

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
 ) Case No.  
 Plaintiff, ) CR-04-127-S-RCT  
 )  
 vs. )  
 )  
 DAVID ROLAND HINKSON, )  
 )  
 Defendant. )  
 )

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BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 14, 2005 (Fri)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 5, PAGES 956 THROUGH 1,200)

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(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: I have three items that I wanted to take up with you before we bring the jury in.

Mr. Hoyt and Mr. Nolan, I was thinking last night about our logistical problems in getting the inmate witnesses here that you are going to need. Let me suggest a couple of things.

One: It occurred to me that some of the folks who were incarcerated with Mr. Hinkson are probably state and local prisoners, as opposed to federal prisoners; so you are going to need writs of habeas corpus and \*\*\*\*\* to condemn.

The other thing I was going to suggest to you is, if you would, to talk to Deputy Meyer upstairs in the Marshal's Office and let him know who you want. He can check and see where they are to make sure they are still here.

I was going to offer, if you want already have the forms filled out -- he does have a form of order for the writ of habeas corpus \*\*\*\*\* for condemn.

MR. HOYT: May I approach, Your Honor?

THE COURT: Absolutely, Mr. Hoyt.

MR. HOYT: I only have the one original. We

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1 can make copies light. I prepared a motion for order to  
2 transport on each prisoner. I prepared --

3 THE COURT: I was trying to save you a little  
4 bit of trouble. Go ahead.

5 MR. HOYT: -- an application for \*\* condemn and  
6 order pursuant to the writ for the transport.

7 THE COURT: Very good. How many people are we  
8 talking about?

9 MR. HOYT: At this point, there are only  
10 three.

11 THE COURT: Very good.

12 MR. HOYT: We have a couple others. It may be  
13 cumulative. They are not in the facility.

14 THE COURT: That is why I thought you might  
15 want to check with Deputy Meyer first so he can find out  
16 where they are.

17 MR. HOYT: We have been tracking that  
18 information.

19 THE COURT: That takes care of that one.

20 Second thing: I know you have had some  
21 discussions with Ms. Longstreet about the transcripts in  
22 electronic form. Let me make clear what it is I am  
23 trying to do here.

24 I want to make sure that we get into your  
25 record an electronic version of the transcript since the

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1 court reporter did not try to simultaneously transcribe  
2 the tapes while we were playing them.

3 I understand, through Ms. Longstreet, that  
4 there was a problem with the court reporter. A fire or  
5 something?

6 MR. HOYT: I don't know about a fire. The  
7 Government didn't make the transcript. It was prepared  
8 by Brit Groom by hiring a court reporter. We gave him  
9 the tape two or three years ago, at the time of the  
10 first detention hearing, the revocation of bond hearing.

11 He had that tape transcribed by a court  
12 reporter in the Grangeville area named Keith Evans. So  
13 the Government has never prepared a transcript. We have  
14 been using the one prepared by Mr. Groom.

15 THE COURT: My only concern was it looked --  
16 the version I had was about an eighth-generation  
17 photocopy. What we can do is scan it but the problem --  
18 I am trying to protect your record here.

19 The problem is it is not going to scan very  
20 well; and that is going to cause everybody problems down  
21 the road.

22 If we can get the best, clearest,  
23 sharpest-image copy that we can, we will scan that; and,  
24 that way, we will have an electronic version to complete  
25 the record.

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1 MR. SULLIVAN: We will attempt to.

2 MR. NOLAN: I think we can get an electronic  
3 version from the court reporter.

4 MR. HOYT: His computer went down, and he has  
5 a new computer; that was the problem.

6 Your Honor, we will search -- we have many  
7 boxes of this type of thing. We may have a better  
8 quality copy. We are talking about the body wire of  
9 March 27th?

10 THE COURT: Although, in terms of transcripts,  
11 I would like to do this for all of the transcript  
12 evidence that we have so that we have got it in the  
13 record. So it would be the March -- whatever it is --  
14 27th body wire plus the April 2003 --

15 MR. SULLIVAN: January 8, 2003, radio  
16 interview.

17 THE COURT: Yes. That one, as well. I guess  
18 we have three then; is that right?

19 MR. SULLIVAN: Only two. There are only two  
20 entered by the Government.

21 THE COURT: Are we going to do anything with  
22 regard to the tape of the April arrest, the one that --  
23 the December 7th?

24 MR. NOLAN: I don't think so. We are going to  
25 put in the full -- we are going to, at least, mark a

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1 full copy of the transcript of the body wire.

2 THE COURT: Yes.

3 MR. NOLAN: We haven't decided whether to  
4 offer the full transcript, in light of some of the  
5 testimony. If I could approach and show the court what  
6 I have?

7 THE COURT: That would be fine.

8 MR. NOLAN: This is what I have. It's on the  
9 computer, but it's a much better copy.

10 THE COURT: That is much better than the one I  
11 was looking at.

12 MR. NOLAN: We would be happy to provide that  
13 to the court.

14 THE COURT: Pick the best you have got, and  
15 give to Ms. Longstreet. She can get it imaged, and we  
16 will have it in the record.

17 MR. NOLAN: Why don't I do that now?

18 THE COURT: Finally, I am handing back to the  
19 Government -- I have reviewed the 302s, again, prepared  
20 by Agent Long and Special Agent Martin, regarding the  
21 two interviews of Chad Croner.

22 I don't see a problem with the relevant  
23 testimony that the Government has marked. Obviously,  
24 the defense may make objections as the testimony comes  
25 in; but I don't think we are going to have the problem

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1 that I was concerned about. 965  
2 MR. NOLAN: Could I give --  
3 THE COURT: Absolutely.  
4 MR. NOLAN: She will have to go to where they  
5 have excised -- where the court ordered the excising,  
6 because this is a full copy.  
7 THE COURT: All right. Well, I think we made  
8 clear on the record, did we not, the page and line  
9 numbers that we were playing. Unless you want something  
10 further done, we will just scan the entire transcript  
11 into -- well, I guess --  
12 THE COURTROOM CLERK: That's fine. I can do  
13 that. I could do 50-page segments. You know, 1 through  
14 50 would be one scan and 51 through 100.  
15 THE COURT: I was just thinking. So that it  
16 is clear what portion was actually --  
17 MR. NOLAN: I think the whole thing should be  
18 scanned. Pilled out and made a separate exhibit would  
19 be what the court ruled they could play. I think I made  
20 some objections. Probably the whole thing should be  
21 scanned as a court exhibit.  
22 THE COURT: I think that will work.  
23 MR. NOLAN: Pull from that what was played as  
24 an actual exhibit.  
25 THE COURT: The record should be clear enough.

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1 MR. NOLAN: Right. Do we get the 302s on 967  
2 Croner?  
3 THE COURT: I previously ruled on that. Not  
4 yet. It depends upon how the Croner testimony comes in.  
5 Based upon the written ruling that I made the other  
6 morning, I did review it in camera and I did not see  
7 that it was either a statement within the meaning of the  
8 Jinks Act or, at least, pretrial that there was Giglio  
9 material in there.  
10 But I did say in my order that I would  
11 reconsider it after we hear from Mr. Croner, depending  
12 upon how his testimony comes in.  
13 MR. NOLAN: The Government made an offer as to  
14 what they were going to elicit from Mr. Croner.  
15 THE COURT: The reason I asked for it is there  
16 are some things in the Croner's 302 that I am quite  
17 certain the defense does not want Mr. Croner to testify  
18 in front of the jury about, which are not relevant to  
19 the issues in this case and which the court would  
20 exclude under 403 as being unduly prejudicial.  
21 I wanted to make sure they were not going to  
22 try to offer any of those portions of the Croner  
23 testimony.  
24 MR. NOLAN: We received, yesterday,  
25 handwritten notes Mr. Croner. Would the court --

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1 if that becomes important enough down the road, that you 966  
2 will be able to make appropriate arguments and identify  
3 for anybody who is reviewing the transcript what portion  
4 was played and what was excised.  
5 Is that acceptable to the Government?  
6 MR. SULLIVAN: It is, Your Honor.  
7 THE COURT: That is all I have. Unless  
8 somebody has anything else, I think we are ready.  
9 MR. SULLIVAN: The Government has two matters.  
10 THE COURT: Go ahead.  
11 MR. SULLIVAN: I was discussing, just moments  
12 before Your Honor took the bench, with Mr. Nolan whether  
13 he had a memory of the court giving a 404(b) instruction  
14 regarding Albers-type testimony. Neither one of us seem  
15 to recall.  
16 THE COURT: Nobody asked for it. I was  
17 certaining going to include such an instruction in the  
18 final jury instructions, but I will be happy to give one  
19 first thing this morning.  
20 MR. NOLAN: I am not requesting it.  
21 THE COURT: You are not requesting it?  
22 MR. NOLAN: No.  
23 THE COURT: I guess we can revisit the issue  
24 when we settle the closing instructions, as to whether  
25 you want one.

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1 THE COURT: I would like to see a copy of 968  
2 those, as well.  
3 MR. NOLAN: If the court would do me a favor  
4 and show which ones the court, in effect, excluded so I  
5 don't go into them in cross, if you know what I'm  
6 saying.  
7 THE COURT: Yes, I do.  
8 MR. HOYT: Your Honor, could we probably get  
9 an extra copy?  
10 THE COURT: Why don't you do this. I don't  
11 need to do this right now.  
12 MR. NOLAN: That's right. He is not the next  
13 witness.  
14 THE COURT: We are not going to get to him  
15 until next week -- oh, I guess today.  
16 MR. HOYT: Maybe we could darken them or  
17 something. They are pretty light.  
18 THE COURT: I will have Ms. Barrett make some  
19 copies for us.  
20 MR. SULLIVAN: One other matter. We are going  
21 to call Joe Swisher as our next witness. This matter  
22 relates to his cross-examination.  
23 I wanted to ensure that what not be a matter  
24 of cross-examination is the trial he had some twenty  
25 years ago where he was acquitted.

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1 The allegation was child abuse, and I see no  
2 possibility of that coming in. Obviously, under the  
3 rules, it is not proper cross-examination.

4 THE COURT: That is my understanding of the  
5 rule.

6 Mr. Nolan?

7 MR. NOLAN: First of all, you know, I think we  
8 have been doing a pretty good job of --

9 THE COURT: You are doing a fine job.

10 MR. NOLAN: I thought about that last night.  
11 Here is what I intended to do: I intended to establish  
12 that he, also, has a bias against Mr. Albers. The bias  
13 relates to a lawsuit he was involved in. I wouldn't get  
14 into the nature of it, but it was a criminal matter.

15 He was ultimately found not guilty, but he  
16 harbors hostility and never has liked him. So in other  
17 words, I wasn't going to get into the circumstances or  
18 the nature of the allegation; but that there is a long  
19 period of hostility towards Mr. Albers.

20 So the conversation between Mr. Hinkson and  
21 Mr. Albers might very well -- Mr. Hinkson and  
22 Mr. Swisher might very well their both disliking Albers.  
23 That was how I was planning on doing that.

24 MR. SULLIVAN: That is why I wanted to bring  
25 it up. I don't want to see a foot in the door to

1 explore this. This sounds like the first foot of  
2 several.

3 THE COURT: I do not think that opens the  
4 door. I think that is the appropriate way to handle a  
5 sensitive issue.

6 MR. SULLIVAN: I object to it.

7 THE COURT: Well, it does go to potential bias  
8 of the witness against Mr. Albers.

9 MR. SULLIVAN: He is talking about the  
10 witness's bias against some third party who is not a  
11 witness in the case.

12 MR. NOLAN: It has to do with his testimony  
13 that he was -- Mr. Hinkson was talking about Albers and  
14 that the two of them had hostility towards Albers during  
15 those conversations. It wasn't just Mr. Hinkson.

16 I have given the complete -- that is what I  
17 was going to do, which I think is the proper thing, not  
18 getting into any of the details.

19 THE COURT: It certainly does help to explain  
20 why he would be willing to entertain the suggestion of  
21 harm to Mr. Albers.

22 MR. SULLIVAN: Which is good for the  
23 Government.

24 THE COURT: Well, it could cut both ways,  
25 depending how the jury sees. They might conclude that

1 Mr. Swisher was off on a lark of his own.

2 I am not going to argue the defense's case for  
3 them, but let's do it this way. Let me hear Mr. Swisher  
4 on direct. And then when we get to cross-examination,  
5 if I have a concern about Mr. Nolan going into that  
6 area, we can take it up outside the presence of the  
7 jury.

8 At this point, my preliminary ruling is that  
9 Mr. Nolan is entitled to cross to the limited extent on  
10 this issue that he proffered.

11 MR. SULLIVAN: Does limited extent, Your  
12 Honor, include, "You were tried and acquitted?"

13 THE COURT: Well, I think the way he said it  
14 was a fair question.

15 "Isn't it a fact that you dislike Mr. Albers  
16 by virtue of the fact that, when he was the Prosecuting  
17 Attorney for Idaho County, he prosecuted you in a case  
18 that you were ultimately acquitted of?"

19 And I assume the answer will be, "Yes, that's  
20 true."

21 That is as far as we are going to take it. I  
22 think that is fair cross-examination.

23 MR. NOLAN: I wouldn't go any further than  
24 that, Your Honor.

25 THE COURT: If you want to instruct --

1 MR. SULLIVAN: This is a trial twenty years  
2 ago.

3 THE COURT: Well, but the guy could still hold  
4 a grudge for twenty years, Mr. Sullivan. As I say, it  
5 is certainly not the fact that -- it is certainly not  
6 admissible for impeachment, in the sense of a prior  
7 conviction, because it did not result in a conviction.

8 MR. SULLIVAN: We are bringing to the jury's  
9 attention something that would be totally inadmissible  
10 for any purpose except to show that something that is  
11 favorable to the Government.

12 They want to bring out something favorable to  
13 the Government. I say that is the camel's nose under  
14 the tent.

15 THE COURT: Well, I do not agree that it is.  
16 A question I think you are now raising which is actually  
17 a good one -- Mr. Nolan, perhaps you can respond to  
18 it -- if it is 23 years ago, that is a long passage of  
19 time.

20 MR. NOLAN: But the fact of the matter is, I  
21 mean, if I needed to, I could establish that that  
22 hostility went right up to the day that Mr. Swisher's  
23 father provided the letter which was published by  
24 Mr. Hinkson to defeat him in the -- I wasn't going to go  
25 into all of that.

1 MR. SULLIVAN: There is a lot of history to  
2 all this.

3 THE COURT: I recall from the tax trial -- as  
4 I recall, Mr. Albers testified in the tax trial, didn't  
5 he, Mr. Hoyt?

6 MR. HOYT: Yes, he did.

7 THE COURT: And I recall that we did get into,  
8 I think, some of the election issues and Mr. Hinkson's  
9 participation.

10 MR. SULLIVAN: The election issues related  
11 right back to Mr. Albers trying Mr. Swisher for this  
12 child abuse charge.

13 THE COURT: Let's do it this way.

14 MR. NOLAN: I wasn't going to get into that.  
15 I'm saying that shows that the hostility continued.

16 THE COURT: I think the Government is entitled  
17 to -- you said you are not calling Mr. Albers?

18 MR. SULLIVAN: I'm not.

19 THE COURT: Are you going to get into the  
20 election issues at all in order to establish motive by  
21 Mr. Hinkson?

22 MR. SULLIVAN: I had no intention of doing it.

23 THE COURT: You are going to leave it -- as  
24 far as the jury is concerned, you are going to leave it  
25 as animosity arising from the Annette Hasalone

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1 litigation?

2 MR. SULLIVAN: Yes. Mr. Swisher would  
3 testify, actually, not just to Swisher's animosity to  
4 Albers but Mr. Hinkson's animosity to Albers. I didn't  
5 intend to develop anything about Swisher's feelings.

6 THE COURT: The jury has already heard the  
7 testimony about the Annette Hasalone litigation. I  
8 think they have heard enough with regard to why  
9 Mr. Hinkson -- and as I understand it, Agent Long is  
10 also going to testify, when he interviewed Mr. Hinkson,  
11 Mr. Hinkson confirmed his dislike for Mr. Albers.

12 MR. SULLIVAN: This is an offer to kill  
13 Mr. Albers for \$10,000 that Swisher is going to --

14 THE COURT: I understand that. You are going  
15 to be allowed to elicit on direct that the offer was  
16 made.

17 I think I am going to reiterate my prior  
18 ruling. I think Mr. Nolan's proffered cross-examination  
19 is proper, limited in scope as Mr. Nolan is offering to  
20 do.

21 I will certainly entertain another objection  
22 from the Government as we hear the evidence come in. At  
23 this point, my preliminary ruling is he is entitled to  
24 ask those questions.

25 All right. Let's bring in the jury.

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1 (The following proceedings were held in the  
2 presence of the jury:)

3 THE COURT: Mr. Swisher, if you would, step  
4 forward here. The clerk will administer the oath. Good  
5 morning, sir.

6 THE COURTROOM CLERK: Please raise your right  
7 hand.

8 \* \* \*

9 ELVEN JOE SWISHER,  
10 having been called, sworn, testified as follows:

11 THE COURTROOM CLERK: Thank you. Please take  
12 the stand, sir. If you would, please state your name  
13 and spell your last name for the record.

14 THE WITNESS: Elven Joe Swisher,  
15 S-w-i-s-h-e-r.

16 THE COURTROOM CLERK: Thank you.

17  
18 DIRECT EXAMINATION

19 BY MR. SULLIVAN:

20 Q. Mr. Swisher, how old of a man are you?

21 A. I turned 68 yesterday.

22 Q. You live in Idaho?

23 A. Yes, I do.

24 Q. For how long?

25 A. My gosh. Over thirty years.

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1 Q. Where were you born and raised?

2 A. I was born and raised in the Upper Ozarks area  
3 of Missouri.

4 Q. What is the level of your education?

5 A. I have an undergraduate degree from Central  
6 Missouri University. I have a graduate degree, a  
7 Master's, from the University of Missouri, Columbia. I  
8 have had doctoral studies at the University of Idaho and  
9 Washington State University.

10 Q. What are your degrees in?

11 A. My undergraduate degree was a Bachelor of  
12 Science in psychology and sociology.

13 Q. What was your Master's Degree in?

14 A. In psychiatric social work.

15 Q. You say you also engaged in doctoral studies?

16 A. Yes, in the field of special education. I am  
17 still short a dissertation.

18 Q. Did you work in that field?

19 A. Yes.

20 Q. What did you do in that regard?

21 A. Oh, my goodness. I began work at the Old  
22 King's Road in Fulton, Missouri, State Hospital Number  
23 One. It was a psychiatric hospital for adults and  
24 juveniles, as well.

25 Q. How long were you there?

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1 A. I was there about four years, and then I  
2 transferred with advancement to the State of California.  
3 I became employed with the Bureau of Protective Services  
4 there. I rendered service to the three major hospitals  
5 in California -- Mendocino, Sonoma, and Napa.  
6 THE COURT: These would be the state mental  
7 hospitals, Mr. Swisher?  
8 THE WITNESS: Yes. Two of them are state  
9 mental hospitals, and one is a hospital for the  
10 retarded.  
11 BY MR. SULLIVAN:  
12 Q. How long did you -- were you employed in this  
13 field of psychology and social work? Is that a fair  
14 characterization of it? I don't mean to --  
15 A. Oh, I think that's fair. In excess of twenty  
16 years. And then I have been in private practice and  
17 kept my hat in the ring for some period of time. I am  
18 still certified.  
19 Q. Certified as what?  
20 A. I am certified as a political social worker.  
21 I belong to the Academy of Certified Social Workers. I  
22 am a certified psychotherapist through the APA. I am  
23 also a certified forensic counselor.  
24 Q. Did there come a time, after some twenty years  
25 of working in this field, that you switched careers?

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1 A. I have taken CEUs from the University of Idaho  
2 in metallurgy, assaying, mine development, things of  
3 that nature.  
4 Q. Did you work in that field?  
5 A. Yes.  
6 Q. What did you do?  
7 A. In the early -- late '70s, early '80s, I  
8 brought one of the first mines back into production in  
9 Idaho since the war years.  
10 Q. Do you still work in that field?  
11 A. Yes.  
12 Q. Do you work for a particular employer?  
13 A. I am more considered a consultant at this  
14 point in time.  
15 Q. All right. Consulting with whom?  
16 A. Oh, I consult with the mining companies, with  
17 people that need plants set up either in mining or in  
18 environmental remediation.  
19 Q. Prior to being a consultant, did you work full  
20 time for some company?  
21 A. Oh, pretty much for companies I had an  
22 involvement with. I worked at my father's company for a  
23 number of years, Idaho Mining and Development Company.  
24 Q. Say it again.  
25 A. Idaho Mining and Development Company.

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1 A. That's correct.  
2 Q. When, approximately, did you switch careers?  
3 A. Oh, in the early to mid '70s, I began to get  
4 into mining and get into a little less strenuous  
5 occupation.  
6 Q. That was quite a switch. How did you have an  
7 interest in mining?  
8 A. Well, I have an old friend, who is now dead --  
9 bless his soul -- and he was one of the -- he was the  
10 epitome of an Idaho range rider till the day he died.  
11 He carried an old, single-action Colt .45 and rode the  
12 range in the back country.  
13 Q. My question is: How did you manage to switch  
14 careers?  
15 A. I'm getting to that, counselor.  
16 THE COURT: Get to it, Mr. Swisher.  
17 THE WITNESS: Anyway, he introduced me to the  
18 back country and some mining property that he knew of.  
19 And then, as a result of my association with him, I  
20 became actively involved in mining.  
21 BY MR. SULLIVAN:  
22 Q. Did you engage in any academic studies, mining  
23 or chemical analysis?  
24 A. Oh, yes.  
25 Q. What did you do in that regard?

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1 Q. Where was that located?  
2 A. It was located in Cottonwood, Idaho.  
3 Q. Where is Cottonwood?  
4 A. Cottonwood is approximately sixty miles south  
5 of Lewiston.  
6 Q. In the year 2000, for whom were you working?  
7 A. Actually, in the year 2000, I was probably  
8 still doing some work for Idaho Mining and Development  
9 and, also, for Northwest Analytical.  
10 Q. Where was Northwest Analytical located?  
11 A. Also located in Cottonwood, Idaho.  
12 Q. What was your position with Northwest  
13 Analytical?  
14 A. Oh, I was an assayer; and I handled most of  
15 the assaying for that company.  
16 Q. What is assaying? Can you define "assaying"  
17 for us?  
18 A. Oh, assaying is, basically, the determination  
19 of metals or minerals in solid or solution.  
20 Q. Did you ever perform assaying for a company  
21 called WaterOz in Grangeville, Idaho?  
22 A. Yes, I did.  
23 Q. When did you start doing that?  
24 A. Probably about mid year 2000.  
25 Q. How did you get introduced to doing that work?

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1 A. Well, I met David Hinkson at the office of my  
2 attorney there in -- well, he was operating out of  
3 Grangeville at that time. And I was introduced to  
4 Mr. Hinkson. Mr. Hinkson invited us -- my wife was with  
5 me -- he invited us out for a tour of his plant.  
6 Q. Who is the attorney that you were seeing at  
7 that point?  
8 A. Brit Groom.  
9 Q. Was that a chance meeting of Mr. Hinkson?  
10 A. I believe so.  
11 Q. What did he invite you out to his plant to do?  
12 A. Oh, to look around.  
13 Q. Did this include some professional services or  
14 just socializing?  
15 A. No. I think that it was more of a social  
16 nature at that time.  
17 Q. Did you go out to his plant?  
18 A. Yes.  
19 Q. What did you do there?  
20 A. He showed us around the plant. He showed us  
21 through. And, oh, he had a number of tapes and  
22 information on water products and so on that he provided  
23 for us.  
24 Q. Did you get interested in his water product?  
25 A. Yes.

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1 Q. When did that start?  
2 A. That started in -- sometime in 2000.  
3 Q. How did you begin working for him in this  
4 professional relationship?  
5 A. Would you say it again?  
6 Q. How did it start? Did he ask you to do this?  
7 A. He didn't initially ask. His manager did.  
8 Q. Who was that?  
9 A. That was a lady by the name of Teri (sic.)  
10 Gray.  
11 Q. What did she want you to do?  
12 A. She wanted us to run tests on the product to  
13 verify that there was the correct amount or  
14 parts-per-million of the minerals that they indicated on  
15 the label actually in the product itself.  
16 Q. Did you, also, discuss that to any degree with  
17 Mr. Hinkson that you were going to provide that service?  
18 A. Yes.  
19 Q. What did you discuss with him about doing  
20 that?  
21 A. Just that we had been asked to provide that  
22 and, if he had no objection, we would do that.  
23 Q. What did he say to that?  
24 A. To go ahead.  
25 Q. What did you do then, in that regard, to

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1 Q. For what purpose or reason?  
2 A. Well, I had been taking medication for chronic  
3 arthritis; and it hadn't been terribly effective. It  
4 was my understanding that the water products may be more  
5 effective.  
6 Q. Did you start using them?  
7 A. Yes, I did.  
8 Q. What sort of conditions did you use them for?  
9 A. Primarily, for the arthritis.  
10 Q. Did you discuss that with Dave Hinkson?  
11 A. With Dave?  
12 Q. Yes.  
13 A. Yes.  
14 Q. Did you become a social friend of  
15 Mr. Hinkson's?  
16 A. Yes.  
17 Q. And would you -- in what fashion would you  
18 socialize with him?  
19 A. Oh, I would go out and, you know, talk with  
20 him; and he would come in town and meet with my wife and  
21 I. We went to a number of dinners together, things of  
22 that nature.  
23 Q. Did there come a time when you provided  
24 professional services to his company, WaterOz?  
25 A. Yes.

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1 provide that professional service?  
2 A. Well, I think, initially, we were supplied  
3 samples to run; and we ran those to determine the parts  
4 per million and whether, actually, what was stated on  
5 the label existed in the product. On the first -- on  
6 the first couple of runs of that type that we ran, it  
7 was as stated on the label.  
8 Q. How often did you do this testing?  
9 A. Initially, we started out, oh, a couple of  
10 times a month; and then that increased in frequency --  
11 Q. To what?  
12 A. -- as we were asked. Oh, I think, at the time  
13 that our last services were provided, they were on a  
14 daily basis.  
15 Q. Did you work almost daily on it, on this then?  
16 A. In one way or another.  
17 Q. Would you be in the WaterOz plant frequently?  
18 A. Yes.  
19 Q. Would you be in contact with Mr. Hinkson  
20 frequently?  
21 A. Yes.  
22 Q. Did you continue, also, to socialize with  
23 Mr. Hinkson?  
24 A. Yes.  
25 Q. Do you see Mr. Hinkson in the courtroom today?

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1 A. Yes. 985  
2 Q. Where is he?  
3 A. He is seated between the two gentlemen to your  
4 immediate left.  
5 THE COURT: The record will reflect that the  
6 witness has identified the defendant, Mr. Hinkson.  
7 BY MR. SULLIVAN:  
8 Q. How long did your professional services last  
9 with WaterOz?  
10 A. From probably about mid year 2000 up until the  
11 end of the first quarter in 2003.  
12 Q. What were you charging for these services?  
13 A. We were charging standard lab fees on an  
14 hourly basis on work provided and performed.  
15 Q. Now, was this under the auspices of one of the  
16 companies that you worked for at that time?  
17 A. Yes.  
18 Q. Which company?  
19 A. Northwest Analytical.  
20 Q. Can you tell us what a monthly charge would be  
21 to WaterOz in this period?  
22 A. Oh, it was variable. It might have been  
23 anywhere from \$1,000 up to \$4,000 or \$5,000.  
24 Q. Could you give us any estimate of what it  
25 would have -- that charge, that is, what you were

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1 charging WaterOz -- would have been for the entire year 986  
2 of, say, 2002?  
3 A. Probably in that first year, that short year,  
4 probably around \$20,000, \$25,000. That's just a guess.  
5 I don't have the records with me.  
6 Q. How were you actually paid?  
7 MR. NOLAN: I'm sorry. Can I just have a  
8 moment?  
9 THE COURT: Sure.  
10 (Whereupon, an off-the-record discussion was  
11 held between Mr. Sullivan and Mr. Nolan.)  
12 BY MR. SULLIVAN:  
13 Q. Let me ask for a clarification, please,  
14 Mr. Swisher. You gave us an answer. My question was:  
15 Can you approximate what your charge was to WaterOz for  
16 your services in the year 2002? Did you hear that  
17 question correctly?  
18 A. Oh, my services?  
19 Q. Yes, for Northridge (sic).  
20 A. For Northwest Analytical?  
21 Q. I'm sorry. Northwest Analytical?  
22 A. Right.  
23 Q. What was it for 2002?  
24 A. I am saying somewhere around \$25,000.  
25 Q. You mentioned something about a short year?

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1 A. Yeah. 987  
2 Q. Mr. Nolan wasn't sure what you meant. In  
3 2001, would that have just been services for  
4 approximately six months or thereabouts?  
5 A. Oh, I'm sorry. I beg your pardon. I have a  
6 head cold, and it's really affected my hearing. Did you  
7 say the year 2000, which would have been the short year,  
8 or 2002?  
9 Q. I said 2002.  
10 A. Well, then it would have probably been in the  
11 neighborhood of double that amount, probably closer to  
12 fifty.  
13 Q. All right. Thank you. If you don't hear  
14 something too well, please try to, you know, let me  
15 know. Now, you told us that you continued to socialize  
16 with Mr. Hinkson?  
17 A. That's correct.  
18 Q. Did you ever go to his home?  
19 A. Yes.  
20 Q. Where was his home?  
21 A. He had a trailer immediately adjacent to the  
22 WaterOz plant.  
23 Q. Can you describe this home? Let me ask this:  
24 Was it the kind of trailer that was on wheels?  
25 A. Oh, no.

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1 Q. What kind was it? 988  
2 A. It was set -- based on a foundation. It had  
3 an upstairs, downstairs, several bedrooms, baths, dining  
4 room, living room, up and down.  
5 Q. In your socializing, did you ever -- did  
6 Mr. Hinkson ever inquire about your background, your  
7 personal background?  
8 A. He may have.  
9 Q. Have you ever served in the Armed Forces,  
10 Mr. Swisher?  
11 A. Yes.  
12 Q. Did Mr. Hinkson ever ask you about your  
13 service in the Armed Forces?  
14 A. Yes.  
15 Q. What branch did you serve in?  
16 A. United States Marine Corps.  
17 Q. Did you ever discuss that with Mr. Hinkson?  
18 A. Yes.  
19 Q. And what was the nature of your discussion  
20 with him?  
21 A. As I recall, Mr. Hinkson stated he had been in  
22 the Navy. I indicated I had been in the Marine Corps.  
23 He asked if I had served in any combat situations. I  
24 explained -- or told him, "Yes."  
25 Q. What else did he ask you about combat

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1 situations? 989  
2 A. He asked if I had ever killed anyone.  
3 Q. What did you say?  
4 A. I told him, "Yes."  
5 He asked, "How many?"  
6 And I told him, "Too many."  
7 Q. Was that one conversation or several?  
8 A. It may have happened over a prolonged period  
9 of time.  
10 Q. What period of time?  
11 A. Oh, probably off and on throughout the year  
12 2001.  
13 Q. Did you ever have occasion to discuss weapons,  
14 guns, with Mr. Hinkson?  
15 A. Briefly.  
16 Q. Did you ever go shooting guns with  
17 Mr. Hinkson?  
18 A. Yes.  
19 Q. And on how many occasions?  
20 A. Only one that I recall immediately.  
21 Q. Did you ever claim to Mr. Hinkson that you had  
22 proficiency with firearms?  
23 A. I believe he knew that I was an expert  
24 rifleman, pistolman.  
25 Q. How did he know that?

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1 there. I assumed they came from Mr. Hinkson. 991  
2 Q. What kind were they?  
3 A. One of them was a shotgun; and I think there  
4 was another rifle there, as well.  
5 Q. What did you bring?  
6 A. I brought a .22 Henry lever-action rifle and a  
7 .32 semi-automatic Browning pistol, and a .45 auto.  
8 Q. How was your shooting?  
9 A. I always hit what I aim at.  
10 Q. How was Mr. Hinkson's shooting?  
11 A. Not terribly good.  
12 Q. What were you shooting at?  
13 A. Well, we shot some trap with a shotgun. I  
14 only shot maybe a half dozen times because I recently  
15 had a pacemaker installed; and a shotgun, a twelve-gauge  
16 particularly, kind of jars you around a little. I  
17 decided I would quit in due time, but I hit my targets.  
18 As I recall, I don't believe David hit any of his.  
19 THE COURT: Counsel, you might have him  
20 explain, for those jurors who do not know what trap  
21 shooting is, a little bit more about that sport.  
22 MR. SULLIVAN: Yes, Your Honor.  
23 Q. Were you engaged in trap shooting?  
24 A. Yes.  
25 Q. Please explain what that is.

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1 A. I probably told him. 990  
2 Q. I'm sorry?  
3 A. I probably told him, and he observed my  
4 shooting.  
5 Q. What was the occasion that you went shooting  
6 with him?  
7 A. I believe it was probably in December,  
8 sometime in December of 2002, that he had a gentleman  
9 from the Soviet Union, from the Ukraine, visiting. I  
10 received a call from Mr. Hinkson.  
11 He said we were going to meet out at an  
12 employee's who lived in the country, Mr. Rich Bellon.  
13 He indicated that his friend from Russia would like to  
14 do a little shooting. Apparently, they didn't get to do  
15 much of that in the Soviet Union. So he asked if I  
16 would bring some weapons.  
17 Q. What did you do?  
18 A. I cleared my schedule and made time for that,  
19 and I took a rifle and several handguns; and we shot  
20 during the course of the day.  
21 Q. Who did?  
22 A. Myself, Mr. Hinkson, and the Russian  
23 gentleman.  
24 Q. Did Mr. Hinkson bring his own weapon?  
25 A. I'm not sure. There were a couple of others

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1 A. Well, that's where -- in this case, we didn't 992  
2 have a machine. We had a thrower and the people --  
3 Q. I'm sorry. A "thrower," is that a person?  
4 A. Yes.  
5 Q. Someone who --  
6 A. The person who wasn't shooting would throw the  
7 clay pigeons for the others. You have a spring-loaded  
8 hand unit that will kick them out, I expect, thirty,  
9 forty yards without any problem at all, airborne. So  
10 that's, basically, what it is. And the challenge is to  
11 hit the airborne target when it's across from you.  
12 Q. During 2001 and 2002, did you become aware of  
13 legal problems that Mr. Hinkson was having?  
14 A. Yes.  
15 Q. Who made you aware of those legal problems he  
16 was having?  
17 A. Primarily, Mr. Hinkson.  
18 Q. Would he talk about it on more than one  
19 occasion to you?  
20 A. Yes.  
21 Q. What did he -- what sort of legal problems did  
22 he tell you he was having?  
23 A. Well, he had had some difficulty with, as he  
24 described it, an ex-employee who had sued him for a  
25 large amount of money; and this was before I met him.

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1 But at the time I met him, he was very disturbed because  
2 the employee had been awarded by the court about  
3 \$100,000.

4 Q. Was he upset about that?  
5 A. Oh, yes.  
6 Q. Did he talk about it?  
7 A. Yes.  
8 Q. On more than one occasion?  
9 A. Yes.  
10 Q. What would be his demeanor when he would talk  
11 about that?  
12 A. Well, he was very angry, initially; and his  
13 demeanor reflected that.  
14 Q. Did he talk about the lawyer for this  
15 employee?  
16 A. Yes.  
17 Q. Did he name him?  
18 A. Yes.  
19 Q. Who was that?  
20 A. That was a Grangeville attorney by the name of  
21 Dennis Albers.  
22 Q. Did Mr. Hinkson express any anger towards that  
23 lawyer, Mr. Albers?  
24 A. Considerable.  
25 Q. Did Mr. Hinkson ever ask you to do anything

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1 regarding Mr. Albers?  
2 A. Yes.  
3 Q. What did he ask you?  
4 A. Oh, he talked about things prior to my  
5 appearance before the Grand Jury in Coeur d'Alene in  
6 April of 2002, but he never really asked me to do  
7 anything until after I had appeared there before the  
8 Grand Jury.  
9 Q. Let me back it up then. Prior to your  
10 appearance in the Grand Jury -- you say it was April of  
11 2002?  
12 A. Yes.  
13 Q. Is that correct? What were the things that  
14 Mr. Hinkson said about Mr. Albers?  
15 A. Oh, prior to that time?  
16 Q. Yes.  
17 A. Oh, he wanted to see him dead. He was very  
18 upset because he felt that he had abused the judicial  
19 system. He was, also, angry with other people at that  
20 time, as well, who had been involved in the case.  
21 Q. After your appearance before the Grand Jury --  
22 did you say Coeur d'Alene?  
23 A. Yes.  
24 Q. And that was April 2002?  
25 A. Correct.

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1 Q. Did Mr. Hinkson bring up Dennis Albers again  
2 to you?  
3 A. Yes.  
4 Q. Where did it occur?  
5 A. That occurred at WaterOz, in his private  
6 office.  
7 Q. Did anything lead up to it?  
8 A. Well, he just asked to talk to me in private.  
9 Q. Did you know what about?  
10 A. Well, I was there, yes.  
11 Q. Well, when he asked to talk to you in private,  
12 did you know what he was leading up to?  
13 A. Oh, not at the time but -- but we had talked  
14 before, in private, on a sundry of subjects.  
15 Q. On this occasion, did he say something further  
16 about Dennis Albers?  
17 A. Yes.  
18 Q. Did he include Mr. Albers' family?  
19 A. Yes.  
20 Q. What was it that Mr. Hinkson said?  
21 A. Well, he started off by talking about how he  
22 would like to have Mr. Albers and his family,  
23 particularly his wife, Margaret, tortured and killed.  
24 And he went into quite a description on the torture.  
25 Q. And what was that?

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1 A. He would -- he said he would like to see them  
2 stripped, bound, and gagged, and then burned with  
3 cigarettes or cigars.  
4 And then while Albers was down on his knees  
5 observing this occurring to his wife and any other  
6 family members that might be present, he wanted to have  
7 a plastic bag put over her head so that she would  
8 suffocate to death in front of him, along with other  
9 family members. Then he wanted that procedure repeated  
10 on Mr. Albers, himself.  
11 Q. Did he want you to do something in that  
12 regard?  
13 A. When he finished describing what he wanted  
14 done, then he offered me \$10,000 a head to do it.  
15 Q. What was his demeanor like when he was telling  
16 you these things?  
17 A. He was cool and calm at that time.  
18 Q. What was your response to Mr. Hinkson?  
19 A. I told him he was out of his mind and he  
20 needed to knock that kind of BS off, and I didn't even  
21 think about it.  
22 Q. How did he respond to that?  
23 A. He just smiled and then didn't reply and  
24 changed the subject.  
25 Q. With regard to your Grand Jury appearance in

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1 Coeur d'Alene in April of 2002, had you been subpoenaed? 997  
2 A. Yes.  
3 Q. Did you know at the time -- who subpoenaed  
4 you, first?  
5 A. I believe that was the Federal Prosecutor. I  
6 believe that was Nancy Cook who subpoenaed me.  
7 Q. Did someone physically hand you a document  
8 titled "subpoena"?  
9 A. Yes, but I'm not sure who handed it to me.  
10 Q. What did that subpoena require you to do?  
11 A. It required me to bring documentation  
12 regarding my contacts, professional contacts as an  
13 assayer and chemist, with WaterOz and then to present  
14 myself at 8:30 the morning that had been scheduled for  
15 me before the Grand Jury to appear.  
16 Q. Did you do so?  
17 A. I'm sorry?  
18 Q. Did you do so?  
19 A. Yes.  
20 Q. Were you met by anyone at the courthouse?  
21 A. Yes.  
22 Q. Who were you met by?  
23 A. As I recall, I think -- well, it was one of  
24 the people involved in the Grand Jury, the prosecution.  
25 I think, probably, Nancy Cook, herself.

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1 Q. Prior to your arriving there in Coeur d'Alene, 999  
2 had you told anyone at WaterOz that you were subpoenaed?  
3 A. No.  
4 Q. When you returned from the Grand Jury  
5 proceeding, did you mention to anyone that you had  
6 appeared before a Federal Grand Jury?  
7 A. Probably. I know I mentioned it to my  
8 attorney.  
9 Q. Who was that?  
10 A. Mr. Groom, Brit Groom.  
11 Q. Did you ever become aware that other WaterOz  
12 employees had been subpoenaed to Grand Jury proceedings?  
13 A. I had heard that. I don't know that for  
14 certainty, but I heard it.  
15 Q. At any time during 2002, after your appearance  
16 in April, did you have any discussion with Mr. Hinkson  
17 regarding a Grand Jury investigation?  
18 A. Probably. If I did, it was brief.  
19 Q. I'm sorry. Let me back up one moment. While  
20 you were there in Coeur d'Alene at the Grand Jury  
21 proceeding, did something occur there in the building  
22 regarding -- involving Nancy Cook?  
23 A. Yes, I believe so.  
24 Q. Did you observe it?  
25 A. Well, partially, in any event. During my

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1 Q. Did you appear before the Grand Jury? 998  
2 A. Yes.  
3 Q. How long was your appearance?  
4 A. Oh, my goodness. I don't think I got on until  
5 3:30 or 4:00 o'clock, and it lasted until after 5:00.  
6 Q. Were you questioned by Nancy Cook?  
7 A. Yes, limited. Most of the questioning was  
8 done by a Federal Prosecutor out of Washington, DC; and  
9 I believe his name was Tom Bradley.  
10 Q. Did you have some understanding or belief  
11 about what the nature of this Grand Jury proceeding was  
12 about?  
13 A. Vaguely, at that point in time.  
14 Q. Where did you obtain this vague understanding  
15 or belief about the Grand Jury proceeding?  
16 A. We had a -- Ms. Cook took my wife and I  
17 upstairs in the Federal Building there in Coeur d'Alene,  
18 and then there was a meeting with an Internal revenue  
19 agent by the name of Steve Hines, Mr. Bradley -- Nancy  
20 Cook was there for a while. There was a gentleman by  
21 the name of Vernon, I think, who I later learned was  
22 also a witness. And then some testimony was discussed.  
23 Q. You discussed what you were going to testify  
24 to?  
25 A. Basically.

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1 testimony -- and I was responding to Mr. Bradley's 1000  
2 questions -- Mr. Hines came in the door of the Grand  
3 Jury Room and handed some papers to Ms. Cook.  
4 And then, subsequently, I learned that  
5 Mr. Hines had been served with a litigation by  
6 Mr. Hinkson that date. And I think, later on --  
7 MR. NOLAN: Objection. Beyond the scope of  
8 his knowledge.  
9 THE COURT: Overruled.  
10 BY MR. SULLIVAN:  
11 Q. You can finish your statement.  
12 A. Later on, I believe that Ms. Cook was also  
13 served that same day.  
14 Q. Now, at some point, did you get involved in  
15 that particular civil lawsuit?  
16 A. I was asked to, at one point, give an  
17 affidavit, I think --  
18 Q. Who asked you --  
19 A. -- for Mr. Hinkson. Actually, Mr. Hinkson's  
20 attorney asked me to give an affidavit to them.  
21 Q. What were you asked to do? With regard to  
22 what?  
23 A. In regards to what had happened in the Grand  
24 Jury Room. They seemed to feel it was inappropriate for  
25 Mr. Hines to have walked in and given anything to the

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1 Q. I am sorry?

2 A. I am having a void right now.

3 Q. Okay.

4 A. But he did accumulate the conversation by --

5 oh, I remember he made some comment to the effect of --

6 he asked if I had remembered the offer he made regarding

7 Mr. Albers and his family. And I said that, of course,

8 I did.

9 And he said he wanted that done, basically,

10 with Ms. Cook and her family and Mr. Hines and his

11 family.

12 And I told him, again, that he was out of his

13 mind. And I, also, went into a little bit of a

14 dissertation because David was a friend at that time.

15 And he said, "Well, you know, I know you're

16 used to it. I mean, you have killed people."

17 I said, "Yes, I have killed people in defense

18 of my life and others; but what you are talking about is

19 murder, and there is a significant difference here.

20 "And you need to get it out of your head

21 because, if you continue talking that way, it will get

22 you in trouble. And if you continue talking this way

23 and I think you are serious about this, I will have to

24 report it to the authorities."

25 Q. How did he respond to that?

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1 Q. What did he tell you about being indicted for

2 those matters?

3 A. Well, he, basically, felt that he would

4 prevail at some point in his litigation against the

5 Government to the tune of millions of dollars. But in

6 the same respect, he was extremely hostile to all of the

7 people who had been involved in that arrest.

8 Q. Did he talk in the same fashion about those

9 people as you have mentioned prior to his arrest?

10 A. Yes. And in January of '03, he approached me

11 again on that, went through the names of the people that

12 had offended him, and added a federal judge by the name

13 of Lodge to that list. And I, essentially, dropped the

14 hammer at that point in time on David.

15 Q. Let me first ask what he asked you to do

16 regarding those people?

17 A. He wanted them all treated the way that the

18 initial offer regarding Albers and his family had been

19 handled.

20 Q. Were you to receive anything in return for

21 doing that?

22 A. At least \$10,000 a head. And I made a mental

23 tally that, with all of the people he named at that

24 time, we were well over \$100,000.

25 Q. You mentioned that he mentioned Judge Lodge on

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1 A. Well, I got his smile again; and then he

2 changed the subject and went on to something else at

3 that point.

4 Q. Now, did he tell you why he had these harsh

5 feelings against Mrs. Cook and Mr. Hines?

6 A. They had abused the judicial system, they had

7 abused him tremendously, and it cost him a lot of money,

8 and they just didn't deserve to live.

9 Q. Did you become aware that Mr. Hinkson was

10 arrested then in November of 2002?

11 A. I am.

12 Q. How did you become aware of it?

13 A. I am not sure. Mr. Groom might have mentioned

14 to me that he had been arrested.

15 Q. Did you learn -- arrested for what?

16 A. Well, I wasn't really sure on that; but I,

17 subsequently, after his arrest, learned that he had

18 violated the IRS laws and there were several other

19 issues. I heard something about forty counts or

20 something of that nature.

21 Q. Did you ever discuss this new legal problem

22 with Mr. Hinkson?

23 A. Oh, yes.

24 Q. After his arrest, I mean?

25 A. Yes, yes.

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1 this occasion?

2 A. Yes, he did.

3 Q. Had he ever talked about Judge Lodge

4 previously?

5 A. I'm not sure. He may have mentioned him in

6 passing a time or two.

7 Q. Did he give you any more information about why

8 he had this harsh feeling against Judge Lodge on this

9 occasion in January of 2003?

10 A. I think there was something he mentioned about

11 Judge Lodge's name being on the arrest warrant, the

12 November arrest warrant. There was something else about

13 the Judge having thrown part of the civil case out or

14 getting ready to or something of that nature. But I

15 just tuned part of it out.

16 Q. Did the \$10,000 offer include Nancy Cook and

17 Steve Hines?

18 A. Oh, yes.

19 Q. Did it include Mr. Albers?

20 A. Yes.

21 Q. Did it include the children of those people?

22 A. Yes.

23 Q. What did he want done with the children of

24 those people?

25 A. Treated in the same fashion.

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1 what?

2 A. No. It would have probably been getting close

3 to summer there. Spring, summer, somewhere through

4 there. Sometime after April, I'm thinking.

5 Q. All right.

6 A. I might be wrong.

7 Q. And who did you contact?

8 A. I contacted the Idaho County Assistant

9 Prosecutor from Grangeville.

10 Q. Now, is he a State Prosecutor, as opposed to a

11 Federal Prosecutor?

12 A. Yes. That's correct.

13 Q. And did you express some concern to him?

14 A. I did.

15 Q. Was it regarding Mr. Hinkson?

16 A. Yes.

17 Q. Thereafter, were you contacted by the FBI?

18 A. Yes.

19 Q. Who contacted you?

20 A. Mr. Will Long.

21 Q. That's the person here at the table?

22 A. Correct, sitting right there.

23 THE COURT: For the record, the witness has

24 identified Special Agent Long.

25 MR. SULLIVAN: Thank you, Your Honor.

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1 I have no further questions on direct, Your

2 Honor.

3 THE COURT: Cross-examination?

4 MR. NOLAN: Thank you very much, Your Honor.

5

6 CROSS EXAMINATION

7 BY MR. NOLAN:

8 Q. Prior to coming here today, did you review any

9 of your testimony that you have given under oath on

10 previous occasions?

11 A. Would you repeat that, sir?

12 Q. Did I speak loud enough, first of all?

13 A. No. I do have a hearing --

14 Q. I'm sorry.

15 A. I have a hearing problem.

16 Q. That's fine. No problem. Before testifying

17 today, did you read any of your prior testimony?

18 A. Yes.

19 Q. When did you do that?

20 A. Yesterday.

21 Q. What testimony did you read?

22 A. I read the transcript from the Grand Jury in

23 April of 2002, and I read the transcript when I appeared

24 before the Grand Jury here in Boise. I think that was

25 in February of '04.

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1 Q. Did you read anything else?

2 A. I read my affidavit that I had given that was

3 previously on the screen.

4 Q. Did you read anything else?

5 A. Oh, I glanced at a copy of a deposition that I

6 gave for Mr. Hoyt earlier this year.

7 Q. Anything else?

8 A. I don't think so.

9 MR. NOLAN: Okay. Thank you.

10 Now, is it appropriate, Your Honor, for me to

11 use this writing screen to assist, in terms of putting

12 down numbers and things?

13 THE COURT: Yes.

14 MR. NOLAN: Fine. Thank you. Let me see if I

15 know how to work it. Okay. Good.

16 Q. Sometime in the year 2000, you became aware of

17 WaterOz; correct?

18 A. Correct.

19 Q. And you worked -- you worked at WaterOz or

20 worked for WaterOz until 2003?

21 A. I was never an employee of WaterOz.

22 Q. The company you worked for did work for

23 WaterOz?

24 A. That is correct, sir.

25 Q. You never worked for WaterOz?

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1 A. No, not directly.

2 Q. All right. And between two -- I will get to

3 use this somehow. I will figure it out. Sometime

4 between 2000 and April of 2002 -- oh, boy.

5 THE COURT: I'm afraid you are off the screen.

6 MR. NOLAN: I'm not going to be able to do a

7 very good job of this.

8 THE COURT: Do you want to use that butcher

9 paper?

10 MR. NOLAN: Oh, that would be much better.

11 THE COURT: Shall we go back to the

12 old-fashioned way, Mr. Nolan?

13 MR. NOLAN: I really prefer to do that. Thank

14 you.

15 May I be in the well?

16 THE COURT: Yes, you may.

17 Mr. Sullivan, if you would like to, move

18 around so you can see what he is writing. That's fine,

19 too.

20 MR. NOLAN: I will try to put it -- do we have

21 any markers?

22 THE COURT: Ms. Longstreet, how are we doing

23 on our supply of colored crayons?

24 THE COURTROOM CLERK: I have got black.

25 THE COURT: We have got black. We can start

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1 you out with one color, Mr. Nolan.

2 MR. NOLAN: Thank you. Thank you.

3 Q. So sometime in mid 2000, you became aware of

4 WaterOz; correct?

5 A. Yes.

6 Q. And sometime in April -- A-p-r-i-l -- of 2002,

7 you testify; right?

8 A. I believe it was the 16th.

9 Q. All right. You testified; correct?

10 A. Yes.

11 Q. Was your testimony in April of 2002 truthful?

12 A. As I believed it to be at that time, yes.

13 Q. All right. It was truthful; correct?

14 A. As I believed it to be at that time. I was

15 under oath.

16 Q. And you told the truth?

17 THE COURT: Counsel, you are arguing with the

18 witness.

19 MR. NOLAN: I'm sorry. I didn't understand.

20 THE COURT: I think the jury has understood

21 his answers.

22 MR. NOLAN: All right. I'm sorry. I'm

23 left-handed.

24 MR. SULLIVAN: Now I can't see.

25 THE COURT: Mr. Sullivan, if you want to, move

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1 over. I would rather have it so the jury can see. I

2 don't want Mr. Nolan blocking the jury's view.

3 BY MR. NOLAN:

4 Q. I will try to do it this way. The last

5 contact you had, as far as working for WaterOz, was

6 January of '03; is that correct?

7 A. No.

8 Q. When was that?

9 A. I beg your pardon.

10 Q. The last contact you had with WaterOz, doing

11 work for WaterOz?

12 A. I previously testified that it was probably in

13 April of '03.

14 Q. April of '03. Between mid 2000 and April of

15 2002, about how many times did you meet with

16 Mr. Hinkson?

17 A. Quite a number of times.

18 Q. More than ten or twelve?

19 A. Probably. I would like to correct one thing.

20 We did the professional work for WaterOz which would

21 have concluded sometime toward the end of April 2003.

22 However, after Mr. Hinkson was arrested -- and

23 I'm thinking that was probably around November or

24 December of '03 -- I received a call from jail, from

25 Mr. Hinkson.

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1 THE COURT: Well, I'm not sure you are

2 correcting anything. Let's wait for a question,

3 Mr. Swisher.

4 THE WITNESS: Thank you, Your Honor.

5 BY MR. NOLAN:

6 Q. It's your testimony that, at the time you

7 testified before the Grand Jury in April of 2002,

8 Mr. Hinkson had not said anything about soliciting you

9 to kill Mr. Albers, his family, or anyone else; is that

10 correct?

11 A. He did not ask me directly to do that prior to

12 that time.

13 Q. You had a number of conversations with him

14 between mid 2000 and April 2002 where you talked about

15 his hostility to Mr. Albers; correct?

16 A. Correct.

17 Q. Now, isn't it true that you testified before

18 the Grand Jury in -- was it November of 2000 -- I'm

19 sorry -- February of 2004; correct?

20 A. Yes.

21 Q. And you told the Grand Jury that, right after

22 the lawsuit was decided and very soon after you first

23 met him, met Mr. Hinkson, that he talked about having

24 Mr. Albers killed, his wife tortured, and members of the

25 family present?

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1 A. Yes.

2 Q. And he said -- or you said in the Grand Jury,

3 in February, that Mr. Hinkson said he would give you

4 \$10,000 for taking care of these people?

5 MR. SULLIVAN: Page number?

6 THE WITNESS: \$10,000 a piece.

7 BY MR. NOLAN:

8 Q. Page 12, 13. He included his wife, did he

9 not?

10 A. The first time, yes.

11 Q. The first time he offered you money; correct?

12 A. Right, which would have been in April of 2002.

13 Q. Now, isn't it true you testified that it was

14 right at the time that Ms. Hasalone had been awarded her

15 money?

16 A. That is not correct. If you will check the

17 testimony, I believe I asked -- I made a comment -- I

18 wasn't sure exactly of the time frame; but it was

19 sometime after that. And, of course, April of '02 is

20 sometime after that, counselor.

21 Q. Isn't it true you were asked the question,

22 page 12, line 20: "Please. Approximately when was

23 that? The lawsuit, I believe, was in the summer --"

24 Answer: "This was right about the time that

25 he had -- Hazelton had been awarded all of this money,

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1 and he was very, very angry.

2 "Then in the same time frame, he was having

3 trouble with his wife at that time -- or slightly before

4 that --"

5 A. He did talk about those things, but the offer

6 to kill them didn't come in until later.

7 Q. Isn't it true --

8 A. He talked about them all the time.

9 Q. Isn't it true you testified at the Grand Jury

10 that the time he offered you the money was to kill those

11 people, including Mrs. Hinkson (sic.) -- I'm sorry --

12 Mr. Hinkson's former wife, was about the time the

13 lawsuit was decided?

14 A. May I see what you are quoting me from?

15 Q. You certainly may. You certainly may.

16 A. May I please see page 9, sir?

17 Q. Certainly.

18 THE WITNESS: If I may, Your Honor?

19 THE COURT: Yes. Take your time, Mr. Swisher.

20 You are welcome to as much of it as you need to answer

21 Mr. Nolan's questions.

22 THE WITNESS: Thank you, sir. On page 9, when

23 I was --

24 THE COURT: No. That's not the way we do it,

25 Mr. Swisher. You can review as much of it as you want

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1 question.

2 MR. NOLAN: Yes, I will. Thank you.

3 Q. You see page 12, do you not?

4 A. Yes, sir.

5 Q. Let's look at page 10. He talks -- you talk

6 about the fact that there was a civil suit, correct, on

7 line 8?

8 A. Yes.

9 Q. Ms. Hasalone had received a judgment of some

10 kind; correct?

11 A. Yes.

12 Q. Over \$100,000, somewhere in that neighborhood;

13 correct?

14 A. Yes.

15 Q. He wasn't happy; correct?

16 A. Yes.

17 Q. That's what you said at that point in time?

18 "He started talking about how he really would like to

19 have Mr. Albers killed, and he would like to have his

20 family tortured . . ." That's at page 11, lines 12

21 through 18; correct?

22 A. Yes.

23 Q. You'd let him ramble on; correct?

24 A. Yes.

25 Q. He said -- I'm sorry. He said -- according to

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1 to review; but then you have to answer his question,

2 okay? So take a look at it, and then I will have him

3 restate the question.

4 THE WITNESS: Okay. I have looked at it.

5 Thank you.

6 THE COURT: Are you ready for the question?

7 MR. NOLAN: I'm going to see if I can get

8 another copy so he can have that in front of him, if you

9 don't mind.

10 THE COURT: Very well. Thank you.

11 MR. NOLAN: I am sorry.

12 THE COURT: Do you want to switch copies?

13 MR. NOLAN: I have to take it back until I get

14 another one, if that's okay. I'm sorry. I should be

15 better prepared.

16 THE COURT: You are doing fine, counselor.

17 Does the Government have an extra copy?

18 MR. NOLAN: That's all right. I will give him

19 a copy.

20 THE COURTROOM CLERK: I can go make one.

21 THE COURT: Let's see --

22 BY MR. NOLAN:

23 Q. Here you are.

24 A. Okay. Thank you.

25 THE COURT: Mr. Nolan, please restate your

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1 you, "He said, 'I would like you to take care of the

2 matter for me because I know you've done this kind of

3 thing before'?"

4 A. Yes.

5 Q. According to you, he said, "I will give you

6 \$10,000 ahead . . ."

7 A. Run that by me again, sir.

8 Q. The next thing you said, at page 12, line 2,

9 is that Mr. Hinkson said, quote, "I will give you

10 \$10,000 ahead . . ." That is ahead, a-h-e-a-d, ahead

11 of time, in effect?

12 THE COURT: Counselor, now you are arguing

13 about how the court reporter transcribed the answer. I

14 think we have to let the jury decide that.

15 MR. NOLAN: I will spell it.

16 THE COURT: Just read it into the record.

17 MR. NOLAN: "I will give you \$10,000 ahead for

18 taking care . . ." I see what you are saying. I didn't

19 think about that.

20 THE COURT: I understand. That's my job.

21 BY MR. NOLAN:

22 Q. "I will give you \$10,000 ahead for taking

23 care of Albers and his wife;" but he said, "I want her

24 taken care of first, and he has to watch it, and watch

25 her being tortured."

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1 That's your testimony; correct?

2 A. Correct.

3 Q. You talked about the plastic bag; correct?

4 A. Yes.

5 Q. That you couldn't believe this; correct?

6 A. Yes.

7 Q. If he were serious, you would have to do

8 something else, probably; correct?

9 A. Yes.

10 Q. And then the next question was:

11 "Approximately when was that? The lawsuit, I believe,

12 was in the summer --"

13 Answer: "That was right about the time that

14 he had -- Hazelton had been awarded all this money and

15 he was very, very angry."

16 Correct?

17 A. Yes.

18 Q. And then you talked about his first wife. I

19 don't know her name.

20 And then you said: ". . . oh, I would say

21 within a couple weeks of this incident, I was out -- in

22 fact, I think my wife was with me. He started blowing

23 off again about all of these things he wanted done."

24 Correct?

25 A. Yes.

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1 was that he wanted to correct, to determine whether or

2 not it's proper to allow him to do that. I'm not sure

3 where he was going with his answer.

4 MR. SULLIVAN: I'm not sure either.

5 THE COURT: I will permit you to talk to him

6 solely about that correction that he wanted to make and

7 nothing else on the break.

8 MR. SULLIVAN: I can tell the court and

9 Mr. Nolan I directed him not to mention anything about

10 an offer to kill Marie.

11 THE COURT: Well, counsel raised it.

12 MR. NOLAN: I raised it. I raised it.

13 THE COURT: Do you want to go there?

14 MR. NOLAN: I certainly do. I mean, that was

15 a conscious decision on my part.

16 THE COURT: I thought it was, but I just

17 wanted to make that clear for the record. If you want

18 to get into solicitations to murder Marie Hinkson,

19 that's your prerogative.

20 MR. NOLAN: The theory of the defense is, Your

21 Honor, that none of this is serious and that he --

22 THE COURT: I understand.

23 MR. NOLAN: And just for the record, I will

24 object to counsel talking to the witness.

25 THE COURT: I am going to --

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1 Q. "He pulled me aside, and he said, 'There

2 would be another \$10,000 if you take care of Marie, as

3 well. She is just a pain in the ass.'"

4 A. Yes.

5 Q. "Do you remember where you were when he said

6 that? Was it a restaurant?"

7 Answer: "No."

8 MR. SULLIVAN: Your Honor, I object to this

9 procedure. It's not a proper procedure.

10 THE COURT: Sustained. I think it is

11 improper, Mr. Nolan.

12 MR. NOLAN: Very well.

13 THE COURT: I think we are going to take our

14 recess this morning. Ladies and gentlemen, we will be

15 in recess for fifteen minutes. Hopefully, we will be

16 back in fifteen minutes.

17 Mr. Swisher, just sit there for a second.

18 Go ahead, ladies and gentlemen. I want to

19 talk to counsel about something.

20 (Whereupon, the jury was excused from the

21 courtroom; and the following proceedings were held:)

22 THE COURT: I am going to make an exception to

23 my rule about the Government, in this case, being

24 allowed to talk to Mr. Swisher during the break.

25 I would like you to talk to him about what it

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1 MR. NOLAN: I understand.

2 THE COURT: For the record, I am going to give

3 a witness who says in open court that he would like to

4 correct his testimony an opportunity to do that if it's

5 relevant and permissible testimony. The only way I

6 know -- well, I guess we can do it right here.

7 MR. NOLAN: We can do it right now.

8 THE COURT: Mr. Swisher, what was it that you

9 wanted to correct in front of the jury that I cut you

10 off on?

11 THE WITNESS: Thank you, Your Honor. What I

12 wanted to correct was -- and I mentioned page 9, before

13 this testimony began, before the Grand Jury.

14 At that point in time, I was feeling probably

15 about like I am today. I was asked the question: "At

16 some point, did you have discussions with Mr. Hinkson or

17 hear Mr. Hinkson make threats towards anyone?"

18 And my answer was: "I don't remember the

19 occasion."

20 And then I tried to qualify it and narrow it

21 down the best way I could. I knew that it had been

22 after these other circumstances and events.

23 But I, at this point, had not had an

24 opportunity to go back and check my wife's calendar or

25 anything so I described -- what I described is accurate,

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1 but it just didn't happen at that particular time frame.

2 THE COURT: All right. Thank you,

3 Mr. Swisher.

4 I will permit the Government, on redirect, if

5 it wishes, to elicit that clarification or you can ask

6 him, Mr. Nolan.

7 MR. NOLAN: I would ask that the court -- that

8 counsel review their 302s because I believe that he told

9 them that the first time he was offered money was soon

10 after he met Mr. Hinkson.

11 And that's a significant change because he

12 testified before the Grand Jury and never -- well, it's

13 part of cross.

14 THE COURT: Yes, I understand.

15 MR. NOLAN: His testimony before the Grand

16 Jury in 2002 --

17 THE COURT: Hang on just a second. Can we

18 excuse Mr. Swisher?

19 MR. NOLAN: I would like that.

20 THE COURT: Mr. Swisher, if you need to use

21 the restroom, why don't you step out of the courtroom

22 and I will hear the rest of the argument from counsel?

23 (Whereupon, witness Swisher was excused from

24 the courtroom, and the following proceedings were held:)

25 MR. NOLAN: Here is the problem. This is,

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1 jury's job.

2 MR. NOLAN: It's hard for me. That doesn't

3 mean the rules change or anything. Quite frankly, I

4 think that he told people it was -- after he tried to

5 take over the business, after he decided that

6 Mr. Hinkson put out a hit on him, after he decided

7 Mr. Hinkson shot at him, after he decided that he

8 wouldn't be getting all of these things from

9 Mr. Hinkson, he became an enemy of Mr. Hinkson.

10 After he became an enemy of Mr. Hinkson, then

11 he comes back and joins the bandwagon; and he tells them

12 right after I started this. That's important because

13 it's before his testimony which puts doubt on his

14 credibility.

15 THE COURT: Okay. I understand where you are

16 going, Mr. Nolan. I think that's fair

17 cross-examination. I am going to allow you to engage in

18 it.

19 I am going to order the Government, over the

20 recess, to take a look at the 302s to see whether or not

21 there is an inconsistency between his Grand Jury

22 testimony and what he told the FBI, prior or after, with

23 regard to the timing of these alleged solicitations.

24 MR. NOLAN: Right. And so it's okay -- now he

25 will say, "I want to change that," which is fine. You

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1 actually, a very significant issue because his testimony

2 in April of 2002 is, basically, a glowing report of

3 everything.

4 I mean, I'm characterizing it; but he doesn't

5 say anything about any of the behavior of Mr. Hinkson

6 that would or should have come up in the nature of some

7 of the questions.

8 It shows that, you know, he tested the product

9 himself; he loved the guy; he loved the product -- all

10 of this kind of stuff.

11 If he was telling us the truth then and now he

12 is coming back and saying, "Oh, he offered, during that

13 time to, you know, kill these people" -- that's why I

14 brought Marie in.

15 If he was having trouble with Marie, it wasn't

16 in April of 2002. I can prove it was in 2000. So it

17 shows that he is actually lying and it's extremely

18 important because he really -- I don't mean to affect

19 the court. He has lied so much that he is going to be

20 hard for me.

21 MR. SULLIVAN: I don't see what the issue is

22 that is going to be discussed here.

23 THE COURT: I think I understand where

24 Mr. Nolan is going. It's not hard for the court. I

25 don't have to decide his credibility. That is the

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1 know, he will say, "Well, I didn't know;" and it really

2 was after 2002.

3 THE COURT: You can attempt to impeach the

4 witness, the Government can attempt to rehabilitate the

5 witness, and the jury will decide whether he is telling

6 the truth.

7 MR. NOLAN: I understand that. I want the

8 court to understand why I think that's so significant.

9 THE COURT: I think you have made your record.

10 I have made my ruling. I hope it's clear with everybody

11 as to what we are doing here.

12 MR. NOLAN: That's fine.

13 THE COURT: Now, the next matter. Juror

14 Mrs. Hanes handed a note to the clerk which says:

15 "Your Honor, I do not know if this is allowed for me to

16 ask; but can Mr. Swisher be asked about the mental

17 capacity of Mr. Hinkson? Did he do a clinical

18 evaluation of Mr. Hinkson? Is David Hinkson on

19 medication? Is Mr. Hinkson mentally ill? Are we or are

20 we not supposed to consider his mental capacity?"

21 At this point, counsel, I am --

22 MR. NOLAN: Can you give them Dr. Duke's

23 report now?

24 THE COURT: How do you want me to handle it?

25 Shall I simply say to the jury that I did receive a note

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1 from one of the jurors but, at this point, I am going to  
2 allow the parties to proceed to put on their evidence;  
3 and that's how we are going to respond to it?

4 MR. NOLAN: I think that's the best way.

5 THE COURT: That's how I would like to handle  
6 it.

7 MR. SULLIVAN: I agree with that, Your Honor.

8 THE COURT: All right. You have ten minutes  
9 for a recess. I will see you back here in ten minutes.

10 (Recess.)

11 THE COURT: Mr. Nolan, my law clerk had, I  
12 guess, spoken to you briefly about some potential  
13 impeachment information on Mr. Croner.

14 MR. NOLAN: I apologize. We just found out  
15 that the file on Chad Croner in the state court, in the  
16 County of Ada, is under seal; so we can't find out about  
17 the underlying facts.

18 We are trying to get a hold -- we are having  
19 somebody try to get the lawyer, to see if we can find  
20 out something. I wanted to alert -- I don't think the  
21 court has the authority to tell the state court to  
22 unseal their records.

23 But because of the lateness of all of this, I  
24 wanted to make a record that we are making the effort  
25 and maybe a phone call might be needed.

1 THE COURT: As much as I'd like to think that  
2 federal judges have unlimited power, I know of no  
3 authority by which I can tell a state court to unseal  
4 its files because I need access to them to see if they  
5 might be discoverable in an ongoing criminal proceeding.  
6 If the Government knows of any authority to permit me to  
7 do so -- I know of none.

8 MR. NOLAN: This agency wasn't investigating  
9 it, so we don't have a problem there.

10 THE COURT: The only case I can think of is  
11 the Younger Doctrine that says I can't interfere in  
12 ongoing state proceedings, so I can't enter an order  
13 telling a state court judge that he has to stop or  
14 terminate an ongoing criminal proceeding for whatever  
15 reason.

16 MR. NOLAN: I wanted to make sure I tried.

17 THE COURT: I think we have to stay within the  
18 Constitution, Mr. Nolan.

19 MR. NOLAN: I think so, too.

20 THE COURT: Are we ready for Mr. Swisher?

21 MR. NOLAN: I am ready, unless there are some  
22 reports I have to get.

23 MR. SULLIVAN: There is not contained in any  
24 document that we have in the nature of a debriefing of  
25 Mr. Swisher that relates to this issue of what date the

1 testimony about Mr. Albers occurred.

2 THE COURT: Very well. Bring in the jury.  
3 And where is Mr. Swisher?

4 Yes, please.

5 (Whereupon, the following proceedings were  
6 held in the presence of the jury:)

7 THE COURT: Ladies and gentlemen, before we  
8 continue with Mr. Swisher, Mrs. Hanes gave us a note,  
9 which is perfectly fine.

10 I went over that with the lawyers. My  
11 response to your question, at this point, is I am going  
12 to allow the parties to proceed with the presentation of  
13 the evidence. So we won't respond immediately to your  
14 question. We will see how the evidence goes. Thank  
15 you.

16 Mr. Nolan, you may proceed.

17 MR. NOLAN: Thank you.

18 THE COURT: Mr. Swisher, you are still under  
19 oath.

20 THE WITNESS: Yes, sir.

21 BY MR. NOLAN:

22 Q. What you would like to correct, I take it, is,  
23 if there is any inference or any suggestion, I think, in  
24 your Grand Jury testimony of February of 2003 (sic.),  
25 that you were told anything or solicited to kill anybody

1 between mid 2000 and April of 2002, that's not a proper  
2 inference? You didn't intend to say that; correct?

3 A. Well, you mentioned February of 2003. What is  
4 that in reference to, sir?

5 Q. I'm sorry. That is the Grand Jury testimony.  
6 That's the date of the Grand Jury testimony that you  
7 reviewed and said you wanted to correct something about.

8 MR. SULLIVAN: Your Honor, I object.

9 THE WITNESS: No, sir.

10 MR. SULLIVAN: That's a misleading statement  
11 by counsel.

12 THE COURT: Sustained.

13 BY MR. NOLAN:

14 Q. I'm sorry. It's two thousand -- my apologies.  
15 That's why I have these pieces of paper. It's 2004;  
16 right?

17 All right. If you said anything in 2004 that  
18 suggested that you were solicited to kill anybody  
19 between mid 2002 and April -- mid 2000 -- excuse me --  
20 and April of 2002, that what you said is in error;  
21 correct?

22 A. Correct.

23 Q. All right. Now, when you first met  
24 Mr. Hinkson in mid 2000, did you and he discuss  
25 Mr. Albers?

1 A. Yes.

2 Q. And between mid 2000 and April of 2002, did he  
3 discuss with you his hatred for Mr. Albers?

4 A. Yes.

5 Q. Did he discuss with you his wanting to kill  
6 Mr. Albers?

7 A. Well, he wanted to see him dead.

8 Q. He wanted to see him dead?

9 A. Right.

10 Q. He didn't say he was going to kill him. He  
11 would like to see him dead; right?

12 A. Right.

13 Q. There was a lot of talk that he did about  
14 Mr. Albers; is that correct?

15 A. That's correct.

16 Q. And I take it, you have a background with  
17 Mr. Albers; correct?

18 A. I know Mr. Albers.

19 Q. Well, a number -- twenty some odd years ago,  
20 he prosecuted you. You were found not guilty; correct?

21 A. Correct.

22 MR. SULLIVAN: I object to this.

23 THE COURT: I am going to permit that  
24 question. Overruled. It's been the subject of a  
25 previous ruling by the court.

1 BY MR. NOLAN:

2 Q. He prosecuted you, and you were found not  
3 guilty; is that correct?

4 A. That is correct.

5 Q. And you have had had feelings about him since  
6 then, have you not?

7 A. I have had.

8 Q. Okay. And you talked to Mr. Hinkson about  
9 your feelings about Mr. Albers between mid 2000 and  
10 April of 2002; correct?

11 A. I may have.

12 Q. Well, did you or did you not?

13 A. I don't recall, specifically.

14 Q. Okay. In November of 2000, did you  
15 participate with Mr. Hinkson in helping to distribute a  
16 piece of literature about Mr. Albers to the public?

17 A. My father did.

18 Q. Did you mail some items?

19 A. I don't think I personally did, no.

20 Q. Did you take them to the post office for  
21 mailing?

22 A. I'm not sure. It's possible.

23 Q. And to the best of your knowledge, that caused  
24 Mr. Albers not to get re-elected; correct?

25 A. I believe that's correct.

1 THE COURT: Counsel, did you establish what it  
2 was that Mr. Albers was trying to get re-elected for?

3 BY MR. NOLAN:

4 Q. I'm sorry. He was trying to get re-elected to  
5 the position of prosecutor?

6 A. Yes.

7 Q. Either county or some kind of prosecutor; is  
8 that correct?

9 A. That is correct.

10 Q. And one of his -- well, that prevented him  
11 from getting elected, that piece of literature, you  
12 believe?

13 A. Correct.

14 Q. Now, you are a disabled veteran; is that  
15 correct?

16 A. That is correct.

17 Q. And you have a hearing problem; correct?

18 A. Correct.

19 Q. And when you testified -- you first became  
20 aware of WaterOz because of a friend of yours; isn't  
21 that correct?

22 A. That's correct.

23 Q. A friend was concerned about your health; is  
24 that right?

25 A. Yes.

1 Q. You were having a lot of trouble walking, and  
2 you had arthritis; is that correct?

3 A. Correct.

4 Q. And he suggested that you look at the  
5 possibility of WaterOz; correct?

6 A. Yes.

7 Q. And you went out there, and he introduced you  
8 to the people at WaterOz; correct?

9 A. No.

10 Q. In the Grand Jury of April of 2002, on page  
11 14, line 1 -- let me see if I can -- can we get -- is  
12 there another copy of the transcript? Let me give it to  
13 the witness. I am going to try to get a copy of this  
14 Grand Jury testimony. Here, let me give you a copy.

15 May I approach?

16 THE COURT: Yes, of course.

17 BY MR. NOLAN:

18 Q. If you could, take a look at page 14. You can  
19 start -- I guess, if you want to, go back to 13, at the  
20 bottom. You can start anywhere you want, but that would  
21 be the place I would suggest.

22 MR. SULLIVAN: Counsel, what was the document?

23 MR. NOLAN: Page 13.

24 MR. SULLIVAN: Which one?

25 MR. NOLAN: Grand Jury of April 2002.

1 MR. SULLIVAN: Okay. 1045  
2 THE WITNESS: Yes.  
3 BY MR. NOLAN:  
4 Q. Okay. Have you been able to review that?  
5 A. Yes.  
6 Q. Is that your -- does that refresh your  
7 recollection that you went with that friend to WaterOz  
8 and he introduced you to the people out there?  
9 A. That's incorrect.  
10 Q. Is that what you testified under oath at the  
11 Grand Jury in April 2002?  
12 A. That's what I believed at that time, yes.  
13 Q. You testified in April of 2002 to that fact;  
14 correct?  
15 A. Correct.  
16 Q. Is that wrong?  
17 A. Yes.  
18 Q. You testified they took you around and said,  
19 "Why don't you try some of these," and so forth? Did  
20 you testify that way?  
21 A. I testified that way, that it was Mr. Hinkson  
22 who did that.  
23 Q. Is that true?  
24 A. That they took me around?  
25 Q. When you testified in April of 2002 to those

1 facts, were those facts true? 1046  
2 A. You will have to go back and start --  
3 MR. SULLIVAN: I don't know what facts counsel  
4 is talking about.  
5 THE COURT: I'm not quite sure what you are  
6 asking Mr. Swisher.  
7 BY MR. NOLAN:  
8 Q. You said, April of 2002, quote, line 5, page  
9 14: "They took me around and said, 'Why don't you try  
10 some of these?'"  
11 "And I said, 'Okay. What's to lose? I will  
12 give it a whirl.'"  
13 You testified that way; correct?  
14 A. Yes.  
15 Q. Was that testimony true?  
16 A. Yes, from Mr. Hinkson. Mr. Hinkson took me  
17 around and made those comments. Would you like me to  
18 explain that?  
19 Q. On page 13, line 24, you said, quote: "I  
20 don't really believe in that, but I'm willing to try it.  
21 So my friend suggested I go out and, in fact, went with  
22 me to WaterOz and introduced me."  
23 A. That's incorrect.  
24 Q. Is that what you testified to?  
25 A. Yes.

1 Q. And that's incorrect? 1047  
2 A. Yes.  
3 Q. All right. Do you have a good memory, sir?  
4 A. Well, I'm 68. I do have some memory flaws  
5 but, basically, pretty good.  
6 Q. And you have previously testified that you  
7 have not -- did not have a good memory; correct?  
8 A. Boy, I don't recall that.  
9 Q. Isn't it -- if you could, take a look at page  
10 36, lines 13 through 19.  
11 Your Honor, would the court like a copy?  
12 THE COURT: I would love a copy. Thank you,  
13 Mr. Nolan.  
14 MR. NOLAN: Here is a copy for the court.  
15 THE COURT: Thank you.  
16 BY MR. NOLAN:  
17 Q. Have you read that, sir?  
18 A. Which line are you referring to, sir?  
19 Q. Line 13, on page 36, through line 19.  
20 A. This is my answer: "You're telling me that I  
21 have it. There is an old saying, you know . . ."  
22 Q. Excuse me. Does that refresh your  
23 recollection that you testified in April of 2002 under  
24 oath in regards to your memory?  
25 A. I guess I did.

1 Q. You have -- 1048  
2 A. It says it here.  
3 Q. You testified in April of 2002 that you didn't  
4 have a good memory; correct?  
5 A. That's not what it says here.  
6 THE COURT: Counsel, it is not what it says  
7 here. I want you to read starting at line 13.  
8 MR. NOLAN: I will be happy to. I was trying  
9 to characterize it.  
10 THE COURT: I want you to read it rather than  
11 characterize it  
12 BY MR. NOLAN:  
13 Q. I would rather read it.  
14 Question: That's okay. That's how my memory  
15 works sometimes.  
16 Answer --  
17 THE COURT: That is not correct, Mr. Nolan.  
18 You have added a word.  
19 MR. NOLAN: I'm sorry. Question: "That's  
20 okay. That's how memory works sometimes."  
21 MR. SULLIVAN: Your Honor, I would request  
22 that the question and answer prior to that be read  
23 first, to give the context.  
24 THE COURT: I am going to allow you on  
25 redirect to clear this up, if Mr. Nolan doesn't want to.

1 on a number of occasions; and he needs to discredit me 1069  
2 in the worst way.  
3 Q. So --  
4 A. I told him I would go to the authorities.  
5 THE COURT: Mr. Swisher, just wait.  
6 BY MR. NOLAN:  
7 Q. So he hates you because you went to the  
8 authorities?  
9 A. Yes, and because I am a witness for the  
10 prosecution.  
11 Q. I see. So he shot at you; is that right?  
12 A. I didn't say he shot at me. I merely stated  
13 that I had been shot at on August 31st of this year,  
14 which is a matter of the official records of Idaho  
15 County.  
16 Q. Now, what day were you shot at?  
17 A. August 31st.  
18 Q. When did you report it?  
19 A. It was probably a day or two later, before I  
20 could get to a phone. It was in a remote area.  
21 Q. A day or two?  
22 A. Huh?  
23 Q. How about a week?  
24 A. It's possible. I was at a remote area in  
25 Idaho County with a Vietnam combat veteran friend, and

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1 involved. 1071  
2 MR. NOLAN: I'm sorry. I will find what I  
3 need.  
4 THE COURT: That's all right. Take your time,  
5 counsel.  
6 BY MR. NOLAN:  
7 Q. Now, when you testified before the Grand Jury  
8 in April about contacts and conversations with  
9 Mr. Hinkson between the time you met him in mid 2000 and  
10 April, you were asked: "Did you talk to him very much  
11 about an investigation, a possible investigation, that  
12 was occurring in 2001?"  
13 A. Where are we at, sir?  
14 THE COURT: Well --  
15 MR. NOLAN: I am talking about --  
16 THE COURT: What do you remember, Mr. Swisher?  
17 Answer the question first.  
18 THE WITNESS: You are getting a little remote  
19 for me. Because I have testified so many times, if I  
20 can't look at it, I can't make a meaningful answer to  
21 you, sir. I don't remember.  
22 I am very tired. I only got about an hour's  
23 sleep last night. I have a terrible head cold. I'm not  
24 going to guess at something I don't know.  
25

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1 we were expecting our wives to come in sometime later 1070  
2 that week.  
3 And we couldn't find the shooter, and it is a  
4 remote area. I did report it. We took photographs of  
5 it initially, right off, with the entrance and exit  
6 holes. The shooter shot at me while I was sitting on a  
7 tin privy, and the bullet missed me on my right side.  
8 The Sheriff's Department, later, after that  
9 investigation, determined that the shooter had used a  
10 nine millimeter handgun approximately 35 yards from the  
11 back of the outhouse.  
12 Q. They also determined that there were some  
13 Forest Service people in the area; correct?  
14 A. We didn't know that, initially.  
15 Q. Uh-huh. I'm saying --  
16 A. Initially -- oh, go ahead.  
17 Q. The case was closed, was it not?  
18 A. I don't know. I haven't heard that. The last  
19 I heard, they were investigating Forest Service  
20 personnel who were there without notification, as  
21 agreed, with that agency, prior to the shooting.  
22 Q. And you believe, Mr. Hinkson did this because  
23 you are a witness against him; is that right?  
24 A. I didn't say he did it but my personal -- if  
25 you are asking for my personal opinion, I believe he was

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1 BY MR. NOLAN: 1072  
2 Q. Do you feel that the trustworthiness of your  
3 testimony today -- that the reliability of your  
4 testimony today is affected by your lack of sleep or  
5 feelings right now?  
6 A. Not regarding the solicitation for murder, no.  
7 Q. So if there are questions about solicitation,  
8 the jury can rely upon them; correct?  
9 A. I would think so.  
10 Q. But if it's anything else about the background  
11 of this case, they shouldn't rely upon it because you  
12 can't give good testimony?  
13 A. That's not what I said. That isn't true.  
14 Q. All right. Now, should the jury treat your  
15 testimony about solicitation today differently than your  
16 testimony about other matters because of your physical  
17 condition?  
18 MR. SULLIVAN: I object to the form of the  
19 question. I object to the argument of counsel.  
20 THE COURT: I will allow the witness to answer  
21 that question, if he can.  
22 THE WITNESS: I have testified under oath on a  
23 number of occasions. At the time I testified under  
24 oath, I believed what I testified to was accurate and  
25 complete.

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25 include people, and that was his offer to me.

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1 I have, on several occasions, learned  
2 otherwise, because of circumstances or something of that  
3 nature; but that's very rare and on not very many  
4 instances.

5 BY MR. NOLAN:

6 Q. Let me try the question again: Are you  
7 suggesting to the jury that they may rely upon your  
8 memory and your testimony about matters relating to the  
9 solicitation, but they may not necessarily rely upon  
10 your testimony about other matters because of your  
11 physical condition today?

12 A. I'm not suggesting that either.

13 THE COURT: That's enough on that subject,  
14 counsel.

15 BY MR. NOLAN:

16 Q. Okay. Now, when you first met Mr. Hinkson,  
17 between mid 2000 and your testimony before the Grand  
18 Jury in April of 2002, did you have discussions with him  
19 about any investigations?

20 A. You will have to be a bit more specific, sir.

21 Q. You were asked before the Grand Jury: Well,  
22 isn't it true that you didn't ask him -- or you didn't  
23 talk to him? He talked to you during this period of  
24 time about an investigation?

25 A. About which investigation? What

1 investigation?

2 Q. Isn't it true that, on page 34, line 24, you  
3 were asked the question: "You said you talked to  
4 Mr. Hinkson about a possible investigation a year or so  
5 ago?"

6 And your answer was: "No, I didn't talk to  
7 him. He talked to me about a year ago."

8 Question: "What did he say?"

9 Answer: "And sometimes -- I don't seek  
10 Mr. Hinkson out when I go there because a few times he  
11 has cornered me. And he is very knowledgeable. My  
12 goodness. His knowledge of chemistry is pretty  
13 fantastic.

14 "But he is a very emotional young man and I  
15 recall about a year ago he was talking to me about -- I  
16 believe he was involved in litigation at that time. He  
17 may still be, for all I know.

18 "There was a local prosecuting attorney  
19 involved and things of that nature so -- and he did  
20 mention that he -- I think he said he had been  
21 investigated one time or the other by the IRS or other  
22 agencies."

23 Was that your -- was that the questions and  
24 were those your answers in April of 2002?

25 A. Yes.

1 Q. And were they true?

2 A. Yes.

3 Q. And would that answer reflect your attitude  
4 about the nature of Mr. Hinkson between mid 2002 -- 2000  
5 and April of -- strike that.

6 Would that reflect your attitude of the  
7 conversations -- that's a bad question.

8 Would that reflect the character of the  
9 conversations about the investigation during 2001 with  
10 Mr. Hinkson?

11 A. I believe so.

12 Q. Were you, sir, ever instructed by anybody that  
13 you should not answer questions when put under oath?

14 A. That I should not answer questions while put  
15 under oath?

16 Q. You testified at a deposition; correct?

17 A. What deposition?

18 Q. You testified at a deposition in October of  
19 this year; correct?

20 A. Yes.

21 Q. At that deposition, you refused to answer  
22 questions, saying that you were prohibited from  
23 answering questions; correct?

24 A. Yes.

25 Q. Who prohibited you from answering the

1 questions?

2 A. I prohibited myself on instructions I had  
3 received when I appeared before the Grand Jury in a  
4 secret session here in Boise.

5 I was told that everything that happened in  
6 that Grand Jury Room was secret until, if and when, the  
7 matter came to trial; that I should discuss nothing that  
8 went before that Grand Jury at that time. And so I  
9 prohibited myself from answering it.

10 Q. Who instructed you not to answer any questions  
11 about what happened in that Grand Jury?

12 A. I don't recall exactly, but I know that was a  
13 general instruction given to me before I appeared before  
14 the Grand Jury in Boise; that Grand Jury matters are  
15 highly confidential and that you are not to discuss  
16 anything that went on, period.

17 Q. You were asked a question before the  
18 deposition as to whether you performed any tests at the  
19 request of any governmental entity on WaterOz projects.

20 You said: "I can't answer that. I'm  
21 prohibited from answering that."

22 Correct?

23 A. Yes.

24 Q. You were asked: "Who prohibited you?"

25 And you said you were prohibited from saying

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1 who prohibited you from answering those questions; is  
2 that right?  
3 A. Yes.  
4 Q. Who has now given you permission to answer  
5 questions regarding that?  
6 A. Well, I think, since that suit, itself, has  
7 been stipulated and dismissed and we are in active  
8 trial, I can probably answer any question you like.  
9 Q. You have decided that yourself?  
10 A. I have now, based on my previous instructions.  
11 Q. You were asked a question in that deposition  
12 of whether you have all records of payments, bank  
13 statements.  
14 And you said: "I'm prohibited from giving you  
15 those answers;" correct?  
16 A. I guess I'm going to have to ask for a copy of  
17 that, too. It's hard for me to respond.  
18 MR. NOLAN: You don't have a copy?  
19 THE COURT: That's okay.  
20 Counsel, do you know where he is?  
21 MR. SULLIVAN: No, I don't.  
22 THE COURT: You don't have a copy either?  
23 MR. NOLAN: I don't have copies for them.  
24 THE WITNESS: That is correct. I see there I  
25 did say that I would be happy to talk to the judge in

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1 lawsuits here, would you mind reading into the record  
2 what suit this is?  
3 MR. NOLAN: This is in the Second Judicial  
4 District, CV-35121. And I will put a staple in it, if  
5 that's okay.  
6 THE COURT: The Second Judicial District for  
7 the State of Idaho.  
8 MR. NOLAN: For the State of Idaho, in the  
9 County of Idaho.  
10 THE COURT: Very good.  
11 MR. NOLAN: May I staple?  
12 THE COURT: Yes.  
13 MR. SULLIVAN: Your Honor, since the  
14 Government hasn't seen this document before, we would  
15 request that we break for lunch and have that  
16 opportunity.  
17 THE COURT: Why don't we do that? Let's take  
18 a little early, if that's all right with you, luncheon  
19 recess.  
20 MR. NOLAN: That's fine.  
21 THE COURT: Ladies and gentlemen, we are about  
22 five minutes before our normal noon recess. Why don't  
23 we recess until ten minutes after 1:00? Hopefully, we  
24 will be able to get started at or about that time. We  
25 will be in recess until 1:10.

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1 private about it.  
2 BY MR. NOLAN:  
3 Q. There was no judge there; correct?  
4 A. Well, that wasn't of my doing. I was ordered  
5 there on a weekend to give this deposition. No judge  
6 was available.  
7 Q. This was the lawsuit in which you were  
8 claiming you were entitled to \$500,000 from Mr. Hinkson;  
9 correct?  
10 A. This is the lawsuit between Mr. Hinkson and  
11 Mr. Bellon that Mr. Hinkson drug me into, and I made a  
12 counterclaim to protect myself and my family.  
13 MR. NOLAN: I just got this. I have not  
14 marked it yet. May I mark it?  
15 THE COURT: Yes.  
16 MR. NOLAN: I would ask that the document be  
17 marked as K.  
18 THE COURT: K?  
19 MR. NOLAN: K.  
20 MR. NOLAN: Thank you.  
21 THE COURTROOM CLERK: Defendant's Exhibit K.  
22 MR. NOLAN: And it appears to be a five-page  
23 document entitled "Answer, Cross Claim, Cross Claim and  
24 Demand for Jury Trial."  
25 THE COURT: Since we have so many different

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1 (Lunch recess.)  
2 THE COURT: Mr. Swisher, you are still under  
3 oath. Have a seat, and we will get back to work here.  
4 Counsel?  
5 MR. NOLAN: Thank you, Your Honor.  
6 Q. Showing you what has been marked as  
7 Defendant's K, would you take a look at this, please,  
8 and tell me whether or not this is the document that you  
9 signed and filed in court?  
10 A. Yes, it is.  
11 MR. NOLAN: I would offer -- excuse me. I  
12 would offer Exhibit K into evidence.  
13 THE COURT: Any objection?  
14 MR. SULLIVAN: No objection, Your Honor.  
15 THE COURT: Exhibit K is admitted. Just so we  
16 are clear, why don't you give me a brief case name so  
17 the jury will know which case this is?  
18 MR. NOLAN: Sure. This is Bellon, Petitioner,  
19 vs. Hinkson, Respondent; and Hinkson,  
20 Counter-Petitioner, vs. Bellon, Counter-Respondent; and  
21 Elven Joe Swisher, Third Party Respondent, and Elven Joe  
22 Swisher, Counterclaimant Cross-Complainant vs. -- and  
23 Cross Complainant. It is an Answer, Counterclaim, and  
24 Cross Complaint in that action.  
25 THE COURT: Very well. With that



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1 clarification, Exhibit K is admitted.

2 (Whereupon, Defendant's Exhibit K was received

3 in evidence.)

4 BY MR. NOLAN:

5 Q. Briefly, back to your -- you were asked

6 questions in this deposition that I've referred to of

7 October of this year regarding your claims for certain

8 property; correct?

9 A. Yes.

10 Q. And you refused to answer them, stating that

11 you were prohibited from giving out that information;

12 correct?

13 A. Yes, I believe so.

14 Q. And you were also prohibited from telling --

15 from saying who was prohibiting you from giving out that

16 information; correct?

17 A. Yes.

18 Q. If I could -- if I could, now, go back to the

19 alleged threats -- oh, by the way, before I do that, you

20 indicated that the investigation of the shooting up in

21 the mountains somewhere was done; correct? There was an

22 investigation done?

23 A. Yes. A Deputy Sheriff from Idaho County came

24 up.

25 Q. And prior to that, you had phoned FBI Agent

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1 Long; correct?

2 A. I didn't testify to that, but I believe that's

3 the sequence of events.

4 Q. And during the investigation, they went to the

5 area where they would have thought this pistol had been

6 fired; correct?

7 A. I believe so.

8 Q. They actually didn't recover a bullet, did

9 they?

10 A. No. They didn't recover a bullet or a casing.

11 Q. They found no footprints at the area where the

12 casing might be found; correct?

13 A. Well, the ground had been scuffed up there;

14 but they found no distinct prints.

15 Q. In fact, you were in an outhouse; correct?

16 A. When I was shot at, yes.

17 Q. And you were there with a friend; correct?

18 A. I was not in the outhouse with a friend, but

19 there was a friend there.

20 Q. Up in the cabin?

21 A. On the property.

22 Q. How far was the cabin from the outhouse?

23 A. Oh, about, probably, 40 yards, 45, give or

24 take.

25 Q. And you told the officer that you were there

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1 with a friend, but you told him, "Don't try to talk to

2 him because he didn't hear any shots;" correct?

3 A. No, I did not.

4 Q. Is that right?

5 A. No.

6 Q. Did you tell him that he didn't hear any shots

7 because he is almost deaf?

8 MR. SULLIVAN: I object, Your Honor, to

9 hearsay and relevance.

10 THE COURT: I will sustain the objection.

11 BY MR. NOLAN:

12 Q. Did you give him his name to confirm whether

13 there were shots fired?

14 MR. SULLIVAN: Object. Same grounds.

15 THE COURT: I will allow it.

16 THE WITNESS: Yes. Absolutely. And his

17 telephone number and address.

18 BY MR. NOLAN:

19 Q. Now, as to your state of mind as to whether

20 you were shot at, your friend told you he hadn't heard

21 anything?

22 MR. SULLIVAN: Object.

23 THE COURT: Let me see you at sidebar.

24 (Whereupon, the following sidebar discussion

25 was held outside the presence of the jury:)

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1 THE COURT: Where are we going with this? I

2 assume there is no evidence to tie Mr. Hinkson to this,

3 other than the witness's pure speculation.

4 MR. NOLAN: None at all. That was the last

5 question because he got into answering all of the things

6 that they did, and I took the report and the report said

7 that his friend didn't hear anything because he is

8 almost deaf. So it is coming from this witness.

9 THE COURT: Well, you haven't -- I don't think

10 you have established a foundation that he knows what the

11 friend told the Sheriff.

12 MR. NOLAN: No.

13 THE COURT: I am not going to allow collateral

14 impeachment on this incident.

15 MR. NOLAN: No, no. Then I said to the

16 witness -- the question was: "As to your state of mind

17 as to whether it occurred, your friend said to you that

18 he didn't hear it?" That was my question.

19 THE COURT: I am going to sustain that

20 objection. We have gone -- this is way beyond.

21 (Whereupon, the following proceedings were

22 held in open court, in the presence of the jury:)

23 BY MR. NOLAN:

24 Q. Between the time you started working at

25 WaterOz in 2000 and the time of your Grand Jury

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1 testimony in 2002, there were no threats made to kill  
2 Mr. Albers, his family, or anyone else; correct?  
3 A. I didn't work there.  
4 Q. I am sorry. From the time you had contact  
5 with Mr. Hinkson from mid 2002 to -- mid 2000 -- excuse  
6 me -- to April of 2002, Mr. Hinkson made no threats in  
7 your presence regarding killing Mr. Albers or his  
8 family; correct?  
9 A. He made many threats.  
10 Q. About killing Mr. Albers and his family?  
11 A. Oh, yes. Not just to me but to a whole lot  
12 of people.  
13 Q. I am talking about you.  
14 A. Right. He made many threats.  
15 Q. About killing?  
16 A. He just didn't ask me during that time frame  
17 to kill them.  
18 Q. He made no -- did he make any threats in your  
19 presence?  
20 A. Yes.  
21 Q. And, again, your testimony as to how many  
22 times you have talked to Mr. Hinkson during that time  
23 period? Approximately, how many times did you talk to  
24 Mr. Hinkson from mid 2000 to April 2002?  
25 A. I don't recall exactly.

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1 A. If I testified to it under oath, I believed it  
2 to be true at that time.  
3 Q. Do you have any reason to believe, now, that  
4 it's not true?  
5 A. Not really.  
6 Q. When you were asked by the Grand Jury in April  
7 of 2002 as to the nature of the communications that  
8 Mr. Hinkson made in your presence, between the time of  
9 mid 2000 until April of 2002, wasn't it your  
10 testimony -- if I might read from page 42 to 43, 42,  
11 line 19, to 43, line 8, I think that that -- being  
12 allowed to read that would be the best way to do this  
13 particular question.  
14 THE COURT: Well, I -- go ahead. Go ahead.  
15 If there is no objection, go ahead.  
16 MR. SULLIVAN: Give me the page number again,  
17 please.  
18 BY MR. NOLAN:  
19 Q. Page 42, line 19, to 43, line 7. You were  
20 asked by a juror, during the time that you were with  
21 Mr. Hinkson, whether you had any conversations of things  
22 other than technical testing? For example, politics,  
23 his views on taxes and so forth?  
24 MR. SULLIVAN: I object, Your Honor. It's  
25 been covered.

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1 Q. Isn't it true that you testified in the Grand  
2 Jury on April of 2002?  
3 MR. SULLIVAN: I object to the -- I object to  
4 the procedure. He said he didn't recall and that  
5 requires --  
6 THE COURT: We are rehashing ground that I  
7 thought you had covered before lunch.  
8 MR. NOLAN: I didn't do the impeachment.  
9 THE COURT: I will allow you to lay the  
10 foundation. His testimony at this point is that he  
11 doesn't recall. If you can impeach him on that, go  
12 ahead. Otherwise, move on to a new area.  
13 BY MR. NOLAN:  
14 Q. Isn't it true you only talked to him about a  
15 dozen times?  
16 A. I indicated that I do not recall at this  
17 point.  
18 Q. Isn't it true you testified in April that you  
19 had only talked to Mr. Hinkson about a dozen times?  
20 A. I don't recall.  
21 Q. Showing you the transcript, page 18, lines 3  
22 through 7.  
23 A. That's what I testified to under oath at that  
24 time.  
25 Q. And was that true?

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1 THE COURT: Sustained. We have been over this  
2 ground.  
3 MR. NOLAN: Your Honor --  
4 THE COURT: No, counsel. I sustained the  
5 objection. Ask another question.  
6 BY MR. NOLAN:  
7 Q. You told the Government that he never said  
8 anything very bad at all about the Government, isn't  
9 that right?  
10 A. I don't recall that.  
11 Q. This is --  
12 THE COURT: Go ahead.  
13 BY MR. NOLAN:  
14 Q. You said that I haven't heard him talk against  
15 the Government other than he just felt the Government  
16 was too repressive. You said that under oath, isn't  
17 that right?  
18 MR. HOYT: It's not impeachment of anything.  
19 THE COURT: That is not impeaching, Mr. Nolan.  
20 BY MR. NOLAN:  
21 Q. Did you hear him make any threats about  
22 government officials between mid 2000 and April of 2002?  
23 A. Would you repeat the question?  
24 Q. Did you hear him make any threats about  
25 government officials during 2001?

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1 A. Probably.

2 Q. Against Ms. Cook?

3 A. 2001? Probably.

4 Q. Against Mr. Hines?

5 A. Probably.

6 Q. Against Judge Lodge?

7 A. No.

8 Q. Against Hines and Cook, that he wanted them

9 dead?

10 A. That's possible.

11 Q. And when you testified before the Grand Jury

12 in April of 2002, you told the Grand Jury that you

13 hadn't heard him talk against the United States, other

14 than he just he felt that the Government was too

15 repressive.

16 Then you said, at one point, he mentioned

17 something about -- well, federal agents were trying to

18 build a case on honest people, things of that nature,

19 but you just kind of let it go; isn't that right?

20 A. Well, let me --

21 Q. Wasn't that your testimony?

22 THE COURT: Mr. Swisher, is that what you said

23 on that occasion? That's the question. "Yes" or "no"?

24 THE WITNESS: Yes.

25

1090

1 BY MR. NOLAN:

2 Q. Now, was that true?

3 A. Yes. At that time, I thought it to be true.

4 Q. So you believed, at that time, that his

5 comments about Cook and Hines and wanting them dead was

6 nothing more than his saying something about federal

7 agents always trying to build a case on honest people,

8 things like that?

9 A. And his wishful thinking. He was a friend at

10 that point in time. Should I have volunteered that to

11 the Grand Jury?

12 Q. Did you feel you missed --

13 A. To say --

14 THE COURT: Mr. Swisher, wait for Mr. Nolan's

15 question.

16 BY MR. NOLAN:

17 Q. Didn't you feel you were misleading the Grand

18 Jury when you testified like that on April of 2002?

19 MR. SULLIVAN: Your Honor, counsel --

20 THE WITNESS: No.

21 MR. SULLIVAN: -- did not read the juror's

22 question that this was responsive to.

23 MR. NOLAN: I will read it.

24 THE COURT: Please.

25

1091

1 BY MR. NOLAN:

2 Q. The question was: "Did you ever have a

3 conversation with Mr. Hinkson about things other than

4 the technical testing? Did you ever -- you know, did

5 you ever talk politics or his views on taxes and so on

6 and so forth?"

7 And your full answer -- may I read the full

8 answer?

9 THE COURT: You may.

10 BY MR. NOLAN:

11 Q. "I wish you hadn't asked that question. Yes.

12 That's where he is -- it's a conversation but more from

13 the standpoint of I listened while he talked, more than

14 anything else.

15 "But he has some very strong feelings about

16 the Government and the Government being too intrusive in

17 our lives and things of that nature, and he has made

18 those clear on several occasions.

19 "But I haven't heard him talk against the

20 United States ever, other than just he felt that the

21 Government is too repressive.

22 "And at one point, he mentioned something

23 about -- well, federal agents were always trying to

24 build a case on honest people, things of that nature;

25 but I just kind of let that go."

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1 That was the question and that was your

2 answer; correct?

3 A. That was my answer. Absolutely.

4 Q. Now, based upon what you are testifying here

5 today about the nature of the conversations that you

6 heard Mr. Hinkson make in the year 2001, do you feel

7 that you were being honest or were you you, in fact,

8 misleading the Grand Jury?

9 A. No. I was being honest with the Grand Jury.

10 Q. During the time that Mr. Hinkson allegedly

11 made solicitations to you, there were other people

12 around, were there not?

13 A. Would you repeat that?

14 Q. During the time that Mr. Hinkson made

15 solicitations, there were other people around; isn't

16 that right?

17 A. When he made the three direct solicitations to

18 me, they were made in private.

19 Q. Isn't it true --

20 A. To commit murder.

21 Q. Isn't it true -- page 16, line 15, through 17,

22 line 3. Isn't it true, when you were asked a question:

23 Did he make statements about trying to hurt someone --

24 I'm sorry -- about trying to hurt anyone?

25 Answer: "Oh, yes."

1093

1 "Tell us what he said to you."  
2 Answer: "Well, he was so angry with the team  
3 that were involved in persecuting him, is the way that  
4 he put it, that he called me over to his trailer house,  
5 in the privacy of it.  
6 "And I think there were probably several other  
7 people that were around. I don't know how much they  
8 heard. I know on at least one occasion my wife was in  
9 the vicinity. She didn't always enter into the  
10 conversations that we have."  
11 Now, was that about statements involving  
12 killing somebody by you, or was that just his other  
13 conversations about wanting them dead?  
14 A. Again, we are at what page? This is on the  
15 14th, I guess, of February? The February --  
16 Q. This is February of 2004.  
17 A. Okay.  
18 Q. Page 16, line 15.  
19 A. All right. At this particular time frame, I  
20 think this was just another one of those -- I wish this  
21 happened; I wish this happened, et cetera, et cetera.  
22 And I think my wife was present. Whether she  
23 heard anything or not -- I didn't push her on it, but  
24 I'm pretty sure she was there and heard that. But that  
25 was not one of the times he solicited me to do the

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1 that.  
2 (Whereupon, Mr. Sullivan provided the court a  
3 copy of the February 10, 2004, Grand Jury transcript.)  
4 THE COURT: What page are we on, counsel?  
5 BY MR. NOLAN:  
6 Q. Page 21, line 11 and 12. You can start at  
7 line 3. I kind of lost it there because that was the  
8 context. Did you use the word "angry"?  
9 A. Yes, I did here, in that testimony.  
10 Q. Now, there has been testimony about a list.  
11 Can you remember any other names on the list, other than  
12 Mr. Albers, his children, Ms. Cook, Mr. Hines, Judge  
13 Lodge? That's about five or six, I guess. Do you have  
14 any -- there were others; correct?  
15 A. Yes.  
16 Q. Who do you remember of the others?  
17 A. Well, I remember Judge Reinhardt from  
18 Grangeville was on on the list.  
19 Q. Who else?  
20 A. Well, the first time we talked, of course, his  
21 wife, Marie, was on the list.  
22 Q. By the last time, her name was taken off the  
23 list; right?  
24 A. That's right. He had omitted her at that  
25 time.

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1 killings.  
2 Q. The time that you said that he lost it, that  
3 was the last time; correct?  
4 A. That's correct.  
5 Q. And that was the time you said he was  
6 pleading; is that right?  
7 A. I would describe it as pleading.  
8 Q. And you described it to the Grand Jury -- was  
9 he angry?  
10 A. He was quite upset.  
11 Q. Was he angry?  
12 A. I'm not sure that he was all that angry. I  
13 think it was more pleading and frustration.  
14 Q. Page 21, line 12 -- lines 6 through 12.  
15 First of all, before I get to that -- I will  
16 do that.  
17 You, in fact, said to the Grand Jury, "He was  
18 so angry"? Weren't those your words? Those are at  
19 lines 11 and 12.  
20 MR. SULLIVAN: I request that he read the  
21 entire answer.  
22 THE COURT: Well, I don't have a copy of the  
23 transcript, so I'm handicapped. All I have is the April  
24 2002 Grand Jury testimony.  
25 MR. NOLAN: I will be happy to go through

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1 Q. Who else was on the list?  
2 A. Oh, my. Well, we've mentioned Nancy Cook,  
3 Steven Hines, their families, Mr. Albers and his family,  
4 George Reinhardt and his family -- there were several  
5 others, but I don't recall them right now. I didn't  
6 write them down.  
7 Q. Now, were there any strings attached to all of  
8 the things that Mr. Hinkson had given you at that point  
9 in time?  
10 A. I didn't think so, up until this last meeting  
11 with him.  
12 Q. You testified before the Grand Jury, did you  
13 not, "There was no string attached to that, you know,"  
14 referring to those items; correct?  
15 A. I would have to know where you are reading.  
16 Q. Page 20, line 19 and 20.  
17 A. Page 20? I think you have to not take that  
18 out of context, sir.  
19 Q. I will read the whole thing. I would be happy  
20 to.  
21 A. Please.  
22 Q. Do you want me -- where do you want me to  
23 start, sir?  
24 A. Oh, I think I would start at line 7 and go  
25 from there.

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1 Q. All right. Quote, "And then it was right  
2 after that -- and I think this was the middle of January  
3 that he signed -- finally got around to signing the  
4 confidentiality form.

5 "He always wanted to know what we were doing,  
6 and I wouldn't tell him until his forms were signed and,  
7 even then, I was hesitant to tell him too much."

8 Right after that, he dropped in on me again  
9 and --

10 MR. SULLIVAN: I want it read correctly,  
11 please.

12 THE COURT: I think the words are, "He dropped  
13 it on me again."

14 BY MR. NOLAN:

15 Q. I'm sorry.

16 "But right after that, he dropped it on me  
17 again, that he wanted these people killed, and he done  
18 all of this for me, and he knew that he had deeds coming  
19 on this property for me, and all that.

20 "Of course, there was no string attached to  
21 that, you know. This was mine, anyway. But he really  
22 needed help because these people were pressuring him and  
23 they just had -- everything was a lie except his side of  
24 the story, and he repeated his offer to -- made an offer  
25 to me to have them killed."

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1 and said, "I was there with you, you know. It was  
2 twenty, the size of a mining claim."

3 And then it hit me that I had made a mistake  
4 and said ten instead of twenty.

5 Q. He also, during the time that he was -- well,  
6 let me -- let me do this: During the course of the  
7 litigation after December of 2003, you received certain  
8 papers at your door; correct? Somebody put legal papers  
9 on your door; correct?

10 A. I don't know what kind of papers they were.  
11 Somebody had hung a sack with some papers on my door  
12 late at night.

13 Q. You called the police?  
14 A. I did.

15 Q. You refused -- you wanted the police to take  
16 them away; correct?  
17 A. That's correct.

18 Q. And the police told you that this is a civil  
19 matter; you deal with it yourself? Correct?  
20 A. I think it was something to that effect.

21 Q. And the police, also, admonished you not to --  
22 MR. SULLIVAN: I object, Your Honor, to  
23 what --  
24 MR. NOLAN: It goes to bias.  
25 THE COURT: Sustained. Hearsay.

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1 Did I read that properly?  
2 THE COURT: You left out a word. You left out  
3 the word "pay." It should be, " . . . made an offer to  
4 pay me . . ."

5 THE WITNESS: Right.

6 BY MR. NOLAN:

7 Q. I'm sorry.  
8 " . . . he repeated his offer to -- made an  
9 offer to pay me to have them killed."

10 Correct?

11 A. Yes. And what I am doing there is talking  
12 about Mr. Hinkson and his comments to me because he made  
13 it clear that he had done all of this for me. He had  
14 all of this property he had given to me, and he had all  
15 of these deeds coming my way on the property and so on.  
16 And, of course, there was no string attached  
17 to that, with this solicitation of murder; but he  
18 mentioned it during the solicitation to murder. Of  
19 course, I never got the title to any of his property  
20 so --

21 Q. I am just curious. I'm not just curious.  
22 That's not true.  
23 Did he offer you ten acres or twenty acres?  
24 A. I testified at one time that I thought it was  
25 ten. My wife corrected me when I talked to her later

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1 BY MR. NOLAN:

2 Q. The week prior to that, you had also --  
3 somebody tried to serve you with papers?  
4 THE COURT: I will allow that answer.  
5 THE WITNESS: I don't know.

6 BY MR. NOLAN:

7 Q. You called the police prior to that?  
8 MR. SULLIVAN: I object, Your Honor.  
9 Relevance.  
10 THE COURT: I will allow the question.  
11 Did you call the police more than once with  
12 regard to process servers?  
13 THE WITNESS: Yes, sir, I did. There was --  
14 somebody showed up at the door, and I was in the middle  
15 of a medical procedure. This was about 2:00 o'clock in  
16 the morning, and they started tearing the hinges off the  
17 door.  
18 My wife went to the door, and there was a  
19 gentleman who was bearded and dirty and unkempt  
20 demanding to see me. Well, I was upstairs.  
21 Let me explain this. I have to cath four or  
22 five times a day, and I had a catheter in me.  
23 THE COURT: Mr. Swisher, that's sufficient. I  
24 think we get the picture.  
25

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1 BY MR. NOLAN:

2 Q. 2:00 o'clock in the morning they came; is that

3 right?

4 A. About that time, yes. You know, it was late

5 at night, anyway. I couldn't -- my wife could tell you

6 the exact time. I don't recall. I was in quite a bit

7 of pain at that time.

8 Q. Was it before 10:00 in the evening?

9 MR. SULLIVAN: I object, Your Honor.

10 THE COURT: This is going way beyond, counsel.

11 Sustained. Move on to another area.

12 BY MR. NOLAN:

13 Q. Very well. Now, what involvement did you have

14 with WaterOz in October, November, and December?

15 A. Of what year, sir?

16 Q. Of 2003?

17 A. I'm trying to think exactly what day he

18 called. It was either -- probably September or October.

19 He was in jail at the time, and he called me and said

20 that he had a partnership with Rick Bellon and that he

21 had talked to Mr. Bellon and they wanted to hire me as a

22 consultant to go out to WaterOz and look the facility

23 over, make things safer for employees, and make things

24 safer in the product for the general public.

25 And in my discussion with David, I said, "Are

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1 A. Probably.

2 Q. Mr. Bellon was present at the meeting?

3 A. If you say so.

4 Q. Well, was he, sir?

5 THE COURT: Do you remember, Mr. Swisher?

6 THE WITNESS: I don't distinctly remember it,

7 Your Honor.

8 BY MR. NOLAN:

9 Q. Mr. Hinkson wanted you to become involved in

10 WaterOz again; correct?

11 A. Yes.

12 Q. He wanted you to get the place running,

13 improve the product, improve the conditions; correct?

14 A. Yes.

15 Q. And you went ahead and did that; isn't that

16 right?

17 A. I wasn't given the opportunity to do it.

18 Q. You weren't given the opportunity because

19 somebody decided they didn't want Mr. Bellon to do it?

20 They wanted Mr. Hinkson's -- the husband of

21 Mr. Hinkson's former wife to do it; correct?

22 A. I don't know about that. I know that I went

23 out as instructed, and they wouldn't permit me to look

24 over the facility.

25 There were two men there, including

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1 you sure that Mr. Bellon is your partner?"

2 And he said, "Absolutely."

3 And he said, "He will be around." And he

4 said, "No one will give you any trouble. I told them to

5 let you have free reign out there. Troubleshoot this

6 for us."

7 I said: "Okay. Fine. I was concerned more

8 about the general public at that time than anything

9 else -- and the employees."

10 Q. Did you attend a board meeting of WaterOz in

11 October of 2003?

12 A. Quite possibly.

13 Q. You don't remember attending --

14 A. I don't remember the details of it. I think

15 that I was called out for a board meeting, and I'm not

16 even sure who all was there.

17 Q. Wasn't there --

18 A. Anyway, to make a long story short, David

19 eventually came on the speaker phone, talking from jail.

20 THE COURT: Let's wait for the question,

21 Mr. Swisher. The only question was whether or not you

22 remember attending a board meeting.

23 THE WITNESS: I remember it vaguely.

24 BY MR. NOLAN:

25 Q. You brought a friend of yours, Doug Sellers?

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1 Mr. Hinkson's ex-wife's new husband, who is an ex-deputy

2 or was an ex-deputy of Idaho County, Greg something --

3 Towerton, I think -- and another gentleman who kept me

4 from going out and doing what David had asked me to

5 do -- and Bellon, both.

6 Q. So you did nothing at WaterOz after the

7 October board meeting with Mr. Bellon; is that correct?

8 A. Not until -- that's correct, until I went back

9 in December, at Mr. Bellon's request, to follow up on

10 that, via the court order.

11 Q. With Mr. Hinkson's approval; correct?

12 A. I don't know about that because he didn't call

13 me again in December on that.

14 Q. And you understand Mr. Bellon is suing

15 Mr. Hinkson; correct?

16 A. I understand that. I don't know exactly when

17 those suits transpired.

18 Q. You were hired, were you not, as an expert

19 witness by Mr. Bellon; correct?

20 A. Boy, I tell you, there's been a lot of legal

21 stuff going on today. If you will give me a reference

22 to that, maybe I can give you an intelligent answer.

23 Q. Well, do you remember being hired as an expert

24 witness by Mr. Bellon in the civil suit that involves

25 Mr. Hinkson?

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1 MR. SULLIVAN: I object, Your Honor.  
2 Relevance.

3 THE COURT: I will permit it; but I do think  
4 we are going on a bit, counsel. Go ahead.

5 I will overrule the objection, for the record.

6 THE WITNESS: Okay. I don't specifically  
7 recall that. I know that Mr. Bellon definitely wanted  
8 me to go out and look the place over.

9 If that's what you mean by being an expert  
10 witness, that's very possible. He wanted my  
11 recommendations on how to improve employee safety and  
12 public safety, as well.

13 BY MR. NOLAN:

14 Q. I'm specifically referring to being hired by  
15 Mr. Bellon after he was kicked out of WaterOz, to assist  
16 him against Mr. Hinkson in the civil suit?

17 A. Well, sir, at that point in time, I had been  
18 asked by both partners, if you want to call them that,  
19 to give my input to protect employees and the public;  
20 and that's what I went out in December to do.

21 Q. In answer to my question, were you hired as an  
22 expert witness by Mr. Bellon to assist him in the civil  
23 suit against Mr. Hinkson?

24 A. Well, let me put it this way: Hiring involves  
25 money, and I never received a dime for going out there

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1 in December.

2 Q. After December -- I'm sorry.

3 THE COURT: Well --

4 BY MR. NOLAN:

5 Q. After December, when there was a lawsuit  
6 between Mr. Bellon and Mr. Hinkson, were you hired as an  
7 expert witness by Mr. Hinkson in that suit?

8 A. I don't think so. By Mr. Hinkson?

9 Q. That's my fault.

10 A. I don't recall either one of them.

11 THE COURT: Counsel, you are getting us all  
12 confused here. If you can, clear this up. I hope the  
13 jury is following this. I am not.

14 MR. NOLAN: I am having a lot of trouble.

15 THE COURT: I think the witness is having a  
16 hard time following you, as well.

17 MR. NOLAN: I will move on, Your Honor.

18 THE COURT: Thank you, counsel.

19 MR. NOLAN: I can't find the exact portion. I  
20 found it. May I approach?

21 THE COURT: Yes, you may.

22 MR. NOLAN: Take a look to see if this  
23 refreshes your recollection.

24 MR. SULLIVAN: May I see the document that  
25 counsel is showing the witness?

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1 MR. NOLAN: I will show it to counsel.

2 MR. SULLIVAN: Your Honor, I object. It's  
3 talking about a different case.

4 THE COURT: Well, I don't know what you are  
5 objecting to yet because I haven't heard the question.

6 MR. SULLIVAN: He is trying to refresh his  
7 memory regarding being hired as --

8 THE COURT: Let me see the --

9 MR. NOLAN: Sure.

10 MR. SULLIVAN: I'm not talking about the civil  
11 case, Your Honor.

12 THE COURT: You may need to clear that up on  
13 redirect. I think it's a fair question.

14 MR. NOLAN: Let me ask -- I will ask it this  
15 that way?

16 THE COURT: That would help, counsel.

17 MR. NOLAN: I would be happy to.

18 Q. Mr. Swisher, were you hired to be an expert  
19 witness in the federal case against Mr. David Hinkson?

20 A. Against Mr. Hinkson?

21 Q. Yes.

22 A. Would you let me see what you are reading  
23 from, sir?

24 THE COURT: Go ahead and show it to him.

25 MR. NOLAN: Okay. Sure.

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1 THE COURT: I think I now understand  
2 Mr. Sullivan's objection.

3 Let me see counsel at sidebar.

4 (Whereupon, the following sidebar discussion  
5 was held outside the presence of the jury:)

6 MR. SULLIVAN: Your Honor, he has been asking  
7 him over and over again about being hired an an expert  
8 witness by Mr. Bellon against Mr. Hinkson.

9 He shows him this document that is a question  
10 by Mr. Hoyt in this deposition, and Mr. Hoyt references  
11 something about a federal case.

12 It's thoroughly misleading and confusing the  
13 witness. It's thoroughly misled and confused me, and I  
14 think it has the jury. I move to prohibit it.

15 MR. NOLAN: I will be happy to clear it up  
16 because what happens is the question says: "Were you  
17 hired as an expert witness in the federal case against  
18 Mr. Hinkson?"

19 The answer is: "Yes."

20 "Did Mr. Bellon pay you any money?"

21 The answer is: "No."

22 So there is, obviously, ambiguity in that  
23 question. But the fact that he believes that he was  
24 hired as an expert witness in a federal case against  
25 Mr. Hinkson goes to his ability and credibility as a

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1 witness. That's what it's for.

2 THE COURT: The problem that I am having is

3 that we have so many different pieces of litigation, and

4 you are hopping around quickly from one lawsuit to the

5 next.

6 I read that answer, and it is ambiguous. I

7 read that answer to refer to helping Mr. Hinkson in

8 connection with the FDA case against Mr. Hinkson. Now,

9 I don't know if that's what Mr. Hoyt intended when he

10 asked him the question.

11 But we have now moved from the Bellon-Hinkson

12 case to the federal criminal case against Mr. Hinkson,

13 and so I'm not sure this is impeachment.

14 MR. NOLAN: I see. In other words, it could

15 be that it pertains to Mr. Bellon assisting Mr. Hinkson

16 in the federal FDA case.

17 Obviously, the court is further ahead on this

18 than I am. I saw it as a bias that he is working for

19 another witness, and so I will just withdraw the

20 question.

21 THE COURT: That would be the best way to

22 handle it.

23 MR. HOYT: Your Honor, off the record, can we

24 just have a discussion?

25 THE COURT: Yes.

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1 (Whereupon, an off-the-record discussion was

2 held between Mr. Hoyt and Mr. Nolan outside the presence

3 of the jury.)

4 (The following proceedings were held in the

5 presence of the jury:)

6 MR. NOLAN: I will withdraw that question,

7 Your Honor. I apologize to the jury for the confusion

8 that I may have caused with all of those questions.

9 THE COURT: That's quite all right, counsel.

10 BY MR. NOLAN:

11 Q. You believe that it's appropriate that, if you

12 wish, you can change your testimony, depending upon the

13 circumstances; correct?

14 MR. SULLIVAN: I object to so broad and vague

15 of a question.

16 THE COURT: I will sustain it as to the form

17 of the question.

18 BY MR. NOLAN:

19 Q. All right. You testified under oath that you

20 had been paid in full for the testing, correct, prior?

21 A. For what testimony?

22 Q. Earlier this morning, in response to

23 questions, we established that, on a prior occasion, you

24 testified that you had been paid in full for the testing

25 that was done on behalf of WaterOz; correct?

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1 A. I thought I had.

2 Q. And you testified at a later time, at a

3 deposition in October of this year, that you would

4 change your testimony because you didn't get the full

5 amount; correct?

6 A. That's true. It was given, but titles were

7 never issued.

8 Q. Now, hopefully, this will be the last

9 question. I'm sure the Judge has been -- I hope no one

10 else has been as anxious as the court.

11 THE COURT: That's all right. The court will

12 give you as much leeway as you need.

13 MR. NOLAN: I appreciate that, Your Honor.

14 THE COURT: It's been a long day.

15 BY MR. NOLAN:

16 Q. When you testified before the Grand Jury in

17 April of 2002 -- I'm sorry if I didn't speak up loud

18 enough -- you talked about your feelings about

19 Mr. Hinkson; correct?

20 A. Probably. Are you making a specific --

21 Q. I am just laying the foundation for the time

22 and place. At the time, in April of 2002, you believed

23 that he was a very bright man; correct?

24 A. Yes, that's true.

25 Q. A little eccentric; correct?

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1 A. True.

2 Q. Initially, he causes you to take a little step

3 back; true?

4 A. True.

5 Q. He is a bright guy? He has come up with some

6 technology that works; correct?

7 A. Correct.

8 MR. SULLIVAN: I object to reading from the

9 Grand Jury testimony. There is no impeachment, no

10 refreshment.

11 THE COURT: I will sustain it as to improper

12 form. Just rephrase your question.

13 MR. NOLAN: I will rephrase it. I will look

14 and then I will --

15 THE COURT: That would be the better way to do

16 it.

17 BY MR. NOLAN:

18 Q. You haven't had -- you didn't have any

19 problems with him; correct?

20 A. I didn't have any problems with him in that

21 time frame from 2000 to 2002.

22 Q. You didn't expect any problems with him?

23 A. Towards me directly?

24 Q. Yes.

25 A. No.

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1 Q. He never lied to you?

2 A. Well, not that I knew of at the time that I  
3 gave that testimony.

4 Q. And you accept people for who they are and  
5 what they are; correct?

6 A. I try to do that.

7 Q. And that was the kind of information you gave  
8 the Grand Jury about Mr. Hinkson in April of 2002;  
9 correct?

10 A. What you just read, correct.

11 MR. NOLAN: No further questions.

12 THE COURT: All right. Redirect?

13 MR. NOLAN: Oh, Your Honor I do have -- I do  
14 have something. May I approach?

15 THE COURT: Yes, sir. I will allow you to  
16 re-open.

17 (Whereupon, the following sidebar discussion  
18 was held outside the presence of the jury:)

19 MR. NOLAN: This is a very difficult issue.  
20 For quite sometime, we have been trying to dig into his  
21 military history because we don't believe it's accurate.  
22 It's one of those things where, if you make a change and  
23 you are wrong, it can just kill you.

24 Because of his age and because of the time of  
25 the war, we don't believe he was in the war. We also

1 don't believe that he got a Purple Heart or was in  
2 combat.

3 But until one second ago, I had nothing that I  
4 could rely upon to attack that until I was handed a  
5 letter from the National Personnel Records Center  
6 indicating that the offices had failed -- the records  
7 fail to show that he ever was recommended for or awarded  
8 any person decorations.

9 He is wearing a Purple Heart, as we speak.

10 MR. HOYT: Your Honor, he entered the service  
11 in August of 1954, after the Korean Conflict took place.

12 MR. NOLAN: I believe I should be allowed to  
13 re-open this. I'm sorry it came up at this hour. I can  
14 tell the court, literally, I had no prior knowledge.

15 MR. SULLIVAN: Your Honor, are they intending  
16 to call a witness?

17 MR. NOLAN: We will subpoena the witnesses if  
18 he denies it. I mean, we just got this letter dated --  
19 this letter is dated January 14th. It was faxed to us.  
20 We got it on the 14th.

21 MR. SULLIVAN: The Government never went in on  
22 its direct about winning medals or combat. I went into  
23 a conversation that he had with Mr. Hinkson and what  
24 Mr. Hinkson asked him about.

25 I didn't ask him anything about where he got

1 medals, if he had medals, or anything else. The  
2 conversation with Hinkson wasn't about those matters.

3 So this is setting up a -- if there is any  
4 basis to it, that is, this is setting up a scarecrow to  
5 knock it down sometime, maybe, potentially, if they can  
6 find somebody.

7 MR. NOLAN: He is wearing a Purple Heart on  
8 the witness stand. He is wearing a Purple Heart on the  
9 witness stand, in the presence of the jury.

10 MR. SULLIVAN: For the record, he has a  
11 little -- I don't know -- you know, something stuck in  
12 his lapel. If somebody knows what that is, fine. No  
13 one has said what it is.

14 THE COURT: I am going to permit this. I am  
15 going to permit Mr. Nolan to ask him what the lapel pin  
16 is that he is wearing.

17 If he answers that it's a Purple Heart, I am  
18 going to permit Mr. Nolan to ask him whether or not he  
19 is telling the jury that he was awarded the Purple  
20 Heart. And that's as far as I am going to allow you to  
21 go, although you can certainly say isn't --

22 MR. NOLAN: On direct examination, he also  
23 said he killed hundreds of people. That was on direct  
24 examination. I didn't go into that. Now, I mean, I  
25 would like permission to have him re-affirm that he was

1 in combat, because of the records.

2 MR. SULLIVAN: He didn't testify he killed  
3 hundreds of people.

4 THE COURT: He testified he killed many  
5 people.

6 Let's see how he handles the Purple Heart  
7 question; and then you can ask the follow-up, depending  
8 upon how he answers the Purple Heart question.

9 MR. HOYT: Can he be asked the question: Did  
10 he serve during the Korean Conflict, as a predicate  
11 question?

12 THE COURT: I will permit that.

13 (Whereupon, the following proceedings were  
14 held in the presence of the jury:)

15 BY MR. NOLAN:

16 Q. I am sorry, Mr. Swisher. I have some  
17 additional questions. Are you wearing something on your  
18 lapel?

19 A. Yes.

20 Q. What is that?

21 A. It's a Purple Heart Medal.

22 Q. Is that a Purple Heart you earned?

23 A. Yes.

24 Q. It was awarded to you by the United States  
25 Government?

1 A. That's correct.

2 Q. Did you serve in combat in the United  
3 States -- did you serve in combat in the Korean War?

4 A. Not in the Korean War but following the Korean  
5 War.

6 Q. In what field of battle did you receive the  
7 Purple Heart?

8 MR. SULLIVAN: Judge, I object.

9 THE COURT: Overruled.

10 THE WITNESS: I was part of a special  
11 expedition, Marine Corps Expeditionary Unit that was  
12 engaged in combat after the Armistice, in an attempt to  
13 free POWs still in secret prison camps in North Korea.  
14 And that information still remains classified, so I'm  
15 not sure how much more I can say on that.

16 BY MR. NOLAN:

17 Q. Showing you a document from the military --

18 MR. SULLIVAN: I object, Your Honor.

19 BY MR. NOLAN:

20 Q. Showing you a document --

21 THE COURT: I will allow him to show him the  
22 document.

23 MR. SULLIVAN: Your Honor, we know it's not  
24 his document.

25 THE COURT: Go ahead and show him the

1 document.

2 BY MR. NOLAN:

3 Q. Showing you a document from the military, I  
4 ask you whether or not that might refresh your  
5 recollection as to whether or not the Government issued  
6 you a Purple Heart.

7 MR. SULLIVAN: I move to strike, Your Honor.  
8 There is no basis for what counsel is attempting to do.

9 THE COURT: Let the witness review the  
10 document.

11 THE WITNESS: Yes, I see the document.

12 BY MR. NOLAN:

13 Q. Now, sir, when you are awarded a Purple Heart,  
14 are you not given a document reflecting your entitlement  
15 to that Purple Heart?

16 A. Commonly.

17 Q. Were you given such a document?

18 A. Yes.

19 Q. Where is that document?

20 A. In my pocket.

21 Q. May I see it, please?

22 A. I have a replacement DD-214, if the court will  
23 permit me to --

24 THE COURT: Let me take a look at it, first.

25 THE WITNESS: It is certified. We had to go

1 clear to Headquarters of the Marine Corps and all over  
2 to get it. Because of the classifications, my record,  
3 along with the other survivors of that Mission, had been  
4 pretty much purged.

5 THE COURT: Ms. Longstreet, would you tender  
6 that to both counsel, please?

7 MR. SULLIVAN: I have a copy, Your Honor.

8 THE COURT: Just hang on to it.

9 MR. NOLAN: What was that?

10 MR. SULLIVAN: I have a copy.

11 MR. NOLAN: May we approach, Your Honor?

12 (Whereupon, the following sidebar discussion  
13 was held outside the presence of the jury:)

14 MR. NOLAN: I am going to -- apparently,  
15 counsel for the Government knew about the validity of  
16 the Purple Heart. He just said he has a copy of this.

17 THE COURT: Have you seen this document?

18 MR. SULLIVAN: He showed me this document this  
19 morning, about 9:00 o'clock.

20 THE COURT: Do you have a copy?

21 MR. SULLIVAN: I have a copy of it.

22 MR. HOYT: Why didn't you tell us?

23 MR. SULLIVAN: Why should I?

24 THE COURT: Gentlemen, hold on a second.

25 For the record, we are looking at a photocopy

1 of what purports to be a Defense Department Form DD-214  
2 in the name of Elven Joe Swisher with a military  
3 identification number of 1517120.

4 It indicates that he was awarded the following  
5 commendations: The Silver Star, the Navy and Marine  
6 Corps Medal with Gold Star, a Purple Heart, and a Navy  
7 and Marine Corps Commendation Medal with Bronze "V."

8 It indicates that the document replaces the  
9 previously issued transfer document dated 8/3/57 and  
10 that he is entitled to wear the Marine Corps  
11 Expeditionary Medal.

12 Now, counsel, you have opened the door on  
13 this. You can either ask him to explain it, or I am  
14 going to allow the Government to redirect and have him  
15 explain the significance of this document.

16 MR. NOLAN: The Government knew about this  
17 when we approached the bench.

18 MR. HOYT: Your Honor, can we excuse the jury  
19 and have a more full opportunity to discuss this?

20 THE COURT: Let's do that.

21 (Whereupon, the following proceedings were  
22 held in the presence of the jury:)

23 THE COURT: Ladies and gentlemen, I am going  
24 to need to have you take an unscheduled recess so that  
25 we can take up this issue more fully.

1 Please rise for the jury.

2 (Whereupon, the jury was excused from the  
3 courtroom, and the following proceedings were held:)

4 MR. NOLAN: Could the witness be excused?

5 THE COURT: Yes. Mr. Swisher, if you wouldn't  
6 mind stepping out in the hallway, take a break but  
7 remain available.

8 THE WITNESS: I would like to add, Your Honor,  
9 if I may, that --

10 THE COURT: Let me take this up with the  
11 lawyers first.

12 THE WITNESS: Okay.

13 (Whereupon, witness Elven Joe Swisher was  
14 excused from the courtroom.)

15 THE COURT: Mr. Nolan, why don't you go to the  
16 podium?

17 MR. NOLAN: If I may just make a record, Your  
18 Honor, I finished my cross-examination of Mr. Swisher;  
19 and then I was handed a document on stationery that was  
20 faxed to us on the 14th of January at the hour of 2:34,  
21 approximately, and it is a letter to Mr. Hoyt's office  
22 from --

23 MR. HOYT: Central Standard Time.

24 MR. NOLAN: -- the National Personnel Records  
25 Center. We had, apparently, been trying to get

1 Mr. Swisher's military records for about ninety days;  
2 and we have very little control over when that happens.

3 It was discussed -- Mr. Hoyt discussed with me  
4 the time variations between being a combat veteran and  
5 the time of the Korean War. I told him that I would not  
6 go into this without some proof and that I would not  
7 even come close to opening up the door.

8 I noticed that the man wore a Purple Heart.  
9 There is prior testimony that his hearing was affected  
10 by a hand grenade. I didn't want to go into it. He  
11 said he killed people. I didn't want to cross-examine  
12 him on that at all.

13 At the conclusion of my cross-examination,  
14 Mr. Hoyt handed me this two-page letter highlighted with  
15 a paragraph -- it's actually from the personnel records  
16 center. It's a one-page letter.

17 Highlighted, it says, "Mr. Swisher's Marine  
18 Corps record has been carefully examined by the Military  
19 Awards Branch of the Office of the Commandant of the  
20 Marine Corps, and that office has stated that his record  
21 fails to show he was ever recommended for, or awarded,  
22 any personal decorations."

23 Based upon seeing that, I immediately  
24 approached the bench before redirect examination began;  
25 and I told the court I just had come into this

1 information and that we intended, depending upon the  
2 witness's answer to the question, to call a witness from  
3 the archives to establish these facts.

4 I requested permission to re-open. The court  
5 considered that, said I could ask about whether he was  
6 wearing a Purple Heart. Counsel for the prosecution  
7 vehemently objected to my getting into this.

8 I was allowed to re-open. I asked the  
9 question. The record will reflect what the witness  
10 said.

11 And then, in the presence of the jury, counsel  
12 for the prosecution said that he had -- when the  
13 document was delivered to the court by the witness out  
14 of his pocket, counsel for the Government indicated that  
15 he already had a copy of that document.

16 Now, this case has been going quite well, in  
17 terms of the behavior of the parties. I feel that what  
18 occurred mandates -- I will request a mistrial.

19 It mandates serious, severe -- in my opinion,  
20 serious, severe actions, based upon the fact that the  
21 Government was in possession of information which we  
22 were not given regarding this witness which, at that  
23 point in time, the Government knew that the only thing  
24 that could happen is it would be adversely taken and  
25 affect the credibility of me, the credibility of the

1 defense, and adversely affect the defendant.

2 And quite frankly, Your Honor, I don't know  
3 how this matter can be resolved. That's my request.

4 THE COURT: Very well. Let me hear from the  
5 United States.

6 MR. SULLIVAN: Counsel should have listened to  
7 me when I said, "Don't go there."

8 THE COURT: Well, let's establish for the  
9 record, Mr. Sullivan, that you indicated at sidebar that  
10 Mr. Swisher had shown you this DD-214 at 9:00 a.m. this  
11 morning.

12 MR. SULLIVAN: That's correct.

13 THE COURT: All right.

14 MR. SULLIVAN: He showed it to me at 9:00 a.m.  
15 this morning because I had asked -- he had mentioned  
16 Korea, serving in Korea.

17 I said, "Wasn't the Armistice in '52?"

18 He said, "But there was still, you know,  
19 combat; and it continues to this day," which I happen to  
20 know to be true. There is combat to this day in Korea.

21 THE COURT: Technically, those hostilities  
22 have never been officially terminated, Mr. Nolan.

23 Mr. Sullivan is correct; the war in Korea, or police  
24 action, whatever you want to call it, is not over.

25 Let me first say this: First of all, I want

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1 to mark as a defense exhibit the facsimile. I also want  
2 to mark a photocopy of the Form DD-214. So let's give  
3 those numbers.  
4 MR. NOLAN: Could we have a copy back of this?  
5 THE COURT: Certainly.  
6 MR. NOLAN: This is the only one we have.  
7 THE COURT: Let me further say that, in  
8 looking at -- well, let's give them numbers so we get  
9 this clearly on the record. It would be defense Exhibit  
10 L.  
11 MR. HOYT: L and the next one would be M.  
12 THE COURT: I am going to mark -- that's fine.  
13 We can mark them both as defense exhibits. I don't  
14 think it makes any difference.  
15 MR. SULLIVAN: May I make my record, counsel,  
16 since counsel is moving for a mistrial and severe  
17 sanctions?  
18 THE COURT: Yes, Mr. Sullivan.  
19 MR. SULLIVAN: I didn't go into anything about  
20 his combat or his medals or anything else on my direct.  
21 He chose to go down this path, even when I objected to  
22 it.  
23 I didn't draw attention to the little pin in  
24 Mr. Swisher's lapel. Lots of people wear them. They  
25 could be anything. He wanted to make an issue of it.

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1 I don't think -- you know, I barely had time  
2 to look at this, myself. It refers to other -- that  
3 this replaces some document previously issued. I don't  
4 know what that document is, and it just led me to  
5 conclude that this is not a proper area to go into.  
6 THE COURT: Ms. Longstreet, may I have the two  
7 documents?  
8 THE COURTROOM CLERK: Yes, Your Honor.  
9 THE COURT: Thank you.  
10 MR. NOLAN: Could I respond briefly?  
11 THE COURT: Go ahead.  
12 MR. NOLAN: Your Honor, we have a document  
13 given to us by the Government which is false; and the  
14 Government knows it's false.  
15 MR. SULLIVAN: I have no evidence or reason to  
16 believe that the document is false.  
17 MR. NOLAN: The document -- I'm sorry. With  
18 all due respect, the document says there is no record of  
19 him receiving any awards and --  
20 MR. SULLIVAN: I --  
21 MR. NOLAN: He has government information that  
22 contradicts that.  
23 THE COURT: All right. Here is my ruling:  
24 The motion for mistrial is denied.  
25 To the extent that there was error here, it

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1 I objected that he is setting up a -- what did  
2 I say -- a straw man -- I said "scarecrow" before, but I  
3 meant "straw man" -- so he can knock it down if he can  
4 develop some more information.  
5 It is permissible to impeach -- to  
6 cross-examine someone, a witness, for making false  
7 statements, under Rule 608.  
8 608(b) permits inquiry into conduct that is  
9 deceitful, but it doesn't permit impeachment by other  
10 documents. It doesn't permit the use of other evidence  
11 if there is a denial of the deceitful conduct.  
12 Counsel whipped out his document that he  
13 received minutes ago. I believe he probably didn't have  
14 enough time to read it and digest it and tried to use  
15 that to impeach the witness. That was improper.  
16 Under Rule 608(b), he should not have been  
17 allowed to show that document. It wasn't a matter of  
18 refreshing his memory. He hadn't expressed any kind of  
19 doubt about his memory.  
20 It was a grandstand play in front of the jury  
21 that didn't -- that wasn't so grand, and he got caught  
22 on it. That's where we are.  
23 There is nothing the Government did that  
24 caused him to go in the area he did. We tried to avoid  
25 going into this area.

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1 was counsel who requested the opportunity to re-open. I  
2 granted permission to re-open so that you could confront  
3 him because I thought that you had a good-faith basis to  
4 believe, based upon the receipt of Exhibit L from the  
5 National Personnel Records Center of the Department of  
6 Defense in St. Louis, Missouri, to ask the question,  
7 based upon the witness's answer, to try and impeach him  
8 on grounds that he has not, in fact, received the Purple  
9 Heart.  
10 Until that happened, there was no reason for  
11 the Government to believe, with regard to Exhibit M,  
12 that the contents of Exhibit M would be impeaching in  
13 any way, shape, or form.  
14 The court finds as a matter of fact that if  
15 Exhibit M is a copy of a genuine military record -- and  
16 at this point, I don't have any way to determine that;  
17 but it appears to be genuine, at least in appearance.  
18 It indicates consistently with how the witness  
19 has testified; that he did, in fact, receive multiple  
20 shrapnel and gunshot wounds in September 1955 in Korea;  
21 and that he was awarded commendations and medals,  
22 including the Purple Heart.  
23 Now, Mr. Sullivan is correct. Under Rule 608  
24 and the applicable Supreme Court precedent, particularly  
25 Justice Jackson's decision in *Michaelson vs. the United*

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1 States, 335 U.S. 469, 1948, you are permitted to attempt  
2 to impeach a witness in the manner that Mr. Nolan  
3 attempted.

4 Ordinarily, under the rules, you are stuck  
5 with the witness's answer; and the court has the  
6 discretion to restrict further collateral proof of that  
7 impeachment.

8 So the basis for my ruling is, essentially,  
9 counsel opened the door with regard to this  
10 late-received facsimile, Exhibit L.

11 The Government, until the receipt of that  
12 exhibit, had no reason to believe that Exhibit M was  
13 discloseable under Brady or Giglio because it was not  
14 impeaching. Therefore, the motion for mistrial is  
15 denied.

16 We will bring in the jury.

17 MR. NOLAN: Does the court have a remedy? You  
18 know, I also think --

19 THE COURT: Hold on.

20 MR. NOLAN: -- that there was a practice that  
21 counsel -- I mean, maybe I can't find the right cite;  
22 but, quite frankly, I am in an awkward position and I  
23 don't think it should be held against Mr. Hinkson. If  
24 the court has a remedy --

25 THE COURT: Let me suggest that one remedy

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1 instruction that the area inquired into was not relevant  
2 for the jury's determination and they should disregard  
3 it.

4 THE COURT: How about if we do it this way? I  
5 will tell them that the error was the court's in  
6 permitting the area to be inquired into and, for that  
7 reason, I am directing that the portion of the testimony  
8 with regard to whether or not he was awarded the Purple  
9 Heart is stricken, so that it doesn't make either side  
10 look bad. Is that acceptable?

11 MR. SULLIVAN: It is, Your Honor.

12 THE COURT: Mr. Nolan?

13 MR. NOLAN: Yes, Your Honor. Thank you.

14 THE COURT: Very well. Let's bring the jury  
15 back in, Ms. Longstreet.

16 MR. HOYT: Do you want to bring the witness in  
17 first, Your Honor?

18 THE COURT: We will do them together,  
19 simultaneously.

20 Go ahead. Yes.

21 (Whereupon, the following proceedings were  
22 held in the presence of the jury:)

23 THE COURT: Ladies and gentlemen, it's been a  
24 long day; and I now realize that I made a mistake in  
25 allowing the questioning with regard to the Purple Heart

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1 that occurs to the court is that I could simply instruct  
2 the jury to strike that portion of the cross-examination  
3 of Mr. Swisher that relates to the Purple Heart. Just  
4 tell them to completely disregard all testimony about  
5 the Purple Heart.

6 MR. NOLAN: That would be appreciated. I  
7 think that would be the best way. Other than that, we  
8 have to bring in people to show our good faith and all  
9 of that.

10 MR. SULLIVAN: Your Honor, now Mr. Swisher  
11 looks like he has said something improper and done  
12 something improper, because the court is striking his  
13 testimony. It was responsive testimony to counsel's  
14 questions.

15 THE COURT: Let me put it to you this way,  
16 Mr. Sullivan. That is the only suggestion I can think  
17 of. If the Government doesn't want me to instruct the  
18 jury, I will leave the record as it stands; and you can  
19 take your chances.

20 MR. SULLIVAN: What I would like, Your  
21 Honor --

22 THE COURT: If there is a conviction,  
23 Mr. Nolan may or may not have an issue here. Do you  
24 want to think about it for a minute?

25 MR. SULLIVAN: All I would ask the court is an

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1 Medal.

2 So I am going to instruct you to disregard  
3 completely all of Mr. Swisher's testimony with regard to  
4 that military commendation.

5 You certainly are entitled to consider all of  
6 the rest of his testimony. Just everything from where I  
7 asked Mr. Nolan to re-open, please strike that from your  
8 minds; and you are not to consider it as evidence in the  
9 case.

10 With that, are we ready to proceed with  
11 redirect examination.

12 MR. SULLIVAN: Yes, Your Honor.

13 THE COURT: Do you want to move that easel,  
14 Mr. Sullivan?

15 MR. NOLAN: I can do that.

16  
17 R E D I R E C T E X A M I N A T I O N

18 BY MR. SULLIVAN:

19 Q. Mr. Swisher, you may recall you were asked  
20 about a particular question and answer you gave in your  
21 first Grand Jury appearance in April 2002. The question  
22 was -- I will put it on the screen again -- it's Grand  
23 Jury testimony at page 42.

24 A question by a juror was: "Did you ever have  
25 a conversation with Mr. Hinkson about things other than

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1 the technical testing? Did you ever, you know -- did  
2 you ever talk politics or his views on taxes, so on and  
3 so forth?"

4 Did you understand that question to require  
5 any response about Mr. Hinkson hoping that federal  
6 officials would die?

7 A. No.

8 Q. Did you try to answer the question as you  
9 thought it was required?

10 MR. NOLAN: Objection. Leading.

11 THE COURT: Overruled.

12 Could you answer that question? The question  
13 was: "Did you try to answer the question as you thought  
14 it was required?"

15 THE WITNESS: As it was asked, I did my best  
16 to answer it.

17 BY MR. SULLIVAN:

18 Q. You were also asked a question, again from the  
19 Grand Jury testimony, about whether Mr. Hinkson's offers  
20 to you were made in private or with other people around.  
21 Do you recall that question?

22 A. I'm sorry. I got lost there. Would you  
23 repeat that question?

24 Q. Do you recall being asked a question about  
25 whether or not Mr. Hinkson made the offers to kill the

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1 other person? Judge Reinhardt?

2 A. Yes.

3 Q. Who is Judge Reinhardt?

4 A. I think he is a judge in the Fifth District  
5 or, at least, he was stationed in Grangeville, Idaho  
6 County.

7 Q. And do you know if Judge Reinhardt had  
8 anything to do with litigation involving Mr. Hinkson?

9 A. I believe he was the trier of fact in the case  
10 that Mr. Hinkson lost, and the plaintiff was awarded  
11 \$100,000 then.

12 Q. Do you recall the name of that particular  
13 plaintiff?

14 A. Arnette Hazelton (sic.), I think. That's  
15 probably an improper pronunciation.

16 Q. You have been asked a number of questions on  
17 cross-examination about your civil litigation involving  
18 Mr. Hinkson; correct?

19 A. Yes.

20 Q. Did you ever sue Mr. Hinkson?

21 MR. NOLAN: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. SULLIVAN:

24 Q. Did Mr. Hinkson ever sue you?

25 A. Yes.

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1 federal officials to you in private or with other people  
2 around in?

3 A. Yes.

4 Q. Do you recall that question?

5 A. Yes.

6 Q. And did he do that in private or with other  
7 people around?

8 A. In private.

9 Q. Were there times there were other people  
10 around that he said other type things?

11 A. Ch, yes.

12 Q. Such as what?

13 A. Well, he wanted to see Albers and his whole  
14 family, you know, dead. He made those comments with  
15 other people around; but with other people around, he  
16 never made the solicitations.

17 MR. NOLAN: Objection, Your Honor. Beyond the  
18 scope. I don't mean beyond the scope. Asked and  
19 answered.

20 THE COURT: Overruled.

21 BY MR. SULLIVAN:

22 Q. You were also asked about people on his list.  
23 Do you understand that to mean, like, a hit list?

24 A. Yes.

25 Q. And you answered there was, at least, one

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1 Q. When did he do that?

2 A. Well, I learned of it sometime after I had  
3 contacted the Idaho County Assistant Prosecutor on --

4 Q. Listen to my question. Give me a date.

5 A. I don't know the date.

6 Q. When he sued you?

7 A. I'm just trying to tell you that it was  
8 sometime after I had contacted the Idaho County  
9 authorities regarding Mr. Hinkson.

10 MR. NOLAN: Objection, Your Honor.

11 THE COURT: Overruled.

12 BY MR. SULLIVAN:

13 Q. Was it in 2003?

14 A. Probably.

15 Q. Were you served process?

16 A. I'm not sure exactly when I was served on the  
17 matter.

18 Q. How did you learn that Mr. Hinkson had sued  
19 you?

20 A. Well, I did eventually get served; but I just  
21 don't recall the date I was served.

22 Q. All right.

23 A. But I know that it came after I had been in  
24 and talked with the authorities.

25 Q. But my question was -- all right. Let me

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1 rephrase. What were you being sued for? 1137  
2 A. As I recall -- and I might be off a quarter  
3 turn here -- I was being sued for -- Mr. Hinkson was  
4 stating that I had stolen his technology from him and  
5 that I had attempted to take over his business.  
6 Q. Was that the part of the litigation involving  
7 Mr. Bellon's lawsuit against Mr. Hinkson?  
8 A. I think, probably so.  
9 Q. Did you countersue Mr. Hinkson?  
10 A. Yes.  
11 Q. What did you claim against him?  
12 A. Again, the property that he had verbally given  
13 me and the grader.  
14 Q. In your countersuit, did you deny that you had  
15 stolen his technology?  
16 A. Boy, I hope so. I am not sure that I did, but  
17 I certainly didn't steal his technology.  
18 Q. Has that lawsuit been resolved in any fashion?  
19 A. From my understanding, it had been. There was  
20 a meeting with Judge Bradbury in Grangeville between  
21 Mr. Hoyt --  
22 MR. NOLAN: Objection, Your Honor.  
23 THE COURT: If he knows if it's been settled,  
24 why don't we establish that?  
25 THE WITNESS: I think it has been settled.

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1 Q. What were you being asked? 1139  
2 A. Well, he was getting dangerously close --  
3 MR. NOLAN: Excuse me. It's vague.  
4 THE COURT: I am going to sustain the  
5 objection as to the form of the question.  
6 BY MR. SULLIVAN:  
7 Q. What did Mr. Hoyt ask you regarding your  
8 testimony as the Federal Grand Jury?  
9 MR. NOLAN: I object to that.  
10 THE COURT: Counsel, you got into this.  
11 MR. NOLAN: That's fine.  
12 THE COURT: I am going to overrule the  
13 objection and allow the witness to answer.  
14 MR. NOLAN: That's fine.  
15 MR. HOYT: Your Honor, may we have a sidebar  
16 on this?  
17 THE COURT: No. We have had enough sidebars.  
18 THE WITNESS: Well, he was getting into the --  
19 of course, the area about the equipment that had been  
20 transferred to me and the property that had been  
21 transferred to me and so on and was getting dangerously  
22 close to some of the questioning that --  
23 MR. SULLIVAN: My question, Your Honor --  
24 MR. NOLAN: Objection.  
25 THE COURT: Mr. Swisher, I know it's been a

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1 BY MR. SULLIVAN: 1138  
2 Q. Did you get any of the property that you sued  
3 for?  
4 A. No.  
5 Q. Did Mr. Hinkson get anything that he sued you  
6 for?  
7 A. No.  
8 Q. Now, you were asked questions, also, about  
9 some questions from a deposition in October. Do you  
10 recall those questions?  
11 A. Yes.  
12 Q. Was that October of 2004?  
13 A. I believe so.  
14 Q. And was that a deposition in conjunction with  
15 this particular civil lawsuit?  
16 A. Yes.  
17 Q. Who was asking you questions in that?  
18 A. Mr. Hoyt.  
19 Q. Was he representing Mr. Hinkson in that?  
20 A. Yes, he was.  
21 Q. Was he asking you about what you told the  
22 Grand Jury?  
23 A. I took it to be that, yes.  
24 Q. What were you being asked?  
25 A. I beg your pardon?

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1 long day; but bear with us. 1140  
2 Go ahead, Mr. Sullivan.  
3 BY MR. SULLIVAN:  
4 Q. I am asking you: What did he ask you about  
5 your Grand Jury testimony?  
6 MR. NOLAN: Objection to the form of the  
7 question, Your Honor.  
8 THE COURT: Sustained.  
9 BY MR. SULLIVAN:  
10 Q. Did he ask you questions about your Grand Jury  
11 testimony?  
12 A. Yes.  
13 Q. What did he ask you?  
14 THE COURT: Counsel, I think the concern is  
15 with the broad nature of your questions. I will permit  
16 you to ask a leading question, if you are trying to  
17 establish a point here.  
18 MR. SULLIVAN: Yes, Your Honor.  
19 Q. Did Mr. Hoyt ask you about these offers from  
20 Mr. Hinkson that you have testified to here today?  
21 A. Yes.  
22 Q. Did he ask you the circumstances of those  
23 offers?  
24 A. He did more than that.  
25 Q. Like what?

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1 A. He indicated he had talked to -- the other  
2 witnesses that he had talked to thought it was all a  
3 bunch of bunk and that David hadn't meant anything and  
4 that he was laying that on me pretty hot and heavy.  
5 And he said, "You know, you probably feel the  
6 same way; right?"  
7 And I said, "Not necessarily."  
8 Q. Another Grand Jury question from your first  
9 Grand Jury testimony in April of 2002 -- you were read  
10 back the quote. This was regarding your memory.  
11 A. Yes.  
12 Q. Do you remember this quote: "If it weren't  
13 for flashbacks, I wouldn't have any?"  
14 A. Yes.  
15 Q. What were you trying to convey when you said  
16 that?  
17 A. Well, I was making an attempt at levity. Most  
18 of the Grand Jury members laughed.  
19 Q. Do you have any problems with your memory?  
20 A. Not really.  
21 MR. SULLIVAN: That's all I have on redirect,  
22 Your Honor.  
23 THE COURT: Mr. Nolan, anything further?  
24  
25

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1 THE COURT: Mr. Swisher, it's a very simple  
2 question. Did you meet with Mr. Hoyt before they took  
3 your deposition, and did you have a conversation with  
4 him?  
5 THE WITNESS: Right in the middle, when the  
6 court clerk and one of the other members on Mr. Hoyt's  
7 team took what I brought over to have copied, there was  
8 about an hour there; and that was when all of this  
9 grilling went on.  
10 THE COURT: All right.  
11 THE WITNESS: But it was -- the deposition  
12 was, basically, in recess for that hour; but it was at  
13 the deposition.  
14 THE COURT: All right. Thank you.  
15 Thank you, counsel.  
16 BY MR. NOLAN:  
17 Q. When you were asked questions under oath at  
18 the deposition of October 2004, I take it, no question  
19 was asked of you as to what you were questioned about at  
20 the Grand Jury; correct?  
21 A. Well, I felt -- the reason I refused to answer  
22 some of those is I felt they were dangerously close to  
23 information --  
24 THE COURT: Mr. Swisher, that's not responsive  
25 to the question being asked of you. The question is:

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RE CROSS EXAMINATION

BY MR. NOLAN:

Q. Isn't it true, during the deposition of  
October of 2004, that Mr. Hoyt asked no questions about  
what you testified to in the Grand Jury?  
A. I'm trying to place this because I may have  
been a bit inaccurate here. The questions were asked  
prior to either the deposition or another proceeding.  
I'm not sure at which time, but they were asked.  
Q. So all of the questions asked of you by  
Mr. Sullivan about the deposition could be in error? It  
could be some other proceeding; is that correct?  
A. No. I think that was the time frame, but I  
think those questions took place before we went on the  
record.  
THE COURT: Counsel, can you establish whether  
or not he met with Mr. Hoyt before he was sworn for that  
deposition?  
BY MR. NOLAN:  
Q. Did you meet with Mr. Hoyt before you were  
sworn as a witness?  
A. Yes. Oh, wait a minute. I do know now -- if  
I may correct that? At some point, I took a bunch of  
documents to be transcribed, and I didn't mind having  
those copies -- what am I trying to say -- copied.

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1 Isn't it true that Mr. Hoyt never asked you specifically  
2 what you testified to before the Grand Jury?  
3 THE WITNESS: Specifically, on the record, no.  
4 THE COURT: Very well.  
5 MR. NOLAN: Thank you.  
6 THE COURT: Counsel, do you want me to give  
7 the jury a 6E instruction with respect to the right of a  
8 witness?  
9 MR. NOLAN: Yes. Yes, especially in the  
10 instructions given afterwards. I would like that. Then  
11 we wouldn't have to call a witness.  
12 THE COURT: Mr. Sullivan, any objection?  
13 MR. SULLIVAN: I would like to discuss at  
14 sidebar, Your Honor.  
15 THE COURT: All right. Let's do that.  
16 (Whereupon, the following sidebar discussion  
17 was held outside the presence of the jury:)  
18 THE COURT: What I proposed to Mr. Nolan was  
19 to simply instruct the jury that, under Federal Rule of  
20 Criminal Procedure 6E, a witness is permitted, at his  
21 discretion, to discuss with anyone he wants to, or to  
22 refuse to discuss with anyone, what he said in the Grand  
23 Jury Room.  
24 If there is an objection to my giving that  
25 instruction now, I may entertain, with regard to the

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1 A. Four.

2 Q. So did you have any more discussion with

3 Mr. Hinkson at that time, around the table?

4 A. No.

5 Q. At some point that day, did you have further

6 discussion with Mr. Hinkson?

7 A. Later that evening.

8 Q. Would you tell us about how that came to pass?

9 A. Well, I was on my bunk; and Dave Hinkson was

10 on his bunk, talking about the feds and how he hated

11 them. Then he flagged me over there, and I sat down.

12 He started showing me why the IRS didn't exist and

13 things like that; that's how it got started.

14 Q. Did you talk about anything else that evening?

15 A. Yeah. Later that evening, we talked about a

16 guy named Swisher.

17 Q. Where were you at that time?

18 A. I was on his bunk.

19 Q. Was anybody else present?

20 A. No.

21 Q. Was this a private conversation, or could

22 other people overhear it?

23 A. They were watching TV. It was private.

24 Q. How far away?

25 A. Fifteen, twenty feet. Fifteen feet.

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1 Q. Anything more specific?

2 A. Not that day.

3 Q. Did he say anything about who Hines was?

4 A. He said he was IRS.

5 Q. I'm sorry?

6 A. He said he was IRS.

7 Q. And Judge Lodge -- did he say anything about

8 whether he had any relationship with Judge Lodge -- "he"

9 being Mr. Hinkson?

10 A. No.

11 Q. Now, over the course of the next day or so,

12 did you have further discussion with Mr. Hinkson?

13 A. The next day, yes.

14 Q. What did you talk about?

15 A. Normal stuff, how he hated the feds, wished

16 they all were dead. He talked about J. C., another guy,

17 one of his friends.

18 Q. Okay. What did he say about J. C.?

19 A. He said that he offered the same offer to him,

20 \$10,000 to get rid of Cook, Hines, and Lodge.

21 Q. Now, at some point, did you have a

22 conversation -- at that point, did you have an

23 understanding as to whether you might be able to get out

24 of prison?

25 A. Would you say that again?

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1 Q. So he had said something about Swisher?

2 A. Yeah. He is -- basically, he said Swisher --

3 he offered Swisher \$10,000 to get rid of Lodge, Cook,

4 and Hines.

5 Q. And did he say anything about whether Swisher

6 was interested?

7 A. No.

8 Q. And did you have further discussions with

9 Mr. Hinkson about his case or these sorts of facts at

10 that time?

11 A. No.

12 Q. Now, who was he offered money to kill?

13 A. Lodge, Cook, and Hines.

14 Q. Do you have the name of Lodge, the first name?

15 A. Edwin or -- Judge Lodge.

16 Q. This is the Judge?

17 A. Yeah.

18 Q. And Cook -- did Mr. Hinkson mention Cook's

19 first name?

