

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) 1:17CR34
)
REALITY LEIGH WINNER,)
)
 Defendant.)
-----))

ARRAIGNMENT AND MOTIONS HEARING
BEFORE THE HONORABLE BRIAN K. EPPS
THURSDAY, SEPTEMBER 14, 2017; 2:02 P.M.
AUGUSTA, GEORGIA

FOR THE GOVERNMENT:

Jennifer G. Solari, Esquire
U.S. Attorney's Office
Post Office Box 8970
Savannah, Georgia 31412
(912)201-2561

David C. Aaron, Esquire
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202)307-5190

FOR THE DEFENDANT:

John C. Bell, Jr., Esquire
Titus T. Nichols, Esquire
Bell & Brigham
457 Greene Street
Augusta, Georgia 30901
(706)722-2014

Joe D. Whitley, Esquire
Brett A. Switzer, Esquire
Baker, Donelson, Bearman, Caldwell, and Berkowitz
3414 Peachtree Road, NE, Suite 1600
Atlanta, Georgia 30326
(404)223-2209

OFFICIAL COURT REPORTER:

Lisa H. Davenport, RPR, FCRR
Post Office Box 5485
Aiken, South Carolina 29804
(706)823-6468

1 (Call to Order at 2:02 p.m.)

2 THE CLERK: The Court calls case number 1:17CR34.
3 The United States of America v Reality Leigh Winner. Jennifer
4 Solari and David Aaron for the government. Brett Switzer, Joe
5 Whitley, John Bell, and Titus Nichols for the defendant. Here
6 for an arraignment on Superseding Indictment and motions
7 hearing.

8 THE COURT: Good afternoon, Everybody.

9 (Simultaneous group response)

10 THE COURT: Ready for the government?

11 MRS. SOLARI: Yes, Your Honor.

12 THE COURT: And the defense?

13 MR. NICHOLS: Yes, sir.

14 THE COURT: All right. Mr. Nichols, I always like
15 when we have a superceding indictment to take it up in the same
16 manner that I would in an initial appearance on an indictment
17 because I want to make absolutely sure that the defendant
18 understands all the rights that we originally explained apply
19 certainly in this context of a superceding document, and first
20 I'll say to you, Ms. Winner, that a superceding indictment
21 replaces in its entirety the original indictment issued in the
22 case. Always the first thing I do when I have an initial
23 appearance is talk about competency.

24 I know I've already made a finding of competency here,
25 but, Mr. Nichols, you've had an opportunity to spend a lot more

1 time with your client since I made that initial finding. Do
2 you have any reason to doubt your initial representation in
3 this matter that this defendant is competent?

4 MR. NICHOLS: No reason to doubt, Your Honor.

5 THE COURT: Okay. All right. Moving on, I want to
6 make sure you understand, Ms. Winner, that as we move through
7 this process with this Superceding Indictment that the right to
8 counsel I explained to you at your initial appearance certainly
9 applies in this context just as it did at the outset. Do you
10 understand that?

11 THE DEFENDANT: Yes, Your Honor. I understand.

12 THE COURT: Okay. That means that you have the right
13 to be represented by an attorney at every stage of this case
14 both in and out of court and including any questioning by law
15 enforcement. You have the right to consult with an attorney
16 before questioning may occur at any time. You may hire your
17 own attorney if you're financially able to do so, and, of
18 course, if you cannot afford to hire your own attorney the
19 court will appoint one at no cost to you. Do you understand
20 that right to counsel I just explained?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And, certainly, in this matter in the
23 past you've retained counsel and you plan on doing that in the
24 future instead of seeking court-appointed counsel; is that
25 correct?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. Moving on, I also want to explain
3 to you and reiterate that your right to remain silent still
4 fully applies in this case. You have an absolute
5 constitutional right to remain silent; that is, no one
6 associated with the government or any law enforcement agency
7 can force or compel you to make any statement regarding any
8 subject whatsoever including, most importantly, the allegations
9 in the Superseding Indictment that we're about to review, but
10 it's also important for you to realize that your right to
11 remain silent is not restricted to the topics and allegations
12 in the Superseding Indictment.

13 Instead, your right to remain silent includes any topic
14 you can imagine. Any statement made by you or any answers that
15 you give to any questions asked of you can be used as evidence
16 against you, not only in connection with this case that we're
17 here for today, but also any other case that's currently
18 pending against you or may be brought against you in the future
19 in any jurisdiction. The bottom line is you're not required to
20 make any statement. If you have made a statement, you need not
21 say any more, and if you start to make a statement, you may
22 stop at any time. Do you understand your right to remain
23 silent?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Mr. Nichols, have you received a copy of

1 the Superseding Indictment and Penalty Certification and had a
2 chance to review those documents with your client?

3 MR. NICHOLS: Yes, I have.

4 THE COURT: Mrs. Solari, for the record could you
5 please summarize those documents?

6 MRS. SOLARI: Yes, sir, Your Honor. The Indictment
7 begins with general allegations setting forth the defendant's
8 history of employment as well as her security clearance. It
9 goes on to describe various levels of classified information as
10 well as how one would access and lawfully handle classified
11 information. Further, the Indictment specifies the defendant's
12 access to national defense and classified information as well
13 as her training regarding the proper access and control of that
14 information. Further, on page 3 the Indictment goes on to
15 allege that the defendant wrongfully removed, retained, and
16 transmitted national defense information on or about the 9th of
17 May 2017.

18 On page 5 of the Indictment appears the substantive count,
19 Count One of the Indictment, incorporating by reference the
20 preceding paragraphs and alleging that on or about May 9, 2017,
21 in Richmond County, in the Southern District of Georgia, the
22 defendant, Reality Leigh Winner, having unauthorized possession
23 of, access to, and control over a document containing
24 information relating to the national defense willfully retained
25 the document and failed to deliver it to the officer or

1 employee of the United States entitled to receive it and
2 willfully transmitted the same to a person not entitled to
3 receive it; to wit, Winner retained the intelligence reporting
4 and transmitted it to the news outlet, all in violation of
5 18 U.S.C. § 793(e).

6 Your Honor, to be clear I want to point out what differs
7 in the Superseding Indictment from the original Indictment. In
8 the original Indictment in paragraph 13 on page 4 I believe the
9 original read "approximately two days later" meaning
10 approximately two days after May 9, 2017. That language has
11 now been replaced with "on or about May 9, 2017". The only
12 other change, Your Honor, appears in Count One on page 5.
13 Instead of alleging a time period -- a range of time -- we have
14 alleged a more precise date of the offense -- that being on or
15 about May 9, 2017. Those are the only changes in the
16 Superseding Indictment.

