

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

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| UNITED STATES OF AMERICA, | : | Docket No. 04-20075 |
| | : | |
| Plaintiff, | : | |
| vs. | : | March 22, 2010 |
| | : | |
| GREGORY JAMES CATON, | : | |
| | : | |
| Defendant. | : | Lafayette, Louisiana |

REPORTER'S OFFICIAL TRANSCRIPT OF THE REVOCATION HEARING
BEFORE THE HONORABLE TUCKER L. MELANCON
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

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| FOR THE PLAINTIFF: | DANIEL MCCOY Assistant United States Attorney 800 Lafayette Street, Ste. 2200 Lafayette, LA 70501 |
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| FOR THE DEFENDANT: | RANDAL P. MCCANN Law Office of Randal P. McCann P.O. Box 3685 Lafayette, LA 70502 |
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| REPORTED BY: | LARAE BOURQUE, RPR, CRR United States Court Reporter 800 Lafayette Street, Ste. 3103 Lafayette, Louisiana 70501 |
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P R O C E E D I N G S

(Call to order of the court.)

THE COURT: Good afternoon. Please be seated.

Let me say, first of all, this is Criminal Docket Number 04-20075, *United States of America vs. Gregory James Caton*. The matter before the Court is the petition of the United States Probation Office to revoke the supervised release of Mr. Caton.

The record will reflect that we started this proceeding on, I believe, Wednesday, March the 17th, and because of the lateness of the hour, we continued it until this date. My recollection was that the defendant's attorney was about to call the defendant to testify.

At this time I would ask the attorneys involved in the case, starting with the Assistant United States Attorney, to go ahead and identify themselves and those people seated at the table with them.

MR. MCCOY: Daniel McCoy for the United States. With me is Special Agent John Ormond and Special Agent Peter Orlando with the Food and Drug Administration.

MR. MCCANN: Randal McCann on behalf of the defendant, Gregory Caton.

THE COURT: And the record should reflect the defendant is present in court.

Mr. McCann, am I correct in my recollection that you

1 were about to present evidence through the defendant's testimony?
2 If I've got that wrong or there's been a change, you should just
3 tell me.

4 MR. MCCANN: I think that you have it correctly except
5 that I am -- over the weekend we met and we've reconsidered.
6 There is a rule, Rule 32.1, where the defendant may make a
7 statement in mitigation, and rather than just go through --

8 THE COURT: Take the oath and -- rather than take the
9 oath and going through some other things, he can come up here and
10 make a statement just like a lawyer could. Is that what you're
11 telling me?

12 MR. MCCANN: Yes, sir. It's a lot of the same
13 information the Court's already heard. It would be to some
14 degree redundant.

15 THE COURT: Understood. But there would not be an oath
16 administered. Is that my understanding?

17 MR. MCCANN: I think that is correct, Your Honor.

18 THE COURT: All right. And then I'd go ahead and ask
19 the United States Probation Officer assigned to the case to go
20 ahead and identify himself for the record.

21 THE PROBATION OFFICER: Clint Mitchell, U.S. Probation.

22 THE COURT: All right. Now, let me ask you this,
23 Mr. McCann, because it's important to me -- well, it may not be
24 important to me, but it might be important to me. Is it your
25 view that you're invoking the procedure that you discussed with

1 your client after reviewing the rule that you'd like to invoke
2 here?

3 If I have any questions of the defendant about anything
4 he says, would it be your view that I would be entitled to go
5 ahead and ask him those questions subject to you saying -- well,
6 you can say it right now -- Judge, he just wants to make his
7 statement and then we'll leave it at that, or would you say,
8 Judge, I reserve the right to advise him as his attorney not to
9 answer that question to the judge? How do you want to handle
10 that?

11 I'm not saying -- you know, the rule is the rule, and
12 I'm not -- your client is certainly not prejudiced by it, but --
13 and I don't know where we're going. I know a lot about the case.
14 I know a lot about the allegation. I mean, how do you see it,
15 Mr. Legal Eagle?

16 MR. MCCANN: I see that he will offer a statement in
17 mitigation. If Your Honor wants to have certain questions
18 answered, I will direct him to answer your questions.

19 THE COURT: Okay. Now, the other thing I want to say
20 before we start this process then is that I have received by
21 Federal Express today another letter. This one again was not
22 complimentary as I understand it. After I was told what the
23 nature of the letter was, I said, I don't need to read that,
24 that's not an issue before me. However, it could be, based on
25 what he says, that it gets to be an issue.

1 And, again, what I'm talking about is alleged sexual
2 conduct regarding a minor. That's my general information. I
3 said, I don't need to see that. I've heard what -- or I remember
4 reading -- because I said I got all of these letters that I
5 didn't read. I said some of them that came in as late as
6 Wednesday weren't favorable. I assume this website, Natural
7 News, among others I understand, too, gave your name, gave my
8 name, send a letter on behalf of Mr. Caton.

9 When I realized that was going on, I said, I don't need
10 to read that, but I did read, I believe, Mrs. Caton's letter.
11 And my memory is not what it used to be, so maybe it got
12 crisscrossed somewhere, but I think in her letter there was some
13 mention about some kind of allegation about Mr. Caton. This was
14 in furtherance of that and I just said I don't need to hear that.
15 Now, maybe I would afterwards. I just want you to know and I
16 want Mr. Caton to know that I don't know where we're going. I'll
17 let him proceed any way he wants to, and then if I think it's
18 appropriate for me to read such, I'll go ahead and read it.

19 Again, I don't think it's an issue before the Court and
20 I can't imagine it would get to be appropriate, who knows, but
21 every letter that was filed or sent to you that you delivered to
22 me or was sent directly to me -- and, again, I don't know how
23 many there are, but there's a good number of them, will be --

24 MR. MCCANN: I got some more this past week myself.

25 THE COURT: What did you do with them?

1 MR. MCCANN: I still have them in my file.

2 THE COURT: Okay. Well, you can -- at the conclusion
3 of this matter I'd go ahead and instruct you to turn them over to
4 Ms. Guidry. I want to file them in the record of this proceeding
5 under seal, but I'm not going to pay any attention to them.

6 And, again, I'm saying that -- and I said this the
7 other day, but I want this record to be clear. It's not that I
8 don't think some of them might have merit. I don't know. But I
9 don't -- we're not going to scan the worldwide web to see who can
10 write a letter to the judge to try to -- I don't know what --
11 pull at the judge's heart or say this is really a good guy
12 because it has nothing to do with the allegations, as I see it,
13 that have been made against the defendant, two of which he's
14 admitted to.

15 The only issue that he has not admitted to was the
16 manufacture of these prohibited products after he was on
17 supervised release. I mean, he has admitted to, as I recall,
18 that he didn't return to the country as he was supposed to and he
19 didn't give truthful information to his probation officer.

20 Am I remembering that correctly?

21 MR. MCCANN: I think you have that correct, Your Honor.

22 THE COURT: All right. That's about all I've got to
23 say unless there's something you want to say in response to
24 anything I've said.

25 MR. MCCANN: Any sexual assertions -- I believe that

1 you read Mrs. Caton's letter -- pertained to she accused a person
2 who is in this business, this industry, that Mrs. Caton believes
3 was providing information to the FDA about Mr. Caton. I don't
4 think that the assertion has anything to do with this case
5 because actually it's accusing somebody completely separate and
6 apart.

7 THE COURT: Okay. Well, Ms. Singletary -- and don't
8 tell me more than I want you to say. This is Ms. Laura
9 Singletary, my law clerk, who got the letter.

10 When I was told in a general sense of what the nature
11 is, I said, I don't think that's something I need to consider,
12 but when you send an invitation out to the universe through the
13 internet, I'm sure it got some people that think, as one of these
14 witnesses said, I love Greg Caton, and there's some other people
15 that hate Greg Caton's guts for whatever reason, good or bad or
16 not so good. But what's the -- just with about one sentence very
17 briefly, what's the general gist of the allegation that's set out
18 in this letter? Just one sentence.

19 THE CLERK: That is the general gist of the letter,
20 that it is from an individual who is accused -- the individual
21 alleges that Mr. Caton has accused him of sexual and physical
22 abuse of a minor.

23 THE COURT: So it's the defendant in this case who's
24 made the accusation against someone else; is that right?

25 THE CLERK: That is correct. However, this individual

1 also goes on to make accusations against Mr. Caton, but not
2 having to do with the three reasons for the revocation.

3 THE COURT: Okay. I understand enough and I think the
4 record is clear. I'm not going to look at that unless lightning
5 strikes which I've been here for 16 years and it's only struck
6 once or twice.

7 MR. MCCANN: Yes, sir.

8 THE COURT: Anything is possible.

9 Now, Mr. McCoy, do you have anything to say in response
10 to anything I've said before we let Mr. Caton come up here and
11 make his statement?

12 MR. MCCOY: I do not, Your Honor.

13 THE COURT: Now, it was brought to my attention by
14 Ms. Guidry that there might be some technical issue, that you may
15 want to show me something that's on your computer that we would
16 need our technical people to come up here and fix. Have they
17 done that?

18 MR. MCCOY: Your Honor, I believe the bulb was burnt
19 out, which they are replacing, but --

20 THE COURT: All right. Well, let me say this. If I
21 walk around to your laptop, if you really think I need to see
22 something after Mr. Caton makes his statement -- you don't know
23 if you're going to do that yet; is that right?

24 MR. MCCOY: That's correct, Your Honor.

25 THE COURT: All right. And if I really need to do

1 that, you know, I can just walk around there and so can
2 Mr. McCann.

3 THE COURTROOM DEPUTY: The only problem is it won't
4 show up on the projector. It will show up on your monitor, just
5 not on the overhead projector.

6 THE COURT: It will?

7 THE COURTROOM DEPUTY: Yes, sir. Just not on the
8 overhead projector.

9 THE COURT: Well, it will show up on his monitor, too,
10 so we don't need all of that. I mean, who else is here that
11 needs to see it? I mean, I know the marshals just can't wait to
12 see it, and Ms. Bourque is usually writing anyhow and not looking
13 around, and Ms. Guidry, I would probably bet she doesn't give a
14 rat's, but I might be wrong.

15 MR. MCCOY: Well, the concern, Your Honor, is the
16 monitor on the witness chair is no longer --

17 THE COURT: Well, is there going to be a witness up
18 here?

19 MR. MCCOY: Well, if Mr. Caton had taken the witness
20 stand.

21 THE COURT: Well, he is not.

22 MR. MCCOY: So now we'll be fine.

23 THE COURT: All right. And, again, he's not offering
24 any evidence. He's making a statement. So if it's rebuttal
25 about something he's going to say, there's no rebuttal there.

1 It's just I'm going to take what he says just like I take -- or
2 what I tell juries to take in jury trials. What the lawyers say
3 is not evidence. Evidence comes from people who took the oath
4 and take the stand or any documents I admit into evidence. So
5 he's making a statement.

