

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

THE UNITED STATES OF AMERICA :  
:  
: 5:02-CR-27 (HL)  
VS. :  
: MAY 9, 2002 & MAY 13-14, 2002  
DWIGHT D. YORK and KATHY JOHNSON, : Macon, Georgia  
DEFENDANTS. :

ARRAIGNMENT & DETENTION HEARING

BEFORE THE HONORABLE CLAUDE W. HICKS, JR.

UNITED STATES MAGISTRATE JUDGE, PRESIDING

APPEARANCES:

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TRANSCRIPT OF OFFICIALLY TAPED PROCEEDINGS, PREPARED BY  
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## P R O C E E D I N G

1  
2 MAY 9, 2002

3 THE COURT: Okay, today is the 9th day of May 2002. The  
4 time is 2:45 P.M. We have one matter scheduled for hearing this  
5 afternoon. This a continuation of the initial appearance hearing  
6 in the case of the United States of America versus Dwight D. York  
7 and Kathy Johnson, criminal number 5:02-CR-27, assigned to Judge  
8 Hugh Lawson.

9 The matter was begun yesterday afternoon at which time the  
10 defendants did not have counsel present. They are represented by  
11 counsel today, Mr. Leroy Johnson of Atlanta, and the government is  
12 represented by Assistant U.S. Attorneys Richard Moultrie and  
13 Sharon Ratley at the hearing this afternoon.

14 Let me ask at this time that Mr. York and Ms. Johnson come  
15 forward along with Mr. Johnson, counsel for each of the defendants  
16 today, and Mr. Moultrie, representing the government.

17 MR. JOHNSON: If it please the Court, let me introduce  
18 Ms. Hines from my office who will also be assisting me as attorney  
19 in this case.

20 THE COURT: Fine. Glad to have with us.

21 MS. HINES: Nice to meet you, Your Honor.

22 THE COURT: Let me ask Mr. Johnson if you and Ms. Hines  
23 will trade places with your client so that I can get you on this  
24 microphone, and they can stand directly in front of me here with  
25 the microphone in the middle. Slide over this way a little.

1 Thank you.

2 All right, yesterday afternoon we only dealt with very  
3 preliminary matters in that we advised the defendants of the  
4 nature of the allegations against them, and I also advised them at  
5 that time of their legal and constitutional rights.

6 The matter before the Court today on the continuation of that  
7 hearing concerns the matter of release from custody and whether or  
8 not that would be appropriate. In that regard, I am advised that  
9 the government has filed motions seeking the pretrial detention of  
10 each of the defendants, and I had previously discussed with both  
11 Richard Moultrie and Leroy Johnson in my chambers the scheduling  
12 of that hearing, and we have agreed that it will be set down for  
13 9:30 a.m. on Monday which will be the 13th day of May.

14 We will begin the hearing at that time. I direct counsel to  
15 be present, and I direct the marshals to return the defendants at  
16 that time so that we may deal with the issue of pretrial  
17 detention. The government, of course, is required at that hearing  
18 to establish that there's no condition or combination of  
19 conditions of release which will assure the appearance of these  
20 defendants as well as the safety of the community. That is the  
21 standard to be dealt with.

22 Both government and the defendants will be permitted to  
23 present information to the Court. They may do so by live  
24 testimony. They may also do so by way of proffer if they wish, and  
25 at that time I'll be glad to entertain any matters that are

1 presented to me, and I remind counsel that I will also consider  
2 the contents of the pretrial services report which has been  
3 provided to me by the U.S. Probation Office, and I believe both  
4 counsel have been provided with a copy of that.

5 I would in the meantime temporarily detain each defendant in  
6 the custody of the marshals, and I'll issue an order to that  
7 effect which will set forth the scheduled time for the detention  
8 hearing itself.

9 I would like to proceed today, however, with the arraignment,  
10 that is the time with the plea is entered. I would like to go  
11 ahead and deal with that so that we may -- that would authorize  
12 Mr. Johnson to file motions on behalf of his clients once that has  
13 been accomplished.

14 I will advise the defendants at this time arraignment is the  
15 time when a plea is to be entered. The only plea I may take on  
16 account of the charges against you, which are felony charges, is a  
17 plea of not guilty. And for the record, Mr. Johnson, I assume  
18 your clients will be tendering not guilty pleas today; is that  
19 correct?

20 MR. JOHNSON: That's correct, Your Honor.

21 THE COURT: All right, even though we stated the charges  
22 for the record yesterday afternoon, I'm going to ask Mr. Moultrie  
23 once again to state those allegations, and at this time to state  
24 the maximum penalty which could be imposed in the event of a  
25 conviction or a plea of guilty.

1 MR. MOULTRIE: Your Honor, in the case number 02-CR-27,  
2 Dwight D. York and Kathy Johnson in count one are both charged  
3 with transporting and causing to be transported children under the  
4 age of 16 in interstate commerce for the purpose of engaging in  
5 criminal sexual activity in violation of Title 18, United States  
6 Code, Section 2423(a).

7 In addition that count also charges Title 18, United States  
8 Code, Section 2. That is the federal aiding and abetting statute.

9 In count two and four Mr. York alone is charged with  
10 transporting in interstate commerce or causing to be transported  
11 in interstate commerce children under the age of 16 for the  
12 purpose of engaging in criminal sexual activity, again, in  
13 violation of Title 18, United States Code, Section 2423(a).

14 Mr. York alone is charged in count three as well for the  
15 offense of traveling in interstate commerce for the purpose of  
16 engaging in a sexual act with a juvenile in violation of Title 18,  
17 United State Code, Section 2423(b).

18 All of those offenses carry a maximum sentence of 15 years, a  
19 penalty of -- excuse me, a fine of \$250,000, or both, a period of  
20 supervised release of three years, and a mandatory assessment fee  
21 of \$100 as to each count.

22 THE COURT: Thank you, Mr. Moultrie. Before we have the  
23 written pleas of not guilty entered in this matter we're going to  
24 present a form to the defendants and to their counsel which is  
25 designed to apprise them of how the U.S. Probation Office at this

1 time feels the federal sentencing guidelines would apply in their  
2 particular cases in the event of a conviction or a plea of guilty.

3 Keep in mind that all I have to say about this form deals only  
4 that circumstance, a finding of guilty after trial or entry of a  
5 plea of guilty. We ask our probation office to compute under the  
6 federal sentencing guidelines what kind of sentencing guideline  
7 range they believe the judge would be required to follow under  
8 those circumstances. They have done so based on information that  
9 they presently have.

10 Of course, if that information is incorrect or if it should  
11 change it could affect the guideline sentencing estimate that  
12 we're going to give to you this afternoon. That range could  
13 therefore go up, but it also could go down. And they have plugged  
14 in all the information they have about each defendant and come up  
15 with an estimate of the guideline sentencing range which they  
16 believe would be applicable.

17 You may or may not be aware of the fact that in federal court  
18 virtually all people are sentenced under the provisions of the  
19 federal guideline sentencing, and they basically tell judges how  
20 they must sentence individuals, and in each case a guideline  
21 sentencing range is determined, and the judge generally speaking  
22 is required to sentence someone between the lower end and the  
23 higher end of that range.

24 We have had the forms prepared, and I'll ask the clerk to hand  
25 those to counsel and to the defendants at this time. And if

1 you'll look at the bottom of the first page of this form you will  
2 see blank spaces which have been filled by the probation office.  
3 They believe that in the event of a conviction or a plea of guilty  
4 the judge would be required to sentence you to a period of  
5 imprisonment somewhere between that first figure and the second  
6 figure.

7 Do keep in mind that this estimate is talking about prison  
8 time. It is not talking about probation. And also if you are not  
9 aware of this at this time, I will advise you that in the federal  
10 system there is no such thing as parole.

11 We ask that each defendant and counsel sign on the back side  
12 of this form. All you're doing by signing the form is  
13 acknowledging receipt of a copy of it, and what we do is have the  
14 form acknowledged by each defendant and counsel, hand it back to  
15 the courtroom deputy clerk, she will then file that, and make it a  
16 permanent part of the record in this proceeding. She will hand a  
17 photocopy of that same form to each defendant and to each attorney  
18 so that you will have copies to take with you from the courtroom.

19 But keep in mine this is not binding on any defendant, on  
20 their counsel, on the government's counsel or the Court. It's  
21 simply a good faith effort to try to give you a better idea of  
22 where you stand insofar as the kind of sentence which could be  
23 imposed in the event of a conviction or a plea of guilty.

24 If you want to take a moment to look that over, Mr. Johnson,  
25 that will be fine, I'll be happy to allow you that opportunity.



1 MR. JOHNSON: Thank you, Your Honor.

2 Your Honor, I've advised my clients to sign this to recognize to  
3 this court that they have received said document.

4 THE COURT: That's the sole purpose of it.

5 MR. JOHNSON: And that's the spirit in which they're  
6 signing it, Your Honor.

7 THE COURT: That is the way it's intended by the Court,  
8 and it will be received in that manner. When you've completed the  
9 form, if you'll hand it back to the clerk, she will then hand  
10 photocopies to you.

11 MR. MOULTRIE: Your Honor, Mr. York and Ms. Johnson have  
12 both endorsed the written notice of estimated sentencing guideline  
13 range form.

14 THE COURT: Okay. Thank you. Copies have now been  
15 handed to the attorneys and to the defendants by the clerk.

16 For the record, the guideline estimate in this case for  
17 Defendant Kathy Johnson in the event of a conviction or a plea of  
18 guilty is 70 months to 87 months to be served in prison.

19 In the case of Mr. York, the estimated sentencing guideline  
20 range is 135 months to 168 months to be served in prison in the  
21 event of a conviction or a plea of guilty, and we will file these  
22 originals with the clerk and make them a part of the record. Do  
23 you have plea forms prepared, Mr. Moultrie?

24 MR. MOULTRIE: I do, Your Honor, and they are before the  
25 Ms. Johnson and Mr. York.

1 THE COURT: By signing these forms the defendant will be  
2 entering pleas of not guilty to each and every allegation set  
3 forth in the indictments against them, and counsel will need to  
4 endorse those signatures as attorney of record.

5 MR. JOHNSON: All right. Your Honor, if it please the  
6 Court, so that the record would reflect my clients will be  
7 entering a plea of not guilty on count one for Ms. Kathy Johnson,  
8 not guilty on count one for Dwight York, not guilty on count two  
9 for Dwight York, not guilty on count three for Dwight York, and  
10 not guilty on count four for Dwight York.

11 THE COURT: That's correct. Thank you.

12 MR. MOULTRIE: Your Honor, Mr. York and Ms. Johnson have  
13 formally entered their pleas of not guilty.

14 THE COURT: If you'll file that with the clerk of the  
15 Court I will enter my standard pretrial order which I have used  
16 for quite a few years. It deals with commonly filed motions but  
17 obviously cannot deal with all pretrial motions. Your time for  
18 complying with that order, Mr. Johnson, begins to run when you  
19 receive the order. We'll try get it in the mail to you either  
20 this afternoon or tomorrow. As I say, it deals with commonly  
21 filed motions, but certainly if you have other motions to file,  
22 you may do so.

23 Technically if you wish to obtain all the information that is  
24 dealt with in the order all you have to do is make a written  
25 request upon government's counsel, and they're required to give it

1 to you. However, if you prefer to file separate motions, you're  
2 certainly free to do so. That is your choice.

3 If you have any questions about the order and how it  
4 functions, I'll be more than happy to explain that to you. In  
5 addition, I believe you are retained in this matter, and we're  
6 going to give you a copy of the Court's policy directed to  
7 retained counsel.

8 There are two matters I will advise you of that we normally  
9 advise retained counsel of. First of all, the Eleventh Circuit  
10 insists that we advise retained counsel the fact that they need to  
11 make sure that any fees that they charge are sufficient to handle  
12 matters through the Eleventh Circuit Court of Appeals should there  
13 be a need for such.

14 Secondly, and this is very important for both your benefit and  
15 the benefit of your clients, we require that all financial  
16 arrangements be made to the satisfaction of counsel within 10 days  
17 from today, and if counsel is not satisfied with financial  
18 arrangements, he may request to come off the case and withdraw  
19 within that period of time, and that request will be honored.

20 The policy is that if you do not request to come off the case  
21 within the 10 days period of time you may find yourself remaining  
22 on the case as what we affectionately refer to as an other than  
23 retained capacity. So please take care of that with your client  
24 and make sure all financial arrangements are taken care of. This  
25 is for the benefit not only of counsel but certainly for

1 defendants so that matters will not be unduly delayed because of  
2 any inability to reach a financial arrangement with a defendant.

3 I believe that that takes care of all matters we can deal with  
4 today. All matters pertaining to detention will be dealt with on  
5 Monday. In the general course of things scheduling of the  
6 pretrial conference and the later scheduling of the trial will be  
7 handled by Judge Lawson since he is the district judge to who this  
8 case has been assigned. But I will take care of preliminary  
9 matters between now and then and, of course, the detention on  
10 Monday.

11 One other matter I will touch on today, and I will make a note  
12 to make sure that I go into this in more detail on Monday and that  
13 has to do with the issue of joint representation since you do  
14 appear on behalf of both defendants today and Rule 44(c), of  
15 course, comes into play which basically requires the Court to  
16 advise the defendants that there are pitfalls in being represented  
17 by one attorney because you may have competing interest which  
18 could possibly develop later on.

19 I will give more instructions on this regard later, and,  
20 Mr. Johnson, I do have a consent to joint representation form  
21 which we normally utilize. If you'll check with my office when  
22 the hearing is over, I'll give you a copy of that if you wish to  
23 use that particular form in dealing with the issue of joint  
24 representation.

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: And I would ask counsel to remind me at the  
2 detention hearing on Monday to further discuss the question of  
3 joint representation since this is certainly a matter of concern  
4 in any criminal proceeding, not just this one. Any additional  
5 matters on behalf of these defendants this afternoon?

6 MR. JOHNSON: No, Your Honor. The hearing will be at  
7 9:30 on Monday; is that correct?

8 THE COURT: 9:30 on Monday, yes, sir.

9 MR. JOHNSON: All right.

10 THE COURT: Mr. Moultrie, anything further for you?

11 MR. MOULTRIE: No, Your Honor.

12 THE COURT: All right, I'll ask the defendants for the  
13 moment to have a seat back in the jury box, and I will direct the  
14 marshals to allow Mr. Johnson to go back upstairs so that he may  
15 consult with his clients this afternoon since he has not had an  
16 adequate opportunity to really do so this afternoon.

17 MR. JOHNSON: Thank you, sir.

18 THE COURT: There being no further business, we'll be in  
19 recess until further business brings us back. Thank you.

20 (ARRAIGNMENT CONCLUDED)

21 P R O C E E D I N G

22 MAY 13, 2002

23 THE COURT: Good morning. Today is the 13th day of May  
24 of 2002, the time is 9:35 a.m. We have scheduled today a hearing  
25 under provisions of the Bail Reform Act of 1984 upon a motion of

1 the United States of America seeking the pretrial detention of  
2 defendants Dwight D. York and Kathy Johnson in case number  
3 5:02-CR-27, a matter assigned to Judge Hugh Lawson.

4 I understand we do have some new attorneys who are present  
5 today. I have been advised the government has seated at its table  
6 Stephanie Thacker from the Department of Justice along with  
7 Richard Moultrie who previously appeared, and, Mr. Johnson, I  
8 believe that Mr. Eddie Garland is with you this morning; is that  
9 correct?

10 MR. JOHNSON: Yes, sir.

11 MR. GARLAND: Good morning, Your Honor, I'm joining Mr.  
12 Johnson as his co-counsel.

13 THE COURT: All right, and as I understand it both of you  
14 are representing both of the defendants insofar as matters now  
15 stand; is that correct?

16 MR. GARLAND: That's correct.

17 MR. JOHNSON: That's correct, Your Honor.

18 THE COURT: All right, in just a moment before we begin  
19 the hearing I do want to go ahead and put on the record the advice  
20 concerning the provisions of Rule 44, that is, concerning joint  
21 representation so that we basically will dot I's and cross T's in  
22 that regard. Counsel don't appear to have any place to sit, are  
23 you planning on standing during the entire hearing?

24 MR. GARLAND: Well, Your Honor, we just were standing  
25 until we got started. We need one more chair.

1           THE COURT: Bring that for them if you would, please.  
2 This is a small courtroom, it accommodates not all that many  
3 people, but oddly enough it's not that few people compared to the  
4 other courtrooms we've got, other than the large courtroom itself.

5           Before we get started there are a couple of housekeeping  
6 matters I want to deal with that have absolutely nothing to do  
7 with this case but because of the fact that we do have interest in  
8 this matter by the media that brings to mind a couple of pet  
9 peeves of mine that I see constantly in both the printed media and  
10 on the radio and television, and that is, there're two particular  
11 matters.

12  
13           One, this court is often referred to as United States  
14 Magistrate Court. There is no such animal as the United States  
15 Magistrate Court and never has been. It's United States District  
16 Court for the Middle District of Georgia. I am a United States  
17 magistrate judge, and I'm authorized to preside over this court.  
18 I'd very much appreciate in the future that any references to this  
19 court be to the district court and not magistrate court. There is  
20 such an entity in the state system, but there is not in the  
21 federal system.

22           The other has to do with my title, which is United States  
23 Magistrate Judge. This title has been around for more than 10  
24 years but constantly people in the media will print it and say  
25 United States Magistrate. Personally I was happy with that title

1 before they changed it 10 years ago. It didn't bother me one bit,  
2 but it has been changed, and in the interest of accuracy I would  
3 appreciate your using the correct title in any future stories that  
4 are printed or made known to the public. This is a pet peeve of  
5 all magistrate judges, and sometimes I believe one of my  
6 colleagues referred to us as the court of redundancy because of  
7 the fact that magistrate and judge are rather interchangeable in  
8 various parts of the world, but keep in mind that the word  
9 magistrate is an adjective as the word district is in the United  
10 States District Judge, and as the word bankruptcy in the United  
11 States Bankruptcy Judge. If you remember that you'll get it right  
12 in the future.

13 Now, as I said that has absolutely nothing to do with this  
14 case today but since it is a pet peeve of mine, I thought I would  
15 mention it for the benefit of those who are here representing the  
16 media.

17 Now, before we get started with the detention hearing today  
18 there are some matters that I wish to deal with, and I touched on  
19 this the other day in talking with Mr. Johnson.

20 As a matter of fact, Mr. Johnson, I believe I provided you  
21 with forms concerning joint representation, but before we talk  
22 about that let me place on the record certain matters for the  
23 benefit of the defendants who are present since they are  
24 represented by the same counsel in the proceedings before the  
25 Court today.



1 Rule 44(c) of the Federal Rules of Criminal Procedure requires  
2 that I advise defendants who do appear before me jointly  
3 represented of certain pitfalls that may occur if they continue to  
4 be represented by the same counsel.

5 Now, these pitfalls may or may not occur in your particular  
6 case, but I do want you to understand that under the United States  
7 Constitution every defendant has a right to effective assistance  
8 of counsel, and when one lawyer attempts to represent two or more  
9 defendants in a case, that lawyer may have difficulty representing  
10 each of the defendants with the same fairness.

11 This is a conflict of interest that denies a defendant the  
12 right to effective assistance of counsel and such conflicts are  
13 always a potential problem in any case because different  
14 defendants may have different degrees of involvement in the  
15 allegations set forth in any indictment.

16 Each defendant has a right to a lawyer who represents only his  
17 or her interest. Now, I want to point out to you certain ways in  
18 which dual representation might work to the disadvantage of a  
19 defendant. Keep in mind what I'm saying today applies in all  
20 criminal proceedings whenever we have attorneys seeking to  
21 represent the interest of more than one defendant.

22 First of all, let me point out to you that dual representation  
23 may inhibit or prevent counsel from conducting an independent  
24 investigation in support of each defendant's case. For example,  
25 the attorney client privilege may prevent your lawyer from

1 communicating information gathered from another defendant to you.

2 Secondly, the government may offer immunity or offer to  
3 recommend a lesser sentence to one defendant for cooperating with  
4 the government. Should you receive such an offer your lawyer  
5 ought to advise you whether or not to accept it. But if your  
6 lawyer advises you to accept the offer, it may harm the other case  
7 of the other defendant represented by that lawyer.

8 Thirdly, the government may let a defendant who is not as  
9 involved as another defendant plead guilty to a lesser charge than  
10 the other defendant, and after the guilty plea the government may  
11 require the defendant to testify. A lawyer who represents more  
12 than one defendant might recommend that the first defendant not  
13 plead guilty to protect the other defendant that the lawyer also  
14 represents. On the other hand the lawyer might recommend that the  
15 first defendant plead guilty which might harm the case of the  
16 other defendant.

17 Dual representation may affect how your lawyer exercises  
18 preemptory challenges or challenge for cause during the selection  
19 of any jury during the trial of your case. Potential jurors who  
20 may be perceived as favorable to you may be perceived as harmful  
21 to your co-defendant or jurors who may be perceived as favorable  
22 to the other defendants may be harmful to you.

23 Now, sometimes one of the defendants represented by a lawyer  
24 will take the stand to testify in his or her own behalf. In order  
25 to represent the other defendant fairly the lawyer should question

1 the defendant on the stand as completely as possible. However,  
2 the lawyer may not be able to do that because he or she cannot ask  
3 the defendant as a witness anything about anything that the  
4 defendant has told the lawyer in confidence.

5 Now, the best defense for is a single defendant often is the  
6 argument that while the other defendant may be guilty he or she is  
7 not. A lawyer representing two or more defendants cannot  
8 effectively make such an argument.

9 Evidence that helps one defendant might harm another  
10 defendant's case, and when one lawyer represents two or more  
11 defendants the lawyer might offer or object to evidence that could  
12 help one defendant but harm another.

13 And insofar as sentencing is concerned a dual representation  
14 would prohibit the lawyer from engaging in post trial negotiations  
15 with the government as to full disclosure by one defendant against  
16 the other. It would also prohibit the lawyer from arguing the  
17 relative culpability of the defendants to the sentencing judge.

18 Now, as I've mentioned I previously provided forms to Mr.  
19 Johnson that would waive any problems concerning joint  
20 representation. It does not necessarily mean that would end the  
21 inquiry, but that at least is the first step that must be dealt  
22 with, and I put upon counsel for the defendants to discuss this  
23 matter with their clients insofar as future representation is  
24 concerned.

25 Insofar as the hearing today is concerned we certainly will go

1 forward with it as matters now stand, but as the case progresses  
2 obviously the potential for conflict is more likely to increase,  
3 and that's why this needs to be dealt with at the early stages of  
4 the proceeding, and I trust counsel for defendants will take that  
5 step.

6 MR. GARLAND: We will do that, Your Honor, and review  
7 that thoroughly.

8 THE COURT: Thank you. We are here today to consider the  
9 motion of the United States seeking pretrial detention of each of  
10 the defendants who is before the Court today. There are several  
11 factors which are required by law for the Court to consider at  
12 this hearing in determining whether or not there is a danger, a  
13 serious risk of flight in this case, and/or a danger to the  
14 community were the defendants to be released from custody.

15 What we would do is take evidence today at this hearing. I'll  
16 be glad to hear from both government and from the defense. In  
17 this hearing today the rules of evidence do not apply, so it's up  
18 to the Court to hear whatever it wishes, and I'll be more than  
19 happy to hear any information in whatever form counsel wishes to  
20 present it to me, whether it be on the witness stand or by way of  
21 proffers, and we will take matters up as they come if there's any  
22 disagreement as to what is to be presented.

23 It's my responsibility to consider the nature and  
24 circumstances of the offenses charged against the defendant; to  
25 consider the weight of evidence against each of the defendants.

1           And parenthetically, let me say, that each defendant will be  
2 considered separately in this hearing today as the law requires.

3           I'm also required to consider the history and characteristics  
4 of the defendants which includes their character, physical and  
5 mental condition, family ties, employment, financial resources,  
6 length of residence in their community, any past conduct, any past  
7 criminal history, if there is such, any record of abuse of alcohol  
8 or drugs, any record of failing to appear or appearing in the past  
9 in any court proceeding, and also whether any defendant is on  
10 probation, parole, or released pending trial, sentencing, or  
11 appeal.

12           And finally, I'm required to consider the nature and  
13 seriousness of any alleged danger to a person or to the community  
14 if that defendant were to be released from custody.

15           The government does have the right, does have the obligation  
16 and duty to present sufficient evidence to satisfy the Court that  
17 there is a risk of flight and/or danger to the community were the  
18 defendants to be released. The defendants, of course, have the  
19 right to be represented at this hearing by counsel and are so  
20 represented. They have the right to testify if they wish. They  
21 certainly have the right to present witnesses and such other  
22 evidence as they wish to present, and obviously have the right to  
23 cross examine any witnesses presented by the government.

24           Now, I do remind counsel, once again, as I've already said,  
25 that the rules concerning admissibility of evidence in criminal

1 trials do not apply at the hearing today, and for that matter I  
2 also want to point out to both sides as I believe I did the other  
3 day that the pretrial services report, which has been prepared by  
4 the U.S. Probation Office, which has been reviewed by me and made  
5 available to counsel, will be considered by me, its contents will  
6 be considered, so if there are any matters in that report that  
7 either side considers to be -- need to be commented on, I'll be  
8 happy to let you do that, and you may address your remarks -- in  
9 your final remarks to the Court, you may address that particular  
10 matter if you wish. But don't hesitate to point out to me  
11 anything that you find to be in error in that report since it will  
12 otherwise be consider by me. Is the government ready to proceed  
13 this morning?

14 MR. MOULTRIE: Yes, Your Honor.

15 THE COURT: Are the defendants ready to proceed?

16 MR. GARLAND: Your Honor, we are, but before we proceed I  
17 have a matter I'd like to request.

18 THE COURT: Step up to the podium, if you would, please,  
19 sir.

20 MR. GARLAND: May it please the Court, I know you are  
21 familiar with the fact that in this case a search warrant was  
22 issued by you.

23 THE COURT: Yes, sir.

24 MR. GARLAND: -- based upon the presentation made in  
25 camera, I assume, but certainly of which the defendants in this

1 case and counsel do not have any knowledge. On that point we feel  
2 as a matter of due process of law and the right to make a  
3 presentation that deals with the facts and have that presentation  
4 be based on a record made here that it places the Court in the  
5 difficult situation of having to compartmentalize or attempt to  
6 compartmentalize about the multiple factors. As you well know  
7 that there're multiple factors.

8 In due course in the process of this case the information  
9 contained in the search warrant would be disclosed. I therefore  
10 move at this time in order to ensure that we are able to deal with  
11 all factors, that you at this time disclose the affidavit of the  
12 search warrant so we may present to you about matters that are  
13 bound to have been placed before you and in your mind to ensure  
14 that you would then have the ease of hearing the contested matter  
15 and rendering your decision, as I know you desire to do,  
16 un-influenced by extraneous matters.

17 If there are any matters within that affidavit that appear to  
18 be of such a confidential nature as to raise a serious question,  
19 then I would ask the Court to examine it with a view toward seeing  
20 if something had to or needed to be redacted.

