

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TENNESSEE  
3 GREENEVILLE

4 UNITED STATES OF AMERICA, . DOCKET NO. CR-2-05-75  
5 GOVERNMENT, .  
6 VS. . GREENEVILLE, TN  
7 . NOVEMBER 17, 2006  
8 . 9:05 A.M.  
9 MICHAEL VASSAR, .  
10 DEFENDANT. .  
11 . . . . .

12 TRANSCRIPT OF PROCEEDINGS  
13 BEFORE THE HONORABLE J. RONNIE GREER  
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 FOR THE GOVERNMENT: U.S. ATTORNEY'S OFFICE

17  
18 FOR THE DEFENDANT: HERBERT MONCIER, ESQ.  
19  
20  
21

22 COURT REPORTER: KAREN J. BRADLEY  
23 RPR-RMR  
24 U.S. COURTHOUSE  
25 220 WEST DEPOT STREET  
GREENEVILLE, TN 37743

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT  
PRODUCED BY COMPUTER.

1 (CALL TO ORDER OF THE COURT AT 9:05 A.M.)

2 THE COURT: MRS. HOPSON, CALL THIS CASE, PLEASE.

3 THE CLERK: USA VERSUS MICHAEL VASSAR, CASE  
4 NUMBER CR-2-05-75.

5 THE COURT: ALL RIGHT. IT APPEARS WE'VE GOT ALL  
6 KINDS OF ISSUES THIS MORNING BEFORE WE CAN GET TO THE  
7 SENTENCING HEARING IN THIS CASE. MR. VASSAR'S ATTORNEY HAS  
8 FILED OVERNIGHT A MOTION TO CONTINUE THIS CASE. I HAVE A  
9 MOTION FILED BY THE ATTORNEY FOR MR. SHULTS TO QUASH THE  
10 SUBPOENA UPON MR. SHULTS; AND I UNDERSTAND, MR. MONCIER,  
11 THAT YOU'VE NOTIFIED MY OFFICE THAT THERE'S SOME EMERGENCY  
12 MATTER THAT NEEDS TO BE TAKEN UP THIS MORNING.

13 MR. MONCIER: PURSUANT TO RULE 44 OF FEDERAL  
14 RULES OF CRIMINAL PROCEDURE YESTERDAY I WAS PROVIDED A  
15 LETTER BY THE GOVERNMENT PURPORTING TO BE A BRADY  
16 DISCLOSURE. ONE OF THE PARAGRAPHS IN THE LETTER ALERTED ME  
17 FOR THE FIRST TIME TO AN ISSUE THAT PERTAINS TO RULE 44(C),  
18 AND I WOULD LIKE TO ADDRESS THE COURT WITH THE GOVERNMENT  
19 PRESENT ON THE RECORD IN CHAMBERS WITH MY CLIENT PRESENT ON  
20 THE RECORD THESE MATTERS. THEY ARE QUITE SENSITIVE TO THE  
21 RIGHTS OF MY CLIENT AND OTHERS.

22 THE COURT: ALL RIGHT. RATHER THAN DO IT IN  
23 CHAMBERS, I'M GOING TO CLEAR THE COURTROOM.

24 MR. MONCIER: OKAY. I DIDN'T KNOW THAT YOU HAD  
25 THAT CAPACITY.

1 THE COURT: EVERYBODY OTHER THAN COURT  
2 PERSONNEL, MARSHALS, PARTIES IN THIS CASE, NEED TO STEP  
3 OUTSIDE. OFFICERS, NOBODY SHOULD COME IN.

4 (COURT ROOM CLEARED)

5 (THE FOLLOWING PROCEEDINGS ARE SEALED)  
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\* \* \* SEALED \* \* \*

THE COURT: ALL RIGHT. FOR THE RECORD LET ME IDENTIFY THE PERSONS IN THE COURTROOM. OF COURSE, MR. SMITH IS REPRESENTING THE GOVERNMENT AND AGENT FARROW, THE GOVERNMENT'S REPRESENTATIVE IN THIS CASE, ARE PRESENT. MR. MONCIER AND MR. VASSAR ARE PRESENT. THERE ARE THREE DEPUTY MARSHALS PRESENT, TWO COURT SECURITY OFFICERS, COURT REPORTER, COURTROOM DEPUTY, TWO MEMBERS OF MY STAFF, ALL OF WHOM ARE DIRECTED AT LEAST AT THIS POINT THAT THE PROCEEDINGS THAT ARE ABOUT TO TAKE PLACE ARE CONFIDENTIAL AND SEALED AND ARE NOT TO BE DISCUSSED OTHER THAN IN THE COURSE OF THESE PROCEEDINGS THIS MORNING WITHOUT PRIOR APPROVAL FROM THIS COURT.

ALL RIGHT. MR. MONCIER, WHAT'S THE NATURE OF THE CONFLICT, OR POSSIBLE CONFLICT?

MR. MONCIER: FIRST OF ALL, YOUR HONOR, I WOULD ASK THAT I BE PERMITTED TO PRESENT THIS TO A DISTRICT COURT JUDGE THAT WILL NOT BE MAKING FACTUAL FINDINGS TO MY CLIENT BY TELEPHONING UP WITH KNOXVILLE OR SOME OTHER DISTRICT COURT JUDGE TO WHERE I CAN DISCUSS THE, THE SPECIFICS OF THE NAMES OF INDIVIDUALS THAT MIGHT OTHERWISE BE MATERIAL TO THE SENTENCING QUESTION BEFORE THE COURT. THAT DISTRICT COURT JUDGE COULD THEN REPORT TO THIS COURT THE APPROPRIATE REMEDY FOR THE MATTER.

I THINK THAT SINCE WE'RE BEFORE YOU ON THESE

1 FACTUAL MATTERS, AS I'VE EXPRESSED PREVIOUSLY, YOU WERE IN  
2 A LITTLE BIT MORE OF A UNIQUE SITUATION THAN NORMALLY TO  
3 RULE ON MATTERS OF THIS NATURE; AND, AND, ONCE AGAIN, I  
4 WILL INFORM THE COURT THAT THIS WAS BROUGHT TO MY ATTENTION  
5 FOR THE FIRST TIME BY THE GOVERNMENT YESTERDAY BY A, BY A  
6 FAX TRANSMISSION, ALTHOUGH THE GOVERNMENT APPARENTLY HAS  
7 KNOWN ABOUT THIS ISSUE SINCE 2005. FOR REASONS UNBEKNOWNST  
8 TO ME, THEY CHOSE TO ONLY BRING IT TO MY ATTENTION  
9 YESTERDAY.

10 THE COURT: WHAT'S THE BASIS FOR THE REQUEST  
11 THAT ANOTHER DISTRICT JUDGE HEAR THIS?

12 MR. MONCIER: BECAUSE FOR ME TO BE MORE SPECIFIC  
13 WITH THE COURT AS TO THE CONTENT OF THE INFORMATION  
14 PROVIDED TO ME BY THE GOVERNMENT, IT WOULD PLACE FACTUAL  
15 INFORMATION BEFORE YOU THAT MAY PERTAIN TO THE SENTENCING  
16 DETERMINATIONS YOU ARE ABOUT TO UNDERTAKE AND COULD BEAR ON  
17 THE, THE SENTENCING DETERMINATIONS YOU MAKE WITH REGARD TO  
18 PERSONS THAT ARE BEFORE YOU. IN OTHER WORDS, TO KNOW THE  
19 SPECIFIC INFORMATION I'M TALKING ABOUT TO DETERMINE WHETHER  
20 TO TAKE RELIEF OR NOT IS GOING TO PLACE INFORMATION BEFORE  
21 YOU ON FACTUAL DETERMINATIONS THAT YOU'RE BEING CALLED UPON  
22 TO MAKE.

23 THE COURT: AND YOUR BASIS FOR BELIEVING THAT I  
24 CAN'T SEPARATE THOSE FROM THE OTHER INFORMATION THAT IS  
25 PROPERLY BEFORE THE COURT IS WHAT?

1 MR. MONCIER: INSTINCT AND HUMAN NATURE, THE  
2 COMMON BELIEF THAT ONCE, YOU KNOW, IF IT WERE A FACT FINDER  
3 WHO HAS FACTS IN MIND, IT IS VERY DIFFICULT FOR THE  
4 APPEARANCE OF JUSTICE TO APPEAR THAT THOSE DO NOT INFLUENCE  
5 THAT PERSON'S DECISION; AND IT'S NOT THE ACTUAL FACT THAT  
6 THE COURT MAY NOT BE ABLE TO SEPARATE FACTS KNOWN TO THE  
7 COURT FROM ITS DECISION THAT IT SHOULD NOT CONSIDER, IT IS  
8 THE APPEARANCE THAT THAT GIVES TO THE PUBLIC AND TO THE  
9 SYSTEM OF JUSTICE THAT, THAT THAT IS OF UTMOST IMPORTANCE;  
10 AND WHEN A COURT KNOWS FACTS, SAY, WELL, I'M NOT GOING TO  
11 CONSIDER THAT, WELL, THAT MIGHT BE ACTUALLY TRUE; AND I  
12 CANNOT CERTAINLY STAND HERE IN GOOD FAITH AND SAY THAT THE  
13 COURT DOES NOT HAVE THAT ABILITY. ON THE OTHER HAND, THE  
14 APPEARANCE TO A REASONABLE PERSON WHO KNEW THAT THE COURT  
15 HAD FACTS AND THEN TOOK ACTION OF WHICH THOSE FACTS PERTAIN  
16 TO IS THAT IT WOULD HAVE AN EFFECT ON THE COURT, AND IT'S  
17 THAT APPEARANCE THAT IS THE ISSUE THAT I ADDRESS, NOT THE  
18 ACTUALITY; AND I'VE ADDRESSED THAT PREVIOUSLY, AND I DO NOT  
19 WISH TO CITE STATUTES AND PROVISIONS THAT, THAT SUGGEST  
20 THAT I'M DOING ANYTHING OTHER THAN ADDRESSING THE  
21 APPEARANCE.

22 THE COURT: WELL, OBVIOUSLY SINCE YOU CITED ME  
23 TO RULE 44(C) IT INVOLVES YOUR JOINT REPRESENTATION BETWEEN  
24 MR. VASSAR AND ANOTHER CLIENT. CLEARLY IT'S NO SECRET TO  
25 THIS COURT, IN FACT IT'S A MATTER OF PUBLIC RECORD IN THESE

1 COURT FILES, THAT YOU REPRESENT AT LEAST ONE OTHER PERSON  
2 THAT IS POTENTIALLY A DEFENDANT AT SOME FUTURE DATE. WE'VE  
3 ADDRESSED THAT IN THE CONTEXT OF MR. GUNTER. WHAT'S --

4 MR. MONCIER: I THINK WE ADDRESSED THAT WITHOUT  
5 THE GOVERNMENT PRESENT OR WITH ANYONE ELSE IN AN IN CAMERA  
6 HEARING IN THAT CASE; AND MUCH OF WHAT WAS DISCUSSED IN  
7 THAT CASE NO ONE WAS PRESENT EXCEPT THE COURT, MR. VASSAR  
8 AND I.

9 THE COURT: I'M NOT SUGGESTING THAT WE MAKE ALL  
10 THAT INFORMATION --

11 MR. MONCIER: YOUR HONOR, MAY I SHORTEN THIS BY  
12 MAKING A SUGGESTION OF WHERE WE ULTIMATELY GET? MY  
13 ULTIMATE SUGGESTION TO ANOTHER DISTRICT COURT JUDGE FOR  
14 THIS DISTRICT COURT IS THAT THEY APPOINT AN INDEPENDENT  
15 ATTORNEY TO SIT DOWN AND TO DISCUSS WITH MR. VASSAR THIS  
16 INFORMATION THAT WAS PROVIDED TO ME YESTERDAY; AND IF MR.  
17 VASSAR CONFIRMS OR DENIES, WHATEVER MR. VASSAR WISHES TO DO  
18 WITH THAT INFORMATION, IF THAT INFORMATION CAN BE USED BY  
19 MR. VASSAR TO ASSIST HIMSELF IN THE SENTENCING PROCESS THAT  
20 IS ABOUT TO TAKE PLACE, THAT SHOULD BE DONE. THAT SHOULD  
21 BE DONE. THAT'S MY ADVICE TO MR. VASSAR, AND THAT'S MY  
22 ADVICE TO EVERY PERSON I REPRESENT.

23 HOWEVER, IF THAT ADVICE PERTAINS TO SOMEONE ELSE  
24 THAT I REPRESENT, THERE IS AN APPEARANCE THAT I WOULD  
25 INTERFERE WITH THAT PROCESS. I WOULD NEVER DO THAT

1 ACTUALLY BECAUSE I REPRESENT MIKE VASSAR BEFORE THIS COURT  
2 TODAY; AND IF I CAN HELP MIKE VASSAR IN HIS SENTENCING  
3 THROUGH THE AWFUL PROCESS OF A 5K1.1 MOTION FOR DEPARTURE  
4 FROM WHATEVER YOU HAVE IN YOUR MIND YOU'RE GOING TO DO IN  
5 THIS CASE, THAT'S WHAT I WANT TO DO. I DISCLOSE TO PEOPLE  
6 I REPRESENT -- I REPRESENT SOME OTHER PEOPLE THAT I, I HAVE  
7 NO REASON TO BELIEVE THAT ARE INVOLVED. THE COURT MAY OR  
8 MAY NOT BE RIGHT, THE ASSUMPTION THAT THE COURT JUST MADE.

9 HOWEVER, IT DOESN'T MATTER WHAT HAPPENS, WHETHER  
10 IT'S A DISTRICT COURT JUDGE IN KNOXVILLE OR WHETHER IT'S  
11 THIS DISTRICT COURT, I WANT THAT MAN TO HAVE SOMEBODY'S  
12 ADVICE OTHER THAN ME ON WHAT I WAS TOLD YESTERDAY FOR THE  
13 FIRST TIME BY THE GOVERNMENT; AND I WANT THAT MAN, THAT GUY  
14 RIGHT THERE, I WANT HIM TO HAVE THE OPPORTUNITY TO TALK TO  
15 THAT MAN RIGHT THERE, NEIL SMITH, THROUGH AN INDEPENDENT  
16 ATTORNEY, IF THAT'S WHAT HE WANTS TO DO, TO HELP THAT MAN  
17 RIGHT THERE; AND BECAUSE I REPRESENT SOMEBODY THAT'S NOT IN  
18 THIS COURTROOM DOESN'T MAKE A HILL OF BEANS TO ME IN THAT  
19 PROCESS BECAUSE I REPRESENT THAT MAN, AND I WANT THAT MAN  
20 TO GET THE BEST BENEFIT OF WHATEVER HE CAN GET FROM THE  
21 SYSTEM THAT I PRACTICE LAW IN; THAT'S MY DUTY; AND THE ONLY  
22 WAY I KNOW TO PERFORM THAT DUTY, THE ONLY WAY I KNOW TO DO  
23 IT, TO HAVE BOTH THE APPEARANCE AND THE ACTUALITY, BASED  
24 UPON WHAT I WAS TOLD YESTERDAY, IS FOR YOU TO CHOOSE  
25 SOMEBODY, SOMEBODY GOOD, SOMEBODY THAT DOESN'T HAVE ANY



1 RELATIONSHIP TO ME, TO SIT DOWN AND TALK TO HIM ABOUT WHAT  
2 HE KNOWS ABOUT WHAT I WAS TOLD YESTERDAY, TO GIVE HIM THE  
3 FREE OPPORTUNITY TO TALK TO THAT PERSON WITHOUT ME BEING IN  
4 THE HEMISPHERE. I'LL BE IN KNOXVILLE.

5 I DON'T KNOW WHAT HE SAYS ABOUT WHAT I LEARNED  
6 YESTERDAY. I HAVE READ IT TO HIM. I HAVE GIVEN HIM A  
7 LETTER. I INSTRUCTED HIM THAT I DIDN'T WANT HIM TO LOOK ME  
8 IN THE EYE, I DIDN'T WANT HIM TO RESPOND TO IT, I DIDN'T  
9 WANT HIM TO SAY ANYTHING TO ME, I DIDN'T WANT TO ASK HIM  
10 ABOUT IT BECAUSE I WANTED HIM TO HAVE THE FREE OPPORTUNITY  
11 BEFORE HE SAID IT TO ME.

12 NOW, ON WEDNESDAY OF THIS WEEK, I WILL TELL THE  
13 COURT, THAT I SAT DOWN WITH MR. VASSAR AND WE WENT THROUGH  
14 AND WE PREPARED A SENTENCING STATEMENT TODAY. I WANT HIM  
15 TO HAVE THE OPPORTUNITY TO SEE WHAT THE GOVERNMENT WROTE TO  
16 ME YESTERDAY THROUGH AN INDEPENDENT ATTORNEY BEFORE I  
17 SUBMIT THAT STATEMENT OUTSIDE OF MY FILE.

18 I DON'T KNOW HOW TO BE MORE FAIR THAN THAT,  
19 JUDGE. I DON'T KNOW HOW TO DO MY JOB. I DON'T KNOW HOW TO  
20 COMPLY WITH MY OBLIGATIONS; BUT THE MOST IMPORTANT THING TO  
21 ME IS, DISREGARDING ALL OF THE SUSPICIONS I HAVE AS TO WHY  
22 THIS WAS BROUGHT TO MY ATTENTION YESTERDAY IN A LETTER THAT  
23 WAS SUPPOSEDLY PROVIDED TO BE EXCULPATORY INFORMATION, I'M  
24 GOING TO GET RID OF MY PARANOIA, THE MOST IMPORTANT THING  
25 TO ME IN MY PRACTICE OF LAW THIS MORNING IS THAT THAT MAN

1 HAVE A FAIR OPPORTUNITY TO PROTECT HIMSELF. THAT'S THE  
2 MOST IMPORTANT THING.

3 IT OVERRIDES EVERYTHING ELSE. IT OVERRIDES YOUR  
4 BELIEF AS TO MY FEELINGS TOWARD THE GOVERNMENT, MY FEELINGS  
5 TOWARD THESE PROSECUTORS. IT OVERRIDES MY SELF INTEREST.  
6 IT OVERRIDES THE FACT THAT I'VE WORKED FOREVER ON THIS  
7 SENTENCING. THE IMPORTANT THING IS THAT HE HAVE THE  
8 INDEPENDENT, IMPARTIAL ABILITY TO HELP HIMSELF, IF THERE'S  
9 SOMETHING TO IT, THAT'S ALL; AND IF YOU CAN THINK OF A WAY  
10 BETTER THAN THAT -- YOU KNOW, HE'S BEEN CONFRONTED WITH  
11 THIS WITHIN THE LAST, WELL, WITHIN THE LAST 30 MINUTES.

12 I'M TOLD THAT MY TELEPHONE CONVERSATIONS TO MY  
13 OFFICE FROM THE GREENE COUNTY JAIL HAVE BEEN REMOVED FROM  
14 THE COMPUTER AND THEY'RE NOT MONITORED. I AM TOLD THAT  
15 THEY DO NOT MONITOR TELEPHONE CALLS MADE BY MR. VASSAR OR  
16 ANY OTHER CLIENT TO MY LAW OFFICE. NEVERTHELESS, I CHOSE  
17 YESTERDAY NOT TO TALK TO HIM ABOUT THIS PARAGRAPH OF -- THE  
18 LETTER, BY THE WAY, THIS WAS SANDWICHED BETWEEN EXCULPATORY  
19 EVIDENCE THAT I WROTE ABOUT WITH CHRIS SHULTS.

20 THE COURT: THIS IS THE PART YOU REDACTED?

21 MR. MONCIER: NO. I ALSO REDACTED THE CHRIS  
22 SHULTS. THE FIRST TEN REPRESENTATIONS AND STATEMENTS WERE  
23 MADE BY CHRIS SHULTS. THOSE, I REDACTED THOSE, AND THEN  
24 THE NEXT PARAGRAPH IS THE PARAGRAPH I'M SPEAKING ABOUT; AND  
25 THEN THE NEXT PARAGRAPH ON PAGE 2 IS THE PARAGRAPH

1 CONCERNING MR. PHILLIPS.

2 THE REASON I REDACTED THE, THE PORTION  
3 CONCERNING CHRIS SHULTS IS IT WAS A MIXED BAG. IT WAS  
4 SMATTERED IN WITH SOME THINGS THAT WERE VERY EXCULPATORY  
5 AND THEN IT WAS SMATTERED IN WITH SOME THINGS THAT WERE --  
6 THERE WAS NO WAY THAT I COULD EXCLUDE THE EXCULPATORY FROM  
7 THE INCULPATORY. I SUMMARIZED THE EXCULPATORY; BUT THE  
8 PARAGRAPH THAT I'M SPEAKING OF WAS EXCISED, YES, SIR; AND I  
9 DID NOT INFORM MR. VASSAR OF IT ON THE PHONE YESTERDAY, AND  
10 I'LL TELL YOU WHY I DIDN'T INFORM HIM OF IT. I EXPECTED ON  
11 A TELEPHONE CALL THAT I COULDN'T DO WHAT I DID TODAY; THAT  
12 IS I EXPECTED THAT HE WOULD RESPOND TO ME IMMEDIATELY  
13 WITHOUT ME GOING THROUGH AND STANDING BEFORE THE COURT AND  
14 DOING WHAT I'M DOING RIGHT NOW; AND I REALIZED THAT ONCE WE  
15 HAVE THAT INSTANT RESPONSE WITHOUT REFLECTION, WITHOUT  
16 INDEPENDENT ADVICE, THAT THAT SORT OF SETS THE COURSE OF  
17 THINGS TO COME; AND SO THIS MORNING I MET WITH HIM  
18 DOWNSTAIRS THROUGH THE, THROUGH THE SCREEN. I TOLD HIM  
19 EXACTLY WHAT I WAS GOING TO DO, AND I TOLD HIM I DID NOT  
20 WANT HIM TO SAY A WORD TO ME OR MAKE ANY INDICATION TO ME  
21 WHATSOEVER WHAT HIS RESPONSE WAS TO THAT UNTIL I HAD AN  
22 OPPORTUNITY TO PRESENT THIS TO THE COURT.

23 SO I -- WHAT I'M ASKING THIS COURT TO DO IS TO  
24 SELECT THE ATTORNEY OF THEIR CHOICE, I DON'T CARE WHO IT  
25 IS, AND LET THAT ATTORNEY SIT DOWN WITH THIS MAN WITH THE

1 PARAGRAPH I JUST HAD, AND MAYBE WITH ALL THE OTHER  
2 INFORMATION WE'VE TALKED ABOUT IN THIS CASE TOO. IF HE  
3 WANTS TO COOPERATE WITH THE GOVERNMENT AGAINST ANOTHER  
4 CLIENT THAT I REPRESENT, HE HAS THE RIGHT TO DO THAT. I  
5 ADVISE HIM TO DO THAT. I HAVE ALWAYS ADVISED HIM TO DO  
6 THAT. I WILL STAND BEFORE THIS COURT AND TELL YOU THAT I'M  
7 TELLING HIM RIGHT NOW, THAT'S THE SYSTEM THAT WE HAVE, THAT  
8 IS THE LAW UNDER 5K 1.1 TO GET THAT MOTION.

9 THE COURT: ALL RIGHT. I UNDERSTAND, MR.  
10 MONCIER.

11 WITHOUT MAKING ANY ASSUMPTIONS ABOUT WHETHER OR  
12 NOT THERE IS SOME JOINT REPRESENTATION HERE THAT PREVENTS  
13 MR. VASSAR FROM BEING REPRESENTED BY A CONFLICT FREE  
14 ATTORNEY, CLEARLY MR. VASSAR IS ENTITLED TO REPRESENTATION  
15 IN THIS CASE BY AN ATTORNEY FREE OF ANY CONFLICT OF  
16 INTEREST AND BY AN ATTORNEY WHO, WHOSE LOYALTIES ARE NOT  
17 DIVIDED. THE GOVERNMENT LIKEWISE HAS AN INTEREST IN SEEING  
18 THAT THAT OCCURS.

19 IT'S VERY DIFFICULT FOR ME TO COMMENT ON THIS  
20 VERY MUCH MORE SINCE I DON'T KNOW THE NATURE OF THE  
21 INFORMATION THAT WAS SHARED YESTERDAY OR WHY IT WAS SHARED  
22 YESTERDAY. MR. SMITH, I -- YOU WANT TO, YOU WANT TO  
23 RESPOND TO THAT?

24 MR. SMITH: YOUR HONOR, I WOULD LIKE TO FILE A  
25 COPY OF THE CORRESPONDENCE AS AN EXHIBIT WITH THE COURT.

1 THE COURT: WELL, I THINK THAT'S WHAT MR.  
2 MONCIER HAS INDICATED HE DOESN'T WANT ME TO SEE. THAT IS  
3 WHAT YOU'RE TALKING ABOUT, ISN'T IT, MR. MONCIER --

4 MR. MONCIER: YES, SIR.

5 THE COURT: -- THIS CORRESPONDENCE?

6 MR. MONCIER: I DID NOT HAVE THE OPPORTUNITY TO  
7 HAVE A CONVERSATION WITH MR. SMITH YESTERDAY, BUT I AM  
8 OFFERING TO MR. SMITH, WHETHER HE RECOGNIZES IT OR NOT, THE  
9 ABILITY TO TALK WITH SOMEONE OTHER THAN THE PERSON WHO  
10 REPRESENTS THE INDIVIDUAL HE'S INTERESTED IN TO SEE IF THEY  
11 CAN COME TO SOME AGREEMENT WITH MY CLIENT TO CORROBORATE  
12 INFORMATION THAT MAY BE BENEFICIAL TO THE GOVERNMENT IN  
13 THEIR PROSECUTION. I CANNOT IMAGINE THE GOVERNMENT NOT  
14 WANTING AT LEAST THAT OPPORTUNITY, AND I DO NOT EXPECT THAT  
15 MR. SMITH WOULD FEEL COMFORTABLE IN CONDUCTING THOSE  
16 NEGOTIATIONS WITH ME; BUT WHEN YOU MENTIONED RULE 44 JUST A  
17 MINUTE AGO, I'D SAY THAT THERE IS ANOTHER INTEREST HERE.

18 I AM NOT SEEKING NOR WILL I ACCEPT A JOINT  
19 REPRESENTATION ON THIS ISSUE. THAT'S THE POINT. THIS  
20 ISN'T SOMETHING THAT, THAT HE CAN WAIVE BASED UPON OUR  
21 ADVICE BETWEEN EACH OTHER. HE NEEDS INDEPENDENT ADVICE AS  
22 TO WHETHER OR NOT TO, TO GO FORWARD AND WHETHER TO SEEK THE  
23 GOVERNMENT -- IN OTHER WORDS, IF HE STOOD UP HERE, NO, I  
24 WANT TO GO FORWARD WITH MR. MONCIER TODAY, HE HASN'T BEEN  
25 PROPERLY ADVISED WITH REGARD TO WHAT HIS OPTION IS WITH

1 REGARD TO THAT INFORMATION, IF I'M MAKING MYSELF CLEAR.

2 THE COURT: I UNDERSTAND.

3 MR. MONCIER: NOW, IT MAY BE -- I DON'T WANT TO  
4 GO AHEAD AND SAY WHAT MAY HAPPEN AFTER THE INDEPENDENT  
5 ADVICE TAKES PLACE BECAUSE THAT MIGHT BE SUGGESTING  
6 SOMETHING, I DON'T WANT TO GO THERE. DOES THE COURT  
7 UNDERSTAND MY POSITION?

8 THE COURT: I UNDERSTAND YOUR POSITION.

9 GO AHEAD, MR. SMITH.

10 MR. SMITH: YOUR HONOR, I WOULD NOTE FOR THE  
11 RECORD THAT THE GOVERNMENT HAS BEEN WILLING SINCE MR.  
12 VASSAR WAS FIRST APPROACHED IN APRIL OF 2002 AND THEN AGAIN  
13 AT HIS ARREST IN AUGUST 2005 TO ENTERTAIN ANY COOPERATION,  
14 AND IT WAS RATHER FLATLY REJECTED. IN FACT, AFTER THE  
15 COURT'S HEARING ON CONFLICT OF INTEREST IN MARCH -- I  
16 BELIEVE THAT WAS MARCH 17TH OF THIS YEAR, AND THE COURT  
17 DIRECTED MR. MONCIER ON MR., ON BEHALF OF MR. VASSAR TO  
18 APPROACH THE GOVERNMENT WITH ANY PLEA NEGOTIATIONS, MR.  
19 MONCIER BASICALLY ASKED, WELL, MAKE US AN OFFER, GOING  
20 THROUGH THE MOTIONS; TO WHICH THE GOVERNMENT RESPONDED, YOU  
21 KNOW, TELL US WHAT KIND OF OFFER YOU WANT; AND THAT WAS  
22 BASICALLY THE END OF THE DISCUSSION.

23 I WOULD NOTE THAT THE INDIVIDUAL THAT MR.  
24 MONCIER IS REFERRING TO, AND SO THAT WE DON'T MAKE THAT AN  
25 ISSUE, WE WON'T IDENTIFY HIM, THAT PERSON WAS IDENTIFIED IN

1 COURT TO THE CLIENT OF MR. MONCIER BACK ON MARCH 16, 2006,  
2 AT THE HEARING BEFORE THIS COURT ON WHETHER MR. MONCIER  
3 COULD REPRESENT BOTH MR. VASSAR AND MR. MICHAEL GUNTER; AND  
4 AT THAT TIME MR. VASSAR RAISED NO MATTER TO THE COURT  
5 SUGGESTING THAT THERE WAS ANY CONFLICT BETWEEN HIS -- MR.  
6 MONCIER REPRESENTING HIM AND MR. MONCIER REPRESENTING THIS  
7 OTHER INDIVIDUAL. IT'S A RATHER LATELY FOUND CONFLICT.

8 AND, LASTLY, YOUR HONOR, IS THAT THERE'S NO  
9 EVIDENCE OF AN ACTUAL CONFLICT; AND SO IN THIS ALLEGATION  
10 OF IT BEING A POTENTIAL CONFLICT, THAT THERE HAS TO BE SOME  
11 SHOWING OF PREJUDICE OR SUCH, AND, AND THAT'S SIMPLY NOT  
12 PRESENT.

13 EVEN IF THE COURT DOESN'T WISH TO CONSIDER, I  
14 STILL THINK FOR ANY APPELLATE RECORD WE WOULD ASK A COPY OF  
15 THE ENTIRE LETTER BE FILED UNDER SEAL.

16 THE COURT: WELL, THE LETTER WILL EVENTUALLY GET  
17 INTO THE FILE ONE WAY OR THE OTHER. IF I GO FORWARD TODAY,  
18 I'LL LET YOU PUT IT IN THE FILE. IF I DECIDE TO ASK  
19 ANOTHER JUDGE TO CONDUCT A RULE 44 INQUIRY, CLEARLY IT WILL  
20 BE PART OF THE RECORD IN THAT PROCEEDING.

21 MR. SMITH, DOES THE LETTER FAIRLY RAISE A  
22 POTENTIAL CONFLICT OF INTEREST BASED ON JOINT  
23 REPRESENTATION OF CLIENTS BY MR. MONCIER?

24 MR. SMITH: THE LETTER CONTAINS A SUMMARY OF  
25 INFORMATION PROVIDED BY MARK THORNTON TO THE GOVERNMENT

1 WHERE HE REPRESENTED COMMUNICATIONS MADE BY HIM -- MADE TO  
2 HIM BY MICHAEL VASSAR CONCERNING A PERSON.

3 THE COURT: SO IT'S IN THE NATURE OF --

4 MR. SMITH: IN THE NATURE OF CRIMINAL CONDUCT  
5 RELATING TO SOMEONE THAT MR. MONCIER HAS CLAIMED TO  
6 REPRESENT IN THE PAST.

7 THE COURT: WELL, CLEARLY MR. VASSAR HAS  
8 INDICATED TO THIS COURT IN THE PAST THAT HE HAD NO  
9 INTENTION OF COOPERATING WITH THE GOVERNMENT, IN FACT HAD  
10 NO INFORMATION TO TELL THE GOVERNMENT. WE ALL KNOW,  
11 HOWEVER, THAT THOSE PERSPECTIVES ON THINGS CHANGE WHEN  
12 DEFENDANTS ARE FACING WHAT IN MR. VASSAR'S CASE IS A  
13 POTENTIAL LIFE SENTENCE HERE.

