
11 Well, what do we know?
12 There's the complaint. Anthony Young was right:
13 Multiple sales, multiple dates, various amounts.
14 Now, do you remember Mr. Bergrin tried to slide
15 one by Agent Cline when he took the stand? He was just a
16 witness to put in the phone records to back up that there
17 was actually phone calls that day, right, we were going to
18 put in the phone records? What did he say? Oh, that
19 couldn't be me, I was in court, right, at the time?
20 Turns out, as you learned, it wasn't. It was
21 Mr. Bergrin on the phone. He had not been to court yet.
22 Now, do you think Mr. Bergrin knew that was him on
23 the phone? Do you think he tried to slide one by you there?
24 Or do you think he genuinely believed, no, that's probably
25 not me on the phone?

1 Why, members of the jury? Why would he go to such
2 lengths?
3 Well, because, again, when Anthony Young is
4 telling the truth, Paul Bergrin's guilty.
5 Now, Anthony Young wants to tell us about a second
6 phone call where Paul Bergrin mispronounces the name Kamo
7 for Kemo. He passes that along, that information along to
8 law enforcement. What does law enforcement confirm? Well,
9 obviously they know Kemo is the cooperator. So when Anthony
10 Young tells them that, that's also corroborated. He's
11 right.
12 And beyond that, Thomas Moran also corroborates
13 Anthony Young through his testimony. Now, although
14 certainly Agent Brokos didn't know it at the time or anybody
15 involved in the investigation because it was only much later
16 that we learned this information, but think about what
17 Mr. Moran told you. Paul Bergrin told him that he passed
18 the name of the witness to William Baskerville's people, and
19 Mr. Moran told you what "people" meant in the parlance of
20 Mr. Bergrin. And then you also know in his own words,
21 again, going back to those newspaper articles, two separate
22 articles, that Mr. Bergrin himself said, yes, I passed that
23 along.
24 So was Anthony Young telling the truth when he
25 said I was in the car and he passed along the name to Hakeem

1 Curry?

2 Yes.

3 And what do we also know about these calls?

4 They match -- we matched the phone records to the

5 day of the arrest and what Anthony Young says. Let's look

6 at these calls.

7 Two calls, right -- there's a total of three

8 calls, one of them before the court appearance, two of them

9 after the court appearance, just as Anthony Young told you.

10 One of them we got the information before he went to court,

11 one, he wasn't sure, I think he said a couple hours later.

12 Anthony Young says that there was contact between

13 Paul Bergrin and Hakeem Curry the day of the detention

14 hearing, that there was a meeting, all right, days later

15 between Paul and the Curry group, with the gang.

16 Now, originally, Agent Brokos told you that she

17 believed what Mr. Young was saying was, no, it was that same

18 night. But what Mr. Young told you was that he didn't know

19 the exact date, and he didn't even know the exact date of

20 the actual arrest. I mean, the calendar in his line of

21 business isn't that important. What he did remember,

22 though, was after Thanksgiving. And it wasn't on the

23 weekend.

24 Now, what event of significance happens after

25 Thanksgiving, after the weekend, in the world of William

1 Baskerville? A detention hearing on December 4th, 2003, the
2 first time that Mr. Bergrin and William Baskerville are told
3 he's facing life. You will have the transcripts to review
4 in the back. And you will see where Mr. Gay says on the
5 record that's what he's facing.
6 What does Anthony Young tell you? Well, that Paul
7 Bergrin came to us one night, again, after the weekend,
8 after Thanksgiving, and told us, Will Baskerville is facing
9 life. That's the first time we heard about it. But you
10 know what else? It's the first time he heard about it, too.
11 Read the transcripts.
12 And on that day, were there phone calls between
13 Mr. Bergrin and Hakeem Curry?
14 Yeah.
15 Three calls.
16 Can you put that up?
17 We don't have this one in as nice a chart, but if
18 you look at the records there. You can see on December 4th
19 three calls, three connections from -- or between, I should
20 say, two phones, Hakeem Curry's and Paul Bergrin's phone the
21 day of the detention hearing, when Mr. Baskerville was told,
22 you are not getting out of jail, no bail for you, and you
23 are facing life.
24 You can look at the dates. You can match the date
25 on there with the front page of the transcript. Same date.

1 What else does Anthony Young tell you?
2 Well, at the meeting, he shows up in a
3 dark-colored Mercedes-Benz.
4 Well, we don't have photographs of that day, but
5 we do have a photograph of Paul Bergrin's Mercedes-Benz that
6 was grabbed by or captured by an E-ZPass I think it was two
7 months prior to the meeting, maybe even three months prior
8 to the meeting.
9 Now, at that meeting, the impact of Paul Bergrin's
10 words is what's critical. Anthony Young tells you before he
11 arrived they didn't know much about the Federal system.
12 They knew you do 85 percent of your time, they knew the
13 Federal Government doesn't usually arrest individuals, it's
14 larger groups, but he didn't know the exact laws. He knew
15 they faced more time, but how much, he did not know.
16 And he also told you that that made a big
17 difference. Again, no one was going to kill Kemo McCray if
18 Will Baskerville was doing five years, 10 years. It wasn't
19 going to happen.
20 He's not sure what will happen with Feds, but they
21 know who the informant is. They haven't decided yet what to
22 do about it. You know why? Because they have not heard
23 from their counsel yet, from their trusted advisor. So when
24 he tells them, again, if Kemo testify against Will, Will was
25 never coming home. Don't let Mr. Kemo testify against Will.

1 And then making the promises of success: If he don't
2 testify, he will make sure he gets Will out of jail. If no
3 Kemo, no case.
4 And then after the short conversation between just
5 Mr. Bergrin and Curry off to the side, he looked back at the
6 group and said, Don't forget what I told you, remember what
7 I told you, made his hand motion: No Kemo, no case.
8 And with that legal analysis, with that advice
9 from Curry's confidant, from the group's house counsel,
10 again, the die was cast: Kemo was to be killed.
11 Now, again, if you believe Mr. Bergrin said those
12 things at the meeting, he is guilty of all the charges
13 relating to the Kemo murder.
14 Let's talk about some things after the meeting.
15 Right?
16 They discussed how they were going to find Kemo.
17 He explained why he already hadn't done so, the group hadn't
18 done so, because they were waiting to sort of figure out
19 what the plan of attack was and how they were going to go
20 about it. And what efforts, how far they were willing to go
21 to get William Baskerville out of jail.
22 It was decided Rakim Baskerville will be the
23 getaway driver because he's apparently a great driver, and
24 that the shooter would be Anthony Young and Jamal -- or
25 Jamal McNeil, not Curry, and not Jamal Baskerville.

1 There was a long search for Kemo. I'm not going
2 to go into the details of the search. But suffice to say
3 that they got frustrated, they thought the Feds had him in
4 the Witness Protection Program. He said the group kept
5 looking for him.
6 Now, how was that corroborated? Agent Brokos told
7 you that she was getting information from three separate
8 sources that people -- that the Baskerville people were
9 looking for Kemo because he's a snitch. During that period
10 of time from November 25th through March 2nd, when Kemo was
11 killed, including one source that said they were looking for
12 him at Bradley Court. As Anthony Young told you, that's one
13 of the places he was looking, or the group was looking.
14 Now, the day of the shooting, what does he tell
15 you?
16 Well, he tells you that he sees Mr. McCray at the
17 construction site, also corroborated by Johnny Davis.
18 That's where he was. And that he had a mask on, right?
19 Corroborated by Johnny Davis, the photographs, the medical
20 examiner's words, all of that stuff. Kemo had the mask.
21 Remember the mask was broken and laying by his body?
22 That he watched him walk down 18th Street, up
23 South Orange Avenue, just as Johnny Davis told you. That he
24 walked back, and when they reached 19th Avenue, he jumped
25 out and he struck. Again, as Johnny Davis told you.

He told you there were three cars involved, that two of them bookended the middle car, the rental car with no plates, right? He told you there were no plates. How would he know there were no plates unless he was there? And how was it corroborated? Well, because all the witnesses who were there said, yeah, there was no license plate, we couldn't see a license plate.

So we know that's true.

We have the lookouts -- excuse me. The other thing about Kemo bringing stuff out to the dumpster. Mr. Davis says the same thing, that he saw him a couple of times.

With respect to the actual shooting, he said he shot him with a nine millimeter. What did you learn from law enforcement? Yes, nine millimeter.

Said it was one gun. One guy, one gun. What did you learn from law enforcement? Also, one guy, one gun. Detective Alarcon told you that, and Mr. Gozsa, the investigator, right, from the crime scene, they told you, three or four shots, just as Anthony Young said.

The dust mask, just as Anthony Young said.

The car, silver Grand Am, although, again, Grand Prix became Grand Am, he wasn't sure initially, or he says he was. Agent Brokos says no, I believe he said Grand Prix. Grand Prix, Grand Am, silver car, right from the beginning,

1 exactly how it was said at the crime scene.
2 And how about this one? How many people know
3 this? Walking down the street with a cigarette in his hand.
4 You saw those photographs: Cigarette in his hand
5 while he's laying there on the ground.
6 Where are you getting that information from?
7 Anthony Young said Kemo's body was face down.
8 Ms. Barbito came in here, the investigator from the crime
9 scene people, the Medical Examiner's Office. She told you
10 that he was prone. Different terminology, but you'll be
11 able to see the photos. Is he looking like this, or is he
12 on his back?
13 And then he told you something that only the
14 shooter would know: That he shot him on his way down, like
15 this. Right?
16 Now, how do you know that's actually true? It's
17 very simple. What did they tell you they found when they
18 rolled the body over?
19 You don't have to put this up.
20 You guys -- you will have the photos in the back
21 to review. But what is found by Ms. Barbito and later
22 confirmed by the crime scene guys is that there are
23 projectiles under the body.
24 Now, how do the bullet fragments get under the
25 body unless it is falling -- I'm going to hurt myself --

1 falling, and shot as he is going down, with his body
2 covering the projectiles?
3 Who could possibly know that but the actual
4 shooter?
5 You will be able to look at the pictures. You can
6 look at also the pictures of Anthony Young when he says
7 partial braids. He was right. The photos don't lie.
8 Anthony Young says it was cold and he had on a
9 fleece. Mr. Bergrin offered an exhibit saying what the
10 actual temperature was.
11 Members of the jury, whatever the temperature was,
12 the temperature was. People were wearing jackets that day,
13 all right?
14 Here's the photo. Look at the guys in the front.
15 Are they wearing jackets, are they not wearing jackets?
16 There's one guy in the back who's not, the other guys are.
17 He didn't say he was wearing a parka. Mr. Bergrin
18 offers this evidence that somehow, Anthony Young was lying.
19 He was wearing a fleece.
20 What are these guys wearing?
21 He said I wore a fleece, the temperature was cold
22 enough that it didn't look weird that I was wearing a fleece
23 so I was able to blend in. Then I just zipped it up, pulled
24 down my hat and went after him.
25 You don't have to look at any temperature. Look

1 at these guys. Does it look like they're out of place? Is
2 anybody staring at them, like what in the world are you
3 putting your jacket on for? Why do you have a jacket?
4 Anthony Young wasn't gauging what the temperature
5 was. All he was saying to you was, he didn't stand out. I
6 had a fleece on. It didn't look weird that I was standing
7 there with a fleece.
8 Mr. Bergrin can make whatever argument he wants
9 about the temperature, but that photograph ends what the
10 reality was that day.
11 Now, if you do want to look at the photos, again,
12 we're not going to put them up, but the ones I would direct
13 you to are 2319H, 2319K, and 2319F, and what that's going to
14 show is how the body was laying, when he rolled over where
15 the two fragments were underneath, and when the sheets were
16 taken off, again, with the fragments under the body.
17 He also told you -- Anthony Young told you there
18 was a gun in the trap, right, that's where he had it. In
19 Rakim's van, we had this hidden trap, and that's where we
20 had the gun with Curry brought it over.
21 Now, in a completely unrelated investigation, the
22 D.E.A. investigation of Hakeem Curry, they recovered that
23 van. Did you see those pictures of the trap, exactly where
24 Anthony Young told you? Of course they had to pull it apart
25 because they didn't know the code, but the exact location in

1 the exact vehicle, that's where the trap was.