17 THE COURT: Okay.

18 MRS. SOLARI: Would Your Honor like me to review the
19 penalty as well?

20 THE COURT: Please.

21 MRS. SOLARI: Your Honor, should the defendant be
22 convicted of the violation of 18 U.S.C. 793(e) alleged in the
23 Superseding Indictment, she faces a maximum penalty of
24 imprisonment for not more than 10 years, a fine of up to
25 \$250,000 or both, not more than three years supervised release,

1 and a mandatory \$100 special assessment.

2 THE COURT: Thank you, Mrs. Solari.

3 MRS. SOLARI: Yes, Your Honor.

4 THE COURT: Ms. Winner, is it fair to say that you
5 understand the nature of this charge and the maximum penalties
6 associated with the charge?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You have a right to a formal reading of
9 the Superseding Indictment. It is simply where I would, in
10 addition to this in-court summary by the prosecutor, read every
11 line of the Superseding Indictment to you here. Do you waive
12 formal reading of the Indictment?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: How do you plead to the charge?

15 THE DEFENDANT: Not guilty, Your Honor.

16 THE COURT: Let the record reflect that Ms. Winner
17 has received a copy of the Superseding Indictment and Penalty
18 Certification, waived formal reading of the Superseding
19 Indictment, and entered a plea of not guilty to the charge
20 contained therein.

21 I understand, of course, that here the government has
22 already provided some discovery in the case pursuant to its
23 normal discovery policy. The changes in this Indictment --
24 does it change the scope of discovery and require the
25 government to produce anything in addition to what it has in

1 the case so far?

2 MRS. SOLARI: It does not, Your Honor, and we are in
3 receipt of a letter requesting additional discovery by the
4 defendant. We are working diligently to respond to that
5 letter, and I am told Ms. Edelstein has taken lead on that
6 along with Mr. Aaron. I am told that in approximately one week
7 we should have a response to the defendant's discovery request.

8 THE COURT: Okay. Will you reply by a letter to
9 that?

10 MRS. SOLARI: Yes, Your Honor. That's our intent.

11 THE COURT: Okay. And is there a plan for some kind
12 of follow-up conference after that to the extent there is any
13 continuing disagreement?

14 MRS. SOLARI: If Your Honor would like to have one.
15 We didn't have a plan yet. We hadn't yet discussed it with
16 defense counsel since we were in the process of seeking certain
17 information.

18 THE COURT: Okay. Well, certainly, in the process of
19 formulating that letter maybe if you could start thinking ahead
20 to when you could get together if you anticipate not resolving
21 the issue -- when in the near future you can get together with
22 defense counsel to discuss the remaining, if any, disputes.

23 MRS. SOLARI: We will do that, Your Honor.

24 THE COURT: Okay. I believe that takes care of all
25 we need to discuss in terms of the Superceding Indictment.

1 Mr. Nichols, is there anything further from your
2 perspective we need to discuss with respect to the Superceding
3 Indictment?

4 MR. NICHOLS: Nothing further with regard to the
5 Indictment, Your Honor.

6 THE COURT: Mrs. Solari?

7 MRS. SOLARI: Your Honor, Mr. Aaron did remind me
8 that one of the issues we'll have with regard to meeting any
9 defense discovery request is simply the issue of clearances
10 that remain. So it may be a while before we can discuss this
11 with the entire defense team, but, again, we will meet with
12 them and see how we can go about all getting on the same page
13 with that and notify the court if we need a follow-up
14 conference.

15 THE COURT: Okay.

16 MRS. SOLARI: Nothing else with regard to the
17 Superceding Indictment.

18 THE COURT: All right. We'll move on to a discussion
19 of the pending motions.

20 Mr. Nichols, you and your client may be seated.

21 Before I open the floor for comments by the lawyers with
22 respect to the three motions that I noticed for a hearing
23 today, I did want to go through my initial thoughts. I've had
24 an opportunity to read those briefs and the cases cited in
25 those briefs and give some thought to my initial reaction and

1 so I think it's helpful maybe for me to start with that and
2 then we can turn to the lawyers. I want -- certainly, I am not
3 trying to stifle any discussion. I think, though, it might be
4 more efficient if I start with my preliminary conclusions.

5 First of all, as to the government request to exclude time
6 from speedy trial, I don't think there's been any opposition to
7 that. I didn't see anything in it that in my mind was
8 objectionable. I think it's probably a good idea to enter an
9 order in the manner that the government requested. So I am
10 inclined to grant that motion and enter the order.

11 In terms of the defense objections to the ex-parte
12 Section 4 discovery motion, I have looked at this very
13 carefully and looking at -- I've read every case that the
14 defense cited in their brief and it appears to me the Eleventh
15 Circuit has already weighed in somewhat on this and said that
16 allowing defense counsel to participate in the Section 4
17 process itself would defeat the very purpose of Section 4, and
18 then there's this issue of, well, does that change any when you
19 have defense counsel that has a security clearance?

20 I looked very carefully at that and, certainly, some
21 courts have said that at least it opens the door slightly for
22 participation by defense counsel, but something I found pretty
23 persuasive was the Sixth Circuit's holding in that regard in a
24 case called *U.S. versus Amawi*, 695 F.3d 457, where the court
25 said that nothing in CIPA contemplates the Section 4 process

1 changing from an ex-parte one to one where defense counsel
2 participates merely because defense counsel has a security
3 clearance going back to the thought that this whole purpose of
4 Section 4 is to allow the government in a highly-secure,
5 one-on-one setting with the Court to present these things and
6 ask that they not be disclosed to the defendant and her
7 counsel.

8 So those are my preliminary conclusions in that regard. I
9 do think, though, that it makes sense to give the defendant an
10 opportunity to file an ex-parte, in-camera submission that
11 describes the defense. That way it gives me an opportunity to
12 really understand it and have a more knowledgeable approach to
13 the Section 4 motion filed by the government.

14 Moving on, we also have the Motion to Modify the
15 Scheduling Order presented by the government, and in my
16 comparison of the initial kind of skeletal scheduling order I
17 had put in place and the more detailed one offered by the
18 government it appears to me that the government wants to add a
19 deadline for defense reply briefs in support of their pretrial
20 motions; also, wants to include an opportunity for the
21 government to challenge the sufficiency of the Section 5 notice
22 meaning objections on the grounds that it's not sufficient; a
23 response brief and then a reply brief on that issue before we
24 get into the Section 6 process itself; and then, of course,
25 full briefing on the Section 6 issue before the hearing occurs.