21 One of the issues that you will face, as you've just  
22 indicated, is the weight and strength of the evidence in this  
23 case. The indictment in this case does not tell us who the  
24 victims are. So for the Court to be able to access that on a  
25 contested basis and look at it, we are here really in the dark,

1 and the affidavit to the search warrant obviously most likely is  
2 the most factual recitation available, I assume. So I ask the  
3 Court at this time to disclose the affidavit for the search  
4 warrant.

5 THE COURT: All right, before I hear from Mr. Moultrie,  
6 let me state for the record that I did, in fact, review that  
7 affidavit, and on basis of that affidavit and that affidavit along  
8 with the search warrant was issued there's nothing outside the  
9 four corners of that affidavit that came into play in issuing the  
10 search warrant itself. Mr. Moultrie.

11 MR. MOULTRIE: Your Honor, the government disagrees that  
12 the defense is entitled to a copy of the affidavit at this point.  
13 The affidavit and the search warrant are under seal. As  
14 Mr. Garland knows, there will be a point in time when that  
15 document and the search warrant will be unsealed. In part, the  
16 Court agreed to seal the affidavit and search warrant to protect  
17 the identity of the confidential informants in this case, many of  
18 whom are juveniles.

19 On that same issue, Your Honor, I provided defense counsel  
20 with a copy of motion in limine form asking the Court for the  
21 purposes of this hearing to not allow the defense to go into any  
22 matters concerning the identification of the confidential  
23 witnesses that have been interviewed by the FBI in this case, and  
24 I think we're dealing with the same issue, Your Honor, in terms --  
25 this is that motion, Your Honor. We're dealing with the same



1 issue as it relates to the disclosure of affidavit.

2 There was information in that affidavit the defense counsel  
3 could use in order to ascertain the identities of, again, some of  
4 our witnesses who are juveniles. This is not the appropriate time  
5 to do that, Your Honor. We ask that the Court to continue to seal  
6 those documents at this time. This is a detention, Your Honor.  
7 There will be ample time for the defense to get all of the  
8 information that they ask for in due course as part of the  
9 discovery process in this case.

10 MR. GARLAND: Your Honor, to go to the heart of it, the  
11 substance of this case that we're charged with is a really a child  
12 molestation case in which there is a claim of federal jurisdiction  
13 because of transportation. So the core charge, the core factor in  
14 determining the weight of the evidence here is a child molestation  
15 case. You cannot have a situation where we are in the dark as to  
16 who the alleged victim is in a child molestation case. Now, I  
17 understand there's a parallel child molestation case in the state,  
18 and this is very unusual. There're child molestations in the  
19 State of Georgia, I would venture there are five thousand a year  
20 or four thousand a year with no federal jurisdiction assumed.

21 So there's something we don't know obviously going on here of  
22 some significance, significant enough that the Federal government  
23 has chosen to make a federal charge out of a state child  
24 molestation claim. There's no way to defend and face the  
25 accusation against us. And this addresses itself to the search

1 warrant, but also the necessity to know who the victim is. You  
2 can't say a victim is also a confidential informant, therefore  
3 you, the accused don't know who's making the accusation against  
4 you.

5 The most fundamental constitutional principle is the right to  
6 know your accuser, the right to face the accusation, and it can't  
7 be covered over with that. That is even more reason why the  
8 affidavit in support of the search warrant should be disclosed and  
9 obviously who the victims are in this case.

10 As I understand it they are in the custody, or some of them  
11 according to newspaper reports, Your Honor, are in the custody of  
12 the Department of Family and Children Services. Now that was an  
13 -- that's totally unverified. I just read that in a news clip  
14 this morning on the way down here.

15 So in terms of giving us our constitutional rights, there  
16 needs to be some disclosures here that are on the record in open  
17 court that we can deal with. There may be factors relating to the  
18 parents of the alleged victim that go to bias, motive, to frame  
19 these -- for false charge, I don't know. We want to know, what  
20 are we here for and what are we here to contest this morning.

21 MR. MOULTRIE: Your Honor.

22 THE COURT: Do you want to comment?

23 MR. MOULTRIE: Yes, Your Honor. This is a surprising and  
24 very sudden turn of events. Just prior to the Court taking the  
25 bench, I had a conversation with Mr. Johnson and Mr. Garland, and

1 they both said that they were not going to make any attempts to go  
2 into the identifies of the confidential witnesses and victims at  
3 this stage of the proceedings, however, having, said that --

4 MR. GARLAND: Now, excuse me, let me correct that. We  
5 are not seeking confidential informants. We are seeking to know  
6 who the alleged victim in the indictment is. If those happen to  
7 coincide, we certainly never intended to say we wouldn't want to  
8 know who the victim is. If the victim is the confidential  
9 informant, then they are not a confidential informant; they are a  
10 victim, and they are not entitled to be shielded, but I cannot  
11 imagine in America that prosecution could take the proposition  
12 that they're going to bring a case and not let a defendant know  
13 against whom he has allegedly committed the crime. So if you are  
14 misled in any way, I apologize. I never could have assumed that,  
15 and I don't now and I cannot imagine it. Thank you.

16 MR. MOULTRIE: Your Honor, again, first of all, if the  
17 witnesses and/or victims are under 18 we cannot give out that  
18 information anyway. Second, when Mr. Garland talks about this  
19 being something suddenly new as a development in the law, the idea  
20 of having the protection of confidential informants protected at  
21 certain proceedings, then I suggest that he read the case of  
22 **Roviaro versus United States**, a Supreme Court case that was  
23 decided in 1957, that holds that that very proposition exists.

24 Third, the affiant on the search warrant is here, she will be  
25 testifying. There is nothing to prevent Mr. Johnson and Mr.

1 Garland from asking her about the nature of the offenses in this  
2 case. They do not have to know the identity of these children in  
3 order to examine what the nature of this evidence will be that  
4 supports our position and from our opinion that supports the need  
5 to detain Ms. Johnson and Mr. York. There simply, Your Honor, is  
6 not a need to go in the identifies of these confidential  
7 informants who are also victims who are also in many cases  
8 juveniles.

9 MR. GARLAND: Your Honor, further on the right to the  
10 search warrant. If I heard the prosecutor right, I think he said  
11 -- sometimes I don't hear exactly right -- but that the agent will  
12 testify and the agent is the affiant on the search warrant. If  
13 that is the case then we are entitled to it under the rules of  
14 discovery, 26.2, or whatever it is, to that information which  
15 would be a prior statement of the witness.

16 THE COURT: My view is that you are not entitled to it at  
17 this hearing today. Certainly ultimately I believe you are  
18 correct. This is a preliminary matter. The focus of this hearing  
19 is the question of pretrial detention and detention hearings we  
20 hold in this court the identity of the confidential informant is  
21 not gone into and will not be gone into in the hearing today.

22 Insofar as as the affidavit in support of the search warrant  
23 is concerned, I will not direct the government at this time to  
24 turn over that search warrant. It is sealed at this time. It  
25 will remained sealed. There will come a point in time, of course,

1 when that search warrant will be revealed. I do not believe it is  
2 necessary for purposes of the hearing today for it to be revealed  
3 at this time, nor do I believe that it would prejudice the rights  
4 of the defendants at the hearing today.

5 The government has stated that the affiant of that search  
6 warrant will testify and counsel may feel free to cross examine  
7 her on matters other than the identities of the confidential  
8 informants and any alleged victims. I will not allow that to take  
9 place today, recognizing fully that the defendants have the right  
10 to pursue this but not at the hearing today. Subsequent to the  
11 hearing will be fine. Is the government ready to proceed?

12 MR. MOULTRIE: Yes, Your Honor. Preliminarily, Your  
13 Honor, I just wanted to point out that the written motion for  
14 detention filed by the government is not completely clear that the  
15 rebuttal presumption does apply in this case pursuant to Title 18,  
16 United States Code, Section 3142(e) and (f). Specifically, Your  
17 Honor, the rebuttal presumption is invoked if the charges deal  
18 with a crime of violence as defined in Title 18, United States  
19 Code, Section 3156, SubSection (a)4(c). That section, Your Honor,  
20 covers the offenses that are alleged in the indictment returned by  
21 the grand jury.

22 THE COURT: It may do that, but you didn't put it in your  
23 motion.

24 MR. MOULTRIE: Well, actually, Your Honor, the crime of  
25 violence is checked under the eligibility --

1 THE COURT: The rebuttal presumption portion is not  
2 checked, though, and you haven't put the defendants on notice of  
3 that, and as they stand before the Court today, they were entitled  
4 to be notified of that.

5 MR. MOULTRIE: Okay. Well, we'll proceed, Your Honor,  
6 with the written terms that are spelled out in the written motion.

7 THE COURT: I'll limit it to that because I think  
8 certainly they were entitled to be notified if you were going to  
9 invoke the rebuttal presumption.

10 MR. MOULTRIE: Certainly, I understand. We have one  
11 witness, Your Honor, if you're prepared to hear from that witness  
12 at this time.

13 THE COURT: Come forward, please. Identify the witness  
14 for the record, please, Mr. Moultrie.

15 MR. MOULTRIE: Certainly, Your Honor. The witness is  
16 Jalaine, J-A-L-A-I-N-E, Ward, W-A-R-D.

17 THE COURT: Administer the oath, please.

18 DEPUTY CLERK: Raise your right hand, please. Do you  
19 solemnly swear that the testimony you are about to give is the  
20 truth, the whole truth, and nothing but the truth, so help you  
21 God?

22 THE WITNESS: I do.

23 JALAIN WARD,

24 having first been duly sworn, testified on

25 DIRECT EXAMINATION

1 BY MR. MOULTRIE:

2 Q. Would you again, state your full name for the record, please?

3 A. My name is Jalaine G. Ward.

4 Q. And where are you employed?

5 A. I am employed with the Federal Bureau of Investigation  
6 assigned to Macon, Georgia.

7 Q. And, Agent Ward, are you familiar with the investigation of  
8 Dwight D. York and Kathy Johnson for transporting minors in  
9 interstate commerce for the purpose of criminal sexual activities?

10 A. Yes.

11 Q. As part of that investigation have you determined other names  
12 used by York in the past?

13 A. Yes.

14 Q. What are those names?

15 A. Dwight H. York, Dwight D. York, Dwight Henry York, Isa Abd,  
16 A-B-D, Allah, A-L-L-A-H, Muhammad Isa Al Madhi, Isa Al Madhi, Isa  
17 Muhammad, Isa Hohay Al Mahdi, Malachi Z. York, Malaki Z. York with  
18 a different spelling, Isa Muhammad Baba, Chief Blackie.

19 Q. What is the current name of York's organization?

20 A. The current name is the Al Mahdi Shriners and the Holy Seed  
21 Baptist Synagogue Incorporated, the two current names that he's  
22 working under.

23 Q. Has York called his organization other names previously?

24 A. Yes.

25 Q. And what are those other names?

1 A. He has been, his organization has been named the Nubian  
2 Islamic Hebrews, the Ansaru Allah Community, the Tents of Kedor,  
3 the Ancient Mystic Order of Melchizedek, the United Nation of  
4 Nuwaubian Moors, and currently the Al Mahdi Shrines.

5 Q. Did the FBI recently conduct searches of two of the properties  
6 where York and his followers reside?

7 A. Yes.

8 Q. Here in Georgia?

9 A. Yes.

10 Q. And where are those properties located that your agency  
11 searched?

12 A. They are located at in Athens, Georgia, at 155 Mansfield  
13 Court, and in Eatonton, Georgia, 404 Shady Dale Road.

14 Q. And in addition to the properties in Eatonton and the  
15 residence in Athens, are you aware of other cities where York's  
16 followers reside or have resided?

17 A. Yes. In Brooklyn, New York, Sullivan County, New York,  
18 Philadelphia, Connecticut and -- that's in the United States.

19 THE COURT: Which is it? Philadelphia, Connecticut or  
20 Philadelphia, Pennsylvania and Connecticut, which is it?

21 THE WITNESS: Philadelphia, Pennsylvania and Connecticut.

22 MR. MOULTRIE: Thank you, Your Honor.

23 BY MR. MOULTRIE:

24 Q. Do you know if York operates any businesses outside the United  
25 States?



1 A. Yes, in London.

2 Q. And do you know if he maintains any communities outside of the  
3 United States?

4 A. No.

5 Q. Agent Ward, let's talk now about the allegations in this case.  
6 Did your agency receive reports from a number of cooperating  
7 witnesses and victims concerning allegations of sexual molestation  
8 perpetrated by Mr. York and Ms. Johnson?

9 A. Yes.

10 Q. How many cooperating witnesses have you interviewed concerning  
11 the allegations of sexual molestation?

12 A. Approximately 18.

13 Q. And how many known victims have you identified at this point  
14 concerning these allegations?

15 A. Between 30 and 35.

16 Q. And what was their range in ages at the time they accused York  
17 and Johnson of sexually molesting them?

18 A. Between the ages of four and eighteen.

19 Q. Did the victims tell you when York and Johnson stopped  
20 molesting them?

21 A. Yes. They said that when they left, when they left the  
22 compound.

23 Q. Did all these victims reside in Eatonton at the compound?

24 A. Yes. In Eatonton or in Athens.

25 Q. Did they describe any rules that York imposed at the compound

1 or at his other communities in terms of what they could do and  
2 where they could go, again, referring to the cooperating witnesses  
3 and victims?

4 A. Yes.

5 Q. What were those rules they described?

6 A. The rules were, first of all, that York himself makes all the  
7 rules. He is referred to as Baba, which means father.

8 Q. How do you spell that?

9 A. B-A-B-A. Isa, which means Jesus, or Imam, which means leader.

10 They were to refer to him as that. They were to refer to him as  
11 their God.

12 Q. And excuse me, Agent Ward, would you spell Isa and Imam for  
13 the record, please?

14 A. Isa, I-S-A. And Imam, I-M-A-M. There are different spellings  
15 sometimes, but that's what we were told.

16 Q. Okay. And continue to tell us about the rules.

17 A. York controls everything that goes on the land with the  
18 members who lives there and controls their money, the food that  
19 they eat, where they live, when they can leave the compound, when  
20 they can come onto the compound, what they wear, and where they  
21 go, et cetera. The men are not allowed to talk to the woman who  
22 live on the compound without York's permission and have to have  
23 York's permission to engage in sexual activity with them if they  
24 have a mate on the compound. The children are separated from  
25 their parents at a very early age and live in housing according to

1 their gender and age. They are not allowed to -- they're only  
2 allowed to visit with their parents with York's permission.

3 Q. That's about it?

4 A. Pretty much it, yeah.

5 Q. Prior to residing in Eatonton or Athens did these victims  
6 reside within York's communities in New York?

7 A. Yes.

8 Q. Tell the Court the kind of sexual acts that the victims  
9 described that York and Johnson committed against them. And what

10 I want to do, Agent Ward, is begin with the sexual acts that the  
11 victims describe that were perpetrated against them by York.

12 MR. GARLAND: Your Honor, I'm going to object to the  
13 generality of the information and ask that they be specific  
14 talking about what witnesses said. I understand they're not  
15 identifying who they are, but if we can -- assume that as an  
16 confidential informant they have a number, if we could have some  
17 numbers. If she says informant number one said this, number two  
18 said that. Otherwise we're just talking generalities.

19 THE COURT: Any problem with that, Mr. Moultrie?

20 MR. MOULTRIE: Well, Your Honor, I think I can clear that  
21 up by asking Agent Ward if all of the cooperating witnesses told a  
22 consistent story, because if they did, I don't see the need -- if,  
23 in other words, Your Honor, Agent Ward testifies that each of the  
24 confidential witnesses that she interviewed, and, again, victims  
25 are included in the confidential witness category, -- if Agent

1 Ward testifies that they all told her a consistent story, I do not  
2 see the need to then go through the -- having her to say  
3 confidential one or confidential witness two or confidential  
4 witness three.

5 THE COURT: I disagree with you. I think I agree with  
6 defense counsel that some specificity is necessary. I think that  
7 will certainly, whatever is forthcoming, more weight would be  
8 given to it if it's in that particular form, so I would ask you to  
9 proceed in that fashion.

10 MR. MOULTRIE: Okay, I understand.

11 BY MR. MOULTRIE:

12 Q. Agent Ward, let's begin with, let's say confidential witness  
13 three. Okay?

14 A. Confidential witness three --

15 Q. And again, we are discussing what acts that confidential  
16 witness described that were perpetrated by York.

17 THE COURT: I think also it would be helpful to know  
18 something about the confidential witness three without revealing  
19 the identity, such at the age at the time of allegations. That  
20 might --

21 MR. GARLAND: Could we have also have the sex?

22 THE COURT: Yes, sir.

23 BY MR. MOULTRIE:

24 Q. Did you understand that, Agent Ward?

25 A. Yes. But I don't have my name key with me. And so I just to

1 either think a minute or get with you on the -- you know, with the  
2 particular numbers because --

3 MR. MOULTRIE: Your Honor, may I approach the witness to  
4 do that?

5 THE COURT: Yes, sir.

6 BY MR. MOULTRIE:

7 Q. All right, Agent Ward, let's begin again with the Court's  
8 instructions in mind with confidential witness three. What is the  
9 sex of confidential witness three?

10 A. Female.

11 Q. And how old was confidential witness three when she recounted  
12 the sexual molestation that occurred by York in New York?

13 A. Eight years old.

14 Q. What did she describe?

15 A. She said that she was fondled over her clothes and underneath  
16 her clothes and taken -- and was taken pictures of in lewdness in  
17 these positions in the residence in New York.

18 Q. What kind of positions?

19 A. Exposing her genital areas and her buttocks.

20 Q. And confidential witness four, is that a female confidential  
21 witness or male?

22 A. Female.

23 Q. And how old was confidential witness four at the time that she  
24 described the molestation by York in New York?

25 A. She was four years old.

1 Q. And what did confidential informant four tell you in terms of  
2 the sexual acts that occurred?

3 A. That York would fondle her over her clothes, underneath her  
4 clothes while she was on his lap, and took pictures or had  
5 pictures taken of her in sexually explicit positions.

6 Q. Did she describe any of those positions?

7 A. Yes. She was with her legs spread and bending over, different  
8 positions on the pillow.

9 Q. And confidential witness eight, is that witness male or  
10 female?

11 A. Male.

12 Q. How old was confidential witness eight at the time that he  
13 described the sexual molestation by York in New York?

14 A. Six, seven years old.

15 Q. And what did confidential witness eight tell you that York did  
16 to him while he was in New York, that is, while confidential  
17 witness eight was in New York?

18 A. I believe he was just approached and groomed in New York.

19 Q. What do you mean when you say groomed?

20 A. Groomed. He started to spend -- was allowed to spend more  
21 time with York at his residence, he was given gifts, he was --  
22 celebrating his birthday, and was treated more special than the  
23 other children who weren't involved in sexual activities with  
24 York.

25 Q. Do you recall if confidential witness eight described a

1 certain film being shown to him by York?

2 A. Yes. It was in a trailer in New York, and it was an animated  
3 pornography tape, and he was present when York was -- when someone  
4 was performing oral sex on York in his trailer.

5 Q. And describe this film.

6 A. It was pornography of -- a cartoon type pornography film of  
7 individuals having sex and performing oral sex with each other.

8 Q. Do you happen to remember anything about the characteristics  
9 of the parts and the characters? Were they animals? Do you  
10 remember anything about that?

11 A. No.

12 Q. All right. Now, did confidential witness three, confidential  
13 witness four, and/or confidential witness eight, tell you if Kathy  
14 Johnson participated during any of these acts that you've  
15 described in New York?

16 A. Yes.

17 Q. And would you tell the Court what it is that the confidential  
18 witnesses told you that Johnson did during these incidents.  
19 Again, for the record list them by number when you refer to them,  
20 and that would be three, four, and eight.

21 A. Yeah, CW-3, CW-4, CW-8 said that Kathy Johnson was present and  
22 participated in the sexual acts that occurred.

23 Q. Participated how?

24 A. By performing oral sex on York in the presence of the  
25 children, teaching them the act of oral sex, and bringing the

1 younger children to York to perform oral sex on him.

2 THE COURT: Are you talking about in New York now?

3 MR. MOULTRIE: Just New York.

4 THE COURT: All right, well, what you told me so far you  
5 didn't say about this going on other than fondling and pictures  
6 and things of that nature, and I'm a little confused about what  
7 you're actually saying took place at that time. Now, I'm hearing  
8 that Kathy Johnson did these things on York, but that wasn't  
9 mentioned before about that going on with these particular  
10 children that we're talking about. Clarify that, if you would.

11 MR. MOULTRIE: Well, -- okay.

12 BY MR. MOULTRIE:

13 Q. Agent Ward, when you talk about Johnson performing oral sex in  
14 the presence of some of the confidential witnesses, either three,  
15 four, and eight, which confidential witnesses told you that they  
16 were present when Johnson performed oral sex on York in the city  
17 of New York -- or excuse me, the state of New York?

18 Agent Ward, it may refresh your memory if you look to  
19 confidential witness eight.

20 A. The confidential witness number eight is a male, and one of  
21 the -- one of York's wives was in the room when they watched the  
22 video and performed -- and was performing oral sex on York.

23 THE COURT: Okay. Not Kathy Johnson?

24 THE WITNESS: Not --

25 MR. MOULTRIE: Yes, that's the point.



1 BY MR. MOULTRIE:

2 Q. Was that Kathy Johnson that CW-8 described?

3 A. Not at that time, no.

4 Q. Okay. Would you look to see if Kathy Johnson was mentioned as  
5 it relates to the sections on confidential witness number three  
6 and confidential witness four?

7 A. All right. I can't tell from -- just from these different  
8 portions of the affidavit because the witnesses are mentioned  
9 throughout the affidavit for different experiences, and, you know,  
10 we were told in general by all of the witnesses that Kathy Johnson  
11 was routinely present during the acts and participated in the  
12 acts, and so to go through to the specifics, you know, I would  
13 have to pull out, extract from each portion of the affidavit.

14 THE COURT: Well, that was part of the reasons as to  
15 having enough time to get prepared for the hearing so everybody  
16 would be able to do this.

17 MR. MOULTRIE: Your Honor, we didn't plan on having to  
18 use or refer to the confidential witnesses by number because we  
19 thought we would be able to protect that amount of anonymity, so  
20 we didn't prepare Agent Ward for that.

21 THE COURT: Well, I think that you are remiss in not  
22 preparing because this is a serious matter, these are serious  
23 allegations, and I'm not going to sit here and let you do a  
24 generalization of things without being more specific than  
25 obviously you plan to be. If you would like a recess so you can

1 get your ducks in a row, I'll be happy to do that, give you a  
2 short recess, but I'm not going to be acting favorably on your  
3 request unless I have sufficient information to do so.

4 MR. MOULTRIE: Certainly, Your Honor. I don't think  
5 we'll need a recess, Your Honor.

6 THE COURT: Okay.

7 MR. MOULTRIE: If I could just have a minute to review the  
8 information, Your Honor, I think I can help Agent Ward.

9 BY MR. MOULTRIE:

10 Q. Okay. Agent Ward, if you'll look at page 13, subsection 31.  
11 Let me make sure that you have the same section.

12 THE COURT: Mr. Moultrie, I'm not prepared to sit here  
13 all morning while you get your case prepared.

14 MR. MOULTRIE: I'm finished, Your Honor, with that part  
15 of it. I apologize. Your Honor, I too could not find the section  
16 in the affidavit pertaining to the sexual acts described as  
17 perpetrated by Ms. Johnson only as it relates to the City of New  
18 York, but I do have the rest of the questions concerning the other  
19 conduct in terms of the transportation from New York to Georgia,  
20 both by Mr. York and Ms. Johnson and then the acts that were  
21 perpetrated against CW-3, CW-4, and CW-8 by both Ms. Johnson and  
22 Mr. York once they arrived in Georgia.

23 THE COURT: Well, I gather what you sought to produce  
24 thus far was just more in the nature of background information,  
25 anyway; is that correct?

1 MR. MOULTRIE: Yes, yes, Your Honor.

2 THE COURT: Let's get to the meat of the problem here and  
3 have some testimony about the actual allegations in the indictment  
4 itself.

5 MR. MOULTRIE: Certainly, Your Honor. And, again, Your  
6 Honor, if I could point out that the interstate commerce, Your  
7 Honor, deals with the fact that the children were transported from  
8 New York to Georgia, and I wanted to make sure I made that point  
9 during the course of Agent Ward's testimony.

10 THE COURT: Yes, sir.

11 BY MR. MOULTRIE:

12 Q. Agent Ward, continuing on, did the victims describe the  
13 circumstances under which they were relocated from New York to  
14 Georgia?

15 A. Yes.

16 Q. And again, let's focus on CW-3, CW-4, and CW-8.

17 A. Yes.

18 Q. What did they tell you?

19 A. They --

20 Q. I should say, what did you learn during the course of the  
21 investigation concerning why they were relocated and the  
22 circumstances under which they were relocated?

23 A. Dwight York would contact Kathy Johnson or another one of his  
24 wives, in this case, CW-3 and four, it was Kathy Johnson, and  
25 instruct her -- give her a list of the individuals who were

1 allowed to move from Sullivan County, New York to Georgia, and  
2 Kathy Johnson would make those arrangements for that move.

3 Q. And was that true in the case of CW-3, CW-4, and CW-8?

4 A. I know it was for three and four.

5 Q. Okay. And why don't you refer to your list concerning what we  
6 know about CW-8, the list that I did for you, the handwritten note  
7 I made for you?

8 A. Yes.

9 Q. Okay. Did the victims tell you if York and Johnson continued  
10 to engage in sexual acts with them upon their arrival in Eatonton  
11 and Athens?

12 A. Yes.

13 Q. Again referring to CW-3, CW-4, and CW-8?

14 A. Yes.

15 Q. What sexual acts did CW-3 describe that York perpetrated  
16 against her once she arrived in Georgia?

17 A. Okay. CW-3. Let's see. CW-3 and CW-4 said that York very  
18 shortly after their arrival within a few days perf -- engaged them  
19 in sexual activity with him, performing oral sex on him and anal  
20 sex, and as they got older, vaginal sex. He penetrated them  
21 digitally, Kathy Johnson penetrated them digitally as they  
22 performed oral sex on York.

23 Q. When you say penetrated them digitally, I need you to be more  
24 specific. Penetrated them with what and where on their bodies?

25 A. On one occasion, CW-4 said that as she was performing oral sex

1 on York, Kathy Johnson was in the bedroom and putting her fingers  
2 in her vagina.

3 Q. And so that we're also clear on the record concerning some of  
4 the Judge's instructions to us about identification, this limited  
5 identification, CW-3 is a female?

6 A. Yes.

7 Q. CW-4 is a female?

8 A. Yes.

9 Q. And what were their ages once they arrived in Georgia when  
10 they say that these sexual acts that you just described occurred,  
11 how old were they? Well, how old were they in terms of their  
12 range in age?

13 A. Five, nine, and seven -- CW-8.

14 Q. Well, we haven't gotten to CW-8 yet.

15 A. Right, okay.

16 Q. Okay. So five to seven?

17 A. Uh-huh.

18 Q. Okay. Let's talk about CW-8. Again, --

19 A. Five to nine, I'm sorry.

20 Q. Okay. Five to nine. And again, that's referring to CW-3 and  
21 CW-4?

22 A. That's correct.

23 Q. Okay. Let's talk now about CW-8, and, again, with the Judge's  
24 instructions in mind, is CW-8 a male or a female?