20 A. Yeah. Nancy.

21 Q. And how about Hines? Did Mr. Hinkson mention

22 Hines' first name?

23 A. Not that day.

24 Q. Did Mr. Hinkson tell you who Nancy Cook was?

25 A. He said she was a fed.

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1 Q. At this point in time, were you thinking that

2 there was a possibility that you might get out of

3 prison?

4 A. No.

5 Q. Did Mr. Hinkson talk with you further about

6 Judge Lodge, Ms. Cook, this man -- this person Hines?

7 A. Yeah. He -- that's when he -- we had more

8 conversation. We talked more about other things; but,

9 basically, he said I would be worth \$30,000 if I could

10 eliminate Lodge, Cook, or Hines.

11 Q. Were those exact words, or are you

12 summarizing?

13 A. Those are exact.

14 Q. And roughly when was this?

15 A. It was on the 22nd, after noon.

16 Q. He said you would be worth \$30,000 if you

17 eliminated these people on -- you are certain about the

18 22nd, November 22nd?

19 A. Yes.

20 Q. So at that point, did you take any steps?

21 A. I called my attorney.

22 Q. When?

23 A. That afternoon, after that.

24 Q. Now, why did you call your attorney?

25 A. I wanted to protect myself.

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1 A. Idaho.

2 Q. You have been here your whole life?

3 A. Yes.

4 Q. Prior to being incarcerated at the Ada County

5 Jail with Mr. Hinkson, had you ever heard of

6 Mr. Hinkson?

7 A. No.

8 Q. Had you ever heard of Nancy Cook?

9 A. No.

10 Q. Had you ever heard of Steve Hines?

11 A. No.

12 Q. Had you ever heard of J. C. Harding?

13 A. No.

14 Q. Had you ever heard of this person Swisher?

15 A. No.

16 Q. Has the Government promised you that your

17 sentence will be reduced because of your testimony

18 today?

19 A. No.

20 Q. But you hope it will be reduced; right?

21 A. Yes.

22 Q. Do you have an understanding as to whether the

23 Government has the authority to reduce your sentence?

24 A. Do I understand that --

25 Q. Can the Government do that?

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1 A. No, they can't.

2 Q. Who has the authority to do that?

3 A. The judge.

4 Q. Do you have an understanding as to whether the

5 Government has filed a motion recommending that your

6 sentence be reduced for your testimony here today?

7 A. I don't think they have.

8 Q. I'm sorry. Would you repeat that?

9 A. No, I don't think they have.

10 Q. Sitting here today, do you have any

11 understanding -- do you have any belief that Judge Lodge

12 will be the person who decides your sentence?

13 A. I was told that he won't be the one.

14 Q. Now, did you enter into a cooperation

15 agreement with the Government?

16 A. When or --

17 Q. Recently, with respect to this case?

18 A. Yes.

19 Q. And do you remember when you entered into this

20 cooperation agreement?

21 A. A couple of weeks ago.

22 MR. TAGAY: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MR. TAGAY:

25 Q. I have just passed you, Mr. Croner, what is

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1 marked as Government's Exhibit No. 6. I ask you to turn

2 turn to the last page. On the bottom there, there is a

3 signature. Do you recognize it?

4 A. Yes.

5 Q. Whose signature is that?

6 A. That's mine.

7 Q. And just above the signature, there is a date.

8 Do you see that?

9 A. Yeah.

10 Q. What date is that?

11 A. 12/22/04.

12 Q. Is this the agreement that you entered into

13 with the Government regarding your cooperation in this

14 case?

15 A. Yes.

16 MR. TAGAY: Your Honor, the Government moves

17 for the admission of Government Exhibit No. 6.

18 THE COURT: Mr. Nolan?

19 MR. NOLAN: Can we defer admission?

20 THE COURT: Yes. Are you going to ask him any

21 questions about the content?

22 MR. TAGAY: No.

23 THE COURT: Very well. We will defer on that

24 then.

25

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1 BY MR. TAGAY:

2 Q. Mr. Croner, one person I didn't ask you about

3 is a person by the name of -- well, actually, let me ask

4 you this: Did Mr. Hinkson ever mention a woman who was

5 living at his house?

6 A. Yes.

7 Q. Who did he mention?

8 A. Arnie Bates.

9 Q. What did he say about Ms. Bates?

10 A. He said that she was -- she lived in his

11 basement for a few weeks.

12 Q. Anything further?

13 A. He said that he was trying to get in her

14 pants.

15 MR. NOLAN: Objection, Your Honor.

16 THE COURT: Overruled.

17 BY MR. TAGAY:

18 Q. Anything further?

19 A. A lot of little stuff.

20 Q. Okay. Had you ever heard of Ms. Bates before

21 meeting Mr. Hinkson?

22 A. No.

23 Q. Do you recognize Mr. Hinkson in the courtroom?

24 A. Yes.

25 Q. Where is he?

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1 A. Right there, one over from you, to the right.

2 THE COURT: Tell us what color clothing.

3 THE WITNESS: Blue sweater.

4 THE COURT: The record will reflect that

5 Mr. Croner has identified defendant Hinkson.

6 BY MR. TAXAY:

7 Q. Did Mr. Hinkson discuss with you his case

8 here, the case that we are here for today, and the

9 evidence against him?

10 A. Yes.

11 Q. Did he discuss any particular concern about

12 any particular evidence?

13 A. Yes. He discussed a lot of stuff about it,

14 about the evidence.

15 Q. Did he mention any witnesses that he was

16 concerned about?

17 A. He was concerned about J. C. Harding and Arnie

18 Bates.

19 Q. What was he concerned about?

20 MR. NOLAN: Objection. Form of the question.

21 THE COURT: Yes. Just what he said.

22 BY MR. TAXAY:

23 Q. Did he tell you what he was concerned about?

24 A. Yes. He said that he was worried about them.

25 He thought he had everybody else -- all of the other

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1 witnesses taken care of but he was worried about

2 their -- about their testimony.

3 MR. TAXAY: Just a moment, Your Honor.

4 THE COURT: Certainly.

5 (Whereupon, an off-the-record discussion was

6 held between Mr. Taxay and Mr. Sullivan.)

7 MR. TAXAY: No further questions right now.

8 Pass the witness.

9 THE COURT: Very well.

10 Cross-examination, Mr. Hoyt?

11 MR. NOLAN: Thank you, Your Honor.

12 THE COURT: Mr. Nolan?

13 MR. NOLAN: Yes. Thank you.

14

15 CROSS EXAMINATION

16 BY MR. NOLAN:

17 Q. It's your understanding, is it not, based upon

18 how you do today on the witness stand, the Government

19 will decide what recommendation to make to a federal

20 judge in reducing your sentence; correct?

21 A. My understanding? Is that -- that was your

22 question? You'll have to repeat it.

23 Q. All right. It's your understanding that,

24 after you testify, the Government, depending upon how

25 they feel about your testimony, will consider making a

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1 recommendation to a federal judge to reduce your

2 sentence; isn't that correct?

3 A. No.

4 Q. Okay. And what is incorrect about that

5 question?

6 A. My performance.

7 Q. So in other words, no matter what you say on

8 the witness stand today, you expect the Government to

9 recommend that your sentence be reduced; correct?

10 A. No.

11 Q. So it depends upon what you say today on the

12 witness stand; correct?

13 A. I don't think so, no.

14 Q. Before Mr. Hinkson talked to you about paying

15 money to kill these people, did you give him any

16 indication that you would be interested in killing

17 people for him?

18 A. No.

19 Q. That you had any prior record with violence

20 towards individuals?

21 A. No.

22 Q. That you had any hatred for Judge Lodge?

23 A. No.

24 Q. That you had any hatred for feds or the

25 Federal Government?

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1 A. No.

2 Q. That you had any interest in overthrowing the

3 Federal Government?

4 A. No.

5 Q. That you had any interest in harming these

6 people for any amount of money?

7 A. No.

8 Q. Is there anything you said or did that you

9 believe would cause him to believe that you would

10 actually carry out a hit on these people?

11 A. I told him I was going to be possibly let out

12 to self-surrender to California. That's my only

13 thought.

14 Q. You believe that that gave him the suggestion

15 that you would consider killing these people?

16 A. I don't know what he was thinking.

17 Q. Is that what you were trying to suggest to

18 him?

19 A. I didn't suggest that to him, no.

20 Q. Were you trying to suggest that to him?

21 A. No.

22 Q. Were you trying to get any money from him?

23 A. No.

24 Q. Were you trying to get any favors from him?

25 A. No.

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1 A. Yes.

2 Q. And where were the legal papers kept?

3 A. Under his bed.

4 Q. Under Mr. Hinkson's bed?

5 A. Under Hinkson's bed, yes.

6 Q. I will put "Iph." Did you ever sit on the  
7 bunk and talk to Mr. Hinkson?

8 A. Yes.

9 Q. Did you ever spend time over on the bunk with  
10 Mr. Hinkson?

11 A. Yes.

12 Q. Was it a double bunk?

13 A. Yes.

14 Q. Were there other -- was there another inmate  
15 in the second part of the bunk while you were there?

16 A. Yes.

17 Q. Was there an inmate in the second part of the  
18 bunk the entire time you were there?

19 A. No.

20 Q. How many days, of the days that you were  
21 there, was there a person in the second bunk?

22 A. Maybe four or five -- three or four.

23 Q. About how much time per day -- strike that.  
24 Mr. Hinkson used the telephone at "A;" isn't that  
25 correct?

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1 A. Yes.

2 Q. About how many hours per day did he utilize  
3 that phone?

4 A. Maybe four. Three or four.

5 Q. And most of that time, you were able to  
6 overhear those calls; correct?

7 A. No.

8 Q. Did you overhear those calls at any time?

9 A. No.

10 Q. Were you aware as to who he was calling?

11 A. I know he called his wife and his daughter.

12 Q. Do you know whether he called anybody else?

13 A. His lawyers.

14 Q. He told you he was talking to his lawyers;  
15 correct?

16 A. One time he told me he was talking to his mob  
17 boss or his mob attorney.

18 Q. My question was -- he referred to his lawyer  
19 as a mob lawyer? Is that what you are saying?

20 A. Yes.

21 Q. So how many times did he refer to him as a mob  
22 lawyer?

23 A. Maybe twice.

24 Q. Other than that, did he refer to him just as a  
25 lawyer?

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1 A. I don't know. I mean, he said he was talking  
2 to his lawyers.

3 Q. Did he talk to his lawyer with disrespect --  
4 strike that. Did he talk about his lawyer with  
5 disrespect, sir?

6 A. Not to me.

7 Q. Did he say why his lawyer was a mob lawyer?

8 A. I don't know which one it is. He just made  
9 that comment twice.

10 Q. He didn't say anything more about that?

11 A. No.

12 Q. You didn't ask him about it; correct?

13 A. No, I didn't.

14 Q. Did you read any of the paperwork from his  
15 case?

16 A. I had seen some motions.

17 Q. Some motions. Which motions did you see?

18 A. I don't remember them now.

19 Q. You are aware that your testimony here, as to  
20 the people involved, is exact -- strike that.

21 That your testimony as to J. C. Harding is  
22 what is alleged in the indictment; correct?

23 A. You have to say that again.

24 Q. You know what an indictment is, do you not?

25 A. Yes.

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1 Q. Did you see the indictment in this case?

2 A. No.

3 Q. You didn't see what he was charged with?

4 MR. TAXAY: Objection, Your Honor.

5 THE COURT: Sustained. Lack of foundation.

6 BY MR. NOLAN:

7 Q. Did you see what Mr. Hinkson was charged with?

8 MR. TAXAY: Same objection. Same question.

9 THE COURT: Sustained. Asked and answered.

10 BY MR. NOLAN:

11 Q. The motions that you read, do you remember  
12 which ones they were?

13 A. No.

14 MR. TAXAY: Objection, Your Honor. That last  
15 question misstates the testimony.

16 THE COURT: Well, the question and the answer  
17 will stand. The jury will remember it.

18 BY MR. NOLAN:

19 Q. Let me make it clear. Did you read any  
20 motions?

21 A. I didn't read them in full, no.

22 Q. Oh, you read some of the motions?

23 A. I skimmed them. He showed me motions, and I  
24 skimmed through them. They were -- I didn't quite  
25 understand them.

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1 Q. Were you doing time in the county jail on a  
2 state case, as well as a federal case?

3 A. I don't quite understand that. I mean, I was  
4 doing time in the county jail, yes.

5 Q. On a federal matter?

6 A. On the federal matter, yes.

7 Q. And on a state matter; correct?

8 A. The state matter -- they suspended the time on  
9 that.

10 Q. How much of the time did they suspend?

11 A. 180 days.

12 Q. You didn't get a five-year sentence?

13 A. The way I understood it, they suspended the  
14 time; so the time when I was in Ada County is on federal  
15 time.

16 Q. What was the crime that you committed in state  
17 court while you were awaiting going into sentencing in  
18 federal court?

19 A. Insurance fraud.

20 Q. And isn't it true that the state court gave  
21 you a five-year sentence and suspended most of it for  
22 you to serve your federal sentence?

23 A. I thought they suspended all of it.

24 Q. Of a five-year sentence; correct?

25 A. Yes.

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1 Q. You wrote some notes, did you not, of what you  
2 remember being said inside the jail; isn't that correct?

3 A. Yes.

4 Q. And those notes were made at the exact time  
5 things were being said, or did you make those notes up  
6 later?

7 A. The original --

8 MR. TAVAY: Objection, Your Honor. Use of the  
9 words "make those notes up" implies that they are  
10 fabrications.

11 THE COURT: Sustained as to the form.

12 MR. NOLAN: I didn't intend to imply --

13 THE COURT: I didn't think so. Just rephrase  
14 your question.

15 BY MR. NOLAN:

16 Q. Did you create the notes at the time? In  
17 other words, if you put down a date and then wrote  
18 something beyond that date, was it on that date that you  
19 wrote that information down; or did you, at a later  
20 time, go back and try to remember what was said on a  
21 particular date and write it down at a different date?

22 A. Yes.

23 Q. "Yes" what?

24 A. Yes, I wrote dates down at another time; and I  
25 went back and remembered a date and remembered and wrote

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1 it down.

2 Q. And you tried to remember all of the things  
3 that you thought would be important; correct?

4 A. I wrote down most everything I thought would  
5 be important.

6 Q. When did you write this information down?

7 A. Maybe the next day.

8 Q. And what did you do with these notes?

9 A. The original notes -- the original notes that  
10 I made to myself? I threw those away.

11 Q. I am talking about the notes that you have  
12 given to the Government.

13 A. Oh, you'll have to ask that again then.

14 Q. When did you make the notes that you gave to  
15 the Government?

16 A. I transferred the one notes to the notes I  
17 gave the Government on the 31st or the 1st, right in  
18 there.

19 Q. 31st of December?

20 A. Yes.

21 Q. So the pieces of paper that have been -- well,  
22 you -- just for your benefit, the two pieces of paper,  
23 you have seen those; correct?

24 A. Yes.

25 Q. Those are the notes you gave to the Government

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1 on the 31st of December; is that right?

2 A. I didn't give them to them on the 31st, no.

3 Q. When did you give them these notes?

4 A. I showed them -- I gave them those notes on  
5 the 8th of January -- or the 8th of -- let me see. The  
6 8th of January 2005.

7 Q. You are in custody now; correct?

8 A. Yes.

9 Q. What was the nature of the fraud that you were  
10 in -- strike that.

11 When you were arrested by the federal  
12 authorities, you were told -- you understood, unless you  
13 agreed to cooperate with the Government, that you would  
14 be bound by what are called the sentencing guidelines;  
15 correct?

16 A. I don't understand your question.

17 Q. You don't understand?

18 A. Can you say it again?

19 Q. When you were arrested by the Federal  
20 Government, you didn't want to go to jail, did you?

21 A. No, I didn't want to go to jail.

22 Q. When you talked to your lawyer and you talked  
23 to the Government and -- you didn't want to go to jail,  
24 did you?

25 A. I didn't want -- no, I didn't want to go to

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1 jail. 1185  
2 Q. Somebody told you that, in fact, based upon  
3 the amount of money involved in your case -- by the way,  
4 how much money was involved in the fraud?  
5 A. It was about \$100,000.  
6 Q. You had sequestered \$100,000 in cash at your  
7 mother's house?  
8 THE COURT: I don't think he --  
9 MR. NOLAN: I used a word I shouldn't have  
10 used.  
11 THE COURT: Rephrase.  
12 BY MR. NOLAN:  
13 Q. My apologies. You took \$100,000 in cash and  
14 you hid it at your mother's house; is that right?  
15 A. Yes.  
16 Q. You took \$80,000 worth of weapons and hid them  
17 somewhere; correct?  
18 A. Yes.  
19 Q. You then filed for bankruptcy, based upon  
20 fraudulent activities with home loans and development  
21 and contract work; correct?  
22 A. I filed bankruptcy for what?  
23 Q. You filed bankruptcy for creditors; correct?  
24 A. Yes.  
25 Q. Was it more than \$700,000 in creditors?

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1 A. Yes. 1186  
2 Q. You owed over \$700,000, is that correct, and  
3 couldn't pay it?  
4 A. Yes.  
5 Q. And you were facing up to three years in  
6 prison for that behavior; correct?  
7 A. Yes.  
8 Q. And if you could find somebody to -- if you  
9 could help the Government find somebody else who might  
10 have done something wrong, then the Government would  
11 recommend to the court that you get a shorter sentence;  
12 correct?  
13 A. You'll have to say that again.  
14 Q. You worked for the Government; correct?  
15 A. No.  
16 Q. You worked with the Government; correct?  
17 A. I cooperated with the Government, yes.  
18 Q. It was your request to cooperate with the  
19 Government; correct?  
20 THE COURT: Are you talking about on the  
21 original case?  
22 MR. NOLAN: Yes. I'm talking about the  
23 original case.  
24 THE WITNESS: My request?  
25 BY MR. NOLAN:

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1 Q. Yes. 1187  
2 A. No. I guess I don't understand.  
3 Q. I will try -- you entered into an agreement  
4 that you would -- you would assist the Government;  
5 correct?  
6 A. Yes.  
7 Q. And that you would actually, possibly, carry a  
8 body wire to implicate other people?  
9 A. Yes.  
10 Q. That you would infiltrate or tell them  
11 everything you knew about false loans, false borrowing,  
12 and a fraud in the construction industry; correct?  
13 A. Yes.  
14 Q. And this was in the white collar field;  
15 correct?  
16 A. I guess.  
17 Q. And you placed your relationships with other  
18 people at risk by doing so; isn't that correct?  
19 A. I don't know if I can answer that. I don't  
20 know.  
21 Q. You were out of custody while you were  
22 cooperating with the Government; isn't that right?  
23 A. I was never in custody. They didn't arrest  
24 me.  
25 Q. You pled guilty to a federal offense; correct?

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1 A. Yes. 1188  
2 Q. And your sentencing was delayed so you could  
3 remain out of custody while you helped the Government;  
4 correct?  
5 A. I was supposed to self-surrender on a certain  
6 date, yes.  
7 Q. Wasn't it a period of at least two years that  
8 you worked with the Government and avoided going to  
9 prison?  
10 A. No. I don't -- I don't believe that's true.  
11 Q. How long did you fight the case before you  
12 pled guilty?  
13 A. I didn't fight it.  
14 Q. How long was it from the time you were  
15 arrested until you pled guilty?  
16 A. I wasn't arrested.  
17 Q. How long was it from the time a search warrant  
18 was executed until the time you pled guilty?  
19 A. Maybe a year.  
20 Q. During that time, you had a lawyer; right?  
21 A. Yes.  
22 Q. And during that time, you were negotiating  
23 with your lawyer and the Government; correct?  
24 A. Yes.  
25 Q. And then how much longer after you pled guilty

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1 did you finally start cooperating with the Government?

2 A. A few months. A month. I don't remember.

3 Q. Your house was searched in the Fall of 2001;

4 isn't that right?

5 A. Yes.

6 Q. And you didn't have to go to jail until

7 November of 2004; correct?

8 A. I thought it was 2002.

9 Q. When did you go to jail?

10 A. November 10, 2004.

11 Q. So you were out of custody from the time of

12 the search warrant in 2001 until November of 2004;

13 correct?

14 A. I don't know if that first date is correct.

15 Q. When was the search warrant?

16 A. I don't know. Do you have it?

17 Q. I take it, it wasn't easy for you to go into

18 jail; correct?

19 A. Was it easy? No.

20 Q. You tried to delay it for a long time, didn't

21 you?

22 A. I didn't try to delay it, no.

23 Q. Did you make motions to delay your surrender

24 to the authorities?

25 A. I had some medical issues, yes.

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1 Q. And were you happy with that reduction?

2 A. I don't know if I was happy or not. I don't

3 remember how I felt.

4 Q. You don't have any recollection of how you

5 felt about whether or not the judge gave you a good

6 enough break for your behavior?

7 A. I don't remember how I felt, no.

8 Q. I take it, you had no problems turning

9 yourself in and starting to do your 21 -- what you

10 thought was 21 months?

11 A. I had no problem turning -- no, I didn't.

12 Q. You wanted out to surrender yourself, though;

13 isn't that correct?

14 A. Yes.

15 Q. How much time do you expect to have reduced

16 from your sentence as a result of your testimony here?

17 A. I'm not expecting any.

18 Q. You don't expect any?

19 A. Just whatever the judge -- whatever the judge

20 recommends, I guess.

21 Q. You have no expectations at all?

22 A. I'm not expecting anything. I don't want

23 to --

24 Q. So I take it that --

25 A. I don't want to be disappointed, I guess, is

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1 Q. How many lawyers did you hire to request

2 extensions of time for you to surrender into court?

3 A. I had two attorneys -- well, one at a time.

4 Q. The Government opposed, saying that you were

5 delaying unnecessarily; isn't that correct?

6 A. I don't remember seeing that but --

7 Q. You don't remember that?

8 A. I remember the last motion, but I didn't see

9 it.

10 Q. The last motion to the judge says: Look it,

11 this is enough. No more.

12 A. I don't know what he said. I didn't talk to

13 him.

14 Q. You don't have any idea about that?

15 A. My attorney said it was denied. That's all I

16 was told.

17 Q. When you went for your reduction of sentence

18 for cooperating with the authorities, instead of getting

19 somewhere between 30 and 37 months, you got 24 months;

20 isn't that right?

21 A. I got 21 months.

22 Q. Are you talking about, if you do well in

23 prison, you will get good time; or are you talking about

24 the sentence you received?

25 A. No. I thought I got 21 months.

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1 what I'm saying.

2 MR. NOLAN: I think, at this time, Your Honor,

3 I ask that the document be admitted.

4 THE COURT: I think that's a good idea.

5 Exhibit 6 is admitted into evidence.

6 (Whereupon, Exhibit No. 6 was received in

7 evidence.)

8 BY MR. NOLAN:

9 Q. It is a rather lengthy contract you have with

10 the Government, isn't that right?

11 A. I don't know.

12 Q. I'm sorry. Did you read the agreement?

13 A. Yes, I did. I don't know what a standard --

14 if standard is long or short. I don't know.

15 Q. You read the agreement; correct?

16 A. Yes.

17 Q. And you signed the agreement?

18 A. Yes.

19 Q. And it says that the court may reduce your

20 sentencing in the amount consistent with the value of

21 your cooperation; correct?

22 A. Yes.

23 Q. And you understand that the value of your

24 cooperation depends upon what these prosecutors

25 recommend; correct?

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1 A. I didn't -- I didn't know that.

2 Q. Who is going to tell the judge about the value  
3 of your cooperation?

4 A. I thought my attorney did that.

5 Q. You don't think the Government makes a  
6 recommendation?

7 A. I wasn't aware of that, no.

8 Q. Doesn't the document say that the Government  
9 cannot -- all right. I started reading the wrong  
10 paragraph, Your Honor. The government's final decision  
11 whether to --

12 MR. TAXAY: Where are you reading from?

13 BY MR. NOLAN:

14 Q. Line 8, page 4. The government's final  
15 decision of whether to file a Rule 35 will be made after  
16 evaluating your cooperation; correct?

17 A. Yes.

18 Q. About the significance and usefulness of your  
19 cooperation here in this courtroom; correct?

20 A. Yes.

21 Q. The truthfulness, completeness, and  
22 reliability of any information or testimony provided by  
23 you; correct?

24 A. Yes.

25 Q. And they are the ones that are going to decide

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1 that, not me; right?

2 A. Yes.

3 Q. You wouldn't want me to decide that and make a  
4 recommendation, would you?

5 A. Do you want me to answer that?

6 Q. Yes.

7 A. I wouldn't want you to do it, no.

8 Q. No. And then there are a couple of other  
9 issues, but they're all related to the nature of your  
10 cooperation, et cetera; correct?

11 THE COURT: Counsel, I didn't understand that  
12 question.

13 MR. NOLAN: I know. I didn't want to be  
14 accused of not reading them all.

15 THE COURT: The result was a question that  
16 nobody but you understood.

17 BY MR. NOLAN:

18 Q. I will go ahead and read all of them. The  
19 nature and extent of your assistance; correct?

20 A. Yes.

21 Q. Any injury suffered or danger or risk of  
22 injury to you or your family resulting from your  
23 cooperation; correct?

24 A. Yes.

25 MR. TAXAY: Objection, Your Honor. He is

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1 reading the document at this point.

2 THE COURT: Overruled.

3 MR. TAXAY: He is asking if this is what the  
4 document said.

5 THE COURT: I think he is trying to establish  
6 whether the witness understood what he signed when he  
7 signed it. I think that's a fair question. Overruled.

8 BY MR. NOLAN:

9 Q. And there was a figure mentioned about what  
10 they expect to recommend and what they expect or hope  
11 that the judge will grant; isn't that correct?

12 A. I think it says no more than six months.

13 Q. So you knew that when you signed this piece of  
14 paper; isn't that right?

15 A. Yes.

16 Q. And right now, you are an optimistic guy,  
17 aren't you?

18 A. I don't know -- in whose opinion?

19 Q. You certainly have been working the system  
20 pretty well for the last four years, haven't you?

21 MR. TAXAY: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. NOLAN:

24 Q. You have been working the system, have you  
25 not?

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1 THE COURT: Counsel, I just sustained that.

2 MR. NOLAN: I thought it was the form of the  
3 question.

4 THE COURT: No, no. It was the question,  
5 itself, that was bad.

6 MR. NOLAN: I thought it was the form. I  
7 apologize.

8 THE COURT: That's all right. Just ask  
9 another question.

10 BY MR. NOLAN:

11 Q. All right. You are hopeful to get at least  
12 six months off your sentence; correct?

13 A. Yes.

14 Q. And you would like to get even more; isn't  
15 that right?

16 A. Yes.

17 Q. And you know that some new judge is going to  
18 decide whether or not you should get more time off your  
19 sentence; correct?

20 A. More or less.

21 Q. And it won't be this judge; correct?

22 A. Yes.

23 Q. And it won't be Judge Lodge; correct?

24 A. Yes.

25 Q. But some federal judge is going to hear that

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1 you came into a courtroom and assisted the Government in  
2 the prosecution of someone soliciting to kill a federal  
3 judge; correct?  
4 A. Yes.  
5 Q. And you know enough about the system to know  
6 or to believe that that's valuable information, isn't  
7 it?  
8 A. I don't know who values that.  
9 Q. What's that?  
10 A. I'm not sure who values that.  
11 Q. You are sure hopeful it's valuable, aren't  
12 you?  
13 A. I think anybody would.  
14 Q. Anybody would, wouldn't they? Isn't it true  
15 your state five-year sentence was reduced to seven days?  
16 A. I thought it was all suspended, but I may be  
17 mistaken.  
18 THE COURT: Counsel, let me ask you: How much  
19 longer do you anticipate?  
20 MR. NOLAN: Can I just have one moment?  
21 THE COURT: Yes, of course.  
22 MR. NOLAN: Is the court --  
23 THE COURT: I'm thinking about adjourning a  
24 little early tonight, since it's Friday night.  
25 MR. NOLAN: I know I'm close but I'm not close

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1 enough to finish.  
2 THE COURT: We will bring Mr. Croner back. I  
3 don't know what the Government's intents are on  
4 redirect.  
5 MR. NOLAN: Thank you very much, Your Honor.  
6 THE COURT: That's fine.  
7 Ladies and gentlemen, we are going to start  
8 our weekend recess. I remind you, again, that Monday is  
9 a holiday. Please, don't come Monday morning. Be back  
10 here Tuesday morning at 9:00 a.m.  
11 I do want to remind you of the instructions  
12 that I gave you earlier. Until the trial is over, you  
13 are not to discuss this case with anyone, including your  
14 fellow jurors, members of your family, people involved  
15 in the trial, or anyone else, nor are you allowed to  
16 permit others to discuss the case with you.  
17 If anyone approaches you and tries to talk to  
18 you about the case, please let me know about it  
19 immediately.  
20 Do not read or listen to any news reports of  
21 the trial. Do not do any outside research, such as  
22 Internet or Dun & Bradstreet searches, relating to the  
23 people or entities discussed during the trial.  
24 Finally, you are reminded to keep an open mind  
25 until all of the evidence has been received -- we are

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1 not there yet, so be patient -- you have heard the  
2 arguments of counsel, the instructions of the court, and  
3 the views of your fellow jurors.  
4 With that instruction in mind, have a very  
5 nice weekend. We will see you Tuesday morning at 9:00  
6 a.m. We are in recess.  
7 (Whereupon, the court stood in recess.)  
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1200

1  
2 **C E R T I F I C A T E**  
3  
4 I, LORI A. FULSIFER, certify that I made a  
5 shorthand record of the matter contained herein, and  
6 that the foregoing typewritten pages contain a full,  
7 true, and accurate transcript of said shorthand record,  
8 done to the best of my skill and ability.  
9 DATED this 27th day of March 2005.  
10  
11  
12 LORI A. FULSIFER, CSR, RMR, CRR  
13 Certified Shorthand Reporter  
14 Idaho Certificate 354  
15  
16  
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1 Please rise for the jury.

2 (Whereupon, the jury was excused from the

3 courtroom, and the following proceedings were held:)

4 MR. NOLAN: Could the witness be excused?

5 THE COURT: Yes. Mr. Swisher, if you wouldn't

6 mind stepping out in the hallway, take a break but

7 remain available.

8 THE WITNESS: I would like to add, Your Honor,

9 if I may, that --

10 THE COURT: Let me take this up with the

11 lawyers first.

12 THE WITNESS: Okay.

13 (Whereupon, witness Elven Joe Swisher was

14 excused from the courtroom.)

15 THE COURT: Mr. Nolan, why don't you go to the

16 podium?

17 MR. NOLAN: If I may just make a record, Your

18 Honor, I finished my cross-examination of Mr. Swisher;

19 and then I was handed a document on stationery that was

20 faxed to us on the 14th of January at the hour of 2:34,

21 approximately, and it is a letter to Mr. Hoyt's office

22 from --

23 MR. HOYT: Central Standard Time.

24 MR. NOLAN: -- the National Personnel Records

25 Center. We had, apparently, been trying to get

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1 information and that we intended, depending upon the

2 witness's answer to the question, to call a witness from

3 the archives to establish these facts.

4 I requested permission to re-open. The court

5 considered that, said I could ask about whether he was

6 wearing a Purple Heart. Counsel for the prosecution

7 vehemently objected to my getting into this.

8 I was allowed to re-open. I asked the

9 question. The record will reflect what the witness

10 said.

11 And then, in the presence of the jury, counsel

12 for the prosecution said that he had -- when the

13 document was delivered to the court by the witness out

14 of his pocket, counsel for the Government indicated that

15 he already had a copy of that document.

16 Now, this case has been going quite well, in

17 terms of the behavior of the parties. I feel that what

18 occurred mandates -- I will request a mistrial.

19 It mandates serious, severe -- in my opinion,

20 serious, severe actions, based upon the fact that the

21 Government was in possession of information which we

22 were not given regarding this witness which, at that

23 point in time, the Government knew that the only thing

24 that could happen is it would be adversely taken and

25 affect the credibility of me, the credibility of the

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1 Mr. Swisher's military records for about ninety days;

2 and we have very little control over when that happens.

3 It was discussed -- Mr. Hoyt discussed with me

4 the time variations between being a combat veteran and

5 the time of the Korean War. I told him that I would not

6 go into this without some proof and that I would not

7 even come close to opening up the door.

8 I noticed that the man wore a Purple Heart.

9 There is prior testimony that his hearing was affected

10 by a hand grenade. I didn't want to go into it. He

11 said he killed people. I didn't want to cross-examine

12 him on that at all.

13 At the conclusion of my cross-examination,

14 Mr. Hoyt handed me this two-page letter highlighted with

15 a paragraph -- it's actually from the personnel records

16 center. It's a one-page letter.

17 Highlighted, it says, "Mr. Swisher's Marine

18 Corps record has been carefully examined by the Military

19 Awards Branch of the Office of the Commandant of the

20 Marine Corps, and that office has stated that his record

21 fails to show he was ever recommended for, or awarded,

22 any personal decorations."

23 Based upon seeing that, I immediately

24 approached the bench before redirect examination began;

25 and I told the court I just had come into this

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1 defense, and adversely affect the defendant.

2 And quite frankly, Your Honor, I don't know

3 how this matter can be resolved. That's my request.

4 THE COURT: Very well. Let me hear from the

5 United States.

6 MR. SULLIVAN: Counsel should have listened to

7 me when I said, "Don't go there."

8 THE COURT: Well, let's establish for the

9 record, Mr. Sullivan, that you indicated at sidebar that

10 Mr. Swisher had shown you this DD-214 at 9:00 a.m. this

11 morning.

12 MR. SULLIVAN: That's correct.

13 THE COURT: All right.

14 MR. SULLIVAN: He showed it to me at 9:00 a.m.

15 this morning because I had asked -- he had mentioned

16 Korea, serving in Korea.

17 I said, "Wasn't the Armistice in '52?"

18 He said, "But there was still, you know,

19 combat; and it continues to this day," which I happen to

20 know to be true. There is combat to this day in Korea.

21 THE COURT: Technically, those hostilities

22 have never been officially terminated, Mr. Nolan.

23 Mr. Sullivan is correct; the war in Korea, or police

24 action, whatever you want to call it, is not over.

25 Let me first say this: First of all, I want

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1 to mark as a defense exhibit the facsimile. I also want  
2 to mark a photocopy of the Form DD-214. So let's give  
3 those numbers.

4 MR. NOLAN: Could we have a copy back of this?  
5 THE COURT: Certainly.  
6 MR. NOLAN: This is the only one we have.  
7 THE COURT: Let me further say that, in  
8 looking at -- well, let's give them numbers so we get  
9 this clearly on the record. It would be defense Exhibit  
10 L.

11 MR. HOYT: L and the next one would be M.  
12 THE COURT: I am going to mark -- that's fine.  
13 We can mark them both as defense exhibits. I don't  
14 think it makes any difference.

15 MR. SULLIVAN: May I make my record, counsel,  
16 since counsel is moving for a mistrial and severe  
17 sanctions?

18 THE COURT: Yes, Mr. Sullivan.  
19 MR. SULLIVAN: I didn't go into anything about  
20 his combat or his medals or anything else on my direct.  
21 He chose to go down this path, even when I objected to  
22 it.

23 I didn't draw attention to the little pin in  
24 Mr. Swisher's lapel. Lots of people wear them. They  
25 could be anything. He wanted to make an issue of it.

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1 I don't think -- you know, I barely had time  
2 to look at this, myself. It refers to other -- that  
3 this replaces some document previously issued. I don't  
4 know what that document is, and it just led me to  
5 conclude that this is not a proper area to go into.

6 THE COURT: Ms. Longstreet, may I have the two  
7 documents?

8 THE COURTROOM CLERK: Yes, Your Honor.  
9 THE COURT: Thank you.  
10 MR. NOLAN: Could I respond briefly?  
11 THE COURT: Go ahead.  
12 MR. NOLAN: Your Honor, we have a document  
13 given to us by the Government which is false; and the  
14 Government knows it's false.

15 MR. SULLIVAN: I have no evidence or reason to  
16 believe that the document is false.

17 MR. NOLAN: The document -- I'm sorry. With  
18 all due respect, the document says there is no record of  
19 him receiving any awards and --

20 MR. SULLIVAN: I --  
21 MR. NOLAN: He has government information that  
22 contradicts that.

23 THE COURT: All right. Here is my ruling:  
24 The motion for mistrial is denied.  
25 To the extent that there was error here, it

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1 I objected that he is setting up a -- what did  
2 I say -- a straw man -- I said "scarecrow" before, but I  
3 meant "straw man" -- so he can knock it down if he can  
4 develop some more information.

5 It is permissible to impeach -- to  
6 cross-examine someone, a witness, for making false  
7 statements, under Rule 608.

8 608(b) permits inquiry into conduct that is  
9 deceitful, but it doesn't permit impeachment by other  
10 documents. It doesn't permit the use of other evidence  
11 if there is a denial of the deceitful conduct.

12 Counsel whipped out his document that he  
13 received minutes ago. I believe he probably didn't have  
14 enough time to read it and digest it and tried to use  
15 that to impeach the witness. That was improper.

16 Under Rule 608(b), he should not have been  
17 allowed to show that document. It wasn't a matter of  
18 refreshing his memory. He hadn't expressed any kind of  
19 doubt about his memory.

20 It was a grandstand play in front of the jury  
21 that didn't -- that wasn't so grand, and he got caught  
22 on it. That's where we are.

23 There is nothing the Government did that  
24 caused him to go in the area he did. We tried to avoid  
25 going into this area.

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1 was counsel who requested the opportunity to re-open. I  
2 granted permission to re-open so that you could confront  
3 him because I thought that you had a good-faith basis to  
4 believe, based upon the receipt of Exhibit L from the  
5 National Personnel Records Center of the Department of  
6 Defense in St. Louis, Missouri, to ask the question,  
7 based upon the witness's answer, to try and impeach him  
8 on grounds that he has not, in fact, received the Purple  
9 Heart.

10 Until that happened, there was no reason for  
11 the Government to believe, with regard to Exhibit M,  
12 that the contents of Exhibit M would be impeaching in  
13 any way, shape, or form.

14 The court finds as a matter of fact that if  
15 Exhibit M is a copy of a genuine military record -- and  
16 at this point, I don't have any way to determine that;  
17 but it appears to be genuine, at least in appearance.

18 It indicates consistently with how the witness  
19 has testified; that he did, in fact, receive multiple  
20 shrapnel and gunshot wounds in September 1955 in Korea;  
21 and that he was awarded commendations and medals,  
22 including the Purple Heart.

23 Now, Mr. Sullivan is correct. Under Rule 608  
24 and the applicable Supreme Court precedent, particularly  
25 Justice Jackson's decision in Michaelson vs. the United

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1 States, 335 U.S. 469, 1948, you are permitted to attempt  
2 to impeach a witness in the manner that Mr. Nolan  
3 attempted.  
4 Ordinarily, under the rules, you are stuck  
5 with the witness's answer; and the court has the  
6 discretion to restrict further collateral proof of that  
7 impeachment.  
8 So the basis for my ruling is, essentially,  
9 counsel opened the door with regard to this  
10 late-received facsimile, Exhibit L.  
11 The Government, until the receipt of that  
12 exhibit, had no reason to believe that Exhibit M was  
13 discloseable under Brady or Giglio because it was not  
14 impeaching. Therefore, the motion for mistrial is  
15 denied.  
16 We will bring in the jury.  
17 MR. NOLAN: Does the court have a remedy? You  
18 know, I also think --  
19 THE COURT: Hold on.  
20 MR. NOLAN: -- that there was a practice that  
21 counsel -- I mean, maybe I can't find the right cite;  
22 but, quite frankly, I am in an awkward position and I  
23 don't think it should be held against Mr. Hinkson. If  
24 the court has a remedy --  
25 THE COURT: Let me suggest that one remedy

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1 instruction that the area inquired into was not relevant  
2 for the jury's determination and they should disregard  
3 it.  
4 THE COURT: How about if we do it this way? I  
5 will tell them that the error was the court's in  
6 permitting the area to be inquired into and, for that  
7 reason, I am directing that the portion of the testimony  
8 with regard to whether or not he was awarded the Purple  
9 Heart is stricken, so that it doesn't make either side  
10 look bad. Is that acceptable?  
11 MR. SULLIVAN: It is, Your Honor.  
12 THE COURT: Mr. Nolan?  
13 MR. NOLAN: Yes, Your Honor. Thank you.  
14 THE COURT: Very well. Let's bring the jury  
15 back in, Ms. Longstreet.  
16 MR. HOYT: Do you want to bring the witness in  
17 first, Your Honor?  
18 THE COURT: We will do them together,  
19 simultaneously.  
20 Go ahead. Yes.  
21 (Whereupon, the following proceedings were  
22 held in the presence of the jury:)  
23 THE COURT: Ladies and gentlemen, it's been a  
24 long day; and I now realize that I made a mistake in  
25 allowing the questioning with regard to the Purple Heart

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1 that occurs to the court is that I could simply instruct  
2 the jury to strike that portion of the cross-examination  
3 of Mr. Swisher that relates to the Purple Heart. Just  
4 tell them to completely disregard all testimony about  
5 the Purple Heart.  
6 MR. NOLAN: That would be appreciated. I  
7 think that would be the best way. Other than that, we  
8 have to bring in people to show our good faith and all  
9 of that.  
10 MR. SULLIVAN: Your Honor, now Mr. Swisher  
11 looks like he has said something improper and done  
12 something improper, because the court is striking his  
13 testimony. It was responsive testimony to counsel's  
14 questions.  
15 THE COURT: Let me put it to you this way,  
16 Mr. Sullivan. That is the only suggestion I can think  
17 of. If the Government doesn't want me to instruct the  
18 jury, I will leave the record as it stands; and you can  
19 take your chances.  
20 MR. SULLIVAN: What I would like, Your  
21 Honor --  
22 THE COURT: If there is a conviction,  
23 Mr. Nolan may or may not have an issue here. Do you  
24 want to think about it for a minute?  
25 MR. SULLIVAN: All I would ask the court is an

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1 Medal.  
2 So I am going to instruct you to disregard  
3 completely all of Mr. Swisher's testimony with regard to  
4 that military commendation.  
5 You certainly are entitled to consider all of  
6 the rest of his testimony. Just everything from where I  
7 asked Mr. Nolan to re-open, please strike that from your  
8 minds; and you are not to consider it as evidence in the  
9 case.  
10 With that, are we ready to proceed with  
11 redirect examination.  
12 MR. SULLIVAN: Yes, Your Honor.  
13 THE COURT: Do you want to move that easel,  
14 Mr. Sullivan?  
15 MR. NOLAN: I can do that.  
16  
17 R E D I R E C T E X A M I N A T I O N  
18 BY MR. SULLIVAN:  
19 Q. Mr. Swisher, you may recall you were asked  
20 about a particular question and answer you gave in your  
21 first Grand Jury appearance in April 2002. The question  
22 was -- I will put it on the screen again -- it's Grand  
23 Jury testimony at page 42.  
24 A question by a juror was: "Did you ever have  
25 a conversation with Mr. Hinkson about things other than

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1 the technical testing? Did you ever, you know -- did  
2 you ever talk politics or his views on taxes, so on and  
3 so forth?"

4 Did you understand that question to require  
5 any response about Mr. Hinkson hoping that federal  
6 officials would die?

7 A. No.

8 Q. Did you try to answer the question as you  
9 thought it was required?

10 MR. NOLAN: Objection. Leading.

11 THE COURT: Overruled.

12 Could you answer that question? The question  
13 was: "Did you try to answer the question as you thought  
14 it was required?"

15 THE WITNESS: As it was asked, I did my best  
16 to answer it.

17 BY MR. SULLIVAN:

18 Q. You were also asked a question, again from the  
19 Grand Jury testimony, about whether Mr. Hinkson's offers  
20 to you were made in private or with other people around.  
21 Do you recall that question?

22 A. I'm sorry. I got lost there. Would you  
23 repeat that question?

24 Q. Do you recall being asked a question about  
25 whether or not Mr. Hinkson made the offers to kill the

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1 federal officials to you in private or with other people  
2 around in?

3 A. Yes.

4 Q. Do you recall that question?

5 A. Yes.

6 Q. And did he do that in private or with other  
7 people around?

8 A. In private.

9 Q. Were there times there were other people  
10 around that he said other type things?

11 A. Oh, yes.

12 Q. Such as what?

13 A. Well, he wanted to see Albers and his whole  
14 family, you know, dead. He made those comments with  
15 other people around; but with other people around, he  
16 never made the solicitations.

17 MR. NOLAN: Objection, Your Honor. Beyond the  
18 scope. I don't mean beyond the scope. Asked and  
19 answered.

20 THE COURT: Overruled.

21 BY MR. SULLIVAN:

22 Q. You were also asked about people on his list.  
23 Do you understand that to mean, like, a hit list?

24 A. Yes.

25 Q. And you answered there was, at least, one

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1 other person? Judge Reinhardt?

2 A. Yes.

3 Q. Who is Judge Reinhardt?

4 A. I think he is a judge in the Fifth District  
5 or, at least, he was stationed in Grangeville, Idaho  
6 County.

7 Q. And do you know if Judge Reinhardt had  
8 anything to do with litigation involving Mr. Hinkson?

9 A. I believe he was the trier of fact in the case  
10 that Mr. Hinkson lost, and the plaintiff was awarded  
11 \$100,000 then.

12 Q. Do you recall the name of that particular  
13 plaintiff?

14 A. Arnette Hazelton (sic.), I think. That's  
15 probably an improper pronunciation.

16 Q. You have been asked a number of questions on  
17 cross-examination about your civil litigation involving  
18 Mr. Hinkson; correct?

19 A. Yes.

20 Q. Did you ever sue Mr. Hinkson?

21 MR. NOLAN: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. SULLIVAN:

24 Q. Did Mr. Hinkson ever sue you?

25 A. Yes.

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1 Q. When did he do that?

2 A. Well, I learned of it sometime after I had  
3 contacted the Idaho County Assistant Prosecutor on --

4 Q. Listen to my question. Give me a date.

5 A. I don't know the date.

6 Q. When he sued you?

7 A. I'm just trying to tell you that it was  
8 sometime after I had contacted the Idaho County  
9 authorities regarding Mr. Hinkson.

10 MR. NOLAN: Objection, Your Honor.

11 THE COURT: Overruled.

12 BY MR. SULLIVAN:

13 Q. Was it in 2003?

14 A. Probably.

15 Q. Were you served process?

16 A. I'm not sure exactly when I was served on the  
17 matter.

18 Q. How did you learn that Mr. Hinkson had sued  
19 you?

20 A. Well, I did eventually get served; but I just  
21 don't recall the date I was served.

22 Q. All right.

23 A. But I know that it came after I had been in  
24 and talked with the authorities.

25 Q. But my question was -- all right. Let me

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1 rephrase. What were you being sued for? 1137  
2 A. As I recall -- and I might be off a quarter  
3 turn here -- I was being sued for -- Mr. Hinkson was  
4 stating that I had stolen his technology from him and  
5 that I had attempted to take over his business.  
6 Q. Was that the part of the litigation involving  
7 Mr. Bellon's lawsuit against Mr. Hinkson?  
8 A. I think, probably so.  
9 Q. Did you counter-sue Mr. Hinkson?  
10 A. Yes.  
11 Q. What did you claim against him?  
12 A. Again, the property that he had verbally given  
13 me and the grader.  
14 Q. In your countersuit, did you deny that you had  
15 stolen his technology?  
16 A. Boy, I hope so. I am not sure that I did, but  
17 I certainly didn't steal his technology.  
18 Q. Has that lawsuit been resolved in any fashion?  
19 A. From my understanding, it had been. There was  
20 a meeting with Judge Bradbury in Grangeville between  
21 Mr. Hoyt --  
22 MR. NOLAN: Objection, Your Honor.  
23 THE COURT: If he knows if it's been settled,  
24 why don't we establish that?  
25 THE WITNESS: I think it has been settled.

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1 BY MR. SULLIVAN: 1138  
2 Q. Did you get any of the property that you sued  
3 for?  
4 A. No.  
5 Q. Did Mr. Hinkson get anything that he sued you  
6 for?  
7 A. No.  
8 Q. Now, you were asked questions, also, about  
9 some questions from a deposition in October. Do you  
10 recall those questions?  
11 A. Yes.  
12 Q. Was that October of 2004?  
13 A. I believe so.  
14 Q. And was that a deposition in conjunction with  
15 this particular civil lawsuit?  
16 A. Yes.  
17 Q. Who was asking you questions in that?  
18 A. Mr. Hoyt.  
19 Q. Was he representing Mr. Hinkson in that?  
20 A. Yes, he was.  
21 Q. Was he asking you about what you told the  
22 Grand Jury?  
23 A. I took it to be that, yes.  
24 Q. What were you being asked?  
25 A. I beg your pardon?

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1 Q. What were you being asked? 1139  
2 A. Well, he was getting dangerously close --  
3 MR. NOLAN: Excuse me. It's vague.  
4 THE COURT: I am going to sustain the  
5 objection as to the form of the question.  
6 BY MR. SULLIVAN:  
7 Q. What did Mr. Hoyt ask you regarding your  
8 testimony as the Federal Grand Jury?  
9 MR. NOLAN: I object to that.  
10 THE COURT: Counsel, you got into this.  
11 MR. NOLAN: That's fine.  
12 THE COURT: I am going to overrule the  
13 objection and allow the witness to answer.  
14 MR. NOLAN: That's fine.  
15 MR. HOYT: Your Honor, may we have a sidebar  
16 on this?  
17 THE COURT: No. We have had enough sidebars.  
18 THE WITNESS: Well, he was getting into the --  
19 of course, the area about the equipment that had been  
20 transferred to me and the property that had been  
21 transferred to me and so on and was getting dangerously  
22 close to some of the questioning that --  
23 MR. SULLIVAN: My question, Your Honor --  
24 MR. NOLAN: Objection.  
25 THE COURT: Mr. Swisher, I know it's been a

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1 long day; but bear with us. 1140  
2 Go ahead, Mr. Sullivan.  
3 BY MR. SULLIVAN:  
4 Q. I am asking you: What did he ask you about  
5 your Grand Jury testimony?  
6 MR. NOLAN: Objection to the form of the  
7 question, Your Honor.  
8 THE COURT: Sustained.  
9 BY MR. SULLIVAN:  
10 Q. Did he ask you questions about your Grand Jury  
11 testimony?  
12 A. Yes.  
13 Q. What did he ask you?  
14 THE COURT: Counsel, I think the concern is  
15 with the broad nature of your questions. I will permit  
16 you to ask a leading question, if you are trying to  
17 establish a point here.  
18 MR. SULLIVAN: Yes, Your Honor.  
19 Q. Did Mr. Hoyt ask you about these offers from  
20 Mr. Hinkson that you have testified to here today?  
21 A. Yes.  
22 Q. Did he ask you the circumstances of those  
23 offers?  
24 A. He did more than that.  
25 Q. Like what?

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1 A. He indicated he had talked to -- the other  
2 witnesses that he had talked to thought it was all a  
3 bunch of hunk and that David hadn't meant anything and  
4 that he was laying that on me pretty hot and heavy.  
5 And he said, "You know, you probably feel the  
6 same way; right?"  
7 And I said, "Not necessarily."  
8 Q. Another Grand Jury question from your first  
9 Grand Jury testimony in April of 2002 -- you were read  
10 back the quote. This was regarding your memory.  
11 A. Yes.  
12 Q. Do you remember this quote: "If it weren't  
13 for flashbacks, I wouldn't have any?"  
14 A. Yes.  
15 Q. What were you trying to convey when you said  
16 that?  
17 A. Well, I was making an attempt at levity. Most  
18 of the Grand Jury members laughed.  
19 Q. Do you have any problems with your memory?  
20 A. Not really.  
21 MR. SULLIVAN: That's all I have on redirect,  
22 Your Honor.  
23 THE COURT: Mr. Nolan, anything further?  
24  
25

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1 RE CROSS EXAMINATION  
2 BY MR. NOLAN:  
3 Q. Isn't it true, during the deposition of  
4 October of 2004, that Mr. Hoyt asked no questions about  
5 what you testified to in the Grand Jury?  
6 A. I'm trying to place this because I may have  
7 been a bit inaccurate here. The questions were asked  
8 prior to either the deposition or another proceeding.  
9 I'm not sure at which time, but they were asked.  
10 Q. So all of the questions asked of you by  
11 Mr. Sullivan about the deposition could be in error? It  
12 could be some other proceeding; is that correct?  
13 A. No. I think that was the time frame, but I  
14 think those questions took place before we went on the  
15 record.  
16 THE COURT: Counsel, can you establish whether  
17 or not he met with Mr. Hoyt before he was sworn for that  
18 deposition?  
19 BY MR. NOLAN:  
20 Q. Did you meet with Mr. Hoyt before you were  
21 sworn as a witness?  
22 A. Yes. Oh, wait a minute. I do know now -- if  
23 I may correct that? At some point, I took a bunch of  
24 documents to be transcribed, and I didn't mind having  
25 those copies -- what am I trying to say -- copied.

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1 THE COURT: Mr. Swisher, it's a very simple  
2 question. Did you meet with Mr. Hoyt before they took  
3 your deposition, and did you have a conversation with  
4 him?  
5 THE WITNESS: Right in the middle, when the  
6 court clerk and one of the other members on Mr. Hoyt's  
7 team took what I brought over to have copied, there was  
8 about an hour there; and that was when all of this  
9 grilling went on.  
10 THE COURT: All right.  
11 THE WITNESS: But it was -- the deposition  
12 was, basically, in recess for that hour; but it was at  
13 the deposition.  
14 THE COURT: All right. Thank you.  
15 Thank you, counsel.  
16 BY MR. NOLAN:  
17 Q. When you were asked questions under oath at  
18 the deposition of October 2004, I take it, no question  
19 was asked of you as to what you were questioned about at  
20 the Grand Jury; correct?  
21 A. Well, I felt -- the reason I refused to answer  
22 some of those is I felt they were dangerously close to  
23 information --  
24 THE COURT: Mr. Swisher, that's not responsive  
25 to the question being asked of you. The question is:

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1 Isn't it true that Mr. Hoyt never asked you specifically  
2 what you testified to before the Grand Jury?  
3 THE WITNESS: Specifically, on the record, no.  
4 THE COURT: Very well.  
5 MR. NOLAN: Thank you.  
6 THE COURT: Counsel, do you want me to give  
7 the jury a 6E instruction with respect to the right of a  
8 witness?  
9 MR. NOLAN: Yes. Yes, especially in the  
10 instructions given afterwards. I would like that. Then  
11 we wouldn't have to call a witness.  
12 THE COURT: Mr. Sullivan, any objection?  
13 MR. SULLIVAN: I would like to discuss at  
14 sidebar, Your Honor.  
15 THE COURT: All right. Let's do that.  
16 (Whereupon, the following sidebar discussion  
17 was held outside the presence of the jury:)  
18 THE COURT: What I proposed to Mr. Nolan was  
19 to simply instruct the jury that, under Federal Rule of  
20 Criminal Procedure 6E, a witness is permitted, at his  
21 discretion, to discuss with anyone he wants to, or to  
22 refuse to discuss with anyone, what he said in the Grand  
23 Jury Room.  
24 If there is an objection to my giving that  
25 instruction now, I may entertain, with regard to the

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1 closing instructions, a defense instruction that says  
2 the same thing. So however you want to handle, I will  
3 leave it up to you.

4 MR. SULLIVAN: I just don't think it's an  
5 issue in the case the jury needs to be concerned with.

6 THE COURT: The problem is that the state of  
7 the record is now such that Mr. Hoyt's integrity has  
8 been placed in issue and I think it unfair to  
9 Mr. Hinkson's counsel to suggest that Mr. Hoyt did  
10 anything improper in questioning a witness that had  
11 previously testified in the Grand Jury to try and learn  
12 what he might know about the facts in the case.

13 Under Rule 6E, there is absolutely nothing  
14 improper with a defense lawyer asking a Grand Jury  
15 witness those questions. We will handle it however you  
16 want.

17 MR. NOLAN: The other thing is, Judge, I think  
18 that he cannot refuse to answer the question on the  
19 basis that he doesn't want to reveal something he  
20 revealed in the Grand Jury, if he is under oath and the  
21 question is otherwise relevant.

22 THE COURT: You and I both know you have to  
23 move to compel the answer.

24 MR. NOLAN: I agree. But I am just saying  
25 that, you know -- yes, I agree.

1 MR. HOYT: It never happened. It never  
2 happened. I would appreciate it if you could make an  
3 instruction orally to the jury at this time while it is  
4 fresh in their minds. I think this could be a lingering  
5 issue.

6 MR. SULLIVAN: This is another one of those  
7 straw men that they go into on their cross-examination.  
8 They are not happy with the answers, and they want some  
9 relief from it.

10 It's not a making of the Government. Just  
11 because this witness has some misunderstanding about the  
12 law is not the problem -- or the court or the Government  
13 or the jury either, for that matter.

14 THE COURT: I am going to, now, give a Rule 6E  
15 instruction. I am very concerned, if I do not, that the  
16 jury will be left with a misimpression as to the  
17 integrity of the conduct of Mr. Hinkson's lawyer. I am  
18 not going to permit that to stay on the record.

19 (Whereupon, the following proceedings were  
20 held in open court, in the presence of the jury:)

21 THE COURT: Ladies and gentlemen of the jury,  
22 you are instructed that, under the Rules of Criminal  
23 Procedure which attend Federal Grand Jury proceedings,  
24 it is permissible for a witness, after he or she has  
25 testified in the Grand Jury, to either talk to people

1 about what they said in the Grand Jury or to refuse to  
2 talk to people. It is entirely up to the witness.

3 Anything further, counsel?

4 MR. NOLAN: No, Your Honor.

5 THE COURT: May Mr. Swisher be excused?

6 MR. NOLAN: No, Your Honor.

7 THE COURT: You want to keep him under  
8 subpoena?

9 MR. NOLAN: Yes, Your Honor.

10 THE COURT: Mr. Swisher, I am going to allow  
11 you to step down. We are finished with you here today,  
12 but you are still under subpoena. Please stay in touch  
13 with the United States in case the defense wishes to  
14 recall you at a later time.

15 THE WITNESS: I will do that, Your Honor. One  
16 question, sir?

17 THE COURT: No questions of me. I get to ask  
18 the questions, all right? Why don't you step down now?  
19 I think we are finished. Thank you.

20 THE WITNESS: Someone has my DD-214.

21 THE COURT: We will get the DD-214 or, at  
22 least, a copy of it back to you.

23 All right. Ladies and gentlemen, I think we  
24 are close enough to the afternoon recess. The court  
25 would like to take a recess for fifteen minutes. We

1 will see you back here in fifteen minutes.

2 (Recess.)

3 THE COURT: The clerk will administer the oath  
4 to the witness.

5 THE COURTROOM CLERK: Please stand and raise  
6 your right hand.

7 \* \* \*

8 CHAD CRONER,  
9 having been called, sworn, testified as follows:

10 THE COURTROOM CLERK: Thank you. Please be  
11 seated. You will need to speak right into the mic.

12 If you would, state your name and spell your  
13 last name for the record.

14 THE WITNESS: It's Chad Croner, C-r-o-n-e-r.

15 THE COURT: Counsel, you may proceed.

16 MR. TAVAY: Thank you, Your Honor.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
 )  
 ) Case No.  
 Plaintiff, ) CR-04-127-S-RCT  
 )  
 vs. )  
 )  
 DAVID ROLAND HINKSON, )  
 )  
 )  
 Defendant. )  
 )  
 )

---

BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 18, 2005 (TUE)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 6, PAGES 1,201 THROUGH 1,470)

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1202

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* * *	

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1 (The following proceedings were held outside  
2 the presence of the jury:)

3 THE COURT: All right. Gentlemen, a couple of  
4 issues have arisen. I guess it's because it is Monday  
5 morning.

6 MR. SULLIVAN: Tuesday.

7 THE COURT: We are missing -- we are losing  
8 two jurors due to illness. Let's see. Where is my jury  
9 list? Here it is.

10 Juror Number 8, Gary Anderson; his back has  
11 gone out on him. He went to the doctor yesterday for  
12 pain killers and steroids, and the doctor told him to go  
13 home and lay down in bed. That is where he is, so I am  
14 afraid we are going to have to excuse him.

15 And then we have Juror Number 12, Jay  
16 Byington, B-y-i-n-g-t-o-n, who came down with bronchitis  
17 and presented himself to the emergency room over the  
18 weekend.

19 When he phoned in this morning, he could  
20 hardly speak with the staff at Jo Ann Cook's office. So  
21 I am afraid we are going to have to excuse him, as well.

22 Unless anybody has any objection, that is what  
23 the court is required to do. That is why we have  
24 alternates.

25 But that sort of disseminates our pool of

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1 permitted to talk to the lawyer who called you as a  
2 witness, in order to give the other side a fair chance  
3 at cross-examination.

4 You didn't do anything wrong in sending the  
5 note. You are not in any trouble for that. Do you want  
6 me to look at the note, or would you like me to just  
7 have Mr. Sullivan give it back to you?

8 THE DEFENDANT: It's up to you. It doesn't  
9 matter.

10 THE COURT: Why don't you hand me the note,  
11 Mr. Sullivan?

12 (Whereupon, Mr. Sullivan complies with the  
13 court's request.)

14 THE COURT: I have reviewed the note; and it,  
15 basically, does contain communications that would be the  
16 normal sort of communication where a witness would talk  
17 to the lawyer who sponsored him to ask for redirect  
18 examination in order to clarify, based upon  
19 cross-examination.

20 I am not going to show this note to the  
21 prosecutor, and I will just allow Mr. Nolan to proceed.  
22 I'm sorry. Mr. Taxay?

23 MR. TAXAY: One further point. We have filed  
24 today a supplemental response regarding Dr. Duke. I  
25 have a courtesy copy for the court.

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1 alternates and leaves us with one. We have twelve  
2 jurors here. We are missing one, who we hope will be  
3 here in just a few minutes.

4 THE COURTROOM CLERK: I think we are okay  
5 because I didn't know there were two ill.

6 THE COURT: Do you want to double-check to  
7 make sure everyone is here?

8 THE COURTROOM CLERK: I will check.

9 THE COURT: Is there anything else that we  
10 need to take up?

11 MR. SULLIVAN: Yes, Your Honor.

12 THE COURT: Go ahead, Mr. Sullivan.

13 MR. SULLIVAN: Your Honor, when we broke  
14 Friday, the court entered the standard order that  
15 witnesses on cross-examination cannot discuss their  
16 testimony, et cetera.

17 This morning, when Mr. Croner was brought in  
18 by the Marshals, one of the Marshals delivered to me a  
19 note that he said was from Mr. Croner. I and Mr. Taxay  
20 have not looked at it, have not read it, and do not know  
21 its subject matter. I am open to suggestions. I would  
22 request the court look at the note.

23 THE COURT: Let me ask Mr. Croner.

24 Mr. Croner, what I normally require is that,  
25 when a witness is on cross-examination, you are not

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1 THE COURT: Very well. Did you want another  
2 examination of Mr. Hinkson by Dr. Engle if I allow the  
3 defense to put on Dr. Duke at all?

4 MR. TAXAY: We don't believe we need another  
5 examination.

6 THE COURT: Then I will review your response.  
7 And I suspect -- without having read your response yet,  
8 I suspect we may need to hold a Daubert hearing if we  
9 are going to go forward with that testimony.

10 I will put the defense on notice of that now.  
11 We will schedule it at some point in the middle of the  
12 week.

13 THE COURT: Yes, sir. Mr. Hoyt?

14 MR. HOYT: Yes, sir. One matter concerning  
15 jail conditions. We have been complaining about the  
16 treatment that Mr. Hinkson has received and it  
17 interfering and restricting his ability to communicate  
18 with his attorney and the attorney-client privilege.

19 We have another instance of that that has just  
20 happened over the weekend which is this:

21 Mr. Hinkson has been placed in solitary  
22 confinement; however, he has been available. When I  
23 have called the jail and said I need to speak with  
24 him, within a reasonable time period, anywhere from ten  
25 minutes to an hour later, they have accommodated. They

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1 have gotten him to a telephone so that we can  
2 communicate.

3 That terminated this weekend, and the  
4 Sheriff's Office told me they would be happy to  
5 accommodate. I spoke to Sergeant Ishima Friday night,  
6 and he just apologized all over the place.

7 He said, "Gee, I'm sorry. We have orders from  
8 Mr. Dave Meyer that he is not to use the telephone,"  
9 basically, and, you know, if there is any question, to  
10 call Mr. Dave Meyer.

11 So I placed the call and left a message with  
12 the operator and did not get a return call.

13 The concern I have is that I think that he is  
14 not, as a detainee in this case -- we are aware of his  
15 status as a result of the conviction in the tax case;  
16 but as a detainee in this case, I think there is an  
17 expanded right to communicate, especially during trial.

18 And to have him unavailable over the weekend,  
19 over a three-day weekend, which I finally was able to go  
20 down to the jail and spend some time with him last night  
21 but it's really -- there has been a substantial amount  
22 of interference here.

23 I don't know how the court remedies it unless  
24 the court can -- I know the court can't direct the  
25 Sheriff's Office how to conduct itself; however, I think

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1 THE COURT: No. That is -- yes, it was a slip  
2 of the tongue. It was Ms. Olson. Thank you, counsel.

3 MR. NOLAN: I feel a little better now.

4 THE COURT: Thank you, Mr. Nolan.

5 (Whereupon, the following proceedings were  
6 held in the presence of the jury:)

7 THE COURT: As I am sure you may have noted  
8 already, we are missing a couple of your number.  
9 Unfortunately, both Mr. Anderson and  
10 Mr. Byington have come down with illnesses over the  
11 weekend that prevent them from being here. I am going  
12 to have to excuse them from service on the jury, and we  
13 will just have to proceed without them.

14 Counsel, are you ready to proceed?

15 MR. NOLAN: I am, Your Honor. Thank you.

16 THE COURT: Very well.

17 THE COURT: Ms. Longstreet, do you want to  
18 tell Ms. Cook she can call the jurors and tell them they  
19 are excused?

20 THE COURTROOM CLERK: Yes, Your Honor.

21 \* \* \*

22 CHAD CRONER,  
23 having been called, previously sworn, testified further  
24 as follows:  
25

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1 that the court has jurisdiction to direct the U.S.  
2 Marshal, specifically, not to interfere with the  
3 telephone communications between Mr. Hinkson and his  
4 counsel.

5 THE COURT: Why don't we do this. I will  
6 tell you, for the record, that I did enter a  
7 security-related order, ex parte, on Friday afternoon  
8 that impacts on this.

9 Why don't we hold a hearing this afternoon at  
10 4:30? We will have Deputy Meyer here to explain the  
11 basis for the entry of that order, and I think things  
12 will become a little more clear to you at that point.

13 Ms. Longstreet, also, would you see if  
14 Ms. Cook is available at that hour --

15 THE COURTROOM CLERK: Yes.

16 THE COURT: -- since she is the one who  
17 presented the order to me? We will handle it at 4:30.

18 MR. HOYT: More surprises, Judge?

19 THE COURT: Absolutely. It is a trial, you  
20 know.

21 Anything else before we bring the jury in?  
22 Let's bring in the jury.

23 MR. SULLIVAN: Your Honor, it was -- was that,  
24 perhaps, a slip of the tongue when you said Ms. Cook  
25 presented an order?

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FURTHER CROSS EXAMINATION 1213

1 BY MR. NOLAN:

2 Q. Good morning, Mr. Croner.

3 A. Good morning.

4 Q. Mr. Croner, how many times did you thumb  
5 through the legal papers of Mr. Hinkson? Let me ask you  
6 this way: On how many separate occasions did you thumb  
7 through the legal papers of Mr. Hinkson?

8 A. A couple.

9 Q. A couple? Two?

10 A. Two or three.

11 Q. Two or three. And did those -- were you  
12 seated at his bunk when you did that; or were you seated  
13 at your bunk, number C?

14 A. His bunk.

15 Q. And at any time, were you looking at his  
16 paperwork on your bunk?

17 A. What -- legal paperwork or --

18 Q. Legal paperwork, yes.

19 A. That has to do with this trial?

20 Q. Legal paperwork that you thumbed through of  
21 Mr. Hinkson's?

22 MR. TAYAY: Objection, Your Honor. It's a  
23 confusing question.

24 THE COURT: Sustained as to the form.  
25

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1214

1 BY MR. NOLAN:

2 Q. You thumbed through legal motions regarding

3 this case; correct?

4 A. Yes.

5 Q. Did you thumb through any of those motions

6 while you were seated on your bunk, "C"?

7 A. No.

8 Q. During the time that Mr. Hinkson talked to you

9 while you were in the cell, is it my understanding that

10 he whispered this information to you?

11 A. I wouldn't say "whisper."

12 Q. Did he talk very softly so that the other

13 people in the cell couldn't hear it?

14 A. It was not softly. I mean, it was just in

15 private.

16 Q. Did he talk privately with you so that no one

17 else in the cell could hear it?

18 A. I don't know who all heard it.

19 Q. Did he talk loudly enough so that other people

20 could hear what he was saying?

21 MR. TAWAY: Objection, Your Honor. Calls for

22 a conclusion about what they could and could not hear.

23 THE COURT: Sustained.

24 BY MR. NOLAN:

25 Q. Was there, in your opinion, an effort to only

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1 communicate to you and not to other people?

2 MR. TAWAY: Objection, Your Honor. Calls for

3 a conclusion.

4 THE COURT: I will allow that question.

5 THE WITNESS: Can you repeat that again?

6 BY MR. NOLAN:

7 Q. Did it appear as if there was an effort -- in

8 your opinion, was there an effort on Mr. Hinkson's part

9 to communicate this information only to you and not to

10 other people in the cell?

11 A. Yes.

12 Q. And how did you draw that conclusion? What

13 facts led you to that conclusion?

14 A. There weren't other people around. There

15 wasn't people sitting next to us. Sometimes there may

16 be people sitting next to us. Sometimes there may be

17 people on the phone; and the rest of the time people

18 would be in front of the TV, away from us.

19 Q. When there were people sitting next to you and

20 people on the phone, did it appear to you as if he was

21 trying to only communicate to you and not to others?

22 A. I can't -- I'm not sure about that.

23 Q. Do you know of any reason why, during those

24 times, other people could not have heard what

25 Mr. Hinkson was saying?

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1 A. I don't understand your question.

2 Q. You have, in the course of your career, read

3 numerous lengthy legal documents, have you not?

4 A. I guess.

5 Q. Well, sir, you were involved in building,

6 financing, and other real estate matters; correct?

7 A. Yes.

8 Q. In 1999, you had a gross income of over

9 \$900,000; isn't that correct?

10 A. I guess. I don't remember.

11 Q. You are more than just a -- you have some

12 sophistication in the business world, do you not?

13 A. Yes.

14 Q. During the course of the statements being made

15 to you by Mr. Hinkson, he said, in fact, that he had

16 names for his automobile bumper; isn't that correct?

17 A. He made a couple of comments, yes.

18 Q. He said -- the brush guard he called a "fed

19 killer;" correct?

20 A. Yes.

21 Q. He was swearing at judges in the course of

22 being in that jail cell; correct?

23 A. Swearing at them?

24 Q. He called judges bad names; isn't that right?

25 A. A couple of them, yes.

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1 Q. Judges other than Judge Lodge; correct?

2 A. Yes.

3 Q. And he talked about people being smited by

4 God; isn't that right?

5 A. A couple of people.

6 Q. That they will be smited by God, or should be,

7 or words to that effect; correct?

8 A. Yes.

9 Q. Is it true that he came to you on a daily

10 basis to talk to you?

11 A. Pretty much.

12 Q. And that you were a passive listener?

13 A. Pretty much.

14 Q. And that you never asked any questions?

15 A. Yeah, pretty much.

16 Q. Well, you told that to the prosecutor, didn't

17 you?

18 A. Yes.

19 Q. He would tell you about how tough it is to be

20 falsely accused by others of doing things that he didn't

21 do?

22 A. Please repeat that.

23 Q. You heard him talk about how people would

24 falsely accuse him of things he didn't do; correct?

25 A. Yeah, he said that.

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1 Q. And at some point on December 7th, there was  
2 some question -- he had been informed that there was an  
3 informant in the cell; do you recall that?  
4 A. Yes.  
5 Q. And did you participate in an effort to  
6 convince him that none of the people in the cell were  
7 snitches?  
8 A. I'm not sure what you're saying.  
9 Q. Well, didn't you help draft a declaration for  
10 people to sign so that all of the inmates would convince  
11 him that there was no one --  
12 A. I didn't help draft it, no.  
13 Q. You didn't talk about the drafting of it?  
14 A. No.  
15 Q. You didn't make the suggestion that someone  
16 should write out a declaration for people to sign?  
17 A. No.  
18 Q. You didn't participate in that process at all?  
19 A. No. But I knew -- whether they were  
20 drafting -- Nicolai was drafting it. I thought it was  
21 just for him.  
22 Q. In terms of the statements that Mr. Hinkson  
23 made about killing people or people being killed, he  
24 added Mr. Albers to that list; correct?  
25 A. You have to say that again.

1219

1 Q. Mr. Hinkson added Mr. Albers to the list of  
2 people you testified about on direct examination?  
3 A. Yes.  
4 Q. He also added other prosecutors and other  
5 judges to that list?  
6 A. Yes.  
7 Q. Now, in terms of his starting to tell you  
8 about all of these things, is it your testimony that he  
9 approached you to start telling you about these things?  
10 A. Can you say that again?  
11 Q. Is it your testimony that he approached you?  
12 He came to you to tell you about these things?  
13 A. Yes.  
14 Q. And in your opinion, he didn't approach other  
15 people in the cell to talk to them in the same way he  
16 was talking to you?  
17 MR. TAXAY: Objection, Your Honor.  
18 THE COURT: Sustained.  
19 BY MR. NOLAN:  
20 Q. Did he, in your presence, approach other  
21 people and talk to them privately in the same manner in  
22 which he approached you and talked to you privately?  
23 MR. TAXAY: Objection, Your Honor.  
24 THE COURT: That question is fair. It's  
25 overruled.

1220

1 THE WITNESS: Yes.  
2 BY MR. NOLAN:  
3 Q. When you had -- when you found out that a  
4 search warrant was executed on the underlying case, the  
5 case that causes you to be in federal prison now -- all  
6 right. That's what we're talking about, okay?  
7 A. Okay.  
8 Q. You immediately had the Government notified  
9 that you wanted to cooperate and help them find and  
10 prosecute other people; correct?  
11 A. I don't remember.  
12 Q. You had put property in your relatives' names;  
13 isn't that correct?  
14 A. I don't know what you're talking about.  
15 Q. You had put -- you had put real property in  
16 the names of some of your relatives to hide that  
17 property; correct?  
18 A. No.  
19 Q. Didn't you place several of your properties in  
20 the names of family members?  
21 A. I don't remember.  
22 Q. What about a residence at 3416 Scottsdale in  
23 Meridian, Idaho?  
24 A. I didn't put them in -- I sold properties, but  
25 I didn't put them in somebody else's name.

1221

1 Q. You sold it to Patsy Croner?  
2 A. Yes.  
3 Q. You got money from Patsy Croner?  
4 A. Yes.  
5 Q. How much money did you get from Patsy Croner?  
6 A. I don't remember.  
7 Q. You don't have any idea?  
8 A. It was three or four years ago.  
9 Q. You don't have any idea how much money you got  
10 for that house?  
11 A. What's that? I didn't hear you. What was  
12 that?  
13 Q. What about 673 Bankside and 2337 Lowry in  
14 Meridian, Idaho?  
15 A. What about them?  
16 Q. You put those in Kristen Shields' name; isn't  
17 that right?  
18 A. The Lowry property she purchased.  
19 Q. How much did she pay for it?  
20 A. Whatever I sold it for. I don't remember.  
21 Q. If the Government alleged that you made an  
22 effort to avoid foreclosure by placing several of your  
23 properties in the names of family members, would that be  
24 a true statement?  
25 A. You will have to repeat that.

1222

1 Q. If the Government alleged that, in an effort  
2 to avoid foreclosure, you placed several of your  
3 properties in the names of family members, would they be  
4 telling the truth?  
5 A. I didn't place properties. I sold properties.  
6 Q. You diverted money from Home Builders, Inc.,  
7 to your personal brokerages account at Merrill Lynch and  
8 Pension Financial; is that correct?  
9 A. I didn't divert any money.  
10 Q. So if the Government alleged that you diverted  
11 money to your personal brokerages account at Merrill  
12 Lynch and Pension Fund, they would be incorrect; is that  
13 right?  
14 A. Yes.  
15 Q. And when you placed under oath -- when you  
16 said under oath that you only had \$200 in cash on hand,  
17 were you telling the truth in your bankruptcy petition?  
18 A. I don't remember. I had \$200 when?  
19 Q. Your schedule that you filed --  
20 A. Chapter 13?  
21 Q. -- is that when you said you only had \$200 in  
22 cash?  
23 A. I did a corporate reorganization, if that's  
24 what you're talking about.  
25 Q. And you stated under oath you only had \$200 in

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1 like, to get out for bail or something like that.  
2 Q. Do you recall when you read those motions?  
3 Actually, did you read them?  
4 A. I just skimmed through them. They were pretty  
5 lengthy. There was, like, ten or twelve of them.  
6 Q. How did you get them?  
7 A. He just showed them to me. He came back from  
8 a meeting with his attorney.  
9 Q. Was this on one instance? Two instances?  
10 A. A couple of instances.  
11 Q. And did he hand you the paperwork, or did you  
12 get it otherwise?  
13 A. He handed it to me when we were sitting next  
14 to each other.  
15 Q. Did he explain it to you when he handed it to  
16 you?  
17 A. Not really. Just that he was going to be,  
18 hopefully, getting out on the 7th.  
19 Q. The 7th of what month?  
20 A. It was December.  
21 Q. December 2003 -- 2004?  
22 A. Yes.  
23 Q. And this paperwork that he was -- that you are  
24 talking about right now, did he show you that -- do you  
25 recall when he showed you it, the paperwork?

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1 cash?  
2 A. I don't remember.  
3 Q. Did you do anything wrong that caused you to  
4 get the 24 months in prison, Mr. Croner?  
5 MR. TAGAY: Objection, Your Honor.  
6 THE COURT: Sustained.  
7 MR. NOLAN: No further questions, Your Honor.  
8 Thank you.  
9 THE COURT: Redirect, Mr. Tagay?  
10 MR. TAGAY: Thank you, Your Honor.  
11  
12 R E D I R E C T E X A M I N A T I O N  
13 BY MR. TAGAY  
14 Q. Mr. Croner, counsel asked you some questions  
15 on cross-examination about papers of Mr. Hinkson that  
16 you reviewed?  
17 A. Yes.  
18 Q. Could you describe those papers?  
19 A. One was, like, a publication or something  
20 about how the IRS didn't exist. It was pretty lengthy.  
21 It was over 100 pages, and there was a few different  
22 documents on that. And then there was a couple of -- a  
23 couple of motions.  
24 Q. Do you recall what those motions concerned?  
25 A. I don't but they were, like, well -- maybe,

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1 A. It was before his -- maybe the 6th -- the 5th  
2 or 6th.  
3 Q. Did you read any of those motions before the  
4 5th or 6th concerning Mr. Hinkson's case?  
5 A. No.  
6 Q. Did you see any paperwork concerning this case  
7 prior to that time?  
8 A. No.  
9 Q. You were asked some questions on  
10 cross-examination earlier about some affidavit that was  
11 prepared by some people in the cell regarding an  
12 informant in the cell. Do you recall that testimony?  
13 A. Yes.  
14 Q. Who prepared this paperwork?  
15 A. I think his name was Fred Nicolai.  
16 Q. Whose idea was it to prepare the paperwork?  
17 A. I think it was Fred's.  
18 Q. Did you sign it?  
19 A. Yeah, I signed it.  
20 Q. Why did you sign it? What was your role in --  
21 MR. NOLAN: Objection, Your Honor.  
22 THE COURT: I am going to allow it.  
23 BY MR. TAGAY:  
24 Q. Why did you sign it? What was your role?  
25 What were you noting by signing it?

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1 A. I was a witness to his signature.  
2 Q. Whose signature?  
3 A. Fred Nicolai's.  
4 Q. Who is Mr. Nicolai?  
5 MR. NOLAN: Objection, Your Honor.  
6 THE COURT: Overruled.  
7 THE WITNESS: Would you say that again?  
8 BY MR. TAXAY:  
9 Q. Who is Mr. Nicolai?  
10 A. He was an inmate next to me.  
11 Q. Did Mr. Hinkson participate in the drafting of  
12 that affidavit?  
13 A. I'm not aware.  
14 Q. You mentioned, on cross-examination, that  
15 Mr. Hinkson had private conversations with people other  
16 than yourself in the cell?  
17 A. Yes.  
18 Q. With whom did he have these conversations?  
19 A. Mark Boursaw, Noah Clark, Fred Nicolai --  
20 that's the ones I remember.  
21 Q. Now, when you were testifying on Friday of  
22 last week, there was some discussion about notes that  
23 you had written up regarding your conversations with  
24 Mr. Hinkson?  
25 A. Yes.

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1 BY MR. TAXAY:  
2 Q. Who --  
3 MR. NOLAN: Objection.  
4 THE COURT: Why don't you ask him how he  
5 knows?  
6 BY MR. TAXAY:  
7 Q. How do you know?  
8 A. I gave the note -- I mean, my attorney gave  
9 the notes.  
10 Q. Now, the conviction for which you are serving  
11 time, did you self-surrender?  
12 A. Can you say that again?  
13 Q. Did you self-surrender?  
14 A. No.  
15 Q. Well, there was some delay before you started  
16 serving time?  
17 A. Yes.  
18 Q. And why was that?  
19 A. Because I was trying to clear up a state  
20 matter so I would be eligible for the six-month boot  
21 camp program that the judge recommended.  
22 Q. Did you have any health issues during that  
23 period?  
24 A. Yes.  
25 Q. Any surgeries?

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1 Q. And you testified that you recall giving these  
2 notes to prosecutors on around December 8th. Do you  
3 remember giving the notes to -- well, actually, did you  
4 ever hand notes to prosecutors?  
5 A. No.  
6 Q. And do you remember giving the notes --  
7 thinking that you had given the notes to your mother?  
8 A. No.  
9 MR. NOLAN: Objection. Leading, Your Honor.  
10 THE COURT: Sustained.  
11 THE WITNESS: Can you repeat the last  
12 question?  
13 THE COURT: No, he can't, because I sustained  
14 the objection to it.  
15 THE WITNESS: Oh, sorry.  
16 BY MR. TAXAY:  
17 Q. Do you know who gave the notes to the  
18 prosecution?  
19 MR. NOLAN: Objection, Your Honor. Lacks  
20 foundation.  
21 THE COURT: If he can establish a  
22 foundation -- the question is: Do you know who gave the  
23 notes to the prosecutor? You can say "yes" or "no" to  
24 that.  
25 THE WITNESS: Yes.

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1 A. Yes.  
2 Q. What were they?  
3 A. Thyroidectomy and they removed some polyps  
4 from my intestine.  
5 MR. TAXAY: I apologize, Your Honor.  
6 THE COURT: Take your time, counsel.  
7 BY MR. TAXAY:  
8 Q. Mr. Croner, with respect to private  
9 conversations that you had with Mr. Hinkson, did you  
10 notice that Mr. Hinkson spoke differently with you --  
11 MR. NOLAN: Objection, Your Honor. I didn't  
12 let him finish. I apologize.  
13 THE COURT: Let me hear the question. You can  
14 remain standing if you want, Mr. Nolan.  
15 Go ahead, Mr. Taxay.  
16 Don't answer the question, Mr. Croner.  
17 BY MR. TAXAY:  
18 Q. Mr. Croner, in your private conversations with  
19 Mr. Hinkson, did you notice that he spoke differently  
20 with you in those conversations than he did in a more  
21 public forum where other people were available to  
22 listen?  
23 MR. NOLAN: I believe that's a leading  
24 question.  
25 THE COURT: I am going to permit it since you

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1 opened the door to it. 1230  
2 THE WITNESS: Yes, he talked differently with  
3 me.  
4 BY MR. TAXAY:  
5 Q. Would you explain?  
6 A. He talked lower. He was contradicting and  
7 just more private.  
8 Q. What do you mean when you say he was  
9 contradicting?  
10 MR. NOLAN: Objection, Your Honor.  
11 THE COURT: I will allow him to explain what  
12 he means by that term.  
13 THE WITNESS: He would say one thing and then  
14 turn around and say something different that  
15 contradicted what he said to the group.  
16 BY MR. TAXAY:  
17 Q. Would you give us an example?  
18 MR. NOLAN: I believe this is argument, Your  
19 Honor. He has to say what he said to somebody else.  
20 THE COURT: He is asking for an example.  
21 Overruled.  
22 THE WITNESS: He would say that I would  
23 never -- I never -- I would never do anything like that.  
24 I would never threaten to kill anybody.  
25 And then, moments later, when we were talking,

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1 testimony to be that, when he talked to you, he talked 1232  
2 to you differently than when he talked to the other  
3 people?  
4 A. No. His question was if he talked to me  
5 differently than he talked to the group.  
6 Q. To the group. This relationship you had with  
7 him -- you went in there on November 10th; correct?  
8 A. Yes.  
9 Q. And you left on December 8th; is that correct?  
10 A. I would have to go back. I went in -- went in  
11 where?  
12 Q. You went into the cell on November 10th;  
13 correct?  
14 THE COURT: Into the cell or into custody?  
15 BY MR. NOLAN:  
16 Q. I am sorry. Into the cell with Mr. Hinkson?  
17 A. No. I went into the cell on November 21st.  
18 MR. NOLAN: May I have a moment, Your Honor?  
19 THE COURT: Sure.  
20 MR. NOLAN: I'm sorry. I just have to  
21 double-check something.  
22 THE COURT: Go right ahead, Mr. Nolan. Take  
23 your time.  
24 MR. NOLAN: May I approach briefly?  
25 THE COURT: Certainly.

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1 he would say, "I wish they all were dead. I would like 1231  
2 to kill them all."  
3 MR. TAXAY: May I have a moment, Your Honor?  
4 THE COURT: Sure.  
5 (Whereupon, an off-the-record discussion was  
6 held between MR. SULLIVAN and Mr. Sullivan.)  
7 MR. TAXAY: The Government pauses the witness,  
8 Your Honor.  
9 THE COURT: Very well. Mr. Nolan?  
10  
11 RE CROSS EXAMINATION  
12 BY MR. NOLAN:  
13 Q. As I understand it, it's your testimony that  
14 you think he had a special relationship with you inside  
15 the cell; is that correct?  
16 A. I don't know how you mean "special."  
17 Q. He only talked to you differently than he  
18 talked to the other people; correct?  
19 A. I wouldn't say that.  
20 Q. I'm sorry. Didn't you just say that to the  
21 prosecutor when he asked the question?  
22 A. Yeah. He would talk differently to me but I  
23 don't know if he talked different that way -- or  
24 differently with other people.  
25 Q. I am sorry. I thought I understood your

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1 MR. NOLAN: Thank you. 1233  
2 (Whereupon, the following sidebar discussion  
3 was held outside the presence of the jury:)  
4 MR. NOLAN: I was preparing yesterday. I had,  
5 at first, thought he went in on the 21st of November,  
6 you know, like he just said.  
7 I reviewed the government's opposition to the  
8 motion to suppress where it said that, on page two of  
9 ten: "Croner was incarcerated at the Ada County Jail on  
10 or about November 10th. Upon his arrival, he was housed  
11 in a cell shared by the defendant and other inmates."  
12 And from that, I came to the conclusion that  
13 he was taken immediately to that cell. I would like to,  
14 at least, get it straightened out because I don't have a  
15 lot of information about Mr. Croner.  
16 And I don't like to be put in a position where  
17 I ask questions that are wrong when I rely upon the  
18 statements; and, presumably, they were relied upon by  
19 the court.  
20 MR. TAXAY: Your Honor, that's a mistake; and  
21 it's my mistake. I don't know what to say, other than  
22 that. I apologize for it.  
23 THE COURT: The court heard the testimony of  
24 Mr. Croner on Friday to be that he surrendered on  
25 November 10th and was initially classified in a

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1 different portion of the jail but that he wasn't  
2 actually housed in the housing pod with Mr. Hinkson  
3 until November 21st. I think this is an issue that the  
4 jury is just going to have to resolve.

5 MR. NOLAN: I heard that, too. I'm just --  
6 I'm just -- again, I want to try to find the source of  
7 it. I will go back.

8 MR. HOYT: I don't mean to pick over an issue  
9 but I thought I heard him say -- I'm sorry. I thought I  
10 heard the witness say that he was transferred to  
11 Mr. Hinkson's cell on the 20th, Sunday, the 20th. So,  
12 you know, we are back and forth on the dates. I hope  
13 that we can clarify that.

14 THE COURT: I think Mr. Hoyt is correct; it is  
15 the 20th. And then I think Mr. Hinkson spoke to him the  
16 night of the 20th and the morning of the 21st.

17 If you want to clear that up, go ahead.

18 MR. TAXAY: If I can clear up one more thing?  
19 I believe Mr. Croner testified to these dates in the  
20 suppression hearing we had regarding his testimony,  
21 prior to the trial. So I think all of this was covered  
22 then, so our motion was submitted sometime earlier.

23 MR. NOLAN: That's fine. I trust the  
24 Government a little more than I trust Mr. Croner.

25 THE COURT: Mr. Nolan, you can clear it up any

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1 6th or 7th -- I'm sorry -- the 5th, 6th, or 7th of  
2 December that he brought you documents to read?

3 A. You are going to have to clarify "documents,"  
4 again.

5 Q. You've talked about two sets of documents.  
6 You talked about legal motions, and you talked about  
7 other documents; correct?

8 A. Yes.

9 Q. And you said it was the 5th, 6th -- 5th, 6th,  
10 or 7th of December that he brought you the documents to  
11 look at?

12 A. Legal documents, yes.

13 Q. The legal documents?

14 A. Yes.

15 Q. Is that right?

16 A. Yes.

17 Q. He had the legal documents in his cell all  
18 that time from the 21st until the 6th -- or the 5th;  
19 correct?

20 A. I assume so.

21 Q. And at no time prior to that did he bring  
22 those over to show them to you; is that right?

23 A. No.

24 MR. NOLAN: No further questions, Your Honor.

25 THE COURT: Mr. Taxay, anything further for

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1 way you see fit.

2 (Whereupon, the following proceedings were  
3 held in open court, in the presence of the jury:)

4 MR. NOLAN: My apologies to the jury and to  
5 the court for the time, Your Honor.

6 Q. All right. You went into custody on the 10th  
7 of November; correct?

8 A. Yes.

9 Q. But you weren't housed with Mr. Hinkson until,  
10 actually, the 20th of November; correct?

11 A. It was Sunday, the 21st.

12 Q. All right. And you talked to him the night of  
13 the 21st; correct?

14 A. Yes.

15 Q. Right after getting in there; is that right?

16 A. It was in the afternoon, yes.

17 Q. And that's when he, allegedly, asked you to  
18 kill somebody for him; correct?

19 A. That evening, yes.

20 Q. And it was the next day you actually called  
21 your lawyer and said, "I got some information;" correct?

22 A. The next -- yeah, the next day.

23 Q. The 22nd?

24 A. The 22nd.

25 Q. And it was -- it was not until the 7th -- the

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1 Mr. Croner?

2 MR. TAXAY: Just limited, Your Honor.

3 THE COURT: Go ahead. Limited to the scope of  
4 the recross?

5 MR. TAXAY: Absolutely.

6 THE COURT: Very well. Proceed.

7

8 FURTHER REDIRECT EXAMINATION  
9 BY MR. TAXAY:

10 Q. On the recross, you were -- you just mentioned  
11 that you told your lawyer that you had some information?

12 A. Yes.

13 Q. What is the information that you told your  
14 lawyer?

15 MR. NOLAN: I would be happy --

16 THE COURT: If the objection is beyond the  
17 scope, I am going to sustain it because I think we have  
18 been over that.

19 BY MR. TAXAY:

20 Q. Did you use those words, "I have got some  
21 information"?

22 A. No.

23 Q. That was -- so what did you mean when you just  
24 testified you told your lawyer, "I have got some  
25 information"?

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1 THE COURT: Counsel, the witness has already 1238  
2 testified to this.  
3 MR. TAGAY: That's all, Your Honor.  
4 THE COURT: Anything further, Mr. Nolan?  
5 MR. NOLAN: No, Your Honor.  
6 THE COURT: Mr. Croner, you are excused.  
7 Thank you for your testimony. You may stand down.  
8 Call your next witness.  
9 MR. SULLIVAN: Call Agent Long, Your Honor.  
10 THE COURT: Agent Long, would you step forward  
11 and be sworn?  
12 \* \* \*  
13 WILLIAM R. LONG,  
14 having been called, sworn, testified as follows:  
15 THE COURTROOM CLERK: Please take the stand.  
16 Please state your full name and spell your last name for  
17 the record.  
18 THE WITNESS: William R. Long, L-o-n-g.  
19  
20  
21  
22  
23  
24  
25

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1 DIRECT EXAMINATION 1239  
2 BY MR. SULLIVAN:  
3 Q. Agent Long, you are an FBI agent?  
4 A. Yes.  
5 Q. For how long?  
6 A. Over fifteen years.  
7 Q. What is your academic background?  
8 A. I have an undergraduate degree in criminal  
9 justice from Northeast Louisiana University and a law  
10 degree from Mississippi College School of Law, Jackson,  
11 Mississippi.  
12 Q. Have you ever practiced law?  
13 A. No.  
14 Q. Did you go right into the Federal Bureau of  
15 Investigation after law school?  
16 A. Yes, I did.  
17 Q. What was the geographical location of your  
18 first assignment?  
19 A. I was assigned to the Salt Lake City Division  
20 of the FBI and detailed out to the Idaho Falls Resident  
21 Agency.  
22 Q. When did you first come to Idaho?  
23 A. October of 1989.  
24 Q. Have you been here in Idaho since then?  
25 A. Yes.

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1 Q. In what towns? 1240  
2 A. I worked in Idaho Falls for about nine years,  
3 and I have been in Coeur d'Alene Idaho since that time.  
4 Q. And you are the case agent in this matter?  
5 A. Yes, I am.  
6 Q. And what does it mean, in the terminology of  
7 the FBI, that you are the case agent?  
8 A. The case agent is the agent who is responsible  
9 for conducting the bulk of the investigation and for  
10 ensuring that the investigation is conducted in a  
11 thorough and complete manner. That would include  
12 assigning out collateral leads, things of that nature.  
13 Q. When did you first get involved in the  
14 investigation of Mr. Hinkson?  
15 A. I was asked to participate in the arrest of  
16 Mr. Hinkson that was to occur on November the 21st of  
17 2002.  
18 Q. Was that following the indictment of  
19 Mr. Hinkson in the so-called tax case?  
20 A. Yes, that is correct.  
21 Q. And what was to be your role in this?  
22 A. One of my collateral duties is I am assigned  
23 to the Salt Lake City Division's FBI SWAT team, and we  
24 used our team to conduct that arrest in the securing of  
25 that facility.

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1 Q. What was it that you were going to do? 1241  
2 A. The team, myself and the others, was there to  
3 arrest Mr. Hinkson and, also, to clear that shop or  
4 manufacturing facility, secure the grounds, and all of  
5 the out buildings while the agents from the FDA and the  
6 IRS actually conducted a search for evidence.  
7 Q. And where was this to happen?  
8 A. This was to happen at Mr. Hinkson's residence  
9 and the manufacturing facility there outside of  
10 Grangeville, Idaho.  
11 Q. How far outside of Grangeville is it?  
12 A. It's probably a 20-minute drive, 25-minute  
13 drive. It's, I would guess, around 20 miles.  
14 Q. Is it a very rural area?  
15 A. Yes, it is.  
16 Q. Are there any other homes around it?  
17 A. No homes that are really close, no. There are  
18 a couple that are within, maybe, a half mile but nothing  
19 that would be close, like a neighborhood type of  
20 setting. Not at all.  
21 Q. Did you meet with all of the people who were  
22 going to participate in the arrest of Mr. Hinkson?  
23 A. Yes.  
24 Q. How many people were to participate in the  
25 actual arrest?

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1 A. The actual arrest -- there turned out to be  
2 about eleven of us that actually went into the house.  
3 Q. And from what agencies?  
4 A. Those were all FBI.  
5 Q. Do you know the number of agents, total, who  
6 were there for the arrest and the search of the WaterOz  
7 facility?  
8 A. Yes.  
9 Q. What was that?  
10 A. Well, I don't know the exact number. I know  
11 that the FBI had a total of around 20. I would say, 20  
12 to 22, somewhere in there, and then I would say there  
13 was about ten each from the FDA and the IRS.  
14 Q. Were there any other federal agencies that  
15 took part in this?  
16 A. No other federal agencies, no.  
17 Q. No Forest Service?  
18 A. No.  
19 Q. Did you have an arrest warrant for  
20 Mr. Hinkson?  
21 A. Yes.  
22 Q. Did you physically have it?  
23 A. Yes.  
24 Q. Was it signed by a judge?  
25 A. Yes, it was.

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1 A. No.  
2 Q. What were you doing?  
3 A. I was leading the team that was on the  
4 perimeter of Mr. Hinkson's home.  
5 Q. Did you announce your presence?  
6 A. Yes.  
7 Q. How did you do that?  
8 A. As soon as we got there and had the perimeter  
9 established and entry had been made into the shop, the  
10 manufacturing facility, we had a negotiator with us, an  
11 FBI agent who is trained specifically in negotiations.  
12 It is commonly our practice to bring a  
13 negotiator along. The negotiator began trying to call  
14 into the house; and he made numerous telephone calls  
15 into the house and, also, tried numerous times to make  
16 contact on a bull horn.  
17 Q. What would he say over the bull horn?  
18 A. He would say something to the effect of, "Mr.  
19 Hinkson" --  
20 MR. NOLAN: Objection, Your Honor.  
21 THE COURT: I am going to permit it.  
22 THE WITNESS: He would say something to the  
23 effect of, "Mr. Hinkson, this is the FBI. We have a  
24 warrant for your arrest. Please come out. Please  
25 surrender." Things of that nature.

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1 Q. On what day did you arrest Mr. Hinkson?  
2 A. November 21, 2002.  
3 Q. Did you go to his home?  
4 A. Yes.  
5 Q. And describe his home, please.  
6 A. It's a two-story manufactured or  
7 pre-fabricated-type home. I would estimate the square  
8 footage to be around 2,500 or maybe 2,700 square feet,  
9 something like that. It has a ground floor level and a  
10 second floor level.  
11 Q. What time did you get to the home?  
12 A. We got there at 6:12 a.m.  
13 Q. Where is the home in relation to the factory?  
14 A. It's within -- I would guess it's probably  
15 within 100 feet.  
16 Q. How big is the factory?  
17 A. I understand it's over 170,000 square feet.  
18 Q. What did you do when you first got to the  
19 grounds of the house?  
20 A. A portion of the agents surrounded the  
21 perimeter around the actual residence, and the rest  
22 entered the manufacturing facility and went through and  
23 cleared the facility. That means they were looking for  
24 any people who might be inside.  
25 Q. Did they find any, to your knowledge?

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1 BY MR. SULLIVAN:  
2 Q. Was it loud?  
3 A. It was very loud.  
4 Q. How long did this aspect go on?  
5 A. This went on for, I would say, at least 45  
6 minutes.  
7 Q. What did you do after 45 minutes?  
8 A. After 45 minutes, we had a discussion as to  
9 whether or not we thought Mr. Hinkson was actually in  
10 the residence.  
11 MR. NOLAN: Objection, Your Honor.  
12 THE COURT: Sustained.  
13 BY MR. SULLIVAN:  
14 Q. After you had -- you had a discussion with the  
15 other SWAT team members?  
16 A. Yes.  
17 Q. About what to do next?  
18 A. Yes.  
19 Q. After you had that discussion, what did you do  
20 next?  
21 A. We made entry into the house to search for  
22 him.  
23 Q. How did you do that?  
24 A. We entered at the back door, on the ground  
25 level.

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1 Q. Now, how were you and the other SWAT team  
2 members dressed?

3 A. We had our green, Nomex flight suits on, body  
4 armour, firearms, helmet.

5 Q. How many entered the house?

6 A. I think that eleven of us went into the house.

7 Q. What did you do once you entered?

8 A. Once we entered, we slowly and methodically  
9 went room to room, announcing our presence, calling out  
10 very loudly, announcing, "This is the FBI. We have a  
11 warrant for your arrest. Mr. Hinkson, come out," as we  
12 proceeded from room to room.

13 Q. You started on this lower level first?

14 A. Yes.

15 Q. Did you proceed up to the second level?

16 A. Yes. We completed the first level, and then  
17 we went to the second level.

18 Q. What was on the -- what rooms were on the  
19 second level?

20 A. Well, we went up the stairs and there was -- I  
21 recall the kitchen was there. There is a hallway with  
22 some bedrooms; and I believe there might be a family  
23 room or a living-room-type room on the upper floor, as  
24 well.

25 Q. Did you eventually find Mr. Hinkson?

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1 A. He is about five foot six.

2 Q. When you entered the bedroom on the second  
3 level, did you have your firearm weapons displayed?

4 A. The pistols were holstered; but we did have  
5 long guns, as well.

6 Q. What happened after you kicked in the door?

7 A. Mr. Hinkson was observed lying on the bed, and  
8 he was given orders to show his hands. He complied. He  
9 was taken into custody.

10 Q. And was he awake or asleep in the bed?

11 A. He was -- in my view, he was pretending to be  
12 asleep.

13 MR. NOLAN: Objection, Your Honor.  
14 Non-responsive.

15 THE COURT: Sustained.

16 MR. NOLAN: I would ask that it be struck.

17 THE COURT: The jury will disregard last  
18 answer.

19 BY MR. SULLIVAN:

20 Q. How did he appear when you saw him immediately  
21 upon entering the room?

22 A. He was lying still in the bed.

23 Q. Was he reacting at all to someone kicking in  
24 his bedroom door?

25 A. I didn't see him react until he was told to

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1 A. Yes. We found him in the very last room.

2 Q. What kind of room was it?

3 A. It was his bedroom.

4 Q. Was the door opened or closed?

5 A. It was closed and locked.

6 Q. What did you do?

7 A. Because it was locked, the agent that -- well,  
8 actually, two agents were in front of me. One kicked  
9 the door, popped it opened; and then the three of us  
10 went into Mr. Hinkson's room.

11 Q. Did the three agents who went into  
12 Mr. Hinkson's room include IRS Agent Steve Hines?

13 A. No.

14 Q. Did you know where Steve Hines was?

15 A. Yes.

16 Q. Where was he?

17 A. He was out in his car, on the perimeter, the  
18 far perimeter.

19 Q. How was he dressed?

20 A. I believe that he had -- he was dressed  
21 casually. Maybe jeans or khaki slacks, something to  
22 that effect.

23 Q. Do you know how tall Mr. Hines is?

24 A. Yes.

25 Q. How tall is he?

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1 show his hands.

2 Q. And he did so?

3 A. He did so.

4 Q. Did you search the area?

5 A. Yes.

6 Q. Did you find anything?

7 A. There was a loaded .45-caliber handgun on his  
8 headboard.

9 Q. Did you take it?

10 A. I picked it up and unloaded it and then left  
11 it in the home.

12 Q. When you were searching the lower level of the  
13 home previously, earlier, had you observed any other  
14 weapons?

15 A. I passed by a wooden gun case that was  
16 downstairs, and I observed a rifle that was in the gun  
17 case.

18 Q. Were those the only weapons found in the  
19 house, the long gun and the handgun?

20 A. Yes. That's all we saw.

21 Q. What was done after Mr. Hinkson was arrested  
22 in the bedroom?

23 A. We got him dressed. He was led outside, and  
24 Mr. Hines was in his vehicle. He pulled his vehicle up  
25 near the front door of the Hinkson residence, and we

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1 walked Mr. Hinkson down to the car and put him in the  
2 car. We then retrieved -- I think he asked for a bottle  
3 of water. We got him a bottle of water.

4 Q. Did Mr. Hines, at any time in your presence,  
5 display a handgun?

6 A. No, never.

7 Q. What was done after he was taken downstairs  
8 and presented to Agent Hines?

9 A. The agents that were in the house vacated the  
10 house, closed up the doors; and then we stayed on site  
11 to secure the outer perimeter while the agents from the  
12 FDA and the IRS came to actually search the facility for  
13 documents.

14 Q. Did they have any kind of judicial  
15 authorization to do so?

16 A. Yes. There was a search warrant that they had  
17 for the manufacturing facility.

18 Q. What are you referring to as "securing the  
19 outer perimeter"?

20 A. Basically, just standing by and doing security  
21 duty. That also included clearing about -- I think  
22 there were five or six out buildings that were out on  
23 the perimeter.

24 Q. Did any WaterOz employees show up that  
25 morning?

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1 A. No.

2 Q. Where was Mr. Hinkson taken?

3 A. Mr. Hinkson was taken for an initial  
4 appearance.

5 Q. By whom?

6 A. By Steve Hines.

7 Q. Do you know where they went?

8 A. I think they went to Moscow, Idaho.

9 Q. What is an initial appearance?

10 A. An initial appearance is when, after a  
11 defendant is arrested, they appear in court; and the  
12 Magistrate Judge informs them of the charges against  
13 them and informs them of their rights.

14 Q. Were you present for that?

15 A. No.

16 Q. How long did the federal agents remain on the  
17 WaterOz property?

18 A. I would say that we were there for, probably,  
19 eight hours.

20 Q. Were you there that whole time?

21 A. Yes.

22 Q. Did you participate in the search of the  
23 plant?

24 A. No.

25 Q. What were you doing?

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1 A. We did security duty outside.

2 Q. Was there a second occasion that you arrested  
3 Mr. Hinkson?

4 A. Yes.

5 Q. When was that?

6 A. That was the 4th of April 2003.

7 Q. So this is some five or six months later?

8 A. Yes, that's correct.

9 Q. And why were you arresting Mr. Hinkson on this  
10 occasion?

11 A. His bond, his O.R. bond, had been revoked by  
12 the judge.

13 Q. What is an O.R. bond?

14 A. He was out on his own recognizance. In other  
15 words, he was out of jail on pretrial release without  
16 actually posting a monetary bond.

17 Q. Did you have an arrest warrant for his arrest?

18 A. Yes.

19 Q. And what was the arrest warrant for?

20 A. It was for violation of his conditions of  
21 pretrial release.

22 Q. What was the alleged violation of his pretrial  
23 release?

24 MR. NELAN: Objection, Your Honor. I don't  
25 think it's necessarily relevant to go into all of the

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1 details.

2 THE COURT: I will sustain that objection.

3 BY MR. SULLIVAN:

4 Q. Did you execute that warrant?

5 A. Yes.

6 Q. How did you go about doing that?

7 A. I contacted Detective Scott Mealer, who worked  
8 for the Idaho County Sheriff's Department, and told him  
9 that I had this arrest warrant and that I wanted to  
10 arrest Mr. Hinkson. He and I discussed a couple of  
11 different options, and we settled on one.

12 MR. SULLIVAN: May I ask a leading question at  
13 this point, Your Honor?

14 THE COURT: You may.

15 BY MR. SULLIVAN:

16 Q. Did that involve having Mr. Hinkson come to  
17 Detective Mealer's County Sheriff's Office?

18 A. Yes.

19 Q. Did it involve some matter that Mr. Hinkson  
20 was interested in?

21 A. Yes. Mr. Hinkson had reported another matter  
22 to the Sheriff's Office previously.

23 Q. And did you know when he was supposed to come  
24 to Detective Mealer's office?

25 A. Yes. Detective Mealer contacted Mr. Hinkson

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1 and told him he wanted to discuss the pre-existing  
2 matter, and Mr. Hinkson said that he would come down to  
3 the office.

4 Q. Did he do so?  
5 A. Yes.  
6 Q. What day?  
7 A. That was the 4th of April 2003.  
8 Q. Were you there, present?  
9 A. Yes.  
10 Q. What did you observe Mr. Hinkson do?  
11 A. Mr. Hinkson pulled up in his car, outside,  
12 which we could see through the window.  
13 Q. Where was there?  
14 A. It was at the Idaho County Sheriff's  
15 Department Substation, which is in Kooakia, Idaho.  
16 Q. What automobile did he pull up in?  
17 A. It was a small car of some kind.  
18 Q. Where were you?  
19 A. I was in the office, looking out the window  
20 through the blinds.  
21 Q. Was Detective Mealer there?  
22 A. Yes.  
23 Q. Did Mr. Hinkson enter the substation?  
24 A. He did.  
25 Q. Did he conduct some business with Detective

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1 Mealer?  
2 A. Yes.  
3 Q. It was regarding this other matter?  
4 A. Yes.  
5 Q. And during that process, where were you?  
6 A. I was in the office, just standing off to the  
7 side.  
8 Q. At some point, did you get introduced by  
9 Detective Mealer?  
10 A. Yes.  
11 Q. What did he say?  
12 A. Detective Mealer said, "This is Agent Long  
13 from the FBI, and he's got some FBI business to discuss  
14 with you," or something like that.  
15 Q. What did you do?  
16 A. At that point, I confirmed for Mr. Hinkson  
17 that I was -- I think I introduced myself, and I told  
18 him that I had a warrant for his arrest.  
19 Q. Did he respond?  
20 A. Yes.  
21 Q. What did he say?  
22 A. He said -- I believe he asked why.  
23 Q. Did you tell him?  
24 A. Yes.  
25 Q. What did you tell him?

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1 A. I told him that his conditions of pretrial  
2 release had been revoked.  
3 Q. What did you proceed to do?  
4 A. He was sitting in a chair, and I asked him to  
5 stand up and he -- he didn't stand up. In fact, he  
6 argued. He objected to being arrest.  
7 He said, "I don't want to go with you. It's  
8 Friday night."  
9 And I told him that it wasn't negotiable. I  
10 directed him to stand up. He finally did comply; and I  
11 began to pat him down, search him.  
12 Q. Did you find anything on him?  
13 A. Yes. He had a tape recorder that was in his  
14 shirt pocket.  
15 Q. What did you do with it?  
16 A. I removed it from his shirt pocket, and I  
17 handed it to Detective Mealer.  
18 Q. Was it on or off?  
19 A. It was -- it was on and recording.  
20 Q. What did you do with it then?  
21 A. I asked Detective Mealer to turn it off.  
22 Q. Did Mr. Hinkson make any statements while this  
23 was going on?  
24 A. Yes, he did.  
25 Q. What did he say?

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1 A. He said -- before he stood up, he said, "Can't  
2 I make my phone call now?"  
3 And I said something like, "No, not right now,  
4 you can't."  
5 He said, "Can't I call my lawyer?"  
6 I said, "No, not right now, you can't."  
7 Q. Did you find anything else on his person other  
8 than the tape recorder?  
9 A. Just keys and personal items like that.  
10 Q. What did you proceed then to do?  
11 A. After he was searched and I had satisfied  
12 myself that he was unarmed, I asked him to sit down back  
13 in the chair, which was right near a desk. I sat down  
14 beside him.  
15 I had my notebook there; and I had a Miranda  
16 form in the notebook, which is a standard form that we  
17 use to advise suspects of their rights. I pulled that  
18 form out, and I read it to him verbatim.  
19 Q. Do you have that form with you?  
20 A. No, I don't.  
21 MR. SULLIVAN: May I have just a moment, Your  
22 Honor?  
23 THE COURT: Yes.  
24 BY MR. SULLIVAN:  
25 Q. What is this? You read this form to him?

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1 A. I did.

2 Q. And you called it a Miranda form?

3 A. Yes.

4 Q. And what is a Miranda form?

5 A. A Miranda form is a form that is commonly used  
6 by law enforcement officers to advise suspects of their  
7 constitutional rights prior to being interrogated while  
8 in custody.

9 MR. SULLIVAN: With permission of the court, I  
10 would like to show what I will newly mark as  
11 Government's Exhibit 8.

12 THE COURT: Very well.

13 THE COURT: Any objection, Mr. Nolan?

14 MR. NOLAN: I don't think it's relevant but I  
15 don't think I have --

16 THE COURT: I am going to overrule the  
17 relevancy objection. You may display it to the jury.  
18 Do you want to offer it into evidence?

19 MR. SULLIVAN: I do offer it.

20 MR. NOLAN: I don't think it necessarily  
21 should go into evidence.

22 THE COURT: Why don't we mark it as a court  
23 exhibit? I will allow him to display it to the jury  
24 while Agent Long is testifying.

25 Government's Exhibit No. 8 is admitted as a

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1 court exhibit.

2 (Whereupon, Government's Exhibit No. 8 was  
3 received in evidence as a court exhibit only.)

4 BY MR. SULLIVAN:

5 Q. I am putting on the projector, Agent Long, a  
6 document. At the top it says, "Advice of Rights."  
7 Could you please tell us what type of document this is?

8 A. Yes. This is the Miranda form.

9 Q. Is this the Miranda form you read -- or a copy  
10 of the Miranda form that you read to Mr. Hinkson?

11 A. Yes, it is.

12 Q. Is there some writings here at the bottom  
13 where I am pointing?

14 A. Yes.

15 Q. What are those writings?

16 A. Those are witness signatures, my signature,  
17 Scott Mealer's signature, and then the time underneath.

18 Q. What is the writing up here at the top of the  
19 page?

20 A. It says, "Place, Kooelcia, Idaho; Date:  
21 4/4/03; Time, 3:30 p.m."

22 Q. How did you go about reading this document to  
23 Mr. Hinkson?

24 A. I pulled it out of my notebook; and I put it  
25 on the table in front of us, on the desk in front of us,

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1 where we both could see it. I had my ink pen in my  
2 hand, and I pointed to each item as I read it.

3 I went through and read each and every portion  
4 of the form exactly as it appears. And after I got done  
5 with reading each individual right, I asked him if he  
6 understood that; and then I would move on because I  
7 would give him an opportunity to respond to me, and then  
8 I would move on to the next one.

9 Q. How did he respond when you asked him if he  
10 understood?

11 A. He indicated he understood.

12 Q. Is this exactly how you read it, starting  
13 with --

14 THE COURT: Counsel, could you enlarge that  
15 just a little bit? I think the jury may be having a  
16 hard time reading those words. I am.

17 That is better.

18 BY MR. SULLIVAN:

19 Q. Did you start with the words, "Before we ask  
20 you . . .?"

21 A. Yes, I did.

22 Q. Would you read that, please?

23 A. "Before we ask you any questions, you must  
24 understand your rights."

25 Q. Continue.

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1 A. "You have the right to remain silent.  
2 Anything you say can be used against you in court. You  
3 have the right to talk to a lawyer for advice before we  
4 ask you any questions and to have a lawyer with you  
5 during questioning.

6 "If you cannot afford a lawyer, one will be  
7 appointed for you before any questioning if you wish.  
8 If you decide to answer questions now without a lawyer  
9 present, you have the right to stop answering at any  
10 time."

11 Q. Would you read the portion entitled "Waiver of  
12 Rights?"

13 A. Yes, I did read that.

14 Q. Would you read it now, please?

15 A. "I have read this statement of my rights, and  
16 I understand what my rights are. At this time, I am  
17 willing to answer questions without a lawyer present."

18 Q. Did Mr. Hinkson answer questions at this time?

19 A. Yes, he did.

20 Q. What did he tell you about -- did you ask him  
21 questions about this case?

22 A. Yes, I did.

23 Q. At that time, were they questions about the  
24 revocation of his bond?

25 A. Yes.

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1 Q. He had not yet been indicted for this case; is  
2 that correct?

3 A. That is correct.

4 Q. So this was, at that point in time, a matter  
5 of revocation of bond?

6 A. Yes.

7 Q. What did he tell you about -- just tell us  
8 what he told you.

9 A. He said he had been very angry and frustrated  
10 since his arrest in November of 2002. I asked him about  
11 any threatening statements he may have made. He said  
12 that he had vented in conversations with J. C. and Anne  
13 Bates.

14 Q. Did he say who he had vented about?

15 A. Yes. He said he had vented about Judge Lodge,  
16 Nancy Cook, Steve Hines, and Dennis Albers.

17 Q. Did he tell you why he was venting?

18 A. Yes.

19 Q. What did he say?

20 A. He told me that he blamed Judge Lodge for  
21 wrongfully dismissing his lawsuit against Cook, Steve  
22 Hines, Dennis Albers, and others.

23 He believed that Judge Lodge had never made a  
24 correct ruling in his entire career on the bench. As  
25 one example, he cited Judge Lodge's --

1 THE COURT: Just a minute, Agent Long.

2 May I see counsel at sidebar?

3 MR. SULLIVAN: Your Honor, I will withdraw.

4 THE COURT: I want to make sure the Agent  
5 understands that. I will allow you to ask a leading  
6 question so we don't get into that.

7 BY MR. SULLIVAN:

8 Q. Without going into this particular example  
9 that Mr. Hinson gave you, did he give any other type of  
10 reasons why he was venting about Judge Lodge?

11 A. He was just dissatisfied concerning Judge  
12 Lodge's rulings, generally.

13 Q. Now, did he tell you what he had against  
14 Assistant U.S. Attorney Nancy Cook?

15 A. Yes, he did.

16 Q. What did he tell you?

17 A. He told me that he blamed Ms. Cook for forging  
18 the Indictment against him. He believed that there were  
19 flaws in the Indictment. He cited that there was no  
20 Certificate of Indictment, which he believed made the  
21 Indictment fraudulent.

22 MR. NOLAN: Excuse me, Your Honor. I am sorry  
23 to interrupt, but it just appears as if he is refreshing  
24 his recollection with the report.

25 THE COURT: Let's get it from your memory

1 first, Agent. If you need to refer to your notes, you  
2 can ask for permission to do that.

3 MR. NOLAN: I apologize.

4 THE COURT: Your objection is proper, counsel;  
5 and it is sustained.

6 We have to do this from memory. If you can't  
7 remember, I will let you refer to your notes.

8 Go ahead, Mr. Sullivan.

9 BY MR. SULLIVAN:

10 Q. What was the document you were referring to,  
11 Agent Long?

12 A. I was referring to my report of that interview  
13 that I wrote.

14 Q. What did he say about the Grand Jury  
15 investigation?

16 A. He said that there had been twelve Grand Jury  
17 tribunals and that he believed that Ms. Cook had forged  
18 the Indictment against him and that there was no  
19 Certificate of Indictment, as I said.

20 Q. Did he say anything about a delay?

21 A. Yes. He said that there had been more than a  
22 70-day delay during the Grand Jury process, in between  
23 the time the Grand Jury met, as I understood him.

24 It was in between the time the Grand Jury met  
25 and the time that an Indictment was issued and,

1 therefore, that would make -- in his view, that made the  
2 Indictment invalid.

3 Q. Did he say that the time delay was between the  
4 Indictment and his arrest?

5 A. I believe so, yes.

6 Q. Did he say anything in regard to what he  
7 believed ALISA Cook's feelings were for him?

8 A. He believed that she was out to get him, that  
9 she had a vendetta against him.

10 Q. Did he tell you what he blamed Agent Hines  
11 for?

12 A. Yes.

13 Q. What was that?

14 A. He said that Agent Hines had been stalking him  
15 for a number of years. He said that Agent Hines had  
16 improperly summarized testimony before the Grand Jury,  
17 that he had perjured himself before the Grand Jury, and  
18 things of that nature.

19 Q. Did he tell you what he had against Attorney  
20 Dennis Albers?

21 A. He told me that Mr. Albers had represented a  
22 former employee who had sued him and that he was very  
23 angry about that, the fact that there was a judgment  
24 against him in that matter.

25 Q. Did you ask him if he had ever offered money

1 to anyone to hurt any of these people?

2 A. Yes.

3 Q. What did you ask him?

4 A. I asked him if he had ever offered money to  
5 hurt or kill any of these people -- Nancy Cook, Steve  
6 Hines, Judge Lodge, or Dennis Albers.

7 Q. How did he respond?

8 A. He said, "I have never seriously, with intent,  
9 offered money to have anyone hurt or killed," or  
10 something to that effect.

11 Q. Did you ask him anything about his  
12 conversations with J. C. Harding?

13 A. Yes.

14 Q. Did he respond to that?

15 A. Yes.

16 Q. What did he say?

17 A. He said that he had vented, in conversations  
18 with J. C. Harding, concerning Judge Lodge, Nancy Cook,  
19 and Steve Hines.

20 Q. Did he say whether or not he had had a  
21 conversation with J. C. Harding about killing those  
22 people?

23 A. He denied that.

24 Q. Did you ask him anything about talking about  
25 Agent Hines' children?

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1 A. Yes. I asked him if he had ever made any  
2 statements or threats concerning Mr. Hines' children,  
3 and he also denied that.

4 Q. Did you ask him if he made any efforts to  
5 locate these people?

6 A. Yes.

7 Q. What did you ask him?

8 A. I asked him if he had made any efforts to  
9 locate the homes, offices, vehicles, or access any  
10 personal information about Nancy Cook, Steve Hines, or  
11 Judge Lodge; and he denied that.

12 Q. Did Mr. Hinkson say anything about hoping that  
13 these people would die?

14 A. Yes. He admitted --

15 Q. What did he say in that regard?

16 A. I'm sorry?

17 Q. What did he say in that regard?

18 A. Yes. He said that, in his words, he was -- he  
19 vented in conversations about these people. He had said  
20 that he wished God would smite them.

21 Q. Did he add anything about how much it would be  
22 worth to him?

23 A. Yes.

24 Q. What did he say?

25 A. He told me that, in relation to the question

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1 about discussions with J. C. Harding, he said, "I have  
2 said, if someone were to kill them, it would be worth  
3 \$10,000 to me."

4 Q. Did you make any reference to J. C. Harding  
5 taping him?

6 A. Yes.

7 Q. What did Mr. Hinkson say about that?

8 A. Initially, when we first started the  
9 interview, I brought -- I got on the subject by saying,  
10 "Someone has told me that you have made statements  
11 threatening Judge Lodge, Nancy Cook, and Steve Hines."

12 He immediately said he knew that J. C. was  
13 wearing a wire, that J. C. was an FBI informant.

14 MR. SULLIVAN: No further questions, Your  
15 Honor.

16 THE COURT: Would this be a good time for our  
17 morning recess?

18 MR. NOLAN: Whatever the court wishes.

19 THE COURT: I think so. Why don't we take our  
20 fifteen-minute morning recess now? Ladies and  
21 gentlemen, we will see you back here in fifteen minutes.

22 (Recess.)

23 (Whereupon, the following proceedings were  
24 held outside the presence of the jury:)

25 THE COURT: Mr. Sullivan, do we need to take

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1 anything up with regard to this piece of paper before we  
2 bring the jury in?

3 MR. SULLIVAN: I don't think so.

4 MR. NOLAN: No, Your Honor. If I can just  
5 have one moment, I am trying to find something in the  
6 transcript. It will just take me a second. I thought I  
7 had it and I --

8 THE COURT: Sure.

9 MR. NOLAN: That's all right. I'm fine,  
10 Judge.

11 THE COURT: Can we bring the jury in?

12 MR. NOLAN: Yes, Your Honor.

13 THE COURT: Thank you, Mr. Nolan.

14 MR. NOLAN: Thank you.

15 (Whereupon, the following proceedings were  
16 held in the presence of the jury:)

17 THE COURT: Mr. Nolan, cross-examination?

18 MR. NOLAN: Thank you, Your Honor.

19 First, Your Honor, I would offer -- I have no  
20 objection to 8 going into evidence.

21 THE COURT: Into evidence as a court exhibit  
22 or completely into evidence?

23 MR. NOLAN: As a complete exhibit, Your Honor.

24 THE COURT: All right. With that stipulation,  
25 Exhibit 8 is admitted for all purposes.

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1 (Whereupon, Government's Exhibit No. 8 was 1270  
2 received in evidence.)  
3 MR. NOLAN: I will hand that to counsel.  
4  
5 CROSS EXAMINATION  
6 BY MR. NOLAN:  
7 Q. Agent Long, I have just a couple of questions,  
8 a few questions.  
9 In regards to your interview of Mr. Hinkson,  
10 the second arrest, that would have been -- it was April  
11 of 2003; correct?  
12 A. Yes, that's correct.  
13 Q. In addition to the comments about Agent Hines,  
14 he also accused Agent Hines, did he not, of spreading  
15 rumors that he was head of two militias and had machine  
16 guns?  
17 A. Yes. He did make that statement.  
18 Q. In regards to the statement, "It would be  
19 worth \$10,000," or words to that effect, at some point  
20 in the conversation he disagreed with your recitation of  
21 what he said?  
22 A. Yes, that's correct. I went back and referred  
23 back to that; and he said, "I never said that."  
24 And I said, "Yes, you did. You just said it  
25 to me."

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1 He said, "No, I never said that." 1271  
2 Q. In regards to the first arrest, you actually  
3 didn't see the first ten or fifteen seconds of what was  
4 going on in the bed; correct?  
5 A. I'm sorry?  
6 Q. You didn't see the first ten or fifteen  
7 seconds when you entered the room, because your duties  
8 were to secure other areas of the room; correct?  
9 A. It's a small bedroom. As I went in, I turned  
10 left because the guy in front of me turned right, which  
11 is our standard procedure when we go into a room.  
12 I swept left visually so, as I enter the room,  
13 I have peripheral vision of what was going on on the  
14 bed. I knew he was there.  
15 And then my attention went left, swept around;  
16 and I saw that there was no one on my side of the room.  
17 I think I looked through, checked a closet briefly, and  
18 then looked back.  
19 As far as a time, it couldn't have been that  
20 long. It was probably more like five to ten seconds,  
21 somewhere in there.  
22 Q. You previously testified, on December 7th,  
23 about these issues; correct?  
24 A. Yes.  
25 Q. You could have said, "Ten to fifteen seconds

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1 but it was a short amount of time"? 1272  
2 A. It was a short amount of time.  
3 Q. Now, is it true that the FBI instructs you  
4 that you may not tape record interviews?  
5 A. Yes. We have a policy that interviews  
6 generally are not recorded.  
7 Q. Would it be fair to say that you, personally,  
8 would believe that it is better to have a tape  
9 recording --  
10 A. I --  
11 THE COURT: Let him finish the question and  
12 then answer it if you understand it, Agent Nolan --  
13 excuse me -- Agent Long.  
14 Mr. Nolan, finish your question.  
15 BY MR. NOLAN:  
16 Q. That tape recordings are a better way to  
17 record what has taken place than memory?  
18 MR. SULLIVAN: I object to asking a conclusion  
19 or opinion on the matter.  
20 THE COURT: I am going to sustain the  
21 objection.  
22 BY MR. NOLAN:  
23 Q. All right. Okay. In regards to your ability  
24 to remember what Mr. Hinkson said when he was arrested  
25 in April of 2003, the first thing you did was to listen

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1 to what he said; correct? 1273  
2 A. You mean, at the time of the interview?  
3 Q. At the time of the interview.  
4 A. Correct.  
5 Q. And then you wrote handwritten notes of what  
6 you wanted to put down on paper, to remember later on;  
7 correct?  
8 A. Yes, contemporaneous with his statements.  
9 Q. Right. And then three or four days later, you  
10 prepared a report of the interview recalling what he  
11 said, as well as refreshing your recollection with your  
12 notes; correct?  
13 A. I believe what I did was, the following  
14 morning, I typed a rough draft; and then I completed  
15 the rough draft. In other words, I checked it for  
16 spelling and grammar and so forth.  
17 Q. And from that report, you refresh your  
18 recollection when you then later testify in any  
19 proceeding; correct?  
20 A. Yes. That's how I use the report.  
21 Q. Right. And presumably, you try to put down in  
22 your report -- well, first of all, you try to put down  
23 in your notes all of those things which you think are  
24 relevant and important?  
25 A. Yes. That accurately reflect the interview,

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1 yes.

2 Q. Right. And then when you prepare your report,

3 you also try to put down those things which you believe

4 accurately reflect your report -- I mean, what took

5 place?

6 A. Yes.

7 Q. In regards to the testimony you gave on direct

8 examination that Mr. Hinkson said that he knew J. C.

9 Harding was wired, was that something you felt was

10 important to write down?

11 A. I didn't put -- I didn't put that in my

12 report.

13 Q. That wasn't my question, was it, Agent?

14 A. I'm sorry. Can you ask it again?

15 Q. Was the fact that Mr. Hinkson allegedly told

16 you that he knew that J. C. Harding was wired an

17 important fact that you felt -- did you feel that was an

18 important fact?

19 A. I did, yes.

20 Q. And you did not put that down in your

21 handwritten notes; correct?

22 A. Right. I didn't.

23 Q. You did not put that down in your report;

24 correct?

25 A. Correct.

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1 Q. And you have not prepared a report that

2 reflects that statement; isn't that correct?

3 A. True.

4 Q. In regards to the tape recording of

5 Mr. Harding's conversation with Mr. Hinkson, at the time

6 that was taking place you were listening to what was

7 happening; correct?

8 A. Yes, that's correct.

9 Q. But you were listening to it on a device

10 different than the device that actually recorded the

11 conversation?

12 A. Yes.

13 Q. So when you were listening to it, you actually

14 couldn't pick up a lot of the conversation?

15 A. Right. There were portions of it that I

16 couldn't hear.

17 Q. The best way for you to listen to what took

18 place was, in fact, what I would call the hard copy, the

19 tape recording?

20 A. Yes.

21 Q. And you listened to that tape recording;

22 correct?

23 MR. SULLIVAN: Your Honor, I object. It's

24 outside the scope of my direct.

25 THE COURT: Overruled.

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1 THE WITNESS: Yes, I have listened to it.

2 BY MR. NOLAN:

3 Q. And you testified under oath regarding that

4 tape recording; correct?

5 A. Yes.

6 Q. And the first purpose of your testimony had to

7 do with whether or not Mr. Hinkson should be detained;

8 correct?

9 A. Yes.

10 Q. And at that time -- and that was in April of

11 2003; correct?

12 A. Yes. The 9th, I believe.

13 Q. The 9th. And he indicated to the court, when

14 he was asked a specific question -- this is my display

15 of page 149 of the transcript of the interview -- I'm

16 sorry -- the wire transcript.

17 THE COURT: That the jury has already seen?

18 MR. NOLAN: Yes. I think this is in evidence.

19 THE COURT: Yes. Go ahead.

20 MR. SULLIVAN: Excuse me. This is not in

21 evidence.

22 MR. NOLAN: The transcript is in evidence.

23 THE COURT: Well, I have instructed the jury

24 that it is the tape that is in evidence. They have seen

25 the transcript, and I will allow you to display it.

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1 MR. NOLAN: Right. I have to find the portion

2 on the tape at this point.

3 THE COURT: Go ahead.

4 BY MR. NOLAN:

5 Q. You testified that you had listened to the

6 tape and that, instead of hearing on the tape, "I'm just

7 suing them," you heard, "Let me sit on it;" correct?

8 A. Yes. That's what I said in the detention

9 hearing.

10 Q. All right. And then in another hearing -- in

11 February of 2004, you were before a Grand Jury; correct?

12 A. Yes.

13 Q. They did not have the tape, to the best of

14 your knowledge; correct?

15 A. Right.

16 Q. And you testified about the tape? You told

17 the jury about the tape?

18 A. Yes.

19 Q. And you told them it was three and a half

20 hours long; correct?

21 A. Yes.

22 Q. You then indicated that there had been a

23 transcript prepared of the tape; correct?

24 A. Yes.

25 Q. But that it was prepared by Mr. Hinkson's

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1 lawyer; is that right?

2 A. Yes.

3 Q. You assured -- I mean, you have, since then,

4 learned that it was actually prepared by a certified

5 court reporter; is that correct?

6 A. Yes. That's what I have learned.

7 Q. It was paid for by Mr. Hinkson's lawyer?

8 A. I would assume so.

9 Q. And there were portions -- you testified at

10 that Grand Jury that there were portions of the tape

11 that you disagreed with?

12 A. Yes.

13 THE COURT: Portions of the tape or portions

14 of the transcript?

15 BY MR. NOLAN:

16 Q. I'm sorry. Portions of the transcript? My

17 apologies. Portions of the transcript that you

18 disagreed with; correct?

19 A. Yes, I did say that.

20 Q. And you indicated that there had been no

21 independent, if you will, transcript prepared by the

22 Government; is that correct?

23 A. I don't know that that came up. It may have.

24 I just don't recall.

25 Q. I think that was a leading question, so I will

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1 withdraw that. You answered right, but it was a leading

2 question.

3 THE COURT: I thought you were on

4 cross-examination. You can ask a leading question.

5 BY MR. NOLAN:

6 Q. That's true. That's true.

7 And you told the jury that, when you listened

8 to the portion of the tape --

9 MR. SULLIVAN: Page number?

10 MR. NOLAN: I'm sorry. Page 24, lines 5

11 through 14. That's the Grand Jury transcript of

12 February '04.

13 MR. SULLIVAN: February 10th?

14 MR. NOLAN: February of 2004, February 10th.

15 I will just wait a second until counsel --

16 MR. SULLIVAN: I have got it.

17 BY MR. NOLAN:

18 Q. You told the Grand Jury that, when you

19 listened to the portion of the tape, you thought it was

20 not clear that it said, "I'm just suing them," and you

21 thought it said, "Let me sit on it;" correct?

22 A. I'm sorry. On which occasion are you --

23 Q. On February 2004, before a Grand Jury?

24 A. What I said then was --

25 Q. Are you reading something?

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1 A. I have the transcript in front of me.

2 Q. Okay. Go ahead. Do you want to read it? Do

3 you want to read the answer?

4 A. Yeah. I think that would be helpful.

5 Q. All right. Fine.

6 THE COURT: Go ahead.

7 THE WITNESS: Mr. Hinkson -- I said -- the

8 question was: "That's fine there."

9 Then if you turn to page 149 and begin reading

10 at line 3, the answer -- informant says, "I want to know

11 something for sure. This is dead serious that I'm

12 asking you this. You talked to me about this on a

13 couple of occasions. Do you want to do it? Do you not

14 want to do it?"

15 Hinkson says, "What?"

16 Harding says, "You know what I'm talking

17 about. I can handle it."

18 Hinkson says, "What?"

19 Informant says, "Your problem with the three

20 wisemen."

21 Hinkson says: "I'm just suing them."

22 The next question, when you listen to that

23 portion of the tape -- the next question is: "When you

24 listen to that portion of the tape, is it clear that's

25 what he is saying? 'I'm just suing them?'"

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1 My answer is: "No. He may have said that.

2 He may have also said something else. It's very

3 difficult to listen to those particular words to tell

4 exactly what he said there."

5 The next question is: "The first time you

6 listened to it, what did you think he said?"

7 My answer was: "I thought he said, 'Let me

8 sit on it.'"

9 BY MR. NOLAN:

10 Q. At the time of your testimony, had you changed

11 your mind about what you thought you heard?

12 A. Well, at the time of the original testimony --

13 Q. I'm talking about the time of the February

14 testimony.

15 A. I had reviewed it numerous times, that

16 particular portion; and at that point, I had decided I

17 was about 80 percent sure that it says, "I'm just suing

18 him."

19 Sometimes when I've listened to it, I think I

20 hear, "Let me sit on it." The volume really drops there

21 in that portion. It's just hard for me to tell.

22 Q. Did you ever have the tape transcribed by any

23 government official or government entity?

24 A. No.

25 Q. Did you ever have anybody in the FBI try to

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1 enhance it, if there were problems with it?

2 A. I did not because my understanding was --

3 Q. Excuse me.

4 THE COURT: It is a "yes" or "no" answer,

5 Agent Long.

6 THE WITNESS: Okay. I did not.

7 BY MR. NOLAN:

8 Q. You testified on September 4th -- I'm sorry --

9 you testified in September of 2004 before a Grand Jury;

10 correct?

11 A. Yes, I believe so.

12 Q. And that Grand Jury didn't have the tape

13 either, did it?

14 A. Right.

15 Q. You were the one telling the Grand Jury what

16 you heard on the tape; correct?

17 A. I haven't reviewed that transcript, so I don't

18 know.

19 Q. In September of 2004, you told the Grand Jury,

20 did you not -- page 12, line 21, through page 13,

21 line -- excuse me -- 15 or so.

22 In September 2004, the Government still had

23 not made a copy of a transcript -- strike that -- had

24 not prepared a transcript of the tape; correct?

25 A. Yes, for good reason.

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1 Q. It's not what, sir?

2 A. It's not 100-percent accurate.

3 Q. So it's a rough draft?

4 A. Yes.

5 Q. And did you ever suggest that maybe it should

6 be reviewed by the Federal Government to have them

7 prepare a transcript from the tape?

8 A. No, not the full transcript.

9 Q. And in September of '04, when you testified

10 before the Grand Jury, you, again, tell the Grand Jury

11 that there is some debate about what is said here;

12 correct?

13 A. Yes.

14 Q. And, again, you say that it may say, "Let me

15 sit on it;" correct?

16 A. I don't have the transcript, sir. I don't

17 know.

18 Q. You stated, under oath -- I think -- page 14,

19 lines 9 through 13.

20 You stated, "There is some debate about what

21 he says here. I'm not quite clear to me on the tape. I

22 think he probably says, 'I'm just suing them,' or, 'Let

23 me sit on it,' one or the other."

24 That was your testimony in September of this

25 year; correct?

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1 MR. NOLAN: I ask that that last portion be

2 struck, Your Honor.

3 THE COURT: Ladies and gentlemen, you may

4 consider the answer as having been only, "Yes." You

5 should disregard the remainder of Agent Long's answer.

6 It was not responsive to the question.

7 BY MR. NOLAN:

8 Q. You had not had anybody review the transcript

9 that was available for its accuracy; correct?

10 A. I had reviewed it, but no one else had; that's

11 correct.

12 Q. And you considered it a rough draft transcript

13 as of September 2004; correct?

14 A. Yes.

15 Q. And so the transcript that, by now, we now

16 know is marked as --

17 THE COURT: 4B.

18 BY MR. NOLAN:

19 Q. -- 4B is a rough draft, in your opinion?

20 A. I think it's substantially accurate, but I

21 disagree with some portions. I think "rough draft"

22 would be a fair characterization.

23 Q. Sir, you testified -- you believe rough draft

24 is a fair characterization; correct?

25 A. Yes, because it's not --

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1 A. Yes.

2 MR. NOLAN: I have no further questions, Your

3 Honor.

4 THE COURT: Redirect?

5

6 R E D I R E C T E X A M I N A T I O N

7 BY MR. SULLIVAN:

8 Q. Is this the entire quote from page 14 of the

9 September Grand Jury testimony by yourself?

10 "There is some debate about what he says here.

11 It's not quite clear to me on the tape. I think that he

12 probably says, 'I'm just suing them,' or, 'Let me sit on

13 it,' one or the other. And I have gone back and forth,

14 but I think it's one or the other."

15 Is that the complete answer you gave?

16 A. That sounds right, yes.

17 Q. In the transcript that was played here in the

18 courtroom, which version is used?

19 MR. NOLAN: I'm sorry. What version?

20 THE COURT: 4B, I think. You are asking, with

21 regard to 4B, which version the Government --

22 MR. SULLIVAN: 4B, the portion that has been

23 on the projector here the whole time.

24 MR. NOLAN: Okay.

25

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1 BY MR. SULLIVAN:

2 Q. Do you know what I'm referring to?

3 A. I do. "I'm just suing them," is the portion

4 that is in the transcript that has been admitted in this

5 trial.

6 Q. Now, who prepared that transcript?

7 A. The court reporter that the defense attorney

8 for Mr. Hinkson hired.

9 Q. And when?

10 A. I believe it was prepared at the end of April

11 2003.

12 Q. And did you consider preparing an FBI version

13 of the transcript?

14 A. Yes.

15 Q. But you didn't?

16 A. Right.

17 Q. Why didn't you?

18 A. Well, I felt there was many portions of this

19 three-and-a-half-hour transcript that weren't at all

20 relevant, and I didn't want to have anyone prepare those

21 portions.

22 And with respect to the portions that have

23 been relevant to this trial, I actually did have one of

24 our support employees start preparing one; and then I

25 learned that the parties in this trial had agreed to use

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1 on this case, also.

2 Q. How about anyone who is involved as a witness

3 in the case?

4 A. Yes. J. C. Harding.

5 Q. Why did you want J. C. Harding to listen to

6 it?

7 MR. NOLAN: Objection. Irrelevant, Your

8 Honor.

9 THE COURT: Sustained.

10 BY MR. SULLIVAN:

11 Q. What do you know about what J. C. Harding --

12 MR. NOLAN: Objection.

13 BY MR. SULLIVAN:

14 Q. -- did with regard to the tape and transcript?

15 MR. NOLAN: Objection.

16 THE COURT: I will allow it, as to whether he

17 knows whether or not Mr. Harding reviewed it.

18 THE WITNESS: Mr. Harding reviewed it,

19 reviewed the tape and the existing transcript, together.

20 BY MR. SULLIVAN:

21 Q. Was that at your request?

22 A. Yes.

23 Q. You were asked a question on cross regarding

24 enhancing a portion of the tape. What do you understand

25 "enhancing" means in this context?

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1 the existing transcript, so I didn't go forward with

2 that.

3 Q. Do you have experience in preparing

4 transcripts from tape recordings?

5 A. Yes.

6 Q. Over your fifteen years?

7 A. Yes.

8 Q. You have had that done a number of times?

9 A. Yes, I have.

10 Q. How long would it take to prepare a complete

11 transcript of a three-and-a-half-hour tape?

12 A. It would be probably two or three days full

13 time for one employee, at least.

14 Q. How many times did you listen to the tape and

15 compare it to the court reporter's transcript?

16 A. I have listened to portions of it probably

17 fifteen times.

18 Q. Did you have anyone else listen to it for

19 accuracy; that is, to compare it against the transcript

20 for accuracy?

21 A. Yes. Others have listened to portions of it.

22 Q. Who would that include?

23 A. Mike Eisenberg.

24 Q. Who is he?

25 A. A Department of Treasury Agent who has worked

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1 A. "Enhancing" would mean clearing up any

2 background noise, having a person who is skilled at

3 manipulating the digital recording and removing any

4 background noise.

5 For instance, if a television had been on or

6 something like that, they would try to remove and

7 decrease that background noise so that you can more

8 clearly hear what is said.

9 Q. Did you consider doing that with this

10 particular tape?

11 A. I gave it some consideration, yes.

12 Q. But you did not do it?

13 A. I did not.

14 Q. Why didn't you do it?

15 A. I did it -- I did not do it because, at that

16 particular portion, the volume drops noticeably. It was

17 my opinion that, at that point, Mr. Harding, who had the

18 body wire on, probably turned away, which is what caused

19 the volume to drop.

20 That's what has been my experience when that

21 happens, when there is no background noise, because I

22 didn't notice any particular background noise. So I

23 didn't think an enhancement would help.

24 Q. You were asked questions, also, regarding your

25 handwritten notes that you took at the time of your

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1 interview of Mr. Hinkson April 4, 2003?  
2 A. Yes.  
3 Q. At the Kookkia substation?  
4 A. Yes.  
5 Q. What is the length of the handwritten notes  
6 that you took at that time?  
7 A. It's one full page.  
8 Q. Is it close, compacted writing?  
9 A. No. It's spread out a bit.  
10 Q. How many pages is your actual, final report  
11 that you prepared of the interview of Mr. Hinkson?  
12 A. May I look?  
13 Q. You may.  
14 THE COURT: Yes.  
15 THE WITNESS: It's two complete pages and  
16 about three-quarters of the third page.  
17 BY MR. SULLIVAN:  
18 Q. And is that in typical, typed paragraphs?  
19 A. Yes, single spaced.  
20 Q. What did you rely on to enable you to write a  
21 two-and-a-half-page report when your notes were one  
22 page?  
23 A. My memory.  
24 Q. When did you prepare the notes?  
25 A. The notes were compared -- or prepared as I

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1 conducted the interview.  
2 Q. When did you prepare the final report?  
3 A. I typed a rough draft version the following  
4 morning.  
5 Q. How long was that?  
6 A. It was, essentially, almost three pages.  
7 Q. When was the final report prepared?  
8 A. I believe that would have been the 7th, which  
9 was three days after the interview, so two days after I  
10 typed my rough draft. I checked it for grammar and  
11 spelling and completed it.  
12 Q. What was done with that final report?  
13 A. The final report goes into our file and is  
14 maintained throughout the case.  
15 Q. Is it reviewed by anyone?  
16 A. My supervisor reviews it.  
17 Q. Does anyone else receive a copy?  
18 MR. NOLAN: Objection. Irrelevant.  
19 THE COURT: Sustained.  
20 MR. SULLIVAN: I have nothing further, Your  
21 Honor.  
22 THE COURT: Very well. Mr. Nolan, anything  
23 further?  
24 MR. NOLAN: Yes. Thank you very much, Your  
25 Honor.

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R E C R O S S E X A M I N A T I O N

1 BY MR. NOLAN:  
2 Q. As I understand your testimony, no effort was  
3 made to prepare a Government version of the transcript,  
4 number one, because the Government agreed to use this  
5 version; correct?  
6 A. Yes.  
7 Q. Number two, it would have cost too much money;  
8 correct?  
9 A. I think, time is more the issue than money.  
10 Q. Has there been time, from the time he was  
11 arrested in April of 2003 to today, to do this work?  
12 A. Oh, certainly. What I meant was the time of  
13 the particular employee that I asked to do this.  
14 Q. And that's a function of budgetary concerns;  
15 correct?  
16 A. I think I considered it more that I didn't  
17 want to waste someone's time with a lot of irrelevant  
18 typing.  
19 Q. You said, "irrelevant typing." Now, I take  
20 it, if the jury were to want to consider whether or not  
21 Mr. Hinkson really knew Mr. Harding was wired while this  
22 was going on, they might very well like to hear a lot  
23 more of the tape; correct?  
24 MR. SULLIVAN: Object to the form of the  
25

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1 question.  
2 THE COURT: Sustained. It's argumentative.  
3 BY MR. NOLAN:  
4 Q. You made a decision as to what portions of the  
5 tape were relevant; correct?  
6 A. I made a decision as to what portions I  
7 believed were relevant, but mine is not the final  
8 decision on that. Yes.  
9 Q. You are aware that the court reporter who  
10 prepared this is a court reporter for a judge?  
11 A. I don't know the gentleman. I'm sorry.  
12 Q. You are aware that these are certified people?  
13 These are people that are trained to listen to tapes and  
14 to prepare transcripts; correct?  
15 A. I believe -- I have no reason to doubt that he  
16 is not. I just don't know him.  
17 Q. You understood, when you testified before  
18 these Grand Juries, that they didn't have the  
19 opportunity to listen to the tape, did they? You  
20 understood that the Grand Juries that heard your  
21 testimony did not have an opportunity to listen to the  
22 tape?  
23 MR. SULLIVAN: I object. It's argumentative.  
24 THE COURT: I also think it is repetitive. I  
25 think we have established that, counsel.

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1 MR. NOLAN: Very well.

2 THE COURT: Sustained.

3 MR. NOLAN: Can I just have a moment?

4 THE COURT: Certainly.

5 BY MR. NOLAN:

6 Q. Thank you. You did not have Mr. Croner wear a

7 tape; correct?

8 A. No.

9 MR. SULLIVAN: Object, Your Honor. Beyond the

10 scope.

11 THE COURT: I will allow the question, and the

12 answer can stand.

13 MR. SULLIVAN: Your Honor, I --

14 THE COURT: Counsel, you are arguing with me

15 now. Sit down.

16 MR. SULLIVAN: I'm sorry.

17 BY MR. NOLAN:

18 Q. At the time of the arrest of Mr. Hinkson the

19 second time, he had a tape recorder and wanted to record

20 more; correct?

21 A. I don't know what he wanted.

22 Q. He didn't want you to take the tape recorder

23 and turn it off, did he?

24 A. He didn't object.

25 Q. You told him he couldn't tape the

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1 FURTHER REDIRECT EXAMINATION

2 BY MR. SULLIVAN:

3 Q. Were there any other considerations of why you

4 didn't want Mr. Croner to wear a wire?

5 MR. NOLAN: Excuse me, Your Honor. He didn't

6 testify there were considerations.

7 THE COURT: Well, you asked the question. I

8 think that is a fair question on redirect.

9 Go ahead, Agent.

10 THE WITNESS: I believe there would be a legal

11 prohibition to it, under the circumstances.

12 BY MR. SULLIVAN:

13 Q. Did you consider any security considerations?

14 MR. NOLAN: Leading, Your Honor.

15 THE COURT: It is leading. I will sustain it

16 as to the form of the question.

17 BY MR. SULLIVAN:

18 Q. You said a legal prohibition?

19 A. Yes.

20 Q. Was that the only reason you considered it?

21 A. No.

22 Q. What else?

23 MR. NOLAN: Your Honor, anything else would be

24 irrelevant. If it's legal --

25 THE COURT: I will permit it, counsel. You

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1 conversation; correct?

2 A. I don't know -- I don't believe that was

3 discussed.

4 Q. Well, he wasn't permitted or would not have

5 been permitted to make a tape recording of that

6 conversation; is that correct?

7 A. That's correct.

8 Q. He would not have been allowed to preserve

9 that on tape; correct?

10 A. Right.

11 Q. You would not have allowed him to do so,

12 correct, because of the law that you -- the policy? I'm

13 sorry. The policy?

14 A. Correct.

15 Q. Not the law?

16 A. Correct. The policy.

17 MR. NOLAN: I have no further questions.

18 THE COURT: Anything further, Mr. Sullivan?

19

20

21

22

23

24

25

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1 opened the door.

2 THE WITNESS: If you put a wire, a body wire,

3 on a person inside a jail cell where you can't control

4 the environment, with five, six, seven inmates in there,

5 it would be extremely dangerous for the person wearing

6 the wire if he were to be discovered. So I wouldn't --

7 I didn't consider that to be a viable option.

8 MR. HOYT: Nothing else, Your Honor.

9 THE COURT: Anything further, Mr. Nolan?

10 MR. NOLAN: No. Thank you.

11 THE COURT: Agent Long, you may step down.

12 Thank you.

13 MR. SULLIVAN: I have nothing further.

14 THE COURT: No further witnesses?

15 MR. SULLIVAN: The Government rests.

16 THE COURT: All right. Very well.

17 MR. HOYT: There is one matter to take up

18 related to that but at this moment --

19 THE COURT: Yes. Should we do it at noon,

20 right after the jury breaks for lunch?

21 MR. NOLAN: Unless the court wants to take

22 matters up now.

23 THE COURT: I would rather -- just to save the

24 jury some time, I think I would rather just proceed

25 forward at this point.

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1 Is the defense ready to proceed?

2 MR. NOLAN: Can I have a moment, Your Honor?

3 THE COURT: Sure.

4 THE COURT: If you want --

5 MR. NOLAN: We preserve all of our whatevers.

6 THE COURT: Yes. That is what I meant.

7 MR. NOLAN: Yes. We are ready, Your Honor.

8 THE COURT: All right. Please proceed,

9 Mr. Hoyt.

10 MR. HOYT: At this time, Your Honor,

11 Mr. Hinkson calls Mr. Frank Nicolai.

12 THE COURT: All right. Do we need to let the

13 Marshal know?

14 Marshal, would you get on the radio and take

15 care of that, please? I'll tell you what; since we have

16 to wait anyway for the witness, why don't we take up

17 that other matter?

18 If you wouldn't mind stepping into the jury

19 room, I need to hear a legal argument right now.

20 (Whereupon, the jury was excused from the

21 courtroom; and the following proceedings were held

22 outside the presence of the jury:)

23 THE COURT: Counsel?

24 MR. SULLIVAN: Your Honor, I wanted to bring

25 up one matter related to our case.

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1 THE COURT: Go ahead.

2 MR. SULLIVAN: That is that there is one

3 exhibit still pending admission or rejection, and that

4 is the cooperation agreement of Mr. Croner. Your Honor

5 said he would take up the admission issue later. I

6 would renew my motion.

7 THE COURT: My note was we deferred admission

8 on it. I thought Mr. Nolan said --

9 MR. NOLAN: I said, during cross, that I felt

10 it became relevant and should come in, because of his

11 testimony. I think I was holding off to see if it was

12 necessary, and then it became necessary; and I think I

13 conceded it.

14 THE COURT: That was the court's

15 understanding.

16 Just for the record, Exhibit No. 6, the

17 cooperation agreement signed by Mr. Croner, is now

18 admitted for all purposes.

19 (Whereupon, Government's Exhibit No. 6 was

20 received in evidence.)

21 MR. SULLIVAN: And that would be all that the

22 Government seeks to have admitted. We are not renewing

23 the motion to admit Exhibit 3.

24 THE COURT: That is the passport application.

25 I think I ruled on that.

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1 MR. SULLIVAN: You did, Your Honor.

2 THE COURT: Anything else?

3 MR. SULLIVAN: Nothing else.

4 MR. HOYT: On behalf of the defendant, at this

5 time, we would tender Defendant's Rule 29 Motion, a copy

6 for counsel, and the original for the court.

7 THE COURT: All right. Since you have done it

8 in writing, what I will do is -- your objections are all

9 preserved for the state of the record. I will review it

10 over the noon hour. If I need further time, I will let

11 you know.

12 MR. NOLAN: Could I make a thirty-second

13 argument?

14 THE COURT: Sure.

15 MR. NOLAN: As to Counts 10 and 11, my

16 recollection of the testimony -- and it's not going to

17 be as good as the court's -- is that Annie Bates

18 overheard a portion of a conversation. I believe that's

19 insufficient as a matter of law to establish the threat.

20 THE COURT: Any response from the Government?

21 MR. SULLIVAN: I think it's irrelevant that

22 she overheard it rather than having it directed at her.

23 THE COURT: I will defer ruling on that

24 motion. The defense's objection is preserved. I will

25 take a look at the written submission and, hopefully,

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1 get you an answer at the end of the noon hour.

2 Let's bring the jury back in.

3 MR. HOYT: Do we have the witness available?

4 THE DEPUTY MARSHAL: We have been advised that

5 they will be bringing him down.

6 MR. HOYT: If we have a couple of minutes, can

7 I go down the hall?

8 THE COURT: Yes, absolutely.

9 (Subsequently, the following proceedings were

10 held in the presence of the jury:)

11 THE COURT: Will the clerk please administer

12 the oath to the witness?

13 THE COURTROOM CLERK: Please raise your right

14 hand.

15 \* \* \*

16 FRANK LESLIE NICOLAI, III,

17 having been called, sworn, testified as follows:

18 THE COURTROOM CLERK: Thank you. Please be

19 seated. Please state your name and spell your last name

20 for the record.

21 THE COURT: One of the jurors indicated -- go

22 right ahead.

23 Wait just a second, Mr. Nicolai.

24 All right. I'm sorry. Go ahead and state

25 your name and spell it for the record.

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1 THE WITNESS: Frank Leslie Nicolai, 1302  
2 N-i-c-o-l-a-i.  
3  
4 DIRECT EXAMINATION  
5 BY MR. HOYT:  
6 Q. Good morning, Mr. Nicolai.  
7 A. Good morning.  
8 Q. Mr. Nicolai, where are you living or where are  
9 you housed right now?  
10 A. Ada County Jail, in "E" tank.  
11 Q. And during, at least, a portion of the month  
12 of November 2004 and early December 2005, where were you  
13 housed then?  
14 A. In the Ada County Jail, in "E" tank.  
15 Q. And do you know Mr. -- December 2004; I stand  
16 corrected. We are talking about November '04, December  
17 '04?  
18 A. Correct.  
19 Q. You were in the "E" tank then? Yes?  
20 A. Yes.  
21 Q. What is the "E" tank, if you can tell us?  
22 Describe it for us, generally, please.  
23 A. It's a closed-custody unit, a tank, that is  
24 approximately eighteen to twenty feet wide, about thirty  
25 feet long. It's built to house eight inmates. It's a

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1 protective custody unit. 1303  
2 Q. And can you just indicate, in terms of the  
3 jury box that's here in front of us and the area in  
4 relationship to the courtroom here, how large is the  
5 room?  
6 A. It's approximately the size of the jury box,  
7 maybe just a little bit more added on for the shower  
8 area.  
9 Q. And then the width would be about eighteen to  
10 twenty feet, as you indicated?  
11 A. Correct.  
12 Q. Now, let's see. Was Mr. Hinkson, David Roland  
13 Hinkson, an inmate of the "E" tank at the same time?  
14 A. Yes.  
15 Q. And was there an inmate that came into the "E"  
16 tank by the name of Chad Croner during that time?  
17 A. Yes.  
18 Q. Where did Mr. Croner spend most of his time  
19 when he was in the "E" tank?  
20 A. On his bunk.  
21 Q. Let me show you a diagram which has previously  
22 been used. If I can get it focused properly and if you  
23 can orient this with the screen in front of you -- let  
24 me just put the diagram -- it's been admitted as Exhibit  
25 No. N. I will slide it up so that we can see the

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1 defendant's exhibit designation. Do you see the area 1304  
2 marked "front door"?  
3 A. Yes.  
4 Q. And do you see an area with stools around it?  
5 A. Yes.  
6 Q. What would that be?  
7 A. That was the table that we ate at, a steel  
8 table.  
9 Q. Do you see an area at the end that says  
10 "wall-mounted TV"?  
11 A. Yes.  
12 Q. And do you, also, see areas that are labeled  
13 "bunk bed"?  
14 A. Yes.  
15 Q. Okay. There is one bunk bed that is close to  
16 what has been marked as the front door. Whose bunk bed  
17 was that?  
18 A. The bottom bunk was David Hinkson's.  
19 Q. And does this diagram, Exhibit N, without  
20 being to scale, fairly represent the "E" tank?  
21 A. Yes.  
22 Q. And where was it that Mr. Croner's bunk was  
23 located?  
24 A. In the center of the three bunks, the one with  
25 the "C" on it.

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1 Q. And where was the telephone located? 1305  
2 A. The telephone was located on the opposite side  
3 of the bunk, by the front door, where the "A" is.  
4 Q. All right. Now, Mr. Nicolai, you were in this  
5 facility 24 hours a day, seven days a week?  
6 A. Correct.  
7 Q. And during that period of time, were you ever  
8 out of the "E" tank?  
9 A. I was out one time for a clergy visit.  
10 Q. And approximately how long did the clergy  
11 visit last?  
12 A. Approximately one-half hour.  
13 Q. And do you recall approximately when that  
14 occurred?  
15 A. I believe that occurred sometime towards the  
16 end of November.  
17 Q. Now, do you remember if Mr. Hinkson had  
18 regular communications with any of the people who were  
19 housed in the "E" tank during this period of time?  
20 A. Yes, he did.  
21 Q. And by "this period of time," I am referring  
22 to the time when Mr. Croner came into the "E" tank until  
23 the time he left the "E" tank.  
24 A. Yes.  
25 Q. All right. Now, who did Mr. Hinkson

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1 communicate with? By that, I mean, who did he talk to  
2 on a regular basis?

3 A. Primarily, with Mark Boursaw, Noah Clark, and  
4 Mitchell Jenkins.

5 Q. And Mr. Boursaw and Mr. Clark -- were you  
6 aware of the nature of the conversations that  
7 Mr. Hinkson was having with them?

8 A. With Mr. Boursaw, it was primarily focused on  
9 the product that --

10 MR. SULLIVAN: I object to the hearsay, Your  
11 Honor.

12 THE COURT: Sustained.

13 BY MR. HOYT:

14 Q. Let me ask this: Were you in a position,  
15 being in the "E" tank, to hear what other people were  
16 saying?

17 A. Yes.

18 Q. And if people spoke in normal conversational  
19 tones, could you hear and understand what they were  
20 saying?

21 A. Yes.

22 Q. How about when people were on the telephone?  
23 Could you hear and understand what they were saying on  
24 the telephone?

25 A. For the most part, I could, yes.

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1 Q. Do you recall whether Mr. Chad Croner ever was  
2 at the location of Mr. Hinkson's bunk?

3 A. Yes.

4 Q. And what occasions would he have to be over at  
5 Mr. Hinkson's bunk?

6 A. From what I observed, it was when he was  
7 either on the phone or waiting his turn to use the  
8 phone.

9 Q. And if he was waiting to use his turn on the  
10 telephone, based upon what you observed, where would --  
11 where was he?

12 A. He would sit on the television end of  
13 Mr. Hinkson's bunk.

14 Q. All right. Let's see. The television, you  
15 indicated, was at the far end of the "E" tank; is that  
16 correct?