2 Again, Anthony Young being corroborated by things

3 of significance: Where the gun is; how he was shot; what

4 Kemo was wearing, where his body was. Not a, Oh, you said

5 this word a little differently five years ago than you said

6 it today. These were things that directly impact on the

7 shooting.

8 The dumpster that he threw the melted gun, the

9 remnants of the melted gun in the dumpster. Well, what did

10 you hear? Turns out across the street at the IYO at that

11 time there was construction, and there was a dumpster, and

12 you saw those photos, right, Ben's shop over here, IYO

13 across the street, and that's where the dumpster was. So,

14 again, literally as Anthony Young told you, independently

15 corroborated.

16 It was a left-handed shooter. Anthony Young says

17 that's how he shoots. Grabbed him with this hand, shot him

18 like this. What did the medical examiner do when he acted

19 it out, right, when Mr. Sanders stood up here and acted it

20 out? Yes, I can't tell you with the degree of medical

21 certainty because you never know how people's heads are and

22 how their hands are, but yes, that is consistent with what

23 you are seeing, these facts as Mr. Gay laid them out.

24 All of that corroborates Anthony Young, the same

25 thing -- some of the things are things that no one else but

1 the shooter could have known. Some of the things are only
2 thing that law enforcement could have known.
3 Now, if we just hop back for a second to what
4 Agent Brokos told you, the investigative steps she was
5 taking prior to Anthony Young admitting that he was the
6 shooter, right, and he told you that -- or she told you,
7 excuse me, that based on information she was receiving, she
8 wasn't sure if Anthony Young was being straight with her
9 that he was just a lookout, so she asked Hassan Miller,
10 another cooperator, to record Anthony Young, to have a
11 conversation with him. Now, you can listen to the
12 recordings. It's in evidence. Mr. Bergrin made a big deal
13 out of the, keep them in amazement, and all that sort of
14 stuff. Agent Brokos told you it was really inconclusive
15 whether or not he was the shooter.
16 But one of the clips Mr. Bergrin didn't play for
17 you, if we can put up, is something Anthony Young said.
18 "Paul going to jail too if it come down to it."
19 Miller says "Yeah."
20 "Young: Paul told us the names, Paul told us if
21 he die."
22 That's in the recording. You're welcome to listen
23 to that.
24 Again, consistent with respect to Mr. Bergrin's
25 involvement in the homicide right from the beginning,

1 throughout, when he's even lying about his own involvement,
2 that's what he's telling about Mr. Bergrin -- not he's
3 telling -- that's what he's telling the guy that's recording
4 it.
5 Now, just so sort of wrap up the Anthony Young and
6 ultimately how he came clean and took responsibility for
7 being a shooter, what he tells you is that he didn't -- he
8 got his new lawyer, Gerry Fusella, on March 1st, 2006 or
9 there around, right, you saw the proffer agreement with the
10 lawyer's name and the date, and Mr. Fusella explained to him
11 that the lookout is part of the conspiracy. If you're
12 contributing to this conspiracy in any way, making it go,
13 making it happen, you're responsible, you're in.
14 So imagine, picture this for a moment. Anthony
15 Young thinks he's got this whole scheme going, that he's
16 been lying to law enforcement, how he's going to get around
17 this whole thing, and then suddenly his lawyer says, even
18 your lie makes you responsible.
19 So what does he do?
20 That when he comes in and says, Oh, then in that
21 case, I don't know anything. I just heard it, I wasn't
22 there, I don't know any of it.
23 He told you then he was sent back and then
24 eventually had his conversation with the -- with his new
25 lawyer, who told him, Listen, you're either in or you're out

1 and you've got to be truthful. And then when he came back,
2 he has told the version consistent with the other stuff
3 about his responsibility since that date.
4 Now, Mr. Bergrin questioned Anthony Young about,
5 Oh, you knew about the conspiracy, you didn't use the word
6 "conspiracy" here.
7 I mean, again, just to sort of put that argument
8 to rest, if Mr. Young really understood the laws of
9 conspiracy as Mr. Bergrin would have you believe, would he
10 seriously have made himself a lookout? I mean, by
11 definition, he is making himself part of the conspiracy.
12 So, I mean, the evidence, independent of Anthony Young
13 telling you I don't remember it, the logic of it is
14 unassailable. If he knew about it, he would not have said,
15 I'm part of it. He didn't think the conspiracy laws would
16 have covered a lookout. The lawyer told him he was wrong.
17 Mr. Bergrin went after Anthony Young in a lot of
18 ways, with the accusatory tone, the moral indignation. You
19 know, none of it, I submit to you, means anything. Saw it
20 again and again. Anthony Young was consistent through
21 hundreds and hundreds of pages of transcript.
22 Remember when that huge binder came out, he put it
23 right there, a huge binder. And you must have thought to
24 yourself, well, here it comes, there are going to be big
25 points.

1 What were those points? Right out of the box.
2 The degree of your friendship with Hassan Miller in the
3 jail, the guy who was recording him, right? You said this,
4 I said this.
5 Well, no, that's not what I said.
6 And as it turned out, if you remember, Anthony
7 Young was right, it was exactly consistent with what he had
8 said the whole time. You can go back and check.
9 That's when Mr. Bergrin was trying to read only
10 part of the transcript, right, and referring to certain
11 parts without referring to the whole thing in context, to
12 try to make you believe Anthony Young was not being straight
13 with you.
14 That's the only reason. It's not as if
15 Mr. Bergrin can't read.
16 Now, -- well, and I mean, again, listen, that was
17 not an uncommon occurrence. There was a good amount of
18 witnesses that went through that exact process, and what I
19 submit to you is that you should keep that in mind when
20 Mr. Bergrin stands up and makes his argument about why this
21 witness should be believed or this witness should not be
22 believed because of some contradiction in their testimony
23 that I'm going to tell you about. Give that argument the
24 value it deserves.
25 THE COURT: Mr. Minish, let me know when it would

be a good time to take the morning break.

MR. MINISH: This is fine, Judge.

THE COURT: Are you sure?

MR. MINISH: Yes.

THE COURT: Okay. Ladies and gentlemen, we'll take a short recess.

THE COURT CLERK: All rise.

(The jury exits)

(Recess taken)

THE COURT CLERK: All rise.

(The jury enters)

THE COURT CLERK: You can be seated.

Remain seated.

THE COURT: Okay. Mr. Minish, continue.

MR. MINISH: Thank you, Judge.

When we left, we were talking about the various points Mr. Bergrin was trying to make on his cross-examination, and the other point was, he said Anthony Young said he was there when Rakim Baskerville paid Paul Bergrin the money.

He said no, I was there, I was in the parking lot.

Aha, big aha moment.

You know, when it comes down to it, it's this, members of the jury. When Mr. Young made a mistake, he told you he made a mistake. When he said which brother was in

1 the car with me during those phone calls, he said, I was
2 wrong, it was this one. I thought about it and it was
3 wrong. It doesn't mean the phone calls don't exist. We
4 know the phone calls exist, and we know that the substance
5 that Mr. Young heard is correct by independent, irrefutable
6 evidence.
7 Now, so like most of Mr. Bergrin's points on
8 cross-examination, after you scratch the surface of them,
9 they're either wrong or misleading or ultimately don't
10 amount to anything.
11 Mr. Young changed his version of how this happened
12 three times: Lookout; wasn't there; I was the shooter.
13 The key question for you, though, members of the
14 jury is, was he truthful when he came in here and testified?
15 And that is why Mr. Bergrin was so desperate to
16 make him, albeit unsuccessfully, look like a liar, because
17 he knows Anthony Young is believable, I submit to you,
18 credible, and supported by unassailable corroboration, and
19 therefore, Mr. Bergrin is guilty of each of the crimes
20 related to the Kemo Deshawn McCray murder.
21 Now, to wrap up this area, when you go to -- do
22 you remember Eric Dock, when he testified?
23 I'm going to put up a clip here. It's page 2124,
24 lines 10 to 23, where it says -- Mr. Gay asking him
25 questions, and the question was:

1 "In other words, it's Mr. Baskerville telling Paul
2 to tell Hak and everybody else to dump their phones, to get
3 rid of them.
4 "Yes.
5 "So he's communicating that message through his
6 lawyer, Paul Bergrin, according to what he told you?
7 "Yes."
8 This is, again, an example of what you're going to
9 see and what you did see in the Vinny Esteves case:
10 Mr. Bergrin acting as a conduit from someone in jail to
11 someone outside the jail, passing messages throughout those
12 meetings where he cannot be recorded.
13 And let's be clear, members of the jury: This is
14 not a case of just passing along good wishes. This is
15 dumping phones. And you have learned throughout this trial
16 there is one reason why you dump phones, and that's to avoid
17 law enforcement detection, so your phones don't get tapped,
18 so they don't get recorded, so you can't get phone records
19 because nobody knows who they are. Unnamed phones, no
20 longer being used.
21 Mr. Bergrin was not acting like a legitimate
22 lawyer representing a charged person. He is actively
23 involved in the conspiracy and actively involved in
24 assisting the gang in avoiding prosecution.
25 Again, the murder conspiracy, everybody played

1 their part: Hakeem Curry, Rakim Baskerville, Jamal
2 Baskerville, William Baskerville, Anthony Young, and,
3 ultimately, Paul Bergrin. He's guilty of conspiring to
4 murder Kemo because of providing the name of the witness to
5 the gang and by providing the legal advice that the only way
6 William Baskerville was going to come home was if Kemo was
7 killed. His analysis of winning the case took into account
8 William Baskerville's chances at trial, how much time he was
9 facing, and he gave his professional opinion, the opinion of
10 what needed to be done to win that case, and that was to
11 kill Kemo. His advice drew a straight line to Kemo's
12 murder, to stop him from testifying, to get William
13 Baskerville out of jail. Not because I'm telling you so,
14 members of the jury, but because the evidence tells you so.
15 Now, the Judge is going to charge you on another
16 type of evidence, it's called 404(b) evidence. And he's
17 going to tell you how to use it. But beyond all that we've
18 already discussed, there is 404(b) evidence relating to the
19 Kemo Deshawn murder that you can take into account relating
20 to your decision on this murder.
21 Now, you remember during the trial the Judge gave
22 you the instruction a couple of times how you consider
23 certain evidence. That was Richard Pozo's and Vinny
24 Esteves's and Oscar Cordova's testimony, right? The Judge
25 said during the trial and again will in his final

1 instructions, is, pertaining to Kemo Deshawn McCray's
2 murder, you can consider the evidence in deciding whether
3 Paul Bergrin acted with the specific intent to tamper with
4 or kill Kemo Deshawn McCray.
5 Now, why is this important?
6 Well, as the Judge said in his instructions, you
7 can't read somebody's mind; you have to judge them what they
8 do, by what they say. And the fact that he acted in a
9 particular way or made a particular statement is something
10 you can use to determine intent, and in this case, things
11 that he said.
12 Rely on his statements Paul Bergrin made to
13 Mr. Pozo, on his statements that he told Vinny Esteves, if
14 there is no witnesses, there is no case.
15 Does that sound familiar?
16 In deciding whether or not he had the intent to
17 kill Kemo Deshawn McCray when he relayed the name Kemo to
18 his -- excuse me -- Hakeem Curry on November 25th, and when
19 he said those words, No Kemo, no case a week or so later, I
20 submit to you that when Mr. Pozo -- excuse me -- when
21 Mr. Bergrin urged Mr. Pozo to get to, to take out Pedro
22 Ramos, when he told Vinny Esteves he needed to kill Junior
23 the Panamanian, when he told Oscar Cordova that they had to
24 make it look like a home invasion robbery, not a hit, that
25 that is something in accordance with the Judge's

1 instructions you can use when trying to determine what was
2 in Mr. Bergrin's head, not just the evidence of the William
3 Baskerville case.
4 Now, and ultimately, the final confession he made
5 to Vinny Esteves. They had identified the witnesses they
6 wanted to kill, right? Mr. Esteves and Mr. Bergrin had a
7 kill list. They discussed how they were going to make the
8 murder happen. He said he would take care of the murdering
9 the witnesses. Vinny Esteves expressed doubt that he'd be
10 able to do it. Mr. Bergrin replied. What did he say? It
11 was not the first time I have done this, meaning killing a
12 witness. He did not use Kemo's name but obviously was
13 referring to a prior time he was involved in killing a
14 witness, the Kemo murder.
15 It totally destroys Mr. Bergrin's claim that he
16 was acting as a legitimate lawyer when he relayed the
17 identity of Kemo to Hakeem Curry, when he told the gang that
18 was assembled on Avon Avenue not to let that kid testify.
19 Anthony Young knew what Paul Bergrin meant when he said we
20 have to get rid of him.
21 And now you do, too.
22 All right. Now, members of the jury, as the Judge
23 told you, we have a bit of a time constraint, so I'm going
24 to try to be -- been a little wordier than I should have
25 been in the last one, so I'm going to try to zip by a few

1 other things, all right?

