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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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|-------------------------------|---|----------------------------|
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | Case No. 3:19-CR-00431-PAD |
| |) | |
| -vs- |) | |
| |) | |
| JULIA BEATRICE KELEHER (01), |) | |
| |) | |
| Defendant. |) | |
| |) | |

TRANSCRIPT OF PROCEEDINGS
MOTION HEARING
HELD BEFORE THE HONORABLE PEDRO A. DELGADO-HERNANDEZ
UNITED STATES COURTHOUSE, HATO REY, PUERTO RICO
THURSDAY, OCTOBER 17, 2019

A P P E A R A N C E S

FOR THE UNITED STATES OF AMERICA:

AUSA Jose Capo-Iriarte
AUSA Alexander L. Alum

FOR THE DEFENDANT:

Maria Dominguez-Victoriano, Esq.
Javier Micheo-Marcial, Esq.

1 (Proceedings commenced at 2:03 p.m.)

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3 THE COURT: How many cases do we have this afternoon?

4 THE CLERK: One motion hearing, Your Honor.

5 THE COURT: Call the case.

6 THE CLERK: Criminal Case Number 19-431, the United
7 States of America versus Julia Beatrice Keleher. On behalf of
8 the government, AUSA Alexander Alum and Jose Capo. On behalf
9 of defendant, Attorneys Javier Micheo and Maria Dominguez.

10 MR. CAPO-IRIARTE: We are ready to proceed, Your
11 Honor.

12 MS. DOMINGUEZ-VICTORIANO: Good afternoon, Your
13 Honor. Likewise, we are ready to proceed.

14 THE COURT: All right. The government is the movant,
15 so go ahead.

16 After I hear from the government, I want to hear from
17 the defendant. And we'll take it from there.

18 MR. CAPO-IRIARTE: Yes, Your Honor.

19 THE COURT: In the process, I'll ask questions. I'll
20 ask for, or I may ask for clarification. And let's see how it
21 goes.

22 Go ahead.

23 MR. CAPO-IRIARTE: Yes, Your Honor. If I may address
24 the Court from the podium?

25 THE COURT: Yes.

1 MR. CAPO-IRIARTE: Your Honor, the United States
2 filed a motion requesting an inquiry whether there is an
3 unwaivable conflict of interest that would preclude Defense
4 Counsel Maria Dominguez and Javier Micheo from representing
5 Defendant Julia Keleher. The reason why we filed the motion is
6 because of communications that we have had previously with
7 defense counsel throughout the investigation of this case.

8 And we can give the Court a timeline as to the events
9 that actually led us here.

10 THE COURT: Please do.

11 MR. CAPO-IRIARTE: On September 20th of 2018, the
12 United States issued a grand jury subpoena in the name of Banco
13 Popular de Puerto Rico requesting information, financial
14 information, from Defendant Julia Keleher. That grand jury
15 subpoena was delivered to the bank on September the 20th of
16 2018.

17 On November 12th, we received a communication from
18 one of the agents participating in this investigation; that he
19 had been contacted by a defense attorney, Mr. Francisco
20 Rebollo, that he was aware that there was an ongoing
21 investigation in this particular case. And he made reference
22 to knowing that search warrants and grand jury subpoenas had
23 been issued.

24 On February 21st of 2019, Counsel Dominguez sent us a
25 communication via email, and we have a copy of that

1 communication, Your Honor. And for the purposes of the
2 hearing, we would like to mark it as Government's Exhibit 1.

3 That communication, which is in the Spanish language,
4 and we have an English translation, Your Honor, is where
5 defense counsel indicated to the government that she
6 represented Banco Popular in regards to a grand jury subpoena
7 that had been issued and served upon Banco Popular. That
8 particular grand jury subpoena requested information regarding
9 Company C and Individual K.

10 The purpose of the communication from Ms. Dominguez
11 was to request an extension of time regarding that particular
12 grand jury subpoena. The grand jury subpoena is attached to
13 the exhibit, Your Honor --

14 THE COURT: Yes.

15 MR. CAPO-IRIARTE: -- that's being published.

16 On April 4th, we received information that a grand
17 jury subpoena, the one that had been issued in September 20th
18 of 2018, had been disclosed improperly by personnel from the
19 bank, or Banco Popular. We learned about it because it was in
20 all news outlets. That particular grand jury subpoena
21 pertained to financial records of Defendant Julia Keleher,
22 Ms. Dominguez's client.

23 On April 11th, Ms. Dominguez sent us an email
24 communication, which we have marked as Government's Exhibit 2,
25 Your Honor, indicating that she had been retained by Ms.

1 Keleher to represent her regarding an ongoing criminal
2 investigation. In that particular email communication, Ms.
3 Dominguez indicated that she was aware that grand jury
4 subpoenas were not subsequent, actually, communication dated
5 April 11, which we have as Government's Exhibit 3.

6 She indicated that she was aware of an ongoing
7 investigation because of search warrants that had been issued
8 and grand jury subpoenas that had been served on other
9 individuals. On that same day, she indicated that she was
10 aware of grand jury subpoenas that had been issued, Your
11 Honor.

12 On May 16th, 2019, Ms. Dominguez indicated via email
13 communication that she had been requested to represent Ms. --
14 Individual K regarding a grand jury investigation. Subsequent
15 communications, she provided a copy of a grand jury subpoena
16 that had been served upon Company C and Individual K.

17 Once we received that email communication, on May
18 23rd, I informed Ms. Dominguez, in writing, that the grand jury
19 subpoena that she had attached to her email communication
20 related to the same investigation, or was of the same nature of
21 the one that she forwarded to us on February 21st of 2019.
22 That communication, we have it here, Your Honor, as
23 Government's Exhibit 3, also with a copy of the grand jury
24 subpoena.

25 And it's the one where we indicated that she had

1 previously represented Banco Popular in relation to this same
2 matter. We also included a copy of the email from February
3 21st of 2019, in order for Ms. Dominguez to be aware that it
4 pertained to the same matter.

5 On May 29th, Ms. Dominguez provided documents that
6 had been requested from Company C and Individual K. And we
7 indicated that the documents that were provided, pursuant to
8 that grand jury request, contained some notes, handwritten
9 notes. Ms. Dominguez then indicated that those were the notes
10 of her client, Individual K, and that he had authorized her to
11 disclose those communications, clearly indicating that she had
12 participated in the production of the documents.

13 On June 3rd, 2019, agents participating in this
14 investigation, Your Honor, were in the process of interviewing
15 an additional witness related to Individual K. That particular
16 witness was contacted by the agents, and the agents later
17 received text messages from Ms. Dominguez, where Ms. Dominguez
18 indicated that she represented this other additional witness in
19 this particular investigation.

20 The agents decided at that time not to interview the
21 additional witness because they were aware that Ms. Dominguez
22 was representing Defendant Keleher, that had represented the
23 bank, had represented the individual from Company C and
24 Individual K, in order to avoid disclosing the investigation,
25 Your Honor.

1 As the Court is aware, on June 24th, 2019, a grand
2 jury returned an indictment against an individual for the
3 unlawful disclosure of the grand jury subpoena related to Ms.
4 Dominguez's client, Julia Keleher. And, also, the disclosure
5 was made by an employee of the entity that's also represented
6 by Ms. Dominguez, or at least that on June -- or at least that
7 on February 21st, Ms. Dominguez indicated that she was
8 representing, regarding grand jury subpoenas.

9 And then, on July 9th, a grand jury returned an
10 indictment against Defendant Julia Keleher, among other
11 individuals, including Alberto Velazquez, Your Honor, who is a
12 co-conspirator in the indictment, as alleged, along with Ms.
13 Keleher. The grand jury subpoena that was produced, the
14 documents that were produced by Ms. Dominguez regarding
15 Individual K and Company C, are documents pertaining to Alberto
16 Velazquez, the co-conspirator of Ms. Dominguez's client.

17 For those reasons, we are compelled to file the
18 motion, in order for the Court to inquire whether there is an
19 unwaivable conflict, Your Honor, that would preclude Defense
20 Counsel Dominguez and Micheo from representing Ms. Keleher.
21 That's where we stand, Your Honor.

22 THE COURT: And at the end of the day, you want them
23 to be disqualified. Well, not you, the government.

24 MR. CAPO-IRIARTE: Yes, Your Honor. And it's --
25 we're not alleging any unethical conduct on behalf of the

1 attorneys. That's not what we are alleging.

2 But we are alleging that there is going to come a
3 time, a point in time, in this particular case, that defense
4 counsel are going to be in a position where they're going to
5 have to possibly cross-examine their own client, or multiple
6 clients, in regards to matters that they participated
7 throughout the investigation, Your Honor. And it is our
8 understanding, based on the case law, Your Honor, that that
9 conflict is unwaivable.

10 THE COURT: All right.

11 MR. CAPO-IRIARTE: We have copies of the exhibits,
12 Your Honor, for the Court's review. And we are also providing
13 a copy of those exhibits to defense counsel.

