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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v. 17 Cr. 548 (JMF)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.
9 June 13, 2022
10:15 a.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS
15 United States Attorney for the
16 Southern District of New York
17 BY: DAVID W. DENTON JR.
MICHAEL D. LOCKARD
Assistant United States Attorneys

18
19 JOSHUA A. SCHULTE, Defendant *Pro Se*

20 SABRINA P. SHROFF
21 DEBORAH A. COLSON
22 Standby Attorneys for Defendant

23 Also Present: Charlotte Cooper, Paralegal Specialist

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1 THE COURT: We've already appeared in the classified
2 setting, but since this is the beginning of our public setting
3 today, in the matter of United States v. Schulte, 17 Cr. 548,
4 counsel, would you state your appearances for the record, and
5 Mr. Schulte.

6 MR. DENTON: Good morning, your Honor. David Denton
7 and Michael Lockard for the government, and with us is
8 Paralegal Charlotte Cooper.

9 THE COURT: Good morning to you.

10 Mr. Schulte.

11 MR. SCHULTE: Josh Schulte, appearing *pro se*.

12 MS. SHROFF: Good morning, your Honor. Standby
13 counsel Deborah Colson and Sabrina Shroff.

14 THE COURT: All right. Good morning.

15 We have a few things to cover before we bring the jury
16 pool up here.

17 One thing you'll notice is that Ms. Smallman is not
18 here. Unfortunately, I anticipate that that will be true for
19 the next five to ten days -- you can probably figure out what
20 the situation is there -- but we will have to make do. It will
21 make things a little bit more complicated, but thankfully,
22 Mr. Lee here has agreed to step in, at least for today and
23 maybe the coming next few days. I don't think he is cleared,
24 so keep that in mind if there are any issues of that sort.

25 In terms of covering things that need to be addressed

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1 here, first, Mr. Schulte's letter on Friday requesting an
2 adjournment after jury selection, that request is denied.
3 First, the fact that Mr. Schulte did not anticipate how hard it
4 is to prepare for trial, let alone how hard it is for a *pro se*
5 litigant, is obviously not a basis for adjournment. He was
6 warned about the drawbacks of proceeding *pro se* and chose to go
7 *pro se* notwithstanding those, and the fact that trials are hard
8 to prepare for is not a reason to grant an adjournment trial,
9 nor is the fact that he assumed incorrectly what order the
10 government would call its witnesses in this trial. That
11 happens in all sorts of trials, and if anything, he just had
12 more information going into this trial than most litigants do
13 going into trial. And finally, I had previously denied the
14 request for an adjournment based on the laptop and medication
15 issues, and nothing Mr. Schulte said in his letter Friday
16 persuades me that that requires reconsideration.

17 That would be enough to deny the application, but for
18 the sake of the record, I feel compelled to say a few other
19 things.

20 First, Mr. Schulte has known about this trial date and
21 that it was a firm date for over six months, since it was set
22 on December 6, 2021. Moreover, I initially set an earlier date
23 but granted his request to delay it by approximately a month
24 not based on the need to prepare but based on the availability
25 of his expert.

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1 Second, I have gone through what I can only describe
2 as extraordinary lengths to ensure that Mr. Schulte has what he
3 needs to prepare for trial and really above and beyond what the
4 law entitles him to. I arranged for him to have more SCIF
5 time, more time in the Sand law library, and so on. As you
6 know, I've regularly communicated both with the MDC directly
7 and the United States Marshal, something that I have done in no
8 other case to date, and I have basically gone to extreme
9 lengths to ensure that most of his requests are granted,
10 subject to some policy issues and security-type issues. But
11 the bottom line is I have done what I can to ensure that he is
12 able to prepare for trial.

13 Third, the supposed problems at the MDC would weigh
14 more heavily in the balance if Mr. Schulte hadn't been
15 complaining on a regular basis about such things. First, that
16 record and what I've heard from the MDC casts some doubt on
17 Mr. Schulte's claims, but more importantly, even if they are
18 accurate, to the extent there have been such problems,
19 Mr. Schulte has long been on notice to make the best use of his
20 time and ensure that he doesn't leave his preparations to the
21 last minute, given the possibility of such problems. And
22 finally, and perhaps most importantly, Mr. Schulte has not made
23 the best use of his time. Since I was reassigned this case,
24 Mr. Schulte has filed a staggering number of motions and other
25 applications. By my rough count or my law clerk's rough count,

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1 close to 100 motions have been filed since I got this case last
2 fall and that I don't even think includes relatively minor
3 requests. The vast majority of those motions were filed by
4 Mr. Schulte, and while some of them raised colorable, if not
5 significant, issues, most did not. Indeed, many -- I did not
6 try to count -- simply reraised arguments that had been
7 considered and rejected by one or both of Judge Crotty and me.
8 After that, Mr. Schulte's 17-some-odd appeals that he has
9 filed, notwithstanding the lack of a final judgment, which, by
10 the way, is why I have continued to proceed despite those
11 appeals and the 15 or so civil cases that Mr. Schulte has filed
12 in this district alone, it is little wonder that Mr. Schulte
13 has not had enough time to finish his preparations for trial.