1 I am inclined at this point to, certainly, add the
2 deadlines for the defense to reply to the pretrial motions,
3 allow full briefing on the Section 6 determination in advance
4 of the hearing. I think that makes total sense. The part I am
5 caught up on, though, and think it may not be necessary and
6 just unnecessarily prolongs the case is briefing the
7 sufficiency of the Section 5 notice itself.

8 Section 5 talks about the defense filing a brief
9 description of the issues and I think that to the extent the
10 government has a concern with the sufficiency of the notice
11 it's probably more efficiently addressed in the Section 5
12 briefing itself. You're going to have a chance to file the
13 government's original motion in support of the Section 6
14 determination, plus a reply brief and then on top of that have
15 a hearing on the Section 6 issue. So to me that gives ample
16 opportunity to explore the sufficiency of the notice in advance
17 and then at the hearing itself. So I think that that may be
18 the more efficient way to proceed.

19 Now there is also this argument by the defense that the
20 CIPA process should be put on hold, essentially, because you
21 have this request for supplemental production so that we start
22 the CIPA process once all the productions have occurred and we
23 have all the information out there and what we're dealing with.
24 There is some efficiency probably to be gained in that, but I
25 prefer, as you might not be surprised, to have immediate

1 progress in the case over any kind of efficiencies we might
2 gain from delaying it, and, certainly, there may be some
3 inefficiencies, but at the same time I'm hoping that as we
4 start the process with respect to the initial production that
5 it'll kind of pave the way, hopefully, and make it easier to
6 deal with the remaining issues that might be presented by the
7 supplemental production.

8 So those are my initial thoughts on the motions and at
9 this time I'll turn to the defense to respond and then the
10 government.

11 MR. BELL: Your Honor, I was going to do the
12 scheduling order and my eminent co-counsel, Mr. Whitley, deal
13 with the Section 4 things. So we're both, I think, quite
14 familiar with all of it.

15 I'm not sure exactly what's left for me to address on the
16 scheduling order. This is, obviously, a purely discretionary
17 thing. I don't think there could be error. We appreciate the
18 equalizing the briefing time. I think putting all of -- you
19 know, any objections to our notice, put that in the main motion
20 rather than have a separate briefing section on that.

21 The one thing I would say about the CIPA process is we can
22 foresee a situation where, you know, with staged discovery
23 production the documents that may seem real important to us
24 might seem less important when we get other documents. We do
25 contemplate a follow-up so that at least one additional request

1 for documents to the government. We've been working on that
2 and dealing with those issues ever mindful of the, you know,
3 restrictions that we discussed on the first request, and to a
4 large extent we are very much in the hands of -- that schedule
5 will be in the hands of the government.

6 If in a week from now we get -- the government produces
7 everything we've requested so far, we're here. If the
8 government takes a different view and, of course, they -- I
9 can't anticipate what that could be, but there could be
10 discovery hearings and such and perhaps briefings on those
11 issues that could at least for these other documents not yet
12 produced delay the CIPA thing.

13 In saying that I would just say if the Court wants to
14 enter what the Court wants to do right now in accord with what
15 you just announced, we would just have the caveat of let's
16 perhaps take a second look if it might look better otherwise
17 once we get more into the subsequent production.

18 THE COURT: Okay. Well, and, you know, certainly,
19 when we talk about supplemental production, supplemental
20 discovery requests, it could gum up the works down the road. I
21 do think it would be highly inefficient most likely to have a
22 full blown Section 6 hearing on the initial production when
23 we're not finished with --

24 MR. BELL: Uh-huh.

25 THE COURT: -- the supplemental production, for

1 example. So if we get that far into it, we're probably going
2 to want to get both discovery -- the initial discovery --

3 MR. BELL: Uh-huh.

4 THE COURT: -- and any supplemental discovery and any
5 issues with that lined up to be addressed at the same time in
6 that final Section 6 briefing and hearing, but I'm hoping we
7 can make progress on all fronts --

8 MR. BELL: Uh-huh.

9 THE COURT: -- right now without having to wait on
10 that supplemental discovery issues to take place. I can at
11 least start looking at what the government has given me already
12 in the Section 4 --

13 MR. BELL: Uh-huh.

14 THE COURT: -- and to the extent you guys get a
15 supplemental production and you're not happy and you want to
16 file a motion to compel, we can go ahead and take that up as
17 quickly as possible -- that kind of thing. I think right now I
18 am hoping we can press on all fronts --

19 MR. BELL: Uh-huh.

20 THE COURT: -- but then at some point I hope to
21 consolidate before we get to the Section 6 process itself.

22 MR. BELL: Okay. It just -- we just -- the Court
23 does normally have a very open mind. We're not asking for
24 delay. We want to be as efficient as possible, but in this
25 case -- and, of course, we're not making a proffer, but there

1 are two issues that are of over-arching importance that the
2 Supreme Court has -- going back to 1940 has under the Espionage
3 Act -- we're not being charged with release of confidential
4 information, per se.

5 The Espionage Act passed in the middle of World War I has
6 been narrowed by the Supreme Court to be military secrets of
7 the Army and Navy and a movement of troops and ships and stuff
8 like that, and the discovery of documents of how -- what's
9 here -- and I am trying not to deal with any of the specific
10 facts since we have been allowed to view documents, but what
11 here -- how this would relate to movements of the Army and
12 Navy, the national defense in time of war, frankly, puzzles me,
13 and we can see considerable discovery that could rest -- relate
14 to that that does not have anything specifically to do with
15 what they allege my client did or did not do, and, likewise, in
16 that decision, 1945, by Judge Learned Hand remains the seminal
17 case on this point and that involved a real German spy, but he
18 was collecting things that any American could collect --
19 matters in the public domain.

20 He was being paid by the government of Germany during
21 World War II to take pictures of defense plants, of -- you
22 know, go by the plant outside and take it, see how many trucks
23 there are, how many tanks, and how many things like that --
24 convicted of the espionage. He was engaged in intentional
25 espionage, being paid to do it, but because all of that

1 information was in the public domain -- something that any, you
2 know, honorable citizen could drive by outside of the plant and
3 take a picture or whatever like that -- Judge Hand said, "It's
4 not a crime." And in this case that is likewise could involve
5 a lot of discovery -- again, far beyond the comings and goings
6 of our client. I'm saying that just to alert the Court.