2 With respect to New York Confidential, ladies and

3 gentlemen, that's the prostitution house, here's what we

4 know. Paul Bergrin pled guilty to conspiracy to promote

5 prostitution, right? You will see that stipulation, both

6 before Jason Itzler is arrested and after Jason Itzler was

7 arrested. He -- through stipulation, it has been agreed

8 that he knew that this was not an escort service, right from

9 the beginning, all the way through, all right? So that's

10 also not disputed.

11 So when you look at what James Cortopassi told you

12 and Natalie McLennan told you about the scheme to get Jason

13 Itzler out, about the scheme to take over New York

14 Confidential, with that backdrop, members of the jury, I am

15 confident that you will find their testimony to be credible.

16 And again, it's a couple of things, right? It's a

17 conspiracy to travel to promote prostitution and then two

18 separate travels, okay? So just again, very briefly, one of

19 the letters was chosen and charged. That's the letter that

20 Mr. Bergrin sent to try to get Jason Itzler's time -- or,

21 excuse me -- parole moved to New York, even after he had

22 gotten him -- excuse me -- even after he had gotten the he

23 works for me from five to one thing done. Now he wanted him

24 to go to New York. And that's one of the -- and the other

25 travel that's specifically charged is when they went and met

1 -- James Cortopassi, Hiram Ortiz, Paul Bergrin, and the
2 other individuals who were employed at New York Confidential
3 went there after Mr. Itzler was arrested, when they did the
4 reorganization meeting: I'm in charge; Hiram's going to be
5 the day-to-day guy; the woman, Erica, is going to be
6 handling the phones. And as you heard from Mr. Cortopassi,
7 it worked for a little while. Mr. Bergrin complained about
8 them shorting him money, that he wasn't getting dropped off
9 enough money.
10 And, members of the jury, I'm going to leave that
11 to you to do your analysis with respect to whether or not
12 Mr. Bergrin did, in fact, conspire to travel and traveled
13 with respect to New York Confidential.
14 Although I guess there are, I apologize, I guess
15 there are two things I should mention.
16 The two most damning parts, the physical, putting
17 their testimony aside, okay, are the checks with respect to
18 this first travel, where he's trying to scheme Mr. Itzler
19 into saying, oh, he works for me, so please let him out for
20 these hours, it's the checks from his own company that are
21 never negotiated, as provided by proof, right? That's
22 independent evidence, inarguable evidence. The checks are
23 written; you have them, they have the bank account. They
24 were never negotiated, period. This is part of the scam,
25 exactly how James Cortopassi told you, exactly how Natalie

1 McLennan told you. He never did any work, no work anywhere.
2 And logically, even if Mr. Bergrin tries to, well, he was
3 doing work in the loft, he was doing work in the house,
4 forget it. Here's why: Because the letter itself doesn't
5 say, let him do work in his house. It doesn't say, let him
6 do work in the loft. The letter, the request, the lie that
7 Mr. Bergrin, the fraud that Mr. Bergrin sent to New Jersey
8 parole says, let him out so he can come to my firm. It
9 doesn't say, let him out so he can do work at home. It
10 doesn't say, let him out so he can go to the loft to do
11 work.
12 So even under Mr. Bergrin's own theory, it's a
13 fraud.
14 And as far as the meeting in January after
15 Mr. Itzler's arrested, the reorganization meeting, again,
16 putting aside any of their testimony, Mr. Cortopassi,
17 Ms. McLennan's, you have a final certificate of
18 incorporation, a new corporation, variation on a name,
19 right? It was one word different: It was New York
20 Confidential Escorts now, instead of New York Confidential.
21 Put yourself in this scene. Mr. Itzler, who's running it,
22 has been arrested. That's Mr. Bergrin's client. For what
23 possible reason, legitimate reason, would he file a
24 certificate of incorporation for New York Confidential
25 Escorts if not to take over the business and to move

1 forward? The company already existed. It existed, New York
2 Confidential. He had a client who was running it. There is
3 no - no - legitimate reason why a lawyer would file that
4 document. Except to create a new company with Mr. Bergrin
5 as the registered agent -- you can look in the document,
6 who's the registered agent -- at a New York address, which,
7 by the way, is not the address he claimed Jason Itzler was
8 working at. His firm address, remember that issue with the
9 firm? That's the address, James Cortopassi said, I never
10 heard of that address? Match it up. It's a whole different
11 address again in New York.
12 So I'm going to move on to the Abdul Williams
13 witness tampering.
14 Now, this involves also a conspiracy to travel in
15 the aid of drug trafficking a business -- a trafficking --
16 drug trafficking business and bribery.
17 Abdul Williams was employed, as you know, at the
18 Law Office of Paul Bergrin from 2006 through 2008. There is
19 an Exhibit, 8015. You'll be able to take a look at it. He
20 was employed there.
21 At Mr. Bergrin's direction, he got involved in the
22 drug-trafficking end of the operation. He acted as a
23 short-range courier. Remember he told you the taxi service,
24 he'd pick up, deliver, drop off, and get paid a few thousand
25 dollars for doing it.

1 As you heard, he was eventually introduced to
2 Yolanda Jauregui, someone he could deal with pertaining to
3 his own drug trafficking, to get his own drugs. He got
4 Mr. Bergrin's approval, and he began to get kilos from
5 Yolanda and Alejandro Barraza-Castro, and he had to deal
6 with them after Mr. Bergrin had put them together, right?
7 Now, the problem was is that on June 8th, 2007, he
8 had a gun, and he got caught. So he gets arrested, and he's
9 charged in -- up the street in Essex County. He told
10 Paul Bergrin that he had the gun, that it was his gun, so
11 what was he going to do about it, because now he also had a
12 second problem. His parole was violated. So he's sitting
13 in jail. What are we going to do? Because now he can't
14 follow through and continue to be the drug courier.
15 So they agreed to have another individual,
16 Jamal Muhammad -- excuse me -- Jamal Muhammad say, no, it
17 was my gun, not Abdul Williams's. And he gave the
18 statements, and you heard about those two statements, right,
19 one to Newark P.D., one to Mr. Bergrin's investigator, Jamal
20 Muhammad claiming that it was his gun, even though Abdul
21 Williams told you, no, no, not his gun, my gun.
22 On August 3rd, 2007, Mr. Bergrin as Abdul
23 Williams' lawyer goes to the New Jersey Parole Office and he
24 tells them, I have this confession, Abdul Williams cannot be
25 guilty because we have this other guy who's saying it's his

1 gun, knowing that that confession was false. And obviously
2 this was done with the intent to get Mr. Williams out of
3 jail so he can continue with the drug trafficking.
4 And as you heard from the hearing officer, it
5 worked. Charges were dismissed, he was released from jail,
6 and since one part of the plan worked, he was able to go
7 back out and continue with his drug trafficking.
8 And from September 2007 through about May of 2009,
9 on multiple occasions, Abdul Williams delivered kilograms of
10 cocaine on behalf of Paul Bergrin and the enterprise. And
11 again, during this period of time, Mr. Williams was able to
12 purchase his own kilograms and distribute them on his own.
13 Now, with respect to the bribery, there's really
14 not much debate whether or not Abdul Williams paid him
15 money. It is clear that he paid him the $1,500. He told
16 him that he did so to falsely claim, and it's not, I submit
17 to you, much of an issue that Paul Bergrin was involved in
18 this conduct. He had multiple conversations with Abdul
19 Williams about getting a statement from Jamal Muhammad, he
20 spoke to Jamal Muhammad in his office, he had Jamal Muhammad
21 generate a written statement, and he sent those false
22 statements to both the Essex County Prosecutor's Office as
23 well as the Parole Board.
24 The only issue really is what was in
25 Mr. Bergrin's head, right? The circumstantial evidence

1 that's used to prove.

2 First, Mr. Bergrin knew the statements were false.

3 Abdul Williams told you they were false, and Mr. Bergrin

4 knew that.

5 But not just because of what Abdul Williams told

6 you. You know how you know? You know because of the own

7 words of Paul Bergrin. All right? In his opening

8 statement --

9 Can you put that clip up, please?

10 Mr. Bergrin says: "You'll hear Paul," referring

11 to him said, "just like Mr. Gay said, telling Abdul Williams

12 on the phone, make sure this guy -- blah-blah-blah, "is a

13 stand-up guy," goes through all this stuff.

14 Now I want to direct you to the line that says,

15 "Sure," it starts with "Sure."

16 "He's willing to take the weight for you." Right?

17 I'm sorry, above that: "Not that he's willing to

18 lie, he's saying he's a stand-up guy, because I would have

19 said make sure he's willing to take the weight for you or

20 lie for you."

21 And then he explains, no, when I said stand-up

22 guy, that's not what I meant, right, and goes through that

23 whole colloquy, explains that whole thing, even that he

24 would have had a New Jersey State Police licensed

25 investigator scrutinize this stand-up guy.

1 Now, putting aside that we all know by the end of
2 this trial what Mr. Bergrin means when he says stand-up guy,
3 all right, as someone who in the criminal world will not be
4 a rat, will not be a cooperator, putting that completely
5 aside and using just Mr. Bergrin's own words, "not that he's
6 willing to lie for you, because I would have said make sure
7 he's willing to take the weight for you or lie for you."
8 Let's turn to June 21st, 2007, Exhibit 4136B2.
9 Now, most of this conversation is about getting
10 statements from various people, including Jamal Muhammad,
11 the guy who ultimately takes the gun, right?
12 Now, this is the recorded conversation of Mr.
13 Bergrin.
14 It turns out on page four he does use the words
15 stand-up when referring to Jamal Muhammad.
16 But when you turn to page five, lines six through
17 eight, what's up there? What does it say?
18 "Yeah. I mean, as soon as they can get here I'll
19 talk to them," the other witnesses, "and have the one guy
20 that's taking the weight for the gun, have me talk to him."
21 Members of the jury, you have to go no further.
22 You don't even need Abdul Williams's testimony, which I
23 submit to you was credible on its face, but out of
24 Mr. Bergrin's own mouth, he told you when someone says take
25 the weight, that means lie. And I wouldn't say that, I

1 would have said stand-up guy.

2 Well, turns out he was wrong. There it is, Mr.

3 Bergrin said.

4 Now, I don't know how many minutes this was into

5 his opening statement that he made this comment, but there

6 is evidence right before you that Mr. Bergrin was not being

7 straight with you, right from the beginning, arguing to you

8 things that are simply not true.

9 Now, it's not always this easy to prove someone is

10 trying to slide one by you, but consider this point where

11 Mr. Bergrin makes his arguments to you when he has his turn

12 up here and give them the value they deserve. In his

13 opening, I wouldn't, that would have meant this. And then

14 you have it in black and white.

15 Now, with respect to his knowledge of the benefit,

16 the $1,500 that was paid, that's the bribery aspect of it,

17 he knew that Mr. Muhammad was doing this for his friend

18 Abdul Williams, he knew that Jamal Muhammad was making his

19 false statement, and he was going to be arrested and charged

20 with the gun possession. Based on those circumstances, I

21 think it could be understood or I submit to you it could be

22 understood that Abdul Williams was offering him a benefit of

23 some kind even if Mr. Bergrin was unaware of the specific

24 thing he was getting.