14 To be clear, I'm not faulting, let alone punishing,
15 Mr. Schulte for availing himself of the Court to seek
16 appropriate relief. Candidly, his litigation strategy writ
17 large has bordered on abuse of the court system. My point is
18 simply having made the choice to spend his finite time in the
19 manner in which he has that he has to live with the
20 consequences of those choices. So bottom line is we have had
21 this trial date for six-plus months. It is a firm date. Once
22 we have a jury, we will proceed expeditiously, and the request
23 for a two-day adjournment after we have a jury is denied.

24 Second, just to make a record, I did communicate with
25 the MDC last week concerning some of the issues that

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1 Mr. Schulte has raised. I was assured at least on the weekdays
2 last week that the computer in the Sand library was up and
3 running and had been checked. I was also told that Mr. Schulte
4 was provided with a grooming kit, and he appears indeed to have
5 groomed himself today. So I assume that that is accurate. He
6 also did receive, obviously, civilian clothing, since he is
7 dressed accordingly today.

8 Mr. Schulte, one note, at times, your mask has dipped
9 below your nose and I have not necessarily called you on it or
10 enforced it, but I would encourage you to ensure that it
11 doesn't go forward. I don't think you want the jury to
12 think that you're not abiding by the rules, and I don't want to
13 call you out in front of the jury. So if you can just make
14 sure you have your mask up, that would be great.

15 I did speak to the U.S. Marshal as well and, on that
16 front, would say a few things. One, I was told that the
17 marshals would allow Mr. Schulte to keep his papers and laptop
18 during breaks and in the mornings when he gets to the
19 courthouse. So that request has been granted. I think there
20 were a few other issues there, all of which, I think all those
21 requests have been granted as well. But I guess the few things
22 that I want to discuss is the approaching of witnesses and
23 approaching of sidebars.

24 Mr. Schulte's request for permission to approach the
25 witness, I'm going to deny that. Again, I think to the extent

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1 that we can figure out procedures so that nobody really needs
2 to approach the witness, that would be ideal. If that means
3 putting binders on the witness box at the start of the
4 witness's testimony with their 3500 so that we can simply
5 direct them to things, that would be ideal. In any event, if
6 anyone needs to approach, I'll let standby counsel approach on
7 Mr. Schulte's behalf. So he should just request permission for
8 standby counsel to approach, and standby counsel can do that
9 for him. But given the security issues involved and the
10 witnesses going before the jury, and so on and so forth, that
11 request is denied, and I think we can come up with an adequate
12 substitute.

13 By contrast, at my urging, the marshals have OKed
14 Mr. Schulte attending sidebars. He will be accompanied by a
15 U.S. Marshal, obviously dressed in civilian clothes. I would
16 request that one standby counsel and one of the marshals
17 approach with Mr. Schulte. I think given the number of people
18 who would be at sidebar, they will simply blend in and there
19 wouldn't be any issues on that score. But with that proviso,
20 Mr. Schulte will be permitted to approach for sidebars.

21 Obviously, Mr. Schulte, if there are any issues
22 whatsoever, that permission will not only be revoked, but it
23 may have other consequences. So I'm trusting, given that you
24 have been on best behavior, in my presence, at least, that
25 there will be no issues -- security issues or threat issues --

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1 but suffice it to say I will swiftly deal with any problems of
2 that sort, so I trust that there won't be any.

3 On Friday, the parties conveyed to me that they had
4 reached agreement on witness-related issues, at least as
5 concerned the witnesses that the government had been most
6 concerned about.

7 Any reason to put anything on the record about that
8 other than the fact of the agreement?

9 MR. DENTON: Your Honor, I would say we've reached an
10 agreement with respect to the category of witnesses the
11 government identified as most sensitive.

12 Standby counsel conveyed that they would be working
13 with the defendant to narrow that list. We were advised this
14 morning that that has been done. After the classified
15 conference, we asked standby counsel to provide us with that
16 narrowed list. Ms. Shroff said she would get to it if the
17 Court issues an order to that effect, so we would ask that the
18 Court order the defendant to convey his narrowed request to the
19 government so that we can start letting people know.

