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 Rudy Davis  
 PO BOX 2088  
 Attorney  
 Forney, TX 75126  
 United States

1 THE COURT: You may.

2 MR. WEEDE: Your Honor, that's all

3 I have for this witness at this time.

4 THE COURT: Cross-examination?

5 MS. CHAVAR: Not from us.

6 MR. BOSTIC: No, Your Honor.

7 THE COURT: Ma'am, you may step  
8 down.

9 MR. WEEDE: The Government calls  
10 Patricia Daily Lewis.

11 THE COURT: Any particular  
12 exhibits with this witness?

13 MR. WEEDE: Your Honor, I  
14 apologize. I may have disclosed this with  
15 counsel a few days ago. 87, 88, 352A, 352B,  
16 353, 355, 356, 361 through 364, 645, 646, 647  
17 and 764.

18 THE COURT CLERK: Please raise  
19 your right hand.

20  
21 ...PATRICIA DAILEY LEWIS, having  
22 been duly sworn, was examined  
23 and testified as follows:

24 MR. WEEDE: If I may, Your

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Hi Rudy & Erin -  
I will be sending  
smaller, more frequent  
packages due to the  
cheaper envelopes.  
They are not going  
to be replaced. The  
copier is down right  
now as well.  
More importantly, say  
a prayer that our  
visitation will be  
approved. God Bless you  
both for all that you are  
& all that you do!  
Peace, Blessings & Love Amy

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11

Honor?

THE COURT: You may.

DIRECT EXAMINATION.

BY MR. WEEDE:

Q. Good morning, Ms. Dailey Lewis.

A. Good morning.

Q. Can you introduce yourself to the Members of the Jury?

A. My name is Patricia Dailey Lewis.

Q. Where do you work?

A. I'm a deputy attorney general with the Delaware Department of Justice.

Q. Just so the jury is clear, that's not the United States Department of Justice?

A. No, it's not the United States Department of Justice. That's the State Department of justice. I'm a professor at Widener Law School.

Q. We will get to that in a second. What do you do at the Delaware State Department of Justice. What does that mean?

A. I'm the director of the family division which is the division that handles all cases that involving child support, child

1 protection, child abuse, domestic violence,  
2 basically anything involving children and  
3 families.

4 Q. How long have you been in that  
5 role?

6 A. I've been the director of the  
7 division just about eight years.

8 Q. And how long have you been at the  
9 Department of justice overall?

10 A. Well, it started in December of  
11 1985. So the total time at the Department of  
12 justice is about 26 years.

13 Q. And you mentioned you are also a  
14 professor at Widener Law School?

15 A. Yes.

16 Q. What do you teach?

17 A. Family law.

18 Q. Let me start with this, are you  
19 familiar with the Defendant David Matusiewicz,  
20 correct?

21 A. I am.

22 Q. Do you see him in this courtroom  
23 today?

24 A. I do.

299  
.tbl  
16

Q. Can you point him out, please?

A. It's a gentleman in the middle of the table directly away from Mr. McCall.

Q. You're aware of course of this shooting that occurred on February 11, 2013 at the New Castle County courthouse?

A. Yes, I am.

Q. After that shooting, you were asked to gather a number of different documents from the Family Court files that pertain to Mr. Matusiewicz as well as Ms. Belford; is that right?

A. Yes, that's correct.

Q. We will be going over some of those documents here today. And you provided the Government with certified copies, correct?

A. Yes.

Q. What does that mean?

A. It's a copy that the court certifies have come from the court's files so we know it's something that has been filed and accepted by the court for filing.

Q. When you say accepted by filing, it simply means that it was it doesn't mean

1 that they necessarily did act on it, but they  
2 accepted and received it at the court?

3 A. Yes.

4 Q. So for Government Exhibit 352,  
5 what are we looking at here?

6 A. This is a petition filed by Thomas  
7 Matusiewicz for grandparent visitation.

8 Q. And what's grandparent visitation?

9 A. Delaware statutes allow for third  
10 parties including grandparents to have  
11 visitation with their grandchildren at certain  
12 circumstances apart from an intact family.

13 Q. If you look at the received stamp  
14 on the righthand side, I believe it says  
15 received

16 A. February 23, 2010.

17 Q. So you file this petition when you  
18 have an intact family, correct?

19 A. No. This was not filed during an  
20 intact family. Sometimes they're filed when  
21 parents can't get along with their parents and  
22 their parents want to file. This was filed when  
23 the family was not intact.

24 Q. Okay. I'm going to show you

they

that's been premarked as Government's Exhibit

52B. Do you recognize this document?

A. That's a petition filed by Amy Gonzalez for a third-party visitation.

Q. And that shows it's received on?

A. March 29, 2010.

Q. What is this document?

A. Aunt and uncles, and really any person who can prove that they have a positive and substantial relationship with the child under certain circumstances may be able to file a petition for third party visitation. That's why it's called thirty party.

Q. It's called third party because of why?

A. Generally, you will find aunts and uncles and siblings of children who want visitation and that's the reason it's called third party because. Sometimes we have daycare providers and longtime babysitters who file these petitions when they are able to show a real positive and substantial relationship with the child.

Q. So those are both in 2010,

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1 correct?

