

1
2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE WESTERN DISTRICT OF MISSOURI**
4 **WESTERN DIVISION**

5 **UNITED STATES OF AMERICA,**) **Case No. 09-00112-01-CR-W-ODS**
6) **Plaintiff,**) **Kansas City, Missouri**
7) **v.**) **January 11, 2010**
8) **CLIFTON D. TAYLOR,**)
9) **Defendant.**)
 _____)

10)
11 **TRANSCRIPT OF ATTORNEY REPRESENTATION HEARING**
12 **BEFORE THE HONORABLE ROBERT E. LARSEN**
13 **UNITED STATES MAGISTRATE JUDGE**

14 **APPEARANCES:**

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1 (Court in Session at 9:33 a.m.)

2 THE COURT: Be seated everyone. Good morning.

3 MR. NELSON: Good morning.

4 THE COURT: I have a matter to take up this morning in
5 the case of *United States of America vs. Clifton D. Taylor*. The
6 number of the case is 09-112-01-CR-W-ODS. Let me have the
7 Assistant U.S. Attorney's appearance, please.

8 MR. NELSON: Good morning, Your Honor. Dan Nelson for
9 the United States --

10 THE COURT: Thank you.

11 MR. NELSON: -- with Leena Ramana.

12 THE COURT: Thank you. And counsel, please, for the
13 defendant.

14 MR. POINDEXTER: Good morning, Judge. Travis Poindexter
15 on behalf of Mr. Taylor, who is present today.

16 THE COURT: Thank you. Okay. I'll just take a moment
17 here. We're here to take up two issues. The first issue is Mr.
18 Taylor is seeking to represent himself in the forthcoming trial
19 that is scheduled for this month. And the second issue concerns
20 the security measures that had been discussed after an incident
21 we had here in my court involving Mr. Taylor. I intend to take
22 up the self-representation issue first and then move into the
23 security issue. Mr. Taylor, I need to ask you some questions
24 here, sir. I hear that you want to at this point give up your
25 right to the appointed counsel that we have provided to you and

1 represent yourself, is that true?

2 MR. TAYLOR: Yes. Because my counsel is not effective.

3 THE COURT: Okay. And so I'm going to go through some
4 questions that I'm required to cover with you, to make sure that
5 you understand the potential downsides to doing this. The first
6 thing that I will say to you, and probably the last thing I will
7 say to you, is that in my experience, and, again, it's the
8 experience of most judges, this is usually not a smart move for a
9 defendant to make in a criminal case. But, of course, you do
10 have a constitutional right to represent yourself. However, I
11 think you need to hear that, in our experience at least, this
12 doesn't turn out to be a particularly smart move to make on the
13 part of the defendant. With regard to the representation issue,
14 I can tell you that we will keep Mr. Poindexter as a standby
15 lawyer.

16 MR. TAYLOR: I don't want --

17 THE COURT: He won't be there to give you any guidance
18 about the law or to make any suggestions to you about tactical
19 matters. But he will be there to essentially slide into the case
20 if you decide at some point during the course of the trial that
21 you don't want to represent yourself any longer and you prefer to
22 have somebody else do it. Yes, sir.

23 MR. TAYLOR: I just don't want him on my case, period.
24 He has not benefitted me now, so he will not benefit me then.

25 THE COURT: Well, he's not going to be at you -- with

1 you at counsel table. I just want him to be available in the
2 courtroom if we run into a problem and --

3 MR. TAYLOR: I want this man out of my --

4 THE COURT: Just --

5 MR. TAYLOR: I want him out of my life. He is not
6 helping me at all.

7 THE COURT: Well, --

8 MR. TAYLOR: If you will not get him off my case, then
9 you might as well represent me. There's no need to be playing me
10 like I'm a fool up here. The man is not going to help me. So,
11 if you're going to stick me with him, stick me with him or get
12 him off my case.

13 THE COURT: You need to let me cover the materials I
14 need to cover with you. He's not there to represent you. He's
15 there to help the judge who's going to try the case. So, he
16 won't be with you at counsel table. He'll be in the audience.
17 Or if you don't want him in the audience, I'll have him just
18 available by phone.

19 MR. TAYLOR: I don't want him no -- have nothing to do
20 with my case, period. Nothing.

21 THE COURT: Okay. Well, then I will direct that Mr.
22 Poindexter simply be available by phone. And if that's
23 acceptable with Judge Smith, who makes the final decisions on
24 these issues, then we will abide by your request. Now, I need to
25 cover with you though the downsides to representing yourself.

1 And again, this is just simply an opportunity for me to make sure
2 that on the record you understand all of the disadvantages that
3 you may experience by going forward with this method of
4 representation here. Do you understand what the *voir dire*
5 procedure is in a criminal case? That's the selection of members
6 of the jury. Do you understand how that's conducted?

7 MR. TAYLOR: No, I don't.

8 THE COURT: Have you ever tried a case before in a
9 federal or state jurisdiction?

10 MR. TAYLOR: No, I haven't.

11 THE COURT: And so I assume that you've never selected a
12 jury in the past. Do you know how to submit questions for the
13 judge to ask the jury so that you can arrive at an unbiased and
14 fair jury?

15 MR. TAYLOR: I do know I'm a member of a entrepreneur
16 membership and I can put anything together better than what he's
17 doing.

18 THE COURT: Okay. Well, the judge will require --
19 unless, Mr. Poindexter, have you already filed written questions,
20 *voir dire* questions for the judge?

21 MR. POINDEXTER: No. We have submitted -- we submitted
22 our jury instructions and provided a copy of those to Mr. Taylor.
23 We've discussed what those are about and what they entail and
24 what they would direct the court to do, but not specific
25 questions for *voir dire* at this point, Your Honor.