6 MR. MCCOY: You're correct. Up until today I was under
7 the impression that he would be taking --

8 THE COURT: As was I until Mr. McCann said he thought
9 about it.

10 MR. MCCOY: Yes, sir.

11 THE COURT: Okay. Bring your client on up here.

12 Mr. Caton, come on up here.

13 And you may proceed however you deem appropriate.

14 THE DEFENDANT: Yes. In September of 2007 I received a
15 phone call from Tabitha LeDoux who testified this last week, and
16 she indicated to me that -- well, she had previously told me in
17 August that her home had been raided, that her supplements and so
18 forth had been taken out, and that she and Zoe would have to meet
19 on October 10th to meet with the prosecutor.

20 But the long and short of what she communicated to me
21 in September was that the October 25th termination hearing for
22 which I had hired Lawrence Billeaud had been turned into a --
23 from a termination hearing to a revocation hearing. And she was
24 crying. She was profusely --

25 THE COURT: Okay. Let me interrupt you just a minute.

1 Now, Mr. McCann, were you Mr. Caton's lawyer at the
2 time?

3 MR. MCCANN: No, sir.

4 THE COURT: You weren't. You were appointed later.

5 Ms. Guidry, does the record -- because I don't have
6 independent recollection, but -- and, Mr. McCoy, I'll ask you
7 first. If you don't know, then I'll ask Ms. Guidry to look at
8 the docket sheet. But is Mr. Caton's appreciation of what was
9 supposed to be a hearing to terminate his supervised release
10 early converted into a revocation hearing from your knowledge of
11 the file?

12 And I'm not saying Mr. Caton didn't get that
13 information from somebody who didn't know what they were talking
14 about or maybe they didn't.

15 What about it, Mr. McCoy?

16 MR. MCCOY: That's not my information from reviewing
17 the file. I was not working with the U.S. Attorney's Office at
18 that time.

19 THE COURT: Mr. McCann, do you want to say something?

20 MR. MCCANN: I know this because I've done the
21 background research by speaking with Lawrence Billeaud.
22 Mr. Caton's explanation of it seems more emphatic, but
23 technically it's his perception that it was turning into --

24 THE COURT: Understood. But, in other words, I just
25 want to know what I did because it couldn't have happened without

1 me and I don't recall what I did.

2 MR. MCCANN: Officially I don't think the supervised
3 release termination hearing turned into a revocation hearing.

4 THE COURT: All right. Ms. Guidry, is that what the
5 docket sheet reflects, that in fact it was supposed to be a
6 termination early and we had an order that was -- I remember it
7 was withdrawn because -- let's see. Let's just go make sure the
8 record is clear because the docket sheet is the docket sheet.

9 There was a motion filed on July 24th, 2007. That's
10 Entry Number 73. It was a motion to terminate supervised release
11 filed by Mr. Caton. Then on September the 21st -- and I'm not
12 sure why there was almost a two-month delay there -- Entry
13 Number 74, there was an order setting the motion for early
14 termination of probation and I signed that.

15 And then on October the 24th, about a month later,
16 Entry Number 75, there was a motion to continue the hearing on
17 the motion for early termination of probation by Mr. Caton. And
18 then on October the 24th I apparently conducted a telephone
19 conference. That's evidenced by Entry Number 78. It was to
20 discuss Mr. Caton's motion to continue the hearing that had been
21 set for October 25th, '07. And the minute entry indicates
22 that -- or the entry on the docket sheet indicates counsel
23 advised the Court at that time -- that's Mr. Billeaud -- he may
24 withdraw the defendant's motion to terminate supervised release.
25 It further says if counsel does not withdraw the motion by noon

1 on October 25th, the hearing on the motion will proceed as
2 scheduled.

3 Then on October 25th, Entry Number 76 -- and I guess
4 this is just the way it works.

5 And, Ms. Guidry, you can help me if I'm about to mess
6 up.

7 The docket entry number of the telephone conference,
8 which happened on the 24th, was Entry Number 78, and the actual
9 motion to withdraw, which was filed on the 25th, is Entry
10 Number 76. It's just we may have filed it electronically and he
11 may have filed it manually.

12 Sometimes it just works that way, Ms. Guidry?

13 In other words, it's not unusual that you have -- it's
14 76 and 78. Seventy-eight actually happened before -- I'm messing
15 up here. I've got to look at it again to tell you.

16 Do you have an explanation for how that could have
17 been? I had never thought about it before, but it didn't matter
18 before, and not that it matters now.

19 In other words, all I'm saying is the docket sheet
20 indicates that we had the telephone conference, but the -- and
21 the entry number assigned to that was 78, which is dated the
22 24th, that I must have done the minute entry by -- electronically
23 probably is the way we do them generally, but what's indicated as
24 Number 76 comes up a day later. This is the actual motion to
25 withdraw.

1 Then on the same date as I received it, Entry Number
2 79, I went ahead -- and whoever is moving those papers, please
3 turn your microphone off because it's driving me nuts. Thank
4 you.

5 Entry Number 79 was an order granting a motion to
6 withdraw document as to Gregory James Caton; one, withdrawing
7 Entry Number 73, a motion for early termination of probation,
8 and, two, the hearing of 10/25 was upset. I signed that. And
9 then it wasn't until November the 14th, 2007, that a petition for
10 warrant or summons for revocation of supervised release was filed
11 by the probation office.

12 So that's -- I just was -- and I didn't mean to
13 interrupt you, Mr. Caton, but my memory, as you probably have
14 observed, is not pristine and I just didn't remember the course
15 of it, but I understand Mr. McCann's point. Your perception,
16 whatever it was, while you were down in Ecuador, wherever you
17 were on that date, was that you thought that the
18 October 25th hearing had been changed from a we're going to let
19 you out of here early into a revocation hearing, and the record
20 reflects it was clearly almost a month later before anything like
21 that happened.

22 But go ahead, Mr. Caton.

23 THE DEFENDANT: I think what Tabitha was describing was
24 a change in functionality. I'm not a lawyer and neither is
25 Tabbie, and I don't think -- she was not saying that something

1 formally has been filed as such, that it's a revocation. She was
2 saying that functionally the purpose of the hearing had been
3 changed.

4 The gist of what she was trying to communicate to me --
5 she was calling, she was crying -- was that she and Zoe were
6 being basically corralled into making statements and saying
7 things that were not true to support --

8 THE COURT: In other words, she told you that the
9 government agents were trying to make her commit perjury or lie
10 and come into a courtroom and lie. Is that what she told you?

11 THE DEFENDANT: That is precisely what I'm saying.

12 THE COURT: Okay. I understand your position. Go
13 ahead.

14 THE DEFENDANT: So this led to the lengthy discussions
15 with my wife about, you know, is there any way I can possibly
16 prevail on this because if they succumb to the pressure to make
17 these statements -- I knew that I had not made these products. I
18 wasn't selling -- I had 350 different Alpha Omega products, only
19 two of which were clearly indicated in the original bill. I
20 could have been making 348 products legally through the -- and
21 did not do so. So I had no interest in doing anything related to
22 the laboratories.

23 But I felt that I was in a situation where it was
24 guaranteed revocation, guaranteed imprisonment for something I
25 didn't do, and that occurred at a time when there was the

1 confluence of some health issues I was having. For that reason I
2 didn't return.

3 THE COURT: Well, if I could interrupt you again, what
4 were your health issues that were testified to by the probation
5 officer that -- apparently she worked with you. What was going
6 on with you down there?

7 THE DEFENDANT: I went in for a test because I had
8 been -- for a long time I had a feeling on my right side. I had
9 been feeling problems in the area of my right kidney. I went in
10 for a blood test and there was blood in my urine which is usually
11 an indication of nephritis or some other kidney condition. So
12 she said it couldn't be translated. You can just look at it. It
13 says sangre. Sangre is Spanish for blood. There was blood --

14 THE COURT: Okay. You don't have to go through that.
15 You can just tell me what you perceived it to be. I'm not going
16 to look at that, but -- so you had a kidney issue with blood in
17 the kidney. What was the treatment?

18 THE DEFENDANT: Well, subsequently I went to a medical
19 doctor that specialized in natural medicine and the subsequent
20 treatment was chandra piedra and --

21 THE COURT: Spell that, please, for the court reporter.

22 THE DEFENDANT: I think it's C-H-A-N-D-R-A, chandra.
23 Piedra, P-I-E-D-R-A.

24 THE COURT: And what is that, sir?

25 THE DEFENDANT: It helps clean the gallbladder, the

1 kidneys. It's very common in Ecuador.

2 THE COURT: Do you know what it is? What's the
3 substance made out of?

4 THE DEFENDANT: Well, it's an herbal compound.

5 THE COURT: That's what I was trying to find out. It's
6 an herbal compound.

7 THE DEFENDANT: Right.

8 THE COURT: Okay. Go ahead.

9 THE DEFENDANT: That and something called mansoa
10 alliacea.

11 THE COURT: Spell that for us.

12 THE DEFENDANT: M-A-N-S-O-A, A-L-L-I-A-C-E-A, I
13 believe.

14 THE COURT: Thank you.

15 THE DEFENDANT: And with the combination of those two I
16 was able to, over a period of several months at least, put the
17 problem in remission.

18 Anyway, what I'm trying to get at is that the
19 confluence of those factors, I just felt that -- and then of
20 course my wife had her own issues which I won't get into because
21 she sent you a separate letter on that, that --

22 THE COURT: Well, I don't want to push you on it, but
23 we're in court here. I've read the letter, but I don't recall
24 the issue. I would appreciate you telling me what the issue is
25 just generally, briefly.

1 THE DEFENDANT: Well, my wife has always been very
2 fearful of the confidential informant in this case who was
3 someone who lived with us, who -- I mean, do you really want me
4 to get into this?

5 THE COURT: I do. I mean, you're telling me something,
6 that I'm trying to offer this in mitigation of whatever
7 punishment you may impose in this case because I didn't come
8 back. And, I mean, I just kind of got -- you know, you've told
9 me, one, you thought the government agents were trying to
10 perjure -- get witnesses to perjure themselves, to come lie to
11 put you back in jail, that you had a kidney issue that you've
12 gone into, and I just want to know -- I mean, you don't have to,
13 but it's -- this is your time to speak.

14 THE DEFENDANT: I don't want to offend the Court.

15 THE COURT: I'm sorry?

16 THE DEFENDANT: I don't want to offend --

17 THE COURT: Mr. Caton, let me say this. One of the
18 great things about life tenure senior status and a terminal
19 cancer prognosis, I don't think there's anything you could do
20 that could offend me. Okay? So go ahead.

21 THE DEFENDANT: Well, you can see the reports that were
22 issued by the prosecutor's office of what Tabbie --

23 THE COURT: No. Excuse me. We were at the point where
24 you were or were not going to tell me what your wife's issue was.
25 You don't have to tell me if you choose not to.