2 A. Correct.

3 Q. Let me show you Government's  
4 Exhibit 353. Now read off the date on that

5 A. March 10, 2011.

6 Q. And you can read starting from  
7 Dear Mr. And Mrs. Matusiewicz.

8 A. Dear Mr. And Mrs. Matusiewicz, I'm  
9 writing on behalf of the Judges and  
10 Commissioners of the Family Court of the state  
11 of Delaware in response to recent correspondence  
12 from you to each of their offices. Please be  
13 advised that the judges and commissioners cannot  
14 respond to ex parte communications. You have a  
15 case pending in this court. You will be  
16 permitted to provide relevant information  
17 through testimony and other properly admitted  
18 evidence.

19 If you have received a decision  
20 from the court that you believe is contrary to  
21 the evidence or the law, you must avail yourself  
22 of the legal appeals process in a timely manner.  
23 If you believe that a child is being harmed, you  
24 must contact the proper authorities. Please



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with an attorney if you have legal  
questions. You will not receive a response from  
the court with respect to any future ex parte or  
appropriate communications. And this is  
signed very truly yours LEEANNE SUMMA, Esquire,  
the director of legal services for the court.

I'm  
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not  
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Q. This pertains to one of the  
petitions we just saw; is that correct?

A. Can you slide it up so I can see  
the numbers on the top? Yes, it does.

Q. Can you explain to the Members of  
the Jury what the term ex parte means?

A. An ex parte communication is a  
communication that's filed directly with a judge  
or hearing officer outside of the knowledge and  
ability to respond to the other party. So the  
judge only sees it, something that one party  
sends as opposed to all the parties being able  
to see it and respond to it.

Q. So Exhibit 355, now what are we  
looking at here if you can pull that up?

A. This is the courts order where the  
court is basically saying tell us why we should  
not dismiss your petition.

1 Q. Okay. So this is matter of  
2 Matusiewicz and Christine Belford and David  
3 Matusiewicz?

4 A. Right. And that if you look at  
5 the numbers and the CPI numbers will correspond  
6 back to that petition that was in earlier  
7 exhibit.

8 Q. Okay. Now, if you could,  
9 Mr. Gordon, if you could go down to the part  
10 where it starts with B. And all the way down to  
11 D.

12 Now, ma'am, if you could please  
13 read in starting at B all the way down through  
14 D, please?

15 A. Because the respondents were  
16 involved in ongoing proceedings on a petition to  
17 terminate the parental rights of David Thomas  
18 Matusiewicz in these three children, the hearing  
19 on this petition was stayed. C, on August 18,  
20 2011, the court entered a decision and order  
21 terminating the parental rights of David Thomas  
22 Matusiewicz in these three children. 13  
23 Delaware Code Section 2410(d) states,  
24 notwithstanding subsections A through C of this

section, if a parent's rights have been  
terminated in the child with whom a parent seeks  
third-party visitation, such person and their  
relatives are prohibited from filing for their  
parental visitation unless, one, more than three  
years have passed since the termination of  
parental rights order was entered and the child  
has not been adopted; or the adoptive parents  
are agreeable and their notarized consent is  
attached to the petition; or three, the adoptive  
parents have previously entered into a written  
notarized agreement or court approved agreement  
for continued visitation and a copy of the  
agreement is attached to the petition.

Q. So under subsection one, if we go  
to I guess three years after August 18th, 2011,  
that's August 18th, 2014; correct?

A. Correct.

Q. And otherwise, is it fair to say  
there has to be some agreement from the parent  
who still has his or her parental rights to get  
around that three-year limitation? Before I ask  
you that question, let me he preface this.

Ma'am, do you have any background with regard to

1 this section of the Delaware Code?

2 A. I do. Actually I worked on the  
3 drafting of this section with the Office of  
4 Child Advocate.

5 Q. So you're pausing. Why are you  
6 pausing?

7 A. I'm pausing because this section  
8 of the code was written primarily for a  
9 situation where the Division of Family Services  
10 terminates a parental rights and then the state  
11 holds parental rights. The state will hold  
12 parental rights of a child before a child is  
13 adopted. The situation here was much different.  
14 This is a situation where one parent sought to  
15 terminate the rights and it was granted of  
16 another parent, leaving only one parent holding  
17 parental rights.

18 So when you see where it says  
19 subsection one, more than three years have  
20 passed since the termination of parental rights  
21 order was entered, and the child has not been  
22 adopted, what that really pertains to is when  
23 the child has no legal parent except the state.  
24 In this circumstance there was a legal parent,

biological mother held the rights.

Q. All right. But as far as you're  
e, did the biological mother consent to  
itation by Thomas Matusiewicz or any other  
relatives of the Matusiewicz family?

A. She absolutely did not.

Q. 356, please. Just to be clear, if  
ou go, you're on the second page there of 355  
hat shows it was sent on what date?

A. It was sent on 10/10/11.

Q. So 356, please. And what are we  
ooking at here?

A. This is where the court actually  
dismissed the petition for visitation because  
here was no response of pleading to the earlier  
0/10/11 order, so the court usually gives about  
hirty days for a party to respond to that, and  
hen they don't respond, the court has the  
uthority to dismiss the petition. And that's  
hat Judge Crowell did.

Q. And that was mailed on what date?

A. The 16th, 11/16/11. Signed and  
mailed on the same day.

Q. All right. Could I have Exhibit

Then why did  
Christine allow  
Tom to visit with  
Laura at Dr.  
Bocanegra's office?  
And if she really  
truly feared any of  
us why would she  
have allowed Tom to  
visit with her  
at all?

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1 361, please.

