

PRESENTED AT

9th Annual Government Enforcement Institute

September 28-29, 2023

Dallas, TX

**Judicial Panel
Compiled Cases**

Presented by: Hon. Reed O'Connor

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

MARK FORKNER (01)

Case No. 4:21-CR-00268-O

MOTION FOR JOINT JURY QUESTIONNAIRE
AND UNOPPOSED MOTION FOR INDIVIDUAL QUESTIONING OF
VENIREMEMBERS REGARDING EXPOSURE TO PRETRIAL PUBLICITY

Defendant Mark Forkner moves this Court to submit a short jury questionnaire to potential jurors. The government joins in this request, and the parties have agreed to the joint questionnaire attached as Exhibit A.

Mr. Forkner also moves that potential jurors be questioned about their exposure to pretrial publicity *individually*, and outside the presence of other jurors, to avoid tainting the rest of the venire. As set out below, this is appropriate in light of the emotional nature and intense publicity of the Boeing 737 MAX tragedy. The government does not oppose this request.

1. In 2018 and 2019, two 737 MAX planes crashed, killing 346 people and causing the grounding of thousands of flights, passengers, and employees. Mr. Forkner is the sole person charged with crimes related to the 737 MAX. He has not been charged with causing the crashes -- but he is charged with defrauding two major Northern District of Texas employers, American and Southwest Airlines. The indictment alleges that Mr. Forkner withheld information about the Boeing 737 MAX from part of the Federal Aviation

Administration (“FAA”) and intentionally schemed to defraud American and Southwest Airlines.

2. The crashes and groundings have spawned Congressional hearings, civil lawsuits, TV documentaries, a book, and thousands of news articles. The media has specifically called out Mr. Forkner by name. Early on, the media reported that he had taken the “Fifth Amendment” in the DOJ investigation—which of course is inadmissible at trial. *See* Steve Miletich, *Former Boeing Official Subpoenaed in 737 MAX Probe Won’t Turn Over Documents, Citing Fifth Amendment Protection*, The Seattle Times (Sep. 7, 2019, 8:37 AM), <https://www.seattletimes.com/business/boeing-aerospace/former-boeing-official-subpoenaed-in-737-max-probe-wont-turn-over-documents-citing-fifth-amendment-protection/>. On November 30, 2021, Penguin Random House released a book highlighting Mr. Forkner’s role titled, *Flying Blind: the 737 MAX Tragedy and the Fall of Boeing*. In September 2021, PBS released a Frontline documentary doing the same titled, “Boeing’s Fatal Flaw.”

3. Various news reports—and reader/viewer comments thereto—have seemingly prejudged Mr. Forkner’s guilt and made negative remarks about him. A sample of 10 articles and attendant public comments from news media is attached as Exhibit B to this motion. Highlights of public comments about Mr. Forkner include

- i. “**Good. Prison for life.**” (Public Comment to Oct. 15, 2021 CNN article);
- ii. “Put the friends, relatives and loved ones, from those who died, **because of his lies**, on the jury.” (Public Comment to Oct. 15, 2021 FOX News article);
- iii. “...if he isn’t **charged with murder**, we may as well burn our law books as worthless.” (Public Comment to Oct. 14, 2021 Washington Post article);
- iv. “Should be **sentenced to life** in prison for the death of 349 people.” (Public Comment to Oct. 14, 2021 Associated Press article);

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