14 I WILL SIMPLY OBSERVE, MR. MONCIER, IF WE'RE  
15 TALKING ABOUT JOINT REPRESENTATION INVOLVING THE CLIENT OF  
16 YOURS THAT'S BEEN WELL KNOWN TO THE COURT SINCE MARCH OR  
17 BEFORE -- I DON'T REMEMBER WHEN YOU FILED YOUR NOTICE THAT  
18 YOU WERE REPRESENTING THAT INDIVIDUAL, BUT IT WAS EARLY  
19 THIS YEAR -- THE POTENTIAL FOR CONFLICT OF INTEREST HAS  
20 EXISTED SINCE THAT TIME BECAUSE OF THE ALLEGATIONS BEING  
21 MADE IN THIS CASE.

22 MR. SMITH: YOUR HONOR, I HAVE A SUGGESTION.  
23 MR. MONCIER WANTS TO MAKE CERTAIN THAT THE COURT DOESN'T  
24 OBTAIN IN CONNECTION WITH THE INVESTIGATION OF THIS ALLEGED  
25 CONFLICT OF INTEREST INFORMATION WHICH MAY DISADVANTAGE MR.



1 VASSAR AS TO SENTENCING. A VERY SHORT RESOLUTION OF THIS  
2 MATTER WOULD BE FOR MR. VASSAR TO BE ASKED THE QUESTION, IS  
3 THIS REPRESENTATION AS FAR AS WHAT YOU SUPPOSEDLY SAID TO  
4 MARK THORNTON TRUE. IF HIS REPRESENTATION IS IT IS NOT,  
5 THEN THERE IS NO ACTUAL CONFLICT OF INTEREST BECAUSE MR.  
6 VASSAR SAYS THIS DIDN'T OCCUR AND THAT THERE, THERE IS NO  
7 CONFLICTING INTEREST BETWEEN MR. MONCIER'S TWO CLIENTS.

8 I WOULD SUBMIT THAT IF MR. MONCIER WANTS THE --  
9 YOUR HONOR TO BE INSULATED FROM THAT, THE MAGISTRATE JUDGE  
10 CAN ASK THAT ONE QUESTION TO MR. MONCIER {SIC} EX PARTE IN  
11 CAMERA. IF THE ANSWER TO THAT QUESTION BY MR. VASSAR IS  
12 NO, WITH THE UNDERSTANDING THAT IT'S GOING TO BE UNDER SEAL  
13 AND THAT THE ANSWER CANNOT BE USED AGAINST HIM IN ANY  
14 CRIMINAL PROSECUTION AND WILL NOT BE USED AGAINST HIM IN  
15 HIS SENTENCING PROCEEDINGS, THEN THAT PUTS AN END TO THIS  
16 ALLEGED CONFLICT OF INTEREST; AND I WOULD SUBMIT IT WOULD  
17 BE A VERY SIMPLE MATTER FOR THE MAGISTRATE JUDGE JUST TO  
18 ASK MR. VASSAR THAT ONE QUESTION. IF THE ANSWER IS, NO, I  
19 DID NOT SAY THAT, THEN THAT'S THE END OF IT.

20 THE COURT: MR. MONCIER, I KNOW YOU'VE SUGGESTED  
21 ANOTHER DISTRICT JUDGE, DO YOU HAVE ANY OBJECTION TO A  
22 MAGISTRATE JUDGE CONDUCTING THE PROCEEDINGS?

23 MR. MONCIER: YES, SIR, AND I ALSO OBJECT TO  
24 THAT PROCEDURE BECAUSE SOMEBODY NEEDS TO ADVISE MR. VASSAR  
25 OF THE CONSEQUENCES OF HIS ANSWERS AND WHETHER OR NOT TO

1 EVEN ANSWER THAT QUESTION OR NOT. SOMEBODY NEEDS TO PUT  
2 TOGETHER THE APPROPRIATE IMMUNITY. IT RAISES A NUMBER OF  
3 SPECIFIC ISSUES.

4 I THINK WHAT WE'RE MISSING HERE IS THAT THE  
5 GOVERNMENT HAD THE OPPORTUNITY TO BRING THIS TO THE  
6 ATTENTION OF COUNSEL BACK BEFORE WE WENT TO TRIAL, THAT  
7 THEY HAD A PERSON WHO HAD OVERHEARD A JAILHOUSE STATEMENT  
8 THAT WAS -- THEY'VE HAD IT SINCE OCTOBER OF 2005, ACCORDING  
9 TO THEIR NOTE, BUT THEY NEVER BROUGHT IT TO ANYONE'S  
10 ATTENTION, THE COURT OR ME.

11 THE NATURE OF THE STATEMENT, LET ME SAY, IS NOT  
12 SPECIFICALLY THE NATURE OF, OF THE INQUIRIES THAT HAVE BEEN  
13 BEFORE. MR. VASSAR WAS ADDICTED TO DRUGS. MR. VASSAR WAS  
14 RECEIVING DRUGS FOR HIS PERSONAL USE, ACCORDING TO THE  
15 INFORMATION PROVIDED BY OTHER PEOPLE, FROM A NUMBER OF  
16 PEOPLE; AND THE INFORMATION IS THAT THIS INFORMATION, THIS  
17 INDIVIDUAL, NOT SELLING OR DEALING IN DRUGS, BUT MAY HAVE  
18 MADE AN OFFER TO GIVE HIM SOME DRUGS. I DON'T KNOW ANY  
19 MORE ABOUT IT THAN THAT OR NOT, AS TO WHAT THAT MEANS.  
20 I'VE ASKED FOR THE FULL STATEMENT.

21 THERE'S ALL SORTS OF ISSUES SURROUNDING THIS;  
22 AND BY THE WAY, NOTHING OCCURRED, ACCORDING TO THE WHOLE  
23 INFORMATION, IT WAS SIMPLY A STATEMENT. THE IMPORTANT  
24 THING THOUGH THAT, THAT WE NEED TO REALIZE THIS MORNING IS,  
25 AND MR. VASSAR NEEDS TO REALIZE, THAT IF HE WERE TO

1 CORROBORATE AND ADMIT MAKING THAT STATEMENT AND TESTIFY FOR  
2 THE GOVERNMENT IN THIS CASE, THAT COULD BENEFIT HIM WITH  
3 SENTENCING IN THIS CASE. THAT'S THE THING THAT HE NEEDS TO  
4 BE ADVISED, AND HE NEEDS TO HAVE A PRIVATE ATTORNEY.

5 THE GOVERNMENT'S RESISTANCE AT THIS REQUEST IS,  
6 IS PUZZLING TO ME IN THAT IT WOULD SEEM TO ME THAT THEY  
7 WOULD WELCOME THE OPPORTUNITY TO, TO REOPEN THESE  
8 DISCUSSIONS WITH SOMEONE ELSE IF, IF THEY WISH, AND I'M  
9 OFFERING THAT TO THEM. I DON'T UNDERSTAND WHY WE'RE  
10 RESISTING IT, OTHER THAN, OF COURSE, WE NOW FIND THAT THE  
11 GOVERNMENT WANTS TO USE THIS PROCESS TO TRY TO PIN MR.  
12 VASSAR DOWN ON SOMETHING THAT WAS DISCLOSED ONLY YESTERDAY  
13 WITHOUT MR. VASSAR HAVING THAT INDEPENDENT ADVICE OF WHICH  
14 MY ETHICS REQUIRE HE HAVE AND THE LAW CERTAINLY WOULD,  
15 WOULD WANT.

16 AND WHAT ARE WE TALKING ABOUT ANYWAY? THIS  
17 SENTENCING HAS BEEN CONTINUED. ALL OF THE OTHER  
18 SENTENCINGS HAVE BEEN CONTINUED. IS IT, IS, IS -- DID THE  
19 GOVERNMENT -- THERE'S A REASONABLE BELIEF THAT THE  
20 GOVERNMENT WAITED UNTIL YESTERDAY TO GIVE SOMETHING TO ME  
21 THAT WAS NOT EXCULPATORY --

22 THE COURT: WELL, LET'S NOT GET INTO THINGS.

23 MR. MONCIER: YES, SIR, AND I DIDN'T WANT TO  
24 DEGENERATE. I HAVE -- I THINK THAT THE APPROPRIATE MATTER  
25 IS FOR MR. VASSAR TO HAVE SOMEBODY ELSE TO TALK TO.

1           LET ME ALSO SAY THAT I'VE SPOKEN TO MR. VASSAR'S  
2 FAMILY. THEY HAVE NO IDEA WHAT I'M TALKING ABOUT. I'VE  
3 ALWAYS TOLD THEM TO TALK TO MR. VASSAR AND TO ENCOURAGE HIM  
4 TO TAKE FULL ADVANTAGE OF 5K1.1 IF THAT IS AN OPTION, AND,  
5 AND MR. VASSAR'S WIFE WOULD REQUEST THAT THE COURT ALLOW  
6 HER TO SPEAK TO MR. VASSAR TOO.

7           I'M NOT THE PERSON TO BE IN BETWEEN THIS ISSUE.  
8 IF MR. VASSAR AS OF TODAY HAS THE OPPORTUNITY TO HELP  
9 HIMSELF AT SENTENCING, THAT CREATES THE ACTUAL CONFLICT  
10 ONLY TODAY, WITHOUT ME KNOWING ANYTHING ABOUT IT. I CAN'T  
11 INVESTIGATE IT FURTHER WITH HIM. I HAVE -- I'VE DONE MY,  
12 AS MUCH DUE DILIGENCE AS I CAN DO IN THE SHORT PERIOD OF  
13 TIME; AND, QUITE FRANKLY, I HAVE HAD SOME OTHER THINGS  
14 BEARING ON ME IN PREPARING FOR THIS SENTENCING HEARING  
15 TODAY, AND I'VE HAD A FEW OTHER LITTLE THINGS GOING ON  
16 THAT -- EATING FAST FOOD AND GETTING FAT; BUT,  
17 NEVERTHELESS, MY INTEREST IN THIS HERE THIS MORNING -- AND,  
18 YOU KNOW, I'M ALSO MINDFUL OF THE FACT, I MEAN, LET'S PUT  
19 IT ON TOP OF THE TABLE, I HAVE MADE NO BONES WHATSOEVER  
20 ABOUT MY OTHER REASONS FOR REQUESTING A CONTINUANCE, ONE OF  
21 WHICH IS TO GET CHRIS SHULTS' SENTENCING OUT OF THE WAY SO  
22 THAT THAT WILL WORK IN MY ARGUMENTS FOR DISPARITY AND SUCH  
23 LIKE THAT. I'M STANDING BEFORE THIS COURT TODAY TO TELL  
24 YOUR HONOR THAT YOU KNOW THAT, HOW STRONGLY I HAVE WANTED  
25 TO BE ABLE TO PRESENT THESE DISPARITY ARGUMENTS. IT'S NOT

1 WHY I'M HERE.

2 THE COURT: WELL, OF COURSE, YOU KNOW IN  
3 SENTENCING OF MULTIPLE DEFENDANTS SOMEBODY GOES FIRST.

4 MR. MONCIER: SURE.

5 THE COURT: SOMEBODY GOES SECOND.

6 MR. MONCIER: SURE. NOBODY ELSE HAS RAISED  
7 DISPARITY THOUGH.

8 THE COURT: WELL, I'M REQUIRED TO CONSIDER  
9 DISPARITY IN EVERY CASE.

10 MR. MONCIER: OR FAIRNESS, YOU KNOW, THAT WE  
11 TALKED ABOUT WEDNESDAY; AND I DON'T WANT TO GO, I DON'T  
12 WANT TO GO THERE. WHAT I'M SAYING IS THIS DIDN'T HAPPEN,  
13 AND THIS IS AN ADDITIONAL ABILITY FOR MR. VASSAR TO RESOLVE  
14 SENTENCING DETERMINATIONS, ONE OF WHICH IS 5K1.1.

15 THE COURT: WHEN DID YOU RECEIVE THE LETTER FROM  
16 THE GOVERNMENT?

17 MR. MONCIER: I RECEIVED IT BY FAX AT 9:42 A.M.  
18 NOVEMBER 16TH FROM MR. SMITH.

19 THE COURT: WHY DIDN'T YOU RAISE THIS  
20 YESTERDAY?

21 MR. MONCIER: I NEEDED TO TALK TO MR. VASSAR. I  
22 RAISED IT IN THE OTHER ISSUES. I WAS PREPARING -- I HAD  
23 PREPARED A MOTION. I HAD DECIDED NOT TO FILE THE MOTION  
24 LAST NIGHT, TO WAIT UNTIL I HAD THE OPPORTUNITY TO PRESENT  
25 IT TO MR. VASSAR, AS I EXPLAINED EARLIER, WHILE -- BECAUSE

1 OF THE SENSITIVE NATURE OF IT; AND FOR THE REASON I STATED,  
2 I DIDN'T WANT MR. VASSAR TO RESPOND TO IT WHEN I READ IT TO  
3 HIM OVER THE TELEPHONE, AND HE WOULD HAVE. IT WOULD  
4 HAVE -- I WOULD NOT HAVE DONE IT. I NEEDED TO TALK TO HIM  
5 IN PERSON, AND THIS MORNING IS THE FIRST TIME I COULD TALK  
6 TO HIM IN PERSON; AND I CALLED THE MARSHAL TO ASK HIM IF I  
7 COULD SPEAK TO HIM IMMEDIATELY UPON HIM GETTING HERE, AND I  
8 DID AT 8:05 THIS MORNING; AND I DON'T KNOW THE ANSWER TO  
9 THE QUESTION THAT THE GOVERNMENT ASKED, AND I DON'T KNOW  
10 THAT MR. VASSAR HAS EVER BEEN ASKED THE QUESTION IN THAT  
11 MANNER, DID HAROLD GROOMS EVER TALK TO YOU ABOUT DRUGS? I  
12 DON'T THINK HE'S EVER BEEN ASKED THAT QUESTION. I'VE NEVER  
13 ASKED HIM THAT QUESTION. SOME PEOPLE MIGHT NOT THINK THAT  
14 THAT'S ILLEGAL ACTIVITY, YOU KNOW. SOME PEOPLE MIGHT NOT  
15 THINK THAT THAT WOULD HAVE BEEN HELPFUL TO THE GOVERNMENT  
16 IN PUTTING TOGETHER A CASE.

17 THE COURT: HARD TO IMAGINE HOW IT WOULDN'T BE  
18 HELPFUL TO ANY PROSECUTION OF HAROLD GROOMS IF THAT'S GOING  
19 TO HAPPEN.

20 MR. MONCIER: IF HAROLD GROOMS SAID SOMETHING TO  
21 HIM ABOUT DRUGS AND IT DIDN'T HAPPEN?

22 THE COURT: DEALING IN DRUGS.

23 MR. MONCIER: IN -- NOT DEALING, IT DOESN'T SAY  
24 THAT; BUT IF HAROLD GROOMS SAID SOMETHING TO HIM ABOUT  
25 DRUGS AND NOTHING EVER HAPPENED, NOTHING EVER DID, THEY

1 NEVER MADE ANY PLAN, THEY NEVER MADE ANY AGREEMENT, THERE  
2 WAS JUST A COMMENT MADE AND NOTHING CAME OF IT; THAT'S THE  
3 INFORMATION, BY THE WAY, I HAVE; BUT THE POINT OF THE  
4 MATTER IS SOME PEOPLE MIGHT NOT THINK THAT THAT'S OF ANY  
5 BENEFIT TO ANYBODY, SOMEBODY JUST TALKING, SOMEBODY JUST  
6 SAYING SOMETHING AND NOTHING EVER HAPPENING AND NO  
7 AGREEMENT EVER BEING REACHED AND NO PLANS TO DO ANYTHING  
8 AND IT WAS JUST A COMMENT IN PASSING.

9 THE COURT: THE MOST TROUBLING THING TO ME ABOUT  
10 THIS ALL IS THAT THIS COULD, THIS COULD BE FORESEEN BY  
11 EVERYBODY.

12 MR. MONCIER: I DIDN'T HEAR WHAT YOU SAID.

13 THE COURT: THIS COULD HAVE BEEN FORESEEN BY  
14 EVERYBODY INVOLVED. EVERYBODY IN THIS COURTROOM KNEW MANY,  
15 MANY MONTHS AGO OF THE POTENTIAL OF THIS HAPPENING  
16 EXISTED.

17 MR. MONCIER: AND THAT'S EXACTLY THE REASON WHEN  
18 MR. GROOMS CAME TO ME TO HIRE ME, HIRE ME, WHEN HE WASN'T  
19 CHARGED, WHEN THE GOVERNMENT PUT IN THE NEWSPAPER AND  
20 RELEASED ALL OF THE PUBLIC INFORMATION ABOUT MR. GROOMS AND  
21 HE CAME AND HIRED ME, I WASN'T SECRET ABOUT IT. I FILED IT  
22 WITH THE COURT, TO WHERE IF THE GOVERNMENT KNEW SOMETHING,  
23 THEY COULD BRING IT TO MY ATTENTION, IT COULD HAVE BEEN  
24 DEALT WITH AT THAT TIME; BUT AT THAT TIME MR. VASSAR WAS  
25 GOING TO TRIAL. HE WAS NOT GOING TO COOPERATE. HE'S NOW

1 GONE TO TRIAL. HE WAS CONVICTED OF A RELATIVELY -- HE WAS  
2 CONVICTED OF FAR LESS THAN WHAT THE GOVERNMENT HAD CHARGED  
3 HIM WITH.

4 NOW WE'RE AT SENTENCING. THE GOVERNMENT IS  
5 WANTING TO HOLD HIM ACCOUNTABLE FOR WHAT HE WENT TO TRIAL  
6 AND WAS ACQUITTED FOR AND THINGS ARE DIFFERENT NOW THAN  
7 THEY WERE AT THE TIME WE WERE HERE PREVIOUSLY. THE  
8 CONSIDERATIONS ARE DIFFERENT. WE'RE NOW BEING TOLD  
9 SOMETHING THAT THE GOVERNMENT KNEW BACK IN LAST OCTOBER  
10 THAT THEY SHOULD HAVE BROUGHT TO MY ATTENTION AND TO MR.  
11 VASSAR'S ATTENTION AND TO THE COURT'S ATTENTION AT THAT  
12 TIME. THEY ELECTED TO WAIT UNTIL YESTERDAY TO DO IT. I  
13 SPENT -- WELL, THEY ELECTED TO DO IT, WAIT UNTIL  
14 YESTERDAY.

15 I MIGHT ADD ALSO THAT WHEN WE GET INTO THE  
16 HEARING TODAY, DEPENDING ON WHAT THE COURT HEARS AND WHAT  
17 THE COURT DOESN'T HEAR, I DID HAVE PLEA DISCUSSIONS WITH  
18 MR. FARROW DURING THE FIRST TRIAL. THERE WERE DISCUSSIONS  
19 ABOUT WHAT MR. VASSAR COULD DO TO HELP THE GOVERNMENT. MR.  
20 FARROW SAID THAT MR. VASSAR COULD HELP THE GOVERNMENT WITH  
21 PUBLIC OFFICIALS. HE NEVER MENTIONED THIS PARTICULAR NAME,  
22 IF HE KNEW ABOUT THIS. I HAVE LETTERS GOING BACK AND FORTH  
23 BETWEEN THE GOVERNMENT AS TO WHAT WE WERE WILLING TO DO AND  
24 WHAT WE WEREN'T WILLING TO DO. THIS WAS NEVER MENTIONED TO  
25 ME.



1           NOW, THEY DID WANT INFORMATION CONCERNING HAROLD  
2 GROOMS, BUT THIS WAS NEVER MENTIONED TO ME, THE FACT THAT  
3 HAROLD GROOMS MIGHT HAVE MADE A STATEMENT OUT THERE AT ONE  
4 TIME THAT DIDN'T RESULT IN ANY CRIMINAL ACTIVITY. IT WAS  
5 NEVER MENTIONED TO ME. IT WAS NEVER BROUGHT TO MY  
6 ATTENTION.

7           NOW, THAT MIGHT BE THEIR INVESTIGATIVE  
8 TECHNIQUE, THAT'S FINE; BUT WHY DID THEY BRING IT TO MY  
9 ATTENTION YESTERDAY WHEN IT'S NOT EXCULPATORY? IF  
10 ANYTHING, IT'S INCULPATORY. WHY DID THEY PUT IT IN THE  
11 MIDDLE OF A LETTER WITH ALL THIS OTHER EXCULPATORY  
12 INFORMATION, THIS INCULPATORY THAT WHEN I READ IT I ALL OF  
13 A SUDDEN REALIZE IT PUTS ME IN THE POSITION THAT I AM  
14 TODAY. DID THEY JUST THINK I WASN'T GOING TO DO ANYTHING  
15 ABOUT IT? DID THEY THINK I'D GO OUT AND TALK TO HIM AND I  
16 WAS THE ONE THAT WAS GOING TO ADVISE HIM ABOUT IT AND HE  
17 WAS GOING TO HAVE TO SIT THERE AND LOOK AT ME WHEN HE KNEW  
18 I REPRESENTED HAROLD GROOMS? THAT'S NOT THE WAY I PRACTICE  
19 LAW.

20           HAD I KNOWN ABOUT THIS ON THE FRONT END, I WOULD  
21 HAVE DISCUSSED IT WITH BOTH OF MY CLIENTS AND I WOULD HAVE  
22 DEALT WITH IT AT THAT TIME; AND SO WHEN YOU SAY THAT, YOU  
23 KNOW, EVERYBODY KNEW, WELL, YOU KNOW, EVERYBODY KNOWS WHEN  
24 THE GOVERNMENT GETS INTO A CASE THAT THINGS CAN BE CREATED  
25 THROUGH THE PROCESSES OF THE INVESTIGATION SUCH AS WE HAVE

1 NOW FOUND HAS HAPPENED WITH THE PHILLIPS, WHEN MR. PHILLIPS  
2 ADMITTED PERJURY TO THIS COURT. I ASSUME THAT MR. PHILLIPS  
3 COMMITTED PERJURY AND LIED TO HIS ATTORNEY BILL LEIBROCK  
4 TOO. I DON'T BELIEVE FOR ONE MINUTE THAT MR. PHILLIPS TOLD  
5 MR. LEIBROCK THAT THE MONEY MR. LEIBROCK WAS TRYING TO GET  
6 BACK FOR HIM WAS DRUG MONEY; BUT ALL OF A SUDDEN, WE FIND  
7 MR. PHILLIPS NOT ONLY LIED TO HIS ATTORNEY, NOT ONLY LIED  
8 TO THE GOVERNMENT, BUT BY GOSH COMMITTED PERJURY IN THIS  
9 COURTROOM. THAT'S WHAT HAPPENS SOMETIMES.

10 THE COURT: IT IS; BUT THAT JUST UNDERSCORES MY  
11 PREVIOUSLY STATED VIEW THAT IT'S NOT GOOD PRACTICE FOR A  
12 LAWYER TO REPRESENT CODEFENDANTS BECAUSE THINGS CHANGE.

13 YOU KNOW, MR. MONCIER, I KNOW YOU WERE VERY  
14 ANGRY AT ME BECAUSE OF THE DISQUALIFICATION OF YOU IN  
15 REPRESENTING MIKE GUNTER; BUT, FRANKLY, THE REPRESENTATION  
16 OF THREE CODEFENDANTS ALL RELATED, WHETHER THERE'S AN  
17 ACTUAL CONFLICT OF INTEREST OR NOT, HAS THE POTENTIAL TO  
18 ABSOLUTELY BLOW UP IN YOUR FACE. I DON'T KNOW WHY ANY  
19 LAWYER WANTS TO DO IT. NOT ONLY DO YOU RUN THE RISK OF  
20 THESE KINDS OF THINGS HAPPENING, IT SEEMS TO ME YOU'RE  
21 JEOPARDIZING YOUR LAW LICENSE.

22 I DON'T KNOW WHETHER THIS IS AN APPROPRIATE  
23 QUESTION OR NOT. IF IT'S NOT, SOMEBODY TELL ME. MR.  
24 SMITH, DOES THE GOVERNMENT HAVE ANY INTEREST IN TALKING TO  
25 MR. VASSAR IF HE WANTS TO TRUTHFULLY DEBRIEF WITH YOU?

1 MR. SMITH: YOUR HONOR, IN LIGHT OF MR. VASSAR'S  
2 PRIOR FINDING BY THIS COURT THAT HE ENGAGED IN THE  
3 SUBORNATION OF PERJURY, MADE FALSE STATEMENTS TO PROBATION  
4 OFFICERS, IN LIGHT OF THE GOVERNMENT'S ARGUMENT TO THE  
5 COURT THAT MR. VASSAR HAS MADE FALSE STATEMENTS TO THE  
6 PROBATION OFFICER IN CONNECTION WITH THIS PRESENTENCE  
7 INVESTIGATION, HIS CREDIBILITY IS MORE THAN SUSPECT; AND,  
8 AND AFTER CONSULTATION WITH MY SUPERVISOR, MS. HARR, I  
9 BELIEVE THE GOVERNMENT DOES NOT HAVE AN INTEREST IN  
10 SPEAKING WITH MR. VASSAR AT THIS TIME.

11 AGAIN, ANY INFORMATION THAT HE COULD PROVIDE AT  
12 THIS POINT WOULD BE HISTORICAL AT BEST, AND IT'S JUST NOT  
13 GOING TO BE HELPFUL AT ALL. HE IS NOT GOING TO BE ABLE TO  
14 BE USED AS A WITNESS BECAUSE OF HIS PRIOR CONVICTIONS FOR  
15 OFFENSES INVOLVING DISHONESTY AND FALSE STATEMENT, AND WE  
16 DON'T HAVE AN INTEREST IN TALKING TO HIM.

17 MR. MONCIER: THAT PRESENTS ANOTHER PROBLEM  
18 THOUGH, YOUR HONOR, AS TO WHAT DO I PRESENT TODAY IF WE  
19 WERE TO GO FORWARD IN A SENTENCING HEARING WITH REGARD TO  
20 POSITIONS AND INFORMATION THAT WE HAVE HAD IN THE PAST.  
21 BEFORE I GO FORWARD TODAY AND PRESENT MY CASE AS IT HAD  
22 BEEN PRESENTED AND PREPARED PRIOR TO THIS TIME, I THINK MR.  
23 VASSAR NEEDS INDEPENDENT COUNSEL. I MEAN, I'VE BEEN  
24 SITTING HERE THROWN INTO A SITUATION. IF THAT'S WHY THE  
25 GOVERNMENT DISCLOSED THAT TO ME YESTERDAY, FINE. I MEAN,

1 I'M, I'M OBVIOUSLY -- I MEAN, THE POINT OF THE MATTER IS,  
2 KEEP IN MIND SINCE WE SAID IT WAS MARK THORNTON, I HAD  
3 SUBPOENAED MARK THORNTON AND HE WAS PREPARED TO TESTIFY, OR  
4 I WAS GOING TO CALL HIM TO TESTIFY AT THE OCTOBER 28TH  
5 HEARING. THEY DIDN'T PROVIDE THIS TO ME. THE OCTOBER 28TH  
6 HEARING WAS LITERALLY CONTINUED THE NIGHT BEFORE THE  
7 HEARING, LATE IN THE NIGHT. THE GOVERNMENT HASN'T SAID  
8 ANYTHING ABOUT IT. THEY KNEW I WAS GOING TO CALL MARK  
9 THORNTON AT THAT TIME. WHAT WERE THEY GOING TO DO, CROSS  
10 EXAMINE MARK THORNTON AFTER HE TESTIFIED ABOUT A COMPLETELY  
11 UNRELATED MATTER ABOUT MY CLIENT AND HARPOON IT INTO THE  
12 CASE? WHO KNOWS. I DON'T KNOW; BUT THE POINT OF THE  
13 MATTER IS I NOW KNOW FOR WHAT THEY SAY MARK THORNTON -- AND  
14 I'VE DONE MY DUE DILIGENCE, AND I HAVEN'T TALKED TO MR.  
15 VASSAR, AND I HAVEN'T DONE THAT FOR THE REASONS I'VE  
16 STATED, AND SO THAT PLACES ME IN A DIFFICULT POSITION AS TO  
17 HOW TO GO FORWARD TODAY.

18 AND I GUESS THE ELEPHANT SITTING IN THE MIDDLE  
19 OF THE COURTROOM HERE IS WHY ARE WE TALKING ABOUT A 7  
20 DAY -- AND IF IT'S, IF IT'S SO MR. VASSAR GOES BEFORE CHRIS  
21 SHULTS, THEN, YOU KNOW, RESCHEDULE MR. SHULTS' UNTIL AFTER  
22 MR. VASSAR, IF THERE'S SOME SUSPICION THAT I'M DOING THIS  
23 SO THAT MR. VASSAR WILL HAVE THE BENEFIT IN THIS RECORD OF  
24 THE, FOR THE FAIRNESS DETERMINATIONS AND THE OTHER  
25 DETERMINATIONS THAT I'VE SUBMITTED IN THE RECORD, WELL,

1 JUST PUT THOSE -- PUT MR. SHULTS AFTER MR. VASSAR.

2 NOW, I'M TOLD BY MR. BELL, ANOTHER THING, I  
3 RECEIVED A MOTION BY MR. BELL LAST NIGHT, HE CALLED ME AND  
4 HE TOLD ME THAT CHRIS SHULTS WAS GOING TO TAKE THE FIFTH  
5 AMENDMENT. THAT'S WHAT WHY MR. BELL IS HERE THIS MORNING.  
6 THAT'S ONE MORE REASON THAT IF MR. SHULTS IS GOING TO TAKE  
7 THE FIFTH AMENDMENT TO MY QUESTIONS TO MR. SHULTS BEFORE  
8 HIS SENTENCING, THEN THAT'S ONE MORE REASON THAT MR.  
9 VASSAR'S CASE SHOULD BE AFTER MR. SHULTS SO THAT MR. SHULTS  
10 WOULD NOT HAVE THAT FIFTH AMENDMENT ISSUE; BUT, YOU KNOW,  
11 ONCE AGAIN, I WANT TO MAKE IT AS CLEAR AS I CAN, IF THE  
12 ISSUE, AND THE ONLY ISSUE THAT'S THE ELEPHANT IN THE MIDDLE  
13 OF THE COURTROOM IS THAT THIS, MR. VASSAR'S SENTENCING IS  
14 GOING TO BE AFTER MR. SHULTS, THEN RESET MR. SHULTS UNTIL  
15 AFTER MR. VASSAR.

16 THE COURT: AND RESET MR. PHILLIPS AFTER MR.  
17 VASSAR AND RESET --

18 MR. MONCIER: I DON'T KNOW. MR. PHILLIPS IS IN  
19 JANUARY, I BELIEVE, JANUARY THE 8TH, AS I RECALL.

20 THE COURT: WELL, I SAID THAT WRONG. IF WE SET  
21 MR. VASSAR AFTER MR. PHILLIPS, SO MR. PHILLIPS CAN'T TAKE  
22 THE FIFTH TOO.

23 MR. MONCIER: NO, I'M NOT GOING THAT FAR. MR.  
24 LEIBROCK, I TALKED TO YESTERDAY, DIDN'T INDICATE TO ME THAT  
25 MR. PHILLIPS WAS GOING TO TAKE THE FIFTH; BUT MR. PHILLIPS'

1 SENTENCING ANYWAY IS JANUARY THE 8TH, AS I RECALL.

2 ONCE AGAIN, I REST ON ALL OF THE GROUNDS THAT  
3 I'VE SAID PREVIOUSLY FOR US HAVING THE BENEFIT OF THEIR  
4 SENTENCING; HOWEVER, ON THIS PARTICULAR ISSUE SPECIFICALLY,  
5 IF THAT'S THE ONLY IMPEDIMENT TO MR. VASSAR HAVING  
6 INDEPENDENT ADVICE --

7 THE COURT: WHAT GOOD WOULD INDEPENDENT ADVICE  
8 DO HERE IF THE GOVERNMENT IS NOT WILLING TO TALK TO HIM IN  
9 ANY EVENT, SO WHAT IF ANOTHER LAWYER COMES IN?

