

CR-10-00757-PHX-ROS, June 13, 2011

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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4			
5	United States of America,	)	
6		)	
7	Plaintiff,	)	
8	vs.	)	
9		)	CR-10-00757-PHX-ROS
10	Jacqueline Parker,	)	
11		)	
12	Defendant.	)	
13		)	June 13, 2011
14		)	1:54 p.m.
15		)	

BEFORE: THE HONORABLE ROSLYN O. SILVER, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

Official Court Reporter:  
**Elaine Cropper, RDR, CRR, CCP**  
Sandra Day O'Connor U.S. Courthouse, Suite 312  
401 West Washington Street, Spc. 35  
Phoenix, Arizona 85003-2151  
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Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared by Computer-Aided Transcription

CR-10-00757-PHX-ROS, June 13, 2011

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CR-10-00757-PHX-ROS, June 13, 2011

P R O C E E D I N G S

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 1:54.)

THE COURT: Please be seated.

COURTROOM DEPUTY: This is case number CR 10-757,

01:54:31

*United States of America v. Jacqueline L. Parker*, on for motion hearing.

MR. PERKEL: Good afternoon, Your Honor. Walter Perkel on behalf of the United States. I'm here with Gary Restaino from my office and I'm also here with IRS Special Agent Lisa Giovanelli, Your Honor.

01:54:42

THE COURT: All right. Let's start with the motion to sever and that is sever Jacqueline Parker.

MS. BERTRAND: Your Honor, would you like to us make appearances? Would you like us to make our appearances?

01:54:59

THE COURT: Yes. Go ahead.

MS. BERTRAND: Joy Bertrand appears for Mrs. Parker. I waive my client's appearance at this hearing.

Also present at counsel table for Mrs. Parker is my firm's associate, Shannon Peters, and paralegal Jameson Johnson.

01:55:11

MR. MCBEE: Good afternoon, Your Honor. John McBee, local counsel for Mr. Parker.

THE COURT: All right.

MS. BERTRAND: Would you like me to approach the

01:55:23

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1 podium?

01:55:24

2 THE COURT: You know, I have a motion and response.

3 No reply.

4 MS. BERTRAND: That's correct.

5 THE COURT: All right. Go ahead.

01:55:31

6 MS. BERTRAND: Would you like me to approach the

7 podium?

8 THE COURT: Please.

9 MS. BERTRAND: Your Honor, regarding the motion to  
10 sever, I think this really comes down to a Hobson's choice that

01:55:45

11 Mrs. Parker is in preparing for trial. She believes that her  
12 husband would be able to provide exculpatory testimony in her  
13 trial, but he can't do that unless he testifies, and he can't  
14 testify, or he hasn't determined whether or not he's going to  
15 testify in his trial.

01:56:14

16 So Mrs. Parker is in a position of saying, well, I  
17 know this would be helpful and, frankly, integral to my  
18 defense, which is that she wasn't involved in this. It was her  
19 husband's international business dealings. And she may not be  
20 able to call him if he were to assert the Fifth Amendment,  
21 which would be his right, and remain silent at his trial.

01:56:39

22 Given that concern, I understand that a severance is  
23 unusual and not the most efficient way to manage criminal  
24 matters; but here I think it's critical to the defense of  
25 Mrs. Parker that her trial be severed from that of Mr. Parker.

01:56:58

CR-10-00757-PHX-ROS, June 13, 2011

1           And what I think is interesting is that in talking           01:57:04  
2 with Mr. Parker's counsel, they don't join in that motion, and  
3 that underscores also how differently situated these two  
4 married people are from each other legally in this case.

5           Mr. Parker believes that having Mrs. Parker tried           01:57:24  
6 with him would be helpful. And I don't think it would be  
7 helpful at all to Mrs. Parker, particularly given the  
8 exculpatory testimony problem that Mrs. Parker has with her  
9 husband's testimony.

10           So that was the gravamen of our motion to sever. I           01:57:40  
11 don't file those lightly. But I think here I don't know how we  
12 can get past that problem. And what I certainly don't want to  
13 have happen is us get in trial and have Mr. Parker say, "No,  
14 thank you, I'm not going to testify," and then we're stuck.

15           So with these pretrial motions that I filed, I wanted           01:57:58  
16 to make sure that I met the Court's deadline for filing  
17 pretrial motions regarding the other two.

18           Regarding preclusion of statements, those might be  
19 better addressed at a final pretrial. But this motion to sever  
20 I wanted to get talking about early here so that all of the           01:58:13  
21 parties can plan and know how these one or two trials are going  
22 to fall out.

23           THE COURT: Let me hear from the government.

24           MR. PERKEL: Thank you, Your Honor. Your Honor,  
25 would you like me to approach the podium as well?           01:58:40

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1 THE COURT: Please. 01:58:44

2 And let me ask you a question. In your response, and  
3 it's on page four of Ms. Bertrand's motion. It says at line  
4 18, indeed in her special agent report, the special agent  
5 assigned to the case did not seek prosecution of Mrs. Parker. 01:59:18

6 And Agent Giovanelli, I believe, concluded that because  
7 Mrs. Parker was not involved with Mr. Parker's business  
8 affairs, the investigation disclosed insufficient evidence to  
9 support a recommendation and prosecute Parker's spouse,  
10 Jacqueline. 01:59:44

11 And then whether or not it was mean-spirited or not  
12 is certainly not what I'm finding. But the AUSA decided the  
13 case should be prosecuted. What happened?