25 A. Male.

1 Q. And what did -- well, let me ask it this way. Did CW-8 tell  
2 you that if York and Johnson continued or did sexually molest him  
3 once he arrived in Georgia?

4 A. Yes.

5 Q. Tell the Court what CW-8 described.

6 A. CW-8 was brought to York and Kathy Johnson by an older victim,  
7 someone who had been sexually active with York and Johnson for a  
8 longer period of time.

9 Q. Was this a male or female?

10 A. Male.

11 Q. Okay.

12 A. They brought this victim to him and started to engage -- the  
13 older victim started to engage the younger victim in sexual  
14 activity while York and Kathy Johnson occasionally came upstairs  
15 and looked in on them.

16 Q. What kind of sexual activity were they doing when Johnson came  
17 in occasionally to look in on them?

18 A. Fondling each other and oral sex.

19 Q. Okay.

20 A. Eventually the older victim and the younger victim came  
21 downstairs.

22 Q. Did they describe who took them downstairs?

23 A. The older victim brought the younger victim downstairs, and  
24 they engaged in oral sex, and York attempted anal sex on the seven  
25 year old victim down -- in the presence of Kathy Johnson and with

1 Kathy Johnson's participation.

2 Q. And was there some reason why the anal penetration was only  
3 attempted?

4 A. Because he was only seven years old.

5 Q. Is that what CW-8 told you?

6 A. He said that he wasn't able to penetrate him.

7 Q. Meaning York wasn't able to penetrate the child?

8 A. The child.

9 Q. Did any of these victims tell you if someone videotaped them  
10 during these incidents?

11 A. Yes.

12 Q. Who did the videotaping?

13 A. Some of York's wives, older victims, and Kathy Johnson and  
14 CW-3 and CW-4 said they were photographed in New York and in  
15 Georgia.

16 Q. Photographed doing what?

17 A. Photographed posing in sexually explicit positions and later  
18 videotaped performing oral sex in sex acts with York, and one  
19 occasion they recall Kathy Johnson taking the video.

20 Q. Did one or more of the victims that you interviewed report  
21 that they were also molested in Orlando, Florida?

22 A. Yes.

23 MR. GARLAND: Excuse me, do we know whether that is one  
24 of these numbered ones?

25 MR. MOULTRIE: I'm going to get to that.

1 MR. GARLAND: Thank you.

2 MR. MOULTRIE: No problem, thank you.

3 BY MR. MOULTRIE:

4 Q. Ms. -- Agent Ward, excuse me, was that CW-3?

5 A. Yes.

6 Q. Did CW-3 tell you how many trips she took with Mr. York to  
7 Orlando, Florida?

8 A. I believe it was two -- two or three.

9 Q. Was Kathy Johnson present?

10 A. Yes.

11 Q. Did CW-3 describe seeing any sexual molestation on either of  
12 those trips to Orlando, Florida?

13 A. Yes.

14 Q. What did she describe?

15 A. She described an older victim performing oral sex on York in  
16 the living room in the presence of Kathy Johnson.

17 Q. Did CW-3 also say whether that victim or another girl spent  
18 the night with York on that occasion?

19 A. That was another victim.

20 Q. What did CW-3 tell you about that other victim?

21 A. Just that that person went to York's bedroom and spent the  
22 night there.

23 Q. Where were they going in Orlando, Florida?

24 A. Disney World.

25 Q. And do you know how old Mr. York is?



1 A. He's 56 years old.

2 Q. And as part of your investigation did you ascertain how many  
3 trips this man, adult man, took to Disney World over, say, the  
4 past four years?

5 A. Approximately 15 to 20 trips to Disney in four years.

6 Q. Did the victims tell you if York or Johnson gave them drugs or  
7 alcohol prior to, during, or following these acts of sexual  
8 molestation you've described?

9 A. Alcohol, on occasion.

10 Q. Did CW-3, CW-4, and/or CW-8 describe any trauma related to  
11 these acts that were done to them by York and Johnson?

12 A. CW-3 and CW-4 did. CW-8 did not describe any specific acts --  
13 incidents of trauma, but CW-3 talked about being in a closet  
14 crying after a sexual encounter with York, and CW-4 talked about  
15 hiding under a bed to avoid York.

16 Q. Have any witnesses or victims reported to the FBI that they  
17 have been threatened by York or Johnson in connection with these  
18 allegations while they were living on the properties in Athens or  
19 Eatonton?

20 A. Yes.

21 Q. And what threats?

22 A. CW-4 reported that York threatened to shoot her in the head  
23 and throw her in the back of the property.

24 Q. Have any witnesses or victims reported that York threatened  
25 them once they moved off the compound in Eatonton?

1 A. Yes.

2 Q. What was the nature of that threat?

3 A. Some of York's associates made a phone call to victims who  
4 have filed paternity suits and left a message to the effect of  
5 bang, bang on their telephone, and then later sent a threatening  
6 e-mail, and a former -- a victim, an older victim who recently had  
7 a conversation with Mr. York was told that any of these victims  
8 who decided to talk to law enforcement should be taken care of.

9 THE COURT: How recent are we talking about that this  
10 threat allegedly occurred?

11 THE WITNESS: Last month, month and a half.

12 BY MR. MOULTRIE:

13 Q. And is this a male or female victim?

14 A. Female.

15 Q. Are you aware, Agent Ward, of any travel by York or Johnson  
16 outside the United States recently?

17 A. 1973 to Sudan.

18 Q. By whom?

19 A. By Mr. York.

20 Q. And are you aware of any family that York has living outside  
21 the United States currently?

22 A. Yes. He has a wife and two children in Sudan.

23 Q. Sudan, Africa?

24 A. Yes.

25 Q. Let's talk now about information you've learned about York's

1 financial operations during your investigation. What, if any,  
2 types of businesses did you determine that York operates  
3 presently?

4 A. York operates 10 to 12 bookstores in various parts of the  
5 country, and these bookstores generate approximately 14 thousand  
6 dollars every two weeks derived from the sale of books and  
7 trinkets and different materials that he sells at these stores.  
8 He derives income from weekly events, or weekly meetings that he  
9 holds on the compound in the approximate amount of \$4,000 a week,  
10 and then also generates the bulk of his income from large events  
11 held on the compound two to three times a year. For example, a  
12 New Year's Eve ball party and a Savior's Day event, which is in  
13 June and celebrates his birthday, those events generate -- have  
14 generated in the past, according to the witnesses, up to 500  
15 thousand dollars an event, and both in '99 and 2000, generated 250  
16 thousand in '99, and 280 thousand in the year 2000.

17 Q. Now, these witnesses that you described -- let me ask you  
18 first, does York maintain a finance department?

19 A. Yes.

20 Q. Did the witnesses that you interviewed that provided this  
21 information concerning the financial operations, did they work in  
22 that finance department?

23 A. Yes.

24 Q. And finally, Agent Ward, let's turn to the -- or I should say  
25 return to the matter of the search that your agency recently

1 executed at York's properties in Eatonton and Athens. During the  
2 course of that search, did your agency recover any weapons?

3 A. Yes, several.

4 Q. What type of weapons?

5 A. Handguns, rifles. AK-47 rifles, Mig 14 rifles.

6 Q. How many, approximately?

7 A. I know that we recovered approximately eleven in York's  
8 residence, many of which were in his bedroom. Approximately 20  
9 weapons were recovered from the barn area on the compound where  
10 the men stay, to include AK-47s and Mig-14s. And several weapons  
11 were seized from the Athens residence as well and hundreds of  
12 rounds of ammunition.

13 Q. During the course of your search, moreover, did you recover  
14 any cash?

15 A. Yes. And there, again, I don't know the exact amount  
16 recovered from the -- you know, from the Eatonton complex. I know  
17 that York was arrested with approximately nine to \$10,000 on him,  
18 and that approximately 127 thousand dollars was seized in the  
19 search in Athens, Georgia.

20 Q. During the course of your search, did you recover any physical  
21 items that the victims described in this case that were in a room  
22 or in their vicinity when York and Johnson molested them?

23 A. Yes, several.

24 Q. And tell the Court what those physical items are that you  
25 recovered?

1 A. Again, just -- I had a brief look, I haven't examined the  
2 evidence myself yet. But eight millimeter VHS and DVD tapes that  
3 were described by the victims, some of which, the location, under  
4 York's bed in a box, and items of what is referred to as child  
5 erotica, -- I'm sorry, just like the animal print pillow where the  
6 photographs were taken and a Pink Panther with male genitals  
7 attached, things like that.

8 Q. You mentioned an animal print pillow where the photographs  
9 were taken. Photographs taken of whom?

10 A. Of CW-3 and CW-4.

11 Q. And you mentioned a Pink Panther doll with male genitalia  
12 attached?

13 A. That's correct.

14 Q. Was that CW-8 that described that doll, if you will, to you?

15 A. That's correct.

16 Q. Did you also determine as part of your investigation whether  
17 Mr. York has any prior criminal convictions?

18 A. Yes.

19 Q. What did you learn?

20 A. In general, that he has a 1964 burglary conviction, a 1964  
21 misdemeanor rape conviction, a 1964 felony assault and possession  
22 of a dangerous weapon and resisting officer conviction, and a 1988  
23 conviction of possession of a false -- using a false birth  
24 certificate to obtain a passport, intent to defraud the U.S.  
25 Government.

1 Q. And when was that conviction?

2 A. That was in 1988.

3 Q: Was that in federal court?

4 A. Yes.

5 Q. And I want to only -- have you recap the prior conviction for  
6 rape. Are you aware of the circumstances of that conviction?

7 A. Just very briefly, that he was 18 at the time that he had sex  
8 with a 13 year old.

9 Q. Was that a -- do you know if that conviction resulted from the  
10 entry of a guilty plea, or if there was a trial?

11 A. A guilty plea.

12 Q. And also I want to make clear that, although we have talked  
13 for purposes of this hearing concerning CW-3, CW-4, and CW-8,  
14 there are more victims; are there not?

15 A. Yes, several more.

16 Q. And in conclusion, Agent Ward, with respect to the conviction  
17 that Mr. York received for the false passport, during the course  
18 of your investigation did you learn if Mr. York had a philosophy  
19 about his community being a sovereign nation with the ability to  
20 have its own passports?

21 A. That's correct. That's what he taught his people, that they  
22 would have their own set of rules and laws within the confines of  
23 the compound, and as a result they were issued fictitious  
24 passports made up by his organization and were, you know,  
25 identified as such with their Muslim names versus their birth

1 names.

2 Q. And how did they obtain Muslim names?

3 A. York gave them to them.

4 Q. Thank you.

5 MR. MOULTRIE: That's all I have, Your Honor.

6 THE COURT: Before you sit down, I want to clarify  
7 something, and I'll do this before I do the cross examination too.  
8 You've testified about CW-3, CW-4, and CW-8. I have not heard any  
9 dates mentioned about the allegations. I'm assuming, and I may be  
10 incorrect, that we're talking about the time line set forth in the  
11 indictment; is that correct?

12 MR. MOULTRIE: Is that correct?

13 THE WITNESS: Yes.

14 MR. MOULTRIE: And that would be March of 1993, Your  
15 Honor, the beginning of March of 1993. Is that right, Agent Ward?

16 THE WITNESS: Yes.

17 THE COURT: My question is this: What information do you  
18 have from your investigation that would lead you to believe that  
19 Mr. York and Ms. Johnson have continued to engage in such acts in  
20 recent times? Because that's really what we're here about today.  
21 We're talking about something that's 8 or 9 years ago. That's one  
22 thing. Is this something that your investigation indicates is a  
23 continuing matter, or did it end back then? That's what I'm  
24 asking.

25 THE WITNESS: Right. The molestation begins in New York

1 prior to 1993, continues in Georgia in '93, and these witnesses  
2 and others identify several people who are currently living, or  
3 were living on the compound until recently, that were being  
4 molested by York, and those individuals, you know, are taken out  
5 to dinner and treated differently and allowed to stay at York's  
6 residence, et cetera, and they were identified by witnesses as  
7 being victims of molestation.

8 THE COURT: I did not mean -- when I said I wanted  
9 specific information, I did not mean to limit that to the  
10 indictment itself, because obviously, if this is something that's  
11 ongoing, it puts it in a different category than if it's something  
12 that has ended some time ago. That's what I'm getting.

13 THE WITNESS: Yes.

14 THE COURT: -- that I want information --

15 MR. MOULTRIE: Yes, Your Honor, I understand.

16 BY MR. MOULTRIE:

17 Q. Did CW-8 also describe when he left, or tell you when he left,  
18 in January of 2001?

19 A. That's correct, yes.

20 Q. And did he tell you if the molestation continued until he left,  
21 the compound in January of 2001?

22 A. He said -- yes, it continued, but it was less often, and he  
23 was starting to -- he was avoiding York at all -- you know, at all  
24 possibility, and -- but it did continue up until he left.

25 Q. And even more recently, was there a CW -- and let's call the



1 CW, CW-9 for purposes of this hearing. Was there a CW-9 who also  
2 reviewed a videotape a few days ago which depicted York leaving a  
3 restaurant in Covington, Georgia with a number of young girls?

4 A. Yes.

5 Q. And as -- is CW-9 male or female?

6 A: Female.

7 Q. And did CW-9 tell you anything about whether any of those  
8 girls in that video were still living on the compound?

9 A. Yes.

10 Q. What did she tell you? And careful not to reveal their  
11 identities.

12 A. All of the them, the people with him, lived on the compound,  
13 three of which were minor aged girls.

14 Q. And do you recall when this videotape surveillance was  
15 conducted?

16 A. Yes.

17 Q. When?

18 A. April 23.

19 Q. Of what year?

20 A. 2002.

21 THE COURT: Are you alleging that they're continuing the  
22 sexual activity concerning these people depicted in the video?

23 THE WITNESS: Yes. The three victims -- the three  
24 individuals, the minor age children identified in the video are  
25 the same victims identified by our witnesses as being -- as

1 witnessed them in sexual activity with York and Kathy Johnson.

2 Q. Including CW-9 that actually reviewed the tape?

3 A. That's correct.

4 THE COURT: Over what time period?

5 THE WITNESS: A time period of when they were 14 years  
6 old to present.

7 THE COURT: Okay.

8 MR. MOULTRIE: And if there are no other questions from  
9 the Court, Your Honor, that's all of my questions.

10 THE COURT: You may sit down and let Mr. Garland begin  
11 his cross examination.

12 CROSS EXAMINATION

13 BY MR. GARLAND:

14 Q. Agent Ward, --

15 A. Yes, sir.

16 Q. -- what is your first name?

17 A. Jalaine.

18 Q. All right. Now, today you have been referring to the  
19 affidavit for the search warrant; is that correct? To refresh  
20 your recollection?

21 A. Partially.

22 Q. All right, what -- and I understood you were referring to some  
23 notes written out by Mr. Moultrie also?

24 A. No. Not at all. My notes. My notes, his questions.

25 Q. So you have your handwritten notes that you've been referring

1 to?

2 A. I have -- I had my notes. They're not handwritten. I had  
3 notes that I made up for myself.

4 Q. So you have a copy of typed notes that you prepared that you  
5 have been referring to in answering the questions today?

6 A. Some -- you know, somewhat. I mean, most of it's been from  
7 just what -- my review of the case and what's in the affidavit.

8 Q. Well, as I heard the examination, there were references to  
9 certain sections of the affidavit --

10 A. That's right; partially the affidavits as well as my notes.

11 Q. -- that you referred to in delivering your testimony today,  
12 correct?

13 A. Yes.

14 Q. Now, the affidavit that you prepared, you signed that  
15 affidavit, correct?

16 A. Yes.

17 Q. And the notes that you have there that you prepared you signed  
18 -- you prepared those, had them typed, reviewed them, and they're  
19 correct; is that right?

20 A. Yes.

21 MR. GARLAND: Your Honor, at this time pursuant to  
22 Federal Rule of Criminal Procedure 26.2 which applies pursuant to  
23 subsection (g) to a detention hearing, we move for the production  
24 of the statement of the witness. The affidavit is a statement of  
25 the witness.

1           The Code Section provides after a witness other than the  
2 defendant has testified on direct examination the Court on a  
3 motion of a party who did not call the witness shall order the  
4 attorney for the government or the defendant and the defendant's  
5 attorney, as the case may be, to produce for it the examination  
6 and use of the moving party any statement of the witness that is  
7 in their possession and that relates to the subject matter  
8 concerning which the witness has testified.

9           If the entire contents of the statement relate to the subject  
10 matter -- subsection (b) -- concerning which the witness has  
11 testified, the Court shall order that the statement be delivered  
12 to the moving party.

13           And then it provides sanctions for failure, and subsection (g)  
14 of that it states as follows: This rule applies at a suppression  
15 hearing conducted under Rule 12, at trial under this rule, and to  
16 the extent specified, SubSection 3, in Rule 46(i), at the  
17 detention hearing.

18           MR. MOULTRIE: What is that section again, Mr. Garland?

19           MR. GARLAND: 46(i)).

20           MR. MOULTRIE: Of what subsection?

21           MR. GARLAND: Excuse me, the rule is 26.2. The scope of  
22 the rule is subsection (g). The subsection number under  
23 subsection (g) is 1 (one), and it makes reference to Rule 46(i).

24           MR. MOULTRIE: Thank you.

25           MR. GARLAND: Or 46 -- yes, (i).

1 THE COURT: 46(i), and then SubSection One under that, I  
2 think also has some further statements.

3 MR. GARLAND: Excuse me, what did you say, Your Honor?

4 THE COURT: I said 46(i) and Subsection One under that, I  
5 believe talks about the general aspects of that.

6 MR. GARLAND: That's correct. 46(i), paragraph (i),  
7 SubSection One, says that Rule 26.2 (a) through (b) and (f)  
8 applies at a detention hearing held pursuant to 3142 unless the  
9 Court for good cause rules otherwise in a particular case.

10 Now, Your Honor, here there is a code section, a rule, a rule  
11 that should be applied. It particularly should be applied here  
12 because the evidence presented to you has been somewhat  
13 generalized as to date, time, and place, particularly generalized  
14 as it relates to the felony element of this case whether it exists  
15 or not, and in order for you to meaningfully judge the sufficiency  
16 of hearsay information delivered by a minor, for all those  
17 reasons, we move that you comply with -- order the witness to  
18 comply and produce her statements and the affidavit and make a  
19 separate ruling.

20 THE COURT: Mr. Moultrie.

21 MR. MOULTRIE: Your Honor, the same section that Mr.  
22 Garland is citing makes provision for the production of an excised  
23 statement if it contains matters that are privileged or not  
24 pertinent to the subject of the investigation. I'm looking here  
25 where it says: If the other party claims that the statement

1 contains privileged information or matter that does not relate to  
2 the subject matter concerning which the witness has testified, the  
3 court shall order that it be delivered to the court in camera.

4 Upon inspection the court shall excise the portions of the  
5 statement that are privileged or that do not relate to the subject  
6 matter concerning which the witness has testified and shall order  
7 that the statement with such material excised be delivered to the  
8 moving party.

9 So we would ask, Your Honor, that those sections concerning  
10 identification of the informants, again, many of whom are  
11 juveniles, if the statement is going to be turned over, that they  
12 be excised.

13 THE COURT: Comment.

14 MR. GARLAND: To begin with I think excising the identity  
15 would be the appropriate fashion, Your Honor, including excising  
16 the identity from the -- I assume they are 302s, statements  
17 prepared by the agent, and I would suggest that if the Court would  
18 that you take a recess to allow them to prepare appropriately  
19 excised documents, and let them be turned over before I begin the  
20 examination.

21 MR. MOULTRIE: Your Honor, the 302s wouldn't be  
22 statements.

23 THE COURT: Say that again, I'm sorry.

24 MR. MOULTRIE: The 302s wouldn't be statements as he's  
25 using the word.

1 MR. GARLAND: Well, I simply -- whatever documents she  
2 has she identified as hers and being accurate that she prepared.

3 MR. MOULTRIE: Her statements, Your Honor.

4 MR. GARLAND: Well, and to the extent 302s contain her  
5 statement that she prepared and dictated they do fall within the  
6 statements.

7 MR. MOULTRIE: Well, she can testify that she doesn't  
8 have any 302s containing her own statements, Your Honor. She has  
9 her affidavit which is her statement.

10 THE COURT: When we earlier discussed the turning over of  
11 the affidavit used to support the issuance of the search warrant,  
12 my contemplation at that time was that it would not be used in the  
13 matter in which it has been used by the government, and I think  
14 the government has sort of backed itself in a corner with that  
15 regard by making such references to the affidavit itself.

16 I frankly had contemplated that the agent would be testifying  
17 more from personal knowledge than from the affidavit per se. I  
18 think Mr. Garland makes a good point in that regard.

19 I do agree, however, that there's certain parts of the  
20 affidavit which would need to be redacted and not made known for  
21 the protection of any confidential informants or witnesses or  
22 whatever and any minors that might be involved in this matter.

23 It's not something I can do sitting here, obviously. What I  
24 would suggest is that counsel come to chambers for a moment and  
25 let's see if we can decide how we're going to go about doing this.

1 But at this particular point, my inclination is to require  
2 that the affidavit be revealed in that limited manner. I see no  
3 alternative under the circumstances.

4 So what we'll do right now is take a recess -- before we do  
5 that, though, Mr. Garland, I'm thinking, my recollection of this  
6 affidavit, and I say this in all sincerity because I think I had  
7 two or three affidavits floating around at one time in different  
8 matters, I believe this one is probably about 50 pages long, so  
9 it's not something that can be done very rapidly, I'll put it that  
10 way.

11 I'm thinking after we have the discussion, we can let those  
12 parties in interest and those in the audience who have interest in  
13 this know in a few moments, hopefully, but I'm thinking it may be  
14 necessary to halt the proceedings until we can both redact the  
15 necessary items and also give defense counsel the opportunity to  
16 review them before we come back into court, and I'll discuss that  
17 with counsel, and we'll try to let those who are here who have  
18 interest in the case know where we stand time wise on it.

19 There's not any hurry as far as I'm concerned in this matter.  
20 We can take what time is necessary to insure that the hearing is  
21 fair to all sides, and that's exactly what I intend to do. We'll  
22 take a recess at this point and leave open the matter when we come  
23 back until after I discuss the matter with counsel. So we'll be  
24 in recess until further order of the Court.

25 P R O C E E D I N G S



1 MAY 14, 2002

2 THE COURT: Today is May the 14th, 2002, the time is 9:34  
3 a.m., we are continuing this morning with the detention hearing in  
4 the case of the United States of American versus Dwight D. York  
5 and Kathy Johnson, criminal number 5:02-CR-27 assigned to Judge  
6 Hugh Lawson. You will have to bear with me a little today, I have  
7 a very sore throat, and I'll try not to talk too much, so I  
8 appreciate if the lawyers would not ask me too many questions.

9 As I recall Special Agent Jalaine Ward was on the stand at the  
10 time we adjourned yesterday and continued the matter. Is the  
11 government ready to proceed this morning?

12 MR. MOULTRIE: Yes, Your Honor.

13 THE COURT: Are you ready to proceed with cross  
14 examination, Mr. Garland?

15 MR. GARLAND: Yes, Your Honor.

16 THE COURT: All right, call Ms. Ward back to the stand.  
17 She is still under oath.

18 JAILAINE WARD

19 CONTINUED CROSS EXAMINATIONh

20 BY MR. GARLAND:

21 Q. Good morning.

22 A. Good morning.

23 Q. You indicated in your direct examination that you had  
24 information about 30 to 35 victims; is that correct?

25 A. Yes.

1 Q. And how many victims have been interviewed by law enforcement?

2 A. Approximately 16 to 18.

3 Q. How many have you interviewed?

4 A. Most of them.

5 Q. All right. Now, what training have you had in dealing with  
6 molestation victims yourself, what personal training have you had?

7 A. I've had in-service training through the FBI and have worked  
8 several cases involving children.

9 Q. Now, what steps did you take to ensure that the interview  
10 process with the people you interviewed had not been influenced by  
11 suggestive processes?

12 A. Just conducted a good interview and let them tell their story.

13 Q. Now, at the time you conducted the interview, did you tape the  
14 interview?

15 A. No, sir.

16 Q. Did you -- no audio or videotape of those interviews?

17 A. No, sir.

18 Q. At the time you conducted the interviews, did you do so alone  
19 or in the presence of -- did you do so in the presence of another  
20 FBI agent?

21 A. Yes.

22 Q. Did you do so in the presence of any third parties at the time  
23 you conducted those interviews?

24 A. Such as?

25 Q. Such as a parent?

1 A. No sir.

2 Q. So you interviewed them alone?

3 A. Yes.

4 Q. Now, have you had any training in the child abuse protocols  
5 being utilized throughout the State of Georgia by the Department  
6 of Family and Children Services as a prerequisite to ensuring  
7 accuracy and uninfluenced interviews of child abuse victims? Do  
8 you have any knowledge of those protocols?

9 A. I'm aware of those protocols.

10 Q. Have you read them?

11 A. I'm aware of them. I don't know that I've read specific  
12 protocols, but I'm aware of them.

13 Q. You're aware how?

14 A. From reading material.

15 Q. Well, how are you aware of them?

16 A. Because I have a lot of material in my possession about child  
17 abuse investigations in general. I'm not familiar with  
18 necessarily a Georgia protocol versus a Florida protocol, et  
19 cetera, but I am familiar with an interview, forensic interview  
20 specialist protocol of videotaping the interview.

21 Q. And what are some of the elements of such a protocol?

22 A. I'm not sure what you're asking, the elements of the protocol?

23 Q. What caution or care do you take in connection with the  
24 interview of a child abuse victim and in particular a minor child?  
25 What cautionary steps are you to take under any of the protocols

1 that you say you're aware of?

2 A. Well, the -- to make sure that the child is, you know, not  
3 traumatized, or not, you know, family traumatized at the time, and  
4 to let the child tell their story and not ask leading questions,  
5 and, you know, I mean, I don't know the specific elements that  
6 you're asking of. I'm just familiar with that protocol that they  
7 videotape the interview.

8 Q. Can you recall anything else that an interviewing person  
9 should do or any care that should be taken to ensure that the  
10 report has been free from outside influence? Can you recall any  
11 other procedures that are represented by child --

12 A. If you're asking if they recommended that they tape them or  
13 whatever, I am familiar with that, and there's as many cons to  
14 that policy as there are pros, and in this situation the interview  
15 was conducted very professionally as any other interview that I  
16 try to participate in.

17 Q. So you made a determination not to tape these interviews?

18 A. That's right.

19 Q. After evaluating the pro and cons?

20 A. That's correct.

21 Q. And you're familiar with that there's a large body of  
22 knowledge that recommends such interviews be taped?

23 A. Actually there's just as large a body of knowledge that is  
24 opposed to it, and some of the experts that I was trained by are  
25 opposed to it.

1 Q. All right, now, prior to these interviews, had these children  
2 been interviewed by other people about the alleged sexual abuse?

3 A. When you say other people, are you -- law enforcement? I  
4 mean, I think they disclosed to family members and somewhat to  
5 each other. Or I don't know even know if they did to each other,  
6 but to family members. But they were first interviewed by us.

