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IN THE UNITED STATES DISTRICT COURT.
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	Case No. 25 CR 693
)	
v.)	REDACTED TRANSCRIPT
)	
)	
MICHAEL RABBITT,)	
KATHERINE MARIE ABUGHAZALEH,)	
ANDRE MARTIN, CATHERINE)	
SHARP, BRIAN STRAW, and)	Chicago, Illinois
JOSELYN WALSH)	May 21, 2026
Defendants.)	10:45 a.m.

TRANSCRIPT OF PROCEEDINGS - HEARING
BEFORE THE HONORABLE APRIL M. PERRY

APPEARANCES:

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PROCEEDINGS REPORTED BY STENOTYPE
TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION

1 (Proceedings heard in open court:)

2 THE COURTROOM DEPUTY: Calling case 25-CR-693, USA
3 vs. Rabbitt, et al.

4 THE COURT: Good morning, everyone.

5 If you can start by introducing yourselves, please.
6 Start with the government, the defendants, and then the
7 intervenors.

8 MR. HOGAN: Good morning, Your Honor.

9 AUSAs Hogan, Skiba, and Almendarez.

10 MR. PARENTE: Good morning, Your Honor.

11 Chris Parente for Brian Straw, who is present, and
12 Damon Cheronis as well, Your Honor.

13 MR. CAMPBELL: Good morning, Judge.

14 Terry Campbell, Ted Poulos and Mallory Davenport on
15 behalf of Andre Martin who is present in court.

16 MR. HERMAN: Good morning.

17 Josh Herman and Molly Armour on behalf of Kat
18 Abughazaleh, who is present in court as well.

19 MS. DE PODESTA: Good morning.

20 Nancy DePodesta and Carly Chocron on behalf of
21 Michael Rabbitt, who is also present here.

22 MR. MANDELL: Good morning, Your Honor.

23 Steve Mandell and Brian Saucier on behalf of
24 potential intervenors, Chicago Sun-Times, 70 WBEZ, Chicago
25 Tribune, and The Better Government Association.

1 THE COURT: Good morning, everyone.

2 So let's start solely with the motion to intervene,
3 and then we'll get to the merits.

4 So let me ask the government first, do you have a
5 position on a motion to intervene?

6 MR. HOGAN: We take no position.

7 THE COURT: Okay. Defendants, one at a time or all
8 together if you are jointly.

9 MR. PARENTE: Judge, I believe we all are in
10 agreement that the hearing should be open to the press.

11 THE COURT: We're starting with the motion to
12 intervene.

13 MR. PARENTE: I'm sorry, we agree that the motion
14 should be granted.

15 THE COURT: Okay. The motion to intervene for the
16 limited purpose of being heard on the unsealing of the hearing
17 will be granted.

18 So let me ask to the intervenors, you filed the
19 motion shortly after midnight last night. I understand it was
20 a short time frame. Do you have anything that you want to add
21 to your motion orally?

22 MR. MANDELL: Yes, Your Honor, briefly.

23 THE COURT: Make your way to the podium.

24 MR. MANDELL: So I'd like to start, if I could, by
25 borrowing a phrase from Your Honor, which is, to refer to an

1 oldie but goody case, which is --

2 THE COURT: Technically that's my father's phrase.
3 Technically that's probably a lot of fathers' people's
4 phrases.

5 MR. MANDELL: That's *Richmond Newspapers vs.*
6 *Virginia*. And really that case stands for the proposition
7 that the First Amendment goes beyond just protecting freedom
8 of speech and expression. It also protects the right to
9 gather information, to receive ideas, and most importantly to
10 have access, public access to criminal trials.

11 And the reason for that is, there's an overriding
12 interest that in a trial, in a criminal case, the public is
13 able to scrutinize the judicial system and how it works,
14 because that's essentially going back a long way important to
15 our democracy and the admission of justice.

16 And I think that's especially important in this case,
17 public scrutiny, because, respectfully, I don't think public
18 skepticism, if not mistrust of government, has arguably ever
19 been higher in this case. And I think it's well placed
20 because of the landscape that we're in.

21 And as Judge Fuentes put in his November 20th, 2025
22 opinion in the *US vs. Briggs* case, "these are not ordinary
23 times at the Everett McKinley Dirksen Building."

24 And this is critical to acknowledge this because it's
25 really important to our petition. Because we acknowledge that

1 grand jury proceedings are ordinarily secret, but given the
2 landscape here, we think Your Honor has discretion, we put
3 that in our brief; and it should be exercised in the favor of
4 transparency.

5 And I just want to tick off a few examples that were
6 not specifically, I don't believe, called out in our brief.

7 And first you have Judge Cummings's determination in
8 the *Nava vs. DHS* case that ICE violated a longstanding consent
9 decree by conducting warrantless arrests.

10 Then you have Judge Ellis's determination that the
11 federal agents had used unreasonable force toward protestors
12 at the Broadview facility. And more importantly, that at
13 least one federal agent lied about the events that took place
14 there.

15 And I understand that her preliminary injunction was
16 ultimately shot down by the Seventh Circuit, but these are
17 findings that she made after evidentiary hearings.

18 Then, of course, you, Judge Perry, found that the
19 government's evidence was unreliable in the *National Guard*
20 case and a lack of candor and failure to reveal that grand
21 juries had failed to return indictments against those whose
22 arrests the government was relying on to request National
23 Guard support.

24 Then you have the case in front of Judge Alexakis, *US*
25 *vs. Martinez*. That's the case where a federal agent pumped

1 five bullets into Ms. Martinez's body and then bragged about
2 it to his buddies, bragged about the fact that he got seven
3 bullet holes out of the exercise. Not to mention that the
4 government car that supposedly rammed or -- that was
5 supposedly rammed by Ms. Martinez's car mysteriously
6 disappeared to Maine, Number 1, where bodywork was done on it;
7 and, Number 2, when the agent admitted under oath that it
8 wasn't really rammed.

9 Now Judge Alexakis chastised the government by
10 allowing to remain on its website the assertion that she was a
11 domestic terrorist long after they dismissed the charges
12 against her, and also that the government mischaracterized the
13 facts of the case in a brief in Your Honor's case to the U.S.
14 Supreme Court.

15 Finally, you have Judge Fuentes's opinion in which he
16 notes that the five arrest cases that came before him, all
17 supported by sworn declarations that supposedly were
18 corroborated by video evidence, all were dismissed, and in
19 three instances a grand jury returned a no bill.

20 So he found it, as he stated, a sobering event that
21 he had signed a complaint finding that the government's
22 allegations supported a finding of probable cause, only to
23 find out that the grand jury refused to find probable cause.

24 He closed his opinion by stating, "But the Court
25 cannot help but note just how unusual and possibly

1 unprecedented it is for the U.S. Attorney's Office in this
2 district to charge so hastily that it either could not obtain
3 the indictment in the grand jury or was forced to dismiss,
4 concluding the case is not provable in repeated cases of a
5 similar nature."

6 And that's just here, Your Honor. If you look to
7 other jurisdictions, similar things are going on.

8 In the Minnesota federal court, you may be aware of
9 the case against Journalist Don Lemon. There a magistrate
10 judge refused to sign a warrant for his arrest. And in an
11 unusual situation, the government went to the district judge
12 and asked him to review that, and the district judge refused
13 to question the magistrate judge's determination. And not
14 happy with that, they took it to the Eighth Circuit, who also
15 refused to question the situation.

16 So -- and then the district judge in that case noted
17 that the government had disobeyed scores of orders, court
18 orders in that case.

19 So in sum, Judge, given the landscape that we've
20 outlined here, this is a case, again, that calls for
21 transparency, not sealing.

22 And I think, Number 1, if you look at the factors set
23 forth in the *Craig* case, it's a Second Circuit case about
24 unsealing grand jury testimonies, a lot of the factors there
25 suggest -- and again, we're aware that grand jury materials

1 are often secret. But the proponents of secrecy in this -- or
2 the factors that weigh in favor of secrecy are at their lowest
3 strength in this case. The grand jury has been dismissed.
4 Count 1 has been dismissed. There are ways -- the defendant
5 is in favor of disclosure here. There are ways -- less
6 restrictive ways that the Court can deal with the privacy of
7 grand jurors or witnesses by, you know, anonymizing them in
8 some way.