25 I'm just going to skip through the element by

1 element, except to say that, members of the jury, the third
2 element that the Judge is going to tell you we have to prove
3 is an overt act, and an overt act is something that is done
4 in furtherance of the conspiracy. So you have the
5 conspiracy, you have the agreement, and then you take an
6 actual step to kind of push it along, to do something. All
7 right?
8 What you'll hear or what you'll see in the
9 evidence when you review it from Mr. Williams is that after
10 the phone calls, they are spelled out in the indictment that
11 you'll have also back with you, what he actually did, and
12 then you can refer to the evidence that supports those
13 allegations.
14 Now, Mr. Bergrin in his cross of Abdul Williams
15 argued that the witnesses had the story down pat before they
16 met Mr. Bergrin.
17 And they did. The thing was, though, that
18 Mr. Williams told you, they had discussed it, he and
19 Paul Bergrin had discussed it beforehand what needed to be
20 done, Abdul Williams went out and got this stuff done and
21 then came back. Mr. Bergrin's not -- or he's not not
22 involved because of that. He's doing his job. He is
23 advising, he is counseling how to go about, how to do things
24 that a legitimate lawyer would not be doing.
25 And then once he gets all the statements, all the

1 information, he is furthering this conspiracy, furthering
2 these travel acts by actually making the arguments to the
3 Parole Board, to the Essex County Prosecutor's Office and
4 their court that these charges should be dismissed against
5 Abdul Williams.
6 Now, members of the jury, let's move into drugs.
7 All right?
8 Throughout this trial, you've had witnesses,
9 recorded conversations, and documents that all show the same
10 thing, all that evidence, that Paul Bergrin has clients in
11 the law practice that are large retail drug distributors;
12 that Paul Bergrin knows a wholesaler cocaine supplier,
13 Alejandro Barraza-Castro; that Paul Bergrin hooks up these
14 retail distributors with the wholesaler, Mr. Barraza-Castro;
15 that Paul Bergrin is a broker for drug deals, that
16 Paul Bergrin uses workers from his law practice to assist
17 in selling these drugs. That's Ramon, Abdul Williams, and
18 Norberto Velez.
19 During the course of the trial, you've heard a lot
20 about drugs generally - the fake IDs, the rental cars,
21 disposable cells, the lookouts, the trapped-out cars, that
22 wiretaps are always a worry, that you don't speak openly on
23 the phone, you speak in code; that in person, you can speak
24 more openly. Speaking in person is safer.
25 Although as Mr. Bergrin found out, that's not

1 always the case.

2 A significant portion of the criminal activity set

3 forth in the indictment relates to drug trafficking.

4 Literally from the very first witness, Lachoy Walker, the

5 very first witness in the case, you've heard about Paul

6 Bergrin's criminal acts regarding drugs. Even the stabbing

7 case, where you didn't think drugs would be involved at all,

8 turns out Norberto Velez eventually made his way into the

9 drug trafficking enterprise, or part of the enterprise, and

10 was represented by Paul Bergrin during that charge.

11 Specifically, remember, Paul Bergrin informs

12 Norberto Velez, and you heard the recording, or saw, excuse

13 me, saw the transcript, Norberto Velez was informed by

14 Paul Bergrin who the snitches are in his drug case.

15 He was also being told to take the weight for

16 Alejandro Barraza-Castro even though Paul Bergrin represents

17 Norberto Velez, not Mr. Castro.

18 From there, right through the Kemo murder to

19 Rondre Kelly, to Abdul Williams, to Eugene Braswell, then

20 through the Monmouth County witness-tampering plot, the

21 recorded conversations are riddled with talk of drug

22 trafficking.

23 Let's start with the involvement with Mr. Curry,

24 okay, what Lachoy Walker told us. He told you that

25 Mr. Curry said I got the connect from Paul, that he brokered

1 the deal, and you're now well aware of what a connect is,
2 right? He's the guy who gives you the drugs. That was
3 Mr. Lachoy Walker's testimony, again, a man who has no
4 requirement, no agreement, no benefit that he is seeking
5 from the Government to come in and testify. He said he's
6 just testifying to tell the truth.
7 Now, with that in mind, let's discuss a couple of
8 things that you know now about Paul Bergrin's relationship
9 with Hakeem Curry that you didn't know when Mr. Walker
10 testified. All right?
11 And keeping in mind that Anthony Young told you
12 everyone thought Hakeem Curry was soft and that if he was
13 arrested, he would cooperate.
14 Let's talk about phone calls between Mr. Bergrin
15 and Mr. Curry.
16 Now, there is going to be a stipulation that
17 you're going to see that since December 12th, 2002,
18 Mr. Bergrin has not represented Mr. Curry in any criminal
19 case. So that's the start date, December 12th, 2002.
20 Still, there are many phone calls, you will see
21 the records, between Paul Bergrin and Mr. Curry. Why? The
22 calls between Mr. Curry and Mr. Bergrin, in just over a
23 two-month period, okay, now I'm going to get these dates
24 right, from October 15th, 2003 to December 12th, 2003,
25 approximately 160 connections between the two.

1 Now, what is going on at this period of time?
2 William Baskerville has not been arrested yet, six weeks
3 before he's arrested, and December 12th, eight days after
4 the detention hearing at which Mr. Bergrin has told the
5 Curry's gang that you've got to kill Kemo.
6 In just that period of time, 160 connections, one
7 phone to the other.
8 Now, visitations, that you learned about
9 visitations between Mr. Bergrin and Mr. Curry. Paul Bergrin
10 visited him in jail, even though, again, not his lawyer,
11 hadn't represented him in the criminal stuff since December
12 12th, 2002. Hakeem is arrested, Hakeem Curry you heard is
13 arrested on March 5th, 2004, so now it's three days after
14 Mr. McCray has been killed, March 5, 2004. He's in the
15 Monmouth County Jail.
16 And who is visiting him? The lawyer who's not
17 representing him. From May 4th, 2004 through October 19th,
18 2004, at least one and a half years after he last
19 represented him in a criminal matter, he visited him at
20 least 10 times: May 4th, May 17th, June 7th, July 6th, July
21 28th, August 10th, September 1st, September 3rd, September
22 13th, October 14th -- not sure, October 14th may or may not
23 because it's just his name without Curry next to it, you can
24 look at the records -- and October 19th.
25 Now, again, this is not because I'm telling you

so. You're going to have these records, the Monmouth County Jail visitation records, Exhibits 920 and 921, and you can look at them.

Why is he visiting him if he's not representing Curry?

Putting aside whether or not the Government would even consider Hakeem Curry as a cooperator, what Mr. Bergrin knows full well is that the dominoes start falling and William Baskerville points at Hakeem Curry, and Hakeem Curry, who does he turn and point at?

Mr. Bergrin.

Let's talk about the tracking device. Remember the testimony about the tracking device that was on Hakeem Curry's car that stopped working shortly prior to the recorded call you heard?

The same day, that day, when it stopped working, he goes to speak with Mr. Bergrin. Why? Mr. Bergrin is heard commenting about the tracker: That's bad, bad.

Who does Hakeem Curry go to for counsel before he even calls his wife, right, because that's the call, you hear him calling his wife. He's already with Mr. Bergrin.

Because he is house counsel, as Lachoy Walker told you.

Now, remember all those guys in the photos we put up at the very beginning of trial? He represented this guy,

1 he represented this guy. Those are the various people in
2 the Curry organization, and Mr. Walker was talking about
3 people at the management level.
4 MR. Bergrin then argued about the percentage:
5 Well, it wasn't that high a percentage, it was this guy, it
6 was that guy, and said, well, it wasn't everybody, so how
7 could I be house counsel, right, was basically his argument.
8 You know what? The percentage almost is
9 irrelevant. I mean not that it was an insignificant
10 percentage; it was quite a few people. But the reality is
11 and the inarguable point is, when he finds a tracker device
12 on his car, who does he run to? One of those other lawyers?
13 Or to his counsel? When he thinks the Feds are looking at
14 him, when he's in trouble, where does he go?
15 Now, the next client that Paul Bergrin sold drugs
16 to was Rondre Kelly. He told you about Paul Bergrin
17 providing him with the means to clean his money, right?
18 Remember the house, he was going to clean his drug money?
19 The kilograms right out of the law office, he was assisted
20 by an employee of the firm, Ramon Jimenez. That's the guy
21 who James Cortopassi said, yeah, he was there, but he never
22 did any work. Well, never did any legitimate work, perhaps,
23 but clearly he was doing work assisting in drug trafficking.
24 And that went on until the robbery at 710 Summer Avenue or
25 thereabouts, and that's something you'll see in the

1 stipulation, the date of March of 2007.
2 Most importantly, putting aside what Rondre Kelly
3 told you, the wiretaps, four months, between November 5th
4 through February 6th, right, and that came in through
5 Detective Mendez, the retired officer who came in? By that
6 time, as Rondre Kelly had told you, Mr. Bergrin had passed
7 him off to dealing mostly day-to-day with Yolanda Jauregui,
8 Alejandro Barraza-Castro and the other people in that
9 organization, Mr. Castro's organization.
10 So what would you expect those wiretaps to show at
11 this point? The day-to-day operations, lots of phone calls
12 between he and Yolanda, and the occasional call with
13 Mr. Bergrin, exactly what you heard.
14 But the fact is that Mr. Kelly thinks Paul
15 Bergrin's the boss. Now, putting aside whether he's right
16 or he's not, from his point of view, look at it this way:
17 He sets the price, he negotiates the price for him, he makes
18 the introductions to these other people who are actually
19 doing the dirty work. From Mr. Kelly's point of view, he's
20 the boss.
21 And compare that to what a drug broker does. As
22 you learned, he introduces customers, Rondre Kelly, to
23 Alejandro Barraza-Castro, sets the price for his customers
24 because the price is always going to include his brokerage
25 fee, right, his money in the link in the chain.

1 So now although Mr. Kelly may be right, may not be
2 right about where Mr. Bergrin fits, whether he's Alejandro's
3 boss or whether he's the guy making it happen, he's most
4 certainly not mistaken about what Mr. Bergrin actually did
5 in the truck-trafficking process. You heard the wiretaps
6 calls. You remember when they were talking about cars and
7 that was drugs, right, that was the code, five cars,
8 bringing back cars, picking up cars, need more cars. The
9 most important call in that entire wiretap happened on
10 December 31st, 2005 at 12:23 p.m. In that call, Rondre
11 Kelly -- excuse me -- talking about it's Yolanda Jauregui
12 talking to Jesse, and they're talking about Rondre Kelly and
13 Paul Bergrin, right, how Paul Bergrin had bad-mouthed Rondre
14 Kelly to Jesse's people during that strip mall meeting.
15 Remember the one where Mr. Bergrin said Oh, I didn't shake
16 anybody's hands, but as it turns out in the video, shaking
17 hands? That's the meeting they're talking about.
18 So let's put this clip up, okay?
19 This is Jauregui, Yolanda:
20 "Huh. So he called him, listen to me! He called
21 him. He called to tell him --
22 And Jesse: "Uh-huh."
23 And we move on to the next: "That, that if you,
24 that if you, that if you told him, that if I -- because I
25 told him -- " -- and he gets to now the meat -- " -- why

would you tell him that you don't trust him if you were the one who introduced him to this other guy? And, and that's why he was buying the cars and he has the cars with him, why are you saying --? Why are you saying that?"

What is Yolanda Jauregui talking about there?

She can't believe that Paul Bergrin went to this meeting and badmouthed Rondre Kelly. He is the guy who introduced him. He is the guy who put this together. Now he's out there badmouthing him. What is he doing?

This is pretty clear, members of the jury, on its face that the only thing you have to know is that "cars" is code for drugs and that the "him" is Paul Bergrin. Other than that, there's no interpretation needed.

We know from Task Force Officer Mendez that this is consistent, his actions, Mr. Bergrin's actions is consistent with that of a drug -- excuse me, a drug broker.

And if you recall, though we're not going to put it up, there was one call we played with Rondre Kelly and Mr. Bergrin talking, and what is Mr. Bergrin saying on the phone?

I didn't say anything bad about you guys. I don't know what -- they're lying. I didn't say anything.

Why? Because he does not want to lose the one side that the connection is making. He's trying to make up with Rondre Kelly. You can look at the sequence of the

1 calls yourself.

2 Now, while we're on Rondre Kelly, I want to cover

3 one thing about sort of cooperators generally, and since

4 Rondre Kelly actually has already been sentenced, he's

5 probably the best person to go through this.

