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P R O C E E D I N G S

March 18, 2022

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THE COURT: So, Mr. Forkner, if you and your trial team will please stand.

The grand jury has returned a second superseding indictment against you charging you with four counts of wire fraud related to the Boeing 737 MAX.

To these charges, how do you plead, guilty or not guilty?

THE DEFENDANT: I am not guilty.

THE COURT: Very good.

You all may be seated.

Who's giving the opening statement?

MR. ARMSTRONG: I am, your Honor.

THE COURT: You can either do it from that podium or from this microphone. Wherever you are, make sure you're good and loud so our court reporter can hear what you're saying.

MR. ARMSTRONG: Judge, can I move the podium?

May it please the Court, Counsel for the defendant.

Ladies and gentlemen, good afternoon.

"Gang up on them and steer them in the direction we want. Deal with them. Based upon fear, sarcasm, and

1 ridicule. Dogs watching TV."

2 Those are the words of the defendant, Mark
3 Forkner, as he tried to manipulate and deceive federal
4 regulators.

5 These regulators would decide the amount of
6 training that pilots in the U.S. needed before flying a
7 brand-new plane.

8 The regulators worked at the Federal Aviation
9 Administration, the FAA, in the Aircraft Evaluation Group.

10 The evidence will show that the defendant had
11 contempt for these regulators and he mocked these regulators
12 as he tried to get these regulators to approve the minimal
13 amount of training for pilots who would fly new planes.

14 He wanted this minimal training so that his
15 employer, Boeing, could make more money selling those
16 planes.

17 You're going to see that, after he got what he
18 wanted, the defendant realized that he had given the
19 regulators wrong information. In his own words, he realized
20 that he lied unknowingly.

21 But the evidence will show that the defendant knew
22 that, if he gave those regulators the right information, the
23 correct information, it could cost his employer tens of
24 millions of dollars. Those were his words.

25 The evidence will show that, because the defendant

1 didn't want to jeopardize his employer getting top dollar on
2 the sales of those planes, he didn't correct the lie.

3 Instead, the evidence will show, he doubled down on the lie.

4 You will see how Mr. Forkner misled and lied to
5 the regulators so his company could make tens of millions of
6 dollars. But you will hear that Mr. Forkner was a pilot.

7 Not just any pilot. He was the chief technical pilot of a
8 brand-new plane, a 737 MAX.

9 The defendant had a lot of experience. You're
10 going to hear that previously he actually worked at the FAA,
11 at the Federal Aviation Administration.

12 The evidence will show that he used that knowledge
13 to manipulate the Aircraft Evaluation Group to make millions
14 for his company.

15 And Ms. Klein, she worked for the Aircraft
16 Evaluation Group or the AEG for short. It was her job to
17 decide how much training pilots needed before they could fly
18 the 737 MAX for airlines like American and Southwest right
19 here in the Northern District of Texas.

20 The evidence will show that Ms. Klein and her
21 colleagues at the AEG trusted the defendant. Ms. Klein
22 relied on Mr. Forkner to give her true, accurate, and
23 complete information about the MAX. She needed Mr. Forkner
24 to do his job so that she could do hers.

25 The evidence will show that Mr. Forkner wanted

1 Ms. Klein to make a decision that he knew was worth tens of
2 millions of dollars for his company. The decision was the
3 level of pilot training.

4 The defendant needed Ms. Klein and her colleagues
5 at the AEG to decide one level of training over another.
6 The first option was something called computer-based
7 training. This training would save the defendant's company
8 and its airline customers a lot of money, because the pilots
9 were flying older versions of the 737, could spend an hour
10 on an iPad from anywhere, watch a video, take a test.

11 If the pilot passed that training, the pilot could
12 then fly this 737. The computer training was called WEB OB,
13 b, as in boy. Remember, Level B is the iPad training.

14 The flipside of Level B is something called
15 simulator training. A simulator is a big machine that
16 basically mimics how the 737 MAX would fly in real life.
17 But instead of an iPad, the pilots for these airlines had to
18 stop flying and then travel to wherever the simulator was
19 and take the training.

20 Simulator training was much more expensive for
21 these U.S. airlines. You will hear that if simulator
22 training was required, some of those airlines were going to
23 make the defendant's company foot the bill.

24 For example, the evidence will show that Southwest
25 Airlines had already preordered 107 737 MAX with an option

1 to buy a hundred more.