14 And one more thing, Your Honor, defense counsel had
15 requested that the Court proceedings today be sealed. They did
16 so last night at midnight. In fact, last Friday, Mr. Micheo
17 contacted co-counsel, Alexander Alum, indicating that they were
18 going to be requesting that. Although, the motion was filed
19 last night at midnight.

20 They responded or replied to our motion, Your Honor

21 --

22 THE COURT: The motion was denied.

23 MR. CAPO-IRIARTE: It was denied. But what we wanted
24 to bring to the attention of the Court is that the information
25 contained in the reply, Your Honor, is also an additional basis

1 as to why we understand that they should be disqualified.
2 Because they're telling the Court that the hearing should be
3 sealed because they don't want to disclose matters that pertain
4 to their clients.

5 If they are not allowed to have a hearing public
6 regarding this matter, how are they going to be able to
7 represent their client in a public trial? That's all we wanted
8 to add, Your Honor.

9 THE COURT: Okay. Thank you.

10 Ms. Dominguez?

11 Mr. Micheo?

12 MS. DOMINGUEZ-VICTORIANO: Yes, Your Honor. Good
13 afternoon, Your Honor.

14 THE COURT: Good afternoon.

15 MS. DOMINGUEZ-VICTORIANO: Let me begin by addressing
16 the last point regarding the motion to seal. The reason for
17 the filing of the motion to seal, Your Honor, was simply to
18 protect the identity of people who are not mentioned in the
19 indictment.

20 In fact, the government's opposition to that would
21 render a nullity, the fact that the names were not disclosed in
22 the indictment. These individuals are referred to as
23 "Individual K," "Individual C" and "Company C."

24 And if, in fact, if their identities were to be
25 publicly-ventilated during this hearing, there would be no

1 reason for the government to protect their identities in the
2 indictment. So I think that the position is really not
3 consistent.

4 With respect to the matters that bring us before the
5 Court today, I would like to start by advising the Court, and
6 assuring the Court, that I take my ethical and my professional
7 obligations very seriously, Your Honor. I've been practicing
8 law for 34 years. I have never been the subject of an ethical
9 inquiry or Bar complaint.

10 I have stood in the shoes of AUSA Capo and AUSA Alum,
11 the government prosecutors, for 25 years. I have always paused
12 before filing motions that allege ethical or professional
13 transgressions on the part of opposing counsel, such as motions
14 for disqualification based on a conflict of interest, which
15 would constitute a violation of the Model Rules of Professional
16 Conduct.

17 I have always taken to heart the admonition of our
18 judiciary that the government bears a heavy burden in
19 demonstrating that a conflict exists and that disqualification
20 of a defendant's counsel is justified. For that proposition, I
21 cite the case of *U.S. versus Moreno*, 132 F. Supp. 3d 265 and
22 270, from this very district, 2015.

23 That motions to disqualify should be approached by
24 the Court with cautious scrutiny because they are often used
25 for strategic purposes, *Reyes Canada versus Rey Hernandez*, 193

1 F. Supp. 2d 409 and 411, again, from this very district, 2002;
2 and that disqualification of the defendant's counsel of choice
3 is a measure of last resort, *U.S. versus Diozzi*, 807 F.2d 10,
4 and 12 and 13, from the First Circuit, 1986.

5 I do understand, Your Honor, that where there are
6 grounds for disqualification of counsel, the government cannot
7 simply stand passively silent and must bring those to the
8 attention of the Court. The government does have an
9 affirmative responsibility to file the motion for
10 disqualification where grounds that warrant disqualification
11 exist.

12 But, in this case, Your Honor, having examined the
13 grounds proposed by the government for disqualification and
14 having examined the facts surrounding the motion, we suggest
15 that the government's allegations are willfully lacking in
16 legal and factual support. The motion for disqualification was
17 filed by the government without any good-faith attempt to seek
18 information that would be highly relevant to the issue of
19 disqualification, to the analysis and relevant good-faith basis
20 for the filing of the motion, knowing full well that I had
21 inquired as to the existence of such a conflict prior to the
22 return of the indictment in this case in May of 2019.

23 The grounds alleged by the government, though
24 inadequate to support a credible recusal argument, have been
25 known to the prosecutor prior to the return of the indictment

1 in this case, yet the government waited 3.5 months after the
2 return of the indictment to raise this conflict argument,
3 after we have been representing Julia Keleher for an extended
4 period of time, filed motions and reviewed discovery.
5 Nonetheless, Your Honor, we are here based on the government's
6 request for an evidentiary inquiry as to the potential conflict
7 of interest in this case.

8 And neither Attorney Javier Micheo nor I shy away
9 from such an inquiry. We have done nothing wrong. We have not
10 engaged in any conduct that could be considered violative of
11 the Model Rules of Professional Conduct, Rules of Court or
12 Professional Rules.

13 The government, in its motion, expresses concern that
14 our prior representation of Banco Popular de Puerto Rico
15 creates a conflict of interest with our representation of Julia
16 Keleher. And I quote from their motion, Your Honor, which is
17 at Docket Entry 139, Page 5 and 6:

18 Because it logically follows that to advocate
19 zealously on behalf of Keleher, Attorney Dominguez is ethically
20 required, as required to do, Dominguez and Micheo must
21 cross-examine these witnesses.

22 Government's motion at Page 5 and 6.

23 With all due respect to the government, Your Honor,
24 this is a superficial and unfounded conclusion, and it fails
25 to, again, advise the Court of highly relevant and pertinent

1 facts with respect to the analysis regarding Banco Popular and
2 Oriental Bank. First of all, Your Honor, Attorney Dominguez,
3 myself, and Attorney Micheo have never represented Oriental
4 Bank on any matter. Attorney Micheo has never represented
5 Banco Popular on any matter, co-counsel in this case.

6 I have only represented Banco Popular with respect to
7 seeking a modest extension to comply with the grand jury
8 subpoena. But I represent, as an Officer of this Court, and I
9 would have been happy to share this information with the
10 government had they bothered to seek it, never reviewed the
11 documents produced, never discussed the documents produced with
12 the client, with the bank, and did not participate in the
13 production of the documents to the government.

14 Given these facts, Judge, there is absolutely no
15 basis, not even a scintilla of evidence, to conclude that I
16 received any information from Banco Popular that we could use
17 for the benefit of my client, Julia Keleher, and to the
18 detriment of Banco Popular, during their cross-examination in
19 this case. In fact, Your Honor, I can unequivocally state to
20 this Court, again, would have been willing to share that
21 information with the government had they asked for it, had they
22 inquired, I never even discussed the matter of the extension
23 with any member of Banco Popular.

24 This was an assignment that was given to me through
25 another attorney at McConnell Valdes, where I am no longer

1 associated, and my intervention in the case was limited simply
2 to seeking an extension of time to allow the client to comply
3 with the grand jury subpoena. There was no substantive matters
4 discussed, much less matters that would affect Julia Keleher or
5 that could be used for cross-examination at the time of trial
6 against any Banco Popular or Oriental Bank employee.

7 Judge, Banco Popular and Oriental Bank are not fact
8 witnesses in this case. If they produced any witnesses for
9 trial, it would be only in the nature of custodian of records.

10 Now, while Mr. Capo, in his motion, suggests that I
11 have an ethical obligation to cross-examine these custodian of
12 records, frankly, that has never been my trial strategy, to
13 cross-examine custodians of records. As this Court is well
14 aware, and not to be disingenuous with the Court, because I
15 know the Court has presided over trials and the Court is well
16 aware of trial practice in this district, a live witness is not
17 required to introduce those records into evidence, a
18 certification suffices, pursuant to 803(6)(D).

19 However, I can see the government has a right to
20 produce a live custodian of records. Although, those are
21 matters that are usually handled by way of stipulation. If the
22 government chose to call a live custodian of records, the
23 matter of authenticity of these records does not affect my
24 client, Julia Keleher, in any way, as the records produced
25 pertain to companies that are not named in counts in which

1 Julia Keleher is charged or even mentioned.

2 As to Company C and Individual K, the government,
3 again, improperly argues that my representation of Company C,
4 of which Individual K was its president, in connection with
5 compliance, again, with the grand jury subpoena, precludes a
6 conflict-free representation of Julia Keleher. The government
7 claims that the subpoena served on Company C requested records
8 pertaining to contracts or agreements between Company C and
9 Defendant Alberto Velazquez-Pinol, who is charged with Keleher
10 in the indictment.

11 That's what they say, charged with Keleher, as if the
12 indictment is an overarching conspiracy in which everyone is
13 charged with everyone. That is not the case.

14 The counts relevant to the documents that are the
15 subject of that subpoena are mentioned in the indictment in
16 connection with the ASES counts in which Julia Keleher is not
17 charged. Individual K and Company C never had any business
18 dealings with Julia Keleher.

19 Before undertaking my representation of Individual K,
20 I did inquire, and the client has issued a statement under
21 penalty of perjury to that effect. Judge, I did inquire
22 whether he knew Julia Keleher, whether he had ever had any
23 business with Julia Keleher, whether he could at all have been
24 involved with any of the allegations that had been leveled
25 against Julia Keleher. Although, at that point, only in the

1 context of an investigation and reports in the press and in the
2 media with respect to the nature of that investigation.