1 THE DEFENDANT: Yeah. Her issue was that we had
2 someone who lived with us who was the informant. We knew it was
3 the informant. And this person had attempted to have sex with
4 our son when he was five years old and we reported it to the
5 authorities. The fact that we did that -- you know, he became
6 very vengeful when he found out that we attempted to get that
7 situation -- have law enforcement look at that. That kind of led
8 to this whole series of events that made her very fearful of him
9 returning.

10 THE COURT: Let me interrupt you again. I hate to do
11 that, but I want to make sure the record is clear and you
12 understand what I understand. Ms. Singletary points out that the
13 letter that I got today by FedEx was apparently from this very
14 person. I'm familiar with it now. I didn't read it, I didn't
15 consider it, and I'm not going to consider it, but I understand
16 your point. You've got three things going now. The government
17 is coming after you --

18 THE DEFENDANT: By way of clarification --

19 THE COURT: Just a minute. The government is getting
20 witnesses to perjure themselves. You've got a kidney issue.
21 You've got an allegation made by the confidential -- who you
22 perceive to be the confidential informant. Maybe you're right
23 and maybe you're not. I don't know. But you had accused -- or
24 you and your wife had accused him of trying to molest your
25 five-year-old child. You feel that everything that you ended up

1 pleading guilty to and the conduct you admitted -- the illegal
2 conduct you admitted to was caused because he got upset with you
3 and turned you in. Have I got that pretty much right?

4 THE DEFENDANT: I'm sorry. I'm not sure I understood
5 the last part.

6 THE COURT: Well, what I'm saying is there are three
7 things that you've brought to my attention. One of them is that
8 you thought the government was trying to get witnesses who would
9 testify against you saying that you had made these illegal
10 drugs in violation of supervised release, your terms of
11 supervised release. The government was trying to get these
12 people to lie about you, come to court and lie. You've told me
13 that.

14 You also had the problem with the kidney that you told
15 me about. And you also had the issue that your wife brought to
16 my attention in the letter by this fella who wrote this letter
17 that I'm not going to consider about alleged molestation of your
18 five-year-old child, and that -- what you said was you believe
19 him to be the informant who turned you in, reported you, whatever
20 he did if it was in fact him being the confidential informant,
21 that caused you to come up in this very courtroom with very able
22 counsel and plead guilty to the charges that you pled to for
23 violating the laws of this country which resulted in you going to
24 jail.

25 Now, do I have that right?

1 THE DEFENDANT: Are you talking about -- are you
2 talking about in 2004 or are you talking about now? Are you
3 talking about --

4 THE COURT: What I said was -- I'm only parroting what
5 I thought you said, Mr. Caton. This fella was causing your wife
6 issues because of what he allegedly did to your five-year-old who
7 you believe -- and I guess your wife believes -- to be the
8 confidential informant. Okay? Are you with me up to this point?
9 That's right? I've got that right, huh?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. And if he was the confidential
12 informant, whoever it was who reported you, turned you in, made
13 an investigation come to pass, after the investigation you were
14 indicted and that indictment results in one day you coming to
15 this courtroom with your lawyer and admitting your guilt and I
16 accept your guilty plea. I sentence you to a federal
17 penitentiary. Then you serve your time and then you get out of
18 the federal penitentiary and you're placed on supervised release.

19 So there's three things here, trying to go get them to
20 perjure -- the witnesses to perjure themselves, your kidney
21 issue, and your wife's fear that -- and yours --

22 THE DEFENDANT: The issues that she brings up in her
23 letter with respect to security issues of my return.

24 THE COURT: But the security issues -- be a little
25 more -- she's worried about your child's security or your

1 security?

2 THE DEFENDANT: My security.

3 THE COURT: And help me with that. That issue --

4 THE DEFENDANT: My child was -- I'm sorry. Go ahead.

5 THE COURT: Okay. It's not your child's security.

6 It's your security. How would you be at risk if you are right
7 that this guy was the informant, that you had admitted your
8 guilt, paid your debt to society with the exception of whatever
9 your supervised release was -- if you came back as you told the
10 probation officer that you would and failed to show up, why would
11 you be at risk? I don't understand why you or your wife thought
12 that.

13 THE DEFENDANT: Well, it's not speculative who the
14 confidential informant.

15 THE COURT: Okay. Let's assume for the sake of that
16 you're right. Why are you at risk?

17 THE DEFENDANT: George Ackerson was partnered with
18 someone about whom I wrote a whistle-blower book 20 years ago for
19 which I have been paying the price ever since through a long,
20 elaborate series of very vindictive, vengeful acts, and that
21 person's name is Kevin Trudeau.

22 For what reason my wife didn't go more in-depth, I
23 don't know, and I wish this would have been covered when Tabbie
24 was here, but at the time that Tabbie's home was raided in August
25 of 2007, Tabitha was told by Special Agent -- FDA Agent John

1 Ormond that I should be making payments to Kevin Trudeau.
2 Nothing is more frightening to a defendant than to know that the
3 architect behind this criminal case is someone from organized
4 crime and Kevin Trudeau is organized crime.

5 THE COURT: Do you have -- let me ask you this. And,
6 of course, she's not here. If she were here, whatever would
7 happen. But do you -- what was -- is there a judgment against
8 you in favor of Mr. Trudeau?

9 THE DEFENDANT: Yes, in Illinois, and it was
10 obtained -- it was a ten million dollar interlocutory default
11 judgment and it was obtained by my simply not ever being served
12 notice that it was --

13 THE COURT: I remember reading that when I reviewed
14 your presentence report. Okay.

15 THE DEFENDANT: So you can't know the hell that I've
16 been through from a five-month long full audit by the IRS because
17 they were told that I had millions of dollars in offshore bank
18 accounts to constant and unending civil litigation to this.

19 THE COURT: How many times -- I note you filed
20 bankruptcy a number of times.

21 THE DEFENDANT: Twice.

22 THE COURT: That wasn't indicative of somebody that
23 you -- you would have had to commit bankruptcy fraud if you had
24 all of these assets. I've forgotten when they were. But I'm
25 saying, gee, it would have been pretty obvious to anybody that

1 you didn't have a whole lot of money unless you lied when you
2 filed for bankruptcy.

3 THE DEFENDANT: Well, I didn't. That's the point.

4 THE COURT: No. I understand. What I'm saying is I'm
5 trying to follow with your logic because it's not -- and I'm not
6 with you yet. I'm just trying to understand. I'm not trying to
7 give you a hard time. I'm really just trying to understand
8 because you may have noticed the last time you were here I'm not
9 the smartest bulb in the lamp, so it takes a little time to
10 spoon-feed the judge so the judge will really understand.

11 THE DEFENDANT: Well, that's it, the confluence of
12 those three factors. I mean, when I heard that Ormond would tell
13 my secretary I should start making payments to Kevin Trudeau, my
14 knees buckled. I was ready to pee in my pants. I realized
15 coming back wasn't just about fulfilling supervised release. I
16 had what I considered safety issues.

17 THE COURT: Help me with that because that's -- what
18 was your safety issue or issues?

19 THE DEFENDANT: Well, this thing has a certain
20 progressive pattern to it. First it starts with, you know, angry
21 letters. Then it goes to civil litigation. Then it goes to a
22 vindictive IRS full audit. Then it goes to now a criminal case.
23 Then it goes to people being pressured to say things that aren't
24 true. I mean, if this thing could be followed in linear
25 regression, where does it go next, an assassination attempt?

1 This thing has gotten nastier and nastier and nastier
2 over a 20-year course. If I had it to do over again, Your Honor
3 -- I think the biggest mistake I ever made was writing that
4 whistle-blower book. I would never again do anything to be a
5 whistle-blower or anything. I mean, it was a grave mistake
6 because it's brought me 20 years of heartache.

7 And I didn't want to bring this up because it enters
8 into the record a certain level of complexity and longitude and
9 history that seems tangential to the case, but in terms of my
10 internal dialogue, the things that are going through my mind and
11 the decisions that I make, it is very relevant to my thinking
12 process.

13 I wanted to just finish this gracefully, get my
14 supervised release terminated. I consciously fulfilled
15 everything I could possible think of properly. And then when I
16 got to the point where I realized that my behavior, that is to
17 say what I did or did not do, was completely divorced from my
18 ability to finish supervised release unmolested, that became -- I
19 just felt, Your Honor, that there's just no winning this.
20 There's no fair play here.

21 The truth should be sacrosanct in court. That's my
22 view. And if it makes me contrarian, then it makes me
23 contrarian, but I just think that telling the truth under oath
24 should be sacrosanct, not just on the part of the defendant, but
25 by everybody. When I felt that it wasn't and I couldn't possibly

1 get a fair shake, it affected my decision making. I realize now,
2 you know, I should have come back. I should have fought it even
3 if it did mean, you know, going back to prison for more time for
4 something I didn't do, but at the time it weighed heavily on my
5 decision-making process. I apologize.

6 THE COURT: Well, let me ask you this, Mr. Caton.
7 There's two things. Do you have any theory -- because, you know,
8 I, like you, believe that truth in a courtroom is sacrosanct, and
9 I tell lawyers in civil cases, if there's anything heavier than a
10 civil case, it's a criminal case. Civil cases are not about
11 dispute resolution. They're a search for the truth.

12 Now, frequently they turn into dispute resolution
13 because we've got to get rid of this. It costs too much to
14 defend, costs too much to prosecute. But when I have a trial, I
15 always tell that jury it's a sacred trust that I'm putting on you
16 and make sure you answer my questions correctly and pay close
17 attention because otherwise we may seat a juror who shouldn't be
18 seated and we may end up with a miscarriage of justice.

19 So I believe -- you know, you can't know what's in my
20 mind like I can't know what's in your mind, you know, but I'm
21 taking you at your word that you believe the same thing I
22 believe.

23 Now, do you have any theory as to why -- and, again,
24 anything is possible. There are a bunch of rogue cops, a bunch
25 of rogue federal -- well, not a bunch. I choose to believe and

1 my life experience leads me to believe that there's not a bunch,
2 but there are some that in order to make a prosecution -- and
3 they've been caught and innocent people have gone to jail, and
4 they've been prosecuted because they committed perjury. Innocent
5 people have been vindicated and compensated. A bunch of things
6 happen.

7 But do you have any theory of why -- what you believe
8 about the agents that were assigned to your case, why it was --
9 because they've got plenty to do -- why it was that they might
10 get involved in some kind of conspiracy to get people to come up
11 here, people -- one of whom said she loved you -- to lie about
12 you to put you back in jail? I mean, what's your theory of why
13 they would care? You're just another case for them unless you
14 can help me understand why.

15 THE DEFENDANT: It came from multiple sources.
16 Mr. McCann has a copy of -- well, I hate to discuss it, but I had
17 a prostitute approach me on skype chat on May 18th of 2006 and
18 May 24th of 2006 saying that I was in danger, that I was not
19 going to finish my supervised release, that there were rogue
20 agents involved in my case. It was quite explicit. And I
21 attempted to further keep this person. They broke off and would
22 not have anything more to do with me.