2 If the AEG required simulator training, Boeing
3 would have to pay Southwest \$1,000,000 per plane. That was
4 at least a hundred million dollars that Boeing would owe
5 Southwest if simulator training was required.

6 You will see that to the defendant this was
7 unacceptable. So he misled the AEG to make sure it didn't
8 happen.

9 In August 2016, the defendant received what he
10 wanted, a decision from the AEG saying that the MAX would be
11 Level B, would be that computer-based iPad training, but
12 that decision was provisional. It had a condition. It was
13 not final and the condition was, if there was a change to
14 the MAX, that Level B decision, that iPad decision could be
15 gone.

16 The evidence will show that Mr. Forkner celebrated
17 obtaining this decision. For him, it was a win. He sent it
18 around in celebration.

19 Fast forward three months, and you will see the
20 defendant saw a change to the MAX that could threaten Level
21 B. It was a change to the Maneuvering Characteristics
22 Augmentation System, also known as MCAS, M-C-A-S. The
23 system would push down the nose of the plane in certain
24 circumstances in flight.

25 You will see that at first, the defendant and AEG

1 knew the same thing about the MCAS. MCAS would never kick
2 in and trigger in a normal commercial flight.

3 But on November 15th, 2016, Mr. Forkner, the
4 defendant, had a shocker alert when he personally flew the
5 MAX in one of those simulators. Those were his own words in
6 a text message when he learned that MCAS was expanding.

7 He saw that MCAS could now kicked in through a
8 wider range of circumstances. And this expansion made it
9 more likely that a pilot would actually encounter MCAS
10 during flights.

11 The evidence will show that Mr. Forkner knew
12 immediately the importance of this information. And in his
13 own words, he realized that he lied to regulators, but he
14 said he lied to regulators unknowingly because he didn't
15 know about the expansion MCAS before that November 15, 2016,
16 simulator session.

17 But after that date, after November 15th, the
18 evidence will show that the defendant deceived and lied to
19 Ms. Klein about MCAS so he could keep Level B.

20 Just days after the shock alert, the defendant sat
21 down in a room with Ms. Klein. You will see that he hid the
22 change about MCAS from her. He didn't say anything about
23 how MCAS had been expanded. He didn't correct the lie.

24 You will see that in the weeks and months that
25 followed, Mr. Forkner had more opportunities to tell the AEG

1 the truth, that MCAS had expanded. But the evidence will
2 show that he chose instead to lie and to deceive.

3 After that shocker alert moment in November 2016,
4 in meetings, in conversations, in emails, the defendant,
5 Mr. Forkner, didn't correct the lie.

6 Just one week later, just one week later after
7 that shocker alert, he was sending his comments to Stacey
8 Klein about changes to a document that would finalize the
9 level of training for the MAX.

10 But you will see the defendant saw MCAS right
11 there on the page of the document. He saw it. And he saw
12 it, not once but twice. And instead, instead of telling the
13 AEG that MCAS had expanded, he misled the AEG. He told
14 Ms. Klein to delete MCAS, delete it from the document.

15 The evidence will show the defendant deceived
16 Ms. Klein and tricked her into deleting MCAS from this
17 federal training document.

18 You're going to see that the defendant's scheme
19 worked. A few months later, in July 2017, Ms. Klein
20 finalized that pilot training document. She finalized the
21 AEG's Level B, iPad pilot training decision. And she did it
22 not evaluating MCAS at all. She did it because of the
23 defendant's deception.

24 For his lies, and his deception, to get money from
25 American Airlines and Southwest Airlines, the defendant is

1 charged with four counts of wire fraud. The wire fraud
2 counts relate to the defendant deceiving the AEG, deceiving
3 Ms. Klein into approving that Level B, iPad training so that
4 Boeing could get more money for the sales of its plane and
5 the sales of its MAX to American Airlines and Southwest
6 Airlines, more money if additional training had been
7 required.

8 He's charges with counts in the indictment
9 relating to the defendant causing an invoice to be sent from
10 his employer outside the State of Texas to right here in the
11 Northern District of Texas.

12 Right here to American, right here to Southwest
13 Airlines. Also, that these airlines would pay millions more
14 to Boeing based on the training level the AEG decided.