10 MR. MONCIER: THIS MAY LEAD TO A CHANGE OF  
11 POSITION ON EVERYTHING, I DON'T KNOW; AND IT WILL  
12 CERTAINLY --

13 THE COURT: WHAT DO YOU MEAN BY THAT?

14 MR. MONCIER: MAYBE HE KNOWS SOMETHING ELSE THAT  
15 HASN'T BEEN DISCUSSED. YOU KNOW, MR. PHILLIPS HAS COME UP,  
16 EVERYBODY ELSE HAS CHANGED THEIR STATEMENT. MR. SMITH,  
17 I'VE QUOTED, I DON'T WANT TO ARGUE WITH IT AT LENGTH, BUT  
18 MR. SMITH HAS PREVIOUSLY SAID, NOBODY TELLS THE TRUTH AT  
19 FIRST, WE ALL KNOW THAT; THAT'S WHAT, THAT'S -- I'M QUOTING  
20 MR. SMITH WHEN HE SAID THAT. PEOPLE, PEOPLE CHANGE. I  
21 JUST DON'T KNOW, AND I'M NOT THE PROPER PERSON TO DO THAT.

22 I MEAN, THE GOVERNMENT'S SUGGESTION THAT, THAT,  
23 THAT THEY WOULD ASK OR THAT THEY WOULD RELY ON THE COURT  
24 BECAUSE OF THE PRESENTENCE REPORT ISSUE THAT THEY'RE  
25 TALKING ABOUT IN THIS CASE IS, IS DISINGENUOUS, I SUGGEST,

1 BECAUSE THEY'VE RELIED AND THEY'RE RELYING ON THE TESTIMONY  
2 OF A PERSON WHO HAS COMMITTED PERJURY UNDER OATH CONCERNING  
3 THEIR ASSETS AND CONCERNING THEIR DRUG LAUNDERING MONEY.

4 NOW, I DON'T KNOW --

5 THE COURT: WE'RE GETTING A BIT AFIELD.

6 MR. MONCIER: WELL, BUT HIS SUGGESTION IS  
7 SOMEHOW, THAT'S DISINGENUOUS. THE SUGGESTION THAT THEY  
8 WOULD NOT WANT INFORMATION IF THE INFORMATION WAS THERE;  
9 AND, YOU KNOW, HE DOES HAVE THE OPTION, AS I SAID, OF  
10 BRINGING TO THE COURT'S ATTENTION AT SENTENCING THROUGH HIS  
11 STATEMENTS AND WHAT HAVE YOU INFORMATION, HE HAS THAT FOR  
12 FAIRNESS.

13 IS IT FAIR THAT THEY REFUSE TO ALLOW HIM TO HELP  
14 THEM WITH REGARD TO SOMEONE THEY HAD A TARGET? I --

15 THE COURT: ALL RIGHT. LET'S TAKE A SHORT  
16 RECESS AND I'LL RULE ON THIS.

17 (RECESS AT 9:58 A.M., UNTIL 10:10 A.M.)

18 THE COURT: ALL RIGHT. THERE'S BEEN A  
19 SUGGESTION MADE TO ME THIS MORNING THAT BECAUSE OF THE  
20 EVENTS THAT HAVE BEEN DISCUSSED HERE THIS MORNING THERE  
21 SHOULD BE A RULE 44(C) INQUIRY CONDUCTED IN THIS CASE  
22 BEFORE FURTHER PROCEEDINGS ARE HAD. MR. VASSAR'S COUNSEL  
23 SUGGESTS THAT THIS COURT ASK A DIFFERENT DISTRICT COURT  
24 JUDGE TO CONDUCT THAT INQUIRY AND THAT THE COURT APPOINT  
25 INDEPENDENT COUNSEL TO ADVISE MR. VASSAR.

1           IT APPEARS, BASED UPON WHAT I'VE HEARD THIS  
2 MORNING, THAT THE POSSIBLE CONFLICT WITH RESPECT TO JOINT  
3 REPRESENTATION IS CREATED BY THE POSSIBILITY THAT MR.  
4 VASSAR MAY HAVE HEARD OR BEEN PARTY TO SOME CONVERSATION  
5 WITH ONE OF MR. VASSAR'S {SIC} OTHER CLIENTS THAT CONCERNS  
6 CRIMINAL ACTIVITY ON THE PART OF THE OTHER -- ACTUALLY, I  
7 THINK I WAS TOLD IT DIDN'T SUGGEST DIRECT CRIMINAL  
8 ACTIVITY, BUT SOME CONVERSATION ABOUT CRIMINAL ACTIVITY ON  
9 THE PART OF ANOTHER CLIENT OF MR. MONCIER.

10           THE SUGGESTION WAS MADE THAT THAT INQUIRY IS  
11 NECESSARY BECAUSE MR. VASSAR SHOULD HAVE THE OPTION AT THIS  
12 POINT BASED UPON ADVICE OF INDEPENDENT COUNSEL OF  
13 DEBRIEFING WITH THE GOVERNMENT IN THE HOPES OF A GOVERNMENT  
14 MOTION FOR DOWNWARD DEPARTURE IN THIS CASE. THE GOVERNMENT  
15 HAS VERY CANDIDLY INDICATED TO ME THIS MORNING THAT BECAUSE  
16 MR. VASSAR'S CREDIBILITY IN THEIR VIEW IS SUSPECT, THAT  
17 THEY HAVE NO INTEREST IN DEBRIEFING HIM, EVEN SHOULD HE  
18 DESIRE TO DO SO. EVEN IF THE CIRCUMSTANCES DESCRIBED TO ME  
19 THIS MORNING WARRANT A RULE 44(C) INQUIRY, AND I THINK  
20 THAT'S DOUBTFUL, ANY RULE 44(C) INQUIRY AT THIS POINT IS  
21 MOOTED BY THE FACT THAT THE GOVERNMENT DOES NOT HAVE ANY  
22 INTEREST IN DEBRIEFING MR. VASSAR IN ANY EVENT BECAUSE OF  
23 THEIR CONCERNS ABOUT HIS CREDIBILITY.

24           THE MOTION OF THE DEFENDANT FOR THE APPOINTMENT  
25 OF INDEPENDENT COUNSEL AND FOR THE CONDUCT OF RULE 44



1 INQUIRY, RULE 44(C) INQUIRY BY A DIFFERENT DISTRICT COURT  
2 JUDGE, AS WELL AS THE MOTION TO CONTINUE THIS PROCEEDING ON  
3 THAT BASIS, IS DENIED.

4 MR. MONCIER: YOUR HONOR, UNDER THAT RULING I  
5 MUST REQUEST THE COURT TO PERMIT ME TO WITHDRAW FROM  
6 REPRESENTING MR. VASSAR BECAUSE I CANNOT EFFECTIVELY ADVISE  
7 MR. VASSAR AS TO HOW TO PROCEED THIS MORNING AT THE  
8 SENTENCING HEARING AND PRESENTING THE EVIDENCE THAT WE HAVE  
9 WITH REGARD TO THE SENTENCING HEARING AND WHAT I WAS  
10 PREPARED TO GO FORWARD WITH REGARD TO THE SENTENCING  
11 HEARING WITHOUT HIM BEING ABLE TO HAVE THAT INDEPENDENT  
12 ADVICE.

13 AND, ONCE AGAIN, I WANT TO EMPHASIZE TO THE  
14 COURT THAT IT IS MY DUTY ONCE THIS INFORMATION CAME TO MY  
15 ATTENTION YESTERDAY, IT IS MY DUTY TO ASSURE THAT MR.  
16 VASSAR HAS INDEPENDENT ADVICE WITH REGARD TO THAT, AND I'M  
17 NOT THE PERSON THAT IS SITTING THERE ADVISING HIM AS TO  
18 WHAT TO DO ABOUT THAT INFORMATION; AND IT IS FOR THAT  
19 REASON, IT IS FOR THAT VERY REASON THAT I HAVE NOT  
20 PERMITTED MR. VASSAR TO EXPLAIN OR TO GO -- TO TAKE A  
21 POSITION WITH REGARD TO THAT BECAUSE HE NEEDS TO HAVE AN  
22 INDEPENDENT ATTORNEY DO THAT.

23 NOW, IF HIS FAMILY NEEDS TO -- HE DOESN'T HAVE  
24 THE FUNDS HIMSELF TO DO THAT; BUT IF HIS FAMILY NEEDS TO  
25 HIRE ANOTHER ATTORNEY, SO BE IT. THE PROBLEM, OF COURSE,

1 WITH THAT IS YOU ALWAYS GET INVOLVED WITH ATTORNEYS THAT  
2 KNOW EACH OTHER, AND THAT'S WHY I ASKED THE COURT TO SELECT  
3 AN INDEPENDENT ATTORNEY, SOMEBODY THAT HAS NO RELATIONSHIP  
4 WHATSOEVER TO ME; OR THE FAMILY IS GOING TO ASK, WHO DO YOU  
5 SUGGEST? THE FAMILY IS GOING TO GO TO THE SAME GROUP OF  
6 PEOPLE FOR SOMEBODY TO ADVISE. HE NEEDS SOMEBODY THAT  
7 DOESN'T KNOW ME AND DOESN'T HAVE ANY RELATION TO ME AND  
8 DOESN'T HAVE ANY RELATION TO THE FAMILY BEFORE I GO FORWARD  
9 AND PRESENT A DEFENSE THIS MORNING BECAUSE ONCE I PRESENT A  
10 DEFENSE THIS MORNING, THAT'S GOING TO HAVE OTHER  
11 RAMIFICATIONS; AND THAT WAS PART OF WHAT I WAS EXPLAINING  
12 TO THE COURT.

13 THE COURT: TO THE EXTENT, MR. MONCIER, THAT  
14 THERE IS A POSSIBILITY NOW THAT MR. VASSAR KNOWS  
15 INFORMATION ABOUT OTHER PEOPLE WHO MAY BE CLIENTS OF YOURS,  
16 YOU'VE KNOWN THAT FOR MONTHS AND MONTHS AND MONTHS.

17 TO THE EXTENT IT CONCERNS MR. GROOMS, I HAD A  
18 SPECIFIC INQUIRY, EXPLAINED ALL THAT TO MR. VASSAR, LONG  
19 AGO; AND YOU ENTERED -- I JUST PULLED IT UP, YOU FILED A  
20 PLEADING IN THE OTHER CASE IN 06-CR-05 ON MARCH 3RD GIVING  
21 NOTICE THAT YOU ALSO REPRESENTED MR. GROOMS. MAGISTRATE  
22 JUDGE ENTERED AN ORDER, WHICH AS I RECALL YOU TOOK GREAT  
23 OFFENSE TO, INDICATING THE POSSIBILITY OF A CONFLICT OF  
24 INTEREST. IF I DIDN'T SAY IT, IT WOULD BE THE FIRST TIME I  
25 EVER FAILED TO SAY IT, BUT SURELY DURING THE PROCEEDINGS WE

1 HAD I ADVISED MR. MONCIER OF THE POSSIBILITY THAT THINGS  
2 ALWAYS LOOK DIFFERENT TO A DEFENDANT AFTER A TRIAL.

3 I'M SIMPLY NOT WILLING TO POSTPONE THIS ON THE  
4 BASIS THAT THERE NOW EXISTS IN YOUR MIND A CONFLICT THAT  
5 SHOULD HAVE BEEN READILY APPARENT TO YOU SIX OR SEVEN  
6 MONTHS AGO.

7 MR. MONCIER: VERY -- EXCUSE ME.

8 THE COURT: GO AHEAD.

9 MR. MONCIER: VERY POSSIBLY I MADE MYSELF  
10 UNCLEAR. I BELIEVE THAT ALL CONFLICTS WERE PROPERLY  
11 RESOLVED. I WAS NOT AWARE THAT THE GOVERNMENT HAD A  
12 JAILHOUSE PERSON WHO WAS ATTRIBUTING THIS STATEMENT TO MY  
13 CLIENT. I HAD NO WAY TO KNOW THAT. I HAD NO WAY TO TALK  
14 TO THAT PERSON BECAUSE THAT PERSON WAS REPRESENTED BY  
15 COUNSEL. THAT PERSON, I HAVE FILED A TRANSCRIPT OF THAT  
16 PERSON'S TELEPHONE CALL TO ME MONDAY OF THIS WEEK AS PRE-  
17 JENCKS. I HAVE PREPARED MY DEFENSE OF MR. VASSAR BASED  
18 UPON INFORMATION SURROUNDING WHAT I KNEW AT THAT POINT IN  
19 TIME.

20 NOW I HAVE THIS NEW INFORMATION. I AM  
21 CONFIDENT, JUST LIKE THE GOVERNMENT IS TALKING ABOUT A  
22 QUARTER BLAZER, THAT THE GOVERNMENT WILL SEIZE UPON ANY  
23 EVIDENCE THAT I OFFER DURING THIS HEARING THAT I HAD  
24 PREPARED BEFOREHAND TO NOW SUGGEST BASED UPON, IF MY CLIENT  
25 WERE TO SAY THAT THAT STATEMENT WAS NEVER MADE OR TO

1 PRESENT EVIDENCE THAT THAT WASN'T MADE OR TO TRY TO PRESENT  
2 EVIDENCE AS SUCH, THAT'S GOING TO BE A POTENTIAL IN THE  
3 CASE. I DON'T KNOW WHETHER THAT'S THE CASE OR NOT; BUT THE  
4 POINT OF THE MATTER IS THAT I AM BEING REQUESTED AT THIS  
5 POINT IN TIME TO GO FORWARD WITH A DEFENSE WHEN SOMETHING  
6 HAS BEEN BROUGHT TO MY ATTENTION THAT, THAT NEEDS TO BE  
7 RESOLVED, AND I CANNOT RESOLVE THAT; SO, THEREFORE, AT THIS  
8 POINT IN TIME IT IS MY DUTY TO ASK THE COURT TO WITHDRAW  
9 AND FOR THE COURT TO APPOINT AN ATTORNEY TO REPRESENT MR.  
10 VASSAR THAT CAN GO OVER THE INFORMATION, GO OVER THE  
11 DEFENSE THAT WE WERE PREPARED TO PRESENT TODAY, IN LIGHT  
12 OF THE FACT THAT THE GOVERNMENT SAYS THEY HAVE A JAILHOUSE  
13 PERSON THAT SAID SOMETHING ABOUT MR. VASSAR; AND I DON'T  
14 WANT TO CHARACTERIZE THINGS BECAUSE MR. VASSAR IS HERE. I  
15 DON'T WANT TO TRY TO INFLUENCE ANYBODY.

16 I AM ASKING YOUR HONOR, IF YOU'RE GOING TO FORCE  
17 ME TO GO FORWARD TO A SENTENCING HEARING TODAY, TO WITHDRAW  
18 UNTIL THIS MATTER IS RESOLVED. NOW, IF THIS MATTER --  
19 COULD WE APPROACH THE BENCH, PLEASE? COULD WE SPEAK AT THE  
20 BENCH OUT OF THE PRESENCE OF MR. VASSAR? COULD I DO THAT?

21 THE COURT: THAT'S AWFULLY UNUSUAL, MR.  
22 MONCIER.

23 MR. MONCIER: WELL, IT'S NOT UNUSUAL, YOUR  
24 HONOR, WHEN I DON'T WANT TO SIT HERE AND TELEGRAPH TO MY  
25 CLIENT -- MAY I JUST APPROACH THE BENCH?

1 THE COURT: YOU MAY.

2 MR. MONCIER: THANK YOU.

3 MR. SMITH: YOUR HONOR, CAN I ASK THAT ANY BENCH  
4 CONFERENCE IS DONE WITH MR. VASSAR'S CONSENT?

5 THE COURT: WHEN I FIND OUT WHAT THIS IS ABOUT,  
6 I MAY STOP THIS BENCH CONFERENCE, WE'LL SEE.

7 (BENCH CONFERENCE WITH MR. MONCIER AND MR. SMITH AND  
8 MS. HARR)

9 THE COURT: WHAT IS THE NATURE --

10 MR. MONCIER: I DID NOT WANT TO TELEGRAPH TO MR.  
11 VASSAR MY VIEW THAT THIS IS NOTHING MORE THAN A  
12 PRECALCULATED PLAN OF THE GOVERNMENT -- I WAS GOING TO USE  
13 THE WORD "SETUP", BUT I DIDN'T, SETUP IS THE COLLOQUIAL  
14 WORD -- PRECALCULATED PLAN OF THE GOVERNMENT TO SABOTAGE  
15 MR. VASSAR'S POSITION IN THIS CASE BECAUSE WHEN I SAY THAT,  
16 THAT SOMEHOW -- I HAVE EVERY REASON TO BELIEVE THAT MR.  
17 VASSAR BELIEVES THAT -- MR. VASSAR, I HAVE EVERY REASON TO  
18 BELIEVE, IS GOING TO DENY THAT THAT STATEMENT WAS MADE;  
19 HOWEVER, HOWEVER, HE NEEDS TO KNOW THE CONSEQUENCES OF  
20 THAT. I HAVE EVERY REASON TO BELIEVE THAT THIS IS  
21 SOMETHING THAT WAS, THAT WAS CONCOCTED WITH MARK THORNTON  
22 WHEN HE WAS FACING A MANDATORY LIFE SENTENCE; THAT THIS IS  
23 JAILHOUSE, TYPICAL JAILHOUSE, OH, I HEARD HIM SAY THIS.

24 THE COURT: WHO ARE YOU ACCUSING OF CONCOCTING  
25 THIS WITH MR. THORNTON?

1 MR. MONCIER: CONCOCTING, I'M GOING TO WITHDRAW  
2 THE WORD "CONCOCTING". PART OF THE CUSTOM AND PLAN THAT I  
3 HAVE STATED IN THE PAPERS THAT I HAVE FILED WITH THE COURT.  
4 THIS -- JAILHOUSE PEOPLE SAYING THAT THEY HEARD SOMEBODY  
5 ELSE SAY SOMETHING IS A VERY COMMON THING USED BY PEOPLE  
6 WHO ARE IN JAIL TO GET BENEFITS FROM THE GOVERNMENT. I WAS  
7 OFFERED TO PREPARE TESTIMONY OF THAT UNDER 404(B) THROUGH  
8 WITNESSES IN BLOUNT COUNTY TO WHERE ONE PERSON EVEN PAID  
9 ANOTHER PERSON TO CONCOCT A STORY.

10 THE COURT: WE'RE NOT GOING TO RETRY THAT  
11 ISSUE.

12 MR. MONCIER: OKAY. MY POINT, MY POINT IS THAT  
13 THIS HAPPENS. I HAVE EVERY REASON TO BELIEVE THAT THAT'S  
14 WHAT MIKE VASSAR IS GOING TO SAY HAPPENED.

15 THE COURT: THAT'S FINE.

16 MR. MONCIER: OKAY. THAT'S GREAT. THE POINT OF  
17 THE MATTER THOUGH IS AS LONG AS I'M REPRESENTING MR.  
18 GROOMS, I'M NOT THE ONE TO GET THAT MESSAGE -- I'M NOT THE  
19 ONE TO CLEAR THAT UP. THAT'S THE PROBLEM. IF YOU WERE TO  
20 APPOINT AN INDEPENDENT ATTORNEY AND LET THAT INDEPENDENT  
21 ATTORNEY TALK TO HIM WITHOUT ME TALKING TO THAT INDEPENDENT  
22 ATTORNEY, TALK TO MR. VASSAR, FIND OUT WHAT ALL THIS IS  
23 ABOUT, AND THEN REPORT BACK TO THE COURT OR TO ME, THEN  
24 THAT CLEARS IT UP; BUT RIGHT NOW I BELIEVE THAT THEY  
25 BROUGHT THIS UP YESTERDAY SIMPLY TO TRY TO CONTINUE TO, TO

1 ATTACK HERB MONCIER.

2 THE COURT: THEY DIDN'T HAVE ANY OBLIGATION AS  
3 FAR AS I CAN TELL TO GIVE IT TO YOU.

4 MR. MONCIER: I AGREE. I'M NOT DISAGREEING.

5 THE COURT: THEY COULD HAVE JUST BLINDSIDED YOU  
6 WITH IT TODAY.

7 MR. MONCIER: OH, I DON'T DISAGREE WITH THAT. I  
8 THINK THEY DID IT TO SEE WHAT I WOULD DO. I THINK THEY DID  
9 IT TO SEE IF I WOULDN'T NOT CALL MARK THORNTON. THEY --

10 THE COURT: WELL, THOSE ARE DECISIONS YOU MAKE  
11 ALL THE TIME.

12 MR. SMITH: YOUR HONOR --

13 MR. MONCIER: JUDGE -- JUST A MINUTE, I'M  
14 SPEAKING, MR. SMITH. I BELIEVE THEY SANDWICHED IT BETWEEN  
15 SOME VERY EXCULPATORY INFORMATION SIMPLY TO SEE WHAT I  
16 WOULD DO, AND I DID WHAT I HAD TO DO. I THEN DID WHAT ANY  
17 LAWYER WOULD DO. THEY'RE -- YOU KNOW, JUDGE, YOU KNOW,  
18 I'VE TRIED EIGHT CASES UP HERE. THESE PEOPLE DON'T LIKE  
19 ME. I HAVE NO PERSONAL ANIMOSITY TOWARD THEM, BUT THEY  
20 DON'T WANT PEOPLE TO HIRE ME TO TRY JURY TRIALS. IT'S --  
21 YOU SHAKE YOUR HEAD AT THAT.

22 THE COURT: I DO. THAT'S RIDICULOUS, MR.  
23 MONCIER.

24 MR. MONCIER: OKAY. WELL, NEVERTHELESS, IT'S  
25 NOT RIDICULOUS WHEN YOU HEAR THE THINGS THAT I HEAR FROM

1 PEOPLE THAT THEY'RE TALKING TO ABOUT COOPERATION; BUT  
2 THAT'S FINE. THAT'S NOT THE ISSUE WE HAVE HERE THIS  
3 MORNING.

4 THE ISSUE THAT WE HAVE HERE THIS MORNING IS  
5 SOMEBODY HAS GOT TO GET THIS CLEARED UP BEFORE I GO FORWARD  
6 AND PRESENT THIS MAN'S SENTENCING HEARING ON THE IMPORTANT  
7 ISSUES THAT WE HAVE BEFORE THE COURT, AND I CAN'T DO THAT.  
8 I CAN'T ETHICALLY DO THAT.

9 THE COURT: WELL --

10 MR. MONCIER: BECAUSE IF I ETHICALLY DO THAT, I  
11 AM VIOLATING MY ETHICAL DUTY.

12 THE COURT: WHAT ETHICAL DUTY?

13 MR. MONCIER: I REPRESENT HAROLD GROOMS. HE  
14 KNOWS I REPRESENT HAROLD GROOMS.

15 THE COURT: YOU KNEW THE POTENTIAL FOR THIS TO  
16 OCCUR WHEN YOU AGREED TO REPRESENT HAROLD GROOMS.

17 MR. MONCIER: THAT'S EXACTLY WHY I SAID I  
18 REPRESENTED HAROLD GROOMS SO THAT THE GOVERNMENT COULD  
19 BRING TO MY ATTENTION ANYTHING THAT I NEEDED TO GET  
20 RESOLVED AT THAT TIME.

21 NOW, I COULD WITHDRAW FROM REPRESENTING HAROLD  
22 GROOMS, I CAN WITHDRAW FROM REPRESENTING HAROLD GROOMS, BUT  
23 THE PROBLEM WITH THAT IS THAT MEANS I'M GOING TO GO FORWARD  
24 WITH THE SENTENCING HEARING FOR THIS MAN TODAY, AND THIS  
25 MAN STILL THINKS THAT I REPRESENT HAROLD GROOMS. HE



1 DOESN'T UNDERSTAND THAT STUFF; SO, SO, YOU KNOW, ETHICALLY  
2 I CANNOT GO FORWARD AND PRESENT ANYTHING TODAY FROM THIS  
3 MAN THAT -- I CAN'T DO IT. I CAN'T DO IT. HE'S WALKING  
4 INTO A TRAP; AND I'M NOT TRYING TO PLAY GAMES WITH THE  
5 COURT.

6 WHAT'S WRONG WITH A WEEK? I KNOW YOU'RE BUSY,  
7 YOU KNOW I'M BUSY, BUT WHAT'S WRONG WITH US PUTTING THIS  
8 OFF FOR A WEEK?

9 THE COURT: BECAUSE I DON'T HAVE A DAY IN A  
10 WEEK, MR. MONCIER. I DON'T HAVE A DAY THE REST OF THIS  
11 YEAR.

12 MR. MONCIER: WELL, IF, IF WHAT HAS TO BE DONE  
13 HAS TO BE DONE, YOU KNOW, THAT'S FINE. I SIMPLY CANNOT --  
14 I'M NOT GOING TO WALK INTO THIS TRAP. I'M NOT GOING TO DO  
15 IT. I'M NOT GOING TO PUT THE -- I HAD A --

16 THE COURT: YOU TELLING ME YOU'RE JUST GOING TO  
17 WALK OUT OF HERE THIS MORNING WHETHER I LET YOU WITHDRAW OR  
18 NOT?

19 MR. MONCIER: OF COURSE NOT.

20 THE COURT: WHAT DO YOU MEAN, I'M NOT WALKING  
21 INTO THIS TRAP?

22 MR. MONCIER: I MEAN IF I HAVE TO SIT THERE AND  
23 REMAIN MOOT, I WILL SIT THERE AND REMAIN MOOT.

24 THE COURT: IN OTHER WORDS, YOU WOULDN'T PROVIDE  
25 HIM A DEFENSE?

1 MR. MONCIER: I CAN'T PROVIDE HIM A DEFENSE. IT  
2 WOULD BE AN INEFFECTIVE ASSISTANCE OF COUNSEL TO DO SO.  
3 EVERYBODY IS WALKING INTO A 2255 IN THIS SITUATION.

4 THE COURT: IT APPEARS TO ME THAT YOU'RE SETTING  
5 THAT UP.

6 MR. MONCIER: I'M NOT SETTING THIS UP.

7 THE COURT: LET ME HEAR WHAT MR. SMITH HAS TO  
8 SAY ABOUT THIS.

9 MR. SMITH: YOUR HONOR, TWO POINTS AS TO THE  
10 DISCLOSURE THAT WAS MADE YESTERDAY. AFTER THE HEARING ON  
11 WEDNESDAY MORNING, THE COURT DIRECTED THAT THE GOVERNMENT  
12 DISCLOSE ANY INFORMATION THAT ARGUABLY CONTAINED, RELATED  
13 TO DRUG QUANTITIES; AND THE FBI 302'S AND TBI REPORTS OF  
14 INVESTIGATION AND WHERE ANYBODY DISCUSSED ANY DRUG  
15 TRANSACTION WITH MIKE VASSAR, WE DISCLOSED THE SUBSTANCE OF  
16 THOSE REPORTS IN ACCORDANCE WITH THE COURT'S ORDER; AND A  
17 DISCUSSION -- WHERE THERE WAS A DISCUSSION BUT NO  
18 TRANSACTION, RELATES TO DRUG QUANTITY, RELATES TO A  
19 QUANTITY, ZERO QUANTITY, BUT IT RELATES TO A DRUG QUANTITY.

20 SECOND, MR. MONCIER HAS REPRESENTED TO THE COURT  
21 SINCE AT LEAST LATE FEBRUARY, EARLY MARCH, HE REPRESENTS  
22 MR. GROOMS; AND UP UNTIL HE ADVANCED TO THE COURT THIS  
23 MORNING THE ALLEGED CONFLICT THAT HE CLAIMS NOW EXISTS WITH  
24 HIS REPRESENTATION OF MR. VASSAR AND MR. GROOMS, HE HAD NO  
25 PROBLEM WITH GOING FORWARD WITH THE SENTENCING HEARING FOR

1 MR. VASSAR; SO, OBVIOUSLY, THE DEFENSE THAT HE WAS GOING TO  
2 PRESENT FOR MR. VASSAR IN THIS SENTENCING HEARING TODAY HAD  
3 ABSOLUTELY NOTHING TO DO WITH MR. HAROLD GROOMS, SO THE  
4 ARGUMENT THAT SOMEHOW HE CANNOT PROVIDE HIS CLIENT AN  
5 EFFECTIVE OFFENSE TODAY IS CAPRICIOUS.

6 MR. MONCIER: THAT IS NOT CORRECT. I WAS GOING  
7 TO REPRESENT THE REASONS THIS MAN REFUSED PRIOR OFFERS.  
8 I'M GOING TO PRESENT LETTERS WHAT HE OFFERED TO DO. I'M  
9 GOING TO PRESENT EVIDENCE AS TO WHY HE COULD NOT AND WOULD  
10 NOT DO WHAT THE GOVERNMENT WAS COMMANDING OF HIM TO DO.

11 THE COURT: YOU MEAN YOUR CLIENT?

12 MR. MONCIER: YES, SIR. I HAVE LETTERS, I HAVE  
13 LETTERS ABOUT ALL THIS. I WAS GOING TO PRESENT DOCUMENTS  
14 AS TO THAT. YOU KNOW, WE, WE, WE WERE GOING TO PUT ALL OF  
15 THAT INTO EVIDENCE.

16 NOW, IF MY CLIENT HAS KNOWN SOMETHING, AS REMOTE  
17 AS IT MIGHT BE, THAT PERTAINS TO HAROLD GROOMS, THAT IS  
18 THAT HAROLD GROOMS OFFERED TO GIVE HIM SOME DRUGS, IF HE  
19 KNOWS THAT, AND IF HE UNDERSTANDS THAT THAT IS WITHIN THESE  
20 THINGS THAT THE GOVERNMENT WAS WANTING, THAT HE NEEDS TO  
21 KNOW THAT. HE ISN'T GOING TO TELL ME IF HAROLD GROOMS SAID  
22 THAT BECAUSE HE KNOWS I REPRESENT HAROLD GROOMS.

23 NOW, IF HE TELLS THAT TO AN INDEPENDENT ATTORNEY  
24 AFTER AN INDEPENDENT ATTORNEY TELLS HIM THAT IF HAROLD  
25 GROOMS OFFERED TO -- I THINK YOU NEED TO SEE -- SINCE YOU

1 ALREADY HAVE TELEGRAPHED WHAT YOUR INITIAL RULING WAS, AT  
2 THIS POINT IN TIME, I THINK YOU NEED TO SEE THE LETTER,  
3 JUDGE. I MEAN, THIS IS OF SUFFICIENT IMPORTANCE; AND I  
4 WANT TO REITERATE WHAT I SAID BEFORE, MR. SMITH IS MISSING  
5 THE POINT. THE POINT IS MR. SMITH HAS BROUGHT SOMETHING TO  
6 MY ATTENTION YESTERDAY FOR THE FIRST TIME THAT I HAD NO WAY  
7 TO ANTICIPATE.

8 THE COURT: MR. MONCIER, DO YOU KNOW WHAT YOU  
9 JUST SAID TO ME?

10 MR. MONCIER: NO.

11 THE COURT: YOU SAID THAT BECAUSE YOU REPRESENT  
12 HAROLD GROOMS, YOUR CLIENT WON'T TELL YOU ANYTHING HE KNOWS  
13 ABOUT HAROLD GROOMS, WHICH IS THE VERY POTENTIAL THAT I  
14 SUGGESTED TO YOU EXISTED IN MARCH.

15 MR. MONCIER: I HAVE EVERY REASON TO BELIEVE  
16 THAT MY CLIENT HAS TOLD ME THE TRUTH. I HAVE NO REASON TO  
17 BELIEVE HE DOESN'T. I DON'T HAVE ALL THE INFORMATION THAT  
18 YOU HAVE FROM YOUR INVESTIGATIONS. I DON'T HAVE --

19 THE COURT: I HAVE CONDUCTED NO INVESTIGATIONS.

20 MR. MONCIER: NO, NO, ALL THE INFORMATION FROM  
21 ALL THESE SERIAL FILINGS ABOUT WHAT -- CONCERNING HAROLD  
22 GROOMS, I DON'T HAVE ANY WAY TO KNOW THAT. ALL I HAVE THE  
23 WAY TO KNOW IS WHAT I TALKED TO MY CLIENT AND WHAT I TALKED  
24 TO PEOPLE WHO COME TO HIRE ME TO RESOLVE CONFLICTS, AND  
25 I'VE ALREADY GONE THROUGH ALL OF THAT. THE POTENTIAL THAT

1 SOMETHING COMES UP AT A LATER TIME, WHILE IT'S ALWAYS TRUE  
2 WHEN YOU REPRESENT MORE THAN ONE PERSON FROM THE COMMUNITY,  
3 IF YOU DID THAT, YOU COULD ONLY REPRESENT ONE PERSON FROM  
4 THE COMMUNITY THAT CONCERNS SOME TYPE OF MATTER. I MEAN,  
5 BILL LEIBROCK REPRESENTS THE WHOLE PHILLIPS FAMILY, THAT'S  
6 NOT A CONFLICT? IT'S NOT A CONFLICT AS LONG AS THEY  
7 COOPERATE WITH THE GOVERNMENT; BUT IF YOU GO TO TRIAL,  
8 THAT'S WHERE THE PROBLEM IS EVIDENTLY THAT THEY WANT TO  
9 CREATE BY WEDGING ONE PERSON AGAINST ANOTHER.