7 THE COURT: Right. Well, and that seems to be very
8 much a fundamental disagreement between counsel for both sides
9 in terms of what the true elements of the offense are.

10 MR. BELL: I agree.

11 THE COURT: And it sounds like, I mean, first of all,
12 we got some very bright lawyers on both sides of this.

13 MR. BELL: And you got me.

14 THE COURT: Typically -- typically, the elements of
15 the offense are pretty easy to identify. I mean, it doesn't
16 take a lot of research and they're pretty evident. So to me I
17 am hopeful that the seasoned and bright lawyers we have in this
18 room could sit down and say, "Look, we've both done our
19 research. Let's compare notes. Somebody is wrong here. There
20 are specific concrete elements to this offense. Let's talk
21 about it and see who is wrong and who is right." But,
22 certainly, if you get loggerheads about that and that's a
23 dispute, then that's something we're going to have to take up
24 in some context here probably sooner than later. I know that's
25 been rolling --

1 MR. BELL: And that could be very ---

2 THE COURT: -- around for a while.

3 MR. BELL: Excuse me. I didn't mean to interrupt
4 you. That could be very helpful perhaps to all of all of us
5 and it'll probably be framed in terms of discovery disputes.

6 THE COURT: Right. That's what I would guess a
7 motion to compel and, you know, if you've got that issue
8 lingering and it's, you know, all of the lawyers today can
9 agree that that's really a big hang-up to deciding what ought
10 to be produced -- what else ought to be produced in the case --
11 then maybe we just need to go ahead and tee that up and get a
12 ruling on it as quickly as possible as one potential way to
13 address this --

14 MR. BELL: Uh-huh.

15 THE COURT: -- but it sounds like you probably need
16 to wait until Mr. Aaron provides you with that letter and y'all
17 have a follow-up meeting about it --

18 MR. BELL: Uh-huh.

19 THE COURT: -- before we can reach a conclusion as to
20 whether a motion needs to be filed.

21 Is there any benefit maybe in the lawyers getting together
22 today and just having a discussion about it while you're here?

23 MR. BELL: We're always glad to meet with them.

24 We're here.

25 MR. WHITLEY: Yes, sir.

1 MR. BELL: We're fine. And I was excited about that
2 statement they hoped to have at least a written response on the
3 discovery as quickly as they suggested.

4 THE COURT: Okay. You know, as we go through this, I
5 do hope that there is some collaboration. I think it certainly
6 is going to save us some time and maybe some needless labor.
7 An example of that -- a good one -- would be the Section 5
8 notice. One way to avoid protracted litigation about
9 sufficiency of it is to submit the notice to the government
10 before you submit it to the court. Let them tell you what they
11 think in terms of whether it's sufficient or not. That way you
12 can avoid the headache of having to brief the issue and get a
13 court ruling on it. Let's just go ahead and let them give some
14 feedback on it before you file it with the court.

15 MR. BELL: Uh-huh.

16 THE COURT: I think we need to be thinking outside of
17 the box --

18 MR. BELL: Uh-huh.

19 THE COURT: -- and erring on the side of
20 collaboration rather than not.

21 Another good example of that is a scheduling order. I
22 think we're finally in a position to get a detailed scheduling
23 order entered in the case, but I think a lot of foresight and
24 collaboration at the outset probably resulted in a lot better
25 and more refined scheduling order from the beginning. So I

1 just offer that as insight as to some ways I think we can make
2 some strides here.

3 Is there anything further that you want to say with
4 respect to the motion you're addressing, Mr. Bell?

5 MR. BELL: Nothing further. I think we've covered
6 it. I would like to turn the podium to Mr. Whitley if I might.

7 THE COURT: All right.

8 Good afternoon, Mr. Whitley.

9 MR. WHITLEY: Good afternoon, Your Honor. It is a
10 pleasure to be here in your courtroom. Thank you for the
11 courtesy of this hearing today. I wanted to introduce Brett
12 Switzer who is with me from Atlanta who's my colleague who's
13 with my law firm who's with me today, Your Honor.

14 THE COURT: Welcome, Mr. Switzer.

15 MR. WHITLEY: Thank you for the courtesy. Having
16 heard the Court comment, Your Honor, on a couple of issues, I
17 think it may shorten my presentation to the benefit of time and
18 efficiency today; so let me ---

19 THE COURT: I am not trying to stifle conversation,
20 but at the same time I don't like beating around the bush on my
21 end. I want to tell you what I am thinking up front and then
22 let's have a meaningful discussion about what I've said.

23 MR. WHITLEY: Yes, sir. Thank you for that. So if
24 the Court please, I am here because I'm representing Reality
25 Winner who is my client along with my colleagues and I take

1 that obligation seriously and the Court understands that and
2 the Court knows that I do, as the government's obligation is
3 taken seriously. Having served a good bit of my career in
4 public service, I can appreciate their obligation and I spent
5 too much of my life in a SCIF when I was in Washington, DC many
6 years ago dealing with lots of these issues dealing with
7 terrorism and I am still obligated under the oath I took then
8 to protect those secrets.

9 So the team we have on the defense side is a unique team
10 with local counsel John Bell and Titus Nichols who is a former
11 Assistant District Attorney and also was a JAG Reserve
12 attorney. Beyond that, we have others who were former
13 Assistant U.S. Attorneys working with us on our team. So I
14 wanted the Court to know if any aspect of the Court's
15 consideration ex-parte contact with the government was ever
16 implicated, our background and experience or our desire to be
17 fully compliant and obligated to the mission we have to
18 represent our client under the law, but also at the same time
19 oblige all of the obligations we have under CIPA, I wanted to
20 send a clear signal. With that background, Your Honor, we're
21 here to serve the court and make sure this process works in an
22 efficient manner. So thank you for your comments earlier about
23 the things that were of concern to us.

24 I want to just emphasize that we -- I know the Court
25 understands and appreciates better than I do that ex-parte

1 contact should be extremely limited and rare. There are
2 provisions under Section 4 that provide for the Court to meet
3 alone. I think that's the word in the statute with the
4 government and I understand that could or has happened and so
5 in terms of that we just would ask the Court to consider our
6 ex-parte submission we'll be making to the Court for an
7 in-camera opportunity to present our defenses to the Court at
8 some point in time. I think that's appropriate. I think that
9 will help the Court better appreciate some of the issues that
10 we think are relevant and this goes back to what the Court was
11 indicating earlier, Your Honor, with regard to the parties
12 getting together and discussing, What are the elements of this
13 offense? And I think that's something we'll undertake and we
14 appreciate the Court's thoughts on that.