9 And so we ask Your Honor to -- we believe this is a
10 case that warrants discretion, not only this individual case,
11 but given all of the other cases where the government's
12 conduct is, in the most charitable way of saying it,
13 questionable, if not misconduct. We, therefore, believe that
14 we've demonstrated a basis for an unsealing and an open
15 process.

16 THE COURT: All right. I'm going to share some of my
17 initial thoughts, and then I'm going to ask the parties to
18 share theirs, because this is, obviously, an adversarial
19 process.

20 I'm going to start just with the fact that I've had
21 about ten hours, several of which were sleeping ones, to
22 consider this.

23 Obviously, as everyone I think would agree, there are
24 some exceedingly important First Amendment interests at stake
25 here, for all of the reasons that you just stated,

1 transparency, accountability, openness, are all vitally
2 important to our democracy.

3 But the First Amendment isn't the only one that is at
4 play. The Sixth Amendment and the Fifth Amendment right to a
5 speedy trial, due process, and impartial jury, those are also
6 really important to our democracy.

7 And I think this case would be a lot simpler if we
8 weren't picking a jury in five days, less than five days at
9 this point.

10 So we have two sets of extremely important, extremely
11 weighty constitutional rights that are in tension here.

12 Selecting a fair and impartial jury in this case was
13 always going to be extremely difficult. There has been a
14 tremendous amount of pretrial publicity. Several of the
15 defendants are public figures. Pretty much everyone in this
16 area has a strong feeling one way or the other about
17 immigration and immigration enforcement activities that have
18 been undertaken by this presidential administration. That was
19 always going to be something we had to deal with.

20 To flood the record a few days before jury selection
21 with grand jury materials that are currently secret, and will
22 never be admitted at trial, right, because we are talking
23 about the colloquy between the prosecutors and in grand
24 jurors. In no way are those admissible. They will never be
25 admissible. They will never be before the jury. To put those

1 in the public record immediately before jury selection, I
2 think, almost guarantees that we will not be able to seat a
3 jury who has not been exposed and has not drawn strong
4 conclusions about, not just the evidence in this case.

5 You have a lot of cases that involve judges sealing
6 and perhaps getting into trouble sealing matters of public
7 record that are going to at some point come into evidence.
8 But what we're talking about here is something that will never
9 come into evidence, that the jurors will then be exposed to
10 before the trial, and just at this moment at least immediately
11 before the trial.

12 So given that, my initial instinct and strong feeling
13 at this point is that at this moment in time, today, Thursday,
14 the before Tuesday trial, the interest in guaranteeing a fair
15 jury to these defendants is more compelling than allowing
16 access to this particular proceeding.

17 To be clear, it is not my intention to keep this
18 proceeding under seal forever, and perhaps not even more than
19 a few hours depending on how things going during the
20 proceeding.

21 So to that extent, I believe the sealing is narrowly
22 tailored to address the issue of upcoming jury selection at
23 this moment, which we expect to be on Tuesday; and frankly, to
24 allow the defendants to consider their position. I know you
25 have one right now. You will get a chance to state it. But

1 the truth is, you haven't seen these transcripts either. So
2 to hold you to a position based upon a complete lack of
3 information about what is in the transcripts, I think would be
4 foolhardy.

5 So I will certainly let you state your position, but
6 I think the more important interest for your clients' right to
7 a fair trial is to allow you to see it first and talk about it
8 first, and then consider your options before you have a chance
9 to truly weigh in on this.

10 So those things make this case very different from
11 those that are cited by the intervener, which involved sealing
12 a 41-day preliminary hearing. That's the *Press-Enterprise*
13 case. A criminal trial itself, that's the *Richmond Newspaper*
14 case. A gag order on the media that lasted for the entirety
15 of the pretrial proceedings, which lasted for three months,
16 that's the *Nebraska Press Association* case.

17 Especially considering that you are not only asking
18 to come to the hearing, you are also asking for the grand jury
19 transcripts themselves, which underlie the hearing.

20 Now, everybody knows, and I'm not going to belabor
21 the point, that grand jury transcripts are secret. They are
22 secret by Federal Criminal Rule and by longstanding practice.
23 The Supreme Court has noted the tradition of grand jury
24 secrecy is older than our nation itself.

25 And Rule 65 states that the Court must close any

1 hearing to the extent necessary to prevent disclosure of a
2 matter occurring before the grand jury, which is what this
3 hearing is going to be doing.

4 The intervenors have cited *Carlson vs. United States*
5 for the proposition that the presumptive right of access to
6 court records extends to grand jury transcripts. I just don't
7 read *Carlson* to say that at all.

8 What I understand *Carlson* to say, and this is a
9 quote, is that, "When unsealing records, the Court has
10 complete discretion over the manner of disclosure at a time
11 and in a manner subject to any other condition it directs."
12 And I think that's what we are talking about here.

13 There may be a time when unsealing some or even all
14 of these grand jury records is appropriate. I don't think
15 that time is five days before trial, and it's certainly not
16 before the defendants themselves have gotten access to them.

17 *Carlson* involved the disclosure of grand jury
18 materials 70 years after they were created, which makes it
19 obviously very distinguishable from this case.

20 So those are my initial thoughts.

21 Let me ask the government, do you have a position on
22 sealing at this time?

23 MR. HOGAN: Sealing or unsealing?

24 THE COURT: Well, we haven't had it yet. So there is
25 nothing to unseal. The question is whether it will be

1 conducted initially under seal.

2 MR. HOGAN: Yes, I think it should be conducted
3 initially under seal for all of the reasons you just
4 expressed.

5 THE COURT: All right. Do the defendants have a
6 position at this time that you want to state on the sealing of
7 the hearing?

8 MR. PARENTE: For Defendant Straw only right now, I
9 just want -- and I understand I am flying blind. I hear what
10 you're saying. But based on the order, it does seem there is
11 something.

12 I just want to note for the Court, which is part of
13 our argument that you'll hear about in the next hearing, Your
14 Honor speculated, understandably, on what these transcripts
15 might show, and you made a comment that you believed it was
16 related to IT issues. They heard that. If this is not
17 related to IT issues, our position is they should have alerted
18 you immediately because there was press in the room who
19 reported on that.

20 So our jury pool has now consumed what they think was
21 said in the grand jury relates to IT-related issues.

22 So for, one, they let that stand out there without
23 going sidebar or telling the Court, which I think is part of
24 our bad-faith argument.

25 But, two, that's already out there. So we think --

1 if they're going to consume that, they should at least consume
2 whatever the truth is. And again, I understand that we don't
3 know what the truth is. So we'll wait.

4 But I just wanted to put that out there for Your
5 Honor to consider.

6 THE COURT: I mean, that is part of my problem with
7 this, right, is that interactions between the grand jury and
8 the prosecutors are not the types of things we will ever be
9 talking about at trial. Those are the types of things you
10 will argue about separately, and we'll deal with separately.
11 But I don't think the answer to a little bad is a whole lot
12 more bad.

13 MR. PARENTE: It is, though, when a little bad
14 benefits them for sitting on their hands and not alerting the
15 Court to the misunderstanding that you were under.

16 THE COURT: Let's pause on that until we talk later.

17 MR. MANDELL: May I be heard, Your Honor?

18 THE COURT: Of course.

19 MR. MANDELL: We had a similar issue come up in front
20 of Judge Wood in connection with the e-mail Jones trial, where
21 there was a trial -- a mistrial, yet the jurors' names were
22 secret. We intervened. Judge Wood expressed concern about
23 that because there was going to be a retrial, and she was
24 concerned that if the press interviewed the jurors that were
25 in place during the mistrial, it might influence future jurors

1 on the retrial. I think she properly came to the conclusion
2 that that's what voir dire is for.

3 And I've tried enough defamation cases against the
4 media to know that in the jury pool you have people that get
5 their news from so many different sources, or don't read the
6 news, that through voir dire, the parties are able to select a
7 jury that's not influenced by anything that is printed by the
8 press.

9 And when you balance against the public outcry over
10 what's going on in this case, and their desire to know, like,
11 what is their government doing, rightly or wrongly, I think
12 it's a closer call than Your Honor may have articulated just
13 now.

14 THE COURT: I think reasonable minds can differ,
15 certainly.

16 Mr. Campbell.

17 MR. CAMPBELL: On behalf of Andre Martin, we would
18 like to take a position after seeing what is in the grand jury
19 transcripts.

20 MR. HERMAN: Judge, on behalf of Ms. Abughazaleh,
21 we're in the same boat. We agree with intervenors'
22 overarching positions and arguments, but for the sake of our
23 client, we would like to take a look at the transcripts first
24 and then make a decision.