10 NOW, I, AS I SAID, THE PROBLEM THAT WE'RE FACED  
11 WITH TODAY THOUGH IS THAT I'M PREPARED TO GO FORWARD WITH A  
12 SENTENCING HEARING BASED UPON WHAT I BELIEVED TO BE CORRECT  
13 AND STATEMENTS THAT I HAD PREPARED AND WITNESSES THAT I HAD  
14 PREPARED PRIOR TO THIS BEING DISCLOSED YESTERDAY. I EXPECT  
15 IF I SAY TO MY CLIENT, I SAID, IS THIS TRUE, HE'S GOING TO  
16 TELL ME NO. I EXPECT THAT THAT'S EXACTLY WHAT HE'S GOING  
17 TO SAY.

18 THE COURT: AND YOU THINK HE'S LYING?

19 MR. MONCIER: I HAVE EVERY REASON TO BELIEVE  
20 THAT IT'S NOT TRUE; BUT THE PROBLEM IS THAT BECAUSE IT'S  
21 ABOUT ANOTHER CLIENT THAT I HAVE, THAT'S WHERE THE CONFLICT  
22 COMES UP. HE NEEDS TO BE ASKED THAT QUESTION AND HE NEEDS  
23 TO BE INTERVIEWED AND TOLD THE CONSEQUENCES OF HIS  
24 RESPONSES BY SOMEBODY OTHER THAN, OTHER THAN ME; THAT'S THE  
25 POINT; AND THEN AT THAT POINT IN TIME IF THAT OTHER PERSON,

1 WHOEVER IT IS, WITHOUT ANY INFLUENCE FROM ME, AND WITHOUT  
2 ME INFLUENCING HIM BY MAKING THE STATEMENTS I'M MAKING HERE  
3 AT THE BENCH, AND, AND HE KNOWING THAT, WHAT I ANTICIPATE  
4 HE'S GOING TO SAY, IF HE MAINTAINS ALL OF THAT AND HE WANTS  
5 TO GO FORWARD, THEN FINE.

6 THE COURT: YOU UNDERSTAND IF I PERMIT YOU TO  
7 WITHDRAW, YOU'RE OUT. WE'RE NOT TALKING ABOUT ANOTHER  
8 LAWYER ADVISING HIM AND THEN YOU COMING BACK AND SAYING,  
9 IT'S OKAY FOR ME TO COME BACK. IF YOU'RE GONE, YOU'RE  
10 GONE.

11 MR. MONCIER: YOUR HONOR, I CAN MEET MY ETHICAL  
12 OBLIGATION BY PROVIDING INDEPENDENT ADVICE.

13 THE COURT: SO YOU'RE NOT REALLY ASKING ME TO  
14 WITHDRAW?

15 MR. MONCIER: I'M ASKING TO WITHDRAW UNTIL I CAN  
16 MEET MY ETHICAL OBLIGATION TO HAVE HIM INDEPENDENT ADVICE.  
17 NOW, IF THAT ATTORNEY COMES BACK AND SAYS, YOU KNOW,  
18 THERE'S A PROBLEM HERE, OF COURSE I'M NOT GOING TO STAY IN  
19 THE CASE. IF THAT ATTORNEY THOUGH AFTER HE HAS INDEPENDENT  
20 ADVICE FINDS THAT THERE IS NO CONFLICT, THEN I CAN  
21 ETHICALLY PROCEED. IT'S MY CLIENT'S CHOICE.

22 THE COURT: UNTIL THE NEXT THING COMES UP THAT  
23 YOU DIDN'T KNOW ABOUT AND YOU RAISE THIS ISSUE AGAIN. I  
24 MEAN, YOU --

25 MR. MONCIER: JUDGE --

1 THE COURT: I KNOW HOW YOU -- I KNOW YOUR VIEW  
2 OF CRIMINAL DISCOVERY, AND IN SOME WAYS I WISH CRIMINAL  
3 DISCOVERY WERE THE WAY YOU VIEWED IT, BUT IT'S NOT. YOU'RE  
4 NOT ENTITLED TO A UNIVERSE OF INFORMATION THAT'S OUT THERE  
5 BEFORE YOU CONDUCT ANY PROCEEDING IN THIS CASE.

6 MR. MONCIER: I WAS ENTITLED TO THE GOVERNMENT  
7 BEING ABLE TO PROVIDE TO THE COURT ANY INFORMATION THAT THE  
8 GOVERNMENT HAD THAT PERTAINS TO THEIR RULE 44 INQUIRY THAT  
9 THE GOVERNMENT SOUGHT IN THIS CASE, TO WHERE THE COURT  
10 COULD THEN ADVISE MR. VASSAR OF THAT INDEPENDENTLY OF ME,  
11 BUT THE GOVERNMENT DIDN'T TELL THE COURT ABOUT THIS  
12 INFORMATION THAT THEY HAD TO WHERE THE COURT COULD THEN  
13 INDEPENDENTLY ADVISE MR. VASSAR. AT THAT TIME HAD THE  
14 GOVERNMENT DONE THAT, I WOULD HAVE GOTTEN MR. VASSAR  
15 INDEPENDENT COUNSEL, HAD I KNOWN THAT THAT INFORMATION WAS  
16 OUT THERE, AND THE COURT WOULD HAVE BEEN ABLE, WOULD HAVE  
17 BEEN REQUIRED TO SAY, NOW, MR. VASSAR, THE GOVERNMENT HAS  
18 ADVISED X, Y AND Z. THAT'S THE WAY IT WORKS; BUT THE  
19 GOVERNMENT SET SILENT, SEE. THEY DIDN'T SAY THAT THEY HAD  
20 A JAILHOUSE INFORMANT. I MEAN, WHAT DO I DO NOW WITH MARK  
21 THORNTON? DO I PUT HIM ON THE STAND OR DO I NOT PUT HIM ON  
22 THE STAND? IF I PUT HIM ON THE STAND, THEN I KNOW, YOU  
23 KNOW, WHAT'S FIXING TO COME. I'VE MADE A PROFFER. YOU SAW  
24 HIS TAPE THERE.

25 THE COURT: WELL, YOU CAN MAKE A PROFFER AT

1 SENTENCING, YOU DON'T HAVE TO CALL MARK THORNTON.

2 MR. MONCIER: WELL, LET ME ALSO DISCLOSE TO THE  
3 COURT ONE OTHER MATTER, IS THAT AFTER I RECEIVED THIS  
4 REPORT YESTERDAY, I AGAIN TALKED TO MARK THORNTON, AND  
5 I DID TALK TO MARK THORNTON ABOUT THIS STATEMENT; SO I HAVE  
6 DONE A DUE DILIGENCE IN WHERE I AM. I'VE DONE WHAT I'M  
7 SUPPOSED TO DO, AND I'M ASKING THE COURT TO ALLOW ME THE  
8 SHORT PERIOD OF TIME NECESSARY -- AND I'M NOT ASKING THAT I  
9 GO OUT AND PICK THE INDEPENDENT COUNSEL, I'M ASKING THE  
10 COURT TO PICK THE INDEPENDENT COUNSEL BECAUSE MY CLIENT IS  
11 INDIGENT, YOU PICK THE INDEPENDENT COUNSEL, AND YOU LET  
12 THAT INDEPENDENT COUNSEL GET TO THE BOTTOM OF THIS. IT'S A  
13 PRETTY REASONABLE OFFER, I SUGGEST.

14 THE COURT: WELL, ONCE AGAIN, YOU'RE NOT REALLY  
15 MOVING TO WITHDRAW; ARE YOU?

16 MR. MONCIER: I'M ONLY MOVING TO WITHDRAW IF YOU  
17 FORCE ME TO GO TO A SENTENCING HEARING TODAY FOR MR. VASSAR  
18 TO HAVE INDEPENDENT COUNSEL. IF AFTER MR. VASSAR HAS  
19 INDEPENDENT COUNSEL MR. VASSAR WISHES ME TO REPRESENT HIM,  
20 AT THAT POINT IN TIME I WOULD DO SO.

21 THE COURT: MR. VASSAR -- MR. MONCIER, THIS IS  
22 THE, I BELIEVE, THE FIFTH TIME IN TWO WEEKS THAT YOU'VE  
23 ATTEMPTED TO GET THIS SENTENCING HEARING CONTINUED. WHAT'S  
24 REALLY GOING ON HERE? WHAT'S GOING ON?

25 MR. MONCIER: I JUST GOT THROUGH TELLING YOU



1 THAT I WAS A LITTLE BIT CONCERNED THAT YOU WOULD FEEL THAT  
2 WAY, AND THAT'S WHY I SUGGESTED PUT MR. SHULTS' HEARING  
3 OFF. WHAT'S GOING ON HERE IS THAT I THINK THAT THE  
4 GOVERNMENT IS TRYING TO SET ME UP. WHEN I GOT THAT LETTER  
5 YESTERDAY WITH A, WITH THAT NONEXCULPATORY INFORMATION  
6 SANDWICHED BETWEEN THEM ACKNOWLEDGING THAT MR. PHILLIPS  
7 COMMITTED PERJURY AND SANDWICHED BETWEEN CHRIS SHULTS  
8 TELLING THEM THAT REPEATEDLY THAT MY CLIENT WAS A DRUG  
9 ADDICT AND THAT SOMEBODY WAS PROVIDING MY CLIENT OXYCONTIN  
10 AND HYDROCODONE AND COCAINE AND THAT MY CLIENT WAS REALLY  
11 HOOKED BAD ON THIS STUFF, CHRIS SHULTS WAS TELLING THEM  
12 THAT, OF COURSE, IT WAS CHRIS SHULTS DURING THAT PERIOD OF  
13 TIME WHEN I KNEW HE WAS PROVIDING MY CLIENT THE STUFF AT  
14 ALICE'S, BUT CHRIS SHULTS WAS TELLING THEM THAT STUFF, AND  
15 THEN SANDWICHED IN BETWEEN THAT I GET THIS STATEMENT BY  
16 MARK THORNTON, WHEN THEY'VE KNOWN THAT I WAS CALLING MARK  
17 THORNTON BACK ON OCTOBER 28TH, THEY'VE KNOWN WHAT I'VE GONE  
18 THROUGH TO GET MARK THORNTON HERE, AND I GUESS THEY'VE  
19 KNOWN THAT MARK THORNTON GOT PERMISSION FROM HIS ATTORNEY  
20 TO TALK TO ME AND CALLED ME MONDAY AND GAVE ME THAT  
21 STATEMENT OVER THE TELEPHONE. I, I ASSUME THAT THEY KNOW  
22 THAT. I ASSUME MR. MARTIN HAS TOLD THEM THAT; SO WHAT'S  
23 REALLY GOING ON HERE, I THINK, IS THAT BECAUSE I HAVE TRIED  
24 A NUMBER OF CASES SUCCESSFULLY, INCLUDING THIS CASE,  
25 BECAUSE I HAVE THE REPUTATION OF TRYING CASES AGAINST THE

1 GOVERNMENT AND NOT DOING WHAT THEY WANT IN THIS COMMUNITY,  
2 THEY'RE COMING AFTER ME. THAT'S WHAT I THINK IS GOING ON;  
3 AND THEY, THEY DON'T -- BUT, BUT IT'S -- YOU KNOW,  
4 ETHICALLY I KNOW WHAT MY JOB IS; AND, JUDGE, I DON'T  
5 UNDERSTAND WHY WE'RE SITTING HERE HAVING THIS DISCUSSION  
6 THE WAY WE ARE WHEN IT WAS DISCLOSED YESTERDAY FOR THE  
7 FIRST TIME THAT THE GOVERNMENT KNOWS, KNEW IN JUNE THAT THE  
8 PHILLIPS COMMITTED PERJURY; AND, AND THAT DOESN'T SEEM TO  
9 BE -- WHY WASN'T THAT DISCLOSED BEFORE?

10 AND, OF COURSE, YOU KNOW, I DON'T KNOW WHETHER  
11 THEY DISCLOSED IT TO THE PRESENTENCE OFFICER, WHETHER THEY  
12 DISCLOSED IT TO THE COURT IN ALL OF THESE THINGS THAT  
13 THEY'VE DONE FOR THE PHILLIPS, BUT HERE IS A MAN WHO LIED  
14 UNDER OATH --

15 THE COURT: YOU KNOW, MR. MONCIER, LET ME JUST--  
16 YESTERDAY IS THE FIRST DAY I'VE HAD OFF THE BENCH --

17 MR. MONCIER: I KNOW.

18 THE COURT: -- IN THREE AND A HALF WEEKS. IF I  
19 HAD BEEN ABLE TO GET THROUGH ALL THAT MATERIAL YOU FILED, I  
20 WOULD HAVE ENTERED THE ORDER I ENTERED YESTERDAY LONG AGO.  
21 THE PROBLEM IS WE HAD TO DIG THROUGH HUNDREDS OF PAGES OF  
22 DISCOVERY REQUESTS; BUT THE BOTTOM LINE IS THAT YOUR  
23 ARGUMENT ALL ALONG HAS BEEN THAT DEWEY PHILLIPS LIED ABOUT  
24 HIS ASSETS. I DOUBT IF THERE WAS ANYBODY IN THE COURTROOM  
25 AT THE TIME HE GAVE THE TESTIMONY THAT THEY DIDN'T THINK

1 THERE WAS A REASONABLE POSSIBILITY THAT HE WAS LYING ABOUT  
2 THAT ISSUE. YOU'RE NO WORSE OFF TODAY THAN YOU WERE BEFORE  
3 EXCEPT THAT YOU'VE GOT ADDITIONALLY THE REPORT YOU GOT  
4 YESTERDAY TO BOLSTER YOUR ARGUMENT, SO YOU'VE NOT BEEN  
5 PREJUDICED IN THE LEAST BIT.

6 MR. MONCIER: WHAT I LEARNED YESTERDAY WAS THAT  
7 THE GOVERNMENT KNEW THAT DEWEY LYNN PHILLIPS COMMITTED  
8 PERJURY BECAUSE HE ADMITTED IT, NOT THE POLYGRAPH  
9 EXAMINATION, BUT AFTER THE POLYGRAPH EXAMINATION HE SAYS, I  
10 LIED UNDER OATH. I LIED TO YOU ALL DURING MY PLEA  
11 AGREEMENT. I LIED TO THE PRESENTENCE OFFICER AND I'VE LIED  
12 TO THE COURT AND I COMMITTED PERJURY.

13 THE COURT: ABOUT THE ASSETS, CORRECT.

14 MR. MONCIER: OKAY, BUT I LIED. THE GOVERNMENT,  
15 HOWEVER, MAY OR MAY NOT HAVE TOLD THE PRESENTENCE OFFICER  
16 THAT BECAUSE I DON'T HAVE HIS REPORT. THE GOVERNMENT MAY  
17 OR MAY NOT HAVE TOLD THE COURT THAT HE HAD LIED ABOUT THAT  
18 IN THEIR PLEADINGS UNDER SEAL, I HAVEN'T SEEN THOSE.

19 THE COURT: WELL, WHAT DIFFERENCE DOES IT MAKE,  
20 THAT'S MY POINT?

21 MR. MONCIER: THAT IS THE UNDISCLOSED BENEFITS  
22 THAT I'M TELLING THE COURT IS GOING ON WITH REGARD TO  
23 PEOPLE THAT COOPERATE. THE GOVERNMENT IS EXCUSING THE  
24 CONDUCT OF SOMEBODY WHO LIED TO THE COURT, WHO BREACHED  
25 THEIR PLEA AGREEMENT, WHO DID ALL OF THAT, DIDN'T TELL THE

1 PRESENTENCE OFFICER, DID NOT URGE ANY OBSTRUCTION OF  
2 JUSTICE, AND IT GOES TO A FAIRNESS ARGUMENT TOO.

3 THE COURT: WELL, I DON'T KNOW IF THEY'RE GOING  
4 TO DO ANY OF THOSE THINGS OR NOT. THEY MAY WITHDRAW FROM  
5 THEIR PLEA AGREEMENT. THEY MAY TAKE THE POSITION HE'S NOT  
6 ENTITLED TO ACCEPTANCE. THEY MAY SAY HE'S OBSTRUCTING  
7 JUSTICE. I DON'T KNOW IF THEY WILL OR NOT.

8 MR. MONCIER: SO I GET THAT FIVE MONTHS AFTER  
9 THEY KNOW HE COMMITTED PERJURY BEFORE YOU, THEY FILED THIS  
10 SENTENCING MEMORANDUM SAYING THAT HE HAD ACCEPTED  
11 RESPONSIBILITY, THEY FILED THE SENTENCING MEMORANDUM SAYING  
12 THAT HE WAS ENTITLED TO A SAFETY VALVE OF A MINIMUM  
13 MANDATORY TEN YEARS SENTENCE WHEN HIS REAL GUIDELINES WERE  
14 360 TO LIFE. THEY DIDN'T TELL YOU THAT HE HAD COMMITTED  
15 OBSTRUCTION OF JUSTICE. THE REASON THEY DIDN'T DO THAT IS  
16 THAT THEY DIDN'T THINK THAT I WOULD EVER FIND OUT ABOUT IT,  
17 AND IT WASN'T UNTIL YOUR ORDER WENT DOWN WEDNESDAY THAT YOU  
18 WOULD HAVE EVER FOUND OUT ANYTHING ABOUT IT; AND THAT'S THE  
19 PRACTICE AND THE CUSTOM THAT I'VE BEEN COMPLAINING ABOUT  
20 THAT I SUGGEST TO THE COURT IS OUTSIDE THE SINGLETON RULE.

21 NOW, THE RELEVANCE TO THIS SENTENCING HEARING IS  
22 WHETHER OR NOT THE COURT IS GOING TO APPLY GUIDELINES THAT  
23 ARE MANIPULATED BY WHAT I SUGGEST TO THE COURT IS AN  
24 UNAUTHORIZED AND UNLAWFUL BENEFIT UNDISCLOSED TO ANYBODY,  
25 INCLUDING THE COURT PRESENTENCE OFFICER AND THE DEFENDANTS,

1 OF GIVING BENEFITS TO PEOPLE THAT COOPERATE AND THEN USING  
2 THEIR COOPERATION AGAINST PEOPLE WHO DO NOT COOPERATE OR  
3 WHO EXERCISE THEIR FIFTH OR SIXTH AMENDMENTS RIGHT.

4 THE COURT: I UNDERSTAND YOUR ARGUMENT.

5 MR. MONCIER: WE'RE GETTING OFF THE SUBJECT.

6 THE COURT: AND WE ARE WAY OFF THE SUBJECT.

7 MR. MONCIER: BUT THE POINT OF THE MATTER IS  
8 THAT WE'RE FOCUSING HERE TODAY ON SOMETHING THAT THEY THROW  
9 THIS IN AND WE'RE NOT FOCUSING ON THE FACT THAT THEY'RE  
10 SUBORNING PERJURY. THEY MAY -- BY GOSH, AS OF NOVEMBER 7TH  
11 OF THIS YEAR, THEY WERE ENCOURAGING THIS COURT TO DEPART  
12 TWO LEVELS BELOW A LEVEL 29 FOR ADDITIONAL ASSISTANCE TO  
13 THE GOVERNMENT WHEN THEY KNEW HE HAD COMMITTED PERJURY AND  
14 TRIED TO HIDE HIS ASSETS.

15 THE COURT: YOU KNOW, IT'S POSSIBLE HE COULD DO  
16 BOTH, HE COULD HIDE HIS ASSETS --

17 MR. MONCIER: ONLY IF THEY TOLD THE COURT.

18 THE COURT: LET'S NOT ARGUE THAT POSITION RIGHT  
19 NOW.

20 MR. MONCIER: THAT'S WHY I SUGGEST TO THE COURT  
21 THAT THROWING IN THIS MARK THORNTON THING YESTERDAY THAT  
22 THEY HAD KNOWN ABOUT SINCE OCTOBER OF 2005, I HAVE THE --  
23 OF COURSE, MY OBLIGATION WOULD BE THE SAME WHETHER THEY HAD  
24 AN ULTERIOR MOTIVE OR NOT, I WOULD HAVE DONE THE SAME  
25 THING, IT DOESN'T MATTER; BUT I TELL YOU THE FACT THAT IT

1 WAS THROWN IN THERE THE WAY IT WAS LESS THAN 24 HOURS  
2 BEFORE I WAS PREPARED TO COME IN AND GIVE A DEFENSE --

3 THE COURT: MR. MONCIER, I DON'T KNOW HOW LONG  
4 WE'VE BEEN UP HERE AT THE BENCH, BUT THE ONE THING THAT  
5 CAUSES ME THE MOST CONCERN ABOUT THIS IS THAT YOUR  
6 STATEMENT THAT BECAUSE YOU REPRESENT HAROLD GROOMS, YOUR  
7 CLIENT WON'T TELL YOU THE TRUTH; AND IF THAT'S THE CASE, I  
8 NEED TO DO SOMETHING ABOUT THAT.

9 MR. MONCIER: I DIDN'T -- LET ME PHRASE THE  
10 STATEMENT THIS WAY.

11 THE COURT: WELL, I HEARD HOW YOU PHRASED IT.

12 MR. MONCIER: OKAY. THERE IS AN APPEARANCE THAT  
13 BECAUSE I REPRESENT HAROLD GROOMS, THAT MY CLIENT NEEDS TO  
14 HAVE THE OPPORTUNITY TO BE ABLE TO TALK ABOUT THAT WITH  
15 SOMEONE WHO DOES NOT HAVE AN APPEARANCE TO MY CLIENT OF  
16 HAVING AN INTEREST IN HAROLD GROOMS. THAT'S THE POINT,  
17 IT'S THE APPEARANCE.

18 THE COURT: YOU OUGHT TO HAVE YOUR HEAD EXAMINED  
19 FOR TRYING TO REPRESENT MIKE GUNTER, MIKE VASSAR AND HAROLD  
20 GROOMS ALL IN THIS CASE. I MEAN, ASIDE AND APART FROM  
21 WHETHER THERE'S ANYTHING ILLEGAL ABOUT IT OR STRICTLY  
22 UNETHICAL ABOUT IT, YOU OUGHT TO KNOW AS LONG AS YOU'VE  
23 BEEN IN THIS, THIS BUSINESS WHAT THE POTENTIAL FOR PROBLEMS  
24 ARE IN THAT KIND OF ARRANGEMENT.

25 MR. MONCIER: I WONDER IF BILL LEIBROCK THOUGHT

1 THAT.

2 THE COURT: I'M NOT TALKING ABOUT BILL LEIBROCK.

3 MR. MONCIER: DID YOU KNOW CHARLES MARTIN  
4 REPRESENTED TWO DEFENDANTS --

5 THE COURT: OH, LET'S GET BACK TO THE RECORD.

6 (END OF SIDE BAR CONFERENCE)

7 THE COURT: IT'S NOW BEEN SUGGESTED TO ME THAT  
8 RATHER THAN GO FORWARD WITH A SENTENCING HEARING TODAY THAT  
9 I SHOULD CONDITIONALLY PERMIT MR. MONCIER TO WITHDRAW,  
10 CONDITIONED UPON THE APPOINTMENT OF COUNSEL TO REVIEW WITH  
11 MR. VASSAR A POSSIBLE CONFLICT OF INTEREST CREATED BY THE  
12 DISCLOSURE TO HIM OF THIS STATEMENT YESTERDAY; AND IT'S  
13 BEEN FURTHER SUGGESTED TO ME THAT AFTER INDEPENDENT COUNSEL  
14 HAS BEEN APPOINTED FOR MR. VASSAR AND HAD AN OPPORTUNITY TO  
15 ADVISE MR. VASSAR ABOUT THAT, THAT IF MR. VASSAR THEN  
16 DESIRES, MR. MONCIER WILL REMAIN IN THE CASE TO REPRESENT  
17 MR. VASSAR DURING THIS SENTENCING PROCEEDING.

18 MR. VASSAR, I'VE ADDRESSED YOU ABOUT THIS  
19 BEFORE. MR. MONCIER HAS CREATED A SITUATION IN THIS CASE  
20 BY HIS ATTEMPTED JOINT REPRESENTATION OF YOU, MICHAEL  
21 GUNTER AND MR. GROOMS -- I CAN'T THINK OF MR. GROOMS' FIRST  
22 NAME -- THAT SHOULD NEVER HAVE OCCURRED.

23 HOW LONG HAVE YOU BEEN IN JAIL NOW, MR. VASSAR?

24 MR. VASSAR: ELEVEN MONTHS.

25 I WAS ON HOME ARREST, YOU KNOW, ONCE BEFORE, I

1 GOT OUT ON BOND IN FEBRUARY.

2 THE COURT: HOW MUCH TIME HAVE YOU SPENT IN  
3 JAIL?

4 MR. VASSAR: ELEVEN MONTHS.

5 THE COURT: ELEVEN MONTHS.

6 MR. MONCIER: JUDGE, I KNOW THAT YOU ARE  
7 THINKING, MAY I STAND AND BE HEARD VERY BRIEFLY?

8 THE COURT: YOU MAY.

9 MR. MONCIER: MAY I APPROACH THE BENCH WITH ONE  
10 OTHER SUGGESTION THAT JUST OCCURRED TO ME? I DON'T KNOW  
11 WHAT YOU'RE ABOUT TO RULE, BUT I AT LEAST WANTED TO PLACE  
12 THIS ON THE TABLE FOR THE COURT.

13 THE COURT: I'M NOT GOING TO HOLD ANY FURTHER  
14 BENCH CONFERENCES IN THIS CASE WITHOUT YOUR CLIENT BEING  
15 PRESENT.

16 MR. MONCIER: IF THE COURT DOES NOT GRANT THE  
17 RELIEF THAT I HAVE ASKED, AS AN ALTERNATIVE, AS MUCH AS I  
18 HATE TO DO IT, I ASK THAT THE COURT CONDUCT AN INQUIRY WITH  
19 MY CLIENT UNDER SEAL AND IN CAMERA AS TO THESE ISSUES  
20 BEFORE THE COURT WERE TO MAKE ME GO FORWARD WITH THIS  
21 SENTENCING HEARING TODAY, OR TO HAVE SOME OTHER JUDGE DO  
22 THAT.

23 AND I HAVE GREAT HESITATION TO STAND AND RISE, A  
24 GOOD FRIEND AND FELLOW MEMBER OF THE BAR, JIM BELL, WHO  
25 SAYS THAT HIS CLIENT CHRIS SHULTS IS GOING TO TAKE THE



1 FIFTH AMENDMENT TO EVERY QUESTION THAT I ASK OF HIM, ALSO  
2 HAD ANOTHER COURT APPEARANCE SOMEWHERE. I'M NOT SURE WHERE  
3 IT WAS, BUT --

4 THE COURT: I THINK HE HAD MADE MY OFFICE AWARE  
5 OF THAT.

6 MR. MONCIER: YEAH, AND I COULD NOT, OF COURSE,  
7 DISCLOSE THESE MATTERS TO HIM. I DID TELL HIM WE HAD SOME  
8 PRELIMINARY MATTERS, BUT I KNOW THAT HE IS VERY, VERY  
9 CONCERNED ABOUT HIS OTHER APPEARANCES. IF THE COURT IS  
10 GOING TO GRANT HIS MOTION --

11 THE COURT: I GUESS THIS IS ADDRESSED TO BOTH OF  
12 YOU, WHY SHOULDN'T I JUST SIMPLY DISQUALIFY MR. MONCIER  
13 BASED ON WHAT WAS SAID AT THE BENCH AND APPOINT COUNSEL FOR  
14 MR. VASSAR?

15 MR. MONCIER: I THINK YOU PROBABLY NEED TO TALK  
16 TO MR. VASSAR ABOUT THAT. I HESITATE -- WELL, I'M NOT  
17 GOING TO SPEAK. I, I SAID WHAT NEEDED TO BE SAID. I WAS  
18 SPEAKING FROM EXPERIENCE, SPEAKING FROM THE THINGS THAT MR.  
19 SMITH HIMSELF HAS SAID ON THE RECORD CONCERNING  
20 INDIVIDUALS, AND I THINK THAT THAT WOULD BE HIGHLY -- OR,  
21 EXCUSE ME, I JUST DON'T WANT TO SPEAK ABOUT THINGS OF MR.  
22 VASSAR. IF THE COURT WISHES TO ADDRESS HIM PERSONALLY  
23 ABOUT THIS MATTER, I THINK THAT'S AN ALTERNATIVE.

24 MR. SMITH: YOUR HONOR, I WOULD NOTE AT THE  
25 OUTSET THAT MR. VASSAR IS AN EXPERIENCED AND SOPHISTICATED

1 CRIMINAL DEFENDANT. HE'S VERY WELL AWARE OF THE PROCESS.  
2 HE'S AN INTELLIGENT MAN. I NEVER DISPUTED THAT. MR.  
3 MONCIER'S ARGUMENT NOW THAT MR. VASSAR HAS BEEN LESS THAN  
4 CANDID WITH HIM OR MAY HAVE BEEN LESS THAN CANDID WITH HIM  
5 BECAUSE OF MR. MONCIER'S --

6 MR. MONCIER: I DID NOT SAY THAT, YOUR HONOR. I  
7 OBJECT TO THAT. I OBJECT TO THAT.

8 THE COURT: I HEARD WHAT MR. MONCIER SAID.

9 MR. SMITH: BUT I GUESS THE QUESTION THEN FOR  
10 MR. VASSAR WOULD BE, HAVE YOU BEEN LESS THAN CANDID WITH  
11 MR. MONCIER IN ANY OF YOUR DISCUSSIONS BECAUSE OF YOUR  
12 UNDERSTANDING THAT HE'S TOLD THE COURT HE REPRESENTS HAROLD  
13 GROOMS? IF HIS ANSWER TO THAT IS NO, I HAVE BEEN FULLY  
14 CANDID WITH MY COUNSEL, THAT'S THE END, THAT'S THE END OF  
15 THAT INQUIRY, YOUR HONOR.

16 THE COURT: OFFICER BIDDLE, I SAW MR. BELL JUST  
17 COME THROUGH THE OUTSIDE DOOR, WOULD YOU ASK HIM TO STEP IN  
18 HERE, PLEASE.

19 (MR. JAMES A.H. BELL PRESENT)

20 THE COURT: MR. BELL, I KNOW YOU HAD INFORMED MY  
21 OFFICE AND MR. MONCIER HAS ALSO MADE ME AWARE THAT YOU'VE  
22 GOT ANOTHER COURT OBLIGATION SOMEWHERE, AND I MAY HAVE  
23 ALREADY MADE YOU LATE FOR IT.

24 MR. BELL: IT COMES WITH THE TERRITORY, YOUR  
25 HONOR, I'LL SURVIVE.

1 THE COURT: WHAT -- WHERE AND WHAT TIME?

2 MR. BELL: IT WAS IN JUDGE BUMGARDNER'S COURT.  
3 THEY WERE DEDICATING THE JUVENILE COURT FACILITY TO THE  
4 LATE JUDGE GARRETT, AND THE COURT WAS GOING TO START AT  
5 10:30. I HAVE OTHER -- I'VE MADE OTHER ARRANGEMENTS.

6 IT'S, IT'S AN UGLY CASE THAT I'M INVOLVED IN  
7 THERE. IT'S A VEHICULAR HOMICIDE WHERE I REPRESENT A  
8 FAIRLY PROMINENT FAMILY THAT THE INDIVIDUAL DRIVING ON THE  
9 WRONG SIDE OF THE INTERSTATE AND KILLED THREE YOUNG PEOPLE,  
10 AND THERE'S -- THE FAMILY IS JUST REALLY DISCOMBOBULATED.

11 THE COURT: WHAT I WAS ABOUT TO SUGGEST TO YOU  
12 WAS THAT YOU GO ON AND DEAL WITH YOUR OTHER OBLIGATION AND  
13 I WILL NOT ALLOW MR. MONCIER TO CALL MR. SHULTS TODAY.

14 MR. BELL: VERY WELL, YOUR HONOR.

15 THE COURT: YOU'RE SCHEDULED TO BE HERE ON  
16 MONDAY. TO THE EXTENT MR. SHULTS HAS TO BE CALLED TO  
17 TESTIFY, I'LL DO IT MONDAY.