3 I think that, again, it is common sense, Judge, that
4 when defense attorneys are on the other side of the spectrum,
5 representing people that may or may not be subject to
6 investigation, may be witnesses, may be targets, may be
7 subjects, and grand jury investigations operate during a cloak
8 of secrecy, we don't have all of the pertinent details to be
9 able to identify instantly whether a conflict exists or not.
10 For that we depend on the government to advise us if we are
11 engaging in multiple representation of clients who might create
12 a conflict. And, also, we depend on the information that our
13 clients give us as to the reasonable inquiries that we make to
14 determine whether such conflicts exist. All of that was done
15 in this case.

16 Because Individual K and Company C have absolutely
17 nothing to do with, nor are they even remotely mentioned in the
18 allegations brought against my client, there is no evidence to
19 sustain an argument that the interests of Individual K and
20 Company C are materially adverse to my client. This is
21 something that, of course, even Individual K believes is
22 true, based on the fact that he has had no business dealings
23 with my client.

24 Again, Your Honor, representation of Individual K and
25 Company C in this matter was limited to ensuring that they

1 complied with the government's grand jury subpoena. The
2 subpoena sought information from -- the subpoena did not seek
3 information related to my client, Julia Keleher, or information
4 regarding anyone directly affiliated with her. In fact, Your
5 Honor, I have a copy of the indictment, if the Court would like
6 to view it, because I'm going to be making reference to some
7 paragraphs.

8 THE COURT: Yes.

9 MS. DOMINGUEZ-VICTORIANO: May I approach?

10 THE COURT: Yes. Did you provide a copy to the other
11 side?

12 MS. DOMINGUEZ-VICTORIANO: I believe they have a
13 copy.

14 MR. CAPO-IRIARTE: Yes.

15 MS. DOMINGUEZ-VICTORIANO: And I've left it open to
16 Page 23 specifically, Your Honor. A superficial review of the
17 indictment in this case reflects that Individual K and Company
18 C are not mentioned until Paragraph 155 of the Indictment.

19 Paragraph 155 falls within Count Nineteen of the
20 Indictment, which charges conspiracy to commit an offense
21 against the United States, in violation of 18 U.S.C. 371. My
22 client, Julia Keleher, is not charged in Count Nineteen of the
23 indictment, nor is she even mentioned in that count.

24 In addition to the foregoing, Your Honor, the
25 government has provided zero evidence showing that I received

1 any information from Individual K and Company C that we could
2 use to the defendant's benefit, to Julia Keleher's benefit, and
3 to the detriment of Individual K and Company C.

4 In any event, Your Honor, I will note that my able
5 co-counsel, Javier Micheo, has not represented any of these
6 parties: Banco Popular, Oriental Bank, which neither have I,
7 Company C or Individual K. So even though we believe,
8 unequivocally, that there is no adversity of interests between
9 Julia Keleher and any of these entities, if, in fact,
10 cross-examination was necessary and counsel for the government
11 believed that I should preclude myself from engaging in that
12 cross-examination, Mr. Micheo, who has never represented any of
13 those parties, is available to conduct that cross-examination.

14 But I do want to stress in closing, Your Honor, that
15 I do not believe that the government has come forward with any
16 evidence to support adversity of interests or to support an
17 argument that Julia Keleher would be deprived of conflict-free
18 representation if we were to remain as her attorneys. With the
19 Court's indulgence, I would ask if the Court would allow Mr.
20 Micheo to address some of the case law that was cited in our
21 motions.

22 THE COURT: Go ahead.

23 MS. DOMINGUEZ-VICTORIANO: Thank you, Your Honor.

24 MR. MICHEO-MARCIAL: Good afternoon, Your Honor.

25 THE COURT: Good afternoon.

1 MR. MICHEO-MARCIAL: As the Court is aware, at some
2 point during the litigation of the government's motion, the
3 Court ordered both parties to file supplemental briefs
4 addressing situations similar to this one, with analogous case
5 law. While the defendant filed a brief with case law
6 addressing facts in situations where the line was way blurrier
7 than this one, Your Honor, where it was a way closer call, the
8 government failed to do so. In fact, the government cites one
9 case from the First Circuit, which is *In Re Grand Jury*
10 *Proceedings*, Your Honor, and that's at 859 F.2d 1021, where the
11 First Circuit didn't even find a conflict worthy of
12 disqualification.

13 And the government, in its initial pleading, where it
14 urged the Court, in the event that a waiver was received, both
15 from defendant and from Individual K, to ignore the waiver,
16 without any basis, it just urged the Court to do so, it cited
17 the same case. And it cited *United States v Mulero-Vargas*,
18 which is at 358 F. Supp. 3d 183, from this district, 2019.

19 In urging the Court to ignore the conflict, the
20 government relied on a case where the situation was a drug
21 conspiracy, during which there were serious doubts whether an
22 uncharged co-conspirator was paying the fees of the defendant.
23 As the Court may be aware, when the Court held a hearing on the
24 matter, the attorneys invoked the Fifth Amendment to avoid any
25 inquiry. In its decision, Judge Besosa cited some case law

1 regarding when the Court may ignore waivers, but stopped short
2 of ignoring the waiver here, instead finding that because no
3 inquiry was performed, that no waiver could be properly
4 weighed.

5 Now, here, Your Honor, there is no qualification in
6 the rules that we have cited of professional conduct, in the
7 case law we have cited, where it urges the Court, in a
8 situation such as this one, to ignore all applicable law and
9 ignore an informed waiver of any potential conflict. And what
10 we are urging the Court to do, Your Honor --

11 THE COURT: You are referring to an informed waiver.
12 Do I have in front of me an informed waiver?

13 MR. MICHEO-MARCIAL: Your Honor, our position is that
14 there is no conflict. However, prepared for any result of this
15 hearing, we do have informed waivers, both from defendant and
16 Individual K. And aside from the informed waivers, we have
17 statements under penalty of perjury, which unequivocally state
18 that they do not know each other; that Individual K has no
19 information, no knowledge of any acts of defendant, and vice
20 versa.

21 Both stated under penalty of perjury. And we are
22 prepared to file them with the Court under the proper viewing
23 restrictions, obviously, because they contain Individual K's
24 real name.

25 THE COURT: But that's your proffer anyhow.

1 MS. DOMINGUEZ-VICTORIANO: Yes.

2 MR. MICHEO-MARCIAL: We do have them here, Your
3 Honor.

4 And that is the extent of my presentation, Your
5 Honor.

6 THE COURT: All right. Mr. Capo?

7 MR. CAPO-IRIARTE: If I may briefly, Your Honor?

8 THE COURT: Yes.

9 MR. CAPO-IRIARTE: To clarify a couple of the things
10 that were said, the only reason why the government's indictment
11 in this particular case do not name Individual K or Company C,
12 the law does not prohibit naming anyone in an indictment that's
13 not charged. It is the Department of Justice's policy not to
14 name individuals in a charging document that had not been
15 charged.

16 That does not preclude the government from disclosing
17 the identity, but for strategic purposes, we do not, simply
18 complying with internal policy, Your Honor. And that is the
19 reason why the indictment does not name those individuals.

20 Now, Ms. Dominguez indicated that the Individual K or
21 Company C are not mentioned until Paragraph 155. It's actually
22 155, '56, '57. They're all, all of the paragraphs are listed
23 in our motion. They're included.

24 That does not mean that that potential witness will
25 testify only as to that, Your Honor. Under Rule 801(d)(2)(E),

1 any statements that were made during the span of a conspiracy
2 by Individual Alberto Velazquez, for example, to Individual K,
3 are admissible in the charges against Defendant Julia Keleher.

4 And that is precisely what we will likely be doing
5 during the trial, Your Honor, asking that particular witness
6 for statements that were made during the span of the conspiracy
7 and for which Ms. Dominguez will have a right to cross-examine
8 her own client, Your Honor, a client that, although she
9 indicates that she did not review information, Your Honor,
10 Government's Exhibit 4, she expresses and discusses the
11 evidence that is being provided, Your Honor. My client's
12 notes, he authorized the production of those notations, Your
13 Honor.

14 She is the one that provided those documents
15 containing information regarding Defendant Alberto Velazquez,
16 who is charged, along with Defendant Julia Keleher, in a
17 conspiracy count, Your Honor. And Ms. Dominguez has an
18 obligation to cross-examine that witness in relation to the
19 co-conspirator, Alberto Velazquez.

20 And, also, Your Honor, again, as we said at the
21 beginning of this hearing, Your Honor, we're not alleging that
22 Ms. Dominguez has done anything unethical, nothing. We are not
23 alleging that. We have the upmost respect for our colleague.

24 But we have a duty, an obligation, to file a motion
25 with the Court because there is a potential conflict that we

1 understand is unwaivable, Your Honor. And the fact that she
2 advises two clients to provide a waiver, that creates a
3 conflict. She is advising her client to provide a conflict
4 that -- a waiver of a conflict, and the other client.