2 Okay. So you're aware that  
3 Ms. Belford was killed on February 11th, 2013?

4 A. I am.

5 Q. What are we looking at here?

6 A. This is a petition for custody  
7 that was filed by Amy Gonzalez against the  
8 Department of Services For Children, Youth and  
9 Their Families. The children's placement had  
10 been vested with the department immediately  
11 after the killing.

12 Q. That's why you have the role here?

13 A. Yes, I am the attorney who was  
14 responsible for the case.

15 Q. And what's the date on this  
16 petition?

17 A. The 13th of February.

18 Q. And if we could turn to page five  
19 of this document, please. And what's this?

20 A. That's the filing date, the charge  
21 charges a filing fee for every petition, and  
22 this is the check that accompanied the petition  
23 when it was sent to the Family Court.

24 Q. What's the date on that check?

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illegal  
about not  
wanting  
my nieces  
in the  
Foster  
care  
system.

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and

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re?

06

4 A. That's dated February 12th, 2013.  
5  
6 Q. And it's fair to say that there is  
7 another petition for custody filed by Amy  
8 Gonzalez, this is again, Government Exhibit 362.  
9 And this is dated what date?  
10 A. The 15th of February 2013.  
11 Q. And this is simply another  
12 petition for custody; correct?  
13 A. Correct.  
14 Q. I'm going to show you Government's  
15 Exhibit 388. What are we looking at here?  
16 A. This is the Court's order  
17 dismissing the petition for custody that was  
18 filed on February 15, and do you want me to read  
19 the order?  
20 Q. Yes, please?  
21 A. The above captioned petition for  
22 custody was filed on February 15th 2013.  
23 Petitioner is not a parent and, therefore, lacks  
24 standing to file a custody petition. Pursuant  
to 13 Delaware Code Section 721, a child custody  
proceeding is commenced by a parent filing a  
petition seeking custody of a child. Therefore,

1 the petition for custody is dismissed. Filing  
2 fees are not refundable. And that's entered  
3 2/26/13 by the former Chief Judge Chandlee  
4 Johnson Kuhn.

5 Q. 363, please, what are we looking  
6 at here?

7 A. This is a petition for permanent  
8 guardianship of a child.

9 Q. And if we could go to -- just  
10 before you talk about this, could we go to page  
11 four, please, Special Agent Gordon.

12 Can you read in the date that this  
13 was signed?

14 A. Signed March 16th, of 2012.

15 Q. So what are we looking at here,  
16 what's petition for permanent guardianship, how  
17 does that differ have a petition for custody?  
18 Highlight the top. This is from whom?

19 A. This is from Amy Gonzalez against  
20 the Department of Services For Children, Youth  
21 and Their Families.

22 Q. How is a petition for permanent  
23 guardianship of a minor different from what we  
24 just saw?



1 A. Only parents file a petition for  
2 custody.

3 Q. So for permanent guardianship who  
4 can file that?

5 A. It's very limited. It's limited  
6 to biological relatives, and foster parents in  
7 some narrow circumstances can file a petition  
8 for permanent guardianship.

9 Q. Can I have Government's Exhibit  
10 87. The petition we just saw was ultimately  
11 dismissed?

12 A. Right, I brought a motion to  
13 dismiss that petition.

14 Q. Are what are we looking at here in  
15 Government Exhibit 87?

16 A. This is the Court's order granting  
17 my motion.

18 Q. All right. And this is, we look  
19 at, this is dated May 25th, 2013?

20 A. Correct.

21 Q. And if you could summarize what  
22 this order states?

23 A. The petitioner filed a petition  
24 for permanent guardianship on May 11th and she

1 actually filed that petition for permanent  
2 guardianship of three children.

3  
4 When there is a termination of  
5 parental rights which there was in this case,  
6 that eliminates the rights of any person whose  
7 rights flowed through the parents. So you're  
8 the father, your rights are terminated, the  
9 aunt's rights would be terminated, the  
10 grandparents' rights would be terminated. They  
11 have no standing to file a petition for  
12 permanent guardianship because they are not  
13 relatives under the law anymore.

14 And that's basically what the  
15 court says here. The court says it was intended  
16 to create a relationship between a child and a  
17 caretaker which is permanent and self  
18 sustaining, creates a permanent family for the  
19 child without complete severance of a biological  
20 bond. Only a blood relative or foster parent  
21 may serve as permanent guardians of the child.  
22 And the petitioner here, Ms. Gonzalez, fulfilled  
23 neither criteria.

24 Q. Because David's parental rights  
had been terminated?

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A. Correct.

Q. That explains that here in this paragraph; correct?

A. The effect of termination of parental rights order shall be that all rights, duties, privileges and obligations recognized which law between the person or persons whose parental rights are terminated and the child shall forever thereafter cease to exist. Do you want me to go on?

Q. Sure.

A. If the parent/child relationship is severed by extension, the relationship with the relatives of that parent is also severed.

Q. Now that was the basis for the dismissal; correct?

A. Correct.

Q. I show you Government's Exhibit 364. If you go to page eight, please. And what are we looking at here?

A. That's a petition for guardianship of a minor child.

Q. And what's that?

A. Guardianship is a petition that

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can be filed by a person, not a parent, who seeks to have care, custody and control of a minor child. It's not a permanent guardianship it's a guardianship and guardianships are temporary by nature.

Q. And if we could go to page ten, please. And what date was that filed?

A. July 10th, 2013.

Q. If you could go into the paragraph directly above the signatures, where it says I am filing this petition because?

A. I am filing this petition because the children, the child is/are dependent and/or neglected based on the following reasons. Father's parental rights were terminated. Mother is deceased. Both parents made me the childrens' Godmother to care for them should anything happen to either parent.

