

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF GEORGIA
3 MACON DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Case No. 5:02-CR-27-CAR
7 -Vs-)
8) Macon, Georgia
9 MALACHI YORK, et al,) December 30, 2003
10)
11 Defendant.)

12
13 HEARING IN COURTROOM
14 10:35 P.M.
15 BEFORE THE HONORABLE C. ASHLEY ROYAL
16 United States District Judge presiding
17

18 APPEARANCES:

19 For the Government: MAX WOOD
20 RICHARD S. MOULTRIE, JR.
21 STEPHANIE THACKER
22 For the Defendant: ADRIAN L. PATRICK
23 MANUBIR S. ARORA
24 BENJAMIN A. DAVIS
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Computer-Assisted Transcription

(December 30, 2003 - 10:35 A.M.)

(IN OPEN COURT FOLLOWING IN-CAMERA HEARING)

THE COURT: Good morning.

ALL: Good morning, Your Honor.

THE COURT: Now, the purpose of this hearing today is to discuss the two matters, motions so-to-speak, that I brought up last week at the pretrial conference, or the week before last at the pretrial conference, related to the possibility of having a closed trial and the possibility of a sequestered or an anonymous jury; and I will tell you that I'm not going to sequester the jury, except possibly for their deliberations, and I will decide about that at the appropriate time.

I will also tell you that I'm not going to have a closed trial. I have made arrangements to have a closed circuit television set up, and any spectators will be able to watch the trial of the case on the third floor by watching the monitor set up for the closed circuit television, and I think that satisfies any public trial requirements under the Sixth Amendment or the First Amendment. And even if I didn't do it that way, I think that circumstances of this case would justify having a closed trial.

So I've narrowed the issues a little bit for you here, gentlemen, in terms of what we're talking about and how we're going to proceed with the trial. I'll give you the opportunity to respond to that if you'd like to, and then we can also deal

with the matter of the anonymous jury.

Now, I've read the defense's response on the anonymous jury; and if the government sent one in, I haven't seen it, so I don't know.

MR. MOULTRIE: We didn't, Your Honor.

THE COURT: You did not?

7 MR. MOULTRIE: No, sir.

8 THE COURT: Okay. So that's why I didn't read it.

9 So I understand if there is any evidence or any
10 argument or anything that anybody would like to present at this
11 time, now is time to do that.

12 MR. PATRICK: Your Honor, if I may on behalf of the
13 defendant, Your Honor, we have a few things we would like to
14 present in terms of the case at this time. Do you want me to
15 stand at the lectern?

16 THE COURT: Well, you can just stay right there. I
17 can hear you fine.

18 MR. PATRICK: Thank you.

19 Your Honor, first of all, per my advice, Mr. Arora
20 will be handling a few of the legal arguments related to
21 opening the courtroom. I will make a few statements, but per
22 my advice, Dr. York has agreed to that.

23 THE COURT: That's fine.

24 MR. PATRICK: Your Honor, first of all, the Court has
25 affidavits that were attached to the notice that was received.

1 I wanted to address a few of those affidavits and a few issues.

2 First of all, Your Honor, there is no evidence
3 whatsoever that Dr. York, the defendant, participated in or

4 directed any form of flyers being distributed in the Brunswick
5 area, none whatsoever.

6 The affidavits, Your Honor, are from individuals that
7 we have no knowledge of. We don't know their history; we don't
8 know their criminal history; we don't know anything about these
9 individuals. They could be liars; we don't know.

10 Additionally, one of the affidavits, Your Honor, from
11 William Brunson, addresses that a man dressed in normal street
12 clothes came to him and gave him a flyer. That gives no
13 indicia that that was any organization related to Dr. York, Dr.
14 York, or anyone directed by Dr. York.

15 There is another gentlemen, James Hurlbutt (phonetic),
16 that stated he saw a group of people in Egyptian style costumes
17 and a man was handing out flyers. Your Honor, that's still not
18 any evidence that Dr. York himself or directed anyone to hand
19 out these flyers.

20 Technically, Your Honor, anyone could have been
21 handing out these flyers, and we would like to just emphasize,
22 Your Honor, that the defendant doesn't have any burden
23 whatsoever -- doesn't have any burden whatsoever to provide any
24 proof of anything.

25 And the burden, Your Honor, is on whoever is making

1 motion, and I think in this case it's the Court to establish
2 that there is evidence by whatever standard, preponderance or
3 beyond a reasonable doubt, that Mr. York in some way directed
4 or participated himself in the distribution of these flyers,
5 and that simply does not exist. There's absolutely no evidence
6 whatsoever.

7 We don't have the opportunity to cross-examine these
8 individuals that provided these affidavits, and I think -- and
9 so, thus, that's a violation of one of the rights we have even
10 if these affidavits are considered, and apparently they are
11 considered, so that's a violation of a constitutional right we
12 have.

13 And, additionally, Your Honor, I think there was some
14 statements at the previous hearing that there were individuals
15 passing out flyers or whatever.

16 Like I say, there is no burden on the defendant to
17 prove anything. There's absolutely no evidence whatsoever that
18 the defendant had any participation in, or indirectly any
19 participation in, the passing out of these flyers.

20 Thus, the defendant should not be punished by having a
21 constructively closed courtroom, which it will be our position
22 that that's what the Court is proposing. By having the
23 third-floor closed circuit T-V, that's a constructively closed
24 courtroom which violates the defendant's Sixth Amendment right
25 to a public trial and violates the public's first Amendment

1 right to have a right to view the trial.

2 So we're saying that's still in the same box, a
3 constructively closed courtroom. There's no evidence presented

4 whatsoever, Your Honor. I'm not sure who obtained the
5 affidavits, but they were obtained, and we don't have any
6 opportunity to cross-examine these witnesses, and there is no
7 establishment of their reliability.

8 Thus, our position is that any position as far as the
9 courtroom being closed, based upon this evidence, should be
10 void and that this Court should notice that there's -- no
11 burden of proof has been met whatsoever as far as the
12 defendant's involvement, and he shouldn't be punished.

13 I would like to point out that the defendant is Chief
14 of the Yamassee Native American Moors of the Creek Nation
15 Number 208/1999, BIA. It's not a religion; it's a tribe. A
16 lot of the statements before Your Honor have been related to
17 Nuwaubians or things like that, but the term "Nuwaupic" cannot
18 be defined. It cannot necessarily be related to the defendant,
19 and anything related to that, Your Honor, is disadvantageous to
20 the defendant.

21 But, Your Honor, the plain and simple point, we rely
22 on the briefs presented; we rely on the burden of proof that
23 anyone accusing the defendant has; and that the defendant has
24 no burden of proof whatsoever. We'd object to the closing of
25 the courtroom. We request that the public be able to come into

1 the courtroom to witness the trial.

2 And we object to the constructively closed courtroom,
3 which is by closed-circuit T-V, and we object to the anonymous
4 jury also, Your Honor, based on these reasons; and we stand on
5 that.

6 I think Mr. Arora, per my advice, will follow-up on my
7 argument.

8 THE COURT: All right. Well, let me point out one
9 thing to you, so you will understand this.

10 MR. PATRICK: Yes, sir.

11 THE COURT: You may be seated.

12 MR. PATRICK: All right.

13 THE COURT: I brought this up in the discussion about
14 the government's motion to restrict -- I don't remember exactly
15 the name of that motion. What was that, Mr. Moultrie?

16 MR. MOULTRIE: "Motion to Partially Close the
17 Courtroom."

18 THE COURT: "Motion to Partially Close the Courtroom."

19 And I think my statement was that I didn't think that
20 was enough, and I will tell you that, as far as the evidence is
21 concerned and my opinions about this matter, they're not simply
22 based on those two affidavits.

23 My understanding is that one of those men is a court
24 security officer in Brunswick, and the other one is a man who
25 has a furniture business down there who is well-known by

1 members of the court.

2 But there are also other affidavits that were attached
3 to the motion filed by the government, and there was other
4 information that was provided by the government in that motion,
5 and the Court is relying in part on that information, plus what
6 the Court knows about this case.