5 That's not the way the procedure is supposed to go,
6 Your Honor. If the Court is going to have or accept a waiver
7 from those individuals, those individuals need to have separate
8 counsel that will advise them as to whether they should or
9 should not provide a waiver. It cannot be the same attorney.

10 Ms. Dominguez also indicated, Your Honor, that the
11 government, that she relies on the government to inform her
12 whether there is any potential conflict. That is correct. And
13 we agree. That is why Government's Exhibit 3 is where I
14 indicated to Ms. Dominguez precisely that, Your Honor:

15 I just saw your email below and noticed that you had
16 previously represented Banco Popular in relation to this
17 matter.

18 I even included the email, Your Honor, that she had
19 previously sent. She responded to that, Your Honor:

20 I didn't know it was the same case. Since I didn't
21 know much about the investigation, I couldn't determine whether
22 there was a conflict.

23 We did inform counsel. We can't reveal an ongoing
24 grand jury investigation because the law prohibits us from
25 doing so. But we did advise Ms. Dominguez that she had

1 represented Banco Popular in regards, Your Honor, to this, and
2 we have it here, to this grand jury subpoena that's attached to
3 the email that Ms. Dominguez sent us right here, asking
4 information about a particular company and an individual. And
5 this is Ms. Dominguez.

6 But then she sends us another email, with an
7 attachment, which relates to the same entity, and Alberto
8 Velazquez. And she is the one providing the documents. In
9 both occasions, she's representing the clients.

10 One occasion she's asking for an extension of time to
11 produce the documents regarding Company C and Individual K, and
12 in another occasion, she's informing us that she's the one
13 producing the documents regarding Individual K and Co-defendant
14 Alberto Velazquez, Your Honor. That is the reason why we are
15 obligated to file the motion with the Court, Your Honor.

16 Now, the indictment was returned in July. That is
17 correct, Your Honor. And we filed the motion on the 1st of
18 October. At the time that we filed the motion is when we
19 realized we do have a conflict here.

20 When we're thinking about the witnesses that we're
21 going to be presenting during trial, Your Honor, during the
22 investigation, we notified defense counsel. We notified her.

23 After the indictment, an oversight. But immediately
24 after we realized that, we filed the motion with the Court.
25 And the fact that three months have gone by doesn't mean that

1 the conflict does not exist today. The conflict exists
2 today; it will exist next month, and it will exist during the
3 trial, when defense counsel is going to have to make a choice
4 as to whether cross-examining a particular witness that she had
5 represented before or to simply not cross-examine that
6 particular witness.

7 THE COURT: Is Banco Popular in any way a material
8 witness, other than for provide -- or authenticate documents?

9 MR. CAPO-IRIARTE: Banco Popular, we will bring
10 witnesses from Banco Popular to authenticate the records of Ms.
11 Julia Keleher, financial records, Your Honor. But in this
12 particular case, it's more significant, because we understand
13 that defense counsel will like to cross-examine because that
14 particular grand jury subpoena was actually disclosed
15 improperly.

16 And the individual that provided the documents
17 regarding that grand jury subpoena is currently indicted,
18 before this very same Court, for unlawfully disclosing that
19 information. So they will have to cross-examine that
20 particular witness that we bring from Banco Popular regarding
21 whether anything was done improperly regarding the disclosure
22 of the financial records, Your Honor.

23 THE COURT: Why would that be relevant in the case
24 here?

25 MR. CAPO-IRIARTE: It is relevant, Your Honor,

1 because defense counsel has a right to question any aspect of
2 an investigation that was -- that ended with an indictment
3 against their client. They have to do that, Your Honor. It is
4 their duty as attorneys.

5 THE COURT: But you'll be using Banco Popular's
6 witnesses to authenticate documents, right?

7 MR. CAPO-IRIARTE: Because we need to present the
8 financial records of the defendant, Your Honor. But in
9 addition to that, Your Honor, in addition to that, then we have
10 Individual K. And then Individual K --

11 THE COURT: Before going -- before reaching
12 Individual K --

13 MR. CAPO-IRIARTE: Yes.

14 THE COURT: -- so the gist of witnesses from Banco
15 Popular have to do with authentication of Banco Popular's
16 documents.

17 MR. CAPO-IRIARTE: That is correct, Your Honor. And
18 whether those documents that were produced to the government,
19 whether anything improper was done in the production of those
20 documents that we have provided in discovery.

21 So we're going to need to go a little bit further
22 than simply authenticating the documents that we will present
23 at trial; that the documents that were provided to the
24 government are actually reliable, since the individual that
25 participated in the production of the documents is the

1 individual that unlawfully disclosed the grand jury subpoena.

2 THE COURT: Are you planning to use as a witness an
3 individual who has been indicted?

4 MR. CAPO-IRIARTE: No, Your Honor. That is why we
5 will have to, the additional, the other witness from Banco
6 Popular that we will bring will need to go into more detail
7 than a simple, than the typical simply authenticating the
8 documents. We will have to go through the entire chain of
9 custody of what happened to all those documents.

10 THE COURT: You would be using Oriental Bank's
11 witnesses to authenticate documents from Oriental.

12 MR. CAPO-IRIARTE: That is correct, Your Honor. We
13 don't anticipate any issue in regards to the authentication of
14 the Oriental Bank financial records because Ms. Dominguez has
15 indicated that they have never represented Oriental Bank. We
16 see no issue with that, Your Honor.

17 THE COURT: Is that the case as well with Company C?

18 MR. CAPO-IRIARTE: No, Your Honor. With Company C,
19 the documents that were provided by Company C in regards to the
20 grand jury subpoena are actually documents related to Alberto
21 Velazquez, an indicted co-conspirator along with Ms. Keleher.

22 THE COURT: But the witnesses you would be using from
23 Company C would be used for what purpose? To authenticate
24 those documents?

25 MR. CAPO-IRIARTE: No, Your Honor. Actually, those

1 are material and actual fact witnesses of interactions that
2 they had with Alberto Velazquez during the span of the
3 conspiracy that's charged in the indictment.

4 THE COURT: And that's the case as well with
5 Individual C?

6 MR. CAPO-IRIARTE: Individual C is the -- it's
7 actually Company C, Your Honor.

8 THE COURT: I mean, Individual K. I'm sorry.

9 MR. CAPO-IRIARTE: Individual K is actually the
10 President of Company C. And there is an additional witness
11 that Ms. Dominguez indicated to the agents that she represents,
12 and it's actually the wife of Individual K, who is a potential
13 witness during the trial, also regarding Alberto Velazquez,
14 Your Honor.

15 THE COURT: And you are proffering that you will be
16 asking those witnesses questions which would be admissible
17 against Ms. Keleher because she is charged with a conspiracy
18 count involving Velazquez.

19 MR. CAPO-IRIARTE: That is correct, Your Honor, under
20 801(d) (2) (E) .

21 THE COURT: All right. Thank you.

22 Let me hear from Ms. Dominguez.

23 MS. DOMINGUEZ-VICTORIANO: Your Honor, first of all,
24 to be clear, I think, as the government has conceded, Oriental
25 Bank is outside of the analysis because neither Mr. Micheo nor

1 I ever represented them.

2 THE COURT: Agree. It's out.

3 MS. DOMINGUEZ-VICTORIANO: Yes, Your Honor.

4 I still do not understand, as much as I try, what my
5 limited representation of Banco Popular, only for the purpose
6 of seeking a 30-day extension of time to comply with the
7 subpoena, how that makes my representation of Julia Keleher
8 adverse to the interests of Banco Popular, or vice versa. I
9 never engaged in any substantive analysis of any documents,
10 discussion of the documents that were being produced, did not
11 participate in the actual production of the documents to the
12 government.

13 THE COURT: If you know, ma'am, who assisted Banco
14 Popular in the substantive review of the documents that they
15 produced in response to the grand jury subpoena?

16 MS. DOMINGUEZ-VICTORIANO: Judge, I cannot say, but I
17 can represent to the Court that my limited involvement of
18 seeking the extension was referred to me by another attorney at
19 the firm, who did represent Banco Popular. He and I did not
20 engage in any substantive discussions of the case. And I would
21 suspect, although I cannot affirm to the Court, that he would
22 have had those discussions with the bank, in which I did not
23 participate.

24 THE COURT: I understand. Go ahead.

25 MS. DOMINGUEZ-VICTORIANO: Now, again, Your Honor,

1 Company C --

2 THE COURT: But before reaching Company C --

3 MS. DOMINGUEZ-VICTORIANO: Yes, sir.

4 THE COURT: -- Mr. Capo put forth a scenario where
5 witnesses from Banco Popular would be used, not only to
6 authenticate documents produced by Banco Popular, but also with
7 regard to the process of production, as a result of which an
8 indictment was filed, and maybe defense counsel would be
9 interested, that's my inference from what he said, in exploring
10 that angle in cross-examining witnesses from Banco Popular.