15 However, we believe there is a difference of opinion and
16 that's something that might impact, ultimately, the Court's
17 determination of what is relevant and what should be redacted
18 and shared with the defense in this case and so we'd ask the
19 Court to keep that in mind as the Court continues to evaluate
20 information that's going to be provided to you in the course of
21 this case.

22 We absolutely respect your authority and decisions as you
23 make them. So I wanted the Court to appreciate that's where
24 this is coming from. We believe there could be a genuine
25 dispute at some point in time between the parties about whether

1 or not an element of this offense is showing a potential harm.
2 That's -- there may be a disagreement there and that's
3 something that we will discuss with the government. We think
4 that's an important element.

5 Those -- there are also legal issues, Your Honor, that the
6 Court will be considering that -- what should be entertained in
7 open court about some of these issues. I know the Court -- and
8 I believe the Court wants to have as much of this case tried in
9 court in the courtroom as opposed to in a SCIF and we're going
10 to do our best to accomplish that with the government, but I
11 think that determination of relevance is something that bears
12 on that defense and we think that the Court will have that
13 opportunity to consider that. I wanted to emphasize that.

14 I don't want to take up much more of the Court's time. I
15 want to look at -- talk about the *Libby* case which I think is a
16 guiding light, if you will, out of the District of Columbia
17 Circuit and it talks about the three things that are necessary
18 or at least for the Court to move forward with an ex-parte
19 conversation with the government and I suggest the Court look
20 at that opinion.

21 The Court probably has already looked at that opinion, but
22 I wanted to mention that as one that really applies to me and
23 all of my colleagues in terms of this need-to-know component of
24 it. I believe that it's hard to define what a need to know is.
25 Also, it is hard to say for me with my background and

1 experience that I don't have a need to know information that
2 has been presented that might bear and be relevant to the guilt
3 of my client one way or the other.

4 And so we don't want to be fighting this case with one
5 hand tied behind our back. We want to be fighting it with both
6 hands available to defend our client fully and effectively as
7 we move forward in this case, and I am not saying this to the
8 Court without all due respect to the Court's decisions as you
9 make them.

10 One of the -- as we move forward we will, you know,
11 examine all the things that we can examine in the SCIF. We
12 have started that process, but as we look at it we'll learn
13 more information. We'll be more informed. We come at this
14 case a little bit behind. Usually, it's sort of an even fight
15 between defense and the government when cases are initiated,
16 but the government knows much more about this case.

17 So in terms of future ex-parte contact with the Court, we
18 would like for the Court to consider whether or not the
19 government should file a notice for leave to contact the Court
20 ex-parte. We think that would be appropriate. That would
21 permit us an opportunity to approach the Court and provide our
22 perspective on those particular matters as they happen.

23 The Court also, hopefully, will consider de novo the
24 information that the Court might be looking at once we file our
25 ex-parte submission with the court on our various defenses that

1 we may be presenting in this case in some, perhaps, in-camera
2 proceeding.

3 This is an adversarial process. We don't want to be
4 handicapped. We want to be able to do the job we need to do
5 for our client. So ex-parte contact may not handicap us, but
6 at the same time the government has a better advantage in this
7 case than we do because of that opportunity. We haven't had an
8 opportunity to sit with the Court and discuss whatever the
9 government may have presented in that situation. Also, we've
10 not had an opportunity to walk through what the defenses might
11 be in this case.

12 I come back to where I started which is I'm honored to be
13 in your court. I am than honored to be in the Southern
14 District. Thank you for the opportunity to be here and be in
15 your courtroom and present our case on behalf of our client and
16 we will do everything we can to defend her innocence in this
17 case going forward. Thank you for the opportunity, Judge, to
18 present this to you today. Thank you.

19 THE COURT: Thank you for that presentation. You do
20 raise an interesting point about the relevance issue and the
21 disagreement y'all are having about the scope of the offense
22 and the elements of the offense and potential defenses to it,
23 et cetera, and while I do want to move forward as quickly as
24 possible with reviewing the Section 4 notice filed by the
25 government, it may be that I have to reconsider that after we

1 get through the issue of the scope of the offenses and the
2 defenses.

3 So, certainly, to the extent that I issue a ruling on the
4 Section 4 motion, it'll be with the absolute confirmation to
5 the defense team that that will be reviewed again if we get to
6 a stage where there are rulings made on the scope -- the
7 disputed scope -- of the case to make a fresh determination
8 about in light of that ruling whether the Section 4 notice and
9 my ruling on it needs to be revisited.

10 MR. WHITLEY: Thank you, Your Honor.

11 THE COURT: In terms of the ex-parte part, you're
12 right; we do everything we can here to avoid ex-parte
13 proceedings, but at the same time we do everything we can to
14 follow the directions and instructions from Congress and that's
15 my primary concern here is that we provide a full and fair
16 opportunity for both sides to always present arguments and
17 counter arguments to the court and only go into an ex-parte
18 proceeding when absolutely necessary and when instructed by the
19 case law or Congress, and so that's my concern. I think
20 Section 4 is pretty clear in that regard.

21 In terms of the Section 4 process, how long do you think
22 you need to file a pleading with the court that would detail
23 the information that you'd like to present regarding the
24 defenses?

25 MR. WHITLEY: The possible defenses?

1 THE COURT: Right.

2 MR. WHITLEY: One moment, if I might consult with my
3 co-colleagues.

4 Your Honor, consulting with Mr. Bell and we would ask the
5 Court to give us three weeks.

6 THE COURT: Okay. Three weeks from today?

7 MR. WHITLEY: Yes, sir.

8 THE COURT: All right. I'll give you that time to
9 make that filing. In looking -- I did look at that case you
10 cited, *U.S. versus Libby*, and, certainly, it does have all of
11 these factors that should be considered in an ex-parte setting
12 which kind of adds another layer to Section 4, and it does so,
13 I think, because you have lawyers in the case with security
14 clearances, but, you know, my concern with that is that
15 Section 4 certainly doesn't mention an exception for defense
16 lawyers with security clearances, and it becomes almost a
17 circular argument because you get security clearances solely
18 for the purpose of defending the client in the case. So I am
19 not sure that it should open the door to additional privileges
20 not contemplated by the Act itself.