6 Now, remember, he told you he was sentenced and he

7 was given no cooperation credit, no credit from the Judge,

8 right, no motion, no letter, no 5K, whatever you want to

9 call it. He was just sentenced on his charges. He had

10 charges that gave him potentially up to life, right? He

11 said on the stand, up to life, up to life, Mr. Bergrin asked

12 him.

13 So it's clear, you know, every cooperator hopes to

14 get time off. I mean, that goes without saying. And Paul

15 Bergrin is right when he says the maximum sentence is this,

16 the maximum sentence is that. You know, by and large, when

17 he asked those questions, it was technically accurate.

18 But what did you learn through Rondre Kelly? That

19 he is facing two life terms, two different jurisdictions,

20 one out in Pittsburgh and one in New York, right, together.

21 And what did he get for his sentence?

22 Fourteen years.

23 Now, I'm not saying 14 years is an insignificant

24 amount of time. It's certainly more than the average person

25 would want to do in jail. But bear this in mind when you're

1 thinking about these deals that Mr. Bergrin is talking
2 about. Whether you like the system or don't like the
3 system, that's what a judge in Pittsburgh thought was fair
4 for Rondre Kelly, without any assistance from the
5 Government: 14 years. Two life terms, all this heroin, all
6 this -- all the stuff that Mr. Bergrin went through with
7 him. Is he expecting to get less time than that? He
8 certainly is hoping to, and that is what he told you. But
9 the reality is, members of the jury, that he is not
10 literally going to be working off of life as Mr. Bergrin
11 would like you to believe.
12 And the other guy who has already been sentenced
13 is Anthony Young, right? He pled to life originally. That
14 was the mandatory thing. He cooperated. He testified in
15 William Baskerville's trial. The Government made the motion
16 that has been described to you many times.
17 He didn't just walk out the door. He didn't get
18 time served. The Judge reduced his sentence to 30 years.
19 Now, so it's clear, he again also hopes for a
20 further reduction in his sentence. But the reality is, that
21 is the evidence before you as far as what actually happens
22 with the sentences for these cooperators. Everything else
23 is possible, as Mr. Bergrin said correctly, but that's what
24 you've actually seen.
25 Now, let's move to the next client that

1 Mr. Bergrin sold drugs to. That was Eugene Braswell.
2 He went to Paul Bergrin as a client for a criminal
3 case. Paul Bergrin beats -- I'm sorry. He gave -- he gives
4 the -- remember he gave -- he sent one of his drug friends
5 to Mr. Bergrin to represent him, and then Mr. Bergrin
6 doesn't do anything, he beats that drug connect for money,
7 so then Eugene Braswell is out of luck, the connect says, no
8 more for you.
9 He complains. Paul Bergrin sets him up with Ramon
10 Jimenez to start giving him drugs. He does a couple of
11 deals with Ramon Jimenez, but Ramon gets arrested, so he
12 needs to get a new supplier. This time he moves away and he
13 gets a different supplier. He continues to get them, the
14 drugs are now from Miami and Texas, as he told you.
15 And in 2008, now, a couple of years later, he's
16 using the money exchanger, remember, Muhammadu Tunkarad, the
17 guy in the Bronx. He needs this because he has all these
18 small bills, and to send down a half a million dollars in
19 small bills takes up a lot of room, and the capacity of
20 these traps in the cars is only so much. The more money you
21 can send down, the more drugs you can get back.
22 So he goes to -- whether it was advisable or not,
23 goes to this Muhammadu Tunkarad and gives him this money,
24 almost a half a million dollars, to convert it to smaller
25 bills -- or larger bills so it can be a smaller pot. And he

1 gets beat for the money.

2 Who does he go to when he's got problems with his

3 drug business? To the police? Or to Mr. Bergrin? Now,

4 he's turning to his one-stop-shopping criminal enterprise

5 guy. And how do we know what happened? You don't even have

6 to hear it from Eugene Braswell's mouth. When Paul Bergrin

7 hears this, he starts recruiting Oscar Cordova to make it

8 happen, to help out Eugene Braswell. Eugene Braswell

9 testified about it, but he doesn't even know he's being

10 corroborated, because on the back end, in Mr. Bergrin's

11 office, what's going on is, he's taking that information and

12 then going to Oscar Cordova.

13 What does Eugene Braswell tell you?

14 He told me he was a Chicago Latin King would look

15 into it, he would take care of it for me.

16 He doesn't care how it gets done, he just wants

17 his money back.

18 He tells Mr. Braswell that. What is recorded,

19 what is the result? What does Mr. Bergrin do with that

20 information?

21 Can you put up that, please?

22 "This guy right here, the Muhammadi Tunkarad," all

23 right, gives him the address.

24 "Black dude?

25 "Yeah, black dude.

1 "He wants a favor.
2 "I need the Kings to do this.
3 "Oscar Cordova: I don't really know. OK Paul.
4 "He took $500,000 cash.
5 "From you?
6 "No, from a very close -- a guy, Eugene Braswell,
7 who I represent."
8 So do you think when Eugene Braswell told you this
9 is what he went to Paul Bergrin for, it was true?
10 Mr. Bergrin tells you this. The most damning part
11 of this comes out of his own mouth.
12 Exactly what Eugene Braswell told you is exactly
13 what Mr. Bergrin turned around and did.
14 So what impact does that have on the rest of what
15 Eugene Braswell told you? When he is talking to you, do you
16 think the rest of his statements -- does that lend
17 credibility to everything else he says when he tells you Mr.
18 Bergrin got me kilos, Mr. Bergrin hooked me up with this
19 guy, Mr. Bergrin hooked me up with that guy?
20 It's the same Mr. Bergrin who's helping him get
21 his half a million dollars in drug money back.
22 The reality is that collecting stolen drug money
23 was just one more service that Mr. Bergrin's enterprise
24 tried to provide.
25 And because he wanted to keep his drug dealer

1 client happy -- this was not just a one thing. He brings it
2 up with Oscar again.
3 Want to put that up?
4 Mr. Bergrin: Did you hear anything about that
5 money, you know, that, the guy in The Bronx?
6 And what does Mr. Cordova say?
7 "Weal, I need some more information," because, as
8 you know he's a cooperator; he can't really go over and beat
9 up some guy in the Bronx and take his money. But
10 Mr. Bergrin doesn't know that, and he is pressing him to
11 make it happen for his client that he is selling drugs to,
12 Eugene Braswell.
13 Now, Mr. Braswell was ultimately arrested, right?
14 You heard. Then the enterprise provided a new drug connect
15 for him, Alejandro Barazza-Castro. When that connect wasn't
16 to his liking, he said he wasn't comfortable dealing with
17 him directly, what did Mr. Bergrin do? He stepped up and he
18 did it himself out of his own law office. He sold kilos to
19 Eugene Braswell on four separate occasions. I'm sorry,
20 twice out of his law office, twice out of the hotel room.
21 Mr. Braswell was arrested on that charge, first Federal
22 arrest, and you heard that he cooperated, he violated the
23 agreement, the cooperation agreement was ripped up, he pled
24 guilty to the second charge, he went through all of that on
25 how that impacts his cooperation is never going to help him

1 on that first charge because of what he did.
2 Move to the next guy, Abdul Williams, another
3 client Paul Bergrin sold drugs to. In 2005, Paul Bergrin
4 introduced Abdul Williams to, again, Ramon Jimenez, the same
5 Ramon Jimenez that helped Rondre Kelly, the same Ramon
6 Jimenez that helped Eugene Braswell. He sold cocaine to
7 Abdul Williams two times. Then he gets -- Abdul Williams
8 gets arrested and starts dealing with Ramon, right?
9 Now, you know, again, beyond even just what Abdul
10 Williams tells you, that what he is saying is the truth
11 because of the recorded conversation with Shelton Leverett.
12 All right? Mr. Leverett came in here and he testified that
13 he -- and you heard the recordings, you saw the transcripts,
14 that he asks Mr. Bergrin for a connection, a drug supplier.
15 What does Mr. Bergrin do? Sends him to Abdul
16 Williams. He doesn't say, Oh, no, no, no, we don't do that
17 here, that's not one of the services we provided. In fact,
18 that is a service we provide quite often, and we have
19 connections out there.
20 You heard that he talked to him about the
21 possibility. Abdul Williams -- excuse me, Shelton Leverett
22 and Abdul Williams, they get the phone number, they make the
23 meeting happen. Abdul Williams doesn't really know what's
24 going on he told you, but you know what's going on because
25 you have the recorded calls of Mr. Bergrin, and then you

1 have the recorded call -- excuse me, the recorded meeting
2 between Shelton Leverett and Abdul Williams. Again, a very
3 straight line: I need a connect, I need drugs; here's a
4 guy, oh, I didn't give you his number? I thought I gave you
5 his number. Here's his number. Tell him I sent you. Go
6 talk to him.
7 So, again, from Mr. Bergrin's own mouth.
8 And while he tried to say, well, Shelton, we had
9 all these -- Mr. Leverett, we had all these deep
10 conversations about very emotional things and a lot of
11 different things, and when I said connect to you, that meant
12 connect you with people, connect you with someone to help
13 you.
14 And if you recall, Mr. Leverett agreed with
15 Mr. Bergrin on most of his points: Yes, you did talk to me,
16 yes, you treated me with respect, yes, yes, yes. But then
17 when he said that? What did he say? Oh, no, no, no. No.
18 Yes on the other stuff, but no. When you say "connect," we
19 were talking about drugs, we were not talking about a
20 psychiatrist or some sort of assistance for my mental state,
21 my mental well-being. No. And you know it's true, again,
22 because of the recorded conversations.
23 Now, with specifics to, again, Abdul Williams, who
24 is introduced to, ultimately, Alejandro Barraza-Castro that
25 we talked about, he was provided multiple career

1 opportunities at the enterprise. He was both an employee at
2 the firm, right, when he was trying to get out of the
3 halfway house, and in his position as a short-range courier.
4 He's employed by both the firm and the enterprise. And when
5 he's represented, he's provided with full coverage from the
6 -- full legal representation from the enterprise. He gets
7 the -- he gets the witness-tampering package that we've
8 already talked about.
9 Now, along the way, he's also provided with the
10 drug connect to get the kilograms himself, which we've
11 discussed, so he can make money selling drugs on his own.
12 This is Paul Bergrin, Alejandro Barraza-Castro,
13 Yolanda Jauregui, all dealing with Abdul Williams. It stops
14 for a short period of time when he's arrested with Jamal
15 Muhammad, but then he gets out and continues. Once out, he
16 continues to sell the drugs with these people, hundreds of
17 kilos, beginning in the fall of 2006 through May of 2009.
18 Each of the three are consistent with that, Rakim -- excuse
19 me -- Rondre Kelly, Eugene Braswell, Abdul Williams, that
20 Paul Bergrin is involved in the drug business, that Yolanda,
21 Mr. Castro, and Ramon are involved in the drug business,
22 that they used Isabela's Restaurant to store and sell drugs,
23 that they used Mr. Bergrin's law offices, both the Pope,
24 Bergrin & Verdesco as well as the Law Office of Paul
25 Bergrin, to sell drugs.

1 Now, Mr. Bergrin would like you to believe that
2 all of this is going on behind his back, his girlfriend, his
3 clients, his restaurant, at his firms: I had no idea.
4 The evidence, which goes well beyond reasonable
5 doubt, says otherwise.
6 Let's talk about Isabela's for a minute.
7 In addition to Rondre Kelly, Abdul Williams, and
8 Eugene Braswell detailing how Paul Bergrin used his
9 restaurant, Isabela's, right, you also have Thomas Moran.
10 Remember he told you about the black eye that he got, that
11 he walked in a day and he said, Oh, I got into a fight --
12 Mr. Bergrin, that is, said, I got into a fight with
13 Alejandro Barraza-Castro and I think he's having an affair
14 with Yolanda. And then a few weeks later he sees him in the
15 office in a closed-door meeting, Yolanda, Alejandro
16 Barraza-Castro, and Mr. Bergrin.
17 And he said, what's going on? You just got into a
18 fight with this guy, you think he's fooling around with your
19 girlfriend, and why is he here?
20 A legitimate question.
21 And what does Mr. Bergrin tell him?
22 Well, he's paying $2,500 a month to store
23 kilograms at the restaurant, 710 Summer Avenue. Paul
24 Bergrin -- and as it turns out, you know it's true, right?
25 And we'll get to that.