14 MR. PERKEL: Your Honor, after the special agent  
15 report, the government sought handwriting exemplars from 02:00:08  
16 defendant Jacqueline Parker and her husband, James Parker. The  
17 handwriting examples provided by the two defendants were  
18 submitted to an expert who compared the handwriting with the  
19 signatures on the four offers of compromise that were filed and  
20 those are counts five through eight in the indictment. 02:00:31

21 It should be noted that counts five through eight  
22 each contain a signature of James Parker and Jacqueline Parker.  
23 The handwriting expert could only conclusively determine that  
24 the two final offers and compromises, which contained the  
25 signature of Jacqueline Parker, matched the examples that were 02:00:48

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1 provided by her.

02:00:52

2 So to answer your question is that after the special  
3 agent report, there was this analysis done by a handwriting  
4 expert that could conclusively determine that she signed the  
5 latter two offers and compromise.

02:01:05

6 THE COURT: And in doing so, that -- and under those  
7 counts, what do you have to prove to establish your case  
8 against her?

9 MR. PERKEL: And that was against my second point, is  
10 that there was also a more thorough and detailed discussion of  
11 exactly what you're referring to. The proof that is necessary  
12 is to show that when she signed those statements, those offers  
13 of compromise, she knew that there was false information in  
14 those offers of compromise.

02:01:23

15 THE COURT: And what is that evidence?

02:01:40

16 MR. PERKEL: So the evidence is -- so part of the  
17 offers of compromise that are required by the IRS are describe  
18 your assets, describe your cars, describe your properties,  
19 describe sort of all of the things that are important in your  
20 financial decisions that you make day-to-day.

02:01:52

21 In the offers and compromise, for example, there was  
22 reporting of no real estate. There was a report of owning a  
23 1999 Buick sedan. There was a report of no cash in bank  
24 accounts.

25 The proof that we have from, essentially, 1997 until

02:02:07

CR-10-00757-PHX-ROS, June 13, 2011

1 the current time shows that there was all of these things. 02:02:11

2 THE COURT: There was -- say that again? In other  
3 words, on the report it said that they existed but they didn't  
4 exist. Is that what you're saying?

5 MR. PERKEL: What I'm saying, Your Honor, is that the 02:02:31  
6 offers and compromise that were signed by both defendants do  
7 not list assets of value and they don't list, for example, the  
8 \$1.5 million home in Carefree, Arizona; a \$1 million home in  
9 Amarillo, Texas; a \$300,000 Rolls Royce. They don't list any  
10 of that. 02:02:59

11 What they list is, essentially, we have a 1999 Buick.  
12 We don't own any homes. Our assets include a wedding ring, a  
13 gun. And so to answer your question is that in evaluating all  
14 of this evidence, we found out and we discovered that she was  
15 really in possession and had knowledge of all of these assets. 02:03:14  
16 She was living at the Carefree residence. She helped inspect  
17 the property in Amarillo, Texas, to purchase it.

18 Records from the insurance documents related --

19 THE COURT: What is -- what was the time period from  
20 which she signed the offer and she inspected the property? 02:03:36  
21 Because from what I can tell from what has been provided to me,  
22 she inspected the property but she didn't live there. Maybe  
23 she had been there a few times. Was that it?

24 MR. PERKEL: It's our understanding that she did  
25 inspect the property in 2005 when it was purchased. There was 02:03:54



CR-10-00757-PHX-ROS, June 13, 2011

1 a real estate agent there that remembers her there. She was -- 02:03:59  
2 she did her inspection. They were interested, her and her  
3 husband were interested in the purchase of furniture that was  
4 inside the property, and it is our understanding that she was  
5 living there for some time. 02:04:14

6 THE COURT: What's the basis of that?

7 MR. PERKEL: The real estate agent who dealt with the  
8 defendants during this transaction, she was under the  
9 impression that they were going to be living at the Amarillo,  
10 Texas, property. 02:04:32

11 THE COURT: Well, under an impression is speculative.  
12 What was it that is admissible?

13 MR. PERKEL: Your Honor, if I can just have one  
14 moment. I just want to consult with the agent.

15 THE COURT: Sure. 02:04:54

16 (Mr. Perkel confers with the special agent.)

17 MR. PERKEL: Your Honor, the -- other than the  
18 evidence from the real estate agent, I don't recall other  
19 evidence to show her living at the house on a continuous basis.  
20 But I will say that -- and this answers another question I 02:05:38  
21 think that you posed with regards to the timeline and that is  
22 the offer and compromise.

23 The first one was in June of 2004. The car, the  
24 Rolls Royce, the \$300,000 Rolls Royce was purchased in July of  
25 2004. And the insurance documents that have been disclosed -- 02:05:53

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1	THE COURT: But that wasn't in her name.	02:05:58
2	MR. PERKEL: It was in the name of the --	
3	THE COURT: -- son.	
4	MR. PERKEL: Well, of the --	
5	THE COURT: Sam somebody?	02:06:05
6	MR. PERKEL: Cimarron River Ranch, Limited Liability	
7	Corporation. And the son actually did have a role in that, but	
8	the car was delivered to the Carefree residence and the	
9	insurance documents were in the name of her husband, but the	
10	documents that were provided to the defendant also show that	02:06:18
11	she was later added as a driver for the car.	
12	THE COURT: But she -- do you have evidence that she	
13	was using bank accounts, taking money out, that type of thing,	
14	and using this -- all of this money that was hidden from the	
15	IRS? I mean, was she involved in enormous expenditures? We	02:06:38
16	have this Rolls Royce that was in somebody else's name, but	
17	apparently her husband was using that; right?	
18	MR. PERKEL: Well, it does seem that -- to the extent	
19	that they were living together at this Carefree residence and	
20	at the Amarillo home, there are records that show -- bank	02:06:58
21	records that show that they were maintaining their lifestyles	
22	at both places.	
23	THE COURT: That's true. But what evidence do you	
24	have -- hold on -- that that property was in her name, let's	
25	say, the Rolls Royce, which is one would expect is something	02:07:17

CR-10-00757-PHX-ROS, June 13, 2011

1 that you own?