15 This case is only about the defendant's conduct.
16 The defendant, who is on trial in this courtroom. This case
17 is about the defendant's fraud, nothing more.

18 The Court will instruct you that you must consider
19 only the evidence in this trial. Only the evidence in this
20 courtroom. You must follow the law as provided to you by
21 the judge. That means setting aside any sympathy or
22 prejudice for or against Mr. Forkner, for or against the
23 United States.

24 You all took an oath to follow the law and to
25 follow the judge's instructions, and that's why you were

1 selected as jurors.

2 After the close of the case, after all the
3 evidence is in, we will come back to you and we will ask you
4 to make a decision based on the evidence presented at this
5 trial. We will ask you to return a verdict of guilty as to
6 four counts of wire fraud charged in the indictment. Thank
7 you very much.

8 THE COURT: Thank you.

9 Counsel.

10 MR. GERGER: And now for the rest of the story,
11 because you need to know the whole story.

12 Six years ago this month, in March of 2016, Boeing
13 engineers changed MCAS and they decided who to tell. Boeing
14 engineers told management, who had to approve it, but they
15 didn't tell Mr. Forkner.

16 Boeing engineers told the top gun test pilots at
17 Boeing who had to test it, but they did not tell
18 Mr. Forkner. And Boeing even told the FAA about the change
19 to MCAS so they could certify it, but they didn't tell
20 Mr. Forkner.

21 And that's not all. Because at a company like
22 Boeing, on a project like this, they have hundreds of
23 systems on this plane and thousands of changes over the
24 course of developing it, and so Boeing needs official
25 engineering documents to do business.

1 And they wrote official engineering documents to
2 do business. And the Boeing engineers sent Mr. Forkner his
3 official engineering document that's called the CSID. And
4 when the Boeing engineers changed MCAS, they never updated
5 Mr. Forkner's official engineering document that he
6 continued to have for the rest of his career at Boeing.

7 Now, the Boeing engineers made a more detailed
8 engineering document called the COORD and they did update
9 that when they changed MCAS, with me? But that engineering
10 document was never sent to Mr. Forkner.

11 So when you are talking about what Mr. Forkner
12 knew about this MCAS change, he's not an engineer. He's not
13 a test pilot. He's not in management.

14 If the Boeing engineers didn't tell Mr. Forkner
15 about it, and if his official engineering document, which
16 you will see, had the old, wrong MCAS in it for this entire
17 time, and if the engineering document that was updated was
18 never sent to Mr. Forkner, what's the evidence they're
19 talking about?

20 When they give you snippets of bad language, a
21 chat. A chat? On November 15th of 2016 -- we're going to
22 talk a lot about that day -- a chat at 10 at night, not an
23 engineering document, not an official document of the way
24 Boeing does business, a chat that Mr. Forkner wrote at 10 at
25 night in his hotel room, after a long day in a simulator,

1 which is very important, that he's writing to his best buddy
2 at Boeing, Patrick in Seattle.

3 They're complaining about their company and
4 sometimes they talk ugly with each other in these chats and
5 they rib each other and they talk about promotions that they
6 don't get, and they talk about how they're going to lie, and
7 maybe they will get a job drinking and selling planes and
8 lying and talk that there's nothing to be proud about but is
9 not a crime.

10 And in this chat, Mr. Forkner mentions a number .2
11 and mentions MCAS, and because of that, the government says,
12 ah-ha, on November 15th, he learned about the change to
13 MCAS.

14 Now, you've already seen from the official
15 documents that Mr. Forkner had no reason to believe MCAS
16 changed and every reason to believe it had not changed.

17 And the key to this chat, this quote, "I lied"
18 chat is it is talking about what Mr. Forkner saw in a
19 simulator on November 15th of 2016.

20 And what you are going to see in the evidence is
21 that, when Mr. Forkner saw in that simulator on
22 November 15th of 2016, didn't change anything about what he
23 knew.

24 And let's talk about it right now and show you
25 what it is. These are the official Boeing documents. The

1 top one is the one that was updated and never sent to
2 Mr. Forkner. The bottom one is the one he gets.

3 And here we are, a simulator. What is a
4 simulator? It's a box that you go into as a pilot. And
5 computer programmers -- it's like the world's most
6 complicated video game, okay? And you sit in this box with
7 all these panels and it's supposed to feel like an airplane.