1 What else do you know about Isabela's? Paul
2 Bergrin and Yolanda Jauregui, 50-50 owners of Isabela's.
3 Paul Bergrin bought 710 Summer Avenue. The mortgage on
4 710 Summer is in Paul Bergrin's name. It was deeded to
5 Yolanda Jauregui for one dollar after the New York
6 Confidential case, right, after he was arrested, but he
7 maintained ownership of it. Bills in his name are recovered
8 inside of Isabela's on May 21st, 2009 in Mr. Bergrin's name,
9 not only Yolanda's name, right?
10 And if there was any doubt to what these guys said
11 to you about drugs being used, drugs being seized, Mr. Moran
12 telling you about the deal that Mr. Bergrin had with
13 Alejandro Barraza-Castro, we turn to May 21st, 2009, and the
14 testimony of Agent Koppinger from the D.E.A.
15 AND what did he tell you? He has information that
16 Alejandro Barraza-Castro is going to Dente's truck yard,
17 right? Remember Dente? That's the mutual friend that
18 introduced Mr. Pozo and Mr. Bergrin and put them together.
19 So they watch the area. They see Alejandro Barraza-Castro's
20 brother Alonso return to 710 Summer Avenue, unloading big
21 bags from the Jeep into the basement of Isabela's. Alonso
22 sells a kilogram to the customer, the D.E.A. arrests that
23 customer, they go back, they get a search warrant, and what
24 do they find in Isabela's? Fifty-three kilos and $26,000.
25 Again, not surprising, if that's what you're

1 renting it out for.

2 Alejandro Barraza-Castro is arrested, Alonso's

3 arrested, and Jose Jimenez, Yolanda's father, are all

4 arrested.

5 They recover multiple phones, all right, and one

6 of them is on Alejandro. Now, bear in mind this is the guy

7 that Paul Bergrin has witnesses saying he had no contact

8 with, right: Oh, never, I never saw Mr. Castro with

9 Mr. Bergrin.

10 For some reason, that phone that was on Alejandro

11 Barraza-Castro called Mr. Bergrin three times, according to

12 the phone records.

13 And how do you know that? Because Detective

14 Koppinger told you the phone number of the phone that was

15 called, all right, 631-484-5242. That phone connected with

16 a cell phone in Paul Bergrin's name three times.

17 And how do you know that? Because Agent Cline

18 told you that the number on -- he reviewed Paul Bergrin's

19 cell phone, he showed you the records, his cell phone

20 records for 973-985-0994 on April 3rd and April 4th, two

21 calls and one calls respectively.

22 That is a month and a half before the arrest of

23 Mr. Castro and Mr. Bergrin. Three calls to the guy he has

24 no dealings with, the guy who he -- Norberto Velez swore up

25 and down I've never seen him with, to the young man who came

in here to testify, I've never seen any of that. Less than two months before they're arrested.

So what are you left with here?

We have multiple witnesses and recordings that show Paul Bergrin is involved in drug dealing, witnesses, documents that show he's associated with 710 Summer Avenue, witnesses and kilos that show 710 Summer Avenue is a stash house for the enterprise.

Now, we also have the Oscar Cordova recordings, but fortunately you don't have to weigh that issue because out of Paul Bergrin's own mouth, you know he's involved in drug trafficking. We haven't even touched upon the numerous recorded conversations that he had with Oscar Cordova talking about drug conversations, but for right now, I want to put up two clips for you, okay? The first one, which shows Paul Bergrin's involvement with drug trafficking and the efforts made to broker the deals between wholesalers and local distributors.

This is 4129B4, pages three and four, lines 21 through 12. Remember this? They're talking about selling the drugs, brokering another deal, a drug deal, this time to the Bloods, and not just any Blood, the five-star general that Paul Bergrin trusts a million percent because he's a hundred percent stand-up. And we all know what that means. And a bit later, still discussing the same five-star

1 general, Mr. Bergrin again saying, "he's stand-up."
2 Now, this is, again, after the meeting with the
3 Bloods five-star general. What is Mr. Bergrin saying in
4 that clip?
5 He knows that he's paying $40,000 for a kilo. He
6 knows it's that dry. Trust me.
7 This is obviously significant evidence of
8 Paul Bergrin's intimate knowledge of the drug trafficking
9 operation: The prices, how much cocaine, the actual volume
10 of cocaine on the streets.
11 This conversation along with the others is
12 overwhelming evidence that Paul Bergrin is involved in drug
13 trafficking. So it's important. But since we're going to
14 move into the other section now with the Monmouth County
15 witness conspiracy, it serves a secondary purpose, okay?
16 Now, when does this call take place? This is
17 December 9th. Okay? This is the last of the series of
18 recorded phone calls with Oscar Cordova. Very last
19 recording.
20 Paul Bergrin has alleged in his opening that he
21 was play-acting with Oscar Cordova, and had actual witnesses
22 show up and say, Oh, they were doing research on the Latin
23 Kings, and we told Paul Bergrin he's a cooperator.
24 So before we start this section about the
25 conspiracy to murder the witnesses, bear this in mind.

On the very last day of the recording, Paul Bergrin and Oscar Cordova are talking about Jason. This time Jason is the five-star Bloods general. He refers to him as a hundred percent stand-up, million-percent stand-up, won't cooperate with law enforcement. He's looking for product, which you know is cocaine.

If Mr. Bergrin thought for a second that Oscar Cordova was a cooperator or a fraud, why would he introduce Oscar Cordova to the five-star general of the Bloods? How could that possibly have been a good move for Mr. Bergrin, To bring a cooperator, a man he knows to be a cooperator to introduce him to this guy who's running a Bloods set and say, Hey, here's your new drug connect, I got this guy for you; I know he's a cooperator, but why don't you meet and talk to him about dealing drugs?

Members of the jury, the answer is clear: It just would not be a good idea. No one would do something intentionally that dumb, that dangerous.

But you'd certainly take Oscar Cordova to the five-star general, to the leader of the Bloods to broker a cocaine deal if you didn't know Oscar Cordova was a cooperator, if you believed he was a Latin King, if you thought he was the son of Lord Gino. A million percent, maybe even a billion, but certainly beyond a reasonable doubt if you believe that Oscar Cordova, the guy who we got

1 to try to collect Eugene Braswell's stolen money, to take
2 over drug distribution in The Bronx and to kill Vinny
3 Esteves's witnesses in the case.
4 With that in context at the very end, let's go
5 back to the beginning of this case.
6 Now, this is Racketeering Act 7 and Counts of the
7 indictment 20 through 25. Racketeering act 7 is broken
8 down, as I told you at the beginning, it's six separate
9 crimes. First you have the conspiracy, and that's to murder
10 Junior, who was Danilo Chen-Pui, as you later found out.
11 And the truck driver, Carlos Noyola, those two guys. The
12 next five involve Travel Act violations relating to that
13 conspiracy. So then you have the agreement and the specific
14 things that happened afterwards.
15 Now, it's clear in order to prove Racketeering Act
16 7, we only have to prove one of those six things. The Judge
17 will explain all of that law to you tomorrow. But the
18 charge -- let's talk about the conspiracy, okay?
19 The charge is a conspiracy to kill witnesses
20 against Vinny Esteves and his Monmouth County case,
21 specifically, Junior and the truck driver.
22 Now, there's three elements: That a conspiracy
23 exists, did one exist, did this agreement exist to try to
24 kill them; did Mr. Bergrin join a conspiracy, was he part of
25 it, and did he know the purpose when he joined it?

1 That's what we have to prove.
2 Now, the conspiracy, as you've learned, is an
3 agreement between two or more people to commit an illegal
4 act, a specific crime, in this case, murder. The agreement
5 doesn't have to be written down. It doesn't have to be
6 formal. The Judge will tell you all of those things. It's
7 secret, so the way you prove it is by circumstantial
8 evidence, what people say, what people do, to figure out
9 what the intent, Mr. Bergrin's intent was with respect to
10 this case.
11 And just so it's clear, it doesn't have to be
12 successful. The fact that no witnesses were actually
13 murdered does not mean that there wasn't a conspiracy. This
14 charge is just the agreement, that they agreed to try.
15 With respect to the first element, did a
16 conspiracy exist to kill Junior and the truck driver.
17 Now, I submit to you, members of the jury, that
18 cannot be seriously contested. Vinny Esteves and Thomas
19 Moran, both participants in the conspiracy, admitted it
20 existed, admitted its purpose, and took full responsibility
21 for it in front of you.
22 As an insider, Vinny Esteves tells you that he and
23 Paul Bergrin formed a plan to kill the witnesses, to use the
24 discovery -- remember that, the reports they were getting
25 from the Prosecutor -- to identify which witnesses needed to

be killed, to enlist Oscar to kill those witnesses, and Paul Bergrin and Thomas Moran acted as they did in numerous other cases -- or, excuse me -- Mr. Bergrin did in numerous other cases, as a conduit, a conduit of information from the guy in jail to the guy outside, Vinny Esteves to Oscar Cordova, about killing both the truck driver and Junior.

The other insider, Thomas Moran, tells you the same thing, what Vinny Esteves said: Oscar was going to kill the witnesses, he and Mr. Bergrin were the conduits of information, Mr. Moran even tells you he smuggled a phone call in, remember that, and that he offered to help Oscar Cordova to get a gun to help kill the witnesses. And that's all recorded.

But the other insiders you hear from are Oscar Cordova and Paul Bergrin himself. They told you all about the conspiracy through the tape recordings, the recordings that show the conspiracy to kill Junior and the truck driver.

The first recording, July 10th, 2008, all right, so I'll try and go in sequence here.

Paul Bergrin tells Oscar Cordova that Vinny Esteves wants to make sure the witnesses are not cooperating and tells Oscar Cordova to kill the witnesses, right from the beginning through the second to last meeting, December 8th, when Paul Bergrin instructs Oscar Cordova to make the

1 murder of Junior look like a home invasion robbery.
2 The second element is that Paul Bergrin joined
3 this conspiracy. In other words, did he do things to
4 further the conspiracy? Did he help out?
5 Well, again, I submit to you, members of the jury,
6 that really can't be seriously contested either. Look at
7 what he did, and we'll go through the list. He made a list
8 of the persons to be killed with Vinny Esteves. He obtained
9 and analyzed the discovery to assemble those. He provided
10 information to help Oscar Cordova find Junior. He recruited
11 Thomas Moran to smuggle cell phones into the jail. He was a
12 conduit of information, in to out, between Vinny Esteves and
13 Oscar Cordova. And then Paul Bergrin finally instructed
14 Oscar Cordova on how to kill him and how to get away with
15 it. All right? "Make it look like a home invasion robbery.
16 It cannot under any circumstances look like a hit."
17 So let's run through this list.
18 As far as making the list of people to be killed,
19 Vinny Esteves tells you it's true, that they made a list.
20 Danilo Chen-Pui, Jr., and a truck driver, Carlos Noyola,
21 were on the list from the beginning and never came out of
22 the list.
23 Now, Mr. Bergrin went through a lot of, well, what
24 about this guy, what about this guy? There's two guys that
25 are actually involved in this conspiracy, two guys that he's

1 charged with: It's Junior, the truck driver, Carlos Noyola.
2 That's it. All these other guys hopping on and off have no
3 effect on the conspiracy that's charged.
4 Why are they on this list?
5 They actually cooperated with the Government.
6 Agent Afanasewicz told you that. They seized money from
7 Junior. He cooperated to let him go. They seized kilos
8 from Carlos Noyola, the truck driver. They did a controlled
9 delivery, they let him go. The limited discovery that
10 Mr. Bergrin had indicated that they had cooperated.
11 There's two Government Exhibits, 5211 and 4206.
12 Vinny Esteves also thought they were cooperating.
13 Now, you heard a little bit about a guy called
14 Tineo, right? Tineo is potentially on the list. You found
15 out about him later. He actually cooperated, the discovery
16 says.
17 Arsenio and Tapia are not on the kill list. They
18 were not cooperating. They could not hurt Vinny Esteves.
19 Paul Bergrin wanted to put Dennis the accountant
20 on the kill list. Vinny Esteves said no. He overruled him.
21 The recordings corroborate what Vinny Esteves said
22 about the list.
23 Again, July 10th, Junior and Carlos are on the
24 kill list.
25 Paul Bergrin says, "That one motherfucker blows

1 the whole investigation for us."
2 We know from the recordings, from the context that
3 what they're talking about is Junior.
4 Mr. Bergrin, quote: "He's the genesis of the
5 case, the key to the case, the rat that started the whole
6 fucking investigation is the guy Junior from Panama."
7 As to the truck driver, Paul Bergrin says: "The
8 truck driver, and the guy who opens the door."
9 Vinny said, quote: "Make sure they're not
10 cooperating."
11 but Oscar asks Mr. Bergrin: "What do you suggest
12 I do, kill 'em?
13 Paul Bergrin's response: "Yeah."
14 By itself, that proves the conspiracy. You could
15 stop there. But there's so much more.
16 The second thing: Paul Bergrin and Vinny Esteves
17 used discovery to identify the cooperators.
18 We have two separate exhibits, right, that you're
19 going to hear a lot about. This is what was being
20 discussed.
21 Paul Bergrin on August 19th is saying he used
22 discovery to identify who Junior was. He's referring to
23 Exhibit 5201. You will have this in evidence, information
24 that he was provided by the Office of the Monmouth County
25 prosecutor.