17 A. Correct.

18 Q. And would the television end of Mr. Hinkson's  
19 bunk -- where would that be?

20 A. It would be where the "H" is on that diagram.

21 Q. Okay. And I think that was in -- there is an  
22 "LP" in parentheses there.

23 A. Right. It's a little fuzzy. I couldn't see  
24 what that said.

25 Q. All right. But it would be that end of the

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1 bunk?

2 A. Yes.

3 Q. And then where would he face?

4 A. He would face the TV.

5 Q. And when he was there, based upon your  
6 observations, was he participating in the conversations  
7 that Mr. Hinkson was having with other inmates?

8 A. No.

9 Q. Did you observe Mr. Hinkson have any  
10 conversations with Chad Croner the entire time that we  
11 are referring to?

12 A. Yes, I did.

13 Q. Okay. Let me ask you this: Other than the  
14 one time you were out for a half hour for a clergy  
15 visit, other than that one-half hour, did you observe  
16 Mr. Chad Croner have any conversations at all with  
17 Mr. Hinkson?

18 A. Yes.

19 Q. Would you please tell us about that?

20 A. They were discussing Mr. Croner's tax  
21 problems. It was at Mr. Croner's bunk. Mr. Hinkson  
22 would stand next to his bunk and talk to him about the  
23 tax problems that Mr. Croner was having, offer him  
24 advice and reading material having to do with tax  
25 issues.

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1 Q. And did you observe that on more than one  
2 occasion?

3 A. I did, on a couple of occasions.

4 Q. Were there any conversations between  
5 Mr. Hinkson and Mr. Croner at the dinner table?

6 A. Not that I remember, no.

7 Q. Now, when Mr. Hinkson stood near Mr. Croner's  
8 bunk and talked to him about tax problems, were you in a  
9 position to overhear what was said?

10 A. Yes.

11 Q. When you were at the table, were you in a  
12 position to overhear what was said?

13 A. Yes.

14 Q. Let me ask you about whispering conversations  
15 in the cell. Do inmates regularly have whispering  
16 conversations between each other in a cell?

17 A. Not regularly, no.

18 Q. Why not?

19 A. It tends to breed mistrust amongst the  
20 inmates.

21 Q. And did you observe Mr. Hinkson having a  
22 whispering conversation with Mr. Chad Croner during the  
23 time period that we are referring to?

24 A. I never observed one, no.

25 Q. During the time that you were in the "E" tank

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1 with Mr. Hinkson and Mr. Croner, did there come a time  
2 when Mr. Hinkson indicated that there might be a  
3 government informant in the "E" tank?

4 A. Yes.

5 Q. And what was -- what did you say in reference  
6 to that?

7 MR. SULLIVAN: I object. Irrelevant.

8 THE COURT: Sustained.

9 BY MR. HOYT:

10 Q. What was done in reference to the question of  
11 whether there was an informant in the "E" tank?

12 A. There was a discussion about drawing up an  
13 affidavit for everyone to sign, saying that they had not  
14 heard or observed Mr. Hinkson ask or solicit for any  
15 illegal activities.

16 And then, later on in that same evening, I  
17 drew up an affidavit stating that; and I signed it. And  
18 everyone else --

19 MR. SULLIVAN: I object to the contents of the  
20 affidavit.

21 THE COURT: The jury will disregard that  
22 portion of the answer that relates to what the affidavit  
23 may or may not have contained.

24 BY MR. HOYT:

25 Q. Did Mr. Croner participate in the discussions

1 regarding the drawing up of a declaration or affidavit?

2 A. Yes.

3 Q. And where were you when that discussion took  
4 place?

5 A. At the table.

6 Q. Was Mr. Hinkson at the table when that  
7 discussion took place?

8 A. No.

9 Q. Did Mr. Hinkson participate in the discussion  
10 regarding the drawing up of the affidavit or the  
11 declaration?

12 A. No.

13 Q. Did you sign the affidavit or the declaration?

14 A. Yes.

15 Q. Did Mr. Croner sign it?

16 A. Yes.

17 MR. HOYT: May I approach, Your Honor?

18 THE COURT: You may. I take it, this is the  
19 original?

20 MR. HOYT: We have a copy for you here.

21 THE COURT: Yes. Let's mark the original.

22 THE COURTROOM CLERK: Defendant's Exhibit O is  
23 marked.

24 BY MR. HOYT:

25 Q. Thank you. Mr. Nicolai, I hand you what has

1 been marked as Defendant's Exhibit O. Do you recognize  
2 that document, sir?

3 A. Yes.

4 Q. Can you tell me who prepared that document?

5 A. I wrote it out.

6 Q. Is this the declaration that we have been  
7 talking about?

8 A. Yes.

9 Q. And who helped formulate the wording in the  
10 document?

11 A. Mr. Croner.

12 MR. HOYT: May I publish, Your Honor?

13 THE COURT: Any objection, counsel?

14 MR. SULLIVAN: No objection.

15 THE COURT: Exhibit O is admitted.

16 (Whereupon, Defendant's Exhibit O was received  
17 in evidence.)

18 BY MR. HOYT:

19 Q. Mr. Nicolai, you see on the screen and you  
20 have the paper in front of you of Exhibit O; is that  
21 right?

22 A. Yes.

23 Q. Now, why is it that you drew up Exhibit O?

24 A. It was what we had discussed, as inmates,  
25 needing to come up with some type of a document that

1 would state what this one states, primarily so that  
2 Mr. Hinkson would continue to talk to us about his  
3 products.

4 But nobody in there was drawing one up, and I  
5 came to the conclusion that maybe they didn't know what  
6 exactly to put on a piece of paper to make this  
7 document.

8 So I sat down and started working on it, and  
9 Mr. Croner came over to see what I was doing and kind of  
10 helped me figure out how to word it; and this is what  
11 was produced.

12 Q. Now the signatures of several people appear  
13 there; is that correct?

14 A. Yes.

15 Q. Whose signature is this?

16 A. I'm not sure whose signature each one of these  
17 are. Some of them I can read, and there is a couple I  
18 can't.

19 Q. Do you know if Mr. Croner actually signed it?

20 A. I did see him sign it.

21 Q. Okay. And did he sign it as a mere witness to  
22 your signature?

23 A. The intent was signing it the same as my  
24 signature, attesting, also, to what the document stated.

25 Q. Had there been some indication that

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1 Mr. Hinkson did not wish to have further discussions  
2 with inmates because of this rumor of an informant?  
3 A. Yes.  
4 Q. And why was that a problem for the other  
5 inmates?  
6 A. Everybody liked --  
7 MR. SULLIVAN: Object. That calls for a  
8 conclusion.  
9 THE COURT: Sustained.  
10 BY MR. HOYT:  
11 Q. For yourself, what were you concerned about?  
12 A. I liked him. I liked the discussions that  
13 Dave and I did have. I didn't want him to, basically,  
14 sequester himself away from me because of something that  
15 somebody else allegedly had been doing; and I felt that  
16 this was a way that he could feel protected enough so  
17 that he wouldn't.  
18 Q. While you were in the "E" tank, did  
19 Mr. Hinkson discuss his case with Mr. Croner?  
20 MR. SULLIVAN: Objection. Calls for a  
21 conclusion.  
22 THE COURT: I will allow it. To the extent  
23 that the witness can testify that he actually overheard,  
24 you have to lay a foundation.  
25

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1 Mr. Croner the allegations against him in the case for  
2 which he is now on trial?  
3 A. I don't remember hearing that, no.  
4 Q. Now, when Mr. -- were you aware that  
5 Mr. Hinkson had shared some of his legal paperwork with  
6 Mr. Croner?  
7 A. I was aware that he had shared some legal  
8 paperwork, yes.  
9 Q. And was that legal paperwork that you were  
10 interested in?  
11 A. I am not sure what the legal paperwork was  
12 that he shared.  
13 Q. Are you aware that Mr. Croner read some of  
14 Mr. Hinkson's legal paperwork on Mr. Croner's bunk?  
15 MR. SULLIVAN: I object to the form of the  
16 question.  
17 THE COURT: Sustained.  
18 BY MR. HOYT:  
19 Q. Were you able to observe whether or not  
20 Mr. Croner read any of Mr. Hinkson's legal paperwork?  
21 A. Yes.  
22 Q. And what was that observation?  
23 A. It was on Mr. Croner's bunk. Mr. Hinkson and  
24 Mr. Croner had discussed his tax case, and I did observe  
25 Mr. Hinkson sharing some legal paperwork. And my

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1 BY MR. HOYT:  
2 Q. Mr. Nicolai, in the "E" tank, were you able to  
3 observe conversations being held between other inmates?  
4 THE COURT: No. Counsel, you have already  
5 established that. The question is whether or not he  
6 ever overheard a conversation about that specific  
7 subject.  
8 MR. HOYT: Right. All right. I will move  
9 ahead.  
10 THE COURT: Rephrase your question.  
11 BY MR. HOYT:  
12 Q. I will rephrase.  
13 Mr. Nicolai, did you ever overhear a  
14 conversation between Mr. Hinkson and Mr. Croner  
15 regarding Mr. Hinkson's case, the case that he is in  
16 court about right now?  
17 A. I never heard that, no.  
18 Q. Specifically, did you ever overhear  
19 Mr. Hinkson ask Mr. Croner to murder a federal judge?  
20 A. I never heard him ask that, no.  
21 Q. Did you ever hear him ask Mr. Croner or tell  
22 Mr. Croner he would pay him money to murder federal  
23 officials?  
24 A. I never heard that, no.  
25 Q. Did you ever hear Mr. Hinkson discuss with

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1 assumption was it had to do with the tax case. I did  
2 not see it. I don't know what it was.  
3 MR. HOYT: I will move to strike the portion  
4 dealing with the assumption.  
5 THE COURT: Yes. Ladies and gentlemen, you  
6 should disregard anything relating to his assumption as  
7 to what it had to do with.  
8 BY MR. HOYT:  
9 Q. Going back for a second to Exhibit O, which is  
10 on the reader, my question is: Did Mr. Croner volunteer  
11 to sign that document?  
12 A. Yes.  
13 Q. And, Mr. Nicolai, did you ever hear  
14 Mr. Hinkson ask Mr. Croner to perform any illegal acts?  
15 A. No, I did not.  
16 Q. Mr. Nicolai, if two inmates had discussed an  
17 illegal act in the cell, such as murdering a federal  
18 judge, how would you respond to that?  
19 A. I would have objected to the conversation. I  
20 would have objected to the risk of bringing attention  
21 into the cell block by the authorities for that type of  
22 a conversation occurring, to where it could be heard  
23 throughout the cell block to other inmates.  
24 It's, basically, just not the type of a  
25 conversation that I would want to have been around,

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1 where it was being discussed in terms where everyone  
2 could hear that.

3 Q. Would it put you at risk for being an  
4 accessory?

5 A. I would have felt like it would have, yes, in  
6 those circumstances.

7 Q. Based upon your knowledge, was murder for hire  
8 or homicide of anyone discussed during the time period  
9 that we are referring to?

10 A. No.

11 MR. SULLIVAN: We should determine what time  
12 frame we are talking about.

13 THE COURT: I think his question is clear  
14 enough. The question and the answer will stand.

15 BY MR. HOYT:

16 Q. You indicated that there were times --  
17 referring back to Exhibit N, if I might, for just one  
18 moment, please, there were times when Mr. Croner sat on  
19 the TV end of Mr. Hinkson's bed; is that right?

20 A. Yes.

21 Q. And the purpose for him sitting there was  
22 what?

23 A. Waiting his turn on the telephone.

24 Q. And where did Mr. Hinkson keep his legal  
25 paperwork, to the best of your knowledge?

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1 (Whereupon, the following proceedings were  
2 held outside the presence of the jury:)

3 THE COURT: I think I would like to take up  
4 the Rule 29 motion before we bring the jury back in.  
5 Has the Government had an opportunity to review the  
6 defense's memorandum?

7 MR. TAXAY: Your Honor, we have had a chance  
8 to read through it.

9 THE COURT: Have not?

10 MR. TAXAY: Have.

11 THE COURT: Would you like to respond orally?

12 MR. TAXAY: Yes, Your Honor. Your Honor,  
13 there has been ample evidence before this jury on which  
14 a conviction could be sustained on any and all of the  
15 counts.

16 The defense, in their Rule 29 motion,  
17 highlights several points the Government would like to  
18 respond to. The defense notes that -- or states that  
19 Mr. Harding, through solicitation, is the subject of  
20 Counts 1 through 6 of the Superseding Indictment.

21 The defense claims that Mr. Harding failed to  
22 identify any affirmative act in furtherance of this  
23 solicitation, and that is simply not required.

24 The element, as the court well knows, is,  
25 basically, that the defendant solicited another person

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1 A. Underneath his bunk.

2 Q. And what type of a container were they kept  
3 in?

4 A. A plastic bin.

5 Q. And how deep is that plastic bin?

6 A. At the time -- at that time, he wasn't keeping  
7 it in a bin. At that time, it was loose, stacked on the  
8 floor. It was after that time when the plastic bin was  
9 used.

10 Q. And a person sitting at the TV end of  
11 Mr. Hinkson's bed, would that person be able to hear a  
12 telephone conversation going on between someone standing  
13 at the telephone and the party on the other end of the  
14 line?

15 A. Yes.

16 Q. You could hear, at least, the other inmate's  
17 end of the conversation; right?

18 A. Yes.

19 MR. HOYT: No more questions.

20 THE COURT: All right. Why don't we take our  
21 luncheon recess until 1:15?

22 Ladies and gentlemen, remember: Don't talk  
23 about the case and keep an open mind. We will see you  
24 back here at 1:15.

25 (Lunch recess.)

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1 to engage in an act of violence.

2 And the defense makes much out of the fact  
3 that -- alleges that mere words not enough. In fact,  
4 mere words are sufficient. In this case, however, there  
5 is more than just words.

6 Plenty of evidence is before the jury that  
7 Mr. Hinkson actually displayed cash to Mr. Harding, had  
8 cash in his hand and showed it to him and said, "This  
9 would be yours if you were to do these acts for me."

10 Even under the defense's standard, which the  
11 Government disagrees with, the defendant has -- there is  
12 evidence before this jury that cash was displayed and  
13 offered.

14 Also, there were plenty of corroborating  
15 circumstances here. The promise of payment of a  
16 benefit, namely the cash, corroborates the defendant's  
17 intent.

18 Mr. Harding testified to that. Ms. Bates, who  
19 was there, saw the cash displayed. The defendant, when  
20 he was interviewed by Agent Long, did not deny that he  
21 had displayed the cash.

22 This is corroborated by the testimony of  
23 Mr. Croner who says that the defendant told him that he  
24 shows the cash to Mr. Harding for the purpose of  
25 soliciting Mr. Harding, and Mr. Hinkson complained that

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1 Mr. Harding was a coward because he didn't take this  
2 cash.

3 In addition, this testimony is consistent  
4 with -- all of this evidence is consistent with the  
5 statements of Mr. Swisher, Amie Bates.

6 The approach of the defendant is the same in  
7 each one of the solicitations, so there is ample  
8 evidence that cash was displayed and that an offer was  
9 made.

10 There is also evidence that the defendant knew  
11 Mr. Harding was familiar with guns, which is another one  
12 of the strongly corroborating factors.

13 Another corroborating factor of the  
14 defendant's intent is that he repeated the offer over  
15 and over again to Mr. Harding, to Mr. Swisher, and to  
16 Mr. Croner.

17 So that's the Government's primary response  
18 with respect to Counts 1 through 6.

19 With respect to Counts 7 through 9, those  
20 address the solicitation of Mr. Swisher. Again, there  
21 is ample evidence of that communication, that  
22 solicitation.

23 Mr. Swisher was very credible and testified  
24 that, indeed, the defendant had offered him money to do  
25 these murders. What is strongly corroborative is that

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1 duties.

2 So the key is not whether or not Ms. Bates  
3 viewed the threat seriously. The question is whether or  
4 not the defendant made a true threat, whether he  
5 intended a threat.

6 Ms. Bates' testimony is something that the  
7 jury can consider, but they can also consider the other  
8 evidence on the primary question of the defendant's  
9 intent. There is ample evidence as to that.

10 In addition, the defense asked for a mistrial  
11 based on the question submitted by one of the jurors  
12 during the testimony of Mr. Swisher.

13 The defense characterizes that testimony --  
14 I'm sorry -- that note as the juror having formed an  
15 opinion as to the evidence, and the defense claims that  
16 she's become prejudiced.

17 My understanding of that note wasn't that the  
18 juror had formed an opinion as to the evidence but,  
19 rather, was asking whether or not additional evidence  
20 would be introduced.

21 I don't believe that's a fair characterization  
22 of the note, and there was no objection at the time to  
23 that juror; and so the Government -- our position is  
24 that that's a non-issue.

25 The defense, also, seeks a mistrial and

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1 the defendant asked him to do this several times.

2 He was very specific about what needed to be  
3 done or what the defendant wanted to have done. As a  
4 consequence, again, there is ample evidence for the  
5 jury.

6 The Government would also add that  
7 solicitation of Mr. Swisher is very similar to the other  
8 solicitations which corroborates the fact that the  
9 defendant intended to solicit murder when he spoke with  
10 Mr. Swisher.

11 The defense asked for a dismissal of Counts 10  
12 and 11, presumably under Rule 29, as well, complaining  
13 that Ms. Bates did not take seriously the defendant's  
14 statements, namely the threats, against children.

15 And the Government highlights that that's not  
16 an element, whether or not Ms. Bates took it, took the  
17 threat seriously.

18 In Section 18 USC 115, the elements of the  
19 offense are that the defendant threatened to assault,  
20 kidnap, or murder an immediate family member of a  
21 federal law enforcement officer or federal official.

22 The threat was made with the intent to impede,  
23 intimidate, fear, retaliate against that federal  
24 official and the threat was made while the officer was  
25 engaged in or on account of the performance of official

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1 complains that the sentencing aggravators are in the  
2 Superseding Indictment.

3 In light of Booker and Fanfan, that language  
4 is no longer necessary in the Indictment; but,  
5 certainly, it doesn't make the Indictment ineffective  
6 and isn't a basis for a mistrial.

7 Last, the defendant complains about a  
8 pre-evidence instruction to the jury that the defendant  
9 was subject to the sentencing guidelines. In fact, in  
10 law, he was not, it is their position.

11 As I understand Booker, Fanfan, not having had  
12 a chance to meaningfully get through it, the guidelines  
13 remain relevant to sentencing. But beyond that, the  
14 jury hasn't heard near enough about the sentencing  
15 guidelines to prejudice the defendant in this case.

16 Whatever error there was with respect to that  
17 is harmless. The Government views -- the Government's  
18 position is that there was no error giving the state of  
19 law at the time. In any event, it is not something that  
20 should cause any kind of mistrial in this case.

21 THE COURT: Let me just say that I did read  
22 the defense's written submission. If you have any  
23 rebuttal beyond what you have said in writing, you are  
24 welcome to make it now. I really don't need it.

25 MR. NOLAN: I understand. If I could be very

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2 THE COURT: Please, go ahead.

3 MR. NOLAN: First of all, I actually  
4 appreciate that; and I don't want a lack of response to  
5 indicate any lack of belief, because I have confidence  
6 that the court remembers and I have confidence that the  
7 court cares deeply about these issues and has considered  
8 them deeply.

9 I do, however, think that the Government  
10 missed my point on Counts 10 and 11. It is not that she  
11 felt threatened or not. It's that she did not hear the  
12 total conversation.

13 She did not hear the beginning. She did not  
14 hear the end. She did not hear whether it's prefaced  
15 by, "Let me tell you a story about . . ." She could not  
16 give the totality.

17 Actually, the case law on those counts is  
18 pretty good in terms of the threat. You have to look at  
19 the totality of the circumstances.

20 So mine is that she didn't hear enough of the  
21 beginning and the end to be able to give the trier of  
22 fact an opportunity to find guilt or innocence, not  
23 whether or not there was a threat. So I wanted to make  
24 that clear.

25 But, no, I would only also say that, when you

1 deal with speech, you deal with unpopular speech.

2 Unpopular speech is where we made our First Amendment  
3 law.

4 So it's difficult. It's difficult for the  
5 court to say: How much opportunity do we give the jury  
6 to make a mistake on the First Amendment?

7 It may be that, right now, for the first  
8 nine counts that's not an issue. At some point, in jury  
9 instructions or otherwise, that may become -- I'm not  
10 assuming that I'm losing 1 through 9, but the odds are  
11 I'm going to; let's put it that way.

12 THE COURT: Very well. Thank you, Mr. Nolan  
13 and Mr. Taxay.

14 The defendant moves the court for Rule 29  
15 Judgment of Acquittal on the basis of insufficiency of  
16 the evidence to support the enumerated offenses.

17 A Rule 29 motion must be denied if the court  
18 finds, viewing the evidence in the light most favorable  
19 to the United States, that any rational trier of fact  
20 could find the essential elements of the crimes charged  
21 beyond a reasonable doubt.

22 As to the solicitation counts, the only real  
23 issue in contention by the defense is Mr. Hinkson's  
24 mental state.

25 Did he solicit the murders of the three

1 federal officers with the intent that the people he  
2 spoke with carry out the murders, or was he just venting  
3 his frustration at the Government over his many legal  
4 difficulties?

5 As to the threat counts, the issue is  
6 essentially the same. As I ruled pretrial, the jury  
7 must decide whether the alleged threats to harm the  
8 family members of the prosecutor and the case agent were  
9 true threats.

10 Based on the evidence before the jury to this  
11 point, I find that there is sufficient evidence from  
12 which a rational trier of fact could find beyond a  
13 reasonable doubt the essential elements of both the  
14 solicitation and the threat counts.

15 Defendant's arguments that mere words are not  
16 enough to support a showing of solicitation is  
17 unpersuasive.

18 The standard is whether the defendant intended  
19 to solicit and whether that intent was strongly  
20 corroborated by the circumstances.

21 Therefore, the jury may consider not only the  
22 words the defendant allegedly used but, also, the  
23 totality of the various circumstances surrounding the  
24 statements.

25 The evidence shows that the defendant

1 repeatedly made statements that could reasonably be  
2 considered solicitations and may have offered money or  
3 other value for these solicitations to be carried out.

4 The jury may find that the defendant was  
5 simply exercising his First Amendment right to free  
6 speech, but that is not the only reasonable  
7 interpretation of the evidence.

8 I will consider instructions propounded by the  
9 defense as to the First Amendment defense when we get to  
10 the close of the case.

11 Defendant's argument challenging the  
12 sufficiency of the threat showing is also unpersuasive.  
13 He argues that Arnie Bates did not take the statement  
14 seriously and Bates simply overheard portions of the  
15 statements made by the defendant.

16 Initially, the court notes that Bates  
17 testified that, over time, she began to take the threats  
18 to family members seriously.

19 Regardless, the standard for showing a true  
20 threat is objective, whether a reasonable person making  
21 such a statement would foresee that the statement would  
22 convey or be interpreted by those to whom the maker  
23 communicates the statement as a serious expression of  
24 intent to harm or assault.

25 Therefore, Ms. Bates' subjective response is

1 not controlling.

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2 Whether the threat was communicated directly  
3 to Bates or whether she only overheard the statements  
4 being made to someone else is, also, not controlling.

5 The required showing is that the threatening  
6 statements were communicated to another person. There  
7 is no requirement that the threat be communicated  
8 directly to the witness.

9 In short, the court finds that there is enough  
10 evidence in the record to warrant submission of the case  
11 to the jury and enough evidence viewed in the light most  
12 favorable to the United States to permit a reasonable  
13 fact finder to find the defendant guilty as to each  
14 count under the standard of Jackson vs. Virginia, 443  
15 U.S. 307, 1979.

16 The defendant's Rule 29 motion is, therefore,  
17 denied.

18 The defendant, alternatively, moves the court  
19 for a mistrial on the basis of juror prejudice.

20 The defendant makes no specific argument  
21 regarding the juror beyond alleging that the juror had  
22 formed an opinion as to the evidence and that she had  
23 become prejudiced thereby because she asked a question  
24 regarding whether there would be a presentation on the  
25 defendant's mental status.

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1 The court recalls that Mr. Swisher had, in his  
2 background testimony, alluded to his education and  
3 training -- I guess he is just shy of a doctorate in  
4 special education -- and had worked in various medical  
5 hospitals in California. The juror's question was  
6 unsurprising, given Mr. Swisher's testimony on direct.

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7 The court rejects the defendant's  
8 characterization of this as demonstrating that the juror  
9 had formed an opinion or become prejudiced.

10 Give the atypical nature of defendant's  
11 alleged conduct, the juror reasonably asked whether the  
12 defendant's mental status might be at issue.

13 I find this argument to be somewhat ironic,  
14 given the effort the defendant is making to introduce  
15 through Dr. Duke testimony with regard to Mr. Hinkson's  
16 mental condition.

17 The court directed the juror to simply  
18 consider the evidence as it is presented and that  
19 instructions would be given at a later time.

20 The defendant did not raise any objection to  
21 either the juror's question or the court's response at  
22 that time.

23 There is no demonstration of prejudice, and so  
24 the defendant's motion for mistrial on that basis is  
25 denied.

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1 The defendant's final alternative motion is  
2 that a mistrial should be granted because of prejudice  
3 resulting from pre-evidence jury instructions.

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4 He argues that the Grand Jury erred in  
5 including sentencing aggravators in the Superseding  
6 Indictment and that the court erred in instructing the  
7 jury that he was subject to the United States sentencing  
8 guidelines.

9 The court rejects this argument as without  
10 merit and a misstatement of the record on the  
11 preliminary instructions that were actually given.

12 The consequences of the Supreme Court's recent  
13 decision in United States vs. Booker and United States  
14 vs. Fanfan are not yet certain.

15 After having read the entirety of the opinion  
16 myself, while the sentencing guidelines may no longer be  
17 mandatory, they continue to have substantial weight in  
18 sentencing in informing a District Court's decision as  
19 to what constitutes a reasonable sentence in fashioning  
20 one for a defendant.

21 The defendant is still subject to the  
22 guidelines. They are no longer mandatory. The court is  
23 simply no longer bound to follow them in their entirety.

24 Moreover, there is nothing in either opinion  
25 which suggests that a mistrial results from inclusion of

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1 sentencing factors in an Indictment.

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2 After the Supreme Court decided United States  
3 vs. Blakely, the Government has been working under  
4 uncertain rules and was attempting to avoid  
5 constitutional error by including those factors in the  
6 Superseding Indictment.

7 Any problem with extraneous language on  
8 sentencing may be handled by redacting the aggravators  
9 from the Superseding Indictment that we send to the  
10 jury.

11 Regardless, the jury has not seen or heard  
12 anything with regard to the sentencing aggravators.  
13 Contrary to defendant's assertion, the court did not  
14 instruct the jury regarding the sentencing guidelines in  
15 its pre-evidence instructions.

16 I took that portion out after the defense  
17 objected to them, before I gave them -- after the jury  
18 was impaneled.

19 Moreover, the jury has not yet seen the  
20 Superseding Indictment; and the court will redact that  
21 portion of the Superseding Indictment before submitting  
22 it to the jury.

23 Any error, if there was any -- and I do not  
24 believe there was -- would be harmless.

25 The defendant's motion for mistrial on that

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1 ground is, therefore, denied.

2 Bring in the jury.

3 (Whereupon, the following proceedings were

4 held in the presence of the jury:)

5 THE COURT: Mr. Nicolai, I remind you, sir,

6 that you are under oath.

7 Counsel for the Government may cross-examine.

8

9 CROSS EXAMINATION

10 BY MR. SULLIVAN:

11 Q. Mr. Nicolai, do I correctly understand that,

12 based upon your experience there the "E" cell, it would

13 have been very difficult for someone to have a private

14 conversation with Mr. Hinkson?

15 A. It would have been difficult.

16 Q. But it was not impossible, was it?

17 A. Not impossible.

18 Q. But you have had one, yourself?

19 A. I have had a few with Mr. Hinkson.

20 Q. Private conversations with Mr. Hinkson?

21 A. Correct.

22 Q. Where others weren't present and weren't

23 listening in?

24 A. Correct.

25 Q. And weren't those -- the last question, I

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1 believe, Mr. Hoyt asked you was: Was the homicide of

2 anyone ever discussed by anyone? Do you remember that

3 last question?

4 A. Yes.

5 Q. Didn't you have such a conversation?

6 A. No.

7 Q. Did Mr. Hinkson have such a conversation?

8 A. Not that I'm aware of.

9 Q. Didn't Mr. Hinkson ask you to do something

10 involving homicide?

11 A. No.

12 Q. Didn't you write a letter to the FBI where you

13 said so?

14 A. No, I did not.

15 Q. Let me show you a document, sir. I would ask

16 that it be marked as Government's Exhibit 9.

17 THE COURT: Government's Exhibit 9 is marked

18 for identification.

19 THE COURTROOM CLERK: Do you want me to give

20 it to the witness?

21 THE COURT: Do you have a copy for the

22 defense? Wait just a second.

23 MR. SULLIVAN: May I show that document to the

24 witness, Your Honor?

25 THE COURT: Yes.

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1 Mr. Nicolai, I don't want you to say anything.

2 Just read it to yourself quietly and wait for me to make

3 a ruling here.

4 Have you read it?

5 THE WITNESS: Yes.

6 THE COURT: Mr. Sullivan, you may proceed with

7 your question to establish whether --

8 BY MR. SULLIVAN:

9 Q. What is marked as Government's Exhibit 8 is in

10 your handwriting, isn't it?

11 THE COURT: It's No. 9.

12 BY MR. SULLIVAN:

13 Q. 9?

14 A. Yes, that is my handwriting.

15 Q. You don't write cursive? You print?

16 A. I print.

17 Q. That's a copy of a letter you sent to the FBI

18 about January 1st, January 2nd, or maybe even December

19 31st?

20 A. No, I did not send this letter to the FBI.

21 Q. Who did you send that letter to?

22 A. I did not send this to anybody.

23 Q. You wrote it?

24 A. I did write it.

25 Q. You gave it to someone?

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1 A. I wrote it at somebody's request, yes.

2 Q. Whose request?

3 A. At the FBI's request to do a handwriting

4 analysis.

5 Q. And who was it with the FBI who did that?

6 A. I don't remember her name.

7 Q. Isn't it true that you met with an FBI agent

8 and you told that FBI agent that you had been solicited

9 to kill people on a list by Mr. Hinkson?

10 A. No.

11 MR. SULLIVAN: May I have the document, Your

12 Honor?

13 THE COURT: Yes.

14 Mr. Nicolai, thank you.

15 BY MR. SULLIVAN:

16 Q. Would you look at the third page of the

17 three-page document, Exhibit 9? Look on the -- let's

18 see.

19 Your Honor, do I need to turn off the

20 overhead?

21 THE COURT: All right. Let's see. Is there

22 some way we can disable that? Do I have a button to do

23 that?

24 THE COURTROOM CLERK: I think he has it.

25 THE COURT: To turn it off?

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1 MR. SULLIVAN: I think I did. 1338  
2 THE COURT: Put your hand under it so we can  
3 see. Yes, it is off.  
4 BY MR. SULLIVAN:  
5 Q. Mr. Nicolai, you have it on the monitor in  
6 front of you, the third page of Exhibit 9?  
7 A. Yes.  
8 Q. And that's a copy of the envelope that you  
9 sent to the FBI, isn't it?  
10 A. It's a copy of an envelope. I did not send  
11 it.  
12 Q. It has your name and inmate number for the  
13 return address in the upper left-hand corner; correct?  
14 A. Correct.  
15 Q. It even has a postmark?  
16 A. It does.  
17 Q. You mailed it?  
18 A. I did not.  
19 Q. The first page bears your signature, doesn't  
20 it?  
21 A. That's not my signature.  
22 THE COURT: Signature or printing, counsel?  
23 BY MR. SULLIVAN:  
24 Q. It's printing?  
25 A. It is printing.

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1 identification of Agent Martin from the FBI. 1340  
2 BY MR. SULLIVAN:  
3 Q. She and another agent came to you on January  
4 7th to interview you in the Ada County Jail?  
5 A. That's correct.  
6 Q. She did interview you, didn't she?  
7 A. Yes.  
8 Q. And didn't you tell her then that Mr. Hinkson  
9 had solicited you to kill a number of people who were  
10 federal officials?  
11 A. No, I did not.  
12 Q. In fact, you met with me, Mr. Taxay, and Mary  
13 Martin this Sunday in the Ada County Jail; and you told  
14 us the exact same thing?  
15 A. I did meet with you.  
16 Q. And you told us the exact same thing?  
17 A. No.  
18 Q. Are you afraid of Mr. Hinkson?  
19 A. No.  
20 Q. In Exhibit 9, this is -- you represented this  
21 to be the list of people to be killed; right?  
22 A. No, I did not.  
23 Q. You wrote it, didn't you?  
24 A. Yes, I did.  
25 Q. You know who those people are who are on the

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1 Q. And doesn't it say, "Frank Leslie Nicolai, 1339  
2 III"?"  
3 A. Yes, it does.  
4 Q. And that's your name; right?  
5 A. That's correct.  
6 Q. The second page is all in your handwriting, as  
7 well, isn't it?  
8 A. That's correct.  
9 Q. And you were visited in jail by an FBI agent  
10 on January 6, 2005; correct?  
11 A. Approximately. I don't remember the exact  
12 date.  
13 Q. And that was Special Agent Mary Martin?  
14 A. I don't remember her name.  
15 Q. Female agent?  
16 A. Correct.  
17 Q. Isn't that Special Agent Mary Martin sitting  
18 in the front row?  
19 A. Yes, I believe so.  
20 THE COURT: Agent Martin, would you stand,  
21 please?  
22 (Whereupon, Special Agent Mary Martin complies  
23 with the court's request.)  
24 THE WITNESS: Correct.  
25 THE COURT: The record will reflect the

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1 list, don't you? 1341  
2 A. I have heard of some of them.  
3 Q. You heard their names from Mr. Hinkson?  
4 A. Correct.  
5 Q. You heard the name Elven Joe Swisher, didn't  
6 you?  
7 A. I have heard "Joe Swisher."  
8 Q. From Mr. Hinkson?  
9 A. Correct.  
10 Q. You heard the name "Dennis Albers" from  
11 Mr. Hinkson?  
12 A. That's correct.  
13 Q. You heard the name "Steve Hines" from  
14 Mr. Hinkson?  
15 A. That's correct.  
16 Q. You have heard the name "Edward Lodge," a  
17 Federal Judge, from Mr. Hinkson?  
18 A. That's true.  
19 Q. "Richard Bellon"? Have you heard that one  
20 from Mr. Hinkson?  
21 A. I can't say for sure that I heard that name  
22 from Mr. Hinkson, no.  
23 Q. You heard "Nancy Cook" from Mr. Hinkson?  
24 A. I have heard that name, yes.  
25 Q. And "Annette Hasalone" you heard from

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1 Mr. Hinkson?

2 A. Yes.

3 Q. And isn't it true, sir, that Mr. Hinkson

4 offered you money to kill those persons?

5 A. No, sir. That's not true.

6 Q. Isn't it true you told Agent Martin that

7 Mr. Hinkson offered you money to kill those people?

8 A. No, that's not true.

9 Q. Isn't it true that you told myself, Mr. Tocay,

10 and Agent Martin last Sunday in the Ada County Jail that

11 Mr. Hinkson offered you money to kill those people?

12 A. No, it's not true.

13 Q. During your time with Mr. Hinkson in "F"

14 cell -- they call it sometimes the pod or the tank --

15 Didn't he offer you, besides money -- strike that,

16 Didn't he offer you certain favors?

17 A. We have offered each other favors from time to

18 time.

19 Q. Did he share his special diet with you?

20 A. On occasion.

21 Q. Did he cause money to be put in what is called

22 your commissary?

23 A. I have received no money on my commissary from

24 Mr. Hinkson.

25 Q. You have to speak a little louder.

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1 Q. And who are those persons?

2 A. Mr. Hinkson.

3 Q. Not Noah Clark?

4 A. I don't know, personally, that Noah Clark

5 received any money from Mr. Towerton.

6 Q. A person named Mark Brower?

7 A. I'm not sure who Mark Brower is.

8 Q. Mark Boursaw?

9 A. I am not aware of Mark Boursaw receiving any

10 money from Mr. Towerton.

11 Q. One of my first questions to you here today

12 was that you had private conversations with Mr. Hinkson,

13 and you answered "yes" to that?

14 A. Yes, I did.

15 Q. And on what date did those occur?

16 A. They occurred many times. Approximately -- I

17 would say around -- from the 10th or the 12th of

18 December up until the time that Mr. Hinkson was moved

19 out of our tank.

20 Q. Was he moved out sometime in early January,

21 the first week of January?

22 A. Approximately. Around the first of the year.

23 Q. And you know that was as a result of your

24 letter to the FBI, correct?

25 A. I did not know that.

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1 A. I have received no money on my commissary from

2 Mr. Hinkson.

3 Q. Didn't you tell us that Mr. Hinkson caused

4 people, associates of his, to put money into your

5 so-called commissary?

6 A. I did not.

7 Q. Have you received money from associates of

8 Mr. Hinkson who put money in your commissary?

9 A. I have not.

10 Q. Such as Mr. Greg Towerton?

11 A. No.

12 Q. You know that name, though, don't you?

13 A. Yes.

14 Q. You know he is married to Mr. Hinkson's

15 ex-wife?

16 A. Yes.

17 Q. And you know that he has sent money to

18 different people in the tank?

19 A. I've not personally seen money sent to other

20 people. I have heard that that's occurred.

21 Q. Who are the people who have received money in

22 their commissary?

23 A. As I said, I'm not personally aware of anybody

24 actually receiving money from Mr. Towerton, other than

25 Mr. Hinkson.

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1 Q. You know he did get moved, though, out of the

2 cell?

3 A. Yes. I did notice that he got moved out.

4 Q. Now, you and some of the other inmates there

5 got together to prepare affidavits, correct?

6 A. Yes, we did.

7 Q. And they were typed up for you by lawyers for

8 Mr. Hinkson?

9 A. By Mr. Hoyt.

10 Q. And this was after you and some of the other

11 inmates got together and decided that you would try to

12 help Mr. Hinkson, right?

13 A. This was after we had heard that Mr. Croner

14 had claimed that Mr. Hinkson had tried to hire him to

15 commit murder for hire, and we were willing to testify

16 as to what we knew about the circumstances as it

17 occurred.

18 Q. One of the things you all decided you were

19 going to put into your affidavits, wasn't it, is that

20 the bunks in the cell make popping noises?

21 A. That's correct.

22 Q. And that, thereby, no one could get up at

23 night because it would wake people up?

24 A. That's correct.

25 Q. Isn't it true that there were actually only

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1 two lunks in the cell that made that kind of a noise?  
2 A. They all make that noise at various times,  
3 depending upon which part of the lunk is being moved  
4 upon.  
5 Q. Didn't you tell us that it was just two lunks  
6 that would make that noise?  
7 A. What I told you was that there was two that  
8 consistently made that noise.  
9 Q. One of them was yours?  
10 A. At the time, yes.  
11 Q. You and the other inmates also decided that  
12 you would exaggerate about Mr. Croner, too, didn't you?  
13 A. No. We never talked about exaggeration. We  
14 talked about the truth.  
15 Q. Didn't you tell us that you and the other  
16 inmates decided you would exaggerate things about  
17 Mr. Croner to try to undermine his credibility?  
18 A. No.  
19 Q. Didn't you tell us -- didn't you put in your  
20 affidavit that Mr. Croner drooled a lot?  
21 A. That's correct.  
22 Q. And didn't you tell us that you all sat around  
23 and you made that up?  
24 A. That's not true.  
25 Q. And that you exaggerated it?

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1 A. Correct.  
2 Q. They slam frequently?  
3 A. Correct.  
4 Q. The TV in your cell was often up loud?  
5 A. It is, at times.  
6 Q. As a matter of fact, it's so loud that the  
7 inmates wear ear plugs sometimes so they can sleep?  
8 A. That's correct.  
9 Q. And they even put a sock over their eyes so  
10 that they are not bothered by the light?  
11 A. That's correct.  
12 Q. So they can sleep at night?  
13 A. That's correct.  
14 Q. Those were all conditions you were familiar  
15 with and that everyone was familiar with; correct?  
16 A. Correct.  
17 Q. How many inmates at any one time would be in  
18 the "E" cell?  
19 MR. HOYT: I'm sorry. During what time frame?  
20 THE COURT: Yes. I will sustain the objection  
21 as to the form.  
22 BY MR. SULLIVAN:  
23 Q. In the last week of November?  
24 A. We would have up to nine.  
25 Q. Nine different inmates?

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1 A. That's not true.  
2 Q. You exaggerated the effect of medication on  
3 him?  
4 A. No. There was no exaggeration. The  
5 medication had a profound effect on him.  
6 Q. In your private conversation with Mr. Hinkson,  
7 didn't you tell him that you had a violent past?  
8 A. That's correct.  
9 Q. And you had access to weapons?  
10 A. I had, in my past.  
11 Q. And didn't Mr. Hinkson say to you, "You sound  
12 like a guy who could kill someone and you could sleep at  
13 night"?  
14 A. No, sir.  
15 Q. Isn't that what you told us Sunday afternoon  
16 in the Ada County Jail?  
17 A. No. I never told you that, no.  
18 Q. With Agent Martin sitting there, Mr. Taxay  
19 sitting there, and me talking to you?  
20 A. With all of us sitting there? No, I never  
21 told you that.  
22 Q. Isn't it a fact that the tank in the Ada  
23 County Jail is someplace where it's actually very loud?  
24 A. There are times when it is loud.  
25 Q. Doors slam? Jail cells slam; correct?

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1 A. Yes.  
2 Q. They would come and go, wouldn't they?  
3 Sometimes some would be moved in and some would be moved  
4 out?  
5 A. Yes.  
6 Q. Now, you told us that you came into "E" cell  
7 about November 19th, I believe?  
8 A. 19th or 20th.  
9 Q. And Mr. Croner came in a day or two later?  
10 A. He came in after I did.  
11 Q. Do you know how many days?  
12 A. I don't recall how many.  
13 Q. And he left about December 8th?  
14 A. Approximately.  
15 Q. In the first week of December, were there as  
16 many as nine inmates in the "E" cell?  
17 A. Yes.  
18 Q. Were you keeping track of the whereabouts of  
19 all nine inmates, 24 hours a day?  
20 A. Not deliberately. Because of the condition of  
21 the cell, it wasn't hard to do.  
22 Q. So if you were asked, you could tell us  
23 everything that nine people did for two weeks, 24 hours  
24 a day?  
25 A. Were I to have that kind of memory, I would,

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1 yes.

2 Q. But you claim to have that memory regarding

3 Mr. Croner; correct?

4 A. I have a memory of different events concerning

5 Mr. Croner.

6 Q. You have a different memory of events

7 concerning Agent Martin, too, don't you?

8 A. I'm not sure what you mean.

9 Q. You have a different memory that you told

10 Agent Martin that Mr. Hinkson solicited you?

11 A. That did not occur.

12 Q. You told Agent Martin that, though, didn't

13 you?

14 A. No, sir, I did not.

15 Q. Did Mr. Hinkson tell you he would help you

16 with your own case that's pending?

17 A. Mr. Hinkson was in no position to help me with

18 my own case.

19 Q. Did he offer to provide you with services of a

20 good lawyer?

21 A. He said he would ask his lawyer to help me get

22 statements from my witnesses.

23 Q. You didn't have to pay him to do that; right?

24 A. I haven't gotten the statements yet either.

25 Q. But that was a service he was offering you, to

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1 was getting them.

2 Q. You kept track of that, too?

3 A. When one person is the only one brought out,

4 everybody can notice that. There are two -- it's a very

5 restricted visiting schedule they have for the

6 closed-custody, special-management unit.

7 Out of several different tanks, they will

8 allow only three inmates and sometimes only one inmate

9 to have a visit during the time. Families have to be

10 there several hours ahead of time to fight for that one,

11 sometimes, single spot.

12 When the single inmate in your tank is brought

13 out for a visit, it's almost a special event that his

14 family --

15 MR. SULLIVAN: Your Honor, I move to strike.

16 The witness is volunteering information not asked.

17 THE COURT: Yes. I will sustain that

18 objection.

19 Mr. Nicolai, you have to answer just the

20 question that Mr. Sullivan asked of you and then wait

21 for the next question.

22 Try it again, counsel.

23 BY MR. SULLIVAN:

24 Q. Mr. Nicolai, prisoners in the "E" cell also

25 would go out for court proceedings, as well; correct?

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1 help you on your own case; right?

2 A. He made that offer.

3 Q. And you, actually, are represented by the

4 Public Defender?

5 A. That's correct.

6 Q. And you are dissatisfied with the

7 representation of the Public Defender?

8 A. That's correct.

9 Q. So it was important to you to get the services

10 of some other lawyer that Mr. Hinkson could provide you?

11 A. Any private attorney is preferable to the

12 Public Defenders.

13 Q. Inmates in the "E" cell, in November and

14 December of last year, were entitled to family visits,

15 weren't they?

16 A. They are entitled, but they are few and far

17 between.

18 Q. My question was: Are they entitled to visits?

19 A. They are.

20 Q. They can go out of the "E" cell and visit with

21 family members; right?

22 A. Yes, they can.

23 Q. Did you keep track of everyone in "E" cell who

24 was getting family visits?

25 A. It wasn't hard to do because only one of us

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1 A. Correct.

2 THE COURT: Mr. Sullivan, one of the jurors

3 needs a bathroom break. We will take a short recess

4 here.

5 Ladies and gentlemen, please rise. We will

6 take just a short recess.

7 (Recess.)

8 THE COURT: Mr. Sullivan, you may proceed.

9 BY MR. SULLIVAN:

10 Q. Isn't it true, Mr. Nicolai, when you contacted

11 the FBI, you asked for certain benefits for your

12 cooperation?

13 A. I never contacted the FBI.

14 Q. Isn't it true you asked FBI Agent Martin to

15 get out of jail?

16 A. No, sir.

17 Q. To have a car?

18 A. No, sir.

19 Q. To get charges against you dropped?

20 A. No.

21 MR. SULLIVAN: Let me show you a document. I

22 will mark it as 10, Your Honor.

23 THE COURT: Very well.

24 BY MR. SULLIVAN:

25 Q. It's also in printing. Is that your printing,

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1 sir?

2 A. Yes, it is.

3 Q. Are those your demands of the FBI, what you

4 wanted?

5 A. No. That's part of the analysis that you

6 asked for.

7 MR. NOLAN: Could we have a copy?

8 THE COURT: Yes. Have we not given a copy to

9 the defense yet?

10 MR. SULLIVAN: No.

11 THE COURT: Have you got an extra copy for

12 them? Mr. Taxay has one.

13 MR. SULLIVAN: Your Honor, we are going to

14 withdraw that particular document. I want to make this

15 particular document Exhibit 11 then.

16 THE COURT: Very well.

17 THE COURTROOM CLERK: Plaintiff's Exhibit 11

18 is marked.

19 THE COURT: Take a minute to review it,

20 Mr. Nolan.

21 MR. NOLAN: Thank you very much, Your Honor.

22 MR. NOLAN: At a break, I would like to get a

23 copy of that, if possible.

24 THE COURT: Of course.

25 You may proceed, Mr. Sullivan.

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1 Q. Who gave you directions to do a handwriting

2 analysis?

3 A. That was at the behest of the FBI.

4 Q. They wanted your handwriting?

5 A. They wanted my handwriting.

6 Q. For what purpose, Mr. Nicolai?

7 A. They said that they needed it to compare to

8 other handwriting samples they had in Dave's case. They

9 also -- well, they also did a polygraph, amongst other

10 things. They have been -- the FBI --

11 Q. You are making it up as you go along, aren't

12 you, Mr. Nicolai?

13 MR. HOYT: Objection. He is interrupting the

14 witness.

15 THE COURT: I will sustain the objection.

16 The jury will disregard Mr. Sullivan's

17 comments on the witness's answer.

18 BY MR. SULLIVAN:

19 Q. Let me ask this question: Aren't you making

20 it up as you go along?

21 A. I am not. I have been given a polygraph by

22 the FBI. I have been harassed and intimidated by the

23 FBI and by yourself to give testimony against

24 Mr. Hinkson.

25 Q. Isn't this document that we are looking at on

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1 BY MR. SULLIVAN:

2 Q. Looking on the screen in front of you,

3 Mr. Nicolai, is this document in your printing?

4 A. Yes, it is.

5 Q. You wrote it?

6 A. Correct.

7 Q. And in this document that you sent to the FBI,

8 doesn't it contain your demands for your cooperation?

9 MR. HOYT: Objection, Your Honor. Assumes

10 facts not in evidence. The witness testified he did

11 not --

12 THE COURT: I will sustain the objection as to

13 the form of the question.

14 BY MR. SULLIVAN:

15 Q. Does this document contain your demands for

16 your cooperation?

17 A. I have no demands for cooperation.

18 Q. Didn't you ask -- didn't you write, "What I

19 want, vehical I choose from . . .?"

20 A. Once again, I wrote all of that at the

21 direction for handwriting analysis. Those are not

22 demands for any cooperation on my part.

23 Q. You wrote all of this at the directions for a

24 handwriting analysis? That is your testimony?

25 A. Correct.

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1 the screen your demands for your cooperation, and they

2 were refused?

3 A. Once again, I made no demands for any

4 cooperation. They could not have been refused because I

5 made no such demands.

6 Q. Well, the writing says, "Vehical I choose

7 from . . ." That's in your writing; right?

8 A. That's what it says. Yes, it is in my

9 writing.

10 Q. It's in your writing, "All pending charges

11 dismissed"?

12 THE COURT: Just a minute, Mr. Sullivan.

13 Mr. Hoyt?

14 MR. HOYT: Objection. Asked and answered. He

15 is starting to badger the witness.

16 THE COURT: I will sustain the objection.

17 MR. SULLIVAN: On what grounds, Your Honor?

18 Counsel raised several grounds.

19 THE COURT: I think you are entitled to elicit

20 what it was that he claims he demanded from the FBI. If

21 you want, just go through and ask him, "Didn't you ask

22 for this?"

23 MR. SULLIVAN: All right. I will.

24 Q. You asked for all pending charges dismissed,

25 \$25,000 cash, cell phone paid to end of Dave's trial?

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1 Isn't that what you asked for?

2 A. No.

3 Q. Isn't it true the Government told you they

4 wouldn't give you anything?

5 A. The Government never told me that because I

6 never asked for it. I made it very clear to the

7 Government --

8 THE COURT: That is enough, Mr. Nicolai. Wait

9 for the next question.

10 BY MR. SULLIVAN:

11 Q. Let me show you what was admitted as Defense

12 Exhibit O. This is all your printing here?

13 THE COURT: That one you can display, counsel.

14 That is now in evidence.

15 THE WITNESS: That is my printing.

16 BY MR. SULLIVAN:

17 Q. That's the exact same printing on the other

18 documents I was just showing you, isn't it?

19 A. That's correct.

20 Q. Those documents were in your printing, just as

21 this document is in your printing?

22 A. As I have already said, yes, they were.

23 Q. Now, this one is where you attest you never

24 heard Hinkson admit to guilt; right?

25 A. Correct.

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1 Q. Now, do you contend that Mr. Croner's

2 signature is on here somewhere?

3 A. Yes, I do.

4 Q. And which one do you contend is Mr. Croner's

5 signature?

6 A. Upper left.

7 Q. Are you talking about this one?

8 A. Correct.

9 Q. You say that's Chad Croner; is that right?

10 A. I'm saying that's the signature he put on

11 there.

12 Q. At the time this was being drafted by you and

13 the other inmates, it was at the request of Mr. Hinkson,

14 wasn't it?

15 A. No, it was not.

16 Q. And you were all concerned that you wouldn't

17 continue to receive your benefits from Mr. Hinkson if

18 you didn't sign it?

19 A. No, we were not.

20 Q. Did Mr. Hinkson read a book on Russian while

21 he was in "E" cell?

22 A. Yes, he did.

23 Q. And did you know the reason why he was reading

24 a book on Russian?

25 MR. HOYT: This is beyond the scope.

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1 THE COURT: I am going to permit it.

2 Overruled.

3 THE WITNESS: I assumed he was wanting to

4 learn the language.

5 BY MR. SULLIVAN:

6 Q. By the way, you are very unsatisfied with the

7 representation by your Public Defender; correct?

8 A. Yes, I am.

9 Q. I think you told us that it's like nearly no

10 representation?

11 A. That's correct.

12 Q. So having good representation is helpful? It

13 is important to you?

14 A. It's helpful.

15 MR. SULLIVAN: I have no further questions,

16 Your Honor.

17 THE COURT: Redirect examination, Mr. Hoyt?

18 MR. SULLIVAN: May I have one more before I

19 sit down?

20 THE COURT: Just a moment, Mr. Hoyt.

21 MR. SULLIVAN: Your Honor, I would like to

22 show one more document to the witness.

23 THE COURT: You may.

24 MR. SULLIVAN: It will be Exhibit 12.

25 THE COURTROOM CLERK: Government's Exhibit 12

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1 is marked.

2 MR. NOLAN: Could we just have a moment, Your

3 Honor?

4 THE COURT: Sure.

5 BY MR. SULLIVAN:

6 Q. Showing you what is marked as Government's

7 Exhibit 12, do you see this on your screen?

8 A. Yes.

9 Q. That's another document in your handwriting?

10 A. Yes.

11 Q. And you contend this was not written by you to

12 the FBI?

13 A. I did not send this to the FBI.

14 Q. Do you contend this was part of your

15 handwriting examination?

16 A. Correct.

17 Q. You wrote it for that purpose?

18 A. Correct.

19 Q. You deny that the things you wrote in here

20 were what you were trying to tell the FBI about Dave

21 Hinkson?

22 A. I haven't tried to tell them any of these

23 things.

24 Q. And can you read the parts I have yellow

25 highlighted?

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1 A. Yes.

2 Q. Do you deny that those were things that you

3 wrote freely and voluntarily and sent to the FBI?

4 A. I do deny that.

5 Q. One last question, sir. The reason that you

6 and some of the other inmates got together after

7 December 7th was because you heard that Dave was worried

8 there was a snitch or a rat in the cell?

9 A. That's correct.

10 Q. An informant? And you wanted to reassure him;

11 is that right?

12 A. That's correct.

13 Q. Because you like Dave Hinkson; is that right?

14 A. That's correct.

15 Q. You wanted to be able to talk with him about

16 health products?

17 A. That's correct.

18 Q. Health is very important to all of you inmates

19 there in "E" cell?

20 A. The products that he had were important

21 because they were doing something that we had never

22 heard of before.

23 Q. And so you wanted to keep him informing you

24 about good life decisions; right?

25 A. Amongst other things.

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1 MR. SULLIVAN: I just found it.

2 MR. HOYT: Excellent. Thank you. That is 11.

3 I am still looking for 12.

4

5 R E D I R E C T E X A M I N A T I O N

6 BY MR. HOYT:

7 Q. Mr. Nicolai, you wrote the statement,

8 Declaration Affidavit, that is found in Exhibit O, which

9 we have talked about, on or about the 7th day of

10 December; is that correct?

11 A. Yes.

12 Q. At some point after that day, were you

13 contacted by the FBI?

14 A. Yes.

15 Q. Approximately when was the first contact by

16 the FBI?

17 A. It was sometime shortly after the first of the

18 year, right around the first of the year, shortly after.

19 Q. And this initial document that was presented

20 as Exhibit No. 9, which was the three-page document that

21 had the envelope as the third page, that document has a

22 date stamp of January 3, 2005, on it.

23 Does that refresh your recollection as to when

24 it was you were instructed to prepare that writing

25 sample?

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1 Q. But someone might think that one of you was a

2 rat, so you put together this affidavit saying you

3 weren't; right?

4 A. That's correct.

5 Q. Another one of your reasons was because it's

6 not a good thing to be labeled as a rat in prison;

7 right?

8 A. That's correct.

9 Q. Bad things can happen to somebody who becomes

10 a snitch; right?

11 A. That's correct.

12 Q. And you don't want to be labeled as a rat or a

13 snitch, do you?

14 A. Nobody does.

15 MR. SULLIVAN: I have no other questions.

16 THE COURT: Very well. Redirect examination,

17 Mr. Hoyt?

18 Counsel, can we start -- I'm sorry. Do you

19 have an exhibit in front of you Mr. Nicolai?

20 THE WITNESS: I don't.

21 THE COURT: Madam Clerk, do you have it?

22 THE COURTROOM CLERK: No.

23 THE COURT: Can we start on whatever documents

24 Mr. Hoyt has while Mr. Sullivan looks for --

25 MR. HOYT: I'm glad to, Your Honor.

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1 A. Yeah. It was close to the first of the year.

2 Q. And that was the very first meeting with the

3 FBI?

4 A. Correct.

5 Q. Tell me how many people were there that

6 represented that they were with the FBI.

7 A. There was two.

8 Q. And was it Ms. Martin?

9 A. Yes.

10 Q. And was it another gentleman?

11 A. Yes.

12 Q. Did the other person give you his name?

13 A. He did. I do not recall what his name was.

14 Q. At the top of this Exhibit 9, it begins, "To

15 Whom it May Concern or Special Agent William Long."

16 Would the name "William Long" be the name of the person

17 who was there with you?

18 A. That was not the name I was given.

19 Q. All right. And just for the record, Agent

20 William Long is sitting here at counsel table. He is

21 the one closest to the Judge. Do you recognize

22 Mr. Long?

23 A. No. I haven't seen him before.

24 Q. Very good. Now, how did the discussion go?

25 Why were you asked -- why were you told that you were

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1 asked to do a handwriting sample?

2 A. They said that they had received a number of

3 allegations about Mr. Hinkson and that they wanted to

4 get a sample of my handwriting and be able to compare it

5 to the ones that they had received.

6 Q. And approximately how long were you with the

7 FBI agents?

8 A. My best recollection is sometime around an

9 hour to an hour and a half.

10 Q. Did they provide the paper?

11 A. Yes. They had a tablet.

12 Q. Did they provide the writing instrument?

13 A. Yes.

14 Q. And who was it that told you to give the

15 writing sample?

16 A. It was the lead agent, I guess. This one over

17 here.

18 Q. The female?

19 A. Correct.

20 THE COURT: Agent Martin?

21 BY MR. HOYT:

22 Q. Agent Martin? Yes?

23 A. I have trouble remembering her name. I'm

24 sorry.

25 Q. And did she tell you each word? "To Whom It

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1 A. Other than where my name is, yes.

2 Q. What is the difference where your name is?

3 A. There was nothing there.

4 Q. Did they ask you to put your name there?

5 A. Correct.

6 Q. Did they ask you to sign it?

7 A. They didn't ask me to sign it.

8 Q. So you printed your name?

9 A. Correct.

10 Q. Now, the things that are stated in here -- for

11 instance, it says, "I am writing you this letter on the

12 advice of my attorney . . ." Was that true? Was it

13 your attorney that advised you to write these things?

14 A. No.

15 Q. It says, ". . . and am asking you to keep the

16 information I am giving you strictly

17 confidential . . ." Did you ask them to keep this

18 information strictly confidential?

19 A. No.

20 Q. So you were writing things on a piece of paper

21 that you knew, at the time you were writing them, were

22 untrue?

23 A. Correct.

24 Q. Why did you do that?

25 A. I did it because I was asked to by the female

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1 May Concern or Special Agent Long"? Did she dictate it

2 to you?

3 A. No. It was written out on another piece of

4 paper.

5 Q. It had already been written out on another

6 piece of paper?

7 A. Correct. Well, you know, like printed from a

8 computer.

9 Q. So it was in some kind of typed form?

10 A. Correct.

11 Q. Printed form? Was the first sheet that was in

12 printed form exactly as it appears here on the first

13 sheet of Plaintiff's Exhibit 9?

14 THE COURT: Counsel, you are going to have to

15 show it to him.

16 MR. HOYT: Let me see if I can -- I think this

17 is right.

18 THE COURT: Do you see it, Mr. Nicolai?

19 THE WITNESS: Yes. Uh-huh.

20 BY MR. HOYT:

21 Q. Can you see this now?

22 A. Yes.

23 Q. To the best of your ability, did you copy the

24 words that were on the printed sheet on to the

25 handprinted sheet shown here as Exhibit 9?

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1 agent.

2 Q. Now, in addition, it says, "He has offered me

3 money for the deaths of any or all the people on this

4 list," referring to an enclosed list. Is that what it

5 says on Exhibit 9?

6 A. Yes.

7 Q. Was that true? Did he offer you money to --

8 A. No, he has never offered me money for

9 anybody's death.

10 Q. Did he ask you to kill anybody for him?

11 A. No.

12 Q. Now, on the next page, there is a list of

13 persons. Do you see that?

14 A. Yes.

15 Q. And was that, also, something that was printed

16 on a separate sheet of paper?

17 A. Correct.

18 Q. Were you asked to write all of the names as

19 they appear here on page two of Exhibit 9 by Agent

20 Martin?

21 A. Yes.

22 Q. Did you understand, at the time, by

23 handwriting this page, it made it appear that

24 Mr. Hinkson had previously solicited you to murder the

25 individuals listed on page two?

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1 A. It did appear like that. When I brought it up  
2 to her, she said, "That's not the purpose of this. It's  
3 merely for an analysis," for their benefit, to eliminate  
4 me as someone who sent the letter.

5 Q. And you believed that to be true at the time?

6 A. At the time, yes.

7 Q. Did you see this envelope when you were in  
8 there with Agent Martin and the other agent?

9 A. Did I see this envelope?

10 Q. Yes.

11 A. Yes.

12 Q. Okay. Who provided you with that envelope?

13 A. Agent Martin.

14 Q. Now, referring to the list that's attached,  
15 were you aware that Mr. Hinkson had, in his legal  
16 papers, at one time, a list of witnesses involved in his  
17 case?

18 A. Yes.

19 Q. And, also, the list included other people who  
20 were involved in the case?

21 A. Yeah. There was a lot of people that he had a  
22 list of.

23 Q. Did there come a time when all of the inmates  
24 of the "B" tank were taken out of the cell and put  
25 somewhere else for a period of time?

1 A. Yes.

2 Q. When you got back to the "B" -- approximately  
3 how long was that?

4 A. That we were taken out?

5 Q. Yes.

6 A. An hour, hour and a half.

7 Q. When you got back to the cell, did you notice  
8 that anything was changed or different about the cell?

9 A. Yes.

10 Q. What was that?

11 A. Well, I noticed that my envelope that I kept  
12 my legal paperwork in had been taken out of my bin and  
13 the papers had been taken out of it and gone through.  
14 They were not in order anymore.

15 Q. Did you notice or did you hear any other  
16 inmates complaining of their papers being similarly --

17 A. Yes. Mr. Hinkson also complained of the same  
18 thing.

19 Q. Now, when you were at this first meeting --  
20 strike that.

21 Did the meeting with Agent Martin and the  
22 other agent occur before or after the things were  
23 removed from yourself?

24 A. It was after.

25 Q. And did Agent Martin or the other agent, at

1 that time, suggest anything to you? Did they say  
2 anything that was intimidating to you, like, "You'd  
3 better cooperate with us," or anything like that?

4 MR. SULLIVAN: I object. Counsel is,  
5 obviously, leading the witness.

6 THE COURT: I will sustain the objection. You  
7 are leading him. He is your witness.

8 BY MR. HOYT:

9 Q. Mr. Nicolai, do you recall, at that first  
10 meeting, whether the FBI agents said anything  
11 intimidating to you?

12 A. Not at the first meeting, no.

13 Q. Just the handwriting analysis paperwork that  
14 you filled out?

15 A. Correct.

16 Q. Was all of the handwriting analysis paperwork  
17 that you filled out done at the first meeting?

18 A. Yes.

19 Q. I know, for instance, on Exhibit 10, in the  
20 upper, right-hand corner, it says, "1/6/05." It looks  
21 like some initials. Are those your initials?

22 A. Yes, they are.

23 Q. And I also note that Exhibit 11 has a similar  
24 marking. Are those your initials?

25 A. Yes.

1 Q. Was that a different meeting?

2 A. No. I believe that was the same meeting.  
3 They had me initial all of the stuff like that.

4 Q. Did they have you initial this first letter in  
5 the same fashion?

6 A. I seem to remember them having me initial  
7 everything.

8 Q. But do you see your initials on Exhibit 9?

9 A. I do not.

10 Q. To the best of your recollection, you filled  
11 out and completed, at their request, Exhibit 9, which is  
12 the three-page document we have talked about; 10, which  
13 is the one that counsel talked about being favors that  
14 you were asking for, allegedly asking for; and Exhibit  
15 11 which seems -- counsel, 11 and 10 -- pardon me.

16 Your Honor, if I might have --

17 THE COURT: I thought 10 was withdrawn,  
18 counsel.

19 MR. SULLIVAN: Yes.

20 MR. HOYT: Do you have 12? You had it up  
21 here, and you were showing it to the witness last.

22 Q. Do you remember a short while ago, when  
23 Mr. Sullivan was asking you questions, that you also  
24 looked at Exhibit No. 12?

25 A. Yes.

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1 Q. Okay. It was another document you mentioned  
2 related to handwriting samples? Here. I will show it  
3 to you now.  
4 A. Yes.  
5 Q. It, too, has the initials and the date of  
6 1/6/05?  
7 A. Correct.  
8 Q. On both sides; correct?  
9 A. Yes.  
10 Q. And you have indicated that all of these  
11 handwriting samples were given on the same date, at the  
12 same meeting?  
13 A. Yes.  
14 Q. When were you given the polygraph?  
15 A. Approximately a week or so later.  
16 Q. Did you have a meeting with any FBI agents  
17 before the polygraph?  
18 A. Just the one we have just been discussing.  
19 Q. And my question is: Were you called out  
20 directly to a polygraph, or did you stop off for a  
21 sit-down meeting with any FBI agent?  
22 A. It was directly to a polygraph.  
23 Q. And at the conclusion of that polygraph, did  
24 you meet with any FBI agents?  
25 A. There was just a brief discussion at the end

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1 A. They did, yes.  
2 Q. Did they tell you that they wanted you to  
3 testify against Mr. Hinkson?  
4 A. Yes.  
5 Q. Did they mention these letters that had been  
6 used as handwriting samples?  
7 A. They did not.  
8 MR. HOYT: If I might have a moment, Your  
9 Honor?  
10 THE COURT: Sure.  
11 BY MR. HOYT:  
12 Q. And, Mr. Nicolai, can you tell us the reason  
13 why you did not sign any of these documents?  
14 A. I felt that, by signing them, it would put  
15 them in the light of legitimacy rather than just  
16 samples.  
17 Q. Make it appear that it was your request?  
18 A. Correct.  
19 MR. HOYT: 9, 11, and 12 are handed back to  
20 the Government. Thank you, Your Honor.  
21 THE COURT: Very well.  
22 MR. HOYT: No further questions.  
23 THE COURT: Thank you, Mr. Hoyt.  
24 Mr. Sullivan?  
25

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1 of it.  
2 Q. With whom?  
3 A. It was with Agent Martin.  
4 Q. Did she have anybody else with her at that  
5 time?  
6 A. I don't believe so.  
7 Q. What did she say to you at that time?  
8 A. My recollection is she said, "I can't say that  
9 you won't be seeing me again."  
10 Q. And that was it?  
11 A. Yeah.  
12 Q. Did you then have another meeting with FBI  
13 Agent Martin?  
14 A. There was a meeting with Agent Martin and the  
15 gentleman at the table there.  
16 Q. Both of them?  
17 A. Yes.  
18 THE COURT: For the record, the witness is  
19 indicating the prosecution table.  
20 BY MR. HOYT:  
21 Q. And when was that?  
22 A. That was Sunday, I believe. This last Sunday.  
23 Q. And at that time, did either of these U.S.  
24 Attorneys or Agent Martin say anything intimidating to  
25 you?

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1 R E C R O S S E X A M I N A T I O N  
2 BY MR. SULLIVAN:  
3 Q. Mr. Nicolai, did you meet with Mr. Hoyt to go  
4 over with him that you were going to claim the  
5 Government asked you to write documents for handwriting  
6 purposes?  
7 A. No, I did not.  
8 Q. How did he know your answers then?  
9 A. I'm not sure --  
10 MR. HOYT: Objection, Your Honor. That  
11 characterization is wrong.  
12 THE COURT: Sustained. I think that is an  
13 improper question.  
14 BY MR. SULLIVAN:  
15 Q. You have met with Mr. Hoyt, though, haven't  
16 you?  
17 A. Yes, sir, I have.  
18 Q. And he was the one who submitted -- who had  
19 the affidavit typed up for you?  
20 A. Correct.  
21 Q. Who is the -- by the way, who is the lawyer  
22 who Mr. Hinkson said he would get for you to represent  
23 you and help you on your own case?  
24 A. He mentioned that he would ask Mr. Hoyt to  
25 help me get statements from my witnesses that my Public

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1 Q. The top?

2 A. Yes. That's where I was.

3 Q. If I wrote the word "top" there --

4 A. Yes.

5 Q. All right. And then initials "RB" for Richard

6 Beck?

7 A. Yes. Yes, sir.

8 Q. All right. That's where your -- that's the

9 place where you resided?

10 A. Exactly.

11 Q. Now, I want you to understand that the

12 questions I am going to be asking you are related to

13 this time period from, approximately, right after

14 Thanksgiving until Mr. Croner left the "E" tank.

15 A. Okay.

16 Q. Mr. Beck, do you recall Chad Croner, anything

17 about his physical make-up or his senses, that was

18 distinctive while he was in the "E" tank with you?

19 A. Well, the first day, it's like -- when you

20 come into a tank like that, you are pretty much quiet,

21 by yourself. You kind of feel yourself in the tank, see

22 who is friendly who is not.

23 He was very distant, always was on top of his

24 bunk. That was the first day. I figured maybe he's not

25 too friendly. If he doesn't want to shake hands, that's

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1 fine. I will try to stay to myself, not talk too much.

2 On the second and third day, it was the same

3 thing. I figured he's a loner, that he wanted to be

4 alone, by himself. He didn't want to speak to anybody.

5 I kept myself away from him and observed the rest of the

6 tank.

7 Q. And during the time that you were there, did

8 Mr. Croner have dinner with you and the other inmates?

9 A. Yes. He would come down for dinner.

10 Q. And you would have dinner at the table, as

11 depicted on Exhibit N7?

12 A. Yes, yes.

13 Q. And during the dinner hour, did you notice

14 that he had any physical characteristics, anything with

15 respect to his hearing that might have been unusual?

16 A. He had slight -- he would turn -- he wanted to

17 turn the TV down. If his name would be said, he would

18 say, "Who?"

19 And they would say, "Mr. Croner;" and he would

20 come up for his tray. It was distinctive. You could

21 tell it was -- the voices -- he didn't know who was

22 saying what to who, the guards or inmates.

23 Q. Did it appear to you that he had a hearing

24 difficulty?

25 A. I wasn't actually noticing a hearing

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1 difficulty, but I did notice that he had to lean up a

2 lot to find out what was said.

3 Q. And did he take medications?

4 A. I'm sure he did because he got down for meds.

5 Whenever they called, "Meds," he was at the door.

6 Q. Do you know what medications he was taking?

7 A. No idea.

8 Q. And can you comment -- the time that -- were

9 you there in the cell continuously? From the time after

10 Thanksgiving when you entered until Mr. Croner left,

11 were you there 24, seven?

12 A. Besides visits, yes, sir. I never went to

13 medical for any problems whatsoever. I have been in

14 that tank until today.

15 THE COURT: Counsel, just for the record, why

16 don't we establish the date of Thanksgiving in 2004?

17 MR. HOYT: Thank you.

18 THE COURT: I have a calendar, if that will

19 help.

20 THE WITNESS: A couple days after that.

21 THE COURT: The date is the 25th of November.

22 BY MR. HOYT:

23 Q. Does that refresh your recollection?

24 A. Yes.

25 Q. Somewhere -- was it the day --

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1 A. The day after or maybe two days after

2 Thanksgiving. The 25th? I'm not really positive.

3 Q. When was it that Mr. Croner left the "E" tank?

4 A. Date-wise, I couldn't tell you. I do remember

5 him leaving, though, and then coming in and physically

6 saying, "Mr. Croner, get your gear up; you're leaving."

7 That happens every other day, so it's hard to tell what

8 dates come and go with people.

9 Q. And during that time period, where was it that

10 Mr. Croner spent the majority of his time?

11 A. I would say, right next door to me, on top of

12 that bunk.

13 A. You don't have it marked. It would be the

14 next bunk over, on the left.

15 Q. The next bunk over, on the left? Would it be

16 this bunk here?

17 A. Yeah.

18 Q. "C," for Croner?

19 A. Yeah.

20 Q. Where was Mr. Hinkson's bunk?

21 A. Over on the right, right back by the front

22 door, underneath, on the bottom.

23 Q. Now, is the "E" tank a large facility?

24 A. No. I would say, 25 feet and you're at the

25 other end of the tank -- or sideways. It's very small

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1 for eight gentlemen. It's very, very crowded.

2 Q. Did you have awareness of what other people  
3 were doing in the tank while you were there?

4 A. All the time.

5 Q. Did you have awareness of what other people  
6 were saying in the tank?

7 A. Necessarily, if you're -- you don't even have  
8 to yell in that tank to know what's going on. You can  
9 hear next door. You can all hear all the way to the  
10 door. You can hear people talking to the guards all the  
11 time.

12 Q. And can you understand what people are saying?

13 A. Basically, unless they are screaming or  
14 mumbling. But you definitely can understand it, even  
15 the bathroom.

16 Q. Now, do you remember whether Chad Croner had  
17 any conversations with Mr. Hinkson during the time that  
18 you were in "E" tank, during the time period we have  
19 talked about?

20 A. I do. And there was only one occasion I do  
21 remember. He was talking about having some problems  
22 with his taxes because that's when he led everybody in  
23 that tank to believe he was in there on tax problems.

24 Mr. Hinkson said, "Well, I have some tax forms  
25 you may want to look over;" and that was absolutely the

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1 wasn't just right away. We would be looking, like, at  
2 each other. You know, we had no clue right off the bat.  
3 Nobody knew.

4 Q. And did you and the other inmates discuss that  
5 possibility?

6 A. Yes, we did.

7 Q. Did you provide assurances -- since the finger  
8 of suspicion was pointed at you in some respects, did  
9 you provide assurances to the other inmates that you  
10 were not an informant?

11 A. He said, "Who's been talking here? Who's  
12 been saying anything?" We want to know, to cover our  
13 own self.

14 Q. And if you truly believed there was an  
15 informant in the tank, what would that do to the  
16 atmosphere in the tank among the inmates?

17 A. It's not a good one. Everybody is looking at  
18 each other 24, seven. It's kind of hard to go to sleep.  
19 You don't know what's going on, if somebody is talking  
20 behind your back.

21 But it doesn't happen in the tank. It happens  
22 outside, and then they come back into the tank. You may  
23 have a visit. When you are at your visit, the rest of  
24 the inmates are at the tank saying, "Maybe it's not a  
25 visit."

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1 only time that I knew of him and Mr. Croner having a  
2 discussion in front of me or any of the other gentlemen  
3 there.

4 Q. Would you have been aware if he was having a  
5 discussion with Mr. Hinkson in front of the other  
6 gentlemen there?

7 A. Oh, yeah. Exactly.

8 Q. Now, did there come a time when Mr. Hinkson  
9 mentioned that he believed there was an informant in the  
10 tank?

11 A. Yes. He came in after a court hearing.

12 Q. And did you ultimately find out who the person  
13 was he thought might be the informant?

14 A. Well, we considered one gentleman who was  
15 calling up to the factory of Mr. Hinkson's; but it was  
16 never established right away. So we were all kind of  
17 curious who this informant might be.

18 Everybody in the tank was looking at each  
19 other. And in jail, you -- it's something you need to  
20 know. It's something that is not -- you don't bypass  
21 that. Everybody wants to know who is saying what in  
22 that jail.

23 Q. At that time, did anybody suspect that Chad  
24 Croner might be an informant?

25 A. Not necessarily right at the moment. It

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1 You have to watch your back when you're coming  
2 in. You don't know if they're thinking you are the  
3 informant or not.

4 Q. What do you mean, "Maybe it's not a visit"?

5 A. Well, when you go out of the tank, the rest of  
6 the inmates inside the tank don't know where you're  
7 going.

8 Q. You could be talking to the police or anybody  
9 else?

10 A. Sure. You can talk to anybody. They have no  
11 clue who you're going out that door for.

12 Q. Was Chad Croner somebody that went out the  
13 door quite often?

14 A. Very often. Every time he did go out, he  
15 would say to the rest of us that it's --

16 MR. SULLIVAN: Objection, Your Honor. The  
17 witness is volunteering.

18 THE COURT: Sustained. Hearsay.

19 BY MR. HOYT:

20 Q. Mr. Beck, did Mr. Croner give assurances that  
21 he was not an informant?

22 A. Basically, yes.

23 Q. Basically? How was that done?

24 A. Well, he wanted -- we brought up a signature,  
25 a piece of paper that we all discussed and put our names

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1 down there so we could be sure that each one of us knew  
2 in our hearts that we weren't an informant.

3 We'd write our name down so we made up a list.  
4 A friend of ours, Frank, actually did it up; and Chad  
5 came over and helped him write it. We assured ourselves  
6 and each other that we were not informing on anybody.

7 Q. Let me show you a piece of paper that has been  
8 marked Exhibit O. I have written "O" on it. The  
9 original is up there somewhere, but this is an exact  
10 copy.

11 Mr. Beck, do you see your signature on this  
12 document?

13 A. I sure do.

14 Q. Now I lost it. I apologize.

15 A. It's the second from the bottom.

16 Q. Right here?

17 A. Yes, it is.

18 Q. And were you present when Mr. Nicolai wrote up  
19 Exhibit O?

20 A. As a matter of fact, I didn't know he was  
21 writing it up just right away. He informed us all that  
22 we were going to write this together. I said, "Sure,  
23 that sounds like a great idea." And, yes, I was there.

24 Q. Did Mr. Hinkson participate in the writing up  
25 of this document?

1 A. He didn't participate in actually putting it  
2 out or saying to write one up. We suggested it to  
3 Mr. Hinkson, if this was okay with him. And he said,  
4 "Gladly."

5 Q. When you put your signature on this page, what  
6 did you intend?

7 A. To let Mr. Hinkson know that it was not me at  
8 all.

9 Q. Now, the date of this declaration, Exhibit O,  
10 is December 7, 2004. Do you recall that being  
11 approximately the date that it was prepared and signed  
12 by you?

13 A. Yes, I do.

14 Q. And shortly after that time, did you have an  
15 opportunity to meet with me, discuss this situation, and  
16 prepare an affidavit of your own?

17 A. Yes.

18 Q. Now, while you were in the "E" tank, were you  
19 in a position to have observed others, such as  
20 Mr. Croner and Mr. Hinkson, if they had been having a  
21 discussion of any kind? Would you have seen them from  
22 your -- from being in the "E" tank?

23 A. Oh, yeah.

24 Q. My question is: Would you have heard them if  
25 they were having a discussion in the "E" tank?

1 A. Well, like I said, in the "E" tank, you can  
2 hear basically anything. It's as far as -- even at  
3 nighttime, in the daytime, when there was a commotion,  
4 when the TV is on, you can hear everybody's  
5 conversations in that tank.

6 Q. And if Mr. Hinkson had said to Mr. Croner that  
7 he wanted to hire Mr. Croner to murder a federal judge,  
8 is that something that you would have paid attention to?

9 MR. SULLIVAN: I object to the form of the  
10 question.

11 THE COURT: I think, as phrased, it is okay.

12 You can answer that, Mr. Beck.

13 THE WITNESS: Well, if anybody says any time,  
14 at any point blank, any time in that pod or that tank,  
15 "murder," everybody raises an eye.

16 Everybody would say, "Excuse me? Murder?  
17 What?" And it would be totally out of the ordinary to  
18 even bring up something like that in that tank.

19 BY MR. HOYT:

20 Q. Why is that?

21 A. It's not -- it's not a place where those --  
22 people in there wouldn't be doing that. It wouldn't  
23 come up in that kind of a tank.

24 Q. Would there be danger to the other inmates?

25 A. Of course.

1 Q. And what would that danger be?

2 A. Well, if you said --

3 MR. SULLIVAN: Judge, I object to this. This  
4 is philosophizing.

5 THE COURT: We have already had testimony to  
6 that effect. I will sustain the objection as cumulative  
7 at this point.

8 BY MR. HOYT:

9 Q. Thank you. Mr. Beck, how about whispering?  
10 If you saw two inmates whispering, how would you react  
11 to that?

12 A. Well, the rest of us inside the tank would  
13 want to know what is going on because there is no  
14 whispering in there. You don't even whisper over card  
15 games in that tank.

16 Q. Why is that?

17 A. Because it's cheating. And it's jail rules;  
18 you don't whisper amongst inmates in the jail.

19 MR. HOYT: No more questions. I might have  
20 one. Just one moment, please.

21 THE COURT: Sure.

22 BY MR. HOYT:

23 Q. Mr. Beck, were you aware that Mr. Hinkson had  
24 legal papers while in the cell?

25 A. Yeah. All of it was under his bed in what



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1 Q. Now, you got there after Thanksgiving;

2 correct?

3 A. Yes, sir.

4 Q. How many days after Thanksgiving?

5 A. Probably two or three.

6 Q. So we are talking -- Thanksgiving is always, I

7 think, November 25th so you are talking from --

8 THE COURT: Where do you get that, counsel?

9 Is that a new rule I don't know about?

10 MR. HOYT: Try the third Thursday.

11 MR. NOLAN: It's always a Thursday.

12 MR. SULLIVAN: The third Thursday, which

13 sometimes falls on the 25th.

14 THE COURT: Nice recovery, Mr. Sullivan.

15 All right. Let's get a question.

16 BY MR. SULLIVAN:

17 Q. Do you know what day Thanksgiving was last

18 November?

19 A. I don't, sir.

20 Q. All right. Tell us the best day that you know

21 that you arrived in "E" cell.

22 A. The 27th.

23 Q. 27th?

24 A. I would put that down as a guesstimation. I'm

25 not saying for a fact.

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1 Q. Is it sometimes loud in the cell?

2 A. Uh-huh.

3 Q. From what?

4 A. Noises from inmates, TV.

5 Q. Is it generally just loud in the jail?

6 A. No. When they shut that door, you are,

7 basically, inside; and it muffles a lot of the jail out.

8 You are just in that tank, and the door is about three

9 inches thick. So it muffles everything into that tank

10 which echoes off the walls, which is pretty loud.

11 Q. The TV is sometimes turned up loud in the

12 cell?

13 A. Yes.

14 Q. Do the inmates sometimes wear ear plugs?

15 A. At night only.

16 Q. Do they sometimes have to put covers over

17 their eyes because there is a light on?

18 A. In the mornings only.

19 Q. Did you ever put anything over your eyes so

20 you can sleep?

21 A. I can't sleep with it. I have tried it. I

22 have been trying it, actually, now; but it's hard. It's

23 like a headache all night because it's restrictive. Ear

24 plugs are, too. I don't wear them.

25 Q. Okay. Now, you are not telling the jury that

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1 you actually kept track of what people were doing in the

2 cell?

3 A. Of course not.

4 Q. Are you aware of what Mr. Hinkson did in the

5 cell?

6 A. Besides eat, sleep, and use the phone? That's

7 about it.

8 Q. Isn't that pretty much what everybody did?

9 A. Most of the time, yes. Play cards, eat, watch

10 TV -- just anything to kill time.

11 Q. You all would -- the only people you had to

12 talk to was each other; correct?

13 A. Exactly.

14 Q. Talking to each other wasn't anything of great

15 significance, was it?

16 A. Not unless you had a big story you were

17 telling, you know, family stories or if somebody new

18 somebody from the outside, where you grew up or

19 something like that.

20 Q. So you all would, occasionally, at different

21 times, chat? You talked about your background, your

22 life?

23 A. I would say, yes.

24 MR. SULLIVAN: Nothing further, Your Honor.

25 THE COURT: Anything further, Mr. Hoyt?

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1 MR. HOYT: A couple of quick questions.

2 THE COURT: Go ahead.

3

4 R E D I R E C T E X A M I N A T I O N

5 BY MR. HOYT:

6 Q. Mr. Beck, did Mr. Hinkson play cards and watch

7 TV?

8 A. Not that I recall. He watched a little bit of

9 TV. Not a lot, though.

10 Q. Do you recall the types of things that he did

11 a lot of in there?

12 A. He would be going over his work. He was

13 worried about his paperwork, trying to get things

14 together, when his next court date might be.

15 Q. Was he ever on the telephone?

16 A. All the time.

17 MR. HOYT: No further questions.

18 THE COURT: Anything further, Mr. Sullivan?

19 MR. SULLIVAN: Nothing else.

20 THE COURT: Mr. Beck, thank you. You may step

21 down.

22 THE WITNESS: Thank you.

23 THE COURT: I think there will be a slight

24 delay for our next witness. Be patient, ladies and

25 gentlemen.

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1 MR. NOLAN: If this is going to take a while,  
2 I can slip another witness in.  
3 THE COURT: I apologize, ladies and gentlemen.  
4 Logistics being what they are, it sometimes take a few  
5 minutes.  
6 THE COURT: Mr. Boursaw, would you stand right  
7 there? Raise your right hand, please.  
8 \* \* \*  
9 MARK RODNEY BOURSAW,  
10 having been called, sworn, testified as follows:  
11 THE COURT: Please be seated. Please state  
12 your name and spell your last for the court reporter.  
13 THE WITNESS: My name is Mark Rodney Boursaw,  
14 B-O-U-R-S-A-W.  
15 THE COURT: Mr. Hoyt?  
16 MR. HOYT: Thank you, Your Honor.  
17  
18 DIRECT EXAMINATION  
19 BY MR. HOYT:  
20 Q. Good afternoon, Mr. Boursaw. Okay. Very  
21 good.  
22 Mr. Boursaw, have you been a resident of the  
23 Ada County Jail during the months of November and  
24 December --  
25 A. Bless you.

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1 A. Yeah, we met. I got to know him a little bit.  
2 Q. And can you tell us -- did you observe that he  
3 had any indications of any physical disabilities?  
4 A. Well, I'm not a doctor; but he took medication  
5 every day. I don't know what kind of medication. And  
6 he slept a lot.  
7 Q. Okay. Did he ever indicate to you, by his  
8 gestures, that he had a little problem with his hearing?  
9 A. You know, the only thing that I noticed about  
10 him, because we were in such a small area and there were  
11 eight of us at times, is he would often ask to have the  
12 TV turned up.  
13 We only had a thirteen-inch. There were eight  
14 of us in the room. That was the only thing I could see.  
15 I never asked him. He never conveyed to me; but it  
16 seemed like he either wanted it up loud or something of  
17 that nature.  
18 Q. Did you get to know him, you know, and talk to  
19 him about some things that you had done outside of jail  
20 that he had a similar interest in?  
21 A. Yes.  
22 Q. And just briefly, what types of things were  
23 those?  
24 A. Well, it may be hard to believe. At one time,  
25 I was a mortgage broker. He told me he owned a

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1 Q. -- of 2004?  
2 A. Yes.  
3 Q. And while there, were you a resident in the  
4 "E" tank?  
5 A. Correct.  
6 Q. Was Mr. Hinkson also a resident there?  
7 A. Yes.  
8 Q. And how about Mr. Chad Croner?  
9 A. Yes.  
10 Q. And the names Richard Beck and Frank Nicolai?  
11 A. Yes.  
12 Q. Now, just a quick review, if we might. What  
13 has been introduced as Exhibit N is a diagram. I just  
14 am putting it on the screen to just show it to you. It  
15 indicates a front door at one end and a TV mounted on  
16 the wall at the other end. Do you recognize this  
17 diagram?  
18 A. And somebody did some great work on it. Yes,  
19 yes.  
20 Q. Does it appear to be the general outlines, not  
21 to scale necessarily, but the general outlines of the  
22 "E" tank?  
23 A. Yes.  
24 Q. All right. Now, Mr. Boursaw, when you were in  
25 the "E" tank, did you meet and get to know Chad Croner?

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1 construction company and that he was a contractor. So  
2 we kind of had that in common. With my --  
3 MR. SULLIVAN: Your Honor, I object. I don't  
4 see the relevance.  
5 THE COURT: I think it is all right, just to  
6 establish background. Overruled.  
7 Go ahead. Go ahead, Mr. Boursaw.  
8 THE WITNESS: Anyway, we would just touch base  
9 on a few things back and forth once in a while, not too  
10 much into it but just, you know, bits and pieces.  
11 BY MR. HOYT:  
12 Q. Was Chad Croner a really friendly, outgoing,  
13 gregarious kind of guy?  
14 A. You mean, like me?  
15 Q. Like you?  
16 A. No.  
17 Q. Where did he spend the majority of his time in  
18 "E" tank?  
19 A. On his bed.  
20 Q. Were you in "E" tank 24, seven, from the time  
21 that Chad first got in there until the time he left?  
22 A. Yeah.  
23 Q. Now, during the time that you were in there --  
24 let's see if we have got the diagram in front of us. We  
25 have some indications -- tell us where Mr. Hinkson's

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1 bunk was, if you would, please.

2 A. Mr. Hinkson's was right over here by the  
3 phone -- by the front door.

4 Q. Where I am pointing? Right there?

5 A. There you go.

6 Q. Was that the bottom or the top bunk?

7 A. He had the bottom.

8 Q. And do you see anything that might be the  
9 telephone in that diagram?

10 A. Yeah. Isn't this the telephone right here,  
11 where it says "A," because the front door -- the front  
12 door is right next to the phone. Yeah.

13 Q. Where did Mr. Croner bunk?

14 A. He bunked next to me. I was over here, the  
15 first bunk where it says "access door." He was in "C;"  
16 and I was right there where you are pointing now.

17 Correct.

18 Q. Top or bottom?

19 A. We were both on top.

20 Q. Top?

21 A. I had just got there. In fact, Chad had got  
22 there and --

23 THE COURT: Just a minute, Mr. Boursaw. Wait  
24 for another question.

25 THE WITNESS: Sorry about that.

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1 BY MR. HOYT:

2 Q. I am going to write the word "top." Is that  
3 in the correct bunk?

4 A. Yeah.

5 Q. For you?

6 A. Sure.

7 Q. I'm going to -- I am just going to put the  
8 initials "MB" for Mark Boursaw there. All right?

9 A. Okay.

10 Q. Does that represent your bunk? Okay. Now,  
11 sir, you were indicating that you had -- did you ever  
12 associate together, eat together at the table?

13 A. Every meal.

14 Q. And when you were at the table, did Mr. Croner  
15 typically participate in the discussion with the other  
16 inmates?

17 A. Not very often. Not very often.

18 Q. Do you recall that Mr. Croner engaged  
19 Mr. Hinkson in conversation while he was there?

20 A. Not very often.

21 Q. What do you recall about the conversations  
22 between Mr. Hinkson and Mr. Croner?

23 A. Mr. Hinkson is involved in a company called  
24 WaterOz. It's got minerals, and so they would talk  
25 about minerals once in a while but not very often

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1 because Mr. Hinkson's bed --

2 MR. SULLIVAN: I object, Your Honor. I think  
3 the question was answered.

4 THE COURT: I believe it was.

5 Mr. Boursaw, we have to do this by question  
6 and answer.

7 THE WITNESS: I'm a talker.

8 THE COURT: I can tell that. I see that. But  
9 we have to do it by the rules, okay?

10 THE WITNESS: Okay. Not a problem.

11 BY MR. HOYT:

12 Q. I'm going to orient you towards Mr. Hinkson's  
13 bed and ask you if any discussions took place there?

14 A. Yeah, every once in a while. Because Chad  
15 would be waiting on the phone and because his bunk was  
16 there, that's where people would sit while they would be  
17 waiting on the phone.

18 Q. Did you and anyone else gather to discuss  
19 WaterOz or mineral issues with Mr. Hinkson?

20 A. Yeah. Me and Dave talked all the time.

21 Q. Where did you conduct your discussions?

22 A. Oh, sometimes on his bed. You know, it was a  
23 very small area; so you didn't have much room. It  
24 wasn't like this, in here. It's very, very small.

25 THE COURT: Mr. Boursaw, the question is,

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1 "Where?" That's all you need to answer. Just tell us  
2 where you had the conversation.

3 THE WITNESS: Either on the bed or -- I'm  
4 sorry, Your Honor.

5 THE COURT: That's okay.

6 THE WITNESS: -- or in the table area.

7 BY MR. HOYT:

8 Q. Did anybody else participate in those  
9 discussions about minerals with you?

10 A. No, not very often. It was mostly me and  
11 Dave, and we had maybe one or two people who'd maybe  
12 listen in a little bit along the way. Mostly, it was me  
13 and Dave.

14 Q. And did you talk about health issues?

15 A. Yes, because I'm in the health and fitness  
16 industry, as well. I was a personal trainer. I ran a  
17 few health clubs. So, yeah, we talked about health  
18 issues, as well.

19 Q. Did you, in fact, gain an interest in doing  
20 something with WaterOz products after you get out of  
21 jail?

22 A. Yes.

23 Q. And you hope to do that?

24 A. Eventually.

25 Q. Now, the first question: If Mr. Hinkson had

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1 had a conversation with Mr. Croner while you were in the  
2 cell with them and Mr. Hinkson had asked Mr. Croner to  
3 murder someone, would you have heard that?

4 MR. SULLIVAN: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. HOYT:

7 Q. Mr. Boursaw, tell us about your ability to  
8 listen to or overhear conversations between other  
9 inmates.

10 A. Because the dynamics of that area is so small  
11 and with the TV on from, oh, 11:00 or 12:00 o'clock --  
12 and we all slept till 12:00 every day. It's so small.  
13 You are all on the same program.

14 From 11:00 to 12:00 at night, you would have  
15 to talk pretty loud to convey any kind of conversation  
16 with anybody else. It's pretty hard to whisper or hide  
17 a conversation; that much I can tell you.

18 Q. Why is it hard to whisper or hide a  
19 conversation?

20 A. Because it was so small. There was, I mean --  
21 I mean, I'm not kidding you. When I say this was a  
22 small area, this is a small area.

23 Q. How would other inmates react if two inmates  
24 were whispering?

25 MR. SULLIVAN: I object, Your Honor.

1 THE COURT: Sustained.

2 This is cumulative, Mr. Hoyt.

3 BY MR. HOYT:

4 Q. Mr. Boursaw, my question is: Did you ever  
5 hear Mr. Hinkson ask Mr. Croner if he could hire  
6 Mr. Croner to go and commit a murder?

7 A. No.

8 Q. If Mr. Croner has been in here and indicated  
9 that such a conversation took place during the time that  
10 you were in the "E" tank with them, would you have heard  
11 it?

12 MR. SULLIVAN: Objection, Your Honor.

13 THE COURT: Sustained.

14 THE WITNESS: Why don't you ask me if I  
15 believe that --

16 THE COURT: Mr. Boursaw, we don't do it that  
17 way. He asks the questions, and you provide the  
18 answers.

19 MR. HOYT: I appreciate that, Mr. Boursaw.

20 THE COURT: I do not. The witness has been  
21 instructed.

22 Ask your next question.

23 BY MR. HOYT:

24 Q. Mr. Boursaw, did the subject of murder for  
25 hire, homicide, or killing federal officials ever come

1 up while you were in the "E" tank?

2 A. No.

3 MR. SULLIVAN: Objection, Your Honor. There  
4 is no foundation whether he would -- how he would know.

5 THE COURT: I will allow that question and  
6 answer to stand.

7 BY MR. HOYT:

8 Q. Do you know, if Mr. Hinkson was not talking to  
9 you about health issues, what other activities he  
10 engaged in during the day? Was he ever on the  
11 telephone?

12 A. He was on the telephone to his company.

13 Q. Was he ever on the telephone to his attorney,  
14 to your knowledge?

15 A. Sure. Yeah.

16 Q. If someone was sitting at the end of the bed  
17 of Mr. Hinkson, would that person be able to overhear a  
18 conversation on the telephone?

19 A. Yes, yes.

20 MR. HOYT: If I might have a moment, please,  
21 Your Honor?

22 THE COURT: Of course.

23 BY MR. HOYT:

24 Q. Did there come a point in time when you were  
25 called out, along with all of the other inmates, and

1 taken out of the "E" tank?

2 A. You mean, like a search?

3 Q. Yes.

4 A. Yeah.

5 Q. And was that while Chad Croner was in the "E"  
6 tank, or was it after he left?

7 A. Well, actually, there was two different  
8 incidents. The first time was when they were fixing the  
9 plumbing. Chad was still in there. We had a toilet  
10 problem and a sink problem.

11 And then about a week or ten days later, right  
12 after -- it might have been a couple days after Chad had  
13 been moved -- they came in and searched again, and they  
14 put us all in a separate tank.

15 Q. The first time when there was a plumbing  
16 problem, did they put everybody in a different tank?

17 A. Yes, the same tank.

18 Q. Was it smaller or larger than "E" tank?

19 A. A little bit smaller, like a holding tank.

20 Q. And when you came back from that time that you  
21 were removed, did you notice whether or not legal papers  
22 had been gone through?

23 A. The first time or the second time?

24 Q. Either time.

25 A. The first time, no. The second time, yes.

1 MR. HOYT: No further questions. 1414  
2 THE COURT: All right. Mr. Sullivan?  
3  
4 CROSS EXAMINATION  
5 BY MR. SULLIVAN:  
6 Q. Mr. Boursaw, do you have a felony conviction?  
7 A. Yes, sir, I do.  
8 Q. Do you have more than one?  
9 A. Yes, sir, I do.  
10 Q. How many do you have?  
11 A. Four -- five. One or the other.  
12 Q. Are you presently serving a sentence?  
13 A. For misdemeanors, yes, sir, I am.  
14 Q. Do you have a felony conviction from 1994?  
15 A. Yes, sir, I do.  
16 Q. And what is the nature of that conviction?  
17 A. That was for burglary.  
18 Q. What is your most recent felony conviction?  
19 A. 1994.  
20 Q. You mentioned something about cell searches  
21 just now. Do the corrections officers search the cells?  
22 A. Are you talking about this last incident?  
23 Q. Yes.  
24 A. Yeah, they did search the cell.  
25 Q. What approximate date was that?

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1 A. Maybe around the 5th to 10th of December, 1415  
2 somewhere in that area. I know because I got moved on  
3 the 17th. I am thinking it was about ten days before  
4 that.  
5 Q. And you know that the corrections officers  
6 search for contraband, don't they?  
7 A. Yes, they do.  
8 Q. That could be a whole lot of different things?  
9 A. It could be a whole lot of things.  
10 Q. Contraband doesn't necessarily mean, like,  
11 drugs? It could be --  
12 A. Knives. It could be knives. It could be ink  
13 pens. It could be tattoo guns. It's many different  
14 things.  
15 Q. Some of it is pretty innocuous, too?  
16 A. Of course.  
17 Q. Do you have any understanding of what the  
18 corrections officers were searching for in this occasion  
19 you just named?  
20 A. I had an interview and they -- someone had  
21 mentioned what they thought it was. To this day, I  
22 still don't know.  
23 Q. You weren't present for the search, though;  
24 correct?  
25 A. No, sir. I was in the tank.

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1 Q. All of the "E" tank inmates were removed; 1416  
2 correct?  
3 A. Into that holding tank, yes.  
4 Q. You didn't see what happened?  
5 A. No.  
6 Q. Now, was that the first search or the second?  
7 A. The second one. The first one, they did it  
8 just for the plumbing situation. They had a couple  
9 maintenance people come in and fix that. We were gone  
10 for about an hour. Then about a week or ten days later,  
11 they did the second one.  
12 Q. Now, you said that you have observed  
13 Mr. Hinkson on the phone to his company?  
14 A. Correct.  
15 Q. Did he talk to someone at the company  
16 frequently?  
17 A. Yes.  
18 Q. Do you know who he talked to?  
19 A. Not always, no.  
20 Q. Did he ever tell you?  
21 A. Once in a while.  
22 Q. Who did he tell you he was in contact with?  
23 A. Like, the owner -- I mean, the president  
24 that's running the company.  
25 Q. In his absence?

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1 A. Yes. 1417  
2 Q. Do you know that person's name?  
3 A. I believe his first name is Greg.  
4 Q. Would that be Greg Towerton?  
5 A. I believe so. I don't know Greg's last name.  
6 I'm sorry.  
7 Q. Now, Mr. Hoyt asked you a question on direct,  
8 something to the effect that you hoped to get into the  
9 health profession when you get out of jail?  
10 A. No. I'm already in the health and fitness  
11 profession. I was just interested in investigating more  
12 about the WaterOz product.  
13 Q. Have you discussed with Mr. Hinkson the  
14 possibility of working for him?  
15 A. Yes.  
16 Q. What was that discussion about? What did you  
17 say, and what did he say?  
18 A. Well, he is looking for some good sales people  
19 that are dynamic, outgoing, and don't know when to shut  
20 up. I'm one of those guys; so I figured, yeah, I'll  
21 take the job.  
22 Q. Did he offer you a job?  
23 A. Yes.  
24 Q. What did he offer you?  
25 A. He offered me a sales position.

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1 Q. You say you are just in on misdemeanors;  
2 correct?

3 A. Correct. Yes, sir.

4 Q. You may be getting out of prison sometime  
5 soon?

6 A. Yes, sir.

7 Q. How soon do you think?

8 A. March 14th.

9 Q. And do you have some understanding that you  
10 might talk to this guy Greg, the manager?

11 A. Correct.

12 Q. Did you ever talk with Greg over the phone?

13 A. Yes. I have met Greg.

14 Q. He has come to the Ada County Jail?

15 A. No. I met him over the phone, yeah. Before  
16 he wanted to give me an opportunity to work for him, he  
17 wanted to talk to me. I am sitting in jail. It's hard  
18 to hire someone when they are sitting in jail so --

19 Q. Was that the subject of your discussions with  
20 Greg, the possibility of a position?

21 A. Employment, yes. Correct.

22 Q. And sales?

23 A. Correct.

24 Q. Because you are a good talker?

25 A. And a good seller.

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1 A. I would rather not discuss that.

2 THE COURT: You have to answer the question.

3 THE WITNESS: I have to answer that?

4 THE COURT: Yes.

5 THE WITNESS: My personal --

6 THE COURT: The jury is entitled to know how  
7 much you expect to make.

8 THE WITNESS: \$1,000 base, fifty percent  
9 commission. If I put together a sales team, I get  
10 whatever I want, if I want 25 or 10. I plan on putting  
11 a couple of different sales teams together and really go  
12 after this thing. I think he has an incredible product  
13 and --

14 BY MR. SULLIVAN:

15 Q. What does a \$1,000 base mean?

16 A. \$1,000 base? That means it doesn't matter how  
17 many hours a month I work; I have a \$1,000 base.

18 Q. \$1,000 a month?

19 A. Base. Plus fifty percent commission of  
20 everything I sell. Plus, if I put together a sales  
21 team, I get a piece of all of that commission team.

22 Q. What do you expect to make?

23 A. A whole bunch.

24 Q. Good luck.

25 A. Thank you very much.

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1 Q. A good seller?

2 A. Can't you tell?

3 Q. Have you been hired?

4 A. Yes, if I can ever get out of jail.

5 Q. Do you expect to get out in March?

6 A. March 14th. Unless you change it, it's going  
7 to be March 14th.

8 Q. But you are on -- you are on state -- you have  
9 a state problem?

10 A. Yeah. I'm here for a couple of misdemeanors;  
11 correct.

12 Q. Do you know if Mr. Hinkson directed Greg to  
13 hire you?

14 A. No. We actually had a pow-wow, all three of  
15 us. We talked. I'm bringing in some new dynamics of  
16 sales that they hadn't really touched base on too much.  
17 I thought it could be very effective.

18 I actually have a pretty extensive background  
19 in sales and marketing, advertising, and they thought I  
20 could be a really great addition to the team, and so did  
21 I.

22 Q. Did you have any understanding what your  
23 starting salary would be?

24 A. Yes.

25 Q. What is that?

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1 MR. SULLIVAN: No other questions, Your Honor.

2 THE COURT: Mr. Hoyt, any redirect?

3 MR. HOYT: Just briefly, Your Honor.

4

5 R E D I R E C T E X A M I N A T I O N

6 BY MR. HOYT:

7 Q. Mr. Boursaw, I will show you what is marked as  
8 Exhibit O. Do you recognize that document?

9 A. Actually, I do.

10 Q. Does that document have your signature on it?

11 A. Yes, sir, it does.

12 MR. SULLIVAN: That's outside the scope of  
13 cross.

14 THE COURT: Sustained.

15 BY MR. HOYT:

16 Q. All right. Mr. Boursaw, you mentioned an  
17 interview during cross-examination. Were you  
18 interviewed?

19 A. By?

20 Q. By anyone?

21 A. Sure.

22 Q. Who were you interviewed by?

23 A. I was interviewed by you, and I was  
24 interviewed by two federal agents.

25 Q. Did those federal agents in that interview

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1 make an offer to you?

2 A. No, they did not make an offer to me.

3 Q. What did they ask you to do?

4 A. They wanted to know what was going on, what I

5 knew, what was going on with Dave Hinkson, the situation

6 with him and Chad, anything that I knew pertinent to the

7 case.

8 Q. What did you tell them?

9 A. I told them I didn't know anything.

10 Q. Did you tell them that you had signed a

11 document while you were in there?

12 A. I don't think so.

13 Q. Did they -- did they make you any -- did they

14 suggest to you that, if you would testify against

15 Mr. Hinkson, they would give you any special

16 consideration?

17 A. No. The reason why they didn't is because

18 they knew I was getting out of jail pretty soon.

19 THE COURT: Answer the question "yes" or "no."

20 THE WITNESS: No, they didn't.

21 MR. HOYT: No further questions.

22 THE COURT: Anything further, Mr. Sullivan?

23 MR. SULLIVAN: Nothing, Your Honor.

24 THE COURT: Thank you, Mr. Boursaw. You may

25 step down.

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1 DIRECT EXAMINATION

2 BY MR. NOLAN:

3 Q. Mr. Oleson, you live where?

4 A. Right now I live in Garden Valley.

5 Q. Last Monday, were you here in court in

6 Department 1 -- or Courtroom Number 1?

7 A. Yes. No, not -- 2, wasn't it?

8 Q. Number 2? It was Number 2?

9 THE COURT: The courtroom across the hall?

10 BY MR. NOLAN:

11 Q. The courtroom across the hall?

12 A. Yes, sir.

13 Q. You met some of the people here in the jury

14 box; correct?

15 A. I never did meet them personally, no.

16 Q. You met the people here?

17 A. Yes.

18 Q. You were called as a witness; is that right?

19 A. A prospective juror, as I recall.

20 Q. You were called as a prospective juror?

21 A. Yes, sir.

22 Q. All right. Thank you for coming back. We

23 appreciate -- I appreciate that. Can you tell us how

24 long you lived in the town you had lived in?

25 A. Where I live now, I have only lived there a

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1 THE WITNESS: Thank you.

2 MR. NOLAN: May I get my next witness?

3 THE COURT: Yes, please.

4 THE WITNESS: Good luck, Dave.

5 MR. NOLAN: I would like to call William

6 Oleson.

7 THE COURT: Mr. Oleson, would you step forward

8 and be sworn, please?

9 THE COURTROOM CLERK: Just stop right there.

10 Raise your right hand.

11 \* \* \*

12 WILLIAM HENRY OLESON,

13 having been called, sworn, testified as follows:

14 THE COURTROOM CLERK: Please take the stand.

15 Please state your name and spell your last name for the

16 record.

17 THE WITNESS: William Henry Oleson,

18 O-l-e-s-o-n.

19 THE COURTROOM CLERK: Thank you.

20

21

22

23

24

25

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1 year. I lived in New Plymouth for about twenty years.

2 Q. New Plymouth is where?

3 A. Over on -- close to the Idaho, Oregon border.

4 Q. You were asked a question, as a prospective

5 juror, as to whether you knew any witnesses?

6 THE COURT: Counsel, let's rephrase the

7 question. I think that is an improper question because

8 it elicits facts that -- it elicits information from the

9 jury pool. Just ask him the question.

10 BY MR. NOLAN:

11 Q. I will try to do that. Do you know a person

12 by the name of Chad Croner?

13 A. Yes, sir.

14 Q. And what do you know Mr. Croner's occupation

15 to be?

16 A. The last I heard, he had a construction

17 company over in Kima.

18 Q. And would you describe what Mr. Croner looks

19 like, for the jury, please?

20 A. Last time I saw him, bright red hair and kind

21 of a scrawny, young guy, about thirty.

22 Q. All right. How do you know Mr. Croner?

23 A. Well, he was raised in New Plymouth and

24 graduated from high school with my middle son; and his

25 sister was also married to my nephew.

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1 Q. So far about how many years did you know him  
2 at New Plymouth?

3 A. Oh, probably about seven or eight.

4 Q. Did you have occasion to -- did you get to  
5 know him on a personal basis?

6 A. Not on a real close, personal basis, no.

7 Q. Did you know about how he was perceived in the  
8 community?

9 A. He had a reputation that --

10 THE COURT: Just answer the question "yes" or  
11 "no." Do you know his reputation?

12 THE WITNESS: Yes, sir.

13 BY MR. NOLAN:

14 Q. And did you know that because you had talked  
15 to other people about him, and it was sort of general  
16 knowledge?

17 A. Yes, sir.

18 Q. All right. And what was his reputation in the  
19 community?

20 MR. SULLIVAN: Objection, Your Honor, to the  
21 form of the question.

22 THE COURT: Overruled.

23 THE WITNESS: It was less than desirable. He  
24 had a tendency to fabricate truths or anything else to  
25 make him look good.

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1 trying to do is -- and this came out of him naturally.  
2 He says, "When he gets into trouble, he lies to get out  
3 of it."

4 I was trying to see if I could formulate a  
5 question which would be appropriate, and I don't think I  
6 can.

7 THE COURT: I don't think you can either. I  
8 think you have gone as far as you can go with this  
9 witness.

10 MR. NOLAN: I am going to ask his personal  
11 opinion. I get to ask his personal opinion as to his  
12 honesty. I get to ask community reputation and personal  
13 opinion.

14 THE COURT: I will allow that.

15 (Whereupon, the following proceedings were  
16 held in open court, in the presence of the jury:)

17 BY MR. NOLAN:

18 Q. Mr. Croner -- Mr. Oleson -- my apologies -- do  
19 you have a personal opinion as to the character of  
20 Mr. Croner for honesty and veracity?

21 A. Oh, I wouldn't believe anything he told me.

22 MR. NOLAN: I have no further questions.  
23 Thank you very much.

24 THE COURT: Cross-examination?  
25

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1 BY MR. NOLAN:

2 Q. Did that reputation have anything to do --  
3 let's see if I can phrase this right.

4 THE COURT: Counsel, follow the rule.

5 MR. NOLAN: Believe me; I think I'm aware, and  
6 I'm trying.

7 THE COURT: I know you are. Go ahead.

8 BY MR. NOLAN:

9 Q. The reputation for honesty that you just  
10 referred to, would it come up in the context of any  
11 particular setting? In other words, would there be  
12 circumstances where that reputation would come up?

13 THE COURT: Let me see counsel at sidebar.  
14 (Whereupon, the following sidebar discussion  
15 was held outside the presence of the jury:)

16 THE COURT: Mr. Nolan, the reason I stopped  
17 you is because I am concerned about the fact that we  
18 have fifty some odd witnesses listed on the defense  
19 list. You are perfectly entitled to call this witness  
20 as a character witness, but the rule is very clear.

21 You can simply ask him if he knows his  
22 reputation and what that reputation is. You are not  
23 permitted to go into specific instances, which is where  
24 your question was headed. I want to be clear on that.

25 MR. NOLAN: I completely agree. All I was

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CROSS EXAMINATION 1429

1 BY MR. SULLIVAN:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. When is the last time you had personal contact  
5 with Chad Croner?

6 A. I haven't had any personal contact with him  
7 since he started his business in Ruma.

8 Q. I can't hear you.

9 A. I said, I haven't had any personal contact  
10 with him since he started his business in Ruma.

11 Q. How many years ago was that?

12 A. I couldn't tell you for sure. It's been about  
13 five years, I think, or something like that.

14 Q. You haven't seen or spoken to him in five  
15 years?

16 A. I have seen him in New Plymouth; but I haven't  
17 really spoken to him, no.

18 Q. Did you say that his sister or his brother is  
19 married to a nephew?

20 A. His sister was married to my nephew.

21 Q. And how many years ago did they get married?

22 A. I think it's approximately thirteen because  
23 the oldest son is about twelve.

24 Q. When is the last time you had any contact with  
25

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1 his sister?

2 A. I haven't seen her since her and my nephew got

3 divorced and she moved over towards Kuna, too, sir.

4 Q. What year did they get divorced?

5 A. I think it was about five years ago, sir.

6 Q. Is that the last time you had any contact with

7 Chad Croner?

8 A. Yes, sir.

9 MR. SULLIVAN: I have no further questions,

10 Your Honor.

11 THE COURT: Anything further, Mr. Nolan?

12 MR. NOLAN: No. Thank you.

13 THE COURT: Mr. Oleson, you are excused. You

14 may step down. Thank you very much.

15 THE WITNESS: Thank you, sir.

16 MR. HOYT: Your Honor, I would like to have an

17 opportunity to step out to call the next witness.

18 THE COURT: Very well.

19 MR. HOYT: We would call to like Jo Anne

20 Huger. We will be right back.

21 MR. NOLAN: We struck the next two witnesses

22 on the list.

23 THE COURT: I understood that. Thank you.

24 THE COURTROOM CLERK: If you would, stand here

25 and raise your right hand, please.

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1 Q. Can you give the jury a little bit of your

2 background, in terms of -- let's see -- your level of

3 schooling?

4 A. One year of college.

5 Q. And have you ever been employed by the U.S.

6 Government?

7 A. Yes, sir.

8 Q. For approximately how many years?

9 A. Approximately twelve years.

10 Q. And during those twelve years, what

11 departments did you work for?

12 A. The Department of Defense and the Department

13 of Agriculture.

14 Q. When you first worked for the Department of

15 Defense, where did you work?

16 A. The Pentagon, Office of Naval Intelligence in

17 Washington, DC.

18 Q. Did you have a security clearance then?

19 A. Yes, I did, a top secret.

20 Q. And your husband's occupation throughout your

21 marriage?

22 A. He was in the Army.

23 Q. And did you have residences in various

24 locations consistent with his assignments?

25 A. Yes, sir.

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1 JO ANNE HUGER,

2 having been called, sworn, testified as follows:

3 THE COURTROOM CLERK: You may take the stand

4 right up here, please.

5 You might need to kind of scoot up to the

6 microphone. If you would, state your name and spell

7 your last name, please.

8 THE WITNESS: Jo Anne Huger, H-o-u-g-e-r.

9 THE COURTROOM CLERK: Thank you.

10 THE COURT: Good afternoon, Ms. Huger.

11 MR. NOLAN: Can we test this for a moment,

12 Your Honor?

13 THE COURT: Sure.

14 MR. NOLAN: Thank you.

15

16 DIRECT EXAMINATION

17 BY MR. HOYT:

18 Q. Ms. Huger, where do you live?

19 A. Grangeville, Idaho.

20 Q. And by whom are you employed?

21 A. WaterOz.

22 Q. And where is WaterOz located?

23 A. Outside of Grangeville.

24 Q. Does your husband also work at WaterOz?

25 A. Yes, he does.

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1 Q. And how long have you resided in the

2 Grangeville area?

3 A. My husband retired in '94; and that's when we

4 returned to Grangeville, 1994.

5 Q. And when did you go to work for WaterOz?

6 A. December 2000.

7 Q. And what do you do now? What is your job

8 title or description for WaterOz?

9 A. I'm the office manager in the sales

10 department.

11 Q. And during the time that you have worked

12 there, did you ever have a chance to meet Mr. Hinkson?

13 A. Yes, sir.

14 Q. Did you work with him for a period of time?

15 A. Yes, sir.

16 Q. And let's turn to what has been marked as

17 Exhibit C-13. It's up on the monitor. I would ask you:

18 Can you identify C-13 for me, please?

19 A. That's the office that Greg Towerton, our

20 general manager, now occupies.

21 Q. And can you identify what has been marked as

22 Exhibit C-18?

23 A. Yes. That's actually the office --

24 MR. SULLIVAN: Objection, Your Honor, in terms

25 of relevance. It's not clear what the point of all of

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1 this is.

2 THE COURT: Let's, at least, lay a foundation

3 for it. I will ask Mr. Hoyt to tie in the relevancy.

4 BY MR. HOYT:

5 Q. Thank you. Ms. Huger, can you describe for

6 the court the surroundings, where you work, and the type

7 of business that WaterOz is engaged in?

8 A. This is, actually, a photograph of my desk, on

9 the right, that I have occupied since my beginnings at

10 WaterOz.

11 Q. And what type of business is WaterOz?

12 A. Manufacturing of water-soluble minerals.

13 Q. And does it also handle sales?

14 A. Yes. We actually handle sales on the phone.

15 Q. And are there, also, Internet sales?

16 A. Yes. We have Internet, fax, e-mail, and

17 telephone.

18 MR. HOYT: And we would offer Exhibit C-18,

19 Your Honor, as a representation of the office where

20 Ms. Huger works.

21 THE COURT: Let me see counsel at sidebar.

22 (Whereupon, the following sidebar discussion

23 was held outside the presence of the jury:)

24 MR. TAXAY: The Government objects because we

25 don't understand the relevance of any of this.

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1 couple of photographs and move on. It's not extensive.

2 MR. NOLAN: I just want the court to know I am

3 going to do everything I can to cut witnesses and to get

4 it to be relevant and things like that.

5 In my opening statement, I wanted them to see

6 WaterOz. There are lots of communications that go on.

7 There is also -- quite frankly, the theory of the

8 defense is that there is this very valuable item and

9 they are taking it over because they think our guy is a

10 jerk and they don't think he deserves to have this kind

11 of a cash cow.

12 And this is where it happens. There is

13 nothing mysterious about it. It's not like a militia,

14 things like that.

15 So there is nothing more than what I put in my

16 opening statement. We just have to put them into

17 evidence. We can do it by stipulation. If the

18 Government wants to move it along faster, we can do

19 things by stipulation.

20 But each witness is -- for example, she's

21 going to establish that he has a character for being

22 generous. It's very simple; but that's important

23 because he seems to be offering people everything, every

24 time.

25 So is he generous? Does he muth off in your

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1 THE COURT: The court is having the same

2 concern.

3 Mr. Hoyt, what is the relevance?

4 MR. HOYT: The relevance is to give a general

5 background of Mr. Hinkson and the circumstances. He has

6 been accused of some pretty serious offenses here. It's

7 important for the purposes of establishing general

8 character and general demeanor what type of a person

9 Mr. Hinkson has been.

10 We are trying to distinguish between alleged

11 threats and solicitation and comments that he has made,

12 and we want to show the environment in which he works

13 with these people.

14 And we are going to ask these people about any

15 comments that he has made that might touch on the areas

16 that he is accused in. We are trying to create a

17 foundation and a background.

18 THE COURT: How many of these witnesses are we

19 talking about?

20 MR. HOYT: Well, we have some -- we have --

21 what we are doing is we have a number of witnesses that

22 will provide specific information, either impeachment or

23 showing bias of the Government witnesses.

24 But then they also can offer a small bit of

25 background, such as I was going to have her identify a

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1 presence? Does he say things? Again, we are trying to

2 keep it concise; but that's the nature of it.

3 THE COURT: All right. I will permit

4 Ms. Huger to identify a few photographs of WaterOz and

5 to, essentially, paint the picture for the jury that

6 this is a legitimate business that Mr. Hinkson has

7 established.

8 I do share the concern raised by the

9 Government's objection that some of the relevancy of

10 this, if we go too far, is too tangential.

11 I will allow you to proceed with Ms. Huger on

12 that basis.

13 MR. TAXAY: May I address one other point?

14 Counsel mentioned that they are intending to, I guess,

15 through this and other witnesses, raise the issue of the

16 defendant's character for generosity.

17 That was not an issue in this case. The

18 Government has put in no evidence and doesn't challenge

19 that, so that's totally irrelevant.

20 THE COURT: We will take this one step at a

21 time. Do you understand my concern? I certainly am

22 going to allow the defense to paint a general background

23 of the defendant, but I am concerned.

24 I appreciate the fact that counsel cut the

25 witness list in half over the weekend.

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1 MR. NOLAN: It's going to be cut more.

2 THE COURT: I appreciate it. Let's take it

3 with Ms. Houser, and we will deal with the generosity of

4 Mr. Hinkson down the road.

5 MR. SULLIVAN: As a procedural matter, they

6 are projecting these particular photos on the screen

7 before they have been admitted. You know, there is not

8 a big prejudice but --

9 MR. NOLAN: I showed them to the jury in

10 opening statement because I intended for them to go in.

11 If there was anything prejudicial about them, it should

12 have probably been raised before.

13 THE COURT: Counsel, the procedure that was

14 followed with regard to Exhibit C-13 and C-18 is not per

15 Hoyle. Given the fact that I didn't think there was

16 going to be any objection to it, I didn't stop counsel.

17 Let's do it by the rules.

18 (Whereupon, the following proceedings were

19 held in open court, in the presence of the jury:)

20 MR. HOYT: Your Honor, we would move for the

21 admission of C-13 and C-18.

22 THE COURT: Based upon the ruling at sidebar,

23 C-13 and C-18 are admitted.

24 (Whereupon, Defendant's Exhibit Nos. C-13 and

25 C-18 were received in evidence.)

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1 BY MR. HOYT:

2 Q. Thank you. Now, Ms. Houser, as a part of

3 functioning -- I believe you have an exhibit book in

4 front of you. It would be a black book. It would be

5 marked "Trial Exhibits Volume 1 of 2."

6 Thank you, counsel.

7 And it has in it something that is marked as

8 Exhibit E-1. I would ask you if you can turn to Exhibit

9 E-1 for me, please.

10 Can you tell the jury what Exhibit E-1 is?

11 Can you identify it for us, please?

12 A. Yes. That's the WaterOz Retail/Wholesale

13 Catalog.

14 Q. Does it describe, generally, the products that

15 are manufactured and sold by WaterOz?

16 A. Yes, sir.

17 Q. Can you, please, identify Exhibit E-2? I will

18 ask you if you can identify this document for me,

19 please.

20 A. Yes. That's the recommended protocols.

21 Q. And that was revised November of 2001;

22 correct?

23 A. Yes, sir.

24 Q. Can you identify Exhibit E-3 for me, please?

25 MR. SULLIVAN: Do these have Bates stamps?

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1 BY MR. HOYT:

2 Q. Thank you. At the bottom it says "0094," if

3 that's helpful.

4 A. This is the price list that was included in

5 the catalog on all of the minerals and products

6 manufactured as WaterOz.

7 Q. And Exhibit E-4? Can you identify that? One

8 page over.

9 A. These are the printed testimonials that we

10 have received feedback from our customers on.

11 Q. And were these marketing and sales pieces that

12 were used in the WaterOz business during the period of

13 2001, 2002, and 2003?

14 A. Yes, sir.

15 MR. HOYT: At this time, we would move the

16 admission of Exhibits E-1, E-2, E-3, and E-4.

17 THE COURT: Mr. Taxay?

18 MR. TAXAY: No objection, Your Honor.

19 THE COURT: Okay. Exhibits E-1, E-2, E-3, and

20 E-4 are admitted.

21 (Whereupon, Defendant's Exhibit Nos. E-1, E-2,

22 E-3, and E-4 were received in evidence.)

23 BY MR. HOYT:

24 Q. Ms. Houser, I want you to describe, briefly,

25 Mr. Hinkson for the jury, what kind of a boss he has

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1 been and what it's been like to work for him when he was

2 at WaterOz.

3 A. He is a very generous man. If there was

4 anyone who called up and said that they had a family

5 member who was very ill or needed assistance, he would

6 give the product to them rather than try to sell it to

7 them. We worked as a family.

8 THE COURT: Just a moment, Ms. Houser.

9 MR. TAXAY: Objection, Your Honor, with

10 respect to relevance. This doesn't go to the issues in

11 the case.

12 THE COURT: I am going to sustain that

13 objection. The jury will disregard that last answer.

14 BY MR. HOYT:

15 Q. Ms. Houser, during the time that Mr. Hinkson

16 was at WaterOz -- and now let's go to April 4, 2003,

17 which is the date that has been established is the day

18 of his arrest.

19 A. Okay.

20 Q. All right. So I'm thinking from the time that

21 you started at WaterOz until April 4, 2003. During that

22 time frame, did you ever overhear or observe Mr. Hinkson

23 making comments about people that he was involved with

24 on a legal basis?

25 A. No, not that I can recall.

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1 Q. Did he ever say anything about a Dennis Albers  
2 in your presence?

3 A. No.

4 Q. How about -- did he ever say, in your  
5 presence, anything about any federal judge or federal  
6 prosecutor or IRS agent?

7 A. No.

8 Q. Was Mr. Hinkson in your office during --  
9 strike that.

10 How often was Mr. Hinkson in your office while  
11 you were working at WaterOz?

12 A. Almost daily.

13 Q. Were you aware that Mr. Hinkson was involved  
14 in a lawsuit with an attorney named Dennis Albers?

15 A. Yes, I was.

16 Q. Were you aware that Mr. Hinkson was involved  
17 in an IRS investigation and something to do with a Grand  
18 Jury involving a Nancy Cook and a Steven Hines?

19 A. Yes.

20 Q. Those names are familiar to you?

21 A. Yes.

22 Q. Did you ever hear him make comments about  
23 those people?

24 A. Nothing other than that they were involved in  
25 the case.

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1 offer. This goes to bias and it goes to --

2 THE COURT: I am going to have to hear it  
3 because it sounds like hearsay, to me.

4 (Whereupon, the following sidebar discussion  
5 was held outside the presence of the jury:)

6 MR. HOYT: Your Honor, this is not being  
7 offered for the truth of the matter asserted but,  
8 rather, it's being offered to show bias, the bias of  
9 Mr. Harding, the reason why he was there.

10 THE COURT: What is she going to say?

11 MR. HOYT: She's going to say that he walked  
12 in and said -- she said, "What are you doing here?"

13 He said, "I'm here to take over WaterOz and  
14 get rid of Mr. Hinkson."

15 THE COURT: Okay. I will allow it.  
16 Overruled.

17 (Whereupon, the following proceedings were  
18 held in open court, in the presence of the jury:)

19 THE COURT: Go ahead, Mr. Hoyt.

20 BY MR. HOYT:

21 Q. Ms. Houser, on that occasion, did you ask  
22 Mr. Hinkson (sic.) why he was there?

23 THE COURT: Mr. Harding?

24 BY MR. HOYT:

25 Q. I'm sorry. I beg your pardon.

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1 Q. Now, did there come a time when a Mr. J. C.  
2 Harding, alias J. C. Steel, came to the WaterOz factory?

3 A. Yes.

4 Q. Do you remember if he had a companion with  
5 him?

6 A. Yes.

7 Q. And what was her name?

8 A. Arnie Bates.

9 Q. And Ms. Bates worked at the factory for a  
10 period of time; isn't that correct?

11 A. Yes, she did.

12 Q. Was that in the year 2003?

13 A. I believe it was early 2003.

14 Q. Do you recall Mr. Harding coming into your  
15 office where you worked?

16 A. Yes.

17 Q. And at that time, what name did you know him  
18 by?

19 A. J. C. Steel.

20 Q. And what did he say to you? What did you say  
21 to him?

22 A. I asked him --

23 MR. TAKAY: Objection.

24 THE COURT: Sustained.

25 MR. HOYT: Your Honor, I would like to make an

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1 Ms. Houser, did you ask Mr. J. C. Harding,  
2 alias J. C. Steel, why he was there?

3 A. Yes. I asked him if I could help him because  
4 he came into the front office from the factory.

5 Q. And what did he say to you?

6 A. He said, "No, you can't. I'm here to get rid  
7 of David," meaning David Hinkson, "and I'll be running  
8 things very soon."

9 Q. What did you say to him?

10 A. I asked him if he was ready to take on all of  
11 us girls, because we stick together like a family. And  
12 he said, "I can handle anything."

13 I told him to get out of the front office,  
14 that he didn't need to be there.

15 Q. Was there a time when Mr. Harding brought with  
16 him an individual named Anthony Hilder to prepare an  
17 info-mercial?

18 A. Yes.

19 Q. And did you observe Mr. Hilder?

20 A. Yes. I observed him going throughout the  
21 factory, videotaping.

22 Q. And did Mr. Harding say that he was in  
23 partnership with Mr. Hilder?

24 MR. SULLIVAN: Objection, Your Honor.  
25 Hearsay.

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1 THE WITNESS: No. 1446  
2 THE COURT: I am going to sustain that  
3 objection.  
4 BY MR. HOYT:  
5 Q. I would like to move forward to the time in  
6 December of 2004 -- strike that -- December 2003 when  
7 Mr. Rich Bellon obtained a temporary restraining order.  
8 Do you remember that time?  
9 A. Yes.  
10 Q. And during that time period, did you observe  
11 who came in with Mr. Swisher -- strike that.  
12 Did you observe who came in with Mr. Bellon  
13 when he brought in the temporary restraining order?  
14 MR. TAVAY: Objection, Your Honor. Lack of  
15 foundation.  
16 THE COURT: Sustained.  
17 BY MR. HOYT:  
18 Q. Ms. Huger, where were you working -- strike  
19 that. Were you working on the day of the Bellon  
20 takeover?  
21 A. No.  
22 Q. You weren't at the factory that day?  
23 A. No, sir.  
24 Q. When was the next time you came to the  
25 factory?

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1 the first of December of 2003, was running WaterOz? 1448  
2 A. Greg Towerton.  
3 Q. And then when you came back approximately the  
4 Monday after the takeover, who did you perceive were the  
5 people in charge of WaterOz?  
6 A. Mr. Rich Bellon.  
7 Q. And who else?  
8 A. Bruce Leavenan; Joe Swisher; and Paul Bellon,  
9 Rich Bellon's father.  
10 Q. Now, WaterOz makes liquid mineral products;  
11 isn't that correct?  
12 A. Yes, sir.  
13 Q. And those are made from what substance?  
14 A. Elemental minerals.  
15 Q. And are the recipes or formulas for making  
16 these minerals kept secret?  
17 A. Yes, sir.  
18 Q. And at that time, who was the mineral maker?  
19 A. Lonnie Birmingham.  
20 Q. And did the company ever disclose its trade  
21 secrets to third parties?  
22 MR. TAVAY: Objection, Your Honor. Lack of  
23 foundation.  
24 THE COURT: Sustained.  
25

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1 A. It would have been that following Monday. I 1447  
2 returned to work, even though I knew the takeover had  
3 taken place.  
4 Q. And did you -- were you made aware of the  
5 events that had transpired in the takeover?  
6 A. Yes.  
7 Q. And who were the parties that were responsible  
8 for the takeover at that time?  
9 MR. TAVAY: Objection, Your Honor. Again, no  
10 foundation.  
11 THE COURT: Sustained.  
12 BY MR. HOYT:  
13 Q. One moment, please. Ms. Huger, as of  
14 December 4th of 2003, who was in charge of WaterOz? Who  
15 was running the business up until the time of the  
16 takeover?  
17 A. It was Mr. Hinkson.  
18 Q. And did he designate anybody in his absence to  
19 assist with that?  
20 A. Yes.  
21 MR. TAVAY: Objection, Your Honor. Again,  
22 lack of foundation.  
23 THE COURT: Sustained.  
24 BY MR. HOYT:  
25 Q. Ms. Huger, who did you believe, as of, say,

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1 BY MR. HOYT: 1449  
2 Q. What was your perception of your  
3 responsibility as the office manager with regard to the  
4 secret recipes and formulas that you have just testified  
5 about?  
6 MR. TAVAY: Objection, Your Honor. Foundation  
7 hasn't been laid that that was part of her job.  
8 THE COURT: Sustained.  
9 BY MR. HOYT:  
10 Q. Did you have access to those formulas and  
11 recipes?  
12 A. No, I did not.  
13 Q. And did you have the right to disseminate them  
14 to the public?  
15 A. No.  
16 MR. HOYT: No further questions.  
17 THE COURT: Thank you. I think this would be  
18 a good time to take our evening recess, ladies and  
19 gentlemen. Please come back here tomorrow morning at  
20 9:00 a.m.  
21 Again, I remind you that the case is not over.  
22 Please do not discuss the case amongst yourselves or  
23 with anyone else, friends, family members.  
24 Do not do any independent research. Do not  
25 listen to the radio or television news if there are any

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1 reports about this case. Be back here tomorrow morning  
2 at 9:00 a.m.  
3 Thank you and have a good evening.  
4 (Whereupon, the jury was excused from the  
5 courtroom; and the following proceedings were held  
6 outside the presence of the jury:)  
7 THE COURT: You can step down, Ms. Houser.  
8 Mr. Nolan?  
9 MR. NOLAN: Very briefly, Your Honor, if the  
10 court wouldn't mind. I am having a little bit of  
11 confusion about the issue of generosity because I  
12 believe that certain character evidence, if it is  
13 relevant to the proceedings -- in this particular  
14 instance, we have the Government asking the jury to draw  
15 inferences from Mr. Hinkson's telling prisoners, for  
16 example, to put money on the books, to get a job, et  
17 cetera, and that there is a reason for that; that is,  
18 false testimony, et cetera.  
19 What I was hoping to do is to intersperse, as  
20 appropriate, without going too far, his character for  
21 generosity; in other words, that it's one of his  
22 characteristics, and so that the jury knows that there  
23 is a character that he has and so that the jury can then  
24 draw the inference that it's not for something else.  
25 It's part of his character. I think character

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1 rebuttal witnesses will be the FBI agent, which is no  
2 surprise.  
3 THE COURT: Given the way the testimony broke,  
4 I would be very surprised if they don't.  
5 MR. NOLAN: What I don't think is  
6 appropriate -- and I think it requires a hearing or some  
7 motion -- is that they were going to bring in the  
8 results of the polygraph test.  
9 THE COURT: Frankly, I was surprised I didn't  
10 get any objections.  
11 MR. NOLAN: We didn't know. We didn't have  
12 any reports.  
13 THE COURT: There is no --  
14 MR. HOYT: He passed the polygraph, Your  
15 Honor. I mean, we ought to bring it in.  
16 THE COURT: We are not going to allow the jury  
17 to consider polygraph evidence. I will be happy to give  
18 them an instruction in closing that they are not to  
19 consider anything about polygraphs.  
20 I know of no authority, except one District  
21 Court case in Texas, that permits it. That is not the  
22 law in the Ninth Circuit.  
23 MR. SULLIVAN: It is the law in the Eleventh  
24 Circuit. Pinochinino.  
25 THE COURT: You are in the Ninth Circuit now.

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1 isn't just honesty, veracity. It's anything that is  
2 relevant to the charges.  
3 In this particular case, I think a little bit  
4 of latitude may be appropriate. I'm asking the court to  
5 reconsider that at an appropriate time.  
6 THE COURT: Mr. Taxay?  
7 MR. TAXAY: Your Honor, the Government, in  
8 those instances, is showing specific bias. Mr. Towerton  
9 making a job offer to a witness the defense has called  
10 in this case is the kind of thing we were focused in on.  
11 That has nothing to do with giving people free bottles  
12 of WaterOz product.  
13 THE COURT: I think Mr. Taxay is right.  
14 I will let you do this: If you can give me a  
15 case cite by e-mail tonight that I can take a look at  
16 before tomorrow morning, I will consider what  
17 authorities you have.  
18 I am not sure your view of character evidence  
19 is quite as expansive as the Federal Rules of Evidence.  
20 If you can convince me to the contrary --  
21 MR. NOLAN: I have been pushing character  
22 evidence.  
23 THE COURT: I understand.  
24 MR. NOLAN: The next thing that the  
25 Government, obviously, informed us is that one of their

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1 We are going to follow the Ninth Circuit law. I am  
2 perfectly clear on what the law is on polygraph  
3 evidence. The answer is: No polygraph evidence.  
4 I want to take up the matter Mr. Hoyt raised  
5 this morning.  
6 I see Ms. Olson and Deputy Meyer are here.  
7 Mr. Hoyt, I think you have stated your  
8 objection.  
9 I think the most efficient way to proceed  
10 would be to put Deputy Meyer on the stand and have  
11 Ms. Olson briefly examine him so you will understand  
12 what happened over the weekend.  
13 Deputy Meyer, would you come forward and be  
14 sworn?  
15 Ms. Olson, you may take over for the United  
16 States.  
17 MS. OLSON: Thank you, Your Honor.  
18 \* \* \*  
19 DAVID MEYER,  
20 having been called, sworn, testified as follows:  
21 THE COURTROOM CLERK: Please state your name  
22 and spell your last name for the record.  
23 THE WITNESS: David Meyer, M-e-y-e-r.  
24  
25

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BY MS. OLSON:

Q. Good afternoon, Deputy Meyer. Would you please state for the record by whom you are employed and your position with the United States Marshal's Service?

A. I'm a Supervisor Deputy U. S. Marshal for the District of Idaho.

Q. In connection with your duties in the District of Idaho, does the Marshal's Service provide security and protect the lives of court personnel, including the judges?

A. Yes, we do.

Q. Deputy Meyer, in connection with your duties in the District of Idaho, in the matter of David Roland Hinkson, have you been conducting an investigation into certain threats or allegations of threats in connection with David Hinkson and comments he made to the Ada County Jail?

A. I have been conducting, in part, an investigation into some circumstances that occurred at the Ada County Jail, as well as some security issues having to do with prisoner security issues, which I handle almost exclusively out of our office.

Q. Deputy Meyer, specifically with respect to the prisoner security issues, have you conducted some

investigation in the last couple of weeks regarding telephone usage by David Hinkson at the Ada County Jail?

A. Yes, I have.

Q. And as a little bit of background, Deputy Meyer, what information do you have with respect to the Ada County Jail and the policy there for prisoners, access to the phones and whether those phones are recorded and/or -- phone calls are recorded and/or monitored?

A. The Ada County Jail has a phone system that has a recording system, a digital recording system as part of it. The recording system is actually monitored out of a company back East somewhere.

And, basically, what the jail is doing right now is they request the prisoners put in a kite, or a written request, when they have phone numbers that they don't want to have recorded.

All phone numbers that are made out of the Ada County Jail are recorded for security purposes, except those phone numbers or phone calls that are made to attorneys.

I requested some documentation and information from the Ada County Jail to get some concept of what Mr. Hinkson has requested, as far as his attorney calls versus calls to others that would otherwise be recorded.

Q. What did you learn with respect to what, if any, telephone numbers Mr. Hinkson had requested or asked the jail to put on a list of attorney numbers so that they would not be subject to the recording and/or monitoring policy at the Ada County Jail?

A. Mr. Hinkson has put in approximately seven or eight kites to the jail staff stating that certain phone numbers are his attorneys' phone numbers, and he lists in those kites over twenty phone numbers that would be his attorneys' phone numbers.

The jail, in turn, gets those kites at different times; and they take those kites, and they were turning off the recording of the phone numbers to the phone numbers that he has requested and that he stated are his attorneys' phone numbers.

Q. In addition to having found out that information, particularly for the period of January of 2005, did you learn -- what information did you gather regarding the number of phone calls that Mr. Hinkson was making to numbers that were on that do-not-record list?

A. Mr. Hinkson didn't use all of those numbers. He didn't call of those numbers, but he was certainly using several of them. When I checked to see what those phone numbers go to and who they are listed to, most of those phone numbers are listed to WaterOz.

Of all of the kites that he put in, only two of the phone numbers were listed to attorney phone numbers.

Now, after listening to a couple of phone conversations and trying to determine, through the phone company, I couldn't really determine exactly what Mr. Hinkson was doing with some of these phone numbers and some of the phone calls.

I did find that there is some sort of switching system that Mr. Hinkson has either located at his WaterOz location in Grangeville or somewhere else where he calls one phone number and that switches to a different phone number.

Now, whether he is calling a local phone number that he has through WaterOz and switching it to his attorney or the other way around, I believe that at least some of those phones are being -- phone numbers are being used to call whoever he wants to call and not necessarily his attorney.

Q. If I can stop you there for a minute, you indicated you have had listened to recorded phone calls. Were those recorded phone calls numbers that were not on the do-not-record list; that is, Mr. Hinkson would know they were going to be recorded?

A. That's correct. Those phone numbers were not

1 ones that he requested be not recorded.

2 Q. And just so the record is clear, they were not  
3 phone calls between Mr. Hinkson and any lawyer who has  
4 appeared for him either in connection with the tax case  
5 02-142-S-RCT, or the case that is currently being heard  
6 before this court, 04-127-S-RCT; is that correct?

7 A. That's correct.

8 Q. I'm sorry. Deputy Meyer, you indicated that  
9 by listening to the phone calls you determined that  
10 there was some sort of switching or call forwarding  
11 system going on; is that right?

12 A. Yes. Mr. Hinkson discusses that. He is asked  
13 on both phone calls that I listened to -- I only  
14 listened to two of them.

15 Mr. Hinkson requested of his wife or of the  
16 other person that he was speaking with, which I believe  
17 would be someone who works up at the WaterOz company,  
18 that the phone be fixed or the phone switch be fixed so  
19 that he is able to -- so he is able to talk more freely  
20 and not be recorded.

21 So those are security concerns that we have.  
22 When we find that sort of thing happening at the jail,  
23 we try to get that stopped so we are back to the way the  
24 policies are, which is phone calls to his attorneys are  
25 unrecorded and phone calls to others are recorded.

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1 Q. Deputy Meyer, as a result of your gathering  
2 that information in your investigation, what steps did  
3 you take to ensure that Mr. Hinkson would be placed back  
4 in the same circumstances as all other federal prisoners  
5 being held at the Ada County Jail or serving as inmates  
6 at the Ada County Jail?

7 A. I looked to see if there was some phone  
8 numbers that he would be able to call that would go to  
9 his attorneys and not to others and brought at least  
10 part of this information to the attention of the court.

11 Q. And to the United States Attorney's Office  
12 which was representing -- in Idaho which was  
13 representing the United States in the tax case; is that  
14 correct?

15 A. Yes. That's correct.

16 MS. OLSON: With the court's permission, Your  
17 Honor, I would like to elicit a little background about  
18 the proceeding that was held in chambers on Friday  
19 afternoon.

20 THE COURT: Please do. That is the purpose of  
21 the hearing.

22 BY MS. OLSON:

23 Q. Deputy Meyer, on Friday, January the 14th of  
24 2005, you were present when a hearing was conducted in  
25 Judge Tallman's chambers; is that correct?

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1 A. Yes.

2 Q. As a result of that hearing which was ex parte  
3 and the results placed under seal, did you obtain an  
4 order from the court directing the Ada County Jail to  
5 limit the number of phone numbers that Mr. Hinkson could  
6 have on the do-not-record attorney number list?

7 A. Yes, I did.

8 Q. And how many numbers did that order direct the  
9 Ada County Jail to put on the do-not-record list?

10 A. Two phone numbers.

11 Q. And did you play any role in selecting those  
12 two numbers?

13 A. We looked at the numbers; and they were the  
14 cell phone numbers of the two attorneys that were  
15 provided to myself and, I believe, to the court, to be  
16 able to get a hold of them, so that way he would be able  
17 to contact them.

18 Q. Those are the numbers for Tom Nolan and Wesley  
19 Hoyt; is that correct?

20 A. That's correct.

21 Q. And did you serve that order on the Ada County  
22 Jail?

23 A. Yes.

24 Q. And did you become familiar with what, if any,  
25 steps were taken by the Ada County Jail to comply with

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1 that court order?

2 A. There was some confusion over the weekend  
3 where they tried to comply with it but the company --  
4 because of the afternoon hour on Friday, the company was  
5 unable or unwilling at that point to make those changes  
6 on Friday.

7 They have now made those changes. They were  
8 gone for the weekend.

9 I did phone the Ada County Jail a few times  
10 this weekend to make sure that he was, at least, able to  
11 call his attorneys. My understanding from the jail  
12 sergeants was that they were allowing him to call his  
13 attorneys at least a couple of times, at least a few  
14 times.

15 There was another issue that came up over the  
16 weekend because, apparently, Mr. Hinkson was also under  
17 some disciplinary action from the jail.

18 So there was some -- they were limiting some  
19 phone call access, themselves, because of the  
20 disciplinary action that he was under.

21 MS. OLSON: That's all of the questions I have  
22 for Deputy Meyer, Your Honor.

23 THE COURT: Mr. Hoyt or Mr. Nolan, would you  
24 like to cross-examine?

25 MR. HOYT: Yes, Your Honor.

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1 MR. NOLAN: I have no questions. 1462  
2 THE COURT: If you don't want to, that's fine,  
3 too. I just wanted you to be aware.  
4 MR. NOLAN: Mr. Hoyt does.  
5 MR. HOYT: Thank you, Your Honor.  
6  
7 CROSS EXAMINATION  
8 BY MR. HOYT:  
9 Q. Deputy Meyer, what phone numbers are the  
10 numbers that, as of Friday, were selected?  
11 THE WITNESS: If I can look at my notes, Your  
12 Honor?  
13 THE COURT: Yes, of course.  
14 Ms. Olson, is there any reason why I should  
15 not unseal the materials that were filed Friday so  
16 counsel can have a copy?  
17 MS. OLSON: No, Your Honor. At this time I  
18 would so move.  
19 THE COURT: That motion will be granted. The  
20 clerk will hand counsel for the defense a copy of the  
21 motion and order that was entered on Friday.  
22 THE WITNESS: I have those.  
23 THE COURT: Glenda, have you got that?  
24 BY MR. HOYT:  
25 Q. Do you have that information available?

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1 A. No. I spoke with Sergeant Stineko this 1464  
2 weekend and, I think, Sergeant Rossi, as well.  
3 Q. And did they inform you counsel for  
4 Mr. Hinkson was advised that he was prohibited from  
5 making any phone calls according to an e-mail that they  
6 received from you?  
7 A. No. He was -- initially, on Friday afternoon,  
8 he was prohibited from making phone calls to anyone  
9 other than these two numbers that I gave them.  
10 But as the weekend went on -- actually, as  
11 soon as he got back to the jail, I believe that  
12 Mr. Hinkson made phone calls.  
13 In fact, I have all of the phone records.  
14 There are some eight pages of phone calls made between  
15 the time he got back on Friday afternoon to last night,  
16 so Mr. Hinkson certainly had access to the phone. A few  
17 of those phone calls were to, I believe, yourself. They  
18 are your phone numbers.  
19 Q. Were there any phone calls on Saturday or  
20 Sunday?  
21 A. I believe so.  
22 MR. HOYT: Your Honor, I don't want to waste a  
23 whole lot more of the court's time on this.  
24 THE WITNESS: There were 220 calls made  
25 between the 14th and the 17th of January.

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1 A. I do. 1463  
2 Q. Mr. Meyer, Marshal -- Deputy Marshal Meyer, do  
3 you have that information available?  
4 A. Yes. The two numbers are (303) 819-7400 and  
5 (650) 619-5980.  
6 Q. All right. It certainly wouldn't be  
7 applicable right now; but did you give any consideration  
8 to the fact that I have multiple offices and that,  
9 specifically, my cell phone doesn't work when I'm in my  
10 North Idaho office? There are no cells up there. So I  
11 have a different phone number than this (303) 819-7400  
12 number.  
13 A. If you or Mr. Nolan has a phone number that  
14 would be a phone number that Mr. Hinkson could use to  
15 get a hold of you, I can make whatever changes might be  
16 appropriate to the jail.  
17 THE COURT: Mr. Hoyt, the court will certainly  
18 entertain an amended order if you want to add better  
19 contact numbers.  
20 MR. HOYT: I think we would like to do that.  
21 THE COURT: That would be fine.  
22 BY MR. HOYT:  
23 Q. Deputy Meyer, as far as this weekend is  
24 concerned, did you speak at all with Sergeant Iahiana  
25 of the Ada County Sheriff's Office?

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1 THE COURT: It doesn't sound like Mr. Hinkson 1465  
2 was too severely restrained.  
3 THE DEFENDANT: I was. I didn't use the  
4 phone.  
5 THE COURT: All right. Is there anything  
6 further? I just want to make sure you are up to speed.  
7 I do want to say two things:  
8 1. Mr. Nolan and Mr. Hoyt, if you would,  
9 please advise your office staff, if you do give them a  
10 different number -- I assume you will, besides your cell  
11 phone numbers -- that they are not to call forward any  
12 of Mr. Hinkson's calls to any number other than a number  
13 that you are standing by to receive the call. I just  
14 want to make sure that is very clear.  
15 MR. NOLAN: First of all, because of the  
16 nature of my work, everybody in my office knows that.  
17 They will be reminded because of the nature of what has  
18 happened here, but we would never think about even --  
19 THE COURT: I want to make that clear.  
20 MR. NOLAN: There is a new receptionist, so we  
21 have to go through the process.  
22 THE COURT: Let's educate the new  
23 receptionist.  
24 Mr. Hoyt, is that clear?  
25 MR. HOYT: Absolutely.

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1 THE COURT: The next thing I have to say is to  
2 Mr. Hinkson.  
3 Mr. Hinkson, this is the second time that the  
4 court has heard a report from the United States  
5 Marshal's Service regarding your misconduct resulting in  
6 a threat to the security at the jail and a violation of  
7 the jail's rules.  
8 The first one involved this incident over the  
9 hollowed-out book that was brought to the attention of  
10 the court at the time the jury learned the verdict in  
11 the tax case.  
12 I have restricted your telephone privileges to  
13 calls to legal counsel. Otherwise, you are going to  
14 have to use the recording system for all other calls.  
15 If you play any more games with the Marshal's  
16 Service, I will consider that to be playing games with  
17 the court. I will cut off all telephone contact and  
18 privileges by you, and you will have to meet  
19 face-to-face with your lawyers.  
20 If that doesn't prove sufficient, I will order  
21 you transferred to the custody of the Warden at the  
22 Federal Detention Center at Sea-Tac; and he will make  
23 sure that my orders are followed.  
24 Am I clear, sir?  
25 THE DEFENDANT: You are clear, but I would

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1 numbers go directly to me. If there is no answer, they  
2 go to my answering service -- not service but machinery  
3 that then takes a message. It is not forwarded.  
4 In other words, it doesn't go outside my  
5 system. If somebody calls my cell phone and I'm not  
6 there, it goes to my voice mail.  
7 THE COURT: Voice mail is fine. What I want  
8 to avoid is any possibility of call forwarding to an  
9 unauthorized number.  
10 MR. NOLAN: I don't even know how to use it.  
11 THE COURT: I think I have made my ruling  
12 clear. If there is anything unclear about it, now is  
13 the time to ask for clarification.  
14 MS. OLSON: One other matter, Your Honor. We  
15 would ask the court to quash a subpoena that was issued  
16 to Sergeant Ishiana of the Ada County Sheriff's  
17 Department that directed him to be here today at 9:00  
18 o'clock when, clearly, there was no purpose of his being  
19 here.  
20 It appears -- it's unclear who served it. It  
21 appears to be a subpoena that was written over the top  
22 of because it bears a date of November 5, 2004.  
23 Clearly, nobody could have known about this matter on  
24 November 5, 2004.  
25 THE COURT: Is there any reason not to quash

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1 like to clarify something.  
2 THE COURT: No, Mr. Hinkson. I am not  
3 interested in clarification. You can talk to your  
4 lawyer about clarification. Do you understand what I am  
5 saying to you? No more game playing.  
6 THE DEFENDANT: I didn't play any games, so I  
7 don't understand.  
8 THE COURT: I think you did. I think you did,  
9 and I think you understand my instructions. You are now  
10 fairly warned as to what the consequences will be if  
11 another security incident like this is brought to my  
12 attention.  
13 Is there anything further, Ms. Olson?  
14 MS. OLSON: One other matter and, perhaps, one  
15 other clarification. We would ask that any number he  
16 gives not be a number that can be forwarded to his  
17 attorneys' offices.  
18 Part of what Deputy Meyer was saying is that  
19 there was a number that he was calling that was being  
20 forwarded to a bunch of different locations.  
21 THE COURT: I want the call to go directly --  
22 you can have equipment that will forward the call from  
23 your office to you. I want to make sure that you are  
24 standing by at the number that the call is forwarded to.  
25 MR. NOLAN: Could I make it clear? All of my

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1 the subpoena?  
2 MR. HOYT: We would withdraw the subpoena.  
3 THE COURT: I will save you the trouble. The  
4 subpoena is quashed.  
5 We are in recess until 9:00 a.m. tomorrow  
6 morning.  
7 (Whereupon, the court stood in recess.)  
8 \* \* \*  
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1  
2 CERTIFICATE  
3

4 I, LORI A. FULSIFER, certify that I made a  
5 shorthand record of the matter contained herein, and  
6 that the foregoing typewritten pages contain a full,  
7 true, and accurate transcript of said shorthand record,  
8 done to the best of my skill and ability.

9 DATED this 28th day of March 2005.  
10

11 LORI A. FULSIFER, CSR, RMR, CRR  
12 Certified Shorthand Reporter  
13 Idaho Certificate 354  
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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) Case No.  
 ) CR-04-127-S-RCT  
 )  
 vs. )  
 )  
 DAVID ROLAND HINKSON, )  
 )  
 Defendant. )  
 )

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BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 19, 2005 (wed)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 7, PAGES 1,471 THROUGH 1,722)

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1 (Whereupon, the following proceedings were  
2 held outside the presence of the jury:)

3 THE COURT: Mr. Nolan, thank you. I did  
4 receive the Borner case last night. I reviewed it this  
5 morning.

6 Quite frankly, it confirms what my  
7 understanding of the law is with regard to the  
8 generosity evidence.

9 Judge Woods' opinion, for the Seventh Circuit,  
10 in that case, cites to the general rule -- and I am  
11 referring to 302 F.3d at 781 -- that general evidence of  
12 the defendant's character is inadmissible in criminal  
13 cases unless the prosecution is trying to counter  
14 evidence where the defendant has introduced evidence  
15 aimed at portraying his own character in a positive  
16 light, which is not the situation we have here where the  
17 Government introduced evidence to establish motive and  
18 bias on the part of the inmate witnesses; that their  
19 testimony was, essentially, paid.

20 So I am going to re-affirm my ruling of  
21 yesterday that the character evidence is inadmissible.

22 For the record, the defendant seeks to  
23 introduce at trial character evidence of defendant's  
24 generosity towards his employees to refute testimony  
25 elicited by the Government regarding defendant's offers

1 or gifts of money or other things of value to cellmates  
2 who testified on his behalf yesterday.

3 The Government sought to impeach those  
4 cellmate witnesses on the grounds that they were offered  
5 money, jobs, legal help, and other things of value to  
6 purchase their favorable testimony on the defendant's  
7 behalf.

8 The defendant now seeks to introduce testimony  
9 of his own character by bringing in employees of his  
10 company, WaterOz, to testify as to his generosity. The  
11 court holds that allowing WaterOz employees to come in  
12 to testify on this sole matter would be confusing to the  
13 jury and a waste of time.

14 I have considered the balancing act under  
15 Federal Rule of Evidence 403, and I rule it  
16 inadmissible. I have in mind, particularly, United  
17 States vs. Ramirez, R-a-m-i-r-e-z, Robles, that's  
18 hyphen, R-o-b-l-e-s, at 368 F.3d 1243 and 1246, which is  
19 a 2004 Ninth Circuit opinion noting that Rule 403  
20 requires the court to balance the probative value of  
21 evidence against its potential impact on the jury.

22 Initially, the court finds that the probative  
23 value of this evidence to the defendant is questionable.  
24 At best, the proffered evidence might tend to show that  
25 defendant's jail cellmates were more or less likely to

1 render truthful testimony. However, the connection is  
2 tenuous.

3 Hinkson's own alleged disinterested intent  
4 behind any offers of employment or legal aid to his  
5 cellmates does not demonstrate that the witnesses  
6 themselves felt that they could testify to facts that  
7 might not be in their new benefactor's best interests.

8 On the other side of the balancing equation,  
9 the question of whether defendant's transactions with  
10 his WaterOz employees over the past ten years should be  
11 considered generous is a complicated issue and well  
12 beyond the scope of this trial.

13 The court heard substantial evidence of this  
14 nature while presiding over the defendant's tax case,  
15 United States vs. Hinkson, 02-CR-0142-C-RCT.

16 Defendant Hinkson was, there, found guilty of  
17 structuring transactions and failing to collect and pay  
18 federal employment withholding taxes.

19 The underlying conduct at the tax case trial  
20 showed that Mr. Hinkson had regularly engaged in  
21 transactions designed to avoid a paper trail for himself  
22 and WaterOz.

23 He also encouraged employees to use only their  
24 first names, did not collect W-2 forms from them, paid  
25 them in cash or by silver coin, and had a strong motive

1 to keep them happy so they would not turn State's  
2 evidence against him by reporting him or cooperating  
3 with IRS investigators.

4 Therefore, the fact that the defendant may  
5 have given free business products or things of value to  
6 other employees or their families and friends could be  
7 pure generosity but could, just as reasonably, be  
8 considered yet another form of disguised compensation or  
9 hush money to ensure their continued loyalty.

10 The tax court jury, by its verdict,  
11 necessarily rejected defendant's claim to beneficent  
12 motive underlying his generosity.

13 Furthermore, if the court allowed evidence  
14 from WaterOz employees regarding defendant's generosity,  
15 then the Government would have to be allowed to  
16 introduce evidence that Mr. Hinkson may have had other  
17 motivations behind his gifts to his employees.

18 We would then be relitigating the tax case  
19 before this jury. The court finds that the amount of  
20 evidence that would be required to determine defendant's  
21 intent behind his, quote, unquote, "gifts" would entail  
22 a substantial amount of time and would require expanding  
23 the scope of the evidence and testimony into tangential  
24 areas that would confuse and mislead this jury on what  
25 should be their central focus, the evidence establishing

1 or not establishing the elements of the solicitation and 1480  
2 threats charges.

3 So the net effect would be to relitigate a  
4 substantial portion of the tax case for no other purpose  
5 than to show that the defendant may have acted in a  
6 generous manner towards his cellmates who may be  
7 testifying only because of their regard for the  
8 defendant and not as a result of any alleged gifts.

9 As such, the court holds that, given its  
10 nominal probative value, the value of the proffered  
11 WaterOz employee testimony as to defendant's generosity  
12 is substantially outweighed by the certain confusion to  
13 this jury and the waste of time the admission of such  
14 evidence would engender.

15 It is, therefore, ruled inadmissible under  
16 Rule 403.

17 The next issue I want to turn to is with  
18 regard to the Daubert hearing. I do think that we  
19 should conduct a hearing. The defendant seeks to  
20 introduce at trial the expert testimony of Dr. Jerry D.  
21 Duke, the psychologist who has recently evaluated  
22 Mr. Hinkson.

23 The court must conduct a two-step inquiry to  
24 determine whether scientific testimony is admissible.  
25 First, the court must determine whether the reasoning or

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1 methodology underlying the testimony is scientifically 1481  
2 valid; and, second, the court must ensure that the  
3 proposed expert testimony is relevant and will serve to  
4 aid the trier of fact.

5 The best case I can find to guide us in that  
6 hearing is United States vs. Finley, F-i-n-l-e-y, 301,  
7 F.3d 1000, 1008. It's a Ninth Circuit 2002 decision.

8 Having considered the defendant's proffer and  
9 the Government's opposition, the court has determined  
10 that a Daubert hearing is necessary to address the issue  
11 of the validity of Dr. Duke's methodology and reasoning  
12 and to determine specifically what opinions the defense  
13 will seek to elicit before the jury from Dr. Duke.

14 Let me ask you, as a matter of scheduling,  
15 when would be the most convenient time to do this? When  
16 are we likely to get to Dr. Duke?

17 MR. HOYT: Your Honor, thank you. It's  
18 possible that we could get to him as early as Friday  
19 afternoon -- it just depends upon how the evidence comes  
20 in -- or possibly early next week.

21 THE COURT: Why don't we do this then? Why  
22 don't we schedule the Daubert hearing, let's say, for  
23 3:00 o'clock on Friday afternoon? I will excuse the  
24 jury a little early for the weekend. That will give us  
25 time to do that.

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1 He may have to come back next week if you're 1482  
2 not quite there. If we are at that point by the end of  
3 the week, I think we are moving along all right.

4 MR. HOYT: And if I understand the nature of  
5 the hearing correctly, it's an evidentiary hearing and  
6 Dr. Duke should be here?

7 THE COURT: Yes. Absolutely. I need to hear  
8 from Dr. Duke.

9 I will leave it up to the Government, after  
10 they have looked at Finley, if they want to call  
11 Dr. Engle, which the Ninth Circuit said was an option of  
12 the other side to aid the court in the Daubert hearing.