Q. Now, in connection with your role in this case, were you forwarded a series of cards that were sent by Amy Gonzalez?

A. Yes, I was.

Q. Could we please have Government's Exhibit 647, please. This has been redacted.

is this one of those cards?

A. Yes, it is.

Q. What's the date on the top there?

A. It was -- looks like it was mailed from McAllen, Texas on 20 May 2013.

Q. Can we scroll through, please. The back of it.

A. That's the stamp that my assistant would put on it. We received it May 31st, 2013.

Q. Okay. And if we go to the handwritten portion, please. So this is addressed to?

A. The girls.

Q. The girls. And if you could read that in if you could read it?

A. I just want you to know that I think of you every day and pray for you all. I promised your mommy and daddy that if anything were to happen to them that I would care for you and take care of all of your needs. That is what a Godmother does. You are like something to me. You are all my girls. Quotes around them. I pray for us to be a family again because all my girls deserve that. We love and

They made my oath before God, as the girls Godmother, which I take very seriously, seem like a lie to obtain custody of the girls. (like I was trying to trick them or something)

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1 miss you, and then some other names and Amy  
2 a happy face.

3 Q. Now, from your awareness of the  
4 prior litigation, were you aware whether or not  
5 Ms. Belford was contesting Amy Gonzalez's  
6 ability to visit her children?

7 A. Yes.

8 MR. IBRAHIM: Objection. The  
9 basis for this, we have been through other  
10 proper witnesses regarding the context of how  
11 that information to the extent it was admitted  
12 was admitted, this witness can have information  
13 from anything, including newspaper.

14 THE COURT: Lay the foundation,  
15 Mr. Weede, because I understood the witness to  
16 say she had some involvement with the matter, so  
17 see if you can lay a foundation.

18 MR. WEEDE: Certainly.

19 BY MR. WEEDE:

20 Q. Did you review again the Family  
21 Court filings in connection with the petition  
22 filed by Amy Gonzalez?

23 A. I did, I reviewed every single  
24 filing.

5 Q. Is what I'm about to ask you based  
6 on your review of those filings?

7 A. And based on the review of my  
8 filings and my knowledge of Ms. Belford, I knew  
9 Ms. Belford, I supervised the prior kidnapping  
10 case.

11 MR. IBRAHIM: That's the basis of  
12 my objection, it's already in evidence, this  
13 witness is merely restating their perception of  
14 what they have seen in the file.

15 THE COURT: Your objection is  
16 cumulative?

17 MR. IBRAHIM: Yes.

18 THE COURT: I'll overrule it.

19 BY MR. WEEDE:

20 Q. Were you aware whether or not  
21 Ms. Belford opposed Amy Gonzalez having  
22 visitation with her three children?

23 A. Yes, I am aware, and she opposed  
24 it.

Q. That's all we need. Okay. So, I  
would like to turn your attention to government  
-- fair to say there were other cards like this  
that were sent and brought to your attention?

1 A. Yes, there were.

2 Q. And those are Exhibits 646 and  
3 645. You reviewed those prior to today;  
4 correct?

5 A. I did.

6 Q. I would now like to show you  
7 Government Exhibit 754. Can I have the elmo  
8 please. What are we looking at here?

9 A. This is a letter dated September  
10 17, 2014 that was sent to the Office of the  
11 Child Advocate and it was forwarded to me.

12 Q. And this was sent by?

13 A. David Matusiewicz.

14 Q. And if we could ask you to read in  
15 that paragraph please?

16 A. I would like to enlist the aid of  
17 the Office of the Child Advocate to regain my  
18 rights to contact, visit, and parent my  
19 biological daughters, Laura, Leigh and Karen  
20 Matusiewicz. I am my children's only surviving  
21 parent and have not been permitted to speak with  
22 them since March of 2009. In that their  
23 biological mother is now deceased, their living  
24 circumstances have changed. I would like to



request your assistance to re-establish my  
constitutionally protected right to parent my  
children. Any assistance you may offer will be  
greatly appreciated. Thank you in advance to  
your attention to this request.

5  
6 Q. And that was signed by David  
7 Matusiewicz; correct?

8 A. Yes.

9 Q. Now, in connection with your  
10 review of the Family Court file, you're aware  
11 that Christine Belford was at the New Castle  
12 County Courthouse on February 11th, 2013 with  
13 regard to back payment for child support;  
14 correct?

15 A. Yes, Mr. Matusiewicz had filed a  
16 petition to decrease his payment on what's  
17 called arrears, it's when you owe child support  
18 and you don't pay it, you build up something  
19 called arrearages, after your parental rights  
20 are terminated, your current support goes away,  
21 but you still have to pay back what you owed  
22 when your parental rights were intact.

23 Q. Ma'am, we have heard some  
24 testimony on that already. I just have one very

That means  
no motion  
to participate  
by phone  
by Christine  
either who  
was  
purportedly  
afraid of  
David.

1 basic question for you. In your review of the  
Family Court file, was there ever a motion to  
participate in that proceeding on February 11th,  
2013 by telephone?

A. I did not see any such motion.

MR. WEEDE: May I have a moment,  
Your Honor.

THE COURT: You may.

MR. WEEDE: Your Honor, I believe  
I forgot an exhibit, if I could have Government  
Exhibit 157, if counsel want to check that  
before I -- it's already in evidence. If I  
could pull up 157, please.

