

19-cr-257-WJM DAVID ROOT - Cross 10-15-2021

1 anticipate, Your Honor.

2 THE COURT: All right. All right. Because of the  
3 importance of the defendant's testimony, I am going to dispense  
4 with closing remarks and my questions, because I think whatever  
5 value they would have, and they have some -- it's not like I  
6 think they would have no value, but I think they would have less  
7 value than the importance of the defendant's testimony. So,  
8 we're going to --

9 MR. TEITELBAUM: Would the Court consider a three- to  
10 four-page supplemental written closing by a certain deadline  
11 from each side?

12 THE COURT: Yeah. I would consider that. Let's talk  
13 about that when we're done with Mr. King. That's a fair  
14 suggestion. Okay. Seventy minutes. So, I think the way we're  
15 going to divide it is I'm going to allow -- let me do some math  
16 here. Okay. This is how we're going to do it. I am going give  
17 the defendant 35 minutes on direct, the Government 25 minutes on  
18 cross, and the defendant ten minutes on redirect with a  
19 one-minute warning for all three. All right. The defendant may  
20 call its first witness. You want to call your witness?

21 MS. REGAN: Your Honor, we call Eric King to the  
22 stand.

23 THE COURT: Okay. There you go.

24 MS. REGAN: Making sure the marshal was good with  
25 that.

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1 THE COURT: Okay.

2 (The Witness is Sworn)

3 THE COURTROOM DEPUTY: Please take your mask off  
4 briefly as you state your full name for the record, and spell  
5 your first and last name.

6 THE DEFENDANT: My name is Eric King. My first name  
7 is spelled E-R-I-C. My last name is spelled K-I-N-G.

8 **DIRECT EXAMINATION**

9 BY MS. REGAN

10 Q Thank you, Mr. King. We're going to move through things at  
11 a smooth pace. I would like to start off by drawing your  
12 attention to August 18th of 2018. At some point, were you  
13 summoned to the lieutenants' office?

14 A Yes.

15 Q And did you know why you were being summoned?

16 A I had a guess, but I wasn't 100 percent sure.

17 Q Okay. And were you handcuffed and escorted, or how did you  
18 ambulate yourself to the lieutenants' office?

19 A No. They just -- the guard in the unit comes, and he just  
20 tells you, hey, you need to go to the lieutenants' office, and  
21 then he goes and opens the unit door. He unlocks it for you,  
22 and you walk there all on your own.

23 And as you walk across the whole compound, they have it  
24 shut down. And then you go and you sit on a bench outside of  
25 the lieutenants' office and wait for them to call you.

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1 Q And at some point did a lieutenant come speak with you?

2 A Yeah. After about two or three minutes, two lieutenants  
3 came out of the captain's office, and it was Lieutenant Kammrad  
4 and Lieutenant Wilcox. And they both came out, and they said,  
5 King, follow us.

6 And I hopped up, and as we started walking towards the  
7 actual lieutenants' office door, that's when Officer Smith  
8 approached them. And Officer Smith comes up to them and says,  
9 hey, do you need any help? And Officer Wilcox kind of smirks  
10 and laughs and says, you don't want to see this. And so Smith  
11 walks off, and then Wilcox leads me into that corridor.

12 Q And how did that make you feel?

13 A At that point, I'm not feeling very comfortable. Any time  
14 you get called to the lieutenants' office, it's not anything  
15 good. So, apprehensive, but I'm not nervous or like threatened  
16 yet.

17 Q Okay. And where are you led to?

18 A So, when you walk into that building, if you look to the  
19 left, there is two actual offices. And they have a desk, and  
20 they have pens on them, and they have like little mementos and  
21 bookshelves and a computer, and so there are offices.

22 But if you're led to the right, there's a mop closet.  
23 It's a closet that the orderlies use, and I was immediately led  
24 to the right, past the fire safety equipment, past the good  
25 offices where you would be monitored, and I was led into that

1 mop closet.

2 Q And who led you at this time?

3 A So, it was Wilcox had -- was leading me with Kammrad right  
4 beside. And when we got to the door, I kind of paused. I was  
5 like, no, no, no. No, no, no. And Wilcox says, get in here, we  
6 gotta talk. And he leads me in first to where I walk in, and  
7 then I have to turn my back to the back of the room and face  
8 them at the door. And it's Lieutenant Wilcox standing first  
9 with Lieutenant -- I didn't know it was Kammrad at the time, but  
10 it's Lieutenant Kammrad standing right behind him.

11 THE COURT: The same Lieutenant Kammrad that  
12 testified?

13 THE DEFENDANT: Yeah. Same one. And they were  
14 standing essentially right next to this big black filing  
15 cabinet. And I'm standing on the opposite side of the filing  
16 cabinet with like a mop closet, or a mop bucket right behind me,  
17 a big push broom, and that's where this all begins.

18 Q. (By Ms. Regan) And if you look at Exhibit A8 in the  
19 defense binder, the bigger binder, which has already been  
20 admitted -- you have to go to the back. Yeah. Sorry. So, if  
21 you look at that photo --

22 A Oh, gosh. Yes.

23 Q Is this photo taken from the doorway?

24 A Yeah. That photo, you can even see the door like open  
25 right there. So, that would be essentially where Kammrad was

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1 standing, and then Wilcox would have been right in front of him.

2 Q Okay. And where are you standing?

3 A I would have been about at that point, about two feet  
4 further back than Wilcox. Like, my shoulder, my left shoulder  
5 would have been against that filing cabinet, just about.

6 Q Okay. And does this picture accurately depict your  
7 recollection of what the mop closet looked like on August 18th,  
8 2018?

9 A Yeah. It was a dump. It was just filthy.

10 Q Okay. And so what happens once you are in the mop closet?

11 A So, this is when things just get absolutely crazy.  
12 Lieutenant Wilcox immediately brings up to my attention, he's  
13 mad about this email. And he starts immediately degrading me  
14 about it. I had sent an email about another officer getting  
15 assaulted, and I laughed about it. It was dark. I make a joke  
16 about it. It's whatever.

17 And Wilcox is taking that very personal, and he's  
18 screaming at me, you think it's funny? You think it's funny  
19 when cops get beat up? Do it yourself, pussy.

20 Can I curse? Do you want me to say what he says?

21 THE COURT: You have to say it exactly as you recall  
22 it.

23 THE DEFENDANT: Okay.

24 THE COURT: Don't worry about offending anybody's  
25 sensibilities.

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1 THE DEFENDANT: Thank you. So, he's screaming in my  
2 face, saying, do it yourself, pussy. Are you a man? Are you a  
3 real man, or are you a bitch? And he's saying these trigger  
4 words, because in prison, there's certain words that you have to  
5 fight over. If someone calls you a bitch or a pussy, you have  
6 to fight. He's been in the bureau 20 years. He knows this.  
7 He's trying to goad me.

