

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	*	Docket Number:
	*	1:22-CR-00035-JLS-HKS-1
	*	
	*	Buffalo, New York
v.	*	January 2, 2024
	*	8:58 a.m.
	*	
LUKE MARSHALL WENKE,	*	STATUS CONFERENCE
	*	
Defendant.	*	
	*	
* * * * *	*	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	MICHAEL DiGIACOMO, UNITED STATES ATTORNEY, By MICHAEL DiGIACOMO, ESQ., Assistant United States Attorney, Federal Centre, 138 Delaware Avenue, Buffalo, New York 14202, Appearing for the United States.
For the Defendant:	FEDERAL PUBLIC DEFENDER'S OFFICE By FRANK PASSAFIUME, ESQ., Assistant Federal Public Defender, 300 Pearl Street, Suite 200, Buffalo, New York 14202.
The Courtroom Deputy:	KIRSTIE L. HENRY

1 The Court Reporter: BONNIE S. WEBER, RPR,  
2 Notary Public,  
3 Robert H. Jackson Courthouse,  
4 2 Niagara Square,  
5 Buffalo, New York 14202,  
6 Bonnie\_Weber@nywd.uscourts.gov.

7 Proceedings recorded by mechanical stenography,  
8 transcript produced by computer.

9  
10 (Proceedings commenced at 8:58 a.m.)

11  
12 **THE CLERK:** All rise.

13 The United States District Court for the Western  
14 District of New York is now in session, The Honorable John  
15 Sinatra presiding.

16 **THE COURT:** Please be seated.

17 **THE CLERK:** United States versus Luke Marshall Wenke,  
18 Case Number 22-CR-35. This is the date for a status conference.  
19 Counsel, please state your appearances.

20 **MR. DiGIACOMO:** Michael DiGiacomo for the United  
21 States, Your Honor.

22 **MR. PASSAFIUME:** Frank Passafiume for Mr. Wenke.

23 **THE COURT:** Good morning, Counsel.

24 Good morning, Mr. Wenke.

25 **MR. PASSAFIUME:** Good morning, Judge.

1           **THE COURT:** We're here today for a status conference.  
2     At the last status conference, I had asked Probation to  
3     follow-up with **BOP** regarding what treatment options might be  
4     available.

5           And I encouraged the lawyers to keep working on their  
6     efforts to find a psychiatrist or a psychologist willing to  
7     **evaluate** Mr. Wenke.

8           So let's have an update from the Government first.

9           **MR. DiGIACOMO:** Judge, if I may, Mr. Passafiume and I  
10    have -- you may recall that, when we were here back in late  
11    December, we had reached out to a Dr. Antonius who was -- first  
12    said he was available, then indicated he wasn't available and  
13    provided the name of several individuals who he felt -- within  
14    his practice group -- could facilitate what the Court was  
15    looking for.

16           We have -- Mr. Passafiume and I have reached out to a  
17    **Dr. Corey Leidenfrost**, who's a research assistant professor with  
18    the Department of Psychiatry at the UB school.

19           He also has some qualifications where he's --  
20    according to his CV, he's a forensic psychologist at Erie County  
21    Forensic Mental Health Services.

22           And he's got some other -- according to his CV --  
23    qualities that could make him someone that could potentially do  
24    this.

25           Mr. Passafiume and I are attempting to speak with him

1 whether it's today or this week.

2 Based on some e-mail communications we had late at the  
3 end of the year with him, he had indicated that he feels it  
4 would take about ten to 20 hours to conduct an evaluation.

5 That's dependent upon the fact -- how much  
6 information, obviously, he needs. I mean, obviously, he wants  
7 Court documentation. He wants medical records, things of that  
8 nature. So he's put it in as a ballpark.

9 The one aspect of -- because he's in private  
10 practice -- comes to who would pay this. The range of between  
11 ten and 20 hours -- his hourly rate is \$250.

12 So we're looking at the low end of \$2,500 to a high  
13 end of \$5,000, so that's where we are.

14 We haven't had -- he's aware, because we put it in the  
15 e-mail, the exact quote from the statute is the type of  
16 evaluation the Court is seeking.

17 He has indicated he thinks -- he feels as if he can do  
18 it. We haven't talked to him to explain all the intricacies,  
19 and that's what we're hoping to accomplish either today or early  
20 week. And so that's the status of where we are.

21 Mr. Passafiume and I did have an opportunity to speak  
22 with Probation this morning. And it's my understanding that  
23 they have -- well, they can report as to the BOP status, as to  
24 whether or not they're in a position to undertake the  
25 evaluation.

1           The BOP is, to take the evaluation that, also, the  
2 Court is seeking. And then it's just a matter of, I guess,  
3 which avenue we pursue.

4           If I could add one other thing, Judge, just, with  
5 Mr. Leidenfrost -- I apologize for interrupting.

6           Obviously, Judge, everybody's -- I don't know -- and  
7 with respect to budgets -- I mean, the Court's well aware that  
8 there's budgetary issues right now, with there being no Federal  
9 budget in place.

10           So, obviously, spending of this nature, I would have  
11 to check to see if the office can even contribute anything or  
12 whether it would fall strictly on the Public Defender's Office  
13 if they wish to go with the private route.

14           So I wanted to put that out there, Judge, for full  
15 transparency.

16           **THE COURT:** Mr. Passafiume, any thoughts?

17           **MR. PASSAFIUME:** I agree with all that. That's all  
18 correct, yeah.

19           **THE COURT:** Okay. What about the idea of if your  
20 office had to pay? Do you have any comments on that at this  
21 point?