1 THE COURT: Okay. So, again, you'll have to file
2 written *voir dire* questions for the judge to ask in selecting the
3 jury. And you'll have to serve a copy of that on the Government
4 when you do that. So, that's one thing that you need to
5 understand. During the course of the trial you'll be -- have an
6 opportunity to strike jurors for cause or use peremptory
7 challenges. Have you ever done that before?

8 MR. TAYLOR: I don't know anything about it, Your Honor.

9 THE COURT: Okay. Well, strikes for cause are when
10 potential jurors have problems that would excuse them from the
11 jury because they're either prejudiced or have some statutory
12 problem that they don't belong on the jury and you get to do
13 that. But you got to understand the underlying bases for strikes
14 for cause, which, obviously, you don't understand what those are
15 today. With regard to peremptory challenge, do you know what
16 those challenges are?

17 MR. TAYLOR: Unt-uh.

18 THE COURT: No. Well, each side gets a certain amount
19 of challenges from the jury to use. And in this case, they'll
20 probably be -- there'll be six that the Government will get and I
21 think the defense gets ten. And so -- but you need to
22 understand, you know, how you're going to exercise those, what
23 you're looking for in a jury, in order to strike them
24 intelligently. And again, you haven't done that in the past and
25 it's not an easy thing to do. So, do you understand that

1 problem?

2 MR. TAYLOR: (No audible response.)

3 THE COURT: Yes? Okay. Opening statements and closing
4 arguments. Have you ever done any of that? I assume not because
5 you've not tried a case before, right? You've not done any of
6 that before?

7 MR. TAYLOR: Not in court.

8 THE COURT: Okay. Do you know what an opening statement
9 is or a closing argument?

10 MR. TAYLOR: Yes. It's telling you I don't want my
11 lawyer.

12 THE COURT: I beg your pardon?

13 MR. TAYLOR: Telling you I don't want my lawyer, that's
14 an opening statement.

15 THE COURT: Okay. Well, no. That's not an opening
16 statement that I'm talking about.

17 MR. TAYLOR: I understand that.

18 THE COURT: An opening statement is an opportunity for
19 you to tell the jury what your evidence is going to be. And the
20 closing argument is to argue to the jury why they should not find
21 you guilty of this offense. And there are certain rules
22 associated with each of those, which you're going to be expected
23 to understand and know. The judge is going to require that you
24 operate in the same manner as a lawyer would operate in court.
25 And, of course, if you've never been trained as a lawyer or never

1 done this before, it would be very difficult for you. Do you
2 understand that?

3 MR. TAYLOR: (No audible response.)

4 THE COURT: Yes? Okay. With regard to cross-examining
5 the Government's witnesses, I know you haven't tried a case so
6 you've not ever done that before. But there are certain rules
7 about what you can get into on cross-examination. And again, the
8 judge will expect and assume that you understand all those rules.
9 And if you violate them the judge isn't going to, you know, let
10 you do that. The judge is going to sustain objections and not
11 allow you to do things that would violate those rules. The same
12 thing on your direct examination of witnesses. Do you know how
13 to get witnesses down here to testify in your case? Do you know
14 how to do that?

15 MR. TAYLOR: Subpoena the judge. Have the judge do it.

16 THE COURT: Well, you need to subpoena the witnesses.
17 But do you -- have we issued subpoenas here in this case, Mr.
18 Poindexter?

19 MR. POINDEXTER: Yes, Your Honor.

20 THE COURT: Okay. Have they been served?

21 MR. POINDEXTER: They have, Your Honor.

22 THE COURT: And so, but if there are other people that
23 you want to have called in your case, then you're going to have
24 to get a subpoena out and ask the court to have the marshals
25 serve that subpoena for you. And that's got to be a written

1 motion --

2 MR. TAYLOR: Well, --

3 THE COURT: -- that you're going to have to file.

4 MR. TAYLOR: I don't have a problem with conferring with
5 the judge.

6 THE COURT: I beg your pardon?

7 MR. TAYLOR: I don't have a problem communicating with
8 the judge to get a motion done.

9 THE COURT: Well, no, you may not as long as you do it
10 in writing and you file it and you give the Government a copy of
11 it, you know, that's not a problem. So, you can do that, you
12 know. But you're going to have to do it in a timely fashion.
13 And, you know, I mean, the marshals need time to serve these
14 things. So, those are always kind of problems that people don't
15 anticipate in the course of trials. With regard to your
16 evidence, you know, when you're presenting evidence, do you
17 understand that you have no burden of proof in this case? You do
18 know that?

19 MR. TAYLOR: Uh-huh.

20 THE COURT: Okay. Do you understand the presumption of
21 innocence?

22 MR. TAYLOR: Uh-huh.

23 THE COURT: Yes? Okay. And do you understand the
24 standard of proof that's going to be applied to the case? Do you
25 know what that standard is? It's not -- this is not a trick

1 question. I'm not trying to embarrass you here. It's proof
2 beyond a reasonable doubt. Do you understand that that's the
3 standard of proof that you'll be required to argue to this jury,
4 right? Okay. And again, these are complicated matters. With
5 regard to the jury instructions, Mr. Poindexter has submitted
6 some proposed instructions. But again, those are things that
7 you're going to have to do. If you don't like those
8 instructions, you're going to have to do your own and get them on
9 file and copy the Government with all that. Now, I don't want to
10 belabor this because I'm not trying to embarrass you or do
11 anything demeaning to you or -- in any way here, but it's just
12 very difficult for anybody who hasn't had any training in the law
13 to do this stuff. And I think I can assume, Mr. Taylor, that you
14 haven't had any training, correct?