7 And, obviously, my concern was that after considerable
8 thought and effort on my part to move this case to a place
9 where there would be no pretrial publicity and that we could
10 get what I will call a "clean jury" in the sense that nobody
11 would have heard about the case and felt like I had achieved
12 that end until the Nuwaubians, as they are known in the
13 newspaper and as I understand to be the followers of Mr. York,
14 went down there and passed out these flyers, or whatever you
15 want to call it, in the parade.

16 And so it's not just any flyers that were passed out;
17 it was flyers about the trial of this case. And I'm afraid
18 that this action has had some impact on the jury, but I still
19 think we're going to find that there are a number of jurors out
20 of the many, many jurors that have been called in this case who
21 really don't know anything about it, and we will be able to
22 pick a jury.

23 MR. PATRICK: Your Honor, may I follow up with just a
24 few points briefly?

25 First of all, Your Honor, I think the Court, by

1 stating that individuals went down and passed out flyers in
2 Brunswick, you have to skip or negate the entire fact that
3 there was an article published in the BRUNSWICK NEWS prior to
4 any action being taken about flyers whatsoever.

5 And our information has revealed that -- by Ms. Sloan
6 (phonetic) that Sheriff Howard Sills was the one that spoke
7 with the editor down there. That's what our information has
8 revealed, which began the information about the trial in the
9 Brunswick area. And to our knowledge, there wasn't any
10 information prior to that point, and the Court's ruling
11 previously that that was an untainted area was correct at that
12 point.

13 But our information reveals this now. I don't know if
14 there's other information that we have, but our information
15 reveals that; so just to skip to the part about flyers being
16 passed out, Your Honor, it negates that entire effect. But we
17 want that pointed out for the record.

18 And, additionally, Your Honor, there's still no
19 evidence whatsoever, regardless of the affidavits submitted by
20 the government, regardless of potential knowledge that
21 individuals were passing out flyers, there's no evidence that
22 Dr. York himself or he had any direct involvement, or indirect
23 involvement, in the passing out of flyers.

24 Your Honor, it's just individuals -- and one affidavit
25 says a person in plain clothes, plain clothing. Who is that?

1 There's no evidence tying Dr. York to that. And if there's
2 evidence to those, these individuals need to be brought into
3 court so we can cross-examine them to find out exactly what
4 their knowledge is and how are they establishing for the Court
5 that it's related to Dr. York.

6 And we stand on that position, Your Honor. There's
7 absolutely no evidence that has been presented that Dr. York
8 himself, indirectly or directly, had any involvement in this.
9 And if that is what the Court is basing its ruling on, Your
10 Honor, we ask that the rulings that -- that the Court not order
11 anything restrictive about this case, whether it be closed
12 circuit T-V or whatever, because there is no evidence
13 whatsoever, and the burden is not on the defendant.

14 Thank you, Your Honor.

15 THE COURT: All right. Mr. Arora?

16 MR. ARORA: Judge, on the closing-the-courtroom issue,
17 very briefly, based on what I've put in my brief, the first
18 thing I'd like to point out is there's an issue between the
19 case law, whether it should be a partial closure and what the
20 Court has suggested is a partial closure of the courtroom or if
21 it's a total closure.

22 Under the partial closure standard set forth in Judd
23 versus Haley, which is an Eleventh Circuit case that came down
24 on May 9th, 2001, there's two prongs listed versus the complete
25 closure which has four prongs under Waller versus Georgia back

1 in 1984.

2 I guess we can debate back and forth whether your
3 action of doing a closed circuit T-V on a different floor for
4 spectators is partial or complete closure. Our position,
5 obviously, is it would be a complete closure.

6 Either way, there's got to be some specific basis for
7 that, based on what's been filed by the government as well as
8 the affidavits provided by the Court. I would point out, in
9 all the case law, that the defendant need not show any
10 prejudice to closing the courtroom to his case or to his side.
11 So that's not one of the factors.

12 What I would say, Your Honor, is based on the
13 affidavits and the flyers, if I could address those first, I
14 don't see anything threatening or inflammatory necessarily in
15 that. Certainly, it could be out there, as the Court said, to
16 try to taint the possible jury pool based on the fact they were
17 passed out at a parade.

18 That may be an issue, and that's a separate issue that
19 we'll deal with, not necessarily with the closure of the
20 courtroom. That may go towards the fairness-of-the-jury
21 question.

22 What the government submitted, as far as the
23 affidavits and the e-mails, there were arguably some threats
24 made by some folks -- we're not sure exactly who they are. In
25 some cases, we can tell from an e-mail name perhaps who it

1 might be. Those were all done six-plus months ago, on most of
2 those cases, from what I recall.

3 The witnesses are pretty much known because all of the
4 discovery was made through the State case, which was initially
5 set to go to trial back in January. That case was going to
6 trial on Monday. I think the Thursday or the Friday before,
7 the case resolved in a plea bargain, and the pleas were entered
8 two or three days before the trial started in January of 2003
9 before the Putnam County judge. The venue was changed in that
10 matter as well.

11 Not a simple complaint, a threat, or anything was
12 raised by the State when those exact same witnesses on the
13 child molestation charges were coming forward, and I don't
14 think anything has changed since then. I don't think there
15 have been any plausible threats or anything made to justify any
16 partial or total closure of the courtroom.

17 The second thing I'd like to point out -- I don't
18 anticipate this being disputed -- is every one of the
19 defendant's calls except to the lawyers are monitored. His
20 visits from folks that are coming to see him are monitored.
21 There's no way he could be connected to any of these activities
22 by followers or just independent folks passing out these flyers
23 out there, and I don't think there's any competent evidence to
24 indicate that.

25 I think, to the contrary, everything would be -- that

1 everything he does is watched closely, and everything is
2 monitored as far as any phone calls he has with his family or
3 other members, or at least it could be monitored under our
4 rules. So I don't think that's appropriate.

5 Further, under some of the factual bases and some of
6 the dicta under Judd v. Haley, Your Honor, under page 1315 of
7 that case, it says, [READING] Furthermore, our prior cases have
8 articulated the values that the Constitution's public trial
9 guarantee seeks to protect, which include permitting the public
10 to see that a defendant is dealt with fairly, ensuring that
11 trial participants perform their duties conscientiously, and
12 discouraging perjury.

13 The case has a lot of dicta and a lot of factual bases
14 explaining why, in pretty much every case we can find, starting
15 from Waller down to Judd, as well as Yung versus Walker,
16 Y-u-n-g versus Walker. It came down August 1st, 2003. That's
17 in the Second Circuit, Your Honor, 341 F.3d 104. All deal with
18 the impact a closed courtroom has on witnesses and their
19 ability to perform properly or the scrutiny that needs to be
20 required.

21 I understand that closed circuit T-V perhaps
22 alleviates some of those fears, but the problem is, as all the
23 case law says -- and I think it's most clear in Judd which is
24 out of the Eleventh Circuit -- is that those spectators need to
25 be able to look at the witness because it discourages perjury;

1 it puts everything on the spot; it puts it out in the open
2 where everything can be observed fairly and impartially.

3 I understand the closed circuit issue is there, but I
4 think there's nothing like having spectators and the jurors.
5 We would ask that, you know -- we could do background checks,
6 provide those, or submit a list of people that we would like
7 admitted into the courtroom based on the capacity of it.

8 We can do our own background checks. We can provide
9 NCICs or what-have-you to ensure that none of those people are
10 felons or anything like that that would come into the
11 courtroom, and thereby allowing the defendant to have an open
12 courtroom. I think there are steps that can be done, as would
13 be required under Waller versus Georgia.

14 If it's all right with the Court, I would like to
15 provide a copy of the Yung versus Walker decision as well as a
16 copy of the Judd versus Haley.

17 THE COURT: I've read a number of the cases. I don't
18 know that I've -- I think I've read the Waller case, for
19 example. I've read a number of cases, you know, from the
20 Eleventh Circuit, from the Second Circuit, and from the Supreme
21 Court on these issues, but I'll be glad to take those.