BY MR. WEEDE:

Q. And just to be clear, I don't  
think we covered this, but Amy's petition for  
visitation was also dismissed; correct?

A. Right. It was dismissed on the  
same basis, correct.

Q. And on the same date, fair to say?

A. Correct.

MR. WEEDE: Your Honor, that's all  
I have for this witness.

THE COURT: Whoever would like to

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start, take a moment. I realize you're gathering your papers and your thoughts.

MR. IBRAHIM: Your Honor, there were quite a few legal exhibits referred to and I have some cross-examination that's going to go through a number of those documents. I don't know if you wanted me to start now or if you wanted to break.

THE COURT: Ms. Strickland, do you have any report on the jury's lunch? I just wondered if they E-mailed you.

THE CLERK: No.

(Discussion off the record.)

THE CLERK: Yes, lunch is here.

THE COURT: All right. The Court is prepared to rule. Stand in recess until 1:30.

(Jury leaving the courtroom at 12:25 p.m.)

THE COURT: All right. Counsel be seated for a moment if you would, please.

With respect to the newly identified witnesses, Michael Tacconelli and Alicia Gunter, I have over the midmorning break

1 reviewed the previous disclosures of the  
2 government to the defense. As to Ms. Gunter,  
3 I'm going to sustain the objection to her  
4 testimony. You wish to be heard on that?

5 MR. WEEDE: No, Your Honor. The  
6 witness is still in the box.

7 THE COURT: Good point. Why do I  
8 always forget the witness? You may step down.  
9 Thank you.

10 THE WITNESS: Thank you, Your  
11 Honor.

12 THE COURT: Usually Mr. Ibrahim  
13 does that.

14 MR. IBRAHIM: I just worry about  
15 the bathroom breaks.

16 THE COURT: Thank you, Mr. Weede.

17 MR. WEEDE: Yes, Your Honor.

18 THE COURT: As to Ms. Gunter, I'm  
19 going to sustain the defense objection. As to  
20 Mr. Tacconelli, I'm going to deny it,  
21 principally on the basis that the information  
22 that the witness has was previously disclosed  
23 sufficiently in advance of trial, and with  
24 respect to the substance of the testimony, a

that government seeks to elicit I find it is covered in the statement of the witness, Bates Stamp 1196.

Having said that, however, from the e-mail of the government sent this past Sunday, I understand that Mr. Tacconelli would also testify to Ms. Gunter pointing out Mr. Matusiewicz and he then began to take notes. As part of my ruling, Mr. Tacconelli will not testify about Ms. Gunter pointing out Mr. Matusiewicz and any testimony that he gives has to be limited to his own observation and a fair scope of the statement, his witness statement as witness number 43.

All right. Any ambiguity as to the ruling?

MR. McCALL: No, Your Honor.

MR. BOSTIC: Your Honor, if I may, the Court I assume from the ruling is not taking into consideration -- when I asked the Court to take into consideration the fact that Mr. Tacconelli did not know will Mr. Matusiewicz beforehand, has no background information as to how he would act or react under an intense

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1 situation, and as such, his statements that it  
2 was inconsistent with everyone else is  
3 prejudicial because there is no foundation for  
4 which he can say this is how Mr. Matusiewicz  
5 would react under pressure.

Shouldn't this have been challenged due to the voir dire process in evaluating jurors to see if they know anyone involved in the case including witnesses?

THE COURT: And that would be the theme of your cross-examination.

MR. BOSTIC: One other point, Your Honor. There was some notes that was supposedly appeared by Mr. Tacconelli, and I don't know if they were turned over, I think the statement or the -- some statements reference that they're not available at this point in time.

I would suggest the Court also puts defense at a disadvantage because the only contemporaneous documentation of these alleged observations are now lost to the defense, and had the government back in 2013 or '14 when they first knew this individual preserved those notes I would have a basis from which to properly impeach or cross-examine this witness as to the observations back in 2013.

The govt took issue because the polygraph experts report for the defense was not disclosed as of the 3/11/15 deadline, but it's okay if the govt decides at the last minute to call a witness they knew about since 2013?

23 THE COURT: As I read the e-mail  
24 from this past Sunday, Mr. Tacconelli began to

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re notes. Is there government would he  
purported to testify that he had gotten up to a  
note about Mr. Matusiewicz.

MR. McCALL: I think what he would  
say is he took notes including Mr. Matusiewicz  
and then he can't find them, they're gone. So  
DSP investigators interviewed him afterwards,  
they did not collect the notes, and when we  
spoke to him, we asked him if he could find the  
notes, he can't find the notes.



THE COURT: I see another rich  
theme for cross-examination by the defense and  
I'll certainly let Mr. Bostic or whoever else  
wishes bring out the fact that there were such  
notes, bring out the date of the interview and  
bring out the disconnect that such notes were  
not turned over and preserved, that I think goes  
to cross-examination rather than to  
admissibility.



MR. BOSTIC: Your Honor, if I may,  
me bringing up the fact that this witness was so  
concerned that he took notes that I hope don't  
have at this point in time, only piles on  
against my client. It only adds to the notice

1 someone that there was nothing so peculiar  
2 this behavior that this individual began to  
3 notes about him. I'm between a rock and a hard  
4 place. I don't have the notes to cross-examine  
5 the witness as to what he put in there and to  
6 raise it now only adds more prejudice against  
7 client.