15 MR. TAYLOR: Then why is it so difficult for you to just
16 give me another lawyer if it's so difficult for me to --

17 THE COURT: We're not talking about that anymore. Let's
18 stay focused on what we're talking about today, which is you want
19 to get rid of Mr. Poindexter and you want to represent yourself.
20 So, you haven't been trained in the law, right?

21 MR. TAYLOR: No. I have not been trained in the law.

22 THE COURT: Okay. And again, as I've mentioned though,
23 Judge Smith will apply the rules against you just as if you were
24 trained in the law and you were experienced in handling federal
25 trial practice cases.

1 MR. TAYLOR: Well, it's my constitutional right to have
2 effective counsel.

3 THE COURT: I understand.

4 MR. TAYLOR: And if I'm not trained in the law, I'm
5 supposed to have effective counsel there by law.

6 THE COURT: We keep on going back to the other issue,
7 which has already been resolved.

8 MR. TAYLOR: But that -- that's law. I understand what
9 this law is I'm talking about. I have to have effective counsel
10 in trial, court or anything.

11 THE COURT: Okay. Well, again, I've already ruled that
12 and that's -- we're not going to change Mr. Poindexter just to
13 bring somebody else in here.

14 MR. TAYLOR: Okay. Well, we'll leave it --

15 THE COURT: So, you can either --

16 MR. TAYLOR: I'm fine with that. You can leave it at
17 that.

18 THE COURT: Okay. All right. So, we're not going to
19 have Mr. Poindexter involved and you will represent yourself.
20 Now, do you understand that during the course of the trial,
21 you'll have to object to things that the Government may be
22 presenting that may be a problem for you, that may be prejudicial
23 to you. And if you don't object, the Court of Appeals will view
24 that as a waiver. In other words, that you gave up any legal
25 rights that you had --

1 MR. TAYLOR: I understand that.

2 THE COURT: -- or any complaints that you had.

3 MR. TAYLOR: That's what I understand.

4 THE COURT: Okay.

5 MR. TAYLOR: And that's why I don't want him on my case,
6 because he's not putting up a argument for me.

7 THE COURT: Right. I understand your position. But do
8 you understand that if you don't object properly in court, that
9 you won't have made that record?

10 MR. TAYLOR: I understand that.

11 THE COURT: Okay. Now, with regard to the jury
12 instructions, do you understand how you make a record in front of
13 a judge concerning jury instructions? Have you -- you've not
14 ever done that before obviously. Well, there's a proceeding
15 that'll occur outside of the presence of the jury in which the
16 judge will go through all of these proposed instructions and ask
17 you if you have objections. And you have to tell the judge, if
18 you do, what the legal objections are. And if you have other
19 instructions that you want the judge to give, you're going to
20 have to propose them, give them to the judge at that point. And
21 they're going to have to be in proper form. You know, a lot of
22 times they use standard pattern or model jury instructions from
23 the Eighth Circuit. And I assume that you don't have a copy of
24 those, do you?

25 MR. TAYLOR: No. I don't have any templates of any

1 kind.

2 THE COURT: Okay. Well, so, you know, that's going to
3 be difficult for you to do under these circumstances. Now,
4 having said all of this, again, I want to emphasize that this is
5 normally not a very smart decision by a defendant to make. But
6 if you insist upon having Mr. Poindexter removed and representing
7 yourself, I will recommend to Judge Smith that he allow that, so.
8 I would also, though, say that I would encourage you, if between
9 now and the time of trial, or even during the course of the
10 trial, if you think that perhaps you want to go back to Mr.
11 Poindexter, that you tell us that and then we'll have Mr.
12 Poindexter come back over and slide into the case and represent
13 you. I would think given the defendant's really adamant and
14 rather vocal objection to Mr. Poindexter, that rather than have
15 him sit through the trial, it may be more sensible though just to
16 have him available by phone. But again, that's a call that Judge
17 Smith is going to have to make. I'm not going to make that
18 decision. So, but if Mr. Poindexter is required to sit through
19 the trial, he'll sit in the gallery, in the public gallery and
20 not confer with this defendant at all. All right. Anything else
21 that we need to place on the record here on behalf of the
22 Government? Any other questions or record that anybody wants to
23 make?

24 MR. NELSON: Your Honor, from the information that we've
25 just discussed this morning, it sounds to us like his waiver is

1 knowing and voluntary and intelligently given. It certainly is a
2 thorough record. We don't have any follow-up questions for that.

3 THE COURT: Okay.

4 MR. NELSON: And no other further issues to take up
5 today.

6 THE COURT: Okay. Mr. Poindexter?

7 MR. POINDEXTER: A couple of administrative things, Your
8 Honor. One, is in regards to clothing for Mr. Taylor at trial.
9 I know that the Court didn't specifically address that. I've
10 discussed that with him on more than one occasion, which he's
11 indicated to us that he did not wish us to provide him with any,
12 he'll contact his family regarding any. I don't know if the
13 Court wants to address that independently with him. In addition,
14 Mr. Taylor did indicate that he may want to request a continuance
15 so he could prepare himself in the rules for the trial. So, the
16 Court might want to address both of those with him.

17 THE COURT: Okay. Well, with regard to the clothing,
18 you have a right to appear in court in regular clothing. In
19 other words, you have a right to have -- you know, everyone will
20 be coats and ties. And if you want to have a coat and tie and be
21 in that kind of dress, you have a right to do that. Usually
22 people who are trying cases in federal court and criminal cases
23 don't want to appear in orange jumpsuits, because it suggest that
24 the defendant is either dangerous or something like that. So, if
25 you want, we can make sure that you have clothing available for

1 you to use during the course of the trial. And I understand that
2 you don't want any participation by the Federal Public Defender.
3 But in the alternative, I think we can probably get Probation or
4 the marshals to come up with some sort of clothing for you to
5 wear during the course of the trial. But you have to let us know
6 that. You have to tell me that's what you want me to do. Or you
7 can have your family come down here and bring clothing down here
8 for you to wear. So, what is your pleasure with regard to that?