25 MS. DE PODESTA: On behalf of Mr. Rabbit, we would

1 like to do the same. We'd like to see the grand jury
2 transcripts and reserve our position. But again, similarly we
3 agree with the position of the intervenors.

4 THE COURT: All right. Anything else that you want
5 to add?

6 MR. MANDELL: One more thing, Your Honor, that I
7 forgot to mention. That is, in this district it has been sort
8 of a pioneer, from my understanding, in that it recently
9 amended local Criminal Rule 6.2.1 to make more transparency
10 into the grand jury process.

11 Now, when there is a return of a no bill, although
12 the jury foreman's name is redacted, that is now going to be
13 filed as a public document.

14 So I think there is a movement. I was not in on the
15 meeting of the people on the committee who made that decision,
16 but one would speculate that there's a sensitivity of the
17 public's need to be able to scrutinize the conduct of its
18 government, and that's a movement towards that goal. And I
19 think that's consistent with what we're -- what our goals are.

20 THE COURT: Two thoughts. I don't disagree with you
21 on the utmost importance of that.

22 I will say that local rule change would not have
23 affected this case because that applies only to cases in which
24 a complaint is filed first and then a no bill was returned.
25 And I don't believe there was a complaint ever filed in this

1 matter.

2 I get your point, but somewhat inapplicable here.

3 Your motion to intervene for the purpose of
4 challenging the sealing is granted. Your motion to attend the
5 hearing is denied.

6 I will absolutely reconsider when and for how long
7 the sealing should occur as soon as we've had a chance to talk
8 amongst ourselves, and the defendants have had a chance to see
9 the relevant materials, speak with their clients, and weigh
10 their options.

11 MR. MANDELL: Understood, Your Honor.

12 Thank you for giving us consideration this morning on
13 such short notice.

14 THE COURT: Thank you, all.

15 So we will take a brief break to allow the courtroom
16 to be cleared, and then we'll start with the 11:00 o'clock
17 hearing.

18 THE COURTROOM DEPUTY: Please rise.

19 (Recess at 11:06 a.m., until 11:08 a.m.)

20 (Exit Mr. Steve Mandell and Mr. Brian Saucier.)

21 THE COURT: I see the four defendants. I see a whole
22 load, although I will not call you a mob, of defense
23 attorneys, so I think we have the right people here.

24 MR. CORNELIUS: I'm here just a representative of the
25 office under the strictest interpretation of Your Honor's

1 order. I was not involved in the supervisor chain. I can be
2 excluded on that basis, otherwise, I am just here.

3 THE COURT: Can you state your name for the record?

4 MR. VANDENBERG: Cornelius Vandenberg.

5 THE COURT: All right. You can stay. We are working
6 on getting the stream turned off. We'll get IT to kill that
7 in a second.

8 It's muted so there is no outgoing transmission.

9 So let me just say to the defendants themselves, this
10 is under seal. What that means is, at least for the moment,
11 it is not open to be talked about or discussed outside of this
12 particular courtroom.

13 I did think it was important for you to be present
14 because you're going to have some decisions that you need to
15 make with your counsel at some point today.

16 So let me just start with a quick overview of the
17 timeline here for the record.

18 On April 8th, the defendants moved to compel the
19 disclosure of the grand jury transcripts, or in the
20 alternative for me to conduct an in-camera review. The
21 defendants' request was narrow. They wanted only the
22 presentment of the law and the conspiracy charge given to the
23 grand jury and related exchanges.

24 The defendants expressed concern that, given the
25 evolving theory of the government's case, the jury had perhaps

1 been misinstructed on the law in a way that would entitle the
2 defendants to a dismissal of the indictment.

3 On April 9th I set a briefing schedule, to the extent
4 the government objected to an ex-parte in-camera review of the
5 transcripts. Because the government did not object, they
6 filed, instead of briefing it, sealed transcripts for my
7 review on April 23rd.

8 During my review of those transcripts, I did identify
9 some infirmities in the legal instructions that had been
10 provided to the grand jury, at least in regards to the very
11 first grand jury appearance, which was on October 9th, 2025.

12 Those inaccuracies were corrected, at least in my
13 view, by the final grand jury appearance, at which the
14 indictment was obtained, during which a much more fulsome and
15 accurate legal instruction presentation was given to the grand
16 jurors.

17 I also noted at the time that I reviewed the
18 transcripts that there were within the transcripts provided
19 certain redactions that had been made by the government. I,
20 therefore, asked the government to bring to the next hearing
21 unredacted copies of the colloquy that I had received.

22 On April 29th, the government represented that it
23 would be dismissing the conspiracy charge, which was the only
24 felony charge, and proceeding with a superseding information
25 on the misdemeanor charges.

1 The government further represented that the
2 disclosure of the grand jury transcripts was mooted by the
3 dismissal of the felony charge, and I agreed, as there is no
4 right to an indictment with respect to a misdemeanor charge,
5 and any missteps with respect to the legal instructions on
6 that charge would be irrelevant.

7 On May 4th the defendants filed a renewed motion for
8 the grand jury transcripts, noting that the redactions
9 themselves in a document that was provided only to the Court
10 raised red flags.

11 The defendants further argued that the presumption of
12 regularity that typically protects government actions no
13 longer should apply in light of the alleged increased misuse
14 of the grand jury by the Department of Justice, and that there
15 was a possibility of improper or prejudicial interactions
16 between the AUSA and the grand jury.

17 On May 18th, at the pretrial conference, the
18 defendants argued their motion for the disclosure of the
19 unredacted grand jury transcripts to me. When I asked if the
20 government objected, they said they did not, and I received
21 the unredacted transcripts on May 19th.

22 So let me ask first: I asked everyone from the
23 U.S. Attorney's Office who participated in the redaction
24 process to be present today. I have the three trial
25 attorneys. We have one in the back, who says that he's here

1 kind of sort of just to observe, but did not participate in
2 the redaction process?

3 MR. HOGAN: That's right.

4 THE COURT: Okay. So I guess that simplifies matters
5 in that there are only three of you who we will have to talk
6 to.

7 I will say that having reviewed the grand jury
8 transcripts myself in full and unredacted form, there are
9 significantly bigger problems than misinstructions to the
10 grand jurors.

11 Although I am not going to prejudge the issue without
12 a hearing, I will say that I was incredibly shocked by the
13 redactions that were made. I have read hundreds, if not
14 thousands, of grand jury transcripts involving prosecutors who
15 are the most junior of prosecutors to several U.S. Attorneys
16 who appeared before the grand jury. I have never seen the
17 types of prosecutorial behavior before a grand jury that I saw
18 in those transcripts.

19 At a high-level summary for the defendants, who do
20 not have the benefit of having seen the transcripts yet,
21 several potential issues jumped out at me immediately and
22 glaringly.

23 First, improper prosecutorial vouching to the grand
24 jurors, with the AUSA putting her personal credibility and
25 trustworthiness on the line in support of the charges.

1 Second, improper prosecutorial communications of a
2 substantive nature with the grand jurors outside of the grand
3 jury room.

4 And, third, the prosecutor excusing grand jurors who
5 disagreed with the government's case from the deliberations
6 process.

7 Which brings me to problem Number 4, which is the
8 fact that all of this was redacted out of the versions of the
9 transcripts that I got. And frankly, it is that that I find
10 the most problematic. Mistakes happen. They happen to all of
11 us. But as I tell my children, you own it. You admit to it.
12 You apologize for it, and you move on. What you do not do is
13 hide it.

14 I relied on all of you and your personal
15 representations in this case about what has been issued in
16 discovery, about the types of searches you have done for
17 exculpatory material, about what arguments you will and will
18 not make in this case. And I do that because, first of all, I
19 treat every attorney who appears before me as an officer of
20 the court. But secondly, because I put even more reliance on
21 Department of Justice attorneys. Your sole goal is to do
22 justice. Your client is justice itself.

23 I do believe deeply in the presumption of regularity
24 and that most government attorneys are doing the best they can
25 to do the right thing. That trust has been broken.

1 The defendants have argued that prosecutorial
2 misconduct would entitle them to a dismissal of the indictment
3 with prejudice, including the misdemeanor charges that are set
4 for trial next week. I'm not sure that's true, given that
5 there was no need for the grand jury at all. I think there is
6 a dearth of case law -- well, there's a lot of case law now
7 about misconduct before the grand jury. What I have not seen
8 is much case law about the dismissal being with prejudice.
9 There have been a lot of dismissals of indictments. In all of
10 the ones I have seen, at least, the government is allowed to
11 try again. So -- but that's not to say it doesn't deserve to
12 be briefed and it doesn't deserve to be argued. But I am
13 looking for case law on that issue.