8 It's incredibly hard to make. It takes years to
9 make a simulator, of trial and error, and the software guys
10 want to make it feel like an airplane. And they send a
11 pilot in to try it and it doesn't work, so they go back to
12 the drawing board to do some more work. And they send in a
13 pilot to try to find out what's wrong. And this goes back
14 and forth for years and thousands of changes.

15 And on November 15th, 2016, this is what was
16 happening. Mr. Forkner was one of those pilots that Boeing
17 said, go to Montreal, Canada, where this simulator is being
18 built and it's just being developed. And there are a lot of
19 glitches, it's trial and error. But go in there, sit in it,
20 try it, and here is your instruction: When you see
21 something that doesn't work right, write it down.

22 And that's exactly what happened in the simulator,
23 because when you go into a simulator, if you see something
24 wrong, you don't think, well, the simulator must be right,
25 the plane must be wrong. No, the plane is the plane.

1 The software guys are trying to make a simulator
2 act like a plane. If you see something wrong in the
3 simulator, the instructions are, write it down, it will go
4 back to the software guys to try to fix it.

5 And by the time Mr. Forkner had gotten into the
6 simulator, there had already been over a thousand glitches
7 that the pilots had written down in this log. We call it a
8 discrepancy log.

9 Mr. Forkner went into the simulator and followed
10 his instructions and sat down and he starts flying the plane
11 level and it's not stable. He's not flying the plane. He's
12 flying the simulator and it's not level. And he writes
13 down, that's not how a real plane flies. And this case is
14 about discrepancy number 1,096 on that log that grew to over
15 3,000 discrepancies.

16 And he did exactly what he was supposed to do by
17 writing in the log the simulator is not working right in
18 this maneuver.

19 And just like it's supposed to happen, that
20 discrepancy log went to the software guys and they did their
21 thing.

22 And just what is supposed to happen next? Is more
23 pilots come to the simulator after a few weeks, to check on
24 the discrepancies.

25 And you're going to hear that Patrick, the buddy

1 on the chat, and another pilot named Barry St. Germain, they
2 go to the simulator. And what do they have? They've got
3 this list of discrepancies. They're going through it to
4 they see if the discrepancies have been fixed, 1,078, 1,077,
5 1,079. They come to the one that Mr. Forkner wrote.

6 And they're looking at the list of discrepancies.
7 They put the plane level and they're seeing, has it been
8 fixed or is it still wobbly? If it was fixed, they check it
9 off; discrepancy closed. And that's what happened in the
10 simulator.

11 What Mr. Forkner saw in the simulator, I don't
12 know if it was a clear, was not MCAS. What he saw was a
13 glitch in the simulator that got fixed.

14 He didn't see anything that happens on the real
15 airplane. He did his job by identifying the glitch. And
16 then he goes back to his hotel room and writes this chat,
17 where he's talking about drinking and he's complaining about
18 his job to Patrick, and telling Patrick, I can get you
19 fired, which is sarcasm. And if I do, maybe I'll go sell
20 airplanes and lie about our planes.

21 That's sarcasm, because Mr. Forkner goes to fly
22 for Southwest after this, because he believes in the MAX.
23 He tells Patrick in this chat, I'm in the sim, and I've put
24 it at level, but it's trimming. And a man named Vince, says
25 something about MCAS at .2, and Patrick says, I think that's

1 wrong.

2 And then Mark says, I suck at flying, which is
3 sarcastic, because he doesn't suck at flying. The sim was
4 just not working.

5 And then they say, we're really out of the loop.
6 And then the test pilots are so busy, I wouldn't want to be
7 them. Later. Later. This chat is nothing.

8 Mr. Forkner didn't see MCAS in that sim. He
9 didn't lie about that to Stacey Klein. And he certainly
10 didn't come up with a scheme to steal tens of millions of
11 dollars from American Airlines and Southwest Airlines for
12 nothing. He didn't lie about MCAS. And in all the time he
13 was there, Boeing never told him about MCAS.

14 I'm David Gerger. You already met Jeff Kearney.
15 This case has so many documents that we split it up, you
16 will meet our partner Matt Hennessey, Jon Liroff, and this
17 is Mr. Forkner.

18 Mark Forkner went to the United States Air Force
19 Academy. And he couldn't handle the -- you know, the test
20 flights, the top gun stuff, flying upside down, but he flew
21 the C17s on missions after 9-11.