8 THE COURT: I think, Mr. Bostic,  
9 you can do it in a way that doesn't invite that  
10 this is an unusual event, sir, you don't get  
11 many instances about this, sir, it's something  
12 that a court officer would take notes, and if  
13 they were interviewed, I just think that in and  
14 of itself the absence of the notes is a fertile  
15 field to cross-examine, but, particularly given  
16 what seems to me to be an interview close in  
17 time to the events, but again, I think that goes  
18 to the issue of credibility of the witness  
19 rather than the admissibility of the testimony.

20 MR. BOSTIC: One last point on  
21 this, Your Honor, there were other courtrooms  
22 with other individuals in them, with other  
23 bailiffs who may have been present and I'm  
24 asking the Court to give me the opportunity to



1 with some form of hiatus to obtain from the  
2 government the list of the individuals that were  
3 in those courtrooms and the opportunity to talk  
4 to those bailiffs, because again, I really do  
5 feel as if my hands and Mr. Matusiewicz's  
6 defense are tied behind my back because of  
7 everything that I have said before. I think due  
8 process should require me to have some  
9 opportunity to see if there is any evidence that  
10 in some other courtroom somebody hearing what  
11 may have been the gunshots reacted or responded  
12 in the way that is consistent with how  
13 Mr. Matusiewicz allegedly responded.

14 THE COURT: I'm not persuaded  
15 Mr. Bostic that that would give you really,  
16 really probative evidence. I think you can  
17 readily establish that in answer of any prior  
18 familiarity of Mr. Matusiewicz, that the ability  
19 of anyone to draw any inference is limited and I  
20 think you can draw themes about the credibility  
21 of the witness as well, if the government still  
22 chooses to call them in view of the all the  
23 circumstances. My ruling stands.

24 Anything further we can accomplish

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before the lunch break?

MR. McCALL: Judge, we are getting close to finishing. One of the last issues on the table I believe are the clips that we're going to play from therapy sessions of Christine Belford. I know the defense counsel has some objections. We also wanted to raise an issue with them at the court. I don't know if you want to take those up now or before we start.

THE COURT: It's your preference now whether you rather do it now or we ought to do it after lunch. Maybe we should do it later so the defendants can be on their way for lunch. It's your call.

MR. IBRAHIM: We haven't listened to them yet, Judge.

THE COURT: Let's reconvene at ten minutes to -- what time did we say we're coming back, so twenty after 1:00, let's reconvene at twenty after 1:00.

We're adjourned.

(A lunch recess was taken.)

THE COURT: Let's go on the record for a moment. Mr. McCall has given me the

What does my lawyer mean by "we haven't listened to them yet?" Does that mean at all, individually or collectively as a group? They are being played today.

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lineup of witnesses for this afternoon, one of whom is Dawn Edgar who I believe is Ms. Belford's therapist. There are notes from the therapy and they are recordings which have been transcribed and there is an intent to play some of the recordings during the testimony of Ms. Edgar. And do I have the permission of defense counsel to begin discussing that issue without defendants being here?

MS. CHAVAR: Permission from counsel for David Matusiewicz.

MR. EDELIN: Yes, Your Honor, on behalf of Lenore Matusiewicz.

MR. IBRAHIM: Yes, sir, on behalf of Amy Gonzalez.

THE COURT: Who wants to take the lead from the defense in terms of the -- I believe that Ms. Bird may have the transcript or do I have it.

MS. CHAVAR: Your Honor, as a whole, these excerpts are cumulative. There is nothing offered in any of these that has not been offered before. The only difference is it's Christine Belford's voice in the courtroom,

1 which is highly prejudicial. It's so aimed at  
2 inflaming the sympathy of the jurors.

3 In addition, it still creates the  
4 problem that we cannot cross-examine her. The  
5 are statements made in therapy. People attend  
6 therapy sessions and they bare all, they say a  
7 lot of things in those sessions that they come  
8 back a week later and say well, I didn't quite  
9 mean it like that. What are we supposed to do?  
10 Are we supposed to pull clips --

11 THE COURT: One of the unique  
12 aspects of this trial is the elements of the  
13 defense causing distress on the part of the  
14 reasonable person and the burden the government  
15 has with respect to that which is opened the  
16 record to so much testimony.

17 MS. CHAVAR: I understand that,  
18 but we have heard from Dr. Richman about  
19 Cristine Belford and the medication she was on  
20 to treat the depression. We have seen text  
21 messages that she sent to people, I'm afraid,  
22 they're around the corner, we have seen a  
23 multitude of this evidence. I think, you know,  
24 it's very fair to say there is evidence on

1 record that she felt stress. There is evidence  
2 on the record that she felt fear. This is  
3 cumulative, nothing more than that, and  
4 specifically if I may, just --

5 THE COURT: By all means.

6 MS. CHAVAR: Just turn the Court's  
7 attention to the clip which is really, really  
8 troublesome. 709-T, and I don't know if Your  
9 Honor has had the opportunity to read this, but  
10 this is -- this is Christine Belford telling her  
11 therapist that Cindy Bender called her and told  
12 her, so there is hearsay.

13 THE COURT: Independently I have  
14 concern about 709-T. Are there other particular  
15 ones?

16 MS. CHAVAR: Again, there is  
17 another one in there about Katy and poisoning  
18 and the Godiva chocolates, we have heard that,  
19 there is nothing new in that, it's duplicative,  
20 it's cumulative, it's really just a way to put  
21 Christine Belford's voice in the courtroom.