9 MR. TAYLOR: I don't want anything of mine nowhere
10 around here, because they are staging evidence on me. And I do
11 not need anything else to pop up negative against me.

12 THE COURT: So, do you -- are you telling me you don't
13 me to have any clothing provided for you?

14 MR. TAYLOR: I'm not turning anything over into the
15 hands of these people. They --

16 THE COURT: I'm sorry.

17 MR. TAYLOR: I'm not turning anything over to these
18 people.

19 THE COURT: I can't hear the last --

20 MR. TAYLOR: I don't trust these people.

21 THE COURT: These people, you mean the marshals?

22 MR. TAYLOR: The federal agent that's on my case, I do
23 not trust him. I do not trust my lawyer. At any given time they
24 would gladly jump on any other chance they get to plant some more
25 DNA or something on me. And I'm not going to put myself in that

1 situation.

2 THE COURT: Okay. Do you want us to contact your family
3 and have them bring clothing down for you?

4 MR. TAYLOR: No. I can't --

5 THE COURT: So, you don't -- let me just make sure that
6 I understand it. You don't want the Federal Public Defender to
7 provide you with any clothing?

8 MR. TAYLOR: I don't trust him.

9 THE COURT: And you don't want the marshals to provide
10 you with any clothing?

11 MR. TAYLOR: And I definitely don't trust them.

12 THE COURT: And you don't want --

13 MR. TAYLOR: I mean, I'm thinking about him. I don't
14 know about the marshals though.

15 THE COURT: Well, do you want me to have the marshals
16 try to get some clothing for you?

17 MR. TAYLOR: No. I'm fine.

18 THE COURT: Do you want me to have the Probation Office
19 provide you with clothing?

20 MR. TAYLOR: No, sir.

21 THE COURT: Do you want, and again, do you want me to
22 contact your family and ask them to provide clothing for you?

23 MR. TAYLOR: No, Your Honor.

24 THE COURT: Okay. Then the second issue, Mr.
25 Poindexter, was what again?

1 MR. POINDEXTER: He had mentioned that he may wish to
2 request a continuance while he prepared for his trial --

3 THE COURT: Oh, yeah, the continuance.

4 MR. POINDEXTER: -- *pro se*.

5 THE COURT: And so what is the story with regard to a
6 continuance?

7 MR. TAYLOR: Are you asking me?

8 THE COURT: Yes, sir.

9 MR. TAYLOR: I mean, you mean the cause of continuance?

10 THE COURT: Mr. Poindexter is indicating that you want
11 to have a continuance --

12 MR. TAYLOR: Yeah.

13 THE COURT: -- of the current trial setting.

14 MR. TAYLOR: Yeah.

15 THE COURT: And why don't you explain to me what you
16 want to do, why you want to do that?

17 MR. TAYLOR: Because I want the information provided
18 where this guy robbed a bank two or three days after I was
19 incarcerated and got killed during the bank robbery. And for
20 some reason nobody can produce these photos of this bank robbery
21 comparing with the ones on my case. I want this information
22 available.

23 THE COURT: Photos of what now?

24 MR. TAYLOR: The bank robbery that occurred two or three
25 days later after I was incarcerated and he got murdered in the

1 process of the bank robbery.

2 THE COURT: And so do you know what he's talking about?

3 MS. RAMANA: Your Honor, if I may? There was a bank
4 robbery that had occurred four days later, I believe, after the
5 one on March 12th, and it was at the same bank. In that case the
6 officers responding located the individual and he was shot and
7 killed during that.

8 THE COURT: Okay. And so what is the relevance of the
9 information concerning this subsequent bank robbery while you
10 were in custody?

11 MR. TAYLOR: I want the photos compared with those on my
12 case.

13 THE COURT: You want the photos and what else?

14 MR. TAYLOR: I want everything, original evidence on
15 that case, compare it with the evidence on my case.

16 THE COURT: And to what purpose? What --

17 MR. TAYLOR: Obviously to vindicate myself. I didn't do
18 it.

19 THE COURT: Vindicate yourself. In other words --

20 MR. TAYLOR: Or get myself out of it rather.

21 THE COURT: I'm sorry. I'm trying to figure out how
22 will these photos and evidence of a robbery that occurred two or
23 three days later while you were in custody --

24 MR. TAYLOR: Because, obviously, he realized something
25 and came back and robbed the bank again and it cost him his life,

1 while I'm sitting here with my life in despair.

2 THE COURT: So, what evidence do you have to show that
3 the person who robbed the bank two or three days later was the
4 same person who was engaged in the robbery on March 12 of '09,
5 which is the subject of this Indictment?

6 MR. TAYLOR: Well, that's what I want to know.

7 THE COURT: No. I'm saying what evidence -- what reason
8 do you have to believe that?

9 MR. TAYLOR: It is worth a shot.

10 THE COURT: It's worth a shot.

11 MR. TAYLOR: And my life is on the line.

12 THE COURT: Okay. Any other reason to continuing -- to
13 request a continuance here?

14 MR. TAYLOR: Yeah. I want certified copies of the
15 people who was in charge of doing these DNA tests and stuff and
16 their opinions.

