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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	23-CR-146(DG)
Plaintiff ,	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
RACHEL CHERWITZ and	:	
NICOLE DAEDONE,	:	
Defendant.	:	May 20, 2025
- - - - -	X	9:30 a.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR FURTHER JURY TRIAL  
BEFORE THE HONORABLE DIANE GUJARATI and a JURY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	JOSEPH NOCELLA, JR.
	Interim United States Attorney
	BY: KAITLIN T. FARRELL
	KAYLA C. BENSING
	NINA C. GUPTA
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	271 Cadman Plaza East
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	1675 Broadway, 19th Floor
	New York, New York 10019
	BY: CELIA COHEN, ESQ.
	MICHAEL P. ROBOTTI, ESQ.
	KELLY LIN, ESQ.
	SCHUYLER LA BARGE, ESQ.
	KELLY LENAHAN-PFAHLERT, ESQ.

(Appearances continued on the next page.)

Court Reporter:	Stacy A. Mace
	Official Court Reporter

1 Appearances: (Cont'd)

2

3 For Defendant Daedone: BONJEAN LAW GROUP, PLLC  
4 303 Van Brunt Street, 1st Floor  
5 Brooklyn, NY 11231  
6 BY: JENNIFER A. BONJEAN, ESQ.  
7 KELSEY KILLION, ESQ.

8

9

10

11 Also Present:

12 Liam McNett, Paralegal, US Attorney's Office  
13 Marlane Bosler, Paralegal, US Attorney's Office

14

15 Galila Assefa, Paralegal, Bonjean Law Group

16 Kamille Simons, Paralegal, Ballard Spahr

17

18

19

20 Proceedings reported by machine shorthand, transcript produced  
21 by computer-aided transcription.

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23 Court Reporter: Stacy A. Mace, RMR, CRR, RPR  
24 Official Court Reporter  
25 United States Courthouse, Room N377A  
225 Cadman Plaza East  
Brooklyn, New York 11201  
smacerpr@gmail.com

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*Proceedings*

2363

1 (In open court; jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 (Judge DIANE GUJARATI entered the courtroom.)

4 THE COURTROOM DEPUTY: The Honorable Diane Gujarati  
5 is now presiding.

6 You may be seated.

7 Your Honor, this is United States of America against  
8 Rachel Cherwitz and Nicole Daedone.

9 Is the Government ready?

10 MS. BENSING: Yes.

11 Kayla Bensing, Kaitlin Farrell, Nina Gupta and Sean  
12 Fern, joined by Paralegal Specialist Liam McNett, Marlane  
13 Bosler, and FBI Special Agent Tricia Quintero.

14 Good morning, Your Honor.

15 THE COURT: Good morning, all.

16 MS. COHEN: Good morning, Your Honor.

17 Celia Cohen, Michael Robotti, Kelly Lin, Schuyler  
18 LaBarge, Kelly Lenahan -- ah, I practiced this last night --  
19 Lenahan-Pfahlert -- I did it -- and Kamille Simons, all on  
20 behalf of Rachel Cherwitz.

21 THE COURT: Good morning, everyone.

22 MS. COHEN: Good morning.

23 MS. BONJEAN: Good morning, Your Honor.

24 Jennifer Bonjean, Kelsey Killion and Ashley Cohen,  
25 on behalf of Ms. Daedone. Along with our paralegal, Galila

1 Assefa.

2 THE COURT: Good morning, everybody.

3 Everyone may be seated.

4 We have a jury situation. Juror Number 6 reached  
5 out to Mr. D'Agostino. She is sick with what she thinks might  
6 be a stomach bug or virus. She thinks she could be better  
7 tomorrow and is going to try to go to the doctor later today  
8 to get checked out and will update Mr. D'Agostino later today.

9 I am going to leave the bench and give the parties a  
10 few minutes to consult with their -- with each other, the  
11 defense attorneys to consult with their client, and to let me  
12 know your collective thoughts on this.

13 So, we take -- I will take a brief pause and ask you  
14 to consult with each other.

15 Again, it's Juror Number 6, thinks she has a stomach  
16 bug or virus and thinks she could be better tomorrow and is  
17 going to try to go to the doctor today to get checked out.