18 MR. BELL: YES, SIR. THANK YOU VERY MUCH, I  
19 APPRECIATE THAT. I'M AVAILABLE.

20 THE COURT: THESE ISSUES THAT HAVE ARISEN THIS  
21 MORNING WERE UNFORESEEN.

22 MR. BELL: I UNDERSTAND. I'VE BEEN AT THE BAR  
23 FOR NEARLY 33 YEARS, I, I UNDERSTAND HOW THINGS OCCUR, AND  
24 I'M A BIG BOY.

25 THE COURT: WELL, I KNOW YOU ARE, BUT --

1 MR. BELL: A LOT BIGGER THAN WHAT I USED TO BE.

2 THE COURT: THAT SEEMS TO GO WITH AGE FOR SOME  
3 REASON.

4 MR. BELL: YES, SIR. THAT'S WHAT MR. BLACKWELL  
5 AND I WERE LAUGHING ABOUT OUT THERE IN THE HALLWAY.

6 MR. MONCIER: DON'T EAT FAST FOOD.

7 THE COURT: I'M NOT GOING TO TOUCH THAT, MR.  
8 MONCIER.

9 MR. BELL: THANK YOU, YOUR HONOR. I'LL BE HERE  
10 MONDAY, AND I'M WILLING TO STAY NOW.

11 THE COURT: WELL, I UNDERSTAND THAT, BUT I SEE  
12 NO POINT IN HAVING YOU SIT OUT THERE WHEN YOU COULD BE  
13 DOING SOMETHING MAYBE PRODUCTIVE SOMEWHERE ELSE; SO  
14 LET'S -- TO THE EXTENT WE NEED TO HEAR FROM CHRIS SHULTS,  
15 WE'LL DO IT MONDAY.

16 MR. BELL: THANK YOU VERY MUCH.

17 (MR. JAMES A.H. BELL NOT PRESENT)

18 MR. MONCIER: AS STATED, THE EFFORT UPON  
19 RECEIVING THIS INFORMATION YESTERDAY TO FULFILL MY ETHICAL  
20 DUTIES, SOMEONE NEEDS TO SPEAK TO MR. VASSAR ABOUT WHAT HE  
21 HAS LEARNED THIS MORNING TO BE CERTAIN THAT WHAT I WAS  
22 PREPARED TO PROCEED AND THE WITNESSES THAT I WAS PREPARED  
23 TO CALL AND THE STATEMENTS THAT I WAS PREPARED TO PRESENT  
24 TO THE COURT ARE DONE WITH FULL ADVICE AND CONSENT. I DO  
25 NOT THINK THAT I AM THE APPROPRIATE PERSON TO DO THAT, AND

1 I BELIEVE THAT THAT SHOULD BE INDEPENDENT. I MOVE THAT THE  
2 APPROPRIATE METHOD IS, AS I HAVE SUGGESTED WITH THE COURT,  
3 SELECTING INDEPENDENT COUNSEL TO GO OVER THESE ISSUES;  
4 HOWEVER, I'M SUBJECT TO ANY OTHER SUGGESTIONS.

5 I HAVE REASON -- THAT'S ALL I HAVE TO SAY IN THE  
6 PRESENCE OF MR. VASSAR.

7 THE COURT: GIVEN MY RULING ON THE RULE 44(C)  
8 ISSUE, I SEE ABSOLUTELY NO HARM IN THE COURT SEEING THE  
9 LETTER AT THIS POINT.

10 MR. SMITH, YOU HAD ASKED TO FILE IT, PASS IT UP  
11 TO ME, PLEASE.

12 MR. MONCIER: SINCE YOUR HONOR IS CONSIDERING  
13 THAT, MAY I FILE WITH THE COURT IN CAMERA EX PARTE AND  
14 UNDER SEAL THE WRITTEN ADVICE THAT I READ TO MY CLIENT WITH  
15 REGARD TO THIS MORNING?

16 THE COURT: YOU MAY.

17 MR. MONCIER: I DO NOT WISH TO GIVE IT TO THE  
18 GOVERNMENT.

19 THE COURT: YOU MAY.

20 MR. MONCIER: MAY IT REMAIN UNDER SEAL AND NOT  
21 GIVEN TO THE GOVERNMENT, YOUR HONOR?

22 THE COURT: UNLESS THE SIXTH CIRCUIT COURT OF  
23 APPEALS ORDERS IT UNSEALED.

24 MR. MONCIER: YES, SIR.

25 THE COURT: SO THE RECORD WILL BE CLEAR, MS.

1 HOPSON OFFERED THE DOCUMENT TO ME, MR. MONCIER, I DIDN'T  
2 LOOK AT IT, I SIMPLY TOLD HER TO PLACE IT UNDER SEAL.

3 MR. MONCIER: OH, I THOUGHT YOU WERE GOING TO DO  
4 AN IN CAMERA INSPECTION.

5 THE COURT: OH, IF YOU WANT ME TO SEE IT, I'LL  
6 BE GLAD TO SEE IT; BUT, OTHERWISE, I'M JUST GOING TO ORDER  
7 THAT IT BE PLACED UNDER SEAL.

8 MR. MONCIER: WELL, I DON'T HAVE AUTHORITY OF MY  
9 CLIENT TO MAKE THE DISCLOSURES STATED TO HIM IN THAT  
10 LETTER, SO I'M -- I REQUEST IT COME IN UNDER SEAL.

11 THE COURT: ALL RIGHT. JUST SEAL IT, MS.  
12 HOPSON.

13 THE CLERK: YES, YOUR HONOR.

14 MR. MONCIER: AND I SUPPOSE THE THIRD THING I  
15 NEED TO FILE UNDER SEAL, YOUR HONOR, IS THE STATEMENT THAT  
16 MY CLIENT SAT DOWN ON WEDNESDAY AND YESTERDAY AND DICTATED  
17 FOR PRESENTATION TO THE COURT, WHICH -- EXCUSE ME, WHERE IS  
18 IT -- WHICH IS THE NATURE AND THEME OF HIS STATEMENT TO THE  
19 COURT TODAY. HERE IT IS.

20 THE COURT: IS THIS IN LIEU OF ALLOCUTION?

21 MR. MONCIER: YES. IT WAS AN ALLOCUTION  
22 STATEMENT.

23 THE COURT: WELL, WE'LL GET TO THE ALLOCUTION  
24 STATEMENT.

25 MR. MONCIER: WELL, NO, NO, THE QUESTION IS

1 WHETHER I PRESENT IT IN THE FORM THAT I'VE BEEN GIVEN, AND  
2 I WANT TO PUT IT IN THE RECORD TO DEMONSTRATE THAT I DO NOT  
3 WANT TO GO FORWARD WITH THIS DEFENSE UNTIL HE HAS  
4 INDEPENDENT ADVICE. THIS IS HIS ALLOCUTION. THIS IS WHAT  
5 WE HAD, THAT WE HAD PREPARED, AND I WANT HIM TO HAVE  
6 INDEPENDENT ADVICE BEFORE I PRESENT THIS ALLOCUTION IN  
7 DEFENSE TO THE COURT TODAY; THAT'S THE POINT. I WANT TO  
8 PUT IT IN THE RECORD UNDER SEAL BECAUSE UNTIL, UNTIL THIS  
9 MATTER GETS STRAIGHTENED UP AND HE HAS AN OPPORTUNITY TO,  
10 INDEPENDENTLY TO STRAIGHTEN IT UP, I, I, I CAN'T -- I MEAN,  
11 I HAVE A PROBLEM PROCEEDING FORWARD WITH THIS ALLOCUTION.

12 THE COURT: MR. MONCIER, IS YOUR MOTION SIMPLY  
13 TO WITHDRAW OR IS YOUR MOTION TO WITHDRAW CONDITIONALLY  
14 SUBJECT TO MR. VASSAR GETTING INDEPENDENT ADVICE ABOUT  
15 THESE ISSUES, AT WHICH POINT YOU WILL DECIDE WHETHER YOU  
16 WANT TO CONTINUE OR NOT?

17 MR. MONCIER: AS RELUCTANT AS I AM TO ASK THE  
18 COURT TO PERMIT ME TO CONFER WITH MY CLIENT AS TO WHETHER  
19 HE WANTS ME TO WITHDRAW OR NOT, I THINK BEFORE I SAY THAT,  
20 I'VE GOT TO KNOW WHETHER HE WANTS ME TO WITHDRAW OR TO DO  
21 THE ETHICAL THING THAT I'M SUGGESTING TO THE COURT THAT I  
22 HAVE TO DO IRRESPECTIVE OF HIS WISHES. I, I HAVE NOT ASKED  
23 MY CLIENT WHETHER NOW HAVING SEEN WHAT HE HAS SEEN THIS  
24 MORNING IF HE WANTS ME TO WITHDRAW AND THE COURT APPOINT  
25 HIM ANOTHER ATTORNEY. THAT I HAVE NOT DISCUSSED WITH HIM,

1 AND THAT I WOULD CERTAINLY HAVE TO DISCUSS WITH HIM BEFORE,  
2 BEFORE I DID THAT.

3 WOULD THE COURT LIKE FOR ME TO SPEAK TO HIM  
4 ABOUT THAT MATTER, OR POSSIBLY THE COURT WOULD LIKE TO  
5 SPEAK TO HIM ABOUT THAT MATTER?

6 THE COURT: WELL, HERE'S THE PROBLEM THAT I'M  
7 STRUGGLING WITH RIGHT NOW, MR. MONCIER. GIVEN THE  
8 SUGGESTION THAT THERE EXISTS A REASON FOR MR. VASSAR TO BE  
9 LESS THAN CANDID WITH YOU, IF THAT'S THE CASE, I DON'T  
10 THINK CONSULTATION OR ANYTHING ELSE WILL CURE THAT.

11 MR. MONCIER: CERTAINLY IT'S AN APPEARANCE, YOUR  
12 HONOR. IT'S THE APPEARANCE THAT IS THE ISSUE THAT I MUST  
13 DEAL WITH, AND IT IS THE APPEARANCE -- I MEAN, WE'RE GOING  
14 THROUGH ALL OF THIS TO TRY FOR ME TO PROVIDE THE ETHICAL  
15 DUTY THAT I HAVE; BUT AN APPEARANCE WHEN THIS INFORMATION  
16 HAS BEEN CAST UPON US YESTERDAY BY THE GOVERNMENT OF ME  
17 SITTING DOWN AND TALKING TO HIM PRIVATELY UNDER THE  
18 ATTORNEY-CLIENT CONFERENCES IS THE VERY THING THAT BRINGS  
19 ABOUT 2255 PETITIONS AT A LATER TIME AND PITS ME AGAINST MY  
20 CLIENT. I DON'T WISH THAT TO HAPPEN. I CAN'T IMAGINE WHY  
21 ANYBODY IN THIS COURTROOM WOULD WANT THAT TO HAPPEN.  
22 THAT'S WHY ATTORNEYS RESOLVE THESE MATTERS WHEN THEY COME  
23 TO THEIR ATTENTION. UNFORTUNATELY, THIS ONE CAME TO MY  
24 ATTENTION TEN MONTHS AFTER THE GOVERNMENT KNEW ABOUT IT.  
25 HAD IT COME TO MY ATTENTION LONG BEFORE NOW, HE WOULD HAVE



1 GOTTEN INDEPENDENT ADVICE AND IT WOULD HAVE BEEN HANDLED  
2 APPROPRIATELY.

3 I DID DO ALL OF THE OTHER THINGS THAT WE DID. I  
4 DO HAVE SIGNED PAPERS IN MY FILE FROM EVERY ONE. I'VE  
5 FOLLOWED ALL OF THE RULES. THE COURT CONDUCTED AN INQUIRY  
6 AND THE GOVERNMENT SAT SILENT; AND THE ONLY REASON WE'VE  
7 SPENT THIS LENGTHY PERIOD OF TIME THIS MORNING IS THAT THIS  
8 WAS CAST UPON ME AND MY ETHICAL DUTIES AT THE LAST MINUTE.

9 THESE AREN'T MR. VASSAR'S DUTIES, THESE ARE MY  
10 DUTIES. THESE ARE NOT MR. VASSAR'S DUTIES, THESE ARE THE  
11 COURT'S DUTIES WHEN THESE ISSUES ARISE; AND THE REASON  
12 ATTORNEYS SHOULD DEAL WITH THEM APPROPRIATELY AT THE  
13 APPROPRIATE TIME IS TO AVOID 2255 AND TO AVOID APPEARANCES  
14 WHEN THEY DO ARISE, DEAL WITH THEM NOW.

15 SO BACK TO WHAT I ASK, MAY I PLEASE FILE UNDER  
16 SEAL THE PROCEEDINGS THAT I WAS PREPARED TO OFFER TODAY  
17 THAT UNTIL THIS ISSUE IS RESOLVED, I CANNOT, MR. -- I  
18 CANNOT GO FORWARD WITH THIS THEORY OF OUR DEFENSE AT  
19 SENTENCING. JUST WANT TO FILE IT UNDER SEAL, NOT FOR THE  
20 COURT TO SEE. IT'S IN WRITING.

21 THE COURT: THIS IS A THEORY DEFENSE NOT ALREADY  
22 INDICATED IN ALL THESE PLEADINGS YOU'VE FILED? I MEAN, THE  
23 THEORY OF YOUR DEFENSE CLEARLY IN THESE PLEADINGS IS THAT  
24 MR. VASSAR'S CASE --

25 MR. MONCIER: OH, THIS IS --

1 THE COURT: -- WAS A 6.6 GRAM TRANSACTION WITH  
2 RICK FANN, AND THAT'S ALL HE'S DONE.

3 MR. MONCIER: THIS IS OUR THEORY OF DEFENSE WITH  
4 REGARD TO THE PLEA AGREEMENTS, THE OFFERS TO PLEAD GUILTY,  
5 THE REASONS -- IT, IT SPEAKS FOR ITSELF, YOUR HONOR; BUT IT  
6 TAKES POSITIONS AS TO WHY VARIOUS THINGS WERE OR WERE NOT  
7 DONE IN THIS CASE THAT, IF MR. VASSAR ACKNOWLEDGES THIS  
8 STATEMENT AND POSSIBLY, YOU KNOW, MISUNDERSTOOD THE  
9 SIGNIFICANCE OF THIS STATEMENT OR SOMETHING LIKE THAT, I  
10 WOULD NOT PRESENT IT TO THE COURT.

11 IF MR. VASSAR SAYS, YEAH, I SAID THAT. I DIDN'T  
12 KNOW THAT THAT'S WHAT THEY WERE TALKING ABOUT WHEN THEY  
13 WANTED COOPERATION AGAINST WHAT'S, AGAINST VASSAR -- OR  
14 HIM. I DIDN'T KNOW THAT THAT'S WHAT THEY WERE TALKING  
15 ABOUT WHEN THEY ASKED, DID I DO ANY DRUG TRANSACTIONS WITH  
16 HAROLD GROOMS? I DIDN'T. MR. VASSAR, REMEMBER, WAS A DRUG  
17 ADDICT AT THAT TIME. HE WAS GETTING DRUGS FROM CHRIS  
18 SHULTS AND ANYBODY ELSE THAT WOULD GIVE THEM TO HIM. HE  
19 WAS STRUNG OUT. YOU'VE NOW HAD TWO PEOPLE TELL YOU THAT HE  
20 WAS ON IT BAD.

21 THE COURT: WHILE HE WAS IN JAIL WHEN THIS  
22 STATEMENT WAS ALLEGEDLY MADE?

23 MR. MONCIER: NO, NO, NO. THIS STATEMENT WAS  
24 MADE BEFORE HE WAS IN JAIL. THE ALLEGED STATEMENT WAS MADE  
25 BEFORE HE WAS ARRESTED IN AUGUST BY HAROLD GROOMS.

1 THE COURT: NO, I'M TALKING ABOUT THE STATEMENT  
2 MADE, ALLEGEDLY MADE TO MARK THORNTON.

3 MR. MONCIER: NO, NO, NO, HE'S QUOTING THE  
4 STATEMENT LATER --

5 THE COURT: HE WAS IN JAIL AT THAT TIME; WASN'T  
6 HE?

7 MR. MONCIER: YES, BUT HE'S QUOTING THE  
8 STATEMENT THAT WAS MADE BEFORE HE WAS IN CUSTODY BACK WHEN  
9 HE WAS ON THE STREET AND BACK WHEN HE WAS USING DRUGS AND  
10 BACK WHEN HE WAS STRUNG OUT. YOU'VE NOW HAD A WHOLE  
11 FAMILY, YOU'VE HAD MARK THORNTON AND NOW YOU'VE HAD CHRIS  
12 SHULTS, ALL TELLING THAT THIS GUY WAS A DRUG ADDICT AND WAS  
13 STRUNG OUT AND SOMETHING BAD WAS GOING TO HAPPEN TO HIM;  
14 AND HERE WE HAVE A STATEMENT SUPPOSEDLY MADE BY, ATTRIBUTED  
15 THAT HE SAID ABOUT ANOTHER PERSON THAT TOLD HIM THAT -- I  
16 DON'T HAVE IT BEFORE ME AND I DON'T WANT TO MISQUOTE IT --  
17 AND THEN NOTHING HAPPENED AS A RESULT OF IT.

18 NOW, HE NEVER DID ANYTHING WITH THAT PERSON, AND  
19 IN HIS WAY OF THINKING AT THE TIME ANY PREVIOUS DISCUSSIONS  
20 HAD BEEN MADE, IT'S VERY REASONABLE THAT HE DIDN'T  
21 UNDERSTAND THAT THAT WAS SOMETHING THAT THE GOVERNMENT WAS  
22 INTERESTED IN; AND IF THAT'S THE CASE, I DON'T WANT TO GO  
23 FORWARD WITH THIS LINE OF DEFENSE AT SENTENCING; AND IF I'M  
24 THE ONE THAT SITS DOWN AND TRIES TO RESOLVE WHETHER OR NOT  
25 THAT STATEMENT WAS MADE OR WHAT IT MEANT OR FLESHING OUT

1 WHAT WAS REALLY SAID OR EXPLAINING HOW IT'S TAKEN OUT OF  
2 CONTEXT OR -- YOU KNOW, ANY OF THE THINGS THAT COULD BE  
3 EXPLAINED AS TO IT, AND I COULD GO ON AND I JUST DID WHAT I  
4 SAID I WASN'T GOING TO DO, BUT I CAN'T GET AWAY FROM THE  
5 PODIUM TO GET BACK UP TO THE BENCH, I'M NOT THE PERSON TO  
6 DO THAT, TO FIND OUT THOSE THINGS ETHICALLY.

7 I HAVE NEVER YET HAD A JAILHOUSE SNITCH IN MY 37  
8 YEARS THAT HAS GOT ON THE STAND AND SAID THINGS THE SAME  
9 WAY THAT THE GOVERNMENT HAD WRITTEN THEM DOWN SOME TIME  
10 BEFORE. NOW, IT MAY HAPPEN, IT MAY NOT HAPPEN; BUT  
11 GENERALLY SPEAKING YOU HAVE DIFFERENT CONTEXTS AND THERE'S  
12 DIFFERENT EXPLANATIONS FOR THINGS AND --

13 THE COURT: MR. MONCIER, I ASSUME THE GOVERNMENT  
14 HAS MADE A GOOD CAREFUL NOTE OF THIS IN VIEW OF THE FACT  
15 THAT YOU FILED TWO SUCH JAILHOUSE STATEMENTS IN THIS CASE.

16 MR. MONCIER: OH, THERE'S NO QUESTION, YOUR  
17 HONOR, THAT, THAT -- YOU KNOW, I KNOW THAT. I TAKE -- YOU  
18 KNOW, I'M LIKE THE GOVERNMENT, I FIND THE WITNESSES WHERE I  
19 GET THEM. YOU KNOW, I DON'T VOUCH FOR SOMEBODY'S  
20 CREDIBILITY.

21 THE COURT: WE'RE A BIT FAR AFIELD. HERE'S WHAT  
22 I THINK, AND I DON'T HAVE THE BENEFIT OF ANY RESEARCH, I  
23 THINK THAT THERE HAS BEEN EXHIBITED THIS MORNING ACTUAL  
24 CONFLICT OF INTEREST IN MR. MONCIER'S REPRESENTATION OF  
25 MICHAEL VASSAR AND IN HIS REPRESENTATION OF HAROLD GROOMS,

1 AN ACTUAL CONFLICT OF INTEREST THAT CANNOT BE WAIVED BY MR.  
2 VASSAR.

3 NOW, I'M GOING TO TAKE A RECESS, LET YOU BOTH  
4 THINK ABOUT WHAT I JUST SAID. THAT'S NOT A RULING,  
5 THAT'S -- I'M TELLING YOU WHAT MY IMPRESSION IS AT THIS  
6 POINT.

7 MR. MONCIER: YOUR HONOR, FOR ME TO BE ABLE TO  
8 DEAL WITH THIS, I'VE GOT TO TALK TO MR. VASSAR.

9 THE COURT: OH, I UNDERSTAND, MR. MONCIER, THAT  
10 YOU'VE CREATED A SITUATION WHERE YOU'RE GOING TO GET THE  
11 CONTINUANCE YOU WANT; AND I'M GOING TO BE FRANK WITH YOU,  
12 AS I WAS AT THE BENCH, ALL OF THIS IS HIGHLY SUSPICIOUS IN  
13 VIEW OF THE FACT THAT THIS IS THE FIFTH EFFORT IN TWO WEEKS  
14 THAT YOU'VE MADE TO GET THIS HEARING CONTINUED; BUT,  
15 NEVERTHELESS, MY OBLIGATION AND THE GOVERNMENT'S OBLIGATION  
16 IS TO SEE THAT MICHAEL VASSAR HAS CONFLICT FREE  
17 REPRESENTATION. I DON'T THINK THIS IS JUST A POTENTIAL  
18 CONFLICT, I THINK THERE'S AN ACTUAL CONFLICT HERE BASED ON  
19 THE STATEMENT MADE AT THE BENCH.

20 MR. MONCIER: WHAT IF THIS ISN'T TRUE, YOUR  
21 HONOR? WHAT IF WHEN I GET INTO THIS --

22 THE COURT: WHAT IF IS NOT THE ISSUE BECAUSE OF  
23 THE SUGGESTION THAT'S BEEN MADE TO ME THAT BECAUSE OF THE  
24 JOINT REPRESENTATION -- YOU KNOW WHAT WAS SAID, I WON'T SAY  
25 ANY MORE ABOUT IT.

1 MR. MONCIER: YOUR HONOR, I THINK YOU'RE TAKING  
2 THE STATEMENT THAT I MADE OUT OF CONTEXT.

3 THE COURT: WELL --

4 MR. MONCIER: AND I THINK IF YOU WILL READ WHAT  
5 MR. SMITH SAID IN THE CHRIS SHULTS FILE, HE SAID VERY  
6 CLEARLY THAT PEOPLE WHO ARE TALKED ABOUT COOPERATING OFTEN  
7 DO NOT TELL THE TRUTH UNTIL THINGS GO THROUGH A PROCESS OR  
8 THEY'RE CONFRONTED WITH OTHER INFORMATION; THAT'S THE WORDS  
9 OF THE GOVERNMENT. THAT'S BASIC INVESTIGATION 101; AND  
10 UNTIL THIS GENTLEMAN IS CONFRONTED WITH THIS STATEMENT AND  
11 IT IS EVALUATED BY HIM, THEN THAT CANNOT BE DONE; AND THE  
12 QUESTION -- THE ONLY QUESTION IS WHETHER I AM THE PERSON TO  
13 DO THAT OR WHETHER SOMEBODY ELSE SHOULD DO THAT. THAT'S  
14 THE ONLY QUESTION. THE QUESTION --

15 THE COURT: WITH ALL DUE RESPECT, I DON'T SEE  
16 THAT AS THE QUESTION.

17 MR. MONCIER: WELL, I MEAN, OBVIOUSLY THE COURT  
18 DOESN'T; BUT I THINK THAT THE COURT NEEDS TO TALK TO MR.  
19 VASSAR. SOMEBODY NEEDS TO TALK TO MR. VASSAR; AND IF IT,  
20 IF IT HAS TO BE ME, I'LL DO IT; BUT SOMEBODY NEEDS TO GET  
21 THIS MAN'S VIEW OF WHAT ALL THIS IS ABOUT.

22 THE COURT: I HOPE YOU DID IT WHEN YOU UNDERTOOK  
23 THE JOINT REPRESENTATION --

24 MR. MONCIER: I DID.

25 THE COURT: -- OF HAROLD GROOMS AND MICHAEL

1 VASSAR.

2 MR. MONCIER: I DID.

3 THE COURT: IT'S MUCH TOO LATE NOW IF YOU DIDN'T  
4 DO IT THEN.

5 MR. MONCIER: YOU DID IT AT A HEARING.

6 THE COURT: I DON'T RECALL CONDUCTING AN INQUIRY  
7 AS TO THE CONFLICT BETWEEN MR. GROOMS AND MR. VASSAR. I  
8 DISQUALIFIED YOU FROM REPRESENTING MR. GUNTER AND MR.  
9 VASSAR, AND I MAY HAVE ASKED HIM ABOUT IT DURING THAT  
10 INQUIRY, BUT THERE WAS NO MOTION BEFORE THE COURT TO  
11 DISQUALIFY YOU WITH RESPECT TO REPRESENTING MR. GROOMS AND  
12 MR. VASSAR.

13 MR. MONCIER: WITH ALL DUE RESPECT, YOUR HONOR  
14 PUT DOWN A SUA SPONTE ORDER IN THE -- VASSAR, WHEN YOU HAD  
15 IT, YOU HAD MR. GUNTER -- YOU HAD MR. VASSAR COME BEFORE  
16 THE COURT, YOU CALLED A HEARING, YOU HELD A HEARING WITH  
17 MR. VASSAR.

18 THE COURT: YOU MAY BE RIGHT. WHAT PRECIPITATED  
19 THAT WAS THE QUESTION OF YOUR CONFLICT OF REPRESENTING MR.  
20 GUNTER AT THE SAME TIME. I MAY HAVE INQUIRED --

21 MR. MONCIER: AND DURING THAT INQUIRY WE HAD A  
22 LENGTHY HEARING THAT THE COURT NEEDS TO REVIEW WHERE THE  
23 COURT QUESTIONED MR. VASSAR ON THE RECORD WITHOUT THE  
24 GOVERNMENT OR ANYONE ELSE PRESENT AND HAD A LENGTHY  
25 DISCUSSION WITH MR. VASSAR CONCERNING THAT MATTER,

1 CONCERNING THIS VERY MATTER. THE COURT HAD THE DOCUMENTS  
2 THAT WERE FILED UNDER SEAL CONCERNING THIS VERY MATTER;  
3 AND THE COURT FOUND AT THAT TIME, BASED UPON WHAT THE COURT  
4 KNEW AND BASED UPON WHAT COUNSEL KNEW, THAT THERE WAS NOT A  
5 JOINT REPRESENTATION. YOU PUT DOWN -- YOU MADE THAT  
6 FINDING OF FACT.

7 NOW, YOU WERE NOT GIVEN BY THE GOVERNMENT AND I  
8 WAS NOT GIVEN BY THE GOVERNMENT THIS JAILHOUSE STATEMENT,  
9 SO THE COURT NEEDS TO REVISIT THAT BECAUSE MR. VASSAR WAS  
10 NOT MADE AWARE OF THAT AS TO WHAT, WHAT THAT HAD TO DO.  
11 THE ONLY REASON THAT I'M HERE IS I HAD SUGGESTED THAT  
12 SOMEBODY OTHER THAN I DO THAT TO AVOID ANY APPEARANCE. I  
13 HAVE EVERY REASON TO BELIEVE THAT WHAT YOU DID, WHENEVER  
14 THE DATE IT WAS, AND I WANT TO SAY IT WAS LIKE ON MARCH THE  
15 8TH, I DON'T KNOW WHETHER THAT IS FILED IN THE VASSAR FILE  
16 OR WHETHER THAT IS FILED IN THE GUNTER FILE. IT HAPPENED,  
17 THERE WAS AN ORDER PUT DOWN IN THIS CASE FOR MR. VASSAR TO  
18 APPEAR, IT WAS A SUA SPONTE ORDER, AND THERE WAS A  
19 HEARING. I HAVE NO REASON TO BELIEVE THAT WHAT HAPPENED  
20 DURING THAT HEARING WAS NOT THE EXACT SITUATION WE'RE IN  
21 TODAY.

22 EXCEPT BASED UPON THE GOVERNMENT'S DISCLOSURE OF  
23 YESTERDAY, I DO NEED TO REEVALUATE WITH MR. VASSAR SOME OF  
24 THE PRESENTATION OF THE, OF THE SENTENCING HEARING. I'M  
25 COMING UP TO MY MIND THE DATE -- CAN I STEP BACK TO MY



1 COMPUTER, YOUR HONOR, AND I CAN TELL YOU THE DATE.

2 THE COURT: THE DATE OF THE ORDER?

3 MR. MONCIER: THE DATE OF THE SUA SPONTE ORDER,  
4 THE DATE OF THE HEARING.

5 THE COURT: IF YOU CAN CALL IT UP QUICKLY, I'D  
6 LIKE TO SEE IT.

7 MR. MONCIER: LET ME SEE IF I CAN.

8 MR. SMITH: YOUR HONOR, THE HEARING WAS ON MARCH  
9 17, 2006. I DON'T RECALL THE DATE OF THE ORDER, BUT IT WAS  
10 WITHIN A DAY OR SO AFTER THAT. I BELIEVE IT WAS ENTERED IN  
11 2-06-CR-05.

12 MR. MONCIER: OBVIOUSLY MR. SMITH WAS AWARE OF  
13 IT. IS THAT THE GUNTER -- MAY I INQUIRE OF THE COURT IF  
14 THAT'S THE GUNTER RECORD?

15 THE COURT: I THINK ALL OF THIS OCCURRED IN THE  
16 05 CASE.

17 MR. MONCIER: I'M ASKING YOU, I DON'T KNOW. 05  
18 DOESN'T MEAN ANYTHING TO ME.

19 THE COURT: WELL, THAT'S 06-CR-05.

20 MR. MONCIER: IS THAT THE GUNTER CASE?

21 THE COURT: I ASSUME IT IS. I THINK IT IS.

22 MR. MONCIER: I MEAN, I KNOW I WAS THERE AT THAT  
23 TIME, I JUST -- THE NUMBER DOESN'T REGISTER WITH ME.

24 DOES MR. SMITH RECALL OF YOUR HONOR WHETHER THE  
25 VASSAR PORTION OF THAT HEARING WAS HELD, AND I'M ADDRESSING

1 THIS TO THE COURT, IF HE COULD ASSIST THE COURT, DOES HE --  
2 SINCE HE WAS AWARE OF THE DATE, DOES HE RECALL WHETHER THE  
3 VASSAR PORTION OF THE HEARING WAS HELD ON THE SAME DAY AS  
4 THE GUNTER HEARING?

5 THE COURT: I RECALL TWO HEARINGS, BUT I THINK  
6 ONE OF THEM WAS RELATED TO GARY MUSICK, BUT -- IT'S BEEN A  
7 LONG TIME.

8 MR. MONCIER: YOU SAID GARY MUSICK, YOUR HONOR.  
9 I THINK YOU MEANT MIKE VASSAR.

10 THE COURT: NO, I THINK THERE WAS A QUESTION IN  
11 THIS CASE ABOUT WHETHER YOUR REPRESENTATION OF GARY MUSICK  
12 REPRESENTED A CONFLICT OF INTEREST.

13 MR. MONCIER: THAT IS CORRECT, THAT IS CORRECT,  
14 AND THAT MAY HAVE BEEN THE SAME DAY; BUT THAT WAS WITH  
15 REGARD TO CHRIS SHULTS. YOU REMEMBER THEY WERE SUGGESTING  
16 THAT I SHOULD BE DISQUALIFIED BECAUSE THE GARY MUSICK CASE  
17 WAS CONCLUDED, AND, AND THAT WAS REGARDING CHRIS SHULTS. I  
18 DON'T RECALL WHETHER THAT WAS THE SAME TIME OR NOT; AND IF  
19 MR. SMITH, WHO OBVIOUSLY WAS MORE PREPARED ON THAT MATTER  
20 THAN I, COULD SHARE THAT WITH THE COURT, I WOULD APPRECIATE  
21 IT.