1 And here are his quotes, and you can read it right
2 in the -- "Show us what he fucking said, how he ratted."
3 Quote: "Danilo Turbo Chen-Pui, that's Junior from
4 Panama."
5 Quote: "He fuckin', he gave a statement giving up
6 Vinny."
7 Quote: He -- " -- again referring to Junior
8 -- " -- the fucking key to the case."
9 How about the August 5th, 2008 conversation with
10 Paul Bergrin, referring to the truck driver:
11 "Get a name for the truck driver when I get some
12 more discovery."
13 Quote: "They let him go and there's a reason they
14 let him go. Must have gave a statement."
15 Obviously meaning implicating Vinny Esteves,
16 cooperating with law enforcement, right?
17 "We do have to worry about -- " -- Mr. Bergrin's
18 saying -- " -- the two in the truck and the guy Junior."
19 November 17th, Paul Bergrin tells Oscar Cordova
20 about a memo he received from the prosecutor, 426. This is
21 the sole information he has.
22 Mr. Bergrin tells Oscar: "I studied it for like
23 six hours and," quote, "made small notes on the thin side."
24 You'll see the notes on the thin side of the page.
25 This is the document he's talking about.

1 wasn't making every effort. He was getting information that
2 Mr. -- excuse me -- that Mr. Esteves got from his people and
3 putting it out to Oscar. Oscar did not -- wasn't able to do
4 anything with this information because he didn't actually
5 know these people, he wasn't actually involved with this
6 organization. But that doesn't mean Mr. Bergrin wasn't
7 holding up his end of the bargain, wasn't doing his job,
8 providing the information, directing him, telling him what
9 Vinny wants: Here's where they are, here where you can get
10 them; talk to this guy, talk to that guy.
11 THE COURT: Mr. Minutes, you have about 30 minutes
12 left.
13 MR. MINISH: Well, let me just go through one
14 thing here.
15 I'm going to stop for a bit of a logic break here,
16 all right?
17 Paul Bergrin wants you to believe that he only
18 wanted to talk to Junior to get a statement. Now, let's
19 think about that for a second. If Paul Bergrin spoke to
20 Mike Lopez and all he wanted to do was get a statement. Why
21 not just get it himself? Why not send an investigator down?
22 What possible legitimate purpose is Oscar Cordova serving in
23 this process to get a statement? He's not the one locating
24 him. Mr. Bergrin's the one telling him where he could find
25 him. He's not telling his legitimate investigator. He's

1 telling Oscar Cordova, Here's how you can locate this guy.
2 Here's how you can find this guy.
3 Now -- well, unfortunately -- maybe not for you,
4 but unfortunately, I'll skip by a few things here.
5 We're going to go by the smuggling of the phones,
6 you guys are very familiar with that, and the reasons why.
7 Mr. Bergrin has more than demonstrated his understanding of
8 why you don't talk on jail phones, why you try to avoid
9 having your calls recorded, and why you want to avoid his
10 association -- or, excuse me -- Oscar's associated with
11 Mr. Esteves. Right? He didn't want him ever to go down, he
12 doesn't want that ever to be linked.
13 And if I can step out just for a second, that was
14 really the importance of the 8300 form. Remember that Form
15 8300? All right? Now, that wasn't the most, say,
16 significant charge in the case, but remember what that
17 document had on it, the type of information it had on it.
18 It had the name of the guy who gave the money, the name of
19 the guy who received the money, the date he received the
20 money, the amount he received the money, and the reason why.
21 And that record is kept in the Federal Government for all.
22 Why do you think Mr. Bergrin when he received
23 $20,000 in cash from Oscar Cordova in that heat-sealed
24 drug-dealer sort of wrapping did not report that money to
25 the Government? It's the exact same reason why he did not

1 want Oscar Cordova to go to the Monmouth County Prosecutor's
2 Office to create a link, a sign-in sheet where he would have
3 said, Oscar Cordova on this day met with Vinny Esteves.
4 There would be no record of it. Do you think Mr. Bergrin
5 wanted a record in the Federal database that's going to show
6 Oscar Cordova paid Paul Bergrin $20,000 towards Vinny
7 Esteves's defense fund that will be searchable by all law
8 enforcement?
9 This wasn't his secretary's fault, members of the
10 jury. There was no secretary who said, Oh, yeah, I know
11 Paul told me to do it, but I'm not going to do it. This was
12 a decision he made to avoid links, to avoid detection to
13 Oscar Cordova, plain and simple.
14 Let's skip to Paul Bergrin knowing about the
15 conspiracy when he joined, what the purpose of the
16 conspiracy was.
17 Now, at the heart of his defense is that he had no
18 knowledge, right? I didn't know. The knowledge in your
19 head, again, is circumstantial, as the Judge will tell you
20 about what you've done and what you've said. And what the
21 evidence in this case shows throughout, unwavering, is that
22 Paul Bergrin knew the purpose of the conspiracy when he
23 joined it and assisted in the furthering of it.
24 Vinny Esteves made that clear to Paul Bergrin that
25 he wanted Junior killed and the truck driver killed.

1 Paul Bergrin made the same thing clear to Vinny Esteves.
2 Oscar Cordova made it clear and you heard it in the
3 recordings to Mr. Bergrin that he was going to kill them.
4 Paul Bergrin made it clear to Oscar that he knew Oscar was
5 going to kill them. Recording after recording after
6 recording.
7 Now, what Mr. Bergrin has done throughout these
8 recordings is to try as best he can not to be overly
9 blatant, right?
10 Let's put up this October 2nd, 2008 clip.
11 Oscar Cordova says to him, "I want to, uh'm, take
12 care of this motherfucker, just kill him, take care of him,
13 get rid of him Pauly."
14 What does Mr. Bergrin say?
15 "Don't talk like that."
16 Now, if it had just been left like that, you'd say
17 to yourself, well, here's a guy that's saying, hey, that's
18 not right.
19 What does the next line said?
20 "I don't trust anything now.
21 "Fucking Feds. Yeah, yeah, Osc, so you gotta take
22 care of that. Come on outside, I don't -- I don't trust
23 anything around here. You gotta be really careful
24 whatever."
25 Again, if you edit around, I guess Don't talk like

1 that could have whatever meaning you want it to. But when
2 you see it in the context, it is one very clear meaning:
3 Hey, Oscar, why are you talking so explicitly? I don't
4 trust anything. What's wrong with you?
5 So what do they do? After reprimanding him for
6 being sloppy, they move the recording to another location
7 where he feels more safe, more safe from law enforcement.
8 Right?
9 What Mr. Bergrin didn't realize, when he thought
10 he was moving away from a possible recording device, he was
11 actually taking the recording device with him - the human
12 recording device, Oscar Cordova.
13 And although I hope this goes without saying, just
14 in case, the only time you're worried about being recorded
15 is if you're doing something that you should not be doing.
16 Saying, hey, don't kill someone, not wrong. Good. Saying,
17 hey, don't talk like that because we may get recorded - very
18 different.
19 Let's have one more example on the August 19th.
20 Now, in this conversation, there is no doubt that
21 Oscar Cordova intends to use the information that Paul
22 Bergrin's giving him to locate and kill Danilo Chen-Pui,
23 right, Junior the Panamanian, DCP.
24 Cordova says, "So if we get rid of him, is that
25 gonna take care of our problem?"

1 "Bergrin: That's a separate fuckin' issue.
2 "Cordova: Right, if we give it to him, they can't
3 bring him back, whoever the fuck this -- whoever the fuck --
4 they can't bring somebody back from the dead.
5 What does Mr. Bergrin say?
6 "Vinny said he thinks he's in Panama."
7 Not, oh, no, no, no, no, no, no, don't -- no.
8 Nothing along the lines of, I just want to make it
9 clear, Oscar, I want to take a statement from this guy.
10 Oscar Cordova could not be more clear what is
11 going on.
12 And what is Mr. Bergrin saying?
13 Vinny thinks he's in Panama. Go get him.
14 And again, what possible quality could Oscar
15 Cordova offer to be the guy whose taking these statements?
16 In an August 5th conversation, Mr. Bergrin slips,
17 and you can see the transcript, hear the recording. He
18 says, "I say we hit the Pam -- " -- then catches
19 himself -- " -- I say we go see the Panamanian first."
20 Now, putting all of that aside, members of the
21 jury, when he got the discovery, because, again, Mr. Bergrin
22 was trying to say, well, ultimately, I found out that these
23 other people were cooperating and I didn't do anything with
24 them.
25 This is in real time. This is not three and a

1 half years after having these recordings and analyzing them
2 and spinning things. This is a realtime decision that
3 Paul Bergrin made with Vinny Esteves and Oscar Cordova.
4 This is what he had. There is no evidence that he
5 had any other information whatsoever. So whatever he
6 eventually got cannot be used to recreate history -- excuse
7 me, I was holding up the wrong thing -- the two documents,
8 the two discovery documents. Whatever, cannot be used to
9 recreate history about, since I learned that afterwards, and
10 then impute knowledge backwards. The only evidence you have
11 for you is that Mr. Bergrin had those two documents, period.
12 So that is the world of his information, that is
13 what he is analyzing, that's what he's trying to figure out
14 when he's making decisions with respect to Vinny Esteves.
15 Now, and again, now, putting all of that aside,
16 putting everything that happened aside, the Oscar Cordova
17 saying things, Mr. Bergrin not saying, No, no, no, him
18 saying, I'm afraid of being recorded, let's come out here,
19 don't be as explicit, saying Vinny wants this, Vinny wants
20 that, saying that, here's how you can find this guy, try
21 this guy, try this guy, try this guy, putting all that
22 aside, you can turn to December 8th, his birthday dinner,
23 and there is nothing more clear that shows you what
24 Mr. Bergrin's intent was from day one.
25 I'm going to put up this clip, but just before we

1 do, just remember what's going on here. Oscar Cordova has
2 been invited to the birthday dinner like he's the big
3 client. There's three people that come to Mr. Bergrin's
4 birthday dinner: One client, Oscar Cordova, or one person
5 related to a client; one employee, Thomas Moran, although
6 Mr. Bergrin was telling you, oh, I was going to fire him any
7 day, every day; one social person, Yolanda Jauregui. That's
8 it. That's the birthday party. Nobody else. Four people
9 at the table. Those are his four people, or those are his
10 three people.
11 And at that dinner, for the very first time,
12 through all the, I think he's here, Oscar, Junior may be
13 here, Oscar. He's back in Panama, you should know this guy,
14 you should talk to this guy, Vinny says this, Vinny says
15 that, for the very first time, Oscar Cordova tells Paul
16 Bergrin, We got him, we know where he is, we have located
17 Junior the Panamanian.
18 And what is Paul Bergrin's reaction? What does he
19 say? Great. We can get that statement. Excellent. What's
20 his address, Oscar? I'm going to send my guys over there
21 right now.
22 No.
23 Pulls his chair a little closer: I want to talk
24 to you.
25 Can we put the clip up?