22 And he met his wife Joann, in the second row, in
23 the Air Force. And like so many United States Air Force
24 veterans, after service for eight years, he went to fly
25 commercial. He went to Alaskan Airlines, and he flew the

1 737.

2 And after a few years there, as you heard, he went
3 to the FAA. What did he do at the FAA? He's not an
4 engineer. He's a government patron. He didn't work on the
5 engineering and certification.

6 He made sure that when planes are coming into the
7 airport and taking off, nobody is building a building or an
8 antenna or a phone line that's going to interfere with the
9 path. And his wife worked in the noise areas around the Air
10 Force.

11 And then Mr. Forkner got a job at Boeing, and he
12 wasn't a technical pilot. He wasn't a manager. He was a
13 leader of a group of four other technical pilots.

14 And they did talk to Stacey Klein of the AEG
15 because she needed to know when the new model comes out, how
16 is it different from the old model?

17 And then Mr. Forkner was there, a new model, the
18 737 was coming out. That's what you've been hearing about.
19 Last year's model was the 737. They called it the NG. Next
20 year's model is going to be called the 737 MAX.

21 Now, I want to talk about a word you heard about
22 these two planes called Level B. Level B was important for
23 the Boeing company. It came down from the board of
24 directors. They wanted it. It was a goal.

25 What does Level B mean? Let me explain it to you,

1 and you will see in the evidence what it meant to
2 Mr. Forkner.

3 To Mr. Forkner, Level B meant safety. What do I
4 mean? If you're going to have last year's model, the 737
5 engine and you're going to sell Southwest next year's model,
6 the 737 MAX, but you are going to have the same pilot fly
7 both planes, you will want those planes to be similar so the
8 pilot can fly both planes, fly from Dallas to Houston on the
9 NG in the morning, get out, get on the MAX, fly to New
10 Orleans, come back home on the NG. You want the dashboard
11 to be similar, the seat to feel similar, the windows to be
12 similar, the landing gear to be similar, the steering wheel
13 to feel the same.

14 And Level B, to Mr. Forkner was, if you make these
15 planes the same on the inside for the pilot, then the NG
16 pilot can safely fly the MAX.

17 And that's what these Boeing engineers were trying
18 to do, is to make the MAX feel like the NG. You know, like
19 you buy a truck one year and the next year you buy another
20 truck and they're the same.

21 Let me give you an example. On the NG, there's a
22 piece of equipment you might hear about called the stab trim
23 switch. It's actually two little switches right there
24 within reach of the pilot.

25 In certain circumstances, the pilot switches the

1 switch. When Boeing engineers were designing the MAX, one
2 of them got the bright idea, let's make the two switches
3 into just one switch, put it in the same place, it does the
4 same function and the pilot just has to flip one switch.
5 That should be easy.

6 They told Mr. Forkner about this particular
7 change, unlike the MCAS expansion, and he went crazy. This
8 will be a planet killer. This is doomsday. You're going to
9 see Mr. Forkner writes these flamboyant, exaggerated,
10 dramatic chats. You can't do that.

11 And the engineers were scratching their head to
12 Mr. Forkner, you will see this, it's government exhibit.
13 That would mean that the pilot would see two switches in the
14 morning when he's flying to Houston, get on the MAX, it
15 would be one switch. Mr. Forkner -- even at that level of
16 detail, Mr. Forkner said, don't change the dashboard. Don't
17 change the cockpit. Keep them the same.

18 Don't make the pilot think that there's -- to
19 remember the differences. If there are differences, we tell
20 the AEG, they decide if that needs training. That's their
21 job.

22 But he's pushing back on these engineers, and he
23 says, you can't do this. And often they would just back
24 down. And so the MAX, the engineer said, we will make it
25 two switches on the MAX also. No difference. Level B, a

1 pilot doesn't need any training on that feature. There are
2 two switches on the NG. There's two switches on the MAX.
3 It's the same experience for the pilot.

4 That's what Level B means. And why it was very
5 important to Mr. Forkner, even though he talks about it in
6 such exaggerated terms, he's protecting the pilot.

7 You heard a term MCAS. What is MCAS? MCAS isn't
8 like those switches. There are a lot of things on airplanes
9 that the pilot never sees. Things that work in the
10 background. Things that are just there so the plane can be
11 certified.