18 Okay. So we'll recess very briefly.

19 (Recess taken.)

20 THE COURTROOM DEPUTY: All rise.

21 (Judge DIANE GUJARATI entered the courtroom.)

22 THE COURTROOM DEPUTY: You may be seated.

23 THE COURT: Okay. We are back on the record.

24 Everybody is here.

25 I will hear from the parties on the juror issue.

1 MS. BENSING: So, Your Honor, we've discussed and I  
2 think the parties are inclined to see what happens with this  
3 juror today.

4 Certainly, if the juror is still sick tomorrow, the  
5 Government would prefer to proceed. I think the defense is  
6 unsure about their position with respect to tomorrow, but I  
7 think for today the parties agree that it could be prudent to  
8 hang onto our alternates.

9 We do, just so the Court knows, we do still  
10 anticipate resting towards the end of next week, so within  
11 the -- the four weeks that we had initially told the Court.  
12 Some of this does depend on some of these authentication  
13 witnesses as the Court is aware, so I say that with a little  
14 bit of hesitancy, but we are moving. And I understand from  
15 the defense that they anticipate that their case will be  
16 shorter than two weeks.

17 So, in terms of the overall length of the trial, I  
18 just wanted to let the Court know that update.

19 THE COURT: Thank you.

20 I'll hear from the defense attorneys now.

21 Ms. Cohen.

22 MS. COHEN: Sure, Your Honor. We agree with  
23 everything Ms. Bensing said.

24 We would like to assess the situation tomorrow. We  
25 understand if it's longer than a day, it creates issues and we

1 could assess that, but I think right now given that, you know,  
2 the timing of things, that we're on -- on target, not to be  
3 over what we anticipated. And we can use today to work out,  
4 hopefully, some things that we've been talking through with  
5 the Government, which could help as well.

6 THE COURT: Ms. Bonjean.

7 MS. BONJEAN: Yes, Your Honor.

8 I think we're all in agreement we don't want to  
9 delay things, but one day is probably worth giving up in light  
10 of the fact that she was a chosen juror. And if it's not  
11 going to be much -- if it's not going to be longer than that,  
12 then, you know, I think we -- and hopefully it won't be -- we  
13 can assess tomorrow. But I think we're all in agreement on  
14 that.

15 We can put the day to good use, I can assure the  
16 Court of that.

17 THE COURT: Okay. And I take it that doesn't mean  
18 filing more motions?

19 MS. BONJEAN: No. But I do owe the Government a  
20 response on their request for reconsideration on the expert  
21 issue, so that is one thing --

22 THE COURT: Okay. That's something that hasn't been  
23 filed, though, with the Court yet.

24 MS. BONJEAN: Correct.

25 THE COURT: Okay.

*Proceedings*

2367

1 MS. BONJEAN: That being the case --

2 THE COURT: That's fine.

3 MS. FARRELL: Beyond that, Your Honor, Mr. Pelletier  
4 filed a motion to quash, and the Government anticipates --

5 THE COURT: Where did he file that?

6 MS. FARRELL: I don't know if it was ever filed. It  
7 was sent to your deputy.

8 THE COURT: That's not a filing.

9 MS. FARRELL: Great. Well, then -- we have our  
10 response prepared.

11 THE COURT: That's not a filing. It's not a filing.  
12 So, I haven't gotten any filing.

13 MS. FARRELL: Great. Well, we -- we have a response  
14 prepared when he files it and we will do so promptly.

15 THE COURT: And the subpoena is for him or for  
16 Mr. Williams?

17 MS. FARRELL: Both of them. He is, I understand,  
18 moving to quash both of them.

19 It -- it revisits the issue of the privilege that we  
20 teed up for Your Honor. So anyway, I just wanted to let you  
21 know that.

22 THE COURT: Are you talking about work product or  
23 attorney-client?

24 MS. FARRELL: They're now asserting attorney-client  
25 for the first time. We're not clear what the basis is, but

1 that is in his letter.