7 Q. Not by a local law enforcement -- when you say "us" you're  
8 talking about FBI?

9 A. I'm sorry. FBI, and there was a state investigator involved  
10 in some of the interviews, but typically it was with an FBI agent.

11 Q. All right, and who was that state investigator?

12 A. Tracy Bowen.

13 Q. And what agency is she a member of?

14 A. Putnam County Sheriff's Department.

15 Q. All right. Was there anyone from DFACS?

16 A. No, sir. No, sir.

17 Q. Were the children taken to DFACS?

18 A. No, sir.

19 Q. And none of the DFACS personnel or their procedures were  
20 employed in connection with obtaining this information?

21 A. No, sir. There was no need to. They were with their family  
22 members.

23 Q. They were with the family members who --

24 A. They were with family members that were not Nuwaubian members  
25 and living on the compound.

1 Q. Okay, now, this person with the Putnam County Sheriff's  
2 Office, did they have any training in dealing with minors who were  
3 victims of sexual abuse?

4 A. I don't know. You'd have to ask her.

5 Q. Okay. But you're not aware of any?

6 A. No. I know that she's a good interviewer.

7 Q. Did she attempt to employ any of the protocols of which you  
8 are familiar in connection with obtaining this information?

9 A. Again, if you're referring to a video tape or audio tape, no,  
10 she did not.

11 Q. Any other procedures that you're aware were employed  
12 specifically to ensure the accuracy of --

13 A. I'm not familiar with what procedures you're talking about. I  
14 mean, if you're talking about taking them to a certain facility,  
15 you know -- I don't know if you're asking about medical  
16 examinations. I'm not sure what you're asking about.

17 THE COURT: I want to interrupt just a moment, please. I  
18 would appreciate if both of you would pause and let the other  
19 person answer.

20 THE WITNESS: Yes, sir.

21 THE COURT: And also let the man ask his question too.

22 THE WITNESS: Yes, sir.

23 THE COURT: It works both ways.

24 THE WITNESS: Okay.

25 THE COURT: We're making a tape of this ourselves, and if

1 it gets jumbled up, then we won't be able to transcribe it at the  
2 appropriate time if it's not clear.

3 BY MR. GARLAND:

4 Q. Were any anatomical models used in connections with these  
5 interviews?

6 A. No, sir.

7 Q. Were any drawings used in connection with these interview?

8 A. No, sir.

9 Q. Were any pictures used of genitalia or other parts of the  
10 human anatomy in connection with these interviews?

11 A. No, sir. There was no need to.

12 Q. And there was no need to for what reason?

13 A. Because the children that we interviewed were old enough to  
14 know the body parts, they were old enough and intelligent enough  
15 to describe what happened to them, and they were able to tell  
16 their story.

17 Q. Now, in connection with the ages of the respective  
18 confidential informants, let me make sure I understand. The  
19 confidential informant, a female, is what age now? And feel free  
20 to look at any documents that you have.

21 A. You're asking about a specific confidential informant, or are  
22 you asking about the age range of all of the --

23 Q. No, I'm asking about the specific confidential informants in  
24 connection with the issues here of statute of limitations and  
25 other things of that nature.

1 THE COURT: I believe that the information that you are  
2 seeking at this time was part of the information that was redacted  
3 by me in reviewing the affidavit that was filed in support of the  
4 search warrant on the grounds that given the age of the  
5 confidential informant would lead to -- could lead to the  
6 identity.

7 MR. GARLAND: That person's present age.

8 THE COURT: Yes, sir, the present age. So for that  
9 reason, I would deny your right to inquire on that today.

10 Certainly at some point in time you're going to be entitled to  
11 know all of these things, but not today.

12 MR. GARLAND: All right.

13 BY MR. GARLAND:

14 Q. Now, in connection with the alleged molestation inside the  
15 State of Georgia, how many alleged victims have you interviewed?

16 A. I'll have to check. There's numerous. I mean, almost all of  
17 the witnesses we interviewed, their molestation began -- either  
18 began in New York and continued in Georgia up until the time that  
19 they were interviewed, or they started in Georgia and continued to  
20 up until the time that they were interviewed. So, you know,  
21 several of them. They were a couple of witnesses we interviewed  
22 that pertained to his finances, et cetera, and were not molested,  
23 but the bulk of the ones that we interviewed for sexual purposes  
24 are going to be the same, going to be somewhere between 15 and 18.

25 Q. All right, now, the community in which -- where the search



1 took place, what is the name of that community?

2 A. The current name?

3 Q. Yes.

4 A. I believe he's calling it the Al Mahdi Shriners group.

5 Q. And is there a Shrine lodge out there that meets there?

6 A. He has what's called a Shriners meeting on certain nights of  
7 the week, yes. I don't know that there's any particular lodge.

8 There's temples and pyramids and Egyptian motifs, but there's no  
9 specific Shriner temple.

10 Q. How many residences are out there?

11 A. Several.

12 Q. Several, meaning how many?

13 A. There's -- I mean, there's approximately 40 structures on the  
14 building -- I mean, probably 18, 20.

15 Q. How many mobile homes are out there?

16 A. I don't have the diagram with me, but there would be  
17 approximately 15 -- 15 or so mobile homes.

18 Q. All right. Now, did you check the title to the property to  
19 determine who owns the property located inside the fenced area out  
20 there?

21 A. I have not had time to really research that deed. I know that  
22 York has passed that on to some other of his followers.

23 Q. So you know the property is not deeded into Mr. York's name,  
24 but rather into a number of other individuals?

25 A. That York controls.

1 Q. You know that, right?

2 A. That York controls all of that.

3 Q. I see, I see. You've been there and watched him control?

4 A. I have interviewed the witnesses.

5 Q. Okay. So the people that own the property you say -- have you  
6 interviewed the people that own the property?

7 A. No.

8 Q. Okay. So you're not able to tell us that the owners of this  
9 property on which -- in this community here in Georgia are  
10 controlled by Mr. York, are you? Not from a personal interview of  
11 them, are you?

12 A. Not from an interview with them.

13 Q. All right. All of their homes were searched on the property  
14 owned by them?

15 A. Yes, sir.

16 Q. Every structure on that -- in that community was searched?

17 A. Yes, sir.

18 Q. Now, did you find any video tapes with pornography on it in  
19 that community?

20 A. Sir, I have not had an chance -- obviously, the search just  
21 ended, and we, you know, certainly are getting prepared for this  
22 aspect of the case. I have not had a chance to personally review  
23 the evidence that was taken from the compound.

24 Q. All right. You worked on that search in connection with other  
25 FBI agents; did you not?

1 A. Yes, sir.

2 Q. How many?

3 A. Numerous.

4 Q. How many law enforcement people were involved in this?

5 A. I would say approximately 200 plus, 225. I'm not -- you know,  
6 again, without -- you know, what we had planned and what we  
7 actually ended up with, I would have to --

8 Q. All right, two or 300. Has any one of those agents come to  
9 you and said, here, I found a photograph of Mr. York with a child  
10 engaged in an indecent act?

11 A. Yes. They found photographs of children in sexually  
12 explicitly positions and other items of evidence, including 280  
13 thousand dollars cash. They have been informing me as we go, you  
14 know, as best they can, some of the items we've taken, and, of  
15 course, you now, numerous guns. But there have been photos found  
16 and several eight millimeter tapes, et cetera, that have not been  
17 reviewed yet for their contents.

18 Q. All right. So you don't know what's on the eight millimeter  
19 tape?

20 A. No, I don't.

21 Q. All right, now, who was in the photographs? Any of the  
22 victims?

23 A. I don't know that yet. I don't know yet, sir.

24 Q. All right. Was Mr. York in the photographs?

25 A. I believe he is in some -- I don't know that yet. Without

1 looking at them myself, I would not want to say that -- say.

2 Q. All right. Was there a collection of pornographic films and  
3 tapes found?

4 A. A large collection, yes, sir. A very large collection.

5 Q. Of tapes?

6 A. Tapes, VHS, DVDs, 8mms, books, magazines. A large collection.

7 Q. When you say a -- what were these items a collection of?

8 A. Again, without reviewing myself, I'm told they are, you know,  
9 pornographic, X-rated, marked triple X. Certainly the titles seem  
10 to, you know, seem to refer to all kinds of pornography, but I  
11 have not had a chance to look at that material.

12 Q. That material you're referring to, where was it found?

13 A. In various places, you know, buildings on the compound,  
14 primarily in York's residence.

15 Q. In various buildings on the compound, but --

16 A. Well, you know, again, not looking at -- I have not had a  
17 chance to study that. I know that the bulk of the material, the  
18 pornography and the cash was found in his residence along with  
19 approximately 10 or 11 weapons.

20 Q. All right, now, the amount of cash found was how much?

21 A. In a suitcase, in a metal suitcase, approximately 280 thousand  
22 dollars, and then there's other cash amounts that were found in  
23 various other places that aren't as large as that total, along  
24 with the 127 thousand in Athens.

25 Q. Now, do you know to what organizations that money belonged

1 from your review of where this money was found?

2 A. The money in the suitcase, according to witnesses, belongs to  
3 York.

4 Q. What organizations to your knowledge collected cash out there?

5 A. The -- York's organizations, are you talking about?

6 Q. The organizations, whether you refer to them as York's or not.

7 A. I think what I mentioned yesterday is the Ancient Order of  
8 Melchizedek, the Holy Tabernacle stores, Holy Ministries, you  
9 know, various entities that pedaled his goods in stores throughout  
10 the country and on the street and provided him with approximately  
11 14 to 17 thousand dollars in cash every couple of weeks.

12 Q. Just a moment please. Did you find these passports you told  
13 about when you were out there?

14 A. I am told that we found numerous passports and membership  
15 applications. I have not seen them myself yet.

16 Q. Well, let me ask you, are you familiar with the fact that in  
17 the passport under "important information," it states: This is a  
18 novelty passport, it's only valid for Kadosh, the Holy Land of  
19 Nuwaubian Moors, it is not legally intended to be used for  
20 traveling to other countries, it is your entrance passport so that  
21 you may be allowed through the Pylons of the entrance gate  
22 (reading). Were you familiar with that fact?

23 A. I have not had a chance to review the passports.

24 Q. Nobody during your investigation told you that these were  
25 novelty passports like you get at Disney World?

1 A. No, sir.

2 Q. You didn't find that out?

3 A. No. They told us they used them to pose as a sovereign  
4 nation.

5 Q. You weren't intending to infer that this was a passport that  
6 could be used for travel?

7 A. No.

8 Q. Or you would -- viewed as some kind of flight risk --

9 A. No, I --

10 Q. -- based on this?

11 A. No, I think it's more indicative of his idea that they should  
12 have their own entity and abide by their own set of rules and  
13 things like that. It his -- it's his thing.

14 Q. Did you read the rules?

15 A. I have not seen the passport.

16 Q. Did you look in this publication and find that in the  
17 publication it says: You're expected to abide by all of the laws  
18 of the United States?

19 A. No, sir.

20 Q. You didn't read that?

21 A. I didn't see that in his publications.

22 Q. Did you look through his publications?

23 A. Which publications are you talking about? There's thousands  
24 that were on -- that, you know, I have seen related to him over  
25 the years.

1 Q. Are you familiar with Rule 16 that you are to cooperate with  
2 the law, but know your rights? Did you read that rule?

3 A. No. I've seen various publications it seems like similar to  
4 what you're holding. I do not recall all the things that are in  
5 there, you know. Again, I don't know which one you're looking at,  
6 so I really don't -- I can't say that I recall that particular  
7 publication.

8 Q. So you are familiar with the rules; is that right?

9 A. No. With York's rules?

10 Q. You're not familiar with his rules?

11 A. I know his rules for the people who live there.

12 Q. And how do you know the rules? Do you know from reading them  
13 in the books?

14 A. No. I know the rules that the witnesses have told us about  
15 what his rules are in terms of men not talking to women,  
16 separating the children from their parents, you know, controlling  
17 their -- the amount of food that they eat and where they live and  
18 what they wear. Those are the rules that I was told about, but as  
19 far as the rules that are in those books, I'm sure that there's a  
20 lot of, you know, good people that consider those York's rules. I  
21 have not read them, at least not recently.

22 Q. So when you're talking about the rules, you're not talking  
23 about the written rules, you're talk about what either you say an  
24 alleged victim said or the parent of an alleged victim; is that  
25 correct?

1 A. I know that what York says on paper is not what I'm told what  
2 he does by the people we've interviewed and even from his  
3 publications.

4 Q. All right. Now, in connection with the travel for the purpose  
5 of having sex with a minor, do you have a witness who says that  
6 the purpose in the travel was to have the children have sex?

7 A. The witness that says that?

8 Q. Yes.

9 A. No.

10 Q. You have no witness that says that?

11 A. Not that says that, no.

12 Q. All right. That's all I'm going to have for this witness at  
13 this time, Your Honor.

14 THE COURT: No other questions by government's counsel?

15 MR. MOULTRIE: May I have just one moment, Your Honor?

16 THE COURT: Yes, sir.

17 MR. MOULTRIE: No, Your Honor.

18 THE COURT: You may step down. Other witnesses to be  
19 presented by the government?

20 MR. MOULTRIE: No, Your Honor.

21 THE COURT: Any matters to be proffered by the  
22 government?

23 MR. MOULTRIE: No, Your Honor, thank you.

24 THE COURT: Okay, thank you. Mr. Garland, I turn to you  
25 at this time, and you may proceed on behalf of your clients, and



1 you may do so by presenting live testimony, you or Mr. Johnson, or  
2 you may proceed by way of proffer or both. As I indicated  
3 yesterday, I'm interested in information, the rules of evidence  
4 don't apply, and I take the position that basically anything  
5 anybody wants to tell me will be considered by me in this hearing.  
6 You may proceed, Mr. Johnson.

7 MR. JOHNSON: Thank you, Your Honor. Your Honor, I call  
8 the Honorable Tyrone Brooks.

9 THE COURT: Mr. Brooks, if you'll come forward, please,  
10 sir, we'll have you sworn as a witness.

11 DEPUTY CLERK: Raise your right hand, please. Do you  
12 solemnly swear that the testimony you're about to give is the  
13 truth, the whole truth, and nothing but the truth, so help you  
14 God?

15 THE WITNESS: I do.

16 THE COURT: Have a seat, please, sir.

17 TYRONE BROOKS

18 having first been duly sworn, testified on

19 DIRECT EXAMINATION

20 BY MR. JOHNSON:

21 Q. Mr. Brooks, would you state your full name, please?

22 A. Tyrone Leon Brooks.

23 Q. And where do you reside, Mr. Brooks?

24 A. Atlanta, Georgia.

25 Q. And how long have you resided in Atlanta?

1 A. Since 1967.

2 Q. And what do you currently do, Mr. Brooks?

3 A. I serve as state representative representing House District  
4 54, and also I serve as president of the Georgia Association of  
5 Black Elected Officials.

6 Q. And how long have you served as representative to the State of  
7 Georgia?

8 A. 22 years.

9 Q. And you're stating that you also served as the president of  
10 GABEO?

11 A. Yes, I do, and I've been president of the Georgia Association  
12 of Black Elected Officials, commonly known as GABEO since 1993.

13 Q. And what is GABEO?

14 A. GABEO is a collection of all the African-Americans who are  
15 privileged to hold public offices throughout the State of Georgia,  
16 federal, state, county, municipal, judges, sheriffs, legislators,  
17 congress persons, probate judges, tax commissioners, over 800 of  
18 us throughout the whole state. We are 32 years old as an  
19 organization.

20 Q. Of the 22 years you've been in the General Assembly of  
21 Georgia, have you had an occasion to meet or to know Dr. Dwight  
22 York?

23 A. Yes.

24 Q. And how long have you known him?

25 A. I've known Dr. York approximately three years.

1 Q. How did you come about knowing him?

2 A. It came about, Senator Johnson, through a call from Reverend  
3 Jessie Jackson's Rainbow Push Coalition that asked me to go to  
4 Putnam County to try to serve as a peace maker between the  
5 Nuwaubian Nation of Moors and Sheriff Howard Seals, and I accepted  
6 Reverend Jackson's organization's request. I went to Putnam  
7 County, and I took two of the national leaders from the NAACP,  
8 Nelson Rivers and Walter Butler, and that's how the introduction  
9 to Dr. York occurred about three years ago.

10 Q. Now, do you know of Dr. York's reputation in the community?

11 A. Yes.

12 Q. And what is that reputation?

13 A. He has a good reputation in the community that I visited  
14 Putnam County, Clarke County, Bibb County, and the Atlanta area.

15 Q. Do you know of Dr. York reputation as a business man?

16 A. Yes.

17 Q. What is that reputation?

18 A. Very good, high on entrepreneurship, owning businesses, owning  
19 land, developing a viable, stable community in the African  
20 community and in the Nuwaubian community so that we can reduce the  
21 unemployment, employ people, get them off welfare so that they can  
22 become self sustainable.

23 Q. Do you know of Dr. York's reputation as a religious person?

24 A. Not much, Senator Johnson, not very much. In my conversations  
25 with Dr. York we have not dwelled on religion. We have dwelled on

1 the opportunity to develop the community called Tama-Re which is  
2 in Putnam County on the outskirts of Eatonton. We have not talked  
3 religion very much. I mean, I'm a Christian, but I have no idea  
4 what his region is. I really don't.

5 Q. Do you know of Dr. York's reputation in the community for  
6 truthfulness and honesty?

7 A. Yes.

8 Q. And what is that?

9 A. Members of the clergy that have worked with us, particularly  
10 in Putnam County, Baldwin County, Bibb County, Christian  
11 ministers, some who have been in this courtroom, some who are  
12 sitting in the courtroom now, Reverend Jessie Jackson, and others.

13 Q. Mr. Brooks, do you have an opinion regarding whether Dr. York  
14 is a threat to the community in which he lives?

15 A. I do not see him as a threat at all.

16 Q. Do you have an opinion as to whether or not if this Court  
17 granted a bond to Dr. York would he return at any time for a trial  
18 set by this court?

19 A. Oh, I'm sure he would.

20 Q. Of the relationship that you've had with Dr. York, have you  
21 ever known him to threaten any person?

22 A. No, never heard of him threatening any person.

23 Q. Mr. Brooks, do you know Dr. York as a Shriner?

24 A. Yes, vaguely. I've read publications and see him in the media  
25 and watched his organization participate with the Shriners,

1 particularly here in Bibb County.

2 MR. JOHNSON: That's all for this witness, Your Honor.

3 THE COURT: Mr. Moultrie, you may cross examine.

4 MR. MOULTRIE: Thank you, Your Honor, just a few brief  
5 questions.

6 CROSS EXAMINATION

7 BY MR. MOULTRIE:

8 Q: Good morning, Mr. Brooks.

9 A: Good morning.

10 Q: How are you?

11 A: Fine.

12 Q: Just a couple of questions, sir. You would agree with me,  
13 would you not, that the molestation of a child is not something  
14 that anyone would want to condone, including yourself; wouldn't  
15 you agree?

16 A: Absolutely.

17 Q: Okay. And wouldn't you also agree, Mr. Brooks, that if  
18 Mr. York were engaged in that kind of conduct that would probably  
19 be something that he would not share with you; wouldn't you say?

20 A: I don't expect Dr. York or anyone to share that with me,  
21 because I wouldn't be interested in that.

22 Q: So if he were engaged in that kind of conduct, wouldn't you  
23 agree that when you came to visit him on his compound and when you  
24 went to visit him in other locations in the State of Georgia that  
25 would probably be a kind of behavior that he would not share with

1 you, correct?

2 A. I wouldn't expect him to share or you to share anything that  
3 you are doing illegally with me, because I wouldn't be interested  
4 in that.

5 Q. Thank you, Mr. Brooks.

6 THE COURT: Further questions of this witness?

7 MR. JOHNSON: Just one other, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q. ~~Mr. Brooks, have you ever during your association with~~  
11 Mr. York and any community in which he lived, have you ever heard  
12 anybody say anything about Mr. York as related to molestation of  
13 any children?

14 A. Never.

15 Q. Would you, Mr. Brooks, believe Dr. York under oath?

16 A. Yes, I would.

17 MR. JOHNSON: That's all.

18 THE COURT: Anything else, Mr. Moultrie?

19 MR. MOULTRIE: No, Your Honor.

20 THE COURT: You may step down, Mr. Brooks. Thank you,  
21 very much.

22 MR. GARLAND: Your Honor, at this time we would offer  
23 Defendants' Exhibit Number One. It is "The Little Book Guide For  
24 Nuwaubians." It contains the basic rules to be followed. It  
25 contains a copy of the Constitution of the United States with an

1 explanation of the rights under the Constitution of the United  
2 States, and it contains the 19 affirmations that members of the  
3 Nuwaubian group and community adhere to and follow, and I won't  
4 read them all, but I want to read several of them to the Court.

5 I don't hate any race, creed, region, or sexual orientation.  
6 Number 13: I don't tell you what to eat, who to like, how to  
7 think and feel. I ask you, let's work together for a better  
8 world.

9 Some of the other affirmations. We would submit for the  
10 Court's consideration all of them.

11 I want to help open the eyes of the world to right, knowledge,  
12 truth, and facts. I will follow -- number three: I will follow  
13 the Lamb of God in true faith, our Savior. I will greet all in  
14 peace and with a sincere heart. I will pray with an open heart,  
15 and I will seek the true light inward. I will follow the laws of  
16 the Holy Bible. I will not kill or even commit suicide for it is  
17 a sin and a wrong. I don't steal or lie and am not cruel to  
18 children and animals. I don't disobey the laws of the government  
19 in which I live.

20 I -- number 10 -- am non-violent. I don't become drunk or  
21 intoxicated or eat unclean things. Let's correct our wrongs,  
22 let's apologize to those we hurt because of religion.

23 Number 15: Let's work together to build a better place for  
24 our children. Number 16: Let's avoid gossip and slander. Number  
25 17: Let's forgive and seek forgiveness. Number 18: Let's enjoy

1 life, it's short, let's respect the laws of nature and the source  
2 of it all. We can take that which is evil and turn it good.

3 And there are a variety of other things about cleanliness,  
4 respect for police officers, being of positive state of mind,  
5 keeping one's self in control when dealing with people, cooperate  
6 with the law, but know your rights; remember, by being arrogant  
7 you may unnecessary heighten the situation. Do not drive under  
8 the influence of intoxicants or anything that would alter your  
9 state of mind.

10 We would move for the admission of the basic rules of the  
11 Nuwaubians handed out to all of the people who participate in the  
12 community.

13 THE COURT: Any objection, Mr. Moultrie?

14 MR. MOULTRIE: No, Your Honor.

15 THE COURT: It's admitted without objection. Next  
16 witness, please.

17 MR. JOHNSON: Dr. Frederick Bright.

18 THE COURT: Mr. Johnson, we're while waiting for the  
19 witness to come in, I would ask you, please, when you're asking  
20 your questions if you will stay close to the microphone. It's  
21 very difficult to get recordings when you wander away. I know  
22 that's a habit many lawyers have. I've had it before myself, but  
23 that's the way we record things in here and your voice is  
24 significantly louder using the amplification, and we're able to  
25 facilitate getting a much better tape of the proceedings today.



1 MR. JOHNSON: Thank you, Your Honor. That's one of my  
2 bad habits.

3 THE COURT: I'll remind if you stray too far.

4 MR. JOHNSON: Okay.

5 THE COURT: Dr. Wright, come forward, please, sir. Come  
6 forward over to my right, please, and we'll have him sworn as a  
7 witness.

8 DEPUTY CLERK: Raise your right hand, please. Do you  
9 solemnly swear that the testimony you're about to give is the  
10 truth, the whole truth, and nothing but the truth, so help you  
11 God?

12 THE WITNESS: I do.

13 THE COURT: Have a seat, please, sir.

14 FREDERICK ORIN BRIGHT

15 having first been duly sworn, testified on

16 DIRECT EXAMINATION

17 BY MR. JOHNSON:

18 Q. State your full name to the Court, please.

19 A. Frederick Orin Bright.

20 THE COURT: Spell your last name.

21 THE WITNESS: B-R-I-G-H-T.

22 THE COURT: I apologize, I called you Dr. Wright, I'm  
23 sorry about that.

24 BY MR. JOHNSON:

25 Q. And where do you reside, Dr. Bright?

1 A. Conyers, Georgia.

2 Q. And how long have you resided there?

3 A. Intermittently since 1996.

4 Q. And, Dr. Bright, what is your profession?

5 A. I am a medical doctor.

6 Q. And where do you practice medicine, Doctor?

7 A. I'm an assistant professor with the Morehouse School of  
8 Medicine in Atlanta, Georgia.

9 Q. And how long have you been with Morehouse?

10 A. Since October of 1995.

11 Q. And, Dr. Bright, have you had an occasion to meet or to know  
12 Dr. Dwight York?

13 A. Yes.

14 Q. Do you know Dr. York in the community in which he lived?

15 A. Yes.

16 Q. How did you come about knowing Dr. York?

17 A. I was introduced to his teachings through a brother-in-law in  
18 1995 or 1994, but was not formally introduced to Dr. York until I  
19 had come to Georgia incidentally having come to meet a person in  
20 the hospital who introduced me again or reintroduced me to the  
21 teachings of Dr. York while I was in Georgia after coming to  
22 Georgia.

23 Q. When you say teachings of Dr. York, what are those teachings?

24 A. Dr. York brings teachings that encompass science, just  
25 knowledge from all different aspects of life that have been

1 helpful in me obtaining a clear understanding of, in general, the  
2 world.

3 Q. Did Dr. York ever teach to you disobey the law?

4 A. He's never taught me to go against any of the laws of the  
5 United States or any other government.

6 Q. Do you know of Dr. York's reputation in the community?

7 A. Yes.

8 Q. And what is that reputation?

9 A. The community that I am familiar with which includes the  
10 medical community and the religious community, he is felt to be a  
11 very respectable individual with teachings that are beyond the  
12 scope of normal religious teachers.

13 Q. Do you know of his reputation in the community as a business  
14 man?

15 A. I'm familiar with the fact that there have been many  
16 businesses that he may be affiliated with, although I cannot speak  
17 directly about his actual connection to those businesses.

18 Q. Are you a Shriner?

19 A. I am a part of the Al Mahdi Shrine.

20 Q. Do you know of Dr. York's reputation a potentate of the  
21 Shriners?

22 A. Yes.

23 Q. And what is that reputation?

24 A. He serves as the grand potentate of the Al Mahdi Shrine.

25 Q. What is a potentate?

1 A. The potentate would be the individual who is given the most  
2 respect, who's held in the most noble level of Shrinedom, as we  
3 may say. In other words, he has been revered as someone who all  
4 people within the Shrine have respect for, he's gone to the  
5 community, served in many charitable events, and is well known as  
6 someone who qualifies to demonstrate the principles of nobility  
7 that the Shrine has been known for.

8 Q. Now Dr. Bright, have you ever lived on campus in Eatonton,  
9 Georgia?

10 A. Yes.

11 Q. And during the time you lived on campus there, were you ever  
12 instructed by Dr. York that you had to have some kind of passport  
13 for ingress and egress to come in and to go out?