17 THE COURT: Okay. And what do you mean certified
18 copies? What are you talking about?

19 MR. TAYLOR: Notarized copies.

20 THE COURT: What?

21 MR. TAYLOR: Notarized copies.

22 THE COURT: Of what?

23 MR. TAYLOR: Of who's doing these DNA things.

24 THE COURT: Are we going to have --

25 MR. TAYLOR: Tests.

1 THE COURT: I'm sorry. Did you want --

2 MR. TAYLOR: Who's doing the DNA test.

3 THE COURT: Are we having DNA evidence in this case?

4 MR. NELSON: Yes, Your Honor.

5 THE COURT: And is that DNA expert going to appear in
6 court and testify?

7 MR. NELSON: She is, Your Honor.

8 THE COURT: And have the reports been turned over to Mr.
9 Poindexter?

10 MR. NELSON: They have, Your Honor.

11 THE COURT: And is this a governmental witness? I mean,
12 in terms of -- is it someone who's employed by a governmental
13 entity or is it a private individual or what?

14 MR. NELSON: She works for the Kansas City, Missouri
15 Police Department Crime Lab.

16 THE COURT: Okay. And so those reports have already
17 been provided to Mr. Poindexter, right?

18 MR. NELSON: Correct, Your Honor.

19 THE COURT: And, Mr. Poindexter, have you gone through
20 those reports with the defendant here?

21 MR. POINDEXTER: We have discussed them. He has not
22 been provided copies of all the reports, but I can do that based
23 upon the Court's order today.

24 THE COURT: Okay. All right. And so -- and is there
25 any DNA expert testimony that the defense is anticipating? Mr.

1 Taylor, do you have any --

2 MR. TAYLOR: I'm sorry. I didn't -- I missed what you
3 just said.

4 THE COURT: I was trying to figure out if you had a DNA
5 expert that you were calling.

6 MR. TAYLOR: Mr. Travis Poindexter was supposed to
7 obtain one.

8 THE COURT: Okay.

9 MR. TAYLOR: I personally haven't had one.

10 THE COURT: Mr. Poindexter?

11 MR. POINDEXTER: We did, Your Honor. But we had none
12 that we intend to offer at trial at this point.

13 THE COURT: Okay. But have those reports been provided
14 to Mr. Taylor?

15 MR. POINDEXTER: The final preparation of those reports
16 are being completed now.

17 THE COURT: Okay.

18 MR. POINDEXTER: It was our intent not to present those
19 as evidence in the case.

20 THE COURT: All right. But if he wants to call that
21 person, he's got a right to do it.

22 MR. POINDEXTER: Yes, sir.

23 THE COURT: Okay. So, turn that stuff over to him.
24 Turn over the -- is there any problem with furnishing the
25 defendant with a copy of the Government's file here?

1 (Off Record Talking)

2 MS. RAMANA: Are you referring to the current case file
3 or the --

4 THE COURT: Right. Right.

5 MR. NELSON: We have no problem, Your Honor.

6 THE COURT: Okay. All right. Okay. So, I'll interpret
7 this as a motion for continuance on the part of the defendant,
8 based on the issues that he's raised before me. I won't require
9 that you file a written motion. I'll just take your statements
10 here as your request for a continuance. And I'll pass that on to
11 Judge Smith and see what he wants to do. Okay. I think that's
12 everything then. Yes, sir.

13 MR. TAYLOR: I have one more thing.

14 THE COURT: Yeah. Go ahead.

15 MR. TAYLOR: There's been a lot of witnesses pop up on
16 the Government's list. And I would like to know why each one of
17 them witnesses is on that list. The purpose, why each one of
18 them witnesses is on there.

19 THE COURT: Yes.

20 MR. NELSON: Your Honor, to speak to that, out of an
21 abundance of caution, because the defendant has refused to enter
22 into any stipulations regarding chain of custody, we've listed
23 the chain of custody witnesses that could become relevant. Now,
24 we don't think we'll have to call 37 witnesses, even on chain of
25 custody. We think even without stipulations we'll be in the

1 ballpark of 20 witnesses. But we have identified those
2 additional witnesses in case the defendant challenges admission
3 of additional evidence.

4 THE COURT: Okay. And so the chain of custody is on
5 real evidence, which is what? What, specifically, are you going
6 to get in through chain?

7 MR. NELSON: The chain of custody, a majority of the
8 witnesses who have been added to the list are with the Kansas
9 City, Missouri Crime Lab. And so people who handled the real
10 evidence, either the DNA buccal swabs or, you know, the real
11 evidence that was checked out from the FBI, taken to the Crime
12 Lab, swabbed and subsequently tested. There's, you know, several
13 people in the stages of that on the FBI side and on the Crime Lab
14 side.

15 THE COURT: Is this all --

16 MR. NELSON: We don't seek to introduce all of them in
17 our case-in-chief --

18 THE COURT: I --

19 MR. NELSON: -- unless it's called into evidence.

20 THE COURT: Right. I understand what the chain is. But
21 we're talking about basically DNA swabs? Is that what we're
22 talking about?