8 And when I get uncomfortable, I laugh. I don't know  
9 how to respond. And so I start laughing. I say, dude, what are  
10 you doing? I'm not fighting you. You have Kammrad right here.  
11 I'm not doing this. And so he looks over his shoulder, and he  
12 just mentioned for Kammrad, beat it. And Kammrad kind of does  
13 his stuttering snicker thing and walks off. He leaves us there.

14 And when he does that, I'm terrified. You're not -- I  
15 don't want to be alone in a room with this lieutenant that's  
16 showing anything that happens is going to reflect badly on me.  
17 Anything. I cannot win in this case now.

18 And as soon as Kammrad leaves, Wilcox steps forward.  
19 And when he steps forward, he is now about an inch or two from  
20 my face, and he's a big man. I'm a small dude. He's at least  
21 two inches taller and 50 pounds heavier than me, and it shows.  
22 And so my back corner is to the shelf, the cabinet, and he's  
23 face-to-face with me, and he starts shouting, we're alone now.  
24 What do you want to do, bitch? Are you going to fight? Are you  
25 a real man?

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1 And I'm laughing, because I don't know how to respond  
2 to this. Maybe if I laugh, he will calm down. He will realize  
3 how weird this is. Because it is not normal in the bureau at  
4 any time for a lieutenant to yell at you. I have never been  
5 yelled at by another lieutenant, since, even.

6 And I start laughing, and then he starts with his  
7 terrorism stuff. He starts saying, you're a terrorist. I hate  
8 terrorists like you. Terrorists like you are pieces of shit.  
9 You're no good. And now he's disrespecting me. I am  
10 uncomfortable. I have no idea what to do. I'm outmatched.

11 So, I respond back to him. I say, yeah, I am a  
12 terrorist. I love terrorists. Fuck you. And at that point,  
13 he's screaming. He's red. I've got spit all over my face from  
14 him. And he loses his shit and says, terrorists killed my  
15 daughter. He screams it. And when he screams that, this -- and  
16 I feel stupid for this, but I laugh. I'm like, what are you  
17 talking about?

18 I'm -- no left-wing anarchist has ever killed a  
19 daughter, ever. And at that point, as soon as I get it out of  
20 my mouth, this grown man, this huge lieutenant, shoves me. And  
21 my back leg is to that mop bucket, and my shoulder is to that  
22 cabinet. And this B shoves me. I fly backwards. I immediately  
23 fall against this wall.

24 That's the clutter people allegedly hear, and as soon  
25 as I look up, at first I'm shocked, like what the heck? And as

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1 I look up -- as soon as I look up, bam, bam. Two punches, fast.  
2 This one hurts. This one, I immediately see stars.

3 So, when I see the stars, I snap back. Bop, bop, bop.  
4 I throw three quick punches, and then immediately step back.  
5 What the fuck just happened? As I step back, I turn to the  
6 door, because I hear the (indicating), Kammrad. I hear Kammrad  
7 running.

8 And he steps into the room, and I'm standing like this,  
9 and he says, King, what the hell did you just do? And I said,  
10 he doesn't get to hit me. He doesn't get to hit me. And then  
11 he immediately comes, and he just takes my arms, and there's no  
12 effort. Like, I'm not going to resist two cops. And he puts me  
13 down on the ground, and then that's when the -- that's when the  
14 shit show starts. That's when it gets bad.

15 Q. (By Ms. Regan) Okay. So, let me pause. So, your  
16 glasses -- I see you are wearing glasses?

17 A Yes.

18 Q During your -- during this incident, what happens to your  
19 glasses?

20 A When he throws this second punch to my eye, my head, my  
21 glasses fly off. So, I'm without glasses at this time, which is  
22 horrible. I cannot see without glasses, and that's what happens  
23 to them. Wilcox punches them off my face.

24 Q What were you feeling at this time period?

25 A Pre punch or after punch?



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1 Q After punch.

2 A After punch, I'm feeling terror like you wouldn't believe.  
3 I know from stories, from hearing people, what happens to people  
4 who are accused of assaulting staff. So, I need to let every  
5 staff member I see know, I didn't do this. This isn't what you  
6 think happened. Your co-worker made a mistake. It's all right.  
7 He made the mistake, though. I had to respond.

8 Because these people can kill you. People die at USP  
9 Florence. People die at FCI Florence, and I'm terrified of  
10 that. I've got a wife that just had cancer surgery. I'm  
11 thinking, I have to get home. People have to know that I didn't  
12 do this to him.

13 Q And what were your options when you were punched in the  
14 face by the lieutenant? Could you run away?

15 A Right. And that's the issue. It's either stand there and  
16 let this massive man pummel me -- I don't know if he's going to  
17 stop. I don't know when he's going to stop. It's ball up and  
18 lay on the ground and hope that he just gets tired, or do enough  
19 to get him to back up off me. Just do enough to get him to  
20 stop. Don't stomp his head. Don't drop elbows on him, but get  
21 him to stop hitting you.

22 Q Okay. And so when you are on the ground, are you  
23 resisting?

24 A Oh, absolutely not. At this point, the show is over. As  
25 soon as they cuff my hands, several guards are in there at this

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1 point, and they start putting the boots to me. That's when I  
2 start getting kicked in the head. And I'm turning my head,  
3 turning my head, because I will feel boots here, and it will  
4 start hurting, so I start turning my head this way. And I don't  
5 want them to get me in the temple, because then they're going to  
6 black me out, and then what happens to me? I don't know. It's  
7 terrifying.

8 So, I'm handcuffed on my belly just getting stomped.  
9 Ms. Brinks is over me, kneeling me in the ribs, calling me a son  
10 of a bitch, you son of a bitch, just stomping the shit out of my  
11 ribs. And I'm just laying there, because you can't fight back,  
12 or -- this is what they're doing after this. If I fight back,  
13 who knows what will happen?

14 So, after a few minutes of that, they lift me up. They  
15 pick me up, and they slam me against this glass door, which is  
16 the door that's in the picture, and they put my face against it.  
17 And I'm looking at one of the officers, I think Cordova, like,  
18 he doesn't get to hit me. He doesn't get three punches, dude.  
19 Listen to me.

20 And he says, King, just shut up. Just shut up for now.  
21 Just listen.

22 So, then they put me down on the ground again, and then  
23 about ten seconds later, I hear more people in the hallway.  
24 They pick me up again. They walk me out into the hallway, and  
25 I'm not resisting. You can't resist four cops, four officers.

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1 You can't resist them.

2 So, then they put me down again and say -- they're  
3 shouting orders to each other. I assume they're getting the  
4 Stryker chair ready now. I didn't know what they were doing at  
5 the time. Then they pick me up again, and they lead me outside,  
6 and they put me on the ground again, and this big burly man  
7 comes up and says, if you don't talk, you will live. But if you  
8 try to struggle, I'm going to kill you.