20 THE COURT: All right.

21 Mr. Schulte or Ms. Shroff.

22 MS. SHROFF: Your Honor, I haven't been able to speak
23 to Mr. Schulte in the SCIF today, so I haven't been able to
24 narrow anything since Friday. We told them we would work on
25 it, and we are. And by the end of the day, we hopefully we

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1 have narrowed it. If I had the narrower list now, I would give
2 it to them.

3 THE COURT: Great. As soon as you do, please give it
4 to them, and if there are any issues that I need to resolve,
5 then you'll let me know.

6 I had a few other things on my list of items to raise,
7 but I don't think they'll take more than a few minutes. So for
8 that reason, unless the parties have any concerns with my doing
9 so, I would probably let the jury department know that they can
10 begin to assemble the jurors and send them up.

11 Anything?

12 MR. DENTON: Just logistically, your Honor, with
13 respect to challenges for cause, before we get to that, does
14 the Court intend to do that at sidebar, or mechanically, how
15 would the Court like to proceed?

16 THE COURT: For the most part, I will call 36 jurors
17 by name based on the randomized list that we'll get from the
18 jury department. 18 of them will be in the jury box. The
19 other 18 will be in the front rows back there. I will proceed,
20 beginning with juror No. 1 and go through, and frankly, most
21 people who should be excused for cause I will simply excuse
22 because it will be obvious to me. At various junctures during
23 the process, I would anticipate giving you guys an opportunity
24 either to make additional applications of that sort or requests
25 to follow up with jurors of that sort. That will either be

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1 done during a break, when no one is here, or it will be done at
2 sidebar.

3 MR. DENTON: That's fine, your Honor. We'll wait for
4 the invitations.

5 THE COURT: OK.

6 Mr. Schulte, any questions about that?

7 MR. SCHULTE: I don't think so.

8 I just wanted to raise or discuss a couple of logistic
9 issues with -- that you had mentioned before -- the marshals
10 and MDC.

11 THE COURT: All right. But before you do that, why
12 don't we just let the jury department know that we will be
13 ready whenever folks are sent up so we can get started.

14 MR. SCHULTE: OK.

15 THE COURT: I'm going to ask before the jurors come up
16 that anyone up here, if you could move to the far back of the
17 courtroom, to please make room for the jury pool in the front,
18 I'd be grateful.

19 Second, to keep going down my list, I mentioned this
20 in the classified hearing but said I would reiterate it here to
21 make a record. I have granted the government's motion to admit
22 Government Exhibit 1 and whatever number exhibit the log files
23 are, the two exhibits the government sought so introduce as
24 classified exhibits at trial. I am granting that motion both
25 under Section 8 of CIPA, and I find, based on my evaluation of

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1 the *Lawlor* factors, that that proposal is adequate or justified
2 as a limited courtroom closure. I will issue an opinion on
3 that issue in due course.

4 There is one remaining issue with respect to the
5 defense use of some classified information that remains
6 unresolved, and I think I'll want resolution on that before I
7 issue an opinion, since I may have to address that as well, but
8 the government has to report back to me on that score in short
9 order.

10 There were some issues raised by Mr. Schulte
11 concerning stipulations. This is Dkt. No. 854. I've already
12 ruled with respect to the stipulations that were admitted in
13 the first trial; to the extent that they were admitted at the
14 first trial, they're admissible here. It would definitely be
15 better if Mr. Schulte signed new versions of them that omitted
16 any reference to his lawyers, but if he's not willing or able
17 to do that, then the burden is on the government to propose
18 some sort of appropriate substitute. But Mr. Schulte raised in
19 that letter that there were some issues.

20 I want to be clear. That is a separate issue from any
21 stipulations that Mr. Schulte is proposing. I'm certainly
22 happy to discuss those, but at the end of the day, the
23 government's not required to stipulate to things, particularly
24 if it doesn't agree with what is set forth in the stipulation.
25 And if the government doesn't stipulate, Mr. Schulte is going

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1 to have to call whatever witnesses he thinks are appropriate to
2 address those issues.

3 Mr. Denton, where do the stipulations stand?

4 MR. DENTON: Your Honor, I think we let Mr. Schulte
5 know that we also view them as separate issues. We do have
6 redacted versions that are available of the old stipulations,
7 if necessary, but we are hoping that he will sign the new ones
8 today.