23 MR. NELSON: DNA swabs of the real evidence, yes.

24 THE COURT: Right. Tell me what are real evidence that
25 you're talking about? Is it, you know, is it a gun or --

1 MR. NELSON: A leather jacket and two stocking caps.

2 THE COURT: Okay. Anything other than the leather
3 jacket and two stocking caps?

4 MR. NELSON: There were -- you know, there was some
5 money recovered.

6 THE COURT: Okay.

7 MR. NELSON: Other items in the bank included a bank
8 note, a Subway card.

9 THE COURT: Okay.

10 MR. NELSON: And then surveillance footage from the
11 bank.

12 THE COURT: Okay. So basically, what the Government is
13 saying is that a lot of those names that you're seeing on their
14 list are people that the Government is going to have to call in
15 order to establish what we call a chain of custody for what are
16 referred to as real exhibits. Now, let me just take a minute and
17 explain to you what that is. Whenever there is an item of real
18 evidence, which is stuff that's at the scene, like the DNA
19 samples or jacket that was found. You know, I don't know where
20 they found all this stuff. But what they then do is to get that
21 in you have to establish what's called a chain of custody. So
22 if, for example, I gathered up that evidence at the scene and I
23 gave it to my courtroom deputy, who gave it to Mr. Poindexter,
24 who then gave it to the FBI agent and they did their analysis on
25 it. To get that into evidence, I have to call the FBI agent, Mr.

1 Poindexter, my courtroom deputy and myself to establish that
2 chain. Since you've decided that you don't want to stipulate
3 that that chain can be made, that the Government is going to call
4 all of those witnesses and have them testify essentially, you
5 know, that yeah, I got this, you know, the FBI agent will say,
6 yeah, I got this from Mr. Poindexter and I put it into our bulky
7 room or wherever. And, you know, then Mr. Poindexter would say,
8 yeah, I got it from the courtroom deputy and I gave it to the FBI
9 agent. And then my courtroom deputy would say, yeah, I gave it
10 to Poindexter and I got it from Larsen. So, that's the chain of
11 custody. A lot of times people decide that they just want to
12 waive that if they know that the Government can make it. But in
13 your case you're saying no. I want them to do that, which you're
14 entitled to have them do. So, that's the reason why you're
15 having this long list of people. They're going to call every one
16 of them, or essentially every one of them, to get in the chain of
17 custody for what we call real exhibits. They're --

18 MR. TAYLOR: Yeah. I understand everything you said.
19 But I still want to see it in writing so I don't have any mystery
20 witnesses popping up on me.

21 THE COURT: Well, you can make that written motion if
22 you want to. And I'll deal with it when I see it. File a
23 written motion and copy the Government.

24 MR. TAYLOR: Okay.

25 MR. NELSON: Your Honor, in addition, the United States

1 intends to file a trial brief, hopefully today, that should have
2 a factual summary of the witnesses in the case, and that should
3 include the, you know, factual witnesses against the defendant.

4 THE COURT: Okay. So, they're saying they're going to
5 give Judge Smith a trial brief and kind of describe, in summary
6 fashion, who all these witnesses are.

7 MR. TAYLOR: Okay.

8 THE COURT: So, you'll get to see that. Okay.

9 MR. TAYLOR: Okay.

10 THE COURT: All right. Anything else before we move on
11 to the security issue here?

12 MR. POINDEXTER: One final logistical thing, Your Honor.
13 If Mr. Taylor does not want me to be in the courtroom, I wonder
14 if it might be possible that I view the trial via some circuit
15 manner, not even being here. In case we are called to come in,
16 at least we would be up to date on what had occurred during the
17 course of the trial?

18 THE COURT: Yeah. I'm going to let Judge Smith make all
19 of that decision. I mean, my own sense is that, you know, you
20 can sit in the back of the courtroom. And, you know, I don't
21 know that it makes much sense not to have you there. You're not
22 going to be in front of him or showing any relationship. You'll
23 just be a part of the public that comes in and watches these
24 things.

25 MR. POINDEXTER: Thank you, Judge.

1 THE COURT: But, you know, I'm trying not to create any
2 more hostility here with this defendant. I don't want to have
3 anything that's going to set him off. So, to the extent you can
4 remain sequestered in the back, I think that would work. So, but
5 I'll let Judge Smith make that call. He's trying the case.
6 Okay. Now, let's move on to the security issue. And I wanted to
7 get everybody together because I think Mr. Poindexter filed a
8 motion to prevent the marshals from using the belt. And I think
9 there may have been a change in the marshals' position on that.
10 And I'd like to get Ty Cunningham up here to testify about that.
11 So, if you'd come up here. I'm going to place him under oath
12 just because we're having -- we have a *pro se* party at this
13 point. And we'll conduct it more formally than we might
14 otherwise.

15 TYRONE CUNNINGHAM, COURT'S WITNESS, SWORN

16 THE COURT: Go ahead and take the stand over there. And
17 I am just simply going to introduce the Deputy Marshal and have
18 him kind of report, in summary fashion, on where they are with
19 regard to the security issues here. And then I'll allow counsel
20 and Mr. Taylor an opportunity to ask questions as well. Okay.

21 EXAMINATION BY THE COURT:

22 Q. Now, tell us your name, please.

23 A. My name is Tyrone Cunningham.

24 Q. And you were asked, along with other Deputy Marshals, to look
25 at the security issue in this case concerning the trial, because

1 of an event that occurred here in my courtroom at a pretrial
2 conference, is that right?

3 A. That's correct.

4 Q. And one of the options that you were looking at was the
5 potential of having what is referred to as a stun belt on the
6 defendant and to have some instructions provided to him
7 concerning its use, and also to ensure that he is not someone who
8 might be experiencing an unreasonable amount of risk if the
9 marshals, in fact, had to stun him in court, true?

10 A. That's correct.

11 Q. Okay. Now, with regard to -- I just want to get some of the
12 collateral stuff out of it, and then I want to hear from you.
13 With regard to the issue of his physical health, I did ask that
14 you have contact with the CCA doctor and to have his medical
15 records reviewed to see if there's anything in the medical
16 history or the records that we have that would create any
17 concerns about risks to him if he, in fact, were stunned?