9 And he puts his knee into the back of my ribs like a  
10 George Floyd move, and starts pushing it down. And at that  
11 point, I am laying so docile, because I am surrounded by  
12 officers that think I just hurt one of their own. And I know if  
13 I resist this, I am going to get killed.

14 So, I'm laying there on my stomach, hands cuffed behind  
15 my back. This dude is strangling me. This is when Captain  
16 Giconi comes over. He looks at me like, I wish it was me. I  
17 wish you had done it to me, you punk. You're dead.

18 And I'm checked out. Checked out at this point.  
19 Because this is bad. And it's going to get worse, and I know  
20 it's going to get worse. And then they bring up the chair.  
21 They haul me up into the chair. At no point am I resisting.

22 Q Did you ever go limp? Did you ever stop walking?

23 A No. Absolutely not. They -- God. God only knows what  
24 would have happened if I would have resisted these people at  
25 that moment. They are so hot feeling that their comrade just

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1 got battered that I can't afford to be resistant towards them.

2 Q So, they put you in the Stryker chair?

3 A Yes.

4 Q And then they transported you to the SHU?

5 A Yes.

6 Q What are you feeling while you're being transported into  
7 the SHU?

8 A The Stryker chair is terrifying, because you're vulnerable.  
9 You can't move. If they want to pepper spray you, you can't  
10 protect yourself. At one time they put on masks, and I think  
11 that's what they're going to do. And I'm like, I'm going to  
12 die. They're going to suffocate me and say I resisted or spit  
13 on them, so I'm sitting there staring like a zombie. I don't  
14 want to move. I don't want to resist.

15 Then they wheel this chair over to the steps, and my  
16 heart rate is going so fast, because what's the first thought?  
17 They're going to toss me down these stairs and say it slipped.  
18 They think I hit one of theirs. They're going to end me right  
19 now in this chair.

20 And they carry me down, thank God they don't throw the  
21 chair down. But I'm terrified, zombie. And they wheel me to  
22 that room, and then they start the four-point process.

23 Q Which we won't go into a lot of detail with that, because  
24 we do have the video, but as you are being stripped down and put  
25 into the four-point restraints, are you being compliant?

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1 A I'm absolutely being compliant. And they have these guards  
2 on me, but they don't cut off your clothes. Like, they have to  
3 remove your clothes, and you're shackled, but they don't cut  
4 them off. They use a hook. And I feel like a rape victim. I  
5 am pressed against the wall with two grown men holding on each  
6 side, and a third one comes with a metal hook and rips my  
7 clothes off. Bare naked. And you can't resist. You can't.  
8 You're docile.

9 Q And then at some point --

10 THE COURT: Hold on. You said bare naked. The  
11 testimony earlier today was that you always had your boxer  
12 shorts on. They never took that off of you?

13 THE DEFENDANT: No. They strip it off and gave me a  
14 new pair, a new baggy pair. And that's on the video.

15 THE COURT: Right away?

16 THE DEFENDANT: When I'm pressed against the wall,  
17 they do that.

18 THE COURT: But you weren't entirely naked for any  
19 period beyond a few seconds?

20 THE DEFENDANT: It was probably about five seconds.

21 THE COURT: Okay. Go ahead, Counsel.

22 MS. REGAN: Thank you.

23 Q. (By Ms. Regan) And at some point a nurse comes into the  
24 room. Do you recall that?

25 A Yeah. I believe it's Nurse Fabroni. They've got me sat on

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1 the bed at that time. I'm already cuffed up. They're just  
2 finishing the process. And Nurse Fabroni comes up to me, and  
3 she does her assessment, and she asks me how I'm feeling. I  
4 tell her, very bad. I am in pain. My head hurts. My hand  
5 hurts. My wrist hurts. My face hurts. And she asks me, put on  
6 a pain scale, and I tried to give a realistic, I'm not going to  
7 say ten. So, I say seven. I really hurt. My head and body  
8 hurt.

9 And then she does my oxygen, my heart. She says I got  
10 a fast heart rate, I guess, and that's it. She tells me try to  
11 breathe. And so I try to breathe.

12 Q Okay. And then what happens next?

13 A Then they -- the officers -- it's a very dramatic process,  
14 because you're handcuffed behind your back, pushed forward, and  
15 so they stretch your legs out to make sure they can come up your  
16 ankles, and then they pull you back and stretch you like a  
17 Garet. It's not a casual stretch. Within two minutes of this  
18 happening, my limbs are on fire. My back is hurting. My neck  
19 is hurting. My head is hurting. You can't breathe.

20 If you start hyperventilating, you will probably black  
21 out, I don't know, but I felt close. And every limb immediately  
22 starts cramping, and then you have the itches. Every little  
23 thing itches, and you cannot scratch yourself. You can't do  
24 anything. You can't bite your arm to make it stop itching, so  
25 you're stretched where it feels like your shoulders are being

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1 ripped out of your body. It's not a casual thing, man. It's  
2 not casual. This is torturous. And that goes on and on and on.

3 Q Do you recall when the first two-hour lieutenant check was  
4 conducted on you?

5 A I don't recall that first lieutenant check. I recall  
6 Captain Giconi, and I recall Captain Giconi --

7 Q Hold on. Pause for one second. So, were you aware that  
8 people were checking -- or that were saying move your head every  
9 15 minutes?

10 A No. There's a glass wall. If I move my head, it was just  
11 because I was trying to itch my head.

12 Q Did you ever think that you were being asked if you were  
13 okay or if you needed to use the bathroom or if you wanted  
14 water?

15 A During that entire time, all five hours, I was never once  
16 asked, would you like to use the bathroom? Would you like some  
17 water? I would have clearly said yes over urinating all over  
18 myself. No one chooses to humiliate themselves. No one makes  
19 that choice, and I wouldn't have either.

20 Q And in fact, that did occur?

21 A It occurred twice. And I just felt so stupid and  
22 humiliated, like I was an animal having to piss on myself,  
23 because these -- these people think I'm so horrible that I don't  
24 deserve to be treated like a human.

25 Q How long were you forced to lay in your own urine?

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1 A God. Three -- three hours.

2 Q Okay. At some point did Captain Giconi come into the cell  
3 B100 where you are?

4 A So, Captain Giconi was cruising in and out of there. And  
5 first time he comes in, he's yelling at me. King, what the fuck  
6 did you do? What is wrong with you?

7 And I tell him, Captain, I didn't put myself in a mop  
8 closet. I didn't put me away from cameras. Your people did  
9 that, not me. I didn't do this. And he said, oh, is that  
10 right? Is that right? Okay.