2 THE COURT: Okay. If there is a filing, it will be  
3 addressed.

4 I am not particularly enthusiastic about not having  
5 trial today, but given that all parties are in agreement that  
6 they want to wait a day and see if Juror Number 6 is feeling  
7 better, I will grant that, essentially, joint request and not  
8 excuse Juror Number 6.

9 I am glad that the parties feel that they are on  
10 track; however, the estimate has always seemed too long to me.  
11 And based on the way things are coming in, it still seems too  
12 long to me, frankly. I think that it's, again, not really so  
13 much an issue of the content, but the pace. And there's still  
14 some fumbling with exhibits and not having copies and things  
15 like that. So, it has gotten better since the beginning of  
16 trial, but I don't think anyone should be patting themselves  
17 on the back for keeping this case to six weeks necessarily.

18 So, I think things could be moving along. And,  
19 again, not trying to curtail anyone from making valid, you  
20 know, arguments or objections or presenting evidence they  
21 think is relevant, but it really is the way in which it is  
22 being done.

23 So I will grant the request that we not have the  
24 jury, you know, sitting today, so we won't have trial today.

25 Do the parties want me to tell the jurors anything

1 specific about today?

2 I could bring them out and tell them that, you know,  
3 with apologies from the Court, we will not be having trial  
4 today because a juror is sick. It is our hope and expectation  
5 that we'll be able to continue tomorrow.

6 I can hear the parties out on this, or I could just  
7 have Mr. D'Agostino go back and say: We won't be sitting  
8 today. Somebody is sick. We'll see you tomorrow.

9 MS. BENSING: Your Honor, I think from the  
10 Government's perspective as long as -- one reason why I think  
11 this could be prudent to do today is that I don't want there  
12 to be additional jurors indicating that they are sick and then  
13 thinking that they may be excused.

14 So, I do think it's important that we inform the  
15 jury that we're not sitting today because we are waiting for a  
16 juror who is sick, so that they understand that they will  
17 still be expected to come back. But I don't have any  
18 preference in terms of how the Court conveys that to the jury.  
19 I'd be fine with Mr. D'Agostino doing it.

20 THE COURT: Ms. Cohen.

21 MS. COHEN: Yes. We think Ms. Bensing's proposal is  
22 fine. That makes sense.

23 I did have that thought, that we want them to know  
24 how serious it is that they're paying attention and, you know,  
25 that we understand it will just be a day.

*Proceedings*

2370

1 THE COURT: Okay. But you're fine with  
2 Mr. D'Agostino just telling them that?

3 MS. COHEN: Oh, yes. I think either -- yes, I think  
4 that's fine.

5 THE COURT: And, Ms. Bonjean.

6 MS. BONJEAN: We're fine. I do think it needs to be  
7 conveyed.

8 THE COURT: Somebody is sick and so we have to wait.

9 MS. COHEN: Yes.

10 MS. BONJEAN: Yes.

11 THE COURT: And we will be back tomorrow.

12 MS. COHEN: Yes.

13 THE COURT: Okay. I think that's what  
14 Mr. D'Agostino will convey, that we are not -- you know, thank  
15 you all for coming today, being here. We are not going to be  
16 having trial today because a juror is sick. We will see  
17 everyone tomorrow.

18 Okay. We'll do that.

19 Let me -- actually, Mr. D'Agostino, could you go  
20 take care of that now just because I do feel badly that they  
21 came here on time and these folks are waiting.

22 There is a couple of other issues to take up.

23 So, two motions were filed last night, one by  
24 defendants and one by the Government.

25 Defendants' motion to strike certain evidence and

1 argument, which was filed at ECF Number 381 is denied. I  
2 referenced the topic of jury instructions recently. In  
3 addition, the Government mentioned that it would not oppose a  
4 jury instruction with respect to defendants' espoused belief.  
5 To the extent that any party seeks a jury instruction, that  
6 party can propose one in a joint filing.