22 MR. ARORA: I mean, if you have copies, it's okay. I
23 just made an extra copy for the Court.

24 THE COURT: Just hand those to my clerk, if you would
25 please.

1 MR. ARORA: Yes, sir.

2 And, Your Honor, the specific importance that I really
3 had to the Judd versus Haley -- the reason I've been sort of
4 hammering it is that involved a child molestation case where
5 the prosecution, much like in this case, is asking, based on
6 the sensitive material and the ages of the witnesses, to close
7 the courtroom. And the court clearly said that that's not a
8 sufficient basis by itself, and I think most of those concerns
9 raised by the prosecution aren't going to be sufficient to do
10 it. I think I've addressed the threat issue, if any, in this
11 matter.

12 With regards to any harm possibly to any of the
13 witnesses, in the Yung versus Walker case, that dealt with
14 closing the courtroom for an undercover officer that would come
15 and testify against the defendant who was a well-connected drug
16 dealer and weapons distributor, and they afraid that the family
17 would see him and there might be some retribution there.
18 Again, that was set as inappropriate, and it's been sent --
19 remanded down for a further hearing, as far as if that's
20 appropriate or not.

21 So I don't think there's, first, a fear factor here.
22 And, second, I don't think just the fact that this is a
23 sensitive case requires closing the courtroom, partial or
24 complete.

25 Finally, regardless of your decision, I'd ask that

1 this be a continuing objection because I don't want to have to
2 keep making -- or Mr. Patrick, I would advise him not to have
3 to keep making the objection over and over again, if we could
4 have an continuing objection.

5 THE COURT: Well, I don't have a problem with it being
6 a continuing objection. That's certainly acceptable with me,
7 and I'm going to do an order on these issues.

8 MR. ARORA: Would you like to hear -- I mean, I don't
9 know if you want to address it separately, but you mentioned
10 that you weren't sequestering the jury except possibly for
11 deliberations. Are we still going to have the names withheld
12 and make them anonymous, or what is the Court's ruling on that,
13 if any, before I discuss that?

14 THE COURT: Well, I haven't finished the order yet.
15 I've been working on it. And what I'm going to do -- and I was
16 going to tell you this later, but I'll tell you now. I'm going
17 to make the jury questionnaires available to the attorneys at
18 nine o'clock Friday morning. You'll have to entire day to
19 review those. Those are going to be anonymous. That doesn't
20 necessarily mean that the -- if I decide we're going to have an
21 anonymous jury, then everything will be based on the number of
22 the juror.

23 MR. ARORA: Yes, sir.

24 THE COURT: If I decide that we're not going to have
25 an anonymous jury, then all of the jurors will stand up and

1 give you their names Monday morning, so you will know the name
2 and the number, so you will have the information.

3 MR. ARORA: Do you want us to be heard on that or are
4 the briefs sufficient?

5 THE COURT: Go right ahead. If you want to speak to
6 that, you can.

7 MR. ARORA: Can I talk just talk to other counsel and
8 make sure --

9 THE COURT: Sure.

10 (PAUSE)

11 MR. ARORA: Your Honor, before we leave the last --
12 the closure-of-the-courtroom issue, the way I read Waller is
13 the defendant's immediate family would be allowed to be
14 admitted along with media members. Is that the Court's
15 understanding as well?

16 THE COURT: Well, I'm not clear that that's correct,
17 and it would certainly seem that even if it is correct, that
18 the closed circuit television concept would deal with that.
19 I don't really understand what is lost by not having somebody
20 in the courtroom when they're upstairs and they're able to see
21 all the witnesses in the trial of the case. It's a little bit
22 unclear to me about what's lost. That's clearly a public trial
23 as far as I'm concerned.

24 MR. ARORA: Judge, that's why I raised some of the
25 issues, and that's why I mentioned the prejudice prong as far

1 as that goes, but I'll rest on my argument.

2 THE COURT: Okay. I understand.

3 MR. ARORA: With regards to the anonymous jury, Your
4 Honor, is it my correct understanding -- because I don't know
5 if I correctly put in my brief -- that names wouldn't be
6 allowed, where they live, where they work, and information
7 about their spouse, but we would know what they do for a
8 living?

9 THE COURT: You would know what they do for a living.
10 You would know what city and town or county they're from. You
11 won't know their specific address, and you won't know their
12 employer but you'll know the type of work they do.

13 MR. ARORA: Yes, sir.

14 If the Court decides to go with, I guess, what we'd
15 call an anonymous jury -- I think I cited U.S. versus Ross,
16 that the Court is probably familiar with. That's out of the
17 Eleventh Circuit from 1994, and it talks about the specific
18 jury charges being given. I'd ask, at a minimum, that be done,
19 because there's this incredible fear that I have when you tell
20 a jury, "We're not releasing your names or using your names,"
21 it's going to have a prejudice on the defendant, and we get
22 into the immediate issue of things like that, as Ross suggests.

23 THE COURT: I do plan to give the Ross charge to the
24 jury, and I do plan to give that early.

25 MR. ARORA: And while I appreciate that, Judge, I

1 don't want to waive our objection to that.

2 THE COURT: I understand that.

3 MR. ARORA: I'm not agreeing that's an acceptable

4 resolution of the case, and I know that's what Ross says, at a
5 minimum that should be done. We ask that the whole thing, you
6 know, go forward as a non-anonymous thing.

7 THE COURT: Right.

8 MR. ARORA: I would also just ask the Court to review
9 United States versus Bowman, B-o-w-m-a-n, 302 F.3d, 1248. It's
10 an August 20th, 2002, case from the Eleventh Circuit. That
11 dealt with the issues that a person involved with murder,
12 that's a member of a motorcycle gang, and --

13 THE COURT: I read that case.

14 MR. ARORA: And I think the last few cases you've
15 probably read are also the United States versus Carpa,
16 C-a-r-p-a, 271 F.3d 962, a 2001 case out of the Eleventh
17 Circuit, and lastly, the United States versus Edwards out of
18 the Fifth Circuit, 303 F.3d 606. It's an August 2002 case.

19 They talk about some of the extreme cases that are out
20 there, all again going around that threat aspect of it, based
21 on their affiliations, whether it's a narcotics ring or
22 organized crime or motorcycle gang, there's a type of violence
23 involved.

24 Certainly, in this case, it can be argued that the
25 child abuse situation is violent, but it's not, I don't think,

1 in the same league as murder charges, drug dealing,
2 racketeering, gun-type charges, as far as that goes.

3 So we, at a minimum, ask for Ross. I don't want to
4 waive any of that. I don't think our facts, based on the
5 affidavits by the government or by the Court, are sufficient to
6 rule either way.

7 Thank you.

8 THE COURT: All right.

9 MR. ARORA: Can we also have that as a continuing
10 objection, Judge, so I don't have to raise it at jury
11 selection?

12 THE COURT: You can have a continuing objection to the
13 closed trial, and you can have a continuing objection to the
14 anonymous jury. I don't know if there's any other continuing
15 objection. I think those are the two issues that we're dealing
16 with right now, and so you're clear on those two.

17 MR. ARORA: And the only reason I ask, Judge, is it's
18 not clear from the law how many times you have to object --

19 THE COURT: I understand.

20 MR. ARORA: -- as far as that goes. I don't want to
21 waive anything.

22 THE COURT: Sure.

23 MR. MOULTRIE: Your Honor, for the government's part,
24 we'd like to renew our objection to the use of a closed circuit
25 television system during the course of this trial, particularly

1 during the course of the testimony of the child victims that
2 will testify in this case.

3 For the reasons that I articulated in my motion, I
4 don't think that the use of closed circuit television will cure
5 the problems or the potential problems that are posed by the
6 degree of psychological harm that can be caused by Mr. York's
7 followers being able to monitor the testimonies of these
8 children.

9 If the Court's mind is made up on that point, what I
10 would ask Your Honor is for a point of clarity, and that is
11 will the spectators that are allowed to be present in the
12 courtroom where the closed circuit television will be set up,
13 will they be searched to ensure that they do not have recording
14 devices?

15 One of the concerns of the government is that a number
16 of very sensitive materials in this case have been made public
17 over the internet by members of Mr. York's organization, and
18 our concern would be that if spectators are allowed to be in
19 this courtroom, that they will record the testimony for the
20 children and then disseminate that information.