14 A. No. Not for the purposes of living there.

15 Q. Now, if you lived on the campus, were you ever instructed by  
16 Dr. York -- did you have to receive instruction by Dr. York before  
17 you could have a conversation with a female?

18 A. No.

19 Q. Did you have to have conversation -- approval from Dr. York  
20 before you could have an intercourse with a female?

21 A. No.

22 Q. Did you have to have Dr. York's approval before you left the  
23 campus to go to town or to go to any other place?

24 A. No.

25 Q. Do you know Dr. York's reputation in the community for

1 truthfulness and honesty?

2 A. Yes.

3 Q. And what is that reputation?

4 A. He is known for epitomizing the spirit of truth in the  
5 community and within the Shrine.

6 THE COURT: Excuse me for interrupting, what community,  
7 specifically are you referring to?

8 THE WITNESS: The community that I'm referring to would  
9 be the community within the confines of the land that has been  
10 known as Tama-Re, and outside of the community he also is  
11 well-known to me as demonstrating the spirit of truth through his  
12 teachings.

13 BY MR. JOHNSON:

14 Q. Do you have an opinion, sir, as to whether or not Dr. York is  
15 a threat to the community?

16 A. In my opinion I see Dr. York as no threat to the community.

17 Q. Do you have an opinion as to whether or not if Dr. York is  
18 given a bond by this Court that he would appear in this court at  
19 whatever date and time that a court date is set?

20 A. In my opinion Dr. York would be someone who I would stake my  
21 life on the fact that he would appear as scheduled and be more  
22 than happy to face any charges in a noble fashion because he  
23 exemplifies the principles of law that we all try to follow.

24 MR. JOHNSON: That's all, Your Honor.

25 THE COURT: Mr. Moultrie, any questions?

1 MR. MOULTRIE: No, Your Honor.

2 THE COURT: You may step down. You may call your next  
3 witness, Mr. Johnson.

4 MR. JOHNSON: Dr. Robert Kimbrough.

5 THE COURT: Administer the oath to the witness, please.

6 DEPUTY CLERK: Raise your right hand, please. Do you  
7 solemnly swear that the testimony you're about to give is the  
8 truth, the whole truth, and nothing but the truth, so help you  
9 God?

10 THE WITNESS: Yes, I do.

11 THE COURT: Have a seat please, sir.

12 ROBERT KIMBROUGH

13 having first been duly sworn, testified on

14 DIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q. Would you state, sir, your full name for the record?

17 A. Robert Kimbrough.

18 THE COURT: Spell your last name, please, sir.

19 THE WITNESS: K-I-M-B-R-O-U-G-H.

20 THE COURT: Thank you.

21 BY MR. JOHNSON:

22 Q. And where do you live, sir?

23 A. I live in Fulton County in Atlanta.

24 Q. And what is your occupation?

25 A. I'm a medical doctor.

1 Q. And how long have you been a medical doctor?

2 A. For 20 years.

3 Q. And what's your area of specialty?

4 A. Internal medicine, general internal medicine.

5 Q. Now, do you know Dr. Dwight York?

6 A. Yes, I do.

7 Q. And how did you come about knowing him?

8 A. I met him probably about 19 years ago at a meeting in New  
9 York.

10 Q. ~~And have you had an occasion since then to have known him or~~  
11 ~~to associate with him?~~

12 A. Yes, I have. I've had numerous meetings with him, personal  
13 conversations over the 19 years that I've known him.

14 Q. Now, have you ever lived on the campus in Eatonton?

15 A. Yes, I have.

16 Q. And how long did you live there?

17 A. I've been living there off and on since 1995.

18 Q. And you say off and on, do you still live there also?

19 A. Well, I come and go, and sometimes I spend weekends out there,  
20 yes.

21 Q. I see. Now, during the time that you lived there, did you  
22 ever have to get permission from Dr. York in order to have a  
23 conversation with a female?

24 A. Absolutely not.

25 Q. Did you ever have to get permission from Dr. York to have

1 intercourse with a female?

2 A. Absolutely not.

3 Q. Did you have to get permission from Dr. York to go off the  
4 campus or to come back into the campus?

5 A. Absolutely not.

6 Q. Did you ever have to get permission from Dr. York as to what  
7 you would eat?

8 A. No, sir.

9 Q. Did you ever have to get permission from Dr. York as to the  
10 amount of money that you could make?

11 A. No, sir.

12 Q. Do you know Dr. York's reputation in the community as a  
13 business man?

14 A. From all indications of everything that I've heard, he's an  
15 excellent, astute business person with business knowledge.

16 Q. Do you know of his reputation in the community as a religious  
17 person?

18 A. Yes, I do.

19 Q. And what is that reputation?

20 A. He's highly respected for his knowledge.

21 Q. Are you a member of the Shriners?

22 A. Yes, I am.

23 Q. Do you know of Dr. York's reputation as the potentate of the  
24 Shriners?

25 A. Yes, I do.



1 Q. And what is that reputation?

2 A. Well, he's highly respected among many of the different lodges  
3 throughout the world.

4 Q. Do you know Dr. York's reputation in the community for peace  
5 -- as a law-abiding citizen?

6 A. Yes, I do.

7 Q. What is that reputation?

8 A. He's a fine, upstanding person, highly respected by many  
9 people in the community. That's in Atlanta, Eatonton, and in the  
10 State of Georgia, and probably around the country and the world.

11 Q. Do you know of his reputation in the community for  
12 truthfulness and honesty?

13 A. Yes, I do.

14 Q. What is that reputation?

15 A. He's a very honest person and law-abiding citizen.

16 Q. Do you have an opinion regarding whether Dr. York is a threat  
17 to the community in which he lives?

18 A. Yes, I do have an opinion. He's absolutely no threat to the  
19 community in which he lives.

20 Q. If this Court granted Dr. York a bond, do you believe that Dr.  
21 York would report back to this court at whatever date and time set  
22 by this Court for a hearing?

23 A. Absolutely, yes. I'm sure he would be here exactly on time  
24 without fail.

25 Q. Now, with reference to your having lived on the campus, were

1 there children on the campus also?

2 A. Yes, sir.

3 Q. Did you have an opportunity to see Dr. York in interaction  
4 with any of the children on the campus?

5 A. Yes, sir.

6 Q. Have you ever heard anybody say -- while you lived there --  
7 that Dr. York ever assaulted or molested any child?

8 A. Absolutely not.

9 THE COURT: Mr. Moultrie, any questions?

10 ~~MR. MOULTRIE: No, Your Honor.~~

11 THE COURT: You may step down. Thank you, Dr. Kimbrough.

12 THE COURT: Next witness, please.

13 MR. JOHNSON: Officer German Fedrick.

14 THE COURT: Come forward, please. We'll have you sworn  
15 as a witness.

16 DEPUTY CLERK: Raise your right hand, please. Do you  
17 solemnly swear that the testimony you're about to give is the  
18 truth, the whole truth, and nothing but the truth, so help you  
19 God?

20 THE WITNESS: I do.

21 THE COURT: Have a seat, please. May I inquire,  
22 Mr. Johnson, before you begin your examination of this witness as  
23 to your plans for witnesses for purposes of scheduling matters  
24 this morning, how many more witnesses do you anticipate to be?

25 MR. JOHNSON: One second, Your Honor, and I'll give you

1 witness?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: We can take a break at that point to allow  
4 you to do that.

5 MR. GARLAND: There may be some particularized witnesses  
6 that are not general character witnesses.

7 THE COURT: Yes, sir, I'll be happy to hear those.

8 MR. GARLAND: But I think we can shorten up the  
9 examination process.

10 THE COURT: Thank you.

11 MR. JOHNSON: Thank you, Your Honor.

12 GERMAN KEITH FEDRICK

13 having first been duly sworn, testified on

14 DIRECT EXAMINATIONH

15 BY MR. JOHNSON:

16 Q. Sir, state your full name for the Court.

17 A. My name is German Keith Fedrick.

18 THE COURT: Excuse me, I didn't have your microphone on.  
19 Repeat that, if you would please, sir.

20 BY MR. JOHNSON:

21 Q. State your name, please.

22 A. My name is German Keith Fedrick.

23 Q. And, sir, where do you live?

24 A. I live here in Macon, Georgia.

25 Q. And how long have you lived in Macon?

1 A. Since August of '99.

2 Q. And what is your occupation, sir?

3 A. I am a Macon police officer,.

4 Q. And how long have you been a Macon police officer?

5 A. I was sworn in September 15th of 2000.

6 Q. And is one of your duties as a police officer to uphold the  
7 law?

8 A. That is correct.

9 Q. Is that correct, sir?

10 A. That is correct.

11 Q. Now, do you know Dr. Dwight York?

12 A. I do.

13 Q. And how did you come about knowing Dr. York?

14 A. I came about meeting Dr. York in 1998 at a family day  
15 gathering.

16 Q. And do you know of his reputation in the community?

17 A. Yes, I do.

18 Q. And what is that reputation?

19 A. It's a very good reputation. He's a very highly respected  
20 man.

21 THE COURT: What community are we talking about?

22 THE WITNESS: Okay. Community in reference to the camp  
23 or the park in Putnam County and as well as abroad, the community  
24 of Georgia.

25 Q. Okay. Now, if Dr. York is granted bond by this Court, is it

1 your opinion that Dr. York would appear at whatever date and time  
2 that this Court said?

3 A. Yes, sir, I do.

4 Q. Do you consider Dr. York to be a flight risk?

5 A. No, sir. He is not a flight risk.

6 Q. In the community of Eatonton in Putnam County, do you know of  
7 Dr. York's reputation for truthfulness and honesty?

8 A. Yes, I do. He's very respected, many people are familiar with  
9 literature, and, like I said, he's a highly respected man known  
10 for his knowledge, and he's known as a preacher as well.

11 Q. Had you had an opportunity to go to the campus in Eatonton?

12 A. Yes.

13 Q. Have you visited that campus?

14 A. Yes.

15 Q. Have you ever heard anybody on campus say anything about Dr.  
16 York molesting or attempting to molest or had a tendency to molest  
17 any children?

18 A. Never, sir. Not in my, you know, during the time I was on the  
19 campus.

20 MR. JOHNSON: The witness is with you, Counsel.

21 MR. MOULTRIE: No questions, Your Honor.

22 THE COURT: You may step down. Thank you.

23 MR. GARLAND: Officer Leon Adams.

24 THE COURT: Administer the oath to the witness, please.

25 DEPUTY CLERK: Raise your right hand, please. Do you

1 solemnly swear that the testimony you're about to give is the  
2 truth, the whole truth, and nothing but the truth, so help you  
3 God?

4 THE WITNESS: I do.

5 LEON ADAMS

6 having first been duly sworn, testified on

7 DIRECT EXAMINATION

8 BY MR. GARLAND:

9 Q. What is your name, sir?

10 A. Leon Stewart Adams.

11 Q. What is your occupation?

12 A. I'm a police officer for the City of Macon.

13 Q. And in connection with your prior work prior to becoming a  
14 police officer did you serve in the military?

15 A. Yes, I did.

16 Q. Who inspired you to become a police officer?

17 A. Dr. York.

18 Q. Now, have you been around Dr. York?

19 A. Yes, sir. I met him personally the first time in 1994. I was  
20 reading his literature from as far back as 1991. I met him  
21 personally in 1994 and had the opportunity to establish a  
22 relationship, a personal relationship with him at that time.

23 Q. In connection with his teachings or his writings, does he  
24 advocate obedience to the law and non-violence?

25 A. Absolutely.

1 Q. And in your experience has he inspired other people to abide  
2 by the law and to be non-violent?

3 A. Absolutely.

4 Q. All right. Now, in connection with the community where people  
5 come who are Nuwaubians and who also participate in the Shrine and  
6 who also go there for recreation, is that a place where you have  
7 to have a pass to get in?

8 A. No, sir.

9 Q. Can a member of the general public just come up there and go  
10 in?

11 A. As a matter of fact on several occasions when I'm there we  
12 have individuals that drive by on that highway which is somewhat  
13 of a shortcut to Atlanta and people drive by and were unfamiliar  
14 that the place was there, turn around and come back in and come in  
15 for a tour.

16 Q. There has been testimony here that Dr. York exercises a  
17 control on every movement and thought of people who are in that  
18 community and who share in the amenities there. Is that true?

19 A. That has got to be the most ridiculous thing I've ever heard.

20 Q. Why do you say that's ridiculous?

21 A. Dr. York encourages anyone that he has ever come in contact  
22 with to think for themselves. His foundation has always been  
23 truth, and his motto is truth is truth, as a matter of fact.

24 Q. Now, do you have an opinion whether Dr. York would appear if  
25 he's granted bond to face these accusations?

1 A. I feel fully confident if he's given a bond that he'll be  
2 here.

3 Q. In connection with Dr. York, have you ever seen any tendencies  
4 of violence?

5 A. No, sir.

6 Q. Does anything in his writing advocate any form of violence or  
7 violation of the law?

8 A. No, sir. To the contrary, as presented earlier, he helped put  
9 together a book called "A Little Guidebook For Nuwaubians" that  
10 advocates compliance with the law, but, no, you're right.

11 Q. And do you agree with what is in that book?

12 A. Absolutely.

13 Q. You think it's a good life conduct format for people,  
14 citizens?

15 A. Absolutely. It gives you full layout of the Constitution so  
16 that you know exactly what your rights are and let's you know  
17 exactly what you can do and what you should do and should not do  
18 when in contact with law enforcement officials.

19 Q. There's a question here whether he's a danger to the  
20 community. Do you think he's a danger or a benefit to the  
21 community?

22 A. Most definitely he's a benefit to the community.

23 Q. Why is he a benefit to the community?

24 A. Like I -- for example, like I was just pointing out with "The  
25 Little Guidebook for Nuwaubians," most individuals who may not



1 know what to do when they come in contact with a law enforcement  
2 official tend to panic and that tends to create tension. By  
3 knowing your rights like he put forward in the book, then you know  
4 exactly what your rights are, and he makes certain suggestions of  
5 making sure you have an ID on you, answer all questions when asked  
6 by law enforcement officials, et cetera. And as a police officer  
7 when in contact with individuals and they're compliant it  
8 decreases tension and creates a better scenario.

9 Q. The religion and the religious doctrine that he advocates, is  
10 it a Christian doctrine?

11 A. Yes, sir.

12 Q. And does it advocate the concept that Christianity shares  
13 common ground with all religions and that the church seeks to  
14 harmonize commonality, not isolate people by sex, religion, race,  
15 or creed?

16 A. Exactly. One of the statements that I personally heard Dr.  
17 York mention was that if all the religions are indeed connected  
18 back to one common rule, then why not come together on that common  
19 rule versus being separated by the vast minor differences.

20 Q. Now, by the way, does he direct people what they are to eat  
21 and not eat?

22 A. No, sir.

23 Q. Does he direct people as to when they will have sex or not  
24 have sex?

25 A. No, sir, not that I know of.

1 Q. Does he direct people to live separate from their children?

2 A. No, sir.

3 Q. Does he direct when people may come or go from this community?

4 A. No, sir.

5 Q. Now, this community, does it have recreational park and a  
6 place where people can play and enjoy themselves?

7 A. There's a playground for the kids, there's several areas that  
8 people can just relax, and often people come up for that purpose.

9 Q. Now, you've had occasion to hear Dr. York preach?

10 A. Yes, sir, I have.

11 Q. How often have you heard him preach?

12 A. Just about every weekend since 1994.

13 Q. And when he preaches, what is the size of the congregation  
14 that comes to hear his learning and his message?

15 A. On a normal weekend it could be anywhere from five hundred to  
16 a thousand. During our annual celebration there have been times  
17 when there's been as much as probably twenty-five or thirty  
18 thousand people there, and that's from just about every area that  
19 you can think of in the world. I remember about two years ago I  
20 met a young lady there from Holland.

21 MR. GARLAND: That's all we have of this witness.

22 THE COURT: Any questions, Mr. Moultrie?

23 MR. MOULTRIE: No, Your Honor.

24 THE COURT: You may step down. Thank you, sir. The next  
25 witness.

1 MR. GARLAND: Dr. Ahmadou Varmah.

2 DEPUTY CLERK: Raise your right hand, please. Do you  
3 solemnly swear that the testimony you're about to give is the  
4 truth, the whole truth, and nothing but the truth, so help you  
5 God?

6 THE WITNESS: I do.

7 THE COURT: Have a seat, please, sir.

8 AHMADOU J. VARMAH

9 having first been duly sworn, testified on

10 DIRECT EXAMINATION

11 BY MR. GARLAND:

12 Q. State your name for the record, please.

13 A. Pastor Dr. Ahmadou J. Varmah.

14 THE COURT: Spell that for the record, please.

15 THE WITNESS: My first name, A-H-M-A-D-O-U, middle  
16 initial J, last name Varmah, V-A-R-M-A-H.

17 BY MR. GARLAND:

18 Q. All right, and where do you live?

19 A. Macon, Georgia.

20 Q. What is your occupation?

21 A. I have my own business.

22 Q. And what is that business?

23 A. It's a bookstore. I sell various books published by various  
24 authors.

25 Q. And what's the name of the bookstore?

1 A. It's called All Eyes on Egypt.

2 Q. And how long have you done that?

3 A. That's since 1998 here in Macon. Prior to that I had a  
4 business in Birmingham, Alabama.

5 Q. And how old are you?

6 A. I'm 29 years old.

7 Q. Who owns that bookstore?

8 A. Myself and my wife.

9 Q. What's your wife's name?

10 A. Lindsey.

11 Q. That's here in Macon?

12 A. That's here in Macon.

13 Q. All right, now, tell us a little bit about your educational  
14 background.

15 A. I attended Sullivan County College, upstate New York in Loch  
16 Sheldrake, where I graduated from with a associate's in science  
17 and arts. I've also studied various languages ranging from the  
18 Greek, Hebrew, et cetera.

19 Q. Do you read Greek, Hebrew -- and Hebrew?

20 A. Somewhat, yes.

21 Q. Do you have a doctor of divinity?

22 A. Yes, I do, yes, sir.

23 Q. Where is that from?

24 A. That's also from Sullivan County College, upstate New York.

25 Q. And where is that located?

1 A. That's upstate at Loch Sheldrake, in the Binghamton area.

2 Q. The Binghamton, New York area?

3 A. Yes, sir.

4 Q. All right. Now, did you have occasion to come to Macon,  
5 Georgia in 1993?

6 A. Yes, I did.

7 Q. And why did you come to Macon?

8 A. I came to Macon for a few reasons, the first of which was that  
9 I want to establish a business after being inspired by the works  
10 that I've seen Reverend York do over the many years, I said, well,  
11 I would like to be an entrepreneur myself, just getting out of  
12 college, so I came down, and we decided, my wife and myself at the  
13 time, to establish a business. Secondly, our organization, the  
14 Shrine had just recently purchased the property out in Eatonton,  
15 and I wanted to be closer to the property for the various works  
16 that we do with the hospitals and things of that nature.

17 Q: Now, when you say your organization, the Shrine, what position  
18 do you hold in the Shrine?

19 A. I am the potentate of the Shrine. Reverend York is the past  
20 potentate, meaning he's retired. Another way of saying retired.

21 Q. And what Shrine organization is that?

22 A. It's Al Mahdi Shrine Temple, and I'm the one who's responsible  
23 for having incorporated it here in the State of Georgia.

24 Q. And how many members are there of that Shrine?

25 A. Starting from the Shrine, just say in the Shrine level, we

1 have over two hundred members, and then, of course, there's the  
2 Masonic and the Eastern Star branches that fall up under the  
3 Shrine.

4 Q. And how many members if you add --

5 A. Put it all together, somewhere around seven hundred, and that  
6 would be total male and female membership.

7 Q. All right, now, do they all live out there in that community  
8 or --

9 A. No. I mean, we have branches in England, Trinidad, Barbados,  
10 here in the United States, various states, Alabama, Florida,  
11 Georgia, Mississippi, Tennessee.

12 Q. All right, so you're involved in the Shrine organization that  
13 Dr. York is the past potentate of?

14 A. Correct.

15 Q. And it has many levels?

16 A. Many levels.

17 Q. Now, in the Shrine -- and I know you have a lot of secrets and  
18 you can't give them away.

19 A. I do my best not to.

20 Q. But are there Arabic names given to Shrine members?

21 A. Yes, sir.

22 Q. Would you explain that process?

23 A. As a matter of fact what I did was there's a branch here  
24 called Al Shihah Shrine of Asahi. They are right here on Second  
25 and Popular, and I took the liberty of getting one of their

1 articles of incorporation and their guidebook, and in there they  
2 have various names like Sudan or Ansar or Nor or Haadi or -- these  
3 are names that various Shrine temples that have over 23 hospitals  
4 in the United States that they've utilized, and I took the liberty  
5 of giving it to counsel.

6 Q: All right. In connection with as you progress through the  
7 Shrine, do these names change at times?

8 A. Definitely.

9 Q. So as you achieve another level you get another name?

10 A. That's correct.

11 Q. All right, now, can you give us some examples, did you bring  
12 some materials, that notebook that you have with you that you  
13 showed me this morning?

14 A. Yes.

15 Q. All right, would you just explain to the Court, illustrate how  
16 names are used in connection with the Shrine that operates out in  
17 this community?

18 A. Okay. For example, this is another branch of the Freemasons  
19 and Shriners that I'm also a member, or have been a member of.  
20 One here, this is the -- I'll read it, it says: Inspector general  
21 international, Supreme Council of World Masons Incorporated,  
22 thirty-third and last degree (reading). This certifies that  
23 illustrious brother, Amadou J. Varmah, a sublime prince of the  
24 Royal Seca, thirty-second degree, is a member of Zechariah -- my  
25 name at that point, Zechariah, in that degree. Okay. Prior to

1 that when I was a member of the Royal Arch Branch, they referred  
2 to me as Zerubbabel. After transcending over to their Shrine  
3 temple I took on the name as New Mecca or Mecca. That's just  
4 there. In the degree of the order of Melchizedek, which is the  
5 thirty-second degree on the Scottish Rite side of Freemason, I  
6 took on the name of Nor, or Nor.

7 Q. Let me stop you.

8 A. Okay.

9 Q. What was that order I believe that's been --

10 A. The Order of Melchizedek. The book is here, if I may, Your  
11 Honor. These are the books here. It's called the "Story of the  
12 Scottish Rite of Freemasonry," by Harold B. Voihist, thirty-third  
13 degree. And in here it talks about the degrees and name changes.  
14 If I may read from it. It says of part four, the Degrees of the  
15 Scottish Rite, the Fourth Degree, Secret Master, the name King  
16 Solomon's Temple is picked up. Fifth Degree, Perfect Master is  
17 where you become a grand master at that point or perfect master.  
18 Sixth Degree, Intimate Secretary. This is something you can get  
19 at any library. Seventh Degree, Provost and Judge. Eight Degree  
20 Intendant of the Building. Ninth, Master Elect of the Nine or  
21 Council of Nine. Ten, Master Elect of Fifteen. Eleven, Sublime  
22 Master Elected. Twelve, Grand Master Architect. Thirteen, Master  
23 of the Ninth Arch. Fourteen, Grand, Elect, Perfect and Sublime  
24 Mason. Fifteen, Night of the East or Sword. Sixteen, Prince of  
25 Jerusalem. Seventeen, Knights of the East and West. Eighteen,



1 Knight of the Rose Croix. Nineteen, Grand Pontiff. Twenty,  
2 Master Ad Vitam. Twenty-one, Noachite. Twenty-second, Prince of  
3 Libanus or Knight of the Royal Axe. Twenty-third, Chief of the  
4 Tabernacle. Twenty-fourth, Prince of the Tabernacle.  
5 Twenty-fifth, Knight of the Brazen Serpent. Twenty-sixth, Prince  
6 of Mercy --

7 Q. Well, how many are there?

8 A. It goes up to thirty-third.

9 Q. We don't need to read anymore.

10 A. Okay, but it goes all the way up to Knights Kadosh and that's  
11 one of the names, Kadosh that we've also used on the property in  
12 Eatonton.

13 Q. All right, now, the Mystic Order of Melchizedek, what is that?

14 A. That is, again, the thirty-second degree on the York right --  
15 excuse me, Scottish Rite of Freemasonry, and that is the degree  
16 where they say Order of Melchizedek or Order of Justice where you  
17 are --

18 Q. Just stop right there.

19 A. I'm sorry.

20 Q. Is that one of Mr. York's organizations?

21 A. No. This is something that has been around since -- well,  
22 freemasonry goes back for quite a long time.

23 Q. The FBI agents filed an affidavit that Mr. York's organization  
24 was known as the Ancient Mystic Order of Melchizedek.

25 A. No, that is a degree within our rites, our freemasonic rites.

1 Q. Okay. Also it's been alleged in an affidavit that Mr. York's  
2 organization was the Al Mahdi Shriners. Is that Mr. York's  
3 organization?

4 A. No, it's not.

5 Q. What is that?

6 A. Al Mahdi Shrine Temple, Number Nineteen, and its various  
7 subsidiaries here in the United States and abroad, it's a Shrine  
8 temple like every other. We go to hospitals, we have magazines,  
9 monthly periodicals we put out, the Shriner Magazine where we take  
10 and have children going on fishing trips. We work at times with  
11 Al Sayyid, which is here in Macon, Georgia. We also go to like  
12 the children's --

13 Q. That's enough.

14 A. Oh, okay.

15 Q. Now, do you know Reverend York by the name Malachi York?

16 A. Yes, I do.

17 Q. And what other names have you attributed to Reverend Malachi  
18 York?

19 A. Depending on the particular meetings that we're having,  
20 meaning this, again, thirty-third degrees in the Rites of  
21 Freemasonry, the Scottish Rite, depending on the degrees in which  
22 we're meeting, and meaning those would obtain those particular  
23 degrees when we meet, within those degrees we have various names  
24 that we refer to each other as.

25 Q. Are you aware that he had his name legally changed from Dwight

1 York to Malachi York in the State of New York?

2 A. Yes, I am.

3 Q. Now, in connection with what Dr. York teaches in the community  
4 I hand you Defendants' Exhibit Number Two, The Sayings of Dr.  
5 Malachi York. What is that?

6 A. "The Sayings of Dr. Malachi Z. York" was put out some years  
7 back because so many people over the years as a preacher or pastor  
8 of churches or as a potentate of the Shrine, so many people often  
9 times say, well, such -- you know, Doc said this or Doc said that,  
10 so he said, well, let me make it clear to the world what I say,  
11 I'll put out a book saying the sayings of Dr. York so people can't  
12 misquote me.

13 MR. GARLAND: I move in Defendants' Exhibit Number Two,  
14 "The Sayings of Dr. Malachi York."

15 THE COURT: Any objection?

16 MR. MOULTRIE: No, Your Honor.

17 THE COURT: Admitted without objection.

18 BY MR. GARLAND:

19 Q. Now, have you read and familiar with those sayings?

20 A. Yes, I have.

21 Q. Do any of those sayings promote violence?

22 A. None whatsoever.

23 Q: The abuse of children?

24 A. None whatsoever.

25 Q. What do they advocate?

1 A. Oh, they advocate respect for women, first of all, respect for  
2 each other, respect for human beings regardless of their race,  
3 never giving up, never letting anyone tell you that you can't  
4 obtain any goals that you set your mind to. There's quite a few.