22           **MR. PASSAFIUME:** No. In the past, again, when there  
23 haven't been these issues, we've split it. We split the bill if  
24 we agree on an expert, and that's been the case.

25           So, hopefully, we can do that again this time, but --

1           **THE COURT:** Let's hold open that possibility.

2           **MR. PASSAFIUME:** Sure.

3           **THE COURT:** Mr. Zenger, Mr. Taberski, do one of you  
4 want to give me an update on the probation front?

5           **PROBATION OFFICER ZENGER:** Yes, Your Honor, we have  
6 been in contact with a number of representatives from the BOP  
7 who have indicated that, whether it be through the different  
8 statutes -- 4244 or 4271 -- sorry -- 4247, there actually is not  
9 a waitlist to get involved in that **evaluation** practice. Either  
10 not a waitlist or a very short waitlist.

11           The defense did bring to my attention that there's  
12 concerns about some kind of transitioning timeline.

13           We've also been in contact with the **Marshals** and they  
14 have indicated that the defendant would need a minimum of around  
15 four months remaining or longer in his sentence to be able to  
16 transition to the **BOP**, but no further complications that I'm  
17 aware of.

18           **THE COURT:** All right. There's, kind of, a lot all  
19 packed into one thought there, but two different thoughts.

20           One is that there is no -- what I'm hearing from you  
21 is that there is no waitlist, it sounds like.

22           Or, certainly, no meaningful waitlist to get a 4244  
23 evaluation, which I know is Mr. Passafiume's concern, correct?

24           **PROBATION OFFICER ZENGER:** That's correct, Your Honor.

25           **THE COURT:** What else do we need to do here today

1 other than pick a date to come back?

2 Mr. Passafiume? Mr. DiGiacomo?

3 **MR. PASSAFIUME:** That's it.

4 **MR. DIGIACOMO:** Judge, I guess what it would boil down  
5 to is what -- we haven't talked to Mr. -- **Dr. Leidenfrost**.

6 I mean, based on the papers and what he's  
7 communicated, he indicates that he should be able to handle it.  
8 It really boils down to we need to, I think, make a very short  
9 turnaround, in the sense -- so we know which avenue we need to  
10 pursue.

11 A, is **Dr. Leidenfrost** someone that, one, we can  
12 utilize here. And if not, then it sounds like we're -- we may  
13 not have any choice, but to go the **BOP** route.

14 If the Court wishes to go the **BOP** route right now,  
15 then I guess that would be the -- that would solve all the  
16 issues, and then we would just start from there.

17 So I guess, not to throw the ball back into the  
18 Court's hands, but -- or put it back into your court, Judge,  
19 it's just -- how does -- how does the Court wish to proceed,  
20 knowing the uncertainty as to whether or not **Dr. Leidenfrost** can  
21 do this?

22 And if the Court wants us to further pursue this, then  
23 I think a short turnaround would be the most appropriate thing  
24 to do here. And then report back and then determine what the  
25 next thing is.

1           Because, obviously, it's no benefit to -- to Mr. Wenke  
2           that, through no fault of his own or anybody in this  
3           Courtroom -- that various agencies have said they could and then  
4           said they couldn't do what they said that they could do.

5           And so we really need to get this to some form of  
6           finality, so Mr. Wenke can be sentenced.

7           **THE COURT:** All right. So how about a couple weeks,  
8           return. Is that about right? Or sooner?

9           **MR. DiGIACOMO:** Judge, I would say, if the Court wants  
10          to put it out two weeks, but if I could throw this caveat in  
11          there -- if Mr. Passafiume and I learn something or -- perhaps  
12          we can e-mail the Court, if **Dr. Leidenfrost** can't do it, and ask  
13          for a sooner **evaluation** or a status date, We could do that if  
14          the Court can sneak us in at some point.

15          **THE COURT:** Sure. We're here anytime. So if, in  
16          fact, you'd like me to put it on for next week, I can do that,  
17          too.

18          **MR. PASSAFIUME:** Thank you.

19          **THE COURT:** Next week? Does that make sense? Or  
20          should we go out to the 16th or 17th?

21          **MR. PASSAFIUME:** Want to do two weeks and then --

22          **MR. DiGIACOMO:** Two weeks, Judge.

23          **THE COURT:** Two weeks. And then I can --

24          **MR. DiGIACOMO:** And then we can come back if we need  
25          to get here sooner.



1           **THE COURT:** -- accelerate it if we need to.

2           All right. So two weeks from now and we'll accelerate  
3 it if we need to. 16th is Tuesday. Or the 17th.

4           Ms. Henry, thoughts?

5           **THE CLERK:** How about the 16th at 9:30?

6           **MR. DiGIACOMO:** That's good for the Government. Thank  
7 you.

8           **MR. PASSAFIUME:** Thank you.

9           **THE COURT:** All right. And if there's nothing else,  
10 folks, we'll see you then. And if you'd like to get in earlier,  
11 please reach out to us and I'll accommodate that as well.

12           Thanks, everybody. Take care.

13           **MR. PASSAFIUME:** Thank you, Judge.

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15                   (Proceedings concluded at 9:07 a.m.)

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2 In accordance with 28, U.S.C., 753(b), I certify that these  
3 original notes are a true and correct record of proceedings in  
4 the United States District Court for the Western District of  
5 New York before the Honorable John L. Sinatra, Jr.

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7  
8  
9  
10 s/ Bonnie S. Weber  
Signature

May 27, 2025  
Date

11  
12 **BONNIE S. WEBER, RPR**

13 Official Court Reporter  
14 United States District Court  
15 Western District of New York  
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