12 And that's because the FAA requires airplanes to
13 be able to do things, I mean, crazy things, that a normal
14 pilot will never do, fly these wind-up maneuvers, sideways
15 and fly up into the air until you stall. And the FAA says,
16 we have rules for that.

17 And when the plane has to be able to do those
18 things, and the steering wheel feels a certain way, that a
19 commercial pilot will never do, doesn't know how to do, and
20 will never see on that flight from Dallas to Houston to New
21 Orleans. And MCAS was a software, very similar to what was
22 the NG, that helped the plane do that.

23 How did Mr. Forkner even know about MCAS, if it
24 doesn't affect what a pilot does?

25 One day in 2014 an engineer and a top gun test

1 pilot were making a presentation to the FAA and to the AEG
2 about this thing, and they invited Mr. Forkner. They didn't
3 invite him in 2016 when they changed MCAS. But he saw a
4 presentation by an engineer and by a test pilot in 2014
5 about MCAS.

6 And so, in 2016, when Mr. Forkner was the chief
7 technical pilot, when he was chief pilot over these four
8 chief technical pilots, a question came up in MCAS, if the
9 pilot doesn't see it, why does it need to be trained on?

10 The question came up. He didn't initiate the
11 question, but the question came up, because Mr. Forkner was
12 told at that meeting, way back two years earlier, MCAS only
13 happens when the plane is at such a high angle of attack.
14 That's a high up angle in the air that a normal pilot would
15 never do that.

16 And you got to come back with me now to March of
17 2016. Such an important time. Remember, that's where I
18 started. The Boeing engineers are changing MCAS in March of
19 2016. That's when this question comes up for Mr. Forkner,
20 should we -- does it have to be in our manuals that pilots
21 rely on?

22 And Mr. Forkner was going to talk to Stacey Klein
23 about that and ask her whether she could agree to remove it,
24 because it's not something that a pilot would see. In
25 engineering talk, that's called it's outside the normal

1 operating envelope.

2 And Mr. Forkner, before talking to Ms. Klein, went
3 to the engineers and said, how can I describe this thing?
4 I'm not an engineer.

5 And they said, MCAS is way outside -- they say not
6 way outside -- they said MCAS is way outside the normal
7 operating envelope. It's just like something on the NG. So
8 Mr. Forkner took that answer and gave it to Stacey Klein.

9 And when the engineers gave him that answer in
10 March of 2016, they did not tell him they were changing MCAS
11 that way. Because in their minds, it was still outside the
12 normal operating envelope, and they didn't tell Mr. Forkner.

13 And then Stacey Klein had a question. Okay. Is
14 this thing, this software, is it in both of the computers on
15 the airplane?

16 Mr. Forkner had no idea. He went to the engineers
17 and said, is it in both computers? The engineers said, yes.
18 Mr. Forkner gave that answer to Stacey Klein, yes.

19 When they gave him that answer, the engineers
20 didn't tell him they were changing MCAS that month. It was
21 still going to be in both computers. They didn't tell
22 Mr. Forkner.

23 Mr. Forkner said to the engineers, what's the
24 speed that this MCAS is at? And they said, high speed, in
25 March of 2016. They didn't tell him they were changing MCAS

1 in March of 2016.

2 And finally, eventually Mr. Forkner said to the
3 engineers, I'm going to ask Ms. Klein to take it out. And
4 they never told him then that they were changing MCAS.

5 And Ms. Klein agreed to take MCAS out of the pilot
6 training manual. And maybe she believes Mr. Forkner
7 withheld something from her that he didn't even know.

8 That's why you have to have the rest of the story,
9 the other side of the phone call, instead of just the one
10 side.

11 And that's how it went until Mr. Forkner decided
12 in 2018 that he would leave Southwest. MCAS was over for
13 him when Ms. Klein removed it. He had to remind her a
14 couple of times. Remember, we agreed this is outside the
15 normal operating envelope, which is what the engineer told
16 him.

17 We will take it out. But he went on to a hundred
18 different tasks that was on his plate. And in 2018, he
19 moved to Southwest Airlines because he wanted to fly this
20 plane.

21 And he knew by then that the MAX was already
22 flying, and Southwest and United and American had the MAX,
23 and they had flown hundreds of pilots for tens of thousands
24 of flights, for millions of miles. And you know what the
25 reviews came in? The pilots said, this MAX feels just like

1 the NG. Pilots' views were, we can fly this with no
2 problems.