21 THE COURT: Well, there's not going to be any
22 recording devices or any other kind of mechanical devices that
23 are authorized in the courtroom, so I don't think you need to
24 worry about that.

25 MR. MOULTRIE: Okay.

1 THE COURT: My understanding about what you just said,
2 Mr. Moultrie, is that you don't have an objection to the
3 concept so-to-speak of the closed circuit television; you just
4 don't want certain witnesses shown on that; is that correct?

5 MR. MOULTRIE: Correct, Your Honor.

6 THE COURT: All right. Well, that was actually next
7 on my list, so let's talk about that. And I think that you
8 have a motion, I believe, related to the protection of these
9 witnesses under the Child Witness Rights Act.

10 MR. MOULTRIE: Correct.

11 THE COURT: And I was wanting to find out if we can
12 get some kind of agreement between the parties about how that
13 would be handled in terms of -- are you expecting me to make a
14 finding and are you going to make a showing on each one of
15 these witnesses about how they are covered by the Child Witness
16 Rights Act or not?

17 MR. MOULTRIE: Well, Your Honor, according to the
18 Child Victim Protection and Witness Act -- Child Victim and
19 Witness Protection Act, any child that will be testifying about
20 acts of molestation that occurred while they were my minors or
21 any adults that will be testifying about incidents of child
22 molestations that occurred while they were minors are protected
23 by that Act.

24 That title is 18 United States Code Section 3509,
25 Subsection (d), and it outlines all of these parameters for the

1 witnesses that are covered pursuant to that Act and the various
2 options that are available to a court in order to make sure
3 that the protections afforded by that Act are observed.

4 When the government filed the first motion pursuant to
5 that Act, that was before Your Honor was assigned to this case
6 back in, I believe, June of 6, 2002.

7 We outlined in our motion, Your Honor, the protections
8 that are afforded by the Act in terms of what can be released
9 and made public in dealing with child victims and child
10 witnesses. And both in that motion and then in the
11 government's subsequent motion to partially close the
12 courtroom, the government argues that pursuant to that Act, the
13 witnesses as I've outlined just now for the Court -- that is,
14 again, any child victims who are currently minors and any
15 witnesses who are not currently minors but are testifying about
16 the subject matter of crimes that occurred while they were
17 minors -- would be covered by that Act.

18 And for all of those witnesses, the government would
19 be asking that those witnesses not be shown during their
20 testimony. I can provide the Court with another list of those
21 witnesses if the Court would like or I could outline them for
22 the Court now.

23 THE COURT: Okay. Well, I don't think I've seen the
24 list, but I would like to have the list. How many people are
25 on the list? How many witnesses are on the list?

1 MR. MOULTRIE: Your Honor, I'd have to count again,
2 but I'm guessing that that is about 12 witnesses.

3 THE COURT: Okay.

4 MR. MOULTRIE: And, Your Honor, all of those witnesses
5 are frankly outlined in the government's indictment. The only
6 thing that hasn't been -- the only thing that hasn't been
7 released is an indictment that makes the names public of those
8 children, and again, that's pursuant to the same Act. But the
9 Court has an unredacted copy, and it outlines pretty much all
10 of the witnesses that are covered pursuant to the Act.

11 THE COURT: How many witnesses do you expect to have
12 altogether?

13 MR. MOULTRIE: I believe -- well, the government would
14 like to proceed with about 30 to 40 witnesses. However, the
15 government made an effort to provide the defense with many
16 stipulations to cover the many FBI witnesses that would be
17 testifying to nothing more than pulling a letter from a
18 particular location on Nuwaubian compound in Eatonton, Georgia.

19 I provided all those stipulations to the defense on
20 Friday, and I was told this morning that the only way that they
21 will agree to stipulations is if we provide them with a list of
22 our exhibits, which we're taking the position that we
23 absolutely do not have to do.

24 We do not have to provide the defense with an outline
25 of our trial strategy, which a list of exhibits would be. We

1 do not have to, under the federal rules, provide any list of
2 witnesses to the defense, and they know that. And so, Your
3 Honor, to suggest that the only way that the defense will
4 stipulate to the simple chain-of-custody witnesses is by
5 getting a copy of our list of exhibits is inappropriate.

6 So the trial will more than likely have to be
7 extended, Your Honor, to cover about 30 FBI witnesses that will
8 be nothing more than chain-of-custody witnesses. So that would
9 make the list closer to 60.

10 THE COURT: Of course, I expressed my thoughts about
11 this when we had the pretrial conference --

12 MR. MOULTRIE: You did.

13 THE COURT: -- and stated that unless there is some
14 good reason why there shouldn't be some stipulation to
15 chain-of-custody witnesses, that ought to be agreed to. I
16 don't understand why we have to go through those details in
17 this case if there is no issue.

18 Now, certainly, there could be an issue about some of
19 them, but most chain-of-custody witnesses are very simple when
20 they say "I got it from this place and I took it to that place"
21 or "I got it from this person and I gave it to that
22 person." And, unfortunately, it ends end up taking a lot of
23 trial time, so I'm going to once again admonish you to work
24 this out.

25 MR. MOULTRIE: I understand.

1 THE COURT: Well, what is your understanding on the
2 defense side about the Child Witness Rights Act and what's
3 required?

4 MR. ARORA: Judge, I don't claim to be an expert on
5 that Act, but the first thing I need to know from the Court is
6 -- the whole point is arguable moot.

7 When the State case was going forward, everything was
8 made public. It was not sealed. All those documents -- there
9 were five or six, I think, total co-defendants -- all the
10 parties have copies of everything.

11 All the information they've been trying to get sealed
12 and sealed and sealed was already released as part of the
13 State's discovery last year. I'm not really sure what exactly
14 they're trying to protect.

15 The DA, in the plea agreement, actually read off the
16 name of every single witness over our strenuous objection,
17 every victim, at the sentencing, with the court cameras and
18 everything running. They made everything public already, so
19 this whole point is just academic at this point, Judge.
20 Everything is out there. It's been out there for over a year.
21 So I don't see why that's even an issue at this point.

22 And, further, I don't find any cases that say that we
23 need to close the courtroom, partially or otherwise, because of
24 a sensitive witness testifying. I mean, in this case, all the
25 witnesses are teenagers or adults. I mean, there's nobody

1 that's 7 or 8 or 9 years old that I understand at this point.
2 So I just don't think any of that applies. It's all academic,
3 and it's moot at this point because it was made public.

4 With regard to the chain-of-custody witnesses, Your
5 Honor, we tried to work out some type of agreement that if we,
6 you know, stipulated to all those types of things that we got
7 certain information in return, and we haven't been able to do
8 that. However, with me being not on the case any more, perhaps
9 they can continue working on that issue, if they choose to see
10 fit.

11 THE COURT: All right.

12 Mr. Moultrie, you want to respond to what Mr. Arora
13 just said?

14 MR. MOULTRIE: Well, Your Honor, I'm certainly
15 surprised to hear the defense refer to something that's being
16 considered as witnesses testifying in this case -- given
17 everything that even the defense has seen in this case by way
18 of the actions that have been undertaken by Mr. York's
19 followers, releasing information about children with venereal
20 diseases made public, releasing information about children and
21 their ages who are victims in this case when that information
22 was supposed to remain anonymous, and the idea that the defense
23 would refer to that as academic is a bit of a surprise.

24 At any rate, whatever the State did, Your Honor, does
25 not obviate the government's responsibility to observe what is

1 a federal statute that relates to the protection of child
2 witnesses and child victims. One has nothing to do with the
3 other.

4 And for the reasons that I've stated, I think the
5 Court -- and I'm asking the that Court -- the government is
6 asking that the Court take whatever efforts that it can in
7 order to diminish some of the psychological harm that may be
8 done to some of these witnesses.

9 And, Your Honor, the reason that some of these
10 protections are made necessary is as a result of some of the
11 things that the Court is aware of that have happened since Mr.
12 York entered his pleas of guilty in this case, in terms of the
13 information that was public about these victims that are going
14 to be testifying.

15 They're very concerned about it, Your Honor. They
16 called our office when some of it developed: The set-up of the
17 courtroom, what's going to be involved, who's going to be in
18 the courtroom.