11 Could you comment on that, ma'am?

12 MS. DOMINGUEZ-VICTORIANO: Yes, Your Honor.

13 First of all, the individual that allegedly is
14 responsible for the leak has been identified and prosecuted.
15 Based on Mr. Capo's representations to the Court, he will not
16 be the person that will be taking the stand.

17 In any event, Your Honor, it is hard to imagine a
18 scenario where the leak of information, the leak of a grand
19 jury subpoena, obviously, contrary to law, would have anything
20 to do, even remotely, with the authenticity of documents.
21 We're not talking -- we're talking about the leak of a grand
22 jury subpoena and separate documents that are in the custody of
23 the bank, that are business records of the bank, that would be
24 authenticated by representatives of the bank for purposes of
25 complying with the business record exception.

1 I don't understand, Your Honor, as much as I try,
2 what one thing has to do with the other. Because whether or
3 not the subpoena was leaked, that does not affect the fact that
4 these are authentic documents that have been in the custody of
5 the bank and were kept in the regular course of business by the
6 bank. So I don't think --

7 THE COURT: There is no allegation that the leak
8 occurred at the behest of your client, right?

9 MS. DOMINGUEZ-VICTORIANO: Correct. Absolutely.

10 And, in any event, Your Honor, I would go as far as
11 to say that I believe that any mention of the leak would be
12 prejudicial and not relevant. I think there would be a 401 and
13 a 403 objection to that coming in. That really has no bearing
14 on the issue of guilt or innocence in the case, and I think it
15 would be a collateral matter, which would not be directly
16 relevant to the issues that would be litigated in the case.

17 THE COURT: Thank you.

18 Could you then address Company C and Individual K?

19 MS. DOMINGUEZ-VICTORIANO: Yes, sir.

20 First of all, I think for purposes of this analysis,
21 Judge, Individual K and Company C are basically one in the
22 same, because Company C is owned and controlled by Individual
23 K. So I think, when we talk about Company C, we have to do so
24 with the understanding if there would be testimony from
25 somebody from Company C, it would be Individual K.

1 And, Judge, not to belabor the point, but I do want
2 to stress, because I think it is critical for purposes of this
3 analysis, that Individual K had no business dealings, no
4 dealings at all with Julia Keleher. The representation of
5 Individual K was limited to ensuring compliance with the grand
6 jury subpoena.

7 Now, at some point, the agents reached out to
8 Individual K's wife and requested an interview of her. Now, as
9 the Court's aware, the government has no power of compulsion to
10 obligate witnesses to speak to them. The power of compulsion
11 belongs to the grand jury. So this would have been a wholly
12 voluntary interview.

13 Individual K contacted me, and I reached out to the
14 agent. However, Your Honor, as an Officer of this Court, and
15 again, this can be corroborated by Individual K, I can
16 represent to the Court candidly that I never met with Mr.
17 Individual K's wife. I never spoke to her.

18 It was simply a precaution that Individual K wanted
19 me there in the event my services would be necessary. But I
20 never even discussed her knowledge of the facts of the case
21 with that individual because the agents desisted in conducting
22 the interview, and so it was rendered needless.

23 THE COURT: I understand. So we are dealing with
24 Individual K.

25 MS. DOMINGUEZ-VICTORIANO: Correct, Your Honor.

1 Now, Individual K --

2 THE COURT: Mr. Capo said Individual K is going to be
3 brought to trial as a witness, or he suggested that.

4 MS. DOMINGUEZ-VICTORIANO: All right. Judge, let me
5 just, with respect to that, let me say the following. Of
6 course, I'm at a little bit of a disadvantage because I don't
7 know how he's going to try this case. But I would say, Your
8 Honor, if the Court refers to the indictment in this case, that
9 Individual K and Company C are mentioned in connection with the
10 ASES conspiracy.

11 Now, conspiracy is not some ephemeral esoteric
12 notion, Judge. It is an express agreement. And in the context
13 of this indictment, the ASES conspiracy is separate from the
14 other conspiracies charged in the indictment.

15 I gave the Honorable Court a copy of the indictment
16 so that the Court could see that the paragraphs in which
17 Individual K and Company C are mentioned relate wholly to the
18 conspiracy charged in Count Nineteen, which is the ASES
19 conspiracy in which my client is not charged. If Individual K
20 was questioned about anything having to do with
21 Velazquez-Pinol, it would not relate to Julia Keleher, and it
22 would not relate, based on the indictment as it is drafted, on
23 other conspiracies in which my client is charged.

24 In any event, Your Honor, because my client had no
25 business dealings, or any dealings whatsoever, with Julia

1 Keleher, it is difficult to sustain an argument of adversity of
2 interests. But even though we believe strenuously and
3 unequivocally that there is no basis to the allegation that a
4 conflict exists, I do remind this Honorable Court that Mr.
5 Micheo did not represent Individual K; that he did not
6 represent Company C; that he never purported to represent
7 Individual K's wife, and never represented Banco Popular or
8 Oriental Bank.

9 THE COURT: But he was an employee, was he not, of
10 McConnell Valdes?

11 MS. DOMINGUEZ-VICTORIANO: He was an employee of
12 McConnell Valdes. But if the Court refers to our memorandum of
13 law that we submitted in this case, the answer to all of the
14 relevant inquiries with respect to prior, the representation of
15 the firm of clients, when one is no longer associated with the
16 firm, every single question is answered in the negative, every
17 single question.

18 We have not, neither myself, and even less, Mr.
19 Micheo, have we received any information from any of these
20 potential clients that would create an adversity of interests.

21 THE COURT: Now, you referred to different
22 conspiracies, to the ASES conspiracy and so forth. I'm not
23 sure that's the way the government is going to interpret the
24 indictment, but maybe yes.

25 Am I wrong, Mr. Capo?

1 MR. CAPO-IRIARTE: Your Honor, the fact that her
2 client did not mention Ms. Keleher during the interactions that
3 he has or has not had with Ms. Dominguez doesn't mean that he
4 has information regarding a co-conspirator regarding the counts
5 charged against Defendant Julia Keleher, Your Honor. And those
6 statements regarding Alberto Velazquez are co-conspirator
7 statements that we will elicit that will be admissible against
8 all of the defendants charged in the same count, including the
9 count that Ms. Keleher is charged with. It's Rule
10 801(d) (2) (E).

11 MS. DOMINGUEZ-VICTORIANO: I know the rule very well.
12 I could probably recite it verbatim, Your Honor.

13 THE COURT: I know.

14 MS. DOMINGUEZ-VICTORIANO: But I think, Your Honor,
15 that Mr. Capo's response was not directly responsive to the
16 Court's question. There are separate conspiracies here, Judge.
17 And according to law, there is not one overarching conspiracy.

18 Mr. Capo cannot pick and choose how he relates one
19 conspiracy to the other. The ASES conspiracy is separate from
20 the Colon & Ponce conspiracy. It's separate from the BDO
21 conspiracy. There are separate conspiracies charged here, and
22 under the law, each has to be proven individually, according to
23 its own merits.

24 Now, according to the indictment, Your Honor,
25 regardless of what Mr. Capo is representing to the Court here,

1 Individual K and Company C have nothing to do with the
2 conspiracy in which Julia Keleher is charged because those
3 counts on Individual K and Company C are not even incorporated
4 into the conspiracies in which Julia Keleher is charged.
5 If Individual C had any information regarding Velazquez-Pinol,
6 that is not information that impacts upon Julia Keleher.

7 He had no dealings with Julia Keleher. He did not do
8 business with Julia Keleher. He is not in any way involved
9 with the Department of Education with Julia Keleher.

10 And I say that, Your Honor, because despite the fact
11 that I was not precisely aware of the basis of the
12 investigation, to determine on my own whether there was a
13 conflict, I did inquire that of Individual C, whether, in fact,
14 there was any potential for conflict of interest with Julia
15 Keleher. And every response that I received was in the
16 negative, to the extent that I believed that my responsible
17 inquiry had yielded no results to raise a red flag as to
18 potential conflict of interest.

19 THE COURT: The basic framework within we must
20 address the issue before the Court is Rule 1.9 of the Model
21 Rules, right?

22 MS. DOMINGUEZ-VICTORIANO: Yes.

23 THE COURT: Which is successive representations or
24 duties to former clients.

25 MS. DOMINGUEZ-VICTORIANO: Yes.

1 THE COURT: Now, the basic issue is whether we are
2 dealing with materially adverse interests between a former
3 client and a current client.

4 MS. DOMINGUEZ-VICTORIANO: And that's where we
5 believe, Judge, that the inquiry fails, because we do not
6 believe that there is any materially adverse interests between
7 Individual C and Julia Keleher -- Individual K or Company C and
8 Julia Keleher. We do not believe that there are any materially
9 adverse inferences.

10 MR. CAPO-IRIARTE: Your Honor, if I may?

11 THE COURT: Go ahead.

12 MR. CAPO-IRIARTE: We are very well aware that Ms.
13 Dominguez is very knowledgeable about Rule 801. However, as
14 she knows, the Rules of Evidence, Rule 801 is a function of the
15 evidence, not of the crime charged. It's whether a statement
16 is admissible to be stated in front of a jury.