02:07:25

2 MR. PERKEL: Well, that's the whole point of the  
3 indictment is none of the properties were in the name of either  
4 defendant. They were using these other entities as a way of  
5 obscuring ownership.

02:07:33

6 THE COURT: I gotcha with respect to -- it's clear  
7 that you have a case against Mr. Parker but why did she know?

8 MR. PERKEL: How did she know?

9 THE COURT: Just because she's married to him?

10 MR. PERKEL: No. I think there are cases where just  
11 by being married doesn't automatically -- you don't infer  
12 knowledge just by being married. I agree with that.

02:07:45

13 I think in this case, Your Honor, when you own or are  
14 in possession -- when I say own, when you live at two homes,  
15 both in the value of about a million dollars, the second home  
16 being about 7,000 square feet, at some point when you sign a  
17 statement which says you don't own any real estate and at some  
18 point when you sign a statement that says the only thing we're  
19 driving is this 1999 car and we have no money in any of our  
20 bank accounts and yet you're enjoying the benefits of living in  
21 these nice homes and you're enjoying the benefits of going to  
22 Belize 11 times -- her husband went there 19 times -- and  
23 you're enjoying the benefit of the car and all of the expenses  
24 of maintaining these homes. These are expensive homes to  
25 maintain, electricity.

02:08:02

02:08:20

02:08:39

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1	THE COURT: Where did the money come from?	02:08:42
2	MR. PERKEL: The money came from Belize. There was	
3	property sold in Belize.	
4	THE COURT: Did she know about that? Do you have	
5	evidence that she knew that?	02:08:50
6	MR. PERKEL: I do, Your Honor. To the extent that	
7	she went to Belize during the exact same approximate time	
8	period.	
9	THE COURT: Did she sign the papers that were	
10	required to sell that property?	02:09:01
11	MR. PERKEL: No, Your Honor.	
12	THE COURT: Okay.	
13	MR. PERKEL: But, again, the knowledge of the assets	
14	is different than -- it's somewhat different than the knowledge	
15	of the scheme to conceal the assets.	02:09:12
16	THE COURT: Well, it seems like what you have here is	
17	primarily these -- signing these compromises; right? And, I	
18	mean, she was basically, as far as you're concerned, she was	
19	hiding this property that was pretty expensive property in that	
20	she didn't disclose it; right?	02:09:33
21	MR. PERKEL: What I think, Your Honor, I'm getting at	
22	is that she signed these documents that were so obviously false	
23	about their assets that she had to have known they were false.	
24	It's not a question of whether or not you have \$2.5 million or	
25	2.2.	02:09:50

CR-10-00757-PHX-ROS, June 13, 2011

1 THE COURT: I've never seen one of those before. Is 02:09:52  
2 it, like, a two-page document that -- where you list what  
3 you've got or is it like a typical IRS return that no one wants  
4 to look at before they sign it?

5 MR. PERKEL: Well, it may be that but it's not a 02:10:08  
6 two-page document. It's pretty detailed. There's lots of  
7 questions about your business and lots of questions about the  
8 things that you do, like, for example, checking accounts.  
9 None. Other accounts, not answered. Let me go through the  
10 purchased automobiles, for example. 02:10:25

11 THE COURT: How many pages is it?

12 MR. PERKEL: There's an individual form that pertains  
13 to your individual assets, which is about six pages, and then  
14 there's a business form.

15 THE COURT: Do you have her fingerprints on all of 02:10:43  
16 those pages?

17 MR. PERKEL: Well, we don't have fingerprints but on  
18 the -- we have her signature signing those offers and  
19 compromises and then, again, our expert was able to  
20 definitively determine that for two of the offers and 02:10:55  
21 compromises, that was, in fact, her signature.

22 THE COURT: And that was, you said, conclusive?

23 MR. PERKEL: That's right.

24 THE COURT: But no fingerprints on all of the pages  
25 that say -- for critical pages that would establish that she 02:11:07

CR-10-00757-PHX-ROS, June 13, 2011

1 looked at them? 02:11:12

2 MR. PERKEL: No. These were submitted in 2004 and  
3 2005. During the same time period they purchased the car and  
4 they purchased the Amarillo house and they also purchased a  
5 cattle ranch in Oklahoma. So there's this notion that you're 02:11:23  
6 in possession of these great assets and you sign something.  
7 How are you going to repay back your payment to the IRS?  
8 Through friends and family, again, another statement which  
9 would indicate if I'm going to ask friends and family for  
10 \$140,000, I'm going to actually have an idea of how I'm going 02:11:37  
11 to get the money.

12 THE COURT: Was she involved in this business, in his  
13 business? How was she involved? Was she there every day, like  
14 on administrative assistant, or --

15 MR. PERKEL: You know, Your Honor, I don't know the 02:11:54  
16 answer to that.

17 THE COURT: Okay. So she says she was bringing up  
18 her children.

19 MR. PERKEL: And she may have been. Again, she's  
20 only really being charged with the making the false statement. 02:12:01  
21 Whether she aided and abetted in the -- sort of the evasion of  
22 the tax payments, someone could argue that, but I don't think  
23 the proof here is beyond a reasonable doubt with regards to  
24 that.