13 MR. NOLAN: I think Dr. Duke is available  
14 Friday afternoon. I am having my office work on that.

15 THE COURT: We will move testimony around if  
16 he is not available. We could do it Monday morning at  
17 8:00 o'clock and have the jury come in at 10:00, if that  
18 works out. I will be flexible with regard to the  
19 scheduling.

20 MR. NOLAN: Thank you.

21 THE COURT: Is there anything else we need to  
22 take up before we bring in the jury?

23 All right. Let's bring in the jury.

24 MR. HOYT: If I could make one quick call to  
25 have Dr. Duke contacted and notified about 3:00 o'clock?

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1 THE COURT: That would be fine. 1483

2 MR. NOLAN: By the way, the record should  
3 reflect that I have received copies of all of the  
4 writings of Mr. Nicolai from the Government.

5 THE COURT: Very well. These would be the  
6 writings that he was testifying about that he said were  
7 handwriting exemplars that the FBI requested?

8 MR. NOLAN: Right, and any other writings that  
9 he gave to the Government, as well. They are not  
10 marked; but it's Exhibit 9, 10, 11, and 12 plus the back  
11 pages and plus some other scribbles of notes.

12 MR. SULLIVAN: That's correct.

13 MR. NOLAN: I just want the record to reflect  
14 we did get that.

15 THE COURT: I appreciate your doing that so we  
16 have a complete record.

17 THE COURTROOM CLERK: And I do have them.

18 THE COURT: Bring in the jury.

19 (Whereupon, the following proceedings were  
20 held in the presence of the jury:)

21 THE COURT: I believe we still have  
22 Ms. Hauger; is that correct?

23 MR. SULLIVAN: Yes, Your Honor. I believe we  
24 are on the Government's -- I believe we are starting the  
25 Government's cross-examination.

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1 THE COURT: Cross-examination, yes.  
2 Ms. Huger, if you would, step forward and  
3 resume your place on the witness stand.  
4 \* \* \*  
5 JO ANN HUGER,  
6 having been called, previously sworn, testified as  
7 follows:  
8 THE COURT: Good morning. I remind you that  
9 you are still under oath.  
10 THE WITNESS: Yes, sir.  
11 THE COURT: You may proceed, Mr. Taxay.  
12 MR. TAXAY: Thank you, Your Honor.  
13  
14 C R O S S E X A M I N A T I O N  
15 BY MR. TAXAY:  
16 Q. Good morning, Ms. Huger.  
17 A. Good morning.  
18 Q. You work for WaterOz?  
19 A. Yes.  
20 Q. And you have been there since the year 2000?  
21 A. Yes. December 2000 so --  
22 Q. And you earn a salary from WaterOz?  
23 A. Yes.  
24 Q. And have since December of 2000?  
25 A. Yes.

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1 Q. Your husband, is that Mr. Del Huger?  
2 A. Yes, sir.  
3 Q. And he also works for WaterOz?  
4 A. Yes.  
5 Q. Since the same period of time, 2000?  
6 A. No, sir.  
7 Q. Since when, ma'am?  
8 A. Late 2003.  
9 Q. And he still works at WaterOz?  
10 A. Yes.  
11 Q. And he, too, earns a salary from WaterOz?  
12 A. Yes.  
13 Q. Your husband is very good friends with Greg  
14 Towerton; isn't that right?  
15 A. Yes, sir.  
16 Q. Now, you are in the sales department at  
17 WaterOz?  
18 A. Yes.  
19 Q. And you are the head of the sales department?  
20 A. Yes, as of November 2004.  
21 Q. In that job, you sell WaterOz products?  
22 A. Yes.  
23 Q. And you talk to customers?  
24 A. Yes, sir.  
25 Q. I think you testified on direct examination

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1 that you went to college for a period of time?  
2 A. Yes.  
3 Q. That was, I think you said, one year; is that  
4 right?  
5 A. Yes.  
6 Q. You don't have any specialized training in  
7 science, do you?  
8 A. No.  
9 Q. No medical training?  
10 A. No.  
11 Q. Now, WaterOz, as I understand it, is a company  
12 that sells a range of products; isn't that correct?  
13 A. Yes, sir.  
14 Q. So mineral tablets and things like that?  
15 A. No, sir. Mineral waters.  
16 Q. Mineral waters?  
17 A. Uh-huh.  
18 Q. And certain equipment; is that right? You  
19 sell certain equipment?  
20 A. Yes.  
21 Q. Ozone generator?  
22 A. Air and water purifier, yes.  
23 Q. Isn't it called the ozone generator?  
24 A. Not now it is not. It's an air and water  
25 purifier.

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1 Q. When was that name changed?  
2 A. I believe, just a year or two ago.  
3 Q. And the company also sells a body suit?  
4 A. No, sir, not any longer.  
5 Q. It used to sell a body suit?  
6 A. Yes.  
7 Q. That was called the ozone body suit?  
8 A. Yes.  
9 Q. And when did the company stop selling the  
10 ozone body suit?  
11 A. About a year or two, also. A year or two ago.  
12 Q. Now, on your direct examination, counsel  
13 showed you a catalog of products for WaterOz. That  
14 catalog that was introduced includes the ozone generator  
15 and the ozone body suit; isn't that right?  
16 A. Yes, sir.  
17 Q. That's Exhibit No. E-1, the catalog?  
18 A. I believe that was a catalog, yes.  
19 Q. I believe you have a copy of the exhibits up  
20 there. If you could, just confirm.  
21 THE COURT: We will hand her the exhibit  
22 notebook.  
23 THE COURTROOM CLERK: Which book was it?  
24 THE COURT: Volume 1, Exhibit 9. I'm sorry.  
25 I misspoke. It's Exhibit E --



1 MR. TAXAY: E-1, Your Honor.

2 THE COURT: E-1.

3 THE WITNESS: Yes. I have it here.

4 BY MR. TAXAY:

5 Q. If you would, take a look at pages 24 and 25  
6 of the catalog, Bates stamped number 66 and 67. That  
7 might help to focus you.

8 THE COURT: Ms. Huger, the Bates stamp  
9 numbers are the numbers stamped on the left-hand margins  
10 of the pages. That is what he is talking about, on the  
11 left-hand side.

12 THE WITNESS: Yes. Thank you.

13 THE COURT: You are welcome.

14 BY MR. TAXAY:

15 Q. These are the products that we were just  
16 talking about. The ozone generator and the ozone body  
17 suit are included in this Exhibit E-1, which is the  
18 WaterOz retail/wholesale catalog; isn't that right?

19 A. Yes, sir.

20 Q. These products were being sold while you were  
21 the sales manager; isn't that right?

22 A. No. While I was just in the sales department  
23 as a clerk.

24 Q. I understand. And the ozone body suit was  
25 advertised as curing things such as lymph-threatening

1 gangrene?

2 A. We reported to customers that we had feedback  
3 from other customers who had had more than satisfactory  
4 results in that area.

5 MR. HOYT: Your Honor, may we approach?

6 THE COURT: Yes.

7 (Whereupon, the following sidebar discussion  
8 was held outside the presence of the jury:)

9 MR. HOYT: Just as the court has been  
10 concerned about relitigating the tax case, it sounds  
11 like counsel is trying to get into an area that may  
12 involve relitigating the tax case.

13 The catalog was provided because it was one  
14 seized by the Government. It was contemporaneous at the  
15 time.

16 It shows a range of products sold by WaterOz,  
17 although we freely admit that the ozone body suit is not  
18 an item that is being sold now.

19 The issue of whether or not they are selling  
20 products that are curative of human disease, which was  
21 charged and part of the tax case, was resolved in that  
22 case. And unless we want to get into relitigating that  
23 whole area again, I think this is a problematic area.

24 MR. TAXAY: Your Honor, counsel chose to put  
25 all of this evidence in -- the catalog, the recommended

1 protocols, the testimonials. They moved for its  
2 admission, and it's part of this case because they have  
3 made it part of this case.

4 Now, the Government's view of this is they  
5 have also chosen to put on a witness who promoted all of  
6 these materials to the public. So it bears on, frankly,  
7 her willingness to be clear and tell the truth.

8 THE COURT: The court has the same concern  
9 that defense counsel has expressed, particularly in  
10 light of the ruling that I just made.

11 These exhibits were introduced without  
12 objection yesterday by the United States. I will allow  
13 you to establish the fact that you just made, in order  
14 to show that this witness may have a bias with regard to  
15 testifying on behalf of Mr. Hinkson, to the extent that  
16 she may be concerned about the fact that her assistance  
17 in selling these products might have rendered her  
18 potentially liable and that is the reason she is here  
19 today, to try to exculpate herself. I want it very  
20 limited.

21 MR. TAXAY: Your Honor, this is an option: If  
22 they were to withdraw the exhibits, they wouldn't be  
23 part of this case.

24 THE COURT: That would solve the problem.

25 MR. HOYT: We could redact those portions.

1 MR. TAXAY: Okay. That's fine. We will go  
2 forward as is.

3 THE COURT: But bear in mind that I want to  
4 keep this very limited because I do not want to re-open  
5 the entire FDA case.

6 MR. NOLAN: We have some people who have been  
7 really saved by this that are willing to walk in and  
8 tell us about it.

9 THE COURT: I understand that, but what that  
10 has to do with solicitation and threats is absolutely  
11 beyond the court.

12 MR. NOLAN: I was just adding something.

13 MR. TAXAY: Your Honor, so I can have a clear  
14 sense of the permissible scope here, there is another  
15 document, E-2, I believe it is, which are the protocols.  
16 It refers to a whole host of diseases, AIDS and other  
17 sorts of diseases, lupus, you name it.

18 Will Your Honor give me some leeway to  
19 highlight that?

20 THE COURT: I will certainly allow you to  
21 establish the fact that those representations are made,  
22 but that is as far as I want to go into it.

23 MR. TAXAY: Okay, Your Honor. I understand.

24 THE COURT: Very well. That is my ruling.  
25

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1 (Whereupon, the following proceedings were  
2 held in open court, in the presence of the jury:)  
3 BY MR. TAXAY:  
4 Q. Ms. Huger, just to finish up that point we  
5 were talking about with respect to the body suit, you  
6 had just said that certain people had said that they had  
7 positive results with the body suit?  
8 A. Yes, sir.  
9 Q. This catalog that you authenticated doesn't  
10 say that? I mean, it says something different about the  
11 body suit?  
12 I will read it to you. "The benefits of using  
13 the ozone suit with an ozone generator have been seen in  
14 cases of simple muscle fatigue to severe infections such  
15 as lymph-threatening gangrene;" correct?  
16 A. Yes, sir.  
17 Q. This was the catalog that you would give to  
18 people; correct?  
19 A. Yes.  
20 Q. Exhibit E-2 -- if you would, turn the page to  
21 what is Bates stamped 72. This is a document that is  
22 titled "Recommended Protocols." You also authenticated  
23 this exhibit on direct examination?  
24 A. Yes, sir.  
25 Q. This, too, is a document that you gave to

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1 customers; correct?  
2 A. Yes, sir.  
3 Q. And it identifies a range of very serious  
4 diseases that WaterOz products help to cure; correct?  
5 A. The word "cure" was never allowed to be used  
6 on the phone or in conversation with any customers.  
7 Q. These recommended protocols, they were given  
8 to customers; correct?  
9 A. Yes.  
10 Q. And there was discussion about how WaterOz  
11 products would help these conditions; correct?  
12 A. Yes. How they would assist, yes.  
13 Q. And this was told to customers; correct?  
14 A. Yes.  
15 Q. And the diseases -- I won't go through all of  
16 them, but they include AIDS?  
17 A. Yes.  
18 Q. Shingles?  
19 A. Yes.  
20 Q. Appendicitis?  
21 A. Yes.  
22 Q. Parkinson's Disease?  
23 A. Yes.  
24 Q. Cancer?  
25 A. Yes.

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1 Q. Carpal tunnel syndrome?  
2 A. Yes.  
3 Q. Lupus?  
4 A. Yes.  
5 Q. Epilepsy?  
6 A. Yes.  
7 Q. Epstein-Barr Virus?  
8 A. Yes.  
9 Q. Gulf War Syndrome?  
10 A. Yes.  
11 Q. Glaucoma?  
12 A. Yes.  
13 Q. Gangrene?  
14 A. Yes.  
15 Q. It's fair to say, isn't it, that I have just  
16 read a portion of the diseases that WaterOz claimed --  
17 that you claimed would be assisted with -- would be  
18 helped by WaterOz products; right?  
19 A. Yes. Just a small portion, yes.  
20 Q. Now, you were unaware that -- to your  
21 knowledge, no medical testing was done on these products  
22 to verify that, in fact, they helped with these  
23 diseases?  
24 A. Correct, except for my personal experience.  
25 Q. I am referring to medical testing.

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1 A. No.  
2 Q. To your knowledge, there was no medical  
3 testing?  
4 A. No, sir.  
5 Q. Now, you testified on direct examination about  
6 your meeting J. C.; correct?  
7 A. Yes, sir.  
8 Q. You talked about how he came into the office  
9 and you met him at that point?  
10 A. Yes, sir.  
11 Q. And I will try to quote you, but I may miss a  
12 word or two. I think you said something pretty close to  
13 J.C. comes in, he introduces himself, and he says, "I'm  
14 here to get rid of David, and I'll be running this place  
15 soon"?  
16 A. Yes, that's the general -- yeah.  
17 Q. You essentially responded, "Well, you have to  
18 take on us girls first;" right?  
19 A. Correct.  
20 Q. So I assume that there was a bunch of women in  
21 the room at that point in time?  
22 A. Actually, I believe there was only one other  
23 woman in the office; but I was speaking in general of  
24 all of the ladies that work there, upstairs and  
25 downstairs.

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1 Q. J. C. is a pretty big guy?

2 A. I guess so.

3 Q. He looks pretty strong, to you?

4 A. Yeah.

5 Q. So you were joking with him?

6 A. Half-heartedly, yes.

7 Q. Now, you mentioned this Mr. Hilder?

8 A. Yes.

9 Q. Anthony Hilder, is that his name?

10 A. Yes.

11 Q. And he was there at WaterOz working on a

12 documentary, wasn't he?

13 A. Yes, a documentary or an info-mercial. I

14 wasn't clear. I heard both.

15 Q. And you said that he was there with

16 Mr. Hinkson; correct?

17 A. He was there with Mr. Harding or J. C. Steel.

18 Q. Mr. Hinkson knew he was there; right?

19 A. Yes.

20 Q. And he was there with Mr. Hinkson's

21 permission?

22 A. I believe so.

23 Q. You have no reason to believe -- well, okay.

24 He had a camera out?

25 A. Yes, a video camera.

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1 A. Correct.

2 Q. You mentioned Mr. Swisher. You had seen him

3 at the site several times; right?

4 A. Yes, sir.

5 Q. In fact, you saw him on the site before what

6 we will call "the Bellon situation" with Mr. Hinkson?

7 A. Yes.

8 Q. You saw him with Mr. Hinkson; right?

9 A. Yes.

10 MR. TAXAY: One moment, Your Honor.

11 THE COURT: Sure.

12 MR. TAXAY: Pass the witness, Your Honor.

13 THE COURT: Very well.

14 Mr. Hoyt?

15 MR. HOYT: Thank you, Your Honor.

16

17 R E D I R E C T E X A M I N A T I O N

18 BY MR. HOYT:

19 Q. Good morning, Ms. Huger.

20 A. Good morning.

21 Q. This Mr. Hilder who came to WaterOz, do you

22 know if he was escorted off of the property?

23 A. I'm not sure.

24 Q. And how about Mr. Bellon? Do you know what

25 the terms of the court order were, related to his

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1 Q. And he was walking around, taking pictures?

2 A. Yes.

3 Q. And he wasn't doing so surreptitiously?

4 A. No, he wasn't disguising what he was doing.

5 Q. Wide out, in the open?

6 A. Right.

7 Q. So it was your sense at that time that it was

8 something good for WaterOz, right, that he was there

9 taking these pictures?

10 A. No.

11 Q. You had no belief that Mr. Hinkson didn't want

12 Mr. Hilder there at that time; isn't that true?

13 A. Correct.

14 Q. You spoke a bit about Mr. Bellon and the

15 incident where he was at the plant for a week or so?

16 A. Yes, sir.

17 Q. He had a court order authorizing him to come

18 on the plant; right?

19 A. Yes.

20 Q. Now, the dispute that Mr. Bellon had with

21 Mr. Hinkson, you don't have personal knowledge of the

22 interactions of that lawsuit; correct?

23 A. No. I mean, yes. Correct.

24 Q. You don't have personal knowledge of their

25 legal dispute; correct?

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1 takeover?

2 A. No, I do not.

3 Q. Did you appear in court and testify regarding

4 that matter?

5 MR. TAXAY: Objection, Your Honor. Beyond the

6 scope.

7 THE COURT: Sustained.

8 BY MR. HOYT:

9 Q. Do you know if that order was reversed by the

10 court?

11 A. Yes.

12 Q. And what happened?

13 MR. TAXAY: Objection, Your Honor. Lack of

14 foundation.

15 THE COURT: Sustained.

16 MR. HOYT: No further questions.

17 THE COURT: Anything further, Mr. Taxay?

18 MR. TAXAY: No, Your Honor.

19 THE COURT: Very well. May the witness be

20 excused?

21 MR. TAXAY: Yes, Your Honor.

22 THE COURT: Ms. Huger, you may step down.

23 You are excused.

24 Call your next witness.

25 MR. HOYT: The defense would call Mr. Jerry

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1 Smith.

2 THE COURT: Very well. Mr. Smith, would you  
3 step forward and be sworn, please?

4 \* \* \*

5 JERRY D. SMITH, JR.,

6 having been called, sworn, testified as follows:

7 THE COURTROOM CLERK: Thank you. Please take  
8 the stand.

9 If you would, state your name and spell your  
10 last name for the record, please.

11 THE WITNESS: Jerry D. Smith, Jr., S-m-i-t-h.

12 THE COURTROOM CLERK: Thank you.

13  
14 DIRECT EXAMINATION

15 BY MR. HOYT:

16 Q. Good morning, Mr. Smith.

17 A. Good morning.

18 Q. Mr. Smith, where do you live?

19 A. Grangeville, Idaho.

20 Q. And by whom are you employed?

21 A. WaterOz.

22 Q. And I would like to show you what has  
23 previously been marked as Exhibit 25 and ask if you can  
24 identify that building for me, please.

25 A. That is warehouse number one, the shipping

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1 department, entrance to the shipping department.

2 MR. HOYT: Exhibit C-25, Your Honor, is not  
3 coming up on counsel's monitor. Might we have a minute?

4 THE COURT: I don't have it on mine either.

5 MR. HOYT: It's coming up on some of the  
6 monitors.

7 THE COURTROOM CLERK: Is yours turned on?

8 THE COURT: Yes, mine is on now.

9 MR. TAYAY: Ours is working now.

10 THE COURT: I think we're all live, Mr. Hoyt.

11 BY MR. HOYT:

12 Q. Very well. You have identified C-25 as a  
13 photograph of warehouse number one of WaterOz?

14 A. Yes, sir.

15 Q. And can you identify C-24?

16 A. That's the parking lot.

17 Q. And does that, also, give you another view of  
18 the same building?

19 A. No. It doesn't show the -- it shows the rest  
20 of the warehouse, the empty bay, and then the very end  
21 bay.

22 Q. All right. And then what is your job at  
23 WaterOz?

24 A. I'm the manager of shipping.

25 Q. And how long have you worked in the shipping

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1 department?

2 A. Five years.

3 Q. And I would like to show you --

4 THE COURT: Counsel, since you have already  
5 shown those to the jury, is there any objection to their  
6 admissibility from the Government?

7 MR. SULLIVAN: Your Honor, I would like the  
8 court to take it under advisement, admitting them, until  
9 we see what relevance they may have.

10 THE COURT: Subject to a relevancy objection?

11 MR. SULLIVAN: Yes, Your Honor.

12 THE COURT: With that stipulation, they will  
13 be admitted for that limited purpose.

14 (Whereupon, Defendant's Exhibit Nos. C-24 and  
15 C-25 were conditionally received in evidence.)

16 MR. HOYT: May I proceed with Exhibit C-3?

17 THE COURT: Yes. My ruling was with regard to  
18 C-24 and C-25.

19 MR. HOYT: Should I have the witness identify  
20 it first, before we show the jury?

21 THE COURT: I prefer to do it that way,  
22 counsel. Thank you.

23 BY MR. HOYT:

24 Q. Very good. Let me show you what has been  
25 marked as Exhibit C-3. You will see it on your monitor

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1 there. What does Exhibit C-3 depict, Mr. Smith?

2 A. That's warehouse number two and storage.

3 Q. And is that something that is within the scope  
4 of your shipping department?

5 A. No.

6 Q. Let me show you Exhibit C-2. And what is  
7 that?

8 A. That's the rack where we pull our mineral  
9 water off to ship it out.

10 Q. And does Exhibit C-2 depict an area that is  
11 within the scope of your shipping department?

12 A. Yes.

13 MR. HOYT: I would move the admission of C-2  
14 and ask for the right to show it to the jury.

15 THE COURT: Any objection?

16 MR. SULLIVAN: Same objection, Your Honor.

17 THE COURT: All right. I will admit it for  
18 limited purposes now, and it may be shown to the jury to  
19 illustrate Mr. Smith's testimony.

20 (Whereupon, Defendant's Exhibit Nos. C-3 was  
21 conditionally received in evidence.)

22 BY MR. HOYT:

23 Q. Thank you. All right. Referring to Exhibit  
24 C-2, Mr. Smith, can you tell the jury what is depicted  
25 there?

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1 A. Water on a rack that -- just mineral waters  
 2 that we ship out every day.  
 3 Q. And behind it? What are the objects behind?  
 4 A. That's where we store our major portions of  
 5 mineral water for later shipment.  
 6 Q. And is this the area where you work in  
 7 WaterOz?  
 8 A. Yes, sir.  
 9 Q. And as a part of your job responsibilities at  
 10 WaterOz, do you have anybody working under you?  
 11 A. I have one person working under me.  
 12 Q. And when orders come into the factory, who  
 13 handles the loading of the materials into boxes and  
 14 shipping out?  
 15 A. Mostly me. I mostly put them in the box, and  
 16 then I have somebody else run it on the computer and  
 17 ship them out.  
 18 Q. Now, Mr. Smith, how long is it you have worked  
 19 at WaterOz?  
 20 A. Almost seven years. I have worked in shipping  
 21 for five.  
 22 Q. And during that time period, have you gotten  
 23 to know Mr. David Hinkson?  
 24 A. Yes, I have.  
 25 Q. And is he somebody that you had some regular

1 contact with over the last seven years?  
 2 A. Yes.  
 3 Q. And during that seven-year period, have you  
 4 observed Mr. Hinkson make comments about parties --  
 5 strike that. Let me ask this first.  
 6 Mr. Smith, are you aware that Mr. Hinkson has  
 7 been involved in various legal matters over that  
 8 seven-year period?  
 9 A. Yes, I have.  
 10 Q. And does Mr. Hinkson have -- have you noticed  
 11 that he has had some strongly-held opinions about the  
 12 parties that he has been involved with in litigation?  
 13 A. Yes.  
 14 Q. And during that time period, have you had an  
 15 opportunity to observe Mr. Hinkson make comments  
 16 regarding people he has been involved with in  
 17 litigation?  
 18 A. Yes.  
 19 Q. Would you please tell the jury what you have  
 20 heard from Mr. Hinkson regarding strong comments  
 21 concerning various people that he's involved with in  
 22 litigation?  
 23 A. He did not like -- do you want me to name  
 24 certain people?  
 25 Q. Sure. Absolutely.

1 A. He did not like Dennis Albers. He highly did  
 2 not like him. Annette Haseloff (phonetic) or Haselone  
 3 or whatever her name is, he really did not like her. He  
 4 just said that she was a problem and kind of a thorn in  
 5 his back, in his side. They just had major problems. I  
 6 never heard him say anything more than -- too much more  
 7 than that, except he didn't really --  
 8 MR. SULLIVAN: Objection, Your Honor. He is  
 9 volunteering information not in response.  
 10 THE WITNESS: Sorry.  
 11 THE COURT: Sustained.  
 12 Mr. Smith, if you would, confine your answer  
 13 just to the question that Mr. Hoyt asks you and then let  
 14 him ask you another question.  
 15 BY MR. HOYT:  
 16 Q. Where, physically, in the plant, were you when  
 17 you observed these comments?  
 18 A. Shipping.  
 19 Q. And what was the type of occasion that would  
 20 occur that he would make these comments to you in  
 21 shipping?  
 22 A. A couple times when he got back from court.  
 23 Q. Did Mr. Hinkson ever tell you that he wanted  
 24 to have Mr. Albers killed?  
 25 A. No.

1 Q. Did he ever -- did he ever invoke the name of  
 2 Deity and ask that God should dispose of them?  
 3 A. Yes.  
 4 Q. Tell the jury what you know about that.  
 5 A. At one time, it was said that God should take  
 6 care of people like that.  
 7 Q. How about the people that are involved in the  
 8 tax investigation of Mr. Hinkson? Are you aware of  
 9 those people?  
 10 A. No.  
 11 Q. Does the name Nancy Cook mean anything to you?  
 12 A. Yes.  
 13 Q. Does the name Steven Hines mean anything to  
 14 you?  
 15 A. No.  
 16 Q. Does the name Judge Lodge mean anything to  
 17 you?  
 18 A. No.  
 19 Q. In connection with the name Nancy Cook, did  
 20 you ever hear him make strong comments regarding her?  
 21 A. Yes.  
 22 Q. And what did you hear him say?  
 23 A. That God should take care of people like that.  
 24 Q. Did he ever say to you he wanted to have Nancy  
 25 Cook killed?

1508

1 A. No.

2 Q. Now, you were there -- strike that.

3 You were working at WaterOz during the time

4 that the FBI and some other governmental agencies

5 conducted a raid upon Mr. Hinkson's home and factory; is

6 that true?

7 A. Yes.

8 Q. And do you remember the time frame? Was that

9 November of 2002?

10 A. Yes. The 21st, if I remember right.

11 Q. Were you scheduled to work that day?

12 A. Yes.

13 Q. Did you go to work that day?

14 A. Yes. I made -- I was going to work when I was

15 stopped by a roadblock.

16 Q. And so as a result of being stopped by the

17 roadblock, were you able to get to the factory that day?

18 A. No.

19 Q. Where did you go?

20 A. Across the canyon, on our property, on the

21 WaterOz property.

22 Q. And did you have with you a telescope or

23 something to observe with?

24 A. I had a spotting scope.

25 Q. How far away from the factory were you?

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1510

1 Q. Mostly FBI that you could see?

2 A. Yeah.

3 Q. And what area of the WaterOz factory and home

4 could you see from where you were?

5 A. I could see all of the back of WaterOz and

6 it's kind of a front view of the -- looking at the side

7 of the front of the house and the whole back view of the

8 house.

9 Q. And did you observe any FBI agents engaged in

10 any activity?

11 A. Yes, I did.

12 Q. What did you observe?

13 A. I observed people jumping on our trampoline.

14 We have a trampoline in front, by the house. We

15 observed them playing football and taking pictures of

16 each other kneeled down in a row of about eight or nine

17 people.

18 Q. What were the people wearing that were jumping

19 on the trampoline?

20 A. They were FBI.

21 Q. What were the people wearing that were playing

22 football?

23 A. FBI.

24 Q. And the people that were taking pictures?

25 A. They were IRS and FBI.

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1509

1 A. Approximately 1,200 yards.

2 THE COURT: Counsel, you might have Mr. Smith

3 explain to the jury what a spotting scope is.

4 BY MR. HOYT:

5 Q. Please, Mr. Smith, could you tell the jury

6 what a spotting scope is?

7 A. It's something I use for looking at deer,

8 finding horns. It's a high magnification scope that

9 sets on the ground on a tripod that I use just for

10 everyday glassing.

11 Q. And do you know how far it was from the point

12 where you were at to the WaterOz factory?

13 A. Right at 1,200 yards.

14 Q. And what kind of detail did the spotting scope

15 you have allow you to see?

16 A. Very, very well. It's a state-of-the-art

17 spotting scope. I can see everything.

18 Q. Did you observe that there were people at the

19 WaterOz factory?

20 A. Yes.

21 Q. And did they have any identifiers on their

22 persons?

23 A. They had jackets on. Some had "FBI" on the

24 back. I think there was IRS ones there. I know there

25 was the IRS there. Mostly FBI.

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1511

1 Q. And did you, also, observe them engaging in

2 any other activity?

3 A. Coming in and out of the house quite often,

4 front and back of the house.

5 Q. And let me -- were they carrying anything when

6 they were coming in or going out of the house?

7 A. They carried out some boxes.

8 Q. Carried boxes out of Mr. Hinkson's house?

9 A. Yes, sir.

10 Q. Let me first show you -- I won't display this

11 to the jury -- Exhibit C-20. Do you see Exhibit C-20 on

12 your monitor?

13 A. Yes, I do.

14 Q. Can you identify that for us, please?

15 A. That is the back of Mr. Hinkson's house.

16 Q. And could you see into this area from where

17 you were spotting?

18 A. Yes.

19 Q. Could you, actually, see right up to the door

20 which is depicted in C-20?

21 A. No.

22 Q. What is it that you could see from where you

23 were?

24 A. I could see them walking out, past the

25 corners.

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1512

1 THE COURT: Counsel, since the jury can't see  
2 it yet, it might be helpful if you want to move the  
3 admission.  
4 MR. HOYT: Thank you, Your Honor. I will now  
5 move the admission of Exhibit C-20.  
6 THE COURT: Any objection?  
7 MR. SULLIVAN: Same objection, Your Honor.  
8 THE COURT: Overruled. It is admitted.  
9 (Whereupon, Defendant's Exhibit No. C-20 was  
10 received in evidence.)  
11 MR. HOYT: May I display it to the jury?  
12 THE COURT: You may.  
13 BY MR. HOYT:  
14 Q. And you indicated that you could see them not  
15 going in and out of the door, but you could see them at  
16 the corners of the house?  
17 A. Yes, sir.  
18 THE COURT: Mr. Hoyt, I am having the lights  
19 turned down. Do we have a pointer or something so that  
20 we can show the jury where that door is? That is  
21 awfully hard to see on the screen.  
22 MR. HOYT: Does this light up as a pointer?  
23 THE COURT: Do we have something like that?  
24 THE COURTROOM CLERK: It will work on the  
25 monitor.

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1513

1 THE COURT: What does he point it to?  
2 THE COURTROOM CLERK: Well, he has to guess;  
3 that's the hard part.  
4 THE COURT: It was so much easier with pointer  
5 sticks and butcher paper.  
6 BY MR. HOYT:  
7 Q. Is that the door we are referring to?  
8 Actually, it leaves some green squares by that --  
9 THE COURT: Mr. Smith, is that the door that  
10 you were talking about a moment ago?  
11 THE WITNESS: Yes, sir.  
12 BY MR. HOYT:  
13 Q. All right. We have got a little green dot.  
14 Is that the door you were talking about a few moments  
15 ago?  
16 A. Yes, sir.  
17 Q. Very good. Now, do you know what was  
18 contained in the boxes that you saw being carried out of  
19 Mr. Hinkson's home?  
20 A. No, I do not.  
21 Q. Do you know where those boxes were taken?  
22 A. No, I do not.  
23 Q. Now, Mr. Smith, were you also working at  
24 WaterOz in the factory when the Bellon takeover  
25 occurred?

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1514

1 A. Yes, I was.  
2 Q. And at that time, did you observe a  
3 communication between Mr. Lonnie Birmingham and Mr. Joe  
4 Swisher in the presence of a group of people?  
5 A. Yes, I did.  
6 Q. And where did that occur?  
7 A. At our lunch table, where we have our  
8 meetings.  
9 Q. Let me just see if I can quickly put up an  
10 exhibit that would show that -- possibly show that area.  
11 I am putting on the screen what has been marked as  
12 Exhibit C-11. It's not published to the jury at this  
13 time. Can you identify that for us, please, Mr. Smith?  
14 A. That's our lunch tables and, also, where we  
15 have our meetings when they call meetings.  
16 Q. At the WaterOz factory?  
17 A. Yes, sir.  
18 MR. HOYT: And at this time we would move the  
19 admission of Exhibit C-11 and move to publish to the  
20 jury.  
21 MR. SULLIVAN: Your Honor, I would like a  
22 date.  
23 THE COURT: Yes. If you could establish --  
24 with regard to the currency of the photograph,  
25 Mr. Sullivan?

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1515

1 MR. SULLIVAN: Yes, and when he claims he  
2 observed or heard this conversation, as well.  
3 THE COURT: Let's do both, Mr. Hoyt.  
4 BY MR. HOYT:  
5 Q. We will do that. Mr. Smith, do you recall  
6 when the Bellon takeover occurred?  
7 A. It was on a Thursday.  
8 Q. And do you recall which month it was in?  
9 A. No, I do not.  
10 Q. Is there anything that would refresh your  
11 recollection?  
12 A. I don't remember -- I don't remember the exact  
13 month that it was taken over. It was around -- I was  
14 thinking it was before Christmas of last year.  
15 Q. 2003?  
16 A. Yeah.  
17 THE COURT: Last year? 2004?  
18 BY MR. HOYT:  
19 Q. 2004?  
20 A. Yeah.  
21 Q. Just a month ago?  
22 A. No. You are right; it would be 2003. I don't  
23 remember exactly -- the exact day when Rich Bellon came  
24 in. I thought it was around one of the holidays.  
25 Q. Approximately how many days was Mr. Bellon in

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1 control of the factory? 1516  
2 A. If I remember right, about ten.  
3 Q. And do you remember that there was a court  
4 suit going on about that?  
5 A. Yes, sir.  
6 Q. And at the conclusion of that court action,  
7 Mr. Bellon left the factory?  
8 A. Yes.  
9 Q. And was this the only time Mr. Bellon came in  
10 and took control of the factory?  
11 A. As far as I know, yes.  
12 Q. Now, let's take a look at Exhibit C-11. Does  
13 it fairly and accurately represent and depict the area  
14 of the lunch room and where you hold your meetings?  
15 A. Yes.  
16 THE COURT: At that time?  
17 BY MR. HOYT:  
18 Q. At that time, back in December of '03?  
19 A. Yes.  
20 THE COURT: Any objection, Mr. Sullivan?  
21 MR. SULLIVAN: No objection.  
22 THE COURT: All right. Exhibit C-11 is  
23 admitted and may be published.  
24 (Whereupon, Exhibit No. C-11 was received in  
25 evidence.)

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1 of a collateral issue, I think, is in violation of Rule 1518  
2 608 (b).  
3 MR. NOLAN: The entire crux of our case, from  
4 my point of view, is that this is a valuable asset that  
5 they felt was not being properly managed by a very weak  
6 and incompetent person, my client; that they saw this as  
7 an opportunity to take advantage of that financial  
8 opportunity; that when they were unable to take  
9 advantage of that financial opportunity, they became  
10 witnesses against him in the prosecution.  
11 And when they testified, they tried to claim  
12 no interest or no involvement, together, as a group, as  
13 a four-person conglomerate, so to speak, at that  
14 takeover.  
15 I think the takeover is very important because  
16 Swisher tried to say, basically, "I didn't have any  
17 interest," et cetera.  
18 It is not collateral. It is key to why this  
19 case is -- in my opinion, why this case is here and why  
20 these people are testifying.  
21 I think that it was actually demonstrated far  
22 more yesterday in the witnesses that were in the jail,  
23 to demonstrate their taking advantage of a weaker  
24 person. That's a side issue. I didn't mean to get into  
25 that. I see this as a very important aspect of it.

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1 BY MR. HOYT: 1517  
2 Q. Is that visible? All right. Now, Mr. Smith,  
3 why were you in the lunch room area of WaterOz when you  
4 overheard this communication?  
5 A. Rich Bellon had called a meeting for the  
6 people that had planned on staying at WaterOz.  
7 Q. And you indicated that you overheard a  
8 communication between Lonnie Birmingham and Joe Swisher.  
9 Would you please tell the court and the jury what you  
10 heard?  
11 MR. SULLIVAN: Your Honor, I would like a  
12 sidebar. I may have an objection at this point.  
13 (Whereupon, the following sidebar discussion  
14 was held outside the presence of the jury:)  
15 MR. SULLIVAN: Your Honor, I object to going  
16 further with this if the conversation that is about to  
17 be testified to is in the form of impeachment of  
18 Birmingham and Swisher on what I consider to be a very  
19 collateral matter, their takeover of the plant, their  
20 support of Bellon, their side in the legal dispute.  
21 I think this is a collateral issue that has  
22 already been inquired to. The jury very well knows  
23 about the factions that existed and the possible biases  
24 that could flow from that.  
25 Going on with this, with impeachment evidence

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1 MR. SULLIVAN: Your Honor, it's still a 1519  
2 collateral issue that has been inquired into; and this  
3 is rehashing an area that has been replewed a number of  
4 times.  
5 THE COURT: Under Rule 608 (b), the general  
6 rule is that evidence as to collateral items of  
7 impeachment is normally not admissible because of  
8 confusion and a waste of time.  
9 However, the court does have discretion if it  
10 finds that the incident may be probative of truthfulness  
11 or untruthfulness.  
12 In this case, it is being offered with regard  
13 to whether Mr. Bellon and Mr. Swisher and others may  
14 have colluded together to conspire to testify against  
15 Mr. Hinkson.  
16 On that basis, I am going to permit the  
17 defense to elicit whatever it was Mr. Bellon said. The  
18 objection is overruled.  
19 (Whereupon, the following proceedings were  
20 held in the presence of the jury:)  
21 THE COURT: The objection is overruled.  
22 Counsel may proceed.  
23 BY MR. HOYT:  
24 Q. Thank you. Mr. Smith, what did you observe  
25 and what did you hear?

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1520

1 A. I heard Lonnie Birmingham tell Joe Swisher  
2 that -- the exact words I remember were, "The takeover  
3 only took a year, and I think it will be worth it."  
4 MR. HOYT: No further questions.  
5 THE COURT: Recross -- or, I guess,  
6 cross-examination?  
7  
8 CROSS EXAMINATION  
9 BY MR. SULLIVAN:  
10 Q. Good morning, Mr. Smith.  
11 A. Good morning.  
12 Q. I'm afraid I didn't hear you very well in your  
13 last answer. You have a low voice. You heard  
14 Mr. Birmingham say what?  
15 THE COURT: Why don't we have the court  
16 reporter re-read his answer?  
17 (Whereupon, the last question and answer in  
18 direct examination were read back by the court  
19 reporter.)  
20 BY MR. SULLIVAN:  
21 Q. Now, the takeover was, as you call it -- is  
22 that what you called it at the time? A take-over?  
23 A. That's not what I called it. That's what they  
24 called it.  
25 Q. And that takeover was by Mr. Richard Bellon?

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1522

1 A. Not in my presence.  
2 Q. All right. Now, Mr. Birmingham was an  
3 employee of WaterOz, wasn't he?  
4 A. Yes.  
5 Q. What was his job there?  
6 A. Making minerals.  
7 Q. Mixing the minerals?  
8 A. Yeah.  
9 Q. He wasn't part of the management team, was he?  
10 A. No.  
11 Q. He was an hourly, salaried employee; right?  
12 A. Yes.  
13 Q. As far as you knew?  
14 A. As far as I knew.  
15 Q. Was he not much different than you in the  
16 position in WaterOz?  
17 A. No.  
18 Q. I'm sorry?  
19 A. No.  
20 Q. How was he different?  
21 A. No, he wasn't much different than what I was.  
22 Q. I am using double negatives. I'm sorry. You  
23 were both salaried or wage employees; right?  
24 A. As far as I know, yes.  
25 Q. Not part of a management team?

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1521

1 A. Yes, sir.  
2 Q. He claimed, under a court order, a right to  
3 come on the property?  
4 A. I don't know all of the details.  
5 Q. Well, he didn't -- you know that he came on  
6 the property and said he was in charge, or words to that  
7 effect?  
8 A. Yes, sir.  
9 Q. And you knew that there was some legal dispute  
10 between Mr. Bellon and Mr. Hinkson?  
11 A. Yes, sir.  
12 Q. Did you know that it was over the control or  
13 management of WaterOz?  
14 A. Not at first.  
15 Q. You didn't know what it was about?  
16 A. No.  
17 Q. Now, Mr. Bellon was part of the management  
18 team of WaterOz, was he not?  
19 A. Not from my recollection at the time, he  
20 wasn't, no.  
21 Q. Had he been regularly on the WaterOz grounds?  
22 A. Yes.  
23 Q. What did you think he was doing there?  
24 A. I had no clue what he was doing there.  
25 Q. He was never escorted off the grounds, was he?

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1523

1 A. No.  
2 Q. Who was the management team?  
3 A. Jeri Gray and Mr. Hinkson.  
4 Q. Is that who you took orders or directions  
5 from?  
6 A. Yes, sir.  
7 Q. When they told you to do something, you pretty  
8 much did it?  
9 A. Yes, sir.  
10 Q. You didn't take orders from Lonnie Birmingham?  
11 A. No.  
12 Q. You didn't take orders from Joe Swisher?  
13 A. No.  
14 Q. You had seen Joe Swisher on the plant grounds  
15 on other occasions?  
16 A. One other time.  
17 Q. And what was he doing?  
18 A. I have no idea.  
19 Q. You knew he was not a part of the management  
20 team, though; correct?  
21 A. Correct.  
22 Q. You are not aware of the legal problems that  
23 Mr. Bellon and Mr. Hinkson had with each other?  
24 A. Not at the time.  
25 Q. Did you ever go to court and learn something

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1524

1 about it?

2 A. No.

3 Q. Whatever you heard was just talk around the  
4 plant?

5 A. Yes.

6 Q. Have you gotten -- in the seven years that you  
7 have worked for WaterOz, have you gotten promotions?

8 A. Yes.

9 Q. Have you gotten raises in salary?

10 A. Yes.

11 Q. What did you start out at? What was your pay?

12 THE WITNESS: Do I have to answer that?

13 THE COURT: Yes, you do.

14 THE WITNESS: I started out at \$7.50.

15 BY MR. SULLIVAN:

16 Q. \$7.50 an hour?

17 A. Yes, sir.

18 Q. And when was your first raise?

19 A. After about six months.

20 Q. Have you had a series of raises?

21 A. Yes.

22 Q. Have you had a series of promotions?

23 A. Just the one promotion.

24 Q. To your present position?

25 A. Yes.

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1526

1 Q. The present manager is Mr. Greg Towerton?

2 A. Yes, sir.

3 Q. And you know he is the husband of  
4 Mr. Hinkson's ex-wife?

5 A. Yes, I do.

6 Q. But you still consider Mr. Hinkson the boss,  
7 don't you?

8 A. Yes.

9 Q. Returning now to November 21, 2002, you say  
10 you got stopped at a roadblock?

11 A. Yes, sir.

12 Q. You were driving to the plant to start work in  
13 the morning?

14 A. Uh-huh.

15 Q. What time was it, approximately, when you were  
16 stopped at the roadblock?

17 A. Approximately fifteen minutes before 7:00  
18 o'clock in the morning.

19 Q. And were these local police officers at the  
20 roadblock?

21 A. Yes, sir.

22 Q. And you were told that you couldn't drive on  
23 to the WaterOz property?

24 A. Yes.

25 Q. Were you given the reason that it was being

Q&A COURT REPORTING (208) 484-6309

1525

1 Q. And that was some five years ago?

2 A. Uh-huh.

3 Q. Do you consider yourself a loyal employee of  
4 WaterOz?

5 A. Yes.

6 Q. What is your salary now?

7 A. I make \$16.10.

8 Q. And you certainly don't want to lose your job;  
9 correct?

10 A. Correct.

11 Q. You have dependents?

12 A. Yes.

13 Q. How many dependents?

14 A. One.

15 Q. Who is that?

16 A. My wife. Oh, my wife -- I have two. Excuse  
17 me. I have my wife and my child.

18 Q. You have got kids?

19 A. Yeah. I have one child.

20 Q. Does your wife work?

21 A. Yes.

22 Q. Where does she work?

23 A. At a place called Stony Mountain Bow Strings.

24 Q. That's not WaterOz?

25 A. No.

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1527

1 searched by Federal officers at that point?

2 A. No.

3 Q. Were you given any reason?

4 A. All they said to me was, "WaterOz is closed  
5 today."

6 Q. So you went over to a point where you say you  
7 were 1,200 yards from the plant?

8 A. Yes, sir.

9 Q. And you happened to have something with you  
10 called a spotting scope?

11 A. Yes, sir.

12 Q. Do you need that to work at the WaterOz plant?

13 A. No, sir.

14 Q. That doesn't have anything to do with the  
15 WaterOz plant?

16 A. No.

17 Q. But you had it in your car?

18 A. I have it in my car today.

19 Q. And from your vantage point, you could see  
20 persons on the grounds and they had jackets on?

21 A. Yes, sir.

22 Q. And did you recognize those to be what is  
23 called raid jackets?

24 A. "Raid"?

25 Q. "Raid jackets," have you ever heard that term?

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1 A. No. 1528  
2 Q. They had initials on the back, though?  
3 A. Yes, they did.  
4 Q. And they were large letters; right?  
5 A. I believe some of them were yellow, yellow  
6 letters.  
7 Q. And you understood that that was so they could  
8 be identified as Federal agents?  
9 A. Yes.  
10 Q. All right. You didn't really even need that  
11 scope to tell that, did you?  
12 A. From where I was at, yes. You couldn't tell  
13 with the naked eye.  
14 Q. Those letters on their backs were pretty much  
15 the size of what? They filled up the whole back of the  
16 jacket?  
17 A. Oh, no. They weren't that big.  
18 Q. But they identify them as either FBI or IRS?  
19 A. I think that's about all I seen was mostly FBI  
20 and a few IRS.  
21 Q. Now, how long did it take you to get to this  
22 vantage point after you were stopped at the blockade?  
23 A. About five minutes.  
24 Q. So it's now, what, pushing 7:30?  
25 A. Excuse me?

1 Q. What time was it now? Pushing 7:30 in the 1529  
2 morning?  
3 A. Pushing 7:00.  
4 Q. Pushing 7:00?  
5 A. I didn't talk to the officers but just a  
6 second.  
7 Q. You got to the blockade at a quarter of 7:00?  
8 A. Yes.  
9 Q. I'm sorry. I thought it was a quarter after.  
10 How long did you stay in that position?  
11 A. A couple hours.  
12 Q. And one of the things you saw were some of  
13 those people, you say, carrying boxes?  
14 A. Yes, sir.  
15 Q. Now, you didn't see them come out of the house  
16 with the boxes, did you?  
17 A. I could not see them physically come out of  
18 the door.  
19 Q. Were they cardboard boxes?  
20 A. Yes, sir.  
21 Q. Do you know if there was anything in those  
22 boxes?  
23 A. No, I do not.  
24 Q. Did you know that there was a search going on  
25 of the plant?

1 A. Yes. 1530  
2 Q. And what you could tell, from what you could  
3 observe, was that there were items being taken out of  
4 the plant; right?  
5 A. Not from my vantage point.  
6 Q. But could you see the Federal officers going  
7 in and out of the plant?  
8 A. Yes, sir.  
9 Q. And did you reach a conclusion that they were  
10 searching the plant?  
11 A. Yes.  
12 Q. Did you reach the conclusion, if they were  
13 taking anything from there during this search, that they  
14 would put it in boxes and carry it out?  
15 A. Yes.  
16 Q. Also, with regard to comments that you would  
17 hear Mr. Hinkson make about various people, you said he  
18 would make comments about Mr. Albers?  
19 A. Yes.  
20 Q. And he made comments about a lady named  
21 Arnette Hasalons?  
22 A. Yes.  
23 Q. Did you understand that Mr. Albers was  
24 representing Ms. Hasalons in a legal dispute with  
25 Mr. Hinkson?

1 A. No, I did not. 1531  
2 Q. You didn't know that at the time?  
3 A. Not at the time.  
4 Q. Ms. Hasalons had been an employee of WaterOz,  
5 hadn't she?  
6 A. Yes, she did.  
7 Q. And you knew her?  
8 A. Yes. I had met her. I didn't know her.  
9 Q. At least acquainted?  
10 A. Acquainted.  
11 Q. And what year was that that she worked at  
12 WaterOz?  
13 A. The exact year I don't remember. It was when  
14 I first started.  
15 Q. Was it before the year 2000?  
16 A. I don't recall.  
17 Q. And you made -- you heard Mr. Hinkson make  
18 comments about a lady named Cook?  
19 A. Nancy?  
20 Q. Nancy Cook?  
21 A. Yes, yes.  
22 Q. And the extent of what you heard was that God  
23 would take care of people like that?  
24 A. Yes, sir.  
25 Q. And now, was he saying -- what were the

1532

1 circumstances of him saying that to you?

2 A. That he didn't like them. He just didn't --

3 Q. Where were you? Do you recall where you were?

4 A. I was in shipping.

5 Q. You were in shipping? And how did Nancy Cook

6 come up in your conversation?

7 A. I think the first time I heard it they had

8 came back from a court -- some kind of court deal.

9 Q. Was this during the time that he had been --

10 after his arrest on 11/21/02?

11 A. After?

12 Q. Yes, that he made this comment.

13 A. No. Before.

14 Q. It was before? How much before?

15 A. I don't recall.

16 Q. And did he tell you what sort of proceeding

17 had occurred with Nancy Cook that he came back from?

18 A. No.

19 Q. Were you aware that Mr. Hinkson generally

20 disliked anyone in law enforcement?

21 A. Yes.

22 Q. Were you aware that Mr. Hinkson generally

23 disliked people with the Federal Government?

24 A. Oh, yes.

25 Q. And were you generally aware that he didn't

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1 like anything having to do with tax laws and the IRS?

2 A. Not at first.

3 Q. But at some point?

4 A. At some point.

5 Q. Did you agree with him in those positions?

6 A. Some.

7 Q. And you discussed with him that you agreed

8 with him in those positions?

9 A. Yes.

10 Q. Which ones are you in agreement with him on?

11 A. Government.

12 Q. Not the County Government?

13 A. No.

14 Q. Not the County?

15 A. I --

16 Q. Not the State Government?

17 A. Federal Government.

18 MR. SULLIVAN: The Federal Government, okay.

19 I have nothing further, Your Honor.

20 THE COURT: Very well. Mr. Hoyt, redirect?

21 MR. HOYT: I have a few questions, Your Honor.

22 THE COURT: Go ahead.

23

24

25

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1 REDIRECT EXAMINATION

2 BY MR. HOYT:

3 Q. Mr. Smith, I believe you stated that

4 Mr. Swisher had not been a part of the WaterOz

5 management team prior to the Bellon takeover; is that

6 correct?

7 A. That's correct, not to my knowledge. Excuse

8 me. Not to my knowledge.

9 Q. But after the Bellon takeover, was it apparent

10 to you that Mr. Swisher was a part of the new management

11 team?

12 MR. SULLIVAN: Object. That is without any

13 foundation, Your Honor.

14 THE COURT: Sustained.

15 BY MR. HOYT:

16 Q. Thank you. Mr. Smith, what did you observe,

17 as far as Mr. Swisher's role after the Bellon takeover?

18 A. That he was going to be our mineral -- our

19 mineral maker, and we were to do what he was told --

20 what he told us to do we were supposed to do.

21 Q. And he was working with Mr. Bellon?

22 A. Yes, sir.

23 Q. And Mr. Birmingham?

24 A. Yes, sir, and some other people. There was

25 five or six of them, I believe.

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1 Q. Now, you said you saw FBI agents carrying

2 boxes away from Mr. Hinkson's house; is that correct?

3 A. Yes, sir.

4 Q. Did they carry boxes into Mr. Hinkson's house?

5 A. No.

6 Q. Did they only carry boxes away from

7 Mr. Hinkson's house?

8 A. That is all I seen, yes.

9 Q. Although you couldn't see him come in or go

10 out of the door, as you described, could you tell from

11 where you were if -- did it appear to you that they had

12 come from inside of Mr. Hinkson's house?

13 A. Yes.

14 Q. And at that time, the time of the raid, did

15 Mr. Swisher appear to have any health problems, as far

16 as you could tell?

17 MR. SULLIVAN: Object, Your Honor. Not

18 covered in my cross-examination.

19 THE COURT: Overruled -- sustained, rather.

20 MR. HOYT: Thank you, Your Honor. No further

21 questions of this witness.

22 THE COURT: Anything further, Mr. Sullivan?

23 MR. SULLIVAN: One question, please, in one

24 area, Your Honor.

25 THE COURT: Yes.

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RECROSS EXAMINATION

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BY MR. SULLIVAN:

Q. Mr. Smith, with regard to the question about what Mr. Joe Swisher did after the so-called takeover, was he directing you to do anything?

A. He hadn't yet.

THE COURT: So is the answer "yes" or "no"?

THE WITNESS: No.

MR. HOYT: I'm sorry. Point of time? At what time? During the entire period or just as of the time that the conversation occurred that he mentioned?

THE COURT: If you can get him to pin it down to a time, that would be helpful.

BY MR. SULLIVAN:

Q. How long did the so-called takeover last?

A. Approximately ten days, I believe.

Q. And what day was -- in that ten days, what was the day that you heard or that you claim to have heard a conversation between Lornie Birmingham and Joe Swisher?

A. The second day, Friday.

Q. And during those ten days, is your answer that Joe Swisher never told you to do anything?

A. They were in court so, no.

Q. So your answer is "no"?

A. No.

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QUINN DAVID RAFF,

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having been called, sworn, testified as follows:

THE COURTROOM CLERK: Thank you. Please take the stand.

MR. SULLIVAN: Your Honor, I would like to ask for an offer of proof at sidebar.

THE COURT: Why don't we take our recess at this point?

Have a seat there, Mr. Raff.

Ladies and gentlemen, we will take our fifteen-minute recess and, hopefully, be back here at 10:30.

(Whereupon, the jury was excused from the courtroom, and the following proceedings were held outside the presence of the jury:)

MR. SULLIVAN: Your Honor, I understand that Mr. Raff is the ex-husband of Marianna Raff; so I would request that counsel provide us a short offer of proof as to where we are going with this witness.

THE COURT: Mr. Hoyt, I thought we were not going to get into Ms. Raff. What is your offer of proof?

MR. HOYT: My offer of proof, Your Honor, is that Mr. Raff is familiar with Lornie Birmingham. He knows his reputation in the community and has been

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Q. Did you know that Joe Swisher was a chemist?

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A. No.

Q. Did you know what he was doing on the other occasions that you had seen him at the plant?

A. No.

Q. During those ten days, did you see him every one of those ten days?

A. I only seen him the first two.

Q. And you never saw him after that?

A. No.

Q. And he never told you to do anything?

A. No.

MR. SULLIVAN: I have no further questions.

THE COURT: Anything further, Mr. Hoyt?

MR. HOYT: Nothing further.

THE COURT: May the witness be excused?

MR. SULLIVAN: Yes, Your Honor.

MR. HOYT: He may.

THE COURT: Mr. Smith, you are excused. You may step down.

Call your next witness.

MR. HOYT: Your Honor, at this time Mr. Hinkson would call Mr. Quinn Raff.

THE COURT: Mr. Raff, would you stop right there? The clerk will administer the oath.

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Mr. Birmingham's neighbor. He has a personal opinion as to Mr. Birmingham's truthfulness.

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Let's see. We are not going to get into issues related to Marianna Raff. I'm trying to see if there is -- just a minute. It's unnecessary in his testimony that we refer to Marianna Raff.

THE COURT: That will be the best way. I will let Mr. Raff testify as to Mr. Birmingham's character for truthfulness, with the stipulation that the defense will not elicit the fact that he is the ex-husband of Marianna Raff.

MR. HOYT: I do know there is one other matter that he would bring up. It's strictly related to Mr. Birmingham and his present business.

THE COURT: Let me hear it.

MR. HOYT: The offer of proof is that he met Mr. Birmingham in the spring, late Spring of 2004; and Mr. Birmingham provided him with copies of brochures and materials for the new business that he was starting, which was based upon the mineral water business that Mr. Hinkson had.

THE COURT: So it goes to competition, basically, and motive to testify?

MR. HOYT: Motive, absolutely.

THE COURT: I will permit that.

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1 Anything further? 1540  
2 MR. SULLIVAN: Yes, Your Honor. On  
3 cross-examination, I would seek permission -- in order  
4 to show how he would have any contact with Lonnie  
5 Birmingham, I think it's necessary that the jury know  
6 that his wife was a long-time employee of WaterOz, to  
7 show that he has a connection to WaterOz and to  
8 Mr. Hinkson. That would go to his bias.  
9 THE COURT: I really do not want to open the  
10 door to Marianna Raff.  
11 MR. SULLIVAN: I do not either, Your Honor.  
12 THE COURT: Let's do it this way,  
13 Mr. Sullivan: I am going to allow the defense to  
14 proceed with the examination as Mr. Hoyt has proffered.  
15 I will then allow you to cross-examine; but I  
16 want to hear the testimony before I rule on whether or  
17 not I am going to allow you, on cross, to even raise  
18 Ms. Raff's name.  
19 MR. SULLIVAN: I would do it, Your Honor, by  
20 only referring to her as his ex-wife and not use her  
21 name.  
22 THE COURT: All right. That's fair. I will  
23 let you do that. Very well. With that ruling, we are  
24 in recess for fifteen minutes.  
25 (Recess.)

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1 are ready. 1542  
2 MR. HOYT: Thank you.  
3 THE COURT: Would you have the witness state  
4 his name and spell it for the record?  
5 MR. HOYT: We will do so.  
6  
7 DIRECT EXAMINATION  
8 BY MR. HOYT:  
9 Q. Mr. Raff, would you please state your name and  
10 spell your last name for the record?  
11 A. My name is Quinn David Raff, R-a-f-f.  
12 Q. Mr. Raff, where do you live?  
13 A. I live in Kooakia.  
14 Q. Kooakia, Idaho?  
15 A. Kooakia, Idaho.  
16 Q. Is that somewhere in the vicinity of the  
17 WaterOz factory?  
18 A. Yes, it is.  
19 Q. Now, at one time, were you a neighbor of --  
20 rather, was Lonnie Birmingham your neighbor?  
21 A. Yes, he was.  
22 Q. And how long have you known Lonnie Birmingham?  
23 A. Six or seven years.  
24 Q. And did your ex-wife work for WaterOz for a  
25 period of time?

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1 THE COURT: Counsel, you had something you 1541  
2 needed to raise with me?  
3 MR. SULLIVAN: Yes. It is also about this  
4 witness, Your Honor.  
5 THE COURT: Sure.  
6 MR. SULLIVAN: I seek permission to be able to  
7 ask on cross-examination, on the basis of inquiring into  
8 his basis for his opinion about Mr. Birmingham, the fact  
9 that, as we understand it, Mr. Birmingham had an affair  
10 with the witness's wife.  
11 THE COURT: Okay. I think that is perfectly  
12 fair to establish. For that reason, I will permit that.  
13 MR. SULLIVAN: May I request, Your Honor, to  
14 be sure about this, that the court direct the witness  
15 not to use the wife's name?  
16 THE COURT: Mr. Raff, so you understand -- and  
17 I won't go into all of the reasons why -- do not mention  
18 Marianna's name at all. Say, "my wife," or, "my  
19 ex-wife."  
20 THE WITNESS: Ex-wife.  
21 THE COURT: With that understanding, let's  
22 bring in the jury.  
23 (Whereupon, the following proceedings were  
24 held in the presence of the jury:)  
25 THE COURT: Mr. Hoyt, you may proceed when you

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1 A. She did. 1543  
2 Q. And have you ever met Mr. David Hinkson  
3 before?  
4 A. I have never shaken his hand, but I have seen  
5 him in the office at WaterOz one time when I was passing  
6 through.  
7 Q. And how many times, total, have you been to  
8 the WaterOz factory?  
9 A. Just into the office, maybe twice in my entire  
10 life.  
11 Q. Now, were you aware that Lonnie Birmingham  
12 worked at WaterOz?  
13 A. Of course.  
14 Q. He was the mineral maker there?  
15 A. Yes.  
16 Q. Have you had an opportunity -- did you meet  
17 him or run into him in the Spring of 2004?  
18 A. Yes, I did.  
19 Q. And where did you see him?  
20 A. He was at Jacob's Lumber Company, a hardware  
21 store in Kamiah, Idaho.  
22 Q. And at that time, did he have some brochures  
23 with him?  
24 A. He did.  
25 Q. And did he tell you what those brochures were

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1 for?

2 A. Yes, he did.

3 MR. SULLIVAN: Object to the hearsay, Your

4 Honor.

5 THE COURT: Overruled.

6 BY MR. HOYT:

7 Q. What were they for?

8 A. They were advertisements, pamphlets,

9 basically, things that he had printed up for this

10 business that he was starting back in South Carolina,

11 very similar to Mr. Hinkson's business, mineral,

12 water-type business.

13 Q. Was he in competition then with Mr. Hinkson?

14 A. It appeared to be so, yes, direct competition.

15 Q. Did he indicate to you if he had any partners

16 or investors in that business?

17 A. He mentioned he had three or four other men --

18 MR. SULLIVAN: Object to the hearsay.

19 THE COURT: Overruled. I am admitting this

20 testimony not for its truth but solely for whether or

21 not it impeaches the testimony of another witness.

22 "Impeach" means "discredit."

23 You may proceed, Mr. Hoyt.

24 BY MR. HOYT:

25 Q. Thank you. I didn't do this before. Let me

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1 Q. And, sir, do you have a personal opinion

2 regarding Mr. Birmingham's truthfulness?

3 A. Yes, I do.

4 Q. What is that opinion?

5 A. He has kind of got two personas. He comes

6 across as a very nice man.

7 MR. SULLIVAN: Object to the form.

8 THE COURT: Sustained.

9 Mr. Raff, the question is: Do you have an

10 opinion as to his truthfulness? That is the question I

11 want you to answer. Do not give us your layman's

12 psychological evaluation of him. Just tell us what your

13 opinion is.

14 THE WITNESS: As far as his --

15 BY MR. HOYT:

16 Q. May I? Let me ask you this: As far as his

17 truthfulness is concerned, can you tell the jury what

18 your experience has been?

19 THE COURT: No. That is not a proper

20 question, counsel. Let's do it by the rules.

21 BY MR. HOYT:

22 Q. Thank you. Tell me what your personal opinion

23 of his truthfulness is.

24 A. That he is dishonest. He personally admitted

25 to me, openly, that he --

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1 just take a moment to ask you for your background. By

2 whom are you employed?

3 A. I work for the U.S. Forest Service.

4 Q. What do you do for them?

5 A. I'm a fire crew leader.

6 Q. What does a fire crew leader do?

7 A. I supervise the district fire crew. There is

8 about twenty folks there. I supervise about half of

9 them. I'm in charge of the fire engine. We go on fires

10 in the state, out of the state, within our area of

11 administrative control.

12 Q. How long have you been a fire crew leader?

13 A. Since about 1996.

14 Q. And how long have you worked with the Forest

15 Service?

16 A. Since 1987.

17 Q. Have you always been a firefighter for the

18 U.S. Forest Service?

19 A. Yes.

20 Q. Mr. Raff, do you know Lonnie Birmingham's

21 reputation in the community for truthfulness?

22 A. Yes, I do.

23 Q. And what is that reputation?

24 A. He is dishonest. He is untrustworthy. He is

25 underhanded in his dealings.

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1 MR. SULLIVAN: Objection, Your Honor.

2 THE COURT: Mr. Raff, you are not listening to

3 my instructions. I do not care what he said to you.

4 All we want to know is what your opinion is. That is

5 all you can testify to.

6 THE WITNESS: I have a very low opinion of the

7 man's honesty.

8 THE COURT: That's fine. Thank you.

9 BY MR. HOYT:

10 Q. Is it true that Mr. Birmingham had an affair

11 with your ex-wife?

12 A. That is true.

13 Q. At the same time, has Mr. Birmingham tried to

14 be buddy-buddy or your friend?

15 A. All the time.

16 MR. SULLIVAN: Objection, Your Honor.

17 THE COURT: Sustained.

18 The jury will disregard that last answer.

19 MR. HOYT: No further questions, Your Honor.

20 THE COURT: Thank you.

21 Cross-examination, Mr. Sullivan?

22

23

24

25

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1  
2 BY MR. SULLIVAN:

3 Q. Good morning, Mr. Raff.

4 A. Good morning.

5 Q. Mr. Birmingham and your wife had an affair is  
6 what you testified to?

7 A. They did.

8 Q. How long ago was that?

9 A. That was -- we got divorced in 2002. The  
10 affair happened about a year and a half before that.

11 Q. So sometime in 2000?

12 A. About then. I didn't find about it for  
13 several months after the fact.

14 Q. Your wife also was an employee of WaterOz;  
15 correct?

16 A. She was.

17 Q. How long was she an employee of WaterOz?

18 A. If I recall, I think it was two or three  
19 years. It was quite sometime.

20 Q. And would that explain the occasions why you  
21 would be at WaterOz?

22 A. I never went to WaterOz in a business manner.  
23 I only went there to -- I passed through WaterOz on my  
24 way to Grangeville when I had meetings there. I would  
25 stop in to talk about what the arrangements were for the

1 kids after school, but I never come to the office.

2 They would page her. She would come there, we  
3 would talk about what's going on after school, that type  
4 of thing.

5 Q. Is it correct, sir, that your low opinion that  
6 you just expressed of Mr. Birmingham is, in large part,  
7 dependent upon the fact that he had an affair with your  
8 wife?

9 A. That is a lot of it. Not all of it.

10 Q. You made the statement that Mr. Birmingham was  
11 in direct competition with WaterOz?

12 A. The pamphlets he provided me to look at were  
13 advertising, basically, the same product that  
14 Mr. Hinkson had at WaterOz. He was clearly -- he didn't  
15 say it, but it was clear to me that he had started the  
16 same type of business back in South Carolina.

17 He mentioned he had three or four partners  
18 that were investing with him in this. In my mind, I  
19 thought, he is stealing Dave's business. He took the  
20 ideas, and he took them right back there, and he is  
21 manufacturing it right now.

22 THE COURT: Ladies and gentlemen, I am going  
23 to instruct you to disregard what was in Mr. Raff's  
24 mind.

25 The question was, "What did Mr. Birmingham

1 say?"

2 BY MR. SULLIVAN:

3 Q. Well, whatever you thought was based upon your  
4 observation of these brochures?

5 A. Absolutely.

6 Q. And so you concluded he was in direct  
7 competition with Mr. Hinkson?

8 A. What else was I to conclude?

9 Q. Right. Sort of like the way that Toyota is in  
10 direct competition with Ford?

11 A. It didn't seem like -- that never entered my  
12 mind. It looked like, clearly, he is taking the  
13 business and going far away to South Carolina. That's  
14 the thought that entered my mind. That's all.

15 Q. Did you have any understanding that any of  
16 Mr. Hinkson's products were protected by a patent?

17 A. No.

18 MR. HOYT: Objection, Your Honor. Well beyond  
19 the scope; lack of foundation.

20 THE COURT: Sustained. I think we have gone  
21 enough into that.

22 MR. SULLIVAN: Nothing further.

23 THE COURT: Anything further?

24 MR. HOYT: No questions.

25 THE COURT: Mr. Raff, you may step down. You

1 are excused.

2 THE WITNESS: Thank you.

3 MR. HOYT: Your Honor, at this time  
4 Mr. Hinkson would call Ms. Jan Dotson.

5 THE COURT: Very well. Is someone going to  
6 get Ms. Dotson?

7 MR. HOYT: I believe so.

8 MRS. HINKSON: She went to the restroom.

9 MR. HOYT: I apologize, Your Honor.

10 THE COURT: That's all right. I understand.  
11 Do you have another witness that you could call? I  
12 don't want to unduly disrupt the order of your  
13 presentation.

14 MR. HOYT: Understood, yes. It would disrupt  
15 things a little bit, but I do have another witness. If  
16 you would, give me one moment.

17 THE COURT: All right.

18 THE WITNESS: Fine. Thanks. You are so good  
19 to me.

20 THE COURTROOM CLERK: If you would, raise your  
21 right hand for me.

22 \* \* \*

23 JANEITE LYNN DOTSON,

24 having been called, sworn, testified as follows:

25 THE COURTROOM CLERK: Thank you. Please take



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1 the stand.

2 THE WITNESS: Can I check for electrodes

3 first?

4 THE COURT: You will be safe.

5 THE WITNESS: Thank you. You are so kind.

6 THE COURTROOM CLERK: If you would, state your

7 name and spell your last name for the record, please.

8 THE WITNESS: My name is Janette Lynn Dotson.

9 That's spelled D-o-t-s-o-n.

10 THE COURTROOM CLERK: Thank you.

11 THE WITNESS: Thank you.

12

13 DIRECT EXAMINATION

14 BY MR. HOYT:

15 Q. Good morning, Ms. Dotson.

16 A. Good morning.

17 Q. Where do you live?

18 A. I live about fifteen miles north of Kaminah,

19 Idaho, in a little community called Woodland.

20 Q. And for a period of time, were you employed by

21 WaterOz?

22 A. Yes, sir, I was.

23 Q. What period was that?

24 A. That was Spring of 2001 till the summer of

25 that same year, sir.

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1 A. I surely did, yes, sir.

2 Q. And approximately how long did you know

3 Mr. Birmingham?

4 A. Well, the first time I met him I had been

5 working for WaterOz. I was still in training for two

6 weeks; and he had been gone for a week, and I met him.

7 They said, "Oh, you have to meet Lonnie," and I didn't

8 understand that at the time --

9 MR. SULLIVAN: Objection, Your Honor.

10 THE COURT: You have to confine your answer

11 to --

12 THE WITNESS: "Yes" or "no"?

13 THE COURT: And specifically whatever the

14 question is. The question is, "And approximately how

15 long did you know Mr. Birmingham?"

16 THE WITNESS: From about April of 2001 till

17 fall of the same year.

18 BY MR. HOYT:

19 Q. And during that time period, did you become

20 familiar with or get to know his reputation in the

21 community for truthfulness?

22 A. Yes, I did.

23 Q. And can you state what that reputation is?

24 A. Well, my first encounter was he was not --

25 MR. SULLIVAN: Objection.

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1 Q. And do you hold any degrees?

2 A. Yes, sir, I do. I have a couple of degrees.

3 I'm a licensed vocational nurse in California, and I'm

4 also a licensed cosmetologist in California.

5 Q. Now, what was your job when you were working

6 for WaterOz?

7 A. Just pretty much, I took orders. And because

8 I am a cancer survivor, I kind of helped people that

9 thought that cancer was a death sentence.

10 Q. And during the time that you worked at

11 WaterOz, did you have an opportunity to meet

12 Mr. Hinkson?

13 A. Oh, yes. Many times.

14 Q. And during those times that you met him, did

15 you have an opportunity to observe him talk about

16 various legal subjects or law cases he was involved in?

17 A. Not usually. I was back in the corner, just

18 taking orders and various things.

19 MR. SULLIVAN: Objection, Your Honor.

20 Non-responsive.

21 THE COURT: I will overrule that objection.

22 That answer can stand.

23 BY MR. HOYT:

24 Q. Ms. Dotson, while you worked there, did you

25 meet a person by the name of Lonnie Birmingham?

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1 THE COURT: Not specific instances.

2 THE WITNESS: Okay. His reputation was a

3 womanizer and a liar.

4 BY MR. HOYT:

5 Q. And do you have a personal opinion of

6 Mr. Birmingham's truthfulness?

7 A. Yes. He is a womanizer and a liar. My first

8 encounter is that --

9 THE COURT: That is enough. We have to do

10 this by the rules.

11 THE WITNESS: Sorry. I'm learning the rules.

12 THE COURT: That's okay. That's why I'm here.

13 BY MR. HOYT:

14 Q. Now, when you were at -- if I might have one

15 moment, please?

16 THE COURT: Sure.

17 MR. HOYT: Ms. Dotson, we appreciate your

18 coming today.

19 Your Honor, I have no more questions.

20 THE COURT: Very well. Thank you, Mr. Hoyt.

21 Cross-examination?

22

23

24

25

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1 CROSS EXAMINATION 1556  
2 BY MR. TAYAY:  
3 Q. Ms. Dotson, you worked at WaterOz for a few  
4 months in 2001?  
5 A. Yes, sir, I did.  
6 Q. And that was the only place that you knew  
7 Mr. Birmingham, correct?  
8 A. Yes. I didn't socially know him at all.  
9 Q. You hadn't seen him before?  
10 A. No, sir. I had never seen him before.  
11 Q. And you only knew him at WaterOz; right?  
12 A. I only knew him at WaterOz.  
13 Q. You didn't know him very well; isn't that  
14 right?  
15 A. Well, I knew him when he came through the  
16 office and flirted with all of the women, yes.  
17 Q. You didn't know him very well?  
18 A. Not in a social -- socially-related, no.  
19 Q. You didn't have that many actual interactions  
20 with Mr. Birmingham, isn't that true?  
21 A. Oh, yes. We talked at great lengths on our  
22 breaks, and he came in the office.  
23 Q. Okay. You said that he was a womanizer?  
24 A. Uh-huh.  
25 Q. And that he flirted?

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1 A. Constantly, yes. 1557  
2 Q. It offended you?  
3 A. Very much so.  
4 Q. And your opinion is largely based upon that,  
5 isn't it?  
6 A. Yes and no, because he was supposed to have  
7 been a --  
8 Q. I just asked --  
9 THE COURT: Well, is the answer "yes" or "no"?  
10 THE WITNESS: Could you repeat the question?  
11 THE COURT: The question is, "And your opinion  
12 is largely based upon that, isn't it?"  
13 THE WITNESS: Go before that. Based upon what  
14 my --  
15 THE COURT: Do you understand that?  
16 THE WITNESS: No, I don't, sir.  
17 THE COURT: Rephrase your question.  
18 BY MR. TAYAY:  
19 Q. Your opinion is largely -- your opinion of  
20 Mr. Birmingham is largely based upon your view that he  
21 is a womanizer and he flirts? You don't like that?  
22 A. No, I don't like that.  
23 MR. TAYAY: No further questions.  
24 THE COURT: Anything further, Mr. Hoyt?  
25 MR. HOYT: Just a couple of quick questions.

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1 REDIRECT EXAMINATION 1558  
2 BY MR. HOYT:  
3 Q. Did Mr. Birmingham confine his womanizing just  
4 to flirting?  
5 A. No, sir, he did not.  
6 Q. What else did he do?  
7 MR. TAYAY: Objection, Your Honor.  
8 THE COURT: I am going to sustain that  
9 objection. I think we have gone into this enough. Do  
10 you have another question for Ms. Dotson?  
11 BY MR. HOYT:  
12 Q. Do you know his marital status at the time?  
13 MR. TAYAY: Objection, Your Honor.  
14 THE COURT: Sustained.  
15 BY MR. HOYT:  
16 Q. Ms. Dotson, as far as his credibility is  
17 concerned and your view of him, is it based solely on  
18 the fact that you believe him to be a womanizer?  
19 MR. TAYAY: Objection, Your Honor.  
20 THE COURT: It has been asked and answered.  
21 Sustained.  
22 MR. HOYT: No further questions.  
23 THE COURT: Anything further, Mr. Tayay?  
24 MR. TAYAY: No.  
25 THE COURT: Ms. Dotson, you are excused. You

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1 may step down. 1559  
2 THE WITNESS: Thank you, sir.  
3 THE COURT: Call your next witness.  
4 MR. HOYT: At this time, Mr. Hinkson would  
5 call Ms. Debbie Morley.  
6 THE COURT: Ms. Morley, would you step forward  
7 and take the oath, please?  
8 THE COURTROOM CLERK: Right up here, ma'am.  
9 THE WITNESS: Sorry.  
10 THE COURT: That's okay.  
11 THE COURTROOM CLERK: Please raise your right  
12 hand.  
13 \* \* \*  
14 DEBBIE EILEEN MORLEY,  
15 having been called, sworn, testified as follows:  
16 THE COURTROOM CLERK: Thank you. Please take  
17 the stand.  
18 THE COURTROOM CLERK: You will need to scoot  
19 right up to the mic. If you would, state your name and  
20 spell your last name, please.  
21 THE WITNESS: Debbie Eileen Morley,  
22 M-o-r-l-e-y.  
23  
24  
25

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1 DIRECT EXAMINATION 1560  
2 BY MR. HOYT:  
3 Q. Good morning, Ms. Morley. Where do you live?  
4 A. I live in Stites, Idaho.  
5 Q. And at one point in time, were you employed by  
6 WaterOz?  
7 A. Yes.  
8 Q. And when was that?  
9 A. From June of '99 to January of 2002 -- 2003.  
10 Yeah.  
11 Q. And during that period of time, did you have  
12 more than one job?  
13 A. Yes, yes.  
14 Q. What jobs did you have there?  
15 A. When I first was hired, I did some phones. I  
16 helped in shipping. I helped in bottling. And then I  
17 ended up doing the copying. I was a copy technician.  
18 Q. And what was your rate of pay when you first  
19 started there?  
20 A. I started out at \$8 an hour; and in no time, I  
21 was making \$10 an hour.  
22 Q. And was that a decent wage for the  
23 Grangeville, Idaho, Stites area?  
24 MR. SULLIVAN: I object, Your Honor. No  
25 foundation.

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1 Q. Did he ever say anything to you regarding 1562  
2 Mr. Albers?  
3 A. In what context?  
4 Q. Did he ever make negative statements about  
5 Mr. Albers in your presence?  
6 A. Yes. He was very upset about him.  
7 Q. And what did he say to you?  
8 A. Most of his comments were things of -- he  
9 would hope that God would smite him, that his skin maybe  
10 would fall off, something in that order.  
11 Q. Did he ever ask you to kill Dennis Albers for  
12 him?  
13 A. No.  
14 Q. Did he ever ask anyone to kill Dennis Albers  
15 for him, in your presence?  
16 A. No.  
17 Q. Did he ever talk to you about an investigation  
18 that was going on by the Federal Government concerning  
19 his taxation?  
20 A. Would you repeat that?  
21 Q. Did he ever talk to you about the fact that  
22 there was an IRS investigation going on?  
23 A. Yes.  
24 Q. And did he ever talk to you about the people  
25 involved in that? Does the name "Nancy Cook" mean

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1 THE COURT: Overruled. 1561  
2 MR. SULLIVAN: Irrelevant.  
3 THE COURT: I will allow her to answer.  
4 You can answer that, Ms. Morley.  
5 THE WITNESS: Yes, it is.  
6 BY MR. HOYT:  
7 Q. Now, did you have an opportunity to meet  
8 Mr. David Hinkson while you were there?  
9 A. Yes.  
10 Q. And did you get to know him fairly well?  
11 A. Yes.  
12 Q. And did he talk to you about some legal  
13 matters that he was involved in?  
14 A. Yes.  
15 Q. Specifically, did he ever talk to you about  
16 the Arnette Hasalone lawsuit?  
17 A. Yes.  
18 Q. Did you attend the trial of the Arnette  
19 Hasalone lawsuit?  
20 A. Yes.  
21 Q. Did you discuss the case with him?  
22 A. Yes.  
23 Q. Was Mr. Hinkson happy with the attorney for  
24 Arnette Hasalone, Mr. Dennis Albers?  
25 A. No, he wasn't.

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1 anything to you? 1563  
2 A. I knew that she was an agent for the IRS.  
3 Q. How about the name Steve Hines?  
4 A. Yes.  
5 Q. You are saying that the name Nancy Cook is  
6 familiar to you because Mr. Hinkson brought it up,  
7 brought the name up before you?  
8 A. Yes.  
9 Q. Are you certain that she was an IRS agent?  
10 A. No.  
11 Q. Was that important to you to know the  
12 positions that the people held that Mr. Hinkson was  
13 talking about?  
14 A. No.  
15 Q. You indicated that you were a copy technician.  
16 What did those jobs entail?  
17 A. I did all of the advertisements for WaterOz.  
18 We made booklets, things like that. I did all of the  
19 advertisements and the mailouts, and there was a lot of  
20 copying. I made all of the booklets myself.  
21 Q. I'm sorry. Are you finished?  
22 A. Yes.  
23 Q. Now, during the time that you were working as  
24 a copy technician, did you have an opportunity in the  
25 year 19 -- excuse me -- 2002, 2003 to meet Mr. Richard

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1 Bellon? 1564  
2 A. Yes.  
3 Q. And did he ever represent to you that he was  
4 an attorney?  
5 A. Yes, he did.  
6 Q. And what did he say about that?  
7 MR. SULLIVAN: Objection, Your Honor, under  
8 Rule 608(b).  
9 THE COURT: Sustained.  
10 That means you can't answer the question.  
11 Wait for another question.  
12 MR. SULLIVAN: I would request that the last  
13 answer be stricken.  
14 THE COURT: The jury will disregard the last  
15 question and answer.  
16 BY MR. HOYT:  
17 Q. Did you know Mr. Bellon's reputation for  
18 truthfulness?  
19 A. Yes.  
20 Q. And what was that reputation?  
21 A. That he is not truthful.  
22 Q. Now, in terms of working with Mr. Hinkson,  
23 could you describe him as a boss?  
24 MR. SULLIVAN: I object. Relevance.  
25 THE COURT: Sustained.

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1 objection. 1566  
2 BY MR. HOYT:  
3 Q. Last question: Did Mr. Hinkson keep his legal  
4 briefs in the copy area where you were the copy  
5 technician?  
6 MR. SULLIVAN: I object. Relevance.  
7 THE COURT: Sustained.  
8 MR. HOYT: No further questions. Thank you  
9 for coming today.  
10 THE COURT: Cross-examination?  
11 You can't go yet.  
12 THE WITNESS: Sorry. Thanks for helping me  
13 here.  
14 THE COURT: You bet. That's my job.  
15  
16 CROSS EXAMINATION  
17 BY MR. SULLIVAN:  
18 Q. Good morning, ma'am.  
19 A. Hi.  
20 Q. I understand you worked at WaterOz from June  
21 of '99 till about January of 2003?  
22 A. Yes.  
23 Q. Okay. And you had various jobs at the time?  
24 A. Yes.  
25 Q. Was it a 40-hour --

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1 BY MR. HOYT: 1565  
2 Q. Was he deeply involved in the lawsuits at that  
3 time that you were working there?  
4 A. Yes.  
5 Q. And did he discuss with you some of the legal  
6 principles that were involved in those lawsuits?  
7 A. Yes.  
8 Q. Were you aware that, in January of 2003,  
9 Mr. Joe Swisher was making telephone calls to  
10 Mr. Hinkson?  
11 MR. SULLIVAN: I object, Your Honor, on the  
12 grounds of relevance; Rule 608(b).  
13 THE COURT: Well, I may sustain the objection;  
14 but let's get an answer, first, as to whether she has  
15 any awareness.  
16 Do you know whether Mr. Swisher was calling  
17 Mr. Hinkson in January of 2003?  
18 THE WITNESS: Yes, I believe he had.  
19 THE COURT: All right.  
20 BY MR. HOYT:  
21 Q. My question is: Did Mr. Hinkson accept his  
22 phone calls?  
23 MR. SULLIVAN: I object, Your Honor. No  
24 foundation and relevance.  
25 THE COURT: I am going to sustain the

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1 A. Not the whole time. When I started out, I did 1567  
2 different sections of it; and then I ended up being just  
3 a copy technician the last probably two years.  
4 Q. Did you work steadily through that whole  
5 period?  
6 A. Yes.  
7 Q. For WaterOz?  
8 A. Yes.  
9 Q. Who was your boss during that period? "Boss"?  
10 How about supervisor at WaterOz?  
11 A. Jeri Gray.  
12 Q. Jeri Gray. All right. What was her position?  
13 A. She was the manager, I believe.  
14 Q. And under what circumstances did you have  
15 contact with Mr. Hinkson?  
16 A. Every day.  
17 Q. Doing what?  
18 A. He was making sure everything was going the  
19 way it was supposed to and just in contact with him,  
20 talking to him about, you know, that kind of stuff. I  
21 mean --  
22 Q. All right. You didn't consider yourself part  
23 of his management team, did you?  
24 A. No.  
25 Q. When Mr. Hinkson would make this comment about

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1 the lawyer, Dennis Albers, that God would smite him --  
 2 do I have that correct?  
 3 A. Uh-huh.  
 4 Q. Did you hear it more than once or only once or  
 5 twice?  
 6 A. Probably once or twice.  
 7 Q. Was it in the context of him talking about  
 8 this Arnette Hasalone trial?  
 9 A. Yes.  
 10 Q. Did you understand that Mr. Albers had  
 11 represented Arnette Hasalone?  
 12 A. Yes.  
 13 Q. And that Mr. Hinkson lost that lawsuit?  
 14 A. Yes.  
 15 Q. He wasn't happy about losing it; right?  
 16 A. No, he wasn't happy.  
 17 Q. Now, Mr. Bellon -- how long were you  
 18 acquainted with him?  
 19 A. Well, the first time I was ever acquainted  
 20 with him was when he came up to WaterOz.  
 21 Q. And when was that?  
 22 A. Let's see. I haven't been there for two  
 23 years. It's been -- 2001, probably. I'm not really  
 24 sure, though, of the exact date when I met him.  
 25 Q. All right. Other than the date, what kind of

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1 contact did you have with him?  
 2 A. They would come into the copy room, usually  
 3 him and David together, and have a few pages, you know,  
 4 to have copied and stuff like that. There was just a  
 5 few words exchanged, you know, back and forth on what he  
 6 had to do and those things.  
 7 Q. Did you see him daily?  
 8 A. No.  
 9 Q. Over what period of time did you see him?  
 10 A. Well, usually about three times a week.  
 11 Q. All right. And for how many months?  
 12 A. Oh, several months. I would say, a year and a  
 13 half.  
 14 Q. And did you report to him?  
 15 A. To Bellon?  
 16 Q. Yes.  
 17 A. No.  
 18 Q. Did you understand that he had some management  
 19 position at WaterOz?  
 20 A. No.  
 21 Q. Did you have any knowledge of what he did at  
 22 WaterOz?  
 23 A. When he first arrived, he was supposed to be  
 24 an attorney for David.  
 25 Q. And he appeared three times a week at the

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1 plant?  
 2 A. That I knew of, yes. It could have been more.  
 3 I worked in the copy room. I didn't work in the front  
 4 office.  
 5 Q. So you had very limited contacts with him?  
 6 A. Yeah, I guess you could say that.  
 7 Q. And your only contacts with him were there at  
 8 the WaterOz plant?  
 9 A. Yes.  
 10 Q. You didn't see him outside of the plant;  
 11 correct?  
 12 A. No. Well, there was times I saw him; but  
 13 there was no contact with him or nothing.  
 14 Q. I mean, did you have any social contact with  
 15 him?  
 16 A. No.  
 17 Q. Do you know where he lived?  
 18 A. No.  
 19 Q. Do you know any of his family members?  
 20 A. No.  
 21 Q. Did you know who his friends were?  
 22 A. No.  
 23 Q. You didn't know the details of the work he was  
 24 doing?  
 25 A. I knew he was supposed to represent David as

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1 an attorney.  
 2 Q. And you would see him with Mr. Hinkson?  
 3 A. Yes.  
 4 THE COURT: There is some water there.  
 5 THE WITNESS: Thank you.  
 6 BY MR. SULLIVAN:  
 7 Q. Are you aware of Mr. Bellon doing any legal  
 8 work?  
 9 A. No.  
 10 Q. You don't know what he did, do you?  
 11 A. I know that he would get paperwork together,  
 12 and then Brit Groom would sign them.  
 13 Q. Brit Groom is an attorney; right?  
 14 A. Yes.  
 15 Q. And that's about all you knew about --  
 16 A. He would converse with David on what to do on  
 17 legal stuff.  
 18 Q. From what you observed, he was a legal  
 19 advisor?  
 20 A. Yes. And he said he was an attorney.  
 21 Q. You thought he was an attorney; right?  
 22 A. Yes. From what he said, yes.  
 23 Q. You want to get that in, don't you?  
 24 A. What?  
 25 THE COURT: Counsel, now you are arguing with

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1 the witness. The jury will evaluate the testimony. 1572  
2 BY MR. SULLIVAN:  
3 Q. When did you last see Mr. Bellon?  
4 A. It's been at least two years.  
5 Q. You have had no contact with him in the last  
6 two years?  
7 A. No.  
8 Q. You haven't seen him?  
9 A. No.  
10 Q. You haven't talked to him?  
11 A. No.  
12 Q. You don't know what he's doing?  
13 A. No.  
14 MR. SULLIVAN: I have no further questions.  
15 THE COURT: All right. Anything further,  
16 Mr. Hoyt?  
17 MR. HOYT: Just briefly, Your Honor.  
18  
19 REDIRECT EXAMINATION  
20 BY MR. HOYT:  
21 Q. Ms. Morley, did Mr. Bellon ever admit to you  
22 that he was not an attorney?  
23 A. Yes.  
24 MR. HOYT: Thank you. No further questions.  
25 THE COURT: Mr. Sullivan?

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1 MR. SULLIVAN: No questions, Your Honor. 1573  
2 THE COURT: Ms. Morley, you are excused and  
3 may stand down. Thank you.  
4 MR. HOYT: At this time, Your Honor, the  
5 defendant, Mr. Hinkson, would call Mr. Don Alm to the  
6 stand.  
7 Mr. Alm, if you would, please come forward.  
8 Do you see the nice lady up there with blonde hair? She  
9 will administer an oath.  
10 THE COURTROOM CLERK: Hi. If you would, raise  
11 your right hand, please.  
12 \* \* \*  
13 DONALD ALM,  
14 having been called, sworn, testified as follows:  
15 THE COURTROOM CLERK: How should we do the  
16 microphone?  
17 THE COURT: Mr. Hoyt, where would be the most  
18 comfortable place? We can leave Mr. Alm right there, if  
19 that is okay by him.  
20 Do we have a microphone?  
21 THE COURTROOM CLERK: How about right here,  
22 sir?  
23 THE COURT: Ms. Longstreet will show you where  
24 to move your wheelchair, Mr. Alm. If you would, face  
25 the jury a little bit. You need to be able to see the

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1 questioner. About right there is fine. 1574  
2 THE COURTROOM CLERK: If you would, state your  
3 name and spell your last name for the record.  
4 THE WITNESS: Donald Alm, A-l-m.  
5 THE COURTROOM CLERK: Thank you.  
6  
7 DIRECT EXAMINATION  
8 BY MR. HOYT:  
9 Q. Good morning, Mr. Alm.  
10 A. Good morning.  
11 Q. Where do you live?  
12 A. Grangeville, Idaho.  
13 Q. How long have you lived in Grangeville?  
14 A. Oh, all my life, pretty much. I moved there  
15 in 1940.  
16 THE COURT: Just wait a minute. We are going  
17 to give a different microphone to Mr. Alm here so the  
18 jury can hear him. Do you need to plug it in?  
19 BY MR. HOYT:  
20 Q. Mr. Alm, what has been your occupation  
21 throughout your life?  
22 A. Farming and mining.  
23 Q. And what is your formal education?  
24 A. Eighth grade.  
25 Q. And as a part of your mining, sir, did you

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1 ever encounter someone by the name of Elven Joe Swisher? 1575  
2 A. Yes, I have.  
3 Q. And approximately how many years ago did you  
4 first meet him?  
5 A. I believe it was probably later '70s, early  
6 '80s.  
7 Q. And what type of a situation was it that you  
8 encountered him?  
9 A. I attended a mine safety and rescue training  
10 that the Bureau of Mines put on up at his mine.  
11 Q. After meeting him on that occasion, did you  
12 subsequently go into business with him?  
13 A. Yes. Uh-huh. We formed a mining corporation.  
14 Q. And did you invest money in the mining  
15 corporation?  
16 A. I --  
17 MR. TAXAY: Objection, Your Honor. That is a  
18 leading question.  
19 THE COURT: It is leading. I will sustain it  
20 as to the form of the question.  
21 BY MR. HOYT:  
22 Q. With regard to the business, what was your  
23 role in the business?  
24 A. I did some of the assessment work and put some  
25 mining claims that I owned into the company.

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1 rumors as to what Mr. Swisher has been doing since your  
2 last contact with him?

3 MR. TAXAY: Objection, Your Honor. Rumors?  
4 THE COURT: Sustained.  
5 MR. NOLAN: Could we -- we can't approach?  
6 THE COURT: I don't think so.

7 BY MR. HOYT:  
8 Q. Let me just ask this: Is your knowledge of  
9 what Mr. Swisher has been doing based upon your contacts  
10 in the community with other persons?  
11 A. Yes.  
12 Q. And is your opinion of him formed by the  
13 information you have received from your contacts in the  
14 community?  
15 A. Yes, sir.  
16 MR. HOYT: No further questions.  
17 THE COURT: Anything further, Mr. Taxay?  
18 MR. TAXAY: No, Your Honor.  
19 THE COURT: Very well. Mr. Alm, you are  
20 excused. Thank you.  
21 MR. HOYT: At this time, Your Honor,  
22 Mr. Hinkson would call Mr. Del Huger.  
23 THE COURT: Mr. Huger, would you step forward  
24 and be sworn, sir?  
25 THE COURTROOM CLERK: If you would, raise your

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1 right hand, please.  
2 \* \* \*  
3 DELBERT R. HUGER,  
4 having been called, sworn, testified as follows:  
5 THE COURTROOM CLERK: Thank you. Please take  
6 the stand. If you would, state your name and spell your  
7 last name for the record, please.  
8 THE WITNESS: My name is Delbert R. Huger,  
9 H-o-u-g-e-r. I have an alias of Del, D-e-l.  
10 THE COURTROOM CLERK: Thank you, sir.  
11  
12 DIRECT EXAMINATION  
13 BY MR. HOYT:  
14 Q. Mr. Huger, where do you live?  
15 A. I live in Grangeville, Idaho.  
16 Q. And by whom are you employed?  
17 A. I am employed by WaterOz.  
18 MR. HOYT: Your Honor, may we -- let's see.  
19 THE COURT: Do you want the lights dimmed?  
20 MR. HOYT: May we have the lights dimmed,  
21 please?  
22 THE COURT: Sure.  
23 MR. HOYT: Let me turn this off and present  
24 Exhibit C-1.  
25 THE COURT: Mr. Huger, that should come up on

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1 that computer screen there.  
2 THE WITNESS: Yes, sir. Thank you.  
3 BY MR. HOYT:  
4 Q. Mr. Huger, I would ask you if you can  
5 identify Exhibit C-1?  
6 A. Yes, I can.  
7 Q. What is that?  
8 A. That is the mineral water containers with the  
9 separate, individual minerals at the WaterOz factory.  
10 Q. And what is your job title or description at  
11 WaterOz?  
12 A. I am the plant manager, as well as the  
13 procurement officer.  
14 MR. HOYT: And I would ask you to identify --  
15 let's see. Let's just go with C-1. We will move the  
16 admission of C-1, Your Honor.  
17 THE COURT: Any objection?  
18 MR. TAXAY: Number one, lack of foundation;  
19 and, two, relevance.  
20 THE COURT: I am going to overrule the  
21 objection on foundation, but I will admit it for the  
22 limited purpose of allowing the witness to illustrate  
23 his testimony.  
24 (Whereupon, Defendant's Exhibit No. C-1 was  
25 received in evidence for illustrative purposes.)

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1 MR. HOYT: May I publish to the jury?  
2 THE COURT: You may.  
3 BY MR. HOYT:  
4 Q. Can you explain to the jury what is going on  
5 in Exhibit C-1, what the objects are in that photograph?  
6 A. The containers each have a separate mineral.  
7 The one closest to you that stands out on the top is  
8 potassium.  
9 The lab people make the mineral water. The  
10 container has R.O. water put in it and a certain amount  
11 of minerals, each mineral in there, to bring the  
12 appropriate parts per million in there.  
13 Q. Would you please explain to the jury what R.O.  
14 water is?  
15 MR. TAXAY: Objection, Your Honor.  
16 THE COURT: I mean, he has testified to it. I  
17 would like the jury to understand what the term means.  
18 Overruled.  
19 THE WITNESS: The R.O. water -- the water  
20 comes out of the spring; and, by reverse osmosis, it is  
21 cleaned and purified so that everything is taken out of  
22 there.  
23 BY MR. HOYT:  
24 Q. Let me show you what has been marked as  
25 exhibit --

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1 THE COURT: Before we do that, let me see if I  
2 can help here. Do you then call it R.O. water after it  
3 has been purified, Mr. Houser?  
4 THE WITNESS: Yes, sir.  
5 THE COURT: All right. Thank you.  
6 MR. HOYT: Thank you, Your Honor.  
7 Q. I would like to show the witness now what has  
8 been marked as Exhibit C-9. Can you identify Exhibit  
9 C-9 for us, please?  
10 A. Yes, sir. That is a cleaning room with the  
11 bottle machine that is inside of that.  
12 MR. HOYT: How does the mineral -- well, let's  
13 do this first. Let me offer C-9.  
14 MR. TAXAY: Some relevance objection.  
15 THE COURT: I will admit it for the limited  
16 purpose of illustrating his opinion.  
17 (Whereupon, Defendant's Exhibit No. C-9 was  
18 received in evidence for illustrative purposes.)  
19 MR. HOYT: May I publish to the jury, Your  
20 Honor?  
21 THE COURT: You may.  
22 BY MR. HOYT:  
23 Q. All right. And how does the mineral water get  
24 from the larger vat depicted in C-1 into the bottle room  
25 area?

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1 MR. HOYT: Your Honor, we would move the  
2 admission of Exhibit C-12.  
3 MR. TAXAY: Same objection.  
4 THE COURT: I will admit C-12. As the court  
5 recalls, this was also the subject of testimony by one  
6 of the Government's witnesses, if memory serves  
7 correctly.  
8 MR. HOYT: It was, Your Honor.  
9 THE COURT: It is admitted. You may publish  
10 it.  
11 (Whereupon, Defendant's Exhibit No. C-12 was  
12 received in evidence.)  
13 MR. HOYT: Thank you, Your Honor.  
14 Q. Now, you mentioned a moment ago, before we  
15 published it to the jury, that there was a tank. Do you  
16 see the green arrow? Is that pointing to the tank that  
17 you are referring to?  
18 A. Yes, sir.  
19 Q. That's where the R.O. water is stored?  
20 A. Yes, sir.  
21 Q. And that creates a gravity flow?  
22 A. Yes.  
23 Q. And then, over here, where the green arrow is,  
24 is that something you have previously described?  
25 A. Yes, sir. That's our cleaning room, with the

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1 A. We have an inch-and-a-half hose that we  
2 connect to the vat, with a tank, and then it is  
3 connected on the back side. What you're looking at --  
4 it goes through a U.V. system, a couple of filter  
5 systems, and then into the white tank on top that you  
6 can see.  
7 Then, from there, it's measured, based upon  
8 the way we set it up with the computer, to either run in  
9 a pint or quart or it can actually run into a gallon  
10 container, several at a time.  
11 Q. I'm using a pointer now. Is this the tank  
12 that you are referring to?  
13 A. Yes, sir.  
14 Q. All right. Now, I would like to show you what  
15 has been marked as Exhibit C-12. Can you identify that  
16 for us, please, Mr. Houser?  
17 A. Yes, sir.  
18 Q. What is that?  
19 A. The yellow container on top is the storage of  
20 the R.O. water. In the stairs leading up to that other  
21 office is the air and water purifier room where we build  
22 the air and water purifying machines.  
23 Q. Is this a photograph of the interior of the  
24 WaterOz factory?  
25 A. Yes, it is.

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1 machine in it.  
2 Q. All right. And are these the vats that we saw  
3 in a picture earlier?  
4 A. Yes, sir.  
5 Q. Now, you talked about the stairs that were  
6 leading up. What room is it that is at the top of the  
7 stairs?  
8 A. That's where we manufacture our air and water  
9 purifier machines.  
10 Q. Inside of this door?  
11 A. Yes.  
12 Q. Just for orientation purposes, there are two  
13 open doors down below that air and water purifying room.  
14 My question is: What's there?  
15 A. That is our kitchen facility in the first one  
16 on the left there.  
17 Q. And in the area outside of the picture -- it's  
18 already been admitted -- the lunch room and meeting room  
19 area, where is that located?  
20 A. That would be to the right of that arrow.  
21 Q. In the direction that the arrow is pointed?  
22 A. Yes, sir.  
23 Q. Now, who is your boss at WaterOz?  
24 A. Greg Towerton.  
25 Q. How do you know him?

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1 A. I hired him to work in the Idaho County Jail  
2 when I was a jail commander there.

3 Q. When were you a jail commander at the Idaho  
4 County Jail?

5 A. 2000 and -- 2001 to 2003. I worked as a  
6 jailer, total, for eight years.

7 Q. Prior to working at the Idaho County Jail, had  
8 you worked in -- what occupation did you have?

9 A. I'm retired from the military, CW III.

10 Q. What branch of the Army?

11 A. Army Logistics, running warehouses, managing  
12 warehouses.

13 Q. Did your training in the military assist you  
14 in your work at WaterOz?

15 A. Yes, sir.

16 MR. TAXAY: Objection. Objection. Relevance,  
17 Your Honor.

18 THE COURT: Sustained.

19 BY MR. HOYT:

20 Q. Now, Mr. Huger, were you working for WaterOz  
21 at the time of Mr. Bellon's takeover in December of  
22 2003?

23 A. Yes, I was.

24 Q. And who were the principal parties involved in  
25 that takeover, to your knowledge?

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1 MR. TAXAY: Objection. Lack of foundation.  
2 THE COURT: Sustained.  
3 Let me see counsel at sidebar.  
4 (Whereupon, the following sidebar discussion  
5 was held outside the presence of the jury:)  
6 MR. TAXAY: The Government has several  
7 objections. One, of course, is lack of foundation, just  
8 in terms of the way the questioning is running, but,  
9 also, the cumulative nature of this testimony.  
10 As we spoke earlier in another earlier  
11 objection, there has been ample evidence on this subject  
12 already.  
13 To the extent defense wants to establish some  
14 kind of lies on Mr. Bellon's part, the evidence is there  
15 for them to argue that. This is just cumulative at this  
16 point.  
17 MR. HOYT: Your Honor, I think we are entitled  
18 to corroboration. I recognize that the term  
19 "cumulative" is out there, but I think you need two  
20 witnesses to establish a certain fact.  
21 We will be very brief on this point, and I am  
22 about finished with this witness. I think he has  
23 something to offer on the subject of the takeover and  
24 the conspiracy between Mr. Bellon, Swisher, and  
25 Birmingham, et cetera.

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1 THE COURT: The court has the same concern  
2 with regard to the cumulative nature of the testimony.  
3 We are not trying a treason case here, and you do not  
4 need two witnesses to the crime.  
5 For that reason, I am going to sustain the  
6 Government's objection. This is cumulative. I do not  
7 think we need to go into more detail with regard to how  
8 WaterOz products are made, sold, or offered on the  
9 Internet. The jury has heard plenty of this.  
10 Frankly, it is so marginally relevant to what  
11 is at issue in this case that I really think we are  
12 getting off on an irrelevant area that is not going to  
13 help the jury on the issues that they are going to  
14 wrestle with in assessing the guilt or innocence on the  
15 Supervening Indictment.  
16 MR. HOYT: May I make an offer of proof  
17 briefly? The defendant offers that Mr. Huger would  
18 testify that he was present when Mr. Bellon -- I'm  
19 sorry -- when Mr. Swisher and Mr. Birmingham were  
20 together at that meeting.  
21 He would like to testify that Mr. Birmingham  
22 approached Mr. Swisher and indicated that, while it had  
23 taken a year for them to get control, he was very  
24 pleased that they had been able to do so.  
25 THE COURT: That is cumulative. We have

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1 already had testimony from Jerry Smith to that effect.  
2 The objection is sustained.  
3 (Whereupon, the following proceedings were  
4 held in open court, in the presence of the jury:)  
5 BY MR. HOYT:  
6 Q. As the plant manager, Mr. Huger, is the area  
7 of the lab and the information contained therein kept  
8 separate from the people who work at WaterOz and the  
9 general public?  
10 MR. TAXAY: Objection. Objection, Your Honor.  
11 Relevance.  
12 THE COURT: Sustained.  
13 MR. HOYT: May I be heard?  
14 THE COURT: No. I think you have made your  
15 record on that point, counsel. My ruling at sidebar  
16 stands.  
17 MR. HOYT: If I might have a moment, Your  
18 Honor?  
19 THE COURT: Sure.  
20 MR. HOYT: No further questions, Your Honor.  
21 THE COURT: Cross-examination?  
22 MR. TAXAY: No questions.  
23 THE COURT: Very well. Mr. Huger, you may  
24 step down.  
25 Call your next witness.

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1 MR. HOYT: Your Honor, I don't know if he has  
2 arrived yet; but our next witness on the list is  
3 Mr. John Harding.  
4 THE COURT: Let's call a different witness.  
5 MR. HOYT: I just don't know. Can I just  
6 check and see?  
7 Your Honor, out of five witnesses, I am not  
8 sure -- they were traveling some distance to get here.  
9 It appears that the next five witnesses are not  
10 available.  
11 THE COURT: You do not have anybody else to  
12 call?  
13 MR. HOYT: I don't have anybody else to call  
14 at this point.  
15 THE COURT: Ladies and gentlemen, I think we  
16 will take an early lunch hour then. Why don't you plan  
17 on being back here at, let's say, 1:00 o'clock?  
18 Have a nice lunch. Remember not to talk about  
19 the case. Keep an open mind. Do not talk to anybody or  
20 allow anyone to talk with you about the matter. We will  
21 see you here at 1:00 o'clock.  
22 (Whereupon, the following proceedings were  
23 held outside the presence of the jury:)  
24 MR. NOLAN: I have a brief matter, Your Honor.  
25 THE COURT: Before we get there, let me just

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1 say that this is not going to happen again. I don't  
2 care if you have to have fifteen witnesses stacked up in  
3 the hallway; we are not going to run out of witnesses  
4 and waste the time of the jury and the court.  
5 MR. HOYT: That was our intention, to have  
6 fifteen witnesses stacked up out there.  
7 THE COURT: I understand. I want you to have  
8 them available so this doesn't happen again, okay?  
9 MR. HOYT: Okay.  
10 THE COURT: All right.  
11 MR. NOLAN: Last night I went to dinner about  
12 6:00 o'clock with David Rubin of the Community  
13 Defender's Office. We had a very nice dinner. I can't  
14 remember the name of the restaurant, but it was a very  
15 nice restaurant. I'm very careful when I go to places.  
16 THE COURT: You should be, in this community.  
17 It's a small town.  
18 MR. NOLAN: I'm very aware of that. We had a  
19 lovely dinner. At the end of the dinner, I looked to  
20 the table ahead of me -- we were upstairs -- and I saw  
21 two people there and I saw a woman that looked like  
22 Juror Number 11. And I looked at her and I couldn't --  
23 I couldn't -- one from --  
24 THE COURT: Ms. Palmedo?  
25 MR. NOLAN: Yes. And she was with another

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1 woman. Whoever this was was with another woman. I  
2 thought is it, like, a daughter or whatever; and I just  
3 couldn't figure out if it was her or not.  
4 The other thing is I didn't see them come in.  
5 I know they were not there when I arrived because we  
6 started at 6:00.  
7 And, you know, I just said "Oh, my. Is this  
8 her?"  
9 And this morning, I'm still looking. I can't  
10 say whether it was her or not. She has a very similar  
11 appearance.  
12 You know, if she had seen me, I don't think  
13 she would have stayed there. If I had seen her, I  
14 certainly would have done something to --  
15 THE COURT: You didn't have any contact with  
16 her?  
17 MR. NOLAN: Oh, no contact at all. It's just  
18 that she was in the table next to us and could have  
19 overheard my conversations. It was a loud restaurant,  
20 but she could have overheard conversations.  
21 THE COURT: We can do this, if you would like.  
22 I can have Ms. Longstreet bring her out before we bring  
23 in the rest of the jury and simply ask her if she saw  
24 you at a restaurant last night and if she overheard  
25 anything you said to Mr. Rubin.

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1 MR. NOLAN: That would be fine. I'm sorry.  
2 It didn't happen until the end of the meal. I'm not  
3 sure it was her.  
4 THE COURT: Mr. Nolan, I have had the same  
5 conversation with my court staff, when we go out for  
6 meals, about being very, very careful about not talking  
7 about the case because, in a town of 50,000 people, you  
8 never know who may be seated at the next table.  
9 MR. NOLAN: Right.  
10 THE COURT: I appreciate your bringing it to  
11 the court's attention.  
12 Ms. Longstreet, we will have Ms. Palmedo come  
13 out just briefly before we bring the jury in at 1:00  
14 o'clock.  
15 Anything else?  
16 We will be in recess until 1:00.  
17 (Lunch recess.)  
18 THE COURT: Why don't you bring in  
19 Ms. Palmedo?  
20 Mr. Nolan, did you get the name of that  
21 restaurant, by any chance, from Mr. Rubin?  
22 MR. NOLAN: No.  
23 THE COURT: That's all right. I will just ask  
24 her if she had dinner at a Boise restaurant.  
25 MR. NOLAN: On Eighth Street.

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1 (Whereupon, the following proceedings were  
2 held in the presence of Trial Juror Palmedo:)

3 THE COURT: Ms. Palmedo, I have a question for  
4 you. Did you happen to have dinner last night at a  
5 Boise restaurant?

6 TRIAL JUROR PALMEDO: Yes.

7 THE COURT: Did you see Mr. Nolan?

8 TRIAL JUROR PALMEDO: Yes, I did.

9 THE COURT: Did you hear any of the  
10 conversation he was having?

11 TRIAL JUROR PALMEDO: No.

12 THE COURT: That is all we needed to know.  
13 Thank you very much.

14 TRIAL JUROR PALMEDO: Okay.

15 (Whereupon, Trial Juror Palmedo was excused  
16 from the courtroom; and the following proceedings were  
17 held outside the presence of all trial jurors:)

18 THE COURT: Good eye, Mr. Nolan. Thank you  
19 for bringing that to the court's attention.

20 For the record, I find that there is no  
21 potential that the juror heard anything she should not  
22 have heard and there is no prejudice to the defendant.

23 MR. NOLAN: Good. Not only the defendant but  
24 I was concerned about anybody who might have seen us and  
25 any appearance of impropriety.

1 THE COURT: I see no problem with the fact  
2 that you happened to have dinner at the same restaurant.

3 MR. NOLAN: Thank you.

4 THE COURT: Bring in the jury.

5 MR. HOYT: Before you do, there is one other  
6 matter.

7 THE COURT: Yes. Sure.

8 MR. HOYT: Let me finish consulting with  
9 Mr. Nolan one second.

10 THE COURT: Take your time.

11 MR. NOLAN: I think that the matter that  
12 Mr. Hoyt wants to bring up we can bring up at a recess  
13 and not delay the jury. It is somewhat important, but  
14 it doesn't need to be dealt with right now.

15 THE COURT: We will do it then at the  
16 afternoon recess.

17 MR. SULLIVAN: Your Honor, I am sorry.

18 THE COURT: That's all right.

19 MR. SULLIVAN: Counsel informs me the next  
20 witness is Roy Farmer. I have read his transcript. He  
21 testified in the tax case. There is absolutely nothing  
22 in that transcript that indicates to me that he has  
23 anything relevant to say in this case, so I would  
24 request another proffer.

25 THE COURT: What is your proffer, Mr. Hoyt?

1 MR. HOYT: My proffer is:

- 2 1. To give Mr. Farmer's background;
- 3 2. To give his background related to  
4 Mr. Hinkson;
- 5 3. That he has, since the tax case, consulted  
6 with WaterOz and is familiar with the economic condition  
7 of the company.

8 He consulted, specifically, as a financial  
9 consultant; and he can testify regarding the financial  
10 condition and that it is a, quote, "cash cow."

11 And so it would follow those lines. I mean,  
12 it's clearly a part of our defense in the case.

13 MR. SULLIVAN: I don't detect anything  
14 relevant in that proffer to this case, Your Honor.

15 THE COURT: Well, I haven't heard anything. I  
16 don't think there is any doubt in the jury's mind, based  
17 upon the evidence they have heard so far, that there are  
18 substantial volumes of sales at WaterOz.

19 I do not think we need to get into dollars and  
20 cents. I think there is more than enough evidence from  
21 which you can argue to the jury that this is a valuable  
22 business and to the extent that there is a bias on the  
23 part of witnesses like Mr. Bellon and others to try and  
24 push Mr. Hinkson out of the control of that business, if  
25 there is a financial incentive for them to do that.

1 At this point, I do not see that Mr. Farmer is  
2 adding anything.

3 MR. NOLAN: Could I just suggest to you that  
4 the amount of financial incentive is a relevant factor?  
5 It won't take up a lot of time, but a range?

6 We have talked about even as much as you get  
7 paid \$8 an hour, \$10 an hour. If we are talking about a  
8 million dollars a year or half million or something, I  
9 mean, I think that's --

10 THE COURT: I think Mr. Nolan is probably  
11 right if his testimony is limited to -- give me the  
12 relevant period of time here. Would he have been  
13 consulting at about the December 2003 time frame?

14 MR. NOLAN: His consulting started in May of  
15 this year.

16 THE COURT: 2004?

17 MR. HOYT: 2004. He did a look back at the  
18 records. He is aware of the financial condition through  
19 the relevant period.

20 THE COURT: He will be able to testify what  
21 the profits of the company were in 2003?

22 MR. HOYT: Yes.

23 THE COURT: I will permit the testimony to  
24 that extent, if we can keep Mr. Farmer that short.

25 All right. Bring in the jury.

1 Can we turn the witness's screen off?

2 THE COURTROOM CLERK: It's the same thing  
3 you've got.

4 THE COURT: It is showing something that I  
5 don't think is evidence.

6 MR. HOYT: How could we turn --

7 MR. NOLAN: I will turn it off. It's off.

8 THE COURT: Thank you, Mr. Nolan.

9 (Whereupon, the following proceedings were  
10 held in the presence of the jury:)

11 THE COURT: Mr. Hoyt, are you ready to call  
12 your next witness?

13 MR. HOYT: We are. We would call Mr. Roy  
14 Farmer.

15 THE COURT: Very well.

16 MR. HOYT: Step forward and be sworn.

17 \* \* \*

18 ROY A. FARMER II,

19 having been called, sworn, testified as follows:

20 THE COURTROOM CLERK: Thank you. Please take  
21 the stand.

22 THE COURTROOM CLERK: If you would, state your  
23 full name and spell your last name for the record.

24 THE WITNESS: Roy A. Farmer II. The last name  
25 is spelled F-a-r-m-e-r.

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1 THE COURTROOM CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. HOYT:

5 Q. Good afternoon, Mr. Farmer.

6 A. Good afternoon.

7 Q. Where do you live?

8 A. I live in Whitebird, Idaho.

9 Q. And do you live in town or somewhere else?

10 A. No. I live out of town; and I have some rural  
11 property, a cattle ranch.

12 Q. And do you have any background in the  
13 financial world?

14 A. Yes, I do.

15 Q. Can you briefly tell the jury about that?

16 A. Yes. I have an Associate's Degree in business  
17 and finance, a Bachelor's Degree in business and  
18 finance. I did my Master's work for an M.B.A. in  
19 finance.

20 I started out working for an investment  
21 banking firm in California. We were, basically, a  
22 billion-dollar-in-sales company. I rose to the level  
23 of a senior vice president and then president of one of  
24 the operating divisions.

25 Since that -- during that time and since that

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1 time, I have been doing financial consulting for a  
2 variety of businesses in marketing and sales and  
3 financial management and some basic accounting work.

4 I started my own company -- several of my own  
5 companies. The last one I started was in the late '80s.  
6 I took it public in 1994. I got listed on NASDAQ.

7 I was the chief financial officer of that  
8 company and then, ultimately, the chief executive  
9 officer of the holding company. And since that time, I  
10 have continued to work in that area.

11 I work now with a company out of Los Angeles,  
12 a 75-year-old financial company called Marshall and  
13 Stevens. It has nine offices throughout the country.

14 THE COURT: Two things: One, slow down so the  
15 court reporter can get everything you are saying; and,  
16 two, wait for Mr. Hoyt to ask you another question.  
17 Okay?

18 THE WITNESS: Okay.

19 THE COURT: That is enough background.

20 BY MR. HOYT:

21 Q. Mr. Farmer, just to set the stage here, have  
22 you worked with turn-arounds of companies that have had  
23 financial problems?

24 A. I have.

25 Q. And specifically, have you met Mr. Hinkson

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1 before?

2 A. I have.

3 Q. And under what context?

4 A. He and his family moved into the Grangeville  
5 area. My family and I were already there. One of  
6 David's daughters is the same age as one of my  
7 daughters. And I don't recall exactly where we first  
8 met.

9 I think we were maybe at, like, a church  
10 picnic or a church activity; and our daughters were  
11 pretty active together. So I met him there and at  
12 various other times after that, going back probably into  
13 the late --

14 THE COURT: That is enough, Mr. Farmer. Wait  
15 for the next question.

16 BY MR. HOYT:

17 Q. When would that have been?

18 A. About 1998, 1999.

19 Q. And since that time, have you kept up some  
20 contact with Mr. Hinkson?

21 A. Yes. We have seen him around. We have -- I  
22 have been to his home. Our daughters have been in  
23 various activities and church functions.

24 Q. During the period of '99 up until 2004, did  
25 there come a time when you were asked by Mr. Hinkson's

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1 father to look into the finances of the business,  
 2 WaterOz?  
 3 A. There was.  
 4 Q. And approximately when was that?  
 5 A. In the April, May time frame of 2004.  
 6 Q. And as a result of that, were you able to look  
 7 at the financial records of WaterOz for the period of  
 8 2000 through 2004?  
 9 Q. Up to that point?  
 10 A. Yes, up to that point.  
 11 Q. Were you, in fact, hired as a consultant by  
 12 WaterOz to provide financial consulting services?  
 13 A. I was.  
 14 Q. Now, can you describe for the jury the  
 15 relative income of WaterOz, the margin, and the  
 16 financial condition of the company as you saw it when  
 17 you were hired as a consultant?  
 18 THE COURT: Just a minute Mr. Farmer.  
 19 MR. SULLIVAN: I object, Your Honor, under  
 20 Rule 1006, Rule 16, 702, 703, and 704.  
 21 THE COURT: Let me see counsel at sidebar.  
 22 (Whereupon, the following sidebar discussion  
 23 was held outside the presence of the jury.)  
 24 THE COURT: Mr. Hoyt, I am assuming that the  
 25 defense engaged in reciprocal discovery, as the court's

1 orders contemplated. Is that not the case, with regard  
 2 to Mr. Farmer and the evidence on which he is relying in  
 3 giving the opinions that he is about to give?  
 4 MR. HOYT: I don't think he is going to render  
 5 an opinion. I think he is going to testify in direct  
 6 testimony as to what his observations were and what his  
 7 knowledge is of the company. I don't think he is going  
 8 to render an opinion, per se.  
 9 MR. SULLIVAN: Your Honor, he is going to  
 10 render an opinion based upon his examination of the  
 11 books and records of WaterOz.  
 12 Those books and records should have been  
 13 provided to the Government for examination because,  
 14 basically, he is testifying to a summary of the  
 15 voluminous writings, recordings, et cetera, under Rule  
 16 1006.  
 17 I don't believe that he should have been  
 18 noticed as an expert in this area who could render an  
 19 opinion based upon an examination such as he says he has  
 20 performed. Rule 16 would have required both. They were  
 21 not provided.  
 22 THE COURT: That was my question.  
 23 MR. SULLIVAN: Yes.  
 24 MR. HOYT: I agree, Your Honor, that they were  
 25 not provided. However, it is not being offered for the

1 purposes of rendering an opinion but, rather, for  
 2 testifying to his own personal and direct knowledge of  
 3 the financial condition of the company.  
 4 THE COURT: The court misspoke when it used  
 5 the word "opinion." The rule is quite clear if a  
 6 witness is going to offer summary testimony, which is  
 7 what you are about to ask him, in terms of what the  
 8 total gross sales of the company were and what the  
 9 profits were, that the other side is entitled to see the  
 10 underlying records on which the witness's summary  
 11 testimony is based.  
 12 If you have not provided those records to the  
 13 United States under your reciprocal discovery  
 14 obligation, I will not permit Mr. Farmer to testify to a  
 15 summary.  
 16 MR. HOYT: Your Honor, those documents were  
 17 provided for that relevant time period. The Government  
 18 happens to have all of those records that were taken by  
 19 the Government in the raid and in the tax case. They  
 20 have all of that information.  
 21 MR. SULLIVAN: I don't know that that's so,  
 22 Your Honor. Mr. Hoyt is, obviously, referring to the  
 23 prosecuting agents of the tax case.  
 24 That doesn't put me on notice that I should  
 25 review thousands of pages of documents because they are

1 going to ask this witness about those documents. I have  
 2 not done so. I didn't know to do so. I don't know that  
 3 those documents even exist, for that matter.  
 4 THE COURT: All right. Here is what I am  
 5 going to do. Because I do find that there has been a  
 6 violation of the reciprocal discovery obligations under  
 7 Rule 16, I am going to permit Mr. Farmer to testify that  
 8 the business was profitable. But beyond that, I am not  
 9 going to allow him to get into any greater detail.  
 10 MR. NOLAN: Can we get the records delivered  
 11 to the Government before we close the defense case so  
 12 that they can take a look at the tax returns and other  
 13 records that the business has?  
 14 I think that -- well, I'm not sure this is a  
 15 summary witness in that respect. If he knows about the  
 16 nature of the business, in terms of it generally has  
 17 this kind of profit margin -- the Government got into  
 18 these questions on direct examination -- I'm sorry -- on  
 19 cross-examination -- I'm sorry -- direct examination in  
 20 their case in chief, how much different items cost to  
 21 build, I think they were dealing with a particular  
 22 device, what the cost to build it was, what the cost of  
 23 the parts were, what it sold for -- they got into that  
 24 information and that was the same kind because those  
 25 people just happened to know because they worked on

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1 these products.

2 THE COURT: Well, that testimony dealt with,  
3 as I recall, the oxygenator -- or the ozone generator.  
4 This is a very different question.

5 This is a witness who is going to testify to  
6 the overall profitability of the company and give a  
7 summary conclusion in gross figures as to what those  
8 numbers are.

9 The court has ruled, and I am going to stand  
10 by that ruling.

11 MR. SULLIVAN: I have an additional ground to  
12 admitting testimony that it was profitable. I think the  
13 reason that testimony is sought is to, again, give a  
14 basis for an argument that all would try to take the  
15 property because it's profitable.

16 The flaw in that logic is they can't show, at  
17 least through this witness, that Bellon, et al., knew  
18 that the company was profitable. They have to make a  
19 logical connection there before this becomes relevant.

20 THE COURT: As I say, under 608(b), this is  
21 clearly a collateral area. I think it is relevant  
22 enough with regard to the motive that, if he establishes  
23 that, based upon his review of the records, the company  
24 was profitable, that will give the defense enough in  
25 order make the argument to the jury.

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1 to arrive at what is known as net income or net margin  
2 for the company.

3 THE COURT: Mr. Hoyt, I will allow you to ask  
4 a leading question to elicit the answer that the court  
5 ruled you would be permitted to elicit.

6 BY MR. HOYT:

7 Q. Based upon that information, did you determine  
8 whether the company was profitable?

9 A. Yes, it was.

10 Q. Did you have any recommendations for the  
11 company to make it more profitable?

12 MR. SULLIVAN: Objection, Your Honor.

13 THE COURT: That is not relevant, counsel.  
14 Sustained.

15 MR. HOYT: One moment, please, Your Honor.

16 MR. NCLAN: Thank you.

17 MR. HOYT: Thank you, Your Honor. No more  
18 questions.

19 THE COURT: Very well. Cross-examination?  
20  
21  
22  
23  
24  
25

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1 That is my ruling.

2 (Whereupon, the following proceedings were  
3 held in open court, in the presence of the jury:)

4 BY MR. HOYT:

5 Q. Now, in your review of the records -- in your  
6 review of the company, did you feel that it was being  
7 run in the most efficient manner?

8 A. No. I --

9 MR. SULLIVAN: Object, Your Honor.  
10 Irrelevant.

11 THE COURT: Sustained.

12 BY MR. HOYT:

13 Q. Did you have some recommendations as to how  
14 the company could be run more efficiently?

15 MR. SULLIVAN: Same objection.

16 THE COURT: Sustained. Same ruling.

17 BY MR. HOYT:

18 Q. In your review of the records, did you  
19 determine whether or not the company was profitable?

20 A. I did.

21 Q. Okay. What was that determination based on?

22 A. A review of the financial information that was  
23 compiled, including the checks and invoices that were  
24 written, allowing you to figure out what the cost of  
25 goods sold were and the general administrative expenses,

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CROSS EXAMINATION

1 BY MR. SULLIVAN:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. You say that Mr. Roland Hinkson asked you to  
5 conduct this examination?

6 A. He did.

7 Q. He is the father of David Hinkson; correct?

8 A. Yes.

9 Q. And you conducted this examination last year?

10 A. Yes.

11 Q. Starting when?

12 A. About May of 2004.

13 Q. And how long did it take you to conduct the  
14 procedures of examining the books and records? Is that  
15 a --

16 A. Several months. I think I finished most of  
17 the work about September or October.

18 Q. Would your examination have included hundreds  
19 of documents?

20 A. It would have included the source -- the  
21 compilation of hundreds of documents.

22 Q. And that took you -- I'm sorry -- how many  
23 months?

24 A. Well, I didn't work full time at it; but there  
25

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1 were other assignments. It was about, I guess, four or  
2 five months.  
3 Q. Now, was the examination conducted because the  
4 management of the company didn't know whether the  
5 company was profitable or not?  
6 A. I don't believe that that was the motivation,  
7 no.  
8 Q. Do you know whether they knew whether or not  
9 the company was profitable?  
10 A. I believe they did know.  
11 Q. Did they know to any detail or degree?  
12 A. I wouldn't know about that.  
13 Q. Who was managing the company in 2004?  
14 A. Mr. Greg Towerton, the general manager of the  
15 company.  
16 Q. Do you know his background?  
17 A. I think so. A good part of it.  
18 Q. You knew that he didn't have any background in  
19 running a business; correct?  
20 A. I did know that.  
21 Q. Did you think that he didn't really know what  
22 was going on in his own business -- or in this business,  
23 rather?  
24 A. At the time frame you are referring to in May,  
25 he was just recently made the general manager. And

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1 prior to that, he was denied access to the books -- some  
2 of the books and records. It wasn't his job, and he was  
3 not given the reins of the company to manage.  
4 Q. Was there some former or prior management?  
5 A. Yes, there were.  
6 Q. Do you know whether they were aware of the  
7 profitability of the company?  
8 A. I don't. I assume Mr. Hinkson would, but the  
9 other people that were involved -- I never have met  
10 them.  
11 Q. So you don't know whether they knew or didn't  
12 know about the profitability, or lack thereof, of the  
13 company?  
14 A. I wouldn't know.  
15 MR. SULLIVAN: Nothing else, Your Honor.  
16 THE COURT: Mr. Hoyt, anything further?  
17 MR. HOYT: I believe some things have been  
18 opened up.  
19 THE COURT: Let me hear questions on redirect.  
20  
21  
22  
23  
24  
25

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1 REDIRECT EXAMINATION  
2 BY MR. HOYT:  
3 Q. Mr. Farmer, given the fact that you conducted  
4 your examination for approximately four or five  
5 months -- October, November December -- let's see --  
6 from May through approximately September of '04, what  
7 did you find with reference to the profitability of the  
8 company?  
9 MR. SULLIVAN: Object, Your Honor, based on --  
10 THE COURT: Sustained.  
11 BY MR. HOYT:  
12 Q. And in your examination of the records of the  
13 company, did you feel that there were -- and that was --  
14 you said you examined hundreds of documents for that  
15 purpose; is that correct?  
16 A. Yes.  
17 Q. And did you find that the company could be  
18 better managed if certain practices were adopted?  
19 MR. SULLIVAN: I object.  
20 THE COURT: It is not relevant. Sustained.  
21 BY MR. HOYT:  
22 Q. How profitable was the company?  
23 MR. SULLIVAN: I object.  
24 THE COURT: I have already ruled on that,  
25 counsel. Sustained.

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1 MR. HOYT: One moment, please, Your Honor.  
2 THE COURT: Certainly.  
3 MR. HOYT: Your Honor, no more questions.  
4 THE COURT: Very well. May the witness be  
5 excused?  
6 MR. SULLIVAN: I have no questions, Your  
7 Honor.  
8 THE COURT: Thank you, Mr. Farmer. You are  
9 excused.  
10 Your next witness?  
11 MR. HOYT: Call Fay Hinkson.  
12 THE COURT: Mrs. Hinkson, would you step  
13 forward, please, to be sworn?  
14 THE COURTROOM CLERK: Please raise your right  
15 hand.  
16 \* \* \*  
17 FAY K. HINKSON,  
18 having been called, sworn, testified as follows:  
19 THE COURTROOM CLERK: Thank you. Please take  
20 the stand. Please state your name and spell your last  
21 name for the record.  
22 THE WITNESS: My name is Fay K. Hinkson,  
23 H-i-n-k-s-o-n.  
24  
25

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1 BY MR. HOYT:

2 Q. Good afternoon, Mrs. Hinkson.

3 A. Good afternoon.

4 Q. And where do you live?

5 A. I live in Ouray, Colorado.

6 Q. And is that a large or a small community?

7 A. It's a small community of about 800 people.

8 Q. And where did you raise your family?

9 A. We moved to Ouray, Colorado, about 34 years  
10 ago. So most of the time there.

11 Q. Approximately how old was your son David when  
12 you moved there?

13 A. I think he was about thirteen or fourteen.

14 Q. Now, David, who is the defendant in this case,  
15 is your son, is he not?

16 A. He is the oldest of our four children.

17 Q. And are all four of your children alive today?

18 A. No. We lost a son before his 20th birthday.

19 Q. Now, Mrs. Hinkson, can you briefly describe  
20 for me what David was like growing up in Ouray,  
21 Colorado?

22 MR. TAXAY: Objection, Your Honor. Relevance.

23 THE COURT: I will allow it.

24 THE WITNESS: David lacked social skills that  
25

1 started showing up early on in his life; and, because of

2 that, he was picked on by his peers and made fun of  
3 because he was different from the other children.

4 MR. TAXAY: Objection, Your Honor.

5 Non-responsive.

6 THE COURT: I will sustain that. The jury  
7 will disregard the answer.

8 Mrs. Hinkson, you have to answer the question  
9 that Mr. Hoyt asks you.

10 Do you want to try to rephrase your question,  
11 counsel?

12 MR. HOYT: Thank you, Your Honor.

13 Q. Mrs. Hinkson, tell me about what interests  
14 David had when he was growing up.

15 A. He was very interested in things that had to  
16 do with science. And as a young child, he asked for a  
17 chemistry set; and we gave him one and a little shop and  
18 an apron that he used to play scientist.

19 Q. Has he followed that through in his adult  
20 years?

21 A. Yes. He started experimenting with all kinds  
22 of products; and, probably, WaterOz is a result of his  
23 interest in this area.

24 Q. Let's see. Did he actually graduate from high  
25 school?

1 A. He joined the Army -- the Navy when he was  
2 seventeen. And then, in the Navy, he received his GED.  
3 And so he got his certificate of graduation through GED.

4 Q. Was there a military conflict going on at the  
5 time he joined the Navy?

6 MR. TAXAY: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. HOYT:

9 Q. Do you know what year it was that he joined  
10 the Navy?

11 MR. TAXAY: Same objection.

12 THE COURT: I will allow that.

13 THE WITNESS: Well, I'm not sure. Well, he  
14 was seventeen. I will have to figure it out, I guess.  
15 Since he was seventeen and he was born in '56 --

16 BY MR. HOYT:

17 Q. Would that have been about 1973?

18 A. 1973, yes.

19 Q. And referring to the Navy, approximately how  
20 long was he in the Navy?

21 A. About eighteen months. The Korean War ended  
22 about that time, and so he received an early release.

23 MR. TAXAY: Objection. Non-responsive.

24 THE COURT: Sustained.  
25

1 BY MR. HOYT:

2 Q. 1973, okay. You said eighteen months.

3 Mrs. Hinkson, did he return to Ouray, Colorado, after he  
4 came out of the Navy?

5 A. Yes.

6 Q. Do you know what job he had, what area he  
7 served in in the Navy?

8 A. He was a helicopter mechanic. He serviced the  
9 helicopters.

10 Q. And, Ms. Hinkson, when he came home to Ouray,  
11 Colorado, what activity or what occupation did he pick  
12 up then?

13 A. He started a business with his two brothers,  
14 running a service station and a wrecker for the  
15 community, the county.

16 Q. And then, at some point, did he marry Marie  
17 Hinkson?

18 A. Yes.

19 Q. And did he move to Las Vegas?

20 A. Yes. They moved to Las Vegas.

21 MR. HOYT: Now, if we could have an adjustment  
22 in the lights, please, I would like to show a few  
23 photographs and have the witness identify them.

24 THE COURT: Well, let's have her identify them  
25 first, before we display them.



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1 MR. NOLAN: I'm just trying to get the --

2 THE COURT: Okay, fine. Thank you, counsel.

3 MR. NOLAN: I hope this doesn't come up on the

4 main screen, Judge.

5 THE COURT: All right.

6 MR. NOLAN: Good. I did that right.

7 THE COURT: Nicely done, Mr. Nolan.

8 MR. NOLAN: Thank you.

9 MR. HOYT: All right. Your Honor, I think we

10 are ready to proceed.

11 THE COURT: Go ahead, Mr. Hoyt.

12 BY MR. HOYT:

13 Q. Mrs. Hinkson, you have before you on the

14 screen what has been marked as Defendant's Exhibit A-1.

15 Can you identify that for me, please?

16 A. Yes. That's a family picture of our entire

17 family.

18 Q. And approximately what year would that have

19 been taken?

20 A. '66, about.

21 Q. Where were you living at that time?

22 A. Well, I think we were still living in Long

23 Beach, California.

24 MR. HOYT: And, Your Honor, we would ask to

25 move the admission of A-1 and ask to publish to the

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1 jury.

2 THE COURT: Any objection, Mr. Taxay?

3 MR. TAXAY: Relevance.

4 THE COURT: I am going to allow this one, but

5 I think we are going to limit the family photographs to

6 one or two.

7 MR. HOYT: Thank you, Your Honor.

8 THE COURT: Very well.

9 MR. HOYT: May I publish?

10 THE COURT: You may. A-1 is admitted.

11 (Whereupon, Defendant's Exhibit No. A-1 was

12 received in evidence.)

13 BY MR. HOYT:

14 Q. And, Ms. Hinkson, you have indicated this is a

15 family picture. I am going to -- I am going to try,

16 with an arrow -- the person, the child depicted

17 immediately to your left where the green arrow is, would

18 that be David?

19 A. Yes. That's David, our oldest child.

20 Q. Approximately what age was he at that time?

21 A. He looks like he was about ten.

22 MR. HOYT: All right. Now, let's see if we

23 can just look at another exhibit here. If it please the

24 court, I would like to show to the witness what has been

25 marked as Exhibit A-7.

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1 THE COURT: Very well.

2 BY MR. HOYT:

3 Q. Thank you. And, Ms. Hinkson, can you identify

4 Exhibit A-7 for us, please?

5 A. It's a picture of David and his family in

6 1992.

7 MR. HOYT: Move the admission of A-7.

8 MR. TAXAY: No objection.

9 THE COURT: Very well. Exhibit A-7 is

10 admitted.

11 (Whereupon, Defendant's Exhibit No. A-7 was

12 received in evidence.)

13 MR. HOYT: If I may publish, Your Honor?

14 THE COURT: You may.

15 BY MR. HOYT:

16 Q. And David, obviously, is in the back row

17 there; is that right?

18 A. Yes.

19 Q. And that would be his wife, his ex-wife,

20 Marie?

21 A. Yes.

22 Q. And then the four individuals depicted, the

23 children in the foreground, those are his children?

24 A. Yes.

25 Q. And does he have another child?

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1 A. Yes. There was one more born after this

2 picture was taken.

3 Q. Good. Now, Mrs. Hinkson, where was this

4 photograph taken, to the best of your knowledge?

5 A. In Grangeville.

6 Q. And what year did he move to Grangeville?

7 A. Oh, this couldn't have been -- he didn't move

8 to Grangeville in '92, did he? I don't -- let's see.

9 When did he move from Las Vegas to Grangeville? About

10 1994 or '95, I think. So this might have been taken

11 when he was still living in Nevada. I'm not sure.

12 Q. All right. And referring, now, to the time

13 that he lived in Nevada, can you tell the jury, briefly,

14 what business he was engaged in there?

15 A. That's where he started experimenting with his

16 chemicals and his health products. He also had a

17 laundry facility where he did bedspreads for the

18 casinos, and he was a doorman for one of the casinos.

19 Q. And did he come up with some inventive new

20 cleaning products to clean the bedspreads of the

21 casinos?

22 A. Yes, he did.

23 MR. TAXAY: Objection.

24 THE COURT: Sustained. The jury will

25 disregard the question and the answer.

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1 politics up in the Grangeville area?  
 2 MR. TAXAY: Objection. Relevance.  
 3 THE COURT: I will permit that question, if  
 4 she knows.  
 5 THE WITNESS: Well, yes, he did. Can I say  
 6 what he did?  
 7 THE COURT: That is the answer. Now let  
 8 Mr. Hoyt ask another question.  
 9 MR. TAXAY: We would also object on the  
 10 grounds of foundation. Lack of foundation.  
 11 THE COURT: I will overrule it on foundation.  
 12 BY MR. HOYT:  
 13 Q. All right. What politics did he get involved  
 14 in in the Grangeville area?  
 15 A. He got involved in trying to get Dennis Albers  
 16 from being re-elected for prosecuting attorney, for  
 17 prosecutor, for DA. A letter came to his attention.  
 18 THE COURT: I think that is the answer.  
 19 Next question, Mr. Hoyt?  
 20 BY MR. HOYT:  
 21 Q. All right. Now, have you followed your son's  
 22 career in the WaterOz business up in the Grangeville  
 23 area?  
 24 A. Yes.  
 25 Q. And could you describe for the jury how his

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1 business grew from the time that he moved up there until  
 2 the present time?  
 3 MR. TAXAY: Objection. Foundation.  
 4 THE COURT: Sustained.  
 5 BY MR. HOYT:  
 6 Q. Have you been in contact with your son  
 7 throughout the years since he moved away from home  
 8 initially -- I think you indicated -- to Las Vegas?  
 9 A. Oh, absolutely. I talk to him all the time  
 10 and visit him.  
 11 Q. And in any of those contacts, has he indicated  
 12 to you any violent tendencies?  
 13 A. David has no violent --  
 14 MR. TAXAY: Objection.  
 15 THE COURT: Sustained.  
 16 BY MR. HOYT:  
 17 Q. Have you ever known him to commit any violent  
 18 act against another person?  
 19 A. No.  
 20 MR. TAXAY: Objection.  
 21 THE COURT: I will permit that question and  
 22 the answer to stand.  
 23 THE WITNESS: Can I elaborate on that, sir?  
 24 THE COURT: No. That's enough. Wait for the  
 25 next question.

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1 THE WITNESS: No, never.  
 2 THE COURT: Mrs. Hinkson?  
 3 BY MR. HOYT:  
 4 Q. And, Mrs. Hinkson, was David prone to sharing  
 5 with you his frustration with Dennis Albers and other  
 6 people that he was involved with legally?  
 7 A. Oh, yes, all the time. David is very verbal  
 8 about his feelings. His way of releasing his feelings  
 9 is to be verbal about them.  
 10 Q. And can you tell the jury what types of things  
 11 David would say to you when he was expressing those  
 12 feelings?  
 13 MR. TAXAY: Objection.  
 14 THE COURT: Let me see counsel at sidebar.  
 15 (Whereupon, the following sidebar discussion  
 16 was held outside the presence of the jury):  
 17 THE COURT: I allowed you to elicit the  
 18 opinion from his mother that he has a peaceful nature.  
 19 You are now seeking to elicit, as I understand your  
 20 questioning, hearsay as to what the defendant told his  
 21 mother about various things.  
 22 I do not know under what Rule of Evidence  
 23 that's admissible. I have given you a fair amount of  
 24 leeway; but you are pushing it, Mr. Hoyt.  
 25 MR. NOLAN: If I can just have a moment? I

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1 don't disagree with the court and I appreciate -- we  
 2 appreciate that.  
 3 I think that his statements are not hearsay as  
 4 to feelings about Albers. So if the question is, "What  
 5 do you remember him saying about Dennis Albers?" and  
 6 there is any other specific person -- but I don't think  
 7 there is -- I think that that would be as far as we  
 8 should be going.  
 9 THE COURT: That is why I permitted the  
 10 question with regard to Albers. If you want to ask her  
 11 that question, I will permit it. Anything more general,  
 12 I think, is not permitted under the rules.  
 13 MR. TAXAY: So we are clear, Your Honor, what  
 14 question are you going to permit?  
 15 THE COURT: You may ask her if she had any  
 16 conversations with her son with regard to his feelings  
 17 about Dennis Albers. That question I will permit.  
 18 MR. NOLAN: Will you allow him to say what he  
 19 said about Dennis Albers?  
 20 THE COURT: Yes.  
 21 MR. HOYT: What about the -- he is charged  
 22 with the federal officials. Same questions with respect  
 23 to --  
 24 THE COURT: If she has relevant testimony with  
 25 regard to what he said about them, that is all right, as

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BY MR. HOYT:

Q. Good afternoon, Mr. Hinkson. Good afternoon, sir.

A. Good afternoon.

Q. Mr. Hinkson, do you reside in Ouray, Colorado, with Fay Hinkson?

A. Yes, I do.

Q. What type of business are you engaged in there?

A. I'm Chairman of the Board of the Hinkson Development Corporation and various other corporations.

Q. And what type of business have you engaged in throughout your lifetime?

A. All types of businesses have been rather extensive. Probably, considering my earlier years, Hinkson -- I have always been self-employed, pretty much.

I did have a part-time job when we first started our businesses. I have been into sales. I was a distributor for the Fulltex vacuum cleaner out of the State of Utah when I was going to college; and then, later, I started my own construction company.

I was a demolition contractor in California, in Long Beach, California, and then I became -- I became

a general building contractor there for a number of years.

I also had sales organizations. Very -- just quite a numerous amount of things. I was the -- I guess I should -- that -- as far as the businesses we have now?

Q. And has Hinkson Development Company had any relationship with constructing things for the City of Ouray?

A. Yes. We installed the sewer system for the City of Ouray. We donated it to them. It was not an expensive donation. It was \$40,000. We also donated --

MR. SULLIVAN: I object to this testimony, Your Honor.

THE COURT: Yes. I think this is enough background, Mr. Hoyt. Let's move on.

BY MR. HOYT:

Q. Mr. Hinkson, you heard the testimony of your wife regarding David and his earlier years?

A. I was out getting some papers for you, so I didn't hear all of it.

Q. Mr. Hinkson, if you could, describe for the jury the kinds of business activities, briefly, that you and your son David have engaged in together.

A. In Las Vegas, David had met some very

successful people; and I got involved with that.

There's a gentleman named George Mitzel who we went into business with. He had lost his -- he had been a multi-millionaire. He lost most of his money but he still had --

THE COURT: Mr. Hinkson, if you would, confine your answer to the question. What kind of businesses did you and your son engage in, just generally?

THE WITNESS: Yeah. I don't know exactly how to describe the business. Okay. We developed -- we took on a cleaning plant. That was one thing that we did with the three of us, George Mitzel, David, and I.

BY MR. HOYT:

Q. Did he help manage an apartment building for a while there?

A. Yes. I had bought a twenty-unit apartment house. He managed it.

Q. And did he run a home for the mentally disabled?

A. He did. Earlier, in Montrose, Colorado, for us. Later, in Las Vegas, he did it on his own.

Q. Are you aware of your son's movement into the area of nutritional health, minerals, and the making of products in that area?

A. Yes, certainly.

Q. At one point in time, did your son suffer from cancer?

A. Skin cancer.

Q. And how did his skin cancer relate to the products that he discovered?

A. I think that's what got him really motivated and trying to uncover cures.

Q. And are you aware of the fact that, at some point in time, he started a business called WaterOz?

A. Yes, I am.

Q. And where was he when he started that business?

A. He was in Las Vegas when he first started, and then he was developing quite a successful program and was interested in locating outside of Las Vegas. So he then developed it and started building and going in earnest in the Grangeville area.

Q. Now, while in Las Vegas, did you become aware that he became involved in some political issues that he was concerned about?

A. Yes, I am aware.

MR. SULLIVAN: Objection, Your Honor. Irrelevant.

THE COURT: I sustained that objection, and I will sustain it again.

1 MR. HOYT: May we have a sidebar, please, Your  
2 Honor?

3 THE COURT: Sure.

4 (Whereupon, the following sidebar discussion  
5 was held outside the presence of the jury:)

6 THE COURT: If we are getting into the turtles  
7 and the leafleting, I have heard this testimony before.  
8 Unless you have come up with something new, I don't see  
9 how it is relevant to any of the issues in the case.

10 MR. HOYT: It's extremely relevant, Your  
11 Honor. This is the essence of the case. This is how  
12 this man relates when he feels that there has been  
13 corruption in government or there has been some other  
14 problem, such as Mr. Albers.

15 He attacks the problem with either some type  
16 of a court suit or some type of a public statement or,  
17 as you say, the leafleting, distributing. This is the  
18 manner in which this man deals with things.

19 Now, whether he is peaceful or not and whether  
20 people think he is peaceful is an opinion. This is  
21 proof of the manner in which this man deals with life  
22 and its frustrations.

23 To deny us the opportunity to present this  
24 kind of evidence, to deny the opportunity to present his  
25 defense --

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1 MR. SULLIVAN: Your Honor, there is no logical  
2 connection to leap to the conclusion that, because one  
3 files lawsuits, even many lawsuits, that one wouldn't,  
4 therefore, threaten the life of a Federal official or  
5 solicit someone to take the life of a Federal official.  
6 There is a complete logic gap between the two.

7 MR. NOLAN: One statement: The Government has  
8 said that they heard, "I will sit on it," instead of,  
9 "I'll sue them."

10 The issue of whether or not his response to  
11 offers to kill somebody or I will sue them, the  
12 background of his litigation, I think, is relevant to  
13 show that it's true; that he said, "I will sue them,"  
14 rather than, "I will sit on it."

15 THE COURT: How much more do we need beyond  
16 what the jury has already heard with regard --

17 (Whereupon, the court turned to the jury and  
18 stated the following:)

19 THE COURT: Ladies and gentlemen, if you would  
20 like to take a brief recess, please go right ahead. I  
21 will finish up with the lawyers.

22 (Whereupon, the jury was excused from the  
23 courtroom, and the following proceedings were held:)

24 MR. NOLAN: Could I make a statement?

25 THE COURT: Yes. All right. Let's see. I

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1 think we were in the middle of this sidebar with regard  
2 to the objection by the Government to the relevance of  
3 activities involving desert turtles and leafleting in  
4 Las Vegas about which the court heard a great deal of  
5 testimony during the tax trial.

6 Go ahead, Mr. Nolan.

7 MR. NOLAN: Yes. I hope this isn't  
8 inappropriate, but I have a problem and that is that I  
9 assume people know everything I know and I'm not very  
10 good, in my office, at telling people what to do because  
11 it just seems so obvious to me. The court has heard all  
12 of this.

13 One of the things -- and I talked about this  
14 in my opening statement because I felt it was important.  
15 We sometimes forget that the jury hasn't necessarily  
16 heard it at all.

17 In other words, they heard it in the opening  
18 statement; and I think that just facts -- if we just say  
19 that there was an issue, that he took on the issue, that  
20 he used litigation, he used leaflets -- I mean, I don't  
21 know whether we can get it by stipulation or whatever,  
22 but I think that that alone is all right.

23 I think that the problem is that sometimes we  
24 want to say too much and get into it in too much depth.  
25 So my suggestion is, merely because we all know it, it

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1 doesn't necessarily mean that, maybe, the jury shouldn't  
2 hear something about it. That's all.

3 I hope the court appreciates what I'm trying  
4 to say because, you know, the problem is that sometimes  
5 we overestimate what the jury picks up and sometimes we  
6 underestimate.

7 One of the problems of sitting back and  
8 watching it is, "My God," you know. If the jury could  
9 push a button to say, "I've heard enough," I would love  
10 to have that happen.

11 THE COURT: You might be surprised at how  
12 quickly they push the button.

13 MR. NOLAN: Absolutely.

14 THE COURT: I will let the Government finish  
15 making its record, if they have anything further to add.

16 MR. SULLIVAN: The jury has heard that  
17 Mr. Hinkson is very litigious. They have already heard  
18 that he engaged in politics in Las Vegas, from the  
19 previous witness. They have heard that he sued the  
20 Federal officials.

21 If they want to prove that he is litigious,  
22 there is tons of evidence in this case that he sues  
23 people and counter-sues people or he gets sued. Everyone  
24 sues everybody in Northern Idaho is the conclusion the  
25 jury may get out of all of this.

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1 There is plenty for them to make any argument  
2 they want to support their defense. Much of the tape  
3 itself has several instances of Mr. Hinkson saying, "I'm  
4 suing them."

5 The one that was in contention, because Agent  
6 Long thought it might be something else, is not the only  
7 reference to suing. There are three or four other  
8 references of Mr. Hinkson saying, "I'm suing them."

9 There is one reference about J. C. Harding  
10 saying, "You know what I mean. The three wisemen."

11 That's followed by an, "I'm suing them,"  
12 reference.

13 THE COURT: Well, gentlemen, anticipating that  
14 this issue might come up, because I do have the  
15 advantage of having heard a substantial amount of this  
16 testimony before during the tax trial over which I  
17 presided, my research confirms what I think you all  
18 know. I clearly have the discretion to limit cumulative  
19 testimony.

20 I looked at United States vs. Henry at 560  
21 F.2d 963, 965 to 66, Ninth Circuit, a 1977 case; and  
22 *Loux, L-o-u-x, vs. the United States*, 389 F.2d 911, 917,  
23 Ninth Circuit, 1968.

24 The court has discretion to limit both the  
25 number of witnesses and the scope of a witness's

1 testimony so long as relevant testimony is not limited  
2 and the defendant is not prejudiced and the jury has  
3 enough information to evaluate the credibility of the  
4 witnesses.

5 Two additional cases for that point are United  
6 States vs. Bensinon, B-e-n-s-i-n-o-n, 172 F.3d, 1121,  
7 1128, Ninth Circuit, 1999; and, also, United States vs.  
8 Scholl, S-c-h-o-l-l, 166 F.3d 964, 972, Ninth Circuit,  
9 1999.

10 In order to consider admitting the proffered  
11 testimony with regard to testimony with regard to the  
12 defendant's political activities in Nevada, the burden,  
13 as I understand it, is on the defendant to show what  
14 additional critical or exculpatory evidence will be  
15 reviewed by these witnesses or on this subject matter;

16 Secondly, what prejudice to the defendant will  
17 result if the number or scope of the examination of the  
18 witnesses is restricted; and

19 Third, what information regarding the biases  
20 and prejudices of witnesses who have already testified  
21 on behalf of the United States will be revealed by the  
22 additional witnesses or testimony.

23 The court believes, based upon what the jury  
24 has heard so far, that there is a substantial amount of  
25 evidence in the record that the defendant is litigious;

1 that he engages in all sorts of activities which are  
2 perfectly legal to engage in, whether it be in the form  
3 of supporting political opponents, people that he  
4 dislikes, such as Mr. Albers; filing lawsuits against  
5 investigating state and federal officials who are  
6 investigating his business; filing lawsuits against  
7 people who he thought were trying to take his company  
8 from him; or becoming involved in litigation with  
9 ex-employees; suing federal officers.

10 The jury clearly has the picture that  
11 Mr. Hinkson is the type of a person who doesn't hesitate  
12 to invoke any and every legal remedy and  
13 First-Amendment-protected weapon at his disposal in  
14 order to address the problems that he perceived to be  
15 affecting him.

16 So unless you can convince me that his efforts  
17 to save the desert turtles or to sue the Clark County  
18 Board of Supervisors for passing a county ordinance  
19 concerning limiting leafletting on sidewalks is any  
20 different from what the jury has already heard, I am  
21 going to limit this testimony.

22 I will allow Mr. Nolan, if you would like to  
23 address this point, to answer those three questions. Be  
24 my guest.

25 MR. NOLAN: The concern I have is the

1 prejudice to Mr. Hinkson, in light of the opening  
2 statement. The jury heard my opening statement. My  
3 credibility and the credibility of Mr. Hoyt is always in  
4 question in a case like this.

5 My experience -- the last time I selected a  
6 jury in Federal Court, we asked them, "How many people  
7 think defense lawyers are less credible than the  
8 prosecution?" We had all sorts of people answer that  
9 way. I am concerned about that.

10 I feel that we made a very concise opening  
11 statement to a particular issue. The problem could be  
12 solved by a simple paragraph or a simple recitation.  
13 The court has been kind enough to allow the parents to  
14 be in the courtroom.

15 That's my main concern. I mean, I also think  
16 that what happens sometimes is that the prosecution is  
17 able to put on their evidence in the way they want and,  
18 because the issues are then raised through that  
19 cross-examination, we are not able to kind of have the  
20 same kind of impact.

21 I actually think that his turtle thing shows  
22 an anti-government issue, shows a use of litigation as a  
23 tool, no indication of going after any officials or any  
24 other kind of violence. At that time, he wasn't rich.

25 At this time, I would ask the court to find an

1 alternative to this issue because I really don't like to  
2 argue to a jury where I haven't been able to prove what,  
3 at the time, I thought was proper and was not objected  
4 to at the time I made the opening statement.

5 So that's my pitch.

6 THE COURT: I think the record will reflect  
7 that the court has been very careful in trying to  
8 preserve any attacks on counsel. I specifically have in  
9 mind the incident that arose on cross-examination of  
10 Mr. Swisher.

11 Certainly, I am trying, to the best of my  
12 ability, to give Mr. Hinkson the fairest trial that I  
13 can; and I do not think it advances the cause to  
14 embarrass the lawyers on either side of the case.

15 I did tell the jury in their preliminary  
16 instructions -- and I will tell them again in their  
17 closing instructions -- that the statements of the  
18 lawyers, both in the opening and closing arguments, are  
19 not evidence in the case.

20 I do not know that that necessarily saves you  
21 from the embarrassment of having made statements during  
22 your opening that the jury just does not hear any  
23 evidence about; but, frankly, I think, based upon the  
24 instructions that we are going to give them on that  
25 point, it will not be as embarrassing and will not be

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1 prejudicial to the defendant, as you say.

2 If there is some kind of a stipulation that  
3 the parties can work out, I am happy to entertain it;  
4 but, at this point, I still do not see what additional  
5 or exculpatory evidence is going to be revealed by going  
6 into these particular incidents that is not already  
7 before the jury in spades.

8 And I really don't think it is going to help  
9 the jury resolve the issues in the indictment that they  
10 have to decide.

11 MR. NOLAN: I'm not arguing with the court. I  
12 would say that I have no objection to what the court has  
13 been trying to do.

14 When I said the jury comes to these  
15 conclusions, it's not because of anything the court has  
16 done. The court has done everything it can to equalize  
17 and to make sure that there is not inappropriate or  
18 improper adverse inferences to counsel.

19 Mr. Hoyt does have an offer of proof, I think.

20 THE COURT: Go ahead, Mr. Hoyt.

21 MR. HOYT: Thank you, Your Honor.

22 At this time, the defendant would offer the  
23 following: Mr. Roland C. Hinkson would testify that his  
24 son David, when having discovered in the Las Vegas area  
25 that what has been known as "the turtle tax," an

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1 environmental litigation fee, was being charged to land  
2 owners at the rate of \$500 an acre to put an out  
3 building or to -- for a unit price of \$500 to add a hot  
4 water heater to their structure, that appeared to be an  
5 exorbitant price.

6 He researched it. He found out that the  
7 Bureau of Land Management was working with the local  
8 Clark County officials, that this fund was designated as  
9 an environmental impact so that the money could be put  
10 away to purchase a habitat for the alleged endangered  
11 turtle.

12 He found out that the desert turtle was not an  
13 endangered creature. He found out through his research  
14 that the funds were being put into an account where they  
15 had accumulated, at that point, about 80 million  
16 dollars; that that 80 million dollars was being used by  
17 officials to purchase areas that would become future on-  
18 and off-ramps for a new highway that was going in,  
19 rather than purchasing habitat lands for the turtle; and  
20 that, in his opinion, the local citizens were being  
21 ripped off by the Government.

22 In order to expose this, he prepared written  
23 documents and purchased a printing press and he  
24 replicated those documents. As the court has said, he  
25 went leafleting. In fact, he had those documents

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1 distributed by people in Las Vegas and around Clark  
2 County.

3 He even went and found homeless people that  
4 would distribute them. 600,000 of these pamphlets were  
5 prepared and distributed.

6 As a result of that, he had the impact of, he  
7 believed, four of the five members of the County  
8 Commissioners not obtaining re-election.

9 He fights what he believes to be government  
10 corruption or corruption at any level, even if it's  
11 private corruption, such as with respect to Mr. Albers,  
12 what he believed was corruption there, in a peaceful  
13 way, petitioning, using the power of disseminating  
14 information, the power of free speech.

15 And we believe that is significant, critical,  
16 and exculpatory evidence as to the manner in which  
17 Mr. Hinkson has, in the past, dealt with highly  
18 conflicted issues.

19 It's prejudicial to him to be restricted from  
20 introducing this information because it shows a pattern  
21 of behavior on his part; and it would definitely support  
22 his defense that he did not make any true threats, nor  
23 did he issue forth any solicitation for murder.

24 Rather, he solicited, as in the case of Dennis  
25 Albers, for and obtained petitions against him, et

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1 cetera. This is the manner in which this man deals with  
2 these conflicts.

3 So that's the offer.

4 THE COURT: Mr. Hoyt, one thing I should ask  
5 for clarification. What was the date of the defendant's  
6 activities in Nevada? Are we talking early '90s?

7 MR. HOYT: Yes. To my knowledge, that  
8 occurred in the early 1990s, like '92, '93, '94.

9 THE COURT: That is what I remembered. I  
10 thought it was more than ten years ago.

11 Does the Government wish to add anything for  
12 the record?

13 MR. SULLIVAN: We would add an additional  
14 ground. This is, basically, propensity evidence that  
15 would be excludable under 404(b).

16 They are trying to argue that, because he  
17 acted in a certain way in the past, it is logical to  
18 assume that he acted in a similar way later on and in  
19 the charged time period.

20 The two situations aren't even comparable. In  
21 the first situation, he is not being the targeted -- he  
22 is not being a target of a criminal investigation. He  
23 is not personally being threatened by federal officers  
24 to be indicted and put in jail.

25 So trying to compare the two is apples and

1 oranges. That's really what they are trying to do. I  
2 would call it inadmissible and propensity evidence.

3 THE COURT: Mr. Hoyt, 404(a)(1) of the Federal  
4 Rules of Evidence provides that evidence of a person's  
5 character or a trait of character is not admissible for  
6 the purpose of proving action and conformity therewith  
7 on a particular occasion except:

8 1. Character of the accused, evidence of a  
9 pertinent trait of character offered by an accused or by  
10 the prosecution to rebut the same or if evidence of a  
11 trait of character of the alleged victim of the crime is  
12 offered by an accused and admitted under Rule 404(a)(2),  
13 evidence of the same trait of character of the accused  
14 offered by the prosecution.

15 As I read that rule, I think Mr. Sullivan is  
16 correct. What is your response? That rule seems to  
17 preclude exactly the kind of evidence that you are  
18 proffering here.

19 MR. HOYT: Your Honor, I think part of our  
20 defense is that Mr. Hinkson has a personality that is of  
21 a particular kind and this propensity evidence  
22 objection, I think, is inapplicable here.

23 I think that it is not character evidence but  
24 it is, rather, evidence to demonstrate how he deals  
25 with -- and, specifically, I'm just wondering -- the

1 court excluded the -- the court is excluding the  
2 evidence of the turtle tax issue which was more than ten  
3 years ago but, then, is the same exclusion going to  
4 apply to the petition against Mr. Albers, which was less  
5 than ten years ago?

6 THE COURT: No. I think the evidence with  
7 regard to the petition against Mr. Albers is part and  
8 parcel of the totality of the circumstances that the  
9 jury has to consider in determining whether or not  
10 whatever it was that Mr. Hinkson said was, in fact, the  
11 solicitation of the murder and a true threat.