11 So, they leave. He leaves. And then he comes back  
12 with a second man who we -- John Doe. I guess he's an ADX or a  
13 complex guy. I still don't know his name.

14 THE COURT: He's a what?

15 THE WITNESS: He comes back, Giconi does, with a  
16 second man.

17 THE COURT: How did you describe the second man?

18 THE DEFENDANT: I think he worked like -- he was a  
19 complex captain or a complex lieutenant.

20 THE COURT: What does that mean, a complex --

21 THE DEFENDANT: It means that they're like over the  
22 entire facility.

23 THE COURT: Oh, the complex.

24 THE DEFENDANT: Yeah. Sorry.

25 THE COURT: I thought you were using that as an



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1 adjective instead of a noun. Go ahead.

2 THE DEFENDANT: They're standing over me, and I'm  
3 stretched out. And they start talking about how now is -- you  
4 know we're going to fuck you up; right? You know we're going to  
5 get you raped; right? We can do that. We have that power. And  
6 I'm just shaking my head like this cannot be happening.

7 And you -- they start, they're just going like, he will  
8 start saying, you hit one of us. We're going to hit you.  
9 That's street justice. That's street justice.

10 And then Giconi is laughing, and he leaves again and  
11 comes right back with a shield. And I don't -- there's no need  
12 for a shield. I am caged to a bed. And as he walks up next to  
13 me, the complex person put their hand over my mouth. And then  
14 while he's doing that, Giconi comes over with this shield,  
15 replaces his hand with a shield, and pushes it on my face and on  
16 my body and says, that's for spitting at my staff. I've never  
17 been accused of spitting at staff. There's no record of me  
18 doing anything like that in any way, and it would have been on  
19 camera.

20 But he pushes on the shield so that now I can't  
21 breathe, because you have this plastic here so you're just  
22 breathing in your fumes. And then he just leaves. He leaves  
23 it. Fifteen minutes later, Giconi comes back, takes it, takes  
24 off the shield, and then puts a sign on the door saying do not  
25 talk to him. No one can talk to inmate. And then he leaves,

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1 and then the rest of it is just guards coming in and out.

2 Q. (By Ms. Regan) So, five hours later, a lieutenant comes  
3 in to transition you to the soft ambulatory restraints. Do you  
4 recall that?

5 A It's Giconi.

6 Q Okay.

7 A And they come and tell me, King, we're going to put you in  
8 the soft restraints. If you're good, we will leave you in them.  
9 If you mess up, you're going back. And I say, I don't care.  
10 Let's go. Please. I will be good.

11 And so they start doing my uncuffing, and they bring me  
12 up, and it just feels like every knife on Earth is just stabbing  
13 into you. Every single knife you've ever owned or seen is just  
14 stabbing into you as they bring you up. And they bring me up.  
15 They unshackle me. They do all that. They put the chains  
16 around me. It's a very long, annoying process.

17 And they put these gross big rubber things on me, and  
18 then they do them on my legs, too. And then I tell them, like,  
19 I need new underwear. I had to go. And so he embarrassed me  
20 like, oh, you peed yourself? Yes. So, he has to go and get me  
21 new underwear, redo the leg shackles, and then I'm left in the  
22 soft restraints for another hour or two, just waddling around  
23 this room, trying to regain circulation in my hands, trying to  
24 regain feeling in my shoulders, trying to feel like a human,  
25 because I am so terrified that what they're going to do next.

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1 And then they do it.

2 Q And you're in a great deal of physical pain at this time?

3 A My whole body is wrecked. Back of the head, shoulders,  
4 cheek, eye, legs from being stretched and not being stretched in  
5 the right way, biceps, chest. It feels like horses have been  
6 trying to just rip me in half for five hours, and then all of a  
7 sudden now you're compressed like this, the exact opposite way.  
8 You go from womp to womp. And it is a sensation that I would  
9 not wish for anybody. It kills. I still feel bad in my hands.

10 Q I forgot to ask you, too, when you were in the five-point  
11 restraints, you were wearing a pair of boxers; correct?

12 A Four-point restraints, and yes.

13 Q I'm sorry. Four-point restraints. You were wearing a pair  
14 of boxers. Did you have a blanket on you when they first put  
15 you into the four-points?

16 A No. It is so humiliating. I'm laying there like a clown,  
17 just completely exposed to all these officers. And then after  
18 about an hour, Giconi comes, and he puts a T-shirt over my neck,  
19 almost to where it's choking me, just this old ratty T-shirt,  
20 and then puts a blanket over my waist and says -- after he  
21 throws it on my waist he says, now you can't say we didn't  
22 follow policy. We stick to the rules around here. And I don't  
23 care about the rules. I just want to get out of this chair, out  
24 of this bed. And so that's when I got the blanket.

25 Q Okay. Sorry to backtrack a little bit. So, at some point

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1 after about two hours in the soft restraints, what happens next?

2 A After that, they tell me that I'm getting moved. I'm  
3 getting moved to the penitentiary. And that's the scariest  
4 thing I've ever heard in my life. I'm a known antiracist  
5 activist, and I know that there's a vast difference in custody  
6 level between medium and penitentiary. What happens at the  
7 penitentiary is stabbing, and I'm thinking they're sending me  
8 there to kill me.

9 I just was accused of hitting one of them. They are  
10 going to kill me. So, they shackle me up. They take me to R  
11 and D, which is what you leave and come through. They change me  
12 into new clothes. They x-ray me. And then we walk outside, and  
13 I get to see the stars, and it's the last time I've seen the  
14 stars in three years, was that walk.

15 And I stare at them. I just stare at them, because I'm  
16 trying to find something, like just anything, like it will be  
17 okay. I'm not going to die. I will be okay. And they put me  
18 in this van. They have this dude videotaping me the entire  
19 time. And they drive me to the penitentiary.

20 And we get to the penitentiary. We just walk in. We  
21 just do the normal R and D thing. I'm completely shackled. I'm  
22 no threat to anyone.

23 Q Do you recognize any of the staff as you're being escorted  
24 into the USP?

25 A So, I recognize the staff that are with us. Giconi is

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1 there for whatever reason. Officer Jones is still there. He  
2 was one of the R and D officers. And then another staff member  
3 that came with us in the van is there. The rest is all  
4 penitentiary, and there's like eight penitentiary officers.  
5 These big burly dudes. Just, you're coming with us.

6 Q Okay. And so then you are -- your clothing is changed  
7 again?

8 A Yes.

9 Q And at some point you are moved to a cell; is that correct?

10 A Yeah. So, I go through the R and D process again. Get new  
11 clothes, shackle me up again, and they walk me through the SHU.  
12 And the SHUs in penitentiaries are terrifying. Those are  
13 killers in there. Those aren't just low-level drug fiends.  
14 These are murderers.