9 With respect to his stipulations, I think there are a
10 number of them that we're in agreement on and will be able to
11 finalize. However, there are a number of them that proposed
12 offering a significant number of exhibits that the government
13 believes would be inadmissible, like thousands of instant
14 message chats between FBI agents who are testifying witnesses
15 or the defendant's own statements. And so I think, you know,
16 insofar as the defendant is asking us to stipulate to
17 authenticity, we may have, either in writing or at a
18 conference, some practice before the Court *in limine* on whether
19 those are going to be admissible before we can reach
20 stipulations on them.

21 THE COURT: OK. A couple of suggestions.

22 First of all, Mr. Schulte, I do think these are
23 separate issues, and again, I think the cleanest and best way
24 to handle the prior stipulations is to sign new ones, reserving
25 your rights to challenge my prior ruling on that front, and I

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1 would order to you that sooner rather than later. Otherwise,
2 some redacted versions of the prior stipulations will be
3 admitted.

4 As for your proposed stipulations, I guess I would
5 just ask that you guys work those things out sooner rather than
6 later so that Mr. Schulte knows if there are witnesses that he
7 needs to subpoena or call, that he has adequate amount of time
8 to do that. And second, Mr. Denton, to the extent that you
9 have issues with respect to relevance or admissibility that are
10 separate from authenticity, I would urge you to at least
11 stipulate as to authenticity so that Mr. Schulte knows he
12 doesn't need to call a custodian or witness to testify to
13 authenticity, and then we can litigate questions of
14 admissibility and relevance and the sort. But to the extent
15 that Mr. Schulte needs adequate time to know what witnesses,
16 custodians he needs to call, I think it's fair to ask that you
17 sort these things out sooner rather than later.

18 Does that make sense?

19 MR. DENTON: Yes, your Honor.

20 I think that with the exception of the Michael memo
21 that we talked about, we're not going to need any custodians on
22 any of the more ministerial things in this case.

23 THE COURT: All right. But I want you to let him know
24 sooner rather than later so that he can use his time wisely.

25 Mr. Schulte, any questions on that?

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1 MR. SCHULTE: No. I mean I think I spoke with the
2 government earlier, and they have already responded to my
3 stipulations. I think, you know, we're -- like he said, we're
4 in agreement on many things, and some things are just related
5 to authenticity versus admissibility, and I think we're
6 essentially finished with that. So I'm hoping by the end of
7 the day to have all that finished. And there shouldn't be an
8 issue.

9 THE COURT: Great. Bottom line is you guys should try
10 and sort these things out. To the extent that you need to
11 raise issues with me, either disputes over stipulations or,
12 more to the point, the admissibility of evidence relating to
13 the stipulations, it's up to you to raise those in a timely
14 fashion.

15 One minor note. We have plenty of time on this, but
16 since it's on my list of things to mention, we've already
17 discussed at the final pretrial conference Mr. Schulte's
18 testimony if he elects to testify, that that will be done in
19 some sort of Q&A, where he drafts the questions for standby
20 counsel. My summer intern actually helpfully raised the
21 question of how to handle objections if Mr. Schulte has
22 objections to questions that are posed on cross or to respond
23 to objections that the government raises on direct, so I thank
24 her for that.

25 The short answer is that Mr. Schulte is representing

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1 himself, so he will raise objections and respond to objections
2 notwithstanding the fact that he's in the witness box. So
3 that's how we will handle that.

4 Mr. Schulte, that covers my list. You had said that
5 you had one or two things as well.

6 MR. SCHULTE: Yeah. So, I mean the first thing is I
7 just wanted to put on the record that, you know, I object to
8 that. I think it's going to be very prejudicial if, and not
9 feasible if I'm testifying and having to deal with the
10 objections.

11 And then there's one other thing I wanted to put on
12 the record too. The 3500 materials the government provided
13 very late on Friday that were dated 5/25, standby counsel asked
14 twice for these materials. I haven't yet been able to review
15 them because they came in so late. So those two things I just
16 wanted to put on the record first.

17 And then my only -- I had two questions. One of the
18 marshals, one of the issues was transport. I've heard, you
19 know, different things from the marshals. I just want
20 clarification. Some said that it shouldn't be an issue to have
21 my legal work with me. Sometimes we sit in front of MDC for
22 three or four hours. It would be nice to be able to actually
23 work on the case on the laptop. So I'm not sure what -- like I
24 said, I've heard a couple different things, so I just wanted to
25 get, try and get clarification on that issue.