7           The other motion filed last night was the  
8 Government's motion to admit certain evidence, namely  
9 financial evidence. That motion is filed at ECF Number 382.  
10 I need to spend more time with that motion. And again, it was  
11 filed last night. And I will address that at a later time,  
12 recognizing that the Government has anticipated that the  
13 evidence it is seeking to elicit from witnesses and through  
14 exhibits could come as early as Friday. So, I will revisit  
15 that issue now with the benefit of more time today.

16           Is there anything else right now that we need to  
17 take up?

18           It sounds like the parties have to talk to each  
19 other about a few things .

20           MS. BENSING: Your Honor, I just wanted to flag for  
21 the Court that we have passed up a binder to the Court for a  
22 witness who I anticipate will testify this week, Robert  
23 Kandell.

24           THE COURT: Yes.

25           MS. BENSING: There are a large number of exhibits

1 that we intend to admit through this witness, principally  
2 communications.

3 I -- I don't know that -- the Court may not be  
4 surprised to hear that we may not be able to reach agreement  
5 on some of these exhibits, and so I just wanted to flag that  
6 for the Court.

7 THE COURT: Okay. What kind of communications, with  
8 whom?

9 MS. BENSING: E-mails principally that this witness  
10 is a party to, as well as some text message communications  
11 that this witness is a party to.

12 THE COURT: And with whom?

13 MS. BENSING: In some cases with the defendants. In  
14 most cases with the defendants, and in some cases with Reese  
15 Jones.

16 THE COURT: Okay. And the bases on which you would  
17 be offering those, presuming you can get him to authenticate  
18 that these are the communications that he recalls or that he  
19 created himself or whatever the case may be, is what?

20 MS. BENSING: In some cases, for the defendant's own  
21 statements. And then the remainder would be context. In some  
22 cases it's not for the truth of the matter, but simply the  
23 fact that they were communicating back and forth about the  
24 financial condition of the company at the time.

25 And in other cases, they may be relying on paging a

1 co-conspirator, and I think that's a few rare cases, Your  
2 Honor.

3 THE COURT: Okay. It sounds like these are not new  
4 issues.

5 And the defense has all of these documents, correct?

6 MS. BENSING: Yes.

7 MS. BONJEAN: We did just get the -- I think  
8 yesterday evening we did get a long a list, which today came  
9 out. So, maybe we'll be able to work out --

10 THE COURT: Okay. That's fine.

11 I also know that each day I'm getting new defense  
12 exhibits, and I'm not quite sure why that is. I'm getting  
13 them when the witness is getting them. I would prefer to get  
14 them ahead of that. And I know there was a reluctance by the  
15 defense to give the Government things earlier.

16 And I think I said before it doesn't make a whole  
17 lot of sense to keep it from me when it will just delay things  
18 if I am looking at something for the first time that the  
19 parties are disputing.

20 So, maybe it's that you're finding documents the  
21 night before, that happens. But to the extent that you're  
22 just holding back something, it's really counter-productive  
23 and I am going to move things along. And if that means  
24 because you didn't give me something on time that we are going  
25 to skip over it and come back to it after a break. And you'll

1 be here with me during the break, that may be what it means,  
2 but I would just ask you to, to the extent you can give me  
3 documents earlier rather than later – I think by now you all  
4 know that I look at everything that you give me – so I would  
5 like to be able to do that in a timely way that doesn't keep  
6 this jury waiting.

7 I think this jury is very attentive and they tend to  
8 show up on time or close to on time. The juror today was  
9 responsible in letting Mr. D'Agostino know that she was ill,  
10 so I don't want to keep them waiting.

11 So if you have documents that you're going to be  
12 using, even if you for whatever reason are not able to share  
13 them with the Government, you have to be able to share them  
14 with me.

15 MS. COHEN: Your Honor, I'll just add that we're not  
16 holding back for that reason. Apologies.

17 Obviously, we do try to get you -- sometimes a  
18 witness testifies and it rings -- makes us realize something  
19 that we want to show.

20 THE COURT: I understand.

21 MS. COHEN: But we absolutely are not doing that on  
22 purpose. We'll try --

23 THE COURT: I wasn't really suggesting in the sense  
24 of on purpose or nefarious, but just get more organized maybe  
25 then too. Because I think some of it is -- there are

1 definitely documents you used that were clearly ones you were  
2 going to use. I mean I don't think there's any way around  
3 that, and I didn't get them in time.