22 THE COURT: IT APPEARS -- I DON'T HAVE AN  
23 INDEPENDENT, A CLEAR INDEPENDENT RECOLLECTION OF ALL THE  
24 EVENTS; BUT IT APPEARS FROM LOOKING AT THE DOCKET SHEET  
25 THAT ON MARCH 6, 2006, THE MAGISTRATE JUDGE, JUDGE INMAN,

1 ENTERED AN ORDER, WHICH APPEARS TO BE A SUA SPONTE ORDER,  
2 REFERENCING THE FACT THAT MR. MONCIER HAD FILED A NOTICE  
3 RECITING THAT HE ALSO REPRESENTED MR. GROOMS THAT WAS  
4 APPARENTLY CONTAINED IN THE SAME NOTICE OF REPRESENTATION  
5 OF MR. GUNTER. THE MAGISTRATE JUDGE SET A HEARING ON THAT  
6 ISSUE, A RULE 44(C) INQUIRY, FOR MARCH 14, 2006, AND IT  
7 APPEARS THAT THERE WAS AN APPEAL FILED FROM THAT ORDER.  
8 MY RECOLLECTION IS THAT THE APPEAL TOOK THE POSITION THAT  
9 THE MAGISTRATE JUDGE DIDN'T HAVE ANY AUTHORITY TO DO THAT.

10 AS A RESULT, THIS COURT SCHEDULED A HEARING FOR  
11 MARCH 17, 2006, AND THE ORDER SETTING THAT HEARING RECITES  
12 THAT MICHAEL VASSAR AND MICHAEL GUNTER BOTH MUST BE  
13 PRESENT.

14 MR. MONCIER: I HAVE FOUND IT ON MY CALENDAR,  
15 AND I DO FIND THAT THE INQUIRY, THE INQUIRY WITH THE VASSAR  
16 MATTER WAS THAT MORNING -- EXCUSE ME, THE INQUIRY INTO THE  
17 GUNTER CASE WAS THAT MORNING. IT WAS AFTER THAT INQUIRY  
18 THAT THE COURT CONDUCTED A SEPARATE INQUIRY INTO MIKE  
19 VASSAR'S CASE, AND THE COURT QUESTIONED MR. VASSAR AND MR.  
20 VASSAR ADDRESSED THE COURT INDEPENDENTLY, AND IT WENT ON  
21 FOR MAYBE THIRTY MINUTES. I DO NOT REMEMBER WHETHER THE  
22 GOVERNMENT WAS PRESENT. THE COURT REPORTER WAS. IT WAS IN  
23 CHAMBERS OF THE COURT.

24 THE COURT: WELL --

25 MR. MONCIER: AND WHAT MR. VASSAR SAID AT THAT

1 TIME I HAVE EVERY REASON TO BELIEVE IS CORRECT TODAY EXCEPT  
2 FOR ANY MISCOMMUNICATION OR MISUNDERSTANDING, MISSTATEMENTS  
3 OR MISQUOTING OR ANY EXPLANATION OF THIS INFORMATION THAT  
4 WAS GIVEN TO US YESTERDAY, AND THAT WAS THE INQUIRY THAT I  
5 THOUGHT SHOULD BE DONE BY A INDEPENDENT THIRD PARTY; AND  
6 I'M WILLING FOR A COURT APPOINTED ATTORNEY, A JUDGE --

7 THE COURT: ALL RIGHT. I'M GOING TO TAKE A VERY  
8 SHORT RECESS AND CONSIDER THIS AND GIVE YOU BOTH AN  
9 OPPORTUNITY TO REFLECT UPON WHAT I'VE SAID.

10 I'M GOING TO ASK THE COURT REPORTER IF SHE WILL  
11 WHILE WE'RE TAKING THAT BREAK TO GO BACK AND FIND THE  
12 STATEMENT THAT WAS MADE AT THE BENCH. I WANT TO MAKE SURE  
13 I DIDN'T HEAR SOMETHING THAT WASN'T SAID.

14 (RECESS AT 11:30 A.M., UNTIL 11:53 A.M.)

15 THE COURT: ALL RIGHT. COUNSEL, I HAVE GIVEN  
16 THIS A LITTLE MORE THOUGHT. I WILL GIVE EACH ONE OF YOU AN  
17 OPPORTUNITY TO BRIEFLY ADDRESS IT FURTHER, IF YOU WISH TO  
18 DO SO.

19 MR. MONCIER: FIRST OF ALL, YOUR HONOR, I DON'T  
20 KNOW WHETHER MY COMMENTS AT THE BENCH HAVE BEEN TYPED UP OR  
21 NOT. I DON'T -- I REMEMBER THE COURT ASKING ME IF I  
22 RECALLED WHAT I SAID, AND I SAID NO. WHAT I MEANT TO  
23 CONVEY TO THE COURT WAS THAT QUITE OFTEN IN DISCUSSIONS  
24 WITH PEOPLE, THE DISCUSSIONS MAY BE IN A CERTAIN CONTEXT  
25 UNTIL WHEN THEY'RE INVESTIGATED AND WHEN THEY'RE FOUND OUT

1 IN FURTHER DISCUSSIONS; THAT'S WHAT INVESTIGATION IS ABOUT,  
2 AND THAT'S WHAT INQUIRY AND WHETHER IT'S A SPECIFIC  
3 SITUATION, THAT'S HOW THE INQUIRY IS TO BE MADE; AND DURING  
4 THE COURT'S ABSENCE -- AND I ALSO STATED THAT THAT'S  
5 EXACTLY WHY WE AS ATTORNEYS WHEN MATTERS COME TO OUR  
6 ATTENTION HAVE CERTAIN OBLIGATIONS TO PROVIDE INDEPENDENT  
7 COUNSEL TO A CLIENT TO CLEAR UP ANY MATTERS WHEN THEY COME  
8 TO OUR ATTENTION.

9 I ALSO HAD THE OPPORTUNITY TO READ THE  
10 GOVERNMENT'S MEMORANDUM WITH REGARD TO THE CONFLICTS THAT  
11 THE GOVERNMENT FILED IN RESPONSE TO THE MAGISTRATE JUDGE'S  
12 ORDER AND WITH RESPONSE TO THIS COURT'S SUA SPONTE -- OR  
13 THE SUA SPONTE ORDER TO THAT, TO MR. VASSAR. THAT IS FILED  
14 IN THE '05 CASE YOU SPOKE OF, 2:06-CR-05, DOCUMENT NUMBER  
15 79 FILED ON 2/16/2006 WHEN THE GOVERNMENT RESPONDED TO THE  
16 CONFLICTS BROUGHT TO THE COURT'S ATTENTION, THE CONFLICTS  
17 THAT THEY THOUGHT THAT ENCOURAGED THE COURT TO A RULE 44  
18 INQUIRY.

19 INTERESTINGLY, THE GOVERNMENT DID NOT SUGGEST TO  
20 THE COURT IN THAT MEMORANDUM OR TO COUNSEL THAT COUNSEL HAD  
21 A CONFLICT IN REPRESENTING MIKE VASSAR AND ALSO  
22 REPRESENTING HAROLD GROOMS. NEVER ONCE DID THE GOVERNMENT  
23 BRING TO THE COURT'S ATTENTION OR TO COUNSEL'S ATTENTION  
24 THAT THEY HAD A JAILHOUSE PERSON THAT HAD SAID, SAID THAT  
25 MIKE'S STATEMENT, MIKE VASSAR HAD MADE A STATEMENT THAT

1 NEVER LED TO ANY CONDUCT THAT MIGHT PERTAIN TO MR. GROOMS.  
2 WHAT BROUGHT ALL OF THIS ABOUT WAS THAT THE GOVERNMENT HAD  
3 FILED IN THE PUBLIC RECORD AN AFFIDAVIT THAT OUTLINED A  
4 CONSPIRACY THAT THE GOVERNMENT BELIEVED EXISTED BETWEEN  
5 MIKE GUNTER AND A NUMBER OF OTHER PEOPLE AND HAROLD  
6 GROOMS. THAT HIT THE FRONT PAGE OF THE NEWSPAPERS.

7 THE COURT: THAT DOCUMENT BEING WHAT?

8 MR. MONCIER: IT WAS AN AFFIDAVIT TO A SEARCH  
9 WARRANT FOR MIKE GUNTER'S HOUSE, AS I RECALL. IN THAT  
10 AFFIDAVIT -- AND THE GOVERNMENT CAN CORRECT ME IF I'M  
11 WRONG. I DO NOT HAVE ANY OF MY FILES ON THIS AND I'M  
12 TALKING FROM MEMORY. THE AFFIDAVIT THAT WAS FILED IN THE  
13 MIKE GUNTER CASE OUTLINED THE GOVERNMENT'S SCOPE OF ITS  
14 INVESTIGATION OF HAROLD GROOMS AND LED TO FRONT PAGE NEWS  
15 ARTICLES AROUND THE STATE OF TENNESSEE.

16 MIKE VASSAR'S NAME, TO MY RECOLLECTION, JUDGE --  
17 AND, ONCE AGAIN, I, I'M REMEMBERING BACK MANY TRIALS AGO,  
18 JUST LIKE THE COURT HAS HAD DIFFICULTY RESTRUCTURING, AND  
19 I'M GOING TO ASK THE COURT, OF COURSE, TO ALLOW US TO  
20 ADDRESS THIS MORE SPECIFICALLY AND KNOW WHAT THE COURT'S  
21 CONCERNS ARE SO THAT WE CAN PROPERLY ADDRESS THIS. MR. --  
22 I WILL STATE FOR THE RECORD THAT MR. VASSAR TOLD ME, AS HE  
23 WAS BEING LED OUT, HE DOES NOT WANT ME TO WITHDRAW FROM  
24 THIS CASE. HE DOES NOT WANT ME TO BE DISQUALIFIED IN THIS  
25 CASE, AND HE REFERRED THE COMMENT TO ME SUA SPONTE,

1 ALTHOUGH I'VE ASKED HIM NOT TO DO SO. HE MADE A STATEMENT  
2 TO ME THAT FURTHER PROVIDES ME COMFORT; BUT, NEVERTHELESS,  
3 I WILL SAY WITH REGARD TO THE AFFIDAVIT THAT LED TO ME  
4 FILING THE NOTICE WITH REGARD TO GROOMS, GROOMS WAS ALLEGED  
5 TO BE IN A CONSPIRACY WITH MIKE GUNTER THAT DID NOT INCLUDE  
6 THIS CASE. IT INCLUDED -- THE COURT CAN READ THAT  
7 AFFIDAVIT ITSELF. TO MY KNOWLEDGE AND RECOLLECTION, MIKE  
8 VASSAR'S NAME WAS NEVER MENTIONED IN THAT. TO MY KNOWLEDGE  
9 AND MY RECOLLECTION, MIKE VASSAR'S NAME WAS NEVER MENTIONED  
10 IN ANY DOCUMENT THAT I KNEW OF CONCERNING HAROLD GROOMS.

11 THE GOVERNMENT WHEN THEY BROUGHT AND FILED THEIR  
12 SENTENCING MEMORANDUM THAT SAID THE THINGS THAT THE COURT  
13 SAID AND TOOK THEM UNDER ADVISEMENT WITH REGARD TO  
14 SANCTIONS THAT WERE SIMPLY UNTRUE CONCERNING MY  
15 REPRESENTATION OF TRACY FLEENOR, WHICH IS ONE OF I THINK  
16 THE, I HAVEN'T COUNTED IT, SIX OR EIGHT CASES THAT I  
17 RECEIVED NOT GUILTY VERDICTS BY A JURY AGAINST THIS UNITED  
18 STATES ATTORNEY'S OFFICE, AND MR. SMITH WAS THE PROSECUTOR  
19 IN TRACY FLEENOR'S CASE, NEVER ONCE DID THE GOVERNMENT  
20 SUGGEST THAT I HAD A CONFLICT OF INTEREST BETWEEN MIKE  
21 VASSAR AND MY PUBLICLY DISCLOSED REPRESENTATION OF HAROLD  
22 GROOMS.

23 NOW, AT THAT TIME, ACCORDING TO WHAT I WAS GIVEN  
24 YESTERDAY, THE GOVERNMENT KNEW THAT THEY HAD THIS, THIS  
25 INFORMATION BECAUSE IT -- THE WAY IT'S WRITTEN AND THE

1 SUMMARY THAT THEY PROVIDED TO ME, AND THAT'S ALL I HAVE, I  
2 DON'T HAVE THE FULL DOCUMENT. I'VE ASKED FOR THE FULL  
3 DOCUMENT; AND I THINK MY CLIENT'S RISK OF LOSING HIS  
4 COUNSEL OF CHOICE, WE NEED TO SEE THE FULL DOCUMENT THAT  
5 THEY'VE SUMMARIZED. ALL WE HAVE IS A SUMMARY. AS I READ  
6 THE SUMMARY, THE GOVERNMENT HAD THAT STATEMENT FROM MR.  
7 THORNTON AS OF OCTOBER THE 15TH OF 2005, SIX MONTHS  
8 BEFORE -- OR FIVE MONTHS BEFORE AND WELL BEFORE I UNDER-  
9 TOOK THE REPRESENTATION OF MR. VASSAR -- GUNTER, EXCUSE ME,  
10 MR. GUNTER AND WELL BEFORE I UNDERTOOK THE REPRESENTATION  
11 OF MR. GROOMS, THE COURT HAS UNDER SEAL, I THINK THEY'RE  
12 AFFIDAVITS, I'M NOT SURE, BUT THE COURT HAS UNDER SEAL  
13 AFFIDAVITS OF MR. GROOMS AND OF MR. GUNTER, AND I DON'T  
14 RECALL WHETHER THERE WAS AN AFFIDAVIT FILED BY MR. VASSAR  
15 OR NOT, AND I JUST DON'T RECALL; SO AS OF MARCH THE 17TH,  
16 OR MARCH THE 16TH, THE GOVERNMENT HAD NOT NOTIFIED THE  
17 COURT THAT THEY HAD THIS JAILHOUSE STATEMENT, ALTHOUGH THEY  
18 NOTIFIED THE COURT OF EVERYTHING ELSE TO GET ME  
19 DISQUALIFIED.

20 THE GOVERNMENT DID NOT FEEL THAT I HAD A  
21 CONFLICT IN REPRESENTING MR. VASSAR AS OF MARCH THE 16TH,  
22 FOR WHATEVER REASON, MAYBE THEY DIDN'T BELIEVE THE JAIL-  
23 HOUSE PERSON, I DON'T KNOW WHAT THEIR THINKING WAS; BUT THE  
24 GOVERNMENT DID NOT SUGGEST TO THIS COURT THAT I HAD A  
25 PROBLEM IN REPRESENTING MR. VASSAR AND REPRESENTING MR.



1 GROOMS.

2 AND LET ME TELL YOU WHY, THE GOVERNMENT AT THAT  
3 TIME WAS OFFERING MR. VASSAR AND WE WERE OFFERING WITH  
4 LETTERS COOPERATION BACK AND FORTH. THE GOVERNMENT WANTED  
5 MR. VASSAR TO ENTER INTO AN AGREEMENT WITH THE GOVERNMENT  
6 AND DO WHAT THE GOVERNMENT WANTED MR. VASSAR TO DO. HAD  
7 MR. VASSAR DONE WHAT THE GOVERNMENT WANTED MR. VASSAR TO  
8 DO, I WOULDN'T HAVE HAD A CONFLICT, YOU SEE, BECAUSE THEY  
9 DON'T RAISE CONFLICTS OF INTEREST OF ATTORNEYS WHOSE  
10 CLIENTS COOPERATE. THE ONLY TIME THE GOVERNMENT BROUGHT  
11 THIS TO THE ATTENTION OF ANYBODY WAS YESTERDAY. THEY WERE  
12 OFFERING ME PLEAS AND TRYING TO GET MY CLIENT TO PLEAD  
13 GUILTY TO THE COUNT 1 CONSPIRACY OF OVER 5 KILOGRAMS OF  
14 COCAINE RIGHT UP THROUGH, I THINK THEIR LAST OFFER WAS  
15 SOMETIME IN MAY. I DON'T HAVE THAT LETTER WITH ME. I, I  
16 WOULD BE PLEASED FOR THEM TO PRESENT THE WRITTEN. I WILL  
17 TELL THE COURT FOR THE RECORD THAT WE WERE BEFORE THIS  
18 COURT OR BEFORE THE MAGISTRATE JUDGE, I DON'T REMEMBER  
19 WHICH ONE, WE WERE IN A HEARING ON APRIL THE 17TH,  
20 DISCUSSIONS OF PLEA NEGOTIATIONS CAME UP, I DON'T RECALL ON  
21 THE RECORD HOW IT DID, BUT IT WAS MENTIONED DURING THAT,  
22 PLEA NEGOTIATIONS. I TRIED TO TALK TO THEM. I WALKED OVER  
23 TO NANCY HARR AND TO MR. SMITH, THIS IS ALL RECORDED; AND I  
24 SAID, FOLKS, IF YOU WANT TO MAKE ME AN OFFER, I WILL ALWAYS  
25 CONVEY AN OFFER TO MY CLIENT.

1 AS A RESULT OF THAT, I GOT A LETTER ON APRIL THE  
2 18TH. IT SET OUT A LOT OF CONDITIONS IN THAT LETTER AND IT  
3 SET OUT WHAT MR. VASSAR WOULD HAVE TO SIT DOWN AND PROFFER  
4 TO THE GOVERNMENT ABOUT OTHER PEOPLE BEFORE THE GOVERNMENT  
5 WOULD OFFER HIM A PLEA AGREEMENT. ONE OF THOSE PEOPLE THAT  
6 THEY WANTED MR. VASSAR TO PROFFER ABOUT WAS HAROLD GROOMS.  
7 THAT LETTER WAS CONVEYED TO MR. VASSAR. I WAS THE ONE WHO  
8 HAD -- OR I WAS THE ONE WHO WAS ORIGINALLY APPROACHED BY  
9 MR. FARROW IN THIS CASE DURING THE FIRST TRIAL WITH REGARD  
10 TO THE POSSIBILITY OF MY CLIENT PLEADING GUILTY; AND ON  
11 APRIL THE 19TH I WROTE AN E-MAIL LETTER BACK TO HIM, AND I  
12 HAVE THAT LETTER. I ASKED THEM, AFTER OUTLINING THE  
13 DISCUSSION THAT I HAD WITH MR. FARROW OUT IN THE HALL  
14 DURING THE FIRST JURY TRIAL IN WHICH MR. FARROW TOLD ME MY  
15 CLIENT WASN'T THAT BAD OF A GUY, MR. FARROW SAID, YOU KNOW,  
16 I CAN UNDERSTAND WHY HE HASN'T COOPERATED. HE WAS FACING A  
17 20 TO LIFE AT THAT TIME, MANDATORY. MR. FARROW WAS  
18 INTERESTED IN PUBLIC OFFICIALS AT THAT TIME. HE DIDN'T  
19 MENTION ANY PARTICULAR NAMES TO ME AND SUGGESTED MY CLIENT  
20 COULD PLEAD GUILTY AND WE COULD HAVE A SENTENCE SOMEWHERE  
21 OF 2 TO 3 YEARS. I CONVEYED THAT OFFER TO MY CLIENT. MY  
22 CLIENT AUTHORIZED ME TO HAVE HIM PLEAD GUILTY TO WHAT HE  
23 ACTUALLY DID, AND THAT WAS THE RICK FANN TRANSACTION.

24 THE COURT: I'M AWARE OF ALL THAT.

25 MR. MONCIER: THE POINT OF THE MATTER IS THE

1 GOVERNMENT WAS PERFECTLY WILLING AS LONG AS MY CLIENT WOULD  
2 COOPERATE WITH THEM NOT TO SAY ANYTHING AT ALL ABOUT THIS  
3 JAILHOUSE SNITCH UP THROUGH MAY.

4 THE COURT: ALL RIGHT. LET'S JUST ASSUME FOR A  
5 MINUTE, MR. MONCIER, THAT THE GOVERNMENT DIDN'T DISCLOSE IT  
6 TO YOU ANY EARLIER, HOW DOES THAT TAKE AWAY WHAT APPEARS TO  
7 BE THE ACTUAL CONFLICT OF INTEREST AT THIS POINT?

8 MR. MONCIER: OKAY. HAD THE GOVERNMENT BROUGHT  
9 TO MY ATTENTION THAT THEY HAD A JAILHOUSE SNITCH THAT SAID  
10 THAT MY CLIENT SAID THAT HAROLD GROOMS OFFERED TO PROVIDE  
11 HIM DRUGS, OR WHATEVER THE WORDS IN THE SUMMARY THAT THEY  
12 HAVE THERE, WHAT I WOULD HAVE DONE AT THAT POINT IN TIME IS  
13 I WOULD HAVE GOTTEN MY CLIENT INDEPENDENT -- OR I WOULD  
14 HAVE, YOU KNOW, GOTTEN HIM INDEPENDENT ADVICE. I WOULD  
15 HAVE LOOKED INTO THE MATTER. I WOULD HAVE TALKED TO THE  
16 MAN, I WOULD HAVE BROUGHT IT TO THE ATTENTION OF THE COURT.  
17 MAYBE IF THERE WAS A CONFLICT AT THAT TIME, IF THERE WAS  
18 SOME INFORMATION THAT REQUIRED OTHER ACTION, I WOULD HAVE  
19 DONE WHAT I'M SUPPOSED TO DO. I HAD NO REASON TO BELIEVE  
20 THAT A JAILHOUSE SNITCH HAD SAID THAT. I HAD NO WAY TO  
21 KNOW THAT.

22 I HAVE NO WAY TO KNOW WHATEVER ANYBODY HAS TOLD  
23 THE GOVERNMENT ABOUT ANY CLIENT THAT I REPRESENT; AND UNTIL  
24 THE GOVERNMENT BRINGS IT TO MY ATTENTION, THAT TRIGGERS MY  
25 ETHICAL OBLIGATIONS, OR BRINGS IT TO THE COURT'S ATTENTION,

1 AS THEY'RE REQUIRED TO DO SO THAT THE COURT CAN DO WHAT THE  
2 COURT DID ON THE INFORMATION THE GOVERNMENT HAD PROVIDED  
3 THE COURT BACK AT THAT TIME, THE SYSTEM CAN'T WORK.

4 NOW, AS I WAS TELLING THE COURT, UP THROUGH MAY  
5 I CONVEYED ALL OFFERS TO MY CLIENT, I CONVEYED EVERY  
6 WRITING TO MY CLIENT AND MY CLIENT WAS GIVEN THE  
7 OPPORTUNITY TO DO WHAT THEY WISHED HE COULD DO; AND IF MY  
8 CLIENT WANTED TO DO IT THROUGH ANOTHER ATTORNEY, THAT'S  
9 ALWAYS AN OPTION WITH MY CLIENTS THAT I GIVE THEM; AND  
10 THAT'S THE WAY IT WAS; BUT IT WAS NOT UNTIL THE GOVERNMENT  
11 WENT TO TRIAL AND THEY LOST, AND THEN NOW THEY'RE TRYING TO  
12 RELY UPON WHAT THEY LOST AT TRIAL.

13 MY CLIENT WAS CONVICTED OF WHAT HE ALWAYS  
14 OFFERED TO PLEAD GUILTY TO. I -- NOW, WHEN I SAY THAT -- I  
15 WITHDRAW THAT. MY CLIENT ALWAYS OFFERED TO PLEAD GUILTY TO  
16 THE RICK FANN CASE, ALWAYS; SO WHEN MY CLIENT WAS CONVICTED  
17 OF WHAT I STOOD BEFORE THE JURY AND VIRTUALLY ADMITTED AND  
18 IN WHICH HE OFFERED TO PLEAD GUILTY TO, THEN THE GOVERNMENT  
19 COMES IN AND TRIES TO SENTENCE HIM AS THOUGH WE DIDN'T HAVE  
20 A JURY TRIAL AND THEY MAKE ALL SORTS OF ALLEGATIONS; AND  
21 THE THING THAT IS UNIQUE ABOUT THIS CASE IS THAT I HAVE  
22 LEARNED A LOT ABOUT THE WAY THE GOVERNMENT TREATED PEOPLE  
23 WHO DID DO WHAT THE GOVERNMENT WANTED THEM TO DO, AND I  
24 CHALLENGED THAT; AND WHEN I CHALLENGED THAT AS  
25 PROSECUTORIAL VINDICTIVENESS AND AS UNAUTHORIZED UNLAWFUL

1 CONDUCT, AS THE COURT POINTED OUT WEDNESDAY TO ME, THE  
2 COURT VIEWED THAT AS A, AS A -- I, I WANT TO CHARACTERIZE  
3 IT CORRECTLY, I THINK THE COURT VIEWED THAT AS A, ACCUSING  
4 THE GOVERNMENT OF WRONGDOING. I CALL IT GRAZING AN ISSUE  
5 THAT IS ESTABLISHED IN THIS CASE, AND WHAT HAS HAPPENED,  
6 THAT NEEDS TO BE RESOLVED IN OUR LEGAL SYSTEM AS TO WHETHER  
7 OR NOT THAT IS APPROPRIATE CONDUCT UNDER THE CURRENT  
8 SENTENCING SYSTEM THAT WE ARE ALL STRUGGLING TO LEARN AND  
9 DEFINE; THAT'S THE DIFFERENCE BETWEEN THE PERSONAL PART OF  
10 THE CASE AND MY PROFESSIONAL DUTIES TO RAISE ISSUES AND  
11 LITIGATE MATTERS.

12 I RATHER SUSPECT IN THE SINGLETON CASE, THAT THE  
13 GOVERNMENT AGENTS IN SINGLETON THAT WENT TO THE PANEL THAT  
14 WERE ACCUSED OF VIOLATING THAT STATUTE FELT PERSONALLY  
15 ATTACKED, THEN A PANEL AGREED WITH IT AND THEN THE EN BANC  
16 GAVE THE LANGUAGE THAT I'VE QUOTED TO THE COURT.

17 NOW, IT WAS AFTER ALL OF THAT, IT WAS AFTER ALL  
18 OF THE EVIDENCE -- EFFORTS THAT I'VE TRIED TO GET THE  
19 INFORMATION THAT THE COURT DISCLOSED, BE IT AWKWARD ON MY  
20 PART OR NOT, YOUR HONOR, I THINK MY MOTIONS THAT I FILED  
21 WITH MY SENTENCING MEMORANDUM WERE PRETTY CLEAR AS TO WHAT  
22 I WAS LOOKING FOR; AND I THINK THE SUPPLEMENTAL MORE  
23 SPECIFIC MOTIONS, AS I BEGIN TO FIND OUT WHAT WAS HAPPENING  
24 IN THIS CASE, WHILE I KNOW IT BURDENS THE COURT TO HAVE  
25 THAT MUCH PLEADINGS IN A CASE, I THINK I WAS VERY SPECIFIC;

1 AND I THINK I BECAME MORE SPECIFIC AS I CONTINUED TO ISSUE  
2 SUBPOENAS AND SAY WHY I WAS DOING IT; AND THEN ULTIMATELY  
3 YESTERDAY, FOR THE FIRST TIME, I FOUND OUT ABOUT THE  
4 PERJURY OF THE VERY WITNESS THAT THE GOVERNMENT WAS  
5 PREPARED --

6 THE COURT: ONCE AGAIN, WHAT DOES THIS HAVE TO  
7 DO WITH IT?

8 MR. MONCIER: IT HAS TO DO WITH WHY THE  
9 GOVERNMENT WAITED UNTIL YESTERDAY FOR THE FIRST TIME TO  
10 ALERT ME TO THIS ISSUE AND IT HAS TO DO WITH WHAT WAS I  
11 SUPPOSED TO DO WHEN THEY DID THIS. WAS I SUPPOSED TO GO  
12 DOWN TO MY CLIENT, WHO HAD ALREADY SPENT THE DAY BEFORE  
13 PREPARING THE THEORY OF OUR DEFENSE, WHO I HAD ALREADY  
14 THEN HIRED ON AND WHO I HAD TALKED TO AT LENGTH, WHO I NOW  
15 RECALL HAD GONE THROUGH A HEARING WITH YOU AND STOOD AT  
16 THIS PODIUM? WAS -- YOU KNOW, WHO KNEW THAT I REPRESENTED  
17 HAROLD GROOMS? WAS I GOING TO HIM TO CLEAR THIS UP IN MY  
18 MIND AND JUST TRUCK AHEAD? IS THAT WHAT MY DUTIES WERE? I  
19 THINK NOT. I THINK MY DUTIES WERE TO DO EXACTLY WHAT I  
20 DID, AND THAT IS REQUEST THIS COURT TO ALLOW HIM TO HAVE A  
21 DIFFERENT ATTORNEY COME IN AND TALK TO HIM ABOUT THIS AND  
22 GET TO THE BOTTOM OF IT.

23 I THINK I KNOW WHAT THE BOTTOM IS. I THINK I  
24 KNEW WHAT THE BOTTOM IS, AND I THINK WE TOLD YOU WHAT THE  
25 BOTTOM WAS BACK ON MARCH THE 17TH. I THINK THE GOVERNMENT

1 EVEN KNOWS WHAT THE BOTTOM IS. IF THE GOVERNMENT THOUGHT I  
2 HAD A CONFLICT OF INTEREST IN THIS CASE, THEY WOULD HAVE  
3 RAISED IT BEFORE YESTERDAY. YOU BETTER BELIEVE IT. IT WAS  
4 A LAST MINUTE THOUGHT THAT THE GOVERNMENT CAME UP WITH. I  
5 KNOW YOU DON'T LIKE IT WHEN I SUGGEST TO YOU --

6 THE COURT: OH, MR. MONCIER, IT DOESN'T HAVE  
7 ANYTHING TO DO WITH NOT LIKING. I'VE BEEN VERY PATIENT  
8 HERE FOR 15 MINUTES.

9 MR. MONCIER: THE POINT OF THE MATTER IS THAT  
10 THE GOVERNMENT SET THIS UP. THEY KNOW THAT YOU DON'T LIKE  
11 THE, YOU DON'T LIKE THE WAY I'VE PRESENTED MY CLIENT'S CASE  
12 AT SENTENCING. I KNOW THAT THE COURT HAS BEEN IRRITATED  
13 WITH ME IN THIS TRIAL AND OTHER TRIALS. I KNOW THAT THE  
14 COURT DOES NOT LIKE THE STYLE BY WHICH I REPRESENT MY  
15 CLIENTS BEFORE JURIES THAT I -- THAT, THAT HAS RESULTED IN  
16 THE SERIES OF FAIRLY SUCCESSFUL RESULTS. I KNOW THAT THE  
17 DISTRICT IS SET FOR MR. GROOMS. I KNOW THE FILINGS ARE  
18 REplete IN THIS COURT WITH INFORMATION. I KNOW HOW BADLY  
19 THIS UNITED STATES ATTORNEY'S OFFICE IS PROBABLY GOING TO  
20 BRING AN INDICTMENT AGAINST MR. GROOMS IN THE NEXT SEVERAL  
21 MONTHS. WE'VE BEEN WAITING.

22 I, I TRY TO JOKE ABOUT THESE THINGS AND ASKED  
23 MR. SMITH, HEY, LISTEN, WHEN ARE YOU GOING TO INDICT HAROLD  
24 SO I CAN PLAN OUT MY SCHEDULE? I MEAN, WE KNOW IT'S  
25 COMING. I KNEW IT WAS COMING WHEN I FILED MY NOTICE. THE

1   WHOLE REASON I FILED MY NOTICE WHEN I DID IS TO LET  
2   EVERYBODY KNOW THAT THIS PERSON THAT THEY THREW ALL THE  
3   PUBLICITY OUT AGAINST IS OUT THERE; AND IF THEY HAVE SOME  
4   REASON TO BELIEVE THAT I HAVE A CONFLICT, LET'S AIR IT  
5   OUT.

6               I HAD ABSOLUTELY AND I HAVE TODAY NO REASON TO  
7   BELIEVE THAT I HAVE ACTUAL CONFLICT OF INTEREST BETWEEN  
8   HAROLD GROOMS AND MICHAEL VASSAR, NONE, AND I DON'T.  
9   HOWEVER, I'M PAINFULLY AWARE, PAINFULLY AWARE OF THE  
10  BURDENS ON THE COURTS ON 2255 PETITIONS, AND THAT'S EXACTLY  
11  WHY I BROUGHT IT TO THE ATTENTION OF THE COURT BECAUSE IN  
12  MY OPINION WHAT THE GOVERNMENT WAS DOING, THEY DON'T CARE  
13  ABOUT MIKE VASSAR, THEY WERE TRYING TO COME UP AND AT A  
14  LATER TIME SUGGEST THAT I HAD A CONFLICT OF INTEREST  
15  WITHOUT EVER TELLING ANYBODY ABOUT IT. IF I DIDN'T DO IT.  
16  THERE IS NO CONFLICT OF INTEREST. MR. VASSAR WANTS TO  
17  ADDRESS THE COURT, AND THIS IS A SETUP TO DENY MR. VASSAR  
18  THE COUNSEL OF HIS CHOICE IN THIS CASE.