5 Q. And you can look at the book, I'm not giving you a test.

6 A. All right. There's one here that says there are but two races  
7 of beings in this world, the agreeable and the disagreeable, or  
8 the good and the evil. My greatest desire is to teach you to  
9 overcome desire. He who is sure commits himself. Tell your mate

10 I do love you. In washing another's feet your hands become clean.

11 Q. Are these saying of Dr. York consistent with your  
12 understanding of the Christian religion?

13 A. Very much so.

14 Q. And is the doctrine that he teaches a Christian doctrine?

15 A. Definitely.

16 Q. Belief in Jesus Christ?

17 A. As our personal Lord and Savior.

18 Q. Now, does he advocate good conduct or bad conduct?

19 A. You have to have good conduct.

20 Q. Now, it has been said here by a witness that Dr. York tells  
21 everybody when to have sex, when to eat, when to come and go, that  
22 he controls the mind of the people, the members of his church or  
23 the Shrine or the community. Is that true?

24 A. No.

25 Q. How can you say that's not true?

1 A. Well, because since I was 12 years old after being introduced  
2 to Dr. York by my father and reading the literature and --

3 Q. Oh, by the way did he ever molest you from --

4 A. No.

5 Q. Did you ever see him molest anybody?

6 A. No.

7 Q. Did you ever hear of him molesting anybody?

8 A. No.

9 Q. Go ahead.

10 A. I forget the question.

11 Q. Well, tell them how you've known Dr. York.

12 A. Well, after meeting him and reading his literature at the time  
13 my mother and myself were going through the normal, I guess,  
14 puberty was coming in, and I was starting to act a little beside  
15 myself, so she called my dad who was living in Liberia, West  
16 Africa at the time. He came in, and he had met Dr. York some  
17 years back overseas, and he said, well, first, let me take you and  
18 let you live at my relatives in Washington. That's my father whom  
19 I'm speaking of. While living there, I read the books and I would  
20 -- frequently with my dad -- Dr. York's --

21 Q. I need to stop you. You said you read the books. Whose  
22 books did you read?

23 A. The various publications that Dr. York has authored.

24 Q. Now, do you sell his publications?

25 A. As well as other publications.

1 Q. In your bookstore?

2 A. Yes, sir.

3 Q. And you buy those over here, or were they given to you?

4 A. No. What happens is coming down here and wanting to establish  
5 my own business as many others has done as far as the bookstore,  
6 Dr. York told us, look, if you guys want to make things happen,  
7 then what I'll do is I'll help you, I put books out, he said, I  
8 don't need money because that's not my goal in life is just to  
9 have more money. He said so what I'll do is I'll give you these  
10 books and you sell them, and all you can do is if you want to  
11 help, help the church or help the Shrine and use your finances in  
12 that way.

13 Q. Okay, so, you have been around Dr. York from the time you were  
14 12 years old?

15 A. Seventeen years, sir, yes.

16 Q. All right. Do you have children?

17 A. Yes, I do.

18 Q. Would you let your children be in his presence alone?

19 A. Yes. They've been in his presence alone, and they love him.

20 Q. All right. Any indication of any abuse of any sort?

21 A. None whatever.

22 Q. Do you believe that if he is given a bond that he would stand  
23 up and face the accusations no matter how terrible they are?

24 A. Without a shadow of a doubt.

25 Q. Now, in connection with the publications, have you brought

1 representative samples of those publications?

2 A. Yes, I have, sir.

3 Q. Okay. Let me show you Defendants' Exhibits 3, 4, and 5.

4 These are newspapers called "The Georgia Informer?"

5 A. Correct.

6 Q. Are you familiar with those newspapers?

7 A. Yes, I am.

8 Q. Are you familiar with who publishes them?

9 A. Yes, I am.

10 Q. And in those newspapers they list Dr. York as one of the 50

11 top --

12 A. As one of the 15 most -- Fifteen of Georgia's Most Intriguing  
13 People in 2001. That includes blacks and whites. There's  
14 another, Georgia's 50 Most Influential Black Men.

15 MR. GARLAND: I move in Defendants' Exhibits 3, 4, and 5.

16 THE COURT: Tell me what each one is separately so we can  
17 make sure it's identified.

18 MR. GARLAND: Defendants' Exhibit Number 3 is an issue of  
19 the "Georgia Informer," and the front caption says Metro Atlanta's  
20 Greatest Preachers.

21 THE COURT: Does it have a date on it or anything?

22 MR. GARLAND: It does not have the date -- excuse me,  
23 August, 2000. Defendants' Exhibit Number 4, January 2000,  
24 Fifteen of Georgia's Most Intriguing People in 2001, and October,  
25 2000. Defendants' Exhibit Five, Georgia's Fifty Most Influential

1 Black Men.

2 THE COURT: Okay, any objection?

3 MR. MOULTRIE: No.

4 THE COURT: Three, four and five are admitted.

5 BY MR. GARLAND:

6 Q. And is Dr. York listed in all of those publications?

7 A. Yes, sir, yes, he is.

8 Q. Now, I hand you Defendant's Exhibit Six. What is that?

9 A. This is a passport, it says Egypt of the West.

10 Q. What were those used for?

11 A. It's a novelty item for people who come from out of town, and  
12 while they're there, they say, you know, I want to have a passport  
13 or memorabilia that I can take back to say that I was here. And  
14 their name is asked for, blood type is blank, of course, sex,  
15 male. They're given a passport number, place of birth, date of  
16 birth, et cetera, and they keep it with them, and basically it's a  
17 souvenir.

18 Q. All right. I hand you Defendant's Exhibit 7, what is that?

19 A. This is the constitution of the United Nuwaubian Nation of  
20 Moors.

21 Q. Now, what is the United Nuwaubian Nation of Moors?

22 A. Moor is another degree within freemasonry, and at that degree  
23 we wear the red vest, in that degree -- I brought some other  
24 magazines from other shrine temples throughout the United States,  
25 and they fall right in line with the same way of doing things.



1 Q. All right, now, I hand you Defendant's Exhibit 8, and ask you  
2 what this is?

3 A. This is "the Constitution of the Ancient Egyptian Order,  
4 Fraternal and Sorority."

5 Q. And what does that relate to?

6 A. Well, this relates to the members of the Egyptian Order, which  
7 is once you graduate from the Shrine, once you progress through  
8 the Shrine degrees, you're into what we call the Ancient Egyptian  
9 Order and Arab Nobles of the Mystic Shrine. That's all throughout  
10 the United States, a very common phrase or Masonic term.

11 Q. All right. Defendant's Exhibit 9, what is that?

12 A. This is a book, "The Story of Scottish Rite of Freemasonry" by  
13 Harold V.B. Voorhis, 33 degree, written 1802.

14 Q. All right, and is that the organization that you're a member  
15 of and the potentate of?

16 A. That is correct, yes, sir.

17 Q. Now, how does your organization use the community where Dr.  
18 York often preaches?

19 A. Well, first of all, we utilize it for events where we have  
20 adults and children come out and picnic on a weekend, it's like a  
21 retreat of sorts. A lot of times with the stresses of living in a  
22 big city, the weekend you try to get away. Most people who hunt,  
23 go hunting, and those of us who go fishing, go fishing. Those who  
24 just like to have family picnics put out a blanket or whatever,  
25 towels, picnic baskets, and have a picnic, and --

1 Q. Do some people keep their hunting weapons out there?

2 A. Definitely.

3 Q. So it is a place of recreation where the members of Shrine or  
4 Freemasonry come more than --

5 A. We say -- I'm sorry.

6 Q. Who all uses it?

7 A. Members of our Shrine temple, members of our Masonic Lodge,  
8 and people in general. We make it open to the public. As a  
9 matter of fact, one of my buddies from Al Sayyid, Mr. Lanford, has  
10 asked many times and been allowed to come out, you know, from time  
11 to time to do some turkey hunting, and that's during turkey  
12 season.

13 Q. Now, you have a packet of documents here. What are those?

14 A. These are certificates, some that I received, others that  
15 other members gave to me so I can have them here today. This one  
16 here is from the Most Worshipful Cedar Lodge, Grand Lodge of  
17 Lebanon, this one here is --

18 Q. Without identifying each one of them, are these certificates  
19 that are awarded in connection with the organization of which you  
20 are the potentate?

21 A. Yes, sir.

22 Q. Okay. I'm going to mark those certificates as Defendant's  
23 Exhibit No. 10. All right, now, you have a magazine there?

24 A. Yes.

25 Q. What is that magazine?

1 A. Well, most shrine temples have a monthly magazine, and in  
2 accordance with that, we also have one. This one is called the Al  
3 Mahdi Mystic Messengers, and what it does is just shows you, one  
4 says the Grand Opening of the Macon Temple, the Meeting of the  
5 Medical Association of America, Noble Reverend Jessie Jackson, who  
6 is also a shriner, visits Tama-Re, the shrine park.

7 MR. GARLAND: I offer this magazine, Defendant's 11.

8 MR. MOULTRIE: Your Honor, may we see Exhibits 10 and 11?

9 THE COURT: Yes, sir, I'm sure that Mr. Garland intended  
10 for you to see those.

11 BY MR. GARLAND:

12 Q. All right, now, do you have some books that Dr. York has  
13 written?

14 A. These are more magazines from other Shrine temples and other  
15 authors.

16 THE COURT: Mr. Garland, let me ask in presenting all  
17 these things, and you're getting ready to present some books to  
18 the Court, is that really necessary for purposes of this hearing?

19 MR. GARLAND: Just a few of them, Your Honor, just to  
20 show --

21 THE COURT: This is the sort of thing that I would think  
22 would be proffered to --

23 MR. GARLAND: I'm just having him help identify. I will  
24 proffer them, Your Honor, and place exhibit numbers on them.

25 THE COURT: One thing I'm concerned about is if all these

1 thing are admitted, they're going to be held by the court, and I  
2 don't know if you want to leave those with us or not. Some of  
3 these things --

4 MR. GARLAND: Well, Your Honor, we have no problem with  
5 leaving them, they're on sale, they're part of the teachings of  
6 Dr. York and how he participates in his connection to the  
7 community, but I will limit the number. There are a large number.

8 BY MR. GARLAND:

9 Q. Defendant's Exhibit 12, what is this document?

10 A. This is our November magazine.

11 Q. All right, now, did Dr. York participate in activities  
12 reflected there?

13 A. Yes, this is our Thanksgiving Allelula Dinner.

14 Q. All right, this is the dinner, and what role did he play in  
15 this?

16 A. A guest.

17 Q. All right. And I hand you Defendant's Exhibit 13, and what is  
18 that?

19 A. This is our 4th of July magazine.

20 Q. And what role did Dr. York play in connection with that?

21 A. Well, every year around the 4th of July we set out to raise a  
22 certain amount of moneys to donate to any charitable cause, and  
23 being the past potentate, one of his responsibilities is finding a  
24 good charitable cause to give away to, and he found the Make a  
25 Wish Foundation, to which we gave 20 thousand dollars.

1 Q. How much?

2 A. \$20,000.

3 Q. All right, now, do you keep the money that's taken in?

4 A. Oh, we have a bank account for the Shrine Temple.

5 Q. All right, and are you in charge of that bank account?

6 A. Yes, sir, yes, I am.

7 Q. All right, and who determines how that money is spent?

8 A. The members of the Shrine. We have shrine meetings, and we  
9 vote on whether it should be spent on this or that cause.

10 Q. Do you have a group of directors?

11 A. Yes, we do.

12 Q. How many directors?

13 A. It's 12 -- nine and --

14 Q. Is Dr. York one of the directors?

15 A. He was at one point a director, but he's the past potentate.

16 Q. So he's not directing how that money is spent?

17 A. Not in the least bit.

18 Q. Now, these other books you have here, what are these books?

19 A. These are books in various of our degrees that we study.

20 These are other Masonic books and other literature.

21 MR. GARLAND: All right. I'm not going to introduce all  
22 of those, Your Honor, but there're some --

23 BY MR. GARLAND:

24 Q. Is this material that's sold in the bookstore?

25 A. Yes, it is.

1 Q. And this stack of books here, what is this stack?

2 A. This is another stack of books that we also put out on  
3 masonry, on various subject matters.

4 Q. Are you familiar with the bookstores around the country, other  
5 bookstores that are associated with your organization?

6 A. Yes, sir, yes, I am.

7 Q. And do they sell similar material?

8 A. Yes, they do.

9 Q. All right. I hand you Defendant's Exhibit 16, and what is  
10 that?

11 A. This a book called "Let's Set The Record Straight."

12 Q. And who wrote that book?

13 A. Inscribed by: Dr. York.

14 Q. And what's the subject matter of it?

15 A. "Set The Record Straight" is dealing with the various native  
16 American tribes here in the United States and how they came about  
17 their names. It's also dealing with -- I think in the beginning  
18 it talks somewhat about -- let me just flip through it and make it  
19 easier on myself.

20 MR. MOULTRIE: Your Honor, excuse me, we certainly have  
21 been patient this morning, but I do feel obliged to ask what all  
22 of these publications have to do with the issue of whether --  
23 first of all, what they have to do with the nature of the offense  
24 that's alleged in this case, what they have to do, two, with  
25 whether Mr. York is a flight risk, and what they have to do with

1 whether Mr. York is a risk to the community. And if they don't --  
2 if they're not germane to any of those subjects, then why are  
3 they relevant for the purposes of this hearing?

4 MR. GARLAND: Your Honor, we offer the books to show his  
5 relationship to the community, his effect on the community, what  
6 his teachings are in the community, and that he has a positive  
7 non-violent relationship to the community, and that his writings,  
8 for instance, I'm about to offer "Jesus Found In Egypt," are about  
9 Jesus and the relationship to Egiptology, and things of that  
10 nature. He has videos, tapes, pamphlets, books, and I just want  
11 illustrate that this is a person who has a deep relationship to  
12 moral good in this community by that. That's what I'm offering  
13 for their relevance, and to dispel some of the contentions that  
14 were put forth here that there's some type of activity that is  
15 controlling the mind and soul and activities of people, that was  
16 kind of offered in the direct testimony.

17 THE COURT: Well, I will take up the matter of the  
18 admissions of the ones that you have not yet offered in evidence,  
19 which so far is 6 through 13 and 16. How many more do you have to  
20 go?

21 MR. GARLAND: Well, Your Honor, I have look about, looks  
22 like about 12 or 13 items.

23 THE COURT: I really don't know. I tend to agree with  
24 Mr. Moultrie, and I suggest once again that you simply proffer to  
25 me the matters that you have. It will accomplish exactly the same

1 thing, I can assure you that.

2 MR. GARLAND: I will proffer them, if I may, Your Honor,  
3 I'll give them exhibit numbers and proffer. I offered the witness  
4 to put them in context and explain them.

5 THE COURT: I have no problem with your identifying them.  
6 We won't put the witness to the burden of doing that.

7 MR. GARLAND: All right.

8 THE COURT: He's dealt with a lot already, but I think we  
9 could speed things up a little bit, and I certainly have no  
10 objection to your identifying them for the record and let you put  
11 them in the record for whatever purposes may be served, and I'll  
12 hear legal argument at the conclusions of all the evidence and  
13 make a determination as to what has been shown by these matters.

14 MR. GARLAND: I would offer the ones that have been  
15 identified at this point, Your Honor.

16 THE COURT: And that's 6, 7, 8, 9, 10, 11, 12, 13, and  
17 16. Any objection other than what's been stated, Mr. Moultrie?

18 MR. MOULTRIE: No, Your Honor.

19 THE COURT: I will admit those particular ones then. What  
20 I'd like for you to do on all the others, if you would, is just  
21 identify those and tell me what you contend they stand for and the  
22 purpose of their being presented, and then we will hear from Mr.  
23 Moultrie.

24 MR. GARLAND: Your Honor, if I may put exhibit numbers on  
25 them so I can refer to them, I'd like to do that after a break,



1 and then I'll just make a simple proffer at that time.

2 THE COURT: Okay. And we'll take a break right now.  
3 We've been sitting here a long time. I always kid people that  
4 I've been in training as a labor negotiator who are known to not  
5 take breaks, and I know there are those present who may need to  
6 take a break, so we'll take a break at this time and give you  
7 about 10 or 15 minutes to get your ducks in a row, and come back  
8 and pick up where we left off.

9 (RECONVENED; ALL PARTIES PRESENT)

10 THE COURT: Okay, we're continuing with the detention  
11 hearing. The time is now 11:33 a.m. Mr. Garland promised that he  
12 would proceed by way of proffer henceforth.

13 MR. GARLAND: Your Honor, in respect to these exhibits,  
14 first, I would like to withdraw Defendant's Exhibit No. 10, and  
15 these were the degrees --

16 THE COURT: Certificates?

17 MR. GARLAND: -- of the last witness.

18 THE COURT: Any objection?

19 MR. MOULTRIE: No.

20 THE COURT: All right, Exhibit 10 is withdrawn.

21 MR. GARLAND: Your Honor, at this time I have a series of  
22 exhibits that I wish to proffer.

23 Defendant's Exhibit 23 is a tape about "Egipitian Statues and  
24 Idols," part of the publications that Dr. York has been involved  
25 in producing.

1 Defendant's Exhibit 27 is a videotape produced by Dr. York  
2 dealing with the pyramids.

3 Defendant's Exhibit 33 is simply one of the publications that  
4 is put out in cooperation with Dr. York, which is simply a remake  
5 of "The Prophet," Khalil Gibran.

6 Exhibit 18 is the "Ancient Egyptian Mystery of Language," one  
7 of the books prepared by Dr. York making the ancient Egyptian  
8 language easy to understand.

9 Defendant's 19, excuse me, I withdraw 19. It's a duplicate.

10 A series of pamphlets prepared by Dr. York dealing with  
11 different parts of generally the scripture of the Bible, the  
12 disciples of Jesus: Luke, Zebedee, Mary, John, the Physician,  
13 Mark.

14 THE COURT: What's the number on that?

15 MR. GARLAND: I'm going to give you the numbers.

16 Defendant's 32 is a pamphlet about Mary the Blessed Mother of  
17 Jesus.

18 Defendant's Exhibit 30 is about Matthew, Publican Disciple of  
19 Jesus.

20 Defendant's Exhibit 29 is about Luke, the Physician.

21 Exhibit 28 is about Mark, the Property Owner.

22 And Defendant's Exhibit 24 is about John.

23 Defendant's Exhibit 21 is a tape of the radio talk shows that  
24 Dr. York, where his sermons are carried on the local radio  
25 stations -- on a local radio station here in Macon. This is a CD

1 of some of those broadcasts.

2 Defendant's Exhibit No. 20 is the book "Jesus Found In Egypt."  
3 A book written by Dr. York, sold here and given to people who want  
4 -- sold to people who are interested in Jesus and religion.

5 Defendant's Exhibit 14 is a book entitled "Are There Black  
6 Devils," and we would proffer that Dr. York's writings are in  
7 describing the issue of whites or blacks being devils that his  
8 theme is no one wins the race in racism, and he points out that  
9 blacks who contend that whites are holding the blacks down are  
10 themselves black devils, that there're black devils and white  
11 devils but that racism is wrong and bad, and this book deals with  
12 the idea that devils are people who lead people into ways that are  
13 not wholesome, healthy, and law abiding.

14 Finally, this is Defendant's Exhibit 34, is a T shirt which is  
15 similar to many of the T-shirts that were prepared by Dr. York,  
16 sold in the community, the back of which have the doctrines of the  
17 Holy Seed Baptist Synagogue, which are recitations from the Bible,  
18 the Christian Bible from Revelations, Daniel, John, Thessalonians,  
19 and I can't read -- that's representative of the kind of  
20 merchandise that is sold in the community through the church or  
21 through the bookstores.

22 Those are the proffered documents we have at this time. Your  
23 Honor, I would like -- we would like at this time to call  
24 witnesses on behalf of Ms. Johnson.

25 MR. MOULTRIE: Excuse me, Your Honor, I also wanted to

1 ask some questions of Mr. Varmah before he concludes his  
2 testimony.

3 THE COURT: Step back up on the stand, please, sir.  
4 First of all, let me ask you about these last exhibits which have  
5 been proffered, any objection to those?

6 MR. MOULTRIE: No, Your Honor.

7 THE COURT: And I identify them -- and I think I have the  
8 correct numbers -- 23, 27, 33, 32, 18, 30, 29, 28, 24, 21, 20, 14,  
9 and 34.

10 MR. GARLAND: Thank you, Your Honor.

11 THE COURT: They are admitted without objection.

12 AHMADOU J. VARMAH

13 CROSS EXAMINATION

14 BY MR. MOULTRIE:

15 Q. Good morning, Mr. Varmah.

16 A. Good morning.

17 Q. Several of the publications that were entered into evidence  
18 included some publications called the "Georgia Informer?"

19 A. That's correct.

20 Q. Who publishes the "Georgia Informer?"

21 A. That is published by Mr. Herbert Dennard.

22 Q. And is Mr. Herbert Dennard a member of the Nuwaubian family?

23 A. Not at all.

24 Q. Now, do you know a Bruce Smith, Jr.?

25 A. The name sounds -- yes.

1 Q. You are also familiar with his brother Ahmed, correct?

2 A. Correct.

3 Q. And are you not the same Ahmadou Varmah that pulled a gun on  
4 Mr. Bruce Smith, Jr., in April of this year?

5 A. No. Mr. Bruce Smith, Jr., attempted to rob my bookstore,  
6 which is across from the Macon Auxiliary Police Station. The  
7 police officers were called in by my wife, they reported, I filed  
8 a police report at the Macon Police Department, and Mr. Smith -- I  
9 gave the license plate number when he attempted to rob my book  
10 store, and they tracked him down.

11 Q. So this is not the incident where you accused Bruce Smith,  
12 Jr., brother, Ahmed of publishing e-mails accusing Mr. York of  
13 molesting children?

14 A. No.

15 Q. And this was not the same incident in which Mr. Bruce Smith,  
16 Jr., reported that you pulled a gun on him and threatened to kill  
17 Ahmed Smith --

18 A. Had I done that, sir --

19 Q. Let me finish, please.

20 A. I'm sorry.

21 Q. Thank you. And this was not the same incident where you said  
22 that you would kill Ahmed Smith because he published those e-mails  
23 concerning the allegations that Mr. York was molesting children?

24 A. No.

25 Q. Thank you.

1 Q. You're welcome.

2 THE COURT: Further questions of this witness?

3 MR. GARLAND: No further questions.

4 THE COURT: You may step down, thank you.

5 MR. GARLAND: Your Honor, we wish to direct some  
6 testimony with respect to Ms. Johnson at this time.

7 THE COURT: That will be fine.

8 MR. GARLAND: And we would like permission to proceed by  
9 live testimony.

10 THE COURT: How many witnesses do you contemplate?

11 MR. JOHNSON: Just three, Your Honor.

12 THE COURT: All right, I'll be glad to hear those  
13 witnesses, call your first one.

14 MR. JOHNSON: Mrs. Bright.

15 THE COURT: Administer the oath to the witness, please.

16 DEPUTY CLERK: Raise your right hand, please. Do you  
17 solemnly swear that the testimony you're about to give is the  
18 truth, the whole truth, and nothing but the truth, so help you  
19 God?

20 THE WITNESS: Yes, I do.

21 THE COURT: Have a seat, please, and speak into the  
22 microphone so everybody can hear what you have to say.

23 ANGELA LORRAINE BRIGHT

24 having first been duly sworn, testified on

25 DIRECT EXAMINATION

1 BY MR. JOHNSON:

2 Q. State your full name, please.

3 A. My name is Angela Lorraine Bright.

4 Q. And where do you reside, Mrs. Bright?

5 A. I reside at 2627, and that's Conyers Road, and that's Rock --  
6 in Conyers, Georgia.

7 Q. How long have you lived there?

8 A. I have lived there approximately seven years.

9 Q. And what is your occupation?

10 A. I'm an advanced practice nurse, and I'm a full-time post  
11 graduate student.

12 Q. And how long have you been an advanced practice nurse?

13 A. I've been an advanced practice nurse approximately six months.

14 Q. Now, do you know Ms. Kathy Johnson?

15 A. Yes, I do.

16 Q. And how long have you known her?

17 A. I've known her since 1996.

18 Q. How did you come about knowing Ms. Johnson?

19 A. I was introduced to her by my husband, Dr. Bright.

20 Q. And that's since nineteen what?

21 A. 1996.

22 Q. Are you familiar with the campus in Eatonton?

23 A. Yes.

24 Q. Have you been there?

25 A. Yes.

1 Q. Have you lived there?

2 A. Intermittently, I have.

3 Q. Now, do you know of Ms. Johnson's reputation in that  
4 community?

5 A. Yes.

6 Q. And what is that reputation?

7 A. She is an advocate in the community very much on health,  
8 education, and welfare for children and the elderly and also  
9 women's health issues.

10 Q. Do you know of Ms. Johnson's reputation for truth and honesty  
11 in the community?

12 A. Yes.

13 Q. What is that reputation?

14 A. She is a God-fearing lady. She's always been very warm,  
15 approachable, has always been helpful in lending a helping hand to  
16 all.

17 Q. Have you seen Ms. Johnson around children in the community?

18 A. Yes, I have.

19 Q. Have you seen her around children on the campus?

20 A. Yes.

21 Q. Have you ever heard anyone say that Ms. Johnson ever molested  
22 any child?

23 A. No.

24 Q. Have you ever heard anyone say that Ms. Johnson ever  
25 mistreated any child?



1 A. No.

2 Q. If this Court granted bond to Ms. Johnson, what would your  
3 opinion be as to whether or not she would report back to this  
4 court at whatever time and date is set by this court?

5 A. My opinion is that she would report back to this court.

6 Q. Do you believe based on your relationship with Ms. Johnson  
7 that she's a threat to the community?

8 A. No.

9 Q. Do you think she's an asset to the community?

10 A. Yes, she is.

11 Q. You do not believe Ms. Johnson to be a flight risk?

12 A. No.

13 MR. JOHNSON: She's with you, Counsel.

14 MR. MOULTRIE: No questions, Your Honor.

15 THE COURT: Okay, you may step down, thank you, Mrs.  
16 Bright. Next witness, please.

17 MR. JOHNSON: Mrs. Solomon.

18 THE COURT: Administer the oath, please, to this witness.

19 DEPUTY CLERK: Raise your right hand, please. Do you  
20 solemnly swear that the testimony you're about to give is the  
21 truth, the whole truth, and nothing but the truth, so help you,  
22 God?

23 THE WITNESS: I do.

24 THE COURT: Have a seat, please.

25 ELLA LOUISE SOLOMON

1                   having first been duly sworn, testified on

2                                   DIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q: Please state your full name to the Court.

5 A: My name is Ella Louise Solomon.

6 Q: And Ms. Solomon, where do you reside?

7 A: I reside at 204 Shady Dale Highway.

8 Q: And how long have you resided there?

9 A: Approximately around seven years.

10 Q: And what is the relationship to where you reside in distance  
11 and where the complex -- where the campus is located in Eatonton?