14 Also, what I think rears its head again is this idea
15 of vindictive prosecution.

16 On March 13th, the defendants had brought a motion to
17 compel discovery on the issue of vindictive prosecution. You
18 all stated repeatedly that you are not alleging any misconduct
19 that occurred at the U.S. Attorney's Office level. The motion
20 was based solely on the theory that someone external to this
21 U.S. Attorney's Office had urged this prosecution.

22 The motion was ultimately denied on the grounds that
23 there was no evidence of any outside influence at play in this
24 case. I specifically said that, given that you hadn't said
25 you were proceeding on any discriminatory intent inside the

1 U.S. Attorney's Office, and without any evidence of those
2 outside of it having any influence here, there is no evidence
3 of discriminatory purpose or intent.

4 Now, obviously, none of us know what we don't know
5 and none of us knew about this at the time. At the time of
6 your motion and my ruling, there was no reason to believe that
7 there had been anything vindictive or selective about the
8 prosecutors' actions. We all took the government attorneys'
9 word on a great many things.

10 I, at the time, was operating on a presumption of
11 regular grand jury proceedings, which these were very clearly
12 not.

13 So based upon what I've seen in the grand jury
14 transcripts, the calculus has changed and it has changed
15 considerably.

16 So I also think you are entitled to a briefing and
17 perhaps a hearing on the issue of vindictive prosecution
18 should you choose to raise it.

19 I think there is also a potential here, separate and
20 apart from the merits of this case and how this case ends up
21 proceeding, on sanctions for prosecutorial misconduct and for
22 potential ethical violations, including lack of candor to the
23 Court. That is a separate issue from how you all proceed with
24 the trial and the motions that you bring, and it will be dealt
25 with separately.

1 So in terms of next steps, I think you all have some
2 decisions to make, and unfortunately you are going to need to
3 make them quickly.

4 You have potential motions to be brought on
5 complicated legal issues that have, frankly, very limited case
6 law. We have been searching for any vindictive prosecution
7 case where a case was dismissed on that basis and the
8 dismissal was upheld by the court of appeals, because those
9 two things together are important. We have not found much.
10 And what we have found is pretty factually distinct.

11 So, you know, that's going to be something you're
12 going to have to research and do some homework on.

13 And there's also, of course, the potential with
14 either of those motions for an evidentiary hearing perhaps.

15 We aren't going to be able to accomplish all of that
16 before Tuesday. I know the Speedy Trial Act is very important
17 to your clients. I know that they are -- they've had this
18 weight over their heads for a long time. We are ready to go
19 on Tuesday. I have 90 jurors showing up on Tuesday. So I
20 think you all have to weigh the likelihood of success on these
21 motions with their desire to go forward to trial on Tuesday.

22 I am prepared to do either, strike the trial date or
23 proceed to trial.

24 I think one other thing you will you have to research
25 is whether we have to resolve these issues before trial. I

1 don't know the answer to that. We have been doing some
2 research on our end.

3 It seems clear that a vindictive prosecution motion
4 would need to be filed before trial. I'm not certain that it
5 would have to be ruled upon with all the evidence collected
6 before trial.

7 But that would be perhaps a third option, is go to
8 trial, see how it goes, and then litigate these issues
9 separately and later.

10 So I have thrown a lot at you. Do you want to take a
11 break to discuss?

12 MR. CAMPBELL: The answer for me is, yes, we want to
13 take a break to discuss.

14 Is it possible for us to get a copy of the grand jury
15 materials before we come back with an answer?

16 THE COURT: You certainly will be provided with a
17 copy of the grand jury materials, both the redacted and the
18 unredacted forms. There is a lot there though. So we'll
19 probably need an answer before you've had a chance to fully
20 analyze them.

21 But I will do what you all want to do here. If you
22 want to give me an initial thought after discussing, and then
23 a final answer --

24 MR. CAMPBELL: Yep.

25 THE COURT: -- I'm hoping for tomorrow midday, so

1 that we have time to call everybody off if that is your
2 choice.

3 Mr. Parente.

4 MR. PARENTE: A point of clarity, Judge. If what
5 you're saying at a summary level is as explosive as it sounds
6 to me, I have significant doubts that it stayed with these
7 three. I just want to make sure that we have an understanding
8 of what you have actually asked the U.S. Attorney's Office.
9 You wanted anyone involved in the decisionmaking process to
10 redact these, not who actually redacted them; is that correct?

11 THE COURT: I wanted anyone at an attorney level who
12 reviewed the transcripts and weighed in on any way on what
13 should be redacted from them.

14 MR. PARENTE: Up to the U.S. Attorney?

15 THE COURT: Yes.

16 MR. PARENTE: Okay. Just so we are clear on that.

17 THE COURT: Given that we have no supervisors here,
18 I'd be surprised if they went straight to the U.S. Attorney.

19 MR. PARENTE: But it would shock me for having come
20 out of that office, if what you're saying is in there happened
21 and that nobody raised this above these three guys. I mean,
22 that is ...

23 THE COURT: If I had to guess based on my reading of
24 the transcripts, which at this moment I do, there were other
25 people in the office who knew of problems occurring before the

1 grand jury, because they were corrected at various points.

2 So, for example, in the third hearing, no one gets
3 kicked out. And I think that's the one where your indictment
4 was ultimately returned.

5 So my guess, although there will be time to sort
6 through these issues, is that somebody at some point weighed
7 in and said, you aren't allowed to do that.

8 MS. DE PODESTA: I would just join Mr. Parente's
9 request to make sure. Knowing how the office works and how
10 things are done, it seems highly unlikely that the redactions
11 were made without consulting others. And I'd just like
12 confirmation on the record.

13 THE COURT: Yes. To be clear, I did not ask for
14 everyone who knew about anything that might have gone
15 suboptimally before the grand jury. I asked only for people
16 at this point who weighed in on what should be kept out of the
17 transcripts that I received.

18 So I would like the representation that you three are
19 the only ones who weighed in on, made any decisions about the
20 redactions made from these transcripts.

21 MR. HOGAN: Mr. Skiba was out of town and he did
22 not --

23 MR. SKIBA: Your Honor, I'm just here. I'm a member
24 of the trial team. I was also present in the grand jury.
25 That's why I'm here.

1 THE COURT: Okay. All right. So it is you two who
2 looked at the transcripts and made a decision about what would
3 be redacted and only you two?

4 MR. HOGAN: Yes, mostly me.

5 THE COURT: Okay.

6 MR. HOGAN: I'll take responsibility for it.

7 THE COURT: Okay.

8 MR. PARENTE: And, Judge, along those lines, you did
9 lay out a timeline. I just want to be clear, before that
10 motion, we had made multiple requests through discovery
11 letters for transcripts of what happened in the grand jury.

12 My understanding is Mr. Skiba was in the grand jury,
13 as he just said. So he was certainly on notice that we were
14 looking for those things. So I know that the formal motion
15 wasn't filed until April, but as you start looking at this,
16 they were on notice from back in December when we first asked
17 for this. And he who had sat through that, should have raised
18 it.

19 And I think there might be a motion here down the
20 road that I don't know if I want someone who participated in
21 this process trying this case.

22 THE COURT: Understood.

23 MR. SKIBA: I'm happy to speak to that, Your Honor,
24 if I may.

25 MR. PARENTE: Sure.

1 MR. SKIBA: So in full candor, Your Honor, I started
2 with this office on July 14th. I had been with the office for
3 less than two months. This was the second time I was before a
4 grand jury. The first time was a simple PSN case.

5 Ms. Mecklenberg is not here to defend herself. I am
6 not trying to deflect blame, but I was with a 20-years-plus
7 senior veteran.

8 I remember what you referred to as the vouching
9 incident. I remember thinking at the time that I would never
10 make that statement as a matter of personal style. What I did
11 not know then, and what only became apparent as we were
12 discussing dismissing these charges, is that's beyond personal
13 style, and that is, at a minimum, arguably misconduct.

14 So that's the first incident.

15 THE COURT: And let me -- I appreciate all of that so
16 far, and I'll let you continue. But let me just say, based
17 upon, again, my high-level research so far, vouching is not
18 itself a constitutional violation.