15 And so they walk you through the SHU, and they put me  
16 in this back cell, and it's got a hard cell. It's got a camera  
17 outside of it, and instead of a food slot, it's got this big  
18 metal box like this, and it sticks out.

19 So, when they put me in there, I have to bend over and  
20 stick my hands through that metal box to get uncuffed. And they  
21 uncuff me, and I immediately look in the toilet and went, oh,  
22 no. Oh, no. So, I go into the cell, and there's a bag of,  
23 like, what you're supposed to be given is a washcloth, the  
24 towels, so, underwear, shirts, boxers, things to replace. My  
25 bag has half a towel, one shirt, and one boxer, and then my

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1 mattress is half a mattress.

2 It is a full casing of a mattress, but when I sit on  
3 it, it's nothing but concrete. I'm devastated. Like, this  
4 sucks. This sucks. So, I go and use the bathroom, and I flush  
5 the toilet, and that's when it comes up. That's the first  
6 time -- like, it's already brown, but I wasn't even thinking  
7 about it. I will just go on top of it and then flush the water.  
8 But I flush the toilet, and it's just all feces, and it just  
9 rises directly to the top.

10 And I hear guards outside. And I immediately bang on  
11 the door. Like, hey, I got shit in here. And the guards just  
12 laugh and say, have fun. Have fun. And I'm like, oh, no. Oh,  
13 God.

14 So, I just let it go. It's just filled with shit,  
15 someone else's. So, I try to lay down. I try to get  
16 comfortable. My body is bruised. My head is swollen. My back  
17 is swollen. My legs and hips from when she was stomping me out  
18 are swollen. And I'm trying to lay on this half-ass mattress,  
19 and I am just aching. It feels like I was in a fight. It feels  
20 like I got jumped by a bunch of gang members who hated my guts,  
21 and that's how my body is feeling and my mind is feeling.

22 THE COURT: When you say you had half a mattress, what  
23 do you mean?

24 THE DEFENDANT: Like, usually the mattress, it has a  
25 long foam white mattress, about half that table. And it has a

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1 blue casing over it so it doesn't get disgusting. So, mine, the  
2 casing at the end was cut open, and inside the foam was only  
3 halfway down. So, like my shoulders could be on the mattress or  
4 my legs could be on the mattress. The other part would be just  
5 on the casing on the concrete. And that's how they have it.

6 THE COURT: So, it was like cut horizontally, you  
7 would only have half your body on a mattress?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Go ahead.

10 THE DEFENDANT: And so --

11 Q. (By Ms. Regan) I'm sorry. Let me interrupt. So, based  
12 on the conditions of your cell, when or how did you inform USP  
13 SHU staff of those conditions?

14 A I informed every single officer that walked by. I am a  
15 door hound. So, as soon as I hear the keys, I'm on the door.

16 Can I please get my toilet fixed?

17 You're getting what you deserve.

18 Then I see a white shirt come by. There's a  
19 lieutenant. They always wear white shirts.

20 I'm like LT, please, this is not my shit. Just don't  
21 do this shit to me, please.

22 Sorry, out of my hands. Out of my hands, King. Have  
23 fun.

24 And that happens for three different lieutenants or two  
25 lieutenants and three officers. And the normal cop walking,

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1 normal officer walking, I'm asking him, constantly, can I please  
2 just get pen and paper, pen and paper. Will you. Because I  
3 have to like say it real quick, because he's burning by me. Pen  
4 and paper, please. Okay.

5 He won't stop and give me this pen and paper or pencil  
6 and paper. And I have my neighbors yelling, King, we got stamps  
7 for you. Just get the paper. We will take care of you.

8 And they put this foam thing in front of my door so my  
9 neighbors can't send me paper and pencils. It's this foam like  
10 snake, and it just sits in front of your door at the bottom of  
11 it.

12 And I'm asking these officers, all day Friday,  
13 Saturday, Sunday, can I please write my family. My wife doesn't  
14 know where I am. She is sick. Can I please write her. And  
15 they're saying, shut up. Shut up. We don't talk to you. You  
16 don't get to talk to us.

17 These people know that I just allegedly assaulted one  
18 of their own. On Sunday night at one point in time, Wilcox,  
19 Junior, comes into the range, and he just stands at my door. I  
20 look at him like -- I just do this. Like, what do you want to  
21 do? Are you going to kill me? Are you going to fuck me up too?  
22 And he just looks at me. And I know it's him, because he has  
23 his nametag, Wilcox, tall skinny guy. And he just stares at me.

24 I'm like, what are you doing here? What do you want to  
25 do? And he just walks off after about -- it felt like 30



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1 minutes. It might have been five or ten. It felt like 30.

2 Q How did that make you feel?

3 A That is so scary. These guys are militant together. They  
4 are -- they stick together. And I can't blame them, but that's  
5 how it is. And if he thinks I just assaulted his father? Good  
6 Lord. He could open my door at any time, any time, and let  
7 another dude in there, let an orderly in there with a knife.  
8 That stuff happens at penitentiaries. He could let himself in  
9 there and say that I threw poop at him, spray me, and then stomp  
10 my head into the ground.

11 This happens, and I know it happens, and it gives me  
12 panic attacks still today even talking about this, because they  
13 could have killed me. And my mindset at that time is if I make  
14 the wrong move here in any way, these officers are going to get  
15 what they want, which is me dead, because they think I hurt  
16 them. They don't like that.

17 Q And so that was Sunday night?

18 A Yes.

19 Q And then Monday night, you are moved from this cell to an  
20 interview room; is that correct?

21 A Monday afternoon, I believe.

22 Q Monday afternoon. And tell me, are you told where you're  
23 going?

24 A See, they come into my cell and say, King, cuff up. I say,  
25 why? Why? Because last time I left somewhere, this stuff with

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1 Wilcox happened.

2 They just say, cuff the fuck up.

3 Okay. What can you do? Okay.

4 Stick your hands through the little box. And then they  
5 open the door, and then they rotate my hands to the front so  
6 that I'm chained at the front. They do the little belly thing,  
7 and they walk me just down this corridor. I have no idea what's  
8 happening. As far as I know, I'm going to another mop closet.  
9 Like, this is the end of me. And I'm terrified. I'm shaking.  
10 I'm freezing. I haven't been sleeping. I haven't been resting  
11 at all, because I'm terrified about my family. I'm terrified  
12 about my health. I'm terrified about my future.

13 And then they walk me into this room, and there's a  
14 camera in there. It's just two officers and a camera. And so  
15 I'm able to sit, but I am so frayed. Not afraid, but frayed.  
16 My mind is three straight days of preparing to get killed, and  
17 then now I'm sitting in front of these two officers.

18 How you doing? We'd like to do an interview.

19 Okay. This is my chance to save my life. This is the  
20 one chance I have to say, I did not assault your officer. What  
21 you heard is not true. This is my only chance to do that.