18 A. That's correct.

19 Q. And the marshals received a note from that physician, and I
20 think we have a copy of it if anybody wants to see it. I don't
21 know if you've been given a copy of it or not. But anyway, there
22 is a Court's Exhibit, I'll call it Court's #1, which essentially
23 indicates that he has no such history or problems that would
24 cause any undue risks in this case.

25 A. That was the doctor's findings.

1 Q. Okay. Now, with regard to the employment of the stun gun or
2 the stun belt, I believe that the marshals have reconsidered
3 that. Is that true?

4 A. Yes, we did at that time. We had a meeting. We reevaluated
5 whether or not we would use that given the current situation.
6 And we felt that we could provide different security in the
7 courtroom that would address the safety of the courtroom and all
8 the personnel in there as well as Mr. Taylor.

9 Q. Okay. And so what are the -- the conclusion is at this point
10 that if Mr. Taylor does act in accordance with the rules of the
11 court and doesn't do anything as we had experienced at the
12 pretrial conference, what would be the procedures that you would
13 have in place for him to operate in Judge Smith's courtroom?

14 A. Well, that would depend on what Judge Smith allows him to do
15 in the courtroom going *pro se*. We wouldn't be able to make that
16 determination until Judge Smith ruled on your findings today on
17 whether or not we would have to implement different procedures.
18 But given the context of him having representation of counsel, we
19 were going to go forward without that stun belt.

20 Q. Okay. So, if he had stayed with Mr. Poindexter, you weren't
21 going to use the stun belt?

22 A. That is correct.

23 Q. Okay. Now, he is not staying with Mr. Poindexter. He's
24 going to represent himself. And I think that -- are you still
25 comfortable then with conducting the trial without having a stun

1 belt on? Do you think you can maintain the safety and security
2 of the courtroom if, for example, Judge Smith says, well, we're
3 going to have everybody remain at counsel table and do the
4 examinations from counsel table, they won't be coming up to the
5 podium and using the stand-up microphone in front of the podium.
6 And if there any exhibits to be passed to jurors, that a
7 courtroom deputy will pick them up and hand them to the witness
8 and return them to the party for use in the examination?

9 A. I believe that would be one of our recommendations to provide
10 that security in the courtroom. If he ruled differently and had
11 Mr. Taylor being able to move where we couldn't move with him,
12 then we would have to address other means of us being able to
13 gain control if he decided to have any outbursts or use violence
14 in the courtroom.

15 Q. Okay. And so -- but if the judge had it set up to where he
16 would just remain at counsel table and we would make arrangements
17 so that when we have to switch people around, for example, where
18 we have to have the *voir dire* conducted, that he would, outside
19 of the presence of the jury, be moved to the other side of the
20 table and there would be a skirt around both tables so that there
21 wouldn't be any indication of any restraints on him?

22 A. I think that would be one of the factors that we would
23 recommend. And if that was the case and the judge ruled on that,
24 I don't believe that we would need the stun belt in that
25 circumstance.

1 Q. So, I've kind of led you through, at least some of the
2 thoughts that I had. Are there -- and you would agree that those
3 would be sound recommendations that would really remove the
4 necessity for any kind of stun belt in this case?

5 A. And that's correct. And in my experience, those in the past
6 have been some of the restrictions that have allowed the Marshal
7 Service not to apply those kind of devices to provide security.
8 And that has happened in the past in many of the districts that I
9 have worked, to facilitate letting people go *pro se*.

10 Q. Okay. Now, are there other recommendations that you have?

11 A. To Judge Smith on what would --

12 Q. Right.

13 A. No. That would be the big one. Having mobility in the
14 courtroom where we would not take the jury by us moving to a
15 proximity to where he is being able to move to is always a factor
16 that we take into consideration when we make recommendations to
17 the court. And given that he would stay at defense table and not
18 move and just stand up, ask his questions and sit back down, I
19 think that takes away all the other elements that we would take
20 into consideration to apply that security where we couldn't reach
21 him physically.

22 Q. Now, there are some other issues that we would need to be
23 concerned about. For example, if there is an objection and the
24 parties want to make a record at the bench, then I suspect what
25 we would have to do is excuse the jury while the record is being

1 made outside of their presence in order to have what normally
2 would be conducted at the bench here outside of their hearing?

3 A. That's correct.

4 Q. Okay. So, just so that -- I want Mr. Taylor to understand
5 what we're talking about.

6 THE COURT: That the court, during the course of trial,
7 sometimes there are issues that come up between the parties that
8 they don't want the jury to know about because they're too
9 sensitive. And they'll come -- the lawyers will come up to the
10 bench and talk about it outside of the hearing of the jury here
11 at the bench. But since you're going to be representing
12 yourself, what would have to happen is the judge would have to
13 take a recess and excuse the jury, get them out of the courtroom,
14 and then conduct the hearing outside of their presence as opposed
15 to just having people come up here. So, that's what we're
16 discussing. Do you understand that?

17 MR. TAYLOR: Uh-huh.

18 THE COURT: Okay. So, that would be one problem. The
19 other problem would be moving him around with regard to opening
20 statement and closing argument. I suspect that the parties would
21 be both required to make whatever opening statement or closing
22 argument they have seated from counsel table, so that there
23 wasn't any undue concern brought to the jury's mind inferentially
24 about Mr. Taylor. Unless somebody has got a better suggestion,
25 I'm happy to listen to it. Anybody have any other ideas? No.

1 MR. NELSON: Your Honor, the Government is willing to do
2 whatever -- to make it be balanced and not appear like there's
3 any restriction. So, whatever the Court asks us to do, we're
4 more than willing to accommodate.