4 So, anyway I leave you with that. And you have the  
5 day today to kind of get more organized.

6 Anything else?

7 MS. FARRELL: Yes. On the topic of sort of  
8 previewing for the Court and organization, I think since we're  
9 all here, I just wanted to flag the following:

10 So as Your Honor I think well understands, because  
11 we've briefed the issue, we intend to authenticate certain  
12 text messages that principally the defendants are on with  
13 other OneTaste executives. And these in some cases are, you  
14 know -- we intend to authenticate these through, first, a  
15 paralegal from the U.S. Attorney's Office who received the  
16 Grand Jury subpoena productions from OneTaste. And that  
17 person can look at the GX's and look at the production and  
18 say: Government's Exhibit 1 through 10 are text message  
19 chains that were produced by OneTaste on, you know,  
20 August 1st, 2020. I just made up the date, obviously.

21 And then we intend to put on a OneTaste custodian,  
22 Mr. Pelletier or Mr. Williams, or potentially both, to say  
23 OneTaste, in fact, produced -- you know, did a production of  
24 materials that included text messages that had been collected  
25 from OneTaste employees on or about these dates.

1           At that point we believe we will have established  
2 the authenticity of the document. But then separately,  
3 there's the issue of -- two issues, relevance and non-hearsay  
4 basis for admission. We intend to -- to publish those  
5 defendant's statements through an FBI summary witness, as is  
6 the typical way that you would put in a defendant's -- a  
7 non-testifying defendant's statements.

8           But what we intend to do is in advance of putting on  
9 that witness is provide to, both the defense and the Court, a  
10 chart of exactly what those exhibits are, what their  
11 relevance -- you know, what the GX number is, who the parties  
12 to the statement are, what the relevance is based on the  
13 testimony to date, and what the non-hearsay basis for  
14 admissibility is.

15           And we also -- a project that is underway, that is  
16 not yet completed, is we understand from how this trial has  
17 gone so far is that some of these are very long texts chains,  
18 but that Your Honor's preference is to only admit portions of  
19 it that the relevance for which has been established. So  
20 we're going through --

21           THE COURT: Well, I mean I think that's fairly  
22 fundamental. Right? You're not just going to be throwing in  
23 pages and pages that have no relevance. Right?

24           So it's not my preference, it's really the Rules of  
25 Evidence.

1 MS. FARRELL: Understood, Your Honor.

2 So, we're -- I mean we think all of it is relevant.  
3 Obviously, there are parts that are more relevant than others,  
4 and so we are trying to, A, narrow the set; and B, narrow the  
5 content of the each specific text thread. So, we are  
6 currently going through it and potentially, like, redacting or  
7 narrowing those threads from what was originally produced,  
8 with the plan being of providing all of that to the Court and  
9 the defense in advance of this special agent's testimony, so  
10 that to the extent there are arguments about the content of  
11 the text, those are worked out in advance.

12 Because the summary, the FBI summary witness is  
13 simply publishing -- publishing these to the jury. He's not  
14 going to be, you know, someone with first-hand knowledge who's  
15 on the text messages. They are, nevertheless, admissible  
16 because they're the defendants' messages.

17 THE COURT: I want to understand more, and I think I  
18 asked about this the other day.

19 Exactly the testimony that you intend to elicit  
20 either from a paralegal, if the Court allows, or from a  
21 custodian at OneTaste, or from individuals whose text messages  
22 are the subject of these exhibits. Right. Really the first  
23 two buckets are more important for me to hear the scope of  
24 what exactly you plan to elicit.

25 MS. FARRELL: Certainly. I can do that right now.

1 And just so you know, we had put all this in our motion in  
2 response to Mr. Pelletier's letter, but I understand he didn't  
3 actually file it. So, I'll --

4 THE COURT: I mean unless he's done it this morning  
5 since I took the bench, but he hadn't as of 20 minutes ago or  
6 25 minutes ago.