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1 And then the MDC, I was trying to see if the Court
2 could help me either get an order or something that before I
3 leave in the morning I'm able to connect my laptop and print
4 some documents, since I don't have access to the printer
5 directly from my cell, when I'm working on things, updating my
6 cross. I know that the Court has said to have paper copies
7 available as well as electronics, so I don't have any way to
8 print that except if I'm leaving in the morning, but the MDC
9 don't allow me to use the printer when I'm coming in the
10 morning. So I'm just hoping to resolve this so that I am able
11 to have paper copies of things as well, updated paper copies as
12 well as electronic copies.

13 THE COURT: All right. I'll get in touch with both
14 MDC and the marshal on those. Those seem like reasonable
15 requests, subject to any policy or security issues that I may
16 be unaware of. I'll see if those can be honored.

17 With respect to your objection or concern about your
18 testimony and the objections, I understand, but given that you
19 are representing yourself, I think it's important to draw the
20 line between those things and make clear to the jury that
21 you're handling your own defense, and I think that's the best
22 way to handle it. Again, recognizing my discretion in these
23 matter, your concerns are overruled or objections are
24 overruled.

25 With respect to 3500, I'm not sure there was an

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1 application made. Obviously, the government, I presume,
2 complied with its deadline with respect to what was in its
3 possession. It is always the case in trials that there are
4 additional materials that are produced on a rolling basis as
5 the government comes into possession of them.

6 Mr. Denton, do you want to address that in any way?

7 MR. DENTON: Yes, your Honor.

8 There were a set of notes taken during the interim
9 between when we made the 3500 production and now, and we
10 provided them to the defendant on Friday.

11 THE COURT: All right. To the extent that the
12 deadline to produce 3500 was several weeks ago, that's a long
13 window. Is there a reason that you waited until Friday?

14 MR. DENTON: Some of them we had to obtain. I don't
15 think there was a particular reason, your Honor. I think we
16 were just providing them in a collated set. It wasn't a large
17 amount of material.

18 THE COURT: All right. Well, given that the vast
19 majority was produced well before trial and indeed that this is
20 the second trial, it doesn't strike me that that's an issue
21 that requires relief, but so be it. I don't know if there's a
22 specific application. I will certainly remind the government
23 of its obligations to produce these things in a timely fashion
24 to avoid the need for any continuance or adjournment, but at
25 the moment there's no such request.

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1 Mr. Schulte.

2 MR. SCHULTE: Yes. I guess I'm just putting it on the
3 record and asking, you know, next -- you know, for the
4 government to be more expeditious if it encounters more
5 material.

6 THE COURT: All right. I just asked the government to
7 do that myself, so I think they've gotten the message.

8 My deputy, who is not here but nevertheless is
9 handling some things from afar, advises that the press has
10 requested a feed to the press room. I think that that was OK,
11 given the precautions that will be in place for the three
12 witnesses; it's audio only.

13 Are there any issues on that score?

14 MR. DENTON: I think that was done last time, your
15 Honor, but to the extent that it's already being sent to an
16 overflow room, I don't think there's any issue with it being
17 sent to the press as well.

18 THE COURT: All right. Agreed. I think it's just a
19 matter of location, and I don't think they would be privy to
20 anything that a member of the public wouldn't be privy to or
21 they wouldn't be privy to if they were here or in the overflow
22 room.

23 Mr. Denton, do you know when you would anticipate the
24 witness testifying this week who would be subject to the most
25 extreme precautions?

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1 MR. DENTON: It is possible that he would take the
2 stand at the very end of the day tomorrow. I think it is more
3 likely that he will be on Wednesday.

4 THE COURT: OK. Anything else from either side before
5 we commence jury selection in a few minutes?

6 MR. DENTON: Not from the government, your Honor.

7 MR. SCHULTE: No, I don't think so.

8 THE COURT: All right.

9 Looking at one final note that I forgot to mention, I
10 did request -- and I gather this was done, but I haven't seen
11 it yet -- that the podium be moved back a few feet in courtroom
12 15A so that, No. 1, no juror can see what's on the screen and,
13 No. 2, Mr. Schulte can more easily go back and forth between
14 the defense table and the podium. So I just wanted to mention
15 that.

16 All right. I will await the jury pool, and we'll get
17 started when they get up here.

18 MR. DENTON: If I may, your Honor, while we're
19 waiting?

20 THE COURT: Yes.

21 MR. DENTON: With respect to the podium, will we be
22 able to center it for purposes of opening statements and then
23 move it back, or is it fixed and the marshals want it to remain
24 where it is?

25 THE COURT: It's fixed. That's less to do with the

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1 marshals than it is to do with the fact that it's wired and
2 connected to all sorts of things.