21 MR. WHITLEY: Yes, sir. I would only say we don't
22 know at this point in time whether -- and, again, this is
23 suggested to the Court with all due respect: We don't really
24 know, Your Honor, what documents were redacted -- whether there
25 was one sentence redacted or whether there was a compilation of

1 documents redacted. You know, large quantities of documents
2 are not going to be seen by defense counsel, but we believe
3 that because of our special background, expertise, and equipped
4 ideas, if you will, about how these cases should be pursued
5 from defending the United States -- from standing here at this
6 lecturn in other courtrooms and saying to the Court, "The
7 United States is ready to proceed" -- that we take our
8 obligation very, very seriously in this case, and I say that on
9 behalf of John Bell and Titus Nichols as well, as well as my
10 law firm.

11 So I think we were in a position had the Court permitted
12 it and we still would ask for that opportunity subject to the
13 Court's review of our filing in three weeks or less to evaluate
14 whether or not this is a document that we should be able to
15 look at. The adversarial process has to be balanced against
16 the government's right and obligation to protect classified
17 information, and we don't want to be -- we don't want to be in
18 a position where at some point in time we've not done what we
19 needed to do to defend our client and or have our obligation to
20 be informed when we sit down with the government and have a
21 conversation with them about this case and right now we don't
22 have that knowledge and that information and that's why I say
23 what I'm saying. I don't know that I feel particularly special
24 from the background I have in government. It's just that I
25 spent a lot of time being sort of in this environment

1 understanding these things and I think we are differently
2 situated because of that.

3 THE COURT: Okay. All right. Thank you,
4 Mr. Whitley.

5 MR. WHITLEY: Thank you, Your Honor.

6 THE COURT: I appreciate it.

7 Mr. Aaron, Mrs. Solari?

8 MR. AARON: Thank you, Your Honor. Your Honor, I'll
9 focus, if I may, just on a couple of issues that the government
10 has a comment on. We agree in general, Your Honor, with your
11 discussion of the scheduling order; however, with the specific
12 issue of the Section 5 notice in our experience the adequacy of
13 the Section 5 notice is often an issue where there is a lot of
14 back and forth involved. I think Your Honor's suggestion of in
15 advance of the filing deadline the defense providing the
16 government with a draft or a read-ahead copy, I think that is a
17 good idea. We respectfully do suggest that it is advisable to
18 build in a little bit of time for back and forth. Whether we
19 build that into the schedule or just retain some flexibility in
20 the event that it's necessary, it is an issue that comes up
21 frequently, Your Honor.

22 THE COURT: So I am trying to envision this. I mean,
23 I don't want there to be unnecessary levels or stages to the
24 litigation. And so they file this Section 5 notice and it
25 says, "We intend to present the following at the trial of the

1 case that's classified." To me you file your Section 6 motion
2 and in there you say, "Number one, the notice is insufficient
3 for the following reasons, and, number two, to the extent we
4 can discern from this filing what it is they intend to present,
5 we have the following objections to it", and then we get a
6 chance for a response brief and then you get a reply to that,
7 and then on top of that you go and have a hearing to discuss
8 these very issues.

9 So to me it sounds like we're litigating the issues fully
10 in that context. It's almost like pre-litigating a summary
11 judgment motion before you get to the summary judgment motion.
12 We're going to fight over -- you know, you file a notice of
13 what you're going to move summary judgment on and then the
14 other side gets to contest it and say, "Well, you're not
15 telling us really what you're moving for summary judgment on.
16 We need to know more, you know, before we even get to the
17 motion itself", and that's the part that I am a little
18 impatient with.

19 MR. AARON: I appreciate that, Your Honor. The issue
20 here is that our 6(a) motion will have to do with the use and
21 relevance and admissibility of the information that the defense
22 is offering in their Section 5. If we haven't nailed down
23 exactly what that is, it will be a more difficult and less
24 efficient motion for us to file.

25 THE COURT: Okay.

1 MR. AARON: And that's why we make the suggestion.

2 THE COURT: Okay. All right. And I think I am going
3 to stick to my guns on it. I feel like everybody will have a
4 full and fair opportunity to litigate it, and, certainly, by
5 the time you're done with the full hearing at that point we'll
6 have all of the information we need in hand to make a ruling
7 even if some of the specificities don't -- worst case scenario,
8 they don't come out until we're sitting in here the day of the
9 Section 6 hearing, but by the end of that hearing we'll have
10 everything we need to make that determination.

11 MR. AARON: That certainly is a worst case scenario,
12 Your Honor, and, again, I hope we do have the opportunity to
13 have that back and forth with the defense in advance of filing.

14 The only other issue, Your Honor, regarding the ex-parte
15 nature of the Section 4 filing even when there are cleared
16 defense counsel, Your Honor correctly identified, of course,
17 the legal authorities on this. Having a cleared defense
18 counsel does not change the need-to-know aspect that's at play
19 in the Section 4, and Your Honor is familiar with the material
20 that we're talking about.

21 Certainly, while we have the utmost respect for the
22 experience of the defense team, on behalf of the United States
23 having a clearance and having a background in government work
24 doesn't automatically give someone a need to know every
25 classified fact, and the government submits, Your Honor, that

1 the classified information be provided ex-parte is beyond
2 counsel's need to know.

3 THE COURT: Let me ask you this, though. I mean, you
4 know, the process -- the process is designed such that you give
5 me a bunch of stuff and I take a look at it and say, "Well,
6 you're right. This is all very sensitive information." But
7 usually the outcome of that is some kind of order that approves
8 substitutions or redactions; right?

9 MR. AARON: Or deletions, Your Honor.

10 THE COURT: Right. But what if the scenario instead
11 is that the government is arguing, for example, that these
12 categories of things shouldn't even be produced at all because
13 they're not relevant to the case? Is that really a Section 4
14 filing?

15 MR. AARON: Yes, Your Honor. There are certainly
16 cases in which, you know, the government might determine that
17 certain information isn't discoverable at all and might present
18 that in a Section 4 filing in an abundance of caution to get
19 the judge's agreement or the judge's opinion on whether it is
20 discoverable in the first place, but, really, what Section 4 is
21 about is once information is technically discoverable under
22 Rule 16 it's seeking to make modifications to the government's
23 obligations under Rule 16(d).

24 So, certainly, there could be entire categories of
25 information that might technically meet Rule 16 but are

1 deletable under rule 16(d).