22 THE COURT: Let me interrupt for a  
23 moment and just explain to the defendants there  
24 is a proposal by the government later today to

1 call Ms. Edgar who was a therapist for Chris  
2 Belford and as part of that introduce audio  
3 recordings of therapy sessions. Your counsel  
4 authorized me to begin the discussion of that  
5 point while you were being brought up, we didn't  
6 want any jurors wandering the halls. The Court  
7 has made no rulings, we only begun to hearing  
8 arguments from the defense. I just wanted to  
9 bring you up-to-date on what we have done and  
10 why.

11 Let me hear from the government  
12 next. We'll go back and forth.

13 MR. McCALL: Judge, I would first  
14 say again, we've submitted probably fifty to  
15 sixty pages of briefing on this specific issue.  
16 The victim's ability to testify, not testify,  
17 but for us to admit evidence of her fear,  
18 specifically in this context, fear that was  
19 expressed by the victim herself to her  
20 therapist, it fits under the state of mind.

21 THE COURT: We're talking two  
22 separate issues, one is cumulative and the other  
23 is potential prejudicial impact. Why don't we  
24 focus there. I think one of the strengths of

the defense argument is the jury has already  
heard a lot.

MR. McCALL: They haven't heard  
from Christine Belford.

THE COURT: Talk about that.

MR. McCALL: Let's take the prime  
example defense counsel raised, Dr. Richman.  
Dr. Richman was her therapist until May 2012.

THE COURT: What's your position  
as to why playing the audio recording is  
important?

MR. McCALL: This is in virtually  
every stalking case that we have cited to the  
Court, the victim has come in and testified as  
to the victim's fear. She's dead in this case.  
She's gone unfortunately. And so we don't have  
that ability. This is the only way that the  
jury can hear from Christine Belford how these  
acts that the defendants have engaged in  
impacted her. That's the critical part, Judge.

With respect to Cindy Bender, for  
example, so Cindy Bender and David Matusiewicz  
are doing all this stuff surreptitiously. I  
have to prove beyond that those surreptitiously

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1 acts impacted and caused fear and emotional  
2 stress in Christine Belford. The fact that  
3 Cindy Bender calls and tells Christine Belford  
4 what was going on with her ex-husband and  
5 confirms all the fears and concerns and worries  
6 that Christine Belford had as it related to  
7 David Matusiewicz, that is central to giving the  
8 government the ability to prove its case.

9 THE COURT: We have already heard  
10 by way of e-mail I think that Ms. Belford had  
11 doubts about Cindy Bender, that she was  
12 concerned as to what whether or not she could  
13 trust her. So there is two elements to this,  
14 one is the cumulative nature, the issue that the  
15 decedent is not here does of course cut both  
16 ways, you're entirely correct. And then in  
17 other instances the jury did hear from the  
18 victim of the crime that is charged. Here,  
19 however, they can hear from her, but she can't  
20 cross-examine, so that's the counter, and so how  
21 do I grapple with that?

22 MR. McCALL: I think that -- I  
23 think that you have to, I think you have to look  
24 at the purpose for which we're offering this



specific evidence.

THE COURT: Okay. The e-mails may have related to just the fact that she was notified about the defendants acts, but this testimony, or this evidence goes to how she felt in her most intimate moments talking about them with her therapist. What Cindy Bender, what Lenore Matusiewicz was doing sending the letter to Christine Belford, how that impacted her, how that caused her substantial emotional distress, fear, intimidated her, all those have relevance, the government can put in evidence that meets each one of those. I don't understand the defense to be saying the therapist can't testify, I understand them to be saying the audio transmission is what they particularly object to because of its emotional impact. If I understand their position correctly. And I see Ms. Chavar nodding, then do you not get the content that you would want from the testimony of the therapist, why is that wrong?

MR. McCALL: It is so probative, so absolutely probative to hear from Christine Belford who is not with us anymore. It's

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1 completely sanitizes it to have the therapist  
2 summarize it when we have an audio recording  
3 the woman talking about how she felt based on  
4 what the acts of the defense.

5 THE COURT: Let me pick on the  
6 defense for a minute. All right.

7 MR. McCALL: Yes, sir.

8 THE COURT: Ms. Chavar.

9 MS. CHAVAR: If I could just say,  
10 the fact that Mr. McCall uses the word, it's  
11 completely sanitizes is exactly to why he wants  
12 to put it up there. He wants it for its  
13 emotional impact.

14 THE COURT: If I may, don't we as  
15 lawyers understand that there is a difference  
16 between a transcript and the difference between  
17 testimony?

18 MS. CHAVAR: Yes.

19 THE COURT: Isn't that why they  
20 say at the appellate court level we always defer  
21 to the finder of fact's observation based upon  
22 what they see and hear, we want to see the  
23 decedent. Isn't there some probative value to  
24 the hearing how she says things in the emotion

of her voice and the tenor in her voice that is  
not captured by the transcript?

MS. CHAVAR: No, because she has a  
therapist who will say I was there, I heard it.  
This is a person who is trained to talk about  
somebody's emotions. It's somebody who can  
adequately tell the Court what was being  
transpired in that therapy session and the  
feelings that they were treating that person  
for, so in this case no.

And I want to address specifically  
Mr. McCall's proffer as to why he needs the  
session with respect to Cindy Bender. That's  
not really what happened in that. It's not  
really about how much it upset her, she is  
telling the therapist how she had to talk Cindy  
Bender through taking power back from David.  
And it's all premised on the lie because Cindy  
Bender told Christine Belford, and this is what  
she's telling the therapist, this is what the  
jury is going to hear, that Cindy Bender said he  
was threatening to give dirty pictures of me,  
and she was on a stand a week ago and said three  
times during her testimony he never threatened

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me.