19 So for what it is worth, they seem to divide on the
20 case law between things that are constitutionally problematic
21 prosecutorial misconduct, and other, and that falls into the
22 other category.

23 MR. SKIBA: And to put an additional finer point on
24 it, what I remembered in the aftermath of that grand jury
25 presentation was not the very start of it. It was the very

1 end. Because we were -- the grand jury returned a no bill
2 that day.

3 So that was the thing that most top of mind up until
4 the discussions about each of the three episodes before the
5 grand jury.

6 The second and third incident, I'm happy to speak to
7 as well, as Your Honor flagged, that was elevated beyond just
8 Ms. Mecklenberg and myself.

9 THE COURT: And by "the second," you're referring to
10 the asking of grand jurors who had made up their minds already
11 to not partake in the second hearing?

12 MR. SKIBA: That's correct, Your Honor. And that was
13 the reason that that was flagged to the criminal chief. The
14 criminal chief said we need to call this off for the day to
15 gather, understand the right protocol. And then the third day
16 I believe was also elevated as well.

17 THE COURT: And can I ask, because defendants will be
18 asking and it is not clear from the transcripts, was there
19 also a no bill after the second presentation?

20 MR. SKIBA: There was no presentation of the
21 indictment that day.

22 THE COURT: Okay.

23 MR. SKIBA: The agent victim, Agent Woemmel, was
24 there that day. My recollection is, midway through his
25 testimony we had gotten the call to call it off for the day.

1 THE COURT: It says in the transcript something like
2 testimony ended abruptly.

3 MR. SKIBA: And that was the reason, Your Honor, for
4 the restarting of the law presentation on both 372 and Section
5 111. And I believe, we just restarted Agent Woemmel's
6 testimony anew as if -- and there were people that were there
7 the third day that were not there the second day. There
8 weren't even the ones who said -- who made comments and then
9 walked out. They just weren't there. So we started entirely
10 anew on that third day.

11 THE COURT: How many grand jurors absented themselves
12 after they were told?

13 MR. SKIBA: To my recollection it was -- there was
14 one individual [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 THE COURT: Was he the only one who left?

22 MR. SKIBA: No. There was, I believe, two or three
23 additional ones. It was not a large quantity.

24 I think he -- my recollection is he was the only one
25 who had left on his own volition, if you will.

1 MR. PARENTE: Judge, was the agent in the grand jury
2 for this?

3 THE COURT: No. It doesn't appear from the
4 transcript as though he was, at least.

5 MR. SKIBA: If I can correct that, Your Honor?

6 THE COURT: Yes.

7 MR. SKIBA: I think what it appears -- and this is
8 not -- I don't recall this in the moment, but it's reflected
9 in the transcript on the first day, was Agent Hylton was in
10 the room during the vouching.

11 Again, that's not my recollection from the day of,
12 but it could have just been, again, lots of things happened
13 that day. The agent being in there when he should have been
14 in the hallway, which is not top of mind.

15 THE COURT: I think Mr. Parente was asking about the
16 second time when the grand jurors were leaving whether the
17 witness was present for that.

18 Did I understand the question right?

19 MR. SKIBA: I can speak to that. I do want to be
20 careful, because I want to take a look at the transcript
21 again.

22 My recollection is what we had done on Day 2 and Day
23 3 is we presented the law first before we had called any
24 witnesses, because not only did we not have a lot of time to
25 present the law on Day 1, I think as Your Honor noted, it

1 wasn't potentially accurate.

2 So my recollection is it was during the law
3 presentation, or even right before the law presentation, that
4 these grand jurors walked out.

5 Again, I want to be careful and not make a
6 categorical statement. That's my recollection. I'm happy to,
7 again, review the transcript again just to clarify.

8 THE COURT: All right. Prefatory gating question
9 here, do you all want to go to trial on Tuesday?

10 So take a break; talk amongst yourselves. If you
11 can't make a decision in this moment, then fine. We can
12 reconvene at some point later.

13 (Recess at 11:30 a.m., until 11:44 a.m.)

14 THE COURT: All right. You've had some time to talk
15 amongst yourselves. Do you have a plan at this moment or a
16 plan to make a plan?

17 MR. PARENTE: We do, Judge. We definitely are going
18 to need more time. So we agree that the trial date should be
19 vacated based on what you just informed us of.

20 We are obviously going to be filing significant
21 motions based on what you just previewed for us. I think
22 we're going to ask for a briefing schedule at least 21 days on
23 our side.

24 Given that, we would also ask that Your Honor
25 reconsider the decision to unseal the transcript of today's

1 proceedings since this trial is not going to happen any time
2 soon. So that concern is sort of lifted.

3 And just, again, based on what's going on in this
4 country right now, I think the public has a right to know
5 about what you just told us, because I think it does impact
6 other cases. I know there are other cases right now where
7 people are trying to get grand jury transcripts, and other
8 judges are trying to weigh, like, is the U.S. Attorney's
9 Office acting in the right way. And based on what I heard
10 having come out of that office, I'm sick to my stomach about
11 what you just described to me. And if it happened here, I can
12 tell you that it's probably happened in other offices, and I
13 think the public's need to know trumps any picking of a jury
14 in this case. Because I don't know if we are ever going to
15 get there based on what you said. And I don't think these
16 three prosecutors will be trying this case, in my opinion.

17 MR. CAMPBELL: I agree with that.

18 On behalf of Andre Martin, our request is that you
19 unseal both the transcript of today and the grand jury
20 transcripts, anonymized to the extent that it's necessary.
21 But it sounds like what we're talking about is colloquy, not
22 anything that is truly presumed or intended to be kept secret
23 under 60. But at a minimum the transcript from today should
24 be released immediately.

25 MS. DE PODESTA: We absolutely join that request.

1 MR. HERMAN: Yes, we join on behalf of Abughazaleh.

2 THE COURT: All right. Let's do this: The trial
3 date will be vacated. It sounds like no one is asking for a
4 new trial date to be set at this time.

5 Do you want a briefing schedule on kind of everything
6 just as one?

7 MR. CAMPBELL: So, Judge, at least on behalf of
8 Mr. Martin, we know that there's going to be a motion and
9 probably a request for a hearing with respect to dismissal
10 with prejudice, okay. I think I need to figure out if there
11 are other things, which is why we're asking for some time.
12 And so if we can set 21 days on that particular item, from my
13 perspective, and then if there are other things and we need
14 more time, we will ask you for that. But 21 days to brief the
15 issues that have arisen out of this hearing.

16 Can I have a moment, Your Honor?

17 (Counsel conferring.)

18 MR. CAMPBELL: Maybe 28 days.

19 But, Judge, we've got to digest all of this and
20 figure out what all we need to brief.

21 THE COURT: 30 doesn't actually help you because that
22 gives you a weekend, so ...

23 I'll give you the time you want, and you can take an
24 extension of time if you have still not figured things out by
25 then.

1 So let's just set the initial briefing for 28 days,
2 and if there's a motion for an extension of time, we will
3 extend it.

4 So it will June 18th for opening briefs on these
5 topics.

6 Response on these topics? How long?

7 MR. HOGAN: Equal time.

8 THE COURT: July 16th for the response.

9 Let's talk about the unsealing.

10 MR. CAMPBELL: Can we get a reply 14 days thereafter?

11 THE COURT: Sure. Sorry.

12 July 30th for the reply.

13 And then we will set a hearing, if necessary,
14 sometime after that, if it is appropriate to do so.

15 So the unsealing -- I mean, there's a few different
16 ways we can go about this. The first question is unsealing of
17 this particular hearing.

18 Question Number 2, which I think is a different
19 question, is unsealing of the grand jury transcripts.

20 Question Number 3 is what redactions, if any, would
21 be appropriate to the grand jury transcripts.

22 I will tell you straight off, my initial instinct,
23 having done no legal research at this point, and not heard
24 anyone's arguments, is that the grand jurors' personal
25 opinions about the case probably should stay under seal,

1 because to the extent there is an interest in secrecy and
2 promoting full and free discourse amongst grand jurors, that
3 is where I see the interest to be strongest.

4 So that is my initial thought, but I would like you
5 all to think about it. You have to read them still. So read
6 them. And then I would like -- tell me how many days you
7 would like to submit something on unsealing of this hearing,
8 unsealing of the colloquy portions as a whole. I don't think
9 we're asking for unsealing of, like, the witness portions,
10 right? We're talking about the colloquy between the
11 prosecutors and the grand jurors and then what redactions, if
12 any, would be appropriate.