2 THE COURT: Well, would you agree with me then if
3 we're talking about the scenario I described where instead of
4 asking for redactions, deletions, substitutions, et cetera,
5 instead you're just asking for a court blessing on the
6 prosecutor's determination that something is entirely not
7 discoverable and you're talking about certain category of
8 information, in that context I am not sure it's a Section 4
9 motion, and at that point I am wondering shouldn't we have a
10 full and fair debate about the issue because it's not me
11 looking at a confidential, classified document and line by line
12 going through it and highlighting things that should be
13 redacted and should be kept. Obviously, that's a very
14 sensitive process, right, and one that Section 4 is designed to
15 protect, but it's entirely different if you're giving
16 generalized categories of information that you want me to stamp
17 as not being discoverable in the case. I would think the
18 generalized categories can be described in a way that's not
19 even classified.

20 MR. AARON: Your Honor, I would say that that type of
21 process -- that type of back and forth is the kind of thing
22 that ordinarily would happen ex-parte between the government
23 and the Court exploring where that might and might not be
24 possible, and without the context of the specific categories or
25 documents, it's hard to talk about right now.

1 I know that ordinarily in a Section 4 process where we're
2 seeking deletion no one is asking the Court to line by line
3 redact items. It's more this category of information, while
4 technically discoverable, isn't relevant or helpful to the
5 defense in this case and should be deleted.

6 With regard to the material that isn't discoverable in the
7 first instance, you know, in many contexts the prosecutor might
8 decide that information in possession of the government is not
9 discoverable, and, therefore, does not provide that at all and
10 not seek ex-parte approval for that and just not include it in
11 discovery, and, certainly, for policy reasons -- not legal
12 reasons -- the government might turn over non-discoverable
13 information as we believe we have in this case on the
14 unclassified side. So I am not sure how much back and forth
15 there needs to be with the defense regarding production of
16 information that's not discoverable in the first instance.

17 THE COURT: Well, I mean, the whole reason why it
18 would be ex-parte to me is because adjudication of the issue
19 requires the actual review of information that's classified,
20 but if you're asking for a court blessing on a prosecutor's
21 determination that something is not -- a general category of
22 information that's not discoverable, then you're not even
23 looking at classified information to begin with. Right? And
24 not in a generalized sense.

25 MR. AARON: Your Honor, again, without the context of

1 specific information, it's hard to respond directly.

2 THE COURT: Right.

3 MR. AARON: I would say everything that's the
4 subject -- everything that's discussed in our Section 4
5 pleading is classified information. So it would probably be
6 easier to answer your question, Your Honor, in a Section 4
7 ex-parte ---

8 THE COURT: Okay. All right. Is there anything --
9 and I interrupted you and I apologize for that. Let's continue
10 with any thoughts and suggestions you want to make in terms of
11 the motions that are outstanding.

12 MR. AARON: Your Honor, I have nothing further.

13 THE COURT: Okay. All right. Thank you, Mr. Aaron.
14 Anything further from the defense?

15 MR. WHITLEY: Your Honor, if I might, just one point.
16 I'll be very brief, Your Honor. Thank you for your patience
17 with me and the process today.

18 THE COURT: I am a very patient person. At least I
19 try to be. So we'll take as long as you want to take.

20 MR. WHITLEY: Yes, sir. Well, I don't know that I
21 could be as patient as the Court. Thank you for your
22 consideration. I believe that discoverability of information
23 is in doubt in terms of how we can get information from the
24 government that we think is relevant and the Court will be
25 making decisions on that and ruling as we go forward. I do

1 believe that we filed robust discovery requests and will
2 continue to do that on behalf of our client. We think that
3 it's difficult to -- well, I have friends who can look at
4 people and tell me what they're thinking, and I am not able to
5 do that, and when I looked at this case I can't tell you what's
6 in this case, Your Honor, at this point in time or what's
7 relevant. I have to tell you that I am still learning and
8 whatever I do I'll be doing it with a belief that what I am
9 seeking from the Court is relevant and my co-counsel will, too,
10 and so we would want to be part of the process with the Court
11 where we looked at relevance and we looked at issues that are
12 going to be coming before the jury to make sure that the jury
13 is receiving information that is, in fact, relevant. So we
14 would be seeking rulings from you, Your Honor, on relevance as
15 these issues come up.

16 So I just wanted to make sure. We did something that's
17 unique to our country and the Court talked about last time this
18 issue and it really resonated with me the 200 years plus of
19 tradition we have in this country of open courtrooms and I
20 strongly believe in that. Even though I believe in everything
21 the government is doing in terms of their obligation to do
22 their job, I just disagree with them about this particular
23 case, and that's why I am standing here, but I do think
24 openness -- and I believe the Court shares this from your
25 comments. So anything we can do, Your Honor, to facilitate

1 that we want to do it on those issues.

2 THE COURT: And so do I as long as I am not violating
3 the statute -- controlling statute -- in the process.

4 MR. WHITLEY: Thank you.

5 THE COURT: All right. I'd like at this time to get
6 an update from Ms. Rodriguez-Feo and have a full, open
7 discussion between the parties about difficulties we're having
8 with litigating in this environment. We had that kind of
9 discussion last time, and I found it to be pretty productive.

10 Is that something, Ms. Rodriguez-Feo -- last time we did
11 it in a closed setting. Is that something that we need to do
12 for you to give everyone an update about where we stand with
13 clearances and that kind of thing?

14 MS. RODRIGUEZ-FEO: I think we could do it in open
15 setting, Your Honor.

16 THE COURT: Okay. And you know what? I didn't give
17 you advanced notice that I was going to do that, but if you
18 could --

19 MS. RODRIGUEZ-FEO: Sure.

20 THE COURT: -- come to the lecturn and maybe -- the
21 things I am interested in would be where we stand with security
22 clearances for defense counsel and anybody else on the
23 prosecution team that doesn't have any and then also where we
24 stand in terms of some of the efforts we talked about last time
25 to make this as easy as possible on both sides to litigate the

1 case -- email and phone lines, that kind of things.

2 MS. RODRIGUEZ-FEO: Right. Yes, Your Honor. So with
3 clearances first, we were able to brief in Mr. Barnard on the
4 defense team and so he has received his TS SCI clearance and I
5 believe he's located in Maryland, the DC area. We are -- Jill
6 Cook -- Jill McCook, excuse me, is also eligible. So she and I
7 have been in communication about scheduling her briefing in the
8 next couple of weeks, and everyone else -- I believe there are
9 four other attorneys, Your Honor, who I have received are
10 pending, and so what that means is their background
11 investigations are with the FBI currently and we have no
12 estimations in terms of the next couple of weeks. So we don't
13 expect the next couple of weeks to receive clearance for those
14 individuals and I can give the Court an update as that comes in
15 from the FBI.