12 So in that respect, I think it does go to his  
13 intent or state of mind; and that evidence is admissible  
14 as to what happened in regard to the Idaho County  
15 Prosecuting Attorney election.

16 But you are not convincing me that 404(a)(1)  
17 does not apply. Also, under Rule 403, I think that this  
18 will be unduly delaying, a waste of time, and a needless  
19 presentation of cumulative evidence.

20 So the court's ruling is that this evidence is  
21 not admissible and is excluded.

22 MR. TAXAY: Your Honor, may I raise a related  
23 issue?

24 THE COURT: Sure.

25 MR. TAXAY: With respect to the propensity

1 evidence, the Government would add an objection to  
2 Dr. Doke's testimony based upon this very rule that you  
3 are citing here.

4 THE COURT: We are going to take up Dr. Doke  
5 after we hold a Daubert hearing. It is not quite that  
6 easy, Mr. Taxay. So you may have to prepare yourself  
7 for Dr. Doke. Prepare yourself for that eventuality.

8 (Whereupon, the following proceedings were  
9 held in the presence of the jury:)

10 THE COURT: Mr. Hoyt, you may proceed.

11 MR. HOYT: Thank you, Your Honor.

12 Q. Mr. Hinkson, after your son moved to the  
13 Grangeville area of Idaho, did you become aware that he  
14 had been sued by someone named Arnette Hasalone?

15 A. Yes.

16 Q. And did you learn the name of her attorney?

17 A. Yes, I did.

18 Q. And who is that?

19 A. Dennis Albers.

20 Q. Now, were you aware that there was a conflict  
21 between Dennis Albers and your son?

22 A. Yes, I did.

23 Q. Now, at some point in time, the lawsuit was  
24 over. However, Mr. Albers was up for election; is that  
25 correct?

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1 A. That's right.

2 Q. Mr. Hinkson, what, if anything, did your son  
3 do with reference to the Albers election?

4 MR. SULLIVAN: Objection. Lack of foundation.

5 THE COURT: I will overrule the objection.

6 Actually, if you can provide a foundation, Mr. Hoyt,  
7 that would be helpful.

8 BY MR. HOYT:

9 Q. Thank you. Mr. Hinkson, were you aware that  
10 your son was concerned about Mr. Albers being elected?

11 A. Yes.

12 Q. And were you aware that your son did not want  
13 Mr. Albers to be elected?

14 A. That's right.

15 Q. And that your son became active in a campaign  
16 to prevent Mr. Albers from being elected?

17 A. That's true.

18 Q. Why don't you tell the jury what your son did?

19 MR. SULLIVAN: Your Honor, I object. No  
20 establishment of personal knowledge.

21 THE COURT: Can we establish what, if  
22 anything, Mr. Hinkson had to do with his son's  
23 involvement with that election? Let's start there.

24 BY MR. HOYT:

25 Q. Mr. Hinkson, how did you become aware of your

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1 son's involvement in this campaign?

2 A. He called me on the phone and told me.

3 Q. And after he told you, did he then indicate to  
4 you in what manner he would be opposing the election?

5 THE COURT: Just a minute, Mr. Hinkson.

6 MR. SULLIVAN: Object to the hearsay,  
7 out-of-court statements.

8 THE COURT: Sustained. It is hearsay.

9 BY MR. HOYT:

10 Q. Did you personally review any documents  
11 related to the Albers election?

12 A. Yes, I did.

13 Q. And what documents did you review?

14 MR. SULLIVAN: Objection, Your Honor. It's  
15 also hearsay.

16 THE COURT: Well, I will allow him to identify  
17 the type of document without eliciting the content of  
18 the document.

19 THE WITNESS: Okay. It was a document from  
20 the Supreme Court of Idaho and the Bar Association.

21 THE COURT: Thank you, Mr. Hinkson.

22 BY MR. HOYT:

23 Q. And, to your knowledge, what was done with  
24 these documents?

25 MR. SULLIVAN: Foundation, Your Honor.

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1 THE COURT: First, ask him if he knows what  
2 was done.

3 BY MR. HOYT:

4 Q. Do you know what was done with the documents?

5 A. Yes, I do.

6 Q. And what was done with them?

7 MR. SULLIVAN: Objection. No foundation.

8 THE COURT: How does he know?

9 BY MR. HOYT:

10 Q. Mr. Hinkson, how do you know what was done  
11 with the documents?

12 A. Through the testimony of those people who  
13 participated in the mailing out of the document to the  
14 electorate.

15 MR. SULLIVAN: I move to exclude this area.

16 THE COURT: I am not excluding the area, but I  
17 will strike the question and the answer because it is  
18 based on hearsay.

19 BY MR. HOYT:

20 Q. Did you participate in the mailing out of  
21 documents?

22 A. I did not, personally.

23 Q. Did you discuss this matter with Mr. Joe  
24 Swisher?

25 A. Yes, I did.

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1 MR. SULLIVAN: I object, Your Honor.

2 Irrelevant.

3 THE COURT: Well, it calls for hearsay. I  
4 will sustain the objection.

5 MR. HOYT: It goes to bias. It goes to  
6 impeachment of Mr. Swisher.

7 THE COURT: All right. Ask your next  
8 question.

9 MR. SULLIVAN: Your Honor, could we go to  
10 sidebar?

11 THE COURT: I think I'd better hear it.  
12 (Whereupon, the following sidebar discussion  
13 was held outside the presence of the jury:)

14 MR. SULLIVAN: It was already established that  
15 Mr. Swisher didn't like Dennis Albers either, so any  
16 questioning about this isn't going to impeach Joe  
17 Swisher in any fashion.

18 MR. HOYT: He said he did not participate in  
19 the letter campaign. He said his parents did. In fact,  
20 the testimony will be that Mr. Swisher personally  
21 participated.

22 THE COURT: But what is he going to say with  
23 regard to the pending question, which is, "Did you have  
24 a conversation with Mr. Swisher?" What is his answer  
25 going to be?

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1 MR. HOYT: I don't know.

2 THE COURT: Then I will sustain the objection.

3 (Whereupon, the following proceedings were  
4 held in open court, in the presence of the jury:)

5 BY MR. HOYT:

6 Q. Did Mr. Swisher indicate to you --

7 MR. SULLIVAN: I object to the leading.

8 THE COURT: It is leading. Sustained.

9 BY MR. HOYT:

10 Q. What did you learn from Mr. Swisher regarding  
11 his participation in this letter campaign?

12 That's a different question.

13 THE COURT: Yes, but it still calls for  
14 hearsay. The objection is sustained.

15 MR. HOYT: I thought the court approved the  
16 bias and the impeachment aspect of that question.

17 THE COURT: You didn't listen to what I said  
18 at sidebar. The objection is sustained.

19 BY MR. HOYT:

20 Q. Mr. Hinkson, tell us about the business  
21 WaterOz. Have you been involved in that business over  
22 the last two years since your son has been imprisoned?

23 A. It's hard to answer. The extent of my  
24 involvement has been in trying to uncover anything that  
25 was improper and to appoint, on David's behalf, as his

1 mouthpiece, those people who should be running the  
2 company. That's the extent.

3 Q. Were you personally sued, named in a lawsuit,  
4 by Mr. Bellon when he sought to take over WaterOz in  
5 December of 2003?

6 MR. SULLIVAN: Relevance.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 BY MR. HOYT:

10 Q. And did you participate in the defense of the  
11 claim by Mr. Bellon?

12 A. Would you repeat that?

13 Q. Did you participate in the defense of the  
14 claim by Mr. Bellon?

15 A. Against the claim that he had made?

16 Q. Yes.

17 THE COURT: Counsel, let me suggest this. The  
18 court is ready for its recess; and there is a matter I  
19 would like to take up with you before we go any further.

20 Ladies and gentlemen, I will try to keep it to  
21 fifteen minutes. We will take our regular afternoon  
22 recess at this time.

23 (Whereupon, the jury was excused from the  
24 courtroom; and the following proceedings were held  
25 outside the presence of the jury:)

1 THE COURT: Mr. Hinkson, you can step down.  
2 Thank you.

3 THE WITNESS: Step down, you say?

4 THE COURT: Yes, for the recess. Come back in  
5 fifteen minutes.

6 Mr. Sullivan, I believe you were in the  
7 process of stating an objection. If not, let me raise  
8 the concern the court has.

9 Mr. Hoyt, it was my understanding that  
10 Mr. Hinkson, Sr., at some point, was designated as a  
11 legal assistant or somehow affiliated with the defense  
12 team in this action or, at least, as I understand from  
13 the Marshal's Service, that representation was made to  
14 the jail commander.

15 MR. HOYT: It was.

16 THE COURT: My concern, based upon the broad  
17 question that you just asked, "Did you participate in  
18 the defense of the claim by Mr. Bellon?" is that you may  
19 be doing something I don't think you want to do or  
20 intend to do, and that is to waive the attorney-client  
21 privilege and open up Mr. Hinkson, Sr., to  
22 cross-examination on matters that may very well  
23 implicate the Sixth Amendment.

24 So before you go much further, I would ask you  
25 to think about that. If you want to confer over the

1 recess, I can talk to you about it beforehand.

2 But I am concerned based upon the broad nature  
3 of the question that you asked and what I understood the  
4 role of Mr. Hinkson, Sr., to be.

5 MR. NEJAN: He was not designated as a  
6 paralegal or legal assistant during the Bellon lawsuit.

7 THE COURT: During the Bellon suit. But he  
8 was, at some point, in connection with this criminal  
9 case, was he not?

10 MR. HOYT: He was.

11 THE COURT: All right.

12 MR. HOYT: I mean, does it open the door if I  
13 talk to him about how he defended himself in the Bellon  
14 suit, as to the Bellon claims for temporary restraining  
15 order?

16 THE COURT: Give me some time frames here.  
17 When did he begin to actively participate in the defense  
18 of the prosecution of the Federal criminal charges?

19 MR. HOYT: Sometime, I believe, the Summer of  
20 '04.

21 THE COURT: '04. The question you asked goes  
22 back to '03.

23 MR. HOYT: Yes. It starts in December of '03.

24 THE COURT: When the jury comes back, if you  
25 could confine the scope of your question to that time

1 frames, I will permit it and rule that it does not open  
2 the door to the concern that the court just raised.

3 MR. HOYT: Thank you.

4 THE COURT: Anything further?

5 MR. NOLAN: Do you want to do it now or later?

6 THE COURT: You had something you wanted to  
7 bring up?

8 MR. NOLAN: Actually, two things.

9 One: There is a witness, Mr. Harding,  
10 Mr. Harding's father, Mr. J. C. Harding's father, and we  
11 have -- and I really think that this is solid  
12 information.

13 He said he wouldn't testify unless we paid him  
14 one million dollars, and it was recorded -- or it was --  
15 we had an investigator talk to him, and he demanded the  
16 money. He hasn't shown up yet.

17 THE COURT: You did subpoena him?

18 MR. NOLAN: He has been subpoenaed. He was  
19 supposed to be on call. He agreed to be here at 12:00.  
20 He is not here. If we can't reach him by phone, I would  
21 like the help of the Marshals to --

22 THE COURT: If you need an arrest warrant for  
23 him, I will sign one.

24 MR. NOLAN: I understand. It could be just  
25 hearing that there is an arrest warrant in the process.

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1 THE COURT: You may tell him that the Judge  
2 has instructed you to tell him if he does not honor the  
3 subpoena that I will issue a bench warrant for his  
4 arrest.

5 MR. NOLAN: He is on the line right now.

6 MR. HOYT: He is five miles outside of Boise.

7 MR. NOLAN: I just was concerned.

8 The other issue is Mr. Hoyt, right at the noon  
9 break, came back. We have some more information  
10 regarding Mr. Swisher and the military thing.

11 THE COURT: Do you really want to re-open that  
12 can of worms?

13 MR. NOLAN: I have two thoughts on it. One:  
14 I feel like, you know, I did something that just  
15 backfired terribly. He is a tough witness. I don't  
16 believe him for one minute. I wish I could get the  
17 goods on him. I didn't have the goods lined up in  
18 order. He pulled this thing out of his pocket.

19 The court dealt with the issue, kind of put it  
20 to bed. But I understand that Mr. Hoyt -- I didn't know  
21 he was doing this -- got more information from the  
22 agency. It looks like the document that Mr. Swisher  
23 gave is a fraudulent document.

24 You know, Mr. Swisher was probably the  
25 toughest witness, the most dangerous witness, and the

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1 one that really said the worst things about this case.  
2 If he is fabricating documents and presenting them to  
3 the court, I mean, that's really serious.

4 So what I am suggesting is I think there is a  
5 subpoena that they will honor with the court's signature  
6 that Mr. Hoyt knows about. They said, "With a court's  
7 signature, we will give you this." But this document is  
8 fraudulent or whatever.

9 And I guess what I am saying is that I think  
10 that -- while it may not come before the jury before we  
11 are through, I think that a subpoena may be appropriate  
12 because of the importance of that witness.

13 If it weren't for that witness, you know, we  
14 could deal with. But, boy, he was -- well, the court  
15 was here.

16 THE COURT: Yes, I heard him.

17 MR. NOLAN: It's something new. I think it's  
18 a subpoena.

19 Mr. Hoyt, you understand that there is,  
20 apparently, an agency --

21 Do you mind if he --

22 THE COURT: No.

23 MR. NOLAN: That's what it's about.

24 THE COURT: Okay.

25 MR. HOYT: Your Honor, yes, indeed. It's not

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1 only the personnel records section of the National  
2 Personnel Records Center, the National Archives Records  
3 Administration, but it is the Department of Marines and  
4 the Department of Veterans Affairs that are involved  
5 here.

6 And what they have indicated to us that, after  
7 having faxed to them a copy of what appears to be the  
8 genuine and authentic DD-214 which was issued back in  
9 1957, Mr. Swisher recorded that document in Idaho County  
10 in February of 2001.

11 THE COURT: Wait a second. I don't have that  
12 exhibit before me. I thought there was a 1998 date.  
13 Let me ask the clerk to hand me Exhibit L and Exhibit M,  
14 as in "Mary."

15 MR. HOYT: And what happened, Your Honor, is  
16 we went one step further. After we received Exhibit M,  
17 which had a recording date on it of 2004, we went back  
18 and found that a similar document, a DD-214 for  
19 Mr. Swisher, had been recorded in 2001.

20 That DD-214 was devoid of any of these honors  
21 and medals and other grants and benefits that  
22 Mr. Swisher claims in Exhibit M.

23 That information has been transmitted and the  
24 indications from the people we have talked to is that  
25 they stand by the letter of January 14th and that they

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1 will provide us with a certified copy of his DD-214 that  
2 would not support Exhibit M; that Exhibit M is a  
3 forgery; and that he was never given any of the awards  
4 or benefits as indicated on Exhibit M; and that,  
5 further, if any change had been made in the discharge  
6 document, it would have been done on a form DD-215 so  
7 there --

8 MR. NOLAN: May I approach with the document  
9 that was recorded?

10 THE COURT: Yes, of course. Why don't you go  
11 ahead and mark those, if you would like, with the clerk.  
12 While you are doing that, I would like to give the  
13 Government an opportunity to respond.

14 MR. HOYT: Let me make the final point. We  
15 were told there is a regulation in the form of an  
16 internal memo issued by the JAG of the Department of  
17 Defense and the Marine Corps; that their JAG has issued  
18 a memo saying that anybody that wants to obtain the  
19 record of a military person must have not just a  
20 subpoena in a criminal case that would be issued by the  
21 clerk but a subpoena issued by a judge, signed by a  
22 judge, with the raised letter seal of the court on it.  
23 They will honor that. They will not honor any other  
24 subpoena.

25 THE COURT: Who would like to respond from the

1 Government?

2 MR. SULLIVAN: Your Honor, I take it, the  
3 petition is that Your Honor issue such a subpoena to  
4 this entity, whoever it may be, for further records to  
5 chase down Mr. Swisher's military record.

6 The issue is whether -- I'm not entirely sure  
7 of the issue. They are not challenging that he was in  
8 the Service. He was in the Marine Corps.

9 They are challenging, before the jury, his  
10 right to wear that little pin which may or may not  
11 indicate he has a Purple Heart or entitled to a Purple  
12 Heart?

13 THE COURT: Well, as I understand the request,  
14 the request is that the court issue an order, whether it  
15 be in the form of a subpoena or a court order, to the  
16 National Personnel Records Center in St. Louis,  
17 directing them to release whatever documentation they  
18 have. I think I understand the Service's position.

19 The concern that the court has in the first  
20 paragraph of the letter dated January 14, 2005, Exhibit  
21 L, says, "We are providing the requested releaseable  
22 military service information based on restrictions  
23 imposed by the military services, consistent with  
24 Department of Defense regulations and provisions of the  
25 Freedom of Information Act and the Privacy Act of 1974.

1 Releaseable information has been transcribed,  
2 photocopied or a combination of both, in order to comply  
3 with your request."

4 And the concern that that raises in the  
5 court's mind is that, if Mr. Swisher testified  
6 truthfully that he was engaged in what I guess would be  
7 best described as covert military operations on the  
8 Korean Peninsula after the cessation of hostilities in  
9 the Korean conflict, we may be getting into records that  
10 are, for National Security reasons, sealed or restricted  
11 in some fashion.

12 Now, at this point, I have no way to know; but  
13 I pause when I read this paragraph in the Personnel  
14 Records Center and wonder what they mean.

15 I guess it won't hurt to issue an order asking  
16 the Service to provide whatever documentation they have  
17 in St. Louis to the court. In camera, I will review it  
18 first and take a look at what we have got.

19 I am troubled by the fact that what has now  
20 been marked as Defendant's Exhibit P purports to be yet  
21 another DD-214 in the name of Elven Joe Swisher with the  
22 same service number of 1517120, recorded, as Mr. Hoyt  
23 represents, in February 2001. It is a different form  
24 from Exhibit M that Mr. Swisher had in his breast  
25 pocket. So I certainly do not blame defense counsel for

1 wanting to pursue this.

2 MR. NOLAN: I would ask the court to do what  
3 the court is -- I think it's a court -- I think the  
4 court should -- the court is as interested as we are.

5 I would ask the court to do what the court can  
6 do, in light of the documents that we have and in the  
7 names that we have; and we will provide them to the  
8 court to review what they can in camera.

9 THE COURT: Why don't you present with a  
10 proposed form of order, run it by the Government. I  
11 will sign it as quickly as you can get that together.  
12 All right. Why don't you let the Government take a look  
13 at it, and I will come out after the recess, before we  
14 bring the jury back in.

15 MR. NOLAN: I have not shown the Government  
16 that document I just marked. I want to make sure that  
17 they see it.

18 THE COURT: Let's give that back to counsel.

19 MR. HOYT: Your Honor, may I be heard on one  
20 more point?

21 THE COURT: Sure. Go ahead, Mr. Hoyt.

22 MR. HOYT: That is, as the court is well  
23 aware, Mr. Swisher intimated his involvement in, quote,  
24 "secret operations" and so on.

25 The information I have is that these are

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1 recent fabrications and that, in fact, he was injured  
2 while in the Service in a car accident in Bremerton,  
3 Washington; and that was the extent of it.  
4 There are numerous indicators that the  
5 document marked as Exhibit M is a false document from  
6 other corroborative evidence of things that should be on  
7 it that aren't.  
8 And so, as a result of that, we feel that  
9 Mr. Swisher willfully lied about a substantial matter  
10 related to his credibility. And I think this matter  
11 goes further and deeper than just the mere apparent  
12 forgery on the DD-214.  
13 MR. NOLAN: He testified he murdered -- he  
14 killed people.  
15 THE COURT: I remember.  
16 MR. NOLAN: If he wasn't in combat, if his  
17 file shows he wasn't in combat, that alone --  
18 THE COURT: Counsel, I think I understand your  
19 positions. I have told you I will sign the order. Just  
20 run the form --  
21 MR. NOLAN: I'm sorry, Judge?  
22 THE COURT: -- by the Government and we will  
23 proceed and see what we get. We will be in recess for  
24 about ten minutes.  
25 (Recess.)

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1 if you can work out a better form of order after we  
2 adjourn at 4:30?  
3 Give my chambers a call and if -- I don't  
4 care. I mean, one lawyer can present it. As long as  
5 you represent that the other side has signed off on it,  
6 I will be happy to sign it.  
7 It's now 6:00 o'clock, anyway, back East; so  
8 I'm not sure that signing it tonight is going to make  
9 any difference one way or the other. Are you going to  
10 fax it?  
11 MR. HOYT: Fax it only to Missouri, which is  
12 just an hour --  
13 MR. NOLAN: Fax it? But they would have to  
14 have something by Fed-Ex, I would assume, also.  
15 THE COURT: Because they want a certified  
16 copy, it will have to go by overnight.  
17 MR. NOLAN: I think if we put in -- I'm just  
18 suggesting we put in the order the representations made  
19 or, generally, the representations made and the nature  
20 of the case and the fact that there is a Ninth Circuit  
21 Judge, that kind of thing.  
22 THE COURT: And that we are in the middle of  
23 trial and we need it yesterday?  
24 MR. NOLAN: Exactly. I would hope they would  
25 pay serious attention to it.

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1 THE COURT: Did we work out the form of order?  
2 Do you need to make some changes to it?  
3 MR. NOLAN: Mr. Hoyt is working on that,  
4 presumably, as we speak. I haven't even talked to him  
5 about it.  
6 THE COURT: He is the one who is conducting  
7 the examination of Mr. Hinkson. I guess we will wait.  
8 MR. NOLAN: He is also looking for the next  
9 witness. I think that is the other thing.  
10 THE COURT: Okay.  
11 MR. NOLAN: I gave the Government copies of  
12 every single piece of paper we have, in terms of contact  
13 people, et cetera. They are making a copy of that now.  
14 I haven't even seen it, myself.  
15 You know, my hope is that we can work some  
16 kind of general order out that is urgent to this court  
17 only, you know, that kind of thing.  
18 THE COURT: Sure.  
19 Go ahead, Mr. Sullivan.  
20 MR. SULLIVAN: We were examining the subpoena  
21 that Mr. Hoyt had prepared. It doesn't really address  
22 the issue that Your Honor identified, and I think that  
23 should be taken into account.  
24 THE COURT: Well, let's do this. I am going  
25 to be here late tonight, anyway. Why don't you guys see

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1 THE COURT: So would I. Although, he  
2 prepared, Mr. Nolan, for a slight let-down.  
3 MR. HOYT: They do have a certified copy ready  
4 to go; but they are saying, "We can't send it."  
5 THE COURT: They can't send it without the  
6 order?  
7 MR. HOYT: Exactly.  
8 THE COURT: I think Mr. Sullivan is right. If  
9 we need to, we can tweak the wording of the order a  
10 little bit. Why don't you do it this afternoon? I will  
11 be available to sign it.  
12 MR. NOLAN: Actually, his full file -- the  
13 issue of whether or not he was in combat wouldn't  
14 necessarily be --  
15 THE COURT: If we can get it, I think that  
16 would be the better way to do it.  
17 MR. NOLAN: We will work on it, Judge. It's  
18 interesting because, if it's a Medal of Honor, there is  
19 a whole group that goes around and ferrets out those  
20 people that falsely claim a Medal of Honor. I mean,  
21 it's a real serious matter and a federal offense that is  
22 taken very seriously, obviously.  
23 THE COURT: All right. Are we ready for the  
24 jury? Please say, "Yes."  
25 MR. HOYT: Yes, Your Honor.

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1 THE COURT: Ms. Longstreet, bring them in.  
2 (Whereupon, the following proceedings were  
3 held in the presence of the jury:)  
4 THE COURT: It took a little longer than  
5 fifteen minutes, as you may have guessed. We really are  
6 working out here.  
7 Are we ready to proceed, Mr. Hoyt?  
8 MR. HOYT: We are, Your Honor.  
9 Q. Now, before the break, Mr. Hinkson, we were  
10 talking about you being involved named as a party in a  
11 lawsuit by Mr. Bellon?  
12 A. Yes.  
13 Q. And as a part of that lawsuit, was it  
14 necessary for you to defend yourself?  
15 A. That's right.  
16 Q. Can you tell the jury what happened to that  
17 lawsuit for a temporary restraining order that was  
18 issued on December the 4th?  
19 A. Yes, I can. Do you want me to tell them?  
20 Q. Tell them what happened.  
21 A. Rich Bellon managed to convince the judge that  
22 he was a rightful partner in WaterOz.  
23 MR. SULLIVAN: Your Honor, I object to all of  
24 the hearsay.  
25 THE COURT: I agree it is hearsay. Sustained.

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1 December 12, 2003?  
2 A. I believe that was the date.  
3 Q. As a result of the temporary restraining  
4 order, was the management of WaterOz taken away from  
5 Mr. Hinkson's management team?  
6 A. Yes, it was.  
7 Q. And as a result of the order of December 12th,  
8 was the management of WaterOz returned to Mr. Hinkson's  
9 management team?  
10 A. Yes. Yes, it was.  
11 Q. Now, had you assisted in the sense of being an  
12 advisor to WaterOz prior to December of 2003?  
13 A. Prior -- yes, I had. Yes.  
14 Q. And in that capacity, were you aware that  
15 Mr. Rich Bellon was attempting to assert himself as a  
16 management person in WaterOz?  
17 A. That's correct.  
18 Q. And were you aware that he was discharged from  
19 employment with Mr. Hinkson at some point in time?  
20 MR. SULLIVAN: I object. These are all  
21 leading questions.  
22 THE COURT: Yes. I think that is enough on  
23 the leading questions. Sustained.  
24 BY MR. HOYT:  
25 Q. When was Mr. Bellon discharged?

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1 I will ask you to ask a leading question so  
2 the witness --  
3 MR. HOYT: We, actually, have a court order  
4 that was issued. It's contained within the transcript  
5 of the trial, and it's been listed as an exhibit. It's  
6 in the exhibit materials. It describes the court's  
7 findings with reference to this matter. Possibly we  
8 should offer that document into evidence at this time.  
9 MR. SULLIVAN: We object to it, Your Honor,  
10 because, again, it goes -- the reason this matter is  
11 even before the jury, purportedly, is for impeachment,  
12 bias, motive, something along those lines. The contents  
13 of this order is hearsay, and it wouldn't go to any of  
14 those purposes.  
15 THE COURT: At this point, Mr. Hoyt, I think I  
16 am going to sustain the Government's objection; but I  
17 will allow you to simply ask a leading question and  
18 establish that, in fact, the order was issued, the date  
19 of the order and so on.  
20 MR. HOYT: Thank you. For the record, it's  
21 Exhibit J; and we will treat that as a tendered exhibit.  
22 THE COURT: Very well.  
23 BY MR. HOYT:  
24 Q. Thank you. Mr. Hinkson, was the order  
25 reversing the temporary restraining order entered on

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1 A. About maybe a week or ten days later, after he  
2 took -- had taken over the company.  
3 Q. Was he not discharged in November, a month  
4 before he tried to take over the company?  
5 A. It was a gradual thing. He was professing to  
6 be a partner and he was not a partner, somewhere along  
7 the lines.  
8 MR. SULLIVAN: I object, Your Honor.  
9 THE COURT: Sustained.  
10 The jury will disregard that last answer. It  
11 is stricken.  
12 BY MR. HOYT:  
13 Q. Do you recall -- was he fired from  
14 Mr. Hinkson's employ in November of 2003?  
15 A. Yes, I believe that was the date.  
16 Q. Has your son David ever made any statements to  
17 you regarding Federal officials that he felt were  
18 pursuing him unjustly?  
19 A. Yes.  
20 Q. In those statements, did he ever threaten to  
21 kill anyone?  
22 A. Never.  
23 Q. Can you tell the jury what he said with  
24 reference to the Federal officials?  
25 A. That they were immoral, that they were

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1 criminals, that they deserved to be smitten. He said  
2 that to me on one occasion -- or more than one occasion,  
3 I guess. His confidence level had plummeted, in the  
4 Government, in what they were capable of doing and had  
5 done to him.

6 Q. And smitten by whom?

7 A. God.

8 Q. Did he ever state to you that he would be the  
9 one that would smite them?

10 A. Never, never, ever.

11 MR. HOYT: No more questions.

12 THE COURT: Very well.

13 CROSS EXAMINATION

14 BY MR. SULLIVAN:

15 Q. Mr. Hinkson, in those statements that you  
16 related that your son David Hinkson said he hoped the  
17 Federal officials would be smitten by God, you  
18 understood he was saying he hoped they would die?

19 A. No. He was venting, as usual.

20 Q. My question was: You understood that he meant  
21 he hoped they would die? "Yes" or "no"?

22 A. No.

23 Q. What did you think "smitten by God" meant?

24 A. Punished.

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1 Q. Punished for what?

2 A. For their misbehavior.

3 Q. Do you agree with your son?

4 A. Yes, I do.

5 Q. All right.

6 A. Not that I'm asking God to smite them, but I  
7 think that they need to be exposed.

8 Q. And you are part of the exposure, aren't you?

9 A. I try to be.

10 Q. You think all of these Federal agents and  
11 prosecutors who have prosecuted your son are all  
12 criminal and immoral?

13 A. That's a little broad. I don't make broad  
14 statements. This is one of the things I try to get  
15 David to realize, that there are, within the ranks of  
16 Government, people who are not following the  
17 Constitution and those people need to be ferreted out  
18 and identified and they need to be relieved of command.

19 Q. And you are trying to do that, aren't you?

20 A. I try to do what I can to alert people in the  
21 public to the crimes that are being committed by  
22 Government.

23 Q. And you believe crimes have been committed  
24 against your own son?

25 A. I sure do.

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1 Q. And so to have him acquitted would tend to  
2 prove your assertion that he has been the victim of  
3 these crimes?

4 A. I would hope so.

5 Q. You would do just about anything to assure  
6 that he got acquitted, wouldn't you?

7 A. Absolutely not.

8 Q. You have been part of his business for years,  
9 haven't you?

10 A. No, I haven't.

11 Q. You have been part of his attempt to hide his  
12 ownership of the WaterOz assets for years?

13 A. No, I haven't.

14 Q. You set up the Belizean corporation, didn't  
15 you?

16 A. Yes, I did.

17 Q. And it holds the ownership or purports to hold  
18 the ownership of the land --

19 MR. HOYT: Your Honor, I will object to this  
20 line of questioning because it assumes facts not in  
21 evidence. There is no testimony that the land is an  
22 asset of WaterOz.

23 THE COURT: Overruled.

24 MR. HOYT: As a matter of fact, the only  
25 testimony before the court is that the land is not an

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1 asset.

2 THE COURT: I am going to allow the Government  
3 prosecutor to pose the question. I think he has a  
4 good-faith basis to ask it.

5 You may proceed.

6 MR. SULLIVAN: May I have it read back,  
7 please?

8 (Whereupon, the pending question was read back  
9 by the court reporter.)

10 BY MR. SULLIVAN:

11 Q. -- that WaterOz sits on?

12 A. I don't think it does. To my knowledge, it  
13 doesn't.

14 Q. When did you set up the Belizean corporation?

15 A. I don't remember the date. It was in the  
16 middle '90s, I think. I would guess, around 1995, '94,  
17 somewhere around there.

18 Q. And you went -- Belize is a small Caribbean  
19 country in Central America, is it not?

20 A. It is.

21 Q. Why did you pick Belize for this corporation  
22 that you set up?

23 A. To answer that question, it would take a  
24 little bit of time. Do you want me to go into it?

25 Q. All right. Well, let's wait on that. What is

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1 your position with that corporation?

2 A. As far as I know, I don't have a position at  
3 this time.

4 Q. When you set it up, you gave yourself a  
5 position, didn't you?

6 A. When I set it up, it was an international  
7 situation that the Belizean law is designed to protect  
8 individuals from any seizure of assets and once there is  
9 a threat, well, then I no longer -- or no one else has  
10 any right or power to change anything. I don't,  
11 frankly, know who is in charge at this time; and I can  
12 state that unequivocally.

13 Q. Well, at the time, you were in charge?

14 A. At the time I set it up, I set one up for  
15 myself and one for my son.

16 Q. David Hinkson?

17 A. David Hinkson.

18 Q. And that was with his knowledge?

19 A. It came about because I explained to him some  
20 corruption that I had uncovered and the only way to  
21 protect it --

22 Q. My question was: Sir, you set it up with your  
23 son's knowledge? "Yes" or "no"?

24 A. I don't recall.

25 Q. Did you ever tell him that you had, later?

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1 A. I told him that I set one up for myself.

2 Q. And you don't recall whether you set one up  
3 for him -- strike that. You don't recall whether you  
4 told him that you set one up for him?

5 A. I can't remember if he -- if I set that up for  
6 him while I was there -- I don't think -- or whether it  
7 was afterwards.

8 THE COURT: That is not the question,  
9 Mr. Hinkson. The question is whether you ever remember  
10 telling him that you set such a company up for him in  
11 Belize.

12 THE WITNESS: Yes, I told him.

13 BY MR. SULLIVAN:

14 Q. I'm sorry?

15 A. Yes, I told him that I set one up.

16 Q. What was the name of your company?

17 A. I don't even remember.

18 Q. What was the name of his company?

19 A. That I can't recall. I remember the trust  
20 that I set up, and I think the name of it was "The  
21 Spruce Trust."

22 Q. What is the company that your wife is a  
23 secretary, treasurer of -- or had been?

24 A. She's the secretary, treasurer of everything  
25 that we do, pretty much.

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1 Q. And she's the secretary, treasurer of a  
2 company called Compania Nortena de Terreno?

3 A. That is the company that David had set up in  
4 Belize; and I didn't know anything about the name, how  
5 it was chosen, or who was on it.

6 Q. Weren't you at one point the president of the  
7 board of directors?

8 A. I presume that I was. At least I thought I  
9 was, but I don't know for a fact whether I was. I  
10 believe I was.

11 Q. And do you know whether that company held any  
12 assets in Idaho?

13 A. As far as I know, it held assets.

14 Q. Like what?

15 A. Well, whatever -- the equipment and buildings  
16 and everything that WaterOz has. I don't think  
17 WaterOz -- in David's name -- I don't think much of  
18 anything remained in his name. I think it was all in --

19 THE COURT: Mr. Hinkson, I'm sorry. I didn't  
20 understand that answer at all. The question is, "What  
21 assets were listed in the name of the company?" You  
22 started to say the equipment and the buildings. Are  
23 there any other assets?

24 THE WITNESS: Frankly, I don't know.

25 BY MR. SULLIVAN:

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1 Q. WaterOz is operated by your son; correct?

2 A. Yes. It's a sole proprietorship.

3 Q. He has always held himself out as the owner of  
4 WaterOz?

5 A. That's right.

6 Q. And to your knowledge, he controls this  
7 Compania Nortena de Terreno, as well?

8 A. Like I told you, it's a little bit  
9 complicated. I don't know whether he does or not now.

10 Q. Did you seat that one up?

11 A. That was the one that I -- the Nortena -- I  
12 didn't know anything about it. I told him about an IBC  
13 and connected him with the people that did it. I can't  
14 recall.

15 I don't think that I -- if I remember right, I  
16 didn't set up an IBC for David while I was there.  
17 Afterwards, I told him about what mine had done and gave  
18 him phone numbers and contacts. But I can't recall  
19 whether, in fact, I did it. I don't think so, though.

20 THE COURT: Counsel, could you have the  
21 witness explain the initials "IBC"?

22 BY MR. SULLIVAN:

23 Q. Did you say the initials "IBC"?

24 A. Yes.

25 Q. What do those stand for?

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1 A. International Business Corporation. 1692  
2 Q. Is it correct that, to your knowledge, very  
3 few assets remain in the name of your son, David  
4 Hinkson?  
5 A. I don't think that he has many assets in his  
6 name. I don't know.  
7 Q. Do you know -- who is the owner of WaterOz?  
8 A. David was operating under the name of WaterOz,  
9 which is a d/b/a of various companies, and that we were  
10 trying to get squared away. I think there were four  
11 different people claiming the name "WaterOz" within  
12 David's control.  
13 Q. "D/b/a" stands for "doing business as"?  
14 A. Correct.  
15 Q. And you have to register such a business with  
16 the Secretary of State of Idaho?  
17 A. That's right.  
18 Q. And he did do that, didn't he?  
19 A. He did.  
20 Q. Now, these corporations or international  
21 business corporations formed in Belize were formed with  
22 the purpose of trying to protect assets of your family  
23 members; correct?  
24 A. Protect assets from liability, primarily.  
25 Q. So that liens couldn't be attached to them?

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1 A. So if fraudulent claims were made, we would be 1693  
2 protected, which is certainly one of the big  
3 considerations that we have these days.  
4 Q. Would those Belizean corporations also protect  
5 family assets against legitimate claims?  
6 A. They would protect against any claims; that's  
7 true.  
8 Q. You mentioned that when your son David was  
9 living in Las Vegas he had skin cancer?  
10 A. That's what I understood.  
11 Q. And that you told us that that motivated him  
12 in the way of looking for a cure?  
13 A. Yes. He was very enterprising. He is always  
14 looking or investigating, trying to find answers to  
15 questions. He has an inquisitive, active mind.  
16 Q. Isn't it true that he believed that he cured  
17 himself of skin cancer?  
18 A. I believe that he feels he did. I don't know  
19 whether -- whether it did or not, I think that he  
20 certainly believed it.  
21 Q. What is your position now with WaterOz?  
22 A. I guess, currently -- depending on the status  
23 of the international corporation, I don't know. I can  
24 just say that if there were -- if David were not being  
25 threatened in court, possibly, I would still be the

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1 chairman of the board; but, now, I don't know. And I 1694  
2 can relate to the law, to the Belizean law --  
3 THE COURT: Let's wait for the next question,  
4 Mr. Hinkson.  
5 BY MR. SULLIVAN:  
6 Q. Do you draw a salary from WaterOz?  
7 A. I have never drawn a salary. I have never  
8 taken a penny, ever.  
9 Q. Do you draw a salary from the Belizean  
10 corporation?  
11 A. No, I don't.  
12 MR. SULLIVAN: No further questions, Your  
13 Honor?  
14 THE COURT: Very well. Anything further,  
15 Mr. Hoyt?  
16 MR. HOYT: If I might have a moment, please,  
17 Your Honor.  
18 THE COURT: You may.  
19 MR. HOYT: No questions, Your Honor.  
20 THE COURT: Very well. Mr. Hinkson, you may  
21 step down.  
22 THE WITNESS: Thank you.  
23 MR. HOYT: We are getting a report on  
24 available witnesses, Your Honor.  
25 THE COURT: Thank you, Mr. Hoyt.

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1 MR. HOYT: I believe I will know momentarily. 1695  
2 THE COURT: Very well.  
3 MR. HOYT: We had an indication that there  
4 were two witnesses who were very, very close to the  
5 courthouse just a short while ago. If I may step out of  
6 the courtroom for a moment, Your Honor?  
7 THE COURT: Sure. Go right ahead.  
8 MR. NOLAN: Can we informally approach?  
9 THE COURT: That would be fine. Ch, I see  
10 Mr. Hoyt has arrived.  
11 MR. HOYT: Your Honor, at this time the  
12 defense would call Mr. John Harding.  
13 THE COURT: Yes. Mr. Harding, would you step  
14 forward and take the oath, please? Right up here.  
15 THE COURTROOM CLERK: Please raise your right  
16 hand.  
17 \* \* \*  
18 JOHN VINCENT HARDING,  
19 having been called, sworn, testified as follows:  
20 THE WITNESS: So help me God.  
21 THE COURTROOM CLERK: Thank you, sir. Please  
22 take the stand. If you would, state your name and spell  
23 your last name for the record.  
24 THE WITNESS: John Vincent Harding,  
25 H-a-r-d-i-n-g.

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1 then why are you objecting so strenuously to this  
2 testimony?

3 MR. SULLIVAN: Again --

4 THE COURT: You are arguing inconsistent  
5 positions here. I think this is an issue the jury has  
6 to sort out and decide who is telling the truth. Your  
7 motion to strike the testimony is denied.

8 MR. SULLIVAN: The Government's position has  
9 been that Mr. Hinkson trusted Mr. Harding up until the  
10 point in time during which he was being candid.

11 At some point, he became suspicious of  
12 Mr. Harding. He was no longer in the residence, and  
13 that's the point Mr. Hinkson became suspicious. That's  
14 the point he was no longer talking candidly. We posit  
15 it's completely consistent.

16 THE COURT: Well, with that clarification, the  
17 Government's position -- I am not finding that the  
18 Government has taken an inconsistent position.

19 The record here is really muddled with this  
20 witness. I don't think there are grounds to strike the  
21 testimony completely, but the jury will just have to  
22 sort it out as best it can.

23 (Whereupon, the following proceedings were  
24 held in open court, in the presence of the jury:)

25 THE COURT: Anything further for Mr. Harding?

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1 Don't let anybody talk to you. Don't watch any TV or  
2 listen to the radio, if there are any news reports about  
3 the case, or look at the newspaper if there is an  
4 article about it. Keep an open mind.

5 We will see you back here tomorrow morning at  
6 9:00 a.m. Thank you.

7 (Whereupon, the jury was excused from the  
8 courtroom, and the following proceedings were held  
9 outside the presence of the jury:)

10 THE COURT: Let's see. Are we going to work  
11 on that order?

12 MR. NOLAN: Could I indicate -- I just spent a  
13 little bit of time writing things down. Again, I hope  
14 I'm not being too presumptive.

15 My suggestion that a document be prepared for  
16 the court's signature says something along the  
17 following:

18 Richard C. Tallman, United States Circuit  
19 Judge for the United States Court of Appeals for the  
20 Ninth Circuit, sitting by designation as a trial judge  
21 in the matter of the United States vs. David Roland  
22 Hinkson, with the case number, requests an order that a  
23 subpoena duces tecum be issued in the above case.

24 The case is in active trial before a jury in  
25 Boise, Idaho.

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1 MR. HOYT: Nothing further, Your Honor.

2 THE COURT: May he be excused?

3 MR. NOLAN: He may.

4 THE COURT: Any objection by the Government?

5 MR. SULLIVAN: No, Your Honor.

6 THE COURT: Mr. Harding, you are excused; and  
7 you may go home, sir.

8 THE WITNESS: Thank you.

9 MR. HOYT: May I step out, Your Honor?

10 THE COURT: Yes, of course.

11 MR. NOLAN: Informally, can we just approach?

12 THE COURT: Sure.

13 (Whereupon, an off-the-record discussion was  
14 held between court and counsel outside the presence of  
15 the jury.)

16 THE COURT: Ladies and gentlemen, I have  
17 another matter that is related to this case that I need  
18 to take up. There is no sense taking up your time  
19 because it may take the lawyers and I a while to take it  
20 up. I will let you go home a half hour early today.

21 If you can, be back tomorrow morning at 9:00  
22 a.m. We will be ready to go. Have a good evening.

23 Again, let me remind you, as I have throughout  
24 the trial, that you are not to have any discussions with  
25 anybody about the case. The evidence is not yet in.

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1 The court's contact information is as follows:  
2 The name, the e-mail address and, if the court wants to,  
3 put other phone numbers and things like that.

4 THE COURT: That would be fine. All right.

5 MR. NOLAN: An important Government witness --  
6 I put the name, serial number, request number --  
7 testified in this case. He wore a Purple Heart during  
8 his testimony.

9 He testified he was a disabled veteran with  
10 combat experience and had killed many people in combat.  
11 He was a victim -- strike that.

12 He was a witness in a case -- he was a witness  
13 in this case alleging that the accused solicited to kill  
14 a Federal Judge, a Federal Prosecutor -- I'm sorry.

15 He was a witness, alleged that he was  
16 solicited -- I don't have the language right, but the  
17 nature of his testimony was that he was solicited to  
18 kill a Federal Judge in a prosecution against the  
19 defendant for solicitation.

20 During cross-examination, he was presented  
21 with a document, which is attached as Exhibit A, showing  
22 that he was not entitled to the Purple Heart.

23 He presented to the court Exhibit B and  
24 testified it was provided to him by the Military, that  
25 it was a sealed and secret document, and that he was on

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1 quite well and quite fast -- excuse me --

2 THE COURT: I will help you with the language.

3 I want to be sensitive to Mr. Sullivan's concern.

4 MR. NOLAN: Absolutely.

5 THE COURT: And I want to write it in as

6 neutral -- I think it is a fairly creative idea to say,

7 "Look, folks, here is the circumstance under which this

8 request is being made," and see what happens.

9 MR. NOLAN: I appreciate that.

10 THE COURT: Have you got a computer? Can you

11 type it?

12 MR. NOLAN: Number one, I can't type. Number

13 two --

14 MR. HOYT: Your Honor, we will have it done

15 immediately. Just give us --

16 THE COURT: As I say, I will be available. I

17 don't think we need to do the drafting on the record. I

18 am going to let the court reporter go home for the

19 evening.

20 Ms. Longstreet and my law clerk and I will

21 stand by for your call. If you guys want to come into

22 chambers a little later on -- and I assume Mr. Hinkson

23 can go back. I don't think we need to detain him any

24 further tonight on this matter.

25 MR. NOLAN: Can we do it by e-mail or not?

1 THE COURT: Absolutely.

2 MR. NOLAN: We could do the content by e-mail,

3 if the Government is willing to stay.

4 MR. SULLIVAN: We will stay.

5 THE COURT: That would be the most efficient,

6 if everybody can stand by.

7 MR. NOLAN: I'm ready to do it.

8 THE COURT: All right. If you want to work in

9 here, that's fine.

10 MR. NOLAN: It shouldn't take long.

11 THE COURT: I will be in chambers, if you need

12 me.

13 Otherwise, we will be in recess until tomorrow

14 morning.

15 (Whereupon, the court stood in recess.)

16 \* \* \*

17

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C E R T I F I C A T E

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3

4 I, LORI A. PULSIFER, certify that I made a

5 shorthand record of the matter contained herein, and

6 that the foregoing typewritten pages contain a full,

7 true, and accurate transcript of said shorthand record,

8 done to the best of my skill and ability.

DATED this 5th day of April 2005.

9

10

11 LORI A. PULSIFER, CSR, RMR, CRR

12 Certified Shorthand Reporter

13 Idaho Certificate 354

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
 )  
 ) Case No.  
 Plaintiff, ) CR-04-127-S-RCT  
 )  
 vs. )  
 )  
 DAVID ROLAND HINKSON, )  
 )  
 )  
 Defendant. )  
 )

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BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 20, 2005

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 8, PAGES 1,723 THROUGH 1,996)

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1 (Whereupon, the following proceedings were  
2 held outside the presence of the jury?)  
3 THE COURT: Are we ready to bring in the jury?  
4 MR. SULLIVAN: The Government would like to  
5 bring one matter to your attention.  
6 THE COURT: Go right ahead, Mr. Sullivan.  
7 MR. SULLIVAN: One of the proposed defense  
8 witnesses is the revenue agent who began this  
9 investigation, Jerry Vernon.  
10 THE COURT: I remember Agent Vernon.  
11 MR. SULLIVAN: A/k/a Jerry Morgan.  
12 THE COURT: I remember that, too. Go ahead.  
13 MR. SULLIVAN: I think we have already advised  
14 the court at sidebar that he has a particular personal  
15 problem involved.  
16 THE COURT: Yes. I believe his daughter is  
17 gravely ill.  
18 MR. SULLIVAN: Yes. And so we wanted -- the  
19 Government wants to bring to the court's attention what  
20 we believe to be the inadmissibility of the proposed  
21 testimony of Mr. Vernon.  
22 I believe if we can determine that -- that is,  
23 its admissibility or inadmissibility -- we won't have to  
24 be making a bunch of changes. If he were to come, he  
25 would be flying on an airplane and it would require a

1 lot of -- 1728  
2 THE COURT: He is still up in the Coeur  
3 d'Alene area, isn't he?  
4 MR. SULLIVAN: He is. He is not there now  
5 because of this other situation.  
6 THE COURT: Okay.  
7 MR. SULLIVAN: I discussed it with Mr. Hoyt.  
8 Mr. Hoyt was nice enough to be candid and forthright  
9 with us about what he expects to elicit from Mr. Vernon;  
10 but, frankly, again, his version of relevancy and mine  
11 don't coincide.  
12 THE COURT: That is why I am here.  
13 Mr. Hoyt or Mr. Nolan?  
14 MR. NOLAN: Briefly.  
15 THE COURT: What is your proffer with respect  
16 to what the reverse agent would testify to?  
17 MR. NOLAN: I think that this would be a way  
18 in which to find out what the court would allow. If the  
19 court would allow certain things, we might be able to  
20 stipulate to those. I don't know.  
21 MR. SULLIVAN: That's where --  
22 THE COURT: Do you want to try and --  
23 MR. NOLAN: Mr. Hoyt would be --  
24 THE COURT: Mr. Hoyt, what do you want to try  
25 to establish?

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1 MR. HOYT: Your Honor, what we would establish 1729  
2 is that Mr. Vernon communicated with the Idaho  
3 Department of Labor on two occasions, at least two  
4 occasions in the year 2000, February.  
5 On the first occasion, approximately February  
6 16th, he indicated that Mr. Hinkson was a, quote,  
7 "dangerous person;" and then, secondly, on February  
8 17th, he communicated with Shawn McDonald of the Idaho  
9 Department of Labor and communicated that, again, he was  
10 a dangerous person.  
11 THE COURT: What was the second date,  
12 Mr. Hoyt?  
13 MR. HOYT: February 17th.  
14 THE COURT: Okay. 2000?  
15 MR. HOYT: 2000.  
16 THE COURT: All right.  
17 MR. HOYT: And he communicated that he, that  
18 is Jerold Vernon, was concerned about the, quote,  
19 "dangerous nature" dealing with Mr. Hinkson and his,  
20 quote, "followers."  
21 He mentioned he is a particularly dangerous  
22 person. He also listed weapons, automatic and  
23 semi-automatic weapons, that were located allegedly at  
24 WaterOz. He described Mr. Hinkson as a coward and is  
25 surrounded by devoted followers who will defend him with

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1 force of violence. 1730  
2 THE COURT: Why do you want to introduce that  
3 evidence? The Government has been pretty careful not to  
4 elicit from Agent Long or its witnesses the testimony  
5 with regard to the guarding of Mr. Hinkson's home by  
6 militia members after the raid and that sort of thing.  
7 How does that evidence help the defense?  
8 MR. HOYT: Your Honor, it's the defendant's  
9 position that the Government was rumormongering as early as  
10 2000 without a factual basis and that Mr. Shawn  
11 McDonald, who did have a factual basis, went out to the  
12 facility and was able to determine the conditions out  
13 there. He and others can speak to the conditions and  
14 that there was no basis.  
15 In addition, there is one further matter and  
16 that is --  
17 THE COURT: Let me just stop you right there  
18 and just say that I want to caution you about opening  
19 the door to this because it seems to me, if you get into  
20 this whole question of the reputation of the defendant  
21 or the suspicion that he was dangerous, then you are  
22 going to be opening the door to Agent Long being  
23 permitted to testify as to why they went in to  
24 Mr. Hinkson's residence and business so heavily armed.  
25 Also, you do not know, because I have reviewed

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1 it in camera, but I would also, I think, have to allow 1731  
2 the Government to recall Mr. Croner, if they wanted to,  
3 who would testify that Mr. Hinkson had told him that he  
4 had transferred machine guns to the custody of others  
5 when he suspected that he was under investigation so  
6 that, if his house and business were raided, Federal  
7 officials would not find automatic weapons on his  
8 premises. I just don't think you want to go here,  
9 Mr. Hoyt.  
10 MR. HOYT: Your Honor, first of all, we  
11 weren't aware of what Mr. Croner might say.  
12 THE COURT: It is irrelevant, in my opinion;  
13 but I just want you to know what the consequences are of  
14 proceeding along this line of defense.  
15 I don't think it helps your defense at all,  
16 and you could be opening the door to an awful lot of  
17 prejudicial testimony that is going to hurt you more  
18 than help you.  
19 MR. HOYT: Well, I appreciate counsel for the  
20 Government bringing up the issue and giving us an  
21 opportunity to air it before the court.  
22 I will say that I think that I need an  
23 opportunity to talk to my co-counsel --  
24 THE COURT: Of course.  
25 MR. HOYT: -- and to discuss the matter

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1 briefly. And so if we can postpone any further argument  
2 or decision on this point --

3 THE COURT: Why don't you reconsider it? We  
4 can talk about it later. But I will tell you right now  
5 that my preliminary leaning would be to exclude this  
6 evidence.

7 I do not think that it is relevant, and I do  
8 think that its probative value is greatly outweighed by  
9 its potential prejudice to the defendant and would  
10 exclude it for that reason.

11 Are we ready for the jury?

12 MR. NOLAN: Yes.

13 MR. HOYT: We are, Your Honor.

14 THE COURT: Let's bring in the jury.

15 (Whereupon, the following proceedings were  
16 held in the presence of the jury:)

17 THE COURT: I believe we are ready to call  
18 your next witness.

19 MR. HOYT: Yes. Mr. Hinkson would call  
20 Ms. Jeri Gray.

21 THE COURT: Good morning, Miss Gray. Please  
22 come forward, and I will administer the oath. Would you  
23 raise your right hand, please?

24 THE WITNESS: I don't swear.

25 THE COURT: That's right. Why don't you -- we

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1 will use that same form that we used before. Wait just  
2 a minute for Ms. Longstreet to get back.

3 Go ahead and sit down.

4 MR. HOYT: Here she comes.

5 THE COURT: Ms. Longstreet, I need that form  
6 of oath.

7 I apologize, Miss Gray. I had forgotten.  
8 Go ahead.

9 THE COURTROOM CLERK: If you would, raise your  
10 right hand. You don't do that?

11 You do solemnly promise to tell the truth, the  
12 whole truth, and nothing but the truth, upon the pain  
13 and penalty of perjury?

14 THE WITNESS: Yes, I will tell the truth.  
15 \* \* \*

16 JERALDINE GRAY,  
17 having been called and having promised to tell the  
18 truth, testified as follows:

19 THE COURT: Thank you. Please have a seat,  
20 Miss Gray.

21 THE COURTROOM CLERK: Please state your name  
22 and spell your last name for the record.

23 THE WITNESS: My name Jeraldine Gray, G-r-a-y.  
24  
25

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1 DIRECT EXAMINATION

2 BY MR. HOYT:

3 Q. Good morning, Miss Gray.

4 A. Good morning.

5 Q. Miss Gray, could you tell us where you live?

6 A. I live in Grangeville, Idaho.

7 Q. And your occupation?

8 A. I'm retired.

9 Q. And when did you retire?

10 A. In March of this year.

11 Q. And for whom did you work before you retired?

12 A. David Hinkson, at WaterOz.

13 Q. And what was your position there?

14 A. I was manager of the office.

15 Q. And for how many years were you the manager of  
16 WaterOz?

17 A. Since '97. Well, I was manager probably about  
18 three -- two -- two and a half to three years. My  
19 sister was manager when we opened the store, but then  
20 she left and I became manager.

21 Q. And your sister's name?

22 A. Bobbi Eve, E-v-e.

23 Q. Is she your twin sister?

24 A. Yes, she is.

25 Q. Now, Miss Gray, while you were working at

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1 WaterOz, did you become acquainted with someone by the  
2 name of Joe Swisher?

3 A. Yes.

4 Q. And how did you get to know him?

5 A. Well, Joe came in and bought products from us;  
6 and then he said he was a chemist, and so we started  
7 sending our products to be analyzed by him.

8 Q. And what kinds of reports was he giving you  
9 regarding those products?

10 A. Well, the first one that he did --  
11 everything -- we had about, maybe, fifteen or twenty  
12 products at that time; and he said everything was  
13 perfect. They come up to standard, and everything was  
14 just fine.

15 Q. And did you and Mr. Hinkson rely upon those  
16 reports in making a determination as to the sales of  
17 products?

18 A. Yes. At that time --

19 MR. TAXAY: Objection.

20 THE COURT: Excuse me, Miss Gray.

21 MR. TAXAY: Relevance.

22 THE COURT: Sustained. The jury will  
23 disregard the question and the last answer.

24 MR. HOYT: Your Honor, it goes to an issue  
25 which hasn't been discussed with the jury yet, but we

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1 will be connecting up. It has to do with Mr. Swisher's 1736  
2 bias.  
3 THE COURT: Let me hear you at sidebar on  
4 this.  
5 (Whereupon, the following sidebar discussion  
6 was held outside the presence of the jury:)  
7 MR. HOYT: Thank you, Your Honor. If I may  
8 make a quick offer, what we believe the evidence will be  
9 is that Mr. Swisher was cranking out false reports that  
10 the product was in compliance with the label or in  
11 conformity with the label, and that it wasn't until the  
12 time of the raid that it was discovered that there was a  
13 serious discrepancy and, as a result, the strong  
14 inference is that he was deliberately setting up  
15 Mr. Hinkson for FDA violations.  
16 And that it was reasonable for them to have  
17 relied upon him and that their products were in what  
18 they thought was conformity with the practices.  
19 MR. TAXAY: Your Honor, this doesn't establish  
20 bias. I think what counsel is arguing, essentially, is  
21 that Mr. Swisher was involved in some mishandling  
22 scheme, which would be the sort of evidence that isn't  
23 admissible in this trial for the purposes counsel has  
24 stated.  
25 So the Government's view is it's irrelevant

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1 Q. And did you work at WaterOz full time from 1738  
2 1997 until you retired in March of 2004?  
3 A. Yes.  
4 Q. And did you speak to Mr. Hinkson virtually  
5 every business day?  
6 A. Every day. He lived right on the property; so  
7 he was there every day, also.  
8 Q. If he had hired Mr. Swisher to be his  
9 bodyguard, would you have known it?  
10 A. Absolutely.  
11 MR. TAXAY: Objection, Your Honor. Calls for  
12 speculation and conclusion.  
13 THE COURT: I will overrule it.  
14 BY MR. HOYT:  
15 Q. Where is Mr. Swisher's home and laboratory, as  
16 far as you knew?  
17 A. Cottonwood, Idaho.  
18 Q. How far away from the factory is Cottonwood,  
19 Idaho?  
20 A. Oh, maybe fifteen miles or twenty miles.  
21 Fifteen to twenty.  
22 Q. Was Mr. Swisher at the WaterOz facility often?  
23 A. No. He just came in to pick up products at  
24 first, and he didn't show up that much.  
25 Q. Do you remember, Miss Gray, when the FBI

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1 and not helpful for the jury in trying to assess the 1737  
2 issues they need to deal with.  
3 THE COURT: I am going to sustain the  
4 objection.  
5 Mr. Hinkson pled guilty to violations of the  
6 Food and Drug Act in connection with the prior  
7 prosecution.  
8 So to the extent that there is a question as  
9 to whether or not the company was in compliance, he is  
10 collaterally estopped to relitigate that issue.  
11 I think this is a collateral matter in your  
12 attempt to impeach Mr. Swisher. The court has the  
13 discretion under Rule 608(b) to exclude collateral  
14 matters that are not relevant, and I am invoking that  
15 rule and excluding it.  
16 (Whereupon, the following proceedings were  
17 held in open court, in the presence of the jury:)  
18 THE COURT: The objection is sustained.  
19 Go ahead, Mr. Hoyt.  
20 BY MR. HOYT:  
21 Q. Thank you. Miss Gray, did there come a time  
22 when Mr. Hinkson hired Mr. Swisher to be his bodyguard?  
23 A. His bodyguard? No, absolutely not.  
24 Q. Did Mr. Hinkson ever have a bodyguard?  
25 A. Not that I know of, no.

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1 conducted a raid at WaterOz? 1739  
2 A. Yes, I do.  
3 Q. Were you permitted to come on the property the  
4 day of the raid?  
5 A. No.  
6 Q. Miss Gray, after the raid occurred, did  
7 Mr. Hinkson become afraid of Mr. Swisher?  
8 A. Yes.  
9 MR. TAXAY: Objection, Your Honor.  
10 THE COURT: Sustained. The jury will  
11 disregard the question and the answer.  
12 MR. HOYT: State of mind.  
13 THE COURT: The objection is sustained.  
14 Counsel, ask another question.  
15 BY MR. HOYT:  
16 Q. Did Mr. Hinkson indicate to you that he was  
17 concerned about the relationship he was having with  
18 Mr. Swisher at that time?  
19 A. Yes.  
20 MR. TAXAY: Objection. Hearsay.  
21 THE COURT: Sustained. The jury will  
22 disregard the question and the answer.  
23 MR. HOYT: Your Honor, may we approach at  
24 sidebar?  
25 THE COURT: Yes.

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1 (Whereupon, the following sidebar discussion  
2 was held outside the presence of the jury:)

3 MR. HOYT: We would refer to Rule 803 and make  
4 an offer of proof that, if Miss Gray was permitted to  
5 testify, she would testify that Mr. Hinkson's state of  
6 mind was that he was afraid of Mr. Swisher shortly after  
7 the raid and from that time forward and that he refused  
8 to have any communication with him because Mr. Swisher  
9 had attempted to blackmail him by advising Mr. Hinkson  
10 that there was cyanide in one of the products and asked  
11 Mr. Hinkson -- told Mr. Hinkson he wouldn't report that  
12 fact if Mr. Hinkson made him a fifty-percent owner.

13 And while it is hearsay, I think it's clearly  
14 an exception to the hearsay rule and it shows  
15 definitely -- it shows that -- it impeaches Mr. Swisher  
16 as to the relationship that he claimed to have had with  
17 Mr. Hinkson.

18 It clearly shows Mr. Hinkson's state of mind  
19 at the time, not that he was trying to hire Mr. Swisher  
20 as a hit man but, rather, he was trying to get away from  
21 him and stay away from him.

22 MR. TAVAY: Your Honor, first off, you can't  
23 impeach Mr. Swisher with this sort of evidence. It's a  
24 collateral matter under 60(b). They should have asked  
25 Mr. Swisher these questions. It's extrinsic for the

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1 witness to testify about these sorts of things as a  
2 matter of impeachment.

3 With respect to his state of mind, as I  
4 understand counsel's argument, he is saying that  
5 Mr. Swisher was extorting him or something like that and  
6 that's something different than Mr. Swisher -- than  
7 Mr. Hinkson being afraid of Mr. Swisher.

8 So the Government fails to understand how this  
9 testimony is either relevant or admissible.

10 MR. NOLAN: I believe the defendant will  
11 testify -- and he will testify to this fact -- as it  
12 affects his state of mind. Maybe the court can get this  
13 evidence in, subject to the defendant testifying to this  
14 fact; and it would be struck if the defendant doesn't  
15 testify to it.

16 THE COURT: Well, the problem the court has is  
17 that you didn't confront Mr. Swisher with these  
18 allegations when he was on cross-examination here in the  
19 courtroom.

20 And I think Mr. Taxay is entirely correct;  
21 this is an improper attempt to impeach him when you have  
22 not laid the foundation for it.

23 The objection is sustained.

24 MR. HOYT: If the objection is lack of  
25 foundation, Your Honor, we would request permission to

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1 connect it up.

2 We will be recalling Mr. Swisher for the  
3 purpose of confronting him with this. Given the way  
4 that the trial has been moving, you know, it is  
5 anticipated that we will call Mr. Swisher the first of  
6 next week.

7 And, therefore, you know, if we do that, then  
8 we have to recall Miss Gray. And, you know, when  
9 Mr. Hinkson starts to testify, well, we are going to  
10 have the same problem.

11 So I think as a matter of accommodating and  
12 the way that we can manage the trial, certainly the  
13 testimony could be struck at a later point in time if we  
14 fail to bring in Mr. Swisher and/or connect up.

15 THE COURT: Here is my ruling: I am going to  
16 sustain the objection at this point in the trial on the  
17 grounds that Mr. Taxay has articulated.

18 We will see if Mr. Hinkson testifies. If he  
19 does testify, I am going to permit him to testify to it.

20 If he does not testify, I will allow you to  
21 recall Miss Gray after you recall Mr. Swisher and lay  
22 the proper foundation for the attempted impeachment.

23 (Whereupon, the following proceedings were  
24 held in open court, in the presence of the jury:)

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1 BY MR. HOYT:

2 Q. After the raid, Miss Gray, was Mr. Hinkson  
3 accepting phone calls from Mr. Swisher?

4 A. No, he didn't.

5 Q. Do you recall Mr. Swisher's health condition  
6 when you saw him at the time of the raid?

7 MR. TAVAY: Objection. Relevance.

8 THE COURT: Sustained.

9 BY MR. HOYT:

10 Q. Was Mr. Swisher's health such that he would  
11 have been able to be a hit man?

12 MR. TAVAY: Objection.

13 THE COURT: Sustained.

14 BY MR. HOYT:

15 Q. How long did Mr. Swisher provide you with  
16 reports that the product was consistent with the --  
17 strike that.

18 Tell us about the financial arrangements  
19 between Mr. Swisher and WaterOz.

20 MR. TAVAY: Objection. Lack of foundation.

21 THE COURT: She can testify to that.

22 BY MR. HOYT:

23 Q. First of all, did you arrange for the payment  
24 of the bills, such as Mr. Swisher's bills for analysis?

25 MR. TAVAY: Objection. Leading.

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1 THE COURT: I am going to permit that. I  
2 think there is a sufficient foundation laid.  
3 Go ahead, Mr. Hoyt.  
4 BY MR. HOYT:  
5 Q. Did you pay the bills?  
6 A. Yes. We had a bookkeeper at that time, and he  
7 paid the bills; but I was aware of the statements that  
8 he brought in.  
9 Q. And do you know whether you kept Mr. Swisher's  
10 bills paid on a current basis?  
11 A. Yes, we did.  
12 MR. TAXAY: Objection. Lack of foundation,  
13 based upon hearsay.  
14 THE COURT: Overruled. Overruled.  
15 BY MR. HOYT:  
16 Q. You kept them current, you say?  
17 A. Yes, we did.  
18 Q. And did there come a time when Mr. Swisher  
19 began demanding money that previously he had been paid?  
20 A. Yes. He double-billed us.  
21 Q. On how many occasions?  
22 A. One particular one that I know of.  
23 MR. TAXAY: Objection.  
24 THE COURT: Overruled.  
25

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1 BY MR. HOYT:  
2 Q. And when was that?  
3 A. It was after we went to another company and he  
4 gave us a bill and said it wasn't paid, and I gave him  
5 the statement that it definitely was. We had proof of  
6 it.  
7 Q. And was there a time when he tried to sell  
8 Mr. Hinkson a piece of equipment for \$10,000?  
9 A. Yes.  
10 MR. TAXAY: Objection. Relevance.  
11 THE COURT: I am going to sustain that  
12 objection.  
13 MR. TAXAY: Lack of foundation.  
14 THE COURT: Sustained.  
15 MR. HOYT: No further questions.  
16 THE COURT: Very well.  
17 Cross-examination, Mr. Taxay?  
18  
19 CROSS EXAMINATION  
20 BY MR. TAXAY:  
21 Q. Ms. Gray -- I'm sorry. Is it "Mrs. Gray" or  
22 "Ms. Gray"?  
23 A. Miss.  
24 Q. Miss Gray. Miss Gray, you retired last year,  
25 March?

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1 A. Yes.  
2 Q. And you were working for WaterOz?  
3 A. Yes.  
4 Q. And you had been working for WaterOz for --  
5 since 1997 or thereabouts?  
6 A. Yes.  
7 Q. You had been the office manager for about two  
8 and a half years?  
9 A. Yes.  
10 Q. And you consider yourself loyal to  
11 Mr. Hinkson, correct?  
12 A. Yes.  
13 Q. You feel he has been good to you, right?  
14 THE COURT: Can you hear him, Miss Gray?  
15 THE WITNESS: No.  
16 BY MR. TAXAY:  
17 Q. You feel he's been good to you; isn't that  
18 right?  
19 A. Yes. He's good to a lot of people.  
20 Q. Who owns WaterOz?  
21 A. Who -- what did you say? Who owns WaterOz?  
22 Is that what you said?  
23 THE COURT: That's the question, Miss Gray.  
24 BY MR. TAXAY:  
25 Q. Yes.

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1 A. David started WaterOz. I don't know who owns  
2 it. It was --  
3 Q. Have you heard of a company called Northern  
4 Land?  
5 A. Yes.  
6 Q. That's a company that a lot of WaterOz assets  
7 are in; correct?  
8 A. It's a company that -- something about assets?  
9 What?  
10 THE COURT: He wants to know whether or not  
11 that is a company that owns title to a lot of the  
12 WaterOz --  
13 THE WITNESS: I don't know. You'd have to ask  
14 Brit Groom about that. He is the one that set it up. I  
15 know nothing about Northern Land.  
16 BY MR. TAXAY:  
17 Q. You wrote a lot of checks for WaterOz; is that  
18 right?  
19 A. Yes.  
20 Q. You wrote that out of an account that was a  
21 Northern Land account; right?  
22 A. It was a WaterOz account with Northern Land on  
23 the name -- on the account, yeah.  
24 Q. And you have heard of an entity called  
25 Compania Nortena de Terreno?

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1 Q. Do you recall that a claim was made by 1756  
2 Ms. Hasalone for twenty percent of the business?  
3 MR. TAXAY: Objection. Lack of foundation,  
4 based on hearsay.  
5 THE COURT: Sustained, unless you can  
6 establish a foundation.  
7 BY MR. HOYT:  
8 Q. All right. Miss Gray, were you aware of the  
9 claims that Ms. Hasalone had made against Mr. Hinkson?  
10 A. Yes, I am aware of it.  
11 MR. TAXAY: Same objection.  
12 THE COURT: I will overrule it. She can  
13 answer.  
14 BY MR. HOYT:  
15 Q. And what was she seeking to get?  
16 MR. TAXAY: Objection. Lack of foundation.  
17 THE COURT: Overruled.  
18 Go ahead, Miss Gray. Answer the question.  
19 THE WITNESS: She said that she was due a car  
20 and a home and some property but the car -- it didn't  
21 make any sense because she said that --  
22 MR. TAXAY: Objection.  
23 THE WITNESS: -- Dave --  
24 THE COURT: Sustained. Just stop right there,  
25 Miss Gray. You are not allowed to speculate as to

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1 was good to others? 1758  
2 A. Yes.  
3 THE COURT: Counsel, I thought I ruled in a  
4 sidebar on this issue.  
5 Mr. Taxay, go ahead.  
6 MR. TAXAY: Relevance, Your Honor. I mean, I  
7 got into this issue in a very limited way. My question  
8 was: Was he good to you?  
9 THE COURT: That's what I heard, too.  
10 The objection is sustained based upon the  
11 court's prior ruling at sidebar.  
12 BY MR. HOYT:  
13 Q. When you went to testify at the Grand Jury the  
14 first time, is it true that there was an attempt to give  
15 you an oath?  
16 A. Yes.  
17 Q. And did you refuse to take that oath?  
18 A. Yes.  
19 Q. Did you tell them that it was against your  
20 religious belief to take an oath?  
21 A. Yes, I did.  
22 Q. Did you offer to testify according to the  
23 truth, according to what you told the judge today when  
24 you --  
25 A. Yes, I did.

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1 whether her demands were proper or not. 1757  
2 BY MR. HOYT:  
3 Q. Miss Gray, did she also seek to get a  
4 percentage of the business?  
5 A. No, she never did get a percentage of the  
6 business.  
7 THE COURT: That was not the question, Miss  
8 Gray. The question was: Did she try to get --  
9 THE WITNESS: Did she try? I heard hearsay,  
10 something about it, but that was during the trial. I  
11 never knew anything about it before.  
12 MR. TAXAY: Objection. Hearsay.  
13 THE COURT: That is hearsay. Sustained. The  
14 jury will disregard the last answer.  
15 BY MR. HOYT:  
16 Q. Did she claim she had not been paid by  
17 Mr. Hinkson?  
18 A. Yes, that's what she claims.  
19 MR. TAXAY: Same objection.  
20 THE COURT: I will overrule that.  
21 BY MR. HOYT:  
22 Q. Now, you indicated that Mr. Hinkson was good  
23 to the employees?  
24 A. Yes, he was.  
25 Q. And then you also had said that Mr. Hinkson

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1 Q. Was that accepted? 1759  
2 A. No.  
3 Q. Would Ms. Cook allow you to testify that day  
4 according to the truth?  
5 A. No.  
6 Q. Ultimately, did you appear before the Grand  
7 Jury in Boise?  
8 A. Yes, I did.  
9 Q. And were you allowed to testify then?  
10 A. Yes.  
11 MR. NOLAN: Your Honor, could we propose one  
12 question?  
13 THE COURT: Well, let me hear the question.  
14 MR. NOLAN: The question would be: And how  
15 was he good to you?  
16 THE COURT: No. I think we have gone far  
17 enough.  
18 MR. NOLAN: Okay. Fine. Thank you.  
19 THE COURT: All right.  
20 MR. HOYT: That's all the questions I have,  
21 Your Honor.  
22 THE COURT: Very well.  
23 MR. HOYT: Thank you, Miss Gray.  
24 THE COURT: Mr. Taxay, any further recess?  
25 MR. TAXAY: Yes. Limited, Your Honor.

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1 describe what C-25 is, we can give him the witness  
2 notebook there, the exhibit notebook. C-25?  
3 THE COURTROOM CLERK: Let me see if that's in  
4 there.  
5 BY MR. HOYT:  
6 Q. Mr. Vaughn, do you recognize the building as  
7 depicted in Exhibit C-25?  
8 A. I'm getting there. Yep.  
9 Q. And is that the building that you described  
10 previously?  
11 A. Yes, it is.  
12 Q. What year was it that the building was built?  
13 A. Well, that would be 2001 or 2000, somewhere in  
14 there. I'm not for sure on that date.  
15 Q. Okay. Was it built over -- it's still not up  
16 there, okay. Now, I think we can go like this. I don't  
17 see that the projector is on.  
18 MR. NOLAN: It's not working.  
19 THE COURTROOM CLERK: I think it's unplugged.  
20 If you want me to crawl under there, I am glad to.  
21 THE COURT: You don't need to get down on your  
22 hands and knees.  
23 Go ahead, Mr. Nolan. If you want to be the  
24 technician, that's fine.  
25 MR. NOLAN: I can't see how it's plugged.

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1 THE COURTROOM CLERK: I think it's this one.  
2 MR. HOYT: Does the court have C-25 on its  
3 screen?  
4 THE COURT: I have it on my screen. There it  
5 is.  
6 THE COURTROOM CLERK: Do you have it here?  
7 THE WITNESS: Uh-huh.  
8 BY MR. HOYT:  
9 Q. And you built that building in segments over a  
10 period of time?  
11 A. Yeah.  
12 MR. TAXAY: Objection, Your Honor. Relevance.  
13 THE COURT: What is the relevance, counsel?  
14 MR. HOYT: I'm establishing the business  
15 relationship between Mr. Vaughn and Mr. Hinkson over a  
16 period of years, and this is going to impeach Mr. Bellon  
17 with reference to the Bellon takeover.  
18 THE COURT: All right. Go ahead.  
19 MR. TAXAY: Your Honor, the Government also  
20 objects on the grounds it is cumulative.  
21 THE COURT: Let me see where he is going. You  
22 can interpose an objection later.  
23 Ask your next question.  
24 MR. HOYT: Thank you, Your Honor. I'm laying  
25 a foundation.

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1 THE COURT: I understand. Go ahead.  
2 BY MR. HOYT:  
3 Q. Mr. Vaughn, did you assist Mr. Hinkson, also,  
4 in obtaining the loan to build the building depicted in  
5 C-25?  
6 A. Yeah, I did. I refinanced his home, financed  
7 the property where the factory and stuff is on there,  
8 through a couple different companies.  
9 Q. Over the period of time that you have known  
10 Mr. Hinkson, have you assisted him in arranging various  
11 other loans for him?  
12 A. Yeah.  
13 MR. TAXAY: Objection. Relevance.  
14 THE COURT: Let me see counsel at sidebar.  
15 (Whereupon, the following sidebar discussion  
16 was held outside the presence of the jury:)  
17 THE COURT: What is he going to say that is  
18 going to impeach Mr. Bellon?  
19 MR. HOYT: He is going to say that Bellon  
20 called him up shortly after he took over the factory in  
21 December and asked him to find a cash buyer for WaterOz,  
22 which was completely inconsistent with Mr. Bellon's  
23 takeover lawsuit and the purpose of the lawsuit, which  
24 was to keep the company going because of alleged poor  
25 management practices; and it was just to show that he

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1 was just trying to steal it.  
2 THE COURT: Let's get to that question. You  
3 have laid enough foundation.  
4 MR. HOYT: He built that other building which  
5 I just wanted to show him the pictures of and, you know,  
6 that's an issue in the case. I was just going to have  
7 him do that.  
8 THE COURT: What is an issue in the case with  
9 regard to the building?  
10 MR. NOLAN: The issue is --  
11 THE COURT: The silence answers my question.  
12 Just ask him the question about Bellon. You have laid  
13 the foundation. Let's move on. This is getting us  
14 nowhere.  
15 (Whereupon, the following proceedings were  
16 held in open court, in the presence of the jury:)  
17 BY MR. HOYT:  
18 Q. Mr. Vaughn, did you become acquainted with  
19 somebody by the name of Richard Bellon that was working  
20 for WaterOz?  
21 A. Yeah, I did. Through conversations, they  
22 called me and asked me if I could do a loan for the  
23 company.  
24 Q. And did you have multiple conversations with  
25 Mr. Bellon?

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1 A. Yes, I did.

2 Q. At some point in time, did you become aware

3 that Mr. Bellon had, through a court order, taken over

4 WaterOz?

5 MR. TAXAY: Objection. Lack of foundation.

6 Hearsay.

7 THE COURT: Sustained.

8 THE WITNESS: Would you repeat that?

9 THE COURT: No. I sustained the objection,

10 meaning he cannot ask that question. He has to ask

11 another question.

12 THE WITNESS: Okay.

13 BY MR. HOYT:

14 Q. Mr. Vaughn, were you contacted by Mr. Bellon

15 in December of 2003, asking you, as a business broker,

16 to sell WaterOz?

17 A. Yes. I was contacted by him, by phone. He

18 asked me if I had an individual or somebody that would

19 like to purchase the property, the business itself. And

20 I told him that, yes, I did.

21 Q. And how quickly did he want you to find a

22 buyer?

23 MR. TAXAY: Objection. Calls for speculation.

24 THE COURT: Sustained.

25

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1 BY MR. HOYT:

2 Q. Did he tell you how quickly he wanted you to

3 find a buyer?

4 A. He told me that he wanted me to be able to --

5 he wanted to know if I could close the deal in three to

6 seven days.

7 And I told him that I couldn't do that unless

8 I had a full package from WaterOz to the customer, and

9 he told me that he would give me that package within the

10 next day or so. And that's when --

11 MR. TAXAY: Objection.

12 THE COURT: You are kind of running on here.

13 Let's wait for the next question.

14 THE WITNESS: Okay.

15 BY MR. HOYT:

16 Q. Do you recall when that occurred?

17 A. It was around the time that he had served, I

18 think, David and his father asked Jeri Gray to leave the

19 premises and leave the property.

20 MR. TAXAY: Objection.

21 THE COURT: Overruled.

22 BY MR. HOYT:

23 Q. And was that approximately December 8, 2003,

24 when he requested that from you?

25 A. Yes.

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1 Q. And did he represent to you, at that time,

2 that he owned 51 percent of the company?

3 A. Yes. He told me that he owned 51 percent of

4 the company.

5 MR. TAXAY: Objection.

6 THE COURT: Overruled.

7 MR. HOYT: No further questions.

8 THE COURT: Cross-examination?

9

10 C R O S S E X A M I N A T I O N

11 BY MR. TAXAY:

12 Q. Mr. Vaughn, you testified that you helped

13 Mr. Hinkson to do a few business deals?

14 A. Yes, I did.

15 Q. You are a broker of sorts?

16 A. I am a loan officer for Heartland Mortgage,

17 and I do commercial brokering on the side because you

18 don't need a license in the State of Idaho to do

19 commercial brokering.

20 Q. You assisted Mr. Hinkson with getting loans?

21 A. Yes, I did.

22 Q. In supporting Mr. Hinkson's request for those

23 loans, you provided others with tax returns; correct?

24 Mr. Hinkson's tax returns?

25 A. Yes, I did.

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1 Q. Those tax returns weren't signed, were they?

2 A. No, they were not.

3 Q. And you presented these unsigned tax returns

4 to others representing that they were, in fact,

5 Mr. Hinkson's tax returns?

6 MR. HOYT: Objection, Your Honor. Relevancy.

7 THE COURT: Sustained.

8 When I sustain an objection, that means he

9 can't ask the question.

10 THE WITNESS: I wanted to answer his other

11 question first.

12 THE COURT: Just wait for the next question.

13 THE WITNESS: Okay.

14 BY MR. TAXAY:

15 Q. Now, you also testified about this inquiry

16 that Mr. Bellon had made regarding possibly selling

17 WaterOz. You had talked to Mr. Hinkson about that

18 previously; isn't that right?

19 A. I have never talked to Dave about selling his

20 property, his business.

21 Q. But you had previously looked for a buyer?

22 A. I had only looked for investors for his

23 property and loans for it. I had never talked to Dave

24 about selling his business.

25 Q. You said that when Mr. Bellon asked you,

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1 "Would it be possible? Do you have a buyer for this  
2 property?" my memory is that you said, "Yes, I do have  
3 somebody that would be interested?"

4 A. Yes, it is correct. When Mr. Bellon asked me  
5 if I knew someone that would buy his business, I did  
6 know someone that wanted to buy his business because it  
7 would coordinate with their business.

8 MR. TAXAY: One second, Your Honor.

9 Q. So you said that you had spoken with  
10 Mr. Hinkson about getting investors for his business?

11 A. Well, mainly investors or -- the investors  
12 that I'm talking about are the people that loan money to  
13 me. They loan hard money.

14 Q. People that would end up owning some piece of  
15 WaterOz?

16 A. Only if there is a default on the loan  
17 contracts.

18 Q. You just called them "investors," sir?

19 A. Well, they invest -- they are investors  
20 because they take and loan their money, hard money, what  
21 we call hard money, at a higher interest rate than your  
22 normal people, than banks and stuff.

23 They get 11 to 13 percent for that money they  
24 loan out. That's why I call them "investors" because,  
25 you know, they are investing in properties that people

1 don't normally -- banks wouldn't loan them. They are  
2 high risk.

3 Q. What was the time frame?

4 A. The time frame of what?

5 Q. These high-risk loans that you were looking  
6 into?

7 A. I have had, probably, five or six different  
8 ones early in 2000, 2001. Almost every year, we looked  
9 at something to -- David would want some more money to  
10 do another project, so he would ask to refinance a piece  
11 of property to be able to come up with some more capital  
12 to do his projects that he wanted to do.

13 Q. Now, this business, WaterOz, was a profitable  
14 business; right?

15 A. I never saw any books on it.

16 Q. Why would you characterize the loans as  
17 high-risk loans?

18 A. Well, because, for one, David was not doing  
19 the normal thing of what I -- you know, I need tax  
20 returns that are taken care of and --

21 Q. You mean, signed?

22 A. Well, some -- I still got -- I got tax  
23 returns, and he signed papers. He would sign them under  
24 protest, saying that the only way he could get this loan  
25 was because the finance company was making him sign

1 them. It didn't make any difference to us. He still  
2 signed the paper.

3 Q. But you said he was high risk because he  
4 wasn't doing things --

5 MR. HOYT: I object, Your Honor. That  
6 mischaracterizes the testimony.

7 THE COURT: I think we have gone far enough on  
8 this subject, Mr. Taxay.

9 BY MR. TAXAY:

10 Q. Sure. Did Mr. Hinkson approach you about  
11 wanting loans while he was on bond, after having been  
12 arrested?

13 MR. HOYT: Your Honor, beyond the scope.

14 THE COURT: Sustained.

15 MR. TAXAY: No further questions, Your Honor.

16 THE COURT: Anything further, Mr. Hoyt?

17 MR. HOYT: Just a quick question or two.

## R E D I R E C T E X A M I N A T I O N

1 BY MR. HOYT:

2 Q. Mr. Vaughn, did the location of the property  
3 have anything to do with it being high risk?

4 A. Not really, not that I could say.

5 Q. How large is that factory building?

6 A. How large is it?

7 Q. Yes.

8 MR. TAXAY: Objection. Beyond the scope.

9 THE COURT: I am going to allow it.

10 Overruled.

11 THE WITNESS: It's, like, 70,000 square feet.  
12 Let's see. There's 25 -- no. It's more than that.  
13 It's pushing 110,000 square feet.

14 BY MR. HOYT:

15 Q. And is that a location that other businesses  
16 would readily move into?

17 A. No, it is not.

18 Q. So if there was a default on the loan, would  
19 there be a difficulty in selling the property?

20 A. Yes, it is, because it's not on a main  
21 highway. It's located too far away from main highways,  
22 where the factory is.

23 So that's why I would say it was high risk,  
24 because everybody -- the investors always looked at it  
25

1 or the loan people would always look at it and say that  
2 it's a big hay shed somewhere out in a field, and they  
3 don't really want a hay shed.

4 Q. In the back woods?

5 A. Yeah, in the back woods. It's just too far  
6 away from a main thoroughway.

7 MR. HOYT: Thank you. No further questions.

8 THE COURT: Anything further, Mr. Taxay?

9 MR. TAXAY: No, Your Honor.

10 THE COURT: May the witness be excused?

11 MR. HOYT: He may.

12 MR. TAXAY: Yes, Your Honor.

13 THE COURT: Thank you. You are excused.

14 MR. HOYT: At this time, Your Honor,  
15 Mr. Hinkson would call Marie Towerton.

16 THE COURT: Very well. Ms. Towerton, would  
17 you step forward to take the oath from the clerk,  
18 please?

19 \* \* \*

20 MANDA MARIE TOWERTON,

21 having been called, sworn, testified as follows:

22 THE COURTROOM CLERK: Please take the stand.  
23 Please state your name and spell your last name for the  
24 record.

25 THE WITNESS: Marda Marie Towerton,

1 T-o-w-e-r-t-o-n.

3 DIRECT EXAMINATION

4 BY MR. HOYT:

5 Q. Good morning, Ms. Towerton.

6 A. Good morning.

7 Q. Over here.

8 A. Sorry.

9 Q. I know it's hard to see over that screen.

10 A. I'm a little disoriented here.

11 THE COURTROOM CLERK: Would you scoot up this  
12 way?

13 THE WITNESS: Okay.

14 BY MR. HOYT:

15 Q. Ms. Towerton, where do you reside?

16 A. Grangeville, Idaho.

17 Q. And do you know David Hinkson?

18 A. Yes, I do.

19 Q. How long have you known him?

20 A. Since 1979.

21 Q. And were you his first wife?

22 A. Yes, I was.

23 Q. And when did you first get married?

24 A. In December of 1979, December 15th.

25 Q. How many children do you have?

1 A. Five.

2 Q. And when did you get divorced?

3 A. July of '96.

4 Q. And the status of your legal custody of the  
5 children?

6 A. Joint custody.

7 Q. And since the divorce, has David been  
8 interested in his children?

9 A. Very much so.

10 Q. Has he been active in their raising?

11 A. Yes.

12 Q. Has he taken advantage of the time that he has  
13 with the children?

14 A. Very much so.

15 Q. Who is the primary caretaker for the children?

16 A. I am.

17 Q. And, now, you were divorced in 1996, as you  
18 testified; is that correct?

19 A. Yes.

20 Q. Did you attempt, for a while, to reconcile or  
21 put your marriage back together?

22 A. Yes, we did.

23 Q. And when did you terminate that effort?

24 A. In 2001, April of 2001.

25 Q. Now, was David in a position to manage and/or

1 take care of the children by himself at that time?

2 MR. SULLIVAN: I object, Your Honor.

3 Irrelevant.

4 THE COURT: Sustained.

5 MR. HOYT: Your Honor, I hate -- may we  
6 approach at sidebar?

7 THE COURT: Not on that question. Go ahead.  
8 Ask another question.

9 MR. HOYT: May I make a relevancy offer?

10 THE COURT: All right. I will hear it. Come  
11 to sidebar.

12 (Whereupon, the following sidebar discussion  
13 was held outside the presence of the jury:)

14 MR. HOYT: Mr. Swisher named her as one of the  
15 targets that allegedly Mr. Hinkson wanted to have  
16 killed. We are going to show through her testimony that  
17 Mr. Hinkson would have absolutely no interest in killing  
18 her.

19 One of the issues is the fact that, being the  
20 primary caretaker of the children and having lived with  
21 him, she recognizes that he would not have been able to  
22 take care of the children on a permanent basis.

23 Given the nature of his relationship with them  
24 and the special needs of at least one of the children,  
25 it would have been impossible for him to do so. It is a

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1 disincentive to try to kill her.

2 MR. SULLIVAN: That's all speculation about

3 what his position was, that he couldn't possibly care

4 for the children. The man is a millionaire. We can go

5 off on that angle and argue whether he could have cared

6 for the children. Lots of divorced men care for

7 children. This is an area rife with speculation.

8 THE COURT: Because of the fact that

9 Ms. Towerton has been identified before the jury as a

10 potential target of a death threat, I am going to

11 overrule the objection and allow some of the testimony

12 to establish what counsel has proffered.

13 (Whereupon, the following proceedings were

14 held in open court, in the presence of the jury.)

15 THE COURT: For the record, the objection is

16 overruled. You can answer that question.

17 THE WITNESS: No, he was not.

18 BY MR. HOYT:

19 Q. Why not?

20 A. Because he was busy running his business and

21 he needed me to assist in the care of the children.

22 Q. Does one of your five children have special

23 needs?

24 A. Yes.

25 Q. And which child is that?

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1 A. The middle one.

2 Q. And his name?

3 A. Michael.

4 Q. And what is the nature -- without going into

5 any detail, what is the general nature of his condition?

6 A. Well, he's --

7 MR. SULLIVAN: I object, Your Honor.

8 THE COURT: I think that is sufficient. She

9 has testified that she has a special needs child.

10 That's enough.

11 BY MR. HOYT:

12 Q. Would that impact -- does Michael need a great

13 deal of attention in order to raise him and work with

14 him?

15 A. Yes.

16 MR. SULLIVAN: I object, Your Honor.

17 THE COURT: Overruled. The question and

18 answer will stand.

19 BY MR. HOYT:

20 Q. Would Mr. Hinkson be able to provide for

21 Michael's needs, as well as all of the other children's

22 needs, if you were not available to take care of them?

23 MR. SULLIVAN: I object to this. Speculation.

24 THE COURT: I think she can answer that

25 question. You can certainly explore it on cross.

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1 Go ahead, counsel.

2 THE WITNESS: Would you repeat the question,

3 please?

4 BY MR. HOYT:

5 Q. Given Michael's special needs, would

6 Mr. Hinkson be able to manage his special needs and all

7 of the other four children's needs if you were not in

8 the picture?

9 A. Probably not.

10 Q. Ms. Hinkson -- Ms. Towerton, did there ever

11 come a time when you became aware that others alleged

12 that Mr. Hinkson made you a target of a murder-for-hire

13 plot?

14 A. Yes.

15 Q. Would you tell the jury how you first found

16 out about this?

17 A. I was driving down Main Street and I --

18 MR. SULLIVAN: I object to this.

19 THE COURT: It is hearsay, counsel. That

20 objection is sustained.

21 MR. HOYT: Well, I think it goes to state of

22 mind.

23 THE COURT: Of whom? It doesn't matter if it

24 is as to the witness. The question is the defendant's

25 state of mind. The objection is sustained.

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1 BY MR. HOYT:

2 Q. Did you find out that you were a target of a

3 murder-for-hire plot?

4 MR. SULLIVAN: I object.

5 THE COURT: She has already answered that.

6 Asked and answered.

7 THE WITNESS: Yes, I did.

8 THE COURT: Ma'am, when I sustain an

9 objection, it means you can't answer.

10 The jury will disregard the question and the

11 answer.

12 THE WITNESS: I'm sorry.

13 MR. HOYT: And just so I'm clear on the

14 ruling, Your Honor, my understanding is that you allowed

15 the question, "Did you find out?" and she answered,

16 "Yes"?

17 THE COURT: Right. And, now, you are asking

18 the same question again; and I'm sustaining the

19 objection because it is cumulative. Ask another

20 question.

21 BY MR. HOYT:

22 Q. My question is: Did anyone from the

23 Government come to you and notify you that there was a

24 murder-for-hire plot against you?

25 MR. SULLIVAN: I object, Your Honor.

1 Irrelevant. 1784  
2 THE COURT: Sustained.  
3 BY MR. HOYT:  
4 Q. Were you ever informed that you should take  
5 special precautions, that you were a potential target in  
6 a murder-for-hire plot?  
7 MR. SULLIVAN: Same objection.  
8 THE COURT: Same ruling. Sustained.  
9 MR. HOYT: Your Honor, may we approach again,  
10 please?  
11 THE COURT: No. I have heard enough. Go  
12 ahead. Ask another question.  
13 MR. HOYT: Your Honor, it goes to whether or  
14 not the Government took this seriously. They never  
15 notified the victim.  
16 THE COURT: Counsel, I have ruled. Ask  
17 another question. Now you are arguing with me.  
18 MR. SULLIVAN: I would ask the court to direct  
19 the jury to disregard.  
20 THE COURT: The jury will disregard Mr. Hoyt's  
21 statements.  
22 BY MR. HOYT:  
23 Q. Ms. Towerton, did you, after learning that you  
24 were the target of a murder-for-hire plot, take any  
25 precautions, change your life in any way, and in any way

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1 try to protect yourself differently than you had 1785  
2 previously?  
3 MR. SULLIVAN: I object.  
4 THE COURT: I will allow her to answer that  
5 question.  
6 THE WITNESS: No, I did not.  
7 BY MR. HOYT:  
8 Q. Did the fact that you had received information  
9 that you were an alleged victim of a murder-for-hire  
10 plot by Mr. Hinkson -- did that change your opinion of  
11 Mr. Hinkson?  
12 MR. SULLIVAN: Objection. Form of the  
13 question.  
14 THE COURT: Sustained.  
15 BY MR. HOYT:  
16 Q. Did you begin to believe that Mr. Hinkson was  
17 a dangerous person?  
18 MR. SULLIVAN: I object.  
19 THE COURT: Sustained.  
20 BY MR. HOYT:  
21 Q. Did you have any communications with  
22 Mr. Hinkson?  
23 A. Yes.  
24 MR. SULLIVAN: I object. Too broad, vague,  
25 and general.

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1 THE COURT: It is too broad, vague, and 1786  
2 general. Sustained.  
3 Ask a specific question, Mr. Hoyt.  
4 BY MR. HOYT:  
5 Q. Ms. Towerton, after you were notified that --  
6 MR. SULLIVAN: Can we approach on this?  
7 THE COURT: I think we'd better.  
8 (Whereupon, the following sidebar discussion  
9 was held outside the presence of the jury:)  
10 MR. SULLIVAN: Your Honor, counsel tends to  
11 beat this to death and try to slip something into the  
12 jury, despite the court's order; and I would request the  
13 court to direct him to move to another area.  
14 MR. HOYT: Your Honor, I don't know how we are  
15 supposed to be able to prove our case; but our case  
16 is that the Government never took this seriously.  
17 The reason they didn't is because it was a  
18 false and fraudulent accusation against Mr. Hinkson; and  
19 they didn't contact Mrs. Towerton, as they should have  
20 done if she was a real victim, and they made no efforts  
21 whatsoever.  
22 Now, what I'm trying to show is that she  
23 continued to communicate with Mr. Hinkson after the date  
24 she was notified and, in that communication, what she  
25 found. What was his state of mind?

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1 THE COURT: All right. Let me just say, for 1787  
2 the record, Mr. Hoyt, that you need to calm down. The  
3 tenor of your voice and your demeanor this morning is  
4 bordering on contemptuous conduct.  
5 That outburst in front of the jury will not be  
6 tolerated. We are going to do this like gentlemen.  
7 Just settle down.  
8 I will allow you to ask her if she had further  
9 contact with the defendant after she learned that she  
10 might be the victim of a murder-for-hire plot.  
11 I am not going to allow you to get into what  
12 was in the mind of unnamed government agencies. I have  
13 no idea whether or not this was ever reported to the  
14 local sheriff, to the state police, to a federal law  
15 enforcement agency.  
16 Frankly, that is not relevant for the charges  
17 that the jury has to consider, as to whether or not the  
18 Government took the threat seriously.  
19 So my ruling is you can ask her whether she  
20 had further contact after, but we are not going to get  
21 what unnamed government agents may or may not have  
22 thought about the credibility of the report.  
23 MR. NOLAN: Would it be appropriate for  
24 Mr. Hoyt to ask, "Did you have conversations with your  
25 husband about it? Did you discuss this with your

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1 husband? Is there something about your husband's  
2 personality that made you, basically, make any changes  
3 in your life?" and leave it at that, because I do think  
4 that -- I was surprised by the testimony that she was  
5 made aware of a death threat.

6 I don't believe -- I do agree with counsel. I  
7 don't believe that we are going to be able to -- going  
8 into the sort of they didn't take it seriously kind of  
9 thing --

10 MR. HOYT: Excuse me, counsel, but I would  
11 appreciate it if you would discuss these things with me.  
12 I realize --

13 THE COURT: You guys can talk about this at  
14 the break.

15 I think my ruling is clear. I will allow you  
16 to testify that she had further contact with him  
17 afterward.

18 I am not going to allow you to elicit from her  
19 opinion of his personality. I think that gets into the  
20 kind of character evidence that I ruled out yesterday  
21 under 608 of the Rules of Evidence and, also, 404(a). I  
22 do not think it is appropriate.

23 MR. NOLAN: Violence would be appropriate if  
24 he wanted to raise it?

25 THE COURT: If he wants to raise it, yes.

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1 THE COURT: Are you clear on the ruling,  
2 Mr. Hoyt? I do not want to have another outburst in  
3 front of the jury. It doesn't do you or the court any  
4 good.

5 MR. HOYT: I am clear on that ruling.

6 (Whereupon, the following proceedings were  
7 held in open court, in the presence of the jury:)

8 THE COURT: Counsel, you may proceed.

9 MR. HOYT: Thank you.

10 MR. NOLAN: Thank you, Your Honor.

11 BY MR. HOYT:

12 Q. Ms. Towerton, after you learned about this  
13 plot and that you were a potential target, you indicated  
14 that you had some conversations with Mr. Hinkson?

15 A. Yes.

16 Q. And were those in person or telephonic?

17 A. Both.

18 Q. And how often did you continue to see him or  
19 talk to him?

20 A. I talked to him at least once -- once -- at  
21 least once, if not more, a day and numerous times during  
22 the week.

23 Q. At any time during those conversations, did he  
24 tell you that he wanted to have you killed?

25 A. No.

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1 MR. SULLIVAN: Objection, Your Honor, to the  
2 hearsay.

3 THE COURT: I will permit that question.

4 THE WITNESS: No, he did not.

5 BY MR. HOYT:

6 Q. And during the entire time that you have known  
7 Mr. Hinkson, have you known him to be a violent person?

8 A. No. He is not a violent person.

9 Q. During your married life, did you and  
10 Mr. Hinkson ever have any kind of physical contact with  
11 each other that was --

12 MR. SULLIVAN: I object under Rule 404, Your  
13 Honor.

14 THE COURT: Sustained.

15 BY MR. HOYT:

16 Q. During your communications with him, after you  
17 learned of the alleged plot, did you hear Mr. Hinkson  
18 make any comments about the Feds?

19 A. No.

20 Q. What types of things did you talk with  
21 Mr. Hinkson about?

22 MR. SULLIVAN: I object, Your Honor. Vague.

23 THE COURT: You are going to open up the  
24 entire marital communications or post-marital  
25 communications? That is way too broad a question. The

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1 objection is sustained.

2 BY MR. HOYT:

3 Q. And, Ms. Hinkson (sic.), did you believe that  
4 the alleged threat against you was credible?

5 MR. SULLIVAN: I object, Your Honor.

6 THE COURT: I will permit that.

7 THE WITNESS: No, I did not.

8 MR. HOYT: Thank you, Ms. Hinkson --  
9 Ms. Towerton.

10 THE COURT: Thank you, Mr. Hoyt.  
11 Cross-examination?

12

13 C R O S S E X A M I N A T I O N

14 BY MR. SULLIVAN:

15 Q. Good morning, ma'am.

16 A. Good morning.

17 Q. You go by "Towerton" now because you are  
18 married to Greg Towerton; correct?

19 A. Correct.

20 Q. And he is the manager of WaterOz?

21 A. Yes.

22 Q. And his salary is paid by WaterOz?

23 A. Correct.

24 Q. Is he your main financial support for your  
25 family?

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1 A. Yes.

2 Q. Do you work?

3 A. I do not.

4 Q. Do you get child support from David Hinkson?

5 A. I do.

6 Q. And that's a fair amount of money?

7 A. Yes.

8 Q. How much is it?

9 A. \$800 a week.

10 Q. \$800 a week?

11 A. Yes.

12 Q. You have children -- your oldest children are

13 over twenty years old, are they not?

14 A. Yes.

15 Q. How many are over twenty years old?

16 A. Two.

17 Q. What are their ages?

18 A. 24 and 21.

19 Q. What is the youngest's age?

20 A. Seven.

21 Q. How long has he been paying you \$800 a week in

22 child support?

23 A. Quite somtims. At least -- at least two or

24 three years. Since I remarried or thereabouts.

25 Q. Did he provide you other benefits, as well?

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1 A. As in --

2 THE COURT: Can you define what kind of

3 benefits?

4 BY MR. SULLIVAN:

5 Q. Well, does he provide money to the children,

6 themselves?

7 A. No.

8 Q. You are unaware of him giving them any money

9 at any time?

10 A. Not specifically, no.

11 Q. And do you also receive any type of divorce or

12 support money, yourself?

13 A. All I receive is child support.

14 Q. And has that been since 1996, when you

15 divorced?

16 A. Yes.

17 Q. Did you remain in the Grangeville area since

18 1997?

19 A. Yes.

20 Q. In '96 you were in Las Vegas; right?

21 A. Correct.

22 Q. So you moved up with Mr. Hinkson to

23 Grangeville?

24 A. I did. I did.

25 Q. You wanted to stay close by?

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1 A. Yes. We were still trying to work things out.

2 Q. And he was your main financial support?

3 A. Yes.

4 Q. He was your only financial support?

5 A. Yes.

6 Q. Until you married Mr. Towerton?

7 A. Correct.

8 Q. And then Mr. Towerton received a salary from

9 WaterOz?

10 A. Correct.

11 Q. How much does he get paid?

12 A. I do not know.

13 Q. You don't know how much your husband makes?

14 A. No. All I know is it's more that he was

15 making at his previous job. That's all I know.

16 Q. Speak a little louder.

17 A. All I know is that it's more than he was

18 making at his previous job.

19 Q. He worked at the Idaho County Sheriff's Jail?

20 A. Right.

21 Q. He was never a businessman, was he?

22 A. Never -- well, he had his own business on the

23 side, a small one.

24 Q. What was that?

25 A. As an entertainer with karacks at weddings and

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1 things like this.

2 Q. I really can't hear you very well.

3 THE COURT: Scoot your chair closer to the

4 microphone.

5 THE WITNESS: I'm sorry. I'm sorry. He was

6 an entertainer. He had his own business working, doing

7 weddings and special events.

8 BY MR. SULLIVAN:

9 Q. When did you marry Mr. Towerton?

10 A. In June of 2002.

11 Q. Has it always been your understanding that

12 David Hinkson is the owner of WaterOz?

13 A. Yes.

14 Q. Has it always been your understanding that he

15 owns all of WaterOz?

16 A. Yes.

17 Q. Including the lands that the buildings sit on?

18 A. They are owned by the bank.

19 Q. I'm sorry?

20 A. They're owned by the bank.

21 Q. Mortgaged?

22 A. Mortgaged. Mortgaged.

23 Q. When you moved up to Grangeville in '97 with

24 Mr. Hinkson, he bought that land, did he not?

25 A. Yes.

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1 Q. You have referenced the land where the house  
2 and the factory sits; correct? Right?

3 A. Yes.

4 Q. And was that land put in his name or both of  
5 your names?

6 A. I don't recall.

7 Q. Well, when you divorced -- excuse me. You are  
8 already divorced; correct?

9 A. Correct.

10 Q. In your divorce, was any allowance made for  
11 this new business that he was setting up, that you were  
12 any type of part owner of the business?

13 A. Not in the divorce papers, no.

14 Q. Well, do you have any interest in WaterOz?

15 A. Define what you mean by "interest."

16 Q. Why don't you try defining what you think is  
17 an interest in WaterOz.

18 A. Only because he started it and it's a future  
19 for my children.

20 Q. So you want WaterOz to continue as a  
21 profitable business for the future of your children?

22 A. Well, it's their legacy.

23 Q. As a matter of fact, you all refer to it as  
24 "the family business"?

25 A. Yes.

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1 2002.

2 Q. Did he work at WaterOz prior to your marriage  
3 to him?

4 A. He did not.

5 Q. Do you have any interest in a company -- any  
6 companies associated with WaterOz?

7 A. No.

8 Q. Are you familiar with the name of a company  
9 called Northern Lands?

10 A. I'm familiar with the name, yes.

11 Q. How are you familiar with it?

12 A. I have heard it used.

13 Q. In conjunction with what?

14 A. WaterOz.

15 Q. Do you have a belief that it has some interest  
16 in the ownership of WaterOz?

17 A. I suppose so. I don't understand all of the  
18 workings and all of the connections between Northern  
19 Lands and WaterOz. That was -- I was never really  
20 involved in that.

21 Q. Do you have any interest in a Belizean  
22 corporation?

23 A. No.

24 Q. Are you aware that there is a Belizean  
25 corporation associated with WaterOz?

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1 Q. You wouldn't want to see it go out of  
2 business?

3 A. No.

4 Q. All of your finances depend on it?

5 A. Basically.

6 Q. You know that he is facing -- that is,  
7 Mr. Hinkson is facing fines?

8 THE COURT: Counsel, be careful.

9 BY MR. SULLIVAN:

10 Q. Do you know or believe that Mr. Hinkson is  
11 facing the payment of large fines?

12 MR. HOYT: Your Honor, I would object, unless  
13 counsel wants to go into this area.

14 THE COURT: I don't think we should. I will  
15 sustain the objection.

16 BY MR. SULLIVAN:

17 Q. Did David Hinkson put Mr. Towerton in charge  
18 because he is your husband?

19 A. I don't know.

20 Q. You don't know why Mr. Towerton was put in  
21 charge?

22 A. I suppose because he felt Mr. Towerton could  
23 do a good job.

24 Q. When did he become manager?

25 A. September of -- I think it was September of

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1 MR. HOYT: Your Honor, I would object.

2 THE COURT: Overruled.

3 THE WITNESS: Repeat the question, please.

4 BY MR. SULLIVAN:

5 Q. Do you have an understanding or belief that  
6 there is some Belizean company that has an interest in  
7 WaterOz?

8 A. Yes.

9 Q. Do you have an interest in that Belizean  
10 company?

11 A. No.

12 Q. Do you know if David Hinkson has such an  
13 interest?

14 A. I assume so. I don't know for a fact.

15 MR. SULLIVAN: Nothing else, Your Honor.

16 THE COURT: All right. We will take our  
17 morning recess at this time, ladies and gentlemen. We  
18 will be in recess for fifteen minutes.

19 (Whereupon, the jury was excused from the  
20 courtroom; and the following proceedings were held  
21 outside the presence of the jury.)

22 THE COURT: Is there something you have to  
23 take up, Mr. Nolan?

24 MR. NOLAN: First of all, the good news --  
25 there is no bad news.

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1 THE COURT: Good, good.

2 MR. NOLAN: The good news is, out of the next

3 four witnesses, we have cut three. We will not be going

4 into the Idaho Department of Labor things.

5 THE COURT: Good.

6 MR. NOLAN: I would request that we be

7 allowed -- Mr. Hoyt thinks he asked the witness a

8 specific question and got a ruling. I thought I heard a

9 different question.

10 The question that we want to ask is, "You

11 heard about this under what circumstances?" and her

12 answer would be, "On the radio."

13 THE COURT: Heard about what?

14 MR. NOLAN: The threat against her life.

15 THE COURT: On the car radio?

16 MR. NOLAN: On the car radio.

17 THE DEFENDANT: And the front page of the

18 newspaper.

19 MR. NOLAN: That would be the answer.

20 THE COURT: All right. That's okay.

21 MR. NOLAN: I think that's a --

22 THE COURT: I think the jury should know that.

23 I will let Mr. Hoyt re-open on that.

24 MR. NOLAN: And the next thing is I am

25 concerned about this Nortena and Belize thing because

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1 it's kind of like being charged with being a liberal

2 Democrat in this state.

3 THE COURT: Counsel, it is a bit more than

4 that, based upon my understanding of the evidence in the

5 tax case; so that is not a fair characterization.

6 But I am concerned about the fact that, the

7 more we go into that Belizean company, the more we are

8 relitigating the issues in the tax case that I have been

9 trying desperately to keep both sides out of.

10 I mean, to the degree that it was relevant to

11 bias and whether the witness had a financial interest in

12 it, I think they are fair questions.

13 But when we start getting into, you know,

14 transferring assets offshore because of the intent to

15 flee, I think you are going too far.

16 MR. NOLAN: My concern was that counsel, I

17 believe -- I don't have any of these documents -- would

18 know whether or not she is part of the company. So the

19 asking of the question sort of borders on bad faith

20 because --

21 THE COURT: I am going to ask Mr. Sullivan. I

22 assume you had a good-faith basis to ask her, that you

23 were laying the foundation for the fact that she has a

24 financial interest.

25 I think you established it at the end of your

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1 cross with regard to, you know, her child support, the

2 family legacy. That is all perfectly fair, bias,

3 impeachment.

4 If you want to respond just for the record, go

5 ahead.

6 MR. SULLIVAN: Well, I asked direct questions

7 rather than leading questions because I wasn't sure

8 entirely of her answers.

9 From the basic knowledge we have, that being a

10 family business, Roland Hinkson testified he set up some

11 of it for different members of the family, I thought it

12 was a legitimate question to inquire whether she had a

13 financial interest in those companies upon which they

14 write checks --

15 THE COURT: Yes.

16 MR. SULLIVAN: -- from the bank.

17 THE COURT: For that reason, I think the

18 Government did have a good-faith basis to ask the

19 questions and that they were proper.

20 MR. NOLAN: I just wasn't sure because I don't

21 have those documents.

22 The last thing -- and we don't need to do this

23 now -- is that I made a comment in opening statement

24 about the nature of the Hasalona suit, that she claimed

25 that he had given her money and property and part of the

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1 company, and that she won the issue of the salary.

2 Throughout the case, in the evidence, it has

3 been that he lost the suit, he lost the suit. All I

4 want to establish -- and I think maybe the best witness

5 is Brit Groom who is coming tomorrow.

6 THE COURT: I thought you listed Mr. Groom.

7 The reason I sustained the objection was it was clearly

8 asking for hearsay statements.

9 MR. NOLAN: I understand. Mr. Groom -- I want

10 to establish the nature of the lawsuit.

11 THE COURT: I will permit Mr. Groom to testify

12 to all of that. The reason I sustained the objection

13 was the manner in which it was attempted to be elicited.

14 MR. NOLAN: That's fine. I would be worried

15 because if I say something and then we are not sure --

16 we know so much, but we are not sure the jury actually

17 heard the evidence. I want the court to understand

18 that's, generally, as far as we need to go into that

19 lawsuit.

20 THE COURT: I will permit you to go that far.

21 I think that is all perfectly appropriate.

22 MR. NOLAN: So we have -- is the witness here?

23 THE COURT: We need to recall --

24 MR. NOLAN: We need to recall --

25 THE COURT: She is sitting right behind you.

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1 MR. NOLAN: Fine. Thank you. 1804  
2 THE COURT: Mrs. Towerton, if you could, come  
3 back on the witness stand.  
4 THE WITNESS: I wasn't sure where I was  
5 supposed to be.  
6 THE COURT: That's okay. You are okay.  
7 MR. HOYT: If counsel is going to release the  
8 Department of Labor witnesses --  
9 THE COURT: Who are we talking about?  
10 MR. NOLAN: Right now, I have only been able  
11 to go through the next ones on our list today. As soon  
12 as we have a longer break, I will go through the rest of  
13 the witness list. I haven't had a chance to go through  
14 that yet.  
15 THE COURT: Who were the three that you  
16 eliminated?  
17 MR. HOYT: For today, we eliminated Robert  
18 Harris, Shawn McDonald, and Herb Lindsay.  
19 THE COURT: Hang on a second. Shawn McDonald?  
20 What number is Mr. Lindsay?  
21 THE COURTROOM CLERK: 27.  
22 THE COURT: 27, okay. I have got Lindsay,  
23 McDonald. And who was the third?  
24 MR. NOLAN: Harris.  
25 THE COURT: What number is he on your list?

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1 MR. HOYT: 39. 1805  
2 THE COURT: 39. I see him. Thank you.  
3 THE COURTROOM CLERK: Counsel, we don't have a  
4 witness list for today.  
5 THE COURT: Did you make up another one of  
6 these sheets for today? Since you are not going to go  
7 into the -- so we can strike Mr. Vernon?  
8 MR. NOLAN: All right. Just for the court's  
9 benefit, so there is no surprise -- and we will get a  
10 new one together as soon as we can. But for the court's  
11 benefit for today, after the witness who is on the stand  
12 and one more witness, we are going to call Mr. Hinkson.  
13 So I just want everybody to be aware of that so there is  
14 no surprise.  
15 THE COURT: Counsel, the court appreciates  
16 being apprised in advance so I know what is coming. I  
17 prefer to try cases this way rather than by ambush.  
18 MR. NOLAN: Just because everybody sort of has  
19 to get positioned, if there are any rules you want  
20 followed, you know --  
21 THE COURT: I want the Rules of Evidence, the  
22 Rules of Criminal Procedure, and Title 18 of the United  
23 States Code followed, and the Constitution. Beyond  
24 that, you do whatever you want. All right.  
25 All right. Let's bring in the jury.

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1 (Whereupon, the following proceedings were 1806  
2 held in the presence of the jury.)  
3 THE COURT: Mr. Hoyt, you had another question  
4 you wanted to ask?  
5 MR. HOYT: I did, Your Honor.  
6 THE COURT: Go ahead.  
7  
8 R E D I R E C T E X A M I N A T I O N  
9 BY MR. HOYT:  
10 Q. Ms. Towerton, you were asked on cross if there  
11 were any other benefits you were receiving from  
12 Mr. Hinkson. Do you recall receiving the use of a  
13 leased vehicle?  
14 A. Yes, I do.  
15 Q. And when did you receive that vehicle?  
16 A. I believe it was 2001.  
17 Q. Was that an Expedition?  
18 A. An Excursion.  
19 Q. An Excursion. And would that, in fact, have  
20 been right before you learned of this plot against you?  
21 A. Yes, it was.  
22 Q. And would you tell the jury what the  
23 circumstances were surrounding your situation when you  
24 heard about this murder-for-hire plot?  
25 A. I heard it on the radio.

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1 Q. And were you at home when you heard it on the 1807  
2 radio?  
3 A. I was in my car.  
4 Q. This car that Mr. Hinkson had arranged for  
5 you?  
6 A. Yes.  
7 MR. HOYT: No further questions.  
8 THE COURT: Anything further, Mr. Sullivan?  
9  
10 R E C R O S S E X A M I N A T I O N  
11 BY MR. SULLIVAN:  
12 Q. How long did you have the Ford Excursion,  
13 ma'am?  
14 A. How long have I had it?  
15 Q. Well, let's start with: When did Mr. Hinkson  
16 provide it to you?  
17 A. Like I said, I believe it was 2001.  
18 Q. And since 2001, how long have you had it? Do  
19 you still have it?  
20 A. Yes. I still have it, yes, yes.  
21 Q. And is it the same automobile that you  
22 received in 2001?  
23 A. Yes, it is.  
24 Q. Is it a leased vehicle?  
25 A. Yes.

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1 Q. He pays the monthly cost of it?

2 A. Yes, and the insurance.

3 Q. Okay. And the Excursion is the big, long,

4 Ford SUV?

5 A. It's the equivalent of a Suburban.

6 Q. A Chevy Suburban?

7 A. A Chevy Suburban, yes.

8 MR. SULLIVAN: Nothing further?

9 THE COURT: Anything further, Mr. Hoyt?

10

11 FURTHER REDIRECT EXAMINATION

12 BY MR. HOYT:

13 Q. Just so we are clear, Ms. Towerton, were

14 there, in fact, two vehicles, one green one and one dark

15 blue one, that you had during this period?

16 A. Yes.

17 Q. And which one was it that you acquired

18 possession of right before you heard about this

19 incident?

20 A. It was the blue one.

21 MR. HOYT: Thank you, Your Honor.

22 THE COURT: Anything further, Mr. Sullivan?

23 MR. SULLIVAN: No, Your Honor.

24 THE COURT: May the witness be excused?

25 MR. HOYT: She may.

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1 THE COURT: Thank you, Ms. Towerton. You may

2 step down. You are excused.

3 MR. HOYT: I just got a report that our next

4 witness was lost, made a wrong turn; but we believe that

5 she will be here momentarily.

6 THE COURT: All right.

7 THE COURTROOM CLERK: Raise your right hand,

8 please.

9 . . .

10 TRACY L. ADAMS,

11 having been called, sworn, testified as follows:

12 THE COURTROOM CLERK: Thank you. Please take

13 the stand.

14 THE COURTROOM CLERK: If you would, state your

15 name and spell your last name for the record, please.

16 THE WITNESS: I'm sorry?

17 THE COURTROOM CLERK: If you would, state your

18 name and spell your last name for the record, please.

19 THE WITNESS: Tracy L. Adams, A-d-a-m-s.

20

21

22

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1 DIRECT EXAMINATION

2 BY MR. HOYT:

3 Q. Good morning, Ms. Adams.

4 A. Good morning.

5 Q. Ms. Adams, where do you reside?

6 A. In Harpster.

7 Q. Idaho?

8 A. Yes.

9 Q. And how are you employed right now?

10 A. Right now, I'm not employed. I work as a

11 seasonal waitress.

12 Q. What was your prior employment to what you are

13 doing now?

14 A. WaterOz. I worked there for four years.

15 Q. And approximately when would that have been

16 from and to?

17 A. I believe, October of '99 to July of '04.

18 Q. And what was your job assignment at WaterOz?

19 A. Basically, sales, customer service, basic

20 office duties.

21 Q. Was it necessary for you to work on the

22 telephone?

23 A. Yes.

24 Q. And where were most of the sales of WaterOz

25 conducted during the period that you worked there?

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1 A. Where were they conducted? There in the

2 office.

3 Q. Were they conducted on the Internet or on the

4 telephone or how -- could you describe that?

5 A. Mostly telephone orders.

6 MR. TAVAY: Your Honor, relevance to this line

7 of inquiry.

8 THE COURT: Let me see counsel.

9 (Whereupon, the following sidebar discussion

10 was held outside the presence of the jury:)

11 MR. TAVAY: Your Honor, the Government objects

12 to this line of inquiry because it doesn't see the

13 relevance to any of the charges that the jury has to

14 consider.

15 MR. HOYT: This is background for this witness

16 to show her familiarity. She is going to be offered to

17 impeach Arne Bates and to provide other evidence

18 relevant to the case.

19 I have to get to my notes to review them, but

20 this is just background. They are objecting immediately

21 when a witness gets on the witness stand.

22 THE COURT: Well, we are having an awful lot

23 of sidebars. If we can get to the impeaching point

24 quickly, that would be helpful.

25 MR. HOYT: Can I just ask her the first

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1 question, Your Honor? 1812  
2 THE COURT: I understand that, but I do think  
3 we need to move along with these impeachment witnesses.  
4 I have to tell you I think it is a lot more effective if  
5 you just come in with a quick stab wound, if you have  
6 got it.  
7 MR. HOYT: I'm doing the best I can.  
8 MR. NOLAN: We listened to a lot of the  
9 background of a lot of the Government witnesses who went  
10 through their history and where they worked. If we  
11 could get just a little bit so that she's familiar, that  
12 she would have seen these people, that she would have  
13 come into contact with them. I mean, that's --  
14 MR. TAXAY: The point to which I objected is  
15 how WaterOz conducts its business, over the Internet or  
16 whatever. I didn't object to the preliminary questions.  
17 The question about how WaterOz conducts its business I  
18 don't see the relevance of.  
19 THE COURT: And I don't either. I mean, I  
20 think -- let's get to the point here.  
21 The other thing I wanted to mention is  
22 Mrs. Towerton is still in the courtroom. Do you want  
23 the rule of exclusion applied?  
24 (Whereupon, the following proceedings were  
25 held in open court in the presence of the jury:)

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1 THE COURT: For the record, the objection is 1813  
2 sustained.  
3 Go ahead, Mr. Hoyt.  
4 MR. HOYT: Thank you, Your Honor.  
5 (Whereupon, witness Marcha Marie Hinkson was  
6 excused from the courtroom.)  
7 BY MR. HOYT:  
8 Q. Ms. Adams, when you were at WaterOz, did you  
9 have occasion to meet someone by the name of Annie  
10 Bates?  
11 A. Yes, I did.  
12 Q. And was she employed at WaterOz?  
13 A. Yeah. She showed up once in a while to work.  
14 She said she was there to work, and she came in once in  
15 a while.  
16 Q. And did you know her reputation in the  
17 community for truthfulness?  
18 A. No.  
19 MR. TAXAY: Objection.  
20 THE COURT: The question has been asked and  
21 answered, "No;" and that answer will stand. The  
22 objection is overruled.  
23 BY MR. HOYT:  
24 Q. Did you have a personal opinion as to her  
25 truthfulness?

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1 A. As I began to hear her stories, everything 1814  
2 that she said pretty much was a lie. It became pretty  
3 obvious that she was not being honest.  
4 Q. And did you find out what she was doing with  
5 respect to Mr. Hinkson's property?  
6 A. What she was doing with his property?  
7 Q. Yes.  
8 A. She was, basically, borrowing his cars.  
9 MR. TAXAY: Objection.  
10 THE COURT: Sustained. The jury will  
11 disregard the last answer.  
12 BY MR. HOYT:  
13 Q. Now, did you also meet Mr. Swisher while you  
14 were working at WaterOz?  
15 A. Yes.  
16 Q. And during that -- do you recall when  
17 Mr. Swisher -- strike that.  
18 Do you recall when Mr. Bellon obtained a court  
19 order and took over WaterOz in December of 2003?  
20 A. Yes.  
21 Q. And did Mr. Swisher enter the picture at that  
22 time?  
23 A. Yes, he did.  
24 MR. TAXAY: Objection.  
25 THE COURT: Overruled.

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1 BY MR. HOYT: 1815  
2 Q. Would you tell the jury what you recall?  
3 A. He was there during the takeover, and he kind  
4 of came in and was acting like he had authority over us.  
5 And, no, we had never heard anything to that effect; so  
6 it was strange. None of us had a very high opinion of  
7 him.  
8 THE COURT: Let's wait.  
9 MR. TAXAY: Objection.  
10 THE COURT: The jury will disregard the  
11 witness's opinion portion of her answer.  
12 Ask another question, Mr. Hoyt.  
13 BY MR. HOYT:  
14 Q. Did he appear, to you, to be working with  
15 Mr. Bellon and others?  
16 A. Absolutely.  
17 MR. TAXAY: Objection.  
18 THE COURT: Sustained.  
19 BY MR. HOYT:  
20 Q. What was your perception of Mr. Swisher's role  
21 at WaterOz during the takeover?  
22 MR. TAXAY: Same objection.  
23 THE COURT: Same ruling. Sustained.  
24 BY MR. HOYT:  
25 Q. Did you make an observation as to

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1 Mr. Swisher's general health at that time?

2 A. He looked --

3 MR. TAXAY: Objection.

4 THE COURT: Sustained.

5 BY MR. HOYT:

6 Q. In the fall -- excuse me. In the late summer

7 or fall of 2003, do you recall being warned by

8 Mr. Bellon about a situation at WaterOz?

9 MR. TAXAY: Objection.

10 THE COURT: Sustained.

11 BY MR. HOYT:

12 Q. Can you tell the jury about Mr. Bellon? Had

13 he participated in the management of WaterOz prior to

14 the time he attempted the takeover?

15 MR. TAXAY: Calls for a conclusion.

16 Cumulative.

17 THE COURT: I will overrule it, in terms of

18 the conclusion. I will allow her to testify as to what

19 she observed, as to whether she saw Mr. Bellon there

20 prior to that time.

21 THE WITNESS: The only time he came in was to

22 pick up his check, pretty much.

23 MR. TAXAY: Objection. Non-responsive.

24 THE COURT: Overruled.

25 MR. HOYT: If I may have a moment, Your Honor?

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1 THE COURT: Sure.

2 BY MR. HOYT:

3 Q. Ms. Adams, did Mr. Bellon ever offer you a

4 bonus if you would stay at WaterOz after his takeover?

5 A. Yes.

6 MR. TAXAY: Objection.

7 THE COURT: Sustained. The jury will

8 disregard the question and the answer.

9 MR. TAXAY: And, Your Honor, if you could have

10 an instruction to the witness to wait?

11 THE COURT: When you see Mr. Taxay stand up,

12 it means he is going to make an objection. Do not

13 answer the question until I hear what he has to say, and

14 then I have to rule on it.

15 MR. HOYT: No more questions, Your Honor.

16 THE COURT: Thank you, Mr. Hoyt.

17 Cross-examination?

18 MR. TAXAY: Yes, Your Honor.

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1 CROSS EXAMINATION

2 BY MR. TAXAY:

3 Q. You spoke about Mr. Bellon. He didn't report

4 to you at WaterOz, did he?

5 A. Report to me?

6 Q. You didn't supervise Mr. Bellon?

7 A. No.

8 Q. And it wasn't your job to keep track of what

9 Mr. Bellon was doing or not doing for WaterOz; correct?

10 A. It wasn't my job, but I was able to observe

11 pretty much what was going on.

12 Q. You don't know what Mr. Bellon did when he was

13 outside of your presence; isn't that right?

14 A. That's correct.

15 Q. For all you know, he was working on WaterOz

16 business at that time?

17 A. It's possible, yes.

18 Q. Now, Arne Bates, she didn't report to you

19 either?

20 A. No. She usually didn't show up at all.

21 Q. You weren't her supervisor?

22 A. Right.

23 Q. It wasn't your job to tell her what to do or

24 what not to do; correct?

25 A. Right.

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1 Q. Ms. Bates lived at Mr. Hinkson's house for a

2 while?

3 A. Right.

4 Q. And Mr. Hinkson liked her; correct?

5 A. At first.

6 Q. And some of the people that worked at WaterOz

7 didn't like the fact that Mr. Hinkson had a visitor at

8 his house, a person that was staying at his house;

9 correct?

10 A. I suppose. I don't know.

11 Q. And folks at WaterOz didn't like it that this

12 employee was getting special treatment, getting to live

13 at Mr. Hinkson's house?

14 MR. HOYT: Objection. Speculation.

15 THE WITNESS: I don't think anybody cared.

16 THE COURT: The question and answer will

17 stand.

18 THE WITNESS: I don't think anybody really

19 cared about that.

20 MR. TAXAY: Nothing further.

21 THE COURT: Anything further, Mr. Hoyt?

22 MR. HOYT: Nothing further.

23 THE COURT: May the witness be excused?

24 MR. HOYT: She may.

25 THE COURT: Ms. Adams, you may step down. You

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1 are excused.

2 MR. HOYT: I would like to make an offer of

3 proof with respect to several issues that were --

4 objections were sustained.

5 THE COURT: Sure.

6 MR. HOYT: I don't know whether you want to do

7 it now.

8 THE COURT: Let's do it now while Ms. Adams is

9 here, in case you convince if I was wrong. I will hear

10 counsel at sidebar.

11 (Whereupon, the following sidebar discussion

12 was held, outside the presence of the jury:)

13 MR. HOYT: Ms. Adams would testify that

14 Mr. Swisher, when he came in during the takeover, was

15 barely able to walk.

16 He sat down in the very first chair available

17 and stayed there the whole time. His health appeared to

18 be very poor. All of this would go to whether or not

19 Mr. Swisher was a person capable of being a hit man, as

20 he purported in his testimony.

21 Let me see if there is anything else I need to

22 make an offer about.

23 THE COURT: I will let the Government respond

24 to that while you are looking.

25 MR. TAXAY: Your Honor, this witness has no,

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1 about doing it.

2 Now, whether or not Mr. Swisher was actually

3 capable of carrying it out for that reason, I think, is

4 inadmissible as incompetent and not relevant.

5 The objection is sustained.

6 MR. NOLAN: Just so it's clear, I believe, if

7 the defendant were to testify as to his belief in the

8 health, that that might be relevant to his mental state

9 as to whether or not he was serious; but that would have

10 to come from the defendant.

11 THE COURT: I think this is just too remote

12 with regard to Swisher's health in early December 2003.

13 I agree with Mr. Taxay.

14 MR. NOLAN: I'm talking about if the defendant

15 were to testify, not this witness. I'm just saying, if

16 he is asked the question about Mr. Swisher's health when

17 he is on the stand. That's all I wanted to make sure is

18 that this ruling doesn't preclude that.

19 THE COURT: Let's hear it from Mr. Hinkson but

20 not from Ms. Adams.

21 (Whereupon, the following proceedings were

22 held in open court, in the presence of the jury:)

23 THE COURT: Call your next witness.

24 MR. HOYT: At this time, Your Honor,

25 Mr. Hinkson --

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1 to my knowledge, based upon her testimony, medical

2 expertise that would give her the ability to

3 meaningfully testify about Mr. Swisher's capabilities.

4 The court and the jury saw that he's a big man

5 but, beyond that, if they want to put on -- if they

6 wanted an expert to testify about his physical

7 capabilities, they haven't done that. They haven't

8 identified an expert.

9 Meanwhile, this witness simply is not

10 qualified to testify as to what Mr. Swisher could or

11 couldn't do on that particular day, presuming that he

12 sat down immediately. Maybe he had just run four miles.

13 I don't know.

14 THE COURT: What is the date of the alleged

15 solicitation in the indictment that is relevant to

16 Mr. Swisher?

17 Counts 7, 8, and 9 are December 2003 to

18 January 2003. That's 7. 8 is the same, regarding

19 Ms. Cook; and 9 is about January 2003 regarding Agent

20 Hines.

21 I agree with the Government that this witness

22 is not competent to offer medical testimony as to

23 whether or not Mr. Swisher was capable as a matter of

24 law. The question is whether or not at the time the

25 defendant made the alleged solicitation he was serious

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1 THE COURT: Ms. Adams, you can leave now.

2 Thank you. You are excused.

3 MR. HOYT: We would call Mr. Hinkson.

4 THE COURT: All right. Mr. Hinkson, would you

5 step forward and be sworn, please?

6 \* \* \*

7 DAVID ROLAND HINKSON,

8 having been called, sworn, testified as follows:

9 THE COURTROOM CLERK: Thank you. Please take

10 the stand. Please state your name and spell your last

11 name for the record.

12 THE WITNESS: David Roland Hinkson,

13 H-i-n-k-s-o-n.

14 THE COURTROOM CLERK: Thank you.

15

16 DIRECT EXAMINATION

17 BY MR. HOYT:

18 Q. Mr. Hinkson, you are currently residing at the

19 Ada County Jail; is that correct?

20 A. Yes. I have been incarcerated for 22 months.

21 Q. And before that, where did you reside?

22 A. In my home in Grangeville, behind the factory.

23 Q. And how long had you lived there before you

24 were placed in jail?

25 A. Well, officially, since 1997, I believe; but I

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1 was on the road and traveling full time between '97 and  
2 '99, so I was really on the move.

3 Q. Where were you traveling from?

4 A. Moving supplies and equipment from Las Vegas,  
5 Nevada, to Grangeville.

6 Q. And had you resided at Las Vegas?

7 A. Yes. I think we moved to Las Vegas in '82,  
8 right after my brother died. We sold what we owned in  
9 Colorado, and we moved to Las Vegas.

10 Q. And what type of business did you engage in in  
11 Las Vegas?

12 A. I tried a little of everything. I mean, I  
13 even drove taxi for a while. The type of business -- I  
14 had a home for the mentally ill, and I helped my father.  
15 We owned some apartment buildings; I think it was twenty  
16 units. And we -- I managed those. My father was still  
17 living in Colorado at the time.

18 And I got involved with Mr. Mitzel. My dad  
19 mentioned him. He was an older gentleman that used to  
20 own a casino, and he had a cattle ranch that was 700,000  
21 acres. That's a little bit of land.

22 MR. SULLIVAN: I object to the narrative  
23 nature.

24 THE COURT: Sustained.

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1 BY MR. HOYT:

2 Q. Did you provide Mr. Mitzel with some  
3 assistance in reference to the cattle ranch?

4 A. Legal briefs. And I also traded land for my  
5 first laundromat. I ended up with three laundromats,  
6 all total.

7 Q. All right. Now, let me ask you a few  
8 questions about your early years, background, and  
9 education. Where were you born?

10 A. Artesia, California, in 1956.

11 Q. And how long did you reside in California?

12 A. Until I was fourteen years old.

13 Q. And did you set up a business of helping  
14 others with their motorcycles?

15 A. Yes. When I was, like, eleven years old, I  
16 was overhauling motorcycles; and we were racing  
17 motorcycles. I had a Bultaco.

18 Q. And were you able to work on these motorcycles  
19 mechanically?

20 A. Yes. I would rebuild them after every race.

21 Q. And did you, also, rebuild the motorcycles for  
22 others?

23 A. Yes, I did. And I had a dune buggy, too, and  
24 a horse and a goat and --

25 Q. And then at some point, did your parents move

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1 to Colorado?

2 A. Yes. I'm not sure of the year. I think it  
3 was 1969 or 1970, maybe.

4 Q. And did you reside in Colorado until you were  
5 out of high school?

6 A. No, no. I joined the United States Navy on my  
7 seventeenth birthday. I got my GED, and I joined. And  
8 the Vietnam War was still going and that's -- I scored  
9 really high on the aptitude tests for jet mechanic and  
10 so --

11 MR. SULLIVAN: I object. Your Honor. It's  
12 unresponsive.

13 THE COURT: Overruled.

14 BY MR. HOYT:

15 Q. And did you work on jet engines while you were  
16 in the Navy?

17 A. A little bit. Because of my age, I ended up  
18 doing a lot of floor mopping.

19 Q. And did you end up actually riding on any of  
20 those helicopters?

21 A. Yes, I did. We would fly over the Devil's  
22 Triangle. It was anti-submarine warfare, and we flew in  
23 the HSL-30, which stands for Helicopter Sea Light.

24 Q. And, Mr. Hinkson, how long were you in the  
25 Service?

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1 A. I think it was about two years. And the  
2 Vietnam War ended, and they cut back. They gave me a  
3 choice to get out, and I gladly accepted it at the time.

4 Q. What did you do when -- were you honorably  
5 discharged from the military?

6 A. Yes.

7 Q. What did you do after you got out?

8 A. I helped my father in Hinkson Construction.  
9 While I was still in the Navy, I got involved in a  
10 multi-level called Raleigh; and I had been very  
11 successful at it. I bought a motor home; and I was  
12 touring the country, signing people into this  
13 multi-level.

14 Q. What type of product was being sold there?

15 A. Cake mixes, pies, puddings, herbal things.

16 Q. Could you explain to the jury what a  
17 multi-level is?

18 A. I own one now, so I guess I can explain it.  
19 It's -- I guess most everybody is familiar with Amway;  
20 that would be a multi-level. You distribute and you  
21 sign up people and they sign up people and they sign up  
22 people and on and on and on.

23 And we pay down seven layers deep, and we pay  
24 back fifty-percent commissions. Back in those days, we  
25 were getting thirty-percent commissions.

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1 Q. When you say we pay "fifty-percent  
2 commissions," what do you mean?

3 A. The multi-level I currently own pays  
4 fifty-percent commissions. I just jumped ahead in time  
5 on you there.

6 Q. Is that affiliated with your present business,  
7 WaterOz?

8 A. Yes, sir. That's how we market, yeah.

9 Q. Now, moving back, when you got out of the  
10 military, you returned to Ouray?

11 A. Yes.

12 Q. Okay. Your man talked about the wrecker  
13 business?

14 A. Yeah. We owned a Texaco, and I was the  
15 mechanic. I could fix anything from transmissions to --  
16 we had bulldozers and dump trucks. And we had a logging  
17 company. It was a small town. It's hard to make a  
18 living.

19 At that point, I ended up owning a Mexican  
20 restaurant. We had a home for the mentally ill. And me  
21 and my two brothers were partners in all of the  
22 different ventures. I hauled coal. I had a semi.

23 MR. SULLIVAN: Object to the narrative nature.

24 THE COURT: Mr. Hinkson, we have to do this by  
25 question and answer.

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1 THE WITNESS: Okay.

2 BY MR. HOYT:

3 Q. Mr. Hinkson, where was the home for the  
4 mentally ill located?

5 A. On Main Street in Olathe, Colorado, which has  
6 a population, I think, of 300 people.

7 Q. Were there other -- was there another business  
8 associated with that?

9 A. The Mexican restaurant was downstairs on the  
10 left and the laundromat -- that was my first  
11 laundromat -- was on the right.

12 Q. Approximately how long did you operate those  
13 businesses?

14 A. Oh, seven or eight years, I believe. And  
15 Marie was feeding the people. You know, she cooked the  
16 meals; and they rode the bus to mental health every day.  
17 So I was very busy.

18 Q. Now when did you and Marie get married?

19 A. I believe it was 1980 -- '81. Never ask a guy  
20 when he got married after twenty years.

21 Q. She testified that you first met in '79?

22 A. Yeah. We dated for two years.

23 Q. My question is: Did you obtain any additional  
24 education beyond your GED in high school?

25 A. Yes, I did.

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1 Q. Okay. Would you tell the jury what additional  
2 education you have obtained?

3 A. Well, I got my -- it's called a GRI, a  
4 Graduate of Real Estate Institute. It's, like, a  
5 two-year degree.

6 If you are a real estate broker, you get a  
7 designation. I guess you have heard of a designation.  
8 It goes along with the profession. I got that from the  
9 University of Boulder.

10 Q. University of --

11 A. -- Colorado in Boulder. Sorry. And because  
12 of that, I was able to become a real estate broker  
13 immediately.

14 And before that, I was an insurance broker for  
15 Farm Bureau in Idaho when I was going to Ricks College  
16 up in Rexburg, Idaho. I actually -- besides the GI  
17 Bill, I actually paid my way --

18 MR. SULLIVAN: I object. This is all  
19 unresponsive.

20 THE COURT: Mr. Hinkson, we have to do this by  
21 question and answer. Please don't run on.

22 BY MR. HOYT:

23 Q. Mr. Hinkson, what were you studying at Ricks  
24 College?

25 A. Business, finance. And I took welding and

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1 became a very proficient welder.

2 THE COURT: The question was, "What were you  
3 studying?" and not how proficient you became at it.  
4 Answer the question and wait for the next question.

5 BY MR. HOYT:

6 Q. Did you study welding at Ricks College?

7 A. Yes. I got certified as a certified welder.

8 Q. And at the same time you were going to Ricks  
9 College, did you obtain any employment?

10 A. Yes. I worked for Farm Bureau as a broker. I  
11 ran an office.

12 Q. Which office did you run?

13 A. Driggs, Idaho, believe it or not.

14 Q. And so you had to commute between -- is it  
15 Pocatello, Idaho?

16 A. No. Rexburg to Driggs. The agent that ran  
17 Driggs died.

18 MR. SULLIVAN: I object.

19 THE COURT: It's not responsive. The jury  
20 will disregard that last answer.

21 THE WITNESS: Okay.

22 BY MR. HOYT:

23 Q. What circumstances arose that you obtained the  
24 Farm Bureau office in Driggs?

25 A. One of the agents died that was a senior

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1 agent, and they didn't have anybody to do the job; and  
2 there wasn't really too much to do except for make the  
3 drive every other day. I was the number-one salesperson  
4 in the State of Idaho for Farm Bureau.

5 MR. SULLIVAN: I object.

6 THE COURT: Mr. Hinkson, you just have to  
7 confine your answer to the question. Mr. Hoyt will ask  
8 you the next question.

9 BY MR. HOYT:

10 Q. Mr. Hinkson, what was your relative position  
11 as a salesman with Farm Bureau of Idaho?

12 A. I was number one in selling property and  
13 casualty insurance during that time.

14 Q. And for how long a period of time did you sell  
15 property and casualty insurance?

16 A. The two years I was going to Ricks College.

17 Q. Now, after you completed your studies at Ricks  
18 College, did you obtain any additional education?

19 A. Oh, that's when I worked with the University  
20 of Colorado; but I did that as, like, an out-study  
21 program.

22 Q. And after the University of Colorado, have you  
23 obtained any additional formal education?

24 A. I don't believe so.

25 Q. Did you obtain a degree from either Ricks

1 College or from the University of Colorado?

2 A. Just the GRI from the University of Colorado  
3 but I was given an honorary medical degree in 19 -- or  
4 2001.

5 Q. Let me just ask you about that. In 2001, what  
6 institution gave you an honorary medical degree?

7 A. It was the United States School of Naturopathy  
8 in Washington, DC.

9 Q. What were the circumstances under which you  
10 obtained that degree?

11 A. Well, I knew the owners of the school; that  
12 really helped. And they knew that I was out giving  
13 lectures on health and these issues of natural medicine,  
14 and they wanted me to work in the clinics with them in  
15 Russia.

16 Q. And have you worked in clinics in Russia?

17 A. Yeah. I worked with --

18 MR. SULLIVAN: Your Honor, I object.

19 THE COURT: I will allow it. Overruled.

20 THE WITNESS: I worked in a clinic in St.  
21 Petersburg, Russia. I worked with Dr. Gold.

22 BY MR. HOYT:

23 Q. What type of a clinic was it?

24 A. Well, it was a cancer clinic. And he used to  
25 have an office in New York.

1 Q. And what did your work in that cancer clinic  
2 involve?

3 A. Mostly research and development. I had some  
4 new ideas I wanted him to try, and he had moved there  
5 because, basically --

6 THE COURT: Mr. Hinkson, the question is:  
7 What did your work involve?

8 THE WITNESS: We just shared ideas and worked  
9 with some patients that had cancer.

10 BY MR. HOYT:

11 Q. And did you utilize any of your products in  
12 that work?

13 A. Yes, I did.

14 Q. And did you provide information or lectures to  
15 any medical practitioners in Russia?

16 A. Yes. And in, also, the Ukraine.

17 Q. And did you work in any clinics in the  
18 Ukraine?

19 A. Tuberculosis clinics.

20 Q. Were those for adults or children?

21 A. Both. In the prison, too.

22 Q. The prison in the Ukraine?

23 A. That was up in Sarasavinz (phonetic).

24 Q. Which is in what country?

25 A. That's up by the North Pole in Soviet Russia.

1 Q. What work did you do in the tuberculosis  
2 clinics?

3 A. Well, I found a new way to cure tuberculosis  
4 in twenty minutes; and we were testing it.

5 Q. And what did that involve?

6 A. Liquefied silver and a nebulizer. You would  
7 breathe the silver vapor for twenty minutes; and the  
8 silver, if it's made the right way, will destroy every  
9 nitrogen-breathing pathogen and virus that's ever been  
10 discovered.

11 It's non-toxic; and it's very, very fast. It  
12 usually took three doses, three treatments -- twenty  
13 minutes, twenty minutes, twenty minutes.

14 Q. And you mentioned the silver -- what form was  
15 that silver in?

16 A. Well, it was my secret process.

17 MR. SULLIVAN: I object, Your Honor.

18 THE WITNESS: Okay.

19 THE COURT: Sustained.

20 BY MR. HOYT:

21 Q. Can you describe for the jury what products  
22 you make through your secret process?

23 THE COURT: Then or now?

24 BY MR. HOYT:

25 Q. Then.

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1 A. I'm the only person in the world making a  
2 bunch of this weird stuff. I have platinum water, gold  
3 water, zinc water, silver water, selenium water,  
4 chromium water, vanadium water.

5 I also have a heavy metal -- not "heavy.  
6 metal" -- a heavy water that is a liquid enzyme. We  
7 make RNA, which is Ribonucleic Acid, also.

8 Q. You have named a number of items such as  
9 chromium and silver and so on. Where are these items  
10 found?

11 A. Well, we buy the raw metals; and then we  
12 process them with our secret process.

13 THE COURT: Counsel, are we talking about  
14 Russia; or have we now moved to Grangeville and you left  
15 us behind?

16 MR. HOYT: Thank you, Your Honor. Let me  
17 orient.

18 Q. Were you able to use these products that you  
19 made in the clinics in the Ukraine and Russia?

20 A. I need to clarify something, if I can. Do you  
21 remember the affidavit by Roman --

22 THE COURT: Wait a second.

23 THE WITNESS: I'm asking him --

24 THE COURT: We are going to do this by  
25 question and answer. The question is --

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1 A. I was working on it, but it just never  
2 happened because I have been -- I have been in jail.

3 Q. Mr. Hinkson, would you, please, explain to the  
4 jury how it is that WaterOz came into being?

5 A. The name?

6 Q. Let's start with the name. Let's say -- where  
7 were you living at the time?

8 A. Las Vegas, Nevada.

9 Q. And how is it that the name came into  
10 existence?

11 A. Well, I --

12 MR. SULLIVAN: Your Honor, I object.  
13 Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: I discovered that there was  
16 different kinds of ozone. I wanted to make an ozone  
17 machine that would be a special ozone machine, so I  
18 started manufacturing ozonators. And the word "WaterOz"  
19 came from water, ozone, "water" and "oz."

20 BY MR. HOYT:

21 Q. And when did you start making ozone machines?

22 A. I would say 1990, '89 -- '88, '89, somewhere  
23 in there.

24 Q. And how did you come across the technology to  
25 make an ozone machine?

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1 THE WITNESS: Okay.

2 THE COURT: The question is: Were you able to  
3 use these products that you made in the clinics in the  
4 Ukraine and Russia?

5 THE WITNESS: Yes, I was.

6 BY MR. HOYT:

7 Q. Okay. And how is it that -- take, for  
8 instance, the silver. How is it that you believe that  
9 benefits the --

10 MR. SULLIVAN: Your Honor, I object on the  
11 grounds of relevance.

12 THE COURT: Sustained.

13 BY MR. HOYT:

14 Q. What year was it that you were working in the  
15 clinics in St. Petersburg and in the Ukraine?

16 A. 2001 and part of 2002. It was right before I  
17 got arrested. I was on the road full time.

18 Q. And were you trying to establish your business  
19 as an international business?

20 A. Yes, I was.

21 Q. And did you form a foreign or an international  
22 business, company, to assist you in that regard?

23 A. Yes, I did.

24 Q. Were you ever able to implement that plan and  
25 establish an international business?

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1 A. That's a weird one. I was trying to figure --

2 MR. SULLIVAN: I object, Your Honor.

3 THE COURT: Sustained. Mr. Hinkson, just  
4 answer the question. How did you come across the  
5 technology?

6 THE WITNESS: That's what I was trying to  
7 answer.

8 THE COURT: You characterized it with your  
9 statement, "That's a weird one." I want you to answer  
10 the question without characterizing it, okay?

11 THE WITNESS: Ozone -- I was investigating the  
12 fraudulent claim of the Government that there is a hole  
13 in the ozone. I started investigating ozone.

14 MR. SULLIVAN: Your Honor, I think he didn't  
15 follow the court's order.

16 THE COURT: He has not. The last statement is  
17 stricken. The jury will disregard it.

18 I am going to have the court reporter re-read  
19 the question to you, and I want you to answer that  
20 question only.

21 (Whereupon, the pending question was read back  
22 by the court reporter.)

23 THE WITNESS: Well, I was just investigating  
24 everything I could find out about ozone.  
25

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1 Q. Now, did you welcome that investigation in  
2 order to try and establish your position with respect to  
3 taxes?

4 MR. SULLIVAN: I object, Your Honor.

5 THE COURT: Just a minute, Mr. Hinkson.

6 MR. SULLIVAN: The form of the question and  
7 relevance.

8 THE COURT: Sustained.

9 BY MR. HOYT:

10 Q. Did you write a letter to Mr. Vernon, asking  
11 him if his investigation was criminal or civil?

12 A. Yes.

13 Q. And did Mr. Vernon from the IRS respond to  
14 your letter?

15 A. Yes.

16 Q. And what did he say to you?

17 A. Civil.

18 Q. Once he informed you that his investigation  
19 was civil, did you write another letter to Mr. Vernon?

20 A. 1,200 pages worth.

21 MR. SULLIVAN: I object, Your Honor.

22 THE COURT: Counsel, wasn't this the subject  
23 of an exhibit that the jury has already received in  
24 evidence? Are we talking about the letters that are  
25 contained in that packet that was marked earlier?

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1 MR. HOYT: Your Honor, I believe that those  
2 letters that are marked as Exhibit F-8, which are  
3 admitted, were with Agent --

4 THE COURT: Hines?

5 MR. HOYT: -- Hines after the civil  
6 investigation concluded.

7 THE COURT: All right. I will allow the  
8 question and the answer.

9 MR. HOYT: Would you read back the question?  
10 (Whereupon, the last question and answer were  
11 read back by the court reporter.)

12 BY MR. HOYT:

13 Q. Mr. Hinkson, did you ask Mr. Vernon -- strike  
14 that. Did you inform Mr. Vernon that you wanted to set  
15 your case for a civil trial?

16 A. Yes, I did.

17 Q. And why did you want a civil trial?

18 A. Because I believe in the Constitution.

19 MR. SULLIVAN: Objection, Your Honor.

20 THE COURT: Sustained.

21 Counsel, I think this might be a good point to  
22 break for our noon recess.

23 Ladies and gentlemen, we will be in recess  
24 until 1:15. Remember: Don't discuss the case; keep an  
25 open mind; don't do any independent research.

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1 We will see you back here at 1:15.  
2 (Whereupon, the jury was excused from the  
3 courtroom; and the following proceedings were held:)

4 THE COURT: Mr. Hoyt, I trust we are not going  
5 to relitigate the tax case because it sure sounds like  
6 that's where we are going with this line of questioning.

7 MR. HOYT: Not at all, Your Honor. I think  
8 that it's important for the jury to be familiarized with  
9 Mr. Hinkson's perspective of the relationship that he  
10 had with Agent Vernon, Agent Hines and, subsequently,  
11 Agent Long; and this is his defense.

12 THE COURT: I'm certainly going to allow it  
13 with regard to Agent Hines, Agent Long, and so on. I  
14 will allow you a little bit of leeway with regard to the  
15 fact that he had this long exchange of correspondence  
16 with Agent Vernon.

17 I would like to bring it up into the criminal  
18 investigation, to the point in time when it was handed  
19 over to Agent Hines. I think that's what is really  
20 relevant.

21 MR. HOYT: Thank you, Your Honor. I think  
22 what we are trying to do is lay a foundation.

23 THE COURT: I was concerned with the fact that  
24 we are going on and on. I don't think we need it on the  
25 civil aspect of it.

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1 MR. NOLAN: I think that civil to criminal was  
2 a triggering, and then it goes from there.

3 THE COURT: That's why I think -- that's what  
4 I want to get to.

5 MR. NOLAN: Yes, right.

6 THE COURT: I'm going to allow you to lay the  
7 foundation. What I don't want to re-open is two weeks  
8 of testimony in the criminal tax case with regard to his  
9 understanding of Supreme Court authority and questioning  
10 the authority of Agent Vernon to conduct a civil  
11 investigation. That's just not --

12 MR. HOYT: We are not going to go into those  
13 issues. But I am going to ask him, "Did you do  
14 research?"

15 THE COURT: Yes.

16 MR. HOYT: And did he base his decisions upon  
17 research?

18 THE COURT: That's all right.

19 MR. HOYT: We are not going to go into which  
20 case and check this and --

21 MR. NOLAN: We are not talking about the  
22 fringe on the flag, Judge.

23 THE COURT: I will see you at 1:15.  
24 (Lunch recess.)  
25

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1 MR. NOLAN: I cut it at page 6, line 6.  
2 THE COURT: I will allow it.  
3 MR. NOLAN: I will put it together. Thank  
4 you.  
5 THE COURT: You are welcome.  
6 MR. SULLIVAN: We would like -- we would like  
7 to see this reference to Mr. Hinkson's testimony in the  
8 transcript.  
9 THE COURT: The point is it's not in the  
10 transcript.  
11 MR. SULLIVAN: No. I'm talking about --  
12 THE COURT: That's what I understand.  
13 MR. NOLAN: It's Mr. Harding's reference.  
14 MR. SULLIVAN: Mr. Harding's reference.  
15 MR. NOLAN: If we have the transcript yet, I  
16 can thumb through and find it. I remember it.  
17 THE COURT: Are we going to get to this before  
18 the afternoon recess?  
19 MR. NOLAN: I don't think so. I don't think  
20 so. It was just a quick --  
21 THE COURT: If we do, just signal me and we  
22 will take a recess.  
23 MR. NOLAN: If they have the Harding  
24 transcript, I can do this.  
25 THE COURT REPORTER: They both have it, Judge.

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1 THE COURT: The court reporter said she's  
2 already given it to you.  
3 MR. NOLAN: I will go through it. Thank you.  
4 THE COURT: Go ahead, Mr. Hoyt.  
5 MR. HOYT: As you can see, on the edge of  
6 defense table, there are three bottles that are samples  
7 or exemplars of products made by WaterOz.  
8 THE COURT: If you want to mark those, I will  
9 let you mark them.  
10 MR. HOYT: All right. Very good.  
11 THE COURT: You can introduce those through  
12 Mr. Hinkson.  
13 MR. HOYT: That's what I would like to do.  
14 Rather than having a lot of commotion back and forth in  
15 front of the jury --  
16 THE COURT: Let's pre-mark them now.  
17 THE WITNESS: Yes. If you put white paper  
18 behind them, the color shows up. That gold is actually  
19 a gold color.  
20 THE COURT: I think we have some colored  
21 exhibit tags that we can put on them.  
22 THE COURTROOM CLERK: They will be marked as  
23 Defendant's Q, R, and S.  
24 MR. NOLAN: MR. SULLIVAN, if you find the  
25 area, let me know. As soon as I find it, I will tell

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1 you.  
2 MR. HOYT: Let's just put the sticker right  
3 above the word "WaterOz" on each one of them, if you  
4 please.  
5 THE COURTROOM CLERK: S is the silver water.  
6 MR. HOYT: That makes sense to me.  
7 THE COURTROOM CLERK: Q is the dietary  
8 supplement.  
9 MR. HOYT: "Water of Life" it's called.  
10 THE COURTROOM CLERK: And R is the gold.  
11 MR. HOYT: We can have it Q, R, S and have it  
12 in alphabetical order.  
13 THE COURT: I don't think I gave the  
14 Government a chance. Do you want to make an objection  
15 to these three samples of the water?  
16 MR. SULLIVAN: I would just like an  
17 opportunity to look at them, that's all.  
18 THE COURT: Sure. Let's do that now.  
19 MR. SULLIVAN: What time frame are we talking  
20 about?  
21 MR. HOYT: When were these bottles  
22 manufactured?  
23 MR. SULLIVAN: My problem with them, Your  
24 Honor, is -- the one I'm holding, the silver, says -- it  
25 has a typical label on the front; and then it says, at

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1 the bottom, "These statements have not been evaluated  
2 by the Food and Drug Administration. This product is  
3 not intended to diagnose, treat, or prevent any  
4 disease." I don't think that statement was on there  
5 until much later.  
6 THE COURT: How about if we do this?  
7 Mr. Hinkson can use them as demonstrative exhibits to  
8 illustrate his testimony, but they will not be admitted  
9 into evidence to go back to the jury room. So the jury  
10 doesn't ever need to read the representations on the  
11 label.  
12 MR. HOYT: That's fine with us.  
13 THE COURT: Is that acceptable, Mr. Hoyt?  
14 MR. HOYT: It is.  
15 THE COURT: Does that cure your problem,  
16 Mr. Sullivan?  
17 MR. SULLIVAN: It may. I will have a few  
18 questions about --  
19 THE COURT: We will just have to take it as it  
20 goes. Just be forewarned, if you question too far, they  
21 may come into evidence for all purposes.  
22 MR. SULLIVAN: Yes.  
23 THE COURT: All right.  
24 THE COURTROOM CLERK: Are you admitting them  
25 as illustrative?

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1 THE COURT: They are admitted for the limited  
2 purpose of demonstrative exhibits to illustrate  
3 Mr. Hinkson's testimony.

4 (Whereupon, Defendant's Exhibits Q, R, and S  
5 were received in evidence as demonstrative exhibits.)

6 THE COURT: Anything else?

7 Marshal, could you open the door for the jury,  
8 please?

9 (Whereupon, the following proceedings were  
10 held in the presence of the jury:)

11 THE COURT: Mr. Hoyt, you may continue.

12 MR. HOYT: Thank you, Your Honor.

13 Q. Before the break, Mr. Hinkson, I asked you  
14 about sending some papers to Agent Vernon indicating  
15 that you wanted to have a civil trial regarding the tax  
16 issue?

17 A. Yes. Yes, I did.

18 Q. And had you actually prepared a complaint to  
19 be filed concerning the issues you wanted to raise?

20 A. Yes, I did. But I did not file it at that  
21 time.

22 Q. And were you -- how soon after that were you  
23 notified that this matter was referred -- strike that.

24 Here you told that you were going to have a  
25 meeting regarding the civil investigation by the IRS?

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1 A. Yes, I was.

2 Q. And what happened to that meeting?

3 A. The Government Agent cancelled it for some  
4 reason.

5 Q. Did he later tell you what the reason was?

6 A. I think he found out I was threatening to sue  
7 him, so he decided to cancel the civil investigation.

8 Q. And was the civil investigation --

9 MR. SULLIVAN: That was not responsive.

10 THE COURT: It was not responsive. The jury  
11 will disregard the last answer. Sustained.

12 BY MR. HOYT:

13 Q. Was the civil investigation cancelled, to the  
14 best of your knowledge?

15 MR. SULLIVAN: I object. I think counsel is  
16 misspeaking.

17 THE COURT: You can find out if the meeting  
18 ever occurred.

19 MR. SULLIVAN: He is saying civil  
20 investigation, I think you said civil meeting.

21 THE COURT: The meeting with the revenue  
22 agent, is that what you are asking?

23 BY MR. HOYT:

24 Q. Was the meeting with Agent Vernon cancelled?

25 A. Yes, it was.

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1 Q. And did you ever file your civil complaint?

2 A. No, sir.

3 Q. And at some point in time, did you become  
4 aware that a criminal investigation was proceeding  
5 against you?

6 A. Yes. Steven Hines sent me a letter stating  
7 that.

8 Q. And would you describe for the jury, briefly,  
9 what that criminal investigation entailed?

10 A. He just said I was being investigated  
11 criminally and that I had the right to remain silent, if  
12 I remember right, and not incriminate myself.

13 Q. And how did you respond to Agent Hines'  
14 statement that you were being criminally investigated?

15 A. I think I originally sent him a letter  
16 explaining to him and asking him some questions like  
17 where he got his authority from to do this, and I also  
18 told him he had my name wrong on the paperwork.

19 Q. And did you have communication from -- further  
20 communication from Mr. Hines?

21 A. I'm not sure. It seemed to me that he started  
22 summoning bank records at that time.

23 Q. How did you become aware that there were  
24 summons for bank records?

25 A. Well, the banks would call me, believe it or

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1 not; and Hines, Steven Hines, sent me copies of his  
2 summons.

3 Q. And during this period, did you file any  
4 objections to these summonses?

5 A. Yes. I filed an objection with each bank that  
6 he summonsed, and I sent an objection to Steven Hines.  
7 And the basis of the -- should I stop there?

8 THE COURT: Yes.

9 MR. SULLIVAN: I would object, Your Honor.

10 THE COURT: Overruled.

11 BY MR. HOYT:

12 Q. Now, Mr. Hinkson, you have talked about a lot  
13 of correspondence. You have talked about a complaint  
14 that you filed. What was the basis on which you were  
15 taking issue with both the civil and the criminal  
16 investigation?

17 A. Can you just break that into two questions?  
18 Because there's different issues, I mean --

19 Q. I understand. Rather than getting into the  
20 specific issues, did you formulate your positions based  
21 upon research?