25 THE COURT: Okay. Thank you. 02:12:15

CR-10-00757-PHX-ROS, June 13, 2011

1 MR. PERKEL: Can I just finish on one thing, Your Honor? 02:12:17  
2

3 THE COURT: Sure.

4 MR. PERKEL: I just wanted to finish with saying that  
5 what brings -- I think there's two points with regards to the 02:12:22  
6 severance, because I just wanted to take a step back. The  
7 statement made by Ms. Bertrand that she wants to call her  
8 husband to testify at trial, and if I'm wrong, I'm sure the  
9 Court will correct me. I don't remember that being an argument  
10 in her motion for severance, so I didn't exactly address that 02:12:41  
11 point.

12 THE COURT: I'm not sure that that was an argument  
13 other than, let's see here. I think you did respond to it in a  
14 way. You said it's the burden of the defendant to show that  
15 properly instructed jury could not be incapable of 02:12:57  
16 compartmentalizing evidence, so is that what you're talking  
17 about? Or are you talking about more the problem, the Fifth  
18 Amendment issue there?

19 MR. PERKEL: The more the Fifth Amendment. I don't  
20 remember her arguing that she intends to call her husband as a 02:13:15  
21 witness at trial and what he's going to say and all of the  
22 issues that may be involved with that.

23 THE COURT: Well, let me -- I'll ask her about that.

24 MR. PERKEL: Okay.

25 And the second thing is, I just wanted to reiterate 02:13:24

CR-10-00757-PHX-ROS, June 13, 2011

1 again is that the -- all of the acts here that are involved  
2 with the evasion of payment was the possession of those assets.  
3 And then the second step is sort of hiding these assets behind  
4 these nominal entities to avoid collection from the IRS or to  
5 avoid payment of the assets.

02:13:27

02:13:44

6 The first chunk of those, which is the possession of  
7 the assets, which is equally important to the whole case of the  
8 evasion of payments, all of the possession stuff also applies  
9 to Mrs. Parker because, again, the statements and the offers  
10 and compromise are so void of reality of what's going on that  
11 someone must have known.

02:13:58

12 And I'll give you an example. In the purchased  
13 automobiles she lists a 1999 Cadillac Seville worth \$5,500 and  
14 a 1999 trailer and then two 1999 Yamaha jet skis. And we know  
15 that, again, that there was a Rolls Royce that was purchased  
16 that was driven to the Carefree residence and that she, in  
17 fact, was later added as an insured party, or that's what the  
18 record suggests.

02:14:20

19 So, again, just the fact that the reality of what was  
20 going on versus what's in the statement, which is in the offers  
21 of compromise, is probative that, in fact, she made a false  
22 statement.

02:14:36

23 THE COURT: Thank you.

24 MR. PERKEL: Thank you, Your Honor.

25 THE COURT: Ms. Bertrand, how long had Mr. and

02:14:47



CR-10-00757-PHX-ROS, June 13, 2011

1 Mrs. Parker been married? 02:14:52

2 MS. BERTRAND: At what point, Your Honor?

3 THE COURT: Well, before the allegations in the

4 complaint.

5 MS. BERTRAND: I believe they were married in 02:15:01

6 approximately 1982, 1983.

7 THE COURT: And they are still married?

8 MS. BERTRAND: Yes, ma'am.

9 THE COURT: So. She wasn't involved in the business,

10 I take? 02:15:19

11 MS. BERTRAND: No. It's not how I -- that's not how

12 I've seen this at all. She was a housewife.

13 THE COURT: Now, what about Mr. Perkel's argument

14 that you've raised for the first time, the issue about the

15 Fifth Amendment issue that her husband would testify on her 02:15:36

16 behalf?

17 MS. BERTRAND: I did raise it on page seven of my

18 motion. I didn't flesh out the exculpatory aspect of it. I

19 was looking more at inculpatory and thinking that the

20 inculpatory aspect of this in preparing this motion, and I 02:15:53

21 should have fleshed out the exculpatory.

22 But the confrontation clause is directly discussed in

23 our brief. If one of these parties chooses not to testify, we

24 have problems.

25 THE COURT: Well, proffer what Mr. Parker would say 02:16:14

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1 on behalf of his wife.

02:16:20

2 MS. BERTRAND: I would proffer the following:

3 Mr. Parker would say that his wife was not involved in his  
4 business dealings. They are conservative Christians and their  
5 mind set is one of the woman is the queen of the home. She  
6 takes care of the children. That is her job. Her job is to  
7 make sure dinner is on the table and the kids are clothed.

02:16:35

8 She stayed home and home-schooled the kids as they  
9 were growing up. She was not involved in his business  
10 dealings. That was not what her defined role was. And she has  
11 been the dutiful wife who has lived with him in several states,  
12 traveled with him to Belize, but she was not involved in these  
13 business dealings.