19 And a lot of that again has been made important and
20 significant because of the kinds of information that have been
21 disseminated about these victims and about these children.

22 THE COURT: Well, I guess I'm not clear exactly what
23 you're trying to protect here. Are you just trying to protect
24 these witnesses from the emotional impact of being on the
25 witness stand and testifying in front of other people or is it

1 beyond that? Is it their names? What is it?

2 MR. MOULTRIE: Well, Your Honor, the Act specifically
3 demands that the witnesses, the children/victim witnesses'

4 names, not be made public, that initials be used during the
5 course of their testimony when a transcript of a trial is made.

6 The Act also provides that the Court can order that
7 the courtroom be partially closed when a child victim or child
8 witness is testifying if there is a potential for psychological
9 harm.

10 And the government, in its motion to partially close
11 the courtroom, made an effort to present an outline of what it
12 thinks the evidence is in terms of potential for psychological
13 harm to these witnesses.

14 What the government does not want, Your Honor, is a
15 courtroom full of Mr. York's followers to be watching as these
16 children testify and then going out and disseminating this
17 information about what they testified about, because they have
18 proven that they will not observe the federal statute that
19 relates to protecting the identities of the witnesses and also
20 the information to which they will be testifying, or about
21 which they will be testifying.

22 And for that reason, we're asking that his family
23 members not be allowed to be in the courtroom, that his
24 followers not allowed to be in the courtroom, that the
25 courtroom be partially closed, or, as the Court, I thought, was

1 leaning towards doing, completely closing the courtroom except
2 to the media, which I think would satisfy the demands afforded
3 to Mr. York pursuant to the Sixth Amendment.

4 However, if the Court is of the mind that a closed
5 circuit television system is the one that's most appropriate,
6 then what we would ask is that when the child victims and
7 witnesses who are testifying about matters, about the child
8 molestation when they were children, when those witnesses are
9 testifying, we would ask that the closed circuit television not
10 be used.

11 There are a number of other witnesses that will be
12 testifying in the case, Your Honor. There are some
13 chain-of-custody witnesses. There is Ken Lanning who will be
14 testifying. There may be some other defense witnesses who will
15 be testifying. Certainly, the closed circuit television system
16 can be employed during those parts of the trial.

17 THE COURT: You want to respond to that, Mr. Arora? I
18 see you shaking your head over there.

19 MR. ARORA: Judge, I mean this is bordering on
20 ridiculous. I mean, nobody's here to hurt the kit kids or
21 anything, but their own counterparts in the DA's office took
22 none of these protections when they released all those
23 documents to all of the different lawyers. They didn't seek
24 any of these protections saying, "There's a federal statute,
25 Judge. Can we adopt it as part of this Georgia case?" They're

1 the ones that went out on the DA's office publicizing
2 everybody's name on television, talking about these things.
3 Now they come back and say, "Close the courtroom, Judge, to
4 protect the kids."

5 Nobody here wants to see the two or three teenagers --
6 the rest, I think, are adults -- that are going to get harmed
7 in this case. But his Sixth Amendment right, based on what
8 we've said and the standard set out, including Douglas and
9 Nelson, which was a child molestation case from a couple of
10 years ago, I just don't see -- I mean, this is causing issue
11 after issue to come up in a trial that should be relatively
12 straightforward. I simply ask that you let the courtroom stay
13 open.

14 THE COURT: All right.

15 Now, is there anything anybody else would like to say
16 about any of these motions that we've talked about? My motions
17 and the government's motions, I think we've been about -- they
18 tend to run together. But have we concluded all that?

19 MR. MOULTRIE: Your Honor, I'd also like to renew our
20 objection to the use of an anonymous jury panel. If I
21 understand correctly, Your Honor, if the Court determines that
22 the anonymous jury selection process is the one that will be
23 employed in this case, then when we arrive to the clerk's
24 office on Friday morning, we will be given the jury
25 questionnaire forms but the names and any other identifying

1 information would be redacted?

2 THE COURT: Substantially so.

3 MR. MOULTRIE: All right.

4 Obviously, Your Honor, the government's concern is
5 that we won't have an opportunity to ensure that -- well, we
6 just won't have an opportunity to make certain investigative --
7 taken certain investigative efforts that we would like to and
8 that we normally do in the selection of a jury; that having
9 them arrive on Monday and being in court is not going to
10 provide us the opportunity to do that. And that's our concern,
11 and that's the basis for our objection.

12 THE COURT: All right, I understand. Okay. That
13 deals with all of the motions. Now --

14 MR. ARORA: Your Honor, could I say one other thing?

15 THE COURT: Go ahead. I'm sorry.

16 MR. ARORA: Could we have those faxed to our office?
17 It will save Mr. Patrick a trip, the jury questionnaires on
18 Friday.

19 THE COURT: Could you what?

20 MR. ARORA: Could we have those faxed to Mr. Patrick's
21 office or my office based on the conversations we had, instead
22 of coming down here to pick it up?

23 THE COURT: It's 130 questionnaires. We can't fax
24 that.

25 MR. ARORA: No, no. I just meant one of the sample

1 questionnaires just so that we --

2 THE COURT: Oh, certainly.

3 And so you won't travel all the way down to Brunswick,
4 they're going to be available here. So that will shorten your
5 trip considerably.

6 MR. ARORA: And the last thing I want to make sure,
7 Judge, since my participation is an issue at this point, is
8 there any discovery or pretrial order or anything out there in
9 this case that I'm not aware of? Because there's certainly
10 some statements on some of our witnesses that we haven't
11 disclosed, and under Rule 26.2, the disclosure is pretty clear
12 as to when it has to happen.

13 I just want to make sure we're not violating anything
14 so there's no, you know, witness testimony being stricken or
15 anything like that out there; because I'm not aware of a set,
16 you know, 72 hours before trial or 14 days before trial or
17 anything like that. I could be completely mistaken, but I want
18 to bring that up now so there's no unfairness issue.

19 MR. MOULTRIE: Well, Your Honor, Rule 16 is fairly
20 specific. We were supposed to receive reciprocal discovery in
21 this case. We filed that motion pursuant to a motion back in
22 July of 2002.

23 As of today, we've received no Jencks Act material
24 from any of the defense witnesses. We will have a running
25 objection to any defense witness that the defense tries to call

1 for which we have not been provided the necessary Jencks
2 material.

3 Additionally, we received the notice of four experts
4 on --

5 THE COURT: Well, let's stop there. We're going to
6 talk about the experts in just a minute.

7 I thought we dealt with this at the pretrial, and I
8 ordered the defendant's attorney to provide any of this
9 information that was required under the Act.

10 MR. ARORA: I understand that, Your Honor.

11 But with regards to Rule 16 and Rule 26, as far as
12 witness statements go, I didn't know what the disclosure time
13 period was; because Rule 16 doesn't say, you know, 5 days or 10
14 days or 20 days prior to trial. We've got some statements that
15 we took just of the witnesses that we planned on calling, Your
16 Honor, that I'm happy to disclose, but reading Rule 26.2, it
17 specifically says as to witnesses witness' statements need to
18 be released. Typically, my experience has been that courts
19 will say 72 hours prior to that, go ahead and give the Jencks
20 material or anything like that.

21 A lot of the material we've gotten from the government
22 in this case came through the State. It was part of the
23 discovery. I know there's another report coming, but perhaps
24 they wouldn't given it to us.

25 So I'm not sure if there's some order in this

1 jurisdiction. I've gone through, on the computer, the standing
2 orders or the pretrials here, and I don't see, you know, five
3 days or three days or one day, or whatever it is. I mean,
4 traditionally, it's after they're done; you then drop the
5 statement to the other side as part of 26.2.

6 THE COURT: Are you talking about a local rule?

7 MR. ARORA: In the Northern District, sometimes the
8 Magistrate Court will say, "Give it to them three days prior to
9 trial." I'm not aware of that being done in this case. I'm
10 happy to provide it. I just want to bring that out now, five
11 or six days before trial, arguably three weeks before they
12 would even need to use that, once we call our witnesses, so
13 that everybody gets a level playing field, if that's necessary.