22 A. Yes, research of the law and some Supreme  
23 Court rulings. But the letter --

24 THE COURT: That's enough. Wait for the next  
25 question.

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1 Q. And, actually, would it refresh your  
2 recollection to know that her lawsuit was filed in 1999?  
3 A. Then it would have been 1998.  
4 Q. Actually, do you recall the trial date of her  
5 lawsuit, Mr. Hinkson?  
6 A. August of '99 or 2000. It was in August; I  
7 know that.  
8 Q. Mr. Hinkson, what was your understanding of  
9 the allegations in Ms. Hasalone's lawsuit against you?  
10 A. She said that I promised her twenty percent of  
11 WaterOz, \$600,000, a cabin with a septic system, and a  
12 Dodge diesel pickup truck. I think that's it.  
13 Q. And when that lawsuit was over, there was a  
14 jury verdict against you; isn't that correct?  
15 A. Yes.  
16 Q. Did the jury find in favor of her on her claim  
17 for twenty percent of WaterOz?  
18 A. No.  
19 Q. Did it find in favor of her on her claim for a  
20 cabin?  
21 A. No.  
22 Q. Or real property?  
23 A. No.  
24 Q. Or the Dodge pickup truck?  
25 A. No.

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1 that's a fair question.  
2 Go ahead.  
3 BY MR. HOYT:  
4 Q. I was trying to set a time frame. Would it  
5 refresh your recollection if the jury verdict was  
6 entered on September fourteen, 2000?  
7 A. Yes.  
8 Q. Now, as a result of that trial, what were your  
9 feelings against Mr. Albers?  
10 A. Well, I was angry, very, very angry for one  
11 reason. My anger came from the fact --  
12 MR. SULLIVAN: I object to what his reasons  
13 were, Your Honor.  
14 THE COURT: Sustained. The question was  
15 "feelings," and he has answered that question.  
16 BY MR. HOYT:  
17 Q. And I would like to ask the witness: What  
18 were your reasons for being angry?  
19 MR. SULLIVAN: I object. Rule 403.  
20 THE COURT: Let me see counsel at sidebar.  
21 (Whereupon, the following sidebar discussion  
22 was held outside the presence of the jury:)  
23 MR. NOLAN: This is an intent case, and I  
24 think some latitude should be given because of the  
25 reasonableness of his hostility. I think the jury might

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1 Q. Did it find in her favor for past wages due?  
2 A. Yes.  
3 Q. And what was the amount of the judgment, if  
4 you recall?  
5 A. I think it was \$95,000.  
6 Q. Did you pay that judgment?  
7 A. Not voluntarily but, yes.  
8 Q. Who was Ms. Hasalone's attorney?  
9 A. Dennis Albers.  
10 Q. And what was it about that case that gave you  
11 concern with Mr. Albers?  
12 A. Well, that's my first trial I've ever been to;  
13 let me say that. And there was five people that  
14 testified against me during this trial.  
15 MR. SULLIVAN: Your Honor, I am going to  
16 object. We are going to go into his opinion about what  
17 happened in the trial.  
18 THE COURT: I am going to sustain the  
19 objection.  
20 BY MR. HOYT:  
21 Q. Now, would it refresh your recollection --  
22 MR. SULLIVAN: I object.  
23 THE COURT: Wait a second. Let me hear the  
24 question. I think he's trying to establish vis-a-vis  
25 the defendant's attitude toward Mr. Albers. I think

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1 conclude that he overreacted or -- I mean, from my  
2 theory -- or they may -- he may argue he had every right  
3 to be that way.  
4 I think the jury should have some  
5 understanding because I don't think that it's going to  
6 be anything highly prejudicial to the Government or  
7 anybody.  
8 THE COURT: What is he going to say in  
9 response to this question?  
10 MR. HOYT: I believe he is going to say that  
11 Mr. Albers had a number of people testify that didn't  
12 know him, didn't know Hasalone, and that they didn't  
13 know the situation at all.  
14 And as a result of that, they were providing  
15 personal testimony of things that they didn't know,  
16 couldn't know; and he was shocked by the whole process.  
17 He felt that people had lied against him, and it was an  
18 orchestrated attempt just to take money.  
19 THE COURT: And that it was Mr. Albers who had  
20 endorsed all of these witnesses and, basically, caused  
21 all this to happen?  
22 MR. HOYT: Yes.  
23 THE COURT: The objection is overruled.  
24 (Whereupon, the following proceedings were  
25 held in open court, in the presence of the jury:)

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Q. Mr. Hinkson, what was your reason for being angry?

A. The only reason was that, out of the five people that testified against me, I didn't even know three of them. They all committed perjury against me for three straight days.

There wasn't one shred of anything true that was said about me, and I almost had a nervous breakdown over it. I was so upset.

Q. What did you feel was the source of the five people who testified in that fashion?

A. Albers coached them in how to lie properly.

Q. And that was as of September 2000? Was there an election in November of 2000?

A. Yes, there was.

Q. And was Mr. Albers running for a public office?

A. Yes, he was.

Q. And did you become involved in that political campaign?

A. Yes. I started a campaign called the "Unelect Dennis Albers Campaign."

Q. Why did you do that?

A. Because he told me that I belonged in jail and

1 he was going to put me there, and he was running for prosecutor.

MR. SULLIVAN: I object and move to strike. Hearway.

THE COURT: Overruled.

Ladies and gentlemen, you may not consider the answer that Mr. Hinkson gave for the truth but only as to Mr. Hinkson's state of mind at the time, with regard to his feelings toward Mr. Albers.

BY MR. HOYT:

Q. As a result of your feelings toward Mr. Albers at that time, Mr. Hinkson, what did you do in the Unelect Dennis Albers Campaign?

A. Well, I knocked on a few doors but not too much of that, really. It was mostly Brit Groom's idea. He stated that --

MR. SULLIVAN: I object.

THE COURT: Sustained.

BY MR. HOYT:

Q. Who were the other candidates who were running for Prosecutor in Idaho County at that time?

A. Brit Groom was one of them.

Q. Was he your attorney at that time?

A. Yes.

Q. And who else?

A. There was Jeff -- Jeff Payne; right?

Q. And Mr. Albers?

A. And Mr. Albers, yes.

Q. Just the three of them?

A. That's my recall, yes.

Q. Now, Mr. Hinkson, what is it that you did with reference to the Unelect Dennis Albers Campaign?

A. Well, I heard that --

MR. SULLIVAN: Your Honor, I object.

THE COURT: Overruled. I think he can testify as to what he did in connection with it.

MR. SULLIVAN: He said, "I heard," in his answer.

THE COURT: I'm sorry. You are correct.

We want to know what you did. You are not permitted to testify to rumors.

THE WITNESS: Well, I've got a copy of --

MR. SULLIVAN: Your Honor --

THE COURT: No. What did you do?

THE WITNESS: I'm trying to explain it.

MR. SULLIVAN: May we go to sidebar?

(Whereupon, the following sidebar discussion was held outside the presence of the jury:)

MR. SULLIVAN: Your Honor, I'm sure he is leading to the point of trying to elicit or he will

1 volunteer that he got a letter that reprimanded Mr. Albers for some misconduct back when he was the prosecutor of Mr. Swisher, twenty years or more before, that Mr. Nolan has already elicited once.

THE COURT: Go ahead and finish your statement.

MR. SULLIVAN: And I want to prohibit him from talking about the contents of this letter because the information relates back to this twenty years.

MR. HOYT: Your Honor, I think I understand what counsel's objection is. If I'm reading that letter correctly, which we intend to introduce into evidence, which is Exhibit F-4, that letter does not refer to Mr. Swisher by name.

I think it does refer to the Supreme Court reprimand, although it doesn't go into great detail. It is a sample of his writing in a highly emotionally charged situation and how he conducted himself.

THE COURT: How who conducted himself?

MR. HOYT: How Mr. Hinkson conducted himself when he was angry with somebody and how he prepared this letter and mailed it out and how he organized the campaign to do that and so on.

I don't believe -- it's not my intention to go into any allegations against Mr. Swisher as a result of

1 whatever kind of case it was. It was a criminal case  
2 back in the '80s, and it's purely to show how he  
3 responded to Mr. Albers.

4 MR. NOLAN: In other words, we are going to  
5 establish that he wrote this and he sent this out; and  
6 we are offering it but not going into the details of why  
7 he said this and that in the letter. So you can look at  
8 the letter, it is F-4.

9 THE COURT: Let me take a look at the letter  
10 while we are here.

11 MR. HOYT: Have you read F-4?

12 MR. SULLIVAN: Actually, I have not.

13 I object to the admission -- I object to the  
14 admission of that document, Your Honor. It's a  
15 full-page letter with many allegations. First of all, I  
16 object to smearing Mr. Albers, you know, any further  
17 than he's done already.

18 I don't see any need for this letter to prove  
19 that he acted in a particular way that excluded  
20 violence, so I move to exclude this letter.

21 MR. NOLAN: The problem is he's charged with  
22 soliciting to kill, under 404(b), Mr. Albers. To show  
23 his behavior and attitude towards Mr. Albers in  
24 exercise of the First Amendment is the crux of the case.

25 Did he cross over the line of the First

1 Amendment? It shows his behavior. As far as -- I mean,  
2 we are not here to offend Mr. Albers, but he hasn't  
3 testified as a witness and, unfortunately, this -- I  
4 mean -- anyway --

5 THE COURT: Having reviewed Exhibit F-4, the  
6 proposed letter, I am going to admit it.

7 I am, however, looking at Exhibit F-5. Are we  
8 going to go to that one next?

9 MR. HOYT: Yes.

10 THE COURT: I think that one does contain more  
11 than just claims against Mr. Albers. It contains  
12 statements with regard to Jeff Payne, Bill Clinton,  
13 statements with regard to Ms. Hasalone's potential  
14 criminal background.

15 I will let you get in F-4, but I think F-5 is  
16 going too far and that its probative value is outweighed  
17 by its prejudicial impact. The Government's objection  
18 to F-4 is overruled.

19 MR. NOLAN: May we establish that he also  
20 wrote something called "Corruption in the County" and  
21 sent it out? It contains many allegations -- or words  
22 to that effect?

23 THE COURT: That's fine. I will allow that.

24 MR. HOYT: What I will do, Your Honor, if it's  
25 okay, is I will have him identify F-5 and talk about it,

1 we will move its admission, counsel can object, and you  
2 can sustain.

3 THE COURT: No. I have ruled at sidebar. We  
4 will do it the way Mr. Nolan suggested, which makes it  
5 less likely to give Mr. Hinkson a chance to blurt out  
6 the contents of F-5, which I'm trying to avoid. That's  
7 my ruling.

8 MR. NOLAN: I don't think he was going to say  
9 anything about F-4. We will make sure he doesn't.

10 MR. HOYT: Do you mean F-5?

11 MR. NOLAN: Oh, yes, F-5.

12 (Whereupon, the following proceedings were  
13 held in open court, in the presence of the jury:)

14 BY MR. HOYT:

15 Q. Mr. Hinkson, do you have Exhibit F-4 in front  
16 of you?

17 A. Yes.

18 Q. Who was the author of F-4?

19 A. Me, David Hinkson.

20 Q. And without going into detail as to the  
21 precise -- all of the statements, because it can be read  
22 by the jury itself, can you tell us, generally, the  
23 purpose for the letter, F-4?

24 A. I'm pointing out the fact here that Dennis  
25 Albers, in the past, has prosecuted innocent people for

1 personal and financial gain.

2 MR. HOYT: And, Your Honor, we move the  
3 admission of Exhibit F-4.

4 THE COURT: Based upon the court's ruling at  
5 sidebar, Exhibit F-4 is admitted.

6 (Whereupon, Defendant's Exhibit No. F-4 was  
7 received in evidence.)

8 BY MR. HOYT:

9 Q. Mr. Hinkson, at some point, did you mail out a  
10 letter to the voters of Idaho County prior to the  
11 election and to the year 2000?

12 A. Actually, Joe Swisher mailed most of them. I  
13 mailed a few. It was three days before the elections,  
14 to be exact. Halloween Eve.

15 Q. And was Mr. Swisher interested in seeing that  
16 these letters went out?

17 A. Yes.

18 MR. SULLIVAN: Objection, Your Honor.  
19 Irrelevant.

20 THE WITNESS: Yes, he was.

21 THE COURT: Overruled. The question and  
22 answer may stand.

23 BY MR. HOYT:

24 Q. And to whom did you mail the letters?

25 A. Like I said, I didn't physically mail them but

1 they were addressed -- okay. I think that's the  
2 question you are asking.

3 They were addressed to every registered voter  
4 in the county, and my secretaries hand-addressed every  
5 single envelope so that they would look like local mail.

6 Q. And what was the effect of this letter?

7 A. A total desecration of Mr. Albers' legal  
8 career.

9 Q. Was he elected?

10 A. The vote went from the Gallup pole, to 30  
11 positive to 30 minus.

12 MR. SULLIVAN: Objection.

13 THE COURT: Was he elected or not?

14 BY MR. HOYT:

15 Q. Was he elected?

16 A. No. It was a landslide against him at that  
17 point.

18 THE COURT: The jury will disregard the  
19 testimony with regard to the Gallup pole.

20 BY MR. HOYT:

21 Q. Now, Mr. Hinkson, prior to that time, had you  
22 been involved in an issue down in Arizona?

23 A. No. It was Las Vegas.

24 Q. Thank you. Las Vegas. I'm sorry. Mental  
25 block.

1 Mr. Hinkson, just briefly, what was the issue  
2 you were involved in in Las Vegas?

3 A. I exposed fraud.

4 THE COURT: Counsel, there is an objection, I  
5 believe.

6 Go ahead, Mr. Sullivan. Is it the same  
7 objection you made yesterday?

8 MR. SULLIVAN: It is.

9 THE COURT: The ruling is the same. The  
10 objection is sustained.

11 BY MR. HOYT:

12 Q. Mr. Hinkson, was the letter regarding  
13 Mr. Albers the first time you were involved in political  
14 activity?

15 A. No, sir.

16 Q. Had you been involved in political activity  
17 previously?

18 A. I did a similar letter in Vegas, yes.

19 Q. And without going into any of the content of  
20 the letter or what the campaign was about, were you  
21 concerned about corruption?

22 A. Yes.

23 THE COURT: Counsel, if this relates to the  
24 Las Vegas matter, I have ruled several times. Move on  
25 to a new subject matter.

1 The jury will disregard the last question and  
2 the answer.

3 BY MR. HOYT:

4 Q. Have you ever done any legal work?

5 A. Yes.

6 Q. And what kind of legal work have you done  
7 previously?

8 A. Legal work against different federal agencies  
9 for different people, one of them being the orangutans  
10 for the Client Eastwood movie with the orangutans.

11 Q. Without going into detail, were you a  
12 paralegal?

13 A. Yes.

14 Q. Were you working with a law office?

15 A. Yes. I was, yes, sir.

16 Q. And generally, what were your efforts, your  
17 legal efforts as a paralegal for --

18 THE COURT: Counsel, I think you are trying to  
19 go through the back door to do what I have now ruled  
20 three times you may not do. Adhere to my ruling.

21 MR. HOYT: Your Honor, I appreciate the  
22 court's ruling. What I had understood the court's  
23 ruling to be --

24 THE COURT: Let me see you at sidebar.  
25

1 (Whereupon, the following sidebar discussion  
2 was held outside the presence of the jury:)

3 MR. HOYT: I am trying to establish that this  
4 man has experience in the legal field; that he has done  
5 legal research under an attorney, in fact, in Las Vegas;  
6 that he worked with clients who were trying to save  
7 their properties, et cetera, in a very general way; that  
8 he had written letters and communicated that he not --  
9 not politically -- I understood the court -- I thought  
10 the court's ruling yesterday was that that witness  
11 couldn't go into it.

12 I didn't realize that the defendant couldn't  
13 go into what happened in Las Vegas. Understanding that  
14 to be the court's ruling at this time, with reference to  
15 political matters -- I thought the door was still open  
16 and he could talk about his experience.

17 One of the things that I think the jury needs  
18 to know is that he has, at least in his view, a rational  
19 basis for making these opinions and conclusions and  
20 engaging people such as Mr. Albers in these issues. He  
21 may not be right, but there is a lot of lawyers out  
22 there that aren't even right.

23 MR. SULLIVAN: Your Honor, I don't think more  
24 need be said. His early career as a paralegal doesn't  
25 shed any light on the issues in this case.

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1 THE COURT: Mr. Hoyt, if there was something  
2 unclear in my ruling yesterday, I apologize; but I will  
3 make it clear now.

4 I don't want you to be asking questions as you  
5 are doing now in a way that simply serves as a platform  
6 for Mr. Hinkson to testify to the details of the matters  
7 that I excluded yesterday. That's exactly what is  
8 happening here.

9 So I have no problem with your eliciting the  
10 fact that he had some legal training as a paralegal and  
11 worked in a lawyer's office.

12 I do have a problem with your asking what kind  
13 of matters he worked on because that becomes his  
14 invitation to go into areas the court has excluded. I  
15 don't know how to say this any more clearly, but we are  
16 wasting time here. That might solve the problem.

17 (Whereupon, the following proceedings were  
18 held in open court, in the presence of the jury.)

19 BY MR. HOYT:

20 Q. Mr. Hinkson, when you were working with a law  
21 office, did you learn about legal research?

22 A. Yes, sir. I used a legal research foundation.

23 Q. Did you learn about preparing legal briefs?

24 A. Yes. I was taught.

25 Q. And did you learn about stating legal issues

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1 there was a Grand Jury that was considering your case?

2 A. Yes, I did.

3 Q. And how did that information come to your  
4 attention?

5 A. I believe one of the workers at WaterOz  
6 mentioned that they had been summonsed, that it was  
7 supposed to be a secret.

8 Q. Did you do anything to block or prevent that  
9 or any other person from attending the Grand Jury?

10 A. No.

11 Q. And what, if anything -- what information did  
12 you learn of the Grand Jury investigation?

13 MR. SULLIVAN: Objection. No foundation.

14 THE COURT: Sustained.

15 BY MR. HOYT:

16 Q. Did you ultimately obtain copies of the Grand  
17 Jury testimony?

18 A. Yes, I did.

19 Q. And did you read those Grand Jury transcripts?

20 A. Yes, I did.

21 MR. SULLIVAN: May I have a date, Your Honor?

22 THE COURT: Yes.

23 Counsel, please establish a time frame.

24 BY MR. HOYT:

25 Q. And do you know when those Grand Jury meetings

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1889

1 such as in correspondence?

2 A. Yes, I did.

3 Q. And was that in connection with the attorney's  
4 representation of clients?

5 A. I was always pro bono. I never -- we never  
6 charged the people I was helping.

7 MR. SULLIVAN: Move to strike, Your Honor.

8 THE COURT: The jury will disregard the last  
9 question and the answer.

10 BY MR. HOYT:

11 Q. Was it in connection with the representation  
12 of clients?

13 A. I would say "yes" then.

14 Q. After the October 10th letter to Mr. Hines,  
15 did you continue to communicate with him in writing?

16 A. Yes, I did.

17 Q. And what was the subject of your continued  
18 communications?

19 A. Well, every time I sent a letter out  
20 complaining about him to the Inspector Treasury General  
21 or the Postmaster General, I would send him a copy.

22 Q. Did he respond back?

23 A. He has never responded to any of my  
24 correspondences.

25 Q. After a period of time, did you learn that

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1891

1 took place?

2 THE COURT: No, counsel. That was not the  
3 objection. The objection was -- when did Mr. Hinkson  
4 receive the Grand Jury transcripts to review?

5 BY MR. HOYT:

6 Q. Mr. Hinkson, when did you obtain copies of the  
7 Grand Jury transcripts, to the best of your  
8 recollection?

9 A. It was after I was arrested in November. I  
10 was released on O.R.; and about a month after that,  
11 that's when I was -- Nancy Cook had sent me copies of  
12 them to read.

13 Q. And in reading them, did you find statements  
14 in there that were untrue?

15 A. Yes.

16 MR. SULLIVAN: Objection.

17 THE COURT: Sustained.

18 BY MR. HOYT:

19 Q. Did you perceive, in reading those  
20 transcripts, that there were statements contained in  
21 there which were untrue?

22 A. Yes, I did.

23 MR. SULLIVAN: I object, Your Honor.

24 THE COURT: Overruled.

25

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1892

1 BY MR. HOYT:

2 Q. And without going into great and lengthy

3 detail, would you tell the jury if Mr. Phil Kofahl --

4 was he allowed to make statements in the Grand Jury?

5 MR. SULLIVAN: Objection. Objection.

6 THE COURT: Sustained.

7 MR. HOYT: Your Honor, is this a prohibited

8 area?

9 THE COURT: No. It's a prohibited way that

10 you are asking the question, counsel.

11 BY MR. HOYT:

12 Q. Mr. Hinkson, what was the nature of the

13 statements that were made in the Grand Jury testimony

14 that you perceived was untrue?

15 MR. SULLIVAN: I object to going into the

16 details of what he perceived.

17 THE COURT: I think he can testify as to what

18 he thought.

19 THE WITNESS: After I read it, there was three

20 or four things that jumped out at me. Phil Kofahl said

21 that my products had killed people.

22 BY MR. HOYT:

23 Q. Had your products killed people?

24 A. No, sir. I never had a complaint with any

25 government agency or not even a lawsuit.

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1893

1 Q. Had you ever learned that anybody had died as

2 a result of taking your products?

3 A. No. Just lots of happy customers.

4 Q. Anything else?

5 A. Yeah. Arnette Hasalone testified that I had

6 murdered Art Bell's son.

7 Q. Who is Art Bell?

8 A. A famous late-night talk show host. She said

9 that I killed him.

10 Q. Had you killed him?

11 A. No.

12 Q. Did he die?

13 A. No. He is alive and well.

14 MR. SULLIVAN: Your Honor, I object. Now he

15 is trying to --

16 THE COURT: The jury will disregard the last

17 question and answer. Sustained.

18 BY MR. HOYT:

19 Q. Was there anything else in the Grand Jury

20 testimony that you perceived to be untrue?

21 A. Yes. I was -- Hines accused me of being an

22 international machine gun dealer, head of two militias,

23 and ordering hits to murder people.

24 Q. Was there any truth to that?

25 A. No.

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1894

1 Q. Did you find out that, as a result of these

2 Grand Jury meetings, an indictment was issued against

3 you?

4 A. I didn't find out until November when they

5 came and attacked my house. I didn't know. When I

6 filed my lawsuit, I didn't know.

7 Q. Let's go back to April 16th of the year 2002.

8 Do you recall filing a lawsuit on that date?

9 A. Yes, I do.

10 Q. And who did you name in that lawsuit?

11 A. Nancy Cook, Steven Hines, and Jerold Morgan.

12 Q. Did you also name Dennis Albers?

13 A. Oh, yes, I did. Yes.

14 Q. Why did you name Dennis Albers?

15 A. Because I had evidence that he, basically, was

16 in cahoots with them.

17 Q. Now, you have used the name Jerold Vernon. Is

18 that -- I'm sorry -- Jerold Morgan. Is he also the same

19 as --

20 A. Yes.

21 THE COURT: Mr. Hinkson, wait for your

22 attorney to finish the question.

23 THE WITNESS: Okay.

24 BY MR. HOYT:

25 Q. Is he also the same person as Mr. Jerold

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1895

1 Vernon?

2 A. Yes. He has aliases.

3 Q. Morgan and Vernon are the same person?

4 A. Yes.

5 Q. And what information had you received that

6 made you believe that Mr. Albers was in cahoots with

7 them?

8 A. The questions that were asked during the

9 civil --

10 MR. SULLIVAN: I object to going there.

11 THE COURT: Sustained.

12 THE WITNESS: Okay.

13 BY MR. HOYT:

14 Q. Mr. Hinkson, were you notified that there was

15 an Administrative Summons for records that was delivered

16 to Mr. Albers by Mr. Vernon?

17 A. Yes. And the court had ordered it sealed.

18 Q. And did you learn what had happened to the

19 records that were requested pursuant to that summons?

20 A. He turned it over immediately.

21 MR. SULLIVAN: I object.

22 THE COURT: Doesn't this go to the turning

23 over of the tax records?

24 MR. SULLIVAN: I believe it does, Your Honor.

25 THE COURT: I am going to permit it.

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1 Overruled. 1896  
2 BY MR. HOYT:  
3 Q. And you indicated earlier, when summons were  
4 sent to banks or other financial parties, that you had  
5 received a notice from Mr. Hines and you had received a  
6 notice from the bank telling you that the summons had  
7 arrived; correct?  
8 A. Correct, correct.  
9 Q. And is there a notice period in which you were  
10 allowed to take some action if you wanted to, to the  
11 best of your knowledge?  
12 A. There was supposed to be a certain time that  
13 you have to respond.  
14 Q. Do you remember how much time there was?  
15 A. I think it's twenty days or fifteen days. I'm  
16 not really sure at this point.  
17 MR. HOYT: There is no foundation showing for  
18 what he thinks on these particular matters. I object to  
19 going into it.  
20 THE COURT: The objection is overruled. It  
21 goes to the defendant's state of mind. I thought we  
22 covered this at sidebar. Overruled.  
23 BY MR. HOYT:  
24 Q. Mr. Hinkson, I want you to think about the  
25 time that you were notified that Mr. Vernon had sent an

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1 THE WITNESS: Yes. 1898  
2 BY MR. HOYT:  
3 Q. Did that happen before or after the election  
4 campaign of November 2000?  
5 A. This all happened after the election.  
6 Q. Okay. All right. Now, Mr. Hinkson, in --  
7 A. It was before the election. I'm sorry.  
8 Q. You believe it was before the election?  
9 A. Yeah. I'm trying to remember. The election  
10 is the last thing I ever did, as far as defense.  
11 Q. Then you filed a lawsuit of April 16, 2002?  
12 A. Correct.  
13 Q. Now, did you check with the Clerk for the  
14 Grand Jury in Coeur d'Alene regarding the status of the  
15 Grand Jury before you filed that lawsuit of April 16,  
16 2002?  
17 A. Yes, I did.  
18 Q. And what information did you obtain?  
19 A. The Grand Jury had been disbanded, and there  
20 was no indictment.  
21 Q. Then did you proceed with the preparation and  
22 filing of the lawsuit?  
23 A. Actually, Rich Bellon created it. I was so  
24 busy doing other things. He was acting as a total  
25 paralegal-legal guy, and he did all of the work on it.

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1 Administrative Summons to Mr. Albers. Do you recall 1897  
2 receiving a notice giving you a time period, whether it  
3 was fifteen or twenty days, in which to respond?  
4 A. Yes, I do.  
5 Q. And did you attempt to respond to that?  
6 A. Yes, I did.  
7 Q. What was your response?  
8 A. I sent a letter to the person who got the  
9 summons; and I sent a letter to the person that issued  
10 the summons, Mr. Hines, explaining why the summons was  
11 fraudulent.  
12 Q. Did you mention the court order to them that  
13 you just mentioned a few moments ago?  
14 A. I'm sure I did.  
15 Q. And to the best of your knowledge, what did  
16 you perceive that court order said?  
17 A. Well, the court ordered that the records in  
18 the civil case be sealed, especially tax returns and  
19 other matters; and Albers immediately turned it over on  
20 the spot, without even giving anybody a chance to  
21 object.  
22 Q. And did that increase your anger towards  
23 Mr. Albers?  
24 A. I had already established what he was.  
25 THE COURT: Just answer the question.

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1 Q. And was he working with Mr. Groom's office at 1899  
2 that time?  
3 A. Not initially, no. He claimed he had a  
4 Harvard Law professor helping him.  
5 Q. And is that a lawsuit -- I believe it's  
6 Government Exhibit 1. Is that a lawsuit that you  
7 actually filed in the Federal District Court?  
8 A. Yes. It had my name on it, yes.  
9 Q. It's called a Bivens action?  
10 A. Yes, Bivens.  
11 Q. Can you explain to the jury, briefly, what a  
12 Bivens action is?  
13 A. Okay. A Bivens action is an action when you  
14 sue for constitutional law violations. I was hoping,  
15 mostly, just to get them to stop --  
16 THE COURT: No, that's not responsive. The  
17 question is: Can you explain to the jury what a Bivens  
18 action is, not what you were hoping.  
19 THE WITNESS: It's just a lawsuit to enforce  
20 civil rights crimes.  
21 BY MR. HOYT:  
22 Q. Did you believe that civil rights crimes had  
23 been committed against you at that point?  
24 A. Yes, I did.  
25 Q. Then did you have any more contact with either

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1 E. Albers or with Mr. Hines at that time? That would 1900  
2 have been April of 2002.  
3 A. I think it was just -- yeah, communications  
4 with -- there was 100 motions between the two of us. We  
5 were filing back and forth motions.  
6 Q. In that case?  
7 A. In that case, yeah. It was a very active  
8 case.  
9 Q. Were you asking for discovery?  
10 A. Proof that there was no Grand Jury.  
11 Q. Did you ever obtain any proof that there was  
12 or was not a Grand Jury?  
13 A. They refused to provide any discovery in that  
14 case.  
15 Q. Ultimately, what happened to that Bivens  
16 lawsuit?  
17 A. It was ultimately dismissed.  
18 Q. And do you recall who it was that dismissed  
19 the case initially?  
20 A. I think it was Judge Lodge.  
21 Q. Do you know if the case was worked on by  
22 another judge, such as Magistrate Boyle?  
23 A. Yes. Boyle always ruled very good. He is a  
24 very good Magistrate.  
25 THE COURT: That's not responsive.

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1 would be in the time period from April 16th of 2002 1902  
2 until November 21st of 2002 -- can you advise the jury  
3 whether you were inside or outside of the United States?  
4 Did you travel?  
5 A. Yes. I was pretty much gone a lot, yes.  
6 Q. And where were you traveling?  
7 A. I was in Russia, the Ukraine, Egypt,  
8 Venezuela, Mexico. I even went to Africa.  
9 Q. And can you tell what period your travel  
10 spanned?  
11 A. After -- 1999 to 2001 or 2002, somewhere in  
12 there, before I got arrested.  
13 Q. You were -- do you recall the day of the raid,  
14 November 21, 2002?  
15 A. Yes, I do. Yeah.  
16 Q. Had you been outside of the country during the  
17 few months before that? That is my question.  
18 A. Yes. I was in the Ukraine.  
19 Q. And why were you in the Ukraine?  
20 A. I got engaged to get married, and I fell in  
21 love, and I was trying to work with the Ukrainian  
22 doctors there at the Infectious Disease Center because  
23 we were doing testing on our silver product for  
24 tuberculosis and we had AIDS testing going, a product  
25 that would cure AIDS.

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1 THE WITNESS: Yes, Boyle. 1901  
2 THE COURT: The jury will disregard the  
3 answer.  
4 Ask the question again, counsel.  
5 BY MR. HOYT:  
6 Q. Do you know if Judge Boyle entered any rulings  
7 in that case?  
8 A. Yes, he did.  
9 Q. Now, as a result of the dismissal of that  
10 case, what action did you take?  
11 A. I appealed with the Ninth Circuit, I ordered  
12 books on how to appeal, and I ordered all of the stuff  
13 to teach myself how to appeal.  
14 Q. Now, in the summer -- strike that.  
15 It's my understanding that the Indictment in  
16 the tax case is, also, an exhibit of the People, of the  
17 Government, in this case. When was the first time you  
18 saw that Indictment?  
19 A. I believe it was November 21st they threw it  
20 in front of me in the back seat of Hines' Suburban -- or  
21 Tahoe.  
22 Q. That was the day of the raid?  
23 A. Yes.  
24 Q. I want to go back in time with you. After you  
25 filed the Bivens lawsuit and before the raid -- so that

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1 Q. And at the time of your arrest -- that is the 1903  
2 raid of November 21st -- did you have any plans to leave  
3 the country again?  
4 A. Yes, I did. I had already purchased tickets  
5 back to the Ukraine, and my fiancée had bought tickets  
6 from there to Egypt, and then we were going to Africa.  
7 Q. I take it --  
8 A. I'm sorry. It was to Bangkok, Thailand, and  
9 then to Africa. It was kind of a --  
10 Q. Mr. Hinkson, did you go on those trips that  
11 had been scheduled?  
12 A. No. I lost my money for the tickets.  
13 Q. Mr. Hinkson, who were you going to see when  
14 you went to the Ukraine?  
15 A. Well, I was going to get Tonya, pick her up,  
16 first.  
17 Q. Tonya being your fiancée?  
18 A. She's my wife now, yes.  
19 Q. All right. And you were going to pick her up  
20 first. Who else were you going to see in the Ukraine?  
21 A. Roman.  
22 Q. Who is Roman.  
23 A. Roman Polanco (phonetic). I still can't  
24 pronounce his last name. He is my employee in the  
25 Ukraine.

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1904

1 Q. Who else were you going to see in the Ukraine?

2 A. Just the infectious disease doctors. We were

3 going back there to give them enough samples to start

4 the testing.

5 Q. How many of those doctors were there?

6 A. I think there was, like, twenty.

7 Q. Mr. Hinkson, in November of 2002, you have

8 heard the testimony that the FBI came in very early in

9 the morning into your house. Do you recall that

10 testimony?

11 A. Yes, I do.

12 Q. What time of day was it that they entered your

13 house, to the best of your recollection?

14 A. It seemed like it was just a hair before 6:00.

15 Q. 6:00 o'clock Pacific time?

16 A. Grangeville is on a different time schedule

17 than here so, yeah, Pacific.

18 Q. And that would have been in the morning?

19 A. Yes, early.

20 Q. And you have heard the testimony that there

21 was a bull horn and announcements made from the outside.

22 Did you hear any of those announcements or statements

23 over the bull horn?

24 A. No.

25 Q. What had gone on the night before or in the

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1906

1 was working on a new soap -- just a variety of

2 experiments.

3 I developed a -- you will think this is crazy,

4 but I developed a machine that powers cars. A gallon of

5 water will power a car for one year with no fuel needed.

6 I actually had a working model of this.

7 Q. Anything else you were working on until 3:00

8 o'clock in the morning?

9 A. I had a motor that would run with magnets and

10 no electricity needed. I also had a machine that would

11 heat a house for about five cents a month. I had an

12 ozonator. I invented a new kind of ozonator that could

13 be used for toxic waste clean-up.

14 Q. A commercial grade?

15 A. Yes. It used, like, a milli amp of

16 electricity but made 100 grams of ozone an hour. A

17 solar panel would run it, and you could clean up toxic

18 waste with it.

19 Q. Going to November 21, 2000, when was the first

20 time you were aware that there were federal agents on

21 your property?

22 A. November -- I woke up when they kicked down my

23 door and they were screaming, "Freeze, MF."

24 Q. "MF" being the initials of a cuss word; is

25 that right?

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1905

1 early morning hours before the FBI entered your home?

2 A. Well, where I live there is a lot of elk and

3 the dogs get to barking; so I had ear plugs on the

4 headboard because they wake me up.

5 They were barking at the agents, but I didn't

6 know this. I turned on the fan and put the ear plugs in

7 my ears because I was trying to sleep still for a few

8 more hours.

9 Q. Let's talk about your schedule. What kind of

10 a work schedule did you have at WaterOz?

11 A. I usually worked till 3:00 in the morning or

12 later, and I usually got up at 9:00 or 10:00 or 11:00.

13 Q. What type of -- what type of work were you

14 doing?

15 A. I was in the laboratory. I spent my time in

16 the laboratory, not running WaterOz.

17 Q. Who handled the business end of things of

18 WaterOz at that time?

19 A. Jeri Gray was in charge of everything.

20 Q. And did you have other employees?

21 A. Charlie was the bookkeeper, yeah. There was

22 forty workers, all together, I think, at one point.

23 Q. And what were you doing until 3:00 o'clock in

24 the morning?

25 A. Oh, I invented a non-toxic hand lotion and I

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1907

1 A. Yes, sir.

2 Q. What did you see?

3 A. I saw Steven Hines come into the room holding

4 a silver-plated handgun.

5 Q. How was Mr. Hines dressed?

6 A. Plaid jacket, like a sports jacket, and

7 slacks, kind of a gray slacks.

8 Q. Were there other individuals in the room with

9 him?

10 A. Yeah. It seemed like there was seven or eight

11 people with body armour and ski masks on.

12 Q. What color were their outfits?

13 A. It seemed like black or very dark green, a

14 very dark color.

15 Q. What were you told to do at that point?

16 A. "Freeze."

17 Q. Did you freeze?

18 A. Oh, yeah. I said, the gun -- excuse me. They

19 asked me, "Where is the gun? Where is the gun?" I

20 didn't know if they were talking to me. Somebody

21 screamed, "Where is the gun? Where is the gun?".

22 Q. How did you respond?

23 A. "It's on the headboard."

24 Q. What gun was on the headboard?

25 A. I had a .45 semi-automatic.

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1908

1 Q. And what type of a weapon is that?

2 A. It's a handgun for protection.

3 Q. Who was living with you at that time?

4 A. That night, nobody. Normally, my children

5 stay with me three days a week.

6 Q. And did you normally keep a handgun on the

7 headboard?

8 A. Yes, for years.

9 Q. Did you have any other weapons in the house?

10 A. I had one hunting rifle, but it only got fired

11 once because it hurt so much when I fired it. It about

12 took my shoulder off.

13 Q. Did you have a BB gun in the house?

14 A. Yes.

15 Q. Did you have any other weapons besides that?

16 A. Yeah. There was a .22 pistol in the gun

17 cabinet and a .22 target-shooting rifle.

18 Q. Now, Mr. Hinkson, after you said, "It's on the

19 headboard," what happened next?

20 A. It seems like Steve Hines grabbed the gun and

21 unloaded it.

22 Q. Now, you indicated that he was dressed

23 differently than the other people?

24 A. Yes. He was dressed in, like, regular

25 civilian clothes, you know, a sports jacket and slacks.

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1909

1 Q. And were you handcuffed?

2 A. Yeah, immediately handcuffed. They pulled --

3 they pulled a shirt over my head but wouldn't let me put

4 my arms in the sleeves.

5 Q. And what did they do with you at that point?

6 A. They took me outside and put me into the back

7 of Hines -- Hines' Tahoe, a Chevy Tahoe.

8 Q. On November 21st, what was the temperature

9 like outside?

10 A. Cold.

11 Q. Frost on the ground?

12 A. Yes. Snow, a little bit of snow.

13 Q. Did you resist them in any way?

14 A. No, I did not.

15 Q. Were you aware that they had broken down doors

16 in your house or factory?

17 A. No.

18 Q. Did you offer a --

19 MR. SULLIVAN: Objection, Your Honor. Facts

20 not in evidence.

21 THE COURT: Sustained. The jury will

22 disregard the last question and answer.

23 BY MR. HOYT:

24 Q. At some point in time, did you become aware

25 that they had broken down doors in your house and your

QNA COURT REPORTING (208) 484-6309

1910

1 factory?

2 A. Yeah, when I got back, when I got back from

3 court.

4 Q. That morning, when they put you in Mr. Hines'

5 vehicle, did you offer them your keys?

6 A. Yes.

7 Q. Did they accept the offer?

8 A. No.

9 Q. When you got back that night, how many doors

10 did you find had been broken?

11 A. They battering-rammed ten doors.

12 Q. Did you have communication with Mr. Hines at

13 that point?

14 A. Yes.

15 Q. You are in the back of his car. What was the

16 communication?

17 A. I only asked him where the affidavit was for

18 the search warrant; and he said, "You'll get it later."

19 Q. Was there an affidavit attached to the search

20 warrant?

21 A. No.

22 Q. What happened next?

23 A. I just sat there for about an hour, and then I

24 think somebody got in the back seat next to me, and

25 Hines drove me up to Moscow.

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1911

1 Q. And did you appear in front of a Judge by

2 video conference?

3 A. Yes. It was Williams, I believe.

4 Q. Judge Williams?

5 A. Yes. He is a Magistrate. He's not a Judge.

6 Q. So you appeared in front of Magistrate

7 Williams?

8 A. Yes.

9 Q. And what was the purpose for that appearance,

10 to the best of your knowledge?

11 A. He asked me to make a plea.

12 Q. And did you enter a plea?

13 A. No.

14 Q. What did you tell him?

15 A. That I didn't understand the nature and the

16 cause of the complaint and that I don't accept this as a

17 settlement offer for the lawsuit.

18 Q. What lawsuit were you referring to?

19 A. My civil one.

20 Q. The Bivens lawsuit?

21 A. Yes, sir.

22 Q. Was it still pending at that time?

23 A. Oh, yeah.

24 Q. It had not been dismissed at that time?

25 A. No.

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1920

1 MR. HOYT: Your Honor, this line of  
2 questioning is designed to point out the bias of  
3 Mr. Swisher; and it is not offered for the truth of the  
4 matter asserted.

5 THE COURT: Okay. With that representation, I  
6 will allow you to proceed. Overruled.

7 BY MR. HOYT:

8 Q. All right. What was the nature of that  
9 communication?

10 A. Point on point, he said he had come by the  
11 factory; he had picked up samples; he had tested  
12 everything; and, now, nothing matched on the labels.  
13 The product didn't match the labels anymore.

14 Q. And had his representations and test reports  
15 indicated that the product PMW did match the labels  
16 previous to that?

17 A. Yes. He said everything was perfect.

18 Q. Now, what is "PMW"?

19 A. "PMW" is "parts per million."

20 MR. SULLIVAN: I object.

21 THE COURT: I think I will allow it.

22 MR. SULLIVAN: This isn't going to show bias,  
23 as was proffered.

24 THE COURT: It is being offered for  
25 impeachment purposes. I will allow him to go into it

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1922

1 it.

2 And the third one is, actually, Silver.

3 There's over 150 parts per million silver in the Silver.

4 I think there's 60 parts per million gold in the Gold  
5 and about 3,000 parts per million of liquid rock in the  
6 Water of Life.

7 Q. What size are the particles?

8 A. They are down to the molecule or half a  
9 molecule.

10 Q. And is it your process that breaks them down  
11 to this molecular, half molecular size?

12 A. Yes.

13 Q. And does that small size have some advantage  
14 to a person who takes it?

15 A. Yes. This stuff is already pre-digested so  
16 that the body doesn't have to do anything except for use  
17 it as a building block material to fix things, to help  
18 your health.

19 Q. How absorbable is it?

20 A. 100 percent, in the upper stomach.

21 Q. Now, the minerals that Mr. Swisher called you  
22 about and said that the labeling did not accurately  
23 reflect what was in the product, what did you do as a  
24 result of that?

25 A. Well, he suggested that we have a meeting

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1921

1 for that reason.

2 THE WITNESS: Go back a question, can you,  
3 about what was missing?

4 THE COURT: No, we are not going to go into  
5 it. What we are going to talk about is parts per  
6 million.

7 THE WITNESS: I thought of something that was  
8 really important.

9 THE COURT: You can talk with your lawyer  
10 about that later. Let's talk about parts per million.

11 BY MR. HOYT:

12 Q. What is parts per million?

13 A. Parts per million is how many parts per  
14 million of something is in the water.

15 Q. And you have in front of you there -- on the  
16 little table in front of the jury, there are three  
17 bottles which have been marked as Exhibits Q, R, and S.  
18 Do you see those exhibits?

19 A. Yes, I do.

20 Q. Can you identify them for the jury, please?

21 A. Well, we've got Water of Life, the first one,  
22 which is actually a liquid rock from Wimmeruoca, Nevada.  
23 It has everything in it, all of the minerals.

24 And the second one, I believe, is Gold. And  
25 it's a yellow color because it actually has real gold in

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1 immediately.

2 MR. SULLIVAN: I object, Your Honor. It's  
3 still hearsay.

4 THE COURT: I think it's leading up to the  
5 impeachment.

6 MR. HOYT: Your Honor, it takes a little bit  
7 to tell the story.

8 THE COURT: I can tell that. I'm instructing  
9 the jury, with regard to this testimony, again, it's  
10 being admitted for purposes of trying to impeach  
11 Mr. Swisher's testimony.

12 You are not to consider it for the truth of the  
13 what Mr. Swisher and Mr. Hinkson talked about on that  
14 particular occasion.

15 MR. SULLIVAN: Your Honor, Mr. Swisher was  
16 never questioned about this; so there can't be an  
17 impeachment.

18 THE COURT: Well, counsel, I have made my  
19 ruling. I think I heard enough of Mr. Swisher's  
20 testimony to understand the relevance.

21 Go ahead, Mr. Hoyt.

22 BY MR. HOYT:

23 Q. Thank you. And a meeting was suggested. Did  
24 you, in fact, have a meeting with him?

25 A. Yes, I did.

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1 Q. Before that meeting, did you pull samples of  
2 your product?

3 A. Yes, I did. Lornie and Scooter -- not  
4 Scooter.

5 THE COURT: That's not the question. Did you  
6 pull samples of the product? "Yes" or "no"?

7 THE WITNESS: There was three of us. We  
8 pulled them together, sort of.

9 BY MR. HOYT:

10 Q. Let's do that. What was the purpose of  
11 getting samples of your products?

12 A. Well, we wanted to have Swisher test them  
13 again and test the tanks and the products to see where  
14 this problem might have arised from.

15 Q. Okay. And was this the first time Mr. Swisher  
16 informed you that there was a problem with the products?

17 A. Actually, no. There was actually an earlier  
18 time, and I think it's mentioned in his affidavit.

19 Q. And once you knew that there was a problem,  
20 did you attempt to correct it previously?

21 A. Yes. And we had a letter from Mr. Swisher  
22 saying that it was now fixed and everything was up to  
23 par again. That was July, I believe.

24 Q. So, now, we are in November of 2002; and you  
25 and Swisher are about to have a meeting. You indicated

1 that you asked Lornie. Would that be Lornie Birmingham?

2 A. Yes.

3 Q. The gentleman who testified here previously?

4 A. Yes, sir.

5 Q. And another individual and you created samples  
6 of your products; is that correct?

7 A. All of the products and all of the tank  
8 sampling, yes.

9 Q. And did you -- who went -- did you go over to  
10 Mr. Swisher's place?

11 A. Lornie and I, yes, went to Mr. Swisher's house  
12 the day after the raid. It might have been two days  
13 after the raid. I think it was the next day.

14 Q. And did you take those samples with you?

15 A. Yes. And a report of the FRMs and also pH  
16 reports.

17 Q. Was there a problem with the pH for potassium?

18 A. Yes. It readed 10 point -- it read 10.5.

19 Q. Now, "pH," what does that stand for?

20 A. It's the amount of hydrogen in a product. If  
21 something is very acidic, that means it has an abundance  
22 of hydrogen. If something is very alkaline, it means it  
23 has a shortage of hydrogen. Anything over 10 would be  
24 harmful to you if you swallowed it. Baking powder and  
25 baking soda has a pH of 10, for example.

1 Q. What does P measure?

2 A. The parts of hydrogen in the product.

3 Q. Do you regulate the parts hydrogen in your  
4 products as part of your business?

5 A. Yeah. It's falls under the word "buffering."  
6 Like, if you buy buffered aspirin, it means that they  
7 buffered the hydrogen in the aspirin so it won't upset  
8 your stomach. All of the products are buffered.

9 Q. Having the potassium with a pH, or parts  
10 hydrogen, of 10 was something that was undesirable?

11 A. 10.5. It was a big worry because the  
12 Government had been in the factory, and we did not know  
13 why it was reading 10.5.

14 Q. What should it have been reading if it was in  
15 proper form?

16 A. 6 or 7, somewhere in the middle, neutral  
17 range.

18 Q. And what, if anything, did Mr. Swisher tell  
19 you about the pH of the potassium?

20 A. Well, he smelled it. He looked at it, smelled  
21 it, you know. He didn't taste it. He just smelled it;  
22 and he goes, "I smell -- it smells like sodium cyanide  
23 to me."

24 I smelled it, and I couldn't smell anything.  
25 I've got a pretty good nose. I was very alarmed at this

1 point.

2 Q. Why were you alarmed if there was cyanide in  
3 the product?

4 A. Well, I mean, we are shipping out product and,  
5 I mean, if there is cyanide in it, we are going to have  
6 lots of dead people. I mean, it's a major worry. Why  
7 would there be cyanide?

8 Q. And so as a result of that, did you leave all  
9 of the samples with Mr. Swisher that day to be tested?

10 A. Yes. We left every sample there with him  
11 under the understanding that Lornie --

12 THE COURT: You have answered the question.

13 BY MR. HOYT:

14 Q. Did you also leave Lornie with him to  
15 participate in the testing?

16 A. Yes, that was the agreement. Lornie was going  
17 to stick with him and work for two reasons.

18 Q. What were those reasons?

19 A. Well, first, Joe Swisher's health was so bad  
20 that he wasn't able to walk; and he had an assistant in  
21 the laboratory that was going to work with Lornie. I  
22 can't think of his name. Sellers, maybe. Doug Sellers;  
23 is that right?

24 Q. An assistant in the lab?

25 A. Right. That's Swisher's assistant. He works

1 out of his lab. His lab is in his house.

2 Q. He needed some additional assistance?

3 A. Well, he couldn't -- he was so crippled at  
4 that time that he couldn't even walk. He did, with a  
5 crutch, go four feet; and then he'd collapse in his  
6 chair.

7 Q. Do you know why he was crippled?

8 A. He had just had open heart surgery.

9 Q. Had you previously been on the telephone with  
10 him when he had his attack?

11 A. He died -- he literally died when I was  
12 talking to him. He fell off the porch, unconscious.

13 MR. SULLIVAN: Your Honor, how can the witness  
14 testify to that if he was talking to him on the phone?

15 THE COURT: The jury will disregard that last  
16 statement.

17 BY MR. HOYT:

18 Q. In any event, you are aware that he had had  
19 some heart surgery; is that correct?

20 A. Well, before that, he had some problems, too.  
21 He was very --

22 MR. SULLIVAN: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. HOYT:

25 Q. Mr. Hinkson, you left Lornie there to assist

1 with the lab work; is that correct?

2 A. Yes. I wasn't sure who to trust; and so I  
3 wanted Lornie, because I trusted Lornie, to stay right  
4 there and see every test kit done. Yes, high speed.

5 Q. How long had Lornie worked for you at that  
6 point?

7 A. I think, since either the end of '99 or the  
8 beginning of 2000. He was there quite a while.

9 Q. Did Lornie -- what were Lornie's credentials  
10 when he came to you?

11 A. Well, I met him at church. I thought he was  
12 an honest, hard-working young man with a nice family  
13 and, you know, he had three children and --

14 THE COURT: Counsel, can we move on?

15 BY MR. HOYT:

16 Q. At that time, did Lornie show any signs of  
17 disloyalty to you?

18 A. No. No, he did not.

19 Q. Mr. Hinkson, did you get a phone -- did you go  
20 back to the factory, yourself?

21 A. Yes, I did. I left Lornie there. We drove  
22 separate cars.

23 Q. Now, did you get a phone call from Mr. Swisher  
24 the next day regarding that sample of potassium?

25 A. No. No, I didn't. It was -- we didn't hear

1 back from him about that till the end of December, I  
2 believe, or the first of January.

3 Q. And when he called you back on that sample of  
4 potassium, what did he say?

5 MR. SULLIVAN: I object to the hearsay.

6 THE COURT: Again, ladies and gentlemen, it's  
7 being offered not for the truth but for Mr. Hinkson's  
8 state of mind.

9 THE WITNESS: Let me --

10 THE COURT: Just answer the question.

11 THE WITNESS: I answered the last one.

12 MR. HOYT: Please let the judge finish his  
13 ruling.

14 THE COURT: Let's re-read the question so that  
15 Mr. Hinkson has it in mind.

16 MR. HOYT: May I restate it or just rephrase?

17 THE COURT: Please do.

18 BY MR. HOYT:

19 Q. Mr. Hinkson, at some point, did Mr. Swisher  
20 contact you regarding that sample of potassium?

21 A. Yes.

22 Q. What did he tell you about the potassium?

23 A. He told me that the potassium tested at 30,000  
24 parts per million sodium cyanide.

25 Q. How large a sample was it?

1 A. I think it was a 16-ounce bottle.

2 Q. And 30,000 parts per million of cyanide?

3 A. That's what he claimed, yes.

4 Q. Did he send it out for independent testing?

5 A. Yes, he did.

6 Q. Mr. Hinkson, what did he tell you about his  
7 finding that he had cyanide in the sample?

8 A. Well, he said it was 30,000; but the problem  
9 was we brought him the sample and the sample --

10 THE COURT: That's not responsive.

11 Mr. Hinkson, that's not responsive. The question is:  
12 What did he say? It's not what you brought him.  
13 Please, answer the question.

14 BY MR. HOYT:

15 Q. Mr. Hinkson --

16 THE COURT: Confine your answer to those  
17 questions.

18 BY MR. HOYT:

19 Q. The question is: What did he tell you about  
20 those samples, in terms of your business?

21 A. You are talking about the first meeting, the  
22 only --

23 Q. No. I'm talking about the telephone call.  
24 What did he tell you on the phone?

25 A. He said -- this was the 4th of January, just

1 to clarify. Okay. On the 4th of January, he said that  
2 he wanted to be fifty-percent owner of WaterOz or he was  
3 going to testify against me to the Food and Drug  
4 Administration that I was sending out sodium cyanide to  
5 my customers.

6 Q. Did you make him fifty-percent partner in your  
7 business?

8 A. I hung up on him.

9 Q. Did you ever determine why the potassium had a  
10 higher factor of pH?

11 A. I did, actually, yes.

12 Q. What was the cause of that?

13 A. My people made it wrong.

14 Q. And did your product ever have sodium cyanide  
15 in it?

16 A. No.

17 Q. Mr. Hinkson, given that 30,000 parts per  
18 million of cyanide in that sample which Mr. Swisher had  
19 tested, how much sodium cyanide would you have had to  
20 add to the vat of product that it was taken from in  
21 order to achieve that?

22 A. About a --

23 MR. SULLIVAN: Objection. Irrelevant.

24 THE COURT: I think he can answer that  
25 question.

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1 THE WITNESS: It would take a 55-gallon ball  
2 of sodium cyanide to bring a 1,500-gallon tank to 30,000  
3 parts per million. A whole lunch. Enough where a  
4 teaspoon would kill you dead.

5 BY MR. HOYT:

6 Q. Is sodium cyanide a product used in the mining  
7 industry?

8 THE COURT: Counsel, you are flogging a dead  
9 horse here. You have established the point. Move on.

10 BY MR. HOYT:

11 Q. Mr. Hinkson, after you returned to the factory  
12 on your own recognizance from Moscow, were you invited  
13 to speak at a forum in Southern California?

14 A. Yes.

15 Q. And who invited you?

16 A. I think her name was Wendy something or  
17 another. There was two speeches I gave.

18 Q. And who arranged the trip?

19 A. Well, Jeri Gray had arranged it with this  
20 woman. Her name is Wendy. I know you know her name. I  
21 just don't know it.

22 Q. Does the name "Edrington" refresh your memory?

23 A. Yes, that's her name.

24 Q. Now, with reference to the trip before -- when  
25 did you go to Southern California?

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1 A. I think it -- just going from memory, it seems  
2 like it was a couple weeks after I was released on O.R.  
3 that I flew down to the Los Angeles Airport.

4 Q. Before you flew down there, did you get a  
5 telephone call from somebody in Southern California  
6 regarding the accommodations?

7 A. Yes, I did.

8 Q. And who was that?

9 A. His name was Mark --

10 MR. SULLIVAN: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. HOYT:

13 Q. Did someone arrange for a limousine to meet  
14 you at the airport?

15 A. Yes. His name was Mark Glover, or glow-ver  
16 (phonetic).

17 Q. And, actually, does that person's voice appear  
18 on the tape of the body wire taken by Mr. Harding?

19 A. Yes.

20 Q. There was a telephone call in the middle of  
21 that where Mr. Glover spoke to the two of you?

22 A. Yes.

23 Q. Now, is this something that you arranged for,  
24 yourself?

25 A. No. I really didn't want to go.

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1 Q. What subject were you to be speaking on at the  
2 Granada forum?

3 A. Health. Just health.

4 Q. Do you remember the name of the other forum?

5 A. I don't. One was Granada; I remember that.

6 Q. And when you got down there, did you speak on  
7 health at the Granada forum?

8 A. Yes, both locations.

9 Q. And what topics did you speak on, generally?

10 A. Health, the products, diseases.

11 Q. And did you -- were you transported by  
12 limousine from place to place?

13 A. It's the nicest limousine I have ever seen.  
14 He said it was one hundred and --

15 THE COURT: Mr. Hinkson, for the umpteenth  
16 time, answer the question and don't run on like this.

17 BY MR. HOYT:

18 Q. Had you ever ridden in a limousine before  
19 that?

20 A. No.

21 Q. When you got to the Granada forum, who  
22 introduced you?

23 A. Anthony Hilder.

24 Q. And was there something about that  
25 introduction that you thought was unusual?

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1 A. Yes.

2 MR. SULLIVAN: Objection. Relevance.

3 THE COURT: Sustained.

4 MR. HOYT: Your Honor, there is an issue I

5 think we have to take up at sidebar.

6 THE COURT: Counsel, just move to another

7 area. We can talk about it at the end of the day. Go

8 on.

9 BY MR. HOYT:

10 Q. After you spoke at the forum, were you -- did

11 you go out to some kind of a restaurant for something to

12 eat?

13 A. Yes, I did.

14 Q. And what vehicle did you ride in?

15 A. The limousine.

16 Q. And how many people were in the back of the

17 limousine?

18 A. Three, I think. Three -- three or four.

19 Q. Do you recall who those people were?

20 A. Well, I remember just Annie Bates sitting

21 there next to me.

22 Q. Do you remember if Mr. Hilder was there with

23 his video camera?

24 A. He was not there at that time.

25 MR. SULLIVAN: Objection. Facts not in

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1 THE COURT: Sustained. It is leading.

2 MR. HOYT: I think it goes to impeachment.

3 THE COURT: Sustained, counsel.

4 BY MR. HOYT:

5 Q. What did Ms. Bates tell you she wanted to do?

6 A. Just to come and visit and tour the factory.

7 She wanted to see this WaterOz factory; and she was

8 moving to Boise, anyway. That's about it. She was

9 interested in the product.

10 Q. Did she seem to have any interest in you,

11 personally?

12 A. Yeah. She kept trying to smuggle up to me in

13 the back of the limousine.

14 Q. And did you inform her that you were engaged

15 at that time?

16 A. Yes, I did.

17 Q. And did she, at that time, indicate to you

18 that she wanted to come and stay in your house?

19 A. No, she did not.

20 Q. She did come and she did stay in your house;

21 is that right?

22 A. She did, yes.

23 Q. How did that come about?

24 A. Well, she came up to take her tour; and she

25 had Harding with her. They arrived in a vehicle with no

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1 evidence.

2 THE COURT: Sustained. The jury will

3 disregard the last question and answer.

4 BY MR. HOYT:

5 Q. And did you go out to a restaurant?

6 A. Yes, we did.

7 Q. And did you get acquainted with Ms. Anne Bates

8 at that time?

9 A. Not really, no.

10 Q. Did you -- at some point that evening, did you

11 get acquainted with her?

12 A. She just introduced herself; that's all.

13 Q. Did she indicate to you that she was moving to

14 North Idaho?

15 A. Yes, she did. Yes.

16 Q. And what did she tell you she wanted to do in

17 North Idaho?

18 A. She wanted to move to Boise, and she asked if

19 it would be okay if she came by to see my factory and

20 see what I do.

21 Q. Did she indicate to you that she wanted to be

22 the plant manager of your factory?

23 A. No.

24 MR. SULLIVAN: I object to the leading

25 questions.

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1 roof on it; and it was freezing cold outside, very, very

2 cold. It was in the middle of winter. And they spent

3 the night; and the next day, about 10:00 or 11:00, they

4 left.

5 Q. And you have heard the testimony of both

6 Mr. Harding and Ms. Bates. Ms. Bates says that that

7 night you pulled a wad --

8 MR. SULLIVAN: I object to the form of the

9 question.

10 THE COURT: I will permit it.

11 Go ahead, counsel.

12 BY MR. HOYT:

13 Q. You pulled a wad of money out and showed it to

14 Mr. Harding? Mr. Harding says that, the next morning,

15 you pulled a wad of money out and showed it to him?

16 THE COURT: Counsel, let's not do it in a

17 compound fashion. Let's do it one incident at a time.

18 Why don't you just ask him what he remembers?

19 BY MR. HOYT:

20 Q. Mr. Hinkson, why don't you tell the jury what

21 you remember about that first visit by Mr. Harding and

22 Ms. Bates?

23 A. Well, I had the flu; and I talked to them for

24 a little bit, and then they wanted to go work out at a

25 gym. They wanted to borrow one of my cars.

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1 Q. Did you say "work at a gym"?

2 A. They wanted to go and work out. They didn't  
3 stay very long. And I didn't feel real good that night,  
4 so I watched a movie and they left. So there really was  
5 no communication, you know.

6 Q. Was there an older gentleman there discussing  
7 your products with you that evening?

8 A. I don't remember an older gentleman.

9 Q. And they indicated that you all went out to  
10 dinner at, possibly, a Chinese food restaurant. Do you  
11 recall doing that?

12 A. No. I definitely wouldn't go to the Chinese  
13 place.

14 Q. So your recollection is that they borrowed  
15 your car and they said they wanted to go to --

16 A. Lewiston.

17 Q. -- Lewiston? How far away is Lewiston,  
18 time-wise?

19 A. It's about an hour's drive.

20 Q. And were you aware when they came back that  
21 evening?

22 A. I was asleep, and I think they woke me. And I  
23 opened the door for them, and then I went back to sleep.

24 Q. And about what time was it that they came  
25 back?

1 A. I would say it was 1:00 in the morning.

2 Q. Now, Ms. Bates claims that sometime that  
3 evening you pulled a wad of money out of someplace and  
4 offered it to Mr. Harding. Do you recall doing that?

5 A. No, sir.

6 Q. Did that happen?

7 A. No, absolutely not.

8 Q. The next morning, Mr. Harding claims that you  
9 pulled a wad of money out and offered it to him. Do you  
10 recall doing that?

11 A. No.

12 Q. Did that happen?

13 A. No, absolutely not.

14 Q. Did you ever offer money to Mr. Harding for  
15 any purpose?

16 A. No. He wanted a job, but Jeri Gray refused to  
17 hire him.

18 Q. Did he want to sell your products?

19 A. Yeah. He talked us into that. He said he  
20 would do some shows, yes.

21 Q. What does it mean to do some shows?

22 A. You take the product on consignment and set it  
23 up in a booth. That really wasn't discussed the first  
24 time he arrived. He was just there to see the factory.

25 Q. Now, did you arrange for them to see the

1 factory?

2 A. They toured the factory. I think Debbie  
3 Morley gave them a tour the next morning. I wasn't  
4 involved in the tour.

5 Q. And then did they leave in this car that had  
6 no top?

7 A. Yes, they did.

8 Q. How many total times did Mr. Harding come to  
9 your home and factory near Grangeville?

10 A. I remember four times.

11 Q. And would you please tell us those four times?

12 A. Well, the first time they spent the night; and  
13 I probably talked to them a total of an hour on that  
14 first trip. Then they went back to Boise. But they  
15 went on to go and get their stuff in Arizona, too. So  
16 that was the first time.

17 Q. Now did you arrange to pay for Ms. Harding's  
18 (sic.) U-Haul to bring her stuff?

19 A. No, I didn't arrange it. She called up from  
20 the road, desperate. She said they were broke, said she  
21 had no money at all and couldn't get her stuff out of  
22 the mini storage in Arizona. She begged me to loan her  
23 the \$500 or \$600, whatever it was, for the storage fees.

24 Q. And how about the U-Haul charges?

25 A. It was the same deal. That was, I think, four

1 or 500 additional dollars.

2 Q. And how did you loan her the money?

3 A. I gave her my credit card, Wells Fargo  
4 account, over the phone. It was -- she said she would  
5 pay it back.

6 Q. Did she ever pay it back?

7 A. No.

8 Q. Now, did she ultimately bring her stuff to  
9 Boise?

10 A. Yes, she did. She rented a U-Haul and drove  
11 it all the way to Boise and Harding -- I guess Harding  
12 drove it. She just rode with him.

13 Q. And when she got to Boise, was there an  
14 incident over a Bowflex?

15 A. Yes. She called me to tell me that a neighbor  
16 had a Bowflex and was selling it for half price, and she  
17 wanted to know if I wanted it.

18 Q. And what did you do?

19 A. I drove to Boise and went and got it.

20 Q. And was it a good buy?

21 A. I thought so.

22 Q. Did you have any communications with Ms. Bates  
23 at that time?

24 A. I did, just for a few minutes. She introduced  
25 me to the guy that was selling it. We drove to his



1 storage unit. We loaded it up. I said, "Good-bye." As <sup>1944</sup>  
2 I was leaving, I sawed Harding unloading the U-Haul; but  
3 I didn't stop and talk to him.  
4 Q. Now, that was actually the second time you had  
5 seen Mr. Harding in Idaho; is that right?  
6 A. Right.  
7 Q. Now, when was the next time you saw  
8 Mr. Harding in Idaho?  
9 A. He showed up at my house with an Anthony  
10 Hilder.  
11 Q. Was this the same person you had met down in  
12 Southern California at the Granada forum?  
13 A. Yes, the same exact person.  
14 Q. Did you have a radio talk show while you were  
15 in Las Vegas?  
16 A. Yes. I broadcasted on the WWCN. It's the  
17 worldwide Christian Radio Network.  
18 Q. Did you ever have Mr. Hilder on any of your  
19 programs?  
20 A. I would guess, three or four, at least. He  
21 was a good speaker.  
22 Q. And had you ever met him personally?  
23 A. No, I guess not.  
24 Q. How did he -- how was he able to be on your  
25 radio program but you didn't meet him personally?

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1 A. Well, I don't really have a radio station; so <sup>1945</sup>  
2 he would call in and we had what is called a Gentner.  
3 Q. A what?  
4 A. A Gentner. It's like a circuit board, and  
5 twelve different phone lines can all come in at one  
6 time. So you can have -- line one is caller one.  
7 Basically, you can put together people to do  
8 talk shows; and it goes on a phone line to a satellite;  
9 and from the satellite, it went to Nashville, Tennessee,  
10 and broadcast it over the shortwave.  
11 Q. So when you met Mr. Hilder down at the Granada  
12 forum in early December of 2002, that was your first  
13 meeting?  
14 A. Yes. It was my first meeting, yes.  
15 Q. Now, you said that Mr. Harding showed up at  
16 the factory with Mr. Hilder?  
17 A. Yes. They showed up together, yes.  
18 Q. What was the purpose of their coming together?  
19 A. Hilder wanted to make a video.  
20 MR. SULLIVAN: I object to the hearsay.  
21 THE COURT: Sustained. Can we establish a  
22 time frame, Mr. Hoyt?  
23 BY MR. HOYT:  
24 Q. Yes. When was this?  
25 A. I believe, February 20th. It's just a guess.

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1 I mean, the phone records would prove exactly when. <sup>1946</sup>  
2 THE COURT: Of what year?  
3 MR. SULLIVAN: Move to strike.  
4 THE COURT: I think it's fine if we can just  
5 establish a year.  
6 BY MR. HOYT:  
7 Q. Was this -- what year was this?  
8 A. 2003.  
9 Q. And did Mr. Hilder -- strike that.  
10 Did Mr. Harding say that he was participating  
11 with Mr. Hilder in the making of this video?  
12 A. Yes.  
13 MR. SULLIVAN: I object. Relevance and  
14 hearsay.  
15 THE COURT: Sustained on both grounds. The  
16 jury will disregard the question and the answer.  
17 BY MR. HOYT:  
18 Q. And did you have any communications with  
19 Mr. Harding at that time?  
20 A. No. He was mostly an observer.  
21 MR. SULLIVAN: I would object. I move to  
22 strike the answer to the question.  
23 THE COURT: The answer is, "No." The jury  
24 will disregard the remainder of the answer.  
25

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1 BY MR. HOYT: <sup>1947</sup>  
2 Q. Approximately how long was Mr. Harding there  
3 at WaterOz in that February meeting?  
4 A. I would say, two hours.  
5 Q. And then what happened?  
6 A. Well, you know, I was told they were partners.  
7 THE COURT: No, no, no. Hearsay. The jury  
8 will disregard that.  
9 THE WITNESS: What happened was he wanted to  
10 hire himself. He wanted me to give him \$10,000.  
11 MR. SULLIVAN: I object.  
12 THE COURT: Mr. Hinkson --  
13 THE WITNESS: I'm trying to answer the  
14 question.  
15 THE COURT: No, you are not answering the  
16 question.  
17 Counsel, why don't you ask a leading question  
18 so you can get a "yes" or "no" answer.  
19 BY MR. HOYT:  
20 Q. Mr. Hinkson, did you have Mr. Anthony Hilder  
21 escorted off the property?  
22 MR. SULLIVAN: I object. Relevance.  
23 THE COURT: Sustained.  
24 MR. HOYT: May we approach?  
25 THE COURT: Sure.

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1 (Whereupon, the following sidebar discussion  
2 was held outside the presence of the jury:)

3 MR. HOYT: Your Honor, part of our defense in  
4 this case is that Mr. Anthony Hilder hired Mr. Harding  
5 to go to Mr. Hinkson and to create a rouse and to have  
6 contact with him so that he could claim that Mr. Hinkson  
7 was making threats against people, murder-for-hire  
8 threats.

9 And part of our case in this defense is that  
10 Mr. Hilder conspired with Mr. Ted Gunderson in order to  
11 hire Mr. Harding for this purpose.

12 And this particular meeting where they were  
13 doing the video was a part of the rouse that they were  
14 setting up in order to get close to Mr. Hinkson, to have  
15 contact with him, to try to make friends with him so  
16 that they could get close to say that we were -- that  
17 is, Mr. Harding and his companion, Ms. Bates -- and to  
18 make these false accusations against him that he was  
19 allegedly trying to hire Mr. Harding to commit a murder  
20 and that Mr. Hinkson was allegedly making threats  
21 against the children of IRS people.

22 And it is the conspiracy of Mr. Hilder and  
23 Mr. Gunderson, as spawned by their connection with  
24 Arnette Hasalone, that will become the -- you are  
25 laughing, but it is not a laughing matter. This is what

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1 they did, and we have proof that they did it. And they  
2 were trying to set up Dave Hinkson for their purposes.

3 And the purpose that Arnette Hasalone was  
4 trying to set up Mr. Hinkson for was to take him out of  
5 circulation, have him thrown in jail, get him convicted  
6 of murder for hire so that he would spend the rest of  
7 his life in jail, so that she could steal his market  
8 share and, thus, his business.

9 MR. SULLIVAN: Your Honor, because that's  
10 their claimed defense doesn't vacate the hearsay rules.  
11 They could -- if this was their defense, I don't know  
12 why they didn't ask J. C. Harding some questions to set  
13 it up. They certainly had the opportunity.

14 It's co-counsel's fault? All right.

15 Nevertheless, they can't get in, through this  
16 witness, what a whole bunch of different people told him  
17 unless there is some exception to the hearsay rule.  
18 Just because it's part of their defense doesn't mean  
19 it's an exception to the hearsay rule.

20 THE COURT: The court's concern is not that  
21 you can't establish a defense, although I have to admit  
22 that this is a surprise to the court. This is the first  
23 time I have heard about this aspect of the defense.

24 The concern I have is the way that you are  
25 trying to prove it and you are doing it -- attempting to

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1 elicit hearsay statements from Mr. Hinkson.

2 There is no exception under the Rules of  
3 Evidence to have him testify in the manner that you are  
4 having him testify, as to what was said to him on this  
5 occasion. I just don't know of any exception that  
6 covers it, Mr. Hoyt.

7 MR. HOYT: Your Honor, I would like to proceed  
8 on this line and just simply have Mr. Hinkson testify as  
9 to his perception of what happened, in terms of the  
10 attempt to take video footage at his place, and that he  
11 was solicited for \$10,000 to purchase or pay for the  
12 video that Mr. Hilder wanted to do, subject to  
13 connecting it when we have Mr. Hilder and other parties  
14 testify next week.

15 THE COURT: Well, I'm going to allow you to  
16 elicit the fact that Hilder took a videotape because the  
17 jury has already heard testimony to that effect. And  
18 you can certainly have him testify as to what Hilder  
19 said to him with regard to the \$10,000.

20 Beyond that, the hearsay objection is  
21 sustained.

22 (Whereupon, the following proceedings were  
23 held in open court, in the presence of the jury:)

24 BY MR. HOYT:

25 Q. Mr. Hinkson, when Mr. Hilder arrived with

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1 Mr. Harding, were you aware that he was taking video  
2 footage of your factory?

3 A. No, I wasn't.

4 Q. Did he ask for your permission before he took  
5 the video footage?

6 A. No.

7 Q. At some point, did he solicit you for \$10,000  
8 to make a video movie of your experience of being raided  
9 by the U.S. Government?

10 A. Yes, that was his proposal.

11 Q. Did you accept his proposal?

12 A. No, I did not.

13 Q. And did you have him escorted off the  
14 property?

15 A. Rich Bellon escorted him off the property.

16 Q. Is that because he became adamant in his  
17 demand?

18 A. Yes, sir.

19 MR. SULLIVAN: Objection, Your Honor.

20 THE COURT: Sustained. The jury will  
21 disregard the last question and answer.

22 BY MR. HOYT:

23 Q. Why did you have him escorted off the  
24 property?

25 MR. SULLIVAN: Objection. Relevance.

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1 THE COURT: Sustained.

2 BY MR. HOYT:

3 Q. Now, at that time, did Mr. Harding leave with

4 Mr. Hilder?

5 A. Yes.

6 Q. Was Ms. Bates working at the factory at that

7 time?

8 A. According to my recollection, yes.

9 Q. And did you have any communication with

10 Mr. Harding about murder for hire on that occasion,

11 approximately February 20, 2003?

12 A. No.

13 Q. Had Mr. Hilder brought up the topic?

14 A. I'm just not sure how to answer this.

15 THE COURT: Let's try "yes" or "no."

16 THE WITNESS: Well, the topic was mentioned,

17 yes.

18 BY MR. HOYT:

19 Q. By whom?

20 A. They asked what it was about.

21 THE COURT: Who asked?

22 THE WITNESS: They asked me what it was about.

23 MR. SULLIVAN: Your Honor, I object. We are

24 back to --

25 THE COURT: The objection is sustained. It's

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1 factory in approximately February 20, 2003?

2 THE COURT: Mr. Sullivan?

3 MR. SULLIVAN: I object to the speculation and

4 opinion.

5 THE COURT: Sustained.

6 BY MR. HOYT:

7 Q. Mr. Hinkson, when was the next time you saw

8 Mr. Harding?

9 A. He showed up to get a load of products to take

10 to the show. He claimed he was visiting Anthony Hilder

11 up in Coeur d'Alene, and he was coming by.

12 MR. SULLIVAN: Objection, Your Honor.

13 Unresponsive.

14 THE COURT: It is unresponsive. The answer is

15 stricken.

16 BY MR. HOYT:

17 Q. Do you know approximately when that was?

18 A. I thought I answered that already. Oh, when

19 he came by, it would have been, I think, the first week

20 in March, maybe.

21 Q. Did you sell him some product on credit?

22 A. Yes, consignment. Jeri Gray gave him \$1,000

23 worth.

24 Q. And did he promise to pay for that product?

25 A. Yes, he did.

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1 a completely unintelligible statement.

2 Counsel, can you help us with a question?

3 BY MR. HOYT:

4 Q. Who asked you?

5 A. Anthony wanted me to explain the story that he

6 was offering to create a video about.

7 MR. SULLIVAN: Judge, I object to this.

8 THE COURT: Well, it does call for hearsay. I

9 am going to sustain it, based upon our discussion at

10 sidebar.

11 BY MR. HOYT:

12 Q. May I ask you this: You mentioned that

13 Anthony -- meaning Anthony Hilder; is that right?

14 A. Yes.

15 Q. My question is: Did Mr. Harding talk to you

16 about the subject of murder for hire?

17 A. No. He was angry that we wouldn't hire

18 Harding -- I mean, Hilder --

19 MR. SULLIVAN: Objection.

20 THE COURT: Sustained. The jury will

21 disregard everything after the answer, "No."

22 THE WITNESS: Okay.

23 BY MR. HOYT:

24 Q. What was your perception of the purpose for

25 the meeting when Mr. Harding and Mr. Hilder came to your

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1 Q. To your knowledge, did he ever pay for it?

2 A. No, he has not.

3 Q. To your knowledge, what did he do with that

4 product?

5 A. He sold it to another one of my distributors.

6 Q. And where is that other distributor based?

7 A. California.

8 Q. When was the next time -- now, strike that.

9 When Mr. Harding came and visited you and

10 picked up product in approximately the first week of

11 March -- that would be 2003?

12 A. Yes.

13 Q. Did you discuss murder for hire with him?

14 A. No, no. No, sir.

15 Q. Did he -- well, let me ask you this: When was

16 the next time you saw Mr. Harding?

17 A. I guess it was the 27th of March.

18 Q. And there has been a tape recording of a

19 communication that you had with Mr. Harding that

20 evening. Do you recall hearing that tape recording?

21 A. Yes, I do.

22 Q. Was that the fourth visit that we are talking

23 about here?

24 A. Yes.

25 Q. And that was March, you said, 27th of '03?

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1 A. I believe that was the date of the wire, yes.  
 2 Q. Did Mr. Harding notify you that he was coming  
 3 to visit you before he arrived?  
 4 A. There was a message on my answering machine.  
 5 He said he was going to come by to pay me.  
 6 Q. And did he pay you?  
 7 A. No.  
 8 Q. We have heard a good portion of that wire that  
 9 was tape recorded. Did you know that Mr. Harding was,  
 10 actually, wearing a tape recorder and transmitter that  
 11 evening?  
 12 A. No, because I talked pretty stupid on the  
 13 wire.  
 14 Q. What do you mean by "stupid"?  
 15 A. Just a BS session. I was depressed; and I was  
 16 venting, you know.  
 17 MR. SULLIVAN: I object, Your Honor. There is  
 18 no question pending. Unresponsive.  
 19 THE COURT: I think the jury -- that answer  
 20 can stand.  
 21 BY MR. HOYT:  
 22 Q. Mr. Hinkson, there was some mention on that  
 23 wire about children who were dying. Do you remember  
 24 that discussion with Mr. Harding?  
 25 A. Yes, I do.

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1 we lived out in the desert.  
 2 Q. And when was it that you started making good  
 3 money?  
 4 A. When we started in Las Vegas. But every penny  
 5 went to Idaho to try to get the factory opened.  
 6 Q. And as you have gone along in your business,  
 7 where have you put the profits that you have made?  
 8 A. It all went back into construction, to create  
 9 the jobs and the infrastructure.  
 10 Q. Do you own a yacht?  
 11 A. No. I wish I did.  
 12 Q. Now, Mr. Hinkson, in reviewing this tape  
 13 recording between you and Mr. Harding that evening, you  
 14 mentioned to him that you were angry with certain  
 15 people, federal officials and others; is that right?  
 16 A. Yes.  
 17 Q. And for you, what did it mean to be angry with  
 18 these people?  
 19 A. Well, I was actually very frightened because  
 20 of the things they were saying about me.  
 21 Q. In fact, at one point, you say, "It's not what  
 22 I say; it's what they say I said"?  
 23 A. Yes. That's correct.  
 24 Q. Why were you concerned about what they say you  
 25 said?

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1 Q. What were you referring to that evening?  
 2 A. Well, I was -- what was in my mind was I was  
 3 thinking about the fact that we were bombing Iraq and  
 4 innocent children were being injured, and he was trying  
 5 to guide me there. And I said I was sorry, on the wire;  
 6 and then I corrected my statement.  
 7 Q. So in terms of the subject matter that  
 8 evening, were you and Mr. Harding on the same plane  
 9 throughout the evening?  
 10 MR. SULLIVAN: Object.  
 11 THE COURT: The jury is going to have to make  
 12 that determination.  
 13 Mr. Hinkson, the objection by Mr. Sullivan is  
 14 sustained.  
 15 MR. HOYT: I will withdraw that question.  
 16 Q. The body wire of the 27th of March, at page  
 17 131 -- the jury had the privilege of seeing the  
 18 transcript -- starts with the phrase, "I've never been  
 19 rich before." What did you mean by that?  
 20 A. Well, I have had a lot of really crazy things  
 21 happen to me when people perceive me with money. I  
 22 mean, it's like winning the lottery.  
 23 Q. Page 131. And what were the conditions that  
 24 you were living in when you were down in Las Vegas?  
 25 A. I had a mobile home, just a single wide; and

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1 A. Well, since the year 2000, there's been --  
 2 literally, the gossip about me being a machine gun  
 3 dealer, a hit man, and the head of two militias has been  
 4 roaring through the little gossip town of Grangeville.  
 5 Q. Have you ever been to a militia meeting?  
 6 A. No, sir.  
 7 Q. Have you ever held a machine gun in your hand?  
 8 A. No. I have never even held one, no.  
 9 Q. Now, Mr. Harding repeatedly asks you on this  
 10 wire if you want to kill or do away with certain people.  
 11 Do you recall that those questions were asked of you?  
 12 A. Yes. Actually, no. I wasn't really paying  
 13 much attention to him. I have read it since then.  
 14 Q. Well, what were you doing at the time that you  
 15 communicated with Mr. Harding on March 27th?  
 16 A. Well, he is not really a conversationalist.  
 17 So I would say I was venting and just talking to myself  
 18 outloud, pretty much.  
 19 Q. There is a statement here by Mr. Harding where  
 20 he says, "For \$6,000 I'll kill her," on page 133.  
 21 A. I don't think I responded because I don't  
 22 think I even heard it. But the mention of \$6,000 came  
 23 from one of my workers.  
 24 Q. You had been talking earlier that evening  
 25 about \$6,000?

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1 A. Yes.

2 Q. What had happened with that \$6,000?

3 A. Well, one of the girls in the office who I had  
4 just fired -- basically, as I walked by, jokingly said,  
5 "Those people that robbed you in Mexico, if you give me  
6 \$6,000 --"

7 THE COURT: Counsel, the jury will disregard  
8 that portion of the answer. Let me see counsel at  
9 sidebar.

10 THE WITNESS: Okay.

11 (Whereupon, the following sidebar discussion  
12 was held outside the presence of the jury:)

13 MR. SULLIVAN: The Government objects to going  
14 into any explanation of what happened in Mexico. It has  
15 to then follow that Ms. Raff's name will come up; and  
16 where it goes after that, I'm not sure. I don't think  
17 there are any good areas.

18 MR. HOYT: I didn't think we were going to get  
19 into Mexico.

20 THE COURT: You asked the question with regard  
21 to the \$6,000, and the only connection I know to \$6,000  
22 is Marianna Raff. So it's your fault, Mr. Hoyt. Just  
23 ask him a different question, and let's get away from  
24 this.

1 (Whereupon, the following proceedings were  
2 held in open court, in the presence of the jury:)

3 BY MR. HOYT:

4 Q. Did you think it was a little odd that  
5 Mr. Harding kept alluding to the hit man topic on March  
6 27th?

7 A. No, I didn't think it was really odd because  
8 that was a subject with him and Hilder at the previous  
9 meeting.

10 MR. SULLIVAN: I move to strike, Your Honor.

11 THE COURT: I will allow that question and  
12 answer to stand.

13 BY MR. HOYT:

14 Q. And he kept bringing up the subject, and your  
15 response was that you were suing people?

16 A. Yeah, that's what I'm doing. At least, I used  
17 to be.

18 Q. Now what are you doing?

19 A. Just rotting in jail.

20 Q. At one point, he says: "To me, you've made  
21 it." I'm now on page 133. "I mean --"

22 And you said, "I want to hurt them. I'm suing  
23 them."

24 What did you mean when you said, "I want to  
25 hurt them," and, "I'm suing them"?

1 A. Just what I said; I'm suing the people that  
2 were picking on me.

3 Q. And how did you want to hurt them?

4 A. By suing them.

5 Q. So you believed that just merely by suing  
6 somebody you would be hurting them?

7 A. Yes.

8 Q. Now, you mentioned that -- page 134, lines 6  
9 through 10 -- "I mean, how would you like it if they  
10 said you were a head of two militia and buying and  
11 selling machine guns and you're whacking people, all  
12 lies with no proof at all, and they're up there in front  
13 of the grand juries telling them all of these terrible  
14 things about you." What were you talking about?

15 A. I told Anthony Hilder the story about how they  
16 had been accusing me of all of these things since the  
17 year 2000.

18 MR. SULLIVAN: I object.

19 THE COURT: Sustained. I think you can ask  
20 him what he meant in his conversation with Mr. Harding.  
21 The answer that he gave is not responsive.

22 BY MR. HOYT:

23 Q. Mr. Hinkson, what did you mean to Mr. Harding  
24 when you made that statement?

25 A. Can you re-ask the question?

1 Q. Do you remember the statement that I just read  
2 to you, or should I read it again?

3 A. Read it again.

4 Q. At page 133, pages 6 -- excuse me -- lines 6  
5 through 10, the transcript reflects that you said:

6 "I mean, how would you like it if they said  
7 you were a head of two militia and buying and selling  
8 machine guns and you're whacking people, all lies with  
9 no proof at all, and they're up there in front of the  
10 grand juries telling them all of these terrible things  
11 about you."

12 The question is: What did you mean when you  
13 were talking to Mr. Harding on March 27th by making that  
14 statement?

15 A. I was talking about all of the accusations  
16 that they were telling the Grand Jury because I had just  
17 read the Grand Jury Minutes.

18 Q. Now, on page 135, lines 2 and 3, Mr. Harding  
19 asked you this question: "The three feds that you  
20 hate?"

21 And you responded: "Oh, I hate them."

22 What did you mean by that?

23 A. Well, they have been having endless Grand Jury  
24 tribunals against me. It doesn't make me really happy.  
25 I mean --

1 Q. And, at that time, did you have an active  
2 Bivens lawsuit against them?

3 A. Yes, I did.

4 Q. Then you said -- Mr. Harding made the  
5 following partial statement: "So I mean, that's -- "

6 You stated: "They kicked my door down and put  
7 machine guns in my face."

8 What were you referring to there?

9 A. I was lamenting the fact of what they had done  
10 to me.

11 Q. On what occasion?

12 A. The raid, when they came in with their armed  
13 forces or whatever.

14 Q. And then he said to you: "Right, but, I mean,  
15 I know that you told me. For me I just go, oh, that's  
16 just Dave. He's ranting and raving but you got to stop  
17 saying it to people or people are going to take it  
18 seriously."

19 And your response was: "They tried to murder  
20 me for real."

21 What did you mean by that?

22 A. Well, I didn't know what it meant; but,  
23 basically, I think I'm the target here.

24 Q. And why do you think someone tried to murder  
25 you for real?

1 A. Because, when Hines came in my bedroom, he was  
2 holding a silver-plated handgun. And I think when he  
3 asked, "Where's the gun? Where's the gun?" I think that  
4 they weren't prepared for me to say, "On the headboard."  
5 I think they were going to shoot me and plant it in my  
6 hand; that is what I believe.

7 Q. And then you said -- you were asked the  
8 following question at lines fourteen and 15, page 135:  
9 "So you're going to murder them? What are you going to  
10 do? What can you do?"

11 And you responded: "I'm going to sue them."

12 Do you recall that?

13 A. Yes, I do.

14 Q. And what did you mean when you said, "I'm  
15 going to sue them"?

16 A. Just what I said; I'm going to sue them. I am  
17 suing them. I really thought I could win in court.

18 Q. So you believed, at that time, that you had  
19 been the target --

20 MR. SULLIVAN: I object to the summarization  
21 by counsel.

22 THE COURT: Sustained.

23 MR. HOYT: I'm trying to get a state of mind.

24 THE COURT: I think he has testified to that.  
25 It's cumulative, and you're leading.

1 BY MR. HOYT:

2 Q. All right. Mr. Hinkson, after you had this  
3 conversation with Mr. Harding on March 27th, did you  
4 have any more communication with him?

5 A. No, sir.

6 Q. Now, during the time that Ms. Bates was at  
7 your place, do you recall having any discussions with  
8 her regarding the murdering of children?

9 A. No, sir.

10 Q. She testified that she overheard a  
11 conversation that you were having with a third party in  
12 which you talked about murdering children. Do you  
13 recall that she said those things from the witness  
14 stand?

15 A. I recall her saying that, yes.

16 Q. Was there ever a time that you had a  
17 conversation with anyone at your home, as she described,  
18 in which you talked about murdering children?

19 A. Well, I have never talked about that; but  
20 there was a conversation on the deck with one person who  
21 did visit during that period of time. Harding mentioned  
22 it in his testimony, also.

23 Q. All right. What was that conversation?

24 A. Patrick Johnson had come by.

25 Q. And what was that conversation?

1 A. He wanted to take --

2 MR. SULLIVAN: Objection. Hearsay.

3 THE COURT: I am going to allow the witness to  
4 identify, if possible, the date on which it occurred and  
5 if the subject of murdering children was part of that  
6 conversation.

7 BY MR. HOYT:

8 Q. Do you recall the date that Mr. Patrick  
9 Johnson came by?

10 A. Well, it was a -- it was just one of those  
11 four visits of -- it was one of the four visits of  
12 Harding. I would guess it would be the second visit.

13 Q. And what do you recall of that conversation?

14 A. Well, Patrick had brought an older gentleman  
15 with him. There was two of these people. And Hilder  
16 was there with Patrick Johnson, and Patrick Johnson was  
17 there to pick up the red Mustang because it had a dent  
18 in it. He does body work.

19 And that pretty much -- oh, the older  
20 gentleman that was with him was a paralegal. And I  
21 handed, at that time, a legal brief I did, the one about  
22 the public lands, and I gave that --

23 MR. SULLIVAN: Object.

24 THE WITNESS: -- to Patrick Johnson.

25 MR. SULLIVAN: There is no relevance.

1 THE COURT: Mr. Hoyt, can we elicit whether or  
2 not the topic of conversation with Mr. Johnson on that  
3 occasion had anything to do with murdering the children  
4 of federal officers?

5 BY MR. HOYT:

6 Q. Mr. Hinkson, on that occasion when you were  
7 talking with Patrick Johnson on the deck, do you recall  
8 the topic of murdering the children of federal officers  
9 coming up?

10 A. No, sir. Just car repair.

11 Q. Was there ever a time when Ms. Bates either  
12 stayed in your house -- or after she moved out of the  
13 house, to her apartment in Grangeville, was there ever a  
14 time when you had a conversation with a third party  
15 about murdering the children of federal officers?

16 A. No. No, sir. Never.

17 Q. Now, Mr. Hinkson, do you recall the testimony  
18 of Mr. Swisher?

19 A. Yes, I do.

20 Q. And Mr. Swisher alleges that you --

21 MR. SULLIVAN: I object to prefacing the  
22 question in this fashion.

23 THE COURT: Well, let's just elicit as to his  
24 response to Mr. Fisher's statement on the witness stand.

25 MR. HOYT: Thank you, Your Honor.

1 Q. Mr. Hinkson, according to Mr. Swisher's  
2 testimony, on a number of occasions you approached him  
3 and asked him to murder federal officials?

4 A. I have never approached him. I don't know  
5 where I would approach him; but, no, I have never talked  
6 to him about hurting anybody.

7 Q. Did you cut off communications with  
8 Mr. Swisher after the incident over the cyanide?

9 A. Yes. That was January 3rd or 4th.

10 Q. Of 2003?

11 A. Yes, sir.

12 Q. Did you have any communication with him after  
13 that time?

14 A. No. I wouldn't take his calls.

15 Q. Did you ever meet with him personally after  
16 that time?

17 A. No. I have never met with him.

18 Q. Now, Mr. Swisher stated that shortly after the  
19 lawsuit by Arnette Hasalene that you talked to him for  
20 the first time about killing Dennis Albers? Do you  
21 remember that testimony?

22 A. Yes, I remember that.

23 Q. And he included your ex-wife, Marie, in that?  
24 Do you recall that?

25 A. Yes. He said I was going to hurt Marie.

1 Q. Did you have such a communication with  
2 Mr. Swisher?

3 A. Never. I love Marie. I still love Marie.

4 Q. Mr. Hinkson, Mr. Swisher indicated that he had  
5 been solicited by you on a number of occasions and that  
6 he indicated that he was going to -- he said -- he was  
7 going to have to bring the hammer down, I think, is what  
8 he said. Do you recall that he said that in his  
9 testimony?

10 A. In his testimony? Yeah.

11 Q. Mr. Hinkson, did you ever have a communication  
12 with Mr. Swisher where you asked him to murder anyone?

13 A. No, sir.

14 Q. Do you remember the evening that Mr. Swisher  
15 went to Mr. Bellon's house with you for dinner?

16 A. Yes, I do.

17 Q. And I believe there was testimony that that  
18 occurred in approximately September of '02?

19 A. Yes, just before his open heart surgery.

20 Q. Was it before the raid?

21 A. Yes.

22 Q. And there was someone who came to dinner that  
23 night? Who was that?

24 A. Roman Polankio from the Ukraine.

25 Q. And did Mr. Polankio obtain any samples of

1 product from you at that time?

2 A. No. He got them the day before because Roman  
3 went to his lab with Lonnie. I'm sorry. Strike that.  
4 Chris Paitreyot took Roman to Swisher's lab.

5 Q. Let's see if we can tell the jury. Who is  
6 Chris Paitreyot?

7 A. Oh, I didn't realize it was an alias name till  
8 I heard his middle name; but he was a guy that made the  
9 minerals before Lonnie. He disappeared three days  
10 before the raid. He just, flat, disappeared.

11 Q. Were you concerned about him when he  
12 disappeared?

13 A. Yeah. Yeah.

14 MR. SULLIVAN: I object. Relevance.

15 THE WITNESS: I was concerned.

16 THE COURT: The jury will disregard the  
17 question and the answer.

18 BY MR. HOYT:

19 Q. Did you file a missing persons report?

20 A. Yes, I did. I filed a missing persons report  
21 because --

22 THE COURT: Mr. Hinkson?

23 THE WITNESS: -- I just couldn't figure out  
24 where he went.

25 THE COURT: Mr. Hinkson?

1972

1 THE WITNESS: Yes.

2 BY MR. HOYT:

3 Q. What was Mr. Chris Paitreyot's role?

4 A. He manufactured the minerals -- I taught him

5 how -- and every time he made a bunch, he would drive to

6 Swisher's house, drop it off.

7 And then a few days later, Swisher would fax

8 it over; or, when he picked up more samples, he would

9 verify the test to make sure the product was in

10 compliance with the Food and Drug Administration.

11 Q. Did Mr. Chris -- what was Mr. Chris

12 Paitreyot's middle name?

13 A. John.

14 Q. So it was Chris John --

15 A. Chris John Paitreyot, like "christian patriot"

16 (phonetic). Ha-ha.

17 Q. If that was his alias name, what was his real

18 name?

19 A. Carl Waterman, as I found out later. Carl

20 Waterman.

21 Q. Did you do a background check on this

22 Mr. Chris Paitreyot?

23 A. No.

24 MR. SULLIVAN: Object on relevance, Your

25 Honor.

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1974

1 skeet.

2 THE COURT: Is that that occasion? If that's

3 the case, then I will overrule the objection and allow

4 you to go into it.

5 MR. HOYT: Thank you.

6 Q. Do you recall that evening?

7 A. Yes, I do.

8 Q. Okay. Did Mr. Swisher tell you that evening

9 that he had killed lots of people before?

10 A. No, sir.

11 Q. Who fired the gun that evening?

12 A. I'm not really interested in guns, and I shot

13 it twice. Mostly, Joe shot from his chair because he

14 had a hard time standing. He was pretty sick.

15 Q. Did Roman use the weapon?

16 A. Oh, yeah. Roman was very excited. You are

17 not allowed guns in Soviet Russia.

18 Q. Soviet Russia? It's not Soviet Russia.

19 A. Well, it's Russia. He was taking the samples

20 to Russia, but he lives in the Ukraine. Let me clarify

21 that.

22 Q. Now, Mr. Hinkson, did you then, after the --

23 after that meeting, did you ultimately get the results

24 from Russia regarding the testing of the product?

25 A. About two days after Mr. Waterman disappeared,

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1973

1 THE COURT: I'm not sure what the relevance is

2 either, counsel. Sustained.

3 BY MR. HOYT:

4 Q. Looking at that September meeting now, do you

5 recall being there with Mr. Swisher and at Mr. Bellon's

6 house and with Mr. Roman Polankio?

7 A. Yes, I do.

8 Q. What was Mr. Roman Polankio going to do with

9 the samples that he took?

10 A. He was taking them to the laboratory in Russia

11 to get it tested, and Swisher was supposed to make sure

12 the product was perfect for the testing samples so that

13 we would be approved in the Soviet Union to market these

14 products.

15 Q. Do you recall that Mr. Swisher brought a gun

16 with him that evening?

17 A. Yeah. I believe it was --

18 MR. SULLIVAN: I object, Your Honor.

19 Relevance.

20 THE COURT: I am going to sustain the

21 objection as to the form of the question. It is

22 leading. I am also wondering about the relevance,

23 myself.

24 MR. HOYT: It was brought up by Mr. Swisher in

25 his direct testimony that he brought a gun and they shot

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1975

1 Roman sent me an e-mail; and he was very angry.

2 Q. Why was he angry?

3 A. Because none of the samples matched the label.

4 It was a complete failure.

5 MR. SULLIVAN: Judge, I move to strike based

6 on hearsay.

7 THE COURT: I agree. It's completely

8 irrelevant. The motion to strike is granted. The jury

9 will disregard all testimony with regard to the testing

10 in Russia and the results.

11 BY MR. HOYT:

12 Q. And did you ultimately purchase a machine to

13 test your own products?

14 A. Yes, an ICP machine.

15 Q. What does "ICP" stand for?

16 A. Inductively Coupled Plasma. I sent Lamie to

17 school to learn to run it.

18 Q. And what does this machine do?

19 A. It tests the whole periodic table. You put

20 one sample in, hit the button; and it gives a complete,

21 certified read-out.

22 Q. What is the periodic table?

23 A. It's the elements.

24 MR. SULLIVAN: Judge, I object.

25 THE COURT: The objection is sustained.

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1 BY MR. HOYT:

2 Q. Did Mr. Swisher try to sell you a testing  
3 machine?

4 A. Yes.

5 Q. When was that?

6 A. In the month of January. He kept insisting  
7 that we buy it for \$10,000.

8 Q. Had you already purchased the ICP machine?

9 A. I had made a contract to purchase it. It was  
10 a lease with a buy-out at the end.

11 Q. Did Mr. Swisher insist on selling you his  
12 machine?

13 A. He did.

14 MR. SULLIVAN: I object, Your Honor. Move to  
15 strike. Irrelevant.

16 THE COURT: Overruled. I will permit it.

17 BY MR. HOYT:

18 Q. Now, in relationship to January 4th, was it  
19 before or after the communication regarding the cyanide?

20 A. Say it again.

21 Q. In relation -- the offer to sell you his  
22 testing machine for \$10,000, was that before or after  
23 the January 4th --

24 A. Both. He started mentioning it at the first  
25 meeting. He said we needed our own machine, and he kept

1 hinting that we were to buy it.

2 Q. Now, that was back in November?

3 A. November, yes.

4 Q. And then did you ever inform Mr. Swisher that  
5 you had already purchased another machine?

6 A. I never would talk to him after the 3rd; and  
7 so, no, I never informed him. I sent Rich Bellon to  
8 deal with him.

9 Q. Did you -- you say the 3rd but --

10 A. The 3rd of January.

11 Q. Previously, you testified the 4th of January?

12 A. Well, the 4th is when he tried to blackmail  
13 me. The 3rd is when he signed the affidavit. You know,  
14 it's neck in neck there.

15 Q. What affidavit was that?

16 A. He signed an affidavit swearing that it was  
17 Chris Paitreyot that messed the products up that caused  
18 the raid from the FDA.

19 MR. SULLIVAN: Your Honor, I object.

20 THE COURT: Sustained. The jury will  
21 disregard the last statement. It's hearsay.

22 BY MR. HOYT:

23 Q. Mr. Hinkson, you were arrested on the 4th day  
24 of April 2003?

25 A. Yes.

1 Q. And how was it that you were arrested? What  
2 happened? What events occurred?

3 A. Well, Scott Mealer called the factory; and he  
4 told Tracy that they had information on my house  
5 robbery, the \$6,000 that got stolen from my house.

6 And they told me to come on down because they  
7 wanted to go over the evidence. I had a picture of the  
8 girl holding my stolen credit cards, and I had all of  
9 the proof that she robbed me.

10 So I gathered the proof together, and I drove  
11 down the hill to see Mr. Mealer about this house  
12 robbery.

13 Q. Mr. Mealer is with what law enforcement  
14 department?

15 A. Idaho County Sheriff's Department. He is a  
16 deputy.

17 Q. And did you go in and meet with him about that  
18 topic?

19 A. I did. I gave him a complete package of  
20 evidence, and we discussed it briefly.

21 Q. And at that point, did he introduce you to  
22 Agent Will Long?

23 A. Yes, he did.

24 Q. And at that time, did you have a tape recorder  
25 in your pocket?

1 A. Yes. I was wearing my own little Radio Shack  
2 tape recorder.

3 Q. And why were you wearing your own little Radio  
4 Shack tape recorder?

5 A. Well, I don't trust Mealer for a variety of  
6 reasons.

7 THE COURT: That's enough.

8 BY MR. HOYT:

9 Q. And what was your purpose in having the tape  
10 recorder in your pocket?

11 A. I knew he was having an affair with the girl  
12 that robbed me. Okay.

13 Q. What was your purpose?

14 A. Just to record it.

15 THE COURT: Ladies and gentlemen, you will  
16 disregard the witness's last statement. It is stricken.

17 BY MR. HOYT:

18 Q. What was your purpose in having the tape  
19 recorder?

20 A. I just wanted to protect myself; that's all.

21 THE COURT: You have asked the question. It's  
22 been answered. Ask another question unrelated to the  
23 purpose of having the recorder.

24 BY MR. HOYT:

25 Q. Mr. Hinkson, what was the -- was the tape

1980

1 recorder operating when Agent Will Long started  
2 communicating with you?  
3 A. Yes, it was.  
4 Q. And during that time, did you request to have  
5 the opportunity to speak with your attorney?  
6 A. Yes. I think, two or three times.  
7 Q. And was that recorded on the tape?  
8 A. Yes, it was.  
9 Q. Did Agent Long appear in court on April the  
10 9th, after that day, and was that a court hearing  
11 regarding your detention?  
12 A. Yes.  
13 Q. My question is: At that hearing, was Agent  
14 Long asked if you had requested an attorney at the time  
15 of your arrest?  
16 A. Yes.  
17 MR. SULLIVAN: I object to this procedure.  
18 THE COURT: Sustained. That is not a  
19 permissible question. It calls for hearsay. The jury  
20 will disregard the witness's answer.  
21 THE WITNESS: It's on the transcript.  
22 MR. HOYT: Sidebar?  
23 THE COURT: No. I have ruled. Ask another  
24 question.  
25

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1981

1 BY MR. HOYT:  
2 Q. At the detention hearing, were you permitted  
3 to face your accusers?  
4 A. No, sir.  
5 Q. Were you able to --  
6 MR. SULLIVAN: I object to the question, Your  
7 Honor.  
8 THE COURT: What is the relevancy of this,  
9 Mr. Hoyt? Sustained.  
10 BY MR. HOYT:  
11 Q. Now, Mr. Hinkson, you have been continuously  
12 confined in jail since April 4, 2003?  
13 A. Yes.  
14 Q. During that time, was Mr. Bellon working for  
15 you as a legal assistant?  
16 A. Yes.  
17 Q. And over the next few months, April, May, and  
18 June, did Mr. Bellon indicate to you that he wanted to  
19 be your partner in WaterOz?  
20 A. Yes. He insisted that I give him half of  
21 WaterOz or he would leave me rotting in jail.  
22 Q. Did he ever threaten you that he would come  
23 and testify against you if you didn't give him half of  
24 WaterOz?  
25 A. Yes, he did.

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1982

1 MR. SULLIVAN: Your Honor, could we have a  
2 time, date, and place?  
3 THE COURT: If you can, establish the time.  
4 BY MR. HOYT:  
5 Q. Yes. Can you tell the jury which times it was  
6 that Mr. Bellon made those threats?  
7 A. It wasn't the first couple of months but I  
8 would say June, July, --  
9 Q. On July 26th, did you advise Mr. Bellon that  
10 you would give him a one-half interest in a related  
11 entity to WaterOz?  
12 A. No. I'm going to answer that "no."  
13 Q. Did you tell Mr. Bellon that you would give  
14 him a one-half interest in WaterOz Club?  
15 A. Future. It was a future -- it was a thing  
16 that I promised that, in the future, we would work  
17 together and I would share with him in the future.  
18 Q. What was it you were going to share with him  
19 in the future?  
20 A. Anything we did together in the future.  
21 Q. Did it relate to WaterOz? The manufacturing  
22 company? The bottling plant?  
23 A. No, it did not.  
24 Q. Was WaterOz Club -- what position was it to  
25 hold, in terms of the total organization?

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1983

1 A. I would have to see the contract. There is no  
2 such thing as -- it hadn't been created yet. The entity  
3 that I was going to share with him was not in creation  
4 at that point. It was a future -- a future thing.  
5 Q. Was it to handle sales?  
6 A. In the future. It was something we were doing  
7 together, yes.  
8 Q. And you agreed to split the profits 50/50?  
9 A. From that new entity we were going to create,  
10 yes.  
11 Q. And that new entity was going to sell WaterOz  
12 products?  
13 A. And do legal seminars.  
14 Q. Why did you agree to give him a one-half  
15 interest in this future entity, WaterOz Club?  
16 A. He kept demanding something. That's the only  
17 thing I would promise him; I was going to work with him  
18 in the future.  
19 Q. And did you tell your attorney at that time,  
20 Mr. Brit Groom, to prepare a document reflecting this  
21 agreement?  
22 A. I dictated it over the phone; and they  
23 recorded it in the rough draft form, yes.  
24 Q. Was that rough draft ever brought to you to  
25 review and sign?

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1984

1 A. No, sir.

2 Q. Was that rough draft used by Mr. Bellon as his

3 basis for obtaining the temporary restraining order, to

4 the best of your knowledge?

5 A. Yes.

6 MR. SULLIVAN: I object. These have all been

7 leading questions.

8 THE COURT: Sustained as to the form of the

9 question.

10 BY MR. HOYT:

11 Q. What did Mr. Bellon use the rough draft of

12 that proposed agreement for?

13 A. Well, he created the TRO -- that's the

14 temporary restraining order -- and he accused my wife of

15 stealing a half million dollars.

16 MR. SULLIVAN: Judge, I object to this.

17 THE COURT: I am going to sustain the

18 objection.

19 BY MR. HOYT:

20 Q. Mr. Hinkson, there has been some testimony

21 about the fact that Mr. Bellon obtained a TRO, a

22 temporary restraining order, from the court in Idaho

23 County?

24 A. Yes, sir.

25 Q. And the question is: Did he use that proposed

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1985

1 agreement?

2 A. Yes, he did.

3 Q. Now, ultimately, what was the outcome of that

4 case?

5 A. He was removed from the factory by the Judge.

6 Eventually, the case -- we settled. Everybody dropped

7 the suit.

8 Q. Now, during that suit, did you learn that Joe

9 Swisher had materially participated in the takeover of

10 WaterOz?

11 A. Yes.

12 MR. SULLIVAN: Judge, I object to the form of

13 the question. The question calls for conclusions.

14 THE COURT: Sustained. Also, you are going to

15 have to lay a foundation. I assume that this was at a

16 time when Mr. Hinkson was in jail; so it would call for

17 hearsay, as well, counsel.

18 BY MR. HOYT:

19 Q. Mr. Hinkson, did Mr. Swisher sue you?

20 A. Yes.

21 Q. As a part of that suit with Mr. Bellon?

22 A. For half of everything I have, yes.

23 Q. Did he sue you for a specified amount of

24 money?

25 A. I remember it being six million, but that's

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1986

1 just my memory.

2 Q. And I believe he testified here that he sued

3 you for \$522,000.

4 A. That was his counterclaim.

5 Q. Oh, I'm misunderstanding. I am just talking

6 strictly about Mr. Swisher.

7 A. Yeah. He sued me for \$522,000, yes.

8 Q. And it was Mr. Bellon that had sued you for

9 half of the business; is that right?

10 A. Yeah.

11 Q. Sorry. That was my mistake.

12 A. The reason they filed that is because they

13 were both filed.

14 Q. Now, was part of Mr. Swisher's claim that he

15 wanted recovery for amounts that he had given you a

16 discount for when he was doing analytical testing?

17 A. Yes.

18 MR. SULLIVAN: I object to the leading

19 question.

20 THE COURT: Sustained.

21 THE WITNESS: Okay.

22 BY MR. HOYT:

23 Q. What was Mr. Swisher's basis for making his

24 claim of \$522,000 against you?

25 MR. SULLIVAN: I object on the grounds of

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1987

1 relevance.

2 THE COURT: Sustained.

3 MR. HOYT: Your Honor, it seems like it it

4 would go to impeachment of Mr. Swisher's testimony and,

5 also, show his bias and interest in --

6 THE COURT: The jury has heard the details

7 about this lawsuit ad nauseam. The question, I think,

8 if I understand the objection, is: What is he going to

9 say that's new that we haven't heard before?

10 MR. HOYT: May I ask a further question?

11 THE COURT: Sure.

12 BY MR. HOYT:

13 Q. Had Mr. Swisher ever submitted a billing

14 statement, a letter, a communication to you, indicating

15 that he felt you owed him this money --

16 A. Yes.

17 Q. Can I finish the question?

18 A. I thought you did. Yes.

19 Q. -- that he felt you owed him this money prior

20 to the time that he filed the counterclaim with the

21 court in the TRO lawsuit?

22 A. Oh, no.

23 Q. Was that the first time that you were ever

24 aware that Mr. Swisher was making such a claim against

25 you?

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1 A. Yes, it was.

2 Q. Now, Mr. Hinkson, Mr. Lonnie Birmingham came  
3 and testified about an alleged threat that you made and  
4 a solicitation of him to murder Mr. Albers. Did you  
5 hear that testimony?

6 A. Yes, I did.

7 Q. And Mr. Birmingham testified that he was  
8 working for you. He was your mineral maker; is that  
9 right?

10 A. Correct.

11 Q. And where did he work? What part of --

12 THE COURT: Counsel, this is repetitious. We  
13 have heard the testimony about where Mr. Birmingham  
14 works. Just ask him the question, the direct question,  
15 you are trying to get to.

16 MR. HOYT: I need to establish that he worked  
17 in the laboratory.

18 THE COURT: The jury knows that, counsel.  
19 This is cumulative, and you are wasting time. Ask  
20 another question.

21 BY MR. HOYT:

22 Q. Mr. Hinkson, Mr. Birmingham claims that he was  
23 working by the back door when you said to him you wanted  
24 him to go murder Dennis Albers for \$10,000. Do you  
25 recall that testimony?

1 A. Yes.

2 Q. Did that happen?

3 A. No. He doesn't work by the back door; and,  
4 no, it didn't happen.

5 Q. Did you ever vent, when you were in the  
6 WaterOz plant, around your fellow employees?

7 A. Yes.

8 Q. What kinds of things did you say?

9 A. Just about Dennis, I would say, "God needs to  
10 smite him."

11 Q. Why?

12 A. Because he was putting innocent people in  
13 jail.

14 Q. Did you ever say to anyone that you wanted  
15 them to kill Dennis Albers?

16 A. No, sir.

17 MR. HOYT: If I might have a moment, please?

18 THE COURT: Sure.

19 BY MR. HOYT:

20 Q. Mr. Hinkson, when you were at your factory,  
21 did you ever vent about feds?

22 A. Well, I had a letter called "The Nancy Cook  
23 Letter." That's about it. I did not vent on any one  
24 person.

25 Q. What was "The Nancy Cook Letter"?

1 A. It was a letter showing she had no delegation  
2 of authority and she was impersonating a U.S. Officer.  
3 I had mailed that to her.

4 Q. And do you ever recall venting about Nancy  
5 Cook at the factory?

6 A. Well, I didn't like her because she was, you  
7 know, stalking me. But I never said anything like -- I  
8 never even said, as I can remember, that I want God to  
9 smite her. Most of my focus was on Dennis Albers.

10 Q. And why was your focus on Dennis Albers?

11 A. I said, right on the wire, "I really hate  
12 him."

13 Q. Why do you really hate him?

14 THE COURT: Counsel, this is cumulative. He  
15 has testified to that already.

16 BY MR. HOYT:

17 Q. Did you ever see a letter by Mr. Albers to the  
18 Federal Government insisting that they put you in jail?

19 A. Yes, I did.

20 Q. Mr. Hinkson, did you ever do any research  
21 regarding Judge Lodge?

22 A. I didn't. Rich Bellon did.

23 Q. And to the best of your knowledge, what did  
24 that research entail?

25 A. He downloaded cases that the Judge had ruled

1 wrong on, and he had quite a variety of them.

2 Q. When you say "ruled wrong," do you mean that  
3 they were reversed?

4 A. Pretty much it was just Bellon's opinion that  
5 Judge Lodge ruled wrong every single time. I never had  
6 any experience with Judge Lodge at that time.

7 Q. And did you ever do any research into where  
8 Judge Lodge lived?

9 A. No. I had Lexis-Nexis, and I never used it  
10 for any of that.

11 Q. Did you find out that the U.S. Government had  
12 asked Lexis-Nexis for a record of your transaction  
13 requests?

14 A. Yes, yes. They requested it to prove that I  
15 was trying to solicit.

16 MR. SULLIVAN: Judge. I object to the --

17 THE COURT: It calls for hearsay. It's  
18 sustained.

19 BY MR. HOYT:

20 Q. Lexis-Nexis is a search engine; is that right?

21 A. Yes. It searches everything in the whole  
22 world, you know.

23 Q. Did you ever use Lexis-Nexis or any other  
24 search engine to find the home address of Steve Hines?

25 A. No, sir.

1 Q. Did you ever use Lexis-Nexis or any search  
2 engine to find the home address of Nancy Cook?

3 A. No, sir.

4 Q. Did you ever attempt to find out information  
5 such as the kind of automobiles that these people drove?

6 A. No, sir.

7 Q. Did you ever seek information as to where  
8 these people officed?

9 A. No, I did not.

10 Q. Or what hours they kept?

11 A. No, I did not.

12 Q. Or whether or not Mr. Hines or Ms. Cook had  
13 any children?

14 A. No, I did not. I did know that Dennis Albers  
15 has one daughter who is a lawyer, and she's a very nice  
16 lady.

17 Q. You have met her before?

18 A. Oh, yeah.

19 Q. Mr. Albers, in fact, represented you at one  
20 time, didn't he?

21 A. Yes. He was my lawyer until he decided to  
22 attack.

23 THE COURT: That's fine.

24 THE WITNESS: Okay.

25 (Whereupon, an off-the-record discussion was

1 held between Mr. Nolan and Mr. Hoyt, outside the  
2 presence of the jury.)

3 MR. HOYT: Your Honor, upon advice of counsel,  
4 he feels that the appropriate thing to do might be to  
5 ask the court if we can lay over until tomorrow and  
6 finish our examination at that time.

7 THE COURT: I think that's good advice,  
8 Mr. Hoyt; and I'd take it. The court will take it, too.

9 Ladies and gentlemen, we will be in recess  
10 until 9:00 a.m. tomorrow morning. Before you go, let me  
11 just alert you to our schedule.

12 I do have another matter that is related to  
13 this case that I am going to have take up outside your  
14 presence, and I have scheduled that for 3:00 o'clock  
15 tomorrow afternoon.

16 So for purposes of making your weekend plans,  
17 you can be assured that you will be out of here by at  
18 least 3:00 o'clock tomorrow afternoon.

19 Depending upon how the testimony goes  
20 tomorrow, it may be a little earlier than that; but we  
21 won't keep you past 3:00, in any event.

22 Again, keep an open mind. Don't talk about  
23 the case. Don't allow anybody to talk with you about  
24 the case. Don't do any outside research. Don't do any  
25 Internet research or anything of that nature. Don't

1 listen to the radio or read any newspaper articles, if  
2 there is any, going on in this case.

3 Have a nice evening, and we will see you  
4 tomorrow morning at 9:00 a.m.

5 (Whereupon, the jury was excused from the  
6 courtroom; and the following proceedings were held  
7 outside the presence of the jury:)

8 THE COURT: Counsel, let me just ask, for  
9 scheduling purposes tomorrow, who are your witnesses and  
10 how long do you estimate they will take? I take it,  
11 with the exception of checking your notes and so on, you  
12 are about finished on direct examination?

13 MR. NOLAN: We want to check our notes and  
14 make sure we haven't missed something.

15 THE COURT: He is an important witness, and  
16 you are entitled to get everything out of him you want.

17 MR. NOLAN: We have two witnesses tomorrow.

18 THE COURT: Who is that?

19 MR. NOLAN: Brit Groom and Greg Towerton.

20 THE COURT: How long do you estimate they will  
21 take on direct?

22 MR. NOLAN: I don't know about Greg Towerton.  
23 But if I have permission to do Mr. Groom, it shouldn't  
24 take more than a half hour. I want to establish times  
25 and litigation issues to try to -- not summarize but,

1 you know, try to get in perspective what happened.

2 THE COURT: Okay.

3 MR. NOLAN: As far as Towerton goes, the cross  
4 might be more substantial than the direct.

5 MR. SULLIVAN: Is that a question?

6 THE COURT: Mr. Sullivan, this really is a  
7 question for both parties because I don't hear even a  
8 full morning's worth of testimony unless you are  
9 anticipating -- of course, you still have to cross  
10 Mr. Hinkson, which will take some time.

11 MR. NOLAN: The best question is: How long  
12 does he expect to take for cross-examination?

13 THE COURT: Just a rough guess? I am just  
14 trying to make sure we have enough witnesses to fill up  
15 the time between 9:00 and 3:00.

16 MR. SULLIVAN: I think I can fill up the day  
17 with cross-examination.

18 THE COURT: Then I won't worry any further  
19 about losing any precious time with the jury.

20 I will see you all tomorrow morning at 9:00  
21 a.m. We are in recess.

22 (Whereupon, the court stood in recess.)

23 \* \* \*

CERTIFICATE

I, LORI A. FULSIFER, certify that I made a shorthand record of the matter contained herein, and that the foregoing typewritten pages contain a full, true, and accurate transcript of said shorthand record, done to the best of my skill and ability.

DATED this 8th day of April 2005.

LORI A. FULSIFER, CSR, RMR, CRR  
Certified Shorthand Reporter  
Idaho Certificate 354

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,            )  
  ) Case No.  
                          Plaintiff,    ) CR-04-127-S-RCT  
  )  
vs.                                        )  
  )  
DAVID ROLAND HINKSON,                )  
  )  
  ) Defendant.                                )  
\_\_\_\_\_

BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 21, 2005 (Fri)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 9, PAGES 1,997 THROUGH 2,299)

Prepared for:  
WESLEY W. HOYT  
ATTORNEY AT LAW

Reported by:  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
 )  
 ) Case No.  
 Plaintiff, ) CR-04-127-S-RCT  
 )  
 vs. )  
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 DAVID ROLAND HINKSON, )  
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 Defendant. )  
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1  
2  
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1  
2 **I N D E X O F E X A M I N A T I O N**

3 Witness Page Number

4 **SAMANTHA BURKE**

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17 **ROBERT CRAIG ENGLE, Ph.D. (Without the Jury)**

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2 **I N D E X O F R E C E I V E D E X H I B I T S**

3 Exhibit Number Page Received

4 Government's Exhibit No. 7 . . . . . 2067  
5 Government's Exhibit No. 13 . . . . . 2111  
6 Government's Exhibit No. 14 . . . . . 2158  
7 Government's Exhibit No. 15 . . . . . 2199  
8 Government's Exhibit No. 16 . . . . . 2199  
9 Government's Exhibit No. 17 . . . . . 2201  
10 Government's Exhibit No. 18 . . . . . 2205

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1 (Whereupon, the following proceedings were  
2 held outside the presence of the jury:)

3 THE COURT: Good morning.

4 Mr. Hoyt or Mr. Nolan?

5 MR. HOYT: Yes, Your Honor. We have a matter  
6 to take up.

7 MR. NOLAN: I am going to try to --

8 MR. HOYT: Let's do the witness first, if it's  
9 okay with you.

10 Your Honor, we have a witness here who has a  
11 flight at 11:00 o'clock this morning and needs to be to  
12 the airport by 10:00. We would like to interject her.

13 THE COURT: In the middle of Mr. Hinkson?

14 MR. HOYT: We have advised the Government. I  
15 don't think there is an objection.

16 MR. SULLIVAN: No objection.

17 THE COURT: Fine. We will take Ms. Burke.  
18 Are planes flying? This weather is --

19 MR. HOYT: I think there have been a bunch of  
20 flights cancelled. She has the reservation. We don't  
21 know what to do. The fog may lift.

22 THE COURT: The court certainly has no  
23 objection to taking her out of order.

24 Mr. Nolan?

25 MR. NOLAN: I am going to try to make this as

1 succinct as possible. Mr. Hoyt wishes to ask Mr. Hinkson  
2 on the stand about his understanding about a conspiracy.

3 Here is the evidence that we have of the  
4 conspiracy:

5 A witness by the name of Bott (sic.), who is  
6 on our witness list --

7 MR. HOYT: Webb.

8 MR. NOLAN: Webb -- excuse me -- overheard in  
9 the year 2000 Arnette --

10 THE COURT: Hasalone?

11 MR. NOLAN: -- Hasalone speaking to  
12 Mr. Gunderson who is someone -- anyway, Mr. Gunderson,  
13 saying that, in effect, she is going to try to get  
14 everything she can from Mr. Hinkson, et cetera.

15 Mr. Gunderson --

16 MR. HOYT: And put him in jail.

17 MR. NOLAN: And put him in jail.

18 Mr. Gunderson has a longstanding hostility  
19 toward Mr. Hinkson because of the Art Bell matter where  
20 Mr. Hinkson allegedly said something that he and  
21 Mr. Gunderson got into it about. And Mr. Gunderson is a  
22 good friend of Mr. Hilder, and Mr. Harding is associated  
23 with Mr. Hilder.

24 MR. HOYT: And Henderson.

25 MR. NOLAN: And that Mr. -- and that he has,

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1 at this time, a belief that all of these people are  
2 involved in a conspiracy to get him.

3 To the extent that he was aware at the time,  
4 he was aware of certain things at the time of the  
5 events, that would show his hostility towards Mr. Albers  
6 and Ms. Hasalone.

7 THE COURT: In 2000?

8 MR. NOLAN: In, I believe --

9 MR. HOYT: Yes, Your Honor, in 2000, 2001,  
10 2002, 2003.

11 MR. NOLAN: He was not aware of the connection  
12 to Gunderson and Hilder until the nature of this case --  
13 until this case was going on.

14 And, therefore, his bias and attitude -- his  
15 attitude on the stand today about these people is  
16 relevant to show his state of mind or bias.

17 THE COURT: At that time?

18 MR. NOLAN: Well, no. I'm sorry. His bias --  
19 his testimony now -- his state of mind now on bias is, I  
20 think, the connection that we can get in on that.

21 In other words, as he's testifying now, he has  
22 this belief that Harding, Hilder, and Gunderson are  
23 involved in the conspiracy with Hasalone.

24 Now, this question is very important to the  
25 defendant. We have these other witnesses lined up. I

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1 suggested to counsel that maybe we didn't need to call  
2 those witnesses if Mr. Hinkson could testify as to his  
3 belief in this conspiracy, rather than put on all of  
4 these witnesses who would say there was a conspiracy.

5 THE COURT: Let me hear from the Government,  
6 and then let me ask you a few legal questions.

7 MR. NOLAN: Right. Again, I've just tried to  
8 succinctly state it.

9 THE COURT: I think I understand your request.  
10 Go ahead, Mr. Sullivan.

11 MR. SULLIVAN: It sounds like Mr. Nolan is  
12 trying to wrap the hearsay exception of state of mind  
13 around a set of facts that are not otherwise proveable.

14 But because Hinkson believes it, even if they  
15 are outlandish, if the moon is made of blue cheese and  
16 if he believes it, he can testify to it. State of mind  
17 has some limits on it, I'm sure.

18 THE COURT: Here is my legal question. If I  
19 understand Mr. Nolan correctly, he is seeking to  
20 introduce, under the co-conspirator exception of Federal  
21 Rule of Evidence 801(D)(2)(e), statements that were made  
22 in 2000 by persons in regard to a conspiracy about which  
23 the court has heard virtually no evidence, at least  
24 certainly not evidence that is sufficient to establish a  
25 prima facie case that such a conspiracy existed.

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1 So at this point in the trial, I am not going  
2 to permit, under 801(D)(2)(e), those statements to be  
3 admitted because I just don't see that such a conspiracy  
4 actually existed, which may mean that you are going to  
5 have to bring in those other witnesses in order to lay  
6 the foundation. I would certainly then permit you to  
7 recall Mr. Hinkson at that point.

8 But I recall yesterday at sidebar, when this  
9 whole issue came up with respect to the Hilder  
10 conspiracy -- I know Mr. Hoyt was expressed some concern  
11 that, you know, everyone was surprised and making light  
12 of it.

13 Frankly, the court was surprised because it's  
14 the first time the court has heard any suggestion of  
15 such a conspiracy.

16 So at this point, I don't think that the state  
17 of mind exception is broad enough to permit Mr. Hinkson  
18 to testify to what his state of mind was as a result of  
19 hearing these statements he would be testifying to which  
20 would have to come in under 801(D)(2)(e); but before the  
21 jury could hear them, in order to lay the foundation so  
22 that he could then say, "Once I heard that, then it  
23 changed my state of mind," thus and so.

24 Am I making any sense here? That is the way  
25 I'm trying to analyze this thing.

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1 MR. NOLAN: I think that it may be that we are  
2 anticipating some cross-examination. In other words, if  
3 his credibility is challenged or a bias is established,  
4 then we might be able to ask him on the stand: Do you  
5 feel there is a conspiracy among these people?

6 THE COURT: I think that might be a fair  
7 question, depending upon how the cross goes.

8 MR. NOLAN: Right, right.

9 THE COURT: Which sort of might eliminate the  
10 whole evidentiary issue that I'm wrestling with under  
11 the 801(D)(2)(e) issue.

12 MR. NOLAN: I don't think I can bring it in on  
13 the direct. Depending upon what happens on cross, we  
14 may be able to say, "Do you think it's a conspiracy?"  
15 It may be relevant based on the cross.

16 THE COURT: I think if it is going to come in  
17 without laying the prima facie foundation, the rules  
18 otherwise contemplate that is the only other way I know  
19 how to do it.

20 MR. NOLAN: Thank you very much.

21 THE COURT: Thank you, Mr. Nolan.

22 MR. SULLIVAN: I note, if we are going to  
23 discuss conspiracy, if they are going to attempt to  
24 enter what is otherwise a hearsay statement under the  
25 801(D)(2)(e) exception, which is not really an

1 exception --

2 THE COURT: It is not hearsay, as a matter of  
3 law.

4 MR. SULLIVAN: There has to be one proof of a  
5 conspiracy, as Your Honor stated, but the exception --  
6 it goes on that the statement to be admitted, under (e),  
7 must be by a co-conspirator of a party and not just some  
8 conspiracy that exists out there somewhere. It must be  
9 a conspiracy of a party.

10 THE COURT: You are absolutely right.  
11 Mr. Hinkson cannot testify to statements of another  
12 co-conspirator in a conspiracy in which he was not a  
13 member.

14 That is your point; right?

15 MR. SULLIVAN: Exactly. And that the  
16 Government was not a member of a conspiracy. First of  
17 all, the rule only applies to a party. It's a statement  
18 of a party.

19 That's the basis of the -- you know, like any  
20 admission, it's a statement of a party. So if the  
21 statement of the party is admissible against the  
22 defendant, it's a statement by the Government. It's  
23 admissible as a party.

24 But Mr. Gunderson and Mr. Hilder and the whole  
25 crew of mock conspirators are not a party.

1 THE COURT: Well, it also seems to -- I think  
2 you are absolutely correct as a matter of law.

3 I will let you respond to that, Mr. Nolan. I  
4 think Mr. Sullivan is right, now that he reminds me of  
5 the application of the rule.

6 The other problem is this clearly is a  
7 collateral issue with respect to the attempt to impeach  
8 Mr. Harding. Under 803(b), what you are asking me to do  
9 is to allow you to prove up by extrinsic evidence the  
10 existence of such a conspiracy as it would inform the  
11 jury as to Mr. Harding's bias and motive in testifying  
12 against Mr. Hinkson.

13 I think, in the exercise of my discretion,  
14 based upon the state of the record at this point, I am  
15 not going to permit it.

16 MR. NOLAN: It may very well be, though, that  
17 we can establish that Mr. Hinkson believes there is a  
18 conspiracy. To the extent that he can say why he  
19 believes there is a conspiracy, it's not for the truth  
20 of the matter and it might be admissible for that --

21 THE COURT: No, because the problem is what  
22 you are really trying to introduce it for is to get in,  
23 through Mr. Hinkson's so-called state of mind, his  
24 belief as to why Mr. Harding is testifying against him  
25 and Harding's motive. I don't think that's proper

1 impeachment of Harding. I don't think you can do it  
2 that way.

3 MR. NOLAN: I think that we have resolved, as  
4 far as right now, for the benefit of the jury,  
5 Mr. Hinkson's -- the question of Mr. Hinkson.

6 As far as whether or not we are allowed to  
7 call those witnesses, we might want to address that  
8 later today --

9 THE COURT: All right.

10 MR. NOLAN: -- and, you know, give it some  
11 more thought.

12 THE COURT: Let's handle it this way:  
13 Mr. Hoyt, when you get to that point on redirect of  
14 Mr. Hinkson, before you ask the question, call for a  
15 sidebar so that we don't get, you know, bogged down in  
16 front of the jury over it.

17 MR. HOYT: Understood. It seems to me -- I  
18 think I understand the court's ruling -- that it  
19 wouldn't, in any event, be appropriate for me on his  
20 direct examination to ask him a series of questions, so  
21 I won't do that. I won't do that.

22 THE COURT: Okay.

23 MR. HOYT: What I am hearing is that, should  
24 some examination during cross bring up the subject, he  
25 may be allowed to testify about that; and then there is

1 the further issue as to whether or not we can get into  
2 the subject of his conspiracy. And that's something we  
3 can just take up later?

4 THE COURT: Yes.

5 So that we are clear on it at this point, my  
6 ruling is:

7 It is not admissible through Mr. Hinkson's  
8 testimony on his direct examination.

9 Depending upon how the cross-examination goes,  
10 if you feel on redirect that the door has been opened by  
11 the Government, when you get to that point in your  
12 redirect examination, single me for a sidebar so I will  
13 know where we are going.

14 MR. HOYT: Excellent. One quick question:  
15 Has the court received from the National Records any  
16 response yet?

17 THE COURT: No. And I can tell you I was  
18 expecting a Federal Express package to be delivered  
19 yesterday from my office in Seattle, and it didn't make  
20 it to Boise because of the fact that the Boise Airport  
21 was closed.

22 So I am afraid that those air courier services  
23 may be suffering from these fog-related weather problems  
24 that we are experiencing here in Boise.

25 And I haven't received anything, as far as I

1 know, unless Ms. Longstreet has received an e-mail or  
2 phone call.

3 THE COURTROOM CLERK: No. I checked this  
4 morning.

5 THE COURT: We haven't heard from anybody at  
6 the Records Center.

7 MR. HOYT: We did follow up. We know the  
8 package that we sent was received.

9 THE COURT: Great.

10 MR. HOYT: And, B, they did go ahead and put  
11 the records that were requested in an overnight pouch,  
12 probably Fed-Ex, and it was sent out yesterday. Of  
13 course, we have the local fog problem.

14 THE COURT: Hopefully, it will be here by  
15 Monday, in which case I think it will still be timely.

16 Mr. Sullivan?

17 MR. SULLIVAN: Judge, I have one document that  
18 I would like to turn over to the court on this matter  
19 for in-camera review to be done when these other  
20 documents reach you. We do have one document.

21 THE COURT: Is it a 302?

22 MR. SULLIVAN: No. It's a document from the  
23 Department of the Navy.

24 THE COURT: Is this in regard to Mr. Swisher?

25 MR. SULLIVAN: Yes.

1 THE COURT: All right. Well, let me take a  
2 look at it. Okay. Let's bring in the jury.

3 (Whereupon, the following proceedings were  
4 held in the presence of the jury:)

5 THE COURT: Mr. Hinkson, would you resume the  
6 witness stand, please?

7 MR. HOYT: Your Honor, were you going to  
8 permit us to call our witness out of order?

9 THE COURT: With the court's permission,  
10 ladies and gentlemen, because of a witness travel  
11 problem, I am going to allow the defense to interrupt  
12 the examination of Mr. Hinkson so that we can call a  
13 witness who is going to try and make an 11:00 o'clock  
14 flight out of here this morning.

15 With that, go ahead.

16 MR. HOYT: Thank you, Your Honor. At this  
17 time Mr. Hinkson would call Samantha Burke.

18 THE COURT: Ms. Burke, would you step forward  
19 and be sworn, please?

20 THE COURTROOM CLERK: Please raise your right  
21 hand.

22 \* \* \*

23 SAMANTHA BURKE,

24 having been called, sworn, testified as follows:

25 THE COURTROOM CLERK: Thank you. Please take

1 the stand. If you would, state your name and spell your  
2 last name for the record, please.

3 THE WITNESS: Samantha Burke, B-u-r-k-e.

4  
5 DIRECT EXAMINATION

6 BY MR. HOYT:

7 Q. Good morning, Ms. Burke.

8 A. Good morning.

9 Q. Ms. Burke, where do you live?

10 A. I live in Yakima, Washington.

11 Q. And what formal education do you have in the  
12 way of post high school?

13 A. I have a pharmaceutical tech degree.

14 Q. And from what institution did you receive that  
15 degree?

16 A. That was Big Bend Community College in Moses  
17 Lake, Washington.

18 Q. Have you ever worked in a pharmacy situation?

19 A. Yes, I have. I worked in two pharmaceuticals.

20 Q. And have you ever worked at WaterOz?

21 A. Yes, I did.

22 Q. Do you remember when you started at WaterOz?

23 A. I started at WaterOz on October 29th of 2002.

24 Q. What was your last day that you worked at  
25 WaterOz?

2014

1 A. December 1, 2004.

2 Q. By whom were you hired?

3 A. By Jeri Gray.

4 Q. And was Mr. Hinkson at WaterOz when you were

5 hired?

6 A. No. He was out of the country.

7 Q. And when did he return to WaterOz?

8 A. I believe, a couple weeks.

9 MR. TAXAY: Objection.

10 THE COURT: Overruled.

11 BY MR. HOYT:

12 Q. Did you work with Mr. Hinkson?

13 A. Yes, I did.

14 Q. And what were your job assignments at WaterOz?

15 A. I was to answer the telephone, customer

16 service and telephones, like, take orders. I also did a

17 copy -- all of the copying work. And, also, I created

18 the newsletter the last two months that I was working

19 there.

20 Q. And during that period of time, did you get to

21 know Mr. Hinkson?

22 A. Yes, I did.

23 Q. And did you ever hear Mr. Hinkson make any

24 threats towards either Mr. Albers or towards federal

25 officials?

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1 A. Yes, I did.

2 Q. At one point in time, were you aware that she

3 lived in Mr. Hinkson's house?

4 A. Yes, I was.

5 Q. When she first arrived, how did she treat

6 Mr. Hinkson?

7 A. She seemed to be a very health-conscious woman

8 and her goals were to, you know, get a job and --

9 MR. TAXAY: Objection. Non-responsive.

10 THE COURT: Sustained. That is not

11 responsive.

12 BY MR. HOYT:

13 Q. How did she treat Mr. Hinkson when she first

14 arrived?

15 MR. TAXAY: Objection.

16 THE COURT: Sustained.

17 MR. HOYT: Your Honor, that question is a

18 specific question designed to impeach the testimony of

19 Ms. Bates.

20 THE COURT: With that representation, I will

21 allow it. Go ahead.

22 MR. TAXAY: Your Honor, it calls for a

23 conclusion and opinion.

24 THE COURT: I am going to allow her to answer

25 the question. Let's see how it goes.

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1 A. No, I didn't.

2 Q. Did you observe how it was that Mr. Hinkson

3 worked at WaterOz?

4 A. Yes, I did. He was very, very, very observant

5 and busy with everything.

6 MR. TAXAY: Objection. Beyond the scope.

7 Relevance.

8 THE COURT: I agree. Sustained.

9 BY MR. HOYT:

10 Q. Were you there -- that is, in the sense of --

11 were you working at WaterOz when the Government raid

12 occurred on November 21, 2002?

13 A. No, we didn't work that day.

14 Q. Now, after that time, did you ever meet a

15 person by the name of Arnie Bates?

16 A. Yes, I did.

17 Q. And who was the worker at WaterOz who was the

18 closest in age to Ms. Bates?

19 MR. TAXAY: Objection.

20 THE COURT: I am assuming he is laying a

21 foundation. I will overrule it and allow her to answer

22 that question.

23 THE WITNESS: I was.

24 BY MR. HOYT:

25 Q. Did you socialize with Ms. Bates?

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1 Go ahead.

2 BY MR. HOYT:

3 Q. How did she treat Mr. Hinkson?

4 A. At first, she treated Mr. Hinkson like she was

5 very health conscious and that she was an innocent gal

6 that needed a place to work and needed a home.

7 MR. TAXAY: Objection.

8 THE COURT: I am going to -- ladies and

9 gentlemen, you may disregard that last answer. Let me

10 see counsel at sidebar.

11 MR. HOYT: I would move to strike the answer.

12 THE COURT: I am striking the question and the

13 answer. Do you want to ask another question? Let's do

14 that.

15 BY MR. HOYT:

16 Q. Did she seem to have any personal interest in

17 Mr. Hinkson?

18 MR. TAXAY: Objection.

19 MR. HOYT: This is the impeaching question.

20 THE COURT: I think it is. Overruled.

21 Go ahead.

22 MR. TAXAY: Calls for a conclusion.

23 THE WITNESS: Yes, she did.

24 BY MR. HOYT:

25 Q. What was that?

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1 A. She seemed, to me, as though she wanted to be  
2 with David and that she was looking --

3 MR. TAXAY: Objection.

4 THE COURT: Sustained.

5 Counsel, you have to lay a foundation as to  
6 what she observed, not what Ms. Burke assumed or  
7 speculated.

8 BY MR. HOYT:

9 Q. Ms. Burke, were you able to see Mr. Hinkson  
10 and Ms. Bates together from time to time while you were  
11 working there?

12 A. Yes.

13 Q. And did you see the way that she treated him?

14 A. Yes.

15 Q. And did those observations assist you in  
16 making the conclusions that you just arrived at?

17 A. Yes.

18 Q. And did you feel like she had a personal  
19 interest in Mr. Hinkson at that time?

20 MR. TAXAY: Objection. Conclusion.  
21 Relevance.

22 THE COURT: Sustained. Sustained. It is also  
23 leading. Please have her testify to her observations.

24 BY MR. HOYT:

25 Q. What was your observation, Ms. Burke?

1 A. What I observed was that I felt that Arnie was  
2 attracted to David.

3 MR. TAXAY: Objection.

4 THE COURT: Not what you felt. What you saw.  
5 I just want you to tell the jury, as best you can  
6 remember or explain it, what you saw about Ms. Bates.

7 THE WITNESS: I saw that Arnie Bates was  
8 making a pass toward David.

9 BY MR. HOYT:

10 Q. And that was at first. Did that change over  
11 time?

12 A. Yes, it did.

13 Q. And after she had been there for a while, how  
14 did she begin to treat Mr. Hinkson?

15 A. Then she treated David like she was not really  
16 interested in him.

17 MR. TAXAY: Objection.

18 THE COURT: Sustained. You have to confine  
19 it, counsel, to specific observations.

20 BY MR. HOYT:

21 Q. Let's go with specific observations. What did  
22 you observe about the way she treated him?

23 A. She treated him --

24 Q. Did she borrow his car?

25 A. Oh, she totally, yeah, borrowed his car. She

1 used him, basically.

2 Q. She lived in his house?

3 A. She lived in his house, borrowed his car, used  
4 him for money. She had no interest in him personally.

5 MR. TAXAY: Objection. Move to strike.

6 THE COURT: The jury will disregard the last  
7 portion of that answer as to whether she had an interest  
8 in him.

9 BY MR. HOYT:

10 Q. She gave the appearance that she was a prim  
11 and proper person when she arrived; is that right?

12 A. Yes, yes.

13 MR. TAXAY: Objection.

14 THE COURT: Sustained. The jury will  
15 disregard the question and the answer.

16 BY MR. HOYT:

17 Q. I want the specifics now. Did you become  
18 suspicious of Arnie Bates while she was working at  
19 WaterOz?

20 MR. TAXAY: Objection.

21 THE COURT: Sustained. Improper question.

22 BY MR. HOYT:

23 Q. What job assignment was Arnie Bates given when  
24 she first started working at the factory?

25 A. She worked one day in bottling; and then she

1 worked upstairs scanning documents, court documents.

2 Q. Now, you talked to her personally?

3 A. Yes, I did.

4 Q. Based upon your perception of her, did she  
5 have any interest in WaterOz?

6 MR. TAXAY: Objection.

7 THE COURT: Sustained.

8 BY MR. HOYT:

9 Q. Do you know -- did she move her belongings --  
10 strike that.

11 Did she indicate to you that her intention was  
12 to move to Grangeville and work at WaterOz permanently?

13 MR. TAXAY: Objection. Hearsay.

14 THE COURT: Sustained.

15 MR. HOYT: I think it goes to impeachment, and  
16 it's an exception.

17 THE COURT: Let me see counsel at sidebar.

18 (Whereupon, the following sidebar discussion  
19 was held outside the presence of the jury:)

20 THE COURT: Mr. Hoyt, I think I know what you  
21 are trying to do. It is the way that you are going  
22 about it that is causing all of these objections which  
23 are proper on the part of the Government.

24 What she is doing is she is, essentially,  
25 testifying to hearsay and to what her own impressions

1 were.

2 If Ms. Bates said something to her that is  
3 inconsistent with what Ms. Bates testified to, you can  
4 simply ask her about the impeaching statement; and  
5 that's it. You can't do much more with a witness like  
6 this.

7 MR. HOYT: In addition to that, Your Honor,  
8 there are some concrete facts. Ms. Bates did not move  
9 her belongings to Grangeville, even though she said she  
10 wanted to move there.

11 So I was trying to get into the area of the  
12 concrete facts of why she believed that Ms. Bates was  
13 not interested in WaterOz.

14 THE COURT: Why don't you just ask her, in a  
15 non-leading fashion, "Do you know whether or not she  
16 moved her belongings? At what period of time?" et  
17 cetera.

18 Instead, the way you are asking the question,  
19 you are, basically, just eliciting hearsay and her  
20 impressions. That is not proper impeachment.

21 (Whereupon, the following proceedings were  
22 held in open court, in the presence of the jury:)

23 BY MR. HOYT:

24 Q. Ms. Burke, did Arne Bates move her belongings  
25 to Grangeville?

1 A. No, she didn't.

2 MR. TAXAY: Objection. Foundation.

3 THE COURT: Overruled. Why don't you lay a  
4 foundation, counsel? Sustained.

5 BY MR. HOYT:

6 Q. You indicated that you socialized with  
7 Ms. Bates?

8 A. Yes, I did.

9 Q. And did you get to know her well enough to  
10 know where her belongings were located?

11 A. They were located in Grangeville -- or Boise.  
12 Actually, they were in Boise; and whatever she carried  
13 on her was in Grangeville.

14 Q. So she had a few personal items with her in  
15 Grangeville?

16 A. Right.

17 Q. The question is: Did she manifest, by her  
18 conduct, an interest in WaterOz?

19 MR. TAXAY: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. HOYT:

22 Q. What did you observe about her interest in  
23 WaterOz?

24 MR. TAXAY: Objection. Same question.

25 THE COURT: Sustained.

1 BY MR. HOYT:

2 Q. You indicated that she worked one day in the  
3 bottling plant?

4 A. Yes.

5 Q. After she worked in the bottling plant, did  
6 she ever seek to be assigned to any other part of the  
7 health product manufacturing of WaterOz?

8 MR. TAXAY: Objection. Foundation.

9 THE COURT: Sustained.

10 BY MR. HOYT:

11 Q. You said she was scanning documents; is that  
12 correct?

13 A. Yes.

14 Q. Did scanning documents involve anything  
15 related to the manufacturing of health products?

16 MR. TAXAY: Objection. Foundation.

17 THE COURT: I will allow that.

18 THE WITNESS: No.

19 BY MR. HOYT:

20 Q. And what were the circumstances under which  
21 Ms. Bates terminated her employment at WaterOz?

22 MR. TAXAY: Objection. Foundation.

23 THE COURT: Sustained.

24 BY MR. HOYT:

25 Q. Are you personally familiar with the

1 circumstances? Did you observe the circumstances under  
2 which she terminated at WaterOz?

3 A. Yes, I did.

4 Q. And would you please advise the court and jury  
5 what the circumstances were?

6 A. It was supposedly her birthday March 13th or  
7 14th, and we went to the bar after work and drank. And  
8 she was out all night long, till about 4:00 o'clock in  
9 the morning, and --

10 MR. TAXAY: Objection. Non-responsive.

11 THE COURT: I think that's all right.

12 Go ahead. Just ask another question,

13 Mr. Hoyt.

14 BY MR. HOYT:

15 Q. You said she was out till 4:00 o'clock in the  
16 morning. What happened the next day at work?

17 A. She never showed back up. She said she was  
18 hung over, and she never did come back to work.

19 Q. She never did come back to work ever?

20 A. To work, right, yes.

21 Q. She was finished at WaterOz at that point?

22 A. Yes.

23 MR. HOYT: No further questions.

24 THE COURT: Thank you, Mr. Hoyt.

25 Cross-examination?

1 CROSS EXAMINATION 2026  
2 BY MR. TAXAY:  
3 Q. Ms. Burke, you weren't with Ms. Bates 24 hours  
4 a day; isn't that right?  
5 A. Right.  
6 Q. You don't know what she was doing when she  
7 wasn't with you?  
8 A. Right. I don't know.  
9 Q. You testified that she borrowed Mr. Hinkson's  
10 car?  
11 A. Yes, she did, on one occasion.  
12 Q. And "borrow" means Mr. Hinkson let her have  
13 it; right?  
14 A. Usually, yes.  
15 Q. You said that she lived in his house?  
16 A. Yes.  
17 Q. She did so with Mr. Hinkson's permission;  
18 correct?  
19 A. Yes.  
20 Q. You spoke about her drinking until 4:00  
21 o'clock in the morning. I assume you were with her, and  
22 that's how you know this?  
23 A. Yes.  
24 MR. TAXAY: One second, Your Honor.  
25 THE COURT: Sure.

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1 BY MR. TAXAY: 2027  
2 Q. This evening that you guys went out till 4:00  
3 o'clock to the bar, is that the last time you saw  
4 Ms. Bates?  
5 A. I saw her one other time when she came to get  
6 her stuff from WaterOz.  
7 Q. Since then, you haven't had any contact with  
8 her?  
9 A. No.  
10 MR. TAXAY: Nothing further.  
11 THE COURT: Anything further, Mr. Hoyt?  
12 MR. HOYT: Nothing further, Your Honor. She  
13 may be excused.  
14 THE COURT: Thank you, Ms. Burke. You are  
15 excused. I hope you catch your 11:00 o'clock flight.  
16 Thank you.  
17 Mr. Hinkson, would you resume the witness  
18 stand, please?  
19 \* \* \*  
20 DAVID ROLAND HINKSON,  
21 having been called, previously sworn, testified as  
22 follows:  
23 THE COURT: Good morning, Mr. Hinkson. I  
24 remind you, sir, that you are under oath.  
25 MR. HOYT: Excuse me, Your Honor.

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1 THE COURT: Certainly. 2028  
2 MR. HOYT: We have great air conditioning in  
3 here today.  
4 THE COURT: At least it's cooler in here today  
5 than it was yesterday.  
6 MR. HOYT: Yes, indeed.  
7  
8 FURTHER DIRECT EXAMINATION  
9 BY MR. HOYT:  
10 Q. Good morning, Mr. Hinkson.  
11 A. Good morning.  
12 Q. Mr. Hinkson, would you please tell the jury:  
13 Do you have a criminal record?  
14 A. No, I have never had any problem with the law.  
15 Q. Have you ever been stopped by police?  
16 A. Yes.  
17 Q. And what was that all about?  
18 A. I have had about four speeding tickets in my  
19 entire life.  
20 Q. Have you ever had a parking ticket?  
21 A. No.  
22 Q. Have you ever been stopped --  
23 MR. SULLIVAN: I object. I object to this.  
24 THE COURT: Sustained.  
25

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1 BY MR. HOYT: 2029  
2 Q. Was there an incident near Teton, Idaho?  
3 A. Yes.  
4 Q. Briefly, tell us what happened.  
5 MR. SULLIVAN: Your Honor, I object if this is  
6 something about being stopped for speeding.  
7 THE COURT: If that's what it relates to, the  
8 objection is sustained.  
9 MR. HOYT: It doesn't relate to speeding, Your  
10 Honor.  
11 THE COURT: All right. Go ahead.  
12 BY MR. HOYT:  
13 Q. Mr. Hinkson --  
14 MR. SULLIVAN: I would ask for a question  
15 rather than an incident.  
16 THE COURT: Yes. Why don't we do it that way?  
17 BY MR. HOYT:  
18 Q. After the Teton Dam flood, did you work on  
19 the clean-up operation?  
20 A. Yes. I volunteered to clean up the Teton Dam  
21 mess.  
22 Q. As a result of that, did you find some  
23 snowmobiles that had been carried away in a flood?  
24 THE COURT: Counsel, let me see -- I think I  
25 know where you are going. The Government is objecting.

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1 Let me talk to you.

2 (Whereupon, the following sidebar discussion  
3 was held outside the presence of the jury:)

4 THE COURT: What do you seek to elicit? That  
5 he was investigated for the theft of a snowmobile? I  
6 mean, it's not impeaching. I don't know how it's  
7 relevant.

8 MR. HOYT: It shows the contact that he's had  
9 with police in the past, the level of his cooperation.  
10 it goes to general character. I think we are entitled  
11 to show the jury some background. Especially since the  
12 Government says that he is a law violator, I think that  
13 his history is relevant to the subject.

14 THE COURT: If they tried to impeach him on  
15 the subject, I wouldn't allow them do it because it's  
16 not proper impeachment.

17 MR. HOYT: It will be mentioned by Dr. Duke.  
18 It's in his report. He asked him if he had ever had any  
19 contact with police, and he mentions this incident.

20 If he doesn't have a chance to -- I don't want  
21 to have it come out later, not having given him the  
22 opportunity -- it's, like, two more questions just to  
23 get it out.

24 MR. SULLIVAN: Your Honor, it has nothing to  
25 do with the case. He's trying to put on good character

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1 testimony that he -- I don't know exactly what he did.  
2 If he was investigated, so what? I mean, it means, I  
3 guess, no charges so, therefore, there was nothing, so  
4 that's good character evidence.

5 THE COURT: Is that it? I mean, is that what  
6 he is going to say?

7 MR. HOYT: He has talked about those  
8 snowmobiles, and he had receipts for them. He had  
9 purchased them, and so that ended the investigation  
10 right there.

11 THE COURT: Then what is the relevancy? The  
12 fact that somebody was investigated for a crime and is  
13 either not charged or acquitted is not admissible.

14 MR. NOLAN: The only problem I had when I  
15 heard the question was Mr. Hinkson said, "I have never  
16 been," and I remembered that Dr. Duke had referred to  
17 that, that he had been investigated about this.

18 THE COURT: I'm going to decide over the  
19 weekend whether and how much of Dr. Duke's testimony is  
20 coming in. I don't know until I hear from Dr. Duke what  
21 the relevancy is, in terms of establishing a  
22 psychological opinion.

23 The fact that somebody has been investigated  
24 but never charged with a crime -- I just don't see what  
25 that has to do with anything.

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1 MR. NOLAN: All I am saying is that I can  
2 understand his follow-up question because we don't want  
3 to appear as if Mr. Hinkson is lying when Dr. Duke gets  
4 on the stand and says something about this incident.  
5 That was my thought.

6 THE COURT: Let me do this: If Mr. Hoyt  
7 thinks it's this important -- I question the relevancy  
8 of it, but I think we probably spend more time arguing  
9 about whether it's admissible or not than if we just let  
10 it in.

11 But I'm going to let it in only because you  
12 say that Dr. Duke is relying on it in forming whatever  
13 his opinions are.

14 MR. SULLIVAN: I have another matter that is  
15 related but separate. I seek permission of the court to  
16 make my very first question to Mr. Hinkson on  
17 cross-examination, "Isn't it true you are a convicted  
18 felon?"

19 THE COURT: With his answer, I think that's a  
20 fair question on cross-examination. I'm going to allow  
21 you to ask that question.

22 MR. NOLAN: Isn't there an issue about whether  
23 or not sentencing is required before you are, in fact,  
24 convicted?

25 THE COURT: I had my Law Clerk research that;

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1 and the answer is it comes in as a conviction, although  
2 you can establish on redirect that the matter has not  
3 yet been appealed and, therefore, is not final yet.

4 MR. NOLAN: That goes back and forth,  
5 depending upon the purpose. I have been reading stuff.

6 THE COURT: I thought about it. I have had  
7 some research done, and that's what I understand the  
8 Ninth Circuit law to be on that subject. You know,  
9 that's as much as I need to say now.

10 (Whereupon, the following proceedings were  
11 held in open court, in the presence of the jury:)

12 MR. HOYT: May I have the last question read  
13 back by the court reporter?

14 (Whereupon, the last question and answer were  
15 read back by the court reporter.)

16 BY MR. HOYT:

17 Q. Mr. Hinkson, can you briefly tell us what  
18 happened?

19 A. Yes, I was arrested for looting.

20 Q. Related to the snowmobiles?

21 A. Yes. I found them.

22 Q. And were you able to provide some  
23 documentation as to those?

24 A. Well, I called up the owners and tried to  
25 return them; and the owners didn't want them back

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1 because they were going to get new ones for free. And  
2 so I got a bill of sale signed for each one and I --  
3 MR. SULLIVAN: I object. Unresponsive.  
4 THE COURT: Sustained.  
5 BY MR. HOYT:  
6 Q. Were you able to present a bill of sale for  
7 those items to the police?  
8 A. Yes.  
9 Q. Did that end the investigation?  
10 A. Yes.  
11 Q. Mr. Hinkson, have you been convicted by a jury  
12 of the tax charges as have been discussed here in this  
13 case, specifically, on May 5th of 2004?  
14 A. Well, the Government thinks --  
15 THE COURT: Just "yes" or "no."  
16 THE WITNESS: -- I was convicted.  
17 THE COURT: "Yes" or "no," were you convicted?  
18 MR. SULLIVAN: Your Honor, I didn't hear the  
19 answer.  
20 THE COURT: The court reporter will re-read  
21 the question and the answer.  
22 (Whereupon, the previous question and answer  
23 were read back by the court reporter.)  
24 BY MR. HOYT:  
25 Q. Is the answer "yes" or "no"? "Yes" or "no"?

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1 A. Okay. I will say "yes" then.  
2 Q. Have you been sentenced on those charges yet?  
3 A. No.  
4 Q. Has the case been appealed yet?  
5 A. No.  
6 Q. Now, Mr. Hinkson, you were arrested on April  
7 4, 2003, related to these alleged threats, as testified  
8 by Agent Long; isn't that correct?  
9 A. Yes, I was.  
10 Q. And how long was it before the Government  
11 indicted you on this offense?  
12 A. Eighteen months.  
13 Q. In Mr. Harding's discussion about the body  
14 wire, Mr. Harding said that there was a long pause and  
15 that you stared at his chest and that, from that, he  
16 presumed that you were aware he was recording.  
17 MR. SULLIVAN: I object to the summarization  
18 of the testimony.  
19 MR. HOYT: I am laying a foundation.  
20 THE COURT: Overruled. I think it's a fair  
21 foundational question.  
22 BY MR. HOYT:  
23 Q. Do you recall that general testimony, sir?  
24 A. Yes, I do.  
25 Q. And, Mr. Hinkson, were you aware, on the night

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1 of March 27, 2003, when you had the conversation with  
2 Mr. Harding, that he was recording you?  
3 A. No. I had no idea.  
4 Q. After the raid of November 21, 2002, were  
5 records concerning your credit with credit companies  
6 removed? Did you discover they were removed?  
7 A. Yes. The files were taken from the factory.  
8 MR. SULLIVAN: I object. Relevance.  
9 THE COURT: Sustained.  
10 BY MR. HOYT:  
11 Q. After the raid, was your credit shut down?  
12 A. Yes.  
13 MR. SULLIVAN: I object.  
14 THE COURT: Sustained. Irrelevant.  
15 BY MR. HOYT:  
16 Q. Mr. Swisher contended in his testimony that,  
17 at one point in time, you had asked him to murder your  
18 former wife, Marie Hinkson, now Towerton. Do you recall  
19 that?  
20 A. Yes.  
21 Q. Do you have any reason or motivation to want  
22 her killed?  
23 A. No.  
24 MR. SULLIVAN: Asked and answered.  
25 THE COURT: It is cumulative, counsel. You

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1 asked him that yesterday. Sustained.  
2 BY MR. HOYT:  
3 Q. In the tape-recorded radio interview that was  
4 played for the jury, you are talking to a radio  
5 announcer; is that correct?  
6 A. Yes, that's correct.  
7 Q. And what was the name of that program? Do you  
8 recall?  
9 A. I don't remember.  
10 Q. Would the term "The Agitator Hour" refresh  
11 your recollection?  
12 A. Yes.  
13 Q. Now, is this a regular program that goes on,  
14 to your knowledge?  
15 A. I don't know because it was the first time I  
16 was ever on it, I think.  
17 Q. Now, you had -- you had been a radio talk show  
18 host, yourself?  
19 A. Yes. 1,000 shows I've done.  
20 Q. And do you recall, at the beginning of the  
21 tape recording, what the approach of the announcer was?  
22 Was it -- was it a spoof? Was it very serious? What  
23 was going on? What type of a program was it?  
24 MR. SULLIVAN: I object, Your Honor. It calls  
25 for a characterization.

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1 THE COURT: The tape is in evidence.  
 2 Sustained. The jury will have to draw its own  
 3 conclusions.  
 4 MR. HOYT: The full tape is not in evidence.  
 5 THE COURT: Well, your question is improper.  
 6 MR. HOYT: One moment, please.  
 7 MR. NOLAN: We would move offer a piece of  
 8 evidence, Your Honor. It's probably best to take it up  
 9 at the bench.  
 10 THE COURT: On this same subject?  
 11 MR. HOYT: We can do it at another time. It  
 12 doesn't have to be done now; but our purpose would be to  
 13 be offering it through this witness, i.e., to have him  
 14 authenticate the balance of the tape.  
 15 THE COURT: Why don't you have him  
 16 authenticate whatever it is you want him to  
 17 authenticate. Go ahead. We will see where we go.  
 18 BY MR. HOYT:  
 19 Q. Mr. Hinkson, do you remember the broadcast of  
 20 January 8, 2003?  
 21 A. Yes, I do.  
 22 Q. And there was a portion of it that was played  
 23 here for the jury?  
 24 A. Yes.  
 25 Q. Was that the full tape?

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1 A. No.  
 2 MR. HOYT: Your Honor, we would tender -- and  
 3 I'm sure you want to take that up with us as a legal  
 4 matter later. We would tender the balance of the tape  
 5 that wasn't played for the jury and ask that we can do  
 6 that at a later point in time.  
 7 THE COURT: Let me take a look at it at the  
 8 recess.  
 9 MR. NOLAN: We want to have a foundational --  
 10 whatever you think is necessary.  
 11 THE COURT: You have done that. If I rule it  
 12 admissible, you can play it. If I don't, then you  
 13 won't.  
 14 BY MR. HOYT:  
 15 Q. Hinkson, as a matter of speech, do you use  
 16 metaphors?  
 17 A. Yes, constantly.  
 18 Q. In the recording by Mr. Harding of March 27th,  
 19 you make the following statement at page 36, starting at  
 20 line 1.  
 21 My question is -- I want to read you -- let's  
 22 see. Let's see if we can put that before the witness.  
 23 The easiest way might be with the exhibit book.  
 24 Your Honor, may I approach?  
 25 THE COURT: Sure.