16 THE COURT: Okay. All right. What about the other
17 efforts in terms of technology?

18 MS. RODRIGUEZ-FEO: Sure. So in our previous closed
19 hearing there are a couple of things we can open up to the
20 Court today with regards to facilitation -- that is that we are
21 installing a classified phone line in the defense SCIF that we
22 are currently working on here in Augusta. Currently, the
23 defense counsel has a SCIF in Columbia, South Carolina, and we
24 are in the next, I'm told, two to three weeks going to be able
25 to make the SCIF here in Augusta operational, and I will have

1 an update on the phone line. I don't have a promise that the
2 phone line will be installed at the time the SCIF is
3 operational, but, hopefully, within the month we will be here
4 completely in Augusta in terms of their SCIF.

5 We will also be providing SCIF space in Atlanta, Georgia
6 for defense counsel to work and review documents. I have not
7 gotten the okay yet for defense to visit with their client in
8 Atlanta, but they will be able to visit with their client here
9 in Augusta in the SCIF space.

10 THE COURT: Okay. What about the secure phone line
11 for the Atlanta SCIF?

12 MS. RODRIGUEZ-FEO: So the FBI -- we won't be able to
13 arrange a line specifically for defense in Atlanta, but they
14 have said that in terms of scheduling a phonecall that they'll
15 be able to assist as long as they have, you know, advanced
16 notice as to a phonecall. So, essentially, defense counsel
17 would be able to go into one of their rooms and use one of the
18 FBI phone lines so long as all of that is worked out with local
19 FBI in Atlanta.

20 THE COURT: Okay. And would that also be true in
21 some of the satellite offices of the defense firm?

22 MS. RODRIGUEZ-FEO: So the only other place that I
23 believe we would be able to receive approval for that would be
24 in the Washington, DC area.

25 THE COURT: Okay. What about new Orleans? I think

1 one of the lawyers is based there.

2 MS. RODRIGUEZ-FEO: I can look into that, Your Honor.
3 I haven't --

4 THE COURT: Okay.

5 MS. RODRIGUEZ-FEO: -- but it may be possible that we
6 can look at a local field office at the FBI to arrange a
7 similar phonecall.

8 THE COURT: Okay. Because I think that -- isn't
9 Mr. Chester resident in your Louisiana office? Is that right?

10 MR. WHITLEY: Yes, sir, your Honor. He is.

11 THE COURT: Okay. And so that -- I would think that
12 the top priorities for you would be in Augusta, Atlanta, and
13 New Orleans in terms of secure phone lines?

14 MR. WHITLEY: Yes, sir, and Washington.

15 THE COURT: Washington, too.

16 MR. WHITLEY: Yes, sir.

17 THE COURT: Okay. And that part is probably the
18 easiest part of that; right?

19 MS. RODRIGUEZ-FEO: Yes. I will talk to the FBI.

20 THE COURT: Okay. All right. And then in terms of
21 secure emails, I know you said that was probably not going to
22 happen. Have you made the miracle occur? Are we going to be
23 able to have those?

24 MS. RODRIGUEZ-FEO: I put in the request, Your Honor,
25 with our associate director and it was denied --

1 THE COURT: Okay.

2 MS. RODRIGUEZ-FEO: -- saying that that is not a
3 possibility in terms of classified email.

4 THE COURT: Okay. That's no surprise. You told us
5 that had been the result in the past. So these phone lines
6 that are going to be installed means Mr. Bell -- not only can
7 he call the Atlanta SCIF to talk with defense counsel in these
8 other offices, but he can also communicate directly with
9 Mrs. Solari and Mr. Aaron, et cetera, on these phone lines
10 about any issue they want to talk about; right?

11 MS. RODRIGUEZ-FEO: That's correct, as long as we
12 arrange that everyone is on a secure line on a secure phone.

13 THE COURT: Okay.

14 MS. RODRIGUEZ-FEO: So the logistics involved would
15 need to be in advance with everyone aware of where they would
16 need to be, but that's correct.

17 THE COURT: Okay. How do they go about -- if I am
18 Mr. Bell, how do I go about setting that up?

19 MS. RODRIGUEZ-FEO: Well, once we realize where the
20 phones would be -- for instance, once we have a phone line here
21 in Augusta, then Mr. Bell would coordinate directly with the
22 government and say, "I would like to get on a classified phone
23 call." I don't need to be involved with the facilitation of
24 that. However, I would need to be involved with facilitation
25 of the FBI calls --

1 THE COURT: Okay.

2 MS. RODRIGUEZ-FEO: -- at local field offices.

3 THE COURT: Okay. All right. Anything further that
4 you want to report on?

5 MS. RODRIGUEZ-FEO: I think that's all.

6 THE COURT: Okay. Thank you very much.

7 Mr. Bell, Mr. Whitley, anything further in regards to
8 logistics and anything that you want to talk about?

9 MR. WHITLEY: No, sir. Nothing, Your Honor, from the
10 defense. Thank you.

11 THE COURT: Okay.

12 MR. BELL: Your Honor, I would like to state that we
13 work so much with Ms. Rodriguez-Feo and she is an amazing
14 person in terms of being responsive and trying to be as
15 cooperative as she can. For that, we're grateful.

16 MR. WHITLEY: Well, let me say I think we all agree
17 with that, Your Honor.

18 We want to thank you for your courtesy and consideration
19 to us. Thank you.

20 THE COURT: She is sharing that courtesy and
21 consideration to all court personnel and we certainly
22 appreciate her efforts as well.

23 I believe that takes care of everything that we need to
24 talk about today. In terms of the details of the exact
25 deadlines and all that, I don't see any need to get into that.

1 I have gotten proposed schedules from everybody. I will take a
2 careful look at that and enter an order that will be in line
3 with comments that I made here today.

4 Is there anything further from the defense we need to
5 discuss in this matter today?

6 MR. WHITLEY: No, sir, Your Honor. Thank you very
7 much.

8 THE COURT: Thank you.
9 Anything further from the government?

10 MRS. SOLARI: No, sir, Your Honor.

11 THE COURT: All right. I do want to take about a
12 10-minute break, and there may be a possibility of reconvening
13 with just the government lawyers to talk specifically about
14 that Section 4 filing. So if y'all could hang out for 10 or 15
15 minutes, I'll let you know whether to be excused or whether
16 we're going to reconvene.

17 (End of Transcript of Record.)
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

I, Lisa H. Davenport, Federal Official Court Reporter, in and for the United States District Court for the Southern District of Georgia, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Lisa H. Davenport, RPR, FCRR
Federal Official Court Reporter