3 I actually don't know if in 15A there's a global
4 podium that can be moved to be in front of the jury box as
5 there is in some courtrooms. I can check on it, but I guess
6 unless and until I say otherwise, you should assume that you'll
7 have to address the jury from the fixed podium.

8 MR. DENTON: Thank you, your Honor.

9 THE COURT: It's not ideal, but it's better than the
10 Covid courtrooms.

11 MR. DENTON: That's certainly true.

12 THE COURT: All right.

13 MS. SHROFF: Your Honor, may Mr. Schulte just consult
14 with Mr. Fisher for five minutes before the jury comes? He
15 just has a question, and Mr. Fisher was on the first trial too.
16 He's from the Federal Defenders.

17 THE COURT: He can talk for a couple of minutes, but
18 when the jury is here, we're going to get going.

19 MS. SHROFF: Of course. Thank you, your Honor.

20 THE COURT: Counsel, please take your seats.

21 (Continued on next page)

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1 THE COURT: You may be seated. It appears that all
2 the prospective jurors have left the courtroom.

3 So let's discuss first jury selection. We have at
4 present, by my count, 34 qualified jurors. We need to fill
5 seat 19 first thing tomorrow and then resume with 36. We have
6 gone through 65 jurors so we have only five. Assuming they're
7 all here and remaining in the pool I will keep my fingers
8 crossed that we don't need to go through any extra.

9 Yes, Mr. Schulte? Microphone, please.

10 MR. SCHULTE: 33 we never finished questioning.

11 THE COURT: You are correct -- no, not correct about
12 that. I think we did. She is the woman who came up at the
13 end.

14 MR. SCHULTE: We didn't go through the personal
15 questions list.

16 THE COURT: You are totally correct about that. Thank
17 you for pointing that out. So we will need to do that
18 tomorrow. But since that's not a function of qualifying I will
19 treat her as a qualified juror. But, thank you for reminding
20 me.

21 So again, I think we have 34 qualified, we need to
22 fill 19 and 36. Hopefully the remaining jurors will let us do
23 that. If not, we will get some extra jurors and start over but
24 let's hope that doesn't come to that.

25 Anything to discuss on that front? Any follow up on

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1 any of the 34? Any related motions to strike anything
2 jury-selection related.

3 Mr. Denton?

4 MR. DENTON: Not with respect to jury selection, your
5 Honor.

6 THE COURT: Mr. Schulte, anything else relating to
7 jury selection?

8 MR. SCHULTE: Just one second?

9 (pause)

10 MR. SCHULTE: No, we do not have anything.

11 THE COURT: Anything unrelated to jury selection,
12 Mr. Denton?

13 MR. DENTON: Yes, your Honor.

14 We just wanted to flag something for the Court that we
15 expect will come up at various points. As we just saw and has
16 happened frequently --

17 THE COURT: Will you use the microphone a little
18 better?

19 MR. DENTON: Is that better?

20 THE COURT: Yes.

21 MR. DENTON: We frequently had instances in which
22 there have been pauses for the defendant to confer with standby
23 counsel, sometimes audibly. We have taken a look and just want
24 to be mindful of the admonitions in McAskill about not
25 undermining the appearance that the defendant is directing his

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1 own defense. It seems like the law on that really focuses on
2 the unsolicited activities of standby counsel but defendant can
3 direct his defense and his team however he wants. So we just
4 wanted to flag, I expect that there may come points where
5 outside of the presence of the jury we just ask the Court to
6 allocute the defendant about his satisfaction with the role
7 being played by standby counsel and the fact that their input
8 is solicited and desired by him, just to protect that record
9 down the road.

10 THE COURT: There are two separate issues here, one is
11 the Mr. Schulte on his defense. First, standby counsel is
12 accurately involved but from my observation it would appear
13 that is with Mr. Schulte's consent and invitation and in that
14 regard is not inconsistent with him controlling his defense.
15 It is pretty clear to me based on the flood of filings and
16 other such things that Mr. Schulte is driving the boat here.
17 But I certainly have no objection, I am sure Mr. Schulte
18 doesn't, to just confirm every once in a while that that is in
19 fact the case.

20 There is a separate issue which is the audibility of any
21 consultation. Candidly, Ms. Shroff in particular, at times
22 during pretrial conferences that has been whispering things or
23 not so much communicating things to Mr. Schulte that even I
24 have been able to hear it at a distance. I have largely
25 ignored that and allowed it even though at times I think it has

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1 made the court reporter's job more difficult but I do want to
2 underscore that in front of the jury that can't happen.
3 Obviously, any communications from either side within the trial
4 teams can't be audible to the jury because that's not
5 appropriate for them to hear so I trust that everybody will
6 understand and adhere to that and make sure that their
7 communications are genuine whispers even with the masks so that
8 the jury can't overhear anything that they shouldn't overhear.