5 THE COURT: Okay. All right. Anybody see any other
6 issues that might arise?

7 MR. NELSON: Your Honor, the mobility of the defendant,
8 even with the stun belt, we'd be a little bit worried that it
9 might be intimidating to some of the witnesses, particularly the
10 bank employees who interacted with him that day if he were
11 allowed to move around and approach towards the witness stand.
12 We can see that being a problem as far as the comfort level of
13 several of our witnesses.

14 THE COURT: Okay. I understand. I understand. Okay.
15 But anybody see any other issues in the course of the trial? No.
16 Mr. Taylor, any other issues you want to raise or --

17 MR. TAYLOR: Yes, sir.

18 THE COURT: -- questions you want to talk --

19 MR. TAYLOR: Oh, no. Not about security.

20 THE COURT: -- talk with the -- so, I think what the
21 answer is is that, you know, we're all hopeful that there won't
22 be a repetition of what happened here in front of me. And I
23 think as long as you act the way you've been acting here, which
24 is responsibly, that, you know, the judge is going to do whatever
25 he can to make sure that you get a fair trial here and not have

1 the jury think there's something wrong with, you know, different
2 about the way you're being treated. So, you have no more
3 questions though that you want to ask about those issues?

4 MR. TAYLOR: Unt-uh.

5 THE COURT: Do you understand, though, what the marshals
6 are saying would happen? Yes.

7 MR. TAYLOR: I understand exactly what he's saying.

8 THE COURT: I'm sorry, sir?

9 MR. TAYLOR: I understand.

10 THE COURT: Okay. Thank you. Anything else that
11 anybody wants to ask of the deputy here?

12 MR. NELSON: No, Your Honor.

13 THE COURT: Okay. Then thank you. Appreciate it. All
14 right. Yes, sir.

15 MR. TAYLOR: It was mentioned by Mr. Poindexter that
16 some bank employees or someone was supposed to come and inform me
17 of the fact that this was indeed a federally-owned bank and
18 clarify that with me. I haven't met these people yet.

19 THE COURT: Well, there are going to be witnesses, I
20 assume from the Government, who will testify from the bank that
21 the bank has been, at the time of this alleged event, was insured
22 by the Federal Deposit Insurance Corporation. And the Federal
23 Deposit Insurance Corporation is an agency of the United States.
24 So, when an individual robs a bank, if it's -- if the bank is
25 just a state bank, well, then the feds don't have any

1 jurisdiction over that. But if the bank is insured by the
2 Federal Deposit Insurance Corporation, a federal agency, then
3 that makes it potentially a criminal -- federal criminal case.
4 So, that's -- it's an important jurisdictional fact that the
5 Government is required to establish. And I assume the Government
6 is going to call people from the bank who are knowledgeable about
7 that issue and have the certificate produced that says that
8 during this period of time the bank was indeed insured. Is that
9 the case?

10 MR. NELSON: Yes, Your Honor.

11 MR. TAYLOR: But what I was saying was, his statement
12 was they wanted to know if I was knowledgeable of the fact
13 that --

14 THE COURT: No. It doesn't matter whether or not an
15 individual who's charged with bank robbery knew that the bank was
16 insured by FDIC or not. That's not a part of the proof. They
17 don't have to prove that anybody knew about it. They have to
18 prove that it, in fact, it was. And so if it was insured, you
19 know, the guy goes in or the woman who goes in and robs the bank
20 doesn't have to know anything about FDIC or anything else. They
21 just have to go in and rob a bank. And then if it turns out to
22 be FDIC, it could be filed in federal court. Okay. All right.
23 Anything else that we need to talk about with regard to this
24 case?

25 MR. NELSON: Not from the Government, Your Honor.

1 (Off Record Talking)

2 THE COURT: Okay. Yeah. Carol raises a good point.
3 You're asking for a continuance of the trial. The trial is set
4 on the January 19 docket, is that right? You're going out on the
5 19th. And the one that is after that would be February 16th of
6 2010. So, are you requesting that we move it from January 19th
7 to February 16th?

8 MR. TAYLOR: Yeah. Or else they can -- or else the
9 courts can provide the information I want beforehand.

10 THE COURT: Okay. Well, I'm going to deal with the
11 requests that you've made here. But you're saying that you would
12 want it moved to February 16th?

13 MR. TAYLOR: Sure.

14 THE COURT: Okay. All right. And what's the
15 Government's position on continuance?

16 MR. NELSON: Your Honor, this has been an open file
17 case. We've provided all of the discovery. We're ready to go to
18 trial and would prefer to go to trial in January. We have
19 numerous witnesses in the case who are expecting to go trial next
20 week and it would be difficult on our witnesses more than
21 anything else.

22 THE COURT: Okay.

23 MR. NELSON: We have not confirmed with the witnesses
24 their availability in February.

25 THE COURT: All right. Okay. All right. Anything else

1 that we need to talk about here? No?

2 MR. TAYLOR: All right. Well, since they're laying a
3 hammer to me, I also want my clothing tested for this fake hair
4 that was sewed into this cap. It should have been on my clothes,
5 too. So, I want my clothes tested for this hair they was wearing
6 on their head.

7 THE COURT: Well, file a motion and request leave to
8 file it out of time.

9 MR. TAYLOR: And that it be done before this trial date.

10 THE COURT: You know, I'm not saying it's going to be
11 granted. I'm not saying that it's going to be granted. I'm
12 saying that, you know, you're representing yourself now so you
13 need to file a motion. And then I'll give the Government an
14 opportunity to respond and we'll deal with it. Anything else?

15 MR. TAYLOR: I'll file a motion.

16 THE COURT: Okay. All right. Thank you all.

17 (Court Adjourned at 10:22 a.m.)

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.

/s/ Lissa C. Whittaker
Signature of transcriber

January 29, 2010
Date