THE COURT: Let's put 709-T to the side because part of the concern I have with 709-T is I do think it gets into gratuitously other bad acts of which we had heard a great deal in the case. That doesn't mean if I'm leaning toward excluding that that I'm leaning toward ultimately excluding all of the audio transcripts, Ms. Chavar. I think there is two separate issues here, one is a content and I have a content problem with 709-T, the other is overall impact.

So government, let's assume that I'm leaning toward excluding 709-T, right, and you can attempt to dissuade me, but I think your time would be better spent talking about some of the other clips.

MR. McCALL: May I ask, what is the Court's problem with 709-T because part of it is what is conveyed to Christine Belford, so we're not offering, right, the comments by Cindy Bender for their truth, that's certainly not the issue, but it's certainly relevant for the jury to hear what Christine Belford was told by Cindy

I guess I don't understand the concept of not offering for their truth - why bother then?

1 Bender in Christine Belford's word, not Cindy  
2 Bender's words.

3 THE COURT: That's not doing it  
4 for me. Let's assume that I'm not inclined to  
5 allow you to play 709-T, I would like you to  
6 focus on some of the other clips.

7 MR. McCALL: So, Judge, what I  
8 would do is, I mean, I would just turn the  
9 Court's attention right back to Old Chief, and I  
10 would just -- I would note that the language in  
11 Old Chief is exactly I think what's at stake  
12 here, and what it says is the government must be  
13 permitted to tell its story in a manner that  
14 will meet the jurors' expectations.

15 THE COURT: I'm not sure we're  
16 communicating right now. I'm headed toward the  
17 defense so that you know, too, allowing a  
18 limited portion of the audio transcripts to be  
19 played to the jury. All right?

20 MR. McCALL: Okay.

21 THE COURT: And I'm ruling against  
22 the defense on that point principally because of  
23 my firm conviction that there is added  
24 evidentiary value to hearing from the voice of

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defense?

1 Christine Belford what she's experienced. And  
2 at the same time, though, government, I think  
3 it's vitally important that we balance the  
4 inability to cross-examine and given the amount  
5 of other prior bad acts that have been part of  
6 the record and properly and necessarily so, that  
7 I think dwelling on them in the voice of the  
8 decedent is particularly problematic, it is for  
9 me. On that basis I'm prepared to rule that  
10 709-T is not going to be something that's played  
11 to the jury, that's why I'm now asking the  
12 government to focus its attention more precisely  
13 on the other audio clips.

14 With respect to 708-T, Mr. McCall,  
15 one of the concerns that I have about 708-T is  
16 the time frame at least at the beginning where  
17 it is going back in time to pre-indictment  
18 behavior where there is a suggestion that the  
19 decedent attempted to poison Lenore Matusiewicz,  
20 right, and so vis-à-vis the time frame of that,  
21 tell me why the jury should be hearing that in  
22 the voice of Christine Belford.

23 MR. McCALL: So, Judge, while the  
24 act itself is purported to have occurred in

Lenore Matusiewicz uses what she believes  
occurred in 2004 and puts it in letters,  
she files a police report with Hedago County  
the charge time frame accusing Christine  
of this. She puts it on the internet as  
of the comments to the YouTube video, and  
the act may have occurred outside the  
acted act and this is an act that Christine  
engaged in, it's not a bad act, she's  
Christine Belford poisoned her.

when is  
poisoning  
not a  
bad act?

THE COURT: I have looked at the  
text in 708-T because I was a going to allow  
second half of 708-T. I will allow the  
document to play 708-T in its entirety. As I  
already ruled, 709-T is out. Focusing on

MR. McCALL: 711-T, if I had to  
all of them, Judge, this is the most  
important one, because this is the one that  
at which time Christine Belford expresses  
impact of all this on her.

THE COURT: Let me hear from the  
party on 711-T.

MS. CHAVAR: 711-T is very

The PFA in 2006 was  
pre indictment period as well.  
The purported things Christine  
accused David of saying,  
for the purpose of using  
against David, were  
interjected into the trial.  
They failed to tell you  
that in Christine's PFA  
petition she wrote that  
David could pay the  
mortgage, cell phone, bills,  
turn over the credit cards  
& check book - being more  
concerned about monetary  
items than fear of him.  
I will send a copy when I do

1 emotional. She talks about times when she  
2 thought about suicide, and that how she wants  
3 stay strong. She talks about prayer, and her  
4 faith. In addition to that very emotional  
5 impact, there is the other side of her therapy,  
6 it's searching. There are other sessions in her  
7 therapy where she talks about having many  
8 stresses in her life, feeling suicidal at many  
9 times throughout her life, unrelated to David,  
10 so it puts us in that untenable position, how do  
11 we bring that out. After they hear it and then  
12 go back to the therapist, are we even have to  
13 put in that position, will we have to now  
14 attack. Mr. McCall was very angry with us  
15 earlier in this trial because he thought we were  
16 going to attack the victim. But what position  
17 are you putting us in when you want to put this  
18 type of thing before the jury. It completely  
19 ties our hands.

20 THE COURT: All right. I  
21 understand your argument. Let me just take a  
22 minute here, and then we'll move to the next  
23 one. I'm going to overrule the objection and  
24 allow 711-T.