9 With respect to the first issue, Mr. Schulte, again, it is
10 my observation that you are actively availing yourself of
11 standby counsel's advice but is it fair to say that you agree
12 that you are running the ship and controlling your own defense
13 and that their advice is solicited rather than unsolicited?

14 MR. SCHULTE: Yes, that's correct; especially for the
15 jury selection, I really need their assistance. I have
16 actively requested a lot of assistance in being able to -- they
17 have lots of experience and I want to be able to use that
18 experience so I have been -- everything going on is me
19 requesting assistance in picking jurors and things of that
20 nature.

21 THE COURT: Very good.

22 Mr. Denton, anything else on that or otherwise?

23 MR. DENTON: No, your Honor.

24 THE COURT: To the extent that we can discuss it in
25 this setting, anything that you can share -- I know you have

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1 been in the courtroom most of the day but any developments on
2 the 6(c) front that we might be able to share?

3 MR. DENTON: Only to say that as of our one break the
4 wheels were actively turning. I don't know where that's gotten
5 us to in the last four hours but we will find out and try and
6 keep the wheels turning.

7 THE COURT: Very good.

8 Mr. Schulte, anything else unrelated to jury selection
9 from you?

10 MR. SCHULTE: Yes. Just a couple things.

11 Before I asked for like a kind of dress rehearsal for
12 how these things would go, but anticipating tomorrow most
13 likely the direct and first cross will occur and whenever I
14 anticipate doing my cross-examination I would anticipate using
15 the laptop to bring up the exhibits and so we are just kind of
16 working out how exactly that's going to work.

17 We have a cable over here and we are in contact with
18 someone trying to get another cable, but unless the Court is
19 aware, this computer or the computer at the podium is also used
20 for putting the exhibits on or how does the Court anticipate if
21 I can just use my own laptop to connect to display the
22 exhibits, if that's acceptable? I just want to work all of
23 this out now before there is any issues.

24 THE COURT: First of all, I was in contact with the
25 marshal last week and he told me that -- I had made the request

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1 that you be produced to 15(a) at 4:00 to do a run-through. Did
2 that not happen?

3 MR. SCHULTE: No. That never happened.

4 THE COURT: OK. Sorry to hear that. I don't know if
5 that was a marshal issue or separate issue. I know you were
6 trying to get various things done that day. The short answer
7 is I don't involve myself in those things but it is up to the
8 parties to do it. But, in general, the computers connect with
9 the system through wiring at counsel table. And the monitor --
10 first of all, we are not in this courtroom for trial, it is
11 15A, but to say in general, set up there the monitor on the
12 podium is a display monitor and usually someone at counsel
13 table controls the computer and calls up whatever it is the
14 person conducting the examination wants to call up and then it
15 is displayed on the monitor. If it is not in evidence it
16 cannot be displayed to the jury, it can only be deployed to the
17 witness and counsel and me. Once it is admitted, however, you
18 can ask for it to be published and displayed to the jury. I
19 don't know. There are two separate issues here, one is
20 connecting to the system. I certainly don't have the
21 appropriate wires but I want to make sure that you do but
22 that's something that hopefully you and standby counsel can
23 sort out and get sorted out before tomorrow.

24 Second, who is going to operate the machine while you
25 are conducting an examination. I mean, I would hope and assume

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1 that standby counsel could do that or figure out someone who
2 might be able to assist you in doing that. The alternative is
3 for you to be able to do it yourself by going back and forth
4 but there is only so much of that I can tolerate because that's
5 just going to make cross-examination intolerably long.

6 (Continued on next page)

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1 MR. SCHULTE: My hope was that I wanted to be able to
2 do it both myself. I think they're looking to see if there's a
3 cable long enough that I can just bring the laptop here, pull
4 up the exhibits as I do the cross. So obviously I'm not going
5 back and forth. But I just wanted to check and make sure that
6 the Court would be OK with us getting wires for that, or then
7 if that doesn't work, for me to be here as I'm doing the cross.

8 I anticipated that I will be pulling the exhibits up
9 as I'm doing the cross, and I just wanted to make sure that
10 this is acceptable and that we can try and get a wire that runs
11 across the floor. I mean I know it's a different courtroom but
12 at the same time a setup so that I can do both.

13 THE COURT: If you are able to procure a wire and we
14 can do it in a way that would render it safe and convenient to
15 do it that way, I'm certainly open to it.