02:16:53

14 And, for example, Mr. Perkel mentions this cattle  
15 ranch. It's my understanding that Mr. Parker's theory of the  
16 case will be that that cattle ranch was a business operation  
17 that had real cows on it and irrigation systems and  
18 construction on it. It was a real operating ranch and that the  
19 Rolls Royce was bought to entertain investors who they thought  
20 would -- the way I heard it described, when you think --  
21 remember the beginning of Dallas back in the eighties with all  
22 of the glamor and the big cars and showing the big ranch? They  
23 were selling that image, the big hair, the big cars, the  
24 jewelry, that kind of stuff. But it was purchased to entertain  
25 investors, and I don't think there's any indication that

02:17:18

02:17:43

02:18:04

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1 Mrs. Parker ever drove the car. I don't know if she ever even 02:18:08  
2 rode in it. She definitely visited the ranch, but it's her  
3 husband's business and she would have followed him there. And  
4 her son ran the ranch. So that would be the proffer. She  
5 didn't know. She was busy taking care of the family. 02:18:21

6 And I think that, given the totality of these  
7 circumstances, makes sense. I don't know how much she  
8 appreciated the attachments to those offers and compromise, and  
9 I don't know that they are going to be able to prove how much  
10 she understood the legality, the legal issues encompassing 02:18:45  
11 those representations. And here the government has got to show  
12 a lot more than should have known. They have got to show  
13 affirmative acts that prove her intent to violate the law.  
14 This isn't a recklessness standard and I don't know that they  
15 can prove that but that is on them. 02:19:07

16 In terms of how we try this case, I don't see how  
17 Mrs. Parker, given her circumstances, can be tried sitting next  
18 to her husband. And I will tell you that in making the  
19 decision to sever the case was very difficult. She sat next to  
20 her husband, for better or worse, for almost, what, 30 years 02:19:29  
21 and now she's saying, "I can't do this with you next to me."

22 So that was our basis for our motion to sever.

23 THE COURT: Okay. The motion to sever is granted.

24 Let me say why. It is unusual to do that in this  
25 case but, Mr. Perkel, I appreciate your honesty in telling me 02:19:48

CR-10-00757-PHX-ROS, June 13, 2011

1 that and, of course, actually, it came forth from Ms. Bertrand 02:19:53  
2 at first. The first indication was she didn't look like she  
3 was really involved. And then when you found her name signed  
4 on the documents, that is not proof beyond a reasonable doubt.  
5 That may be probable cause; but if that's what you're using to 02:20:17  
6 get to the jury, and I've tried to drive everything else out of  
7 you, it doesn't even appear -- most of it is speculative at  
8 this point. Of course your case could prove, you could have  
9 people who come in and testify and say, "Well, we talked to her  
10 and she knew what she had and didn't have and all of that." So 02:20:36  
11 the motion is granted.

12 All right. The next motion?

13 Okay. And this motion is to preclude attorney client  
14 communications, evidentiary evidence. Is that really an issue  
15 now? 02:20:58

16 MS. BERTRAND: I don't know that the attorney-client  
17 one will be an issue at this time. With both the marital  
18 communications and the attorney-client, I filed these, Judge --

19 THE COURT: Out of an abundance of caution.

20 MS. BERTRAND: Yes. 02:21:13

21 THE COURT: Let me ask Mr. Perkel, are you going to  
22 respond to these? Do you know of anything right now that would  
23 indicate that you're going to be offering attorney-client  
24 privileged information that isn't, let's say, protected by the  
25 crime fraud exception, which would be your obligation? Of 02:21:28

CR-10-00757-PHX-ROS, June 13, 2011

1 course you would have to disclose anything that is 02:21:34  
2 attorney-client and you would have to disclose, gee, it's  
3 attorney-client but it's protected by the crime fraud  
4 exception.

5 And so that we can save ourselves some time, the same 02:21:51  
6 with the marital privilege, and you're right, there's two  
7 different kinds of privilege, but tell me anything today.

8 MR. PERKEL: Your Honor, the first question about the  
9 responses, I would say are you referring to additional response  
10 in addition to what we've already filed? 02:22:09

11 THE COURT: I'm asking you to be clear. You  
12 basically said, no, there's no attorney-client privilege issue  
13 here. I don't want to run into this in the middle of a trial  
14 and have you, let's say, proffer some evidence that really may  
15 well be protected by the attorney-client privilege, which is as 02:22:24  
16 privileged of a privilege as you can find, because we're all in  
17 this business. So I don't want to hear that it was a  
18 confidential communication for the purpose of obtaining legal  
19 advice of any sort of any way.

20 And if it's close to that, you are certainly going to 02:22:50  
21 have to disclose that and I am going to leave that to you but  
22 just remind you I'm not going to be happy if that comes up  
23 during trial when we had this opportunity; okay?

24 MR. PERKEL: I appreciate that. I don't anticipate  
25 proffering or offering privileged information at this point. 02:23:08

CR-10-00757-PHX-ROS, June 13, 2011

1 But I guess what I think is that these motions, I think both of 02:23:15  
2 them should be denied now.

3 We will be disclosing our witness lists, our exhibit  
4 lists, and if something seems to sort of be on the argument of  
5 whether it's privileged or not, it's something that I'll 02:23:29  
6 discuss with the attorneys to raise at another time.

7 At this time, though, both motions seem to be  
8 premature but I can't identify the statements that she's  
9 referring to.

10 THE COURT: They are -- as they should be, they are 02:23:40  
11 out of an abundance of caution and I think you know what  
12 abundance of caution means, because you have filed such  
13 motions. So I'm not denying them as moot. I'm just -- I'm  
14 unable to tell whether it's going to be moot or not, and I  
15 leave it to you, as you've said, that as the evidence is 02:24:04  
16 disclosed, you'll let everybody know that this may be an issue;  
17 all right?