7 MS. FARRELL: I understand. So, let me proffer that  
8 for you.

9 So, the first is a former paralegal from the U.S.  
10 Attorney's Office who worked on this case, who is the person  
11 who received all the productions from OneTaste when they were  
12 being made pursuant to the Grand Jury subpoenas that had been  
13 served.

14 There were three Grand Jury subpoenas served on  
15 OneTaste. The texts were really in response to the second  
16 one. And so she will testify, you know, a Grand Jury subpoena  
17 was served on OneTaste that requested this set of information.  
18 On such and such date, OneTaste produced materials in response  
19 to the subpoena. This is what the cover letter said. These  
20 are the materials.

21 THE COURT: I don't think I've seen the cover letter  
22 or the materials. Is that right?

23 MS. FARRELL: Correct. We're not going to provide  
24 you the materials because it's literally like --

25 THE COURT: Okay.

1 MS. FARRELL: -- dozens of thousands of text  
2 messages.

3 THE COURT: Yes. But it's in the cover letter,  
4 though?

5 MS. FARRELL: We can provide you the cover letter.  
6 It's a cover e-mail, but we can provide that to you.

7 They -- they were served in tranches or produced in  
8 tranches, so it's not just one production. I believe there  
9 are three that are responsive.

10 Again, this is all laid out in the letter in  
11 response to Mr. Pelletier. Perhaps what I'll do today, Your  
12 Honor, is just change it as a letter to the Court so that you  
13 have it in a letter form.

14 But, essentially, there were three, I believe three  
15 productions made by OneTaste in which these text messages  
16 responsive to the Grand Jury subpoena were produced. And so,  
17 our former paralegal will say, you know, I received them. I  
18 saved them on our drive. I've -- you know, I've since -- I  
19 understand Government -- that Exhibits 1 through 10 are marked  
20 for admission in this trial. I've reviewed the content of  
21 those exhibits and compared them to what was produced by  
22 OneTaste. They are identical documents.

23 Then we'll have Mr. Pelletier or Mr. Williams,  
24 potentially both depending on how their testimony comes out,  
25 say, I -- let's say Mr. Pelletier, because he's the one who

1 actually submitted all -- who actually made all these  
2 productions: OneTaste got a Grand Jury subpoena. I was their  
3 lawyer. We gathered materials responsive to the subpoena.

4           Somebody will say, I don't know if it's  
5 Mr. Pelletier or Mr. Williams or Eli Block: In response to  
6 the subpoena we collected phones of employees of OneTaste, you  
7 know, uploaded text messages from those phones and produced  
8 responsive text messages pursuant to the subpoena.

9           Now, the issue that they are asserting work product  
10 privilege over, which we think we should be permitted to have  
11 them testify about, is the identity of the employees from whom  
12 they collected the phones. I believe that is the core issue  
13 over which they are asserting work product privilege. And  
14 now, I understand also attorney-client privilege. Although,  
15 that is a new assertion as of Friday.

16           You know, our belief, which we've argued to Your  
17 Honor before -- and we can supplement this -- is that it's not  
18 work -- the identity of the individuals from whom the phones  
19 were collected, even if it at one point was work product  
20 privilege, it no longer is now that those materials have been  
21 produced, and there was no assertion made at the time of the  
22 production. Although, the subpoena --

23           THE COURT: That's why I need to know what the  
24 response was.

25           MS. FARRELL: Yes.

1 THE COURT: Did the response identify the people  
2 from whom the materials were collected?

3 MS. FARRELL: Well, it indicates that it's -- it's  
4 self-evident from the materials that are collected.

5 THE COURT: What do you mean it indicates that it's  
6 self-evident?

7 MS. FARRELL: Like, the -- it says on the -- on the  
8 face of the document who -- who is -- the participants in  
9 these texts.

10 THE COURT: That's a different question though,  
11 right?

12 MS. FARRELL: Right.

13 The cover letter does not say we collected from the  
14 following ten people. At the same time, they did not assert  
15 any privilege over -- there were separate privilege assertions  
16 over separate documents that are not at issue today, and which  
17 we take no issue with.