12 A: Approximately about a half a mile or a mile and a half.

13 Q: Do you know Ms. Kathy Johnson?

14 A: Yes, I do.

15 Q: And how long have you known her?

16 A: Approximately I've known Ms. Johnson since about 1995.

17 Q: Now, what is your occupation?

18 A: I'm retired from the State of Ohio, state government worker,  
19 plus, I ran for county commissioner District Four of Putnam  
20 County.

21 Q: And how long have you been retired?

22 A: I've been retired approximately around 12 years.

23 Q: And what year did you run for county commissioner of Putnam  
24 County?

25 A: Two and a half years ago.

1 Q. Do you know of Ms. Johnson's reputation in the Eatonton/Putnam  
2 County community?

3 A. Yes, I do. I know Ms. Johnson very well. She helps me quite  
4 a lot. We do fund raisers. I'm a retired professional model. We  
5 put on fashion shows, we do very -- things in the community, in  
6 our church, with the children, with different organizations and  
7 minorities, and Star. We work very closely with the community,  
8 Ms. Johnson and I.

9 Q. Is Ms. Johnson also a member of the Eastern Star?

10 A. Yes, she is.

11 Q. Have you ever known Ms. Johnson to be accused anywhere in the  
12 community of mistreating a child?

13 A. No, I have never.

14 Q. Have you ever heard her being accused of molesting a child?

15 A. No, never.

16 Q. Do you have an opinion as to her reputation in the community  
17 as to truthfulness and honesty?

18 A. Very much so. She's very honest. She's very truthful. We're  
19 kind of strict sometime because I'm strict. With the Eastern  
20 Stars, if everybody knows the Eastern Stars, we have to be  
21 professional women. We have to walk right. We have to talk  
22 right.

23 Q. And what is Ms. Johnson's reputation in the community for  
24 being peaceful and law-abiding?

25 A. Matter of fact, she's very peaceful; she's very law-abid

1 Q. If this Court granted bond to Ms. Johnson, what is your  
2 opinion as to whether or not she would return here whatever date  
3 and time that the court has set for a hearing?

4 A. Absolutely, she would return.

5 Q. You do not consider her to be a flight risk?

6 A. No, I do not.

7 Q. Do you consider Ms. Johnson as being dangerous or a threat to  
8 the community?

9 A. No, I do not.

10 MR. JOHNSON: Counsel, the witness is with you.

11 MR. MOULTRIE: No questions, Your Honor.

12 THE COURT: You may step down, thank you very much, Ms.  
13 Solomon. Next witness, please.

14 MR. JOHNSON: Mr. Fred Johnson.

15 THE COURT: Administer the oath, please, to the witness.

16 DEPUTY CLERK: Raise your right hand, please. Do you  
17 solemnly swear that the testimony you're about to give is the  
18 truth, the whole truth, and nothing but the truth, so help you  
19 God?

20 THE WITNESS: I do.

21 FRED JOHNSON

22 having first been duly sworn, testified on

23 DIRECT EXAMINATION

24 BY MR. JOHNSON:

25 Q. State your name, please, sir, to the Court.

1 A. Fred Johnson.

2 Q. And, Mr. Johnson, where do you live?

3 A. Covington, Georgia.

4 Q. How long have you lived there, Mr. Johnson?

5 A. A little over five years.

6 Q. And what is your occupation?

7 A. I'm retired.

8 Q. From where?

9 A. The New York City Fire Department.

10 Q. I'm sorry?

11 A. New York City Fire Department.

12 Q. And how long were you with the New York City Fire Department?

13 A. 22 years.

14 Q. And how long have you been retired?

15 A. 18 years.

16 Q. Now, you know Ms. Kathy Johnson; do you not?

17 A. Quite well.

18 Q. And she's related to you, isn't she?

19 A. She's my daughter.

20 Q. She's your daughter. And you love your daughter, don't you?

21 A. With all my heart.

22 Q. And if this Court granted bond to your daughter, do you  
23 believe that she would report back to this court on whatever date  
24 and time that the court may set?

25 A. Absolutely.

1 Q. Do you consider your daughter a risk or a danger to the  
2 community?

3 A. No.

4 Q. Have you ever lived on the campus there in Eatonton at any  
5 time?

6 A. Yes, I had the pleasure of living there.

7 Q. During that time did you ever hear anybody make any statements  
8 about your daughter to the effect that she was mean and hard and  
9 cruel to children?

10 A. Never.

11 Q. Have you ever heard anybody say anything about her molesting  
12 any child?

13 A. Never.

14 Q. In that community of Putnam and Eatonton, Georgia, where you  
15 lived and where you observed your daughter, have you an opinion as  
16 to what her reputation is in that community, that is, what other  
17 people think about her?

18 A. Very highly. She's a very wonderful person, and people that  
19 meet her, they just love her.

20 MR. JOHNSON: The witness is with you, Counsel.

21 THE COURT: Any questions?

22 MR. MOULTRIE: No, Your Honor.

23 THE COURT: Mr. Johnson, you may step down, thank you,  
24 sir. Further witnesses on behalf of either of the defendants or  
25 further proffers?

1 MR. GARLAND: A further proffer, if I may. I would like  
2 to ask all of the people who have come here to testify on behalf  
3 of the good character of the accused, Kathy Johnson or Reverend  
4 York, please stand. Your Honor, I can have them identify  
5 themselves, or I can submit a list. It would be pretty easy for  
6 me to have them give their names.

7 THE COURT: I note the presence of all those here, some  
8 of whom I believe have already testified certainly. I don't know  
9 that it's really necessary. It is a substantial number, and I  
10 take note of that.

11 MR. GARLAND: Thank you, Your Honor.

12 THE COURT: You may be seated, thank you.

13 MR. GARLAND: We have nothing further.

14 THE COURT: Anything further to be presented on behalf of  
15 the government in this matter?

16 MR. MOULTRIE: No, Your Honor.

17 THE COURT: All right, it's lunch time. What I would  
18 like to do is take a lunch break at this time to give counsel an  
19 opportunity to prepare their legal arguments to me, and we'll take  
20 that up right after lunch at which time I will make a decision as  
21 to the motion filed by the government.

22 The burden in this case, in this hearing, is upon the  
23 government to establish that there's no condition or combination  
24 of conditions of release which will assure the appearance of these  
25 defendants and/or the safety of the community as those terms have

1 been defined.

2 So I will expect legal argument from both government's counsel  
3 and defense counsel. The government would have the right to both  
4 open and conclude since that burden is upon the government, and  
5 they may deal with that as they see fit.

6 The time is almost noon. I have, believe or not, other  
7 matters to deal with besides this case, as I'm sure most folks  
8 here do. I would like to start back at 2 o'clock to give me  
9 enough time to take care of some other matters. That should  
10 certainly give counsel sufficient time to prepare their remarks in  
11 an orderly fashion, and I'll be anxious to hear their remarks as  
12 to how the law applies to the facts which they believe have been  
13 established. So we will take our break for lunch at this time and  
14 see everybody back here at 2:00 p.m.

15 (RECONVENED; ALL PARTIES PRESENT)

16 THE COURT: We are continuing this afternoon at 2:00 p.m.  
17 on the 14th day of May, 2002, with the detention hearing in the  
18 case of United States of American versus Dwight D. York and Kathy  
19 Johnson, number 5:02-CR-27. We are at the stage of proceedings  
20 now for legal argument to be made by counsel. I note that Mr.  
21 Garland is on his feet, so I assume he has something he wishes to  
22 say.

23 MR. GARLAND: Yes, Your Honor. During the lunch -- as  
24 you know we recently entered this case, and it involves a lot of  
25 evidence and information. We discovered that there were two



1 medical doctors, one of whom testified today, Dr. Kimbrough, and a  
2 Dr. Thompson and a Nurse Bright, who regularly gave physicals to  
3 all of the children on a regular basis out there in this community  
4 and on the campus. I would move the Court to allow me to reopen  
5 very briefly to put them up on a very limited point that they  
6 found no evidence whatsoever of child abuse, and they did routine  
7 examination on the children that lived out there on these  
8 premises. And, of course, we don't know who the informants are,  
9 but we would offer those -- or I would offer to proffer that.

10 THE COURT: Comments from the government's counsel?

11 MS. THACKER: Your Honor, the United States would object  
12 to reopening in terms of them putting on these medical doctors in  
13 terms of relevance because there's no way to know which children  
14 the doctor may have examined in terms of who the victims are or  
15 what types of examinations those were.

16 THE COURT: Further comment?

17 MR. GARLAND: No, Your Honor. Since the government  
18 decides to hold back who they are. This is the only way we can  
19 confront our accuser.

20 THE COURT: I will let you put the doctors up for the  
21 limited purpose. I don't see any need to have cumulative  
22 testimony to that effect, if you can get the one that you wish to  
23 present evidence on the stand by way of testimony, and you may  
24 proffer additional matter on behalf of others.

25 MR. GARLAND: Dr. Kimbrough.

1 THE COURT: Dr. Kimbrough, you're still under oath, if  
2 you'll have a seat on the witness stand, please.

3 DR. ROBERT KIMBROUGH

4 having previously been sworn, testified on

5 DIRECT EXAMINATION

6 BY MR. GARLAND:

7 Q. Dr. Kimbrough, you previously were placed under oath and  
8 identified yourself?

9 A. Yes, sir.

10 Q. In your position as a license medical doctor in the State of  
11 Georgia, what role did you play in examining the children who live  
12 out in the community at what has been referred to as Tama-Re?

13 A. Myself and other members of the medical team routinely  
14 examined all the children that lived on the premises, complete  
15 physical examinations, and we also addressed any injuries whenever  
16 they came up from time to time.

17 Q. You said complete physical examinations?

18 A. Well, limited physical examinations, because we don't have all  
19 the equipment to do a complete physical exam, but what's  
20 considered complete for children of that age group.

21 Q. Now, Dr. Thompson, is he one of the other licensed medical  
22 physicians with the State of Georgia who worked with you?

23 A. Yes, he is.

24 Q. And he's present here in the courtroom. Dr. Thompson, would  
25 you stand up, please. All right, thank you.

1 And did you observe him also doing those physicals?

2 A. Yes, I have.

3 Q. And did you have a nurse also assist?

4 A. Yes, we have.

5 Q. And that's Nurse Bright, and she is also here?

6 A. Correct, she's one of the nurses, correct.

7 Q. Did you or Dr. Thompson or Nurse Bright ever find any evidence  
8 of child abuse or child molestation in connection with the  
9 examination of the children out there?

10 A. Absolutely not.

11 Q. And for how many years have you been doing it?

12 A. Since 1994.

13 MR. GARLAND: That's all I have for the witness.

14 THE COURT: All right, cross examination by government's  
15 counsel?

16 MS. THACKER: Just a couple of questions, Your Honor.

17 THE COURT: Okay, Ms. Thacker.

18 MS. THACKER: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. THACKER.

21 Q. Doctor, you did general examinations of these children; is  
22 that correct?

23 A. Correct.

24 Q. You weren't looking -- doing clinical forensic examinations  
25 looking for child sexual abuse; is that correct?

1 A. No; we were not. Correct.

2 MS. THACKER: Thank you.

3 THE COURT: Additional questions, Mr. Garland?

4 MR. GARLAND: No additional questions, Your Honor.

5 THE COURT: All right, you may step down, thank you,  
6 Doctor.

7 MR. GARLAND: We would proffer that the testimony of Dr.  
8 Thompson and Nurse Bright would be the same.

9 THE COURT: Okay. The proffer will be considered by the  
10 Court. All right, that brings us back to where we were when I  
11 came through the door, and that is for legal argument this  
12 afternoon. At this point the attorneys will address the evidence  
13 which has been presented and what they believe it has shown to the  
14 Court and any other legal arguments they wish to make.

15 As I indicated earlier, the government has the right to both  
16 open and conclude since the burden is upon the government to  
17 establish that there's no condition or combination of conditions  
18 of release which will assure the appearance of the defendants  
19 and/or the safety of the community as those terms have been  
20 defined in court decisions. Who will speak for the government?

21 MS. THACKER: I will, Your Honor, and the United States  
22 would waive the opening as part of its closing at this time.

23 THE COURT: Okay, Mr. Garland, the ball is in your court.

24 MR. GARLAND: May it please the Court, as the Court  
25 indicated to us right before lunch that the burden is on the

1 government to show no condition or combination of conditions would  
2 assure the attendance of the defendant or that prevent him from  
3 being a danger to the community.

4 First I ask the Court to look at this in full light of the  
5 presumption of innocence which applies to the accused in this  
6 case. It is particularly important in a case where people are  
7 controversial people, where they espouse beliefs that are  
8 different from ordinary and routine beliefs, that the benefit of  
9 the presumption of innocence be accorded to them because it is  
10 those very people that throughout the history of this country have  
11 been subject to false accusations generated sometimes by politics,  
12 sometimes by envy, sometimes by hatred.

13 Now, in this case, which boils down to a child molestation  
14 case, I would point out that in that weight of the evidence issue  
15 presented here there has been presented no evidence of the  
16 essential element to create federal jurisdiction; that is, that if  
17 minors traveled in interstate commerce, there was no evidence  
18 presented that that transportation was for sexual purposes.

19 That is an essential element of the offense, and on that  
20 element alone it is unlikely, based on what we have heard, that  
21 the government could succeed in light of the agent's testimony  
22 that no one had told that the children were transported for sexual  
23 purposes. That is important because the failure of such proof is  
24 that if a federal case could exist if a child is molested and is  
25 ever moved in interstate commerce, the mere fact that the child

1 had moved and knew the alleged molester before and after would be  
2 sufficient to create federal jurisdiction of what is normally a  
3 state case.

4 But in connection with child molestation cases, the history of  
5 prosecutions of child molestations cases are replete with false  
6 allegations of molestation and the higher profile the entity or  
7 the people are, the more people they have dealt with, the more  
8 opportunities there are for people to have motives.

9 Now, those motives might be growing out of personal  
10 relationships, such as romantic relationships. They may grow out  
11 of hatred, they may grow out of revenge, they may grow out of  
12 political motivations, and they may be inchoated for many reasons,  
13 and they may be created where people hope to obtain monetary  
14 reward.

15 So though a child molestation is a terrible offense, the fact  
16 that the accusation is leveled should not in any way dispense with  
17 the right to bail in a free society.

18 Now, there is no evidence that at any time during these  
19 allegations molestations did anyone ever make a complaint, an  
20 outcry, or was there ever a circumstance where anyone reported a  
21 suspicion or otherwise. We have a historical, apparently, claim  
22 of child molestation. So it misses any outcry.

23 So when it comes to this case, this is a case that will be  
24 contested by a plea of not guilty, and we believe that therefore  
25 the issue of guilt should in no way be presumed in looking at what

1 you have heard presented in hearsay about alleged allegations.

2 However, Your Honor, to speak to the issue of is there  
3 evidence of danger to the community, I know this Court is  
4 thinking, well, if this man was molesting children and he's  
5 placed back in the community, is he a danger to the community, and  
6 we in no way concede that the proof supports that.

7 However, we would offer as a condition of a bond a restriction  
8 the defendant, Malachi York not be around children or in their  
9 presence under the age of 18 years of age. As to his own  
10 children, we would offer the condition that he not be around them  
11 unless they are accompanied by the parent of Ms. Johnson, Mr.  
12 Johnson, who you heard testify here, who is a retired New York  
13 City police officer who lived at this location.

14 THE COURT: Fire department.

15 MR. GARLAND: Excuse me, fire department. -- and/or Dr.  
16 York's sister, Ms. Dale York. We would offer that he be kept --  
17 that his location be restricted to where he resides to his  
18 residence in Athens, Georgia, and that a restriction be placed  
19 upon him that he could not visit or go around the community of  
20 referred to in Putnam County and which the people there generally  
21 refer to as Tama-Re, the community that was pyramids and four  
22 hundred and something acres.

23 We also offer that Your Honor could impose a condition that he  
24 wear an ankle bracelet and be monitored with a suggestion that he  
25 be in his home by 9 p.m. and remain there until 6 a.m. Also we

1 would suggest that he surrender his passport, and we would suggest  
2 a bond in the amount of a hundred thousand dollars, along with the  
3 other restrictions that Your Honor normally imposes on travel to  
4 the Middle District with the exception of we would ask permission  
5 for him to travel to Atlanta where both Mr. Johnson and I have our  
6 law offices to be able to confer with us, and with local counsel  
7 we might have in Putnam County or otherwise, but to Atlanta where  
8 those meetings would take place.

9 I would point out to Your Honor that there is no evidence that  
10 he is any risk of flight. The evidence offered was that there  
11 were Nuwaubian passports, but you can take a look at it and see  
12 that it's clearly a novelty passport, that it was a way of  
13 identifying people who were part of the committed community,  
14 committed to these Christian religious values that were being  
15 reported there, and to the studies which indicate that when you  
16 think of Jesus you don't think in colors, but that it's equally --  
17 that people of different races could see Jesus in different  
18 colors, and that's part of what is in the materials so that  
19 everyone was being taught that there was a faith that was  
20 essentially color blind, and that in one of his books, as I read,  
21 as he preached, there's no -- no one wins the race in racism.

22 So what we have is that he changed his name legally in 1983  
23 and has been known as Malachi York and that he's had some other  
24 names in connection with the Shrine and masonry work and in  
25 connection with their religious studies. But it all relates to



1 the history of the tribes of Egypt, the history of the native  
2 American tribes, and there is nothing about those appellations,  
3 which are common place in the Shrine that indicates any danger or  
4 risk of flight.

5 There was a mention that he had traveled to the Sudan 25 or 30  
6 years ago. There's no evidence he has been back to the Sudan,  
7 holds any kind of Sudan passport whatsoever.

8 There is contested claim that he engaged in these acts, a  
9 claim in which he asserts his innocence, but there has been  
10 nothing, no evidence shown to clearly show that conditions could  
11 not fully protect the community. The teachings that are contained  
12 in these publication are wholesome, healthy, proper to the proper  
13 order of a society. They do not promote violence. They promote  
14 caring, they promote love, they promote honesty, they promote  
15 cleanliness. Very simple rules that help keep people off of  
16 drugs, off of alcohol.

17 The government's presentation in its effort to say he had all  
18 these organizations, claimed he had responsibility and control  
19 over independent Shrine organization, and listed that as one of  
20 the names of one of his successive organizations. He started out  
21 as a Muslim, he became a Hebrew, and he switched and became a  
22 Christian and has been teaching the Christian doctrine since that  
23 time, which is before he came to the State of Georgia.

24 You've also heard of a community of support. I would be proud  
25 if I had to seek a bond to have doctors, neighbors, people who've

1 lived next to me, people who've worked with me, young men that I  
2 had helped raised that went on to get doctors degrees in divinity  
3 and masters degrees. We have had policemen. You heard one  
4 policeman say that he was inspired to become a policeman by Dr.  
5 York. We've had other policemen who testified:

6       So none of those people corroborate the hearsay claim of the  
7 agent who claimed that Dr. York told people when to have sex and  
8 when not to have sex. These are people that lived with him. Or  
9 that told them when to go and come, or told them what they could  
10 eat when the very doctrine he espouses said, I don't tell you what  
11 to eat, I don't tell you what to do.

12       So the general, broad-based theory obviously has been received  
13 by someone who has animus toward -- from someone who has animus  
14 toward Dr. York and his teachings, and when people have animus  
15 they see and create theories that often times don't bear out under  
16 the scrutiny.

17       Now, all of these people have been there, lived there, seen  
18 him, been around him, and then finally, Your Honor, here are the  
19 doctors who were examining the children who are there with him and  
20 none of them show any signs of child molestation.

21       So for all those reasons and with those conditions we do not  
22 think the government has met its burden by clear and convincing  
23 evidence either to show he's a danger to the community or that he  
24 is a risk of flight.

25               THE COURT: Thank you, Mr. Garland. Mr. Johnson, you

1 will address matters on behalf of Kathy Johnson?

2 MR. JOHNSON: That's correct, Your Honor.

3 THE COURT: Okay.

4 MR. JOHNSON: If it pleases the Court, and I'll try not  
5 to be redundant, if it pleases the Court, but I state here in my  
6 place and for the record that the burden, again, is on the  
7 government. The Court made that decision earlier.

8 And if it pleases the Court, Ms. Kathy Johnson, who loves her  
9 husband very much, is asking this Court for a bond, and she's  
10 doing so because -- and I don't know whether she's subsequently  
11 entered her plea of not guilty -- but because the government has  
12 failed to show this Court why she should not have one, and the  
13 rules and regulations have been established.

14 Some 43 year ago, Your Honor, I decided to go into the law and  
15 to practice law, and one of the tenants that drove me to that  
16 decision was the principle of law which says that in this system  
17 of justice a person is innocent until proven guilty. That is the  
18 foundation of our legal system, that principle, and that applies  
19 to this hearing or any criminal hearing in which a defendant may  
20 appear.

21 So I think we start out with the presumption that a person is  
22 innocent until proven guilty, but we also start out with the  
23 presumption that people will obey the law. That's the  
24 presumption. And Ms. Kathy Johnson believes that.

25 I have looked at the evidence, and I've looked at the

1 indictment and the affidavit, and then I looked at the duties of  
2 the government to prove that she is not worthy of a bond, and I  
3 ask the Court to look at the pre- service sentencing report, and  
4 in that report it asks the question, are there any -- have there  
5 been -- is there a criminal record of this defendant, Ms. Kathy  
6 Johnson, and the record speaks loud and clearly, no, there's no  
7 criminal record. First time she's been in court for a criminal  
8 offense is in this instance.

9 Does it have any meaning. I think it does, Your Honor.

10 Ms. Johnson is 33 years of age and no criminal record in a society  
11 that we have today in which it's so easy intentionally or  
12 unintentionally to get a criminal record. Does she have a stake  
13 in this community. Yes, she does. And her stake in this  
14 community is as deep and as rooted and is the stake of her father,  
15 and her stake in this community is as deep and as rooted as the  
16 stake of the people that she associates with, like Mrs. Bright, and  
17 others that she meets with every day as a member of the  
18 organization in which she performs weekly and daily services to  
19 the community, the Shriners.

20 I ask the Court to recall the witnesses that testified on her  
21 behalf, Mrs. Bright, who was a graduate nurse, and, Judge, you  
22 well know that you can determine -- you can believe what the  
23 witness says, total amount of what the witness said, all of it or  
24 none of it, and judge it's demeanor and her demeanor, but  
25 Mrs. Bright sat there calm, deliberate and honestly stated to this

1 Court that out of eight years she's known Ms. Johnson, she does  
2 not consider her a risk not to return to court. She is not a  
3 flight risk, that she was not a person who she considered to be a  
4 danger to the community.

5 And what must the government show. The government has to show  
6 that she is a danger to the community, that there a propinquity or  
7 a notion for her to flight. The government hasn't done that. But  
8 the witnesses who came forth before this Court who knew her very  
9 well in the community in which she lived has said to this Court,  
10 no, she's not a risk, no, she's not a threat to the community, and  
11 the government had an opportunity to cross examine every witness  
12 to try to show to this Court that the witness was not telling the  
13 truth. The government had that opportunity. The government did  
14 not take it. And the three persons that testified, Mrs. Bright,  
15 Ms. Solomon, and her father sat there and told the Court what they  
16 thought about Kathy Johnson.

17 Now, in the government's case there is not a scintilla of  
18 evidence against Ms. Johnson that she was in possession of any  
19 firearms, not a scintilla of evidence against Ms. Johnson that she  
20 was in possession of any pictures or tapes or any other artifact  
21 that would have been children. There's not a scintilla of  
22 evidence that Ms. Johnson had any amount of money at all.

23 And I ask the Court, again, to look at the pretrial service  
24 report. The pretrial service report states as it relates to her  
25 health that she has multiple sclerosis. I ask the Court to take

1 that into consideration in the Court's ruling as to whether or not  
2 she should have a bond based also on a failure of the government  
3 to prove otherwise.

4 Her criminal history as I've indicated to the Court is  
5 non-existing. If you look at the indictment, Your Honor, you will  
6 see that Kathy Johnson is named in only one count of the  
7 indictment. And the count of the indictment states that she aided  
8 and abetted. That's the charge against her, aiding and abetting,  
9 bringing someone across the state line.

10 Your Honor, the charges itself does not preclude the hopes and  
11 the ambition of this defendant to get a bond. The charge itself  
12 is a vehicle that brought us to this court, and then the evidence  
13 in this court should determine whether or not this defendant will  
14 get a bond, but not the fact that she is charged as it is in count  
15 one should make that determination. She's not charged in count  
16 two, three, or four, if it pleases the Court.

17 Now, Your Honor, if we look at government motion for detention  
18 hearing, the government checked serious risk the defendant will  
19 flee, but there's not one iota of evidence, not one person has  
20 taken that stand for the government and have given testimony to  
21 this Court that that defendant, Ms. Johnson, would flee, not one.

22 The government checked also the serious risk of obstruction of  
23 justice. But there is not one scintilla of evidence, not one  
24 witness have taken that stand that said that this defendant will  
25 obstruct justice.

1           Now, I guess I'm from the old school, Your Honor, I always  
2 thought that allegations without proof was to naught. That's what  
3 we have here. The government's detention hearing states that  
4 defendant -- that safety of any other person and the community as  
5 the reason for detention. The evidence is that Ms. Johnson has  
6 been a good citizen, believable in her community. No evidence at  
7 all -- and that she's not feared by anyone in her community.

8           There's no evidence that if the Court grants Ms. Johnson a  
9 bond that the safety of anybody in the community would be in  
10 danger. To the contrary, it is believed by those people who  
11 testified for her that that would not be the case.

12           If the government has not been successful in proving the  
13 things that they checked off here, I submit to the Court that  
14 Ms. Johnson deserves the consideration of this Court in granting  
15 her a bond.

16           Now, as it relates to the conditions, Ms. Johnson will adopt  
17 the condition that was enumerated in this court by Attorney  
18 Garland except for the leg brace. Other conditions, if it please  
19 the Court, we would accept.

20           Your Honor, there is a belief that justice in this system is  
21 paramount and has no equal anywhere in the world. I believe that  
22 to be so. We ask this Court to look at the government's case and  
23 determine whether they have legally carried the burden, and if  
24 not, we ask them to give bail to this defendant.

25           And the thing that is most striking about our judicial system

1 is that we have an impartial arbitrator like Your Honor, who,  
2 though, is in the presence of the government far more times than  
3 this poor defense attorney, but not withstanding that, the rock  
4 bottom foundation of our system is one in which that arbitrator  
5 looks at us as if he saw us for the first time in this hearing and  
6 make a judgment based on what has come before this Court at this  
7 time, and based on that judgment this defendant accepts the ruling  
8 graciously of this Court. Thank you.

9 THE COURT: Thank you, Mr. Johnson. Closing argument  
10 from the government, Ms. Thacker.

11 MS. THACKER: Thank you, Your Honor. Your Honor, it's  
12 position of the United States that both defendants in this case  
13 should be detained, first of all pursuant to 18 U.S.C., Section  
14 3156(a)(4)(c), the offenses with which they are charged are crimes  
15 of violence, but beyond that, Your Honor, in considering all of  
16 the factors set forth in Section 3142 with regard to this  
17 detention hearing, that is, the weight of the evidence, the  
18 history and characteristics of both the defendants and the  
19 offenses with which they're charged, the criminal history, and the  
20 nature of the offenses, it's the position of the United States  
21 that there is no condition or combination of conditions that could  
22 be imposed on these defendants that would assure both their  
23 appearances and safety to the community, and the United States has  
24 met the burden in that regard.