23 I took this communication and I cut and pasted and gave
24 a copy to my wife, a copy to Zoe, a copy to Tabbie, a copy to
25 Crystal. I actually gave it to my entire staff because I said I

1 really need help trying to figure out if this is legitimate? Do
2 you think this is real?

3 This person actually claimed that they were hired to
4 try to get me to cross the state line to meet with them to
5 violate my probation, and when I made it clear, look, honey,
6 that's not happening, I just got out of prison, that's when they
7 broke down and told me what was happening. That's just one of
8 several instances of strange --

9 THE COURT: But let me ask you this and go back to my
10 question. You've given me this is why I thought it, Judge.
11 There was this prostitute that wanted me to cross state lines.
12 But what else?

13 I'm trying to understand why the agents in your case
14 were just waiting until the day you got out of jail or shortly
15 thereafter to try to set you up so they could go bust you yet
16 again, because, again, I will say this. Is anything possible?
17 Dern near anything is possible. But the likelihood of them even
18 remembering your case after you had been away for -- how long
19 were you in jail?

20 THE COURTROOM DEPUTY: Thirty-three months.

21 THE DEFENDANT: The sentence was --

22 THE COURT: How long did you serve in jail before you
23 got out, Mr. Caton?

24 THE DEFENDANT: Is that with or without the halfway
25 house?

1 THE COURT: The whole deal.

2 THE DEFENDANT: I think -- because you get some time
3 for good behavior. I think roughly close to 30 months.

4 THE COURT: Okay. And, again, the fact that these guys
5 would be just waiting to get some prostitute or somebody who
6 claimed to be a prostitute to try to get you to cross the line, I
7 mean -- state lines so you would be revoked, I'm trying to figure
8 out why other than -- I mean, that's just kind of like those
9 letters I got off the internet that I said I wasn't going to
10 read, the ones that like you and the ones that don't like you.

11 The internet is a really great tool, but it's a
12 dangerous thing. I mean, anybody can say anything, but it
13 doesn't make it so. Maybe go ahead and tell me what else. I
14 don't understand why these guys were sitting in the gap waiting
15 for you.

16 THE DEFENDANT: Well, Your Honor, following your line
17 of reasoning, the argument could be made why a book called
18 *MLM Fraud* that I wrote in the year 1991 -- why would the
19 vindictiveness still be occurring in the year 2000? Because from
20 May, 2000, to September, 2000, over a five-month period, I had a
21 full audit. I was given information as to how that full audit
22 came to be and it had to do with these millions of dollars that I
23 had in offshore bank accounts that didn't exist that I didn't pay
24 income taxes on. This was a current refrain --

25 THE COURT: Yeah. But there's a material difference

1 here, Mr. Caton. What you are asserting here as a reason to
2 mitigate whatever punishment I might impose here is that federal
3 officers intentionally not only violated their oath, but broke
4 the law and would subject their career -- I mean even going to
5 jail. Not only losing their jobs and their retirement and
6 whatever, they would go to jail for that.

7 And I can tell you -- I for one, but I'm not near the
8 only one. Most of my colleagues feel this way. If we get a
9 rogue federal agent -- and I've only had it happen one time. I
10 gave that rogue federal agent as much time as I could, which was
11 18 years, and it happened to deal with a border case that I had.

12 And it's funny you would mention prostitution. He got
13 some poor lady -- I think she was Honduran -- coming through who
14 was married and had two kids. He told her he had -- he knew she
15 had a fake ID. He said you go over there and then he takes her
16 over to a motel room. She does whatever he said, she's scared to
17 death, and he rapes her. So when I had the chance to nail him to
18 the wall -- if I could have given him 25 years or 50 years, I
19 would have.

20 But my point is why would officers -- I mean, federal
21 officers -- and anything is possible. What's your theory about
22 why these guys would put everything at risk, including going to
23 jail for a hell of a lot longer than the time you had to go to
24 jail, just to get you? What's the theory?

25 THE DEFENDANT: You're asking me to come to a

1 conclusion, Your Honor, and I can only tell you what happened.

2 First of all, how would an agent even know -- it wasn't
3 widely publicized unless someone was really following the court
4 records in the Western District concerning a bankruptcy I had in
5 '96. Why would anyone even know that I had this ten million
6 dollar judgment outstanding with Trudeau, and why would an agent
7 acting in advocacy -- more than advocacy -- acting as -- almost
8 like he's acting on behalf of saying he needs to start making
9 payments to this person? It's shocking to me.

10 THE COURT: But you're accepting what was told to
11 you -- and I don't doubt that it was told to you because you're
12 telling me, and even though you're not under oath right now --
13 you know, you could be making a false statement in a federal
14 proceeding which would be another criminal offense, but that's
15 another story for another day.

16 Okay. Let's assume it was told to you. It doesn't
17 make it true. And why would anybody know about your bankruptcy
18 and the ten million dollar judgment? The same reason I know
19 about them, because back in the presentence report that was
20 prepared in your case back in August of '04 and filed under seal
21 on August 24th, '04 -- you know, I had it. Your lawyer at the
22 time had it and the government had it. That's exactly how
23 somebody involved in your case might know, but I don't know who
24 else might know.

25 What I do know -- and I find that interesting, one of

1 the things that was brought to my attention. On your very
2 website there's a quote that you attribute to me and you give the
3 page and the line about something I said.

4 Now, I don't know what else is out in the universe or
5 what interest you piqued by making the kind of statement on the
6 quote that I made at that time, certainly out of context as far
7 as the way it appeared on the website, at least what I was shown.
8 It might have piqued a lot of people's interest saying -- you
9 know, a lot of people think the big bad federal government is out
10 there trying to nail everybody to the wall and the government is
11 taking over everything.

12 And, look, you know, so you'll know, I'm doing
13 conventional medicine to a point, but I am -- and I'm a raw food
14 vegan, unconventional medicine, and I went to a three-week life
15 change school. I understand a lot more than many people,
16 including some medical doctors, and I'm alive right now, I
17 believe, because of good docs, good meds, and what I'm doing
18 right now because I was supposed to have been dead a couple of
19 years ago, you know, with recurrent male breast cancer, which is
20 terminal depending where it is, but I just -- there's all kinds
21 of stuff that you put out there.

22 I'm not -- that would be an invitation if I was
23 somebody who was thinking the government has got -- the FDA or
24 whoever has got a conspiracy trying to protect drug companies or
25 docs or whoever anybody is thinking they are, you know. Well,

1 we've got a federal judge down in Louisiana saying this was a
2 travesty or whatever was quoted. I don't really remember. So
3 maybe I'd want to go find all of that out.

4 And we do have in this country open trials, open
5 proceedings. The presentence report would be under seal, but the
6 people involved with the case would certainly know it. So, I
7 mean, it doesn't shock my conscience that -- and I'm trying to
8 work with you on -- or walk with you on this so I understand.

9 THE DEFENDANT: Well, what you're citing was posted for
10 the first time in late November of 2008, but the events we've
11 been speaking about to this point all occurred in 2007.

12 THE COURT: Okay. Well, I didn't know the post date,
13 but I did see it.

14 THE DEFENDANT: Yeah. There's -- in terms of the time
15 line, there's no relationship between those two.

16 THE COURT: Okay. That question is asked and answered.
17 Move on.

18 THE DEFENDANT: But when I first met with Lewis
19 Unglesby on this case, one of the first things Lewis told me is
20 this is not like an ordinary criminal case. These people really
21 hate you. This case is personal. He was very emphatic about
22 that with my wife and I. So right away I knew that there were
23 factors behind the scenes that were out of the ordinary.

24 When I met with Ron Helo in July of 2004, he was
25 filling out my PSI report -- and I understand that a lot of these

1 comments are made offhandedly because the PSI officer has got a
2 tough job. He tries to break the ice. But one of the first
3 things he said to my wife and I was, you know, people don't get
4 charged for things like that. You must have pissed somebody off
5 in Washington. You know, you get enough of these kind of inputs
6 and it says something to you.

7 And I'm not trying to say that I've got all the pieces
8 figured out because I do not, but I'm trying to explain to you
9 what my internal dialogue was at the time that I was in Ecuador
10 and I had a decision to make.

11 I've got a court date on October 25th where I actually
12 entered into a frame of mind where I said I just -- I just don't
13 feel I can go. The deck is stacked. All I can do is tell you
14 what my state of mind is. That's all I can do. I can't tell you
15 that I've put the pieces together because I have not.

16 THE COURT: All right. And I understand your
17 perception and your perspective, I think, but now let's talk
18 about this. You don't call your probation officer -- after
19 having some dialogue with her back and forth about your illness
20 and getting an extension and when you're going to report, you
21 don't call her and say, look, I'm not coming. You just let it
22 die there. Is that true? Because she says she doesn't hear from
23 you again after the last contact when you said you were coming
24 back. Is that true?

25 THE DEFENDANT: I honestly don't remember, Your Honor.

1 I know we had a dialogue back and forth. I had explained to her
2 my health issues. I don't really remember the very last thing.

3 THE COURT: You heard her testimony last Wednesday,
4 didn't you?

5 THE DEFENDANT: Yes, I did.

6 THE COURT: And under oath she said that after the last
7 time she talked to you and you said you would be back on "x"
8 date, she never heard from you again.

9 THE DEFENDANT: Yeah. That's entirely possible, Your
10 Honor.

11 THE COURT: Okay. I'm with you.

12 Now, let me ask you this because you mentioned
13 Mr. Unglesby -- and it's of no great moment, but I know
14 Mr. Unglesby to be an outstanding and excellent lawyer. He's
15 represented some of the more prominent defendants, if I could put
16 it that way, if you can have a defendant that's prominent in our
17 state. He does have -- it's also been my experience he does tend
18 to be a little bit hyperbolic sometimes in court and out, but we
19 all have our idiosyncrasies, and that's certainly not meant as a
20 criticism because it's not. It's not intended that way.

21 But there was a time after Mr. Unglesby -- after you
22 pled guilty and you were sentenced, you filed a motion against
23 Mr. Unglesby saying you had inefficient assistance of counsel.
24 Is that true?

25 THE DEFENDANT: I filed a 2255, yeah.

1 THE COURT: Based on he didn't represent you adequately
2 at the guilty plea?

3 THE DEFENDANT: Well, I don't want to make this
4 personal because --

5 THE COURT: No. That's all right. I'm just trying to
6 make sure my memory is right. I'm trying to figure out what to
7 do with you, Mr. Caton, and what I believe.

8 THE DEFENDANT: Your Honor, your memory is right. I
9 did. And I believe in retrospect I had, you know, bad counsel.
10 I had someone in the prison system who said you can do this
11 because this is a framework by which you can mitigate your
12 sentence, and if I had to do it over again, I wouldn't have filed
13 a 2255. But one of the issues was -- please understand I
14 don't -- I openly admit my knowledge of the law wouldn't fill a
15 Dr. Seuss book, so...