3 And Joanna got a transfer down to DFW, and they
4 moved here with their young son in July of 2018 to be at
5 Southwest. Right before the unimaginable happened.

6 And for causes that have nothing to do with
7 Mr. Forkner, the plane went down in Indonesia and another
8 one in Ethiopia.

9 And how Ms. Klein reacted to those events is very,
10 very important. You will see that next week when we have
11 the evidence.

12 But I mention it this afternoon for one reason. A
13 criminal investigation then began after those planes went
14 down. I'm going to mention a name that the prosecutor did
15 not mention in their opening statement. A man named David
16 Loffing. Because the criminal investigation, the FBI,
17 Department of Transportation, Department of Justice starts
18 looking at Boeing, but Boeing is so big, it's the biggest
19 employer, biggest employer, too big, right? Too big to
20 fail.

21 So the investigation looks at a man named David
22 Loffing, a very important engineer at Boeing. One of his
23 jobs was for engineering called integration, making sure
24 that the engineers talk to each other and get the
25 information out to the right people it has to go to. Well,

1 that didn't happen. Okay.

2 And I mention David Loffing because he's going to
3 come as a witness next week at this trial. You are going to
4 hear that he became a subject of this investigation.

5 The Department of Justice and the FBI and the
6 Department of Transportation, criminal investigators told
7 him, your conduct is within our review. You better get a
8 lawyer. He had a young family and a great job, status and a
9 reputation.

10 You're going to hear next week that a criminal
11 investigation is heavy, really heavy on somebody. And he
12 was called to the federal grand jury and he was read his
13 rights and he was told he was the subject.

14 And what that will do to somebody with such a
15 bright career? Even being criticized about this would be
16 terrifying.

17 And you're going to hear that Mr. Loffing went
18 into that grand jury as the subject and he came out with a
19 promotion at Boeing. Because, out of the blue, he
20 remembers, he says, a phone call with Mr. Forkner.

21 You're going to hear about that phone call next
22 week when the government puts Mr. Loffing on. There's no
23 record of that phone call. It's something that cannot be
24 proven and cannot be disproven. All right?

25 A conversation, and we're going to try to question

1 Mr. Loffing about that conversation. And some of the things
2 you will hear are, there's no record of it. There's no
3 email about it. There's no text. His assistant doesn't
4 know about it. Nobody else knows about it. He didn't tell
5 anybody about it. He didn't do anything.

6 Judge O'Connor will tell you that a criminal case
7 requires proof. It will be for you to decide whether that
8 is proof.

9 So let me end where I began. You were asked by
10 the government in voir dire, is it okay to lie or mislead?
11 Of course, not.

12 And they might ask witnesses that question next
13 week. Would you expect Mr. Forkner to tell the truth?
14 Would you expect him to lie?

15 Let me just save you some time. Nobody is saying
16 it's okay to lie.

17 So every time you hear that topic come up next
18 week, remember two things, nobody here is saying it's okay
19 to lie.

20 And also, every time you hear that, think of these
21 three questions, as you look at the evidence next week, did
22 Boeing update the official engineers' document that was sent
23 to Mr. Forkner?

24 Did Boeing send the COORD sheet that was updated,
25 the official engineering document, that was updated, did

1 they ever send that to Mr. Forkner?

2 And did Boeing give complete information about
3 MCAS to Mr. Forkner?

4 If any of these questions are no, let's not go
5 there.

6 If they continue to send him an official
7 engineering document with the wrong, old MCAS, it's a not
8 guilty.

9 If they never sent him the correct engineering
10 documents, that's not guilty.

11 And if they never gave him the complete
12 information, that's not guilty. But the answer to all of
13 three of those is no.

14 And you know who knew that Mr. Forkner was out of
15 the loop? Stacey Klein. Just like Boeing talks about the
16 FAA people, you know, in these little chats, sometimes very
17 rude, the FAA gets together and they chat about Boeing too.

18 And Ms. Klein knew how important communication
19 was. And what you're going to see is that she built a
20 fantastic communication system at the FAA in her office and
21 she bragged about it.

22 Because she knew at other FAA offices around the
23 country, they didn't talk to each other. But she got in the
24 seat of the table with the FAA flight test pilots and the
25 other people working on the Boeing account, and they

1 communicated to each other.

