

1 expert. I mean, at some point you have to decide whether you
2 are going to. If you decide not to -- you can always give the
3 government what you expect him to testify and then decide not to
4 call him.

5 MS. CASSINELLI COUCH: Sure.

6 THE COURT: So that's a decision that can be made
7 pretty quickly. If you are going to call him, what is he going
8 to testify about? Let's do that by 10 o'clock tomorrow.

9 What else do we have?

10 MR. GORDON: Your Honor, just so the Court is aware,
11 the defense has issued two or three subpoenas to ATF. We have
12 been assisting them in trying to get ATF to comply. ATF has all
13 these hurdles and things.

14 THE COURT: ATF has what?

15 MR. GORDON: Hurdles, processes, procedures they are
16 requiring the defense to go through. We've been trying to --

17 THE COURT: When were the subpoenas issued?

18 MS. CASSINELLI COUCH: Several weeks ago. They keep
19 changing the procedures.

20 THE COURT: Tell ATF if they can't get their people
21 here, I'm going to mistry this case, and we're going to start it
22 over. I'm not going to let them do that.

23 MR. GORDON: I communicated that might happen to them.

24 MS. CASSINELLI COUCH: He has.

25 THE COURT: I'm not saying Mr. Gordon has done or not

1 done anything. I know he has done everything he can in this
2 case. I'm just saying, I don't want them to sit here and say,
3 we're not going to show up because of a procedure.

4 MS. CASSINELLI COUCH: I guess I should alert the
5 Court that some of that is records, that I have had trouble with
6 the expert issue because of some of the records I need. That
7 all kind of goes together.

8 MR. GORDON: I believe from some of the e-mail traffic
9 on this particular issue, for records from the NFA, there's some
10 question about apparently they don't keep the records in the way
11 the defense wants them, and they are having some issue about
12 whether or not they can actually do that.

13 THE COURT: We're not talking about just having
14 witnesses show up. We're talking about records.

15 MR. GORDON: Yes, sir.

16 THE COURT: Them trying to put their hands on the
17 appropriate records.

18 MS. CASSINELLI COUCH: I should clarify that. There's
19 one witness that's an issue, appearance. There's one set of
20 records that they have produced in part. They have redacted
21 things that shouldn't be redacted. And there's a third set of
22 records, which I was unaware of that issue. I think they said
23 they were working on it, and I think I responded that I don't
24 care what format it's in, just give me the information. It's
25 just that they keep changing the protocol so you kind of can't

1 meet the requirements.

2 THE COURT: My initial statement about mistrying the
3 case is more firmly stated against a witness who says he or she
4 doesn't want to show up than it is about a record that's not in
5 the proper form. But you need to let them know.

6 MR. GORDON: I have.

7 THE COURT: Let's work this out. I mean, we've done
8 three weeks. You know, we're down at the end. We're at the
9 end. I mean, no need at this point to start -- for any of us to
10 do anything that makes us have to, you know, do it over if we
11 don't have to.

12 MS. CASSINELLI COUCH: I think that's probably what we
13 needed was just to hear from the Court so we can both report
14 back to our respective contacts that the Court has gotten
15 involved and there's a nudge.

16 MR. GORDON: I think two of those three issues have
17 been resolved. It's the final record request from NFA. Can
18 they produce them in the way the defense wants them is the last
19 sticking point. I know the defense subpoenaed records from ATF,
20 anything having to do with Dr. Mann prior to February of 2009.
21 They produced some records that are redacted. I originally told
22 them, I don't want it redacted, because they are simply blacking
23 out confidential informant information. I said, look. You
24 don't reveal the name. You just identify them by a CI number.
25 They are not going to know who it is anyway. Give me

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