18 MR. PERKEL: And, Your Honor, the only other thing  
19 that I wanted to ask, the motion to sever, I know you've  
20 reached your decision. Would it be possible to at least have a 02:24:15  
21 chance to respond to some of the arguments today or ask for a  
22 motion to reconsider? I didn't really know about the Fifth  
23 Amendment motion and then I --

24 THE COURT: My decision is really not based upon the  
25 Fifth Amendment motion. My decision is based upon the reasons 02:24:28

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1 I've said: Prejudicial effect outweighs the probative value. 02:24:31  
2 I'm very concerned about whether or not you're going to ever  
3 get to the jury based upon the fact that she signed those  
4 documents and that's primarily it. Prejudicial effect, 403,  
5 and unless you're going to tell me that there is something that 02:24:50  
6 you haven't placed in these motions, I'm not going -- or the  
7 motion or response.

8 MR. PERKEL: It just seems that the issue about  
9 whether or not there's proof beyond a reasonable doubt, or Rule  
10 29, seems to be somewhat of a different issue than a Rule 14 02:25:07  
11 decision. And the 403 balancing test I don't think is also as  
12 appropriate here because that deals with more of the admission  
13 of evidence. This is really whether it should be prejudice.

14 THE COURT: I've asked you for the admission of  
15 evidence on a motion to sever, which is absolutely necessary, 02:25:24  
16 because as of today, I'm not going to -- you know, you may have  
17 probable cause. You had probable cause to get an indictment.  
18 But the question is whether or not there is sufficient evidence  
19 to get to the jury today on this defendant on the basis of what  
20 you've alleged. And Ms. Bertrand is right, it has to be 02:25:48  
21 willful and you've got a signature.

22 MR. PERKEL: I understand your argument, Your Honor.  
23 I understand Ms. Bertrand's argument. And I mean no disrespect  
24 by saying this, but it seems like the legal issue is more  
25 whether or not she can prove she would be prejudiced by a joint 02:26:04

CR-10-00757-PHX-ROS, June 13, 2011

1 trial, not whether the government has provided sufficient proof  
2 today to meet its burden of proof. And I wasn't anticipating  
3 laying out all of the arguments I would make in a summation --

02:26:07

4 THE COURT: Well, not on a summation. You have the  
5 burden. You go first, not a summation. This is what evidence  
6 do you have and with the enormous amount of evidence that you  
7 have, as I see it, let's say, evidence and whether the jury  
8 believes it or not against her husband, prejudicial effect  
9 outweighs the probative value against her. I've asked you to  
10 outline what the evidence is, signatures. And it was after

02:26:22

11 those -- and there was a clear statement by an agent that she  
12 probably shouldn't be charged until her signatures were  
13 identified on those two documents. Those two documents are  
14 your case. And so don't argue something you've already argued.

02:26:44

15 MR. PERKEL: I understand. If there's an opportunity  
16 to be heard, I might be able to articulate better what I said.

02:27:09

17 THE COURT: I've heard you. And you've been very  
18 articulate in writing and in open court.

19 The only question is, and usually is, who goes first.  
20 And it looks like Mr. Parker goes first. He's the first on the  
21 list and that is the way I handle it.

02:27:26

22 MR. PERKEL: Okay. Thank you.

23 THE COURT: All right.

24 Motion to seal. I have a problem with this,  
25 Mr. Perkel. You're up here first. I don't see after, you

02:27:39



CR-10-00757-PHX-ROS, June 13, 2011

1 know, the cat is out of the box, if that's what it's called, 02:27:44  
2 how in the world you're going to tell me to seal these  
3 documents now. Because what am I going to do? I'm going to  
4 tell the press, this publication, am I going to tell them it is  
5 some news corporation? 02:28:02

6 Usually, I get these motions well before. It's the  
7 Oklahoma Political News Articles. And I see what you're  
8 talking about, after reading it, that there's a lot of  
9 information in here. But it says, looks like, on page five,  
10 James Parker said documents he received also show that Tim 02:28:25  
11 W. Barnes, President of the First State Bank of Boise City,  
12 talked to the IRS about him and filed 15 suspicious activity  
13 reports stemming from wire transfers made from Belize bank  
14 account to his son's ranch.

15 Barnes also told the IRS that 36 money wires totaling 02:28:49  
16 \$1.2 million concerned him because Belize was on the U.S. State  
17 Department's list of major money-laundering countries. That's  
18 why I saw Mr. Barnes' name. Was it somewhere else, too, that I  
19 missed?

20 MR. PERKEL: No. That's it, Your Honor. On page 02:29:15  
21 five. You were right.

22 THE COURT: So why should I undo something that has  
23 been done?

24 MR. PERKEL: Just that at this point, it came to us  
25 as a surprise that he was commenting on specific things from 02:29:23

CR-10-00757-PHX-ROS, June 13, 2011

1 the discovery. The bank complained about it.

02:29:27

2 In disclosing the discovery, and pursuant to my  
3 discovery obligations, I disclosed this. I think, at this  
4 point, it's fair to say that it doesn't seem there's been any  
5 foul. There's been nothing terribly wrong. But I think the  
6 Court can understand this is a local bank, a mom-and-pop type  
7 of bank. This is not a big national bank. This is the  
8 president of the bank. It can cause embarrassment.

02:29:42

9 I think just to, at this point, we're moving forward  
10 at trial and Tim Barnes, we hope this is going to be one of our  
11 witnesses at trial. And I think at this point, just to be kind  
12 of careful, that we just ask that disclosures made by the  
13 government in this type of sensitive information not be  
14 disclosed to the public.

02:30:00

15 THE COURT: So you mean in the future to anyone else?  
16 Is that what you're saying?

02:30:15

17 MR. PERKEL: That's right. Your Honor. At this  
18 point, I don't think there's anything we can do about what has  
19 already happened.

20 THE COURT: So what you've got here, and this is the  
21 typical thing that I see in these kinds of cases, this proposed  
22 form of order. Let's see here.