18 THE COURT: Did they respond?

19 I think we went through this the other day, so I  
20 don't want to repeat necessarily, but there were different  
21 paragraphs in the subpoena calling for particular information.

22 Was that provided or was there an incomplete  
23 compliance with the subpoena?

24 There was those couple of paragraphs I read out to  
25 you which were just examples.

1 MS. FARRELL: Yes.

2 So, the subpoena called for any privilege assertions  
3 to be made at the time. It also called for the company to  
4 certify compliance. It also called for the company, to the  
5 extent there were incomplete documents or incomplete materials  
6 where summary materials being provided, for -- for the company  
7 to indicate as much.

8 So --

9 THE COURT: There was also something about  
10 authentication I believe, right?

11 MS. FARRELL: Correct.

12 THE COURT: I could pull it out.

13 MS. FARRELL: Correct. That the company -- that to  
14 the extent they weren't going to provide somebody to  
15 authenticate the documents at the time of trial, to indicate  
16 as much.

17 And so, they produced the documents. There was no  
18 indication that there was any privilege being asserted over  
19 them at the time. There was no indication that the documents  
20 were incomplete or not what they purport to be, which just  
21 spacially they look like and they are text messages with  
22 employees whose names are on the document.

23 So, in other words, at the time of the subpoena  
24 response, there's no reason that the Government would have  
25 anticipated being where we are today because they did not

1 assert a privilege. They didn't --

2 THE COURT: Well, surely you could have anticipated  
3 that OneTaste would be filing a motion, if not exactly this  
4 one, but something else along these lines, no?

5 MS. FARRELL: I have to say, personally no. I mean  
6 I wasn't involved at the time, but I've never, ever -- I've  
7 done a lot of white collar trials, I've never been in a  
8 situation where a corporation has refused --

9 THE COURT: It's not common.

10 MS. FARRELL: -- to authenticate its own documents  
11 that it has produced in response to a subpoena.

12 And so, our position is to the extent there are  
13 issues in response to the subpoena, the subpoena called for  
14 the company to flag those at the time and they were not --

15 THE COURT: That's what I asking about the other  
16 day.

17 MS. FARRELL: Yes.

18 THE COURT: And that's why I'm asking you now, what  
19 exactly are you planning to elicit about the response, about  
20 what was asked for and then what was given?

21 That's what I'm asking.

22 MS. FARRELL: Yes. So, the -- from the paralegal  
23 we'll elicit, you know: This list of ten people -- ten  
24 employees, their texts were requested. In response to this  
25 specific number on the subpoena, OneTaste produced -- made

1 these three productions. Those individuals' names are, in  
2 fact, listed on the documents that were produced.

3 From -- from -- then from the OneTaste custodian  
4 we'll elicit: We got the subpoena. We produced these  
5 materials in response to this request.

6 What I'd like to elicit is: Exactly from whom did  
7 you collect phones?

8 They're going to -- I understand they will assert  
9 work product over that answer, unless the Court orders them to  
10 answer.

11 Frankly, I don't --

12 THE COURT: I don't know if that would be reason to  
13 believe that if the Court orders them to answer, that they  
14 will still refuse to answer.

15 MS. FARRELL: Yes. Mr. Pelletier has indicated that  
16 they intend to mandamus you if you order them to answer.

17 What I will say is, I actually don't think for  
18 purposes of authenticity that we even need to elicit that  
19 testimony.

20 THE COURT: Well, this is why I'm asking you --

21 MS. FARRELL: Yes.

22 THE COURT: -- what exactly are you seeking to  
23 elicit?

24 MS. FARRELL: Well, I think it would be sufficient,  
25 but here's the thing is I don't -- we want guidance from the

1 Court on this because our -- our only goal is to get these  
2 text messages into evidence, to authenticate them.

3 The Government thinks it is sufficient, and we -- we  
4 understand OneTaste agrees, that it would be sufficient to  
5 have a OneTaste custodian testify that we got this request for  
6 these ten people's text messages. We collected employees'  
7 text messages and produced them in response to the subpoena.