14 THE COURT: Well, obviously, anything you have needs
15 to be submitted before the time of the trial. I don't think it
16 would be appropriate for you to submit that after the trial
17 actually began.

18 But, go ahead, Mr. Moultrie. You want to respond?

19 MR. MOULTRIE: Yes, I do, Your Honor.

20 We began providing the defense with discovery right
21 after this case was indicted initially in May of 2002. We had
22 an open discovery policy with the defense. They were allowed
23 to come to the FBI office. They were allowed to review all the
24 boxes. They were allowed to send in investigators to my office
25 and review the discovery.

1 I submitted most of the discovery in this case before
2 the State discovery process even began, so Mr. Arora is
3 mistaken when he submits to the Court that a lot of the
4 discovery came from the State.

5 I have kept every single letter outlining the
6 discovery that I've provided to the defense from the very
7 beginning of the case, once it got to that point.

8 And the idea that on the eve of trial, six days before
9 trial, the defense doesn't have to provide Jencks material,
10 Your Honor, pursuant to a motion that was filed in July of
11 2002, again, is a bit of a surprise.

12 And given the openness of the government on its part,
13 in terms of sharing discovery, I'm again, Your Honor, renewing
14 my objection to the defense being able to put up witnesses for
15 which they have not provided the government with the required
16 Jencks material.

17 The Court was very specific at the pretrial calender
18 that the defense was to have provided that material to the
19 government by Monday, December 22nd. So the Court did give the
20 defense a specific period of time in which to comply with that
21 discovery rule, and the defense has not done that.

22 THE COURT: Well, I'm not sure exactly what date I
23 said, but it's very clear in my mind that I told you to turn
24 that information over, and so what I want you to do is get Mr.
25 Moultrie's fax number and provide that to him by five o'clock

1 this afternoon.

2 MR. ARORA: Yes, Judge.

3 Judge, some of them are videotapes. Can we just

4 provide it tomorrow morning? That's why I brought it up,
5 because I wasn't clear, because I thought you said file all the
6 motions and things by the 22nd.

7 I've tried to discuss it with some of the other
8 counsel. We weren't clear so we brought it up today. If we
9 were going to be underhanded about it, we'd just have waited
10 and said, "26.2 protects us." Nobody is trying to do that.
11 We're just trying to be overly-honest and say we've got this
12 stuff. I mean, we are a couple of weeks before they're going
13 to need it. I'm just letting you know I can get it to them
14 tomorrow. Some of it is live videotapes.

15 THE COURT: All right. Well, make it sure you get it
16 to them. And anything you can fax to them this afternoon, I'd
17 like for you to do that. Any other information, I want you to
18 provide to them no later than tomorrow.

19 MR. ARORA: Yes, Your Honor.

20 That was done with some of the new counsel in there.
21 Those things didn't exist until just very recently, so that's
22 why I'm bringing that up now.

23 THE COURT: That's fine. All right. Okay. I think
24 we've dealt with the motions now. Let's move on a little bit
25 further here.

1 If you have any motions that you are thinking about
2 filing on Monday, you need to file those no later than noon
3 Friday. I do not want to have to stop the process of picking
4 this jury because of a motion, and I'm really not going to like
5 it if you dump a bunch of motions on me on Monday morning.

6 So if there's anything else at all you're
7 contemplating that needs to be filed, you make sure that you
8 get it in my noon on Friday so I'll have an opportunity to look
9 at it over the weekend.

10 MR. MOULTRIE: Your Honor, one question I had: Will
11 the juror questionnaires also be available at the clerk's
12 office in Brunswick or just here on Friday?

13 THE COURT: No. They will just be here on Friday.
14 They'll just be here on Friday. All right.

15 Now, we had some discussion at the pretrial conference
16 about how to pick the jury in this case, and one idea I that I
17 mentioned that Mr. Garland seemed to think was agreeable was
18 simply starting out with a general question to all of the
19 jurors about whether they knew anything about the case or Mr.
20 York, or whatever, and asking all of those people to stand up;
21 and then once that we're assured that these jurors really don't
22 know anything about the case, and assuming that there are
23 enough of them we can use to strike the jury, then we will just
24 do the voir dire on those. Does that sound acceptable?

25 MR. ARORA: Yes, sir, Your Honor.

1 MR. WOOD: Your Honor, may I be heard on that?

2 THE COURT: Sure.

3 MR. WOOD: Your Honor, if I'm understanding the Court

4 correctly, the Court is proposing that we ask a general
5 question, "Have you heard anything about this case," and if a
6 potential juror has heard something about the case,
7 acknowledges that to the Court, that those people will be
8 summarily dismissed at that point and we'll proceed with the
9 rest?

10 THE COURT: No, no, no. That's not it at all.

11 MR. WOOD: All right.

12 THE COURT: Those people who don't know anything about
13 the case will be asked to stand up. We'll find out how many
14 people that is, and if that is a large enough group from which
15 to strike a jury, then we're going to do that, but nobody is
16 going to be allowed to leave the courtroom.

17 MR. WOOD: Well, I think that is effectively
18 accomplishing the same thing. We would object to that. Just
19 because someone has heard about a case should not in and of
20 itself disqualify them from sitting on the jury. There are
21 follow-up questions that we can obviously ask, as in every
22 case, and I would suggest we do it in this case too.

23 It may be lengthy but, you know, you run the risk of
24 getting a very unaware jury pool sometimes if you eliminate
25 anybody that's heard anything about the case. I think that

1 there are further questions that need to be pursued at that
2 point, and maybe the suggestion would be that those who have
3 heard about the case be questioned first. So I guess we would
4 object to that procedure, Your Honor.

5 THE COURT: All right. I understand your objection.

6 Anything further on that?

7 MR. PATRICK: Your Honor, the defense concurs with the
8 Court on that, the two-stage process.

9 THE COURT: Okay. Thank you.

10 Now, what are your thoughts about how many alternates
11 we need to choose?

12 MR. PATRICK: Your Honor, the defense is thinking
13 maybe four alternates.

14 THE COURT: Okay.

15 MR. WOOD: That's fine.

16 THE COURT: That was the number I had in mind, so
17 that's fine. Okay.

18 Now, this is something that Mr. Moultrie started out
19 on, and that is I have received and reviewed the expert
20 disclosures from the defense in the case, and I wanted to give
21 the government the opportunity to raise any objections that the
22 government might have to that, so we can talk about it.

23 I'm not going to rule on anything today related to any
24 of those witness, but I'm going to give you the opportunity. I
25 will say, however, that it is my recollection, Mr. Arora, that

1 when we talked about experts at the pretrial conference, you
2 said you didn't know whether they would be called or not --

3 MR. ARORA: Correct.

4 THE COURT: -- that it depended on the government's
5 case. So I don't want to spend a lot of time on it if these
6 witnesses are not going to be called. However, if you think
7 there are some that are going to be called -- I know that, as
8 far as at least one of these witness, I have some concerns
9 about the nature of their testimony, and I don't know what the
10 government --

11 MR. ARORA: Well, we have the Kenneth Lanning issue,
12 so we've got a psychiatrist from our side basically to counter
13 that, if the Court deems that admissible. Then we have the
14 full rape shield issue with the physical tests --

15 THE COURT: Right.

16 MR. ARORA: -- and things that were done.

17 I mean, if they can say they're planning on bringing
18 that in, they'll save us a lot of time, or if it doesn't, it
19 will extend the trial out a little bit. We need to have the
20 two doctors that I've listed that actually treat child victims
21 that I've put in there from the Morehouse School of Medicine
22 that would testify.

23 THE COURT: Right.

24 MR. ARORA: But, otherwise, arguably, it wouldn't be
25 relevant if they don't get into it. They may still become

1 relevant, but arguably they wouldn't be.

2 THE COURT: So are you telling me that you're probably
3 going to use two or you're probably not going to use two? Is
4 that what you're telling me?

5 MR. ARORA: What I'm telling the Court is the two
6 doctors, depending on how the case goes, may be used anyway by
7 the defense; the two medical doctors that I've listed, Dr.
8 Bright and Dr. Alexander. The two psychiatric folks probably
9 wouldn't be necessary, depending on, you know, what's happens
10 with the Kenneth Lanning situation or any of the other
11 social-worker types that are listed, because they've listed
12 several expert witnesses on their disclosure. I really can't
13 say until we sort of get into it, but I would imagine zero to
14 two possibly.