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1 MR. NOLAN: Mr. Hoyt, I have it here.  
 2 MR. HOYT: Exhibit H?  
 3 MR. NOLAN: It's page 36 of the transcript.  
 4 MR. HOYT: Page 36, okay. It's missing from  
 5 this book.  
 6 THE COURT: It should be -- isn't that 4-A,  
 7 Exhibit 4-A, the transcript of the --  
 8 MR. HOYT: It is also Exhibit 4-A.  
 9 MR. NOLAN: I have the transcript page here.  
 10 MR. HOYT: All right. May I put it on the  
 11 Elmo, Your Honor?  
 12 THE COURT: Yes. Go right ahead.  
 13 BY MR. HOYT:  
 14 Q. Mr. Hinkson, do you recall that you made this  
 15 statement starting at the top of the page: "The feds  
 16 are good for something, sport."  
 17 And Mr. Harding said to you: "Good for sport.  
 18 Did you bring the sporting feds today, Wilson? Yes, I  
 19 did."  
 20 And then you respond to him: "I got two IRS  
 21 (inaudible) we are going to hunt them. Got the hound  
 22 dogs ready? Yeah. (Inaudible) this one, white one.  
 23 Yeah."  
 24 And then Mr. Harding says to you: "Do you  
 25 think there are good guys in the system, though, that

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1 just don't know?"  
 2 Mr. Hinkson: "They quit."  
 3 My question to you is: Were you speaking  
 4 literally or metaphorically when you said, "We are going  
 5 to hunt them?"  
 6 A. Just metaphorically.  
 7 Q. Why would you use that metaphor?  
 8 A. There was a movie on TV about this where they  
 9 had done this and we were -- I was kind of joking about  
 10 this movie.  
 11 Q. Is that the kind of humor that you follow?  
 12 A. Not usually. I mean, I -- I was just BS'ing  
 13 with Mr. J. C.  
 14 MR. HOYT: Your Honor, subject to some  
 15 follow-up questions that would relate to the tape  
 16 recording of the radio interview and the portions that  
 17 were not played previously, at this time, no more  
 18 questions of Mr. Hinkson.  
 19 THE COURT: Very well. Thank you, Mr. Hoyt.  
 20 I will allow you to re-open if I admit that portion that  
 21 you want to play.  
 22 MR. HOYT: Thank you.  
 23 THE COURT: Cross-examination?  
 24  
 25

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CROSS EXAMINATION

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BY MR. SULLIVAN:

Q. Mr. Hinkson, let's start with last things first. This passage that Mr. Hoyt just read to you that started out on page 36, "The feds are good for something, sport," you think that's funny, don't you?

A. Well, they hunt me. Yeah, it's funny.

Q. So you are hunting them?

A. No.

Q. Isn't it correct that the -- you didn't get this from a movie, did you?

A. No. There was a movie where they took these two agents and they took them out in the outback and they hunted them.

Q. You found that amusing?

A. It was a good movie.

Q. You found that amusing?

A. No.

Q. The passage starts at page 135.

THE COURT: 35 or 135?

MR. SULLIVAN: I'm sorry. 35.

MR. HOYT: What line, counsel?

BY MR. SULLIVAN:

Q. Let's start at line 12. J. C. starts out saying: "No, the feds, how are they staying healthy?"

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Mr. Hinkson: "Nobody is opposing them."

Informant: "Why?"

Hinkson: "You go to jail, nobody cares."

Informant: "You think somewhere somebody just starts killing, go, okay. This is enough. They're not railroading me anymore."

Mr. Hinkson: "That was a true story where they are hunting those people, turn them loose, hunt them like animals."

Informant: "Yeah. Yeah."

Hinkson: "But they kidnapped two IRS agents. They turned them loose and hunted them. True story."

You thought that was a true story,

Mr. Hinkson?

A. I think the movie was based on that, yes, I do.

Q. And you thought that true story was entertaining?

A. Hollywood did, I think.

Q. Did you? You did, didn't you?

A. It was just a movie. It was a plot.

Q. You followed up that conversation with what appears at page, 36 and you join in the fun.

You say: "The feds are good for something, sport." And that expresses what you think of the feds,

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doesn't it?

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A. I think there are some federal agents that are very bad, and I think there are some good ones that are trying to do their job and honor the Constitution.

Q. You further say: "I got two IRS (inaudible) we are going to hunt them. Got the hound dogs ready? Yeah. (Inaudible) this one, white one. Yeah."

When you say, "I got two IRS," what are you referring to? The two IRS agents you are going to hunt?

A. I wasn't referring to anybody.

Q. You weren't referring to Jerold Vernon, the revenue agent; and Steve Hines, the criminal investigator?

A. No. I was just kind of BS'ing.

Q. Mr. Hoyt asked you if you used metaphors, just a few moments ago; correct?

A. Yes, he did.

Q. Let me ask you this question, if this was a metaphor, from page 25 of the radio interview on "The Agitator Hour."

MR. HOYT: One moment, please, counsel.

THE COURT: Counsel, you are going to have to enlarge that.

BY MR. SULLIVAN:

Q. Could we have the exhibit from the book? Page

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25 of Government's Exhibit SA, starting at 740. At 740, "DH," which is David Hinkson, do you see that on the monitor?

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A. Yes, I do.

Q. It reads: "About a week ago, but we sent her another letter and she's in default as of Friday this week again. That will be the fifth time."

You are talking about Nancy Cook?

A. Yes, I was, actually.

Q. You follow then with: "We're trying to give her every opportunity to cough it up. We want that stuff."

"Well, yeah."

And you follow with: "We got a fifty-million-dollar lawsuit and that's the evidence we need to finish her off. We need it."

Was it literal or a metaphor when you said you needed it or wanted it to finish her off?

A. Well, I'm asking for my discovery here. To "finish her off" would mean that she's going to lose in court.

Q. It doesn't mean that you were going to finish her off, in the metaphorical sense, that you were going to kill her?

A. No. It reads the way it's supposed to read.

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1 It says "finish her off." It's the lawsuit. We are  
2 talking about a lawsuit here.

3 Q. Those are your choice of words here; correct?

4 A. That's what it says.

5 Q. "Finish her off."

6 Let me ask you if this was also literal or  
7 metaphorical when you said, at page 48 of the radio  
8 interview, starting at 1454: "Well, I have to file a  
9 motion to put her in contempt." You were, again,  
10 referring to Ms. Cook?

11 A. Yes, I was.

12 Q. It says: "Well, no. She's -- she's  
13 denying --"

14 You say: "Somebody has to. Somebody has to  
15 say I motion to put her in contempt."

16 Announcer: "Well, no. Wait a minute. No.  
17 Wait a minute. The judge -- this was the judge's order.  
18 If somebody's not obeying the judge's order --"

19 And you say: "It's great. It's great because  
20 she has to dismiss everything. If she doesn't have it  
21 turned over, it's over for her."

22 Was that metaphorical or literal?

23 A. It's absolutely metaphorical. What I'm saying  
24 here is she won't give me my discovery. If she won't  
25 give me my discovery, she has to dismiss the phony

1 accusations against me.

2 By the way, I never got my discovery.

3 Q. Did I ask you that question, sir?

4 THE COURT: The jury will disregard what  
5 Mr. Hinkson just volunteered. It's not responsive to  
6 the question. It's stricken.

7 MR. HOYT: Discovery has been mentioned many  
8 times and I'm --

9 THE COURT: Counsel, I have ruled.

10 MR. HOYT: I'm not arguing about that. I  
11 wonder if we could have a definition of the term  
12 "discovery" in a lawsuit so the jury might understand.

13 THE COURT: I will allow -- you can handle  
14 that on redirect. I think the jury knows what discovery  
15 is.

16 Go ahead.

17 BY MR. SULLIVAN:

18 Q. You didn't mean, again, "kill her," just in  
19 some other metaphorical sense, but that things would go  
20 badly for her in the lawsuit?

21 A. Yes.

22 Q. But you continued in that statement. After  
23 you say, "It's over for her," you say, "And if she turns  
24 it over knowing that she forged that indictment, she's  
25 toast."

1 Is that metaphorical or literal?

2 A. That means that she's going to go to jail.

3 Q. By the way, she never went to jail, did she?

4 A. No. She kidnapped me.

5 Q. You went to jail?

6 A. Right. I was kidnapped.

7 Q. So when you say, "She's toast," you weren't  
8 referring to killing her; right?

9 A. No. I think she just should be in jail where  
10 she belongs.

11 Q. That was your choice of words, though, to say,  
12 "She's toast"?

13 A. It sure was.

14 Q. You say you were kidnapped, Mr. Hinkson?

15 A. Yes, I do.

16 Q. You know there was a court order for your  
17 arrest; correct?

18 A. I don't believe so.

19 Q. You were brought before Magistrate Judge  
20 Williams on --

21 A. There was no attached oath and affirmation;  
22 therefore, it was an invalid arrest warrant.

23 Q. So you must have moved to have the charges  
24 dismissed on that basis; correct?

25 A. It depends upon which case we are talking

1 about now.

2 Q. Which case are you talking about?

3 A. You are asking the questions. Why don't you  
4 rephrase it so I know what case you are talking about?

5 Q. I will. You said you were kidnapped. Which  
6 case were you kidnapped in?

7 A. I would say, both of them.

8 Q. Okay. It doesn't matter which one I'm asking  
9 about; is that correct?

10 A. That's correct.

11 Q. Your first kidnapping would have been  
12 11/21/02?

13 A. Yes.

14 Q. And you know there was an arrest warrant  
15 issued by a Federal Judge for your arrest on that date?

16 A. No Federal Judge signed that arrest warrant.

17 Q. So you must have moved to have the case  
18 dismissed on that basis; right?

19 A. No, I didn't. You said "Federal Judge." It  
20 was a Magistrate.

21 Q. He is a Federal Judge, sir.

22 A. I didn't know Magistrates were Federal Judges.

23 Q. So the answer to my other question was, no,  
24 you didn't move to dismiss on the basis that there was  
25 no signed arrest warrant; right?

1 A. I don't remember if I did or not.

2 Q. You spent a lot of time preparing for your  
3 testimony in this case, have you not?

4 A. I've spent zero time because I was supposed to  
5 be on Monday or Tuesday of next week, not today.

6 Q. So your testimony is you haven't spent any  
7 time preparing to testify, is that it?

8 A. I have not spent any time preparing for this  
9 testimony.

10 Q. After you were arrested 11/21, you contend  
11 that was a kidnapping?

12 A. Absolutely.

13 Q. And you told Judge Williams that; correct?

14 A. I told him I didn't understand the nature and  
15 the cause.

16 Q. And you told him, "The defendants have  
17 kidnapped the plaintiff"?

18 A. Yes, I did.

19 Q. And he didn't -- excuse me. He said, "That's  
20 your civil suit;" right?

21 A. I think he said that, yes.

22 Q. Your second kidnapping was April 4, 2003?

23 A. Yes.

24 Q. And that, again, was based upon a warrant  
25 signed by a Federal Judge?

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1 A. Without an oath and affirmation.

2 Q. And you were detained on that arrest warrant,  
3 weren't you?

4 A. I was put on hold.

5 Q. You were put on hold?

6 A. That's what you call it when you put somebody  
7 in jail with no bond or bail for 22 months. You call it  
8 a hold.

9 Q. Didn't the judge who signed the warrant call  
10 it a revocation of bond for violation of the terms of  
11 your bond?

12 A. I think he said something about I violated my  
13 release -- my release -- I'm not sure if I worded quite  
14 exactly right, but I don't have it in front of me so --

15 Q. You know that the reason for your arrest on  
16 April 4th was because there was an arrest warrant issued  
17 for your violation of bond?

18 A. There was an arrest warrant issued for making  
19 threats.

20 Q. Which violated your bond?

21 A. But there were no threats.

22 Q. You know you were -- you had your bond  
23 violated -- that is, revoked -- because of threats?

24 A. There were no threats. There was no evidence  
25 of a threat ever entered into the court until 22 months

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1 later.

2 Q. You had a hearing before a Federal Judge,  
3 didn't you?

4 A. I never had a --

5 Q. Let me finish the question. You had a hearing  
6 before a Federal Judge on the revocation of bond, too,  
7 didn't you?

8 A. I have never had a bond or bail hearing in 22  
9 months.

10 Q. You had one on April 9, 2003?

11 A. That was not a bond and bail hearing.

12 Q. And it was before --

13 A. It was not a de novo hearing.

14 THE COURT: Wait for the question,  
15 Mr. Hinkson.

16 BY MR. SULLIVAN:

17 Q. That was before Judge Mikel Williams who had  
18 set your bond, wasn't it?

19 A. I have never been on bond, that I know of.

20 THE COURT: Mr. Hinkson, did you have a  
21 hearing before Judge Mikel Williams on April 9, 2003?  
22 "Yes" or "no"?

23 THE WITNESS: Yeah, there was a hearing.

24 BY MR. SULLIVAN:

25 Q. All right. And you were seeking to be

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1 released on bond again; correct?

2 A. I had no chance to prepare for that hearing so  
3 I don't know what -- you said I'm seeking something?

4 Q. You were represented by Brit Groom; correct?

5 A. He showed up, yes.

6 Q. Is there a difference between showing up and  
7 being represented, Mr. Hinkson?

8 A. When there is no time to prepare, I don't  
9 think it's such good representation.

10 Q. And after the Judge ordered you held on the  
11 revocation of your bond, you appealed that to a District  
12 Court Judge, also; right?

13 A. We appealed the improper detention, yes.

14 Q. Right. And the District Court Judge affirmed  
15 the ruling of the Magistrate?

16 A. With no detail, yes.

17 Q. So you have had at least two hearings on the  
18 revocation of bond; correct?

19 A. They were not bond and bail hearings. They  
20 were not de novo hearings. So the answer is "no." I  
21 have never had a bond or bailing hearing de novo. No, I  
22 have not.

23 Q. When the District Court Judge upheld the  
24 Magistrate Judge, you took an appeal to the Ninth  
25 Circuit Court of Appeals about the revocation of your

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1 bond; true?

2 A. Yes, I did.

3 Q. So you had another review, a third review;

4 correct?

5 A. Yes, I did.

6 Q. And you were still held in jail because you

7 were found to have violated the terms of your bond and

8 to be a flight risk?

9 A. There has never been any evidence presented to

10 this court to show that I had ever made a threat at that

11 time.

12 Q. Agent Long testified at the first hearing on

13 April 9th; correct?

14 A. He committed five counts of perjury on that.

15 It's proven on the record.

16 Q. The Judge believed his testimony; correct?

17 A. Third-party hearsay is not evidence.

18 Q. The Judge didn't reject his testimony? He

19 accepted his testimony as accurate and truthful, didn't

20 he?

21 A. What he said was the perjury didn't matter or

22 something like that.

23 Q. Everyone perjures themselves against you; is

24 that correct, Mr. Hinkson?

25 A. It's proveable perjury. It's on the record.

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1 THE COURT: Mr. Hinkson, answer Mr. Sullivan's

2 question.

3 The court reporter will read back the

4 question.

5 (Whereupon, the previous question and answer

6 were read back by the court reporter.)

7 THE WITNESS: Everybody you have brought to

8 court.

9 BY MR. SULLIVAN:

10 Q. So I am also a part of those who bring perjury

11 against you, Mr. Hinkson?

12 A. I have no evidence that you personally did it.

13 Q. But you believe it?

14 A. I know that you know I'm innocent, and you are

15 prosecuting a person that you know is innocent.

16 Q. And you made that allegation against Dennis

17 Albers, too, didn't you?

18 A. I sure did.

19 Q. And you made that allegation against Nancy

20 Cook, didn't you?

21 A. Yes, I did.

22 Q. You made -- you make allegations without proof

23 against lots of people, don't you, Mr. Hinkson?

24 A. No, not lots of people.

25 Q. You accused Steve Hines of trying to murder

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1 you?

2 A. I think he did. He had a handgun in his hand.

3 Q. You had absolutely no proof of such a thing

4 that he was trying to murder you?

5 A. Well, we are all entitled to our opinion. I

6 didn't wave a gun in your face.

7 Q. You accuse Nancy Cook of being a member with

8 Mr. Hines to murder you on 11/21; correct?

9 A. No, I don't think Nancy Cook was there.

10 Q. She wasn't there, but you later accused her of

11 being a part of the plot to murder you?

12 A. No. She's not part of a plot to murder

13 anybody. She is just the prosecutor.

14 MR. NOLAN: Could I approach briefly, Your

15 Honor? I don't mean to interrupt.

16 THE COURT: Yes.

17 (Whereupon, the following sidebar discussion

18 was held outside the presence of the jury:)

19 MR. NOLAN: I would ask the court to admonish

20 the jury that any finding by a previous court or judge

21 regarding any threats or anything is not relevant to

22 whether or not he is guilty of those charges today, in

23 light of the cross-examination.

24 THE COURT: I think that's proper. Unless the

25 Government objects, I will give that limiting

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1 instruction now.

2 MR. SULLIVAN: Your Honor, he claims there

3 were no -- there was no evidence produced, that everyone

4 perjured himself. For the court to tell the jury now

5 that they shouldn't consider, you know, what happened in

6 those hearings --

7 THE COURT: No. I think Mr. Nolan's request

8 is more limited. He just wants me to tell the jury that

9 they are not to consider, in deciding whether or not

10 Mr. Hinkson is guilty of the counts in the indictment,

11 any decisions by a Federal Judge in connection with

12 holding him without bail.

13 (Whereupon, the following proceedings were

14 held in open court, in the presence of the jury:)

15 THE COURT: Ladies and gentlemen, I need to

16 give you another limiting instruction.

17 You just heard some testimony in response to

18 Mr. Sullivan's questions about decisions by other

19 Federal Judges and Courts of Appeal concerning the

20 reasons for holding Mr. Hinkson without bail.

21 You are not to consider the fact that other

22 judges have ruled upon some of the evidence in making

23 that determination, in evaluating the evidence that you

24 are hearing here in court, in deciding whether or not

25 Mr. Hinkson is guilty of the offenses charged in the

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1 Indictment. Do you understand that?  
 2 Okay. I see everybody nodding their head  
 3 "yes."  
 4 Thank you, Mr. Nolan.  
 5 Go ahead, Mr. Sullivan.  
 6 BY MR. SULLIVAN:  
 7 Q. Mr. Hinkson, you just now said you don't  
 8 believe you ever said that Nancy Cook was part of the  
 9 plot to murder you with Steve Hines?  
 10 A. She didn't show up on the property. She  
 11 plotted to bring these phony, false indictments against  
 12 me.  
 13 Q. Could I have a "yes" or "no" answer? Did you  
 14 accuse her of plotting to murder you?  
 15 A. I don't know. I don't think so.  
 16 Q. Didn't you put out on a website something  
 17 relating to your arrest, something called "David  
 18 Hinkson's Day of Terror at the Hands of Satan's Foot  
 19 Soldiers"?  
 20 A. I didn't put that on the Internet.  
 21 Q. So where it says, "I, David Hinkson," wasn't  
 22 you?  
 23 A. I wrote the article; but a bunch of other  
 24 people kind of massaged it, also. So, you know, it's --  
 25 Q. It's not quite your work? It's someone else's

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1 work?  
 2 A. It would be a combination of different people  
 3 that were active in writing that story, yes.  
 4 Q. But you started it, and it's your version of  
 5 what happened on 11/21/02?  
 6 A. I think the rough story is my version, yes.  
 7 Q. Didn't you say the following in that rough  
 8 story: "After thinking about the whole situation, I  
 9 believe that the defendants, Nancy Cook and Steve Hines,  
 10 orchestrated the raid on WaterOz and my home for the  
 11 sole purpose of murdering me and ending the lawsuit that  
 12 was filed against them by me in the amount of fifty  
 13 million dollars." You wrote that, didn't you?  
 14 A. In the rough draft, yes, I wrote that.  
 15 Q. So you just forgot that you accused a Federal  
 16 Prosecutor of trying to murder you?  
 17 A. I said "orchestrated," didn't I? I don't have  
 18 it in front of me so --  
 19 Q. It says: Nancy Cook and Steve Hines,  
 20 together, orchestrated the raid for the sole purpose of  
 21 murdering me.  
 22 A. I think that was their purpose, yes.  
 23 Q. Of course, you had no proof of such a thing?  
 24 A. No proof?  
 25 Q. Yes. You had no proof. You were not there to

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1 hear anyone talk about, "Let's go murder Dave Hinkson"?  
 2 A. A SWAT team and machine guns aimed at my house  
 3 and ear plugs in is no proof?  
 4 Q. You made it up as you were preparing this,  
 5 just to try to influence the public, didn't you?  
 6 A. No. I think that -- I think what you did was  
 7 very vicious, surrounding my house.  
 8 Q. You prepared this document, "David Hinkson's  
 9 Day of Terror at the Hands of Satan's Foot Soldiers," to  
 10 influence the public when they read it; right?  
 11 A. Well, yes. I think that was to influence the  
 12 public, yes.  
 13 Q. And it was the same purpose in going on "The  
 14 Agitator Hour," to influence the public; correct?  
 15 A. Yes, I did.  
 16 Q. Because you were facing trial on the tax case?  
 17 A. And the FDA charges.  
 18 Q. With the FDA charges and the structuring of  
 19 money charges; right?  
 20 A. Yes.  
 21 Q. And you hoped, by putting your message out in  
 22 this fashion, you could influence the public in your  
 23 favor?  
 24 A. Oh, I would think so, yeah.  
 25 Q. That could help you with any jury that heard

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1 your tax case?  
 2 A. I don't know if very many people saw the  
 3 letter. I don't know if that would help with my jury.  
 4 Q. You hoped it would when you put it out on the  
 5 website and did the radio show?  
 6 A. I don't think it had anything to do with the  
 7 jury. I think it was just me exposing my perception of  
 8 what is being done to me.  
 9 Q. And in order to expose this corruption, you  
 10 made up a lot of lies about Nancy Cook and Steve Hines?  
 11 A. I don't think those are lies. I think they  
 12 orchestrated to get me any way they could.  
 13 Q. You claimed Steve Hines came through the door  
 14 with a silver handgun --  
 15 A. Yes, I did.  
 16 Q. -- on 11/21? And you claim that he -- they  
 17 were -- they, the agents present, were going to kill you  
 18 and put that gun in your dead fingers? I think you used  
 19 that expression; correct?  
 20 A. Somewhere I think I said that, yes.  
 21 Q. Right?  
 22 A. I'm not sure where.  
 23 Q. Of course, that didn't happen, did it?  
 24 A. No, because I said, "It's on the headboard,"  
 25 and I don't think they expected me to answer that way.

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1 I really believe that they were holding the silver  
2 handgun to plant it in my hands. That is my belief  
3 system.  
4 Q. That's your belief system so that, therefore,  
5 makes it true?  
6 A. It's my belief system. And when I wrote that,  
7 I expressed it as my belief of what happened.  
8 Q. Now, you had a handgun there, right?  
9 A. Yes. Two of them, actually.  
10 Q. When you refer to "on the headboard," you are  
11 referring to a gun of your own?  
12 A. Yes, it was.  
13 Q. Was it registered to you?  
14 A. I don't know.  
15 Q. Where did you get it?  
16 A. Years ago. I don't know. Las Vegas  
17 somewhere.  
18 Q. But you have had it -- do other people know  
19 it's yours?  
20 A. I don't understand what you mean.  
21 Q. Did you show it to anybody? Did you take it  
22 out with some of the people to go shooting?  
23 A. No, I don't think it's ever been shot but one  
24 time.  
25 Q. But you have shot it, right?

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1 Q. The fact that nothing happened at all doesn't  
2 influence your belief system, does it?  
3 A. Nothing happened at all?  
4 Q. Right. No one shot you? No one planted a gun  
5 on you?  
6 A. They were planning to shoot if I would have  
7 looked out the window, I believe.  
8 Q. And that didn't happen either, did it?  
9 A. That's because I didn't go to the window.  
10 Q. They could have pushed you to the window,  
11 couldn't they?  
12 A. No. Then they would get shot, maybe.  
13 Q. You said there was -- when you came back from  
14 the bond hearing, you found urine in the bathtub?  
15 A. I did, and ear plugs all around the house.  
16 Q. And because you are skilled in chemistry, you  
17 must have taken a sample of the urine in the tub to  
18 prove your allegation?  
19 A. No. I just had somebody clean it up.  
20 Q. Because you are sure that they were planning  
21 to kill you, you must have taken photos of the urine in  
22 the tub?  
23 A. We took photos of everything.  
24 Q. You took photos of what, sir?  
25 A. Footprints, the muddy footprints, the doors

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1 A. One time, yes.  
2 THE COURT: Counsel, the record is a little  
3 confused here. I believe the witness testified that he  
4 had two guns, and you are asking him about one.  
5 BY MR. SULLIVAN:  
6 Q. I'm talking about the one you said was on the  
7 headboard.  
8 A. Yeah. It was a .45.  
9 Q. You had a .45 on the headboard?  
10 A. Uh-huh.  
11 Q. Was there anything that stopped the agents  
12 from taking that gun and putting it in your dead fingers  
13 if they wanted to?  
14 A. I think they didn't know who was all storming  
15 into the room. They were surprised, I think, to see me  
16 laying there. They all had ski masks on.  
17 Q. Yes.  
18 A. I think they hesitated in their plan. That's  
19 my belief.  
20 Q. And that, therefore, makes it true?  
21 A. In my mind, yes.  
22 Q. So Nancy Cook and Steve Hines didn't  
23 orchestrate it that well, is that correct?  
24 A. I don't think it went according to the plan  
25 they hoped.

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1 that got battering-rammed, the urine in the bathtub --  
2 we took a video of everything that was done.  
3 Q. Oh, you didn't mention that on direct, did  
4 you?  
5 A. Nobody asked me about a video on direct.  
6 MR. SULLIVAN: Your Honor, I would like to  
7 have the document that I was reading from marked as the  
8 next exhibit.  
9 THE COURT: Very well.  
10 MR. HOYT: Is that in? Is that already in?  
11 THE COURT: I think it's previously been  
12 marked as Exhibit 7; is that correct, Mr. Sullivan?  
13 MR. SULLIVAN: Yes, Your Honor.  
14 THE COURT: All right.  
15 THE COURTROOM CLERK: Do you want it 7-A or do  
16 you want it 13? We could do 7-A or 13.  
17 THE COURT: Do we have another 7?  
18 THE COURTROOM CLERK: We have a 7.  
19 THE COURT: It's already marked as 7.  
20 THE COURTROOM CLERK: He just wanted this  
21 portion.  
22 THE COURT: Do you want the whole thing or  
23 just the portion?  
24 MR. SULLIVAN: The whole thing, Your Honor.  
25 THE COURT: The whole thing. All right.

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1 Would you like it shown to the witness?  
 2 MR. SULLIVAN: Yes, Your Honor.  
 3 THE COURT: Ms. Longstreet?  
 4 THE COURTROOM CLERK: Did you admit it, Your  
 5 Honor?  
 6 THE COURT: I haven't admitted it yet,  
 7 Mr. Sullivan. Let's have him authenticate.  
 8 MR. SULLIVAN: What is the number, please,  
 9 your Honor?  
 10 THE COURT: 7, counsel.  
 11 BY MR. SULLIVAN:  
 12 Q. I am showing you Government's Exhibit 7, a  
 13 printout of the document I was just reading from, "David  
 14 Hinkson's Day of Terror." Do you recognize it?  
 15 A. Yeah. I have seen it before.  
 16 Q. Who were the other people who you say helped  
 17 you draft it?  
 18 A. Well, it kind of went everywhere. I know that  
 19 Rod Remlin pitched in and helped write it. Just a  
 20 variety of different people. I didn't even come up with  
 21 the title.  
 22 Q. Who did?  
 23 A. I'm not sure.  
 24 MR. SULLIVAN: Your Honor, I move the  
 25 admission of Government's Exhibit 7.

1 MR. HOYT: No objection.  
 2 THE COURT: Government's Exhibit 7 is  
 3 admitted.  
 4 (Whereupon, Government's Exhibit No. 7 was  
 5 received in evidence.)  
 6 BY MR. SULLIVAN:  
 7 Q. I am showing you Government's Exhibit 7 to the  
 8 jury, the document entitled "David Hinkson's Day of  
 9 Terror at the Hands of Satan's Foot Soldiers," by David  
 10 Hinkson.  
 11 THE COURT: Can you focus that, Mr. Sullivan?  
 12 BY MR. SULLIVAN:  
 13 Q. The passage I read to you is from page two,  
 14 the yellow underlining, the yellow highlighting. Do you  
 15 see that, Mr. Hinkson?  
 16 A. Yes, I do.  
 17 Q. At the bottom of the page -- let me ask you  
 18 this: Is it your contention, sir -- let me show you the  
 19 second page of the document. Do you see where it says,  
 20 "In light of the fact that I have always made myself  
 21 available and accessible to the court and defendant  
 22 Hines and Cook . . ." Do you see that?  
 23 A. Yes. I see that, yeah.  
 24 Q. How did you make yourself accessible to the  
 25 courts and Mr. Hines and Mr. Cook?

1 A. All you have to do is come and knock on the  
 2 door.  
 3 Q. How did you make yourself accessible to  
 4 Mr. Hines and Ms. Cook?  
 5 A. I was never in hiding.  
 6 Q. How did you make yourself accessible to the  
 7 court?  
 8 A. I guess you just serve papers like you  
 9 normally would anybody else.  
 10 Q. Isn't it true, sir, that you were invited to  
 11 meet with Special Agent Hines during his investigation  
 12 and you declined?  
 13 A. I think he cancelled.  
 14 Q. Didn't he invite you to have a meeting, and  
 15 you didn't show up?  
 16 A. No.  
 17 Q. Isn't it true you were invited to appear  
 18 before the Grand Jury to testify?  
 19 A. I do remember that, yes.  
 20 Q. And did you make yourself accessible to the  
 21 Grand Jury by doing that?  
 22 A. Yes. I was going to come, but there was  
 23 stipulations in there as to what I had to say; and,  
 24 therefore, I decided, under direction of counsel, not to  
 25 go.

1 Q. That invitation appears in Government's  
 2 Exhibit 1, your civil lawsuit; correct?  
 3 A. I'm not sure.  
 4 THE COURT: Counsel, would this be a good  
 5 time, while you are looking at that, to take our morning  
 6 recess?  
 7 MR. SULLIVAN: I have it, Your Honor.  
 8 THE COURT: All right. Go ahead.  
 9 MR. SULLIVAN: All right. We need the break,  
 10 Your Honor.  
 11 THE COURT: All right. Ladies and gentlemen,  
 12 we will take our fifteen-minute recess at this time.  
 13 (Recess.)  
 14 (Whereupon, the following proceedings were  
 15 held outside the presence of the jury.)  
 16 THE COURT: I know you have stuff to take up  
 17 with me, but let me dispose of the letter that was  
 18 tendered to me this morning for in-camera review.  
 19 For the record, it has got two dates on it,  
 20 the most recent of which is a January 10, 2005, letter  
 21 from the Department of Navy Headquarters, United States  
 22 Marine Corps, to Mr. Ben Keeley, K-e-e-l-e-y, of the  
 23 Idaho Division of Veterans Services, from Lieutenant  
 24 Colonel K. G. Dowling, D-o-w-l-i-n-g, who is the  
 25 Assistant Head for the Military Awards Branch.

1 Having reviewed it, I assume the Government  
2 has no objection if it's disclosed to the defense. I  
3 believe it to be Giglio material.

4 MR. SULLIVAN: Yes, Your Honor.

5 THE COURT: Very well. Ms. Longstreet, would  
6 you provide copies to defense counsel?

7 THE COURTROOM CLERK: All three of them to the  
8 defense?

9 THE COURT: I think the Government has a copy.  
10 We will keep one for the court record. She does have --  
11 oh, give the third one to the Government.

12 MR. SULLIVAN: Sorry.

13 THE COURT: That's all I had. What have you  
14 got? Somebody wanted to see me? No? That was it?

15 THE COURTROOM CLERK: You don't want this  
16 marked or anything?

17 MR. NOLAN: I would ask that it be a court  
18 exhibit.

19 THE COURT: Let's do that. Let's give it a  
20 court exhibit number and make it a part of the record  
21 that way.

22 THE COURTROOM CLERK: Court's Exhibit No. 1 is  
23 marked.

24 THE COURT: Very well.

25 THE COURTROOM CLERK: And sealed, Your Honor?

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1 THE COURT: Yes.

2 Mr. Hinkson, why don't you resume the witness  
3 stand. As soon as you do that, we will bring in the  
4 jury.

5 (Whereupon, the following proceedings were  
6 held in the presence of the jury.)

7 THE COURT: Mr. Sullivan, I believe there was  
8 a question pending that you can restate or I can have  
9 the court reporter read it back, if you would like,  
10 however you want to do it.

11 MR. SULLIVAN: If we could have it read back,  
12 the last question?

13 (Whereupon, the previous question was read  
14 back by the court reporter.)

15 BY MR. SULLIVAN:

16 Q. Mr. Hinkson, showing you Bates number 65 from  
17 Government Exhibit 1, your civil lawsuit, do you  
18 recognize this letter?

19 A. No, I don't recognize it.

20 Q. Did you attach it to your civil lawsuit?

21 MR. HOYT: Your Honor, just for clarification,  
22 objection. I think it was attached to a Memorandum in  
23 Support. The lawsuit was filed on April 16th, and it  
24 would be a physical impossibility to have attached the  
25 May 22nd letter; so that's my objection.

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1 THE COURT: It appears to be -- am I correct,  
2 Mr. Hoyt, it appears to be attached to a portion of  
3 Exhibit 1 that begins at Bates 044, captioned  
4 "Memorandum in Support of Objection to Certification"?

5 MR. HOYT: Yes, Your Honor. I believe that  
6 was an August 27, 2002, filing.

7 THE COURT: With that clarification,  
8 Mr. Sullivan, you may proceed.

9 BY MR. SULLIVAN:

10 Q. That was part of your lawsuit, correct?

11 MR. HOYT: Objection, Your Honor. I don't  
12 mean to be hypertechnical, but it may have been raised  
13 as a part of a motion that came up in the lawsuit. It  
14 doesn't necessarily mean that it was, quote, "part of  
15 the lawsuit."

16 THE COURT: Sustained.

17 Why don't -- Mr. Sullivan, perhaps you can  
18 just ask the question directly without showing the  
19 letter. That might be the better way to do it.

20 BY MR. SULLIVAN:

21 Q. Isn't it true, sir, you were invited to appear  
22 before the Grand Jury?

23 A. In reading that letter, we asked -- my lawyer  
24 asked, first, that I see the Grand Jury -- and then that  
25 letter was in response to our -- so the answer is "yes"

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1 on that.

2 Q. You were invited to appear and testify before  
3 the Grand Jury?

4 A. Yeah. After my lawyer requested it, yes.

5 Q. And after he requested it, you were invited to  
6 do so?

7 A. Correct.

8 Q. And you were given a date that you could  
9 appear?

10 A. Correct.

11 Q. But you didn't? You declined that invitation?

12 A. It was declined --

13 THE COURT: "Yes" or "no," Mr. Hinkson? Did  
14 you decline it?

15 THE WITNESS: Well, we didn't show up.

16 BY MR. SULLIVAN:

17 Q. Now, isn't it true that one of your complaints  
18 about the Grand Jury was that Ms. Cook only put people  
19 before it as witnesses who were unfriendly to you?

20 A. That's very true.

21 Q. Did you consider Jeri Gray to be unfriendly to  
22 you?

23 A. No. In fact, she's adopted me as her son.

24 MR. SULLIVAN: I move to strike, Your Honor.

25 THE COURT: If you wish.

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1 MR. SULLIVAN: All right. I will withdraw it.

2 Q. Jeri Gray adopted you as her son? Very good.

3 A. She did, yes.

4 Q. And she appeared before that Grand Jury;

5 right?

6 A. She was forced to appear, yes.

7 Q. Did she appear or didn't she?

8 A. She appeared.

9 Q. She wasn't your enemy, was she?

10 A. No.

11 Q. And Grant Walton appeared before the Grand

12 Jury, likewise?

13 A. Yes, he did.

14 Q. He wasn't your enemy?

15 A. No. He's a good man.

16 Q. Bruce Meinen appeared before the Grand Jury,

17 and he wasn't your enemy?

18 A. That's true. He's a good man, too.

19 Q. But in the interview on "The Agitator Hour",

20 you claim that Ms. Cook only put people unfriendly to

21 you before the Grand Jury; right?

22 A. If that's what I said, that's what I said.

23 Q. Well, you knew it was false when you said it?

24 A. Well, every person that ever seems to have

25 been fired from WaterOz has been taken and put in front

1 of a Grand Jury.

2 Q. Do you admit, when you said on "The Agitator

3 Hour" that Ms. Cook only put unfriendly people before

4 the Grand Jury, that that was a false statement because

5 you knew at least three friends of yours had been put

6 before the Grand Jury?

7 MR. HOYT: Your Honor, I think that is

8 argumentative.

9 THE COURT: I think it's a fair question.

10 "Yes" or "no"?

11 THE WITNESS: I -- it's probably a

12 misstatement.

13 BY MR. SULLIVAN:

14 Q. A misstatement?

15 A. Unless, of course, of the time line. It

16 depends upon when they were in front of the Grand Jury,

17 and it would depend when I made the statement.

18 Q. You appeared on "The Agitator Hour" after your

19 indictment; correct?

20 A. I believe so.

21 Q. Didn't you appear on "The Agitator Hour" on

22 January 8, 2003?

23 A. I don't have a recollection; but if you say

24 so, it's okay.

25 Q. By the way, didn't you say on "The Agitator

1 Hour" that you have a photographic memory?

2 A. I have a pretty good memory.

3 Q. You don't remember the date that you appeared

4 on "The Agitator Hour"?

5 A. It didn't seem important enough to remember

6 the date.

7 Q. But you recall that it was after your

8 indictment; correct?

9 A. Yeah, I would agree with that.

10 Q. And you knew that those three people, Jeri

11 Gray, Bruce Walton and -- excuse me -- Grant Walton and

12 Bruce Meinen all appeared before the Grand Jury before

13 your indictment?

14 A. That's true.

15 Q. They all appeared in 2002?

16 A. Okay.

17 Q. Was it a -- referring to Government's Exhibit

18 Exhibit 5-A, the radio transcript -- let me put it on

19 the monitor.

20 Q. Page seventeen, line 494, was it a

21 misstatement at this point when the announcer asked:

22 "Who were the people that -- who were the people that

23 they called into this Grand Jury that were saying all

24 this?"

25 And you answered: "Anybody that I ever fired

1 or didn't like me."

2 And you answered: "They found them all."

3 A. It's true.

4 Q. That's what you said; right?

5 A. Yes.

6 Q. You knew that was false when you said it?

7 MR. HOYT: Objection, Your Honor. It

8 mischaracterizes the whole transaction. He didn't

9 say -- he was asked previously: Did you say --

10 THE COURT: Counsel, you can bring it up on

11 redirect. Your objection is overruled. It's a fair

12 question on cross-examination.

13 BY MR. SULLIVAN:

14 Q. Was that a misstatement when you made that

15 statement that I just read?

16 A. Well, I didn't exclude the people that were

17 friends; so I would say, yes, it's probably a

18 misstatement.

19 Q. Because you knew that Mr. Walton, Mr. Meinen,

20 and Miss Gray had all appeared before the Grand Jury in

21 2002; right?

22 A. Yes.

23 Q. Another one of your friends, a fourth friend,

24 appeared before the Grand Jury in 2002. You knew that

25 was Mr. Swisher; right?

1 A. Yes. I was aware he was in front of the Grand  
2 Jury, yes.

3 Q. And he was your friend in 2002, wasn't he?

4 A. He was a tester, an acquaintance. I wouldn't  
5 call him my friend.

6 Q. And you accused -- strike that.  
7 And you also accused Nancy Cook of putting  
8 people before the Grand Jury who lied about you; right?

9 A. Absolutely.

10 Q. And you took that very personally, didn't you?

11 A. Yes. I would take it personal, yes.

12 Q. You took it so personal that you decided to do  
13 something about it?

14 A. Yeah. I sued her.

15 Q. You did more than that, didn't you,  
16 Mr. Hinkson?

17 A. I can't think of anything else.

18 Q. Same page, seventeen, starting at 491: "God,  
19 everything is a lie that they said. They sat there day  
20 after day hearing orchestrated lies against me."

21 A. Yes.

22 Q. "I do take that kind of personal."

23 A. Yeah. You would take it personal if somebody  
24 is lying against you in front of the Grand Jury.

25 Q. I am going to show you again Government's

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1 Exhibit 7, a document entitled "Hinkson's Day of  
2 Terror." Referring to the second page, you made the  
3 statement at the very bottom, yellow highlighted, "I was  
4 not, and am not, planning on going anywhere;" correct?

5 A. That's what it says on the paper.

6 Q. What is the date that you made that statement  
7 on this paper?

8 A. I don't know. What's it dated?

9 Q. Do you see the date that I'm pointing to at  
10 the top of Exhibit 7?

11 A. Yes.

12 Q. It says published November 29, '02?

13 THE COURT: Excuse me, counsel. I think there  
14 is a "12" there. I think it's December.

15 MR. SULLIVAN: It's 11/29/02.

16 THE COURT: Where are you looking? I'm  
17 looking at something that says "published."

18 MR. HOYT: Published 12/10/02.

19 THE COURT: Are you looking at a different  
20 piece of paper than I am?

21 MR. HOYT: Do you want to borrow my copy? Go  
22 ahead.

23 BY MR. SULLIVAN:

24 Q. I'm sorry. Your Honor is correct.  
25 "12/10/02," do you see that at the top? It's yellow

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1 highlighted.

2 A. Yes.

3 Q. So at that point in time, you had been  
4 indicted and arrested and you made your appearance  
5 before Judge Mikal Williams; correct?

6 A. Yes.

7 Q. And he had released you on bond; correct?

8 A. No.

9 Q. He didn't release you on bond?

10 A. No. He just released me on -- he called it  
11 O.R., I believe.

12 Q. Right.

13 A. On my own recognizance because he said I never  
14 had a criminal record and I was not a threat.

15 Q. And you had to sign a document that was an  
16 O.R. bond?

17 A. Well, I didn't know it was a bond. There was  
18 no money attached, but I did not sign it.

19 Q. You were ordered to sign it; correct?

20 A. Yes, I was ordered to sign it.

21 Q. And then you did?

22 A. No, I didn't.

23 Q. You didn't sign it?

24 A. No.

25 Q. Showing you Government's Exhibit 5-A, the

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1 transcript of the radio interview, you talked about  
2 appearing before Judge Williams on the radio interview,  
3 didn't you?

4 A. I don't recall. But if this is what it says,  
5 I will go with it.

6 MR. HOYT: Is there a page?

7 BY MR. SULLIVAN:

8 Q. Page 40, starting at 1216. Excuse me. Start  
9 at 1208. Starting at 1208, you said -- on "The Agitator  
10 Hour," you are referring to your appearance before Judge  
11 Williams at this point, are you not?

12 A. Yes, I am.

13 Q. You said: "I'm confused. I don't know the  
14 nature and the cause. He says . . ." That's the judge;  
15 correct?

16 A. I would believe so.

17 Q. ". . . Well, what's nature? I said, well, I  
18 think it means you don't have legislative, concurrent,  
19 or subject matter jurisdiction to hear this case, sir.  
20 "He says, 'Well, well, well, uh, uh, I'll  
21 plead for you.' He can't do that." Quote, unquote,  
22 "'Not guilty.' Boom. 'You're going home, son. I'm  
23 going to CR you today. You get to go home.'"  
24 That was you saying the judge was going to  
25 release you on your own recognizance; right?

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1 A. That's what I said, yes.

2 THE COURT: Mr. Sullivan, when you read that,  
3 could you read a little slower? The court reporter is  
4 racing to keep up with you.

5 MR. SULLIVAN: I'm sorry, Your Honor.

6 Q. You said: "And I said, 'Well, I don't know.  
7 I've never been arrested before. I don't know anything  
8 about O.R.'"

9 "He says, 'Well, you've got a contract in  
10 front of you. You want to read it real quick?'"

11 "Well, I could have thumbed through it; but I  
12 says, 'Well, I don't like it. What happens if I don't  
13 want to sign this thing?'"

14 "He says, 'If you don't sign that piece of  
15 paper, we're going to leave you in jail till you do.'"

16 It continues over and you say: "Just that I  
17 agree to have a probationary officer and not  
18 leave . . ."

19 You meant -- you understood, by "not leave,"  
20 you were saying that you would make all court  
21 appearances; correct?

22 A. I can't read where you're quoting.

23 Q. Can you read it now?

24 A. Yes. Go ahead.

25 Q. "I agree to have a probationary officer and

1 not leave . . ." You said that?

2 A. I think that's what I said, yes.

3 Q. And you understood that you had to make all  
4 appearances before the court; right?

5 A. Yes, I understood that.

6 Q. And that's what you meant by saying "not  
7 leave"?

8 A. Yeah. I was told I can't leave.

9 Q. That was a condition of bond; right?

10 A. Yes.

11 Q. It goes down -- you state: "I said, let me  
12 get this straight. You kidnap me and you're my captors,  
13 and this whole thing is a fraud and, basically, the  
14 kidnapers are not going to let me go unless I sign this  
15 piece of paper under threat . . ."

16 You were referring to signing the O.R. bond,  
17 weren't you?

18 MR. HOYT: " . . . under threat; right?"

19 THE WITNESS: Yes.

20 THE COURT: Counsel?

21 THE WITNESS: " . . . under threat; right,"  
22 yes.

23 BY MR. SULLIVAN:

24 Q. And you were referring to signing the O.R.  
25 bond?

1 A. Correct.

2 Q. Didn't you just tell us a few minutes ago you  
3 didn't sign the O.R. bond?

4 A. I never signed it.

5 Q. It continues. It says: " . . . unless I sign  
6 this piece of paper under threat; right?"

7 "He says, 'Yeah, yeah, yeah.'"

8 "I says, 'I was hoping you'd say that.' And I  
9 picked up the pen; and I said, 'Let this be my  
10 handwriting,' which makes it not my signature."

11 And you signed the O.R. bond?

12 A. No.

13 Q. Did you put a pen in your hand and write  
14 "David R. Hinkson"?

15 A. Yes, I did that. That's not my signature.

16 Q. Because you said some magic words?

17 A. No. It's a canon of law. It's not your  
18 signature unless there is free agency. It's one of the  
19 basic concepts of the Constitution and Civil Rights.

20 Q. By saying, "Let this be my signature"?

21 A. No. I said, "Let it be my handwriting."

22 Q. You made your signature invalid; is that  
23 correct?

24 A. No. It was my handwriting.

25 Q. Is it correct that you thought you made the

1 bond invalid?

2 MR. HOYT: Objection, Your Honor. I think --  
3 I think, first of all, I feel counsel has been arguing  
4 with the witness, number one. And number two --

5 THE COURT: There is some arguing going on  
6 here, counsel; and I think it's over what constitutes a  
7 signature. I think the jury understands Mr. Hinkson's  
8 position.

9 Mr. Sullivan, I think you have made your  
10 point. Move on to another subject.

11 BY MR. SULLIVAN:

12 Q. Isn't it true, sir, when you signed the bond  
13 or whatever you did, you had no intention of complying  
14 with the bond?

15 A. Well, I was planning on complying with it  
16 because I agreed to.

17 Q. Right. You said you wouldn't leave; right?

18 A. I said I wouldn't leave; but I also asked the  
19 judge if I could go to California to give the speaking  
20 engagement that I was already scheduled to speak at, the  
21 forum.

22 Q. Your intention was to flee before trial, was  
23 it not?

24 A. I have never planned on fleeing before trial.

25 Q. Isn't it correct that you tried to obtain a

1 passport after this bond hearing?

2 A. I didn't try. I did obtain one.

3 Q. And wasn't one of the conditions of the bond

4 that Judge Williams told you about was not to obtain a

5 passport?

6 A. He demanded that I turn over my passport is

7 what he demanded.

8 Q. And didn't he say, "And don't obtain another

9 passport"?

10 A. I don't remember him saying that but I'm -- I

11 believe he probably did.

12 Q. Do you recall Judge Mikel Williams saying, at

13 that hearing, page 11 of the transcript:

14 "THE COURT: All right. So it's O.R. release,

15 pretrial supervision, surrender passport, not obtain a

16 new passport, reside in his residence and travel

17 restricted to the Continental United States."

18 Do you recall Judge Williams advising you of

19 that?

20 A. Yes, I do.

21 Q. So you knew, at that point in time, at that

22 initial appearance on 11/21/02, that you were to

23 surrender your passport; correct?

24 A. Yes, I did.

25 Q. And not obtain a new passport?

1 Q. Yes. So there was a further hearing when it

2 became known that you had tried to obtain a second

3 passport; correct?

4 A. There was a second hearing, yes.

5 Q. And this time, the judge put you on \$100,000

6 appearance bond?

7 A. Yes, he did.

8 Q. But the terms stayed the same, otherwise;

9 correct?

10 A. Correct.

11 Q. You still had to make all court appearances;

12 correct?

13 A. Correct.

14 Q. You couldn't leave the Continental United

15 States?

16 A. That's true.

17 Q. Yet you planned to flee before trial to the

18 Island of Antigua?

19 A. That is not true.

20 Q. Because you didn't intend to stand trial;

21 correct?

22 A. That is not correct.

23 Q. And if you hadn't been arrested on April 4,

24 2003, you would have fled to Antigua?

25 A. That is not true.

1 A. That is correct.

2 Q. Correct?

3 A. Yes.

4 Q. And you agreed to that?

5 A. I agreed to that.

6 Q. But that was a false statement when you told

7 Judge Williams that, wasn't it?

8 A. I don't believe it was a false statement.

9 Q. Because you went out and obtained a new

10 passport?

11 A. I applied for a new one so that I could submit

12 it.

13 Q. And you violated the term of that bond, didn't

14 you?

15 A. I don't believe I did because there was

16 reasons why this happened the way it did.

17 Q. You understood that the bond was a promise

18 from you to the court to be released? You would abide

19 by the terms of the bond?

20 A. Right. And because of that, he made me sign

21 another bond for \$100,000 because I --

22 Q. Your promise to the court was not one you

23 intended to keep; correct?

24 A. Oh, I intended to keep it. So in answer to

25 your question, I intended to keep it.

1 MR. SULLIVAN: Excuse me, Your Honor. I need

2 a moment.

3 THE COURT: Do you need the lights,

4 Mr. Sullivan? Would you like the lights, counsel, to

5 help you see?

6 MR. SULLIVAN: No. I will find it.

7 THE COURT: That won't help?

8 BY MR. SULLIVAN:

9 Q. Page 11 of the tape transcript between J. C.

10 Harding and Mr. Hinkson -- excuse me. It's not 11.

11 On page 150, didn't you tell Mr. Harding that

12 you were headed for Antigua?

13 A. I don't know. I would have to read the

14 statement.

15 Q. Okay. Showing you page 150.

16 THE COURT: Counsel, you have got two pages

17 superimposed there.

18 BY MR. SULLIVAN:

19 Q. Starting at line 1, the informant says:

20 "Right."

21 You say: " -- and I am orchestrated to go to

22 prison and I end up in Antigua or wherever I end up,

23 never allowed to come back to my country, yeah. Or if I

24 was sitting in a jail cell for the next 400 years, I'd

25 pay for that. But right now I think God is going to

1 take care of them."

2 So you referred to going to Antigua, didn't

3 you?

4 A. I did.

5 Q. That's because you were planning on going to

6 Antigua?

7 A. No, that's not the reason I mentioned Antigua.

8 Q. Antigua is an island in the Carribean?

9 A. Yes. It's a very nice island.

10 Q. You have been there before?

11 A. I have not.

12 Q. How do you know it's a nice island?

13 A. I have seen pictures.

14 Q. Didn't you tell J. C. Harding that you saw

15 yourself as a future Antiguan?

16 A. Yes, I made that statement.

17 Q. Wasn't that in context to how you were going

18 to leave the country so you wouldn't have to stand

19 trial?

20 A. No.

21 Q. Showing you page 141 of the transcript between

22 you and Mr. Harding on tape -- let me ask this: Isn't

23 it true that, to facilitate your fleeing the country,

24 you tried to liquidate assets by getting big loans on

25 your property?

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1 A. Yes.

2 Q. Not that you sought him out?

3 A. Margie brought him because she was a mortgage

4 broker and she was trying to earn a commission, and she

5 brought him because she knew we needed to refinance

6 because we had a balloon on the property.

7 Q. So your testimony is that you sought a loan,

8 but you weren't trying to encumber your property so that

9 you could leave?

10 A. I sought the loan for two years, before I was

11 indicted, from Dan Vaughn. Marjorie is a friend of Dan

12 Vaughn's.

13 Q. Dan Vaughn testified here?

14 A. Yes. He was here yesterday, yes. So she

15 brought him over because it was an excellent loan and an

16 excellent interest rate, and he wanted me to agree to

17 the terms.

18 Q. My question was: You were seeking a loan, a

19 legitimate loan, and you were not trying to encumber

20 your property with liens or mortgages so you would have

21 enough money to flee?

22 A. I was not. I rejected his loan. I didn't

23 want to reject it, but I decided not to borrow any

24 money.

25 Q. Let me show you page 141 of the transcript of

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1 A. It's not true.

2 Q. You did try to get loans on your property,

3 didn't you?

4 A. It's not true.

5 Q. You spoke to a man, namely -- excuse me -- Lee

6 Sternburg, to borrow \$600,000?

7 A. Yes. He came to my factory and proposed that

8 I borrow \$600,000 at six-percent interest.

9 Q. That's a good loan rate, isn't it?

10 A. It was excellent.

11 Q. And he, of course, wanted some sort of

12 security or collateral for that loan; correct?

13 A. He just needed my signature.

14 Q. This time, you would actually sign?

15 A. I always keep my word, yes.

16 Q. And when did this happen?

17 A. I think it was maybe about a week before

18 Harding showed up.

19 Q. And it's your testimony that Mr. Lee Sternberg

20 proposed this loan arrangement to you?

21 A. Yeah. He came with another woman. Her name

22 was Margie Anderson, I believe.

23 Q. My question was --

24 A. Yes.

25 Q. Mr. Sternberg proposed it to you?

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1 the tape recording between you and Mr. Harding, starting

2 at line 3.

3 Didn't you say: "They moved the trial all the

4 way to the end of the year."

5 Harding. "Oh, they moved it past September

6 now?"

7 Hinkson: "Yeah, sometime. I don't know

8 exactly when."

9 Harding: "(Inaudible) enjoy yourself."

10 Hinkson: "I got the next -- I got the next

11 June, July, August. I got at last five months before I

12 even got to worry about the trial starting."

13 The informant: "Well --"

14 Mr. Hinkson: "I've arranged to put loans on

15 everything. The feds didn't lien anything."

16 The informant: "Put loans on -- I don't

17 understand. You just started borrowing money against

18 all your shit?"

19 Hinkson: "Everything."

20 Informant: "Smart."

21 Hinkson: "I'll have a million dollars worth

22 of debt, and it will all be in an offshore bank. Give

23 me two weeks."

24 And you follow with: "See, that's brilliant.

25 That's smart."

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1 Hinkson: "I'm working hard."  
2 Informant: "Dude," I would rather you think  
3 like that."  
4 Hinkson: "Future Antiguan."  
5 You said those words, did you not?  
6 A. I did.  
7 Q. When you were talking with Mr. Hinkson (sic.)  
8 that particular day of the tape recording --  
9 MR. HOYT: Your Honor, I know counsel didn't  
10 mean to say this; but he said, "When you were talking  
11 with Mr. Hinkson."  
12 MR. SULLIVAN: It happened before.  
13 THE COURT: Yes. We all do it. Just start  
14 your question again.  
15 BY MR. SULLIVAN:  
16 Q. I'm sorry. Mr. Hinkson, when you were talking  
17 to Mr. Harding on March 27, 2003, the day of the taping,  
18 didn't you believe that he might be a fed or an  
19 informant?  
20 A. No, sir.  
21 Q. Didn't you tell Special Agent Long, when he  
22 interviewed you on April 4, 2003, that you had believed  
23 that he had been an informant?  
24 A. No, sir.  
25 Q. You didn't tell Agent Long that?

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1 A. I didn't tell Agent Long anything.  
2 Q. You didn't tell him anything?  
3 A. No, I didn't, not with regards to this matter.  
4 Q. I see. But you did hear him testify about  
5 things regarding this matter; right?  
6 A. I heard -- I heard his lies, yes.  
7 Q. I see. And do I understand that you're  
8 telling the jury that what he testified to was not true?  
9 A. Totally lies. Totally untrue.  
10 Q. Another perjurer against you?  
11 A. He is really good at it.  
12 Q. I see.  
13 A. Uh-huh.  
14 Q. But you deny that you knew Mr. Hinkson (sic.)  
15 was an informant; right?  
16 A. Yes.  
17 THE COURT: You said "Mr. Hinkson" again.  
18 THE WITNESS: Please do.  
19 BY MR. SULLIVAN:  
20 Q. You deny knowing Mr. Harding was an informant?  
21 A. Yes, I deny that.  
22 Q. You deny saying it to Agent Long?  
23 A. I deny that, yes.  
24 Q. Didn't you tell -- didn't you even tell Chad  
25 Croner in the Ada County Jail that you knew he was an

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1 Informant?  
2 A. I did not tell Chad Croner that, no.  
3 Q. On the tape between you and Mr. Harding, isn't  
4 it true that you were very careful in what you said?  
5 A. Careful? I think I was talking really stupid.  
6 Q. All right. But you never once said, "I hope  
7 these people die;" right?  
8 A. No. I said, "I want God to smite them." I  
9 think I said that.  
10 Q. Right.  
11 A. Yes.  
12 Q. But you didn't say it on the -- you didn't  
13 say, "I hope someone dies," on the tape, did you?  
14 A. I don't think so.  
15 Q. It's because you were being very careful?  
16 A. No, I wasn't being careful or I wouldn't have  
17 talked so stupid for four hours.  
18 Q. What was so stupid about what you were saying,  
19 Mr. Hinkson?  
20 A. The conversation, prior to this end, was  
21 totally stupid.  
22 Q. Who was stupid? You or Mr. Harding?  
23 A. Me. I was very stupid.  
24 Q. Because you said things that made it sound  
25 like you had discussed with Mr. Harding hiring him as a

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1 hit man; right?  
2 A. No. We were talking about stupid things,  
3 about girls and stuff like that.  
4 Q. We didn't even play that part of the tape.  
5 A. I know. Thank you for that.  
6 Q. Yes. We played the parts where Mr. Harding  
7 says, "You shouldn't say stuff like that or someone will  
8 take you up on it;" right?  
9 A. What's the question?  
10 Q. I said that we played the parts where Harding  
11 says to you, "You shouldn't say stuff like that or  
12 someone will take you up on it?"  
13 A. You played that part, yes.  
14 Q. We did. Those were his words to you; right?  
15 A. I believe so.  
16 Q. And you knew what he meant?  
17 A. No. I don't know what the word "it" meant,  
18 and I really wasn't even listening to what he was  
19 saying. I was just talking at him.  
20 Q. You don't know the meaning of "it"?  
21 A. I don't. He's not a conversationalist.  
22 Q. J. C. Harding is not a conversationalist?  
23 A. I don't think it's possible to have a  
24 conversation with this man.  
25 Q. You knew he was a stand-up comedian, did you

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1 not?

2 A. I don't find him funny. No, I did not know  
3 that.

4 Q. You knew he was a radio talk show host?

5 A. Oh, yeah. That was the guise he gave for  
6 showing up.

7 Q. And you know, from your own experience in that  
8 area, that radio talk show hosts have to be good  
9 conversationalists?

10 A. Good BS'ers, too.

11 Q. Sir, do you deny that, on April 4, 2003, you  
12 told Agent Long that Judge Lodge has never made a  
13 correct ruling during his entire career on the bench?

14 A. If that's what I said on that wire, then  
15 that's probably what I said.

16 Q. I'm not talking about the wire. I'm talking  
17 about the conversation, the interview by you -- excuse  
18 me -- of you by Agent Long on April 4, 2003, at the  
19 Kooekia Substation.

20 A. No. I deny that. I never had a conversation  
21 with Agent Long.

22 Q. Do you deny that you used to criticize Judge  
23 Lodge?

24 A. No, I don't deny that.

25 Q. And you used to say very insulting things

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1 about him?

2 A. I'm not sure how to answer that question.

3 Q. Didn't you say that Judge Lodge was worse than  
4 Adolf Hitler?

5 A. I said that in my kitchen. I remember reading  
6 that on the wire.

7 Q. Right. At page 170 of the conversation with  
8 Mr. Harding, you said: "All I'm saying is these people  
9 are so wicked and evil that they deserve to be smitten  
10 by God today. These are bad people. I got on the radio  
11 and I said that Judge Lodge was worse than Adolf  
12 Hitler."

13 A. If that's what the transcript says, I must  
14 have said it.

15 Q. And it continues: "This man sits there and  
16 throws innocent people in prison every single day.  
17 That's his job description. And he's wicked. What have  
18 I got to lose? He already hates my guts. He already is  
19 going to rule against me every chance he has. I might  
20 as well tell the world he's a damn bastard from hell.  
21 What the hell."

22 That's what you said about Judge Lodge?

23 A. Yeah, in my kitchen.

24 Q. You believe Judge Lodge is wicked?

25 A. I do.

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1 Q. He puts innocent people in prison every single  
2 day?

3 A. Yes, I think he does. And I think you do,  
4 too.

5 MR. SULLIVAN: Move to strike.

6 THE COURT: The jury will disregard the last  
7 answer.

8 BY MR. SULLIVAN:

9 Q. Then you say: "What have I got to lose?"  
10 Right?

11 A. Yeah, I guess.

12 Q. Because he hates your guts?

13 A. I don't think he likes me.

14 Q. He hates your guts?

15 A. That's what I said.

16 Q. He's going to rule against you every chance he  
17 gets?

18 A. Yes.

19 Q. And when you said that about Judge Lodge -- he  
20 was the judge assigned to handle your tax case, wasn't  
21 he? Do you have to think about it?

22 A. Yeah. He had never made a ruling in my case  
23 at that point. It was just, basically, Williams. I  
24 know, eventually, he was going to be involved, I  
25 believe; but at that point, he had never done anything

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1 to me.

2 Q. My question was: He was the Judge of your  
3 criminal tax case; right?

4 A. Yeah. After -- yeah, I think so.

5 Q. And you just now said, at that point, he had  
6 never done anything to you?

7 A. He hadn't.

8 Q. Is that your testimony?

9 A. Yeah.

10 Q. All right. Hadn't he thrown out your civil  
11 lawsuit?

12 A. I didn't know it was thrown out. I'm not sure  
13 what day it was thrown out.

14 Q. Wasn't it thrown out in February, a month  
15 before you said these words?

16 A. Is that the date that it shows? I don't know.

17 Q. You don't remember?

18 A. I don't remember.

19 Q. I am showing you Government's Exhibit 1, all  
20 of the pleadings from your civil lawsuit. You are  
21 familiar with it; correct?

22 A. A little bit, yeah.

23 Q. You wrote it, didn't you?

24 A. No. Rich Bellon wrote it.

25 Q. Oh, Rich Bellon wrote it?

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1 A. Yes.

2 Q. I see. You didn't write it?

3 A. I didn't.

4 Q. Let me go back. Showing you, from Exhibit 1,  
5 a document with Bates stamp 073. It's at the very end,  
6 the document entitled "Judgment;" correct?

7 A. Yes.

8 Q. It says: "On February 11, 2003, the court  
9 entered an order dismissing this action;" correct?

10 A. That's what it says.

11 Q. And the action is David Hinkson vs. Steve  
12 Hines, et al.?

13 A. Okay.

14 Q. Correct? It says: "Based upon that order,  
15 and the court being fully advised in the premises, it is  
16 hereby ordered and adjudged that plaintiff's cause of  
17 action is dismissed in its entirety;" right?

18 A. That's what it says.

19 Q. And it's signed by Judge Lodge?

20 A. I think so. I wasn't there to witness it. I  
21 don't know.

22 Q. Well, you received this pleading in the mail;  
23 right?

24 A. I don't remember getting it; but I'm sure I  
25 must have gotten it.

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1 Q. You were the plaintiff?

2 A. I was the plaintiff, yes.

3 Q. You were suing for fifty million dollars?

4 A. I was.

5 Q. And Judge Lodge has now dismissed your suit in  
6 its entirety?

7 A. Yes.

8 Q. So he had done something to you at this point;  
9 right?

10 A. Yeah. He ruled wrong.

11 Q. Again, he ruled wrong?

12 A. "Again"? No. I said, "He ruled wrong." I  
13 didn't say, "Again."

14 Q. I'm sorry. Don't you think he has always  
15 ruled wrong?

16 A. That's what I said and I -- I was upset about  
17 some other things he did.

18 Q. That's right. You had a whole bunch of  
19 reasons to be upset at Judge Lodge, didn't you?

20 A. Just that one. On a personal basis, I mean --

21 Q. When did you retain Richard Bellon to prepare  
22 your civil lawsuit?

23 A. I'm not sure what date he started. It would  
24 have been just a guess here. I would guess, maybe April  
25 of 2002, maybe.

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1 Q. Didn't you file the lawsuit on April 16, 2002?

2 A. Okay. So then he would have been hired about  
3 a month before that.

4 Q. And you knew he had legal training; right?

5 A. He claimed he was a lawyer in California. I  
6 knew he wasn't supposedly, at that time, licensed in  
7 Idaho. He claimed he wrote a book, which I found out he  
8 did not write.

9 Q. You also found out he was convicted of  
10 assaulting an IRS officer, too?

11 A. Yeah. I found out that when he was barred  
12 from coming into the courtroom.

13 Q. You approved of that, didn't you; that he had  
14 assaulted an IRS officer?

15 A. I didn't know anything about it.

16 Q. You found out about it later, as you just told  
17 us?

18 A. Well, I found out he had mishandled a female  
19 IRS agent is what I found out.

20 Q. And you didn't have any problem with  
21 Mr. Bellon being convicted of assaulting an IRS officer,  
22 did you?

23 MR. HOYT: Your Honor, I think we are going  
24 way far afield right here.

25 THE COURT: Overruled.

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1 BY MR. SULLIVAN:

2 Q. You didn't have any problem with Mr. Bellon  
3 having been convicted of assaulting an IRS agent, did  
4 you?

5 MR. HOYT: Objection. Vague.

6 THE COURT: Overruled.

7 MR. HOYT: The problem --

8 THE COURT: Overruled. Sit down, Mr. Hoyt.

9 THE WITNESS: Ask the question again, please.

10 BY MR. SULLIVAN:

11 Q. For the third or fourth time, you didn't have  
12 any problem with the fact that Mr. Bellon had been  
13 convicted of assaulting an IRS officer?

14 A. I never had even thought about it.

15 Q. So when did he start preparing all of your  
16 pleadings in the civil suit?

17 A. I told you it would have been about a month  
18 before the lawsuit was filed because it took him a month  
19 to write it.

20 Q. All right. And you consulted with him that  
21 whole time?

22 A. Yes. On a daily basis, we were in  
23 communication.

24 Q. Because he didn't know the facts as you  
25 alleged them to be independently of asking you; correct?

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1 A. Well, he went on the Internet; and he  
 2 downloaded all of the files. He was looking at all of  
 3 the other stuff; and he put it together on his own,  
 4 pretty much. But, yes, I was in contact with him.  
 5 Q. Sure. You had to sign the complaint?  
 6 A. Yes, I did sign the complaint. I read it  
 7 first.  
 8 Q. You had to sign all of the pleadings; correct?  
 9 A. I did.  
 10 Q. Mr. Bellon would bring you the pleadings to  
 11 have you review them?  
 12 A. Yes.  
 13 Q. And then you would sign them?  
 14 A. Correct.  
 15 Q. So he is the author, even though you signed  
 16 them?  
 17 A. That is correct.  
 18 Q. When you were on "The Agitator Hour," the  
 19 radio interview show, did you lie about who prepared the  
 20 civil pleadings?  
 21 A. I might have lied at that point. If I said  
 22 that I did the work, then, yes, I would have misstated  
 23 the facts.  
 24 Q. Let me show you page eighteen of the  
 25 transcript of the interview on "The Agitator Hour."

1 Starting at 528, line 528, you say: "That kind of  
 2 messes up the investigative power of the Grand Jury,  
 3 don't you think?"  
 4 The announcer said: "It's manipulation is  
 5 what it is."  
 6 And you say: "Well, yeah. Well, that's why I  
 7 sued her for the fifty million for prosecutorial  
 8 misconduct and Grand Jury tampering. And I did it pro  
 9 se, which means no lawyer."  
 10 A. That's correct.  
 11 Q. "It's a war of a titan." Excuse me. There is  
 12 sixty -- strike that.  
 13 "There's sixty motions back and forth in that  
 14 thing. It a war of a titan."  
 15 That's what you said on "The Agitator Hour;"  
 16 correct?  
 17 A. Yes. "Titans," I think, with an "s."  
 18 Q. Yeah. And you took credit by saying you  
 19 handled this matter pro se, without a lawyer?  
 20 A. Well, I didn't mention that Bellon wrote it at  
 21 that point; but I didn't take credit necessarily for it  
 22 either.  
 23 Q. You said you did it pro se?  
 24 A. That means that the person who signed it is  
 25 not a lawyer. I signed it because it was my name on it

1 and not a lawyer's.  
 2 Q. Is that what "pro se" means, Mr. Hinkson?  
 3 A. Well, I believe that when you file it in your  
 4 own name and you don't have a lawyer, it's called "pro  
 5 se."  
 6 Q. It means you did it yourself, that you  
 7 represented yourself, doesn't it?  
 8 A. Well, maybe that's your definition; but it  
 9 wasn't mine.  
 10 Q. Isn't it true you just made it up in this  
 11 courtroom that Richard Bellon did the civil pleadings?  
 12 A. Well, I have probably ten witnesses that will  
 13 testify to it; but you wouldn't let them speak about  
 14 this.  
 15 Q. I wouldn't?  
 16 A. No. You cut them off every time Wes tried to  
 17 let this information come in.  
 18 Q. You blame Richard Bellon for a lot of your  
 19 problems, don't you, Mr. Hinkson?  
 20 A. No. He wasn't a problem, initially.  
 21 Q. So you blame him for a lot of your problems  
 22 later?  
 23 A. It would depend on the time.  
 24 Q. Let me ask you this: In your direct  
 25 examination yesterday, did you claim that you went to

1 Coeur d'Alene to find out what date the Grand Jury had  
 2 been sitting and whether or not it had disbanded? Did  
 3 you do that?  
 4 A. No, I didn't.  
 5 Q. Did you say you did that?  
 6 A. It was in Boise that we checked. It was the  
 7 Boise Grand Jury that we checked.  
 8 Q. Okay. Tell me about that. What was it -- did  
 9 you do it, or did Mr. Bellon do it?  
 10 A. Well, I checked in the courthouse and there  
 11 was no -- there was no record showing that the Grand  
 12 Jury had been extended.  
 13 Q. How did you do that? How did you check that?  
 14 A. You go to the Clerk's Office.  
 15 Q. Did you know what Grand Jury, particularly, to  
 16 ask about?  
 17 A. Well, we did at the time. I mean, Rich Bellon  
 18 had kind of laid it out for me.  
 19 Q. I see. Rich Bellon supplied you with the  
 20 information?  
 21 A. Correct.  
 22 Q. Okay. What is it that he told you?  
 23 A. He said that the Grand Jury had ceased to  
 24 exist, and we wanted to get a certified copy of that.  
 25 Q. Okay. And so you did that?

2110

1 A. I remember -- that's my recollection.

2 Q. So where is that certified copy?

3 A. I don't have a clue. I have been deprived of

4 all of my legal papers.

5 Q. You, of course, couldn't have had one of your

6 lawyers go get you another certified copy of the

7 document; right? That was impossible?

8 A. Well, I made the accusation that there was no

9 file stamps. Later on, some paperwork appeared to show

10 that the Grand Jury had been extended. And it's my

11 belief that they just created this paperwork, because

12 some of it is not file stamped.

13 Q. I see. It's your belief system, again, that

14 there was some phonying up of paperwork?

15 A. Yes. That's why I wanted the certified copy

16 to prove it.

17 MR. SULLIVAN: I would like a new document

18 marked as Government's Exhibit 13.

19 THE COURT: Exhibit 13? Very well.

20 MR. SULLIVAN: Your Honor, I would like to

21 have marked a two-page document as Government's Exhibit

22 13. It is a certified court document from the Clerk of

23 the District Court for District of Idaho.

24 THE COURT: Does the document have a title,

25 counsel?

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1 MR. SULLIVAN: Yes, Your Honor. "Motion and

2 Order to Extend Term of Northern 2001 Grand Jury."

3 THE COURT: Very well. You are offering it at

4 this time?

5 MR. SULLIVAN: I offer it at this time.

6 THE COURT: Any objection, Mr. Hoyt?

7 MR. HOYT: No objection.

8 THE COURT: Government's Exhibit 13 is

9 admitted.

10 (Whereupon, Government's Exhibit No. 13 was

11 received in evidence.)

12 BY MR. SULLIVAN:

13 Q. Let me show you Government Exhibit 13,

14 Mr. Hinkson. Do you see this document that is signed at

15 the bottom by Thomas E. Moss, United States Attorney?

16 A. I do.

17 Q. And it's dated the 26th day of April 2002?

18 A. Yes, I see it.

19 Q. And it's entitled "Motion and Order to Extend

20 Term of Northern 2001 Grand Jury;" correct?

21 A. I see it.

22 MR. SULLIVAN: May I publish to the jury, Your

23 Honor?

24 THE COURT: You may.

25 THE WITNESS: I can't see the top of it.

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1 MR. HOYT: It's published.

2 BY MR. SULLIVAN:

3 Q. "Comes now United States Attorney for the

4 District of Idaho and hereby moves the court for an

5 order extending the Northern 2001 Grand Jury through the

6 31st of July 2002. The reason for such extension is

7 that the panel is involved in several investigations

8 which are complex." Do you see that?

9 A. Uh-huh. I see it.

10 Q. And the second page of this certified court

11 document is an order, which no one can read: I will

12 read it.

13 "Order.

14 "The United States Attorney has moved the

15 court for an order to extend the term of the Northern

16 2001 Grand Jury to and including July 31, 2002.

17 "Upon good cause shown, it is hereby ordered

18 that the Northern 2001 Grand Jury is hereby extended to

19 and including July 31, 2002.

20 "Signed April 29, 2002.

21 "Honorable Larry M. Boyle, Chief U.S.

22 Magistrate Judge."

23 When you made the accusation against Nancy

24 Cook that the Grand Jury had disbanded in May 2002, you

25 knew that was a false accusation, didn't you?

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1 MR. HOYT: Your Honor, I will object. It

2 assumes facts not in evidence. I think he said --

3 THE COURT: The fact has now been in evidence.

4 MR. HOYT: I think he said that the Grand Jury

5 had been disbanded in April, before he filed his

6 lawsuit.

7 THE COURT: Well, I'm going to allow the

8 question. Your objection is overruled based upon

9 Government's Exhibit 13. Counsel certainly has a

10 good-faith basis to ask the question.

11 MR. SULLIVAN: May I have my question read

12 back?

13 (Whereupon, the pending question was read back

14 by the court reporter.)

15 BY MR. SULLIVAN:

16 Q. Can you answer that question?

17 A. Well, when I checked the record in Boise, I

18 didn't find those papers. Is that on file in Boise?

19 Q. I ask the questions, sir. So are you telling

20 the jury that your accusation against Ms. Cook was based

21 on some misunderstanding?

22 A. No, no. I didn't find these papers when I

23 checked; therefore, I would say that there is no proof

24 as to what day this paperwork was created.

25 Q. You also accused her of forging the

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1 Indictment; correct?

2 A. I did.

3 Q. Based upon the fact, as you believed it, the

4 Grand Jury had disbanded in May of 2002; right?

5 A. That's true.

6 Q. So you believed that, if there had been no

7 Indictment returned in May of 2002, then any other

8 Indictment afterwards must have been forged; right?

9 A. In discovery, she refused to give us the

10 Minutes. There were no Minutes. There has to be

11 Minutes, but there aren't any Minutes.

12 Q. You were represented in the tax case by

13 lawyers; correct?

14 A. Not initially. I was pro se initially.

15 Q. You were represented by a Mr. Mahathy

16 initially?

17 A. Initially.

18 Q. You were represented by Mr. Groom in April of

19 2002?

20 A. Yes, that's true.

21 Q. And after November of 2002, when you were

22 arrested, you were -- excuse me. That's when you

23 retained Mr. Mahathy, after November 21, 2002; right?

24 A. I believe so.

25 Q. And you retained Mr. Groom sometime in early

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1 2003?

2 A. Well, Rich Bellon suggested that we needed a

3 lawyer of record; so Rich Bellon worked with Mr. Groom

4 full time at that point on the case. Okay.

5 Q. Okay. And based on Mr. Bellon's suggestion,

6 you are claiming you retained Mr. Groom?

7 A. Yes. Mr. Bellon felt that, even though he was

8 doing the work --

9 THE COURT: No, no. Mr. Hinkson, we don't

10 care what Mr. Bellon felt. The question was whether or

11 not, based upon his suggestion, you retained Mr. Groom.

12 THE WITNESS: Yes, I did.

13 BY MR. SULLIVAN:

14 Q. Actually, you had a series of lawyers even

15 after Mr. Groom; right?

16 A. Correct.

17 Q. You were always represented through 2003,

18 weren't you?

19 A. I believe so.

20 Q. All the way through 2004?

21 A. Yes, I believe so.

22 Q. Right through trial?

23 A. Yes.

24 Q. And your lawyers, whoever they were at the

25 various times, filed motions for discovery; right?

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1 A. Yes.

2 Q. Which means demanding various kinds of

3 documents from the Government to assist you in your

4 defense; right?

5 A. We are talking about the first case now only?

6 Q. We are talking about the tax case.

7 A. The tax case?

8 Q. Right.

9 A. Yes.

10 Q. Right. And you never alleged, at any time, in

11 any motion regarding the Grand Jury, that Ms. Cook

12 forged the Indictment, did you?

13 A. I don't think so. I don't have it in front of

14 me. I haven't read it for years so I don't --

15 Q. You think you would forget whether or not you

16 moved to dismiss the Indictment because the AUSA, the

17 prosecutor in the case, forged the Indictment? You

18 would forget such a thing?

19 A. Well, I'm not sure if I remember. I do

20 remember there was a referral.

21 THE COURT: Just a minute, Mr. Hinkson. Wait

22 for the next question.

23 BY MR. SULLIVAN:

24 Q. Well, you have never been adverse from

25 preparing affidavits and submitting them in various

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1 lawsuits you have been involved with; correct?

2 A. I'm pretty good at writing affidavits, yes.

3 Q. You never prepared an affidavit and attached

4 it to any kind of motion to dismiss the tax case

5 alleging that Nancy Cook forged the Indictment, did you?

6 A. I don't recall one. I don't remember.

7 Q. All right. Because that would be a really

8 significant kind of allegation to make, wouldn't it?

9 A. Well, I don't think we -- it would be a

10 significant allegation, yes.

11 Q. And you know that no such motion to dismiss,

12 based on that allegation, was ever made in your tax

13 case; correct?

14 A. Well, she wouldn't give discovery; so I would

15 say "correct."

16 Q. And you didn't file anything that had your

17 affidavit saying Ms. Cook forged the Indictment, did

18 you?

19 A. Not that I remember.

20 Q. You only say that over the public radios;

21 right?

22 A. Oh, I said it on the radio, yes.

23 Q. That's right. Because you don't have to

24 provide proof over the public radio; right?

25 A. That's true.

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1 Q. You do have to provide proof when you are in a  
 2 court of law making a motion to dismiss; right?  
 3 A. That's true.  
 4 Q. Proof means facts?  
 5 A. Uh-huh.  
 6 Q. You don't worry about facts, do you,  
 7 Mr. Hinkson?  
 8 A. I try to gather them every chance I get.  
 9 Q. You make allegations without knowing any facts  
 10 to back them up?  
 11 A. I don't think that's a safe statement.  
 12 Q. Didn't you, in this courtroom, yesterday, make  
 13 an accusation against Detective Mealer with no facts to  
 14 back up such an accusation?  
 15 A. I did?  
 16 Q. Yeah.  
 17 A. I don't remember an accusation.  
 18 THE COURT: Counsel, would this be a good  
 19 place to stop? I will let you pick the time, but we are  
 20 right up against the noon hour.  
 21 MR. SULLIVAN: May I have one minute, Your  
 22 Honor?  
 23 THE COURT: Sure.  
 24 BY MR. SULLIVAN:  
 25 Q. When you went -- you were arrested on April 4,

1 2003, at the Kookia Substation; right?  
 2 A. Yes.  
 3 Q. And you had gone there to report a burglary or  
 4 a theft to Detective Scott Mealer?  
 5 A. Yes.  
 6 Q. And it was at that place that you got arrested  
 7 by Special Agent Long?  
 8 A. Yes.  
 9 Q. And you resent the fact that Sergeant Mealer  
 10 set you up for that arrest?  
 11 A. Well, it wasn't a nice thing to do.  
 12 Q. Plus, you didn't trust Sergeant Mealer?  
 13 A. That's true.  
 14 Q. That's why you had the tape recorder in your  
 15 pocket?  
 16 A. That's true.  
 17 Q. And, yesterday, you blurted out in front of  
 18 the jury that the person you were accusing of stealing  
 19 your money --  
 20 THE COURT: Counsel, before you go here, I  
 21 thought I struck that question and the answer. Do you  
 22 want to go there again?  
 23 MR. SULLIVAN: I do.  
 24 THE COURT: All right. All right. Go ahead.  
 25 BY MR. SULLIVAN:

1 Q. You blurted out that Sergeant Mealer was  
 2 having an affair with that person; correct?  
 3 A. That is correct.  
 4 Q. And you did it because you resent the fact  
 5 that he set you up for the arrest?  
 6 A. No.  
 7 MR. SULLIVAN: This would be a good time to  
 8 stop.  
 9 THE COURT: Ladies and gentlemen, as my have  
 10 been clear from that last exchange, you may disregard my  
 11 instruction to you yesterday with respect to striking  
 12 the statement that Mr. Hinkson said about Detective  
 13 Mealer having an affair, since Mr. Sullivan now wants to  
 14 inquire about it.  
 15 With that, we will be in recess until 1:15  
 16 this afternoon.  
 17 Don't talk about the case. Keep an open mind.  
 18 Don't let anybody talk to you about it. Don't do any  
 19 research. We will see you back here at 1:15.  
 20 (Lunch recess.)  
 21 MR. SULLIVAN: May I proceed, Your Honor?  
 22 THE COURT: You may.  
 23 BY MR. SULLIVAN:  
 24 Q. Mr. Hinkson, did you try to hack into Judge  
 25 Lodge's files by computer?

1 A. No, I did not.  
 2 Q. Did somebody else?  
 3 A. No.  
 4 Q. Are you a hacker?  
 5 A. I'm not computer literate.  
 6 Q. May I ask you if you didn't say in the taped  
 7 conversation between you and Mr. Harding, page 163 --  
 8 lights -- top of the page: ". . . that the NSA  
 9 attacked me last week, accused me of --"  
 10 Informant: "The NSA? You mean the National  
 11 Security Agency?"  
 12 And you say: "And the FBI."  
 13 "What?"  
 14 Mr. Hinkson: "They accused me of hacking."  
 15 I am going to skip down to line 16.  
 16 "They shut off my computer."  
 17 "Did they tell you?"  
 18 Mr. Hinkson: "No. They said I was hacking.  
 19 I'm a hacker. All I did is download the Judge's files  
 20 to prove that he rules wrong every time for the last  
 21 eighteen years."  
 22 Did you say that to J. C. Harding?  
 23 A. I said I was not a hacker.  
 24 Q. Did I read it wrong? Line eighteen?  
 25 A. You are misinterpreting it.

1 Q. Did I read it wrong at line eighteen when I  
 2 read?  
 3 Mr. Hinkson: "No. They said I was hacking.  
 4 I'm a hacker."  
 5 A. Yeah. There is the word "not" missing there.  
 6 But read either way, it still means I'm saying I'm not a  
 7 hacker. You are misinterpreting it, the way you're  
 8 reading it.  
 9 Q. Did you download Judge Lodge's files to prove  
 10 that he rules wrong every time for the last eighteen  
 11 years?  
 12 A. Rich Bellon went on the public access for the  
 13 Federal Court System, and he downloaded a whole bunch of  
 14 Judge Lodge's cases.  
 15 Q. Where does it say Richard Bellon downloaded  
 16 the Judge's files?  
 17 A. It does not.  
 18 Q. It says, ". . . I did . . ."? It says, "All I  
 19 did is download the Judge's files." That means you did?  
 20 A. Well --  
 21 Q. Correct?  
 22 A. It was metaphorically speaking. Rich Bellon  
 23 is the one that downloaded them.  
 24 Q. It's Rich Bellon who is responsible; is that  
 25 your testimony?

1 A. It's not a matter of being responsible. It's  
 2 not a crime to look at public domain.  
 3 Q. Well, it's a crime to lie though, isn't it,  
 4 under oath?  
 5 A. I wasn't under testimony.  
 6 Q. Well, you are now?  
 7 A. Yeah. I am now, yes.  
 8 Q. And you said it was Bellon?  
 9 A. It was.  
 10 Q. And you are under oath?  
 11 A. Yes, I am.  
 12 Q. At that previous time, you said it was you?  
 13 A. I wasn't giving testimony when I was talking  
 14 to Mr. Harding.  
 15 Q. So you could lie to Mr. Harding?  
 16 MR. HOYT: Your Honor, he is badgering the  
 17 witness. He said he spoke metaphorically.  
 18 THE COURT: Sustained. The jury will decide.  
 19 BY MR. SULLIVAN:  
 20 Q. And the reason -- well, the reason that there  
 21 was any downloading of Judge Lodge's files is because  
 22 you were unhappy with his ruling dismissing your  
 23 lawsuit; right?  
 24 A. No. Wrong.  
 25 Q. Weren't you unhappy with him about that?

1 A. It wasn't a big deal.  
 2 Q. Then why did you call him -- at page 162 of  
 3 the Harding-Hinkson tape, why did you call him  
 4 ". . . more evil than Adolf Hitler and a slut . . ."  
 5 A. Well, I don't believe that just dismissing one  
 6 civil case would cause enough hostility from me to have  
 7 made those statements.  
 8 Q. Well, were you so hostile that you also said,  
 9 "And I ripped him an ass so big you could drive the  
 10 Grand Canyon through it"? That's pretty hostile, isn't  
 11 it?  
 12 A. It wasn't about him dismissing my case.  
 13 Q. So you are hostile toward him for some other  
 14 reason?  
 15 A. Yes, I am.  
 16 Q. But you admit you were hostile?  
 17 A. It wasn't personal. It's just I know he's a  
 18 very bad person.  
 19 Q. When did you stop filing income tax returns,  
 20 Mr. Hinkson?  
 21 A. 1994, I believe.  
 22 Q. You testified in your own tax case prosecution  
 23 last April or May; correct?  
 24 A. Yes, I did.  
 25 Q. You took the stand there, like you're doing

1 now?  
 2 A. Yes, I did.  
 3 Q. And you were under oath then, as you are now?  
 4 A. Yes.  
 5 Q. Starting at line 6, page 1157, did you testify  
 6 at your own tax structuring trial to the following:  
 7 "And had you been an income tax filer up until  
 8 that point in time?"  
 9 Answer: "Yes, we were."  
 10 Question: "And then, as you were working at  
 11 the Tropicana through this period, did you stop filing  
 12 tax returns?"  
 13 Answer: "Well, I stopped filing -- I believe  
 14 it was 1989. I don't have the record in front of me."  
 15 Is that the testimony you gave under oath at  
 16 your own previous trial?  
 17 A. I really don't remember when I quit filing. I  
 18 believe, at that time, I was being -- going with my  
 19 understanding that -- during the trial, I think,  
 20 evidence was presented that '94 was my last one; but I'm  
 21 not sure.  
 22 Q. So you're not sure whether it was '94 or five  
 23 years earlier than that, 1989?  
 24 A. I'm not really positive.  
 25 Q. And I think you told us you stopped filing



1 because you read the entire Internal Revenue Code and  
2 Supreme Court decisions; correct?

3 A. Yes. I have, yes.

4 Q. All right. So that was just some principal  
5 position you took that you were not entitled -- excuse  
6 me -- you weren't required to file tax returns?

7 A. It is my belief at this point that it's  
8 voluntary and nobody is required to file under the  
9 current law as written.

10 Q. Isn't it true your principal position that you  
11 took that you didn't have to file also saved you a lot  
12 of money?

13 A. No. I never had any profit or income,  
14 pursuant to the law, because every penny I made went  
15 back either into expansion or tax-deductible things; and  
16 I knew I did not have a tax liability.

17 In the raid, they stole all of my  
18 tax-deductible receipts; so I was not allowed to make a  
19 defense.

20 Q. I see.

21 MR. HOYT: I object to going into this area.  
22 Are we going to relitigate the tax case?

23 THE COURT: I realize that you are laying a  
24 foundation here. If you could get to the point, I would  
25 appreciate it, Mr. Sullivan, because I have the same

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1 concern Mr. Hoyt does.

2 BY MR. SULLIVAN:

3 Q. Well, at your tax trial, when you testified  
4 last year, you were shown tax returns that you had  
5 prepared; correct?

6 A. No. I did not prepare them.

7 Q. I said, "that you had prepared." Someone  
8 prepared them for you?

9 A. They weren't tax returns. They were just  
10 statements of income.

11 Q. They were 1040s, were they not?

12 A. They were on 1040 forms.

13 MR. HOYT: Your Honor, I think this was an  
14 issue in the tax case.

15 THE COURT: He is laying a foundation. I  
16 think he's entitled to lay it for impeachment. Go  
17 ahead. Overruled.

18 BY MR. SULLIVAN:

19 Q. You had a lady named Peggy Newman, an  
20 accountant in Las Vegas, prepare Form 1040 income tax  
21 returns for you in the late 1990s and even into the  
22 early 2000s, didn't you?

23 A. She printed them out.

24 Q. "Yes" or "no"?

25 A. She printed them out. The way you asked the

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1 question, no.

2 Q. And you provided her with information about  
3 your finances so she could do that; right?

4 A. I provided her with some figures, yes.

5 Q. All right. And you had her prepare your tax  
6 returns?

7 A. No, not correct.

8 Q. And you consider them not your tax returns  
9 because you didn't sign them?

10 A. That and the figures were not correct on them.

11 Q. Well, the figures came from you, didn't they?

12 A. Not entirely, no.

13 Q. But you used those tax returns for a purpose  
14 that benefited you?

15 MR. HOYT: Your Honor, I don't know where we  
16 are going. It could just drag on.

17 THE COURT: I assume you are getting to  
18 Eighteen USC 1001?

19 MR. SULLIVAN: Yes, Your Honor.

20 THE COURT: Let's get to it.

21 MR. SULLIVAN: There is another purpose, as  
22 well, Your Honor.

23 THE COURT: All right. Go ahead.

24 BY MR. SULLIVAN:

25 Q. You had those tax returns prepared, and you

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1 used them for a purpose that was beneficial to you?

2 A. They weren't tax returns that were prepared as  
3 tax returns.

4 Q. What term would you like me to use?

5 A. They were, basically, a profit and loss  
6 statement.

7 Q. On a Form 1040; right?

8 A. That's correct.

9 Q. And you used those Form 1040 profit and loss  
10 statements to secure loans from financial institutions;  
11 correct?

12 A. It was private money on those, I think. It  
13 was not -- it was not institutions, like you say.

14 Q. You secured a loan from something called CLS  
15 Mortgage Company, didn't you?

16 A. Right. That was a private lender, like forty  
17 or fifty different investors.

18 Q. Does it matter if they are a private or a  
19 public corporation, to you, Mr. Hinkson? You submitted  
20 those -- whatever you want to call them -- financial  
21 information forms on the 1040s; right?

22 MR. HOYT: Your Honor, objection. We went  
23 into this in depth.

24 MR. SULLIVAN: No, we haven't, Your Honor.

25 MR. HOYT: We went into this in depth in the

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1 tax case. He used them as financial statements there.  
 2 The discussion was made about the difference between a  
 3 bank and private lenders.  
 4 THE COURT: I understand.  
 5 MR. HOYT: Even Mr. Dan Vaughn alluded to this  
 6 yesterday, how he had to get hard money because he  
 7 wouldn't sign tax returns.  
 8 THE COURT: Counsel, that's fine.  
 9 Your objection is overruled, Mr. Sullivan.  
 10 You may go ahead with your attempt to impeach him.  
 11 MR. SULLIVAN: Could my last question be read  
 12 back, please?  
 13 (Whereupon, the pending question was read back  
 14 by the court reporter.)  
 15 BY MR. SULLIVAN:  
 16 Q. You did that; right?  
 17 A. I submitted it to CLS, yes.  
 18 Q. And that was to secure a loan?  
 19 A. Yes.  
 20 Q. And other institutions required you to sign  
 21 those returns, didn't they?  
 22 A. Nobody has ever required me to sign them.  
 23 Q. Are you testifying that you never signed one  
 24 to secure a loan?  
 25 A. I have never signed one to secure a loan.

1 Answer: "Well, they said they had to have tax  
 2 returns; and I told them that I had not signed them, nor  
 3 had I filed them, and they said, 'Well, we don't care  
 4 about all of that, but we want you to sign this form  
 5 because it has to go in our file so that we can verify  
 6 with the IRS that you signed them.'  
 7 "And I told them I didn't sign them, and so I  
 8 put 'Forced to Sign as a Condition of Funding' above my  
 9 signature after I told them this."  
 10 Was that your testimony?  
 11 A. Yes.  
 12 Q. So when you needed a loan, you would sign  
 13 documents, wouldn't you?  
 14 A. Just the loan documents.  
 15 Q. Right. Now, sir, you said the tax returns  
 16 that you had the lady in Las Vegas prepare for you  
 17 showed that you owed substantial amounts of income tax,  
 18 didn't they?  
 19 A. They weren't accurate because they were just  
 20 financial statements.  
 21 Q. Did they show that you owed substantial  
 22 amounts of income tax?  
 23 A. I don't believe so.  
 24 Q. All of those income tax returns you didn't  
 25 sign were moved into evidence in your trial, weren't

1 Absolutely.  
 2 Q. Are you quibbling about signing?  
 3 A. No, I'm not.  
 4 Q. Such as you said, "Let this be my  
 5 handwriting," or something?  
 6 A. Not even my handwriting.  
 7 Q. Sir, did you give this testimony at your tax  
 8 trial last year, under oath, starting at 1250, page 21.  
 9 Question by the prosecutor -- Mr. Bradley, was  
 10 it?  
 11 A. I don't know. Why don't you put it on the  
 12 screen?  
 13 Q. Question: "Mr. Hinkson, finally, I would like  
 14 to show you Government Exhibit 76 which is in evidence,  
 15 which is the W-9 form. Do you remember that coming in  
 16 through the CLS Mortgage people?"  
 17 Answer: "Yes, I do."  
 18 Question: "Can you see your signature there?"  
 19 Answer: "Yes, I do."  
 20 Question. "It says, 'Signature, Forced to  
 21 Sign as a Condition of Funding,' quote, unquote. Did  
 22 you write that there?"  
 23 Answer: "I did."  
 24 Question: "Why did you write that there,  
 25 sir?"

1 they?  
 2 A. I would assume so.  
 3 MR. HOYT: Your Honor, may we approach at  
 4 sidebar?  
 5 THE COURT: I think that might be a good idea.  
 6 (Whereupon, the following sidebar discussion  
 7 was held outside the presence of the jury.)  
 8 MR. HOYT: Your Honor, Mr. Hinkson has  
 9 admitted that he was convicted of the tax counts. And  
 10 what I see counsel trying to do here is to go back  
 11 through and relitigate. This is more like a 404(b) sort  
 12 of argument of, you know, prior bad acts or something.  
 13 You know, the man has been convicted. He  
 14 can't say anything more than that. It just doesn't seem  
 15 proper to go through all of the individual items of  
 16 evidence that were used at the tax case against him.  
 17 He's had wide latitude, and we haven't really gotten  
 18 anywhere.  
 19 MR. SULLIVAN: Counsel, on his direct, tried  
 20 to paint a picture of Mr. Hinkson to the jury that he's  
 21 a humanitarian that wants to cure the world of every  
 22 disease known to man, that all he does is work hard at  
 23 his plant in order to do this, that he is curing  
 24 tuberculosis, et cetera, et cetera.  
 25 This is a completely different view of the man

1 that is being presented to the jury that, while he is  
2 doing all of these humanitarian acts and standing on  
3 principal, he is not filing tax returns and he is  
4 benefiting, quite substantially, financially.

5 THE COURT: The court has the same concern  
6 that Mr. Hoyt has articulated. I think the way to get  
7 there, counsel, is to just confront him directly with  
8 the fact that, as a result of the fact that he engaged  
9 in this conduct, he has received substantial amounts of  
10 money that he paid no income taxes on, hundreds of  
11 thousands of dollars -- I think that the only thing you  
12 can do with a witness like this so to simply confront  
13 him with that. Let him answer any way he wants.

14 The problem -- and I agree with Mr. Hoyt --  
15 the problem is, if you ask him the kind of open-ended  
16 questions you are asking him, you are just inviting him  
17 to go back in and testify again to all of the things  
18 that the tax court jury heard and rejected.

19 And he's been convicted of that, and I do  
20 think that you can get to the point more directly  
21 without going into this much detail.

22 MR. SULLIVAN: I am going to go right to it.  
23 I think I have laid sufficient foundation to confront  
24 him and impeach him in testimony where he admitted that  
25 these tax returns show tax due and owing.

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1 On this particular one, I would ask: "You  
2 hadn't paid that \$35,000, had you?"

3 "No."

4 THE COURT: If you can get right to it, I will  
5 allow you to go that far. Otherwise, I think we have  
6 heard enough on the tax case.

7 (Whereupon, the following proceedings were  
8 held in open court, in the presence of the jury:)

9 BY MR. SULLIVAN:

10 Q. Page 1212, line 2. Did you give this  
11 testimony under oath at your tax trial?

12 Question by Mr. Bradley: "Then it says,  
13 quote, 'Estimated Tax Payments and Amount Applied on  
14 line 53, \$35,000. Do you know where she got that number  
15 from?'"

16 Answer: "I really don't. I mean, I can  
17 speculate."

18 Question: "You hadn't paid that \$35,000, had  
19 you?"

20 Answer: "No."

21 Is that the testimony you gave last year,  
22 April or May?

23 A. I didn't read it on the screen, so I'm not  
24 sure.

25 THE COURT: If you want to, show it to him to

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1 refresh his recollection. Otherwise, the question and  
2 answer will stand.

3 BY MR. SULLIVAN:

4 Q. Do you see it on the screen where I am  
5 pointing?

6 THE COURT: You can show it to the jury, since  
7 you have already read it. You are going to need to  
8 enlarge it, counsel.

9 BY MR. SULLIVAN:

10 Q. Did you give that testimony?

11 A. That's what it says on the screen. I don't  
12 recall but --

13 Q. Do you recall being shown your 1998 1040  
14 prepared by Peggy Newman and being asked about your tax  
15 due and owing in?

16 A. I do not remember.

17 MR. HOYT: Your Honor, objection. Counsel, I  
18 thought, was going to get right to it, ask the one  
19 question, and move on.

20 THE COURT: I think this is a different year.

21 MR. SULLIVAN: It is a different year.

22 THE COURT: I will permit him to ask on the  
23 different year.

24 MR. HOYT: Your Honor, I am just wondering if  
25 I have to bring in a bunch of witness to counter this

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1 testimony.

2 THE COURT: I ruled at sidebar that he could  
3 get to the question of money otherwise due and owing.  
4 That's what he is doing. Overruled.

5 BY MR. SULLIVAN:

6 Q. Were you shown by Mr. Bradley your 1980 --  
7 excuse me -- 1998 1040 prepared by Peggy Newman? Do you  
8 recall that?

9 A. I don't.

10 Q. And do you recall that that tax return showed  
11 you owing \$58,000?

12 A. I don't recall, but I'm sure it's not a tax  
13 return if it's not signed.

14 Q. Did you give this testimony to these  
15 questions?

16 1215, counsel.

17 Question: "Exhibit 42 is your 1998 1040  
18 prepared by Peggy Newman. Do you recognize her  
19 signature, sir?"

20 Answer: "Yeah, I recognize her signature."

21 Question: "On this return, the total amount  
22 of tax that year was \$58,000 on line 56. Is that what  
23 it says?"

24 Answer: "That's what it says."

25 Question: "And your total payments were

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1 \$57,000 that year?" 2138  
2 Answer: "That's what it says."  
3 Question. "You didn't pay that \$57,000?"  
4 Answer: "No, I didn't pay that."  
5 Was that your testimony at that time, sir?  
6 A. I haven't seen it on the screen.  
7 MR. SULLIVAN: May I show it to the --  
8 THE COURT: Yes, you may.  
9 MR. SULLIVAN: Page 1215, starting with line  
10 9.  
11 THE COURT: Move it up just a little bit,  
12 Mr. Sullivan. There you go.  
13 THE WITNESS: Well, it says I testified to it;  
14 so I believe it. I don't recall it.  
15 BY MR. SULLIVAN:  
16 Q. The truth of the matter is, Mr. Hinkson, that  
17 you are a successful businessman because you never paid  
18 your taxes?  
19 A. I don't think that's true, no.  
20 Q. Do you claim that you are a successful  
21 businessman because you had a superior product that sold  
22 well?  
23 A. No, I don't think that's correct either.  
24 Q. Well, you didn't have the same overhead that  
25 other businessmen do, did you?

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1 A. I had more overhead than other businessmen. 2139  
2 Q. You didn't have the overhead of having to pay  
3 taxes; correct?  
4 A. I paid a lot of taxes during those years.  
5 Q. You didn't pay your income taxes?  
6 A. I paid any tax that I legally owed.  
7 Q. As a matter of fact, you didn't pay any Idaho  
8 State tax either, did you?  
9 MR. HOYT: Your Honor, how deep are we going  
10 to go into this?  
11 THE COURT: I will sustain the objection.  
12 I think that's enough on the tax case,  
13 Mr. Sullivan.  
14 MR. SULLIVAN: Yes, Your Honor.  
15 Q. Mr. Hinkson, you also accused Nancy Cook of  
16 having forged the search warrant that was used to search  
17 the plant on 11/21/02?  
18 A. Yes, I did. I believe I did. Do you have a  
19 transcript to show me or something?  
20 Q. Government Exhibit 1 -- excuse me. It's not  
21 1. It's the transcript of the radio interview.  
22 THE COURT: 5-A.  
23 MR. SULLIVAN: 5-A, Your Honor.  
24 Q. Page 26, line 782. Does this refresh your  
25 memory?

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1 You said: "Now, the next part of the crime -- 2140  
2 notice she's the criminal -- is on the 21st of November.  
3 She created a search warrant to search my factory. She  
4 signed the judge's name to it and never file stamped it  
5 in."  
6 Does that refresh your memory?  
7 A. Yes.  
8 Q. On page 27, line 804, you said in the radio  
9 interview: "So she never took that to court. She just  
10 created that, signed the name on it, and never bothered  
11 to take it to court."  
12 You are referring to the search warrant for  
13 the plant; right?  
14 A. I'm not sure. I would have to read more of  
15 that. Was it the search warrant, or was it the  
16 indictment?  
17 Q. Are you telling me -- all right. You accused  
18 her of forging the indictment, too, didn't you?  
19 A. Yes, I did.  
20 Q. And you don't recall whether you accused her  
21 of forging the search warrant, also?  
22 A. Well, there was no affidavit attached to it;  
23 and I don't think it was proper.  
24 Q. Well, my question was: Are you forgetting  
25 whether or not you accused her of forging a search

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1 warrant? 2141  
2 A. If that's what I said, then I would agree  
3 that's probably what I said. And it's my belief that it  
4 is a fraud, yes.  
5 Q. Okay. And at this point in time, on January  
6 8, 2003, when you gave this radio interview, you still  
7 had your lawsuit against Nancy Cook and Steve Hines in  
8 court; right?  
9 A. What day?  
10 Q. Your lawsuit hadn't been thrown out of court  
11 or dismissed yet on January 8, 2003; right?  
12 A. Okay. I agree with that.  
13 Q. Okay. And did you ever, at any time in that  
14 lawsuit, complain that your civil rights had been  
15 violated by Nancy Cook for forging an indictment or  
16 forging a search warrant?  
17 A. She wouldn't give the discovery, so I had no  
18 way of absolutely proving it because she refused to  
19 cooperate.  
20 THE COURT: Mr. Hinkson, that's not responsive  
21 to the question. The question is: At any time in the  
22 lawsuit, did you complain that she had violated your  
23 civil rights by forging an indictment or forging a  
24 search warrant? Just answer that question.  
25 THE WITNESS: I don't remember. I would have

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1 to read it at this point.

2 BY MR. SULLIVAN:

3 Q. Did you attempt to amend the complaint by  
4 alleging that she violated your civil rights by forging  
5 the indictment, forging the search warrant, and plotting  
6 to murder you?

7 A. No. I don't recognize that testimony or that  
8 statement.

9 Q. Those would be pretty significant civil rights  
10 violations if somebody had committed them; is that  
11 correct?

12 A. I think that would be serious, yes.

13 Q. But you didn't file anything or seek relief in  
14 court for those alleged violations?

15 A. I don't know. I haven't read the civil suit  
16 in three and a half years -- or three years.

17 Q. Your testimony is you don't know whether you  
18 included in your complaints that she forged the  
19 indictment, et cetera, forged everything against you?  
20 You don't remember that?

21 A. I don't remember that, no.

22 Q. Sir, in 2003, were you the legal owner of  
23 WaterOz?

24 A. In 2003?

25 Q. Yes.

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1 THE COURT: Thank you.

2 BY MR. SULLIVAN:

3 Q. Your criminal trial was last year?

4 A. Yeah. I remember there was a trial.

5 Q. Right. And that was in 2004; right?

6 A. I guess so.

7 Q. Is that where you say it was established --  
8 they established that you were the owner of WaterOz?

9 MR. NOLAN: Can we approach, Your Honor?

10 THE COURT: Yes, please.

11 (Whereupon, the following sidebar discussion  
12 was held outside the presence of the jury:)

13 MR. NOLAN: I know the least about this of  
14 everybody here, but it seems to me that he may have made  
15 representations that he didn't own the place on a number  
16 of occasions.

17 He may have even testified that way. There  
18 may be all sorts of things about who owned what. The  
19 jury made a determination or the court made a  
20 determination.

21 The fact that he took a position back then  
22 that may or may not have turned out to be true I don't  
23 think is something that is appropriate to get into.

24 MR. SULLIVAN: I am not trying to establish  
25 that this was a proven fact at his criminal trial in

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1 A. I think they established that at the trial.  
2 They said I was a legal owner of the business.

3 Q. Who established?

4 A. This court did.

5 Q. But you had been claiming earlier -- you had  
6 claimed before your trial -- your trial was in 2004;  
7 right? Correct?

8 A. I really don't remember the exact time.

9 Q. You don't remember having your trial last  
10 year?

11 MR. HOYT: Which trial, counsel?

12 Objection. Date.

13 BY MR. SULLIVAN:

14 Q. You don't remember this trial?

15 THE COURT: Let's see if we can help  
16 Mr. Hinkson remember what trial we are talking about.

17 BY MR. SULLIVAN:

18 Q. Before this trial, you only had one other  
19 trial; correct?

20 MR. HOYT: Your Honor, there are other cases  
21 that have been talked about.

22 THE COURT: That's what Mr. Hoyt's concern is.  
23 Can you help him out?

24 MR. SULLIVAN: The criminal trial is what I  
25 meant.

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1 2004. I am trying to establish that he has tried to  
2 hide assets for a number of years, and he's done it by  
3 claiming he is not the legal owner of WaterOz. I think  
4 that goes to deceitful conduct.

5 THE COURT: It is true that that was a portion  
6 of the proof that the court heard at the last trial but  
7 it's going to -- it will take so much time to establish  
8 all of that. Unless you are trying to lay the  
9 foundation so that you can set him up for impeachment,  
10 fine.

11 Otherwise, you are reopening the entire tax  
12 case; and I don't think that's going to help any of us.  
13 And it certainly --

14 MR. SULLIVAN: Your Honor, I will avoid doing  
15 that. I have specific transcript pages to ask him those  
16 questions which I think show his inconsistency in these  
17 areas.

18 THE COURT: Well, let's --

19 MR. SULLIVAN: If he would answer the  
20 question --

21 THE COURT: You have to deal with the witness  
22 as he is, and he is a very evasive witness who doesn't  
23 respond directory to questions.

24 I mean, I had the same problem with him when  
25 Mr. Hoyt was examining him. He is just a tough witness.

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1 So do the best you can. But let's get to the impeaching <sup>2146</sup>  
2 stuff, okay?  
3 (Whereupon, the following proceedings were  
4 held in open court, in the presence of the jury:)  
5 BY MR. SULLIVAN:  
6 Q. In 2003, were you the legal owner of WaterOz?  
7 "Yes" or "no"?  
8 MR. NOLAN: Your Honor, does that call for a  
9 legal conclusion?  
10 THE COURT: It does call for a legal  
11 conclusion. Sustained.  
12 BY MR. SULLIVAN:  
13 Q. Did you believe, in 2003, that you owned  
14 WaterOz?  
15 A. No.  
16 Q. Sir, when did you hire Mr. Richard Bellon for  
17 any capacity?  
18 A. I said earlier that I thought it was a month  
19 before the civil lawsuit was filed. That's my best  
20 recollection.  
21 Q. Did you hire him to be some sort of legal  
22 advisor?  
23 A. Yes. He was supposed to do legal work for me,  
24 for the -- yes, for me.  
25 Q. Was he also supposed to assist you in running

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1 WaterOz? <sup>2147</sup>  
2 A. Absolutely not.  
3 Q. Wasn't he part of your management team of  
4 WaterOz?  
5 A. Yes. Once we had a problem, we wanted him to  
6 help solve the problem; and we had some management  
7 meetings with my father, Jeri Gray, me, Charlie.  
8 Q. Was the answer, "yes," he was a part of your  
9 management team then?  
10 A. I believe he was, for a brief period of time.  
11 It would have been in January of '03.  
12 Q. That what?  
13 A. That he was meeting with us and trying to help  
14 us resolve some problems. They were, like, manager  
15 meetings.  
16 Q. The question is: Was he a member of your  
17 management team, not whether he was trying to help you?  
18 A. These are just words. They are semantics.  
19 THE COURT: Counsel, now you are quarreling  
20 with the witness.  
21 THE WITNESS: He was, basically, asked to help  
22 negotiate some serious problems we were having with  
23 Mr. Swisher.  
24 BY MR. SULLIVAN:  
25 Q. Sir, in the taped conversation that you had

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1 with Mr. Harding on March 27, 2003, didn't you say the <sup>2148</sup>  
2 following?  
3 MR. HOYT: Page?  
4 MR. SULLIVAN: 76.  
5 MR. HOYT: It was excluded, counsel.  
6 MR. SULLIVAN: Page 76.  
7 MR. NOLAN: I'm not sure this is in evidence.  
8 THE COURT: I don't think it is but I assume  
9 that you are going to -- well, go ahead and ask your  
10 question. Let me hear it and see if there is an  
11 objection.  
12 BY MR. SULLIVAN:  
13 Q. In the conversation, the taped conversation  
14 with Mr. Harding, do you recall having a conversation --  
15 one topic of your conversations was about firing or  
16 hiring an employee?  
17 A. Yes. That was the girl that robbed my house.  
18 Q. Right. And Harding says: "Bizarre. You're  
19 not going to hire her back? Please say, 'No.'"  
20 MR. HOYT: Your Honor --  
21 THE COURT: I am going to sustain the  
22 objection. This is not a permissible area,  
23 Mr. Sullivan. Move on to something else.  
24 BY MR. SULLIVAN:  
25 Q. Sir, with regard to your WaterOz products,

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1 have you -- you have claimed they can cure tuberculosis; <sup>2149</sup>  
2 is that right?  
3 A. God cures the tuberculosis.  
4 Q. You don't think you are God, do you?  
5 A. No.  
6 Q. But you say you can cure tuberculosis, don't  
7 you?  
8 A. I just don't like the way you used the word.  
9 Q. I'm sorry. Do you think you can cure  
10 tuberculosis?  
11 A. I think silver kills all viruses known to man;  
12 and if you breathe silver vapor, tuberculosis will die.  
13 Q. My question is, sir: Any of these products  
14 that you sell and have been selling for a number of  
15 years, have you ever patented them with the U.S. Patent  
16 Office?  
17 MR. HOYT: Your Honor, I will object. I  
18 think, if we are going to go into this area, we really  
19 do need to approach at sidebar. There is a whole litany  
20 of issues here, now that counsel has brought it up, that  
21 we would be happy to address.  
22 THE COURT: Let's not do it in this fashion.  
23 Are you trying to lay a foundation for impeachment here,  
24 Mr. Sullivan?  
25 MR. SULLIVAN: I'm not. I think I know the

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1 answer and I think that will --

2 THE COURT: So do I. If that's the case, then  
3 I sustain the objection. Move on to another area.

4 BY MR. SULLIVAN:

5 Q. Sir, you know who Kay Walsingham is; correct?

6 A. Yes.

7 Q. She was the secretary of your previous  
8 attorney, Brit Groom?

9 A. Yes.

10 Q. You have known her for a while; correct?

11 A. Yes.

12 Q. You used to go into Mr. Groom's law office and  
13 speak with her?

14 A. Yes, I have spoke to her.

15 Q. And you used to say things in front of her  
16 that you hoped Dennis Albers would die; correct?

17 A. No.

18 Q. You never said that in front of Kay  
19 Walsingham?

20 A. No.

21 Q. Did you ever say in front of -- didn't you say  
22 in front of Kay Walsingham that you hoped Dennis Albers'  
23 wife and children would die?

24 A. Dennis Albers doesn't have children. And the  
25 answer is "no."

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1 Q. I thought he had a daughter, sir. Didn't you  
2 tell us yesterday that he had a daughter?

3 A. Yes, an older daughter who is a lawyer and a  
4 very nice lady. The word "children" refers to younger  
5 people.

6 THE COURT: Well, Mr. Hinkson, I think the  
7 jury understands what the word "children" means.

8 BY MR. SULLIVAN:

9 Q. Didn't you say in front of Kay Walsingham that  
10 you hoped -- or you wanted Mrs. Albers and her children  
11 to be tortured in front of Mr. Albers?

12 A. No, absolutely not.

13 Q. You do like Mrs. Walsingham, though, don't  
14 you?

15 A. Yes, I have always liked her.

16 Q. She's not one of your enemies, is she?

17 A. No.

18 Q. You have never sued her, have you?

19 A. She's never sued me is a better way of saying  
20 it.

21 Q. Okay. She's never sued you; right?

22 A. Right.

23 Q. And you've never sued her?

24 A. Right.

25 Q. Now, you do sue people regularly, of course?

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1 A. No. I'm not the aggressor.

2 Q. In the litigation between you and Mr. Bellon,  
3 it's correct that he sued you; right?

4 A. Yes. He sued me, yes.

5 Q. And then you filed a counterclaim against him?  
6 Yes?

7 A. Yes, I did, even though I didn't participate  
8 in it. I was in jail.

9 Q. And then you filed a claim -- that is, you  
10 sued Mr. Swisher and made him a third-party respondent;  
11 correct?

12 A. Yes, because he seized the factory.

13 THE COURT: The answer is "yes" or "no," not  
14 why you did it.

15 THE WITNESS: Yes.

16 THE COURT: The jury will disregard why.

17 THE WITNESS: It is my understanding that,  
18 yes, we did.

19 BY MR. SULLIVAN:

20 Q. And when was that that you did that,  
21 approximately?

22 A. I'm not sure. I would just be able to guess.  
23 I don't have a calendar in jail. Just every day is the  
24 same.

25 THE COURT: Mr. Hinkson, this is not a place

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1 from which we make speeches. We answer questions.

2 BY MR. SULLIVAN:

3 Q. Now, the litigation between you and  
4 Mr. Bellon, wasn't that because he claimed to be your  
5 partner?

6 A. He claimed it, yes, verbally.

7 Q. Well, you had a written agreement with him,  
8 didn't you?

9 A. No, sir.

10 Q. Didn't you dictate an agreement to Brit Groom  
11 for him to prepare for you?

12 MR. HOYT: Your Honor, objection. There is a  
13 court order that finds that there is no basis for a  
14 written agreement.

15 MR. SULLIVAN: I object to counsel's speeches.

16 THE COURT: So do I. Counsel, the objection  
17 is overruled. You brought this up yesterday on direct,  
18 and I think Mr. Sullivan is entitled to explore it on  
19 cross.

20 BY MR. SULLIVAN:

21 Q. Mr. Hinkson, didn't you dictate to Mr. Groom,  
22 Brit Groom, your attorney, a document that encompassed a  
23 partnership between you and Mr. Bellon?

24 A. It was a future partnership that was being  
25 proposed, yes.

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1 MR. SULLIVAN: Let me show you a document.  
 2 The next exhibit number?  
 3 THE COURT: Fourteen, I think, counsel.  
 4 MR. SULLIVAN: Thank you. Fourteen? Thank  
 5 you.  
 6 THE COURTROOM CLERK: Plaintiff's Exhibit No.  
 7 Fourteen is marked.  
 8 BY MR. SULLIVAN:  
 9 Q. If you will, look at the screen in front of  
 10 you at Government's Exhibit fourteen for identification.  
 11 Do you recognize this particular document?  
 12 A. I don't think I have ever read it.  
 13 Q. Do you see the back, the second page?  
 14 A. Yes, I see there is a second page.  
 15 Q. Do you recognize Mr. Groom's signature?  
 16 A. I don't really know what Mr. Groom's signature  
 17 looks like, so I can't say I recognize it.  
 18 Q. Mr. Groom used to file motions on your behalf  
 19 in the criminal case, the tax case; correct?  
 20 A. As my lawyer, yes.  
 21 Q. And he would sign those pleadings, wouldn't  
 22 he?  
 23 A. As a lawyer, yes.  
 24 Q. Okay. And you would review those pleadings,  
 25 wouldn't you?

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1 A. Yes. Before I filed him, yes.  
 2 Q. You would see his signature on the back page,  
 3 the last page of those pleadings?  
 4 A. Yes.  
 5 Q. This is the signature of Mr. Groom on the  
 6 screen in front of you, isn't it?  
 7 A. I don't know for sure, but I believe it is.  
 8 Q. You know what this is, don't you, Mr. Hinkson?  
 9 A. Yeah. It was read to me on the phone.  
 10 Q. Because you were in jail, and you dictated  
 11 this partnership agreement to Mr. Brit Groom; correct?  
 12 MR. NOLAN: Can we object on the basis that it  
 13 calls -- he is making a legal conclusion?  
 14 THE COURT: I will overrule the objection.  
 15 The document does contain that word, and I think it's  
 16 appropriate.  
 17 The jury, however, will be instructed that  
 18 they are not to draw any conclusion as to whether it is  
 19 or is not a legal partnership agreement; but the  
 20 document does contain the words "partnership agreement."  
 21 MR. SULLIVAN: Yes, Your Honor.  
 22 Q. Mr. Hinkson, isn't it correct that this  
 23 document was created by Mr. Groom as you dictated it to  
 24 him over the telephone?  
 25 THE COURT: To him or to Mrs. Walsingham?

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1 MR. HOYT: Your Honor?  
 2 MR. SULLIVAN: To both, Your Honor.  
 3 MR. HOYT: Can we approach?  
 4 THE COURT: Yes. I want to hear where we're  
 5 going on this.  
 6 (Whereupon, the following sidebar discussion  
 7 was held outside the presence of the jury:)  
 8 MR. SULLIVAN: Your Honor, they presented and  
 9 their defense includes a version of this litigation that  
 10 they like to call "The Bellon Take-Over."  
 11 I want to show the jury that there was a legal  
 12 basis. There was a legitimate, legal dispute, based  
 13 upon the document that this witness has identified he  
 14 dictated, this document to Brit Groom; and it represents  
 15 a partnership.  
 16 MR. HOYT: Your Honor, we already have a legal  
 17 determination in this issue between Mr. Bellon and  
 18 Mr. Hinkson. Mr. Groom even testified about it in the  
 19 court up in Idaho County.  
 20 The court ruled, on December 12, 2003. For  
 21 the purposes of the temporary restraining order, he  
 22 found that this document didn't have any validity and it  
 23 wasn't a legal agreement. I don't understand why we are  
 24 trying to relitigate all of these cases.  
 25 THE COURT: Let me just say this: As I

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1 understand the purpose of Mr. Sullivan's line of  
 2 inquiry, which you, Mr. Hoyt, opened the door to  
 3 yesterday on direct examination of Mr. Hinkson, the  
 4 Government is now attempting to impeach Mr. Hinkson with  
 5 the document that he admits he dictated to Mr. Groom's  
 6 law office.  
 7 And you have suggested, in your examination of  
 8 Mr. Hinkson, that there was a conspiracy by Mr. Bellon  
 9 and Mr. Swisher and others to takeover the company and  
 10 to take it away from Mr. Hinkson and that's why they are  
 11 all testifying against him.  
 12 Mr. Sullivan is entitled to show that  
 13 Mr. Hinkson was discussing, at least at this point in  
 14 time, engaging in some kind of a joint venture with  
 15 Mr. Bellon. That is impeaching. Your objection is  
 16 overruled.  
 17 Proceed.  
 18 MR. NOLAN: Can I just, first of all, say --  
 19 THE COURT: Let me just say that I have been  
 20 very generous about allowing both lawyers; but I want  
 21 one lawyer to state the position for each side, and it  
 22 will be the lawyer handling the witness. You can  
 23 whisper in Mr. Hoyt's ear, and he can be your  
 24 mouthpiece. I want to do this one at a time.  
 25 (Whereupon, the following proceedings were

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1 held in open court, in the presence of the jury:)

2 THE COURT: Proceed, Mr. Sullivan. The  
3 objection is overruled.

4 MR. SULLIVAN: Your Honor, I move the  
5 admission of Exhibit fourteen.

6 THE COURT: I will admit it for the purposes  
7 of impeachment. It's not coming in yet as substantive  
8 evidence.

9 (Whereupon, Government's Exhibit No. 14 was  
10 received in evidence for the purposes of impeachment.)

11 MR. SULLIVAN: May I display it on the  
12 projector?

13 THE COURT: Why don't you, first -- yes. All  
14 right. You may do that. I will give a limiting  
15 instruction.

16 Ladies and gentlemen, what I mean by this is  
17 that, where a party is using either a document or a  
18 prior statement of the witness to try and impeach or  
19 discredit the witness, you may not consider the content  
20 of the statement or the document for its truth.

21 But you may consider it to the extent that you  
22 find that, depending upon how the witness responds to  
23 it, it is not consistent with prior testimony that the  
24 witness has given.

25 With that understanding, you may display it to

1 the jury.

2 BY MR. SULLIVAN:

3 Q. Mr. Hinkson, on the screen before you is a  
4 document that is headed, or titled at the top,  
5 "Partnership Agreement;" is that correct?

6 A. Yes.

7 Q. And it's dated Thursday, July 24, 2003?

8 A. Yes.

9 Q. And then it is followed by the words, "Mr.  
10 David Hinkson and Richard Bellon agree, as follows;"  
11 correct?

12 A. Correct.

13 THE COURT: Could you enlarge that a little  
14 bit, counsel? It's hard to read.

15 BY MR. SULLIVAN:

16 Q. And this purported to be some kind of a  
17 partnership agreement between you and Mr. Bellon;  
18 correct?

19 A. Correct.

20 Q. And you were in jail at the time you dictated  
21 it to Mr. Brit Groom, right?

22 A. Correct.

23 Q. And he prepared it and he signed it; correct?

24 A. I don't know if that's his signature but --

25 Q. And then Cathryn Walsingham, his secretary,

1 also signed it, to witness it; correct?

2 A. I don't know what her signature looks like,  
3 but I believe you.

4 Q. And it bears a handwritten inscription at the  
5 bottom with the name Richard Allen Bellon; correct?

6 A. That's what it says on the screen.

7 Q. You didn't see him write that?

8 A. I was in jail.

9 Q. You didn't see Ms. Walsingham or Mr. Groom  
10 sign it either?

11 A. No, I did not.

12 Q. But you did see this document later, during  
13 the litigation; correct?

14 A. I'm not sure if I have ever seen it.

15 Q. Mr. Hoyt represented you in that litigation;  
16 correct?

17 A. Yes. I'm sure he saw it.

18 Q. At the very bottom of page one, does it not  
19 read: "Mr. Bellon shall have management authority over  
20 the operation of the WaterOz facility with consultation  
21 with Mr. Hinkson."

22 MR. HOYT: Your Honor, I object to the form of  
23 the question. Counsel is well aware of the court decree  
24 that finds that this --

25 THE COURT: Counsel, no more speaking

1 objections. The objection is overruled.

2 Mr. Hinkson, did you dictate those words or  
3 not?

4 THE WITNESS: I don't believe so. I don't  
5 have a copy of the tape.

6 BY MR. SULLIVAN:

7 Q. Are you alleging that Mr. Groom didn't take it  
8 down correctly when you dictated it?

9 A. I wouldn't know. They have recorded every  
10 conversation I ever made to Mr. Bellon. I believe there  
11 are, like, 300 tapes.

12 THE COURT: No. Mr. Hinkson, that's not  
13 responsive to what Mr. Sullivan asked you.

14 THE WITNESS: I don't know. I mean, I don't  
15 remember.

16 BY MR. SULLIVAN:

17 Q. When is the first time -- do you recall ever  
18 seeing this document before? "Yes" or "no"?

19 A. No, I have never seen it.

20 Q. You have never seen it?

21 A. No.

22 Q. You were being sued on the basis of this  
23 document, and you are telling the jury you never saw it?

24 A. Correct.

25 Q. That particular litigation between you and

1 Mr. Bellon was settled by everyone dropping their  
2 claims; correct?  
3 A. I believe so.  
4 Q. And the litigation between you and Mr. Swisher  
5 that accompanied it was settled by you and Mr. Swisher  
6 walking away from your claims; correct?  
7 A. I believe so but I wasn't -- I wasn't there.  
8 Q. You were asked on direct examination whether  
9 or not you tried to find out where Ms. Cook, Mr. Hines,  
10 or Judge Lodge lived? Do you remember that question?  
11 A. Yes.  
12 Q. I think you told us you didn't make such an  
13 effort; right?  
14 A. I never did.  
15 Q. Isn't it true you did know where they all  
16 worked, however?  
17 A. I don't know where they worked, for sure.  
18 Q. But you wrote letters and sent them to Steven  
19 Hines, didn't you?  
20 A. I think my secretaries called to find out  
21 his -- well, his address -- wasn't his return address on  
22 the letter?  
23 THE COURT: Mr. Hinkson, that's not the  
24 question. The question is --  
25 THE WITNESS: I just responded to the address

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1 A. Yes.  
2 Q. It has a return address for Mr. Hines, doesn't  
3 it?  
4 A. Yes. On this paper, it does.  
5 Q. Does that refresh your memory that you did  
6 know that he had a return address?  
7 A. I already said I knew he had a return address.  
8 Q. You said you didn't know if he had a return  
9 address, didn't you?  
10 A. That's not what I said. I thought I said that  
11 I had an address that was on his paperwork for a return  
12 address.  
13 Q. And you said you didn't know where he worked?  
14 A. I don't know where he works. That's just his  
15 mailing address.  
16 Q. So you think that doesn't necessarily mean  
17 that's where he works; right?  
18 A. I don't know where he works.  
19 Q. Did you tell Chad Croner that you had a mob  
20 lawyer?  
21 MR. HOYT: Your Honor, where is this going?  
22 THE COURT: Well, I think there was testimony  
23 to that effect by Mr. Croner. Overruled.  
24 BY MR. SULLIVAN:  
25 Q. Did you tell him that?

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1 that was on his correspondence, I believe.  
2 BY MR. SULLIVAN:  
3 Q. That's the address for this building, isn't  
4 it?  
5 A. I wouldn't know.  
6 Q. You couldn't find a street address in Boise if  
7 you wanted to?  
8 A. I didn't try.  
9 Q. But you did know where he worked? "Yes" or  
10 "no"?  
11 A. No, I didn't know where he worked.  
12 Q. You did know the address, the return address,  
13 for his letters, though, didn't you?  
14 A. If they were on his return address, yes.  
15 Q. And you knew that Nancy Cook was in the U.S.  
16 Attorney's Office in Coeur d'Alene, too?  
17 A. No, I did not know that.  
18 Q. You didn't know that?  
19 A. No.  
20 Q. Mr. Hoyt moved into evidence, after you  
21 identified this exhibit, Defendant's Exhibit F-7. Do  
22 you recall this exhibit, sir? Defendant's F-7?  
23 A. Yes, I do, actually.  
24 Q. You remember that? It was only yesterday.  
25 Yes?

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1 A. No.  
2 MR. HOYT: My objection is to relevance, Your  
3 Honor.  
4 THE COURT: I'm allowing it for impeachment,  
5 Mr. Hoyt. Overruled.  
6 BY MR. SULLIVAN:  
7 Q. Did you tell Chad Croner in jail that you had  
8 a mob lawyer?  
9 A. No, I did not use those words.  
10 Q. In Las Vegas, when you were a paralegal, did  
11 you have a mob lawyer?  
12 A. Well, he's an Italian lawyer; but, you know  
13 he's not a mob lawyer.  
14 Q. Haven't you called him a mob lawyer?  
15 A. There's been times when I referred to him as  
16 that, yes.  
17 Q. You referred to him that way to Mr. Croner,  
18 too, didn't you?  
19 A. Not that I remember, no.  
20 Q. If you would, look at page 156 of the  
21 transcript with J. C. Harding. Didn't you say, at line  
22 16 -- start at 15.  
23 "And I got it. I got a Harvard law professor  
24 using my account, my dad, Rich Bellon, in Vegas a mob  
25 lawyer. I was trained in Vegas by a mob lawyer. I was

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1 trained by a mob attorney."  
 2 You said that to Mr. Hinkson (sic.); right?  
 3 THE COURT: Mr. Harding?  
 4 MR. SULLIVAN: I'm sorry. Mr. Harding. I  
 5 keep doing that.  
 6 THE COURT: MR. SULLIVAN, would you write on a  
 7 piece of paper and just put the name "Harding" on it and  
 8 stick it under his nose?  
 9 MR. SULLIVAN: Or put it on my forehead.  
 10 THE COURT: I'm not sure you would see it on  
 11 your forehead.  
 12 BY MR. SULLIVAN:  
 13 Q. You said that to Mr. Harding, didn't you?  
 14 A. Yes, I did.  
 15 Q. You said it to Chad Croner, didn't you?  
 16 A. No I didn't.  
 17 Q. How else would he know you had a mob lawyer in  
 18 Las Vegas, sir?  
 19 A. I'm sure you prompted him.  
 20 Q. Is that another one of your accusations that  
 21 you make against federal officials, based upon no fact,  
 22 Mr. Hinkson?  
 23 MR. HOYT: I object.  
 24 THE COURT: Overruled.  
 25 You can answer that, Mr. Hinkson.

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1 THE WITNESS: I think he got information off  
 2 my legal paperwork stolen from my jail cell.  
 3 BY MR. SULLIVAN:  
 4 Q. Your testimony has now changed? I must have  
 5 prompted him? Someone stole your information? Is that  
 6 your new testimony?  
 7 A. I'm not going to give any testimony on that.  
 8 Q. Why not?  
 9 A. Could you restate the question?  
 10 Q. Never mind.  
 11 Counsel also moved into evidence Defendant's  
 12 Exhibit F-4. Do you recall this document?  
 13 A. Yes. I saw it yesterday, yes.  
 14 Q. This is the document that -- you did a mass  
 15 mailing when Dennis Albers was running for District  
 16 Attorney; is that correct?  
 17 A. I don't believe that's correct.  
 18 Q. All right. Tell us what F-4 is.  
 19 A. I think it's a letter to the Idaho Supreme  
 20 Court. Go back to the top. It will tell you what it  
 21 is. It says it was addressed to the Idaho Supreme  
 22 Court, State Bar Association, and the Mayor, and  
 23 Grangeville City Council.  
 24 Q. Are you testifying that you didn't include  
 25 this in your mass mailing to the voters in Idaho County?

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1 A. That is correct; that was never mailed out.  
 2 Q. Is it your testimony you sent it to the Idaho  
 3 Supreme Court and the other persons listed at the very  
 4 top?  
 5 A. That would be my testimony, yes.  
 6 Q. In this letter, you accuse Mr. Albers of  
 7 having orchestrated -- do you follow my finger -- having  
 8 orchestrated a lawsuit against you based upon perjury;  
 9 correct?  
 10 A. Absolutely.  
 11 Q. And you allege, "Dennis Albers has further met  
 12 with federal agents while acting as a prosecutor, City  
 13 of Grangeville, in an attempt to destroy me and my  
 14 family for the purposes of taking property he is not  
 15 entitled to;" correct?  
 16 A. Correct.  
 17 Q. At the very bottom of this letter, the last  
 18 sentence, did you write to the addressees at the top,  
 19 the following:  
 20 "After fifteen days, if I do not hear from  
 21 you, I will consider that you granted Dennis an implied  
 22 immunity and are, thus, sanctioning Dennis Albers'  
 23 activities by silence."  
 24 A. Yes, I did.  
 25 Q. Was that supposed to mean that, if they didn't

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1 go along with you, you were accusing them of some  
 2 impropriety?  
 3 A. I think that's what it says. I think it  
 4 states that I will state that they will be in agreement  
 5 that this activity of his is okay.  
 6 MR. SULLIVAN: Excuse me, Your Honor. I have  
 7 lost another document.  
 8 THE COURT: Go ahead. Take your time,  
 9 counsel.  
 10 BY MR. SULLIVAN:  
 11 Q. Sir, during the conversation with Mr. Harding  
 12 on March 27th, did Mr. Harding tell you, at page 136,  
 13 line 10 -- line 1 -- Mr. Harding said at the top: "So  
 14 when does that happen, though? Do you get close to  
 15 losing and you go, okay, I've got to whack these guys?"  
 16 And you say: "I am only one guy."  
 17 Didn't you understand Mr. Harding to be saying  
 18 "whack these guys" -- that he was talking about  
 19 murdering them?  
 20 A. I think he was speaking metaphorically.  
 21 Q. Like you do?  
 22 A. I did, at that time, yes.  
 23 Q. And you said say, "I'm only one guy." Is that  
 24 metaphorical, too?  
 25 A. Yeah. I feel overwhelmed.

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1 Q. Meaning you were only one guy, and you  
 2 couldn't whack three guys by yourself; right?  
 3 A. No. I can't fight the whole world by myself.  
 4 Q. And then at page -- excuse me -- same page,  
 5 line 12, where it says --  
 6 A. It's talking about people in Grangeville.  
 7 Q. But Harding says: ". . . made the joke in  
 8 front of that guy the other day about killing those  
 9 three feds . . ." What joke had you made the other day  
 10 about killing three feds?  
 11 A. I do not know of any joke, and I do not know  
 12 if I even was listening to him.  
 13 Q. You don't know if you were listening to him?  
 14 A. No. He just sort of talked, and I really  
 15 didn't pay much attention to what he was saying.  
 16 Q. Because you didn't say to him, in response,  
 17 "What joke?" or, "Killing what feds?" did you?  
 18 A. I really -- I wasn't really having a  
 19 conversation with him. It was more like he was just  
 20 kind of doing what he does, yacking away; and I wasn't  
 21 really listening to most of it.  
 22 Q. Were you listening when he said,  
 23 ". . . killing those three feds . . ." or were you  
 24 listening when he said, ". . . if you keep doing that  
 25 in front of people, somebody is going to fuck with you

1 or somebody is going to whack one of them mother  
 2 fuckers -- no, you think that's funny."  
 3 You were laughing at that point, weren't you,  
 4 Mr. Hinkson?  
 5 A. No.  
 6 Q. Why did he say, "No, you think that's funny"?  
 7 A. Everything he said --  
 8 Q. Do you think that's funny?  
 9 A. Everything he said here was staged for you  
 10 guys that were listening.  
 11 Q. So you are saying you weren't laughing when he  
 12 talked about whacking people?  
 13 A. I wouldn't laugh about that.  
 14 Q. Were you listening when he said, "But somebody  
 15 is going to whack one of them mother fuckers and they  
 16 are going to go, 'Well, that's funny, because Dave is  
 17 always saying that he will pay you money to do it'?"  
 18 Did you hear him what he he said that?  
 19 A. I didn't remembering hearing him. What was my  
 20 response?  
 21 Q. Your response was: "(Inaudible) comes out of  
 22 here. She's got everything else."  
 23 A. I can't see.  
 24 THE COURT: You have to move it up, counsel.  
 25 MR. SULLIVAN: Sorry.

1 THE WITNESS: I was talking about the girl  
 2 that robbed my house, so it was non-responsive. I  
 3 really wasn't listening to him.  
 4 BY MR. SULLIVAN:  
 5 Q. Right. You were trying to avoid engaging in a  
 6 conversation because you knew he was wired?  
 7 A. No. I was very depressed that day because  
 8 this woman had robbed my house.  
 9 Q. At page 137, line 3, don't you indicate that  
 10 you are listening to him when he asked the question at  
 11 line 3:  
 12 "My point being, if you're going to do it,  
 13 commit to it somewhere. IF you're not going to do it,  
 14 shut the fuck up. That's serious. That's from a  
 15 friend. Are you listening to me at all?"  
 16 And you say: "Yeah. No, the only thing I can  
 17 do is if it's going to get that ugly is I need to leave  
 18 the country and never come back and (inaudible) like the  
 19 American people."  
 20 He says: "I would rather you do that than  
 21 hurt somebody."  
 22 You were listening then, weren't you?  
 23 A. I don't understand the word "it" or "that,"  
 24 and I really wasn't really listening to what he was  
 25 saying; and that's why I respond and the way I did, I

1 believe. My response is non-responsive.  
 2 Q. That's because you suspected he was wearing a  
 3 wire; right?  
 4 A. No. I didn't have any idea he was wearing a  
 5 wire. Harding is not somebody you would take serious.  
 6 THE COURT: Wait for the next question,  
 7 Mr. Hinkson.  
 8 The jury will disregard that last statement.  
 9 BY MR. SULLIVAN:  
 10 Q. Were you listening to Mr. Harding when he  
 11 said, at page 149, line 3: "I want to know something  
 12 for sure. This is dead serious what I'm asking you  
 13 this. You talked to me about this on a couple of  
 14 occasions. Do you want to do it? Do you not want to do  
 15 it?"  
 16 You say: "What?"  
 17 He says: "You know what I'm talking about. I  
 18 can handle it."  
 19 You say: "What?"  
 20 He says: "Your problem with the three  
 21 wisemen."  
 22 And your response is: "I'm just suing them."  
 23 You knew who he meant by "the three wisemen,"  
 24 didn't you?  
 25 A. No, I did not.

1 Q. Did you say, at line 12: "I don't know what  
2 you're talking about, J. C." You didn't say that, did  
3 you?

4 A. No.

5 Q. You said, "I'm just suing them," right?

6 A. That's what it says there.

7 Q. So you knew he was talking about the three  
8 feds; right?

9 A. No.

10 Q. And, in fact, on this date, March 27, 2003,  
11 you weren't suing anybody, were you, because your  
12 lawsuit had been thrown out?

13 MR. HOYT: Objection. It calls for a legal  
14 conclusion.

15 THE COURT: Overruled.

16 BY MR. SULLIVAN:

17 Q. Isn't that true?

18 A. I don't think so.

19 Q. Your lawsuit had been thrown out, so you  
20 wanted the three wisemen and the wise lady murdered?

21 A. No.

22 MR. SULLIVAN: Nothing further, Your Honor.

23 THE COURT: Very well.

24 Redirect, Mr. Hoyt?

25 MR. HOYT: Yes, Your Honor.

1 THE COURT: I think we will go another fifteen  
2 or twenty minutes, and then I will let the jury go home  
3 for the day.

4 Let me just ask: Can everybody last another  
5 fifteen or twenty minutes? Okay.

6  
7 R E D I R E C T E X A M I N A T I O N

8 BY MR. HOYT:

9 Q. Mr. Hinkson, do you recall the testimony of  
10 Mr. Harding when he said his reference to the three  
11 wisemen? Was he speaking in code?

12 A. Yes, he was speaking in code.

13 Q. Mr. Hinkson, did you, in fact, appeal the  
14 decision of Judge Lodge after he dismissed your case?

15 A. Yes, I did.

16 Q. So you were suing the authorities that you had  
17 a dispute with; right?

18 A. Yes.

19 Q. Now, Mr. Hinkson, do you have the book in  
20 front of you that contains Exhibit J?

21 A. No.

22 THE COURT: Let's get it, Ms. Longstreet.

23 THE WITNESS: This goes to F. Do you have a  
24 J?

25 THE COURTROOM CLERK: I just go to I, counsel.

1 THE WITNESS: This is just F.

2 THE COURT: It should look something like  
3 this.

4 THE COURTROOM CLERK: Let me see if I have it  
5 over here.

6 THE COURT: Shall I give him my copy,  
7 Mr. Hoyt?

8 MR. HOYT: That would be fine.

9 THE COURT: Mr. Hinkson, I am handing you  
10 Exhibit J.

11 BY MR. HOYT:

12 Q. Mr. Hinkson, can you identify Exhibit J?

13 A. A transcript, yes.

14 Q. Okay. What is it?

15 A. It says it's a transcript of a temporary  
16 restraining order hearing on the 11th and 12th of  
17 December of 2003 at 9:16 a.m.

18 Q. Okay. And can you turn over to what is marked  
19 as page 355, at Bates number 380?

20 A. Uh-huh.

21 Q. Do you see the portion where it begins, on  
22 line eighteen, "The Court"?

23 MR. SULLIVAN: Judge, I object.

24 THE WITNESS: Yes.

25 THE COURT: Sustained. This exhibit is not in

1 evidence yet, is it, counsel?

2 MR. HOYT: I'm just asking him --

3 THE COURT: You can't ask him about the  
4 contents of it until it's admitted into evidence. We  
5 are doing this by the rules, Mr. Hoyt.

6 BY MR. HOYT:

7 Q. Mr. Hinkson, can you identify this exhibit  
8 that says the transcript -- my question is: Can you  
9 identify the portion of the transcript that is depicted  
10 in Exhibit J?

11 A. Do I recognize it?

12 Q. Yes.

13 A. I wasn't there; but I recognize that it's a  
14 transcript of the hearing, yes.

15 Q. Is it a transcript of the court's findings and  
16 determinations as a result of the temporary restraining  
17 order dispute?

18 A. Yes.

19 THE COURT: The jury will disregard the  
20 answer.

21 Mr. Sullivan, what is your objection?

22 MR. SULLIVAN: He, obviously, can't establish  
23 a foundation of personal knowledge. This is hearsay.

24 THE COURT: Sustained.

25 MR. HOYT: We move the admission of Exhibit J.

1 THE COURT: That exhibit will not be allowed,  
2 based upon the prior objection.  
3 MR. HOYT: As a self-authenticating document?  
4 THE COURT: Overruled. It is not admissible.  
5 BY MR. HOYT:  
6 Q. As a result of the hearing of December 12th,  
7 Mr. Hinkson, what happened to the claim of Mr. Bellon  
8 that he had a valid contract with you?  
9 A. Well, I think --  
10 MR. SULLIVAN: I object, Your Honor, unless he  
11 has some personal knowledge.  
12 THE COURT: Sustained.  
13 BY MR. HOYT:  
14 Q. Do you -- are you aware, personally aware, of  
15 what happened to Mr. Bellon's claim?  
16 A. I was on the phone for --  
17 THE COURT: Just a minute. Just a minute. It  
18 has to come in through hearsay.  
19 Counsel, aren't you going to have Mr. Groom  
20 testify?  
21 MR. HOYT: Mr. Groom was not counsel of record  
22 on this case.  
23 THE COURT: I see, okay. That is a problem.  
24 You still have a hearsay problem.  
25 MR. HOYT: Mr. Hinkson was on the phone during

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1 this hearing from the jail.  
2 THE COURT: I see. Very well. With that  
3 representation, you may proceed.  
4 BY MR. HOYT:  
5 Q. Mr. Hinkson, are you aware of what happened in  
6 this proceeding?  
7 A. Yes.  
8 Q. And what happened?  
9 THE COURT: Well, no, counsel. That's too  
10 broad. Let's do it with a leading question.  
11 BY MR. HOYT:  
12 Q. All right. Mr. Hinkson, as a result of the  
13 claims for temporary restraining order of WaterOz, are  
14 you aware of the Judge's finding?  
15 A. Yeah. He, basically, removed the people that  
16 had seized the factory. He ordered them out.  
17 MR. SULLIVAN: Your Honor, I move to strike  
18 the characterization of "seized the factory."  
19 THE COURT: Overruled.  
20 BY MR. HOYT:  
21 Q. Now, Mr. Hinkson, you talked about the Grand  
22 Jury Minutes that you wanted to get in discovery from  
23 Nancy Cook. Do you recall that testimony?  
24 A. Yes.  
25 Q. How would obtaining those Grand Jury Minutes

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1 have helped you in your lawsuit against Nancy Cook?  
2 A. It would have proven a misconduct.  
3 Q. Who had possession and control of the Grand  
4 Jury Minutes?  
5 A. The court.  
6 THE COURT: Just a minute.  
7 MR. SULLIVAN: Unless he can show personal  
8 knowledge, speculation.  
9 THE COURT: Sustained. The court -- the jury  
10 will disregard the last answer.  
11 MR. HOYT: Your Honor, not at this moment but  
12 I would like to make an offer of proof on this subject.  
13 THE COURT: I understand, counsel. I think I  
14 know an awful lot about Grand Jury proceedings, and that  
15 was a proper objection. Move on to the next question.  
16 BY MR. HOYT:  
17 Q. Now, Mr. Hinkson, did you disagree with the  
18 Internal Revenue Service as to how your income and  
19 expenses should be calculated?  
20 A. Yes.  
21 Q. And when you were submitting information in  
22 loan packages to lenders, did you include 1040 forms  
23 that had been prepared by an accountant?  
24 A. No.  
25 Q. Did the lenders obtain that information from

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1 your accountant?  
2 A. I did not have an accountant at that time.  
3 Q. What were you doing the night that Mr. Harding  
4 came to your house and ultimately tape recorded the  
5 conversation March 27th?  
6 A. It had been a long week; and I was just,  
7 basically, taking it easy for the day.  
8 Q. Were your children there that evening?  
9 A. Yes, they were.  
10 Q. Were you preparing dinner for them?  
11 A. Yes, I was.  
12 Q. Were you occupied in various kitchen  
13 activities?  
14 A. Yes, I was. I was making dinner.  
15 Q. You were making dinner while Mr. Harding was  
16 talking to you?  
17 A. I was.  
18 THE COURT: Counsel, you are leading.  
19 BY MR. HOYT:  
20 Q. Did your children ever come up and speak to  
21 you during the time that you were talking to  
22 Mr. Harding?  
23 A. I think they interrupted a few times there.  
24 You could hear them in the background.  
25 Q. Now, counsel for the Government attempted to

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1 suggest that you were intending to flee with a passport;  
2 is that correct?  
3 A. That's incorrect.  
4 Q. They intimated that that's --  
5 A. Yes, that's correct.  
6 Q. Mr. Hinkson, where was your passport at the  
7 time that you were arrested?  
8 A. I believe it was at the Ukrainian Embassy.  
9 Q. Why was it at the Ukrainian Embassy?  
10 A. I had sent it in to get travel permission.  
11 They stamp it authorizing you to come to that country.  
12 Q. And why were you planning on going to the  
13 Ukrainian Embassy as of November 21, 2002?  
14 A. I was planning to go to the Ukraine to pick up  
15 my fiancée; and we were going to go to Bangkok,  
16 Thailand, for a week and then we were flying to Africa.  
17 Q. And were you going to meet with anyone in the  
18 Ukraine when you went there?  
19 A. Well, I always met with Roman and his  
20 doctor --  
21 THE COURT: Didn't we go through this in some  
22 detail when you had him on direct yesterday?  
23 BY MR. HOYT:  
24 Q. Were you -- were you able to get your passport  
25 back from the Ukrainian Embassy?

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1 THE COURT: Just what did you do, Mr. Hinkson?  
2 Don't characterize it.  
3 THE WITNESS: I wanted to turn one over to  
4 him.  
5 THE COURT: No. Mr. Hinkson, not what you  
6 wanted. What did you do?  
7 THE WITNESS: Oh, I applied for another one  
8 for the purpose of surrendering it to him. And I  
9 believe the court was going --  
10 THE COURT: Mr. Hinkson --  
11 THE WITNESS: -- to allow me --  
12 THE COURT: Just stop with you applied for  
13 another one. Wait for the next question.  
14 THE WITNESS: Okay.  
15 BY MR. HOYT:  
16 Q. When you declined to show up or for the Grand  
17 Jury, Mr. Hinkson, had you asked to be able to speak  
18 freely to the Grand Jury?  
19 A. Yes, I did.  
20 Q. And what were you told?  
21 A. I was --  
22 MR. SULLIVAN: Objection. Time?  
23 THE COURT: I am going to allow it since you  
24 tried to impeach him.  
25 MR. SULLIVAN: Some foundation?

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2183  
1 A. No. They said they couldn't find it.  
2 Q. Was there a government agent named Gayler who  
3 was pressing you to turn in your passport?  
4 A. He said, if I didn't turn it in, he was going  
5 to immediately have me arrested.  
6 Q. And in response to that statement by  
7 Mr. Gayler, what did you do?  
8 A. That's when I applied for another one. But it  
9 wasn't a secret.  
10 Q. What do you mean, "It wasn't a secret"?  
11 MR. SULLIVAN: I object to the --  
12 THE COURT: The jury will disregard  
13 Mr. Hinkson's comments as to whether or not it was a  
14 secret.  
15 THE WITNESS: Okay.  
16 BY MR. HOYT:  
17 Q. Did you make the information available to  
18 Mr. Gayler that you had applied for a back-up passport  
19 since your passport was lost?  
20 A. Well, yes. I explained to him that I didn't  
21 have it, but he didn't believe me. He kept getting more  
22 and more vocal about it. He said I had to turn it over.  
23 Q. And so what did you do to comply with his  
24 demands?  
25 A. It was a double-edged -- I wanted to --

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2185  
1 THE COURT: If you could, establish a time  
2 frame and who gave him whatever instruction he was told.  
3 BY MR. HOYT:  
4 Q. Was the time frame the same as the time frame  
5 for the letter that was written that has now been  
6 discussed in your prior testimony?  
7 A. Yes.  
8 Q. And during that time frame, who did you talk  
9 to about the possibility of Grand Jury testimony?  
10 A. Mr. Baxley.  
11 Q. What did you learn about your ability to speak  
12 freely to the Grand Jury?  
13 A. I was told I could not speak freely to them.  
14 Q. What were you -- what restrictions were to be  
15 placed upon your testimony?  
16 A. I think they are in the letter.  
17 MR. SULLIVAN: Object.  
18 THE COURT: You are not going to testify what  
19 the letter said. What did you understand the  
20 restrictions to be?  
21 THE WITNESS: I understood the restrictions  
22 were -- basically, I was there to just be roasted; and I  
23 was not going to be allowed to defend myself.  
24 BY MR. HOYT:  
25 Q. Now, Mr. Sullivan made quite a -- strike that.

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1 MR. SULLIVAN: Form of the question.  
 2 THE COURT: Don't characterize. Just ask a  
 3 question.  
 4 BY MR. HOYT:  
 5 Q. You were asked about statements that were made  
 6 in the account of your arrest and how those statements  
 7 might have appeared in the press. Do you recall that?  
 8 A. Yes.  
 9 Q. Are you aware of false statements made by the  
 10 Government that have appeared in the press?  
 11 A. Yes.  
 12 MR. SULLIVAN: Objection, Your Honor.  
 13 THE COURT: Sustained. Counsel, that's not a  
 14 proper question on a number of grounds.  
 15 BY MR. HOYT:  
 16 Q. At the original detention hearing dated April  
 17 9, 2002, four days after your arrest, Mr. Hinkson --  
 18 THE COURT: 2002 or 2003?  
 19 MR. HOYT: I'm sorry. The court is correct;  
 20 it's 2003.  
 21 Q. On April 9, 2003, Mr. Hinkson, were there --  
 22 was there any live testimony given by Mr. Harding?  
 23 A. No.  
 24 Q. Was there live testimony given by Ms. Bates?  
 25 A. No.

1 Q. Did you or your lawyer have the opportunity to  
 2 cross-examine either Ms. Bates or Mr. Harding?  
 3 A. No.  
 4 Q. How was their information presented to Judge  
 5 Williams?  
 6 A. Agent Long presented it, and I put the  
 7 transcript in.  
 8 Q. What transcript did you put in?  
 9 A. The body wire was not wanted to be used by  
 10 Mr. Agent Long. He didn't want it in.  
 11 MR. SULLIVAN: Objection.  
 12 THE COURT: Sustained.  
 13 MR. SULLIVAN: Move to strike.  
 14 THE COURT: The jury will disregard the last  
 15 question and answer.  
 16 BY MR. HOYT:  
 17 Q. Did you offer as an exhibit the body wire  
 18 recording at the April 9, 2003, hearing?  
 19 A. Brit Groom did, at my request.  
 20 Q. How was the information from Harding and Bates  
 21 presented at --  
 22 THE COURT: Counsel, that's not relevant.  
 23 MR. HOYT: No further questions.  
 24 THE COURT: Very well. Mr. Sullivan, let me  
 25 just ask you how long you --

1 MR. SULLIVAN: Just a few minutes, Your Honor.  
 2 THE COURT: Let's see if we can finish up with  
 3 Mr. Hinkson.  
 4  
 5 RE CROSS EXAMINATION  
 6 BY MR. SULLIVAN:  
 7 Q. Isn't it true, Mr. Hinkson, at the April 9,  
 8 2003, hearing on the revocation of your bond, the tape  
 9 between you and Mr. Harding had not yet been  
 10 transcribed?  
 11 A. That's not true.  
 12 Q. It's your testimony that --  
 13 A. You are right; it wasn't transcribed. The  
 14 actual disc was put into evidence.  
 15 Q. So the transcript at that point didn't exist;  
 16 right?  
 17 A. Correct.  
 18 Q. So nobody was reading transcripts, as we have  
 19 done here; right?  
 20 A. Correct.  
 21 Q. Your testimony is you declined to testify  
 22 before the Grand Jury because you thought you would be  
 23 roasted?  
 24 A. Yeah. Another metaphor.  
 25 Q. You choose those kind of metaphors all the

1 time, don't you?  
 2 A. Yes, I do.  
 3 MR. SULLIVAN: I have nothing else, Your  
 4 Honor.  
 5 THE COURT: Anything further?  
 6 MR. HOYT: Nothing further, Your Honor.  
 7 THE COURT: Very well. Mr. Hinkson, you may  
 8 stand down.  
 9 Ladies and gentlemen of the jury, we are, once  
 10 again, at a weekend break. I want to remind you, as I  
 11 have told you many times, until the trial is over, you  
 12 are not to discuss this case with anyone, including your  
 13 fellow jurors, members of your family, people involved  
 14 in the trial, or anyone else, nor are you allowed to  
 15 permit others to discuss the case with you.  
 16 If anyone approaches you or tries to talk to  
 17 you about the case, please let me know immediately.  
 18 Do not read or listen to any news reports of  
 19 the trial. Do not do any outside research, and that  
 20 includes Internet searches or Dun & Bradstreet searches,  
 21 related to the people or entities discussed during the  
 22 trial.  
 23 Finally, you are reminded to keep an open mind  
 24 until all of the evidence has been received and you have  
 25 heard the arguments of counsel, the instructions of the



1 court, and the views of your fellow jurors.

2 I wish you all a pleasant weekend. Be back  
3 here at 9:00 a.m.

4 Please stay healthy. I do not want to lose  
5 any more of you. We will see you back here at 9:00  
6 o'clock on Monday morning.

7 (Whereupon, the jury was excused from the  
8 courtroom, and the following proceedings were held  
9 outside the presence of the jury.)

10 THE COURT: Counsel, we will be in recess for  
11 about ten minutes and take up that other matter.

12 (Recess.)

13 THE COURT: Counsel, a couple things before we  
14 get started with our two psychologists.

15 I have received, just within the last few  
16 minutes, the response from the National Personnel  
17 Records Center. It is about a half-inch-thick stack of  
18 materials which I will review this weekend.

19 I can tell you that a quick review of the file  
20 indicates that Mr. Swisher was, in fact, involved in top  
21 secret activities; and it appears that he was awarded  
22 the medals that he claims that he was awarded.

23 What I plan to do is go through the file  
24 carefully over the weekend, make sure that there is  
25 nothing in there that I am not permitted to disclose.

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1 It looks like the records have been declassified, but I  
2 want to satisfy myself of that.

3 And what I would propose to do would be to  
4 have you come in early on Monday morning and let you  
5 take a look at the entire file in chambers, and then I  
6 will seal them or return them to the National Personnel  
7 Records Center. They do not appear to be impeaching,  
8 based upon my quick review.

9 MR. NOLAN: What is interesting is the letter  
10 that was given to us today.

11 THE COURT: It is all in there. It looks like  
12 they have copies of the correspondence with Mr. Hoyt.  
13 And as I say, it is about a half-inch thick. I did not  
14 have time to go through all of it in fifteen minutes,  
15 but it does not look like it is impeaching.

16 MR. NOLAN: May I also indicate that he is  
17 under the court's -- I mean, he hasn't been excused.

18 THE COURT: I understand, yes.

19 MR. NOLAN: I don't want the defense to  
20 contact him. I don't want any of us to contact him. I  
21 would appreciate it if the court would allow us to have  
22 the Marshal contact him.

23 THE COURT: We can tell the Marshal to have  
24 him come back but I don't want to -- I'm thinking of a  
25 word here. I don't want to pre-judge my preliminary

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1 review; but based upon what I saw, I don't think you are  
2 going to want to bring him back for that reason.

3 MR. NOLAN: I thought that the letter we just  
4 got today from the prosecutor seemed to say that some of  
5 the things are impossible. I'm sure the court will  
6 figure it out.

7 THE COURT: I want to do it carefully. I will  
8 review everything. I wanted to, at least, give you the  
9 preliminary indications so you have some idea over the  
10 weekend where that is going.

11 The other thing is you should have received  
12 copies of the court's draft of final jury instructions.  
13 I want you to have a chance to review them over the  
14 weekend, and we will have an instruction conference next  
15 week as soon as we see where the evidence is going.

16 At this point, is the defense still thinking  
17 that you may rest on Monday?

18 MR. NOLAN: I believe so.

19 Isn't that the case?

20 THE COURT: Mr. Hoyt?

21 MR. HOYT: I think so.

22 THE COURT: And then does the Government have  
23 any idea how long their rebuttal case might take?

24 MR. SULLIVAN: We are planning a rebuttal  
25 case, Your Honor; but it would be very short.

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1 THE COURT: We might be to the jury by mid  
2 week, after closing arguments?

3 MR. SULLIVAN: Yes, sir.

4 THE COURT: Let's proceed. Mr. Nolan?

5 MR. NOLAN: Yes. I would like to call  
6 Dr. Duke, please.

7 THE COURT: Dr. Duke, would you step forward  
8 and be sworn, please?

9 MR. SULLIVAN: As a preliminary matter, would  
10 it be okay if the Government's psychologist sat at  
11 counsel table?

12 THE COURT: That's fine. There is no jury  
13 here. I would like the two psychologists to hear one  
14 another. That's perfectly appropriate.

15 \* \* \*

16 JERRY D. DUKE, Ph.D.,

17 having opinion called, sworn, testified as follows:

18 THE COURT: First of all, Mr. Nolan, before  
19 you proceed, let me thank both doctors for making  
20 themselves available on such short notice to the court.

21 I know you are very busy, and I appreciate  
22 your accommodating us.

23 Go ahead, Mr. Nolan.

24 THE COURTROOM CLERK: If you would, state your  
25 name and spell your last name please for the record.

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1 THE WITNESS: Jerry Don Duke, D-o-k-e.

2 THE COURTROOM CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. NOLAN:

5 Q. You are a Ph.D.; is that correct?

6 A. You are correct. Yes.

7 Q. And you brought with you a file today;  
8 correct?

9 A. Yes.

10 Q. It would be your entire file; correct?

11 A. Yes.

12 Q. And you would be happy to give that to the  
13 Government at any point so that they can make a complete  
14 copy of the file and the court can also review the  
15 entire file; is that correct?