19              NOW, IF WE'RE GOING TO GO FORWARD ON THIS  
20  MATTER, I -- MR. VASSAR HAS ALSO INSTRUCTED ME THAT HE  
21  WANTS TO GO FORWARD WITH SENTENCING TODAY. WE HAVE OUR  
22  WITNESSES HERE. RATHER THAN THE COURT TAKING ME OFF OF HIS  
23  CASE, HE, HE WANTS TO GO FORWARD. HE WANTS TO TALK TO THE  
24  COURT. MR. VASSAR'S POSITION IN THIS CASE IS AS THE COURT  
25  SUGGESTED WEDNESDAY, MR. VASSAR'S POSITION IN THIS CASE IS



1     THAT HE HAS BEEN CONVICTED OF 6 GRAMS OF COCAINE, HIS  
2     POSITION IS THAT AS STATED IN OUR SENTENCING MATERIAL, THAT  
3     UNDER FAIRNESS, WHICH I DID PLEAD, YOUR HONOR, I PLED IT IN  
4     MY SENTENCING MEMORANDUM, THERE ON PAGE 6, I BELIEVE IT IS,  
5     I PLED RIGHT OUT OF THE STATUTE, SENTENCING FAIRNESS, NOT  
6     JUST IN MY VERY ORIGINAL SENTENCING MEMORANDUM, I'VE CITED  
7     IT TIME AND TIME AGAIN, MR. VASSAR'S POSITION UNDER  
8     FAIRNESS, UNDER DISPARITY, UNDER HIS NEED FOR SENTENCING,  
9     UNDER ALL THE NEEDS WE PLACED IN OUR SENTENCING MEMORANDUM  
10    THAT HE'S SERVED HIS TIME.

11                 THE LAST THING, I THINK, MR. VASSAR SAID TO ME  
12    IS IF MY CASE HAS TO BE CONTINUED FOR ME TO TALK WITH  
13    ANOTHER LAWYER, WILL THE JUDGE GIVE ME RELEASE; AND I KIND  
14    OF FORWARD THAT TO THE COURT. MR. VASSAR ABIDED BY  
15    EVERYTHING YOU ASKED HIM TO DO BEFORE. IF THIS SENTENCING  
16    HEARING DOES HAVE TO BE PUT OFF FOR A PERIOD OF TIME FOR  
17    ANY REASON, INCLUDING IF IT DOESN'T GO FORWARD TODAY, HE  
18    REQUESTS THAT HE BE PLACED ON SUPERVISED RELEASE UNDER THE  
19    TERMS AND CONDITIONS THAT THIS COURT CAN DEFINE.

20                 HE WANTS TO TALK TO THE COURT, JUDGE.

21                 THE COURT: ALL RIGHT.

22                 MR. MONCIER: I HAVE NOT HAD A CHANCE TO  
23    RESEARCH TO ADDRESS THIS, AND LIKEWISE I HAVE NOT HAD A  
24    CHANCE TO REVIEW THE WORDS THAT THE COURT HAS VIEWED AT THE  
25    BENCH OR TO REVIEW THOSE WITH MR. VASSAR.

1           THE COURT:   BEFORE I HEAR FROM THE GOVERNMENT.  
2   MR. MONCIER, YOU JUST MADE SOME STATEMENTS ABOUT WHAT YOU  
3   KNOW ABOUT THIS COURT'S ATTITUDES ABOUT YOU AND THE WAY YOU  
4   DO THINGS.   THERE HAVE BEEN A NUMBER OF OCCASIONS WHEN I  
5   HAVE COMPLIMENTED YOU IN THE OPEN COURTROOM ON THE SUCCESS  
6   YOU'VE HAD IN DEFENDING CRIMINAL DEFENDANTS IN THIS COURT.  
7   CONTRARY TO WHAT YOU MIGHT SEE AS SOME DISAPPOINTMENT ON MY  
8   PART WHEN YOU GET AN ACQUITTAL, THAT'S NOT THE CASE.   I'VE  
9   NEVER BEEN DISAPPOINTED OR UPSET WHEN YOU'VE GOTTEN AN  
10  ACQUITTAL IN THIS COURT, NOR HAVE I EXPRESSED AN OVERALL  
11  DISLIKE TO THE WAY YOU PRESENT YOUR CASES.

12           WHAT I HAVE SAID TO YOU ON NUMEROUS OCCASIONS IS  
13  THAT I DO NOT LIKE THE LACK OF CIVILITY THAT YOU BRING TO  
14  CASES; THAT I DO NOT LIKE THE LACK OF CANDOR THAT YOU OFTEN  
15  BRING TO CASES; THAT I DO NOT LIKE THE FACT THAT YOU ON  
16  OCCASION MISREPRESENT FACTS BEFORE A JURY OR BEFORE A  
17  WITNESS; THAT I DON'T LIKE THE ASPERSIONS YOU CAST, THE  
18  PERSONAL ASPERSIONS THAT YOU CAST AT TIMES UPON THE  
19  PROFESSIONALS WHO OPPOSE YOU, NOR DO I LIKE THE ASPERSIONS  
20  YOU CAST UPON THE COURT AT TIMES.   YOU KNOW VERY WELL THAT  
21  I DID NOT APPROVE OF COMMENTS YOU MADE ABOUT THE MAGISTRATE  
22  JUDGE IN THIS COURT IN THE PLEADINGS YOU FILED BEFORE THIS  
23  COURT.   I DO NOT LIKE THE FACT THAT YOU'LL MAKE AN ARGUMENT  
24  BEFORE THE JURY THAT I SUSTAINED AN OBJECTION TO OR, OR  
25  INSTRUCTED YOU NOT TO MAKE.   THAT HAPPENED IN MR. VASSAR'S

1 OTHER CASE WHERE I SUSTAINED AN OBJECTION AND YOU TURNED  
2 AROUND AND MADE THE SAME ARGUMENT AGAIN. THAT HAS  
3 ABSOLUTELY NOTHING -- NONE OF THAT HAS ABSOLUTELY ANYTHING  
4 AT ALL TO DO WITH WHAT MIKE VASSAR'S SENTENCE OUGHT TO BE  
5 IN THIS CASE.

6 YOU THINK THE GOVERNMENT IS OUT TO GET YOU  
7 BECAUSE YOU HAVE SUCCESS. YOU THINK THE COURT IS AGAINST  
8 YOU BECAUSE YOU HAVE SUCCESS. ASIDE AND APART FROM THE  
9 EGOTISTICAL IMPLICATIONS THAT THAT STATEMENT CONTAINS,  
10 THEY'RE JUST SIMPLY WRONG. I DON'T RESENT YOU THE SUCCESS  
11 YOU'VE HAD HERE. EVERY CLIENT -- I'VE BENT OVER BACKWARDS  
12 IN THIS CASE FROM THE VERY BEGINNING TO MAKE SURE THAT MR.  
13 VASSAR GOT THE COUNSEL OF HIS CHOICE IN THIS CASE.

14 I, I SAY THAT ONLY BECAUSE YOU STATE FOR THE  
15 RECORD IN THIS CASE, A RECORD THAT I'M SURE WILL BE  
16 REVEALED -- OR REVIEWED BY AN APPELLATE COURT STATEMENTS  
17 LIKE THAT AS IF THEY ARE FACT. MUCH OF THIS COMES FROM  
18 YOUR CHOICE OF WORDS, AS I POINTED OUT TO YOU ON  
19 WEDNESDAY. YOU SAY YOU HAVE NO PERSONAL ANIMOSITY TOWARD  
20 THE GOVERNMENT, YOU CAST NO PERSONAL ASPERSIONS TOWARDS  
21 THESE AGENTS OR ATTORNEYS, AND YET YOU USED WORDS LIKE YOU  
22 DID ON WEDNESDAY, TORTURE, EXTORT; OR YOU USE WORDS LIKE  
23 YOU DID AT THE BENCH, THEY CONCOCTED. I KNOW WHAT  
24 "CONCOCTED" MEANS, EVERYBODY KNOWS WHAT "CONCOCTED" MEANS.  
25 YOU MADE AN ACCUSATION THAT THEY MADE UP, AND IT -- I DON'T

1 KNOW WHETHER YOU JUST, IT'S JUST A POOR CHOICE OF WORDS OR  
2 WHETHER YOU INTENTIONALLY USE THOSE WORDS; BUT THAT'S WHAT  
3 I DISAPPROVE OF.

4 I DON'T DISAPPROVE, CERTAINLY, OF YOU  
5 AGGRESSIVELY REPRESENTING YOUR CLIENTS, THAT'S WHAT YOU  
6 OUGHT TO DO; THAT'S WHAT YOU'VE DONE WITH MR. VASSAR;  
7 THAT'S WHAT HE HIRED YOU TO DO; THAT'S WHAT YOU'VE HAD AN  
8 OBLIGATION TO DO.

9 NOR HAVE I SUGGESTED THAT YOU WERE WRONG THIS  
10 MORNING IN CALLING THIS MATTER TO MY ATTENTION AND  
11 SUGGESTING A RULE 44(C) INQUIRY. MOST OF THAT HAS  
12 ABSOLUTELY NOTHING TO DO WITH THE ISSUE BEFORE THE COURT.  
13 THE ISSUE BEFORE THE COURT IS WHETHER OR NOT THERE IS AN  
14 ACTUAL OR POTENTIAL CONFLICT OF INTEREST SUCH THAT I'M  
15 REQUIRED TO TAKE SOME SORT OF ACTION; THAT'S THE ONLY ISSUE  
16 RIGHT NOW.

17 IT DOES, HOWEVER, BOTHER ME IN ADDITION THAT  
18 YOU'VE TOLD ME IN A SIDE-BAR CONFERENCE THIS MORNING THAT  
19 IF THIS HEARING GOES FORWARD TODAY, YOU INTEND TO SIT THERE  
20 AT COUNSEL TABLE MUTE AND RENDER INEFFECTIVE ASSISTANCE OF  
21 COUNSEL OF MR. VASSAR; AND NOW YOU TELL ME THAT YOU'RE  
22 PREPARED TO GO FORWARD, MR. VASSAR WANTS YOU TO GO  
23 FORWARD. THOSE ARE THE KINDS OF THINGS, MR. MONCIER, THAT  
24 GIVE ME HEARTBURN ABOUT YOUR CONDUCT. YOU CAN'T HAVE IT  
25 BOTH WAYS. I MEAN, EITHER YOU'RE PREPARED TO GO FORWARD

1 AND DO WHAT YOU NEED TO DO TO REPRESENT HIM OR YOU'RE NOT.

2 NOW, MR. SMITH, CLEARLY I'VE MADE YOU A  
3 BYSTANDER TO A LARGE EXTENT HERE AND YOU'VE HAD TO ENDURE A  
4 LOT OF WHAT'S BEEN SAID, BUT, NEVERTHELESS, NOT ONLY DOES  
5 THE COURT HAVE AN OBLIGATION TO MAKE SURE THAT MR. VASSAR GETS  
6 REPRESENTATION THAT'S CONFLICT FREE, SO DOES THE  
7 GOVERNMENT. THE GOVERNMENT HAS A CLEAR INTEREST IN SEEING  
8 THAT THAT HAPPENS.

9 DOES THE GOVERNMENT HAVE A POSITION ON THIS OR  
10 DO YOU WANT TO BE HEARD ON THIS?

11 MR. SMITH: ONLY VERY BRIEFLY, YOUR HONOR.

12 I THINK FROM MR. MONCIER'S REPRESENTATIONS TO  
13 THE COURT THAT IT IS CLEAR THAT NO ACTUAL CONFLICT OF  
14 INTEREST EXISTED DURING HIS REPRESENTATION OF MR. VASSAR AT  
15 TRIAL. I THINK THAT'S IMPORTANT TO ESTABLISH AS A MATTER  
16 OF THIS RECORD.

17 THE COURT: AND I AGREE, IF AN ACTUAL CONFLICT  
18 OF INTEREST EXISTS, IT AROSE YESTERDAY OR TODAY.

19 MR. SMITH: AND, YOUR HONOR, AGAIN, AS MR.  
20 MONCIER HAS RAISED THE CLAIM THAT THERE'S A -- AND HE  
21 INDICATES IT'S NOT AN ACTUAL CONFLICT OF INTEREST, I THINK  
22 HE STILL REPRESENTS THAT THIS IS A APPEARANCE OF A CONFLICT  
23 OF INTEREST. THE GOVERNMENT DOES NOT OPPOSE GOING FORWARD  
24 WITH THIS SENTENCING HEARING TODAY WITH MR. MONCIER  
25 REPRESENTING MR. VASSAR. WE WANT MR. VASSAR TO HAVE

1 COMPETENT COUNSEL BECAUSE THAT IS BOTH IN THE INTEREST OF  
2 MR. VASSAR AND THE UNITED STATES.

3 MR. MONCIER MADE A NUMBER OF REPRESENTATIONS  
4 ABOUT PLEA DISCUSSIONS WHICH ARE FACTUALLY INACCURATE, BUT  
5 WHICH ARE TOTALLY IRRELEVANT TO THE RESOLUTION OF THE  
6 CONFLICT ISSUE, BUT I SIMPLY WANTED TO NOTE ON THE RECORD  
7 THAT THOSE ARE DISPUTED.

8 WITH THAT SAID, YOUR HONOR, WITH MR. MONCIER'S  
9 REPRESENTATION, AND PARTICULARLY IF MR. VASSAR REPRESENTS  
10 THIS TO THE COURT THAT HE WISHES MR. MONCIER TO CONTINUE AS  
11 HIS COUNSEL FOR THIS SENTENCING HEARING, THAT AS MR.  
12 MONCIER JUST STATED TO THE COURT, AND I WROTE THIS DOWN SO  
13 I HAD THE QUOTE ACCURATE, I HAVE NO REASON TO BELIEVE I  
14 HAVE AN ACTUAL CONFLICT OF INTEREST, THAT IN LIGHT OF THAT  
15 INFORMATION, AND IF -- IN LIGHT, PARTICULARLY IF MR. VASSAR  
16 REPRESENTS TO THE COURT THAT HE DOESN'T BELIEVE HIS COUNSEL  
17 HAS A CONFLICT AND HE WISHES TO GO FORWARD WITH MR.  
18 MONCIER, I SEE NO REASON NOT TO GO AHEAD AND CONCLUDE THIS  
19 SENTENCING HEARING.

20 MR. MONCIER: FIRST, I WOULD LIKE TO BRIEFLY  
21 RESPOND TO WHAT THE COURT SAID. I HAVE RAISED ISSUES AS TO  
22 HOW THE GOVERNMENT PROSECUTES THESE CASES, NOT ONLY IN THIS  
23 CASE, BUT PREVIOUS CASES, INCLUDING THE MUSICK CASE THAT IS  
24 ON APPEAL TO THE SIXTH CIRCUIT AND PRIOR CASES. I HAVE  
25 RECEIVED INFORMATION FROM PEOPLE THAT I'VE TALKED TO,

1 AGENTS OF THE GOVERNMENT, AND THE PROFFER THAT I FILED FROM  
2 THE VERY JAILHOUSE PERSON MONDAY OF THIS WEEK IS TYPICAL OF  
3 THE TYPE OF INFORMATION THAT I HAVE RECEIVED WITH REGARD TO  
4 WITNESSES THAT I HAVE INTERVIEWED, THE PROCESS IN WHICH  
5 WITNESSES ARE INTERVIEWED HERE; SO I STAND ON THE BASIS OF  
6 THE RECORDS THAT I HAVE PRODUCED TO THE COURT IN THIS CASE  
7 AS A REASONABLE BASIS FOR ME TO RAISE THESE ISSUES.

8 NOW, IF THE COURT, FOR EXAMPLE, WERE TO FIND  
9 THAT WHAT THE GOVERNMENT IS DOING TO GET PEOPLE TO  
10 COOPERATE AND TESTIFY IS AS IS INDICATED BY THE RECORDS  
11 THAT I'VE PLACED BEFORE THE COURT, THEN I BELIEVE THAT THE  
12 TERM "TORTURE" TO A PERSON, WHILE IT WAS A HARSH TERM, IT  
13 IS IN FACT A TERM THAT UNLESS YOU DO THIS, YOU'RE GOING TO  
14 SPEND THE REST OF YOUR LIFE IN PRISON, I DON'T KNOW WHAT  
15 OTHER THAN THAT THAT IS.

16 THE COURT: MR. MONCIER, YOU DON'T HAVE TO  
17 JUSTIFY YOUR CONDUCT. I TOLD YOU --

18 MR. MONCIER: WELL, NO --

19 THE COURT: I TOLD YOU WHAT I DON'T LIKE ABOUT  
20 IT.

21 MR. MONCIER: OKAY.

22 THE COURT: WHETHER YOU AGREE WITH THAT OR NOT  
23 IS IRRELEVANT. IF YOU THINK THE WORDS THAT YOU USED ARE  
24 JUSTIFIED, THAT'S FINE.

25 MR. MONCIER: AND WITH REGARD, YOUR HONOR, WITH

1 REGARD TO THE FACT, THE FACT THAT I DO PLEAD THINGS THAT I  
2 BELIEVE NEED TO BE PLED, AND I DON'T SAY THEM IN THE BARS  
3 OR ON THE STREETS -- BARS IS A BAD CHOICE OF WORDS. I  
4 DON'T SAY THEM OUTSIDE THE COURT ROOM. WHEN I HAVE  
5 INFORMATION THAT I NEED TO BRING TO THE ATTENTION OF THE  
6 COURT, I DO IT. NOW, THE, THE ISSUE IS THOUGH THAT THE  
7 GOVERNMENT, AS THEY JUST SAID HERE, THEY DON'T WANT TO TALK  
8 TO MY CLIENT, WHETHER MY CLIENT COULD HELP THEM OR NOT, AND  
9 THE REASON IS, IS THEY DON'T WANT TO HAVE ME HAVE ANY  
10 SUCCESS BECAUSE WHAT HAPPENS IS PEOPLE WHO WANT TO GO TO  
11 TRIAL ARE GOING TO COME AND HIRE ME, AND IT'S GOING TO BE  
12 THE SAME THING IN THOSE CASES; AND SO WHEN THE GOVERNMENT  
13 GOES OUT AND THEY TALK TO THESE PEOPLE ABOUT COOPERATION  
14 AND SUCH LIKE THAT, THEY ALSO HAVE A VESTED INTEREST IN, IN  
15 WHETHER THAT ATTORNEY IS GOING TO AGGRESSIVELY DEFEND THE  
16 CASE OR NOT.

17 NOW, ALL OF THAT BEING SAID AND DONE, WHAT THAT  
18 BEARS ON THE ISSUE NOW IS THE SETUP THAT WE HAVE NOW IS  
19 THAT MR. SMITH THIS MORNING CHANGES THE POSITION OF THE  
20 GOVERNMENT ALWAYS BEFORE BECAUSE, FOR EXAMPLE, MY CLIENT  
21 WASN'T TRUTHFUL WITH THE PRESENTENCE OFFICER. WELL,  
22 YESTERDAY MR. SMITH PROVIDED US AS A DOCUMENT A TBI REPORT  
23 CONCERNING MR. RICK FANN, NOT QUITE SURE WHY; BUT YOU  
24 REMEMBER MR. -- THE REASON HE SAYS THAT MY CLIENT WASN'T  
25 TRUTHFUL WITH MS. DEADERICK ABOUT THE QUARTER GLASS FOR A



1 BLAZER. MY CLIENT SAYS THAT WAS A QUARTER GLASS FOR A  
2 BLAZER -- JUST A MINUTE.

3 THE COURT: WHAT DOES THAT HAVE TO DO WITH THE  
4 ISSUE?

5 MR. MONCIER: YESTERDAY THEY PROVIDED ME WITH A  
6 STATEMENT OF MR. FANN. IN THAT STATEMENT MR. FANN TOLD  
7 THEM, THAT THEY NEVER PRODUCED TO ME AT TRIAL, THEY, THAT  
8 IS MR. FANN AND MR. VASSAR, NORMALLY REFERRED TO  
9 WINDSHIELDS FOR TRACTOR TRAILER TRUCKS BECAUSE THOSE TYPES  
10 OF WINDOWS ARE SPLIT INTO TWO SIDES; AND BY REFERRING TO  
11 THOSE WINDOWS, THEY CAN ORDER ONE HALF OUNCE QUANTITIES OF  
12 DRUGS.

13 THE COURT: YOUR ARGUMENT WOULD BE STRONGER IF  
14 THEY SAID THEY ALWAYS DID, BUT THAT'S NEITHER HERE NOR  
15 THERE ON THIS ISSUE.

16 MR. MONCIER: THAT'S CONTRARY TO WHAT MR. FANN  
17 TESTIFIED ON THE STAND.

18 THE COURT: I'M GOING TO HEAR YOU IN OPEN COURT  
19 ON SENTENCING.

20 MR. MONCIER: THE POINT IS, YOUR HONOR, IS  
21 YOU'RE GETTING LIMITED INFORMATION; AND WHAT THE SETUP IS  
22 NOW IS THEY SAY, WELL, WE DON'T WANT TO TALK TO HIM BECAUSE  
23 OF THIS FALSE STATEMENT THAT HE MADE CONCERNING QUARTER  
24 GLASSES FOR BLAZERS, WHEN THEY'VE ALWAYS KNOWN THAT THAT'S  
25 NOT EVEN WHAT THEIR OWN PERSON SAID AND THAT HE TESTIFIED

1 FALSELY AT THE TRIAL.

2 THE COURT: I'LL HEAR IT LATER.

3 MR. MONCIER: BUT THE POINT IS --

4 THE COURT: NO, THE POINT IS THAT I TOLD YOU  
5 I'LL HEAR IT LATER IN OPEN COURT.

6 MR. MONCIER: YES, SIR.

7 THE COURT: AND THAT'S ANOTHER EXAMPLE OF WHY  
8 YOU AND I GET CROSSWAYS BECAUSE YOU SIMPLY WILL NOT FOLLOW  
9 MY DIRECTIONS.

10 MR. MONCIER: IT'S A PRETEXT.

11 THE COURT: I DON'T CARE WHAT IT IS AT THIS  
12 POINT, WE'LL HEAR IT WHEN WE GET TO THE SENTENCING  
13 HEARING.

14 MR. MONCIER: WITH REGARD TO THE SENTENCING  
15 HEARING, THEY SAY NOW GO FORWARD WITH THE SENTENCING  
16 HEARING. ONCE AGAIN, I WANT TO POINT OUT TO THE COURT THAT  
17 I NEED TO TALK WITH MY CLIENT, AND I'M ASKING THE COURT TO  
18 APPOINT AN IMPARTIAL PERSON TO TALK WITH MY CLIENT.

19 THE COURT: I AM NOT GOING TO APPOINT AN  
20 IMPARTIAL PERSON TO DO THAT. YOU'VE TOLD ME THERE IS NO  
21 CONFLICT OF INTEREST. THERE IS NO REASON TO DO IT.

22 MR. MONCIER: YES, SIR. I WOULD LIKE TO HAVE  
23 THE LUNCHEON HOUR TO WORK WITH MY CLIENT IN LIGHT OF THE  
24 INFORMATION I GOT YESTERDAY THAT I FIRST TALKED TO HIM  
25 ABOUT THIS MORNING. I RECEIVED 183 PAGES, I BELIEVE IT WAS

1 WEDNESDAY. I'VE OUTLINED THAT IN MY MOTION. I HAVEN'T HAD  
2 AN OPPORTUNITY TO GO OVER THAT, AND PLUS THIS ADDITIONAL  
3 INFORMATION THAT I RECEIVED YESTERDAY; SO I COULD -- I  
4 COULD BE PREPARED TO GO FORWARD AT 1:30.

5 THE COURT: ALL RIGHT. MR. VASSAR, COME UP HERE  
6 TO THE PODIUM WITH YOUR ATTORNEY, PLEASE.

7 MR. VASSAR, I SIMPLY DON'T REMEMBER WHETHER  
8 BACK IN MARCH I INQUIRED OF YOU ABOUT THE POTENTIAL  
9 CONFLICT OF INTEREST THAT EXISTED BETWEEN YOUR LAWYER'S  
10 REPRESENTATION OF HAROLD GROOMS ON THE ONE HAND AND YOU ON  
11 THE OTHER. THE SITUATION TODAY IS THIS, AND I HAVE THE  
12 TRANSCRIPT OF WHAT WAS SAID, OR AT LEAST A PARTIAL  
13 TRANSCRIPT OF WHAT WAS SAID HERE AT SIDE BAR EARLIER. IN  
14 THE CONTEXT OF OUR DISCUSSION AT THE BENCH ABOUT THIS  
15 STATEMENT THAT WAS DISCLOSED YESTERDAY AFTERNOON THAT MARK  
16 THORNTON APPARENTLY ATTRIBUTES TO YOU WHILE YOU WERE  
17 INCARCERATED AT THE GREENE COUNTY DETENTION CENTER, MR.  
18 MONCIER SUGGESTED THAT I NEEDED TO APPOINT AN INDEPENDENT  
19 ATTORNEY TO CONSULT WITH YOU AND TO ADVISE YOU AND TO TALK  
20 TO YOU ABOUT THAT MATTER AND MADE THE FOLLOWING STATEMENT,  
21 "HE ISN'T GOING TO TELL ME IF HAROLD GROOMS SAID THAT  
22 BECAUSE HE KNOWS I REPRESENT HAROLD GROOMS." WHETHER THAT  
23 WAS A POOR CHOICE OF WORDS, WHETHER IT WAS MISSPOKEN,  
24 WHATEVER THE REASON, THAT'S WHAT MY RECOLLECTION OF WHAT  
25 MR. MONCIER SAID WAS, THAT'S WHAT THE PRINTED TRANSCRIPT

1 BEARS OUT. THE IMPLICATION BEING THAT BECAUSE MR. MONCIER  
2 ALSO REPRESENTS HAROLD GROOMS, YOU HAVE SOME FEAR OR SOME  
3 HESITATION OR SOME RELUCTANCE TO DISCLOSE TO HIM WHATEVER  
4 YOU MIGHT KNOW ABOUT HAROLD GROOMS, IF ANYTHING, THAT MIGHT  
5 ASSIST IN YOUR SENTENCING HEARING. YOU UNDERSTAND WHAT THE  
6 ISSUE IS?

7 MR. VASSAR: I THINK SO, YOUR HONOR. I DON'T  
8 KNOW EXACTLY -- ARE YOU TRYING TO SAY THAT IF I KNEW  
9 SOMETHING ABOUT HAROLD GROOMS, I WOULDN'T TELL MR. MONCIER  
10 BECAUSE HE'S REPRESENTING HAROLD GROOMS?

11 THE COURT: WELL, THAT'S THE CONCERN MR. MONCIER  
12 EXPRESSED TO ME AT THE BENCH, THAT YOU MIGHT NOT DO THAT.

13 NOW, MY QUESTION TO YOU IS, IN VIEW OF THAT, IN  
14 VIEW OF BOTH MR. MONCIER'S CONCERN ABOUT IT AND IN VIEW OF  
15 THE VERY REAL POSSIBILITY THAT THAT MIGHT BE THE CASE, THAT  
16 YOU MIGHT BE AFRAID TO TELL ON HAROLD GROOMS IF YOU KNEW  
17 SOMETHING ABOUT HIM BECAUSE YOUR LAWYER ALSO REPRESENTS  
18 HIM, YOU STILL WANT MR. MONCIER TO REPRESENT YOU IN THIS  
19 CASE?

20 MR. VASSAR: YES, SIR.

21 THE COURT: YOU UNDERSTAND THAT AS A RESULT OF  
22 THIS SENTENCING HEARING WE'RE ABOUT TO HAVE THAT I COULD  
23 SENTENCE YOU TO 30 YEARS IN FEDERAL PRISON?

24 MR. VASSAR: YES, SIR.

25 THE COURT: EVEN IF MR. MONCIER'S ULTIMATE

1 LOYALTY IS TO HAROLD GROOMS, YOU STILL WANT HIM TO  
2 REPRESENT YOU?

3 MR. VASSAR: I DON'T UNDERSTAND WHAT YOU MEAN BY  
4 "REPRESENTING ME", REPRESENTING ME HOW? HE CAME TO COURT.

5 THE COURT: WELL, I MEAN, IF THERE CAME A  
6 DECISION THAT HAD TO BE MADE, DO I LOOK OUT FOR MICHAEL  
7 VASSAR'S INTEREST OR DO I LOOK OUT FOR MY OTHER CLIENT  
8 HAROLD GROOMS'S INTEREST?

9 MR. VASSAR: LOOK OUT FOR MICHAEL VASSAR'S  
10 INTEREST.

11 THE COURT: WHAT DID I SAY, MICHAEL GROOMS? IF  
12 A SITUATION EVER ARISES WHERE MR. MONCIER HAS TO CHOOSE  
13 BETWEEN MICHAEL VASSAR'S INTERESTS AND HAROLD GROOMS'S  
14 INTERESTS, AND IF YOU ASSUME THAT MR. VASSAR'S {SIC}  
15 ULTIMATE LOYALTY IS TO HAROLD GROOMS AND THAT HE'LL DO  
16 WHAT'S RIGHT FOR HAROLD GROOMS, WHAT'S NOT RIGHT FOR  
17 MICHAEL VASSAR, YOU STILL WANT HIM TO REPRESENT YOU?

18 MR. VASSAR: NO. I WANT HIM TO REPRESENT ME  
19 LIKE HE'S SUPPOSED TO REPRESENT ME. I WOULDN'T WANT HIM  
20 NOT TO REPRESENT ME ON ACCOUNT OF HAROLD GROOMS, YOU KNOW,  
21 TO WHERE HAROLD GROOMS --

22 THE COURT: YOU UNDERSTAND HOW THE POTENTIAL  
23 COULD ARISE OR HOW THE SITUATION COULD ARISE WHERE MR.  
24 MONCIER WOULD HAVE TO MAKE A CHOICE BETWEEN WHAT'S BEST FOR  
25 YOU AND WHAT'S BEST FOR HAROLD GROOMS?

1 MR. VASSAR: YES, I UNDERSTAND.

2 THE COURT: WHETHER THAT SITUATION EXISTS NOW  
3 OR, OR NOT, I, I CAN'T REALLY SAY; BUT UNDERSTANDING THAT  
4 THAT POTENTIAL IS THERE, ARE YOU TELLING ME YOU STILL WANT  
5 MR. MONCIER TO REPRESENT YOU?

6 MR. VASSAR: WELL, I DON'T UNDERSTAND. MR.  
7 MONCIER HAS ALREADY REPRESENTED ME AT MY TRIAL. I MEAN, IS  
8 THIS JUST FOR THE SENTENCING HEARING?

9 THE COURT: FOR THE REMAINDER OF THESE  
10 PROCEEDINGS.

11 MR. VASSAR: I DON'T UNDERSTAND. I, I DON'T, I  
12 DON'T, I DON'T UNDERSTAND. I, I THOUGHT HE WOULD HAVE TO  
13 REPRESENT ME IN MY SENTENCING BECAUSE HE KNOWS ALL ABOUT  
14 THE CASE. HOW COULD SOMEBODY FAIRLY REPRESENT ME WITHOUT  
15 GOING THROUGH MY TRIAL AND WITHOUT UNDERSTANDING THE CASE  
16 AND WITHOUT UNDERSTANDING EVERYTHING THAT'S HAPPENED, HOW  
17 COULD SOMEBODY ELSE REPRESENT ME FAIRLY?