22 And so they sit this camera in front of me and say,  
23 we're going to do this interview. Do you want to do it? And  
24 that's where we're at.

25 Q So, at some point, there was a discussion about your advice

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1 of rights?

2 A Yes.

3 Q And the Court will have the video. But at some point, they  
4 give you a piece of paper, I believe, and ask you to read it.  
5 Do you recall that?

6 A Yes.

7 Q Okay. And at that time, what do you do? What is your  
8 response when they give you that piece of paper?

9 A From the beginning, even before they give me this paper,  
10 they're saying you just gotta -- we have to do this, and then  
11 you can get a lawyer. Do this, and then you can get a lawyer.  
12 So, in my mind, I am thinking, if I don't do this interview, I  
13 will never get to talk to my lawyer. I will never get to see my  
14 wife. They're already not giving me paper and pencils. I'm not  
15 going to get a phone call.

16 So, they're saying that to me like six times. And I  
17 have told them over and over, well, I'd really like to talk to  
18 my lawyer.

19 Well, you can after this. We will get you one.

20 I don't need you to get me one. I have one. I just  
21 need to talk to her.

22 Well, we will do that, but it's gotta be after this.

23 Well, okay.

24 Q And so at this time, you had an attorney that you had  
25 retained that you were working with; correct?

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1 A Yes. Amanda Schemkes.

2 Q And that was the attorney that you were wanting a legal  
3 call with; correct?

4 A Yes. Absolutely.

5 Q And did they inform you that Ms. Schemkes was calling the  
6 BOP and emailing the BOP trying to make contact with you?

7 A No. Absolutely not. They made it seem as if I had to wait  
8 for them to give me a brand new lawyer, which having done  
9 several years in the BOP, I know that's ludicrous. Like, they  
10 do not just go and find you lawyers. But that's how they're  
11 making it seem, is that if you want a lawyer, we will get you  
12 one, a different one, but it's going to be after you talk to us.  
13 Not before. You don't get it just because.

14 Q And that was your understanding, that you would not have  
15 access to your attorney until you complied with the requests of  
16 these interviewers?

17 A It was my absolute total understanding that if I don't do  
18 this interview in some way, shape, or form, that I'm not getting  
19 out of their penitentiary, and I'm not talking to my lawyer.  
20 So, I can do it their way, or I can do it my way and suffer, but  
21 I have got to find -- I've gotta pick one, and I chose to do it  
22 their way to try to save my life and talk to this lawyer and get  
23 ahold of my family.

24 THE COURT: Counsel, one second. So, we're at 4:30,  
25 but I'm going to give you an extra five minutes.

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1 MS. REGAN: Thank you.

2 Q. (By Ms. Regan) So, at the time you did not have your  
3 glasses; correct?

4 A No.

5 Q And you read that *Miranda* form, but I believe you just  
6 testified that -- well, let me ask. You're reading this form.  
7 You read it out loud. Are you comprehending it? What is going  
8 on inside your head?

9 A Your Honor, this form, I'm reading it, but it's just like  
10 reading a Qur'an in Arabic. I'm not understanding what it says.  
11 I'm not caring what it says. This piece of paper could say that  
12 my name is Jeff, and I eat dogs, but I need to sign that paper  
13 because I need to talk to a lawyer.

14 They're telling me multiple times, talks to us, get a  
15 lawyer. There is no compromise. There is no, oh, you can fall  
16 back, and we will let your lawyer come and talk to you. Just  
17 take your time. We understand.

18 That's not on the table. It's, you need to do this,  
19 and then we will get you what you need to survive. And I have  
20 got to preserve my health at this point by talking to these  
21 people, and so I felt like I had no other option.

22 Q And you were complaining about the conditions in your cell;  
23 correct?

24 A Yeah.

25 Q You were complaining about the pain you were feeling?

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1 A I let them know everything.

2 Q At one point you turned and show them your black eye;  
3 correct?

4 A Yes. I'm hoping that they will see, like, we are doing him  
5 bad. Like, we are out of line. Maybe we need to reevaluate how  
6 we're acting right now. Maybe this guy isn't the horrible  
7 villain that we're about to treat him like.

8 Q Okay. So, now let's speed it up, because we've got a few  
9 minutes left. So, after the interview, you're transferred to  
10 USP Leavenworth; correct?

11 A Yes.

12 Q And you meet with a lieutenant on a regular basis while you  
13 are at USP Leavenworth; right?

14 A I meet Lieutenant Ratz on an almost daily basis, and  
15 Lieutenant Ratz tells me, all we're waiting on to do your DHO is  
16 for the FBI to kick it back. We can't do your DHO if the FBI  
17 process is still pending. We all know what that means is if  
18 they're prosecuting me, I can't get a shot yet. I will only get  
19 the shot if they choose not to prosecute, because they're not  
20 going to do both. That's how it was made to me by Lieutenant  
21 Ratz, by AW Grant, by the number one, Oriano, by every officer  
22 there. We cannot do your DHO if you are pending prosecution.  
23 And then --

24 Q Sorry. If you could quickly look to Exhibit -- Defendant's  
25 Exhibit A6.

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1 A I know how to use this thing now.

2 Q And is this a letter that you wrote to your wife from USP  
3 Leavenworth?

4 A Yes. And I always make sure to date my letters, because  
5 like it felt important to remember like these moments. And I  
6 wrote this letter after Lieutenant Ratz came to my cell, and he  
7 told me, King, we got good news, bud. They're dropping it.  
8 They're dropping the charges.

9 THE COURT: Who said this to you?

10 THE DEFENDANT: Lieutenant Ratz. He's a SHU  
11 lieutenant.

12 THE COURT: Spell that last name.

13 THE DEFENDANT: R-A-T-Z.

14 THE COURT: He's a lieutenant in Leavenworth?

15 THE DEFENDANT: He was a SHU lieutenant at that time,  
16 yeah. So, he was in charge.

17 Q. (By Ms. Regan) And what time period is this? We're  
18 obviously speeding things up a little bit, but you got to USP  
19 Leavenworth in the summer, and is it about -- on or about  
20 December of 2018?

21 A It's all -- sorry. It's about four and a half months  
22 later, and he comes and celebrates with me. You got a shot;  
23 they got a shot. Everything is even. They dropped it. You're  
24 going to get the DHO. You're going to get transferred, so feel  
25 good, King. Feel good about what's happening right now. He

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1 even brought me some coffee and Cocoa Puffs to celebrate. We  
2 had a little party.

3 Q And so at that time, you feel confident that criminal  
4 prosecution is not on the table any longer for you?

5 A BOP policy and the lieutenant and the AW have all told me  
6 we can't prosecute you if -- or we can't do your DHO if they are  
7 prosecuting you. So, when they come and tell me your  
8 prosecution is dead, that tells me I am free to now defend  
9 myself in a real way in DHO.