15 THE COURT: All right. Mr. Moultrie?

16 MR. MOULTRIE: Yes, Your Honor.

17 I'm really not in a position where I can very
18 educationally object at this point. There are a couple of
19 their experts that they've cited that frankly don't seem
20 qualified to provide the kind of testimony in this case that
21 would be relevant, but we are continuing to do some background
22 checks on the experts they've provided.

23 We've not gotten curriculum vitae on -- we've only
24 gotten curriculum vitae on two of them, so we really don't
25 have very much information at this point, but we will most

1 likely be objecting to one or more of the witnesses that they
2 -- the expert witnesses that they named. What I'd like to do,
3 Your Honor, is have a little more time in order to prepare that
4 objection.

5 THE COURT: All right. Charlie, do you have that?
6 I'm going to tell you what my concern is about one of these.

7 I think my concern is, just based on the statements
8 made in the notice, involves Nancy Aldridge and her testimony,
9 or possible testimony, that she will address the deficiencies
10 in the interview techniques used by the law enforcement when
11 they interviewed the alleged victims, as well as the failure to
12 follow the proper protocol set forth by the Georgia Department
13 of Human Resources.

14 Now, if the government is going to call witnesses who
15 are involved with the Georgia Department of Human Resources or
16 who use interview techniques of a clinical social worker, then
17 I would imagine she can probably testify. But she's not, based
18 on what I see here, in law enforcement; and she's not an expert
19 in law enforcement techniques.

20 And I'm not at all convinced that her testimony would
21 be relevant as to law enforcement techniques; not to mention
22 the fact that I question whether or not she has the expertise.
23 So I just tell you about that so you can be thinking about
24 that.

25 MR. ARORA: Judge, may I address just that one?

1 THE COURT: Certainly. Go right ahead.

2 MR. ARORA: When she was --

3 COURT REPORTER: Could you please stand at the
4 lectern?

5 MR. ARORA: When she was the Director for the Georgia
6 Center of Children, the District Attorney's offices throughout
7 the state used that agency, on pretty much every child
8 molestation case, to do the forensic interviews. When I was a
9 District Attorney, we used to use her constantly on that. So,
10 perhaps we could have a hearing if she becomes relevant at that
11 point, based on that.

12 The reason I put her on there is when the State case
13 was going forward, a lot of children were initially interviewed
14 by State authorities in Putnam County and other counties
15 because a disclosure was made to the State initially.

16 So there's a lot of interviews, and these kids have
17 been interviewed dozens of times, but there was a lot of
18 interviews in the beginning that the State did that we were
19 given disclosures of. And the DFACS protocol requires
20 videotapes, and things like that, blanketly for all these, at
21 least on the initial interview; and none of that was done.

22 And those are some of the issues we would go into. I
23 mean, I don't have the exhibit list or witness list to discuss
24 that with the Court. So I'm just trying to cover all the bases
25 on behalf of Dr. York.

1 THE COURT: Well, I'm obviously not ruling on that.
2 I'm just telling you that's what struck my mind as I read it.

3 MR. ARORA: Yes, sir.

4 THE COURT: And it's something that you can be
5 considering if you're thinking about calling this witness, and
6 it may well be that she is qualified. But just on the face of
7 it, that appeared to be a problem to me.

8 MR. ARORA: And I would ask that Mr. Patrick give the
9 Court notice, perhaps after, late after court is closed one
10 day, if she could come in and, you know, we could have that
11 hearing, if necessary, at that point rather than -- since we're
12 sort of running short on time, if she's going to be allowed to
13 testify, assuming it becomes relevant; or before court starts,
14 just something like that, so we don't waste the trial time like
15 you've suggested.

16 THE COURT: Is that agreeable with you, Mr. Moultrie?

17 MR. MOULTRIE: Well, Your Honor, it doesn't look like
18 we have much of a choice, given that we start trial in six
19 days.

20 THE COURT: Well, I guess -- I don't want to have a
21 hearing if we're not likely to call a witness. I mean, there's
22 no reason to take up the time. And, of course, part of the
23 problem, I suppose, is that I don't know what the testimony is
24 going to be, and so then you have the problem of trying to
25 decide whether her testimony is relevant and you don't know

1 what testimony the is going to be that she's supposedly
2 responding to. So I don't think that I'll hear from her on
3 Monday.

4 MR. ARORA: I'm not asking for Monday, Your Honor.
5 I'm saying once they rest, if there becomes an issue --

6 THE COURT: All right. That's fine.

7 MR. ARORA: -- but I need to bring her from Atlanta,
8 or Mr. Patrick would, and we could set up a time early one
9 morning before the jury comes in and we could have that
10 hearing.

11 THE COURT: All right. I think we can do that.
12 Anything else on that issue, Mr. Moultrie?

13 MR. MOULTRIE: No, Your Honor.

14 THE COURT: Any other issues that anybody else needs
15 to deal with? Mr. Arora?

16 MR. ARORA: Just for the record, Your Honor, there
17 were a bunch of motions filed in the previous indictment, and I
18 would ask that those sort of continue on in this indictment,
19 since we haven't really heard all those that Judge Lawson may
20 have ruled on, before we press into this case as well. I mean,
21 I assumed that it would.

22 We filed several motions and had several hearings
23 before Judge Lawson before he was recused. As the Court
24 pointed out when you first came on the case, that whatever his
25 rulings were, you were not going to re-visit those issues. I

1 just want to make sure they go to this new indictment as well.
2 I don't know if the Court recalls that, but I just want to make
3 sure those motions sort of travel, because it's the just
4 factual issues that we argued back then.

5 THE COURT: Mr. Moultrie?

6 MR. MOULTRIE: I wasn't really sure, Your Honor, what
7 Mr. Arora was --

8 THE COURT: Well, it sounds to me like they filed some
9 motions under the old indictment and they want to make sure
10 that those motions are still effective under the new
11 indictment.

12 MR. MOULTRIE: But as I understand it, Your Honor,
13 those would have been the motion to suppress which this Court's
14 order is pending on. Correct?

15 MR. ARORA: Correct.

16 THE COURT: I think it would be good if you could
17 identify those motions. I mean, I think it's hard for anybody
18 to be able --

19 MR. ARORA: Could we submit a letter to the Court? I
20 don't have all the motions in front of me. I was just sitting
21 here and started thinking that we had several hearings. I
22 don't recall all the different motions. If there's anything --
23 since the Court pointed out that Judge Lawson had ruled on
24 something, it struck me that I wanted to make sure that those
25 issues, whether they were for us or against us, were protected

1 on the record, if they're relevant to this case, and that they
2 travel with it. That's all I'm asking.

3 THE COURT: I don't know what those motions are,
4 because I was not in the case at the time, and Mr. Moultrie
5 doesn't remember what they are, and you don't remember what
6 they are, so I don't know how we can -- I mean, on the surface
7 of it, what you say appears to be fine, but I don't know how we
8 can agree to that unless we know what the specific motions are.

9 MR. ARORA: They're probably going to be in the
10 court's file; I would imagine. I'm not asking the Court to
11 review it. I'm just saying whatever is in the file just be
12 attached to this new indictment as well so the same evidentiary
13 rulings, if any, were made. I can't recall specifically. It's
14 been, what, eight months now.

15 THE COURT: Okay.

16 MR. MOULTRIE: Your Honor, that would be the motion
17 for change of venue and --

18 THE COURT: We've taken care of that.

19 MR. MOULTRIE: -- the motion to suppress --

20 THE COURT: We're going to take care of that.

21 MR. MOULTRIE: -- and the motion for psychological
22 evaluations.

23 THE COURT: And we've taken care of that.

24 MR. MOULTRIE: And, Your Honor, for the government's
25 part, we were curious as to when we might be able to expect

1 some of the Court's rulings on the motions that are pending,
2 i.e, the motion to suppress.