18 THE COURT: WELL, I'D HAVE TO GIVE THEM TIME TO  
19 FAMILIARIZE THEMSELVES WITH IT.

20 MR. VASSAR: I'LL HAVE TO GO THAT WAY THEN  
21 BECAUSE I FEEL LIKE -- I WANT TO FEEL LIKE I'M GOING TO BE  
22 FAIRLY REPRESENTED. IF HE WAS GOING TO REPRESENT HAROLD  
23 GROOMS --

24 THE COURT: YOU'VE KNOWN SINCE MARCH THAT HE  
25 REPRESENTED HAROLD GROOMS; HAVEN'T YOU?

1 MR. VASSAR: YES, SIR, I DID.

2 THE COURT: YOU KNOW THAT MEANS WE WON'T GO  
3 FORWARD WITH YOUR SENTENCING HEARING THIS AFTERNOON; DON'T  
4 YOU?

5 MR. VASSAR: YES, SIR.

6 MR. MONCIER: YOUR HONOR, I WOULD REQUEST THAT  
7 THE COURT SPEAK WITH MR. VASSAR IN PRIVATE AS TO THE --  
8 WHAT REASONS COULD HAPPEN TO WHERE I WOULD, TO WHERE I  
9 WOULD HAVE MY LOYALTIES TO HAROLD GROOMS DIFFERENT FROM  
10 HIS.

11 THE COURT: I CAN'T POSSIBLY ANTICIPATE THAT.

12 MR. MONCIER: WELL, YOU KNOW THIS ONE.

13 THE COURT: I'M SORRY?

14 MR. MONCIER: YOU CERTAINLY KNOW THIS ONE, AND  
15 YOU CERTAINLY KNOW WHAT WE TALKED ABOUT AT THE PREVIOUS  
16 HEARING. THE GOVERNMENT CAN BRING TO YOUR ATTENTION ANY  
17 OTHER INFORMATION THAT THEY MAY SUGGEST. THAT'S WHY I  
18 ALWAYS SUGGESTED THAT WE HAVE ANOTHER JUDGE HEAR THIS.

19 WE COULD SAY THE SAME THING ABOUT ANYBODY ELSE.  
20 IF MY LOYALTIES ARE TO SOMEBODY ELSE AND NOT TO MIKE  
21 VASSAR, I WOULD EXPECT MIKE VASSAR TO SAY THAT WHAT HE JUST  
22 SAID; BUT WE'VE GOT TO FIND OUT WHETHER THERE IS ANY --  
23 WE'VE GOT TO FIND OUT WHETHER THERE'S ANYTHING TO IT, AT  
24 LEAST AS FAR AS HE KNOWS WHAT WE'RE TALKING ABOUT; AND, AND  
25 SINCE WE'RE -- WE'VE GONE THIS FAR, THE QUESTION THAT I

1 THINK THE COURT NEEDS TO TALK TO HIM ABOUT IS WHETHER  
2 THERE'S ANY TRUTH WHATSOEVER TO WHAT WAS PRESENTED TO HIM  
3 THIS MORNING OR WHETHER THAT'S JUST SOMEBODY TRYING TO TELL  
4 THE GOVERNMENT SOMETHING TO GET SOMETHING AND WHETHER HE  
5 THINKS THAT ANYTHING IN THIS SENTENCING HEARING WOULD MAKE  
6 ME -- I'M NOT QUITE SURE WHAT LOYALTIES I WOULD HAVE.  
7 THIS WHOLE -- TO HAROLD GROOMS WITH REGARD TO THAT.

8 THE COURT: YOU'VE GOT AN ABSOLUTE LOYALTY DUTY  
9 TO HAROLD GROOMS JUST LIKE YOU DO TO MICHAEL VASSAR. DON'T  
10 STAND THERE AND TELL ME YOU DON'T KNOW WHAT LOYALTY YOU'VE  
11 GOT TO HIM.

12 MR. MONCIER: WELL, WAIT A MINUTE. NO. HOW AM  
13 I GOING TO DO SOMETHING DIFFERENT IN HIS TRIAL TODAY?

14 THE COURT: I DON'T KNOW, BUT I CAN THINK OF  
15 ONE.

16 MR. VASSAR, MR. MONCIER HAS NOW BEEN PLACED IN A  
17 POSITION WHERE HE'S GOT TO BE MAKE A DECISION THIS  
18 AFTERNOON; AND THAT DECISION IS, DO I CALL MARK THORNTON TO  
19 THE WITNESS STAND IN VIEW OF THE FACT THAT IT NOW APPEARS  
20 THAT MARK THORNTON IS POTENTIALLY GOING TO GIVE SOME  
21 TESTIMONY THAT IMPLICATES HAROLD GROOMS. HE'S GOT TO MAKE  
22 A DECISION, DO I CALL MARK THORNTON AND RUN THE RISK THAT  
23 HE SAYS SOMETHING HERE IN THIS OPEN COURTROOM THAT GETS  
24 REPORTED IN THE NEWSPAPER THAT IMPLICATES MY CLIENT HAROLD  
25 GROOMS?



1 MR. MONCIER: I'M SORRY, YOUR HONOR, I'D LIKE  
2 FOR YOU TO ALSO PRESENT TO HIM WHAT I WAS MORE CONCERNED  
3 WITH.

4 THE COURT: I UNDERSTAND WHAT YOU'RE CONCERNED  
5 WITH.

6 MR. MONCIER: MY CONCERN IS, MY CONCERN IS  
7 WHETHER I CALL MARK THORNTON TO TESTIFY TO THE THINGS THAT  
8 I INTENDED TO HAVE HIM TESTIFY TO KNOWING THAT HE HAD  
9 POTENTIALLY MADE THIS OTHER STATEMENT TO THE GOVERNMENT  
10 THAT MY CLIENT KNOWS SOMETHING THAT MY CLIENT SAID HE  
11 DIDN'T KNOW; THAT'S THE PROBLEM, IS DO I CALL MARK THORNTON  
12 FOR THE GOOD PARTS OF WHAT MARK THORNTON ADDS TO THIS  
13 MATTER, BUT MARK THORNTON KNOWING THAT THE GOVERNMENT IS  
14 GOING TO LAY BACK AND THEY'RE GOING TO CROSS EXAMINE HIM  
15 AND YOU'RE GOING TO LET THEM GO BEYOND THE SCOPE OF DIRECT,  
16 I SUPPOSE, IF YOU DO, LET THEM GO BEYOND, TO GO INTO THIS  
17 ADDITIONAL INFORMATION THAT THE COURT NOW KNOWS ABOUT THAT  
18 HAS THE POTENTIAL OF FLYING INTO THE FACE OF POSITIONS THAT  
19 WERE PREVIOUSLY TAKEN; AND ARE WE GOING TO GET INTO A MINI  
20 TRIAL AS TO ALL OF THOSE THINGS THAT WERE SAID AND THE  
21 TRANSCRIPT, IS THAT GOING TO OPEN UP THAT TRANSCRIPT OF  
22 THAT HEARING WE HAD BEFORE WHERE MR. VASSAR, WHERE MR.  
23 VASSAR TOLD THE COURT WHAT HE DID OR HE DID NOT KNOW; AND,  
24 ONCE AGAIN, IT'S UNDER SEAL. I MEAN, WE WENT THROUGH ALL  
25 OF THAT.

1 THE COURT: MR. VASSAR, HERE'S THE COURT'S  
2 CONCERN. WHEN WE HAVE THIS SENTENCING HEARING I WANT YOUR  
3 LAWYER TO ASK WHATEVER QUESTIONS ARE NECESSARY TO ASK TO  
4 ADEQUATELY PRESENT YOUR CASE TO THIS COURT. I DON'T WANT  
5 YOU REPRESENTED BY A LAWYER WHO IS RELUCTANT TO ASK  
6 QUESTIONS FOR -- OUT OF CONCERN ABOUT WHAT THE ANSWERS  
7 MIGHT BE AS THEY RELATE TO HAROLD GROOMS. I DON'T WANT  
8 YOUR LAWYER TO BE IN A POSITION TO WHERE HE IS RELUCTANT TO  
9 CALL A WITNESS FOR FEAR THAT THE GOVERNMENT MIGHT ASK ABOUT  
10 HAROLD GROOMS AND HE DOESN'T KNOW WHAT THE WITNESS IS GOING  
11 TO SAY. YOU UNDERSTAND WHAT I'M SAYING?

12 MR. VASSAR: YES, SIR.

13 THE COURT: I WANT YOUR LAWYER'S LOYALTY TO BE  
14 TO YOU --

15 MR. VASSAR: THAT'S WHAT I WANT, YOUR HONOR.

16 THE COURT: -- AND NOBODY ELSE.

17 MR. VASSAR: THAT'S WHAT I WANT.

18 THE COURT: NOW, YOU UNDERSTAND HOW THOSE  
19 CONFLICTS CAN ARISE IN THE CONTEXT OF THIS CASE WITH MR.  
20 MONCIER REPRESENTING HAROLD GROOMS AND REPRESENTING YOU AT  
21 THE SAME TIME?

22 MR. VASSAR: I UNDERSTAND.

23 THE COURT: OKAY. IT'S A VERY SIMPLE QUESTION  
24 THEN, UNDERSTANDING HOW THOSE CONFLICTS CAN ARISE, DO YOU  
25 WANT MR. MONCIER TO CONTINUE REPRESENTING YOU IN THIS CASE

1 OR DO YOU WANT ME TO SEE IF I CAN FIND SOMEBODY WHO HAS NO  
2 CONNECTION WITH ANY OTHER CODEFENDANT OR POTENTIAL  
3 CODEFENDANT IN THIS CASE?

4 MR. MONCIER: ONCE AGAIN, YOUR HONOR --

5 THE COURT: MR. MONCIER --

6 MR. MONCIER: HE MAKES --

7 THE COURT: MR. MONCIER, YOU BE QUIET.

8 MR. MONCIER: MAY I APPROACH THE BENCH?

9 THE COURT: YOU MAY STAND THERE AND DO WHAT I  
10 TOLD YOU TO DO UNTIL MR. VASSAR ANSWERS THIS QUESTION.

11 MR. MONCIER: FOR THE RECORD, YOUR HONOR, I  
12 OBJECT WITHOUT HIM HAVING --

13 THE COURT: MR. MONCIER, ONE MORE WORD AND  
14 YOU'RE GOING TO JAIL.

15 MR. MONCIER: MAY I SPEAK TO MY --

16 THE COURT: OFFICERS, TAKE HIM INTO CUSTODY.  
17 WE'LL BE IN RECESS.

18 (RECESS AT 12:47 P.M.)

19 (END OF SEALED PROCEEDINGS)

20 \* \* \* \* \*

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1 (THE FOLLOWING PROCEEDINGS ARE NOT UNDER SEAL)  
2 (CALL TO ORDER OF THE COURT AT 1:40 P.M.)  
3 (ATTORNEY JOHN ROGERS PRESENT ON BEHALF OF MR.  
4 MONCIER)

5 MR. ROGERS: GOOD AFTERNOON.

6 THE COURT: GOOD AFTERNOON, MR. ROGERS.

7 ALL RIGHT. I HAVE INDICATED TO THE COURT  
8 SECURITY OFFICERS THAT THE COURTROOM CAN BE OPEN. NO  
9 REASON TO BAR THE PUBLIC AT THIS POINT.

10 MR. VASSAR, IN VIEW OF WHAT'S HAPPENED THIS  
11 MORNING, IN VIEW OF THE QUESTIONS THAT HAVE BEEN CONSIDERED  
12 BY THE COURT CONCERNING THE POSSIBILITY THAT THERE EXISTS A  
13 CONFLICT OF INTEREST HERE IN YOUR REPRESENTATION, I AM  
14 GOING TO CONTINUE YOUR SENTENCING HEARING.

15 I AM GOING TO APPOINT COUNSEL TO REPRESENT YOU.

16 I'M NOT SURE WHO THAT WILL BE, BUT WE WILL APPOINT SOMEBODY  
17 TOTALLY UNRELATED TO THIS CASE OR ANY OF THE CASES THAT  
18 HAVE BEEN ALLEGED TO BE RELATED TO THIS CASE. I WILL  
19 DIRECT THE CLERK AT THE TIME I ENTER AN ORDER APPOINTING  
20 THAT COUNSEL TO SERVE A COPY OF THAT ORDER ON YOU  
21 PERSONALLY AT THE DETENTION CENTER SO THAT YOU WILL KNOW  
22 WHO HAS BEEN APPOINTED.

23 I AM NOT GOING TO RELIEVE MR. MONCIER TODAY OF  
24 FURTHER REPRESENTATION OF YOU. I'M GOING TO TAKE UNDER  
25 ADVISEMENT FOR A FEW DAYS THE QUESTION OF WHETHER OR NOT HE

1 CAN CONTINUE TO REPRESENT YOU IN ANY FASHION. I'M INCLINED  
2 TO THINK NOT, BUT YOU WILL RECEIVE AN ORDER FROM US IN THE  
3 NEXT FEW DAYS APPOINTING COUNSEL TO REPRESENT YOU.

4 I WILL NOT SET A DATE TODAY FOR YOUR  
5 SENTENCING. I WILL WAIT UNTIL WE APPOINT COUNSEL AND CAN  
6 CONFER WITH THAT COUNSEL ABOUT HOW LONG IT WILL TAKE TO  
7 PREPARE FOR YOUR SENTENCING HEARING.

8 I HAVE CONSIDERED YOUR REQUEST MADE THROUGH MR.  
9 MONCIER EARLIER THAT YOU BE RELEASED PENDING SENTENCING IN  
10 THIS CASE. UNFORTUNATELY, BECAUSE THE STATUTORY, STATUTORY  
11 MAXIMUM IN THIS CASE IS A TERM OF IMPRISONMENT OF 30 YEARS,  
12 I DO NOT BELIEVE I CAN DO THAT. HOWEVER, I WILL SET YOUR  
13 SENTENCING JUST AS SOON AS HUMANLY POSSIBLE, EVEN IF I HAVE  
14 TO MOVE SOME OTHER CASES IN ORDER TO ACCOMMODATE YOU.

15 ALL RIGHT. WITH THAT, MR. VASSAR, I'M GOING TO  
16 EXCUSE YOU. MARSHALS WILL TAKE YOU BACK TO, TO THE  
17 DETENTION CENTER.

18 (MR. VASSAR NOT PRESENT)

19 THE COURT: MR. ROGERS, ARE YOU HERE  
20 REPRESENTING MR. MONCIER?

21 MR. ROGERS: MAY IT PLEASE THE COURT, I AM,  
22 UNDER THESE CIRCUMSTANCES. IT WAS COMMUNICATED TO ME THAT  
23 YOU WANTED TO HAVE THIS HEARING AT 1:30 PROMPTLY. MR.  
24 MONCIER HAD CALLED RALPH HARWELL, AN ATTORNEY IN KNOXVILLE  
25 WHO YOU'RE FAMILIAR WITH. MR. HARWELL WAS ON HIS WAY, BUT

1 HE WAS OBVIOUSLY NOT ABLE TO GET HERE BY 1:30; AND INSTEAD  
2 OF, OF LEAVING MR. MONCIER WITHOUT COUNSEL, AND -- I FELT  
3 COMPELLED TO MAKE AN APPEARANCE HERE AT THIS TIME. MR.  
4 HARWELL WILL JOIN ME IN HIS DEFENSE.

5 MANY MAY THINK I'M CRAZY FOR INTERJECTING MYSELF  
6 INTO THIS MATTER ON A GRATUITOUS BASIS, BUT THOSE PEOPLE  
7 DON'T KNOW YOU; AND I KNOW THAT YOU UNDERSTAND THE RIGHT TO  
8 COUNSEL, AND I, I HAVE NO FEAR IN THAT REGARD.

9 THE COURT: WELL, I WAS JUST LOOKING AT THE  
10 RULE. I HADN'T HAD A CHANCE TO LOOK AT IT; BUT GIVEN THAT  
11 THIS CONTEMPT APPEARED OR WAS COMMITTED IN THE PRESENCE OF  
12 A JUDGE, RULE 42(B) PROVIDES FOR THE COURT TO SUMMARILY  
13 PUNISH THE CONTEMPT.

14 MR. ROGERS: YOU MAY DO THAT, YOUR HONOR, UNDER  
15 EXTRAORDINARY CIRCUMSTANCES. AS I -- IN MY JUST, JUST  
16 QUICK REFERENCE, AND I CAME DOWN HERE WITHOUT A PEN OR A  
17 BOOK OR, OR THE LAW, BUT I BORROWED THE GOVERNMENT'S LITTLE  
18 SUMMARY AND I LOOKED AT IT JUST A MOMENT AGO.

19 (AUSA HARR IS PRESENT)

20 MR. ROGERS: AND THE FIRST THING I WOULD LIKE  
21 TO ASK THE COURT RESPECTFULLY IS TO GIVE MR. MONCIER'S  
22 ATTORNEY AN OPPORTUNITY TO PREPARE FOR THIS HEARING AND NOT  
23 TO EXERCISE THE, YOUR, YOUR OPPORTUNITY TO SUMMARILY  
24 RESOLVE THIS MATTER.

25 BEFORE I GO ON, YOUR HONOR, THOUGH I WANT TO

1 MAKE IT CLEAR TO YOU THAT MR. MONCIER HAS EXPRESSED TO ME  
2 IN THE BRIEF TIME THAT I SPENT WITH HIM THE FACT THAT HE  
3 WAS ONLY TRYING TO MAKE AN OBJECTION; THAT HE INTENDED NO  
4 DISRESPECT TO THE COURT AT THAT TIME AND THAT HE IS VERY  
5 SORRY THAT BY, BY, BY ATTEMPTING TO UTTER HIS STATEMENT  
6 THAT HE VIOLATED THIS COURT'S ORDER WHEN HE FELT HE WAS  
7 COMPELLED TO DO SO.

8 I WILL SAY TO YOUR HONOR THAT I HAD -- YOU  
9 REMEMBER THE DORIS BROWN CASE, AND I KNOW YOU HAVE THE  
10 UTMOST RESPECT FOR JUDGE BECKNER. JUDGE BECKNER WAS  
11 INVOLVED WITH ABOUT 500 JURORS, AND BERKELEY BELL WAS  
12 ASKING QUESTIONS ABOUT REASONABLE -- ABOUT CIRCUMSTANTIAL  
13 EVIDENCE, AND I OBJECTED BECAUSE HE MISPHRASED IT. HE THEN  
14 TOLD ME, HE TOLD ME -- THE NEXT TIME HE ASKED THE SAME  
15 QUESTION, I OBJECTED AND HE TOLD ME TO SIT DOWN; AND THE  
16 NEXT TIME HE ASKED THE SAME QUESTION, HE TOLD ME TO BE  
17 QUIET; AND THE NEXT TIME HE ASKED THAT QUESTION, HE TOLD ME  
18 TO GO OVER AND SIT DOWN AND THAT MR. LAUGHLIN WOULD TAKE  
19 OVER UNTIL HE DECIDED WHAT TO DO WITH ME. I'M NOT TRYING  
20 TO QUOTE THAT AS, AS PRECEDENT TO YOU; BUT AFTER -- IF IN  
21 FACT WHAT WAS GOING ON WAS COUNSEL WAS TRYING TO MAKE AN  
22 OBJECTION, AFTER LUNCH HE DECIDED THAT, THAT THAT WAS A  
23 DUTY THAT THE ATTORNEY HAD.

24 NOW, IF YOUR HONOR PLEASE, YOU MAY KNOW THAT  
25 I'VE -- I HAVE, I THINK, THE LEADING CASE IN TENNESSEE ON

1 CONTEMPT.

2 THE COURT: I'M VERY FAMILIAR WITH IT.

3 MR. ROGERS: IT'S NOT, IT'S NOT -- I DON'T KNOW  
4 THAT THAT APPLIES HERE, BUT THAT CASE, STATE VERSUS BOB  
5 MCD. GREEN, STANDS FOR THE PROPOSITION THAT YOU'RE UNDER AN  
6 OBLIGATION TO UNDERTAKE EFFECTIVE REPRESENTATION AS YOU  
7 UNDERSTAND IT; AND COUPLED WITH THAT APOLOGY, AND I WOULD  
8 TELL YOUR HONOR A HEART FELT APOLOGY, I WOULD ASK YOUR  
9 HONOR NOT TO EXERCISE THE OPPORTUNITY GIVEN TO YOU UNDER  
10 42(B) OF THE FEDERAL RULES OF PROCEDURE, CRIMINAL  
11 PROCEDURE, AND TO ALLOW COUNSEL AN OPPORTUNITY TO CONFER  
12 WITH MR. MONCIER, COME BACK BEFORE THE COURT AT A LATER  
13 TIME AND LET YOUR HONOR ALLOW US TO PUT MR. MONCIER ON THE  
14 STAND SO YOU CAN UNDERSTAND HIS MINDSET BECAUSE ONLY AFTER  
15 YOU UNDERSTAND THE MINDSET OF THAT ADVOCATE, I WOULD  
16 RESPECTFULLY SUBMIT TO YOU, WILL YOU BE ABLE TO JUDGE THE  
17 EXTENT OF HIS CONDUCT AS TO WHETHER IT WAS CONTENTIOUS OR  
18 NOT; AND I KNOW YOUR HONOR HAS BEEN IN THE PIT MANY TIMES,  
19 YOU KNOW, YOU KNOW WHAT HARD LITIGATION INVOLVES; AND  
20 BECAUSE OF THAT, I BELIEVE THAT OUR, OUR REQUEST WILL NOT  
21 FALL ON DEAF EARS AND I WOULD ASK YOU TO GIVE US THE  
22 OPPORTUNITY TO PREPARE FOR A HEARING IF YOU INTEND TO  
23 PROCEED WITH, WITH A, WITH A SUMMARY CONTEMPT PROCEEDING.

24 THE COURT: UNDER ORDINARY CIRCUMSTANCES IT'S  
25 UNLIKELY THAT I WOULD EVER PROCEED TO SUMMARILY PUNISH



1 CONTEMPT COMMITTED IN THE PRESENCE OF THE COURT. IN MR.  
2 MONCIER'S CASE, HE HAS BEEN WARNED REPEATEDLY BY THIS COURT  
3 THROUGHOUT THE COURSE OF THESE PROCEEDINGS. I HAVE TAKEN  
4 UNDER ADVISEMENT PREVIOUSLY IN THIS CASE THE ISSUE OF  
5 WHETHER OR NOT HE IS IN CONTEMPT BASED UPON COMMENTS MADE  
6 IN THAT PLEADING ABOUT A SITTING JUDGE OF THIS COURT.

7 GIVE ME JUST A MINUTE.

8 MR. ROGERS: YOUR HONOR, I JUST BORROWED THIS  
9 BOOK AGAIN TO TRY TO REMEMBER EXACTLY WHAT THE STATEMENT  
10 WAS, QUOTE, UNLESS THERE IS A COMPELLING REASON FOR AN  
11 IMMEDIATE REMEDY THIS COURT SHOULD NOT ACT SUMMARILY.  
12 THAT'S NOT AN EXACT QUOTE, BUT THAT'S WHAT THESE CASES  
13 STAND FOR, HARRIS VERSUS UNITED STATES AND UNITED STATES  
14 VERSUS WILSON; AND WE WOULD RELY ON THOSE, AND WE WOULD  
15 RELY ON THE FACT THAT -- I DON'T KNOW ANYTHING ABOUT THE  
16 UNDERLYING CASE, SO I -- IT'S IMPOSSIBLE FOR ME TO BE  
17 EFFECTIVE BECAUSE I DON'T KNOW WHAT'S BEEN GOING ON HERE.

18 I DON'T MIND TELLING YOUR HONOR I WAS IN, IN A,  
19 IN A PERSONAL POSITION WHEN I GOT THE WORD THAT I NEEDED TO  
20 COME DOWN HERE, AND I -- MR. LAUGHLIN CLAIMED HE DIDN'T  
21 HAVE A TIE AND SO HE SENT ME, SO HERE I AM. I HAVEN'T SEEN  
22 THE TRANSCRIPT OF THE PROCEEDINGS. I'M NOT REALLY IN A  
23 POSITION TO GO FORWARD, AND I WOULD ASK YOUR HONOR TO  
24 CONSIDER MY REQUEST.

25 THE COURT: ALL RIGHT. MR. ROGERS, GIVEN THAT

1 CONTEMPT IS PUNISHABLE AS A CLASS C MISDEMEANOR, WHICH  
2 POTENTIALLY CARRIES A TERM OF IMPRISONMENT OF UP TO 30  
3 DAYS, I'M GOING TO ISSUE AN ORDER TO SHOW CAUSE DIRECTING  
4 MR. MONCIER TO SHOW CAUSE AT 9:00 A.M. ON MONDAY, NOVEMBER  
5 27, WHY HE SHOULD NOT BE HELD IN CONTEMPT OF THIS COURT  
6 AND FINED AND/OR IMPRISONED UP TO THE MAXIMUM TERM  
7 AUTHORIZED BY STATUTE.

8 MR. ROGERS: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. COURT WILL BE IN  
10 RECESS.

11 MARSHAL, YOU CAN RELEASE MR. MONCIER.

12 MR. MONCIER: CAN I SPEAK TO MR. ROGERS JUST ONE  
13 MOMENT?

14 THE COURT: YOU MAY.

15 MR. ROGERS: YOUR HONOR, I DO THINK MR. MONCIER  
16 INTERRUPTED WITH A VALID POINT THAT YOU'LL, I THINK YOU'LL  
17 AGREE. WILL IT BE IN ANY WAY DEEMED CONTENTIOUS CONDUCT  
18 FOR HIM TO HAVE CONTACT WITH HIS CLIENT IN THE INTERIM?

19 THE COURT: WELL, THAT'S A GOOD QUESTION, GIVEN  
20 THE FACT THAT WHAT MR. MONCIER APPEARED TO BE DOING BEFORE  
21 LUNCH WAS TRYING TO PREVENT HIS CLIENT FROM ANSWERING A  
22 QUESTION THE COURT HAD ASKED.

23 MR. ROGERS: WELL, I WOULD SAY TO YOUR HONOR  
24 THAT, THAT THERE ARE ISSUES THAT ARE INHERENT IN THIS  
25 PROCESS FOR WHAT, WHAT LITTLE I KNOW ABOUT IT THAT STRETCH

1 THE PARAMETERS OF, OF LEGAL PRECEDENT, AND I -- THE ONLY  
2 REASON THAT MR. MONCIER ASKED ME TO ASK YOU THAT IS BECAUSE  
3 HE DOES NOT WANT TO VIOLATE ANY SPOKEN OR UNSPOKEN  
4 INDICATION OR RULE OF THE COURT.

5 THE COURT: MR. MONCIER IS DISQUALIFIED FROM  
6 FURTHER REPRESENTATION OF MR. VASSAR TEMPORARILY.

7 MR. ROGERS: THERE WILL BE NO CONTACT THEN, YOUR  
8 HONOR.

9 THE COURT: MR. MONCIER KNOWS THE RULES. I WILL  
10 APPOINT OTHER COUNSEL TO REPRESENT MR. VASSAR.

11 MR. ROGERS: THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 JUST A MINUTE, MR. ROGERS.

14 MR. ROGERS: YES, YOUR HONOR.

15 THE COURT: I MAY HAVE MADE A MISTAKE ON THE  
16 DATE HERE.

17 MR. ROGERS: THAT'S A MONDAY, YOUR HONOR, IS IT  
18 NOT?

19 THE COURT: IT IS.

20 MR. ROGERS: WHAT ABOUT THE 28TH, YOUR HONOR?

21 THE COURT: 28TH, TUESDAY AT 9:00, I'M SORRY.

22 MR. ROGERS: THE ONLY REASON I KNEW THAT, YOUR  
23 HONOR, IS I HAD SEVERAL CASES ON THE 28TH BUT I SETTLED  
24 THEM TODAY, SO I KNEW THAT WAS ON A TUESDAY.

25 THE COURT: GOOD. I HOPE YOU GOT A GOOD

1 SETTLEMENT.

2 MR. ROGERS: THANK YOU, YOUR HONOR. JUSTICE WAS  
3 DONE.

4 THE COURT: ALL RIGHT. 9:00 A.M.

5 MR. MONCIER: YOUR HONOR, I AM IN A FEDERAL  
6 COURT TRIAL THAT DAY. I ASSUME I'M GOING TO HAVE TO  
7 REEVALUATE ALL OF THESE THINGS WITH WHAT'S HAPPENED HERE  
8 THIS MORNING, BUT I AM SCHEDULED TO BE IN A FEDERAL COURT  
9 TRIAL IN OWENSBORO, KENTUCKY ON THAT DAY IN THE CASE OF  
10 UNITED STATES VERSUS -- WELL, I'D RATHER NOT STATE THAT IN  
11 PUBLIC.

12 THE COURT: HOW LONG WILL IT TAKE TO TRY THAT  
13 CASE?

14 MR. MONCIER: WELL, LET ME ALSO SAY THAT I KNOW  
15 THAT MY OFFICE YESTERDAY WAS WORKING ON THAT WHILE I WAS  
16 WORKING ON THIS CASE AND THAT MAY WELL NOT GO FORWARD,  
17 ALTHOUGH I HAVEN'T TALKED TO MY OFFICE, I THINK THAT  
18 THERE'S A POSSIBILITY THAT THAT CASE MAY RESOLVE ITSELF BY,  
19 BY AN AGREEMENT; BUT I CAN'T -- I JUST WANTED TO ALERT THE  
20 COURT THAT CURRENTLY I AM SET FOR TRIAL IN THAT CASE.

21 MR. ROGERS: WOULD IT BE APPROPRIATE, YOUR  
22 HONOR, TO FALL BACK AT THE HEELS OF THE DOCKET ON MONDAY,  
23 IF, IF YOU HAVE COURT --

24 THE COURT: I DON'T HAVE A MONDAY DOCKET. THAT  
25 WAS THE PROBLEM.

1 MR. MONCIER: ONCE AGAIN, I DO THINK --

2 MR. ROGERS: WELL, WHEN CAN YOU LET HIM KNOW?

3 MR. MONCIER: PROBABLY AS SOON AS I CAN GET BACK  
4 TO MY OFFICE OR MONDAY, TALK WITH WHO HAS BEEN WORKING ON  
5 THAT CASE.

6 MR. ROGERS: WHAT ABOUT BY 12:00 NOON ON MONDAY  
7 IF I LET YOU KNOW, YOUR HONOR?

8 THE COURT: ALL RIGHT, AND MR. MONCIER CANNOT BE  
9 HERE ON TUESDAY, THE 28TH. YOU MAY HAVE TOLD ME, HOW LONG  
10 WILL THAT TRIAL TAKE?

11 MR. MONCIER: IF THE CASE WENT TO TRIAL, ONCE  
12 AGAIN, I DON'T THINK IT WILL, BUT IF IT DID GO TO TRIAL,  
13 IT'S SCHEDULED FOR THREE DAYS.

14 THE COURT: TUESDAY, WEDNESDAY AND THURSDAY.

15 MR. MONCIER: AND, ONCE AGAIN, WITH THE EVENTS  
16 OF THIS MORNING, I'M NOT TOO SURE THAT, THAT -- I HAVE TO  
17 ASSESS SOME OTHER OBLIGATIONS.

18 MR. ROGERS: WELL --

19 THE COURT: IF WE CAN'T GO FORWARD AT 9:00 A.M.  
20 ON THE 28TH, HOW ABOUT 9:00 A.M. ON FRIDAY THE 1ST?

21 MR. ROGERS: FRIDAY, DECEMBER 1ST. I KNOW I'M  
22 IN CHICAGO THAT DAY.

23 WHAT ABOUT, WHAT ABOUT ONE OF THE, THE DAYS  
24 EARLIER THAT WEEK, YOUR HONOR?

25 THE COURT: WELL, THOSE ARE THE DAYS MR. MONCIER

1 WILL BE IN TRIAL.

2 MR. ROGERS: WE DON'T HAVE COURT AT ALL ON THE  
3 27TH. WHAT ABOUT -- DO YOU HAVE COURT ON THE 25TH -- ON  
4 THE 5TH, ON MONDAY?

5 MR. MONCIER: YOUR HONOR, CAN I MAKE A TELEPHONE  
6 CALL VERY QUICKLY TO MY OFFICE, AND I CAN RESOLVE THIS  
7 PROBABLY IF I CAN GET AHOLD OF MR. WIGLER. HE IS THE  
8 ATTORNEY AND I KNOW HE'S IN THE OFFICE BECAUSE THAT'S WHO I  
9 CALLED. I CAN PROBABLY RESOLVE THIS IN THREE MINUTES.

10 THE COURT: ALL RIGHT. LET'S TAKE A SHORT  
11 RECESS THEN WHILE YOU MAKE THAT CALL.

12 (PROCEEDINGS ARE CONCLUDED AT 2:03 P.M.)

13 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM  
14 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

15 SIGNATURE OF COURT REPORTER

DATE

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