10 Q And is Exhibit A6 the letter you wrote to your wife on or  
11 about the time you learned that you were no longer being  
12 prosecuted?

13 A Yeah. Heck yeah.

14 MS. REGAN: Your Honor, we would offer A6.

15 THE COURT: Any objection?

16 MR. TEITELBAUM: Under the rule of completeness, we  
17 would object to most of the letter being redacted.

18 THE COURT: Well, it wasn't the defendant that  
19 redacted it. The objection is overruled. A6 is --

20 MR. TEITELBAUM: I'm sorry, Your Honor. I mean, it  
21 was not the Government counsel that redacted it. I'm not  
22 familiar with where the redactions came from.

23 MS. REGAN: Your Honor --

24 THE COURT: Hold on. Don't snatch victory from -- the  
25 Exhibit A6 is admitted into evidence.



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1 MS. REGAN: Thank you.

2 Q. (By Ms. Regan) So, what happened next? After you learned  
3 from Lieutenant Ratz that the prosecution was no longer  
4 happening, what happened next? And let's focus on what happened  
5 to sort of affirm your belief and understanding that you were  
6 not being prosecuted.

7 A Correct. So, things moved fast at this time. I've got the  
8 AW coming up to me every week saying, King, you're going to do  
9 your DHO. You're on the first docket, and we're getting you  
10 transferred out of here.

11 Q Which is the associate warden; correct?

12 A Yes. The AW, the associate warden. And he's coming up to  
13 me one week, and then I get my shot. They come and serve me my  
14 disciplinary shot, and it's a 224 for a non-severe assault, for  
15 a casual assault without injuries. And then AW Grant comes the  
16 next week and tells me, you got the 200. You're probably going  
17 to another medium. You're good to go. You're cruising, son.

18 And I've got Lieutenant Ratz coming up and saying,  
19 we're so ready to get you out of here. You did good. It's  
20 over. And then I do my UDC, and I ask for a staff rep. And I  
21 ask for a staff rep, because I want to defend myself. I know  
22 what's happening isn't right. I don't want to lose my good  
23 time. I don't want to be thought of as a cop puncher, officer  
24 assaulter, because then the other officers will see that on my  
25 record.

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1 So, I want to protect myself and show I'm in the right  
2 here on this one, fellas. I've been wrong before. I'm right  
3 here.

4 And I give them a list of 20 questions, all these  
5 things. Why was I in the mop bucket? Why was there no cameras?  
6 Why was I alone with the lieutenant? Why was there brooms  
7 everywhere? And I asked for a staff rep. And that's  
8 detrimental to your health in the prison system. That can get  
9 you beat up, because people think you're telling, but I needed  
10 to do the right thing.

11 I asked for this staff rep under the impression, I'm  
12 not being prosecuted. I can now defend myself in a real way,  
13 and really just give this a shot to fix my life, just get back  
14 to how things need to go, and that's what happens.

15 Q Let me pause and ask you this.

16 THE COURT: Counsel, I keep -- I mean, how much more  
17 do you have?

18 MS. REGAN: Maybe two more questions.

19 THE COURT: Go ahead.

20 Q. (By Ms. Regan) So, what was your understanding of the  
21 consequences of being prosecuted federally for assault versus  
22 engaging in the DHO process and potentially being sanctioned in  
23 the disciplinary realm?

24 A It's our understanding and the bureau's understanding that  
25 those two can't happen at the same time. So, if I'm not being

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1 prosecuted for assault, then I am being disciplined for assault,  
2 and the discipline would be losing good time, losing my phone,  
3 losing commissary. It would have that on my jacket, on my  
4 record that I assaulted staff, but I wouldn't go to prison. I  
5 wouldn't be taken away from my family for years. It's a  
6 metaphorical victory almost just to protect yourself inside the  
7 system.

8 Q Did the DHO inform you during the hearing and/or show you a  
9 document that said the FBI AUSA released the prosecution, or  
10 something to that effect?

11 A Yeah. Because this is a staff assault, it got referred.  
12 And I have known this the whole time. And so when we go in  
13 there, she refers to the document saying, because they've let it  
14 go, we can now pick it up. So, we're going to do this process  
15 now. That's why it's delayed. Because she had to explain to me  
16 why it was delayed, otherwise she just violated my rights  
17 horribly, and I would have beat the shot, but she had to.

18 Q Did you ever see the document that was referred to today  
19 that said that the Government was going to prosecute you?

20 A Oh, no. God no. That was maybe a couple weeks ago.

21 THE COURT: Hold on. But I don't understand what  
22 you're just saying, because those two reports were at least  
23 dated, if not created three weeks after the hearing. So, how  
24 could you have been given and shown these reports at the hearing  
25 or before the hearing?

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1 THE DEFENDANT: She's referring -- my lawyer is  
2 referring to the one that says I'm not going to be.

3 THE COURT: Which is the same date. Both version one  
4 and version two as we've been calling them -- hold on. Version  
5 one and version two as we've been referring to them were both  
6 created -- I forget the exact date -- February 21, something.  
7 Approximately three weeks after the hearing on January 30th,  
8 2019.

9 THE DEFENDANT: Mm-hmm.

10 THE COURT: So, now, that's just the date it bears.  
11 If in fact those documents were created on February 21st --  
12 created, typed, and signed, on February 21st, it's impossible  
13 for you to have relied on those documents at a January 30th  
14 hearing.

15 THE DEFENDANT: What I was saying to my lawyer is I  
16 never saw the document that says that I was being prosecuted.  
17 Because that would have been in my DHO report, the report that  
18 they have to give me. That would have been in that, and it  
19 wasn't. I've never received anything that said I was being  
20 prosecuted at any time, until I was indicted.

21 THE COURT: All right.

22 Q. (By Ms. Regan) So, my last question was you didn't know  
23 that you were being prosecuted until you were brought to this  
24 courthouse and arraigned; is that correct?

25 A I fully understood that I was not being prosecuted until

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1 August two years ago.

2 MS. REGAN: Thank you. Pass the witness.

3 THE COURT: All right. Cross examination?

4 MR. TEITELBAUM: Your Honor, I have a suggestion, or a  
5 proposal, if the Court is willing to hear it. The Government  
6 would forgo its cross examination of the defendant if the Court  
7 would be willing to permit the ten minutes per side of oral  
8 argument instead.

9 THE COURT: I thought you asked me 40 minutes ago for  
10 a written post brief, the leave to file a post hearing brief?

11 MR. TEITELBAUM: I did, Your Honor. That was before I  
12 listened to the defendant's testimony and have been able to make  
13 an educated determination about the utility of cross examination  
14 versus in-person argument.