17 Now, that statement will implicate a co-conspirator
18 that she represents because it's a statement from a
19 co-conspirator during the span of the conspiracy in furtherance
20 of the conspiracy. And she will be facing a decision during
21 trial as to whether to cross-examine Individual K --

22 MS. DOMINGUEZ-VICTORIANO: Individual --

23 MR. CAPO-IRIARTE: -- in favor of her client or
24 whether she should not cross him or ask too many questions, in
25 order to represent adequately Individual K, to whom she also

1 has a duty of loyalty, Your Honor. It's a function of the
2 evidence, not of the crime charged.

3 And we can elicit testimony from Individual K
4 regarding many matters and many statements that Mr. Alberto
5 Velazquez, co-defendant of Ms. Julia Keleher, throughout the
6 trial. And she will have an option of cross-examining or not.

7 She can use the cross-examination as to whether, use
8 the testimony of this individual to help her client or to
9 affect the co-defendant, Alberto Velazquez. But that's a
10 decision that she has to make, and that's where the problem
11 lies, Your Honor.

12 MS. DOMINGUEZ-VICTORIANO: And, Your Honor, for that
13 I guess we have to take Mr. Capo's word. I understand
14 801(d)(2)(E) is a rule that has a threshold and has norms,
15 which are -- must be met before the evidence is introduced.
16 If, in fact, I had to cross-examine, or Mr. Micheo, had to
17 cross-examine Individual K, it certainly would not be about
18 Julia Keleher because he's had no dealings with her.

19 THE COURT: The foundation would be *Petrozziello*. We
20 are all aware of that.

21 MS. DOMINGUEZ-VICTORIANO: Right.

22 THE COURT: But what you are saying is there is no
23 way Individual K can implicate your client?

24 MS. DOMINGUEZ-VICTORIANO: At all, Judge, at all.

25 THE COURT: And that would be the only question you

1 may ask him if he were to testify?

2 MS. DOMINGUEZ-VICTORIANO: Has he ever had any
3 business dealings with Julia Keleher; did he ever meet Julia
4 Keleher; has he engaged in business or contracts with Julie
5 Keleher? And the answer to all of those would be no.

6 THE COURT: Why then, Mr. Capo, under that scenario,
7 would be dealing with materially adverse, the materially
8 adverse scenario that would preclude counsel from representing
9 Ms. Keleher in this case?

10 MR. CAPO-IRIARTE: Because this potential witness,
11 Your Honor, we can ask him questions about what Mr. Alberto
12 Velazquez was doing during the year 2017 in regards to
13 government contracts, and the statements that Mr. Alberto
14 Velazquez provided the witness are admissible against her
15 client.

16 THE COURT: Ms. Dominguez?

17 MS. DOMINGUEZ-VICTORIANO: Judge, again --

18 THE COURT: Let me let you all know where I'm coming
19 from. I do not see any issues regarding Banco Popular. It's
20 basically authentication as to whether there was a leak.
21 That's Banco Popular's problem, as far as I'm concerned.

22 There are 401, 402, 403 issues. So, for me, I do not
23 see any, any issues with regard to Banco Popular. The same
24 thing, obviously, with Oriental.

25 But I cannot say the same thing, without further

1 inquiry, with regard to Individual K, based on what I've heard
2 so far. Maybe I can change my mind. I'm not saying I'm going
3 to conclude that Ms. Dominguez and Mr. Micheo should be
4 disqualified. That's not what I'm saying. But I would like
5 more information with regard to Individual K.

6 I'm accepting Ms. Dominguez's word with regard to
7 what Individual K told her, at the time she represented him,
8 before the indictment was issued by the grand jury.

9 MS. DOMINGUEZ-VICTORIANO: And, Your Honor, I might
10 also add that the subpoena that was issued to Individual C and
11 Company K --

12 THE COURT: Individual K.

13 MS. DOMINGUEZ-VICTORIANO: Individual K, I'm sorry,
14 and Company C, referred to documents that were part of the ASES
15 conspiracy, not the other conspiracy that was charged in the
16 indictment. So I'm having a very difficult time imaging the
17 scenario proposed by Mr. Capo.

18 In any event, my review -- and, by the way, I'd like
19 to correct the record, because I never said I didn't review the
20 documents that Individual K produced. I said I didn't ever
21 review the documents that were eventually produced by Banco
22 Popular.

23 But the documents that Individual K and Company C
24 produced had nothing to do with the counts in which my client
25 is charged. They had to do with the ASES conspiracy. So I

1 have not acquired any information from my client, Individual K
2 and Company C, that would be materially adverse to my client or
3 vice versa, Judge, because we're talking about separate counts
4 in the indictment.

5 In any event, Your Honor, if the Court would feel
6 more comfortable that if Individual C -- Individual K
7 testifies, also as a representative of Company C, and the
8 scenario, which I believe is highly unlikely, proposed by Mr.
9 Capo, occurs, then I would defer cross-examination to Mr.
10 Micheo, who never had any contact with the client.

11 THE COURT: But he was an employee of McConnell
12 Valdes. Individual K was a client of whom? Of McConnell
13 Valdes?

14 MS. DOMINGUEZ-VICTORIANO: He was, Your Honor. But
15 Mr. Micheo never represented him and never represented Company
16 C, never represented his wife. And so the inquiry would be
17 resolved in our favor, despite the fact that he was a client of
18 mine, but was not a client of his.

19 THE COURT: But if an attorney is a partner or
20 associate or an employee of a firm and that particular firm is
21 retained to provide legal services and those services are given
22 through an employee, an associate of the firm --

23 MS. DOMINGUEZ-VICTORIANO: Yes.

24 THE COURT: -- is that not the same situation as if
25 the attorney were a solo practitioner? Because, at the end of

1 the day, who produced the, the timekeeper? The timekeeper was
2 probably used to bill for services rendered, and if it was the
3 firm, the entity who received the payment for services
4 rendered.

5 So the fact that Mr. Micheo did not personally
6 interact with Individual K may not be dispositive of this
7 particular issue. It may or may not. That's what I'm posing.

8 MR. MICHEO-MARCIAL: Well, Your Honor, if I may,
9 Javier Micheo. Rule 1.9(b) explicitly states that my
10 cross-examining of Individual K would be dispositive of this
11 matter, Your Honor, because Rule 1.9(b) provides that a lawyer
12 shall not knowingly represent a person in the same or a
13 substantially related matter in which a firm which the lawyer
14 formerly was associated had previously represented a client

15 (1) whose interests are materially adverse to that person;
16 which we have emphasized, and we understand they're not; but

17 (2) about whom that lawyer, the individual, that's me,
18 acquired information protected by Rules 1.6 and 1.9(c) that is
19 material to the matter.

20 And, Your Honor, insofar as I have never had a
21 conversation about -- during the investigation or about the
22 investigation with Individual K, then there is no way I can
23 satisfy prong 2 of the inquiry, or the government can satisfy
24 prong 2 of the inquiry. I've never obtained any information,
25 material or otherwise, about this case from Individual K, Your

1 Honor.

2 THE COURT: But does this refer to individual
3 attorneys or to firms?

4 MR. MICHEO-MARCIAL: It refers to the individual
5 attorney as it pertains to a client that his former firm
6 represented.

7 THE COURT: Right.

8 MR. MICHEO-MARCIAL: And so the interests have to be
9 materially adverse, and I have to have participated and
10 obtained information from that client, while I was at the firm,
11 to later disqualify. It would be -- it's, essentially, as it
12 pertains to me, the same situation with Oriental Bank as
13 Individual K. I haven't met with any representative from
14 either one.

15 THE COURT: So what you are saying is that within
16 McConnell Valdes, and in this particular situation, there was a
17 de facto Chinese wall, pursuant to which you did not get
18 pertinent information in any way or form.

19 MR. MICHEO-MARCIAL: Your Honor, yes, as an Officer
20 of the Court, it wasn't intended. It just happened like that.
21 There are many matters, despite what it appears, where Attorney
22 Dominguez manages them solely by herself, and I do not
23 participate.

24 And this was one of them, Your Honor. It was a very
25 limited matter that did not require anyone else's

1 participation, but Attorney Dominguez's.

2 And I would proffer to the Court, as an Officer of
3 the Court, that Rule 1.9(b)(2) is very specific in requiring
4 that I have acquired information that is material to the matter
5 and protected under Rules 1.6 and 1.9. And I didn't acquire
6 any information, Your Honor.

7 Therefore, by default, the government cannot meet its
8 burden under Rule 1.9(b) as it pertains to me. And, therefore,
9 in the event, like Your Honor very aptly stated, in the event
10 that more information is needed on the matter, once his direct
11 examination is flushed out, if there is something that
12 precludes Maria Dominguez from cross-examining him, I'm
13 perfectly able, under the rules, to do so, and perfectly happy
14 to do so as well.