8 THE COURT: Why do you need that middle step?

9 MS. FARRELL: That they collected the --

10 THE COURT: Why is it not sufficient that you  
11 indicate that you --

12 MS. FARRELL: We complied with this provision of the  
13 subpoena?

14 Yes, I think that's right. We actually think it is  
15 sufficient. And then to the extent they want to challenge,  
16 you know, go after the weight, not the admissibility, of the  
17 document and claim that these are what, I don't know, someone  
18 made them up and they're fake. Like fine, this they want to  
19 cross on that, be my guest.

20 You know, we would obviously point to some of the  
21 defense exhibits where they appear to be using these very text  
22 messages themselves.

23 THE COURT: I mean to the extent that you are going  
24 to be possibly putting on people whose texts are at issue and  
25 they authenticate that these are their texts, that is yet

1 another data point to indicate that these documents are what  
2 they purport to be.

3 I assume that that is another one of your bases on  
4 which you would ask the Court to admit the others.

5 MS. FARRELL: That's correct.

6 So, we are prepared to call all the people whose  
7 texts -- whose texts were produced in response to the Grand  
8 Jury subpoena. We don't think we need to do that, and we  
9 don't think -- we would prefer not to have to do that.  
10 They're all adverse witnesses who still work at OneTaste and  
11 who are going to -- you know, they may -- they may well not  
12 recall and personally be able to authenticate them because  
13 they haven't seen the documents in a long time.

14 But we do -- there already have been, and there will  
15 be, additional people who are going to testify who are going  
16 to look at documents that were produced by OneTaste and be  
17 able to authenticate them. And we believe that that is  
18 sufficient to authenticate all the documents because it shows  
19 that what was produced by OneTaste are, in fact, true and  
20 accurate copies of text messages of employees.

21 So, for example, Mr. Kandell is going to testify, we  
22 anticipate he is going to be able to authenticate his own text  
23 messages as Ms. Bensing just indicated. Those are text  
24 messages that came from that tranche, that production, that  
25 OneTaste provided.

1 THE COURT: Well, let me just say based on what I've  
2 seen – and, again, if there's some filings that were intended  
3 to be filed that weren't, I haven't seen them yet – but I am  
4 not at all persuaded that there is either work product  
5 protection or attorney-client privilege at issue here. I  
6 think there's game-playing going on. And, you know, enough is  
7 enough.

8 So, you know, I think you can talk to the defense  
9 here. I think one thing you might want to think about is  
10 exactly what, you know, the universe of what you want to put  
11 in. And, perhaps, a testimonial stipulation might go a long  
12 way here.

13 But, again, you know, there's game-playing going on  
14 here and enough is enough.

15 MS. FARRELL: Thank you, Your Honor. We feel the  
16 same way.

17 And I -- I think the bottom line is we can  
18 authenticate these text messages without having to get to the  
19 point where OneTaste is threatening to mandamus you.

20 THE COURT: They can threaten all they want. That's  
21 really separate from the evidentiary decisions that this Court  
22 will be making.

23 MS. FARRELL: Exactly. I don't -- I don't think we  
24 need to get the testimony about from exactly who the texts  
25 were collected, given that we can just establish what the

1 subpoenaed said and the fact that they said they were in  
2 compliance with the subpoena.

3 All right. Thank you, Your Honor.

4 Oh, I'm sorry. I think Ms. Bensing had something to  
5 add.

6 MS. BENSING: No.

7 MS. FARRELL: No, all right.

8 THE COURT: All right. I think the parties have a  
9 lot to talk to each other about, but I will tell you that the  
10 Government makes persuasive arguments on this point. I think  
11 that it would be worthwhile having a conversation with these  
12 two defense attorneys. OneTaste is not a party in this case,  
13 and I am not attributing game-playing to these attorneys here.  
14 Let me make that very clear.

15 Okay. We are adjourned. And, hopefully, we will  
16 have our full complement of the jury tomorrow.

17 MS. FARRELL: Thank you.

18 THE COURT: Have a productive and good today. Maybe  
19 give yourselves a little bit of a break.

20 (Matter adjourned to May 21, 2025 at 9:30 a.m. )

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