15 THE COURT: Thank you for the suggestion, but I mean,  
16 I think I would -- I would benefit and my law clerk would  
17 benefit more from the parties getting a transcript of the  
18 hearing and then giving me post hearing briefs that can -- not  
19 just make legal arguments and factual arguments from memory, but  
20 factual arguments from the actual record of this hearing. So,  
21 it's your chance for cross examination. Take it now, or let it  
22 go.

23 MR. TEITELBAUM: We will let it go, Your Honor. No  
24 cross examination questions.

25 THE COURT: Okay.

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1 MR. TEITELBAUM: We would -- would you be willing to  
2 discuss the parameters of the written submission? We would  
3 still like to do that. I would just like to make sure I know  
4 the page limits.

5 THE COURT: I will do that. If you're not going to  
6 have more cross examination, then I think in fairness, I will --  
7 do you have any more -- had you known there was not going to be  
8 any cross, did you have any more questions on direct?

9 MR. TEITELBAUM: Your Honor, we would object to that,  
10 however. I mean, I think each time the defendant testifies  
11 about something, then I would need to make a determination about  
12 whether to cross him. I think that the Government should be  
13 permitted to hear the time-limited testimony, determine whether  
14 to cross examine, and if we're going to forgo it here, then not  
15 have the door reopened to have the defendant keep testifying and  
16 potentially trigger the need for additional cross examination.

17 MS. REGAN: And Your Honor, we're fine. We covered  
18 what we needed to cover today.

19 THE COURT: All right. Good. Fine. So, that's moot.  
20 I hear what you said, Mr. Teitelbaum. I think it's also true  
21 that had I known you were not going to do cross examination, I  
22 would have given the defendant a longer period of time for  
23 direct, but that's all water under the bridge right now. All  
24 right.

25 So, what we're going to do is I think the counsel

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1 should talk amongst themselves and see if they can come to an  
2 agreement on sharing the cost of transcripts, and order a  
3 transcript of the hearing. And then I'm going to order -- I'm  
4 going to make the due date be triggered by when that transcript  
5 is complete and provided to counsel.

6 So, I will say -- and let me pause. Let's go off the  
7 record just for a second, only for this.

8 (Discussion held off the record.)

9 THE COURT: So, 14 days from tomorrow, which is a  
10 Friday, would be the 29th. Is that a doable date for getting  
11 the transcript to counsel?

12 THE COURT REPORTER: Yes, Your Honor.

13 THE COURT: So, what we're going to do is I am going  
14 to order that the parties submit post-hearing briefs  
15 simultaneously. You're going to get the transcript on the 29th.  
16 Let me pull my calendar up here. Two weeks from that would be  
17 the 12th. Monday the 15th. That gives you two weeks and a  
18 weekend. In terms of page limits, I will allow -- I will allow  
19 20 pages per brief, exclusive of the signature block and  
20 certificate of service.

21 MR. TEITELBAUM: Could I raise a brief housekeeping  
22 matter as well, Your Honor?

23 THE COURT: Sure. You may.

24 MR. TEITELBAUM: We have discussed this with the  
25 defense previously. Lieutenant Kammrad is going away on

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1 military orders for a year, relatively soon. Our understanding  
2 is that up to and including December 3rd, it would be relatively  
3 easy to secure his attendance as a trial witness, but after  
4 December 3rd, it would become extremely difficult, bleeding into  
5 impossible relatively soon because he will be overseas, at which  
6 point he will be on a military posting for about 12 months.

7 THE COURT: Well, I understand that, but we have to  
8 deal with the reality of my calendar, which if you were to see  
9 it, it would give you the creeps.

10 MR. TEITELBAUM: I'm sure it would, Your Honor, and I  
11 don't mean to --

12 THE COURT: I think the -- there's no way you're  
13 getting a trial before December 3rd.

14 MR. TEITELBAUM: Understood, Your Honor. Our  
15 application would then be to do a video deposition.

16 THE COURT: I was going to say, the only solution to  
17 this dilemma is a preservation videotaped deposition that would  
18 be played at trial.

19 MR. TEITELBAUM: So, we will be filing a motion for  
20 the Court's leave to do that. I have already discussed --

21 THE COURT: You don't have to do that. I will  
22 consider your request now an oral motion to do that. Is there  
23 an objection?

24 MS. REGAN: Yes, Your Honor.

25 THE COURT: The objection is overruled. You have the



1 opportunity to -- I will allow -- I will use the limits that --  
2 under the local rules of seven hours, maximum seven hours on the  
3 record. Deposition, videotaped deposition of the lieutenant to  
4 be taken before he leaves the country. Beyond that, is there  
5 anything further from the Government?

6 MR. TEITELBAUM: Only if the Court would be willing to  
7 make the order prior to December 3rd, because once the military  
8 gets into a certain posture, it can be -- even if Mr. Kammrad is  
9 technically still in the United States, it can become impossible  
10 for us to secure his attendance. We've been told that prior to  
11 December 3rd is when realistically we would be able to secure  
12 his testimony.

13 THE COURT: You want an order from me as to a date by  
14 which the deposition would take place?

15 MR. TEITELBAUM: That would be our respectful request,  
16 Your Honor.

17 THE COURT: All right. Is there an objection to that  
18 portion of the request?

19 MS. REGAN: No, Your Honor. But we would add to the  
20 request that Mr. King be permitted to be present during that  
21 video deposition.

22 THE COURT: Yes. He shall be. And he will have  
23 access to his lawyers. All right. No. I only -- you had your  
24 time to testify. I only recognize attorneys who have entered  
25 their appearance at this hearing.

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1 The minutes, Ms. Buchanan, will reflect that the  
2 videotaped deposition of the lieutenant will take place no later  
3 than December 3rd, 2021. Beyond that, Mr. Teitelbaum, is there  
4 anything further from the Government?

5 MR. TEITELBAUM: Nothing else, Your Honor. Thank you  
6 for your time today.

7 THE COURT: All right. Thank you. Anything further  
8 from the defendant?

9 MS. REGAN: Nothing, Your Honor. Thank you.

10 THE COURT: All right. Obviously the matter is taken  
11 under advisement. After I receive the briefs, I will be issuing  
12 a written order. The defendant is remanded to the custody of  
13 the United States Marshals. Thank you. That will be all.

14 (Proceedings concluded at 4:49 p.m.)  
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REPORTER'S CERTIFICATE

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4 I, KEVIN P. CARLIN, Official Court Reporter for the  
5 United States District Court for the District of Colorado, a  
6 Registered Merit Reporter and Certified Realtime Reporter, do  
7 hereby certify that I reported by machine shorthand the  
8 proceedings contained herein at the time and place  
9 aforementioned and that the foregoing pages constitute a full,  
10 true, and correct transcript.

11 Dated this 27th day of October, 2021.  
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17 Kevin P. Carlin, RMR, CRR  
18 Official Court Reporter  
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