15 THE COURT: Mr. Capo?

16 MR. CAPO-IRIARTE: Yes, Your Honor.

17 I just wanted to clarify the part about Banco
18 Popular. The Court should be aware that the subpoena that was
19 issued in the name of Banco Popular de Puerto Rico is regarding
20 information pertaining to Company C.

21 Ms. Dominguez requested an extension to provide the
22 documents pertaining to Company C on behalf of the bank. At
23 the same time, she's also the one producing the documents, when
24 Individual K is subpoenaed, to get documents regarding
25 Co-defendant Alberto Velazquez.

1 THE COURT: But is that materially adverse?

2 MR. CAPO-IRIARTE: It is, Your Honor.

3 THE COURT: Why?

4 MR. CAPO-IRIARTE: Because there is -- we have a
5 scenario where we have a defense attorney representing a bank
6 requesting an extension of time to produce documents regarding
7 a company, which defense counsel also represents. And at the
8 same time, the documents that are being requested from the
9 company she represents pertain to an individual that is a
10 co-conspirator charged in the indictment of another individual
11 that she now represents.

12 So she will definitely need to cross-examine
13 Individual K, Your Honor, at trial. And it's going to pertain
14 to --

15 THE COURT: Individual K.

16 MR. CAPO-IRIARTE: -- to Individual K.

17 THE COURT: Okay. We're back to Individual K.

18 MR. CAPO-IRIARTE: But what we're trying to explain,
19 Your Honor, regarding Banco Popular is that she also requested
20 an extension of time regarding the documents pertaining to
21 Individual K from the bank.

22 THE COURT: But it was not to produce documents to
23 the bank. It was to produce documents to the grand jury.

24 MR. CAPO-IRIARTE: Yes, Your Honor, documents that
25 she was asking the government for an extension of time on

1 behalf of the bank, but she also represents the individual
2 whose bank account we were requesting from the bank.

3 THE COURT: I understand your point, and your point
4 is preserved.

5 But, Ms. Dominguez?

6 MS. DOMINGUEZ-VICTORIANO: Judge, the subpoena could
7 have been to produce a hundred different matters having to do
8 with dozens of different grand jury investigations. It would
9 have made no difference to me because I never engaged in a
10 review of the documents, nor a discussion of the underlying
11 documents with the bank.

12 My intervention was a mechanical intervention, for
13 all intents and purposes, of asking for an extension of time.
14 I did not get into the merits of the document. I did not get
15 into a discussion of the documents. I never met with the
16 client to discuss anything relevant to the subpoena.

17 THE COURT: You mean, Banco Popular.

18 MS. DOMINGUEZ-VICTORIANO: Banco Popular, correct.

19 THE COURT: Yes. Yeah, I understand.

20 At this point, I am where I was some minutes ago. I
21 do not see any problem with Banco Popular. I do not see any
22 problem with Oriental. I'm concerned though with Individual
23 K, maybe because I do not have a clear idea of what his
24 testimony is going to be, what the configuration this will take
25 going forward during trial.

1 And, at the same time, I know that Rule 1.9 -- I have
2 the rule here. Rule 1.9(2) talks about, or addresses a
3 situation when the lawyer has acquired information protected by
4 Rules 1.6 and 1.9(c) that is material to the matter, unless the
5 former client gives informed consent confirmed in writing.

6 That said, Mr. Micheo, you were not a sole
7 practitioner. You were part of a firm, and now you are part of
8 a firm as well. And that kind of, in my mind, complicates the
9 issue and may require a further inquiry review into the scope
10 of 1.9 under these circumstances; that is, what is the extent
11 of Rule 1.9 beyond sole practitioners, solo practices.

12 Because it is easily understood and applied in a case
13 where an attorney is a solo practitioner. Now, what happens
14 when the attorney was part of a firm and moves on to be part of
15 another firm? And it is in that particular context where
16 questions about conflicts under 1.9 need to be analyzed and
17 resolved.

18 MR. MICHEO-MARCIAL: I understand, Your Honor, but
19 precisely Rule 1.9 addresses -- it's tailored to the situation
20 where you're actually part of a big firm and you leave to
21 participate elsewhere, and this kind of situation arises. Rule
22 1.9 is --

23 THE COURT: But that's not what the rule technically
24 says. It does not say: The rule will not apply in a case
25 where the attorney previously worked for a firm and moves to

1 another firm.

2 We need to apply the rule in that particular context.

3 MS. DOMINGUEZ-VICTORIANO: Judge, if I could. Rule
4 1.9(b) requires that 2 prongs be met in order for the former
5 attorney to be disqualified.

6 THE COURT: Correct.

7 MS. DOMINGUEZ-VICTORIANO: Number 1 would be that the
8 lawyer formerly was associated, had previously represented a
9 client whose interests are materially adverse to that person.

10 We contend that they are not.

11 But the second prong, clearly, has not been met:
12 About whom a lawyer had acquired information protected by Rules
13 1.6 and 1.9(c) that is material to the matter.

14 There is no question that Mr. Micheo has not acquired
15 any information, whether material or not, any information at
16 all regarding Individual K and Company C. No question about
17 that. So there is no way that he can be disqualified, pursuant
18 to Rule 1.9(b), Your Honor.

19 And, in any event, the judge --

20 THE COURT: Let me say this, I mean, along the same
21 line.

22 MS. DOMINGUEZ-VICTORIANO: Yes.

23 THE COURT: Comment 4 of the rule begins, I mean, it
24 is titled "Lawyers Moving Between Firms."

25 MS. DOMINGUEZ-VICTORIANO: Yes, sir.

1 THE COURT: And the first sentence reads:

2 "When lawyers have been associated within a firm, but
3 then end their association, the question of whether a lawyer
4 should undertake representation is more complicated."

5 It is.

6 Now, at the end of the day, the ABA says:

7 "Paragraph (b) operates to disqualify the lawyer only
8 when the lawyer involved has actual knowledge of information
9 protected by Rules 1.6 and 1.9(c)."

10 MS. DOMINGUEZ-VICTORIANO: That's correct, Your
11 Honor.

12 THE COURT: "Thus," says the comment, "if a lawyer
13 while with one firm acquired no knowledge or information
14 relating to a particular client of the firm, and that lawyer
15 later joined another firm, neither the lawyer individually nor
16 the second firm is disqualified from representing another
17 client in the same or a related matter even though the interest
18 of the two clients conflict."

19 MS. DOMINGUEZ-VICTORIANO: And we wholeheartedly
20 agree.

21 THE COURT: That's what the comment to the rule says.
22 And this is the interpretation given by the drafters of the
23 rule.

24 MS. DOMINGUEZ-VICTORIANO: Yes.

25 THE COURT: And, for me, it is persuasive. So, at

1 the end of the day, what we are dealing with is whether
2 interests are materially adverse. Because the hurdle of
3 whether, at least Mr. Micheo, acquired information protected by
4 Rules 1.6 and 1.9(c), based on the proffer, is no issue. He
5 did not.

6 MS. DOMINGUEZ-VICTORIANO: And, Your Honor, we
7 respectfully, again, reiterate, for all of the reasons that
8 we've already put on the record, that we don't believe that
9 there are adversity of interests. But, in any event, there is
10 no question that both prongs would need to be met, and there is
11 no way, there is no evidence to subject that prong number 2 is
12 met.

13 Because Mr. Micheo, both he and I have represented to
14 the Court, as Officers of the Court, the government cannot come
15 forward with any evidence contrary to that, that he has never
16 represented Company C or Individual K, never met with them,
17 never participated in any of the issues dealing with the grand
18 jury subpoenas issued to them. Therefore, prong number 2 of
19 1.9 is not met.

20 THE COURT: I mean, that's on the same category as
21 Oriental.

22 MS. DOMINGUEZ-VICTORIANO: Correct, Your Honor.

23 THE COURT: And we're back to materially adverse.

24 MS. DOMINGUEZ-VICTORIANO: But I believe, Judge,
25 respectfully, that under 1.9(b), it is written in the

1 conjunctive, not in the disjunctive. It is "and," not "or."
2 So in order for the attorney to be disqualified, both prongs of
3 1.9(b) would have to be met. And there is no question that
4 prong number 2 -- there can be, perhaps, debate. Although, we
5 believe there is no adversity of interests.

6 But with respect to prong number 2, there is no
7 question that Mr. Micheo did not participate in any way, shape
8 or form in that engagement, and so prong number 2 would fail.
9 And, therefore, he could not be disqualified to represent Ms.
10 Keleher.

11 THE COURT: Well, it says, Mr. Capo, what Ms.
12 Dominguez says it says. The lawyer shall not, shall not,
13 unless: (a), there are materially adverse interests; and, (2),
14 the lawyer has acquired information protected by Rules 1.6 and
15 1.9(c).

16 But I'm not so sure, Ms. Dominguez. I mean --

17 MS. DOMINGUEZ-VICTORIANO: Judge --

18 THE COURT: It says:

19 A lawyer shall not knowingly represent a person in
20 the same or a substantially related matter in which a firm with
21 which the lawyer formally was associated had previously
22 represented the client whose interests are materially adverse
23 to that person and about whom the lawyer had acquired
24 information protected by Rules 1.6 and 1.9(c).