16 The other option is if the wire can only reach to the
17 end of counsel table and there isn't too much of it, I could
18 allow you to just go back and forth when you want to call up an
19 exhibit. But my strong preference is that if we can't rig it
20 and wire it so that you can take your laptop to the podium,
21 then standby counsel, at your direction, can call something up.
22 That does not intrude on your conducting your defense. Just as
23 government counsel, I assume, will call upon their paralegal to
24 call up an exhibit at the appropriate time, you'd say, I'll ask
25 standby counsel to please show Defendant's Exhibit 1, and they

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1 can then follow it up. There's no reason that you need to be
2 the one that does that, and if it requires you going back and
3 forth between the podium and counsel table, that's just not
4 going to work.

5 Again, if you can procure a wire that's long enough
6 and reaches and do it that way, that's great. Let's do it that
7 way, and if it's based on the podium and is convenient, I think
8 that I'm OK with that, assuming it doesn't pose problems. But
9 if not, I think the best solution is going to be for counsel to
10 do it at your direction, or if it's only a few instances, then
11 you might be able to go back and forth, but that can't be an
12 every-question sort of thing.

13 MR. SCHULTE: OK.

14 And so then my last question was just if there's any
15 way that the Court can check in with MDC so that tomorrow when
16 I leave I have my cross, opening, everything updated and
17 printed, so that I can print it before I leave the MDC, just to
18 make sure I have paper copies of everything.

19 THE COURT: I will certainly do my best.

20 MR. SCHULTE: Thank you.

21 THE COURT: Government, which of you intends to open?

22 MR. DENTON: I will, your Honor.

23 THE COURT: And do you have any prediction of how long
24 your opening will be?

25 MR. DENTON: 20 minutes, tops, maybe a little less.

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1 THE COURT: OK.

2 Mr. Schulte, do you anticipate giving an opening
3 statement?

4 MR. SCHULTE: Yes, I do.

5 THE COURT: How long do you predict yours would be?

6 MR. SCHULTE: About the same.

7 THE COURT: All right. Very good.

8 We'll pick up where we left off with the jury
9 selection. I assume that we'll be done with that at some point
10 in the morning, hopefully not too late. And we'll then need to
11 reconvene in 15A, and I'll give preliminary instructions. So I
12 would assume that you will be opening tomorrow and starting
13 with witnesses. That's certainly what I would expect if I were
14 in your shoes.

15 I would hope that the government can give me a report
16 in the morning on the 6(c) issues. If we need to reconvene in
17 a classified setting, then we can make appropriate arrangements
18 for that to happen at some point tomorrow.

19 Anything else that we need to discuss before we break
20 for the day?

21 MR. DENTON: Just two, your Honor.

22 First, on the point the defendant was making about the
23 exhibits, I think technically one of the reasons why we
24 typically keep the laptops down at the end of counsel table is
25 because that is where the sort of separate device that controls

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1 the publishing goes. I think that's something we would have a
2 little concern about Mr. Schulte trying to run from the witness
3 stand -- from witness podium, but we just wanted to flag that
4 that's a separate piece that has to be addressed here so that
5 things are not shown to the jury that are not in evidence.

6 I think the second thing with respect to that is it
7 may be worth taking up tomorrow together with our report on the
8 6(c), but just whether it makes sense to have argument,
9 briefing, or both, with respect to the government's objections
10 to various defense exhibits that have been produced to us now.

11 THE COURT: All right. Is now not the time to discuss
12 any of those?

13 MR. DENTON: We understand Mr. Schulte's got an
14 updated set of exhibits for us. And so once we're able to get
15 those, we'll take a look, and we can certainly either let the
16 Court know what we expect in the morning or just come right out
17 and have a plan for it.

18 THE COURT: Great. So definitely think about it. I
19 certainly want those issues raised in a timely fashion so that
20 we're not having argument when the jury's sitting in the box.

21 MR. DENTON: Understood, your Honor.

22 THE COURT: All right.

23 Mr. Schulte, anything remaining for you? Otherwise,
24 we'll call it quits for the evening.

25 MR. SCHULTE: No, nothing further.

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1 THE COURT: All right. I want everyone in here by
2 nine so that we can take up whatever issues we have as the
3 jury's coming together. I trust that while I told them to be
4 here by nine, not everyone will be here promptly at nine, so
5 we'll have a few minutes. The bottom line is I'll see you at
6 nine tomorrow morning.

7 Have a good evening.

8 (Adjourned to June 14, 2022, at 9:00 a.m.)

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