13 MR. PARENTE: Would you consider just the unsealing
14 of today's hearing instanter right now, because I think --
15 again, there is a compelling interest now that the jury is not
16 going to be picked any time in the near future, that interest
17 is gone. And I don't think you said anything today that would
18 interfere with the grand jury matter.

19 THE COURT: There are a few things that were said
20 today that impact the grand jurors' thoughts, responses,
21 et cetera.

22 So tell me how quickly you can brief your position.
23 Also, the government needs a chance to quickly
24 respond.

25 So if you want to do it orally, you can. If you want

1 to do it in writing because there are a few things to think
2 through, even if it's a 24-hour date.

3 MR. PARENTE: We can do it orally right now. We are
4 okay with you -- at least team Straw is okay with you
5 redacting what you have expressed about the grand jurors'
6 personal opinions.

7 I think your summary of what occurred there is
8 critical. And I think our clients have been dragged through
9 the mud repeatedly by this office. And knowing that this
10 is -- that they were sitting on this the whole time is just
11 infuriating. I mean, it is going to be very hard for my
12 client to not be able to talk to his family about this, his
13 kids about this.

14 I think the public has a need to know. Things are
15 happening in this country every minute. There is a
16 weaponization fund that I think we are now eligible for. And
17 I think people need to see what this DOJ is doing.

18 MR. CAMPBELL: On behalf of Andre Martin, if you have
19 any concerns that relate to, you know, disclosing what a grand
20 juror said, redact it from the transcript. That ought to be
21 out there by the close of business today. We can deal with
22 the grand jury transcript in time, we can brief that. But the
23 transcript of today's proceeding with the Court's judgment on
24 what, if anything, ought to be redacted should be out today.

25 MS. DE PODESTA: We agree with the understanding that

1 any opinions of the grand jurors with respect to the facts
2 that it probably should remain secret under the rules of the
3 grand jury. But we would ask that anything else with respect
4 to today's hearing be released today.

5 MR. HERMAN: Judge, we agree, and we would also
6 inquire, if the press is still outside, if there could be a
7 short summary of what happened. Using Your Honor's judgment
8 about saying whatever you feel comfortable saying to the
9 press. I believe they're still out there right now.

10 THE COURT: Let me think about that. I'm not wild
11 about creating a court proceeding just for the purposes of
12 letting the press know.

13 MR. POUTROS: Your Honor, perhaps just to advise the
14 press that --

15 THE COURT: Sure. We can go on the record to strike
16 the trial date.

17 Okay. Anybody else?

18 That's it.

19 Okay. Does the government have a response at this
20 time about the -- it sounds like the only thing on the table
21 at the moment is the unsealing of today's proceeding.

22 MR. HOGAN: I think we'd like to get some guidance
23 before we give a response.

24 THE COURT: Let's do this: I am going to invite
25 anybody who wants to come in. We will put on the record that

1 the trial date has been vacated. We will put on that the
2 trial date -- that a briefing schedule has been set for motion
3 practice based upon the grand jury transcripts, and that you,
4 of course, still need to see them. We'll put on the public
5 record the amount of time that the government has to give you
6 those transcripts. And then we can take a break for some
7 period of time. And the government can come back and state on
8 the public record what its position is on the unsealing of
9 today's hearing.

10 Does that sound like a plan?

11 MR. CAMPBELL: Yes, Judge.

12 THE COURT: All right. Let me figure out how
13 logistically we open the courtroom.

14 (Recess at 11:53 a.m., until 11:55 a.m.)

15 THE COURT: All right. We are back on the public
16 record.

17 The May 26th trial date has been vacated at the
18 request of the defendants, and no new trial date will be set
19 at this time.

20 The parties have requested a briefing schedule for
21 briefing of potential motions based upon the grand jury
22 matter.

23 The defendants' brief will be due on June 18th, 2026.

24 The responsive brief by the government will be due on
25 July 16th.

1 The reply brief will be due on July 30th.

2 The government has -- the defendants have again
3 requested the unsealing of today's hearing. And the
4 government has asked for a brief time to consult with their
5 front office about their position on that.

6 How long do you need? It is currently 11:55.

7 MR. HOGAN: 15 minutes.

8 THE COURT: Oh, 15 minutes. Okay.

9 MR. HOGAN: I think, assuming people --

10 THE COURT: It is lunch time.

11 How about we resume at 1:00 p.m., and the government
12 will present its position on the unsealing of today's hearing.
13 With the understanding that the Court at this point plans to
14 redact out from the transcript portions of the hearing that
15 discussed the grand jurors' personal opinions about the case,
16 because the interest in secrecy I think is still present for
17 those.

18 The government is to provide the grand jury
19 transcripts, both the unredacted form and the form that I was
20 given initially, the redacted form, to the defendants by
21 3:00 p.m. today, please.

22 I will give a heads up to the defendants, there are
23 portions that are obviously redacted, meaning blacked out
24 lines, there are also pages missing. So you will need to look
25 at both of those things when you get the two sets together.

1 MR. PARENTE: Judge, on that point, I meant to raise
2 this earlier, is somewhere in the record just so it is clear
3 what they gave you initially, is that going to be somewhere?

4 THE COURT: That's what I just attempted to say.

5 MR. PARENTE: Okay, got it. Sorry, I just have
6 missed it.

7 THE COURT: There are two sets of documented, the
8 redacted version, the unredacted version.

9 And then the defendants will submit in how long your
10 position papers on the unsealing of the grand jury transcripts
11 and any potential redactions for those?

12 MR. CAMPBELL: Can we have until end of day Tuesday?

13 THE COURT: Sure.

14 MR. CAMPBELL: I'm sorry, taking into account the
15 holiday, can we have until Wednesday?

16 THE COURT: Sure. The 27th then.

17 And then how long does the government want to respond
18 on the issue of the unsealing of the grand jury colloquy?

19 MR. HOGAN: Wednesday?

20 THE COURT: They're doing Wednesday.

21 MR. HOGAN: Friday.

22 THE COURT: Okay. So we will reconvene on the public
23 record at 1:00 p.m. for the government to state its position
24 about the unsealing of today's hearing.

25 Is there anything else that we need to address at the

1 moment?

2 MR. CAMPBELL: No, Your Honor.

3 MR. PARENTE: No.

4 THE COURT: All right. Thank you very much.

5 (Recess at 11:58 a.m., until 1:02 p.m.)

6 (Enter Mr. Andrew S. Boutros, Mr. Steve Mandell, and Mr.
7 Brian Saucier.)

8 THE COURTROOM DEPUTY: Recalling 25-CR-693, USA vs.
9 Rabbitt, et al.

10 MR. BOUTROS: Good afternoon, Your Honor. I was
11 looking to see if it was noon or not.

12 Andrew Boutros on behalf of the United States as the
13 United States Attorney.

14 THE COURT: Good afternoon. We have three others
15 here. Can you state your names for the record?

16 MR. HOGAN: We do. AUSAs Hogan, Skiba and
17 Almendarez.

18 THE COURT: Thank you.

19 MR. PARENTE: Good afternoon, Your Honor.

20 Chris Parente, Damon Cheronis, for Mr. Brian Straw,
21 who is present in the courtroom.

22 MR. CAMPBELL: Good afternoon, Judge.

23 Terry Campbell, Mallory Davenport, and Ted Poulos on
24 behalf of Mr. Andre Martin, who is also present in court.

25 MR. HERMAN: Good afternoon.

1 Josh Herman, Molly Armour on behalf of Kat
2 Abughazaleh, who is present.

3 MS. DE PODESTA: Good afternoon, Your Honor.

4 Nancy DePodesta and Carly Chocron on behalf of
5 Michael Rabbitt who's also here present in court.

6 MR. MANDELL: Good afternoon, Your Honor.

7 Steve Mandell and Brian Saucier on behalf of the
8 intervenors.

9 THE COURT: Welcome back.

10 MR. MANDELL: Thank you.

11 THE COURT: So we have resumed to ask the government
12 for its position on whether or not the transcript from this
13 morning's proceeding should be unsealed.

14 MR. BOUTROS: Your Honor, the government takes no
15 position.

16 THE COURT: And the defendants have all requested, I
17 think, the unsealing. Mr. Mandell has requested unsealing on
18 behalf of the intervenors.