16 THE COURT: Well, I remember your filing. I don't
17 remember the particulars, but I remember at the time I said he
18 must have a real good jailhouse lawyer who's a real smart guy who
19 could have been a lawyer. I mean, that was my recollection. I
20 might be wrong about that. I didn't give you the relief you
21 wanted, so you lost.

22 THE DEFENDANT: It was a jailhouse lawyer, you know,
23 but in any event -- and I'm only answering your question.

24 THE COURT: And I appreciate that. I'm just trying to
25 walk through this.

1 THE DEFENDANT: No. He said, you know, the
2 50,000-dollar fee includes filing for appeal, and when I asked
3 him about it, nothing further came of it, so I felt that I needed
4 to file it.

5 But, you know, I don't want to bring this into the vein
6 of being personal. Even at the time I didn't view it as a
7 personal attack on Mr. Unglesby. I just felt that he should have
8 been more forthwith on something that I felt needed to be done or
9 should have been taken care of and certainly was prepaid for.
10 But, again, you know, I was acting not as a person who himself
11 has a great -- has any real legal expertise.

12 THE COURT: Well, let me ask you this because I'm
13 trying to remember -- and, frankly, I remembered your case very
14 well. I didn't remember exactly what I did, but it seems to
15 me -- and I'm looking at the presentence report that was prepared
16 for your case. I think the guideline range for your case, the
17 sentence that I could have imposed -- at the time they were
18 mandatory guidelines, so I was bound -- this was before the
19 Supreme Court said, no, they're advisory.

20 But the guideline range was from 33 to 41 months of
21 incarceration, and I believe -- and you correct me if I'm wrong,
22 but the sentence that I actually gave you was the low end of the
23 guideline, the 33 months. I think that's what I gave you. Isn't
24 that true?

25 THE DEFENDANT: That's correct, Your Honor.

1 THE COURT: Okay. So you got -- and, again, you had
2 pled guilty to what I sentenced you for. You got the lowest
3 sentence that I could have given you. Are we together on that at
4 this point?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. And then I said the other day, as I
7 recall -- and I believe it to be true and I want you to
8 straighten me out. I literally from day one, the first day you
9 appeared -- and I've forgotten what gun and ammunition issues
10 that were there, but there was some other real heavy concerns by
11 the United States Attorney's Office at that time because they get
12 a case and they've got you up here and they find out all of
13 this -- whatever they found. Your lawyer persuaded me, over the
14 government's objection, to release you pending -- I don't know if
15 it was sentencing or your guilty plea. Whatever it was, I let
16 you go as soon as you got to me. I think that's true. Is that
17 not right?

18 THE DEFENDANT: Your Honor, you were very generous with
19 me. You allowed me to be out on bond between the --

20 MR. MCCANN: The plea and the sentencing.

21 THE DEFENDANT: -- the plea and the sentence.

22 THE COURT: Okay.

23 THE DEFENDANT: And then I had an ongoing contract with
24 Bill Woodward. You allowed me to go to Ecuador to take care of
25 sales issues for him. And after -- you know, I was told I should

1 be able to be let off probation after one year. You allowed me
2 to go back and forth to Ecuador. You know, I'll always be
3 grateful for those --

4 THE COURT: But, Mr. Caton, I guess where I'm going is
5 my recollection -- and you've confirmed it -- is up to this
6 point -- or whatever impression you made on me back then was
7 that, okay, I think this is overkill on the gun issue, I don't
8 think he's a threat.

9 One thing I take very seriously is when guns are
10 involved because, you know, if I'm wrong in my judgment, somebody
11 might get killed. You know, in that sense it's much worse than
12 being a state district judge who's got a third or fourth offense
13 DWI and the judge for whatever good or not so good reason gives a
14 very minimum sentence. Then don't you know the month after the
15 man or woman is out of jail, they get in a wreck and kill four or
16 five people. Well, this is serious as a heart attack for me. So
17 I take it very seriously.

18 But for whatever reason at the time I was going with
19 you the whole way. Whatever you needed, I generally accommodated
20 you. And who knows what would have happened had we had this
21 hearing because it's not automatic that I'll give it. Sometimes
22 I do and sometimes I don't. I never have a clue of what I would
23 have done until -- I don't judge anything until I hear it.

24 But I guess the point is that as far as the process of
25 the Court, with the exception of me not granting your motion as

1 it related to your previous ineffective assistance of counsel,
2 you've gotten damn near everything out of this judge that you had
3 asked for. Is that a fair statement?

4 THE DEFENDANT: I think it's a fair statement, yes.

5 THE COURT: Okay. And so -- okay. Go ahead. Anything
6 else you would like to tell me or comment on anything I've said?

7 THE DEFENDANT: It wasn't about your generosity and
8 being so accommodating. If you would have had three women up
9 there and the two that -- and Tabbie and Zoe were made to say
10 things that weren't true to you, you would have had three women
11 saying he did it and you would have me saying I didn't and to me
12 that sounded pretty finalistic and automatic to me.

13 And then there's the moral hazard of it because then I
14 would have had to be in a position where people that I really
15 love and care about -- I would have had to have said, listen,
16 they're lying. I mean, this isn't quite the same as having your
17 mother testify and having to call your mother a liar, but it's
18 headed in that direction and that felt pretty bad and pretty
19 nasty to me. And I'm sorry, Your Honor. I just -- I admit that
20 it was a bad value judgment, but I just couldn't -- I just
21 couldn't see myself at the time going through that, not again. I
22 just couldn't.

23 THE COURT: Okay. Well, is there anything else you'd
24 like to say?

25 THE DEFENDANT: Just that -- just that irrespective of

1 how you sentence me here today, I'll always be grateful for the
2 accommodations that you made for me and my family during what was
3 at that time the darkest hour of our lives.

4 THE COURT: Well, let me ask you this. One other issue
5 that came up -- and we were talking about this country that does
6 or does not have an extradition treaty. You know, one could
7 certainly -- common sense would lead one to believe that there
8 was more than just one call that said the federal agents are the
9 bad guys trying to get you now for whatever reason, going back to
10 that book you wrote or whatever other reasons there might be,
11 that there was some kind of a planning that, you know, I better
12 make sure I know where a safe haven is.

13 And of course I'm not -- this case is not about the
14 internet and what was presented to me about these agents broke
15 the law of Ecuador and some judge is running out trying to stop
16 the plane and all that kind of stuff. That's not what this
17 hearing is about, but those are the kind of things that some of
18 the people were putting on my plate like -- that has nothing to
19 do with whether you came here when you were supposed to or not.

20 But I'm interested about -- you know, when did you
21 start saying I better figure out where I think I'm safe as far as
22 an extradition treaty with the United States? When did you start
23 thinking about that?

24 THE DEFENDANT: That's Crystal Leslie. That's
25 completely fallacious. I was considering Costa Rica, Panama and

1 Ecuador. At the end before I moved to Ecuador, I was down in --
2 all three of them have extradition treaties. I mean, this is
3 nonsense. What country doesn't -- what would that mean, me going
4 to North Korea, Cuba, Algeria?

5 I mean, I don't know where they got this from because
6 the fact of the matter is that none of the places I gave serious
7 consideration to -- all of them have not only favorable relations
8 with the U.S., but they have an extradition treaty. As a matter
9 of fact, I had a deportation hearing. I won it. I was still
10 taken away over the judge's objection. I know because I was
11 there. I'm a firsthand witness. But this idea of going some
12 place where there's no extradition treaty is -- you know, my
13 actions do not bear that out.

14 THE COURT: Didn't I hear the lady who said she loved
15 you and she was here under subpoena and she hated being here or
16 something to that effect also say that there was discussion about
17 an extradition treaty? It wasn't just the other lady. And the
18 question for her was when was it that you -- when was this
19 discussion had, before Point A or after Point A. I've forgotten
20 the particulars.

21 THE DEFENDANT: I think they're confusing it. What I
22 was looking for has nothing to do with whether there was an
23 extradition treaty. It's whether the practice of naturopathy --
24 my wife's an M.D. She has four college degrees.

25 It was whether the laws of that country are favorable

1 to practitioners of natural medicine and are more favorable than
2 they are in the U.S. You have a great number of practitioners in
3 South America -- my wife and I know quite a number -- who are
4 there because the laws are more favorable to naturopathic
5 practice. That's not the same as searching out a country that
6 doesn't have an extradition treaty with the U.S.

7 THE COURT: So the lady who testified under subpoena
8 and who said she hated being here and she loved you, she just
9 misunderstood?

10 THE DEFENDANT: Well, it could have been framed in the
11 following way. It's possible that it was framed that a person
12 wouldn't be extradited for practicing natural medicine in "x"
13 country. Do you understand what I'm saying?

14 In other words, a person would be able to be in that
15 country and practice naturopathy without fear of -- without fear
16 of being deported, I guess. And, as I said, there's a great
17 number of people in South America who are there because they're
18 looking for greater expression in the area of natural medical
19 practices.

20 THE COURT: Well, there's a lot of mighty fine
21 naturopathic doctors who as long as they don't represent the
22 product they make, use, or recommend contrary to the Federal Drug
23 Administration rules, I mean, as to what it is, it will cure this
24 or it will do that, that they -- and I'm living proof, I think,
25 or at least I'm proof in my own mind of those kind of fine folks

1 that function in the United States within the confines of the
2 law.

3 I mean, you don't have to get out of the United States
4 to be a naturopathic doctor or to do research. It's just so you
5 don't make a false claim or a claim that is not backed by the FDA
6 which is the law of our country. You can't do "x" if you don't
7 have FDA's holy water. Are we together on that --

8 THE DEFENDANT: I understand.

9 THE COURT: -- on the state of the law?

10 THE DEFENDANT: I understand that, Your Honor, and were
11 we to be treated the way all of our competitors were, if we were
12 not to be treated selectively, had we gotten a warning letter or
13 even -- my wife is practicing now in Ecuador. You know, Alpha
14 Omega Labs is running again. If she were to ever get a warning
15 letter, she's not going to ignore it. She's going to do what the
16 letter calls for.

17 I mean, this could be taken out of the realm of
18 selective prosecution and put back in the realm of law
19 enforcement. My wife and I are not lawless people, but we have
20 never been given the accommodation that all of our competitors
21 have.

22 You know, I owned a cheesecake factory in 1980. So for
23 30 consecutive years -- for 30 years I have been under the FDA
24 jurisdiction in some form or fashion. In all of that time, the
25 only time I've ever gotten any kind of negative communication

1 from the FDA was in 1987. I got what was back in those days
2 called a letter of adverse finding because I had a label on my
3 Cajun jerky that the FDA didn't agree with. What happened? I
4 cleaned it up. Thirty days later both sides shake hands.
5 There's not a problem. If this could have been handled with that
6 level of civility, I would have never even been in a criminal
7 court of law, but I was never afforded that opportunity.

8 I also want to add that at the time that I was
9 arrested, I had an 18-year running relationship with one of the
10 best FDA law firms in the country, Gronek & Armstrong.