25 To begin with the very nature of the offenses with which they



1 are charged implicates both risk of flight and danger to the  
2 community. The crimes charged are themselves interstate in  
3 nature. But more importantly, Your Honor, in terms of the nature  
4 of the offense is the risk of safety to the community by releasing  
5 these defendants on bond. The United States is concerned with the  
6 safety of the children, the victims in this case, past victims  
7 current victims and potential victims as well as witnesses.

8 With all due respect, Your Honor, to some of the witnesses who  
9 testified today in support of the defendant they simply cannot  
10 speak to the crimes that were perpetrated against these children  
11 by these defendants behind closed doors.

12 As Senator Brooks rightly recognized, this sort of activity,  
13 criminal sexual crimes against minors would be something you would  
14 expect the defendants to conceal from law abiding citizens.

15 So although the men that testified today cannot speak to the  
16 crimes perpetrated against the children, the victims can. And  
17 Special Agent Jalaine Ward testified that approximately 18 victims  
18 have told what happened to them at the hands of these defendants.

19 These children, as Agent Ward testified, have told law  
20 enforcement that Defendants York, this man that they were taught  
21 to see as a leader, as a God-like leader and father to them,  
22 separated them from their parents, and notably, Your Honor, no one  
23 refuted the fact that the children are separated from their  
24 parents on the Eatonton complex.

25 This man separated them from their parents and these victims

1 have told law enforcement that he, as well as Kathy Johnson,  
2 engaged in a long-term consistent, repeated, and ongoing pattern  
3 of sexual abuse of minors that included molestation ranging from  
4 fondling, oral sex, anal sex, and vaginal sex of minors ranging in  
5 age from as young as four years up to 18, both boys and girls,  
6 Your Honor. These 18 victims have identified an additional at  
7 least approximately 15 more victims, bringing the total, as Agent  
8 Ward testified, to 30 to 35 victims over the course of the years.

9 These confidential witnesses and victims know of these other  
10 victims because the sexual activities engaged in were often in  
11 group situations with several children engaged in sexual  
12 activities with Defendants York and Johnson. And these sexual  
13 activities with these minors over the years did not stop. They  
14 only stopped when the victims were able to leave, ultimately leave  
15 the compound and begin to tell law enforcement, some of them as  
16 recently as spring of 2001.

17 They did not stop with the cries of CWs 3 and 4 as Jalaine  
18 Ward testified about yesterday when these young girls were four  
19 and eight years old and were being anally assaulted by Defendant  
20 York. They did not stop when, as Agent Ward testified the  
21 children tried to hide at times from Defendant York.

22 And notably, Your Honor, Agent Ward testified to numerous  
23 instances of corroboration of what these several several victims  
24 have told law enforcement about, including what other victims have  
25 corroborated as well as some of the seized materials in the search

1 last week.

2 Although Agent Ward has not had the opportunity to look over  
3 the voluminous amount of evidence that was taken from the complex,  
4 there were numerous items of pornographic videos found in the  
5 York's residence and bedroom, which the victims said would be  
6 there that he used with these minor children to show them how he  
7 wanted them to perform.

8 Pictures of naked children, an animal print pillow that the  
9 children said was -- would be found in his residence and bedroom,  
10 and a pink panther stuffed animal with male genitalia attached.  
11 These are some of the corroborating items that were found in terms  
12 of what the victims have told law enforcement.

13 And, Your Honor, it's the position of the United States that  
14 this sexual molestation continues and continued up until the time  
15 Defendants York and Johnson were arrested, not just because of  
16 what the victims told us in terms of it doesn't stop until they  
17 are able to get themselves out of the situation, which no one  
18 would expect a child as young as eight years old to be able to do  
19 particularly when separated from parents who may not know what's  
20 going on, but as Agent Ward testified as recently as three weeks  
21 ago, April 23, there is a FBI surveillance video which captures  
22 Defendant York leaving a local restaurant with several young  
23 girls, some of them under age that some corroborating witnesses  
24 have told law enforcement previously that they saw York engaging  
25 in sexual activities with the same underage girls he was seen with

1 as recently as three weeks ago.

2 And, Your Honor, make no mistake about it, Kathy Johnson was  
3 an active participant in the criminal sexual activities that  
4 occurred against these several victims. As Agent Ward testified  
5 to a couple of examples with regard to Kathy Johnson, she not only  
6 brought children to Defendant York, but she engaged and  
7 participated in the sexual activity herself.

8 As Agent Ward testified, CW-8 told her that when he was seven  
9 years old and another young boy was approximately four years older  
10 than CW-8, making him about eleven, Kathy Johnson took these two  
11 boys to Defendant York, and Mr. York and Ms. Johnson engaged in  
12 sexual activity with these two minor boys, including oral sex.

13 With respect, again, to Kathy Johnson, Agent Ward testified  
14 that in 1996 there was a trip to Disney World, one of twenty trips  
15 to Disney World York has taken in the last four years in which he  
16 and Kathy Johnson took several minor aged girls approximately 13  
17 to 15 years old to Orlando, Florida, and this is the subject of  
18 counts three and four, Your Honor, and one of the cooperating  
19 witnesses, CW-3 advised that she observed York participating in  
20 oral sex, having a young girl perform oral sex on him in the  
21 presence of Kathy Johnson and that another young girl spent the  
22 night in the room with York.

23 And finally not only did Kathy Johnson participate in actual  
24 sexual activity, Jalaine Ward testified that the victims have told  
25 her that Defendant Johnson took pictures as well as videotapes of

1 York and others engaging in criminal sexual activity with minor  
2 aged victims.

3 Your Honor, another factor in connection with the safety of  
4 the community is the threats that Agent Ward testified about in  
5 connection with victims and witnesses that have been made by  
6 Mr. York. One victim told her that Mr. York threatened that he  
7 would kill her and throw her out behind the woods of the property,  
8 another victim, as Special Agent Ward testified yesterday, within  
9 just the last few months was on the complex when Mr. York  
10 threatened in connection with the sexual molestation allegations  
11 that anyone who talked needed to be quote "taken care of."

12 Significantly, Your Honor, there were firearms seized from the  
13 Eatonton complex in the search last week. Eleven of these in the  
14 residence of York and Johnson, and, York does have a felony  
15 conviction, Your Honor, which is further evidence of his  
16 willingness to violate the law since it is a criminal offense for  
17 a convicted felon to possess a firearm.

18 And with respect to Mr. York's criminal history, he does have  
19 five criminal convictions which notably, Your Honor, include a  
20 rape conviction. Mr. York pled guilty to the rape of a 13 year  
21 old girl in 1964. That, Your Honor, is how long this sort of  
22 criminal activity has been going on on his part. Children are at  
23 risk, have been so for a long time, and continue to be.

24 Mr. York also has a passport prior conviction in which he used  
25 a false birth certificate in an attempt to obtain a United States

1 passport. And, Your Honor, this is not insignificant in terms of  
2 risk of flight considering that not only does it show a  
3 willingness to defraud the United States, but also in light of the  
4 fact that he does have connections outside of the country in terms  
5 of his business in London and has used numerous names or aliases  
6 as listed in the pretrial services report. As well as the fact  
7 that as Agent Ward testified, he considers the Eatonton complex a  
8 sovereign entity.

9 Not only has Defendant York shown a willingness to violate the  
10 law and defraud the United States, Your Honor, but he does have a  
11 vast network of resources at his disposal in terms of flight. He  
12 has shops and stores and organizations around the country and  
13 around the world. As the pretrial services report lists, his net  
14 worth is approximately a little over 800 thousand dollars  
15 currently. The pretrial services report also indicates that he  
16 has a monthly income of approximately 14 thousand dollars.

17 In addition to that, Your Honor, Agent Ward testified that  
18 approximately 280 thousand dollars in cash was found in a metal  
19 suitcase in the York residence. In addition to that she testified  
20 that \$10,000 in cash was found on Defendant York at the time of  
21 his arrest.

22 And finally, Your Honor, again, as to Ms. Johnson for all of  
23 the same reasons that apply to Mr. York in terms of a flight risk  
24 and risk of safety to the community, apply to her as well. She  
25 has been side by side with Defendant York in these endeavors for

1 the past several years and was an active participant.

2 So, Your Honor, for all these reasons because there are no  
3 condition or combination of conditions that would satisfy the risk  
4 factors here it's the position of the United States that both  
5 defendants be detained.

6 With respect to the suggested conditions put forth by  
7 Mr. Garland and to a more limited extent by Mr. Johnson, the  
8 United States submits that that will not do it in terms of the  
9 risk of safety to the victims and potential witnesses in this case  
10 from threats, obstruction of justice, and ongoing crime.

11 The probation office simply would not have the capability to  
12 monitor someone twenty-four hours a day even if there is an ankle  
13 bracelet or home detention, they don't know who's coming in or out  
14 of that home or what's going on there, just simply that he is  
15 there. So that suggested condition would not satisfy the risk  
16 factors in this case, Your Honor.

17 THE COURT: Thank you. Okay, what I propose to do at  
18 this time, it is 10 minutes to three, I want to make sure that I  
19 give due consideration to all of the evidence that has been  
20 presented today. There are a number of items up here I would like  
21 to look at before I make any decision in this matter.

22 So what I'm going to do is recess until four o'clock, and  
23 that's about an hour and 10 minutes away, and I'll come back in at  
24 that point and deliver my decision as to whether the government's  
25 motion ought to be granted. I think that will afford me

1 sufficient time to look over what I need to see and to make  
2 findings that are appropriate for both Defendant York and  
3 Defendant Johnson in this case.

4 It will give me an opportunity to review my notes also so that  
5 I may consider all the evidence that has been presented in terms  
6 of the requirements of law, which, of course, I'm required to  
7 abide by. So I will take a recess at this time. I would suggest  
8 that the marshals remove the defendants from the courtroom and  
9 take them back upstairs, and we'll bring them back down at four  
10 o'clock. We'll be recessed until then.

11 (RECONVENED; ALL PARTIES PRESENT)

12 THE COURT: We are continuing now with the detention  
13 hearing, that is, the hearing on the motion of the United States  
14 seeking the pretrial detention of Defendants Dwight D. York, also  
15 known as Malachi Z. York, and Kathy Johnson, 5:02-CR-27. The time  
16 is 4:00 P.M.

17 I have duly considered all the matters placed in evidence as  
18 well as the argument of legal counsel and at this time I'm  
19 prepared to make my findings, but I will state that I have written  
20 out these findings and orders as to each defendant and what I have  
21 written will certainly supersede any remarks I might make, not  
22 that I don't plan to address things orally, but I usually find it  
23 better to place matters in writing for the benefit of those who  
24 are interested in cases and certainly for the benefit of those who  
25 have to deal with it on a legal basis.



1 First of all, let me say that we've heard testimony and seen  
 2 documentary evidence, and I have reviewed all of the documentary  
 3 evidence that was presented in the hearing today. We've seen this  
 4 evidence and heard this testimony setting forth what purports to  
 5 be the philosophy and/or the theology of Defendant Dwight York,  
 6 also known as Malachi York.

7 I want to make it very clear that it's not my intention in any  
 8 way whatever to denigrate or make fun of this philosophy/  
 9 theology, but I can't help but note and recall that many  
 10 historical figures have spoken and written in very lofty terms  
 11 setting forth their beliefs and their doctrines espousing high  
 12 ideals and demanding exemplary behavior on the part of themselves  
 13 and their followers only to later be condemned because they failed  
 14 to live up to these ideals by committing acts repulsive to what  
 15 they ostensibly demanded of themselves and others.

16 I think without doubt it can be noted that many of the most  
 17 hated autocrats this world has ever known have written in glowing  
 18 terms espousing their philosophies, espousing obedience to  
 19 authority and to the law, democratic ideals, et cetera, only to  
 20 later be exposed as quote "talking the talk, but not walking the  
 21 walk."

22 I think to a great extent that's what's been presented to me  
 23 in the courtroom today, and it's not unlike the situation which I  
 24 imagined existed in courtrooms earlier in previous years with  
 25 individuals like Jimmy Swaggart, Jim Jones, Jim Baker. They had

1 quite a few loyal followers. They let their followers down. That  
2 may ultimately be what the outcome of this case is. It may not  
3 be. That's not for me to say.

4 This is a very preliminary matter today that we're dealing  
5 with, but I did want to make that observation that it appears to  
6 me that despite all of the literature that I've looked over this  
7 afternoon and all that I've heard about the writings of Defendant  
8 York, that I believe that sometimes actions speak louder than  
9 words.

10 There are many words that have been written, and many lofty  
11 ideals which have been embraced on behalf of this community and  
12 put into print by him, but the testimony very clearly before the  
13 Court today and yesterday indicates that these allegations made  
14 against each of these defendants do have a basis in fact from the  
15 standpoint that they're numerous allegations made against these  
16 defendants over a long period of time and involving numerous  
17 individuals, male and female, under the age of 18.

18 It goes without saying that these allegations are very serious  
19 ones and that they can result in long term imprisonment if the  
20 defendants are ultimately convicted. With the return of a true  
21 Bill of Indictment by a grand jury the legal requirement of  
22 probable cause has been met, that is, there's probable cause to  
23 believe that the offenses charged were committed by these  
24 defendants.

25 I want to hasten to add, however, that the requirements which

1 must be met to establish probable cause are less stringent by a  
2 long shot than the requirement which must be met at trial. At  
3 trial the government will be required to proof these allegations  
4 beyond a reasonable doubt, the presumption of innocence will be  
5 with these defendants as they go to trial, and the entire burden  
6 will be upon the government to establish that the violations of  
7 law have occurred.

8       Nevertheless, it is abundantly clear to me from what I've  
9 heard that the weight of evidence against them, at least as known  
10 at this time, is strong, and I so find. The acts with which they  
11 are charged are reprehensible acts. They are acts which have  
12 apparently been going on for a long period of time and which in  
13 the view of this Court are very likely to continue if Defendant  
14 York is released from custody. He admittedly is the leader of the  
15 group occupying the campus in Putnam County, Georgia, and in my  
16 view his leadership position places him in a different category  
17 than Defendant Kathy Johnson.

18       She is charged in only one count of this indictment, and  
19 although her involvement appear to have been over a considerable  
20 period of time involving many minors, I view her risk of flight  
21 and danger to the community to be less than that of Mr. York.

22       I also recognize as is set forth in the pretrial service  
23 report that she is suffering from a medical condition for which  
24 treatment of various types may be required during the time that  
25 this matter will be pending before the Court, and I believe it to

1 be in her best interest and also supported by the findings I've  
2 previously made that conditions of release be granted to her, and  
3 that the government's motion seeking her detention be denied, and  
4 I will grant her a bond, and we'll discuss that in a just few  
5 moments after I deal with Mr. York and his situation.

6 I have made specific findings as to Mr. York and find that  
7 pretrial detention is required in his case. I applied the factors  
8 set forth in Title 18 of the United States Code, Section 3142(g),  
9 and I find that the government has established that pretrial  
10 ~~detention is necessary in this case to reasonably assure both his~~  
11 appearance in court and the safety of the community.

12 Although Defendant York certainly has significant family and  
13 business ties to the Middle District of Georgia and is  
14 well-thought of by those friends and associates who testified on  
15 his behalf at this detention hearing, other factors in my view  
16 compel pretrial detention.

17 Considering the nature of the allegations against him, as I  
18 previously noted, they are very serious allegations. They are  
19 allegations which can result in long term incarceration under  
20 provisions of federal guideline sentencing we have previously  
21 advised him at arraignment that based on what's known at this  
22 time, which certainly may change, the estimated sentencing  
23 guideline range for Mr. York is 135 to 168 months in prison in the  
24 event of a conviction or plea of guilty. Such a potential  
25 sentence in my view accentuates the risk of flight.

1 I find that the weight of evidence, primarily the testimony of  
2 Special Agent Jalaine Ward of the Federal Bureau of Investigation  
3 is strong. She testified that as to numerous instances of sexual  
4 abuse of numerous minor boys and girls, some as young as four  
5 years of age who were brought to Putnam County, Georgia from New  
6 York at the behest of Defendant York over a period of years  
7 beginning in 1993.

8 And for purposes of consideration of the issue of pretrial  
9 detention since this matter was addressed by Mr. Garland, I do  
10 ~~find that the jurisdictional requirement of law is satisfied by~~  
11 the return of a true Bill of Indictment by a grand jury in that  
12 there's probably cause to believe that offenses charged against  
13 Mr. York in the indictment occurred in the manner set forth  
14 therein. That certainly is not does preclude his attacking the  
15 jurisdiction of the court in later motions to be filed with the  
16 court.

17 I do note the criminal conviction record of Defendant York,  
18 and for clarification purposes I've heard the offense of rape  
19 attributed to him in 1964. I think technically from the  
20 information in the pretrial services report it is designated as  
21 third degree rape and was considered a fairly minor conviction.

22 He also has a conviction for possession of a false ID with  
23 intent to defraud the U.S. Government in the U.S. District Court  
24 for the Southern District of New York in 1988.

25 Significantly in dealing with prior conviction criminal

1 records I do note insofar as Ms. Johnson is concerned the absence  
2 of any criminal conviction record.

3 I consider that Mr. York would pose a danger to the community  
4 were he to be released from custody in the nature of continued  
5 contact with minors and his what has appeared to me to be a  
6 pattern over the years which has continued since at least 1993 to  
7 engage in illegal sexual acts with minors has become a pattern of  
8 behavior as best I can tell from the evidence presented.

9 I do find specifically that he poses both a serious risk of  
10 ~~flight and a danger to the community were he to be released from~~  
11 custody.

12 I have signed the order of detention pending trial and will  
13 remand him to the custody of the U.S. marshals to be held in a  
14 facility in accordance with the way we handle pretrial detainees.  
15 I'll leave this order up here to be filed with the Clerk.

16 I would like at this time to ask Defendant Kathy Johnson to  
17 come forward so that we may deal with conditions for her release  
18 at this time, if she would come forward with counsel.

19 Although the government has sought pretrial detention in this  
20 case, for the reasons I've already set forth, I am going to grant  
21 her release from custody subject to certain conditions. And I  
22 have given a great deal of thought of this and studied these  
23 matters before me in the pretrial services report and certainly  
24 take into consideration the arguments made on her behalf by her  
25 counsel, Mr. Johnson.

1           What I'm going to do in this case is to set the following  
2 special conditions. First of all, there will be a travel  
3 restriction. You will be restricted to the State of Georgia. You  
4 may travel anywhere in the State of Georgia you please, but can't  
5 leave the state without getting permission from the court first.  
6 That should alleviate any problem as far as going somewhere to  
7 talk with your attorneys or making any other court appearances  
8 that might be necessary.

9           The probation office is authorized to grant permission for  
10 ~~travel outside the state but she would have to go through them to~~  
11 request that. If for some reason they turn you down, your  
12 attorney would need to get in touch with me if he wished to  
13 contest that.

14           Secondly, you will be subject to supervision by the United  
15 States probation office while you're on release, subject to all of  
16 its rules and regulations, and you will also be subject to alcohol  
17 and drug screening and testing which is a fairly standard  
18 condition that is imposed by me.

19           I'll require you to surrender your passport if you have a  
20 passport, and Mr. Johnson can address that with government's  
21 counsel. I have no knowledge as to whether such a passport exists  
22 at this time, but if there is such a thing, I want it turned over  
23 to the probation office.

24           I'm also going to require that you not be in the company of  
25 any persons under the age of 18 years except for your own children

1 while you're under pretrial supervision.

2 Insofar as bond is concerned I feel that some security is  
3 necessary in this case given the nature of the allegations and the  
4 risk of flight which does always exist in any case, but in this  
5 particular case I believe a reasonable bond would be in the amount  
6 of 75 thousand dollars which shall be fully secured by a certified  
7 band check, money order, approved commercial bond, real estate or  
8 any other securities or sureties in accordance with the policies  
9 of this court.

10 Now, in addition to those special conditions, and we'll make  
11 sure you get a copy of this before you leave today, the general  
12 conditions imposed are as follows. First of all, you are directed  
13 as common sense would tell you not to violate the law while you're  
14 on release. Secondly, you're required to keep the court advised  
15 at all times of your address so that we can contact, and you need  
16 to make sure you stay in touch with your attorneys also. They  
17 cannot assist you properly if they don't know where you are. And  
18 thirdly, you are specifically ordered and directed by me to be and  
19 appear at all proceedings as directed by the court until this  
20 matter has been concluded.

21 Now, the order I'm signing today is the fairly standard form  
22 order that I use in virtually all cases, and it will remain in  
23 effect until one of the following things happens. If for some  
24 reason the government should dismiss the allegation against you,  
25 then you don't have to comply with the order of release any



1 longer. If you go the trial and you are found not guilty, that  
2 ends the case, and you don't have to comply with the order of  
3 release any longer. But if you go to trial and you're found  
4 guilty, or if you later enter a plea of guilty, the order I'm  
5 signing today will remain in full force and effect until such time  
6 as you report for the service of any sentence of incarceration  
7 should such be imposed upon you.

8 Now, on the back side of this order and on this particular  
9 order it's under the heading of part two entitled Advice of  
10 Penalties and Sanctions, and this simply tells what can happen if  
11 you violate the order. I don't contemplate your violating the  
12 order, but I am required to advise you of what could happen if you  
13 did.

14 There's a lot of information under that section. There are  
15 two things that I always point out to all defendants who appear  
16 before me. First of all, if should you violate any provisions of  
17 federal, state, or local law while you're on release, the  
18 government could bring you back into court and ask me to review  
19 the situation, they could ask me to change these conditions, they  
20 could ask me to increase the bond, but in light of the fact that  
21 they've already asked for your pretrial detention once, I suspect  
22 that's probably what they would ask the second time. So make sure  
23 that you don't violate any provisions of federal, state, or local  
24 law while you're on release, and you won't have any problem with  
25 that.

1           Secondly, let me advise you that I expect you to appear at all  
2 proceedings in the future. You need to understand very clearly  
3 that in the federal system there is a separate offense dealing  
4 with failure to appear. If you should fail to appear and if you  
5 should be indicted for that and be convicted of failing to appear,  
6 the judge is required to tack on additional time to any sentence  
7 you might get in the present prosecution. This a mandatory  
8 provision of law, and the judge is required to tack it on. It is  
9 a consecutive sentence, that is, in addition to anything that you  
10 might get should you be convicted on the underlying charges or  
11 charge made against you in count one of the indictment.

12           Now, I've signed this order, and I will have the probation  
13 officer go over this with you when we complete the proceedings  
14 this afternoon. There's a place for you to sign acknowledging  
15 that I've told you these things and promising to abide by these  
16 conditions, and then you and your attorney can determine what you  
17 need to do at that time to try to satisfy the monetary condition  
18 so you can be released from custody.

19           As I said, we'll provide you and your attorney also with a  
20 copy of this so that you will have that for future reference.

21           I do also note parenthetically in this case that apparently  
22 there are charges that have been lodged against each of these  
23 defendants in the state. So I would suggest to Ms. Johnson that  
24 before she posts any money in this case that she make sure she  
25 understands where she stands with Putnam County and any

1 prosecutions that they might have because the way this normally  
2 works, and I see this quite often, if there are state charges  
3 pending, if you are able to make your federal bond and be released  
4 they most likely would have a detainer placed against you if they  
5 don't already have it, I'm sure it would be forthcoming, and they  
6 would pick you up, and then you would be in state custody, and  
7 you'd have to go through a bond hearing there. Mr. Johnson can  
8 explain this further to you, and I'm sure he's very much aware of  
9 that situation, but this bond at least is in place so if you take  
10 care of the state charges, then it will be ready for you to  
11 execute and to be released from federal custody.

12 All right, I believe that takes care of all matters we need to  
13 deal with as far as any both Ms. Johnson and Mr. York are  
14 concerned. Anything further from you, Mr. Johnson?

15 MR. JOHNSON: Your Honor, if it please the Court, I've  
16 consulted with client and she does not have a passport.

17 THE COURT: Okay.

18 MR. MOULTRIE: Your Honor, one issue that the government  
19 wishes to raise with the Court is to consider imposing an  
20 additional condition, and that is that neither defendant make or  
21 attempt to make any contact with any of the potential victims in  
22 this case. I understand that the Court has restricted for the  
23 purposes of this hearing restricted the defense counsels from  
24 seeking any identifying information about the victims in this case  
25 but as Your Honor referenced there is a state indictment that's

1 also been filed, the government has not reviewed it, I don't know  
2 whether it contains information that may identify or indicate who  
3 the victims are additionally, although we did redact the affidavit  
4 that was provided to the defense it may be possible for them to  
5 put two and two together and make certain guesses about the  
6 identities of the victims such that it might be necessary, Your  
7 Honor, for that instruction.

8 THE COURT: Well, if it's a matter of public record, I  
9 don't see how only the two lawyers present could be restricted  
10 from learning it when the whole world could find out about it.

11 MR. MOULTRIE: Your Honor, it's not so much them finding  
12 out who the victims are, but we would ask the Court to consider  
13 instructing them not to make contact with the victims in this  
14 case.

15 THE COURT: Are you talking about the lawyers or the  
16 defendants?

17 MR. MOULTRIE: The defendants. The defendants and their  
18 -- any associates or family members of the defendants.

19 THE COURT: Well, I don't think I have any control over  
20 family members. They're not before the Court. As far as Mr. York  
21 is concerned he will be in detention. I can and will instruct Ms.  
22 Johnson that she is not to have any contact with any witnesses in  
23 this case. Of course, at this time she doesn't know who those  
24 witnesses are, so that would be very difficult to fashion.

25 MR. JOHNSON: And Your Honor covers the point where she's

1 not to have any contact with anybody under the age of 18.

2 THE COURT: Yes, sir. And that takes care of some of the  
3 people, but I imagine that there are some who are over 18 who are  
4 witnesses also, but that's not -- unless the government wishes to  
5 make known the names of those individuals who are to be  
6 restricted, it's a bit difficult for the Court to order that the  
7 persons not have contact just as a blanket matter. So I'll leave  
8 that up to the government to pursue if they wish to, but I will  
9 not deal with that any more today.

10 MR. MOULTRIE: I understand.

11 THE COURT: Anything further from you, Mr. Johnson?

12 MR. JOHNSON: No, sir, Your Honor.

13 THE COURT: Mr. Garland, anything further from you this  
14 afternoon?

15 MR. GARLAND: No, Your Honor.

16 THE COURT: All right, the copy of the detention order  
17 and of the order of release we'll make available to those who are  
18 interested so they that they may have copies to take with them,  
19 and I'll instruct my Clerk to make additional copies because this  
20 will be a matter of public record, and those in the media may pick  
21 up copies if they wish to do so. That will conclude this matter.  
22 We'll be in recess until further business brings us back.

23 (DETENTION HEARING CONCLUDED)

24

25

C E R T I F A T E

I, SALLY L. GRAY, CCR, UNITED STATES COURT REPORTER, CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

*Sally L. Gray*

SALLY L. GRAY, CCR

OFFICIAL U.S. COURT REPORTER

MIDDLE DISTRICT OF GEORGIA

*7-11-02*

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