19 That motion will be granted.

20 There is a presumption of public access to court
21 proceedings. There is also a presumption of secrecy for grand
22 jury proceedings. Today's hearing was a bit of a hybrid as it
23 was a court proceeding that involved matters that occurred
24 before the grand jury.

25 My initial rationale for sealing the proceeding had

1 to do with the potential prejudice to the trial process, given
2 that we were, as of this morning, a few days away from
3 selecting a jury. That is no longer the case. The trial date
4 has been vacated. No new date has been set, and we may never
5 get to the point of a trial in this case.

6 Given that, the presumption of public access to court
7 proceedings wins in our dueling constitutional amendments
8 discussion from this morning.

9 The Seventh Circuit has also held that I have the
10 inherent authority to release grand jury material when it is
11 in the interest of justice. Here, I believe that it is.

12 United States citizens have a right to understand how
13 their government is functioning. And when things do not
14 function as they should, they have a right to know that. Our
15 democracy does not work if public officials can hide what
16 they're doing from public inspection and judgment.

17 The Supreme Court has outlined five reasons for
18 maintaining grand jury secrecy.

19 First, to prevent the escape of those whose
20 indictment may be contemplated, which is obviously not at
21 issue here.

22 Second, to ensure the utmost freedom to the grand
23 jury in its deliberations, and to prevent persons subject to
24 indictment or their friends from importuning the grand jurors.
25 Some of that applies here. We'll talk about that in a moment.

1 Third, to prevent subornation or perjury or tampering
2 of witnesses who may testify before the grand jury and later
3 appear at the trial. Given that our proceeding this morning
4 did not discuss any witness testimony or any witnesses, that
5 does not apply here.

6 Fourth, to encourage free disclosures by persons who
7 have information with respect to the commission of crimes.
8 Again, since this proceeding did not talk about any of the
9 merits of the underlying case, that does not apply here.

10 And, fifth, to protect the innocent accused, who is
11 exonerated from disclosure of the fact that he has been under
12 investigation. And, obviously, all of the defendants here
13 have requested the disclosure, so that also does not apply.

14 What we discussed at today's hearing involved mainly
15 the conduct of the prosecutors. It did not involve any
16 witness or the merits of the case.

17 Given that the only factor that would counsel in
18 favor of secrecy is the discussion about the grand jurors'
19 views of this case, which we had a little bit of, I'm going to
20 redact out the portions of the transcript that talks
21 specifically about the grand jurors' feelings about the case,
22 which is, I would say, probably about 1 percent of what we
23 talked about, with all the other parts being unsealed.

24 Given that high import of government transparency and
25 the lack of interest in the statements being kept secret, I do

1 believe it is in the interest of justice to release the
2 transcript.

3 I am not ruling at this time on the release of the
4 grand jury transcripts that underlie the discussion today.
5 The defendants still have not received those or had a chance
6 to review them or to weigh in on that. We have already set a
7 briefing schedule for them to do that, so that would be a
8 separate discussion for later. But I thought it was important
9 to at least get you access to the proceeding today as quickly
10 as we can, keeping in mind we have logistical things we have
11 to do to make that transcript actually available as well as
12 redactions. So I am hoping that we will do that before close
13 of business today.

14 I see no objection. We will try to make that happen.

15 So let me ask the parties this: I have set some
16 deadlines. We have obviously struck the trial date. Is there
17 anything else we need to do today?

18 MR. BOUTROS: Yes, Your Honor. If I could, Your
19 Honor, be heard.

20 First, perhaps this will moot a lot of the deadlines
21 that Your Honor has to set because I'm up here to dismiss the
22 information.

23 And in doing so, I want to also, with the Court's
24 permission, address some of the items that came up this
25 morning. And so with the Court's indulgence, I'd ask to be

1 heard.

2 THE COURT: Yes. Let me ask first, is that dismissal
3 with prejudice?

4 MR. BOUTROS: With prejudice.

5 THE COURT: That will be granted.

6 And you may be heard.

7 MR. BOUTROS: Thank you, Your Honor.

8 So while this proceeding was taking place earlier
9 this morning, I was actually in the chief judge's courtroom
10 swearing in new AUSAs. So it was ironic as this was happening
11 that we were celebrating six new AUSAs being sworn in today,
12 three in the civil division and three in the criminal.

13 I came down from that to learn that Your Honor was
14 understandably quite upset. And I understood that Your Honor
15 was quite likely upset when I saw the minute order that was
16 issued, I believe, yesterday seeking today's hearing.

17 It is my very sincere belief, Your Honor, that no
18 prosecutor acted intentionally in misleading you, and that
19 there was no desire to mislead the Court and no deliberate
20 misconduct on the part of the prosecutors.

21 I know Your Honor has indicated that you may hold a
22 hearing or will hold a hearing. We obviously defer to Your
23 Honor. But I did want you to know from me, that from my
24 assessment, having spoken extensively to the prosecutors, I do
25 not believe that whatever errors were done specifically as it

1 relates to the redactions, were done intentionally or with a
2 desire to mislead the Court.

3 And if Your Honor wants to hear more about that, I'm
4 happy to come back and explain why that is the case.

5 I also want to put on the record now that these
6 minutes have been unsealed pursuant to your order, that I was
7 completely unaware of any vouching that took place in the
8 grand jury, and only became aware of it on either April 27 or
9 the 28th. And immediately when I learned about that vouching,
10 the next day I moved to dismiss the indictment. That was the
11 first time any issue of vouching rose to my level. And,
12 frankly, to the level of anyone in the front office.

13 With respect to the excusing of grand jurors that
14 took place, which was the second time that the prosecutor
15 sought to return an indictment, that is an issue that I was
16 aware of in realtime. And once I became aware of it, I
17 immediately called off that grand jury session.

18 I then reached out to the chief judge to make her
19 aware of what had happened, because she supervises the grand
20 jury.

21 We then issued all-office guidance on -- as to how --
22 what you are to do as an AUSA if you confront grand jurors who
23 don't want to deliberate or if there is tension in the grand
24 jury. I met with the chief judge. We established a protocol,
25 and then we sent out office-wide guidance for how AUSAs are to

1 respond in the future in the event that there is tension such
2 as what took place in that grand jury.

3 And I also want to put on the record and for your
4 benefit, Judge, that the reason we didn't go into a new grand
5 jury was because we were concerned that by going into a
6 different grand jury, we may be perceived as forum shopping,
7 unwilling to respect the decision of the grand jury. And
8 recognizing there is a difference in view as to the function
9 of the grand jury. Some constitutional law scholars will say
10 that the grand jury's job is to find probable cause and return
11 a true bill when there is probable cause. Others will say
12 that it is also the conscience of the community, and that it
13 speaks for the community, and it dates back to the colonies
14 when unfair kings were perhaps being oppressive to colonists.
15 And so that the indictment and the grand jury process was
16 codified in the Constitution to reflect the consciousness of
17 the community.

18 And so given that view, it was important to me that I
19 say we will go back into the same grand jury again and do it
20 right as opposed to trying to go into a new grand jury, which
21 would have certainly eliminated all of these issues, a fresh
22 grand jury.

23 I will also tell Your Honor that I was completely
24 unaware of any ex parte communications that took place in the
25 third instance until I became aware of the grand jury

1 transcripts. And within the next day or 24 hours thereabout,
2 we immediately dismissed Count 1.

3 So I was unaware of the vouching. I was unaware of
4 the ex parte communications, all except at the time that right
5 before we dismissed the indictment. And I made the decision
6 to dismiss the indictment.

7 I do at least commend the prosecutor who was in the
8 grand jury and who did have the ex parte contact that she had
9 the wherewithal to put it on the record, so that it could be
10 captured, because it also, Your Honor, as you know, what
11 happens in the grand jury stays in the grand jury. So I do
12 give that prosecutor credit for doing so.

13 I will tell Your Honor that as upset as you are and
14 have been, I was upset as well. I too had not seen conduct
15 like that like that, and it upset me, which is why we did
16 dismiss that indictment and proceeded with an information.

17 In doing so, we wanted to moot whatever had taken
18 place in the grand jury. And we were also removing the felony
19 that had now been hanging out there.

20 And to be sure, we could have gone back and I could
21 have instructed the prosecutors to go into a clean grand jury
22 and to return a new indictment. But it was my decision to
23 forego the felony charge and to proceed purely on the basis of
24 a misdemeanor that was reflective of all the things that we
25 have just finished talking about.