3 THE COURT: Well, very soon.

4 MR. MOULTRIE: Okay.

5 THE COURT: I think that the -- I think we're going to
6 overrule or deny the motion to suppress from the defense. I
7 think that's ready to be signed, but I just haven't had the
8 opportunity to get to that yet because I was preparing for the
9 hearing yesterday.

10 What else is there?

11 MR. MOULTRIE: Well, Your Honor, obviously, the
12 government is concerned about the state of the superseding
13 indictment. There were a couple of motions to dismiss the
14 indictment or to dismiss various counts in that superseding
15 indictment.

16 THE COURT: Those are going to be denied.

17 MR. PATRICK: Your Honor, the motions that Mr. Davis
18 filed on Count Two and Count Six is going to be denied related
19 to the Georgia law and the individual being 14 years old as
20 opposed to 13? Do you recall those?

21 THE COURT: Yeah, I mean, I remember that. I'm not
22 sure exactly what the status of the written order is on that,
23 but my understanding was that at the time, the effective facts,
24 the child was 13 and the indictment says approximately 14,
25 which that is close enough for the Court.

1 MR. PATRICK: Well, actually, I think Mr. Moultrie
2 stipulated that the child was 14.

3 THE COURT: No, that's not what he said. That's not
4 what he said. I remember what he said.

5 MR. PATRICK: Well, we will renew that, I guess, as to
6 a directed verdict, because I guess Mr. Moultrie is stating
7 that the child was 13, not 14, in April of 1993. Is that
8 correct, Mr. Moultrie?

9 MR. MOULTRIE: Actually, Your Honor, it's just very
10 easy to just do the math. Based on the birthdate of the
11 children and the date they were transported from New York to
12 Georgia, you can just do the math and figure out how old they
13 were at the time.

14 MR. PATRICK: So I guess he's resting on that then, so
15 we'll just renew our motion.

16 THE COURT: All right. That's fine.

17 MR. ARORA: Could I ask two questions?

18 THE COURT: Go right ahead.

19 MR. ARORA: Since I may or may not be here, with
20 regards to the suppression, since you're ruling that it's going
21 to be -- that it's already denied, can we have that as a
22 continuing objection, or would you like an objection as to
23 every piece of evidence when it comes in, just to speed the
24 trial along?

25 THE COURT: Well, you can have that as a continuing

1 objection.

2 MR. ARORA: And my last motion is I would like to file
3 a brief for additional strikes. Would the Court consider that
4 issue at all in this matter, based on the number of jurors that
5 are going to be there with regards to this case? Have you
6 thought about that?

7 THE COURT: Well, I haven't thought about giving you
8 additional strikes, and I'm not exactly clear about why you
9 would need that in this case.

10 MR. ARORA: I don't know necessarily at this point.
11 It would be based on the large number of jurors coming in. I
12 can't imagine what's going to be written on the questionnaires
13 and the impact based on this case. I'm just asking. I'd like
14 to be able to file a brief on that and perhaps your
15 entertaining it, depending on how jury selection is going,
16 because of the nature of this case. I think this, if anything,
17 would warrant additional strikes obviously, proportionately, to
18 both sides.

19 THE COURT: Well, I mean, I'll be glad to consider
20 that if you want to submit it.

21 MR. ARORA: Thank you.

22 THE COURT: Anything else?

23 MR. MOULTRIE: No, Your Honor.

24 THE COURT: Well, I am going to pass out something to
25 the members of the gallery. Would you pass that out?

1 (HANDING)

2 THE COURT: As I indicated to you attorneys at the
3 pretrial conference, I'm very jealous for the jurors' time in
4 this case, and I expect you to be prepared and to move forward
5 with the trial of the case. I don't want to have any
6 interruptions.

7 I'm sure that you are all capable attorneys and can
8 proceed with this trial in the proper fashion, and I'm
9 certainly not unreasonable about that, but I think I made that
10 very clear to you last week.

11 In considering all of the issues related to a closed
12 jury trial and anonymous jury, and so forth and so on, I've
13 discovered that there are some interesting Code Sections, one
14 in particular that deals with picketing or parading.

15 [READING] Whoever, with the intent of interfering
16 with, obstructing, or impeding the administration of justice,
17 or with the intent of influencing any judge, juror, witness, or
18 court officer in the discharge of his duty, pickets or parades
19 in or near a building housing a court of the United States, or
20 in or near a building or residence occupied or used by such
21 judge, juror, witness, or court officer, or with such intent
22 uses any sound truck, or similar device, or resorts to any
23 other demonstration in or near any such building or residence,
24 shall be fined under this title or imprisoned not more than one
25 year or both.

1 Now, this obviously doesn't have anything to do with
2 the defendant in the case, but it obviously has something to do
3 with those people who might choose to come to Brunswick and
4 stand outside the courthouse and picket and parade. And I will
5 simply tell you that what is acceptable and legal conduct
6 outside of this courthouse -- and I'm talking to the gallery
7 now -- outside of this courthouse during hearings like this is
8 not what you can do when the jury comes into the courtroom.

9 And I'm making this available to you and hoping you
10 will pass it along to others who might be interested in coming
11 to the courthouse with signs and making noise, and so forth and
12 so on, in a way that might attempt to influence any juror,
13 witness, or anybody else in such a fashion that it would be
14 improper. And so I'm offering that to you.

15 And then there's just the matter of influencing or
16 injuring any officer or juror that I -- it happens to be at the
17 top -- but I'm primarily interested in the bottom there,
18 Chapter 73, the obstruction of justice section.

19 This in no way indicates anything about the defendant
20 in the case in my mind, but there certainly have been a number
21 of people who have been outside this courthouse and have
22 demonstrated. You can call it picketing. There has been
23 parading. And that conduct which is appropriate under the
24 First Amendment in the context of a hearing, I find and I think
25 would be inappropriate in the context of the jury trial.

1 So, such matters as these will be handled by either Judge
2 Alaimo or Magistrate Judge Graham. I won't have anything to do
3 with this, but I'm just letting everybody know.

4 I was surprised to see this, because it certainly
5 restricts what can be done. I'm just offering this up for the
6 benefit of those people who might be interested in coming down
7 for the trial of this case.

8 Let me also tell you, the defense attorneys, that Mr.
9 York is going to be moved to Brunswick sometime towards the end
10 of the week, and I'm not exactly sure when that will be, but we
11 have kept him here, or I guess in Jones County, or wherever, at
12 the request of defense counsel, but he's going to have to be
13 moved sometime soon.

14 Anything further?

15 MR. PATRICK: Your Honor, just briefly, I wanted to --
16 I think there was a previous motion, and maybe Mr. Moultrie has
17 already addressed this, but there was a motion by the defense
18 in the previous case, previous indictment, requiring the
19 government to admit or deny the existence of other
20 investigations or potential indictments.

21 I think the government -- have y'all responded to
22 that, Mr. Moultrie? I guess he can answer that. Or, is there
23 any other evidence?

24 MR. MOULTRIE: I'm not sure what you mean.

25 MR. PATRICK: All right. There was a previous motion

1 that was filed. But I guess, Your Honor, I'll just bring that
2 up -- I'll address that with Mr. Moultrie in a conference, and
3 I guess if something comes up later this afternoon, we can
4 address it in the courtroom.

5 THE COURT: All right.

6 MR. ARORA: Would you be available in next 30 minutes
7 if we need to follow up with anything?

8 THE COURT: Certainly. I sure will be.

9 MR. ARORA: We're going to speak some more, and I'd
10 just like to address that issue again with the Court.

11 THE COURT: That will be fine. Anything further from
12 anybody?

13 MR. ARORA: No, sir.

14 THE COURT: Let me just tell you one thing, that Ms.
15 Purvis will have the questionnaires. Mr. Arora?

16 MR. ARORA: Yes, sir?

17 THE COURT: Ms. Purvis will have the questionnaires,
18 and her office is directly across the hall.

19 MR. ARORA: Today?

20 THE COURT: Friday.

21 (WHEREUPON, THE COURT RECESSED AT 11:45 AM)

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CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript of the proceedings taken in the above-captioned matter to the best of my ability.

Date

3/11/81

W. Craig DeLoach
Official U. S. Court Reporter

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