11 THE COURT: How do you spell the first name, Mr. Caton?

12 THE DEFENDANT: Gronek, G-R-O-N-E-K. They're in
13 Chicago. My personal FDA lawyer for 18 years was Paul
14 Winniewski.

15 THE COURT: How do you spell Mr. Winniewski's name?

16 THE DEFENDANT: Paul's last name is
17 W-I-N-N-I-E-W-S-K-I, Winniewski.

18 Anyway, after I got arrested, I said, Paul, what is
19 going on here, and after he had a chance to look at my case, he
20 said, I don't even know how to advise you on this. He said,
21 normally they would never do something like this. You'd get a
22 warning letter first. Imagine me, someone who's not a lawyer,
23 having my 300-dollar an hour FDA attorney say, look, this is over
24 the top, I don't know how to advise you.

25 If I have an FDA attorney who doesn't know how to

1 advise me, how do I advise myself? I mean, I'm truly, truly
2 begging this Court to make them make this legal and provide
3 guidance rather than unending attempts to get people to say
4 things that aren't true and trying to find ways to make me
5 violate probation, et cetera, et cetera. This does not have to
6 be criminal. This could be made civil. It could be -- it could
7 be made legal and right in very short order.

8 THE COURT: I don't understand what you just said. You
9 said this does not have to be criminal. This could be made
10 civil.

11 THE DEFENDANT: Could have, yeah.

12 THE COURT: And it could be made legal and made right
13 in very short order.

14 Are you suggesting that the fact that you admitted in
15 this courtroom under oath to violating the criminal laws of our
16 country could be set aside in some way? Is that what you're
17 suggesting to me?

18 THE DEFENDANT: No. I think you misunderstand, Your
19 Honor.

20 THE COURT: I read it verbatim from my monitor what you
21 just said, what I heard you say and what the court reporter wrote
22 down you said.

23 THE DEFENDANT: I'm saying that there is this -- there
24 is something called a warning letter that the FDA issues.

25 THE COURT: Okay. Let's assume you got busted without

1 proper warning, but you were breaking the law, and you came to
2 this court and you admitted to it. I mean, that's a fact, isn't
3 it?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. I didn't understand how we could
6 make it right in very short order, make it civil. What you were
7 intending to say was this could have been handled in a civil
8 fashion, and even though I might have been breaking the law, had
9 I gotten a warning letter, I would have cleaned my act up and we
10 would have never been here. Is that what you're trying to say?

11 THE DEFENDANT: I'm saying were we to be able to turn
12 the clock back, I'm saying with the issuance of a warning letter,
13 the things that the FDA was complaining about could have been
14 cleaned up in very short order and normally that's what happens.
15 That's what Paul Winniewski told me.

16 THE COURT: Okay. The way I paraphrased what I said is
17 what you just said, so I understand.

18 THE DEFENDANT: And, again, not being a lawyer, I'm
19 sure there's many imperfections you'll find in my speech.

20 THE COURT: Mr. Caton, I am impressed with, one, your
21 intelligence and your ability to express yourself more than --
22 and Mr. McCann can tell you this. You speak and express yourself
23 better than 98 percent of the people that stand in your position
24 for whatever reason they come here. Most of them probably come
25 to get sentenced or have a revocation. Most of them probably get

1 to see me in the first place because nobody gave a rat's about
2 them. They come from a very meager background. They don't --
3 aren't able to express themselves.

4 And one of the things I've tried to do over the years
5 is not -- it took me a little while to really understand. I'm
6 ashamed of that. But people who come here who have never had any
7 background, no family, no education, don't really have the
8 ability to express themselves, and I never hold it against
9 someone who happens to have more benefits in early life than
10 others such as maybe a loving family, maybe an educational
11 opportunity, who can speak for themselves.

12 I've got to make sure that -- because I can identify
13 with those people more than I can identify with people who can't.
14 So it's a fine line. I always -- it took me a while to really
15 appreciate how fine it was, but that's a big role and a big part,
16 I think, of a United States District Judge's role, to make sure
17 you don't get caught up in the moment, why is this poor SOB
18 unable to talk. I don't hold it against anybody who can.

19 But I'm impressed with your intelligence. I don't
20 recall what your formal education is. Maybe you could tell me
21 right quick. I read it the other day, but I've forgotten.

22 THE DEFENDANT: Well, I wouldn't call it meager, but
23 it's not -- I only have a two-year college degree.

24 THE COURT: And what was the area of study?

25 THE DEFENDANT: Premed.

1 THE COURT: Okay. Well, again, I mean, you're doing
2 fine expressing yourself. I got off on a tangent. What else
3 have you got to say, Mr. Caton?

4 THE DEFENDANT: That's it, Your Honor. I've tried the
5 best I could to try to give you a glimpse into my internal
6 dialogue. I deeply apologize for disappointing you and this
7 Court for any embarrassment I've caused Jackie Fontenot and the
8 probation department.

9 THE COURT: Well, let me ask you this. Your wife and I
10 assume your child are down in Ecuador. If it's permissible and
11 possible once you are released from whatever incarceration, is it
12 your intention, if it's legally permissible and they will take
13 you down there, that you're going to return to Ecuador? Is that
14 your intention?

15 THE DEFENDANT: Your Honor, we consider Ecuador our
16 home now.

17 THE COURT: Okay. You answered my question. I just
18 wanted to know. Anything else?

19 THE DEFENDANT: No, Your Honor. I think that's it.

20 THE COURT: Mr. McCann, anything else you'd like to say
21 right now? I'm going to give Mr. McCoy a chance to present
22 witnesses or make comments. You don't have to do it now, but you
23 can do it now if you choose to.

24 MR. MCCANN: No, sir.

25 THE COURT: All right. You and your client may be

1 seated.

2 Mr. McCoy, anything you would like to do?

3 I take it you rest then, Mr. McCann; is that right?

4 MR. MCCANN: Yes, sir.

5 THE COURT: Okay. Mr. McCoy, anything else you'd like
6 to put on, offer, or say?

7 MR. MCCOY: Well, I would like to -- I would like to --
8 it's my recollection in his allocution that he did state that he
9 did not make any drugs. I do have a video, which I've shown
10 defense counsel, made while the defendant was apparently in
11 Ecuador where he's stating that one of the drugs, which was the
12 H₃O that we were speaking about during this revocation hearing --
13 he shows it and mentions, I believe, at the three minute and
14 fifteen second mark that it's for sale for \$9.95 which would
15 obviously rebut the statement he made during his allocution that
16 he did not sell the stuff. I believe he says I did not make the
17 drugs, if I'm not mistaken, during his allocution to you.

18 I would think that the Court should be -- I feel I
19 should have the opportunity to inform the Court that if he's
20 saying he didn't do this stuff, I have a video of him saying that
21 I'm making this stuff and it's for sale.

22 THE COURT: And how do you know, one, where it was
23 made, and, two, when it was made? It's the video I'm talking
24 about.

25 MR. MCCOY: I will tell you, Your Honor, that I can't

1 tell you when it was made. I can tell you it was posted I
2 believe in December of 2009. The reason I can tell you I have a
3 good idea of where it was made is because the defendant states
4 who he is and that he's in Ecuador.

5 THE COURT: Okay. And Mr. McCann has seen this?

6 MR. MCCANN: I have seen it, Your Honor.

7 THE COURT: And has the defendant had an opportunity to
8 see it?

9 MR. MCCANN: No, sir, he has not.

10 THE COURT: And can we play it on the monitors at the
11 desks right now? And then the defendant may or may not want to
12 say anything else. And, again, remember he hasn't taken the
13 oath, he's making statements, but I think it's germane to the
14 issues before the Court. And, again, while the formal rules of
15 evidence don't apply here, I've got the right to reopen any part
16 of the proceeding even if they did.

17 So, Mr. McCann, I think it would be appropriate and
18 fitting for your client to see it, and if he wants to make a
19 response as to what that is or when that is, he may do so, but I
20 think it's germane to the issues that are before the Court, the
21 only one where he denies that he made the drugs.

22 MR. MCCANN: Your Honor, Mr. Caton in making his
23 mitigation statement was questioned by the Court as to a lot of
24 things. I don't recall there being any direct question --

25 THE COURT: I don't either -- I don't either about the

1 drugs. I didn't hear him -- I thought he was -- I didn't ask
2 him.

3 MR. MCCANN: That's correct. You didn't.

4 THE COURT: But the point of it is -- and I don't think
5 he said I didn't make the drugs. He's not under oath and I
6 wasn't trying to put him in peril because he could still be
7 making a false statement in a federal proceeding I think without
8 an oath on a material fact and I think he'd have a world of
9 problems. So I didn't ask him that. And I would have hoped and
10 suspected that you would have jumped up and said, Judge, that's
11 one question I don't think he ought to answer. But, like I said,
12 I can open this question -- or you may have. I don't know what
13 you would have said. If he knew about this video, I would have
14 sure said that.

15 But I think, like I said, while the formal rules don't
16 apply, I can open up anything at any time, and it seems to me
17 that it's germane to the only issue that remains before me. So
18 that's -- I'm not going with Mr. McCoy that the man said I didn't
19 make drugs during this period. I'm not. You know, he denied
20 that through you, but he didn't say he didn't make them. I want
21 him to get the opportunity to see this tape. I'd like to see it.
22 If we can play it on the computers -- Ms. Guidry, is that what
23 you said we could do?

24 THE COURTROOM DEPUTY: Yes, sir.

25 THE COURT: All right. Let's try to do that.

1 MR. MCCOY: And, Your Honor, if I may clarify myself --
2 and the clerk can correct me if I'm wrong, but I believe he did
3 state that he was not making any products.

4 THE COURT: Well, if he said that, it's in the record
5 and the record is the record, but I don't think it matters is
6 what I'm saying because of the procedural posture of the
7 proceeding and the nature of what a revocation hearing is.
8 Certainly it would -- I don't think it needs buttressing, but if
9 it needed buttressing -- and, again, I didn't ask him
10 specifically anything, but I do remember something about product.

11 But, again, is it to a point where my screen ought to
12 be working?

13 MR. MCCOY: Once I start it, Your Honor.

14 THE COURT: Okay.

15 (Video Published)

16 THE COURT: Now, Mr. McCoy, let me ask you this, sir.
17 You say this was -- this video was placed where? Where was it
18 played, sir?

19 MR. MCCOY: I believe it was on YouTube, Your Honor.

20 THE COURT: Okay. And it's posted in December of '09?

21 MR. MCCOY: Correct.

22 THE COURT: Okay. And Mr. Caton is apprehended when?

23 MR. MCCOY: I believe he was apprehended in December of
24 '09, Your Honor.

25 THE PROBATION OFFICER: December 2nd, '09, Your Honor.

1 THE COURT: So, in other words, it would have been one
2 week after he's apprehended that this is placed on the internet;
3 is that right?