25 MS. DOMINGUEZ-VICTORIANO: It's the deliberate use of

1 the "and," Judge.

2 THE COURT: She may have a point, Mr. Capo. How do
3 you respond to that?

4 MR. CAPO-IRIARTE: Well, Your Honor, we are at a
5 scenario that defense counsel will have to make a choice at
6 trial as to whether to cross-examine her own clients. That
7 does not change, Your Honor. And the only remedy for that
8 would be in waiver from both clients.

9 MS. DOMINGUEZ-VICTORIANO: We do have those, by the
10 way, Judge.

11 MR. CAPO-IRIARTE: But that's not the, the procedure.
12 In order for the clients to waive any potential conflict, Your
13 Honor, they would be independent counsel.

14 MR. MICHEO-MARCIAL: Your Honor, we would request
15 that the government provide some sort of case law basis where
16 you need independent counsel to make that determination. I
17 mean, because that implicitly alleges that we were not
18 forthcoming in seeking the waiver, or something of the sort,
19 Your Honor, which I think is not based in any good-faith basis.

20 And, Your Honor, moreover, it seems that the
21 government is operating with blinders and only thinking about
22 Attorney Dominguez, because, once again, we've established
23 beyond a doubt that I'm not disqualified under Rule 1.9. And
24 when Your Honor asked the government to address the issue of me
25 not being disqualified under 1.9, they again pivot to Attorney

1 Dominguez, which, Your Honor, is a concession that, come trial
2 time, if need be, I can cross-examine Individual K, and the
3 rules will perfectly cover that as an okay scenario, Your
4 Honor. And, for us, that should be the end of this inquiry.

5 MS. DOMINGUEZ-VICTORIANO: Informed consent, Your
6 Honor, by the way, is only required if, in fact, the attorney
7 had acquired information protected by Rules 1.6 and 1.9, which
8 is not the case here.

9 THE COURT: But if that were the case, I do not
10 think, although I understand the logic posed by Mr. Capo, that
11 independent counsel would be necessary. Case law recognizes
12 that intelligent waivers may be given upon inquiry by the Court
13 in court.

14 But I do not believe we may have reached that point
15 here. I'll give both sides the opportunity to wrap up and
16 share any final thoughts you want before I go ahead.

17 MS. DOMINGUEZ-VICTORIANO: Your Honor, I don't know.
18 Mr. Capo, if you want to go first? That's fine.
19 It's your motion.

20 MR. CAPO-IRIARTE: All right. Well, Your Honor, as
21 we said at the beginning, we have a duty to file this motion.
22 And as defense counsel should understand, it's a complicated
23 matter, Your Honor.

24 When they are representing multiple witnesses in a
25 case, and a defendant in a particular case, they're going to be

1 facing a decision, come trial, as to whether to cross-examine a
2 particular witness from whom they have acquired privileged
3 information. And that is the scenario that we have here, Your
4 Honor.

5 We're obligated to file this motion. We're obligated
6 to bring this to the attention of the Court. And we understand
7 that if the Court will accept a waiver from both individuals,
8 the defendant and the potential witness, Your Honor, as we
9 indicated in our motion at Docket Entry 145, at the footnote,
10 *U.S. versus Elder*, 311 Federal Supplement 3d 589, Your Honor,
11 from the Eastern District of New York, it is -- it would be
12 prudent for the Court to appoint a counsel for those, both the
13 witness and the co-defendant.

14 And, Your Honor, what we are requesting is that the
15 Court conduct what is actually occurring right now, an inquiry,
16 to make the determination now, rather when the trial comes.
17 And we are at an early stage of this proceeding, Your Honor,
18 that this matter can be resolved prior to being in the middle
19 of a trial.

20 THE COURT: Thank you.

21 MS. DOMINGUEZ-VICTORIANO: Very briefly, and thanking
22 the Court for your infinite patience with us and our repetitive
23 recitation of many of the salient facts in this case.

24 Mr. Capo began his closing statements to the Court by
25 claiming that we received privileged information. Judge, we

1 received no information from Banco Popular or Oriental Bank,
2 never even met with the clients.

3 THE COURT: That's clear for me.

4 MS. DOMINGUEZ-VICTORIANO: For Individual K --

5 THE COURT: Individual K.

6 MS. DOMINGUEZ-VICTORIANO: -- and Company C, all we
7 did was receive documents that were forwarded to the
8 government, and, in fact, conducted a responsible inquiry at
9 the beginning of the engagement to determine whether there
10 could be some potential conflict with our client, Julia
11 Keleher.

12 Our client is Julia Keleher. Our client is not
13 Velazquez-Pinol.

14 And Individual K, who's also representing Company C,
15 had no interactions, business dealings, contractual
16 relationships with Julia Keleher. And if, in fact, he
17 testified, that would certainly be the substance of much of his
18 testimony: That he had no direct dealings or interactions or
19 business contracts with Julia Keleher.

20 If the scenario proposed by AUSA Capo develops, which
21 I respectfully see as a highly unlikely scenario because of the
22 way Company C and Individual K are treated in the indictment,
23 in a conspiracy in which our client is not even mentioned, then
24 Mr. Micheo is more than able. He's a very capable attorney,
25 and there is no ethical transgression to having him conduct

1 that cross-examination.

2 Again, Your Honor, in closing, Rule 1.9(b) requires
3 that both of the prongs of the rule be met in order to
4 disqualify a lawyer. And the second prong, we still believe
5 that there is no adversity of material interests between our
6 client and Individual K.

7 But even if the Court has some lingering doubt about
8 that, due to the representations of the government, we suggest
9 to the Court, most respectfully, that there is no question that
10 prong number 2, which must be met, is not met, because Mr.
11 Micheo did not acquire any information protected by the rules
12 that would have been material to the matter, in fact, acquired
13 no information at all. Because he never met with the client,
14 never discussed the case with the client, never saw the
15 subpoena and never reviewed the documents.

16 Thank you, Your Honor.

17 THE COURT: Thank you.

18 The Court will recess, and we'll reconvene in about
19 15 minutes.

20 (Whereupon a recess was taken at 3:27 p.m., until 5:08
21 p.m.)

22 THE COURT: First, the Court commends both sides for
23 being well-prepared for this hearing.

24 Second, the Court finds that the government has not
25 acted in bad faith. It has brought to the Court's attention an

1 important issue within a time window that, considering the
2 characteristics of this particular case, is not unreasonable.

3 Third, as to the disqualification request, the
4 standards for the professional conduct of attorneys in the
5 United States District Court, for the District of Puerto Rico,
6 are the Model Rules of Professional Conduct adopted by the
7 American Bar Association, as amended. The relevant rule is
8 Rule 1.9. This rule deals with duties to former clients and
9 tries to prevent conflict between those clients.

10 A paradigmatic case of conflict is presented by a
11 situation involving a prosecutor, who has investigated a case,
12 presented evidence to the grand jury, persuaded the grand jury
13 to issue an indictment against a defendant and then switch
14 sides to represent the defendant in the same case, or a case of
15 a defense attorney, who has represented the defendant in all
16 stages of the case, including, say, a suppression hearing, and
17 then changes sides to become a prosecutor in the same case
18 against his former client, the defendant.

19 But that is not what we are dealing with here. We
20 are dealing with prior representation of a witness in a case
21 involving a client. An attorney cannot use, and this is the
22 purpose of the rule, Rule 1.9, information obtained from one
23 client to the disadvantage of another or former client.

24 Based on information proffered today, whatever
25 information Ms. Dominguez received from Individual K is not

1 something that can be considered beneficial to K to the
2 detriment of Keleher, or vice versa, beneficial to Keleher to
3 the benefit -- or to the detriment of K.

4 As to Mr. Micheo's view or argument that he did not
5 acquire information protected by Rules 1.6 and 1.9(6), the
6 comment to the rules states that Paragraph (b) operates to
7 disqualify the lawyer only when the lawyer involved has actual
8 knowledge of information protected by Rules 1.6 and 1.9(c). In
9 other words, regardless of whether Mr. Micheo obtained that
10 information when he was onboard with McConnell Valdes is now --
11 if now he has that privileged information and he obtained that
12 information from Ms. Dominguez, he would have to be
13 disqualified.

14 So we are back to the issue of whether materially
15 adverse interests exist or are present in this particular case.
16 And for the reasons the Court stated, I do not see a situation
17 of materially adverse interests. Therefore, the government's
18 request to disqualify Ms. Dominguez and Mr. Micheo from
19 representing Ms. Keleher is denied.

20 Anything else before we adjourn for the day?

21 MR. MICHEO-MARCIAL: Nothing from us, Your Honor.

22 MR. CAPO-IRIARTE: Nothing from the government, Your
23 Honor.

24 THE COURT: Again, thank you, both sides, for having
25 done a good job on behalf of your respective clients.