02:30:26

23 And your authority for, let's say, the first -- I'm  
24 looking at your proposed order, from identifying and other  
25 personal identifying information of any individual contained in

02:31:02

CR-10-00757-PHX-ROS, June 13, 2011

1 the government's disclosure and that all documents disclosed to 02:31:06  
2 defense counsel are subject to this protective order. What  
3 is -- what's the law for that?

4 MR. PERKEL: It's Rule 16(d), Your Honor, that gives  
5 the Court discretion to issue the protective orders. So that 02:31:21  
6 would be my authority for asking for all of these, Your Honor.

7 THE COURT: Well, and the protective order, though,  
8 generally, is for people who are potential informants who may  
9 be harmed, so I don't see that applies here. I don't see any  
10 case law that would allow for that. 02:31:41

11 I mean, say, for example, if there was an individual,  
12 you know, a private party or something like that, that's  
13 generally what I see from the IRS and I certainly have signed  
14 those kinds of documents where there are enormous privacy  
15 interests involved. But, boy, Mr. Barnes is no longer private. 02:32:02  
16 So are there other individuals other than Mr. Barnes who need  
17 to be protected?

18 MR. PERKEL: Well, there are other government  
19 witnesses that are civilian witnesses that --

20 THE COURT: This is not a classified trial and the 02:32:23  
21 press is going to be in here if they want to be; right?

22 MR. PERKEL: Fair enough, Your Honor.

23 THE COURT: I can't preclude them; right?

24 MR. PERKEL: For the press, no, Your Honor, not at  
25 this point. 02:32:35

CR-10-00757-PHX-ROS, June 13, 2011

1 THE COURT: Okay. So if these individuals testify, 02:32:36  
2 including Mr. Barnes, somebody may be here, and maybe from this  
3 organization or somewhere else. He's not an informant so he  
4 and his family are not at risk; right?

5 MR. PERKEL: Not at risk physically, correct, Your 02:32:58  
6 Honor. I just think that there are civilian witnesses who  
7 acted in some way in a similar capacity who dealt with the  
8 defendant Parker during their business dealings, and I think  
9 just to disclose to unnecessarily talk about them in the press,  
10 after having received information from the government during 02:33:18  
11 the course of the litigation, may embarrass them or could  
12 interfere with their desire to testify at trial. And I think  
13 that is really the motive here. I agree that there's no one  
14 who seems to be in any physical harm.

15 THE COURT: Is it your view that they refused to 02:33:39  
16 testify even if he's subpoenaed?

17 MR. PERKEL: No. Your Honor. That's not the case,  
18 no.

19 THE COURT: So, in other words, he wouldn't violate a  
20 court order? 02:33:50

21 MR. PERKEL: I don't believe so. I haven't spoken to  
22 him. But it's my understanding that he -- I don't believe he  
23 won't testify because of the article. But I do know that there  
24 were complaints because of the article made to the government  
25 by the bank involved and so -- and there are other witnesses 02:34:03

CR-10-00757-PHX-ROS, June 13, 2011

1 like this who have been disclosed who have dealings with  
2 Mr. Parker either as during -- banks or business dealings, and  
3 I think they probably won't want their name in the paper, too.  
4 And I appreciate that. I just don't think that at this point  
5 we need to disclose this or have all of this stuff revealed to  
6 the press.

02:34:07

02:34:21

7 I received Ms. Bertrand's response and I was planning  
8 on filing a reply by Thursday, which I think would be my  
9 deadline. And so if the Court wishes, I could still do that or  
10 if you have any more questions.

02:34:37

11 THE COURT: Well, what else would you put in the  
12 reply? I wanted to give you a chance.

13 MR. PERKEL: I would provide more case law to support  
14 some of these.

15 THE COURT: What kind of case law?

02:34:47

16 MR. PERKEL: I have to read it but just case law that  
17 would -- I haven't read all of the cases, so I can't answer you  
18 now but at least case law to support some of the requests. I  
19 think that the request about disclosing copies to the  
20 defendants, I will withdraw that request. I think they have a  
21 right to review the evidence against them.

02:34:59

22 THE COURT: They better.

23 MR. PERKEL: Well, when I say that they would review  
24 that privately without their attorney, I didn't mean it as a  
25 joke or anything.

02:35:12

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1 THE COURT: I know. Well -- 02:35:13

2 MR. PERKEL: Sorry. I didn't mean it that way.

3 They, obviously, have a right to. I just didn't want copies of  
4 some of this stuff ending up in local publications or  
5 newspapers. 02:35:24

6 THE COURT: Well, I know you don't want that. It  
7 seems to be a significant case somewhere in the world. But  
8 unless you can show to me under 16(d) that there's some harm  
9 other than the fact that the media knows, if there's some harm  
10 that may involve these people or -- and I've seen this once in 02:35:43  
11 my life, is these people are going to refuse to testify.

12 If they refuse to testify and face a contempt of  
13 court order, then maybe that's a different issue or if they are  
14 going to -- you know, if it's going to harm the investigation,  
15 for example, they are not going to tell you anything else. 02:36:07  
16 They refuse to talk to you. That is another issue. But that's  
17 not what I've heard, and that is the only thing I consider in a  
18 reply. It has to be that strong.