4 MR. MCCOY: If it was posted in December of '09, that
5 would be accurate. It would be one week after.

6 THE COURT: And what's the basis for your
7 representation to the Court that it was posted in December '09?

8 MR. MCCOY: That's the date on the video from when they
9 pulled it from the YouTube site.

10 THE COURT: When they pulled it from the YouTube site.
11 Who are you making reference to?

12 MR. MCCOY: Certainly, Your Honor. The agents of the
13 FDA did an internet search for any videos that Mr. Caton might
14 have made on the internet, and when they went to the YouTube
15 site, that video was one of them that was posted on the YouTube
16 site. It would have stated that -- the YouTube site would have
17 stated it was posted in December of '09.

18 THE COURT: Well, let me just say this -- and, again, I
19 don't understand these things and I show my age and my
20 technological lack of understanding, but my most astute young law
21 clerk, Ms. Singletary -- and correct me if I'm wrong. In the
22 note she just gave me, she has a post date of August 13, 2009.

23 Is that right, Ms. Singletary?

24 THE CLERK: That's what YouTube reflects as the date of
25 the original posting.

1 THE COURT: Now, again, it's a distinction with
2 possibly some difference because I would find it hard to believe
3 that a man who had been arrested a week before under the
4 allegation that he's making this product -- of course, maybe it
5 was in the pipeline already and couldn't be stopped, but would
6 come up a week later and say to the world here it is.

7 Now, I'm just -- and, again, I don't know why the
8 agents got one date and Ms. Singletary has another date. And,
9 again, I'm not skilled enough at YouTube or much else on the new
10 twitter and tweet and what all those things are nowadays.

11 But, now, Ms. Singletary, would you tell me a little
12 bit more about -- tell me how YouTube generally works so we can
13 know a post date. I mean, how does one know that? If I went to
14 this web site right now -- in fact, why don't you give us the
15 address of the website and I'm going to go look at your screen.

16 Mr. McCann, you rise.

17 MR. MCCANN: I rose, Your Honor, because I think that
18 we're outside the realm of a hearing. Now we have -- and I'm not
19 sure how to handle this because I've never had to handle this
20 before, but now basically Your Honor's law clerk is becoming a
21 witness against my client.

22 THE COURT: My law clerk is trying to help us in our
23 search for the truth here because the discrepancy between the
24 date reported by the Assistant United States Attorney and my law
25 clerk is germane I find.

1 You can ask for a continuance so you can figure out
2 what the hell to do because I believe this -- like I told
3 Mr. Caton and which he said, I think it's supposed to be
4 sacrosanct, these hearings.

5 And while the formal rules of evidence don't apply, if
6 you think you need some more time to talk to him about what the
7 heck he just said and what I just saw -- and you can find it out
8 on YouTube and I can, too. We can let y'all both agree how
9 YouTube gets posted and what that means. And if I've got to get
10 somebody here from YouTube to make sure we all understand how it
11 works, I can do that. And I know -- I don't take offense at what
12 you've said, but I'm not trying to expand anything. I'm just
13 trying to find out what the truth is.

14 MR. MCCANN: Yes, sir.

15 THE COURT: So if you want to ask for a continuance
16 right now, I'll grant it. If you want to talk to your client
17 about whether he wants a continuance, you can do that.

18 MR. MCCANN: Actually, Your Honor, what I would like is
19 a five-minute recess for me to have a conversation with him.

20 THE COURT: That's absolutely fine. And he has not
21 taken the oath, and it may be good that he didn't take the oath.
22 I don't know. I don't know. I can't wait to see what the
23 explanation for this one is.

24 But it does not escape me -- and I believe I've got
25 this right and I stand to be corrected -- that we're talking

1 about water and sulphuric acid and some oxygenation in it with
2 magnets, some kind of magnetic field. I remember the young man
3 who was up here Wednesday who was in the back room with no lights
4 talked about the magnets and he talked about getting burned.

5 Now, that's -- you know, we're not beyond a reasonable
6 doubt here. We're talking about preponderance of the evidence.
7 And I'm just sitting here because I can't wait to see what the
8 rest of the story tells us all.

9 And before we take that recess, Mr. McCoy, can you
10 offer any logical explanation about why it is that the post date
11 that your agents told you this hit YouTube is different from that
12 of Ms. Singletary, my law clerk, who apparently went right to it
13 and says that's what it says?

14 MR. MCCOY: I think I might be able to, Your Honor.
15 When my agents went to the YouTube site, on the far right corner
16 it said that -- what he recalls is that it posted on 12/09. The
17 kind of point that I would like to make is that's not the date
18 the video is created.

19 THE COURT: I'm not worried about that. I'm talking
20 about when it was posted because I find it ludicrous to think
21 that a man who had been apprehended, you know, a week before
22 would go -- or somebody on his behalf, unless it was just in the
23 chute and they couldn't stop it -- would go up and admit in
24 essence -- or let's not say admit, but bring the position that
25 he's taken by the mere denial of the allegation that he was

1 making the product. I mean, I just think that would be just -- I
2 can't imagine that. Why would one do that to oneself? If it was
3 one's wife or whoever was working with one, why would that
4 happen?

5 There's no question in my mind he's much heavier than
6 he was then, but that's Mr. Caton. I mean, I believe that to be
7 Mr. Caton. I could be wrong about that, too, but I suspect not.

8 But, Mr. McCann, before we take our break, do you know
9 anything about YouTube? I mean, do you use YouTube?

10 MR. MCCANN: No, sir.

11 THE COURT: You're much my junior, but I don't know
12 what the hell all of that is about.

13 MR. MCCANN: No, sir. I think -- next to you, Your
14 Honor, I think I'm the second oldest person in the room.

15 THE COURT: That may be true.

16 State again with specificity, Mr. McCoy, what date your
17 agent says he thinks it was posted to YouTube because
18 Ms. Singletary says she thinks she can figure out if she's got
19 the exact date. Now, I don't know.

20 MR. MCCOY: I can tell you that my agent told me he
21 thinks from his recollection that it was posted -- when he viewed
22 the video on YouTube it said 12/09, but there's more than one
23 video that we downloaded.

24 THE COURT: All right. Understood. But it's mere
25 recollection. He doesn't have anything to document that. So if

1 we go to YouTube right now, what's on YouTube right now --

2 MR. MCCOY: Is probably more accurate than his
3 recollection.

4 THE COURT: That's what I was trying to figure out, why
5 you would present to me as an officer of this court something
6 that turns out may not be accurate, and you've answered my
7 question.

8 Now, Mr. McCann, you can go ahead and you can -- we'll
9 give you five minutes. I'm going to ask Ms. Singletary -- and I
10 think I will put her under oath as far as the procedure she might
11 have followed to tell us all how YouTube works, and we'll use
12 that for whatever it's worth so the record would be complete and
13 we don't have some judge's law clerk making up stuff as she's
14 going along. She would be under oath only following my
15 instructions to help the judge who doesn't understand YouTube.
16 All I want to know is what day it was posted on YouTube.

17 Do you understand, Ms. Singletary, what I want?

18 THE CLERK: I understand.

19 THE COURT: And you will tell us how you come to that
20 conclusion if you do. If you come up and say, gee, Judge, I
21 can't figure this one out or I don't know, then maybe it would be
22 important that I get somebody that could and we'll just recess
23 this thing because it's germane. Is it likely to change whatever
24 could happen in the worst case scenario, Mr. McCann -- and let me
25 say this, too, and make sure I don't misspeak.

1 I believe that the most I can give this defendant for
2 the violations that he's admitted to is two years. Even
3 considering the policy statements, I can give him up to two
4 years. Is that right?

5 MR. MCCANN: I think that's true, Your Honor.

6 THE COURT: Is that the government's view?

7 MR. MCCOY: Yes, Your Honor.

8 THE COURT: Is that probation's view?

9 THE PROBATION OFFICER: Yes, Your Honor.

10 THE COURT: And I may be wrong, but one of the
11 statements I made is that YouTube -- the government lawyer and
12 you, Mr. McCann, said, Judge, we know it's your usual policy not
13 to talk to lawyers before you go into these type of proceedings,
14 guilty pleas or otherwise. That's just how I do it. It's not
15 that other people who do it differently are doing anything wrong.
16 It's just, you know, we have open trials for a reason and
17 hearings.

18 But I think the statement was made that, gee, Judge, if
19 we could -- you know, we know he's going to get two years, we
20 don't need to have the hearing, or something to that effect.
21 Now, did I get that -- and some things get lost in translation,
22 too. If I've got that wrong, forgive me, but I'm trying to make
23 sure my memory is accurate, Mr. McCann.

24 MR. MCCANN: Your memory -- well, let me just restate
25 what I was thinking at the time. It was because my client was

1 going to admit to two violations, if that would have already
2 subjected himself to that penalty --

3 THE COURT: To the maximum.

4 MR. MCCANN: -- then I probably was going to -- I was
5 trying to tell the Court in advance that Mr. Caton was going to
6 admit to violation number two and violation number three because
7 I don't have a defense to the fact that he didn't come back from
8 Ecuador --

9 THE COURT: Understood.

10 MR. MCCANN: -- except his mitigation.

11 THE COURT: Understood.

12 MR. MCCANN: He still vehemently denies violation
13 number one.

14 THE COURT: Okay. So, in other words, we're all on the
15 same page. I understand.

16 You understood what Mr. McCann was wanting at that time
17 when y'all wanted to see me before the hearing?

18 MR. MCCOY: Correct, Your Honor.

19 THE COURT: Okay. We'll take a five-minute recess.
20 I'm going to go by that clock. It's five to 4:00. I want to be
21 back by 4:00 o'clock. Ms. Singletary will be doing her thing and
22 we'll put her under oath and see what she did. Then we'll see
23 what Mr. McCann wants to do after that's in the record if he
24 wants to do anything and we'll just see where we are.

25 We're in recess.

1 (Recess)

2 THE COURT: Please be seated.

3 All right. Mr. McCann, is there anything before I
4 allow Ms. Singletary to tell me -- tell all of us for the record,
5 after she's placed under oath, what she did, and very candidly
6 and quite frankly, what I watched her do so I would understand,
7 one, how YouTube is posted, and, two, how the post date is shown,
8 how you can verify that by seeing people who actually watched the
9 YouTube, what date they watched it.

10 Also there were a number of other -- as I think the
11 government lawyer said, other posts that were related to
12 Mr. Caton, but the only one I'm concerned with is the one we just
13 saw here in the courtroom a minute ago.

14 What would you like to do? And you can listen to her
15 first before you make your decision.

16 MR. MCCANN: I would like to listen to her as she
17 describes when it was posted and how it was posted.

18 THE COURT: All right. If you'd administer the oath.
19 Ms. Singletary, please face Ms. Guidry.

20 THE COURTROOM DEPUTY: Do you solemnly swear that the
21 testimony you will give in this case will be the truth, the whole
22 truth, and nothing but the truth?

