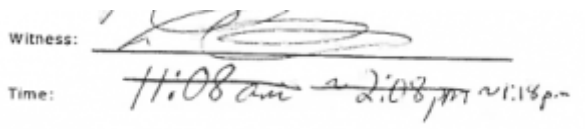
THE FBI HAS NO IDEA WHAT TIME MALWARETECH WAIVED MIRANDA

Here's the signature line of the FBI Agent who says that Marcus Hutchins waived his Miranda rights when he was arrested on August 2 of last year.



As I noted here, in addition to not memorializing that they asked him whether or not he was drunk (but not if he was high or exhausted) until four months after his arrest, the FBI wrote three different times down on his consent form, with the last being just a minute after he was arrested. In a new filing, Hutchins' lawyers disclose that the Agent didn't make those changes until a week after he was arrested — and didn't note the delay on either the form or the 302 of the interview.

> Hours before the scheduled April 19 evidentiary hearing, the government revealed to the defense for the first time how the handwritten times listed on the form came about. Since receiving the form from the government in discovery last fall, the defense had assumed that one of the agents had added the times contemporaneously with the interrogation. But that was not so. One of the two agents who interrogated Mr. Hutchins, Agent Butcher, disclosed to the prosecutors that:
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> > The header information on the advice of rights form was entered after the interview. [She] realized the time she entered on the form was

> incorrect when she was drafting the 302 and attempted to reconstruct the time based on information available to her.
>
> Agent Butcher wrote that 302, which is the FBI's official report of the interrogation, five days after the interrogation, when she was presumably back in Milwaukee. The agent did not note her alteration of the form in the 302 or anywhere else.

It almost seems like the Agent was just as confused, possibly regarding the two hour time zone change from Wisconsin, as Hutchins was.

Hutchins' lawyers want the form thrown out and the FBI's claim that he was warned to be treated with a negative inference.

> Evidence crucial to determining whether law enforcement honored Mr. Hutchins' constitutional rights in connection with custodial interrogation is spoiled, at law enforcement's hands. The form, as it existed whenever Mr. Hutchins signed it, apparently no longer exists. In its place is an altered version, and the government should not be permitted to introduce and rely on altered evidence in defending against Mr. Hutchins' suppression motion.
>
> [snip]
>
> And the Court should also draw from the circumstance an inference adverse to the government's position that Mr. Hutchins was warned of and waived his constitutional rights before making a post-arrest statement.

Hutchins team also suggests — though doesn't explain — that the Agents deceived Hutchins as to why they they were interviewing him or that he was under arrest or what waiving Miranda

entails.

> Deception, as an independent basis for suppression, requires that the defense produce clear and convincing evidence that the agents affirmatively mislead the defendant as to the true nature of their investigation, and that the deception was material to the decision to talk. United States v. Serlin, 707 F.2d 953, 956 (7th Cir. 1983). Importantly, as the Seventh Circuit explained:
>
> > Simple failure to inform defendant that he was the subject of the investigation, or that the investigation was criminal in nature, does not amount to affirmative deceit unless defendant inquired about the nature of the investigation and the agents' failure to respond was intended to mislead.
>
> Id. (emphasis added).

They haven't explained this, but perhaps it will come out on the stand when the Agent testifies next week.

There's one more fuck-up revealed in this motion.

The government wants to use two calls Hutchins made to his boss from jail, in which he apparently discussed the issues he did in the interrogation, as proof that he was willing to discuss those issues. Whether that helps their case or not, apparently the transcript the government made of those calls has some discrepancies with the actual recording.

> The calls were audio-recorded and the government has disclosed those recordings, along with draft transcripts reflecting what was said. The defense's review of the draft transcripts reveals

> minor discrepancies between the transcripts and the actual conversations. If, over Mr. Hutchins' objection, the Court chooses to consider the calls, that consideration should be based on listening to the actual calls, not just reviewing the transcripts.

The defense wants to prevent the government from using the calls (because they were made hours after his arrest and can't really reflect on his state of mind), as well.

Recording the time you gave someone their Miranda warning is pretty basic stuff. Noting that you screwed that up is also pretty basic stuff.

None of that happened properly. Normally, it's really hard to get interrogations thrown out. But the fuck-ups pertaining to this one keep mounting.