19 MR. PERKEL: Understood. Thank you.

20 THE COURT: And I will take a look at your reply, and 02:36:25  
21 that issue is taken under advisement.

22 I think I have resolved all of the pending motions.

23 Have I?

24 MR. MCBEE: Judge, may I be heard for a moment?

25 THE COURT: Let me ask. All of the government's 02:36:43

CR-10-00757-PHX-ROS, June 13, 2011

1 pending motions? 02:36:45

2 MR. PERKEL: Yes, Your Honor. Yes. Thank you.

3 THE COURT: And, Ms. Bertrand, all of your pending  
4 motions?

5 MS. BERTRAND: Yes, ma'am. 02:36:51

6 THE COURT: And now?

7 MR. MCBEE: Judge, Mr. Minns filed a motion to  
8 continue the trial, which I don't believe the government  
9 objects to; but to have some sort of guidance in that area I  
10 think would help with the movement of the case. 02:37:04

11 THE COURT: Okay.

12 You don't have an objection?

13 MR. PERKEL: Well, Your Honor, we principally do not  
14 object to these. Mr. Parker's attorney from Texas called me --  
15 called Pete Sexton and I last Thursday and asked if we would 02:37:17

16 object. We said we would not object. We just wanted to have a  
17 chance to inform the Court of our schedules. I know that  
18 Mr. Sexton has a trial before this court that is supposed to

19 start immediately after this case. I think he told me it's  
20 about a two-month trial or a two-and-a-half-month trial, a long 02:37:33  
21 case. So to the extent that that might interfere, he wanted to  
22 bring that to your attention.

23 I've sort of planned my whole next six months around  
24 this trial. So --

25 THE COURT: So you're free. 02:37:48

CR-10-00757-PHX-ROS, June 13, 2011

1 MR. PERKEL: I'm free but at the same time, October, 02:37:49  
2 I was planning on -- I had anticipated other things in October.  
3 Now that the case has been severed, I don't know if that makes  
4 any difference. So I think that it would be fine.

5 THE COURT: Why don't you work with counsel? I have 02:38:01  
6 a number of big trials also. I don't mind putting it off. You  
7 know, and I'll save you your Halloween if that's what you're  
8 looking for, then you can -- but, you know, it shouldn't be --  
9 it should be -- let's see. June, July, August, maybe sometime  
10 in September. 02:38:26

11 MR. PERKEL: So the current trial is September 6 and  
12 I think the --

13 THE COURT: Oh, it is September 6?

14 COURTROOM DEPUTY: It's a complex case. We set it  
15 out. 02:38:36

16 THE COURT: Well, then, September 7.

17 MR. PERKEL: Okay. So if this case were continued --

18 THE COURT: How about November? You don't want  
19 October. You want November.

20 MR. PERKEL: I don't have any problem with October or 02:38:57  
21 November. The question is more if -- would this case interfere  
22 with the other case, which I think is referred to as the Mathon  
23 case, that is supposed to start immediately after this one? So  
24 that -- would that be pushed back? Because that is supposed to  
25 last some time. 02:39:13



CR-10-00757-PHX-ROS, June 13, 2011

1 THE COURT: Why does that case have to be tried after 02:39:15  
2 this one?

3 MR. PERKEL: It doesn't have to be.

4 THE COURT: Okay. Well, I won't try it after this  
5 one, then. Let's talk about November for this one. 02:39:22

6 MR. PERKEL: November is fine. October or November.  
7 Both months are fine. I was just concerned about the conflict  
8 with the other case.

9 THE COURT: What about the possibility of a plea?

10 MR. PERKEL: Your Honor, I don't think -- both 02:39:34  
11 defendants have indicated they are not interested in a plea.

12 THE COURT: Is that for sure?

13 MS. BERTRAND: That is not correct. We have been  
14 asking for an offer from the United States since the case  
15 originated. We have never gotten an offer. 02:39:45

16 THE COURT: Well, maybe you haven't gotten an offer  
17 because they don't want to give you the offer you want.

18 Why?

19 MR. PERKEL: Your Honor, I actually don't know. I  
20 just know that before Ms. Bertrand was on the case, there were 02:39:56  
21 two other attorneys and there was a lot of discussion about  
22 offers.

23 THE COURT: Okay. All right. Mr. Perkel, let's get  
24 this case -- if we can get it settled and then we need a date  
25 for -- you are to decide that. I just had a visiting judge 02:40:11

United States District Court

CR-10-00757-PHX-ROS, June 13, 2011

1 come in today to try a case and I had to send him away, and I 02:40:15  
2 don't want that to happen.

3 So you have until the end of August to get this case  
4 pled and that means August 26.

5 All right. That is the plea date. 02:40:33

6 Anything else?

7 MR. PERKEL: No. We don't have any problem with the  
8 October or November date.

9 THE COURT: All right.

10 We'll set it. 02:40:44

11 MR. MCBEE: Thank you, Judge.

12 THE COURT: Jacqueline Parker will be tried after  
13 James Parker.

14 MS. BERTRAND: Yes.

15 (Whereupon, these proceedings recessed at 2:41 p.m.) 02:41:13

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CR-10-00757-PHX-ROS, June 13, 2011

C E R T I F I C A T E

02:41:13

I, ELAINE M. CROPPER, do hereby certify that I am  
duly appointed and qualified to act as Official Court Reporter  
for the United States District Court for the District of  
Arizona.

02:41:13

I FURTHER CERTIFY that the foregoing pages constitute  
a full, true, and accurate transcript of all of that portion of  
the proceedings contained herein, had in the above-entitled  
cause on the date specified therein, and that said transcript  
was prepared under my direction and control, and to the best of  
my ability.

02:41:13

DATED at Phoenix, Arizona, this 27th day of June,  
2011.

02:41:13

s/Elaine M. Cropper

02:41:13

Elaine M. Cropper, RDR, CRR, CCP

United States District Court