23 THE CLERK: I do.

24 THE COURT: All right. Go ahead. State your name,
25 please, for the record.

1 THE CLERK: Would you like me to get the microphone?

2 THE COURT: No. You're fine right there.

3 THE CLERK: Laura Singletary.

4 THE COURT: And, Ms. Singletary, are you my law clerk?

5 THE CLERK: I am.

6 THE COURT: One of my law clerks?

7 THE CLERK: I am.

8 THE COURT: And have you served in that capacity since
9 roughly August of last year?

10 THE CLERK: I have.

11 THE COURT: And the record is replete with what I asked
12 you to do prior to us taking a recess so this Neanderthal judge,
13 who doesn't know anything about YouTube, would understand the
14 posting date of the YouTube that the Court viewed at the
15 government's request in this proceeding because of what I noted
16 as a discrepancy in what the government lawyer told me the post
17 date was and the arrest date. His representation was the post
18 date was actually a week or so after the arrest of Mr. Caton.

19 And the question I have -- I think you did pass a note
20 to me during that point and said, Judge, there is an August 13,
21 2009, post date; is that correct?

22 THE CLERK: That's correct.

23 THE COURT: And after you said that, I made the
24 statement -- I asked the U.S. attorney how he would explain the
25 discrepancy or something to that effect. Somewhere around that

1 point or thereabouts Mr. McCann said, gee, Judge, I don't know
2 how to defend this. I've got the law clerk -- the judge's law
3 clerk acting as a witness in this proceeding and I don't know how
4 to respond to that.

5 And, of course, my point was that I just need to
6 understand technically what I saw and when it might have been
7 posted and understand the discrepancy. I gave you specific
8 instructions after I gave Mr. McCann the five-minute break that
9 he asked for, a recess that he asked for, to go find out how to
10 do -- you know, find out exactly what happened in this as far as
11 the YouTube record. Is that correct?

12 THE CLERK: That is correct.

13 THE COURT: And did you do as I asked?

14 THE CLERK: I did.

15 THE COURT: And as you did it the second time, did I
16 stand in back of you and watch you do it?

17 THE CLERK: Yes, you did.

18 THE COURT: And for the record state what it is that
19 you did.

20 THE CLERK: There is a Google search toolbar on the
21 right corner of my desktop, and in that toolbar I typed Greg
22 Caton H₃O search. My search results turned up. The first two
23 things were two videos posted on YouTube. I recognized the
24 starting image of the first video to be the same image that the
25 Assistant U.S. Attorney, Mr. McCoy, had played for the Court. So

1 I clicked on that video.

2 On the -- right below the video -- I played the video
3 without sound and then again with sound while we were back in
4 chambers and confirmed that it was the same exact video that was
5 played before the Court.

6 Underneath the YouTube video there is a posting date
7 which read August 13th, 2009. Also to the right of that posting
8 date is a record of the number of views that were made of that
9 video. The first recorded viewing that YouTube recorded of that
10 video was August 14th, 2009, and then there were many other
11 viewings subsequent to what.

12 THE COURT: So if I understood what you've said, it
13 would have been viewed for the very first time the day after it
14 was placed on the web, on YouTube?

15 THE CLERK: Correct.

16 THE COURT: Okay.

17 THE CLERK: To confirm that the date -- because it
18 reads posting date, but I just wanted to be sure that I was
19 referring to the right date -- I also Googled -- I'm sorry -- I
20 also entered into YouTube March 21st, 2010, healthcare vote just
21 because it was the most recent thing I would think that would be
22 on YouTube.

23 THE COURT: For the record to make sure it's clear and
24 we're not confusing it, it has nothing to do with Mr. Caton.
25 This was the vote that the United States House of Representatives

1 took last evening that passed the healthcare reform bill. Is
2 that correct?

3 THE CLERK: That is correct.

4 THE COURT: All right. And the purpose for you putting
5 that in there was what?

6 THE CLERK: I wanted to confirm that what was listed as
7 the posting date in Mr. Caton's video entry -- the video entry of
8 Mr. Caton, that that was in fact the posting date.

9 THE COURT: That being August 13, 2009?

10 THE CLERK: Correct.

11 THE COURT: Okay. Go ahead.

12 THE CLERK: And when the search results came up for the
13 March 21st, 2010, healthcare vote, the posting date in the exact
14 same area as the posting date for Mr. Caton's video reflected
15 that it was in fact March 21st, 2010, that that video was posted.
16 That was merely for my, you know, confirmation that I was looking
17 at the correct date. It was labeled as the posting date, but I
18 just wanted to be certain that there were not any other dates
19 that would be indicative of a posting date.

20 THE COURT: Mr. McCann, is there anything that you
21 would like to ask Ms. Singletary about the procedure she used?

22 And I don't hold her out as an expert in YouTube. I
23 don't hold her out as an expert in anything except being about 40
24 years my junior and knowing a hell of a lot more about the
25 internet and YouTube and everything else that goes on, but other

1 than that, she is not an expert.

2 MR. MCCANN: No, sir, but I would like to enter some
3 type of objection, although I don't know what kind it is, because
4 similar to what I just argued earlier, basically now we have the
5 Court's personnel serving as a witness.

6 Now, I'm not saying it's a witness for the prosecution
7 or a witness for the defense, but it's a witness nonetheless, and
8 I don't think that that's -- it certainly is not in my
9 experience. Let me just leave it at that.

10 THE COURT: Well, let me say this. It's unique in my
11 experience. What she was doing was at my request, which has been
12 here in realtime in front of you and your client, to make sure
13 she's followed up.

14 But I tell you what I'm going to do because this is new
15 for me. I'm going to strike her testimony and not consider it at
16 all. I'm going to recess this hearing. I'm going to instruct
17 the government to go get somebody who can testify and that's not
18 part of the Court family even though all it is is trying to get
19 documentation because your agent had a faulty memory and you
20 relied on it and it piqued my interest that why would anybody in
21 their right mind post something that might have been generated
22 after he was arrested. Why would his wife do that to him? Why
23 would anybody do that to him? And so that's what we'll do.

24 So we're going to -- I'm striking her testimony. I'm
25 going to instruct the government to go find out. It's going to

1 cost the United States taxpayers some money, but, you know --
2 and, again, maybe Ms. Singletary, not an expert, just trying to
3 assist the Court in our search for the truth here, maybe
4 procedurally it's improper. So I sustain the objection. That's
5 why I'm striking the testimony, Mr. McCann.

6 You understand my instructions to you, Mr. McCoy?

7 MR. MCCOY: I would like to ask one question for
8 clarification, Your Honor. If I do have, for example, an agent
9 that could go to the computer and check out the YouTube, see when
10 the accessing date was, is that going to be sufficient for the
11 Court for these purposes?

12 THE COURT: Let me say this. I am again convinced even
13 though -- just a minute, Mr. McCann -- convinced of what I
14 witnessed and saw -- I mean, I don't have enough data to know
15 it's foolproof, but I would be shocked if it's anything but a
16 post date of August the 13th, 2009. But Mr. McCann raises a
17 point, good lawyer that he is. I don't think there's anything
18 procedurally deficient, but it's not my liberty at risk. It's
19 Mr. Caton's.

20 And, you know, I've got enough data going on right now
21 that, you know, I'm -- you know, I haven't prejudged anything and
22 I haven't formed an opinion, but the reason I allowed this video
23 to be shown to me is because I thought it was germane to the only
24 issue before the Court, whether or not he made the product.

25 And there's a lot of other evidence. If I take what I

1 consider to be the disinterested witness that I've heard who
2 actually got burned, physically burned -- if I take his testimony
3 at face value and what the video said about how you make H₂O not
4 harmful even though it's got this acid in it, I mean -- but,
5 again, I want to make sure that Mr. Caton gets due process
6 because he has some issues with the government agents. I take it
7 that he hasn't had any issues with the Court up to this point. I
8 don't want him to ever walk out of here thinking that, gee, I
9 didn't get a fair hearing.

10 And Mr. McCann, I don't fault him for making any
11 objection he made, and I think if I denied it, I don't think it's
12 reversible error, certainly not in the nature of this proceeding.
13 I think it was entirely appropriate what I asked my law clerk to
14 do in realtime in this courtroom. I think it's entirely
15 appropriate what she did and what I watched her do the second
16 time after she said, Judge, this is how it works, but that's why
17 I put her under oath so everybody would know what the judge knew.

18 Now, Mr. McCann, you stood and you raised your hand or
19 you raised your hand sometime. You may speak.

20 MR. MCCANN: Let me try to short-circuit it, Judge. I
21 was going to put Mr. Caton on the witness stand. I want to ask
22 him a question.

23 THE COURT: Okay. Well, you know, that's fine, but I
24 think I've got to get over this procedural thing here first
25 because he should be given the opportunity to -- what I just

1 struck from the record, to have that part of the record, and then
2 he can make whatever response he wants. Then there could be
3 whatever rebuttal the government wants to put on. That's just
4 procedurally the way I want to do it because this is about me
5 making sure it's a fair proceeding.

6 It's not fair, based on the objection that you made and
7 I sustained and what's been stricken, for him to have to say
8 anything under oath because I think he could already be in a
9 world of trouble technically, but once he takes that oath and
10 gets on the witness stand, that's perjury. It could be perjury.

11 And if he's close to being right -- and who knows,
12 anything is possible -- that this is a vendetta against him for
13 whatever obscure reason -- and maybe Mr. McCoy and his office are
14 against him, too. I don't know. I suspect not, but anything is
15 possible. So I don't want him to have any grounds for him to
16 feel like he was abused in this courtroom while I presided over
17 the case. Okay?

18 MR. MCCANN: Yes, sir.

19 THE COURT: So we'll recess this.

20 And, Ms. Singletary, what's my schedule tomorrow?

21 MR. MCCANN: Your Honor, I have a funeral to go to
22 tomorrow morning.

23 THE COURT: I'm not going to try to trump that.

24 Well, I tell you what. We may just have to put this
25 off until the next time I'm here. It will be in early April.

1 And I'll do it -- it's not early April. It will be in late April
2 or early May. We'll schedule it at that time. We'll continue it
3 until that point. That ought to give the government plenty of
4 time to -- and if you choose to go with letting the agent do it
5 and that's enough or if you want to get -- spend the government
6 resources to get somebody from Google down here or Facebook,
7 whoever the hell that is, to tell us how that works, or if you
8 want to get me to take judicial notice of an official manual, you
9 know, that -- you know, I can take judicial notice. It's your
10 choice. I'm not trying to suggest anything to you.

11 But I want this record to be clear because
12 Mr. McCann -- and, again, nothing improper, but he questioned the
13 procedure that I used and that's why that's struck. It's
14 important. It's an important issue.

15 Okay. Thank you all. We're in recess.

16 (Proceedings adjourned.)

17 - - -

18 Certificate

19 I hereby certify this 14th day of October, 2010, that the
20 foregoing is, to the best of my ability and understanding, a true
21 and correct transcript from the record of proceedings in the
22 above-entitled matter.

23 /s/ LaRae E. Bourque

24 _____
Official Court Reporter

25