1 So I wanted Your Honor to hear from me.
2 Specifically, I wanted the public to hear from me, because I
3 do agree with you that we do have an open court system, and
4 the public should know what's going on, and they should hear
5 it from the chief federal law enforcement officer.

6 And I'm happy to answer any questions, Your Honor,
7 but I did want to put all of this on the record. And I did
8 want to emphasize that I truly do believe that all of these
9 prosecutors here, no one acted with the intent to mislead Your
10 Honor; and I think that they were following your order to give
11 the law, and they provided the law. And in the case of two of
12 the prosecutors, I believe they were either in the middle of
13 trial when they were trying to prepare this stuff, literally
14 in the middle of trial, or on the verge of being in trial and
15 they were moving very quickly.

16 And, obviously, Your Honor knows, because you were
17 here for it, when we dismissed that indictment on April 28th,
18 the prosecutors did offer to give you the unredacted full
19 copy. And I would submit very respectfully to Your Honor
20 that's not the behavior of people who are trying to mislead to
21 offer the transcript to the Court.

22 So we, obviously, defer to the Court's power and to
23 its judgments on terms of next steps, but I did want you to
24 hear from me as to what I believe took place with respect to
25 the other things that I just finished putting on the record.

1 THE COURT: Mr. Parente, I sense you want to be
2 heard.

3 MR. PARENTE: Thank you, Your Honor, this is the
4 second case I've had with U.S. Attorney Boutros, and I commend
5 his ability at the end of the day to stand up and do what is
6 right. The timing of these things is troubling, right. Even
7 as of yesterday, they were going forward with this case. It
8 wasn't until Your Honor expressed strong displeasure today
9 that they are now dismissing this. Up until yesterday he knew
10 what was in those grand jury transcripts and he was still
11 instructing his prosecutors to go to trial on this. And it
12 wasn't until you made your strong comments, which were
13 appropriate, that he changed his mind. I do want to note that
14 and I do appreciate him dismissing this.

15 Second, I would ask that the office, and maybe
16 because Andrew Boutros is here he can remove from the website
17 this press release that says that these guys have all been
18 indicted. At least put a banner that the charges have now
19 been dropped. I would appreciate that for my client.

20 MR. BOUTROS: There's no objection to that, Your
21 Honor. That is a small point.

22 MR. PARENTE: Too, Judge, again, you repeatedly say
23 there's only 30 lines. There's only 30 lines. These
24 gentlemen were sitting here and heard the Court say that and
25 now we find out there are missing pages. I don't understand

1 how that is not misleading the Court. I understand
2 Mr. Boutros advocating for his AUSAs, but having done the job,
3 if I heard a Judge say, well, there is only 30 lines. I think
4 it's IT related, what could it be. And I know in my mind what
5 is going on here, how do you not approach the Court?

6 MR. HOGAN: I'd like to address that. The direction
7 was to give the Court the law on 372 charge and there was a
8 lot of other discussion in the grand jury. And the missing
9 pages also account for the testimony of at least two
10 witnesses. We just didn't turn over the testimony of one of
11 the agents, for example, or both of the agents, I think.

12 THE COURT: Mr. Parente still has not seen the
13 transcripts.

14 MR. HOGAN: There was some IT issues.

15 MR. PARENTE: I'm sure there were. But these are
16 games that civil attorneys play. This isn't what someone
17 whose job it is to always do the right thing should do.
18 Again, this was personal, Judge. It was quoted in the paper,
19 "Prosecutors blasted Parente for hysterically speculating
20 about perceived misconduct in what was the normal practice" --

21 MR. HOGAN: -- that was --

22 MR. PARENTE: I'm not done -- "in Chicago's federal
23 court. There was nothing remotely unusual, let alone
24 nefarious about that state of affairs." How you can say that
25 in this context is beyond me.

1 MR. HOGAN: I'll tell you how because that was with
2 respect to the motion to dismiss with prejudice. It had
3 nothing to do with the grand jury minutes at all. Entirely
4 different issue.

5 MR. BOUTROS: Your Honor, I want to be heard on the
6 first point Mr. Parente made. Once I became aware of the
7 conduct in the grand jury, within 24 hours we dismissed. We
8 then filed an information that has nothing to do with the
9 grand jury, and I was prepared and still would have been
10 prepared to go to trial on the misdemeanor count. Because I
11 do believe in the rule of law. And, Your Honor, there was
12 something that you said that really caught my attention and it
13 made the press.

14 Mr. Parente and the defense had asked to take the
15 jurors to go see the Broadview facility and the government
16 didn't object. And Your Honor said that you were not going to
17 allow for that to happen because you didn't want to
18 potentially subject the jurors to mob scene and to the chaos
19 that ensued. And that's what this case is about. Section 111
20 prohibits any employee or federal official from being
21 assaulted, intimidated, interfered in the carrying out of the
22 exercise of their duties. That applies to whether you're
23 dealing with an elected official, a United States Senator, a
24 congressman, a federal judge, a law clerk, a US attorney, an
25 AUSA, or an ICE agent. And the conduct that took place there,

1 if it had occurred to a federal judge or to a sitting member
2 of Congress, we would not be having discussions about whether
3 or not that was appropriate or not appropriate, and there
4 would be uniform view in agreement that the conduct that took
5 place is unacceptable in a civilized society. And it is for
6 the grace of God that that agent moved at 2 miles an hour,
7 that the agent didn't panic and strike on the accelerator and
8 hurt somebody, that the agent didn't panic and pull out his
9 gun and shoot somebody, that nobody on that scene perhaps had
10 a gun and shot at the agent. And so I do want to say, we
11 stand by the charges that we were prepared to bring, but when
12 we became aware of the conduct in the grand jury, we corrected
13 it by dismissing the indictment immediately. We tendered or
14 at least offered to tender to the Court the transcripts
15 unredacted and we were prepared to proceed on a misdemeanor,
16 which as the defense knows, is a probable cause determination
17 made by the United States Attorney. And this United States
18 Attorney believes that there's probable cause that a crime was
19 committed, and it was the 111 misdemeanor that we were
20 prepared to go to trial on on Tuesday.

21 THE COURT: A few points. My turn. To be clear, I
22 did not refuse to take the jurors on a field trip to Broadview
23 because I didn't want them to be exposed to the mob like these
24 defendants. That is not at all what I said. If you
25 interpreted it that way, that is apparently on me for not

1 being clear. What I said was, Broadview is a public place
2 that has people from all walks of life. It is an uncontrolled
3 setting where I could not prevent the public from taking
4 photos or recording our jurors, as I can in this building; nor
5 could I prevent messages from being sent to the jurors about
6 people's views of this particular case as I can in that jury.
7 So that's first.

8 Secondly, you are significantly undercutting your mea
9 culpa here by standing behind the charges and continuing to
10 vilify these particular defendants.

11 Third, what matters right now is not the defense
12 attorneys or Mr. Boutros or the prosecutors. It is these four
13 defendants whose cases just got dismissed, who no longer have
14 to go to trial on Tuesday. So I suggest we all take a break.

15 The issue of sanctions can be decided after the
16 dismissal, I believe. Someone tell me if I'm wrong on the law
17 on that. But any type of sanctions for misconduct that
18 occurred before this tribunal can wait until later. But my
19 thought would be that we get this dismissal on file. We
20 release these four people and hopefully they will never have
21 to come back to this building again unless it's voluntarily
22 so. And we meet again later to discuss these other issues.

23 Mr. Parente, do you have an objection to that?

24 MR. PARENTE: I just want to make an exhibit part of
25 the record if you would allow. It is just an email that I

1 sent to Mr. Hogan in this time of transparency, where I say,
2 if the Court disagrees with your mootness argument tomorrow,
3 could you bring at least one copy of the unredacted transcript
4 to court. He responded no. So he can argue what he wants. I
5 just want this part of the record in case this does become an
6 issue later on. This is Defense Exhibit 1.

7 THE COURT: We will make that part of the record.
8 Does anyone have anything else that they need to say
9 now?

10 MR. CAMPBELL: (Shaking head.)

11 THE COURT: Thank you very much. We will work on
12 getting the transcript out.

13 (Concluded at 1:21 p.m.)

14 * * * * *

15 I certify that the foregoing is a correct transcript from
16 the record of proceedings in the above-entitled matter.

17
18 /s/Noreen E. Resendez
19 Noreen E. Resendez, CSR, RPR, CRR
Official Court Reporter

May 21, 2026
Date

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