2 And that's why I say it's so important for you to
3 see who was invited to the meetings where Mark Forkner is
4 not invited, but the FAA was invited to learn about MCAS
5 expansion.

6 I want you to pay particular attention whether
7 Stacey Klein was invited to those meetings that Mr. Forkner
8 was never invited to where the Boeing engineers told the FAA
9 about the MCAS expansion. Was Ms. Klein invited?

10 THE COURT: Need you to wrap up.

11 MR. GERGER: All right.

12 Here's what she said to her colleagues about
13 Mr. Forkner. We communicate in our agency, but over at
14 Boeing, they don't.

15 She said, I will tell Mr. Forkner about changes to
16 the MAX that he has no idea about. And she said, we can't
17 rely on those test pilots and engineers to talk to
18 Mr. Forkner, because they're not telling him what's going
19 on.

20 Ladies and gentlemen, on behalf of Mark Forkner,
21 thank you for your attention. And next week, we will put
22 our future in your hands.

23 THE COURT: Okay. Ladies and gentlemen, that's
24 all we'll do today. We'll start up again on Monday.

25 Now, we cannot get started unless all of you are

1 here and all of you are prepared to go in the jury box.

2 We will start at 9 a.m. Monday morning. So please
3 get here before 9 a.m.

4 If all of you are here well before 9 a.m., we will
5 get you in the box and we will start the evidence.

6 Remember what I said a moment ago, unless -- the
7 more time you are in the box listening to testimony and
8 hearing the evidence, the fewer days you're going to have to
9 be driving back and forth into downtown and back. So
10 remember that.

11 You will get home at the end of today and your
12 friends, families, loved ones will be asking you, where have
13 you been? It's sort of out of the ordinary. You weren't at
14 work today. It's after 6:00. You will be home later. You
15 will tell them that you're on this jury. You may already
16 have because you've come in to fill out the questionnaire.
17 So they may already be braced for this.

18 As soon as you tell them that you've made the jury
19 and that you've had opening statements and you're coming
20 back on Monday for witness testimony, they will want to
21 pepper you with questions. What do you think? Who's the
22 judge? What are the lawyers? Are they guilty? Are they
23 not guilty? They will start asking you all these questions.
24 It's just natural.

25 My wife served on a jury, she got home, I did the

1 same thing, and I know better. So that's going to happen to
2 you. So you have to tell them, please tell them that you
3 cannot talk about the case. That, as soon as the case is
4 over, you can tell them all about the case. They're more
5 than happy -- welcome to come down and watch the case
6 themselves, if they want to, but we need you to act
7 differently now that you are jurors.

8 So please follow these instructions. Please abide
9 by these restraints. They are critically, critically
10 important. So with that said, thank you all very much for
11 your hard work.

12 You won't be coming in this door anymore for this
13 trial, I don't think. We will double-check that.

14 Your jury room is actually on the third floor, out
15 this door. Some of you may need elevators. If you can't
16 take steps, we will accommodate you. So maybe you will.
17 But if you don't, you will come in and out here. But at a
18 minimum every day, you will show up in this room that our
19 court security officer is about to take you to.

20 So be careful going home. Have a nice weekend.
21 Don't catch COVID. Be here early Monday morning. We will
22 get started as soon as you all are here.

23 (The following proceedings were had outside the
24 presence of the jury and the alternates.)

25 THE COURT: Okay. Please be seated.

1 Okay. Why don't we get here then at 8:30 on
2 Monday, and we will take up -- we will take up these issues
3 Monday morning. You can think about it in the context of
4 your opening statement now that I have a fuller picture.

5 So we will start at 8:30. You were at the bench?
6 So we will discuss those three issues on Monday morning at
7 8:30.

8 Is there anything else we should take up tonight?

9 MR. JACOBS: No, your Honor. Thank you very much.

10 MR. GERGER: No, your Honor. Thank you.

11 THE COURT: Okay. Then thank you all. Have a
12 good weekend.

13 (The proceedings concluded at 6:12 p.m.)

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REPORTER'S CERTIFICATE

I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter to the best of my ability to hear.

Further, due to the COVID-19 pandemic, some participants are wearing masks, and/or appeared via videoconferencing, so proceedings were transcribed to the best of my ability.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 19th day of March, 2022.

_____/s/ Zoie Williams_____
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