1 "I got everything lined up. I talked with Tommy.
2 Gonna come to you. Is it gonna help our case? Is it gonna
3 help our case or is it gonna hurt it?
4 "Mr. Bergrin: It's gonna help it. They'll never
5 figure it out.
6 "Cordova: Because they'll never bring --
7 Bergrin, now not just approving of it, now
8 directing and explaining how to do it: "Put on a ski mask,
9 and we'll fuckin' rob him 'cause there's got to be a lot of
10 money in the house."
11 Mr. Cordova doesn't understand, he doesn't get it:
12 The money, why the money? I don't need money.
13 Then we skip to Mr. Bergrin. "No, no, no."
14 Because Oscar's not getting it.
15 "We gotta make it look like a robbery. It cannot
16 under any circumstances look like a hit."
17 Now Mr. Cordova got it: "Smart, I was saying fuck
18 his money. We, I got the money."
19 And Mr. Bergrin: "No, I'm not worried about the
20 money but we have to make it look like a home invasion
21 robbery. We have to hit 'em when his girlfriend's at work.
22 We don't want...we don't want her around. Just want to --
23 she's nothing.
24 And Oscar again doesn't understand. Well, that's
25 exactly my point.

1 "She's nothing in the case. Double, double the
2 pressure. You understand?
3 "Double what?
4 "It doubles the pressure. With him, they'll
5 fuckin' say 'Fuck him, he's a drug dealer.' You understand?
6 With her, it makes it, it puts double the pressure on him
7 there alone."
8 And now Mr. Cordova got it: "I got it Paul."
9 When Paul Bergrin had his chance to discuss this
10 matter again, the next day, all right, the whole, Oh, I had
11 a drink, I didn't have a drink, how many drinks did I have,
12 December 9th, in the clear light of day, this discussion is
13 brought up again. Oscar Cordova, Paul Bergrin.
14 Can you put up the next clip?
15 "So uh'm, you can go ahead and take care of that.
16 The other thing is, remember what I was telling about
17 yesterday --
18 "Um-hum.
19 "About the Panamanian, I found him and the broad,
20 so we're gonna, I'll take care of that Pauly, OK? There's
21 no need for you to do anything.
22 "Yeah .
23 "That's going to help us, though, isn't it?
24 Yeah. A lot."
25 The literally, the very last recording.

1 So from beginning to end, Paul Bergrin had this
2 list with Vinny Esteves, two people, Carlos Noyola, Junior
3 the Panamanian, and the very first time he's located, that's
4 what Mr. Bergrin's reaction was on December 8th. And when
5 he had the night to think about it, to wake up the next day,
6 to change his mind, driving in that car to Monmouth County
7 Jail, what did he do? You know, I don't know, I was
8 drinking, I was crazy, I shouldn't do that, that's wrong?
9 No.
10 Yeah, it's gonna help a lot.
11 So you're left with this. Paul Bergrin can try to
12 spin the facts however he wants, but the reality is this.
13 The only possible legitimate role for Oscar Cordova was to
14 take a statement, and even that's sort of absurd. But the
15 first time he's located, you heard what he said. All right?
16 I'm going to leave you with one last clip.
17 Can we put up the December 9th, the last one?
18 "He's like my right-hand man, Tommy, you know?
19 "Big T. He does good, isn't it, Paul?
20 "Mr. Bergrin: He's a good guy. He's a loyal
21 fuckin' guy, man."
22 And "Cordova: That's right. Anna loves him.
23 "Mr. Bergrin: You need loyalty, man.
24 "Yup. You can't get that no more, huh?
25 "Fuck no, man. Everybody's a piece of shit out

there right now. I don't trust, I don't trust nobody, man.

"I know you don't, isn't it. None of us do. It's hard."

And Mr. Bergrin: "Yeah, man. You gotta fuckin' live by a code.

"Mr. Cordova: Yup.

"Bergrin: Of fucking not trusting anybody. It's a hard way to live.

"Cordova: But it is what it is...

"Mr. Bergrin: It's a terrible way to live, man.

"But it is what it is Paul.

Mr. Bergrin says "Yeah."

I don't trust nobody.

Mr. Bergrin was right. He shouldn't have trusted anybody. But he did. Oscar Cordova. And that's why we have the recordings that you've heard.

He said you gotta live by a code, it's a terrible way to live. He's also right. What they did was a terrible code.

The problem is is that Paul Bergrin's code was a criminal code, not a code of honor. It's a terrible way to live. Especially when you get caught.

Now, -- 10 minutes, Judge?

THE COURT: Ten minutes. Not 11.

(Laughter)

1 MR. MINISH: To wrap that up, members of the jury,
2 Mr. Bergrin tried through his questions to hop back and
3 forth, this date to this date, this recording to this
4 recording, this little clip to this little clip.
5 When you look at things in context, nothing could
6 be more clear that these two guys, Junior and the truck
7 driver, were on the list from the very beginning, that Paul
8 Bergrin made every effort he could to assist this
9 conspiracy, both by pulling out information, taking out
10 information from Vinny Esteves in jail and providing it to
11 who he thought was a cooperator -- or, excuse me, who he
12 thought was a hitman so they could find him, they could find
13 the cooperators. Every single step along the way, from
14 beginning to the very end, and then even the day after the
15 end, when he had the chance to change his mind.
16 The evidence against Mr. Bergrin with respect to
17 each count and each act that relates to the Monmouth County
18 witnesses is overwhelming, and that is not even including
19 anything that was said on the stand. Literally just from
20 the recordings, you can easily draw the line from the
21 meeting of Oscar and Vinny Esteves all the way through to
22 December 8th and December 9th. And what Mr. Bergrin wanted,
23 what he knew was going on with the conspiracy, the efforts
24 he made to help the conspiracy, the steps he took, and what
25 he wanted done, and why he wanted it done, because,

1 remember, members of the jury, the whole reason to do this
2 is to get his firm back on the map, making that money again,
3 right, he said his money was going down, and, number two, so
4 they can get Vinny Esteves out because that's how they were
5 going to make the money, right? Once he got that, there's
6 all the testimony, he can get his kilos for this, he can get
7 this, he's got connections, and he's going to get us, once
8 we, Oscar and Mr. Bergrin, once Vinny gets out.
9 That was the motivation.
10 Now, members of the jury -- well, Mr. Bergrin made
11 reference in his opening to the Sixth Amendment of the
12 United States Constitution, all right?
13 Now, the Sixth Amendment provides a series of
14 rights to individuals who are accused of a crime. They have
15 certain rights, and among those rights are to have the
16 assistance of counsel for his defense. That's how it ends,
17 the Sixth Amendment ends.
18 What Paul Bergrin said in his opening is exactly
19 what this case is about, the Sixth Amendment.
20 He's wrong. What it's about is the twisting of
21 the Sixth Amendment.
22 Assistance of counsel does not mean sending false
23 letters and fraudulent checks to probation to get Jason
24 Itzler out so he can run his prostitution business.
25 Assistance for a defense does not equal assisting in selling

1 or buying drugs. It does not mean you get to hook up your
2 clients with the source of kilograms of cocaine. Nowhere in
3 there is it provided for the right to brainwash a
4 nine-year-old girl to testify falsely. Putting on false
5 testimony is not a right covered by the United States
6 Constitution. There's no looking for the location of a
7 prosecution witness so you can make the headache go away,
8 like with Mr. Pozo. Assistance of counsel does not cover
9 devising a scheme to kill witnesses, then advising the
10 hitman the best way to get away with murdering a prosecution
11 witness. And it definitely does not cover while being house
12 counsel for a drug organization, after a member of that drug
13 gang is arrested, finding out the name of the confidential
14 witness from the client in a secure, unrecorded lawyer's
15 room, passing the name along to his fellow gang members,
16 then analyzing the Government's case, determining the only
17 way you can win it is by killing that witness, providing
18 that legal analysis to those gang members, and then leaving
19 with the promise of No Kemo, no case.
20 I offer you this instead, members of the jury: No
21 more of Paul Bergrin not being held responsible for what he
22 has done.
23 Members of the jury, you've heard testimony,
24 listened to recordings, read transcripts, heard
25 stipulations, and reviewed the other exhibits admitted into

1 evidence. You're going to take all those back to the jury
2 room, and you're going to apply the law the Judge gives you
3 when you do.
4 And I'm confident that you will come to the only
5 verdict that makes sense. And to quote Paul Bergrin, using
6 your God-given common sense, you know what is true: That
7 Paul Bergrin is, in fact, guilty of the RICO charge, the
8 RICO conspiracy charge, the violent crimes in aid of
9 racketeering both in the Kemo plot and the Vinny Esteves
10 plot, conspiring to distribute cocaine, failing to file the
11 8300 form, maintaining a drug-involved premises three times
12 over, conspiracy to travel in aid of prostitution, travel in
13 the aid of the prostitution business, conspiracy to travel
14 in aid of a drug trafficking business, traveling in aid of a
15 drug trafficking business, and, most significantly, again,
16 conspiring to murder Kemo Deshawn McCray, an actual man
17 actually killed in this very city because of the work of
18 Paul Bergrin, and doing all that while running his law
19 practice, providing legal and illegal services, while
20 getting his criminal associates to commit crimes along with
21 him, while running his enterprise, the Bergrin Law
22 Enterprise.
23 Paul Bergrin in his opening statement asked for
24 justice. Justice is not letting off a man who committed all
25 these crimes. Justice is holding him responsible for his

1 acts.

2 Give Paul Bergrin exactly what he asked for. Give

3 him justice. Find him guilty of each and every count in

4 this indictment, again, members of the jury, not because a

5 lawyer said so, but because the evidence says so.

6 Thank you.

7 THE COURT: Thank you very much.

8 Ladies and gentlemen, we're going to take a one

9 half hour lunch. We will then come back, and Mr. Bergrin

10 will do his summation.

11 THE COURT CLERK: All rise.

12 Just place your notebooks on your chairs.

13 (The jury exits)

14 (Luncheon recess taken)

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1 A F T E R N O O N S E S S I O N

2 (Defendant present)

3 (Jury out)

4 THE COURT: Counsel need to see me?

5 MR. BERGRIN: Judge, the prosecution had spoken to

6 Mr. Levy in reference to the fact that they had no objection

7 to me mentioning Abu Ghraib for the limited purpose of

8 letting the jury know that I was working on that particular

9 case.

10 THE COURT: Is that true?

11 MR. GAY: Well, Judge, just, again, just the

12 mention of that.

13 THE COURT: Okay. For that limited purpose.

14 MR. GAY: Yes, but that's it, yes.

15 THE COURT: Okay. Let's get the jury.

16 MR. LEVY: Judge, just one other thing.

17 In Mr. Minish's closing -- this is a somewhat

18 belated objection -- he mentioned Mr. Bergrin's opening

19 statement, and in doing so talked about -- used the

20 rhetorical device of, where's the evidence, Mr. Bergrin is

21 trying to pull one over on you, or deceiving you, lying to

22 you, words to that effect, and then referred to the opening

23 statement.

24 We would ask for a limiting instruction reminding

25 the jury that when Mr. Minish did that, the opening

1 statement is not evidence.

2 THE COURT: No. What I'll do is, I'll give my

3 charge to the jury which specifically says that in the

4 charge.

5 Okay. Let's get the jury.

6 THE COURT CLERK: All rise.

7 (The jury enters)

8 THE COURT: You may be seated.

9 Ladies and gentlemen, as you can see, I'm trying

10 to move this along because I don't want to interrupt the

11 lawyers in the middle of summation. I don't want to have to

12 stop. So we're going to go today a little bit longer so

13 that Mr. Bergrin can get his total closing in.

14 Both attorneys from both sides recognize that I've

15 put a limit on the time, and they understand that and they

16 will be bound by it. Just as Mr. Minish was, Mr. Bergrin

17 will be, but we will probably wind up going a little later

18 than we usually do. Not a lot, a little bit.

19 Mr. Bergrin, go ahead.

20 MR. BERGRIN: Thank you.

21 Counsel, ladies and gentlemen.

22 Ladies and gentlemen of the jury:

23 I stand before you a very humbled individual. We

24 are all driven by -- we are all human beings and we are all

25 driven by emotions. We're individuals who react at times