16 A. Yes.

17 MR. NOLAN: I would like to show you and mark  
18 for identification a resume. I would like to mark it as  
19 an exhibit.

20 THE COURT: Counsel, I think I have seen that.  
21 Go ahead and mark it.

22 MR. NOLAN: Was it attached somewhere?

23 THE COURT: I have a copy of Dr. Duke's C.V.

24 MR. NOLAN: I didn't know it was attached.  
25

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1 All right. Fine.

2 THE COURT: I assume the Government stipulates  
3 to his credentials and that he is a qualified  
4 psychologist to enter an opinion.

5 MR. TAXAY: The Government would like to voir  
6 dire on that subject.

7 THE COURT: You would? All right. Go ahead,  
8 Mr. Taxay. I guess we are going to have to do it the  
9 old-fashioned way. Let's do it quickly. I do want to  
10 get Mr. Nolan to the airport.

11 MR. NOLAN: Thank you.

12 THE COURT: Let's do this. I have the C.V. I  
13 have read it. Why don't we let Mr. Taxay ask whatever  
14 questions he wants to ask him?  
15

16 VOIR DIRE EXAMINATION

17 BY MR. TAXAY:

18 Q. Dr. Duke, good afternoon.

19 A. Hello.

20 Q. Your Ph.D. -- you got it from California Coast  
21 University?

22 A. Yes.

23 Q. That's not an accredited -- that's not an  
24 accredited -- it doesn't have an accredited Ph.D.  
25 program; is that right?

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1 A. It's actually nationally approved by the  
2 National Education Association, which is a little  
3 better.

4 Q. It's not accredited by any national  
5 associations; is that correct?

6 A. It's approved.

7 Q. That's not my question.

8 A. I don't believe the "accreditation" word was  
9 used, no.

10 Q. So to your knowledge, it's not accredited?

11 A. Yes.

12 Q. And have you heard of the American  
13 Psychological Association?

14 A. Yes, I have.

15 Q. That's the national body that standardizes  
16 academic training; isn't that right?

17 A. Partly, yes.

18 Q. And they, also, standardize internships and  
19 things like that?

20 A. Yes, they do.

21 Q. And that's the group that -- well, when we  
22 talk of accreditation, that's the group I'm talking  
23 about. The California Coast University is not  
24 accredited by the APA?

25 A. That's correct.

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1 Q. Now, there is another sort of accreditation.  
2 The distance learning -- I'm sorry -- the Distance  
3 Education and Training Council, have you heard of that?

4 A. I think so, yes.

5 Q. Now, California Coast University is not -- its  
6 Ph.D. program is also not accredited by the Distance  
7 Education and Training Council; isn't that right?

8 A. I'm not sure.

9 MR. TAXAY: Your Honor, I have here an  
10 Internet printout from the Distance Education and  
11 Training Council's website detailing accredited  
12 universities -- accredited programs, programs that have  
13 been accredited by them; and California Coast is not on  
14 that list.

15 I would tender that to the court.

16 THE COURT: Very well. Why don't we mark  
17 that? I guess it would be Exhibit 15.

18 THE COURTROOM CLERK: Plaintiff's Exhibit No.  
19 15 is marked.

20 BY MR. TAXAY:

21 Q. Now, California Coast University, that's a  
22 school that allows -- let's see. I'm reading from the  
23 website. Basically, that an individual's multiple  
24 learning experiences can be measured and assessed for  
25 academic comparability and equivalency. Is that your

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1 understanding of California Coast?

2 A. I think that was part of the statements made  
3 in the catalogs.

4 Q. Well, let me ask you this: Did you get some  
5 credit for prior experiences?

6 A. Yes.

7 Q. How many classes did you actually take at  
8 California Coast University?

9 A. I don't have my transcript here; but it was  
10 enough to qualify me to sit on the licensing boards, the  
11 national licensing boards; and I was approved by  
12 California to be able to sit on those licenses boards.

13 Q. How many classes did you take, sir?

14 A. I don't remember.

15 Q. More than five?

16 A. Yes.

17 Q. More than ten?

18 A. I don't remember exactly.

19 Q. When you say the school has been approved,  
20 specifically approved by whom?

21 A. My understanding -- I don't have the  
22 information here; but my understanding, at that time, it  
23 was the National Education Association.

24 A. And I was approved in California, again,  
25 because of the full dissertation and the requirements

1 met, to sit on the licensing board in California.

2 Q. Did you know that -- have you ever heard of  
3 the United States General Accounting Office?

4 Q. GAO?

5 A. Yes.

6 Q. Do you know that the GAO was recently had an  
7 investigation into federal employees? This is what --  
8 it has what the report is called. Federal employees  
9 have obtained degrees from diploma mills and other  
10 unaccredited schools, some at government expense?

11 A. I don't know about that, no.

12 Q. Did you know that California Coast University  
13 is highlighted amongst a small handful of schools that  
14 are unaccredited?

15 A. I don't know about that.

16 MR. TAXAY: Your Honor, the Government would  
17 tender this GAO report.

18 THE COURT: Very well. We will mark it as  
19 Exhibit 16, and both Exhibits 15 and 16 will be admitted  
20 for purposes of this hearing only at this point.

21 (Whereupon, Government's Exhibit Nos. 15 and  
22 16 were received in evidence for this hearing only.)

23 MR. TAXAY: Your Honor, I have highlighted  
24 certain sections of it. I could give you the  
25 unhighlighted copy.

1 THE COURT: I would prefer the highlighted  
2 one, since it's just me.

3 MR. NOLAN: Do you have a copy for me?

4 THE COURT: Yes, provide a copy for the  
5 defense.

6 THE COURTROOM CLERK: Plaintiff's Exhibit 16  
7 is marked.

8 THE COURT: Both exhibits are admitted.

9 MR. TAXAY: Counsel, do you have an extra copy  
10 of his resume handy?

11 MR. NOLAN: Yes.

12 BY MR. TAXAY:

13 Q. I don't have one in this package. I found it.  
14 Sorry. Thank you.

15 Now, you were talking about national  
16 registries a moment earlier. Were you talking about the  
17 American Psychotherapy Association as a national  
18 registry?

19 A. No.

20 Q. Let's talk about that first. That's listed on  
21 your professional affiliations, the American  
22 Psychotherapy Association; and it says you have a  
23 diplomat?

24 A. Yes.

25 THE COURT: Counsel, if you have an extra

1 copy, I don't have mine. I sent my law clerk to go get  
2 it for me.

3 THE COURTROOM CLERK: Thank you.

4 THE COURT: Maybe we should mark this as an  
5 exhibit, just so we have a clear record. Let's give  
6 this one number 17.

7 THE COURTROOM CLERK: Plaintiff's Exhibit No.  
8 17 is marked.

9 THE COURT: And it will be admitted for  
10 purposes of this hearing.

11 (Whereupon, Government's Exhibit No. 17 was  
12 received in evidence for this hearing only.)

13 BY MR. TAXAY:

14 Q. Now, this American -- underneath your  
15 professional affiliations, it says you are a member of  
16 the American Psychotherapy Association and you are a  
17 diplomat. You don't -- to become a member of that  
18 organization, you don't need a Ph.D.; isn't that  
19 correct?

20 A. Correct.

21 Q. A Master's Degree in psychology would be  
22 sufficient?

23 A. To be a member, I believe so, yes.

24 Q. Now, the international -- I'm sorry. Your  
25 professional affiliations also include the International

1 College of Prescribing Psychologists Fellow Diplomat.  
 2 You are not licensed to prescribe medications in the  
 3 State of Idaho; isn't that right?  
 4 A. Correct. No psychologist is.  
 5 Q. Basically, if you pay a fee, you can join  
 6 these two organizations?  
 7 A. No.  
 8 Q. You have to have a Master's in psychology?  
 9 A. That's not correct.  
 10 Q. Okay. Tell me what the requirements are for  
 11 these organizations. First, the American Psychotherapy  
 12 Association?  
 13 A. You have to apply with your history and a  
 14 letter and your credentials, and they take those to a  
 15 board and they either approve you for membership status  
 16 or various other statuses.  
 17 I think there might be an affiliate and, also,  
 18 a diplomat. And with the college of prescribing  
 19 psychologists, international college, that was a 150  
 20 hour classroom hour, face-to-face with professors over a  
 21 period of two or three years to earn the diplomat.  
 22 Q. Let's get to the American Psychotherapy  
 23 Association. To achieve diplomat status, you don't need  
 24 a psychologist -- a Ph.D.; correct? A Master's would do  
 25 it?

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1 A. You know, I think so. I think certain people  
 2 with certain credentials and experience and  
 3 contributions to the field may be able to achieve  
 4 diplomat status. I don't have any of that information  
 5 in front of me, but I believe you might be correct on  
 6 that.  
 7 Q. I actually have a printout from the American  
 8 Psychotherapy Association, and I will read it to you.  
 9 What it says is that diplomat status is only available  
 10 to applicants who have achieved a minimum of a Master's  
 11 Degree from a regionally-accredited institution and a  
 12 psychotherapy-related field. All applicants must have a  
 13 minimum of four years professional psychotherapy  
 14 experience.  
 15 THE COURT: Mr. Taxay, slow down just a little  
 16 bit for the court reporter.  
 17 MR. SULLIVAN: I apologize. Thank you, Your  
 18 Honor.  
 19 Q. Is that consistent with your understanding of  
 20 what it means to be a diplomat with the American  
 21 Psychotherapy Association?  
 22 A. I don't have that in front of me but if that's  
 23 what you read, then I suppose that's --  
 24 Q. Now, the American Psychotherapy Association  
 25 goes by the initials APA?

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1 A. Yes.  
 2 Q. That's different than the American  
 3 Psychological Association; is that right?  
 4 A. Yes.  
 5 Q. The American Psychological Association is the  
 6 entity that accredits programs at a national level;  
 7 isn't that right?  
 8 A. They do some, yes.  
 9 Q. It's the leading organization; isn't that  
 10 right?  
 11 A. You know, for psychologists, I suppose it  
 12 still is. It's changing some. It has over the years.  
 13 Q. You are not a member of the APA, the American  
 14 Psychological Association?  
 15 A. I'm an ex-member of the APA. I used to be a  
 16 member.  
 17 Q. Well, your school is not accredited by the  
 18 APA, the American Psychological Association; is that  
 19 right?  
 20 A. That's right.  
 21 Q. So you are not eligible to be a member of the  
 22 American Psychological Association; isn't that right?  
 23 A. That's not right.  
 24 Q. So is it your testimony that you don't need --  
 25 to become a member of the American Psychological

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1 Association, you do not need to come from an accredited  
 2 APA program?  
 3 A. I had a Master's Degree accredited. And at  
 4 one time, I was a member of the American Psychological  
 5 Association.  
 6 MR. NOLAN: Your Honor, at this time the  
 7 Government would tender a printout from the American  
 8 Psychotherapy Association that describes the  
 9 requirements to become a diplomat.  
 10 THE COURT: Very well. We will mark it as  
 11 Exhibit 18 and admit it for purposes of this hearing.  
 12 (Whereupon, Government's Exhibit No. 18 was  
 13 received in evidence for this hearing only.)  
 14 MR. TAXAY: Counsel, I will get you copies of  
 15 this.  
 16 THE COURTROOM CLERK: Plaintiff's Exhibit No.  
 17 18 is marked.  
 18 BY MR. TAXAY:  
 19 Q. With respect to your membership in the  
 20 American Psychological Association, your membership was  
 21 at the Master's level and not at the Ph.D. level?  
 22 A. That's been a while ago, yes.  
 23 Q. You have never been a member of the American  
 24 Psychological Association at the Ph.D. level; right?  
 25 A. It shows not to be, that's true.

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1 Q. Isn't it true that you are not eligible for it  
2 because you didn't come from an American Psychological  
3 Association's accredited institution?

4 A. I am eligible, if I want to apply, to become a  
5 member of the American Psychological Association.

6 Q. Not to quarrel with you, Dr. Doke, but they  
7 won't accept you at the Ph.D. level, is that right,  
8 because you don't come from an American Psychological  
9 Association accredited Ph.D. program?

10 A. There are different levels of membership, and  
11 at that also changes over the years. I haven't checked  
12 lately, but I can certainly become an associate member.  
13 Again, there are different levels of membership in the  
14 American Psychological Association.

15 Q. So you are not eligible, though, for their  
16 highest level of membership; is that correct?

17 A. If that's the way you want to put it, that's  
18 correct.

19 Q. The American Psychotherapy Association doesn't  
20 require an entrance exam, right? You don't need to take  
21 a test?

22 A. Exactly.

23 Q. One question I forgot to ask about California  
24 Coast University --

25 THE COURT: Mr. Taxay, I don't want to

1 interrupt your deposition here; but I want to really get  
2 to the heart of the matter.

3 Unless there is something else that I need to  
4 know about Dr. Doke's background, I would really like to  
5 get into the substance of his proposed testimony  
6 regarding Mr. Hinkson.

7 MR. TAXAY: Just one more item then, Your  
8 Honor.

9 THE COURT: All right. Go ahead.

10 BY MR. TAXAY:

11 Q. Dr. Doke, have you ever heard of the National  
12 Register of Health Service Providers in Psychology?

13 A. Yes.

14 Q. That's a register that psychologists who  
15 qualify can be -- are included in this book, the  
16 Register, right here?

17 A. Yes.

18 Q. Now, what do you understand this Register is?

19 A. You know, I haven't looked at that for a long  
20 time. I really don't need to do that in order to do my  
21 work.

22 Q. Fair. You are not in this book?

23 A. Right.

24 Q. You are not in the National Register of Health  
25 Service Providers in Psychology?

1 A. That's correct.

2 Q. You don't qualify to be in this book because  
3 you didn't come from an accredited program; isn't that  
4 right?

5 A. I'm not sure if that's correct or not.

6 Q. You can't get in this book because you don't  
7 have the qualifications; is that right?

8 A. I'm not sure.

9 MR. TAXAY: That's all right now.

10 THE COURT: All right. Mr. Nolan, you don't  
11 need to redirect on this. For purposes of this hearing,  
12 I am going to allow Dr. Doke to testify. Let's get to  
13 the meat of it.

14 MR. NOLAN: Thank you.

15 FURTHER DIRECT EXAMINATION

16 BY MR. NOLAN:

17 Q. Were you retained to do an evaluation of  
18 Mr. Hinkson?

19 A. Yes, I was.

20 Q. And he is the person seated here in the  
21 courtroom; is that correct?

22 A. Yes. He is in the blue sweater with the white  
23 shirt underneath.

24 THE COURT: For the record, the Dr. Doke has  
25

1 identified Mr. Hinkson.

2 BY MR. NOLAN:

3 Q. And you were hired to do a psychological  
4 assessment; is that correct?

5 A. Yes.

6 Q. At the time you saw him, he was in custody;  
7 correct?

8 A. Correct.

9 Q. Your proposed testimony may relate to 2000,  
10 2001, 2002, and his personality characteristics or  
11 psychological make-up at that time.

12 Do you believe that you can offer an opinion  
13 in regards to that time period, in light of the fact  
14 that you saw him while he was in custody and were asked  
15 to evaluate his present condition?

16 A. Yes, I can.

17 Q. All right. Are there two types of sort of  
18 diagnoses? You used the words yesterday with me, and I  
19 can't remember. One never changes, and the other is  
20 situational?

21 A. I think we were talking about personality  
22 traits and personality states.

23 Q. Personality traits and personality  
24 straights -- I'm sorry -- and personality states?

25 THE COURT: You lost me on that one, counsel.

1 MR. NOLAN: I lost myself. Personality traits  
2 and personality states.

3 THE COURT: S-t-a-t-e-s?

4 THE WITNESS: Yes.

5 BY MR. NOLAN:

6 Q. The states vary, depending upon the  
7 circumstances?

8 A. Yes.

9 Q. And the traits remain the same?

10 A. Pretty much.

11 Q. Pretty much the same?

12 A. Yeah.

13 Q. So in your testimony, your proposed testimony,  
14 you would be talking about personality traits; correct?

15 A. More -- yes, more than the states.

16 Q. And you would be comfortable being able to be  
17 cross-examined as to whether or not, for example, how --  
18 how you diagnose him, whether that diagnosis is  
19 effective for the years 2000, 2001, 2002?

20 A. I believe so, yes.

21 Q. All right. In regards to the methodology in  
22 determining whether or not someone has certain  
23 personality traits, is there a methodology that is  
24 accepted in the psychological community?

25 A. Yes.

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1 Q. All right. And does that methodology include  
2 taking a history from the patient?

3 A. Yes.

4 Q. And does that include a family history?

5 A. Yes.

6 Q. Does that include a vocational history?

7 A. Yes.

8 Q. An education history?

9 A. Yes.

10 Q. A medical history?

11 A. Yes.

12 Q. And a legal history?

13 A. Yes.

14 Q. Does it also involve observations of the  
15 patient and their behavior?

16 A. Yes.

17 Q. Does it involve trying to, under certain  
18 circumstances, confirm information from sources other  
19 than the patient itself?

20 A. Yes.

21 Q. Does that include administration of standard  
22 psychological tests?

23 A. Sometimes.

24 Q. All right. And does that also include  
25 reviewing other doctors' reports who may have examined

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1 the patient?

2 A. If they are available, yes.

3 Q. In regards to Mr. Hinkson, did you see him on  
4 at least -- did you see him, personally, on three  
5 occasions?

6 A. I saw him personally on 10/25/04, 10/28/04,  
7 and 11/28/04, yes.

8 Q. And I don't mean to lead you too much, but you  
9 have your notes there. You saw him for two hours on  
10 each of those times; is that correct?

11 A. Yes.

12 Q. And that was a person-to-person encounter in  
13 the jail; correct?

14 A. Yes.

15 Q. You also had a conversation with him, did you  
16 not, on the telephone?

17 A. Yes.

18 Q. And that lasted approximately how long?

19 A. On 10/29/04, one hour.

20 Q. And did you administer psychological tests?

21 A. Yes.

22 Q. To Mr. Hinkson?

23 A. Yes.

24 Q. And those were traditional, not unusual  
25 psychological tests; correct?

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1 A. They were -- for the situation in the jail and  
2 the exam I was asked to do, they were acceptable and  
3 traditional, yes.

4 Q. What were those tests?

5 A. The mental status checklist by  
6 psychological -- well, they call it PAR. It's a testing  
7 manufacturing company that is widely used by  
8 psychologists.

9 The mental status checklist also used by them,  
10 both generated from -- both generated by the examiner  
11 and the patient and then --

12 THE COURT: I'm sorry, Dr. Duke. It sounds to  
13 me like you are talking about the same checklist. Are  
14 we still on the mental status checklist, or are there  
15 two different checklists?

16 THE WITNESS: Two different.

17 THE COURT: Could you clarify that, Mr. Nolan?  
18 BY MR. NOLAN:

19 Q. Yes. If you could, just briefly give us the  
20 generic name of the tests that you performed.

21 A. The mental status checklist was one, and then  
22 the quick view was another one.

23 THE COURT: Quick view?

24 BY MR. NOLAN:

25 Q. Quick view?

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1 A. Yes, social history. And then I also gave the  
2 Beck Depression Inventory.  
3 Q. Would you repeat that?  
4 A. Beck, B-s-c-k, Depression Inventory II, which  
5 is the second edition.  
6 Q. How many years of experience have you had in  
7 doing evaluations?  
8 A. 39.  
9 Q. And do you believe that these tests are  
10 reliable that you used?  
11 A. Absolutely.  
12 Q. And the results of these tests, do you believe  
13 that they are reliable?  
14 A. Yes.  
15 Q. And are there ways in which these tests are  
16 designed so that you can make that determination?  
17 A. Yes.  
18 Q. And do you believe that you interviewed  
19 Mr. Hinkson for a sufficient number of hours to offer an  
20 opinion as to his psychological traits and make a  
21 diagnosis?  
22 A. Yes.  
23 Q. And did you talk to his lawyer and get certain  
24 facts from his lawyer, Mr. Hoyt?  
25 A. Yes.

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1 Q. Were there any experimental techniques used in  
2 your evaluations?  
3 A. No.  
4 Q. Did you deviate from any normal practices that  
5 you would use?  
6 A. No.  
7 Q. Based upon your evaluation and your assessment  
8 and your work, were you able to make a diagnosis?  
9 A. Yes.  
10 Q. Do you have confidence in the diagnosis that  
11 you made?  
12 A. Yes.  
13 Q. Are those diagnoses as to personality traits  
14 that you believe exist as to Mr. Hinkson?  
15 A. Yes.  
16 MR. NOLAN: Now, in regards to your -- I want  
17 to give the court some idea of the question that I might  
18 try to ask.  
19 THE COURT: I would appreciate that.  
20 MR. NOLAN: All right. Again, I'm taking into  
21 account that the Government objected to the general  
22 nature of the previous questions; and I don't disagree  
23 with them, so I have tried to formulate them.  
24 THE COURT: Okay.  
25

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1 BY MR. NOLAN:  
2 Q. Let me ask you whether or not these are  
3 questions you feel you can answer as a psychologist and  
4 an expert to assist the trier of fact.  
5 As a hypothetical, based upon your  
6 psychological evaluation of David Hinkson, do you have  
7 an opinion as to whether David Hinkson would be more or  
8 less likely than a person without his psychological  
9 make-up to truly threaten someone or actually intend to  
10 solicit the murder of someone? That's one way of asking  
11 the question.  
12 Is that something that you feel you can  
13 answer, based upon your experience?  
14 A. Would you repeat the question, please?  
15 Q. All right. Let me try it -- let me try a  
16 different question because I'm trying to find the right  
17 one.  
18 Are there aspects of Mr. Hinkson's character  
19 that have been determined by you through your  
20 psychological evaluation and assessment that might be  
21 considered by a jury as making him more likely to truly  
22 solicit the murder of someone?  
23 A. No.  
24 Q. I mean, is that a question that you think you  
25 can assist the jury in determining?

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1 A. Yes.  
2 Q. If so, what are those? And what are your  
3 reasons? That would be one of the questions.  
4 Another possible question is --  
5 THE COURT: Let's not do it in a compound  
6 fashion. Let's him explain the basis.  
7 MR. NOLAN: I was --  
8 THE COURT: You want to lay out the questions  
9 first?  
10 MR. NOLAN: I'm trying to lay out two or three  
11 questions so that, if we all agree that someone has a  
12 better one, we will see what he says on it.  
13 THE COURT: Mr. Nolan, do it any way you want.  
14 MR. TAXAY: Your Honor, the Government --  
15 THE COURT: Let me hear from Mr. Taxay.  
16 MR. TAXAY: The Government objects to the  
17 procedure. It almost suggests that we have this rolling  
18 set of theories as to what he might be able to testify  
19 to. I mean, Dr. Duke has an opinion or he doesn't have  
20 an opinion. That's what we are here to hear.  
21 THE COURT: Maybe we should do it the more  
22 traditional way, Mr. Nolan.  
23 Doctor, do you have an opinion? What is that  
24 opinion? And let me hear what he has to say because you  
25 are leading him an awful lot. I will not let you do

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1 that in front of the jury.

2 MR. NOLAN: Okay. What I'm --

3 THE COURT: I realize you are asking him

4 hypothetically.

5 MR. NOLAN: What I'm trying to do is to

6 formulate the kind of question that would be relevant

7 based upon what he would say and so we will ask --

8 THE COURT: Let me hear what his diagnosis or

9 opinion is.

10 MR. NOLAN: That's fine.

11 THE COURT: Let's go from there.

12 BY MR. NOLAN:

13 Q. If you can, tell the judge what your diagnosis

14 is and how that diagnosis and your opinion is relevant

15 to the issues in this case.

16 MR. TAWAY: Your Honor, I mean, the relevance

17 to the issues in this case is not something for this

18 witness to determine.

19 THE COURT: Well, as I understand Mr. Nolan's

20 question, he would like Dr. Doke to give us his opinion

21 with regard to Mr. Hinkson's personality traits.

22 MR. TAWAY: Right. We would love to hear

23 that.

24 THE COURT: As they relate to Mr. Hinkson's

25 ability to form the intent to solicit the murder of

1 someone?

2 MR. NOLAN: That's right.

3 THE COURT: I would like to know what he's

4 going to say. There is no jury here. You are not being

5 hurt yet.

6 I haven't ruled on whether or not he is going

7 to be allowed to do this. I would like to know what

8 he's going to say. I mean, that's the whole purpose of

9 this hearing.

10 MR. TAWAY: Agreed.

11 THE COURT: Dr. Doke, with that clarification,

12 can you help the court?

13 THE WITNESS: Yes, Your Honor.

14 On Axis I, I put: Rule out delusional

15 disorder. And that was based upon not only my interview

16 but the history and all of the records I read and the

17 testing. I also put, under Axis I, post-traumatic

18 stress disorder, base.

19 THE COURT: Doctor, I read your report. If

20 you were asked in front of the jury, "Do you have an

21 opinion as to his personality traits and, if so, what

22 would that opinion be?" --

23 THE WITNESS: My opinion on his personality

24 traits is that he is in that spectrum of paranoid

25 personality disorder. That's the closest, probably most

1 reliable.

2 In addition, I did put in my report a very

3 descriptive, you know, accounting of that, where it came

4 from, and I quoted Millon who is a nationally- and

5 internationally-recognized expert.

6 THE COURT: It would help the court if you

7 could explain what it is that causes you to conclude

8 that he has a paranoid personality disorder.

9 THE WITNESS: Okay. The testing and my mental

10 status interview, all of the records I reviewed, and all

11 of the other standard elements that I used end up with

12 my psychological evaluation.

13 THE COURT: All right.

14 BY MR. NOLAN:

15 Q. What does that mean, Doctor?

16 THE COURT: That's kind of general.

17 BY MR. NOLAN:

18 Q. Doctor, if you might do me a favor, pretend

19 you are just talking to the Judge. Tell the Judge,

20 without going through all of the detail -- tell him what

21 this means, as far as your assessment of David Hinkson.

22 A. Okay. One of the things we evaluate, Your

23 Honor, is their overall belief system, their thoughts,

24 how they perceive the world, and whether those things

25 are more or less longstanding, pervasive traits or those

1 are situational types of things, whether or not they are

2 consistent in the personality structure over a long

3 period of time and whether or not they meet some of the

4 criteria in the literature and so on.

5 So I was impressed with the nature of his

6 belief system, the way he perceived reality, the way he

7 perceived things that were going on.

8 Based upon a standard, for example, when most

9 people believe that way -- in order to have a

10 personality diagnosis -- you do have to deviate some

11 from the norm.

12 THE COURT: In the tests that you

13 administered, is there some kind of a test score that

14 would help you conclude that he deviates from the norm?

15 THE WITNESS: There is -- we didn't use the

16 MMPI-II or the Millon. Because of the nature of the

17 interview and so on, I didn't necessarily feel that that

18 was necessary.

19 Those tests are adjuncts and those are helpful

20 as collateral information. Most of the research shows

21 that clinicians, licensed psychologists, people that

22 diagnose on a regular basis are better, overall, at

23 diagnosing than the personality inventory.

24 They are not diagnostic tools. They are

25 helpful in clarifying certain deviations within the



1 person on certain personality traits.  
 2 THE COURT: So you are relying more upon  
 3 your -- what was it -- 39 years of experience in  
 4 evaluating individuals who possess paranoid personality  
 5 characteristics?

6 THE WITNESS: I relied more on that and my  
 7 interview and the records than I did any psychometric --

8 THE COURT: Any objective test score?

9 THE WITNESS: Yes.

10 THE COURT: Mr. Nolan, go ahead.

11 BY MR. NOLAN:

12 Q. Thank you. In regards to someone with that  
 13 type of personality characteristic, how is that  
 14 relevant -- if it is, how is that relevant to whether or  
 15 not they may be more likely or less likely to carry out  
 16 verbal threats?

17 A. I don't see it that way when I interview  
 18 someone.

19 THE COURT: See what that way?

20 THE WITNESS: I don't see their personality  
 21 trait or that diagnosis as necessarily relevant to  
 22 whether or not they would have done something. I see it  
 23 more, as a clinician, as a diagnostic category with  
 24 which we can treat someone.

25 We can understand someone better; and if there

1 are other questions related to that personality, we  
 2 would certainly consider that personality.

3 THE COURT: Dr. Doka, I think, if I understood  
 4 Mr. Nolan's question and your answer -- I'm a little  
 5 confused by your answer. What we are trying to get at,  
 6 I think, is propensity.

7 Would an individual with Mr. Hinkson's  
 8 diagnosis of paranoid personality disorder be the type  
 9 of a person who would be prone to solicit acts of  
 10 violence from other people, or would he be prone to  
 11 carry out acts of violence? Can you help us there?

12 THE WITNESS: I can do that. On page eight, I  
 13 believe, I quoted Millon. And at the bottom of the  
 14 page, we talk about the stages of this personality  
 15 diagnosis quoted out of Millon. And if I may, on page  
 16 nine --

17 THE COURT: Go ahead.

18 THE WITNESS: Quote, "During the second stage,  
 19 all personality functions disintegrate. According to  
 20 Schneider's theory, they can split into either the  
 21 combative type or the eccentric type.

22 The combative can be actively quarrelsome  
 23 about their fallacious beliefs, complaining bitterly  
 24 about injustices done to them, often seeking retribution  
 25 and are frequently litigious."

1 THE COURT: But that doesn't really help me  
 2 with the question about whether or not a person  
 3 diagnosed in that fashion would or would not be inclined  
 4 to solicit harm from the objects of these beliefs or  
 5 harm to the -- can you help us with that?

6 THE WITNESS: I think it would be less likely  
 7 that they would, in my opinion. I base it, also, on  
 8 what Millon says because, if they do disintegrate more,  
 9 it would be the eccentric type.

10 His demeanor over the years, his behavior --  
 11 lack of aggression, lack of assault, battery, things  
 12 like that -- as far as we know, has been vocal. They  
 13 have been verbal. They have been protests, marches,  
 14 radio shows, very outspoken, very verbal-type things.

15 That fits into this type. I just used this  
 16 Millon to bolster that up, and I do think it would be  
 17 less likely for him to do anything but be litigious.

18 THE COURT: Less likely for him to do it  
 19 himself? Do you understand he is not charged in this  
 20 case with actually doing it himself? He is charged with  
 21 soliciting or inducing or offering money or other things  
 22 of value to someone else to do it for him.

23 Is that -- does that make a difference, in  
 24 your opinion?

25 THE WITNESS: Yes, Your Honor. I think he

1 would be more litigious. I think he would use the law.  
 2 I think he would use it, like he did in Nevada when he  
 3 had the protests against the commissioners and got one  
 4 fired because of some injustices.

5 THE COURT: Because of the fact that you would  
 6 expect, based upon this disorder, that he would not do  
 7 such a thing, you would not expect him to ask someone  
 8 else to do it for him? Is that what you are saying?

9 THE WITNESS: Right. If he asked anybody to  
 10 do anything, it would be through legal issues, based on,  
 11 again, my -- based on my opinion as a psychologist, on  
 12 his history, on the nature of all of my evaluations and  
 13 his responses, I believe he would use legal means to do  
 14 that, in my opinion.

15 THE COURT: Okay. All right. Go ahead,  
 16 Mr. Nolan.

17 MR. NOLAN: That's, basically, it. I would  
 18 like -- I would like to just farm the question so we  
 19 don't violate any of the rules.

20 THE COURT: Please, do.

21 BY MR. NOLAN:

22 Q. But that's basically -- I take it, you feel  
 23 that -- let me ask you this: Do you feel that this kind  
 24 of diagnosis of paranoia and --

25 THE COURT: Paranoid personality?

1 BY MR. NOLAN:

2 Q. -- paranoid personality and the second axis  
3 was -- I can't remember.

4 A. That was Axis II.

5 Q. Axis I was paranoia?

6 A. Post-traumatic stress disorder, rule out  
7 delusional disorder.

8 Q. Delusional disorder?

9 A. Yes.

10 Q. That a jury may be more likely to believe that  
11 he would be inclined to use unlawful means and misuse  
12 the personality characteristics that they might see, not  
13 knowing that the psychological community actually might  
14 draw a different conclusion?

15 THE COURT: Mr. Nolan, do you want him to --  
16 do you want him to testify as to how an average juror  
17 would misperceive somebody who suffers from paranoid  
18 personality disorder?

19 MR. NOLAN: No. What I think I want to do is  
20 establish the need for the psychologist because of the  
21 fear of the jury misinterpreting the behavior and  
22 drawing a conclusion that would be contrary to the  
23 psychological community's conclusion.

24 THE COURT: Well, I mean the jury obviously --  
25 I don't think you quarrel with this under Rule 704(b).

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1 The jury has to make the ultimate determination as to  
2 whether Mr. Hinkson did, with intent, make solicitations  
3 and engage in true threats.

4 MR. NOLAN: Right.

5 THE COURT: So I'm not sure what question you  
6 are asking him here that wouldn't violate 704(b) on this  
7 issue.

8 MR. NOLAN: I don't think I want to ask him  
9 that in front of the jury. I am asking him that because  
10 it's kind of like if no one knows about Tourette  
11 syndrome.

12 I mean, a lot of people would interpret the  
13 swearing as being the person swearing; and you'd need an  
14 expert to come in and say, "No, it's a disease."

15 All I am saying is that, when you are dealing  
16 with somebody that is vocal and you are pushing this  
17 issue, they are more likely -- a jury may be more likely  
18 to assume that they are more likely to commit the crime  
19 because of that characteristic.

20 Therefore, the need for the jury to be  
21 informed that there are personality characteristics and  
22 diagnoses that they should be aware of, that there are  
23 certain characteristics they may not be aware of about  
24 those people. That was the only reason I was asking  
25 that question.

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1 THE COURT: That's fine.

2 MR. NOLAN: I wasn't going to necessarily ask  
3 it in front of the jury.

4 THE COURT: That one -- I will give you a  
5 written ruling on all of this. That one is more  
6 troublesome to me, as I understand the case law.

7 MR. NOLAN: Because you are, basically,  
8 telling the jury they don't know what they are talking  
9 about?

10 THE COURT: Right.

11 MR. NOLAN: I'm saying that I think one of the  
12 criteria for admission has to be: Does the jury need  
13 some assistance, you know, or can the jury determine it  
14 on their own?

15 THE COURT: Let me ask Dr. Duke: When you  
16 say, on Axis I, that you are ruling out delusional  
17 disorder, can you tell me what you mean by that? Are  
18 you saying he is not delusional, in your opinion?

19 THE WITNESS: We are ruling out a specific  
20 diagnosis of delusional disorder. We are pretty sure,  
21 and there is a strong reason to rule that out. We want  
22 to be more sure.

23 MR. NOLAN: May I follow up?

24 THE COURT: Absolutely.  
25

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1 BY MR. NOLAN:

2 Q. This is something the medical -- it's like  
3 every time I've talked to them. They didn't understand  
4 our concern from a legal point of view.

5 If I understand it correctly, it means you are  
6 pretty sure he is delusional; and what has to happen is  
7 you have to rule it out by all sorts of further tests  
8 and examinations and things like that.

9 Like, you are not going to diagnose it yet  
10 but, boy, it's awfully close? Am I fair in that  
11 assessment of what it is?

12 A. Yes, yes.

13 THE COURT: Thank you, Mr. Nolan. That was  
14 very helpful. Then the other question, Dr. Duke, is:  
15 Under the Axis I diagnostic impression, you indicate  
16 post-traumatic stress disorder.

17 Were you able to identify, in your taking of  
18 the history of the patient, what would have  
19 precipitated -- what cause would have precipitated the  
20 PTSD?

21 THE WITNESS: Okay. As we know it in his  
22 case, it was the being taken away from his work, some  
23 sabotage. My understanding is there were some things  
24 that happened at his business by coworkers that had  
25 betrayed him and that he was uprooted.

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1 PTSD, generally, is a situation that most  
2 people don't experience. In addition, it has an extreme  
3 effect on that person. It may not affect all persons  
4 the same.

5 Just like War veterans, Vietnam Veterans,  
6 there is a certain percent that experience the exact  
7 same situations that have severe PTSD and a percent that  
8 don't.

9 THE COURT: So the traumatic event here with  
10 this patient would be the upheaval in his business life  
11 when he perceived that others were attempting to  
12 dispossess him of everything that he had built?

13 THE WITNESS: I think there were other  
14 factors, Your Honor. That was one. The other one was  
15 his description of his arrest and some of the things  
16 that happened that he considered to be very abusive.

17 Again, it's his perception, also, that they  
18 were so far out of the norm and so unlike anything he  
19 had experienced before that I do believe the symptoms  
20 that I saw not only with my own evaluation but with the  
21 testing were that he was suffering.

22 THE COURT: All right. Mr. Nolan, anything  
23 further?

24 BY MR. NOLAN:

25 Q. One last question. You reviewed Dr. Engle's

1 report; correct?

2 A. Yes.

3 Q. And did he also come to a diagnosis?

4 A. Yes.

5 Q. And was that similar to yours, as far as the  
6 axes?

7 A. Yes, yes.

8 MR. NOLAN: That's all I have. Thank you.

9 THE COURT: All right. Mr. Taxay?

10 MR. TAXAY: Yes, Your Honor. Thank you.

11 MR. NOLAN: By the way, Judge, I think I have  
12 plenty of time. The plane doesn't leave until 6:30 but,  
13 you know, it was just --

14 THE COURT: I know you have got a lot going  
15 on.

16 MR. NOLAN: I wanted you to know that, looking  
17 at the clock, I have plenty of time.

18 THE COURT: Good. I know you are concerned  
19 about your mother, and you have my empathy. I hope it  
20 all works out for your family.

21 MR. NOLAN: I appreciate it.

22 THE COURT: Go ahead, Mr. Taxay.

## CROSS EXAMINATION

2 BY MR. TAXAY:

3 Q. Dr. Doko, in your 39 years of experience, have  
4 you made other diagnoses of people with PFD?

5 A. Yes, I have.

6 Q. And have you tracked their later history to  
7 see if they became violent or were non-violent?

8 A. Some I worked with over a long period of time.

9 Q. Did you track fifty percent of the people?

10 A. Probably not.

11 Q. So you don't -- you just don't know the  
12 long-term history of these people after your diagnosis  
13 with PFD; correct?

14 A. On my particular diagnosis of the people that  
15 I experienced? Was that your question?

16 Q. Yes.

17 A. Actually, no. I didn't track all of them over  
18 a long period of time. I worked in the prison for quite  
19 a while. I worked at the county jail for fourteen  
20 years. I worked in the forensics unit. I ran the  
21 forensics unit.

22 Q. I understand. My very specific question --  
23 you have answered it. Thanks. In large measure, your  
24 conclusion that people with PFD are more violent or have  
25 a tendency to be less violent, there is some speculation

1 in there; isn't that right?

2 A. Yes. There always is.

3 Q. I mean, a substantial amount -- because the  
4 basis for your opinion is your own patient population?  
5 You have testified that you didn't track, down the line,  
6 at least fifty percent of your patients; is that right?

7 MR. NOLAN: I object to that question, in that  
8 it's compound.

9 THE COURT: It is compound. Why don't you  
10 break it up, counsel? Sustained.

11 BY MR. TAXAY:

12 Q. The first question -- the first question is:  
13 Your conclusion that people with PFD are less likely to  
14 be violent involves some speculation on your part;  
15 right?

16 A. Yes.

17 Q. And, indeed, the reason why it's speculative  
18 is that you haven't tracked the history of your own  
19 patients who have had PFD, isn't that right?

20 A. No.

21 Q. Well, you don't know whether or not they were  
22 violent; isn't that right? The fifty percent that you  
23 didn't track?

24 A. Correct.

25 Q. And because of that phenomenon that most

1 psychologists -- most psychologists don't track the  
2 history of their patients down the line; is that right?

3 A. Correct.

4 Q. And because of that phenomenon, isn't that why  
5 people use various tools, standardized tools to assess  
6 risk for violence?

7 A. It depends on the circumstances. It wouldn't  
8 be generally done unless there was a specific request  
9 for that.

10 Q. Well, in the field of forensic psychology --  
11 are you familiar with that term?

12 A. Yes.

13 Q. What does that term mean to you?

14 A. Forensic psychology?

15 Q. Yes, sir.

16 A. Well, it has to do with legal matters,  
17 testifying in court, litigation, court proceedings,  
18 psychological work that is related to the justice  
19 system.

20 Q. And that's, on some level, a subspecialty of  
21 psychology; right?

22 A. It can be, yes.

23 Q. And the big issue, isn't it, is reliability?  
24 When you are testifying in court on these important  
25 subjects, forensic psychologists want to employ the most

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1 reliable methods and procedures to ensure the accuracy  
2 of their opinions?

3 A. Yes.

4 Q. And so forensic psychologists have a battery  
5 of tests that they can use to assess personality;  
6 correct?

7 A. Yes.

8 Q. For example, that Millen Inventory that you  
9 mentioned earlier, that's such a test; right?

10 A. Yes.

11 Q. You didn't run that test; correct?

12 A. Correct.

13 Q. Now, there are, also, various tools that  
14 forensic psychologists use to assess the risk of  
15 violence; isn't that correct?

16 A. There are some.

17 Q. For example, you have heard of the HCR-20,  
18 Assessing Risk for Violence?

19 A. I don't use that one.

20 Q. But you have heard of it?

21 A. Yes.

22 Q. This is one of those tools that forensic  
23 psychologists use to assess the risk of violence in  
24 patients; isn't that right?

25 A. Some do, yes.

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1 Q. You didn't use it?

2 A. No.

3 Q. There is another one called the -- another  
4 tool, similar tool, called the Violence Risk Appraisal  
5 Guide. You have heard of that?

6 A. Uh-huh.

7 THE COURT: You have to say "yes" or "no,"  
8 Dr. Duke.

9 THE WITNESS: Yes.

10 BY MR. TAYLOR:

11 Q. That, too, is another test, inventory, that  
12 forensic psychologists use to assess the risk of  
13 violence in patients; isn't that right?

14 A. Yes.

15 Q. And you didn't run that test either, did you?

16 A. Correct.

17 Q. In fact, you didn't use any of these tools to  
18 assess risk of violence; isn't that right?

19 A. That's correct.

20 Q. I mean, you are basing this on two things, as  
21 I understand it -- correct me if I'm wrong -- your  
22 subjective evaluation of Mr. Hinkson, that's one;  
23 correct?

24 A. Yes.

25 Q. And, two, your understanding of his background

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1 and history; correct?

2 A. Partly, yes.

3 Q. Okay. Are there other factors that play a  
4 major role in your opinion that Mr. Hinkson is less  
5 likely to be violent?

6 A. Other than those I testified to, the training  
7 that we have often is when you are asked a question of  
8 violence and a prediction, on a somewhat informal level,  
9 the best predictor is past history; and you get the best  
10 history you can, police records if you can, and so on.

11 MR. TAYLOR: Your Honor, I am just asking a  
12 very specific question here.

13 Q. Your opinion that Mr. Hinkson is less likely  
14 to be violent is based on, as I understand it, two  
15 things: Your subjective evaluation of Mr. Hinkson, not  
16 having done any of these specific tests, and his past  
17 history; correct?

18 A. Yes.

19 Q. Did anything else form the basis of that  
20 opinion?

21 A. My experience.

22 Q. So your subjective evaluation, your  
23 experience, and your past history.

24 Now, you testified earlier that you didn't  
25 track the history of at least half of your patients. So

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1 is there other experience that you are referring to  
2 here?

3 A. Well, over the years, many, many, many --  
4 having worked with many violent patients, we did a study  
5 at the Corrections Department. When I worked at the  
6 prison, we had almost 600 and some inmates and their  
7 histories of violence.

8 I came up with a partial checklist to try to  
9 predict whether or not they might re-offend and some  
10 things like that. I just pulled from lots of experience  
11 working with people of different diagnoses and some  
12 without a diagnosis.

13 Q. In terms of this survey that you did, was that  
14 a research survey?

15 A. Yes.

16 Q. Did you publish a paper?

17 A. Excuse me?

18 Q. Did you publish a paper?

19 A. No.

20 Q. Was it peer reviewed?

21 A. Yes.

22 Q. By whom?

23 A. The people I worked with and --

24 Q. The other people involved in this study?

25 A. Yes, some of the people involved with the

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1 study and some psychologists that asked for it after I  
2 gave a presentation that were using it.

3 I got a little feedback that it was helpful.  
4 It wasn't specifically to measure recidivism for  
5 violence. It was different things, but that was one of  
6 the issues.

7 Q. Now I'm confused. This survey on which you  
8 are relying -- what was the purpose of it?

9 A. The purpose of the survey was to assess  
10 whether or not we would be able to get a risk scale or a  
11 probability scale for repeat sex offenders.

12 Q. So this concerns sex offenders?

13 A. Yes. Part of that was a propensity to be  
14 violent. We did a lot of research on histories on how  
15 they measure violence and whether or not that was a part  
16 of the scale.

17 Q. So just so I understand this survey, it was of  
18 600 inmates to determine the propensity for violence by  
19 sex offenders?

20 A. That was part of the rating scale. It was an  
21 issue as to whether or not they might be violent, act  
22 out in a violent way.

23 Q. What was the -- I apologize. I'm having  
24 trouble understanding this survey. Could you just --

25 THE COURT: The court is confused, too. Let

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1 me ask a few questions.

2 Dr. Duke, was this a study that was done while  
3 you worked for the Idaho Department of Corrections?

4 THE WITNESS: Yes.

5 THE COURT: Was it done at the Idaho State  
6 Penitentiary?

7 THE WITNESS: Yes, yes.

8 THE COURT: What year was the study done?

9 THE WITNESS: I think it was '86, '87.

10 THE COURT: Were you a staff psychologist at  
11 the prison at that time?

12 THE WITNESS: Yes.

13 THE COURT: The people that you said reviewed  
14 this were other psychologists working for the Department  
15 of Corrections?

16 THE WITNESS: Yes. And then, after that,  
17 after giving a presentation to other licensed  
18 psychologists in the community, they were using it.

19 THE COURT: Here in Boise?

20 THE WITNESS: Yes. Mostly, yes.

21 THE COURT: Go ahead, counsel.

22 BY MR. TAXAY:

23 Q. This study is not published; correct?

24 A. Right.

25 Q. What was the error rate?

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1 A. We didn't do a lot of statistical -- we didn't  
2 follow up with it a lot over the years. It was just  
3 done as a survey to see if -- back in those days, to see  
4 if we could come up with measures that were a little  
5 more comprehensive than those that were in the  
6 literature.

7 Q. You don't have any idea what the error rate  
8 is? Is that fair to say?

9 A. We didn't do an error rate.

10 Q. Is it utilized currently, this study?

11 A. What?

12 Q. Is this study utilized currently by anybody?

13 A. I'm not sure. I would imagine the scale is  
14 used by some people. I know one lady from Texas, back  
15 in the '80s, wrote to me and said she had been using it  
16 and found it to be very helpful.

17 It wasn't -- it's not a scientific measure,  
18 necessarily. It's a tool to narrow some of the factors  
19 that might be involved in not only treating these people  
20 but trying to reduce the rates of recidivism, plus  
21 trying to focus on what past record may contribute to  
22 their risk.

23 Q. Would you explain error rate for the court?

24 A. You know, I have been out of the actual  
25 experimental psychology for a while but it's -- one of

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1 the ways of looking at it is, over time, what error you  
2 might have, like a probability, or --

3 Q. How about this --

4 A. -- how likely it is that a person with a  
5 certain score would have the same score or the  
6 probability that a person with a score on a test might  
7 have characteristics of other people that have that  
8 score. That's, basically, what we do.

9 Q. Is it fair to call error rate, basically, the  
10 extent -- the percent -- the extent to which -- the  
11 extent to -- the extent of --

12 THE COURT: Why don't you start over, counsel?

13 BY MR. TAXAY:

14 Q. Let me start over. Is it fair to say that  
15 error rate would be the percentage of incorrect  
16 predictions?

17 A. Not always. It could be false positives and  
18 false negatives, both, and a percent with which -- there  
19 are statistical reliability measures.

20 There are statistical measures that are  
21 scientific and very esoteric that they use to determine,  
22 if you will, error rate, over time what might happen,  
23 the probability that you might be making an error.

24 They did it with -- pharmaceutical companies  
25 do it, well and not well; and psychologists try to do

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1 it, trying to be a science as much as possible, so that  
2 some of the measures they use, they believe, over time,  
3 are not only valid and measure what they say they are  
4 going to but are reliable over time. There is lots of  
5 different kinds of reliability.

6 Q. These measures determine reliability of the  
7 survey and the checklist and its usefulness; correct?

8 A. Kind of what you can predict. You are talking  
9 about error rate. I think that's probably what you are  
10 talking about more than anything.

11 Q. None of those, as you described them,  
12 scientific statistical measures have been applied to  
13 determine the reliability of your survey and your  
14 checklist; right?

15 A. On the sex offender checklist, we did some  
16 measures, some statistical measures; but it wasn't  
17 reviewed over time or replicated, no. It wasn't  
18 followed over a period of time to see if -- right.

19 Q. We will move on.

20 THE COURT: Let me ask one follow-up question.

21 Dr. Duke, with regard to the 600 same sex  
22 offenders, how many of those 600 would have been  
23 diagnosed with paranoid personality disorder?

24 THE WITNESS: Very few. Most of them were not  
25 clinically diagnosed.

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1 THE COURT: All right. And of the 600, how  
2 many of them tested for a propensity for violence in  
3 connection with their section --

4 THE WITNESS: Very few. Excuse me, Your  
5 Honor. I guess it's considered a violent crime.

6 THE COURT: Sex offender?

7 THE WITNESS: Yes.

8 THE COURT: In the federal system, it is.

9 BY MR. TAXAY:

10 Q. Dr. Duke, this checklist that you are  
11 mentioning, you didn't use it? You didn't apply it to  
12 Mr. Hinkson's case; right?

13 A. No.

14 Q. You didn't utilize it here?

15 A. No.

16 Q. So you said earlier -- I'm trying to track the  
17 bases for your opinion. You said your subjective  
18 evaluation of Mr. Hinkson's past history, your  
19 experience -- and when you explained your experience,  
20 you described this checklist?

21 You didn't use this check list to evaluate  
22 whether or not Mr. Hinkson is more or less likely to  
23 tend toward a violent solution?

24 A. I didn't use that specific checklist. I used  
25 my experience in developing it, which is the question

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1 you asked me, what experience I drew upon, and how do I  
2 arrive at that decision.

3 Q. Mr. Hinkson's past history, let's talk about  
4 that. The total sum of your knowledge of his past  
5 history is based upon Mr. Hinkson's representations and  
6 counsel's representations; isn't that right?

7 A. Partly.

8 Q. You did an independent factual investigation?

9 A. No.

10 THE COURT: So what else do you have besides  
11 what the patient and his lawyer told you?

12 THE WITNESS: I relied -- I saw some letters  
13 that had been written by family members. I was assured,  
14 as I said in my psychological, that he did not have a  
15 criminal history or a battery history or that he'd ever  
16 been arrested for a crime or accused of one.

17 BY MR. TAXAY:

18 Q. These are the things that Mr. Hinkson's lawyer  
19 and Mr. Hinkson told you?

20 A. Those, plus the documents I had that were  
21 given to me by the attorney, yes.

22 Q. You don't know whether any of those things are  
23 true, whether those statements are true or not true;  
24 right?

25 A. I just relied on the expertise and the

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1 professionalism of the attorneys.

2 Q. Because you don't know whether it is true or  
3 not true, isn't it the case that the standard in  
4 forensic psychology is not to engage in fact-finding?

5 A. I wouldn't say that's really true. If I can  
6 answer that question based upon my opinion --

7 Q. Isn't it the standard in forensic psychology,  
8 also, not to rely on facts as stated by defense counsel?

9 A. You do -- you use whatever you have and you  
10 come up with an opinion based upon your best judgment  
11 within the scope of your practice and within the scope  
12 of what you're asked to do.

13 Q. I'm asking about the standard.

14 THE COURT: Let me ask: Dr. Doka, if you are  
15 concerned, with regard to your Axis diagnosis, that the  
16 patient may suffer from a delusional disorder, would  
17 that influence how much you rely upon the veracity of  
18 what the patient tells you?

19 THE WITNESS: It would help me question the  
20 veracity, and I think I mentioned that in my report.

21 THE COURT: So you would question the veracity  
22 of patients that you might expect to be delusional?

23 THE WITNESS: I always question the veracity  
24 of a patient.

25 THE COURT: I'm sorry. Mr. Taxay, go ahead.

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1 BY MR. TAXAY:

2 Q. In terms of the standard that forensic  
3 psychologists employ, that's the specific question that  
4 I'm asking right here.

5 Do you disagree that the standard that  
6 forensic psychologists employ is not to accept as fact  
7 statements by counsel and the defendant regarding the  
8 defendant's conduct?

9 A. I didn't -- I wouldn't agree with that 100  
10 percent. If I may --

11 Q. Do you agree with it somewhat?

12 A. If it's a standard, you know, that you get  
13 from a manual on forensic psychologists, like a subset  
14 of forensic psychologists that call themselves "forensic  
15 psychologists" and what qualifies them to be forensic  
16 psychologists, they do have -- there is a division, I  
17 believe, with the APA, of forensic psychologists; and I  
18 believe that they have outlined and documented certain  
19 standards.

20 Some of those are used, but professional  
21 judgment is the most important thing. Both Dr. Engle  
22 and myself chose not to use scales that would predict  
23 violence, personality inventories, or other standardized  
24 tests for the purposes of the evaluations we were asked  
25 to do.

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1 Q. Actually, Dr. Engle did a personality  
2 inventory. He used the Millon Inventory. He was not  
3 asked to assess risk of violence, so he didn't use an  
4 inventory there.

5 A. I am not aware that he used the Millon. I do  
6 not have a copy of it. To this minute, I was not aware  
7 he conducted a Millon.

8 Q. I apologize. I misspoke. Dr. Engle did not  
9 use the Millon test because he was not evaluating  
10 Mr. Hinkson's personality. He was looking at one very  
11 specific question, competency; and it was in that area  
12 that he applied a test.

13 A. And I was looking in a much more general and  
14 clinical overview of this person.

15 Q. You chose not to run any tests?

16 A. I did run tests.

17 Q. Not any tests on personality?

18 A. Exactly. And I explained that earlier.

19 Q. And no tests on risk of violence, risk  
20 assessment?

21 A. That's right. Correct. That's correct.

22 THE COURT: Thank you, Dr. Doka.

23 MR. NOLAN: May I just interrupt?

24 THE COURT: Yes.

25 MR. NOLAN: I discovered yesterday that there

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1 could be tests that would be helpful; but, because of  
2 the lateness, however we would submit that -- if counsel  
3 wanted to have those tests administered over the  
4 weekend, we would be happy to make that available. In  
5 other words, my concern was notice requirements.

6 THE COURT: That was the court's concern. If  
7 you recall, the court was a little perturbed at the  
8 beginning of the trial.

9 MR. NOLAN: For good reason.

10 THE COURT: I'm not haranguing anybody. I'm  
11 saying the problem that late notice of this nature  
12 creates is this problem; and that is that, as I  
13 understand it, our two doctors were asked to evaluate  
14 Mr. Hinkson with regard to a different issue.

15 And now you want them to testify to something  
16 different, and there are other tests that they might  
17 have done had they understood that that's what you  
18 wanted them to do.

19 MR. NOLAN: That's correct.

20 THE COURT: The question is whether there is  
21 enough time to do it between now and when we would need  
22 them to testify next week. I will certainly hear from  
23 counsel.

24 I appreciate your offer, Mr. Nolan.

25 MR. NOLAN: I'm saying I am offering it. I

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1 didn't determine it until last night and then I said,  
 2 you know -- he said, "Can we do it?"  
 3 I said, "It's too late."  
 4 In light of that -- anyway --  
 5 THE COURT: That was the basis for the court's  
 6 concern on the first day of the trial -- or on Friday, I  
 7 guess it was, the 7th of January, when we addressed this  
 8 issue at some length.  
 9 Go ahead, Mr. Taxay.  
 10 MR. TAXAY: The Government's position is it's  
 11 too late.  
 12 THE COURT: You have made that abundantly  
 13 clear. I have that in mind.  
 14 Go ahead.  
 15 MR. HOYT: I would be happy to talk further on  
 16 that subject.  
 17 THE COURT: No, you don't need to argue  
 18 further on that matter.  
 19 BY MR. TAXAY:  
 20 Q. Moving to a slightly different subject now,  
 21 Dr. Duke, looking at your report on page ten, you say  
 22 that -- from page ten to eleven: "There is no evidence  
 23 that local persons who aggressively pursue their  
 24 beliefs, such as on talk shows, could resort to  
 25 violence."

1 is nothing you can cite? No article? No study?  
 2 A. There are some studies. Obviously, there are  
 3 thousands, hundreds of thousands of them out there.  
 4 When I wrote that statement, I knew of no reason to  
 5 believe that we could say that people that make these  
 6 statements, who are very verbal and so on, are going to  
 7 resort to violence just because they --  
 8 MR. TAXAY: The Government objects to this.  
 9 It's non-responsive. I'm trying to get the --  
 10 THE COURT: You have got the court reporter  
 11 confused. She is trying to get one of you to complete a  
 12 sentence.  
 13 MR. TAXAY: I apologize, Your Honor.  
 14 THE COURT: Let's back it up.  
 15 THE WITNESS: Why don't --  
 16 THE COURT: I will read the question.  
 17 "Other than your own personal experience,  
 18 there is nothing you can cite? No article? No study?"  
 19 And Dr. Duke started to answer, "There are  
 20 some studies. Obviously, there are thousands, hundreds  
 21 of thousands of them out there. When I wrote that  
 22 statement, I knew of no reason to believe that we could  
 23 say that people that make those statements, who are very  
 24 verbal and so on, are going to resort to violence just  
 25 because they -- "

1 There are no studies that support that  
 2 statement; correct?  
 3 A. And I qualified that, such as people that are  
 4 on talk shows that make very inflammatory statements,  
 5 like the Jay Leno Show and even the presidential debate.  
 6 Q. There are no studies that support that  
 7 statement in your report; correct?  
 8 A. That was my statement.  
 9 Q. I'm saying --  
 10 A. No evidence of mine, no evidence that I felt  
 11 we had or I had in my report to suggest that. I didn't  
 12 say there was never -- there was no studies or no -- I  
 13 had no evidence to suggest, and I did not know of any  
 14 evidence that would suggest that vocal persons who  
 15 aggressively pursue their beliefs, such as on talk  
 16 shows, could resort to violence. That's what I meant.  
 17 Q. This is just your personal opinion; right,  
 18 that there is no evidence? It's just your personal  
 19 opinion?  
 20 A. I didn't know of any when I wrote that  
 21 statement.  
 22 Q. Okay. There is nothing you can cite that  
 23 would support that statement?  
 24 A. Just --  
 25 Q. Other than your own personal experience, there

1 Dr. Duke, you didn't finish your statement.  
 2 Just because they what?  
 3 THE WITNESS: Just because they are very vocal  
 4 and aggressively pursue their beliefs, such as people on  
 5 talk shows or, you know, Jay Leno or the debates where  
 6 people say a lot of things and are very aggressive about  
 7 it, very verbal, it doesn't mean they are going to  
 8 resort to violence. That's what I meant.  
 9 BY MR. TAXAY:  
 10 Q. I would like to restate the same question. I  
 11 think it's pretty much a "yes" or "no" answer. There is  
 12 no study, no scientific study, no article that you can  
 13 cite in support of that statement in your report; isn't  
 14 this right? Yes or no?  
 15 A. I don't know.  
 16 THE COURT: You know of none?  
 17 THE WITNESS: I don't know.  
 18 THE COURT: You can't name one?  
 19 THE WITNESS: I can't name one that I would  
 20 name my -- just, again, this was based on my belief of  
 21 my interview and my experience and what I have been  
 22 taught and, probably, imperical evidence.  
 23 I guess we would have to have a study of  
 24 everybody on a talk show and everybody on the Tonight  
 25 Show and so on and everybody in a debate.



1 Especially in politics, and attorneys, they  
2 make a lot of statements that are very aggressive that  
3 don't necessarily -- what I said was: Because somebody  
4 is verbal and aggressively pursues their beliefs does  
5 not mean they are going to resort to violence. And I  
6 think probably most psychologists would back that up.

7 MR. TAXAY: I will move on.

8 THE COURT: I think we have got as much as we  
9 are going to get out of Dr. Duke on that question.

10 BY MR. TAXAY:

11 Q. "There is no evidence that vocal persons who  
12 aggressively pursue their beliefs could resort to  
13 violence?"

14 What about people who bomb abortion clinics?  
15 Isn't that inconsistent with this statement?

16 A. What's the question?

17 Q. In this statement here, you said, "There is no  
18 evidence that vocal persons who aggressively pursue  
19 their beliefs could resort to violence."

20 What about people who bomb abortion clinics?  
21 That is well-known in the public record.

22 A. What's the question, though?

23 Q. Is that inconsistent with your statement? You  
24 say there is no evidence. Would you consider people who  
25 bomb abortion clinics to be people who vocally express

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1 their point of view and then resort to violence?

2 A. When I made that statement, it was a general  
3 statement. There is always -- I suppose there may be  
4 exceptions.

5 Just like when you were talking about error  
6 rate, there is always a probability that there is an  
7 error of prediction, just like with pharmaceutical  
8 companies who put medicine out in the public and there  
9 are people that die.

10 Q. When you say there is no evidence, that's a  
11 mistake in your report?

12 A. It depends on what evidence -- I had no  
13 evidence. I thought I clarified that.

14 Q. Okay. The next sentence is: "The literature  
15 on personality characteristics and dynamics support  
16 Mr. Hinkson's patterns of behavior to be litigious  
17 rather than violent."

18 You don't cite anything, no literature here.  
19 What literature are you talking about?

20 A. I did cite the literature on Millon, as I  
21 testified to earlier today; and I quoted that  
22 literature.

23 Q. Where in that literature that you just quoted  
24 does it say that people with PFD are less likely to be  
25 violent?

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1 A. My statement was that literature on  
2 personality characteristics -- and I probably should  
3 have put, "See page such and such, Millon" -- and  
4 dynamics support what I say.

5 All I was saying is that I have literature to  
6 support my impression, my opinion, about his patterns of  
7 behavior to be litigious.

8 So the Millon literature, in addition to my  
9 clinical findings, his past history, as well as I knew  
10 it and had -- the information I had, you know -- I can  
11 testify under oath that I didn't have -- those things  
12 support that he would probably be litigious.

13 Q. Okay. So that I'm clear, the Millon -- the  
14 portion in your report that cites Millon, that doesn't  
15 include the reference to people with PFD being less  
16 likely to be violent; correct?

17 A. What was that statement, again? Excuse me.

18 Q. What I'm trying to figure out is where in  
19 Millon does it say that people with this personality  
20 disorder are less likely to be violent?

21 You say that -- you quote a portion of Millon  
22 in your report, but nowhere in that quote do I see any  
23 reference to propensity for violence.

24 A. I will quote it again from page nine.  
25 "According to Schneider's theory, they can split into

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1 either the combative type or the eccentric type. The  
2 combative  
3 can be actively quarrelsome about their fallacious  
4 beliefs, complaining bitterly about injustices done to  
5 them, often seeking retribution and are frequently  
6 litigious."

7 I believe that supported my statement that  
8 Mr. Hinkson, in my opinion as a psychologist, with my  
9 interview and all of the information I had, would  
10 probably be litigious. That's all I said.

11 THE COURT: Dr. Duke, I think the question he  
12 is asking you -- and the court is having the same  
13 problem.

14 I read what you wrote on page nine, quoting  
15 Schneider; but it doesn't show any link between people  
16 who have a litigious behavior and violence. There isn't  
17 anything about violence there.

18 THE WITNESS: Exactly. That's my point.  
19 There is no support that -- why mention violence if  
20 there is nothing to indicate violence?

21 THE COURT: Let me ask the question a  
22 different way. Are you suggesting that, because  
23 Schneider doesn't link litigiousness to violence, that,  
24 therefore, Schneider concludes that there is no such  
25 link?

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1 THE WITNESS: No, no.

2 THE COURT: All right. Go ahead, Mr. Taxay.

3 BY MR. TAXAY:

4 Q. But there is literature out there that links  
5 paranoid personalities with increased risk for violence;  
6 isn't that right?

7 A. I reviewed some literature -- I believe it was  
8 on adolescents -- if that's the literature you are  
9 referring to. There is a great deal of literature.  
10 There are --

11 Q. And that literature says, if you have paranoid  
12 personality, you are more likely to be violent; correct?

13 A. I don't know of any literature that is  
14 accepted to be entirely 100 percent reliable or valid.  
15 It applies to --

16 Q. I'm asking what the literature -- the  
17 literature that you are aware of, what does it say with  
18 respect to the link?

19 A. Well, I would have to review the literature.

20 MR. NOLAN: I would ask that the court  
21 instruct the parties --

22 THE COURT: Mr. Taxay, you have to slow down  
23 and let the witness answer the question. You are  
24 talking over one another, and you are not allowing  
25 Dr. Duke to finish his answer before you are asking him

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1 another question.

2 MR. TAXAY: I appreciate that, Your Honor; and  
3 I apologize. I'm trying to move this along because we  
4 are getting a lot of non-responses.

5 THE COURT: I agree. But your job is to ask  
6 him questions to try and clarify it. I will do my best  
7 to hold him to the question.

8 MR. TAXAY: Thank you, Your Honor.

9 THE COURT: The problem Mr. Nolan is talking  
10 about is a different problem. Do you understand the  
11 problem, Mr. Taxay?

12 MR. TAXAY: No, I don't. Maybe I missed it.

13 THE COURT: You are not allowing the witness  
14 the time to finish his answer before you start your  
15 question. All right. So just take a deep breath, let  
16 Dr. Duke finish, and you can ask your next question.

17 MR. TAXAY: I was trying to make -- that's  
18 okay.

19 THE COURT: We are not that rushed.

20 MR. TAXAY: All right.

21 THE WITNESS: May I ask if he has an exhibit?  
22 I'm trying to find mine. It might speed things up if I  
23 can see what literature he is referring to.

24 THE COURT: Do you have something that --  
25

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1 BY MR. TAXAY:

2 Q. I do. I'm happy to show it to Dr. Duke in a  
3 moment. Right now, I'm interested in the literature  
4 that Dr. Duke was citing.

5 A. I'm not citing any literature. There was some  
6 literature faxed to me yesterday on some studies -- I  
7 think they were on adolescents -- and there were some  
8 statements made.

9 We don't necessarily accept that as absolutely  
10 true, that it 100 percent applies to everybody, is  
11 reliably generalized to the whole population and  
12 everybody with a paranoid personality. There is a great  
13 deal of error of measurement.

14 I would be glad to review that and give you an  
15 interpretation. We could go to other literature that  
16 has other studies that have probably replicated those  
17 studies. There are thousands of them out there.

18 If you take one study -- some were done on  
19 adolescents -- and try to apply it to this case, you  
20 know, we are in a wide margin of error there.

21 MR. NOLAN: May I assist? May I try to assist  
22 counsel and the court?

23 THE COURT: That would help us all.

24 MR. NOLAN: There was an article that was  
25 attached to a pleading by the Government that we gave to

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1 the doctor which we believe was the basis of --  
2 everybody is drawing conclusions.

3 If we could just establish, Doctor, did you  
4 get an article? Did you see -- in its title such and  
5 such?

6 THE COURT: Is that the article?

7 MR. TAXAY: No, I'm not there yet. I'm happy  
8 to get there in a minute.

9 MR. NOLAN: If that's not the article --  
10 that's what the Doctor thought, and that's the problem.

11 THE COURT: Let's help out Dr. Duke here.

12 BY MR. TAXAY:

13 Q. The first thing is -- I guess I would like to  
14 follow up right now on something that Dr. Duke just  
15 said.

16 Dr. Duke, you said there are a number of  
17 studies out there regarding risk of violence and that it  
18 would be very cumbersome to take a look at those and  
19 make a judgment as to how that body of scientific  
20 literature might apply to Mr. Hinkson; correct?

21 A. That was not my evaluation. I'm just, more or  
22 less, here to testify on what I did, what I believe on  
23 my evaluation.

24 You can question me about all of the  
25 literature in the world; and I can't, under oath, tell

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1 you, with the truth, the whole truth and nothing but the  
2 truth, that that literature definitely is going to apply  
3 to what I was asked to do and testify to today. I don't  
4 think that's even appropriate.

5 Maybe I shouldn't say that.

6 THE COURT: I will decide whether it's  
7 appropriate or not.

8 Go ahead, Mr. Taxay.

9 BY MR. TAXAY:

10 Q. You understand that there is literature out  
11 there on this subject; correct?

12 A. I saw some yesterday on this particular  
13 subject of personality types and prediction of violence.

14 Q. Prior to offering your opinion, you made no  
15 effort whatsoever to see what the scientific literature  
16 said about the propensity for violence in those people  
17 that had PPD; correct?

18 A. I, again, will testify that the basis of my  
19 report and my evaluation was what I have testified to  
20 earlier.

21 THE COURT: Doctor, the question is very  
22 simple. He is just asking you whether or not you  
23 reviewed any scientific literature about propensity for  
24 violence in people with PPD at the time you wrote the  
25 report. Did you look at such literature or not?

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1 THE WITNESS: No. I used the Millon mostly,  
2 yes.

3 THE COURT: All right. Thank you.

4 MR. TAXAY: I'm happy to turn to this article  
5 that was attached to the Government's pleading. I have  
6 a copy of it here for you that I can give you.

7 May I approach, Your Honor?

8 THE COURT: Let's establish whether Dr. Doke  
9 has seen it. If so, ask your question.

10 BY MR. TAXAY:

11 Q. Have you seen the Nestor article of 2002,  
12 Dr. Doke?

13 A. I don't recall the name of the article. I'm  
14 trying to find it here.

15 Q. I have a copy readily available.

16 THE COURT: That might be the quickest way to  
17 do it.

18 THE WITNESS: Thank you. Yes, I have seen it.

19 BY MR. TAXAY:

20 Q. When did you first see this?

21 A. Yesterday.

22 Q. Have you had a chance to read it?

23 A. Excuse me?

24 Q. Have you had a chance to read it?

25 A. I didn't read every line of this, no.

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1 Q. Do you know who Paul Nestor is?

2 A. He wrote for the American Journal of  
3 Psychiatry, a Ph.D.

4 Q. Do you know of him by reputation?

5 A. No.

6 Q. I will turn you to the second page of this  
7 article. It's page number is 1974. I would like to you  
8 focus in on the section that begins with the header  
9 "Personality Disorders."

10 A. Okay.

11 Q. The first sentence says: "Longitudinal  
12 studies have provided strong evidence of personality  
13 disorders representing a significant clinical risk for  
14 violence."

15 What do you understand that to mean?

16 A. That some studies have shown strong evidence  
17 of personality disorders representing a significant  
18 clinical risk for violence.

19 Q. Okay. Is that inconsistent with your opinion  
20 that you have offered in this case?

21 A. This study -- is that a yes or no question?

22 Q. Yes. Is this statement inconsistent with the  
23 opinion that you have offered in this case?

24 A. Yes.

25 Q. People with PPD are less likely to be violent?

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1 A. Yes.

2 Q. And on what basis do you reject those other  
3 studies?

4 A. Well, this study -- as I said earlier, it was  
5 my opinion, based upon my interview, my clinical  
6 judgment, the testing I used, the history I had in my  
7 interview.

8 And, also, this study, number two, has to do  
9 with an old study, 1978. It was a long time ago. There  
10 has been lots of time since then to replicate the  
11 studies to show whether they are true or not or, in  
12 fact, accepted.

13 Number three, this is done on adolescents in  
14 early adulthood. Mr. Hinkson is not an early adult or  
15 an adolescent. It doesn't apply to him.

16 THE COURT: Dr. Doke, doesn't that last  
17 sentence that Mr. Taxay referred you to cite to  
18 footnotes 7 and 26 of the article?

19 THE WITNESS: Yes.

20 THE COURT: That's what those numbers in  
21 parentheses mean?

22 THE WITNESS: Those are references to other  
23 articles, yes.

24 THE COURT: Thank you.

25 BY MR. TAXAY:

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1 Q. And, Dr. Doke, those footnotes -- I'm not sure  
 2 where you are getting this 1978 stuff.  
 3 THE COURT: That's why I asked the question.  
 4 That's not how I read the footnotes.  
 5 BY MR. TAXAY:  
 6 Q. If you look at the footnotes -- they are  
 7 numbers 7 and 26 -- to me, they look like they refer to  
 8 studies in the year 2000 and --  
 9 A. You are right. I made a mistake. This was  
 10 done at the American Journal of Psychology in 2002 or --  
 11 THE COURT: 2000?  
 12 THE WITNESS: 2002.  
 13 THE COURT: 2002?  
 14 MR. TAXAY: The article is 2002. The  
 15 footnotes reflect the earlier dates. Two thousand --  
 16 THE COURT: And 1998?  
 17 MR. TAXAY: Yes, Your Honor.  
 18 THE COURT: Is that right, Dr. Doke?  
 19 THE WITNESS: Yes. Well, the article, by  
 20 Johnson, was 2000, American Journal of Psychiatry, that  
 21 was footnote 7; and footnote 26 was Benman and Fallon,  
 22 Bacarro in 1998.  
 23 THE COURT: Thank you.  
 24 THE WITNESS: I erred on that.  
 25

1 BY MR. TAXAY:  
 2 Q. I would like to focus you in on some language  
 3 a little bit deeper in that same paragraph. The  
 4 sentence, second to the last sentence, begins with the  
 5 words, "In fact . . ." Do you see that sentence, sir?  
 6 A. Yes.  
 7 Q. I will read it to you, Dr. Doke. "In fact,  
 8 increased symptoms of DSM-IV cluster A or cluster B  
 9 personality disorder corresponded to a greater  
 10 likelihood of violence in the community during  
 11 adolescents and adulthood."  
 12 PFD, paranoid personality disorder, that's a  
 13 cluster B personality disorder -- I'm sorry -- a cluster  
 14 A personality disorder, isn't it?  
 15 A. Yes.  
 16 Q. That's inside -- I mixed up that question.  
 17 THE COURT: You also lost the court. What  
 18 page are you on, counsel?  
 19 MR. TAXAY: I apologize, Your Honor. Page  
 20 1974, the section that reads "Personality Disorders,"  
 21 the first paragraph, second-to-the-last sentence.  
 22 THE COURT: I'm with you.  
 23 BY MR. TAXAY:  
 24 Q. "In fact, increased symptoms of DSM-IV cluster  
 25 A or cluster B personality disorder corresponded to a

1 greater likelihood of violence in the community during  
 2 adolescence and early adulthood."  
 3 Isn't it true that paranoid personality  
 4 disorder is a cluster A disorder?  
 5 A. He is both of these, yes. Yes. But --  
 6 Q. Just -- PFD is a cluster A?  
 7 A. I believe it's a cluster B.  
 8 Q. In any event, you read this to say that people  
 9 with PFD are more likely to be violent?  
 10 A. No. That's not a conclusive statement.  
 11 Q. Dr. Doke, I think, to clear up a preliminary  
 12 matter, I have here the DSM-IV; and it shows paranoid  
 13 personality disorder to be a cluster A personality  
 14 disorder.  
 15 A. Okay. It says cluster A or cluster B here. I  
 16 was trying to answer your question.  
 17 Q. Would you like to see this DSM-IV?  
 18 A. No. That's all right.  
 19 THE COURT: So have we resolved that it is  
 20 cluster A, Doctor?  
 21 THE WITNESS: Yes.  
 22 THE COURT: Thank you.  
 23 BY MR. TAXAY:  
 24 Q. So doesn't this say that people with cluster A  
 25 diagnoses like PFD are -- have a greater likelihood of

1 violence in the community during adolescence and early  
 2 adulthood?  
 3 A. That's what the article says, yes.  
 4 Q. Your conclusion is inconsistent with that, as  
 5 well?  
 6 A. Well, actually, this would support my  
 7 conclusion.  
 8 Q. Would you explain that, please?  
 9 A. Because he had no -- as far as I know, in my  
 10 testimony here today under oath, he had no adolescent or  
 11 early adulthood violence.  
 12 So if he had pervasive cluster A paranoid  
 13 personality disorder most of his life, he had it in  
 14 childhood and he had it in adolescence and early  
 15 adulthood. He wasn't violent, so he is an exception.  
 16 So, again, this article does not apply to him.  
 17 I would never use this, as a clinician, to believe a  
 18 patient that I had or the many, many, many patients I  
 19 have had with paranoid personality disorder were going  
 20 to be violent.  
 21 Q. So it boils down to your gut instinct versus  
 22 a bunch of scientific --  
 23 A. It's my experience. It's probably what most  
 24 psychologists would testify to, if they were honest.  
 25 Q. So we are clear, this is about your gut

1 instinct?

2 A. It's more than gut instinct. It's

3 professional opinion. And I believe that would be

4 corroborated by most psychologists.

5 They would not use this article unless they

6 used it to say, gee, you know, I have a paranoid

7 personality here that was never violent; and this

8 article says they should have been violent in

9 adolescence and early adulthood. Gee, that doesn't

10 apply.

11 That's nothing new in our business. These

12 studies do not always apply to our patients, just

13 because they have a label.

14 Q. Okay.

15 A. And I believe -- I'm not sure but I believe

16 even Dr. Engle, in his report, if I may --

17 THE COURT: We are running a little short on

18 time.

19 MR. TAXAY: I have just a couple more

20 questions.

21 THE COURT: Go ahead.

22 BY MR. TAXAY:

23 Q. You testified this week in another case, isn't

24 that right, Dr. Duke?

25 A. Excuse me?

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1 Q. You testified this week in another case;

2 right?

3 A. Yes, I did.

4 Q. And in that case, your patient, the defendant,

5 you diagnosed him with FPD; correct?

6 A. You know, I don't know whether --

7 THE COURT: Did you testify in open court

8 about it?

9 THE WITNESS: It was in a county hearing.

10 THE COURT: So it was in a public hearing in a

11 courthouse?

12 THE WITNESS: Yes.

13 THE COURT: You are not violating any patient

14 confidences if you have already disclosed it publicly.

15 BY MR. TAXAY:

16 Q. You diagnosed this patient with a paranoid

17 personality disorder this week?

18 A. I don't have the records here. I see many,

19 many, many people a week. I believe his diagnosis was

20 schizo-effective, and that's what we addressed in the

21 court. He had -- I believe he did have Axis II paranoid

22 personality.

23 Q. Did you diagnose this patient with paranoid

24 personality disorder?

25 A. I believe so, yes.

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1 Q. And this patient had a history of violence;

2 isn't that right?

3 A. He had a history of some misdemeanor

4 altercations, yes.

5 Q. And, in fact, he was charged with aggravated

6 assault; correct?

7 A. That's correct.

8 MR. TAXAY: Your Honor, that's all for now.

9 THE COURT: Anything else, Mr. Nolan?

10 MR. NOLAN: No, Your Honor.

11 THE COURT: Dr. Duke, thank you. You may step

12 down. You are excused for the time being. We may need

13 to recall you next week.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: Mr. Taxay, does the Government

16 intend to call Dr. Engle or shall the court hear

17 argument?

18 MR. TAXAY: We will call Dr. Engle.

19 THE COURT: Dr. Engle, would you step forward

20 and be sworn?

21 Thank you, Dr. Duke.

22 DR. DUKE: You are welcome, Your Honor. Thank

23 you.

24 THE COURT: Have a nice weekend.

25 MR. NOLAN: May Dr. Duke remain?

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1 THE COURT: Yes. I would like him to hear, if

2 he has time.

3 \* \* \*

4 ROBERT CRAIG ENGLE, Ph.D.,

5 having been called, sworn, testified as follows:

6 THE COURTROOM CLERK: Thank you. Please take

7 the stand. You can adjust that mic however it works

8 best for you.

9 If you would, state your name and spell your

10 last name for the record, please.

11 THE WITNESS: Robert Craig Engle, E-n-g-l-e.

12 THE COURTROOM CLERK: Thank you.

13

14 D I R E C T E X A M I N A T I O N

15 BY MR. TAXAY:

16 Q. Dr. Engle, what is your profession?

17 A. I'm a licensed psychologist in Idaho. I have

18 a private practice here in Boise.

19 Q. Where do you -- you have a Ph.D.?

20 A. University of Nevada, Reno, 1985.

21 Q. How long have you been a practicing

22 psychologist?

23 MR. NOLAN: I stipulate that he is qualified.

24 THE COURT: I have read Dr. Engle's C.V. With

25 that stipulation, go forward.

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1 BY MR. TAXAY:

2 Q. Thank you. The National Registry of -- let me

3 cite it correctly -- the National Register of Health

4 Service Providers in Psychology --

5 THE COURT: Counsel, I don't think I need to

6 hear what amounts to impeachment. I would really like

7 to get to the heart here with regard to Dr. Engle's

8 testimony with regard to Mr. Hinkson.

9 BY MR. TAXAY:

10 Q. Would you explain what forensic psychology is?

11 THE COURT: Counsel, I know what forensic

12 psychology is. Let's move on.

13 BY MR. TAXAY:

14 Q. In forensic psychology, would you explain

15 whether forensic psychologists use tests?

16 THE COURT: Counsel, let's get to Mr. Hinkson.

17 You can assume the court is with you up to this point.

18 MR. TAXAY: Very well, Your Honor. We are not

19 offering Dr. Engle for the purpose of providing an

20 opinion on Mr. Hinkson.

21 THE COURT: The reason I suggested to you that

22 you might want to call Dr. Engle is that the Finley

23 decision gave the Government the option to do that at

24 the Daubert hearing.

25 If you don't intend, at this point, to have

1 him testify with regard to Mr. Hinkson until after

2 Dr. Doka testifies, that's fine.

3 I will hear argument with regard to whether or

4 not Dr. Doka's testimony will be admissible which is,

5 basically, the purpose of the hearing.

6 MR. TAXAY: Well, we can -- our thought is

7 that we haven't formulated a psychological opinion on

8 Mr. Hinkson's propensity for violence.

9 THE COURT: Let me ask you this: Because

10 Mr. Nolan has offered it, let's ask Dr. Engle while we

11 have him.

12 Dr. Engle, if you do need to testify next week

13 with regard to countering Dr. Doka or discussing

14 Mr. Hinkson's propensity for violence based on a

15 diagnosis of paranoid personality disorder, do you need

16 to conduct any further tests or evaluation of him prior

17 to formulating such an opinion?

18 THE WITNESS: Judge, it would certainly be

19 useful. It goes to the certainly with which an opinion

20 could be expressed.

21 THE COURT: Could you do that over this

22 weekend? Would you have time to do that? We may be

23 getting to this testimony as early, I think, as maybe

24 Monday afternoon.

25 You are not going to have to prepare a written

1 report. I will excuse you from any obligation to do

2 that.

3 Although, counsel, you will have to provide an

4 oral summary of Dr. Engle's opinion to defense counsel

5 prior to his testimony.

6 MR. TAXAY: Your Honor, would it be useful to

7 hear from Dr. Engle on the accepted methodologies that

8 are employed by forensic psychologists?

9 THE COURT: That might be helpful in helping

10 the court formulate its ruling over the weekend. Thank

11 you.

12 BY MR. TAXAY:

13 Q. Dr. Engle, would you -- sort of getting to the

14 meat of it here, would you please explain how forensic

15 psychologists go about formulating their opinions so

16 that they can testify in court?

17 MR. NOLAN: Could I suggest a question?

18 THE COURT: Sure.

19 MR. NOLAN: That is, based upon what the prior

20 testimony was, is there anything that he left out or

21 that you disagree with, in terms of the forensic -- the

22 methodology?

23 THE COURT: Will you accept -- I hesitate to

24 call it a friendly amendment -- Mr. Nolan's amendment to

25 your question, Mr. Taxay?

1 MR. TAXAY: I think it's important to hear

2 from Dr. Engle, as a forensic psychologist, how it is

3 they go about their job.

4 THE COURT: I will let you conduct that

5 examination. If Mr. Nolan wants to ask questions, I

6 will let him do it.

7 BY MR. TAXAY:

8 Q. Dr. Engle, please explain.

9 A. The customary methodology used in establishing

10 diagnostics in a forensic context requires a much higher

11 standard than the criteria used in clinical practice.

12 As Dr. Doka testified, the gathering of

13 history from the patient, the observation of the patient

14 is certainly relevant and important.

15 The collaboration of third-party information,

16 the verification of the third-party information is

17 absolutely critical in forensic reports, since

18 defendants have a vested interest, almost always, in how

19 they present themselves in the evaluation.

20 Psychological testing is also critical in

21 forensic evaluations since it adds a layer or an element

22 of objectivity to what is, essentially, a subjective

23 evaluation of how the defendant comes across to the

24 psychologist.

25 Thirdly, the evaluation needs to be specific

1 to the issues that are relevant. If we are trying to  
2 predict violence or a solicitation for violence, there  
3 are, as you indicated in your examination of Dr. Doka,  
4 specific tests which can help and which most probably  
5 would help in bringing an objective basis to an  
6 expression of that prediction.

7 Q. Now, having heard Dr. Doka's testimony with  
8 respect to how he went about arriving at his diagnosis,  
9 do you have a professional opinion as to whether or not  
10 he followed the standards that are accepted amongst  
11 forensic psychologists?

12 A. I would say that Dr. Doka's evaluation is  
13 typical of a clinical psychologist and not what is done  
14 in a forensic psychologist's evaluation.

15 MR. NOLAN: Object. Non-responsive.

16 THE COURT: Overruled.

17 BY MR. TAXAY:

18 Q. Do you have any specific objections -- can you  
19 identify specifically how you view his approach to be  
20 inconsistent with the standard in forensic psychologist?

21 A. Utilization of psychological testing, a survey  
22 of the scientific literature specifically pertinent to  
23 the questions he is being asked. And I was unclear from  
24 Dr. Doka's report what third-party information he had  
25 exactly and to what extent that had been verified or

1 not.

2 Q. So the failure to do those things is what you  
3 are focused on?

4 A. I would add them, yes.

5 Q. Is it consistent with the standard amongst  
6 forensic psychologists to rely on defense counsel's  
7 denials?

8 A. No.

9 Q. Is it inconsistent with the standard of --

10 MR. NOLAN: Did I --

11 THE COURT: The answer was "no."

12 MR. NOLAN: "No." Thank you.

13 BY MR. TAXAY:

14 Q. Is it inconsistent with the standard among  
15 forensic psychologists to rely on defense counsel's  
16 denials?

17 A. It's highly inconsistent to rely on assertions  
18 by either side.

19 Q. Are there any other points that you think are  
20 significant with respect to deficiencies in Dr. Doka's  
21 methodology?

22 A. No.

23 MR. TAXAY: No further questions.

24 THE COURT: Mr. Nolan?

25

CROSS EXAMINATION

2 BY MR. NOLAN:

3 Q. I take it, you have never relied upon a police  
4 report in forming your opinions for forensic purposes?

5 A. Certainly.

6 Q. Have you ever relied upon a police report in  
7 forming your opinion?

8 A. I just said yes.

9 THE COURT: He said, "Certainly."

10 BY MR. NOLAN:

11 Q. I'm sorry. I take it, they are more reliable  
12 than defense lawyers?

13 A. I don't know.

14 Q. What about prosecutors? Do you rely upon what  
15 they tell you?

16 A. No.

17 Q. And the police are part of the other party,  
18 are they not?

19 A. I don't know their source of information.

20 Q. Isn't the defense lawyer a source of  
21 information?

22 A. With a prejudicial bias, I think.

23 Q. The police don't have a prejudicial bias; is  
24 that right?

25 A. Hopefully not.

1 THE COURT: Nothing further?

2 MR. NOLAN: I have no further questions.

3 THE COURT: I'm sorry, Dr. Engle. I'm not  
4 sure I ever allowed you to answer my question. Would  
5 you be able to conduct any further evaluations of  
6 Mr. Hinkson over this weekend?

7 THE WITNESS: Judge, I have been thinking  
8 about that, as I have been answering. I cannot imagine  
9 that I could administer and score and interpret the  
10 necessary tests by Monday.

11 THE COURT: All right. Okay. Anything  
12 further with regard to evidence before I hear argument?

13 MR. TAXAY: No, Your Honor.

14 THE COURT: All right. Dr. Engle, you may  
15 step down. Thank you very much.

16 I appreciate both of you coming.

17 Let's see. I think the Government has the  
18 laboring oar since the defense has endorsed Dr. Doka and  
19 you have moved in limine to preclude Dr. Doka's  
20 testimony.

21 Let me assure you both I have read your  
22 memoranda. I have read the supporting -- the key  
23 supporting cases.

24 So let's get Mr. Nolan to his airplane and  
25 keep your argument to the point.

1 MR. TAXAY: Okay, Your Honor. Your Honor, I'm  
2 no going to rehash all of the points made in our --

3 THE COURT: I have them in mind.

4 MR. TAXAY: -- response. I would like to  
5 highlight a few things.

6 Dr. Duke's proposed testimony is crystal ball  
7 testimony. Is it more or less likely that the defendant  
8 would have done it?

9 That's not the kind of testimony that is  
10 permissible for psychologists. The case law is clear  
11 that the very limited band of permissible testimony  
12 relates to things that go to whether or not the  
13 defendant could form the requisite state of mind.

14 That's what is not -- that is not in play  
15 here. Dr. Duke would testify not about the defendant's  
16 state of mind or a condition that would affect it but,  
17 rather, whether or not he was more likely to have  
18 committed the act with which he has been charged.

19 That is rank propensity evidence. It is  
20 inadmissible under Rule 40(a). We did not cite that in  
21 our brief. I apologize for that.

22 The Government posits that this crystal ball  
23 evidence has no role in a federal trial. It is the role  
24 of the jury to make a jump as to whether or not this  
25 happened.

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1 Turning my attention, briefly, to this Finley  
2 case, Your Honor, again, the Finley case focuses in on  
3 that very issue: What sort of psychological testimony  
4 would be permissible?

5 It's not the central issue in the case but  
6 it's definitely in play there. When you read the text  
7 of that opinion, there is much discussion about ability  
8 to form intent.

9 That's the kind of psychological evidence that  
10 is in play. Something that I think is worth noting here  
11 is that, in the Finley case, the court talks about the  
12 methodology that was employed by the psychologist and,  
13 essentially, it proves this Millon Clinical Multi-Axis  
14 Inventory to arrive at conclusions.

15 This is the very MMPI test that the Government  
16 says should have been done here if the defense wanted to  
17 put on a witness to testify about personality  
18 characteristics. It wasn't done.

19 That's on page 1006, I believe, Your Honor of  
20 the opinion, reference to this -- yes, 1006 -- reference  
21 to the MMPI.

22 Another item that the Government would  
23 highlight is that Dr. Duke's opinion is hardly  
24 scientific. It's gut instinct based upon his own  
25 personal experience.

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1 He has admitted that he has not followed the  
2 patient history, his patients' history, at least half of  
3 them. When he has a gut instinct, it's really not based  
4 on even good data within his own practice.

5 There is substantial data that is available  
6 outside of his practice that Dr. Duke knowingly and  
7 intentionally decided not to look at to make a judgment.

8 THE COURT: I don't want to -- I'm going to be  
9 fair to Dr. Duke. He wasn't asked originally to do this  
10 kind of an evaluation, although defense counsel is,  
11 obviously, now asking him to do something that he didn't  
12 completely test for. I think that's the problem.

13 MR. TAXAY: That's a fair point, and I  
14 apologize.

15 THE COURT: I don't want to impugn the  
16 integrity of either of our two professionals here. They  
17 did what they were asked to do. Now they are being  
18 asked to do something different, as I understand the  
19 problem.

20 MR. TAXAY: I don't meet to impugn Dr. Duke's  
21 integrity.

22 You raised another very good point which is  
23 that -- this is item two in our motion, our brief --  
24 that they prepared -- the defense prepared an expert  
25 report sometime ago. Most of the issues about which

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1 they want to have Dr. Duke testify really weren't the  
2 subject of that report.

3 The Government identifies those items that  
4 weren't really mentioned in the report. But to the  
5 extent there is any aspect of propensity for violence in  
6 the report, it wasn't the focus of the report; and, as a  
7 consequence, Dr. Duke's opinion is not completely  
8 formulated on that subject. And so it would be  
9 unreliable testimony and confusing to the jury and  
10 certainly not helpful.

11 THE COURT: All right. Mr. Nolan?

12 MR. NOLAN: Yes. Thank you very much, Your  
13 Honor.

14 First of all, Dr. Duke did not not do -- his  
15 purpose in doing the evaluation was not focused on this  
16 kind of testimony.

17 THE COURT: I understand that. So let's go  
18 right to the heart of it, which is, if that's the case,  
19 then why should the court permit him to testify when, by  
20 his own testimony, he hasn't done the types of things  
21 that one would do, from a professional psychologist's  
22 standpoint, in order to render a credible opinion on the  
23 subject?

24 MR. NOLAN: I was going to be very brief.

25 THE COURT: I'm sorry, Mr. Nolan. Go ahead.

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1 MR. NOLAN: What I'm trying to say is: I  
2 looked at the report. I then filed a supplemental  
3 memorandum which said, based upon what he did, I want to  
4 offer him.

5 The court saw that, indicated to the  
6 Government it had an opportunity to do additional tests.

7 We are before the court without the kind of  
8 tests that would make his testimony grade "A" testimony.  
9 We are borderline on the tests that he performed; I'm  
10 conceding that.

11 What I'm trying to say is, if we did have an  
12 opportunity to do the kinds of tests, we could not  
13 because it was too late for us to submit it; and we  
14 understand that.

15 And so, you know, we are at a place where I  
16 think the issue is not the issue of whether it should be  
17 admitted or not, based upon, you know -- that's been  
18 decided by Finley.

19 The question is: Does it meet the criteria?

20 THE COURT: I don't think so, Mr. Nolan.  
21 Finley doesn't say that I can't exclude it. It says, if  
22 I do exclude it, I'd better articulate the reasons why  
23 and I'd better make findings under Daubert as to why the  
24 testimony is not admissible.

25 And one of the grounds, I think, if I

1 understand Daubert correctly, is essentially whether or  
2 not the methodology that the expert employed in this  
3 case would be recognized by his peers as sufficient to  
4 render the opinion that you want him to render.

5 That's what the court is having a problem with  
6 right now.

7 MR. NOLAN: I agree. What I meant was that,  
8 as to the issue of admissibility, the Daubert  
9 methodology is where we are failing.

10 THE COURT: Yes.

11 MR. NOLAN: When I say "failing," I think -- I  
12 think we have met it; but I am conceding it's weak  
13 because we don't have the tests on the violence issue  
14 and that connection. I'm suggesting that I barely made  
15 it.

16 But I think that's where it focuses. It  
17 doesn't focus on, under proper circumstances, this  
18 wouldn't otherwise be admissible testimony.

19 THE COURT: I agree with you, Mr. Nolan. I  
20 think that, if both of the psychologists had been tasked  
21 with the job of assessing Mr. Hinkson in order to render  
22 this opinion and there was adequate time to do it and  
23 they conducted the kind of tests that they needed to  
24 conduct in order to do it, then it would be admissible  
25 under Finley.

1 MR. NOLAN: I'm not conceding it.

2 THE COURT: I understand that. I'm not ruling  
3 yet.

4 MR. NOLAN: Exactly.

5 THE COURT: I am posing the question. I want  
6 you to help me. The laboring oar, I think, is yours  
7 because, as I understand the evidentiary record,  
8 everything that could have been done in order to  
9 formulate what you call a class "A" opinion hasn't been  
10 done.

11 And as I understand Dr. Engle's testimony,  
12 there is not enough time between today, Friday, and the  
13 next trial day, Monday, in order do it.

14 MR. NOLAN: All I would say about that is the  
15 Government had the opportunity. What I am saying is we  
16 can go in -- the Government had the opportunity to do  
17 the class "A" for plenty of time, from the day that this  
18 trial started.

19 In other words, it's kind of like the court is  
20 saying, you know, to the Government, "You had the  
21 opportunity to prepare for that in case I let it in,"  
22 and they just barely made it, that kind of thing.

23 Now, for example, we could do the report over  
24 the weekend; but the court wouldn't allow that, I don't  
25 think.

1 THE COURT: It isn't a question of generating  
2 a report, as I understand it. It's a question of  
3 conducting --

4 MR. NOLAN: The examination?

5 THE COURT: Yes. As Dr. Engle testified,  
6 scoring the tests, interpreting them -- I'm not a  
7 psychologist, so I don't know how much work is involved.  
8 I heard Dr. Engle say that it takes a significant amount  
9 of time to do that.

10 MR. NOLAN: I believe doctor -- I would  
11 submit, for the purpose of an offer of proof, that we  
12 could do those tests this weekend, get them scored, and  
13 be prepared on Monday if we were allowed to do so. You  
14 know, so I am making that representation as an offer of  
15 proof.

16 THE COURT: Let me ask you another question.  
17 I'm looking at the defendant's supplemental memorandum  
18 of authorities regarding experts which the court  
19 received late on January 6, 2005.

20 It outlines three areas that Dr. Duke will not  
21 be asked to render an opinion on. "B" is whether he has  
22 an opinion that Mr. Hinkson had the intent necessary to  
23 commit the offense.

24 Now, when you were posing questions to  
25 Dr. Duke, that's what I was hearing. Did I --

1 MR. NOLAN: Whether or not the personality  
2 characteristics and the diagnosis make it more or less  
3 likely that he would have the intent. In other words --

4 THE COURT: You are citing Finley for the  
5 proposition that -- I must say I have a difficult time  
6 following my colleague's opinion in Finley.

7 MR. NOLAN: I have that feeling.

8 THE COURT: But it's a subtle distinction that  
9 may elude me. The distinction, as I understand it, is  
10 that the expert can offer, I guess, by way of  
11 explanation, background information to aid lay jurors in  
12 understanding how paranoid personality disorder would  
13 affect Mr. Hinkson's ability to form the intent to  
14 solicit the murder of federal officials; but that the  
15 jury still has to make the ultimate finding as to  
16 whether he, in fact, did.

17 MR. NOLAN: Absolutely. The way the  
18 examination is done in California -- when diminished  
19 capacity was eliminated but you still have the due  
20 process intent issue, you get into the way you formulate  
21 the questions.

22 It's not did he have the intent, but is there  
23 something about it which the jury should understand in  
24 deciding whether there exists the intent?

25 THE COURT: Are you, essentially, pursuing now

1 a diminished capacity?

2 MR. NOLAN: No. I was using it as a metaphor.

3 THE COURT: Because there was no 12.2 notice  
4 of it.

5 MR. NOLAN: No. I'm suggesting that there is  
6 a shift away from taking anything away from the jury,  
7 and the idea that someone would say he did not have the  
8 intent is improper.

9 But there is something to say that, because of  
10 this, he might not have had the intent, not that he did  
11 or didn't; but there is something you should be aware of  
12 and that you should consider in deciding whether he had  
13 the intent.

14 THE COURT: Whether or not he had the ability  
15 to form the intent?

16 MR. NOLAN: That would be an undiminished  
17 capacity, whether he had the ability.

18 THE COURT: Isn't that, essentially, what you  
19 are trying to get before the jury, that you want them to  
20 consider this psychological evaluation and Dr. Duke's  
21 testimony in order to help them decide whether or not he  
22 had the intent on the dates in question?

23 MR. NOLAN: That's right, because he has a  
24 diagnosed -- a disorder which affects him in a way  
25 different than other people so that his behavior -- his

1 behavior may not be interpreted in the same way.

2 It's a matter of helping them interpret his  
3 behavior. I mean, that's the way I see it. Again,  
4 Finley -- well, it actually -- if you look at Finley,  
5 Finley goes a lot further than we are going. First of  
6 all, they didn't diagnose --

7 THE COURT: The reason we are having the  
8 hearing is because of Finley. The court is not going to  
9 make the same mistake the trial judge made in Finley.

10 MR. NOLAN: I am hoping, if I don't win, it's  
11 not going to be published.

12 THE COURT: I don't have any control over  
13 that, in this case.

14 MR. NOLAN: I thought you could publish  
15 things. I'm not --

16 THE COURT: I can publish things at the  
17 District Court level but not the Federal Court level.

18 MR. NOLAN: In any event, I think, with the  
19 Court's permission, we will do the tests and try to  
20 score them.

21 But, yes, the court has, really, to decide  
22 whether or not, in this instance, I think, we have  
23 sufficiently done the tests to meet the burden -- hurdle  
24 over the right tests to make that conclusion.

25 THE COURT: This might -- well, let me --

1 Mr. Taxay, would you like to respond?

2 MR. TAXAY: Just a few points, Your Honor.  
3 Your Honor, I think an important point to keep in mind  
4 here is the defendant denies he made any of these  
5 statements. The defendant's position is that he didn't  
6 make these solicitations.

7 THE COURT: I understand that. I assume  
8 Dr. Duke would say that's an aspect of potential  
9 delusion.

10 MR. HOYT: I haven't heard that expert opinion  
11 yet.

12 THE COURT: I'm not rendering one. Let me  
13 just hear your argument.

14 MR. TAXAY: The defendant denies that he made  
15 the statements; and so Dr. Duke's opinion is whether or  
16 not he was likely to do it, not what did he mean when he  
17 said this, because the defense doesn't concede that he  
18 went to J. C. Harding and said, "Look, I will pay you  
19 \$10,000 to kill these people."

20 They don't admit that. And so this evidence  
21 really is designed to get before the jury a reason to  
22 think he didn't make those statements.

23 It's not -- it's not really designed to inform  
24 the jury as to his intent when he made them because the  
25 defendant denies that he made them.

1 THE COURT: Your position is it's almost like  
2 an indifferent defense. I didn't make the statements.  
3 If you find that I didn't --

4 MR. TAXAY: -- I didn't mean it.

5 THE COURT: Mr. Nolan, how do you respond to  
6 that point?

7 MR. NOLAN: They offered the tape. If they  
8 are going to argue that there is nothing in that tape  
9 that the jury may use to infer he is guilty of the  
10 crimes, then --

11 THE COURT: I don't hear them making that  
12 offer.

13 MR. NOLAN: I don't either. Part of it has to  
14 do with the jury understanding those statements in the  
15 tape.

16 THE COURT: Go ahead. Mr. Taxay, anything  
17 further?

18 MR. TAXAY: It's way too late.

19 THE COURT: All right. I'm sorry. I don't  
20 mean to cut you off.

21 Anything else, Mr. Nolan?

22 MR. NOLAN: No, Your Honor.

23 THE COURT: Here is what I am going to do: I  
24 do need to think about this, but you also need a quick  
25 answer to the question.

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1 at least, preliminarily say I will allow you to, at  
2 least, call Dr. Duke to offer testimony with regard to  
3 what a paranoid personality type is.

4 I think enough of an evaluation has been  
5 conducted to do that. Whether I am going to allow him  
6 to go the next step and offer the opinion that was  
7 elicited here is the question I am wrestling with under  
8 Finley and under Rule 704(b). That one I don't want to  
9 decide on the fly.

10 MR. NOLAN: So the generic, "What is a  
11 paranoid personality and what are their  
12 characteristics?" without getting into whether there is  
13 a connection to violence?

14 THE COURT: I might let you go further than  
15 that. The Government might decide whether they want to  
16 call Dr. Engle to testify in rebuttal to that.

17 I think, in light of that question that we got  
18 from the juror earlier, mid trial, about concerns with  
19 regards to whether Mr. Swisher had ever conducted any  
20 kind of an evaluation, at least one juror has a question  
21 about his mental condition.

22 And, frankly, I want to thank both doctors  
23 because the reports that you did and your testimony here  
24 today has been helpful to the court in better  
25 understanding a little bit more about Mr. Hinkson.

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1 If you will, supply me with e-mail addresses.  
2 And did those fax numbers that I used last weekend work?  
3 Everybody got copies? I faxed my rulings -- maybe it  
4 was two weeks ago, I guess, at the start of the trial on  
5 Sunday, afternoon -- to both sides. Did you get them?

6 MR. TAXAY: We did, Your Honor.

7 THE COURT: Mr. Hoyt, you got yours?

8 MR. HOYT: Yes, Your Honor, we got ours.

9 THE COURT: I don't know if I have an e-mail  
10 address for the Government.

11 MR. TAXAY: I can supply that.

12 THE COURT: Would you do that? I will try to  
13 get you a ruling just as quickly as I can. I hope to  
14 have it out by tomorrow afternoon.

15 I don't know if that will be enough time,  
16 Mr. Nolan, but that's the best I can do because,  
17 frankly, the late filing of the motion has jammed the  
18 court, as well.

19 I will do my best to get you an intelligent  
20 ruling in written form. I will get it as early this  
21 weekend as I can finish it.

22 MR. HOYT: Is the court in a position where it  
23 can make a decision on the lateness issue, as to the  
24 testing?

25 THE COURT: Let me say this: I think I can,

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1 So I am going to deny the motion in limine to  
2 preclude Dr. Duke from testifying.

3 What I will issue this weekend is a ruling as  
4 to how far his testimony will go, what the scope of that  
5 testimony will be.

6 MR. NOLAN: And, again, we will be  
7 conducting -- we will start conducting some tests.  
8 Whether the court allows them not necessarily for the --

9 THE COURT: I don't think you need my  
10 permission. In light of that ruling, the Government can  
11 decide, you know, whether there is adequate time or  
12 what, if anything, they want Dr. Engle to do.

13 MR. NOLAN: Great.

14 THE COURT: That's as much as I feel  
15 comfortable doing at 5:10.

16 Safe travels. I hope your mother recovers  
17 quickly.

18 MR. NOLAN: Thank you.

19 THE COURT: And we will see everybody -- why  
20 don't you plan on being here at 8:30 on Monday morning  
21 so that you can review with me in chambers the Swisher  
22 personnel file.

23 And then, Mr. Taxay, I do need, as I indicated  
24 the other day, the redacted form of the Indictment and a  
25 proposed form of verdict. I'd better have those by

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1 Monday, as well.  
 2 MR. TAXAY: Yes, Your Honor.  
 3 THE COURT: Anything further?  
 4 MR. NOLAN: No. Thank you very much, Your  
 5 Honor.  
 6 THE COURT: We will be in recess. Thank you  
 7 all for your help on this difficult issue.  
 8 (Whereupon, the court stood in recess.)  
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C E R T I F I C A T E

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4 I, LORI A. PULSIFER, certify that I made a  
5 shorthand record of the matter contained herein, and  
6 that the foregoing typewritten pages contain a full,  
7 true, and accurate transcript of said shorthand record,  
8 done to the best of my skill and ability.  
9 DATED this 8th day of April 2005.

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LORI A. PULSIFER, CSR, RPR, CRR  
 Certified Shorthand Reporter  
 Idaho Certificate 354

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,            )  
  ) Case No.  
  ) CR-04-127-S-RCT  
  )  
  )  
vs.                                        )  
  )  
DAVID ROLAND HINKSON,                )  
  )  
  ) Defendant.  
  )  
\_\_\_\_\_ )

BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 26, 2005

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 12, PAGES 2,841 THROUGH 2,859)

PREPARED FOR:  
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(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: As I believe my bailiff or courtroom deputy advised, we have a question from the jury which I have had my law clerk type out with a proposed response from the court.

Actually, we also had a request for an easel with butcher paper or a second blackboard in the jury room, and I told Ms. Longstreet to go ahead and make those arrangements.

THE COURTROOM CLERK: And I have done that, Your Honor.

THE COURT: And that's been taken care of.

So let's talk about my proposed answer. Does anybody have any objections or a better response?

Mr. Nolan?

MR. NOLAN: It appears as if it's an appropriate response. I read it. I don't see any problems with it. I would hope the court would send it in.

THE COURT: I can do that, if you would like.

MR. NOLAN: I would rather -- you know, you never know what happens on the back-and-forth. For something like this, maybe it's a better idea to send it in.

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THE COURT: Any objection from the Government?

MR. SULLIVAN: None, Your Honor.

THE COURT: Okay. I did have one additional thought, and maybe this is gilding the lily. I was thinking we might add, at the very end, "Thus, the important point is that you give separate consideration to each count of the Superseding Indictment."

MR. NOLAN: No objection to adding that.

MR. SULLIVAN: No objection, Your Honor.

THE COURT: Ms. Barrett, would you go and run that? Take the brackets out of that.

MR. NOLAN: Your Honor, I wonder if I could ask if I could be excused from being present and go home this evening. It's more of an economic decision. It's costly to the accused to have me here for the value that I give.

But I will be available completely during tomorrow and Friday and whenever next week to be, hopefully, available by phone to advise and participate.

THE COURT: The court certainly understands. And as long as Mr. Hinkson has no objection, you are welcome to do that. I would like to save him a little bit of money in that regard. We will, of course, keep you completely apprised by telephone.

MR. NOLAN: That would be fine.

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THE COURT: And we will consult with you, along with Mr. Hoyt, if there is anything further.

Mr. Hinkson, is that all right with you?

MR. NOLAN: You have to answer out loud.

THE DEFENDANT: Yes.

MR. NOLAN: Thank you very much, Your Honor.

THE COURT: Thank you.

Ms. Longstreet, why don't you bring the jury into this jury room?

THE COURTROOM CLERK: Do you want them?

THE COURT: Just bring them into this jury room as soon as Ms. Barrett finishes typing that instruction.

MR. NOLAN: Are you going to bring them in?

THE COURT: I am going to bring them into the jury room.

MR. NOLAN: You are not going to bring them into court?

THE COURT: No. They are in a larger --

MR. NOLAN: I thought we discussed not having them come into open court and that you were going to hand them --

THE COURT: I misunderstood. Would you like to send that as a response?

MR. NOLAN: That's what I thought. Just send

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1 it into them. 2846  
2 THE COURT: Just send it into them? If that's  
3 all right with the Government --  
4 MR. SULLIVAN: That's what I understood, too,  
5 to send the note back to the jury.  
6 MR. NOLAN: Right. Just send the note back to  
7 them.  
8 THE COURT: I will have that additional  
9 sentence added and just have the bailiff take it to  
10 them.  
11 MR. NOLAN: Because I wasn't wearing my suit  
12 today, Judge.  
13 THE COURT: Okay, Mr. Nolan. If that's the  
14 case, then I believe we --  
15 MR. HOYT: That's fine.  
16 THE COURT: We will be in recess, subject to  
17 call.  
18 (Recess.).  
19 THE COURT: Let's take the easy one first. We  
20 have a question from the jury.  
21 "Could we get the court reporter's transcript  
22 of Mr. Harding's testimony?"  
23 I understand, from Ms. Pulsifer, that she did  
24 transcribe it at, I guess, the request of one or both  
25 parties.

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1 have and that is -- and I think counsel might agree -- I 2848  
2 believe that the accused can waive his presence and that  
3 the court reporter can be instructed to go into the jury  
4 room and read it with instructions not to answer any  
5 questions from the jurors.  
6 What happens sometimes is, when they get to  
7 the point that they were really hung up on, and  
8 everybody knows it, they will say, "We don't need  
9 anymore," at which point you save time.  
10 The other thing is it's uncomfortable for all  
11 of us to sit here for that amount of time and for the  
12 jurors.  
13 And if the instructions are given and the  
14 court reporter is willing to do it and we all waive  
15 that, then I think it's a better solution. It's one  
16 that has been done more. When I first started  
17 practicing, it was always in the presence.  
18 And if it's a particular area they are  
19 interested in sometimes, the court can sometimes say,  
20 "What are you really interested in?"  
21 I don't think that will work in this case. I  
22 think that just creates problems. And if you are going  
23 to do this, you have to read that. I think -- we just  
24 talked about it.  
25 We would all agree, I think, to allow the

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1 MR. SULLIVAN: Yes, Your Honor. 2847  
2 THE COURT: I strongly discourage you from  
3 agreeing to send the transcript, itself, in. The  
4 problem, of course, is that it also contains the  
5 sidebars; and so that is really not an option.  
6 MR. NOLAN: I agree.  
7 THE COURT: The only option we really have is  
8 to re-read the transcript. Ms. Pulsifer tells me that  
9 we are approaching more than 200 pages so it's going to  
10 take -- if we read at 60 pages an hour, it's going to  
11 take about three-plus hours.  
12 We can, I suppose, put somebody on the witness  
13 stand to do the answers and somebody at the podium to do  
14 the questions.  
15 MR. Nolan?  
16 MR. NOLAN: We discussed this a little bit,  
17 and I understand that the court has discretion. I  
18 think, in this case, the court will probably allow it to  
19 be read to the jury.  
20 It won't take that long because -- well, it  
21 will take a long time but not as long because of the  
22 sidebars and the taped transcript.  
23 THE COURT: We should figure the morning,  
24 anyway.  
25 MR. NOLAN: However, there is one suggestion I

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1 court reporter to do it with instructions not to answer 2849  
2 any questions. You know, they might say, "Stop," at  
3 which point she stops; and they say, "Okay, begin  
4 again."  
5 THE COURT: Mr. Sullivan?  
6 MR. SULLIVAN: Your Honor, one of the  
7 difficulties of doing it that way is that it leaves it  
8 to the discretion of the court reporter as to how much  
9 of the objections that were sustained and sidebars --  
10 she has to make the decision as to where to stop and  
11 start again.  
12 If we are doing it in the courtroom, there is  
13 a certain amount of interplay where both sides can say,  
14 "Stop at this point," or, "I want you to back up," or  
15 something along those lines.  
16 Doing it this way -- you know, I have full  
17 confidence in your court reporter, that she is wise and  
18 experienced; but I am just pointing out that it leaves  
19 it in her hands how to deal with that.  
20 MR. NOLAN: We could do it overnight. We can  
21 cross out and consult in the morning about whether there  
22 is any disagreement about what should be read. We have  
23 a transcript.  
24 THE COURT: That's a possibility. The other  
25 thing I was going to suggest would be that I could bring

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1 the jury in, with just me and the court reporter, and  
2 have the court reporter read.

3 I could instruct her, with regard to  
4 objections and so on, not to read pages 25 through 37.  
5 I would represent to the parties that I would say  
6 nothing other than to give directions to the court  
7 reporter on what portions to read.

8 Or we can do it the way Mr. Nolan suggests.  
9 Since we do have a transcript, you can take a look at it  
10 tonight and mark it up; and then that's what we will  
11 send her in to read tomorrow.

12 MR. NOLAN: I prefer the latter. I mean, I  
13 don't think we are going to disagree; and we can help  
14 the court reporter and then give it to the court. The  
15 court can review it and make sure --

16 THE COURT: I would actually feel more  
17 comfortable doing it that way. The problem with me  
18 being present is a juror may blurt something out and  
19 something that I can't control, if I'm in the courtroom  
20 alone with them, other than to say, "I'm sorry, I can't  
21 respond to that."

22 The cleaner way do it, I think, would be the  
23 way Mr. Nolan suggests; and that is just to mark up the  
24 transcript, and those will be the marching orders.

25 If the jury tells Ms. Rulsifer, at whatever

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1 point in the transcript that they are really concerned  
2 about, "That's enough," then I will instruct her that  
3 she should leave the jury room at that point and let  
4 them resume their deliberations.

5 Is everybody in agreement with that?

6 MR. SULLIVAN: That is agreeable to the  
7 Government, Your Honor.

8 MR. NOLAN: Mr. Hinkson, do you agree to that  
9 process?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Hinkson, do you understand  
12 what we are talking about?

13 As Mr. Nolan suggested, the traditional way to  
14 do it, which is the way that I think we are all used to  
15 doing it, is to bring the jury into the courtroom, have  
16 you and your lawyers and everybody here while we listen  
17 to the court reporter read each question and each  
18 answer.

19 I think the advice that you are getting from  
20 Mr. Nolan is good advice. If you understand and agree  
21 to it, that is what we will do.

22 Is that acceptable to you?

23 THE DEFENDANT: Yes.

24 THE COURT: And you understand that it's a  
25 better way to do it than doing it in the courtroom?

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1 THE DEFENDANT: Yes.

2 MR. HOYT: May I have one moment, please?

3 THE COURT: Absolutely.

4 MR. HOYT: I was going to ask counsel --  
5 instead of doing the work twice, one of us could take  
6 the transcript and partially block out or redact on kind  
7 of a master copy; and we could meet tomorrow morning, go  
8 over it, and make sure we are in agreement as to what is  
9 being deleted or redacted.

10 And once we come up with that, we will submit  
11 it to the court. That way, you know -- I just -- we  
12 could both go and do one. Then we have to compare them  
13 and -- I don't know. What is your pleasure on it?

14 MR. SULLIVAN: I really think we ought to both  
15 do our own transcript.

16 THE COURT: Why don't you sit in here and do  
17 it here? I will be in chambers as you do it. If you  
18 have any problems, I will come out.

19 MR. HOYT: Do you have your copy here?

20 MR. SULLIVAN: It's downstairs.

21 THE COURT: We will get copies made for you.  
22 Let's do it here.

23 MR. NOLAN: I don't have any problem because I  
24 think the court reporter can do it on her own because I  
25 think she's experienced in that respect.

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1 THE COURT: Let's do it the way that you have  
2 suggested, with the modification that Mr. Sullivan will  
3 sit here with Mr. Hoyt and they will go through it.

4 If they have a problem, I will be standing by;  
5 and I can come out and make any ruling I need to make.  
6 And so that takes care of that problem.

7 Let me suggest -- with regard to the second  
8 question which I will read into the record:

9 "Judge Tallman:

10 "What are the consequences if we agree on  
11 certain counts and are unable to agree on others? Would  
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QNA COURT REPORTING (208) 484-6309

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11 THE COURT: Okay. I will be available if you  
12 need me.

13 (Whereupon, the court stood in recess.)

14 \* \* \*

1  
2 CERTIFICATE  
3

4 I, LORI A. PULSIFER, certify that I made a  
5 shorthand record of the matter contained herein, and  
6 that the foregoing typewritten pages contain a full,  
7 true, and accurate transcript of said shorthand record,  
8 done to the best of my skill and ability.

9 DATED this 28th day of April 2005.

10  
11 LORI A. PULSIFER, CSR, RMR, ORR  
12 Certified Shorthand Reporter  
13 Idaho Certificate 354  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
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 ) Case No.  
 Plaintiff, ) CR-04-127-S-RCT  
 )  
 vs. )  
 )  
 DAVID ROLAND HINKSON, )  
 )  
 )  
 Defendant. )  
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BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 26, 2005

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 12, PAGES 2,841 THROUGH 2,859)

PREPARED FOR:  
WESLEY W. HOYT  
Attorney at Law

(COPY)

Reported by:  
Lori A. Pulsifer, CSR, RMR, CRR  
QNA Court Reporting  
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(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: As I believe my bailiff or courtroom deputy advised, we have a question from the jury which I have had my law clerk type out with a proposed response from the court.

Actually, we also had a request for an easel with butcher paper or a second blackboard in the jury room; and I told Ms. Longstreet to go ahead and make those arrangements.

THE COURTROOM CLERK: And I have done that, Your Honor.

THE COURT: And that's been taken care of. So let's talk about my proposed answer. Does anybody have any objections or a better response?

Mr. Nolan?

MR. NOLAN: It appears as if it's an appropriate response. I read it. I don't see any problems with it. I would hope the court would send it in.

THE COURT: I can do that, if you would like.

MR. NOLAN: I would rather -- you know, you never know what happens on the back-and-forth. For something like this, maybe it's a better idea to send it in.

THE COURT: Any objection from the Government?

MR. SULLIVAN: None, Your Honor.

THE COURT: Okay. I did have one additional thought, and maybe this is gilding the lily. I was thinking we might add, at the very end, "Thus, the important point is that you give separate consideration to each count of the Superseding Indictment."

MR. NOLAN: No objection to adding that.

MR. SULLIVAN: No objection, Your Honor.

THE COURT: Ms. Barrett, would you go and run that? Take the brackets out of that.

MR. NOLAN: Your Honor, I wonder if I could ask if I could be excused from being present and go home this evening. It's more of an economic decision. It's costly to the accused to have me here for the value that I give.

But I will be available completely during tomorrow and Friday and whenever next week to be, hopefully, available by phone to advise and participate.

THE COURT: The court certainly understands. And as long as Mr. Hinkson has no objection, you are welcome to do that. I would like to save him a little bit of money in that regard. We will, of course, keep you completely apprised by telephone.

MR. NOLAN: That would be fine.

THE COURT: And we will consult with you, along with Mr. Hoyt, if there is anything further.

Mr. Hinkson, is that all right with you?

MR. NOLAN: You have to answer out loud.

THE DEFENDANT: Yes.

MR. NOLAN: Thank you very much, Your Honor.

THE COURT: Thank you.

Ms. Longstreet, why don't you bring the jury into this jury room?

THE COURTROOM CLERK: Do you want them?

THE COURT: Just bring them into this jury room as soon as Ms. Barrett finishes typing that instruction.

MR. NOLAN: Are you going to bring them in?

THE COURT: I am going to bring them into the jury room.

MR. NOLAN: You are not going to bring them into court?

THE COURT: No. They are in a larger --

MR. NOLAN: I thought we discussed not having them come into open court and that you were going to hand them --

THE COURT: I misunderstood. Would you like to send that as a response?

MR. NOLAN: That's what I thought. Just send

1 it into them.

2 THE COURT: Just send it into them? If that's  
3 all right with the Government --

4 MR. SULLIVAN: That's what I understood, too,  
5 to send the note back to the jury.

6 MR. NOLAN: Right. Just send the note back to  
7 them.

8 THE COURT: I will have that additional  
9 sentence added and just have the bailiff take it to  
10 them.

11 MR. NOLAN: Because I wasn't wearing my suit  
12 today, Judge.

13 THE COURT: Okay, Mr. Nolan. If that's the  
14 case, then I believe we --

15 MR. HOYT: That's fine.

16 THE COURT: We will be in recess, subject to  
17 call.

18 (Recess.)

19 THE COURT: Let's take the easy one first. We  
20 have a question from the jury.

21 "Could we get the court reporter's transcript  
22 of Mr. Harding's testimony?"

23 I understand, from Ms. Pulsifer, that she did  
24 transcribe it at, I guess, the request of one or both  
25 parties.

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1 MR. SULLIVAN: Yes, Your Honor.

2 THE COURT: I strongly discourage you from  
3 agreeing to send the transcript, itself, in. The  
4 problem, of course, is that it also contains the  
5 sidebars; and so that is really not an option.

6 MR. NOLAN: I agree.

7 THE COURT: The only option we really have is  
8 to re-read the transcript. Ms. Pulsifer tells me that  
9 we are approaching more than 200 pages so it's going to  
10 take -- if we read at 60 pages an hour, it's going to  
11 take about three-plus hours.

12 We can, I suppose, put somebody on the witness  
13 stand to do the answers and somebody at the podium to do  
14 the questions.

15 Mr. Nolan?

16 MR. NOLAN: We discussed this a little bit,  
17 and I understand that the court has discretion. I  
18 think, in this case, the court will probably allow it to  
19 be read to the jury.

20 It won't take that long because -- well, it  
21 will take a long time but not as long because of the  
22 sidebar and the taped transcript.

23 THE COURT: We should figure the morning,  
24 anyway.

25 MR. NOLAN: However, there is one suggestion I

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1 have and that is -- and I think counsel might agree -- I  
2 believe that the accused can waive his presence and that  
3 the court reporter can be instructed to go into the jury  
4 room and read it with instructions not to answer any  
5 questions from the jurors.

6 What happens sometimes is, when they get to  
7 the point that they were really hung up on, and  
8 everybody knows it, they will say, "We don't need  
9 anymore," at which point you save time.

10 The other thing is it's uncomfortable for all  
11 of us to sit here for that amount of time and for the  
12 jurors.

13 And if the instructions are given and the  
14 court reporter is willing to do it and we all waive  
15 that, then I think it's a better solution. It's one  
16 that has been done more. When I first started  
17 practicing, it was always in the presence.

18 And if it's a particular area they are  
19 interested in sometimes, the court can sometimes say,  
20 "What are you really interested in?"

21 I don't think that will work in this case. I  
22 think that just creates problems. And if you are going  
23 to do this, you have to read that. I think -- we just  
24 talked about it.

25 We would all agree, I think, to allow the

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1 court reporter to do it with instructions not to answer  
2 any questions. You know, they might say, "Stop," at  
3 which point she stops; and they say, "Okay, begin  
4 again."

5 THE COURT: Mr. Sullivan?

6 MR. SULLIVAN: Your Honor, one of the  
7 difficulties of doing it that way is that it leaves it  
8 to the discretion of the court reporter as to how much  
9 of the objections that were sustained and sidebars --  
10 she has to make the decision as to where to stop and  
11 start again.

12 If we are doing it in the courtroom, there is  
13 a certain amount of interplay where both sides can say,  
14 "Stop at this point," or, "I want you to back up," or  
15 something along those lines.

16 Doing it this way -- you know, I have full  
17 confidence in your court reporter, that she is wise and  
18 experienced; but I am just pointing out that it leaves  
19 it in her hands how to deal with that.

20 MR. NOLAN: We could do it overnight. We can  
21 cross out and consult in the morning about whether there  
22 is any disagreement about what should be read. We have  
23 a transcript.

24 THE COURT: That's a possibility. The other  
25 thing I was going to suggest would be that I could bring

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1 the jury in, with just me and the court reporter, and  
2 have the court reporter read.

3 I could instruct her, with regard to  
4 objections and so on, not to read pages 25 through 37.  
5 I would represent to the parties that I would say  
6 nothing other than to give directions to the court  
7 reporter on what portions to read.

8 Or we can do it the way Mr. Nolan suggests.  
9 Since we do have a transcript, you can take a look at it  
10 tonight and mark it up; and then that's what we will  
11 send her in to read tomorrow.

12 MR. NOLAN: I prefer the latter. I mean, I  
13 don't think we are going to disagree; and we can help  
14 the court reporter and then give it to the court. The  
15 court can review it and make sure --

16 THE COURT: I would actually feel more  
17 comfortable doing it that way. The problem with me  
18 being present is a juror may blurt something out and  
19 something that I can't control, if I'm in the courtroom  
20 alone with them, other than to say, "I'm sorry, I can't  
21 respond to that."

22 The cleaner way do it, I think, would be the  
23 way Mr. Nolan suggests; and that is just to mark up the  
24 transcript, and those will be the marching orders.

25 If the jury tells Ms. Pulsifer, at whatever

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1 point in the transcript that they are really concerned  
2 about, "That's enough," then I will instruct her that  
3 she should leave the jury room at that point and let  
4 them resume their deliberations.

5 Is everybody in agreement with that?

6 MR. SULLIVAN: That is agreeable to the  
7 Government, Your Honor.

8 MR. NOLAN: Mr. Hinkson, do you agree to that  
9 process?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Hinkson, do you understand  
12 what we are talking about?

13 As Mr. Nolan suggested, the traditional way to  
14 do it, which is the way that I think we are all used to  
15 doing it, is to bring the jury into the courtroom, have  
16 you and your lawyers and everybody here while we listen  
17 to the court reporter read each question and each  
18 answer.

19 I think the advice that you are getting from  
20 Mr. Nolan is good advice. If you understand and agree  
21 to it, that is what we will do.

22 Is that acceptable to you?

23 THE DEFENDANT: Yes.

24 THE COURT: And you understand that it's a  
25 better way to do it than doing it in the courtroom?

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1 THE DEFENDANT: Yes.

2 MR. HOYT: May I have one moment, please?

3 THE COURT: Absolutely.

4 MR. HOYT: I was going to ask counsel --  
5 instead of doing the work twice, one of us could take  
6 the transcript and partially block out or redact on kind  
7 of a master copy; and we could meet tomorrow morning, go  
8 over it, and make sure we are in agreement as to what is  
9 being deleted or redacted.

10 And once we come up with that, we will submit  
11 it to the court. That way, you know -- I just -- we  
12 could both go and do one. Then we have to compare them  
13 and -- I don't know. What is your pleasure on it?

14 MR. SULLIVAN: I really think we ought to both  
15 do our own transcript.

16 THE COURT: Why don't you sit in here and do  
17 it here? I will be in chambers as you do it. If you  
18 have any problems, I will come out.

19 MR. HOYT: Do you have your copy here?

20 MR. SULLIVAN: It's downstairs.

21 THE COURT: We will get copies made for you.  
22 Let's do it here.

23 MR. NOLAN: I don't have any problem because I  
24 think the court reporter can do it on her own because I  
25 think she's experienced in that respect.

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1 THE COURT: Let's do it the way that you have  
2 suggested, with the modification that Mr. Sullivan will  
3 sit here with Mr. Hoyt and they will go through it.

4 If they have a problem, I will be standing by;  
5 and I can come out and make any ruling I need to make.  
6 And so that takes care of that problem.

7 Let me suggest -- with regard to the second  
8 question which I will read into the record:

9 "Judge Tallman:

10 "What are the consequences if we agree on  
11 certain counts and are unable to agree on others? Would  
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14 And it is signed, "Thanks, Jim Steele," who,  
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11 THE COURT: Okay. I will be available if you  
12 need me.

13 (Whereupon, the court stood in recess.)

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4 I, LORI A. PULSIFER, certify that I made a  
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9 DATED this 28th day of April 2005.

10  
11 \_\_\_\_\_  
12 LORI A. PULSIFER, CSR, RMR, CRR  
13 Certified Shorthand Reporter  
14 Idaho Certificate 354  
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BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 27, 2005

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 13, PAGES 2,860 THROUGH 2,892)

PREPARED FOR:  
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(COPY)

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## A P P E A R A N C E S

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(Neither Mr. Nolan nor the defendant was present for the following proceedings.)

(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: Good morning, counsel.

MR. HOYT: Good morning, Your Honor.

THE COURT: Mr. Hoyt, I understand the Marshals have yet to get your client to the building here.

It seems to me that we can, at least, take care of the preliminary matters, if there are any, with regard to the transcript, unless you have an objection.

I will leave it entirely up to you, but I don't think this is a critical stage of the deliberations. But if you would prefer that we wait for him, I will do that.

MR. HOYT: Your Honor, I think we can proceed.

THE COURT: I do, too. Let's see, I guess I was given the proposed mark-up. Are you both in agreement, now, that there is no dispute over those provisions?

MR. SULLIVAN: Yes, Your Honor. We went back and forth and came up with a version that we both agree on.

THE COURT: Very well. Mr. Hoyt, that's

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acceptable to you?

MR. HOYT: That is acceptable, Your Honor.

THE COURT: Then we will go ahead, as soon as the jury is here, at 9:00, and we will send Ms. Pulsifer in.

And then I circulated, last night, a couple of proposed draft answers to the two questions. Have you both had a chance to look at those?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Mr. Hoyt?

MR. HOYT: I have, indeed, Your Honor.

THE COURT: Just for the record, with respect to the question of Mr. Harding's testimony, the answer from the court will be:

"You may not have a transcript of Mr. Harding's testimony. However, the court reporter will be permitted to read the admissible portions of the testimony to the jury.

"The court reporter is not permitted to answer any questions, and you should not engage in any discussion with one another while she is present.

"Your foreperson may instruct her to stop at any time and ask her to leave the room. She will not be permitted to return without express permission from the court."

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Is that acceptable to both sides?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Mr. Hoyt?

MR. HOYT: Yes, Your Honor.

THE COURT: Have you had a chance to talk with Mr. Hinkson about the court's proposed answer to the question?

MR. HOYT: No, Your Honor.

THE COURT: Then I think we'd better wait until he arrives so that you, at least, have an opportunity to show him what we propose to do before we send it in.

You can, I think, just indicate to Ms. Longstreet if he has no objection --

MR. HOYT: All right.

THE COURT: -- rather than reconvene the court.

And then, secondly, I propose to answer their question: "What are the consequences if we agree on certain counts and are unable to agree on others? Would the fact that we are unable to agree on certain counts negate our verdict on other counts?"

The answer from the court will be: "The fact that you are unable to come to agreement on certain counts will not negate any verdict on other counts on

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1 which you can reach a unanimous agreement." 2865  
2 MR. HOYT: "To wit?"  
3 THE COURT: I changed it to "on which," just  
4 to be more grammatically correct.  
5 MR. SULLIVAN: "On which." I agree.  
6 THE COURT: With that change, is that  
7 acceptable to both sides?  
8 MR. HOYT: It is, Your Honor subject to my  
9 client's review of the matter.  
10 THE COURT: All right. Did the Marshals give  
11 us any indication?  
12 THE COURTROOM CLERK: About five more minutes.  
13 THE COURT: Well, I think we can just wait.  
14 He should be here at 9:00. We are right before 9:00.  
15 Is there anything else we need to take up?  
16 MR. SULLIVAN: I don't believe so, Judge.  
17 THE COURT: Okay.  
18 MR. HOYT: How are we marking the transcript,  
19 Your Honor, that relates to Mr. Harding, the one that  
20 will be read by Ms. Pulsifer?  
21 THE COURT: As I understood it, you both had  
22 marked in thick, black, felt pen the portions that you  
23 did not want read to the jury.  
24 Let me check with Ms. Longstreet, but I  
25 believe that should scan electronically without any

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1 I agree with Mr. Nolan's observation that we 2867  
2 are not at a point yet where the jury is dead-locked. I  
3 am hoping that our proposed responses to these two  
4 questions will aid them in their ability to continue  
5 their fact-finding and complete their deliberations.  
6 Let me also ask, as well, Mr. Hoyt, do you  
7 want us to set up a telephone link for Mr. Nolan if we  
8 have any further questions today?  
9 MR. HOYT: I am listening, and I'm thinking.  
10 Yes. If we do have further questions, I think that it  
11 would be appropriate, Your Honor, to do that.  
12 THE COURT: Ms. Longstreet, do we have a  
13 speaker phone in here?  
14 THE COURTROOM CLERK: No.  
15 THE COURT: We don't? Can you make  
16 arrangements with Clay to install one?  
17 THE COURTROOM CLERK: We would have to do it  
18 in chambers or a different courtroom.  
19 THE COURT: That will work. We can do it in  
20 my chambers or move to another one of the courtrooms  
21 that has a speaker phone in it.  
22 MR. HOYT: Very good.  
23 THE COURT: So if we call you for any further  
24 questions, we will tell you where to report, as soon as  
25 we figure out which courtrooms are available.

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1 problems. 2866  
2 THE COURTROOM CLERK: We can mark it as  
3 Court's Exhibit No. 3.  
4 THE COURT: We will mark it as Court's Exhibit  
5 No. 3 for the record.  
6 Then I am signing and filing these answers so  
7 that will be in the record, as well. You will have it  
8 both in the transcript and in the court file.  
9 MR. HOYT: You mean, the jury questions and  
10 answers?  
11 THE COURT: Yes.  
12 MR. HOYT: Very good.  
13 THE COURT: So I think we have made as clear a  
14 record as I know how to make as to what we are doing.  
15 THE COURTROOM CLERK: I generally seal those.  
16 THE COURT: You are going to seal the  
17 questions and the answers.  
18 THE COURTROOM CLERK: They won't have access  
19 to them.  
20 THE COURT: We are giving copies to counsel.  
21 They will know what they look like.  
22 THE COURTROOM CLERK: Okay.  
23 THE COURT: All right. Counsel, I do  
24 appreciate your help on the questions; and I did take a  
25 look at some of the Ninth Circuit cases.

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1 MR. HOYT: Very good. 2868  
2 (Whereupon, the defendant entered the  
3 courtroom.)  
4 MR. HOYT: If I might have a moment, Your  
5 Honor?  
6 THE COURT: Of course, Mr. Hoyt. Take your  
7 time.  
8 (Whereupon, an off-the-record discussion was  
9 held between Mr. Hoyt and the defendant.)  
10 MR. HOYT: May it please the court?  
11 I have consulted with my client, and we are in  
12 agreement. The two answers as proposed by the court are  
13 acceptable.  
14 THE COURT: Very well. With that stipulation,  
15 I will hand the two answers to Ms. Longstreet, ask that  
16 she take those into the jury room as our response, and  
17 bring Ms. Pulsifer with her to leave Ms. Pulsifer in the  
18 jury room to begin reading the transcript of  
19 Mr. Harding's testimony as they have requested.  
20 We will be in recess until further call.  
21 (Whereupon, the court reporter read a portion  
22 of the trial transcript containing the testimony of  
23 James C. Harding to the jury.)  
24 \* \* \*  
25 (Subsequently, the following proceedings were

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1 held outside the presence of the jury.)

2 THE COURT: Counsel, before we bring the jury

3 in, given the questions that we have previously had from

4 the jury, I propose to ask two questions before I allow

5 the jury to tender the verdict.

6 The first question would be to the Foreman:

7 Has the jury reached a verdict?

8 "Yes" or "no"?

9 And then, without telling me how the jury

10 stands numerically, is it unanimous as to each count?

11 "Yes" or "no"?

12 If he answers, "No," I propose to ask:

13 Is the jury dead-locked as to some of the

14 counts?

15 "Yes" or "no"?

16 If he says, "Yes," we can do either one of two

17 things. I can send the jury back in, and we can talk

18 about it at that point; or I would propose to give an

19 Allen charge.

20 Your response?

21 MR. SULLIVAN: I would like to see the Allen

22 charge, of course, Your Honor. I'm sure Mr. Hoyt would,

23 too. Other than that, I think that would be fine.

24 THE COURT: I won't send them back in if you

25 are in agreement that those are the answers to give to

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1 with one another and to deliberate in an effort to reach

2 a unanimous verdict if each of you can do so without

3 violating your individual judgment and conscience.

4 Each of you must decide the case for yourself

5 but only after you consider the evidence impartially

6 with your fellow jurors.

7 During your deliberations, you should not

8 hesitate to re-examine your own views and change your

9 opinion if you become persuaded that it is wrong.

10 However, you should not change an honest

11 belief as to the weight or effect of the evidence solely

12 because of the opinions of your fellow jurors or for the

13 mere purpose of returning a verdict.

14 All of you are equally honest and

15 conscientious jurors who have heard the same evidence.

16 All of you share an equal desire to arrive at a verdict.

17 Each of you should ask yourself whether you

18 should question the correctness of your present

19 position.

20 I remind you that, in your deliberations, you

21 are to consider the instructions I have given you as a

22 whole.

23 You should not single out part of any

24 instruction, including this one, and ignore others.

25 They are all equally important.

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1 the question, which I will give the Allen instruction,

2 which is 7.7 of the Ninth Circuit Model Rules.

3 Is that acceptable?

4 MR. HOYT: That's acceptable.

5 THE COURT: Fine. Bring in the jury.

6 (Whereupon, the following proceedings were

7 held in the presence of the jury:)

8 THE COURT: Mr. Steale, as the foreperson of

9 the jury, "yes" or "no," has the jury reached a verdict?

10 THE FOREPERSON: On some counts.

11 THE COURT: Without telling me how the jury

12 stands numerically, is it unanimous as to each count?

13 "Yes" or "no"?

14 THE FOREPERSON: To some of the counts. To

15 some of the counts.

16 THE COURT: Is the jury dead-locked as to some

17 of the counts? "Yes" or "no"?

18 THE FOREPERSON: Yes.

19 THE COURT: Very well. I am now going to give

20 you a supplemental instruction.

21 Members of the jury: You have advised that

22 you have been unable to agree upon a verdict as to each

23 of the eleven counts in this case. I have decided to

24 suggest a few thoughts to you.

25 As jurors, you have a duty to discuss the case

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1 You may now retire and continue your

2 deliberations.

3 Please rise.

4 (Whereupon, the jury was excused from the

5 courtroom; and the following proceedings were held

6 outside their presence:)

7 THE COURT: Ladies and gentlemen, please be

8 seated. We are going to take the jury back down to the

9 jury room that they have been conducting their

10 deliberations in.

11 The court will be in recess subject to any

12 further communications from the jury.

13 (Recess.)

14 (Subsequently, the following proceedings were

15 held outside the presence of the jury:)

16 THE COURT: All right. Do we have Mr. Nolan

17 on the phone, or did that not work?

18 MR. HOYT: Your Honor, I just reached

19 Mr. Nolan; and he said that he would be on standby if

20 there were any further questions or issues, such as

21 another Allen issue.

22 THE COURT: Well, here is what I've got. I

23 have got another note from the jury that says:

24 "Judge Tallman:

25 "The jury is dead-locked on three counts and

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1 has reached unanimous decisions on the other eight  
2 counts. We do not believe that we will be able to  
3 resolve this dead-lock.

4 "Thanks, Jim Steele," who is the foreperson.  
5 What we can do --

6 MR. HOYT: May I? Since we have a question,  
7 may I go ahead and get Mr. Nolan? It will only take a  
8 moment. I have him on speed dial.

9 THE COURT: Absolutely.

10 MR. HOYT: Let me get him.

11 THE COURT: Okay.

12 MR. HOYT: We figured out, by experimentation,  
13 that it worked through this microphone.

14 (Whereupon, Mr. Hoyt placed a telephone call  
15 to Mr. Nolan and, subsequently, the following  
16 proceedings were held:)

17 MR. HOYT: Mr. Nolan, you are now on speaker  
18 phone. The judge has advised us -- we are in session,  
19 and the judge has advised us that there is another note  
20 from the jury.

21 The jury has indicated that it is dead-locked  
22 on three and has unanimous verdicts on the other eight.  
23 And we are ready to proceed.

24 Your Honor, where do you think we are at this  
25 point?

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1 THE COURT: Mr. Nolan, I will read it. For  
2 your benefit, I will read the note again.

3 It says: "The jury is dead-locked on three  
4 counts and has reached unanimous decisions on the other  
5 eight counts. We do not believe that we will be able to  
6 resolve this dead-lock."

7 Did you hear that, Mr. Nolan?

8 MR. HOYT: Did you hear that, Mr. Nolan?

9 MR. NOLAN: Yes, I did. Yes. And my  
10 suggestion is that you agree to allow it, if the Judge  
11 is willing to take the verdicts, and to declare the  
12 remaining a hung jury.

13 THE COURT: Let me suggest this: The Ninth  
14 Circuit Model Instructions -- the Committee recommends a  
15 Post-Allen charge inquiry under Ninth Circuit 7.8 and  
16 the comment -- I will read it into the record -- says:

17 "If the jury indicates that it is dead-locked  
18 after an Allen charge is given, the Committee recommends  
19 asking the foreperson of the jury the following:

20 "In your opinion, is the jury hopelessly  
21 dead-locked?

22 "If the foreperson's response is 'yes,' then  
23 ask the foreperson:

24 "Is there a reasonable probability that the  
25 jury can reach a unanimous verdict if sent back to the

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1 jury room for further deliberation?

2 "If the foreperson's response is 'no,' then  
3 ask the following question of the entire panel:

4 "Do you feel there is a reasonable probability  
5 that the jury can reach a unanimous verdict if sent back  
6 to the jury room for further deliberations?"

7 Now, I believe that that post-Allen charge  
8 inquiry contemplated the situation where they are unable  
9 to reach agreement on any count.

10 Here, they have indicated that they have  
11 reached a unanimous decision on eight of the eleven  
12 counts.

13 Let me first ask Mr. Sullivan: What is the  
14 Government's position on the Post-Allen charge inquiry?

15 MR. SULLIVAN: Your Honor, I first want to  
16 note we have had trial for approximately three weeks and  
17 only two days of deliberations.

18 This is very early in the deliberations for  
19 them to be claiming to be dead-locked, to the extent  
20 that they wouldn't be able to resolve it if they  
21 underwent further deliberations.

22 I would suggest the court forego questioning  
23 them at this point. They have only deliberated two  
24 days. I would suggest we release them for the day, let  
25 them go home, and come back tomorrow and begin their

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1 deliberations again.

2 And if we get another note, then we go through  
3 the process suggested by the Committee.

4 THE COURT: All right. Let me hear then from  
5 the defense.

6 MR. HOYT: All right. Mr. Nolan, did you hear  
7 that?

8 MR. NOLAN: I heard most of it. My  
9 understanding is that the court has indicated a possible  
10 scenario of questions, and that the Government said they  
11 didn't want that, that they wanted to send the jury back  
12 for further deliberations and see what they say  
13 tomorrow. Am I correct?

14 MR. HOYT: I think that's a good summation.

15 MR. NOLAN: All right. My request, on behalf  
16 of Mr. Hinkson, would be that the court go through the  
17 colloquy that the court is proposing on the basis,  
18 number one, that they have demonstrated that they are  
19 able to agree which is, I think, a factor to consider in  
20 whether or not to force them to continue to deliberate.

21 If you had a situation where they had not  
22 agreed, you might be talking about some kind of  
23 hostility or jumping to opinion.

24 But the fact that they were able to agree, I  
25 think, indicates that they are and have considered this

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1 at some length and in good faith.

2 They have shown a split for quite some time,  
3 from the notes from the jury. They appear to be working  
4 and have worked very hard, and I think it should be  
5 resolved now by way of accepting it.

6 Going through the colloquy that the court  
7 recommends allows a jury who disagrees to be able to  
8 say, "No, I want to spend more time." If they all  
9 agree, I think it would be inappropriate to send them  
10 back to further deliberate.

11 THE COURT: I will note for the record that  
12 the Committee note cites to a Ninth Circuit 1978  
13 decision, Arnold vs. McCarthy, 566 F.2d 1377, 1387.

14 It indicates seven factors that the court  
15 should consider before declaring the jury hopelessly  
16 dead-locked; and they inclined:

- 17 1. A timely objection by the defendant;
- 18 2. The jury's collective opinion that it  
19 cannot agree;
- 20 3. The length of the deliberations of the  
21 jury;
- 22 4. The length of the trial;
- 23 5. The complexity of the issues presented to  
24 the jury;
- 25 6. Any proper communications which the Judge

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1 has had with the jury; and

2 7. The effects of possible exhaustion and the  
3 impact which coercion of further deliberations might  
4 have on the verdict.

5 I'm trying to factor those in. I would say  
6 that we did have eleven days of testimony, a full day of  
7 argument. Jury deliberations commenced last Wednesday  
8 morning -- I guess it was yesterday -- the 26th, at  
9 approximately 9:00 a.m.

10 The jury deliberated until approximately 12:30  
11 yesterday, took an hour luncheon recess, and then  
12 deliberated again until approximately 5:00 o'clock last  
13 night.

14 Then they requested a read-back of  
15 Mr. Harding's testimony. That commenced at about ten  
16 after 9:00 this morning, the 27th of January. It took  
17 until approximately 10:40 a.m.

18 They resumed deliberations, took a luncheon  
19 recess at approximately 12:40 p.m., until about 1:30 or  
20 1:40 p.m., and then sent out the note at about 2:20 p.m.  
21 that we addressed the last time we met.

22 The court gave an Allen charge at  
23 approximately 3:10 p.m. today, the 27th; and it is now  
24 almost 5:00 p.m. Mountain Standard Time.

25 I think we ought to, at least, inquire as to

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1 whether or not, in the collective opinion of the jury,  
2 further deliberations might prove fruitful if we send  
3 them home for the evening and lets them come back fresh  
4 in the morning.

5 Depending upon how that question is answered,  
6 we can poll each individual juror and ask that and, at  
7 that point, see whether or not it's fruitless to have  
8 them deliberate further.

9 How does that sound, Mr. Sullivan?

10 MR. SULLIVAN: Agreeable, Your Honor.

11 THE COURT: Mr. Hoyt or Mr. Nolan?

12 MR. HOYT: Mr. Nolan, first of all, did you  
13 understand what it was the Judge said?

14 MR. NOLAN: What I heard -- what I heard was  
15 that he thinks he should ask the jury now about whether  
16 or not they think, by coming back, it would make a  
17 difference, or words to that effect.

18 I agree that the court, at this point, should  
19 question the jurors and then make a decision based upon  
20 the response from the jurors.

21 THE COURT: Very well. With that  
22 understanding, go ahead, Mr. Hoyt.

23 MR. HOYT: And, Your Honor, for the record,  
24 the defendant is placing an appropriate -- any further  
25 Allen charge objection on the record.

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1 THE COURT: I am not proposing to give a  
2 further Allen charge at this point. The only indication  
3 in the comments is simply a Post-Allen inquiry, which is  
4 what I am proposing to do, and then whether or not they  
5 think that further deliberations will be fruitful on the  
6 three counts on which they cannot reach agreement. I  
7 don't propose to further instruct them.

8 MR. HOYT: All right. Excellent. Thank you,  
9 Your Honor.

10 MR. NOLAN: Thank you, Your Honor. I will  
11 hang up unless I'm needed again.

12 THE COURT: Very well, Mr. Nolan. We will  
13 call you and let you know as soon as we get some answers  
14 here.

15 MR. HOYT: Talk to you later. Bye.

16 (Whereupon, Mr. Nolan hung up the telephone.)

17 THE COURT: Let's bring in the jury.

18 (Whereupon, the following proceedings were  
19 held in the presence of the jury.)

20 THE COURT: Mr. Steele, as the foreperson of  
21 the jury, I understand, from your note, that you have  
22 reached a unanimous agreement as to some counts but are  
23 dead-locked as to others; is that correct?

24 THE FOREPERSON: Correct.

25 THE COURT: In your opinion, is the jury

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1 hopelessly dead-locked on those counts on which they 2881  
2 cannot reach agreement?  
3 THE FOREPERSON: Yes, Your Honor.  
4 THE COURT: Is there a reasonable probability  
5 the jury can reach a unanimous verdict if sent back to  
6 the jury room for further deliberations as to those  
7 counts?  
8 THE FOREPERSON: No, sir.  
9 THE COURT: All right. Counsel, unless --  
10 well, let me ask one other question.  
11 Do you think that if I sent you all home for  
12 the evening that you could have a good night's rest and  
13 come back here tomorrow morning to continue  
14 deliberations and that you might be able to reach a  
15 unanimous verdict as to all counts?  
16 Let me ask each one of you that question.  
17 Having that question in mind, Mr. Casey?  
18 TRIAL JUROR CASEY: No.  
19 THE COURT: Mr. Taylor?  
20 TRIAL JUROR TAYLOR: No.  
21 THE COURT: Mr. Bennett?  
22 TRIAL JUROR BENNETT: No.  
23 THE COURT: Mr. Steele?  
24 THE FOREPERSON: No, sir.  
25 THE COURT: Mr. Sawin?

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1 THE COURT: Mr. Steele, would you hand the 2883  
2 signed verdict form to the bailiff, please?  
3 Mr. Hinkson, would you please rise and face  
4 the jury?  
5 All right. Madam Clerk, would you please read  
6 the verdict?  
7 THE COURTROOM CLERK: Should I just say "no  
8 verdict"?  
9 THE COURT: Yes.  
10 THE COURTROOM CLERK: We, the jury, find as  
11 follows:  
12 As to Count 1, no verdict;  
13 As to Count 2, no verdict;  
14 As to Count 3, no verdict;  
15 As to Count 4, not guilty;  
16 As to Count 5, not guilty;  
17 As to Count 6, not guilty;  
18 As to Count 7, guilty;  
19 As to Count 8, guilty;  
20 As to Count 9, guilty;  
21 As to Count 10, not guilty.  
22 As to Count 11, not guilty.  
23 So say we all.  
24 Signed, Jim Steele, Foreperson.  
25 Dated January 27, 2005.

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1 TRIAL JUROR SPWIN: No. 2882  
2 THE COURT: Mr. Blatt?  
3 TRIAL JUROR BLATT: No.  
4 THE COURT: Ms. Howell?  
5 TRIAL JUROR HOWELL: No.  
6 THE COURT: Ms. Haynes?  
7 TRIAL JUROR HAYNES: No.  
8 THE COURT: All right. Ms. Crawford?  
9 TRIAL JUROR CRAWFORD: No.  
10 THE COURT: Ms. Palmado?  
11 TRIAL JUROR PALMADO: No.  
12 THE COURT: Mr. Lee?  
13 TRIAL JUROR LEE: No, Your Honor.  
14 THE COURT: Ms. West?  
15 TRIAL JUROR WEST: No.  
16 THE COURT: Counsel, based upon the jury's  
17 response, I propose at this time to ask the foreperson  
18 to tender the verdict.  
19 I will review it and proceed to receive the  
20 verdict as to those counts on which the jury has reached  
21 a unanimous agreement.  
22 Is that acceptable to the Government?  
23 MR. SULLIVAN: Yes, Your Honor.  
24 THE COURT: Mr. Hoyt?  
25 MR. HOYT: Yes, Your Honor.

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1 THE COURT: Would the parties like the jury 2884  
2 polled?  
3 Mr. Sullivan?  
4 MR. SULLIVAN: Yes, Your Honor.  
5 THE COURT: Mr. Hoyt?  
6 MR. HOYT: Yes, Your Honor.  
7 THE COURT: Madam Clerk, would you please poll  
8 each member of the jury?  
9 THE COURTROOM CLERK: Ladies and gentlemen, as  
10 I read your name, just answer "yes" or "no." Answer  
11 "yes" if this is your verdict; "no" if it is not, as I  
12 read it.  
13 Mr. Casey? Is this your verdict?  
14 TRIAL JUROR CASEY: Yes.  
15 THE COURTROOM CLERK: Mr. Taylor, is this your  
16 verdict?  
17 TRIAL JUROR TAYLOR: Yes.  
18 THE COURTROOM CLERK: Mr. Bennett?  
19 TRIAL JUROR BENNETT: Yes.  
20 THE COURTROOM CLERK: Mr. Steele?  
21 THE FOREPERSON: Yes.  
22 THE COURTROOM CLERK: Mr. Sawin?  
23 TRIAL JUROR SAWIN: Yes.  
24 THE COURTROOM CLERK: Mr. Blatt?  
25 TRIAL JUROR BLATT: Yes.

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1 THE COURTROOM CLERK: Ms. Howell?

2 TRIAL JUROR HOWELL: Yes.

3 THE COURTROOM CLERK: Ms. Haynes?

4 TRIAL JUROR HAYNES: Yes.

5 THE COURTROOM CLERK: Ms. Crawford?

6 TRIAL JUROR CRAWFORD: Yes.

7 THE COURTROOM CLERK: Ms. Palmedo?

8 TRIAL JUROR PALMEDO: Yes.

9 THE COURTROOM CLERK: Mr. Lee?

10 TRIAL JUROR LEE: Yes.

11 THE COURTROOM CLERK: Ms. West?

12 TRIAL JUROR WEST: Yes.

13 THE COURTROOM CLERK: All in the affirmative,  
14 Your Honor.

15 THE COURT: Very well. The court will accept  
16 the verdict as to Counts 4, 5, 6, 7, 8, 9, 10, and 11  
17 and order it filed.

18 I will declare a mistrial as to Counts 1, 2,  
19 and 3.

20 Ladies and gentlemen of the jury, I would like  
21 to thank you for your efforts to reach a unanimous  
22 agreement on all of the counts.

23 I will accept your verdict on those counts on  
24 which you have reached a unanimous verdict; but I am  
25 obligated by law to declare a mistrial as to the

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1 remaining counts on which you were unable to reach  
2 agreement.

3 At this time, I will discharge you from  
4 further jury service with the thanks of the court.

5 You are relieved of all of the restrictions  
6 that I previously imposed upon you. You may choose to  
7 talk about the case with anyone you wish, or you may  
8 choose not to speak with anyone. It is entirely up to  
9 you.

10 The court will meet with you privately in the  
11 jury room to say good bye and to thank you, each of you  
12 personally, for your jury service.

13 You may now retire to the jury room.

14 THE COURTROOM CLERK: Please rise.

15 (Whereupon, the jury was excused from the  
16 courtroom; and the following proceedings were held  
17 outside their presence:)

18 THE COURT: As to the custodial status of  
19 Mr. Hinkson, under 18 USC Section 3143(a)(1), the court,  
20 quote, "shall order that a person who has been found  
21 guilty of an offense and who is awaiting imposition or  
22 execution of sentence be detained unless the judicial  
23 officer finds by clear and convincing evidence that the  
24 person is not likely to flee or pose a danger to the  
25 safety of any other person or the community if

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1 released."

2 In light of the jury's verdict, the defendant  
3 now bears the burden of showing that he is not a flight  
4 risk or a danger to the community.

5 I am relying upon United States vs. Wheeler at  
6 795 F.2d 839, 840, Ninth Circuit, 1986.

7 There is no presumption that release is  
8 appropriate, and the Government does not have the burden  
9 of proving by clear and convincing evidence that the  
10 defendant is a flight risk or a danger to others.

11 The defendant has not introduced evidence  
12 sufficient to meet his burden of showing by clear and  
13 convincing evidence that he is not a flight risk or a  
14 danger to others.

15 Prior to trial, the court held that pretrial  
16 detention was required because the defendant was  
17 awaiting sentencing in the tax case and, also, because,  
18 under applicable pretrial detention standards of proof,  
19 the court was satisfied that he was a flight risk and a  
20 danger to others or to the community, as outlined in my  
21 order, docket number 129, denying the defendant's motion  
22 for a de novo detention hearing.

23 Following the jury's verdict of guilty in the  
24 tax case, this court ordered the defendant detained  
25 under Section 3143(a)(1).

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1 In addition to the substantial evidence before  
2 the court when it rendered that order, the court now has  
3 to consider the fact that the defendant has been found  
4 guilty by a jury of soliciting the murders of federal  
5 officers in Counts 7, 8, and 9 of the Superseding  
6 Indictment.

7 That conduct for which the defendant has now  
8 been found guilty by proof beyond a reasonable doubt  
9 constitutes a direct attack on the safety of federal  
10 judicial, prosecutorial, and law enforcement officers  
11 and the due administration of justice.

12 I note, also, that the defendant committed the  
13 crimes for which the jury has now convicted him of while  
14 he was on pretrial release following his November 21,  
15 2000, arrest on the tax case Indictment, which is Case  
16 No. 02-CR-142-S-RCT.

17 In addition, the court credited the testimony  
18 introduced at trial that, while the defendant has been  
19 incarcerated pending sentencing in the tax case and  
20 trial on these charges here, the defendant has continued  
21 to engage in efforts to solicit murders as recently as  
22 November 2004.

23 The court finds that this past misconduct  
24 demonstrates, beyond question, that to release the  
25 defendant would place the lives and safety of others and

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1 the community at large in jeopardy. 2889  
2 Furthermore, the defendant remains  
3 incarcerated subject to sentencing following the jury's  
4 guilty verdict in the tax case.  
5 For these reasons, the court holds that  
6 release pending sentencing is prohibited by 18 USC  
7 Section 3143(a) (1) and finds by proof beyond a  
8 reasonable doubt that no conditions will adequately  
9 protect the safety and security of the community.  
10 Alternatively, the court reiterates its prior  
11 findings that, if released, the defendant would flee the  
12 jurisdiction to avoid punishment for his crimes.  
13 The defendant is remanded to the custody of  
14 the United States Marshal.  
15 Sentencing shall be scheduled for March 28,  
16 2005, commencing at 9:00 a.m. Mountain Time in Boise.  
17 Will the clerk read the attendant dates to  
18 that order?  
19 THE COURTROOM CLERK: Yes, Your Honor.  
20 MR. SULLIVAN: Excuse me, Your Honor. Could I  
21 bring up one matter? Mr. Taxay and I have another trial  
22 that starts March the 15th that may go two weeks.  
23 THE COURT: All right.  
24 MR. SULLIVAN: Could we make the sentencing  
25 date a little later?

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1 THE COURT: Do you want a longer date than 2890  
2 March 28th?  
3 MR. SULLIVAN: Yes, please.  
4 THE COURT: Let's see. Alternatively, I can  
5 schedule it for April 25, 2005, at 9:00 a.m. here in  
6 Boise.  
7 Very well. The clerk will read the dates that  
8 are attendant to that date.  
9 THE COURTROOM CLERK: Date of sentence, April  
10 25, 2005, at 9:00 a.m. before Judge Tallman;  
11 Original report due to counsel March 21, 2005;  
12 Notification of objections by counsel due  
13 April 4, 2005;  
14 Final report due to court and counsel April  
15 18, 2005.  
16 THE COURT: Anything further that the court  
17 needs to take up at this time?  
18 MR. SULLIVAN: Nothing further from the  
19 Government.  
20 THE COURT: Mr. Hoyt?  
21 MR. HOYT: Your Honor, if I might have a  
22 moment to consult with co-counsel?  
23 THE COURT: Of course.  
24 (Whereupon, Mr. Hoyt places a telephone call  
25 to Mr. Nolan.)

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1 MR. HOYT: Your Honor, counsel is wondering if 2891  
2 it is jurisdictional to file a Motion for New Trial  
3 within seven days or can we get some time?  
4 THE COURT: I will give you thirty days.  
5 MR. HOYT: That's all we have. Thank you.  
6 THE COURT: Very well. The court will be in  
7 adjournment.  
8 Thank you, all, for your efforts.  
9 (Whereupon, the court stood adjourned.)  
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C E R T I F I C A T E

I, LORI A. PULSIFER, certify that I made a shorthand record of the matter contained herein, and that the foregoing typewritten pages contain a full, true, and accurate transcript of said shorthand record, done to the best of my skill and ability.

DATED this 27th day of April 2005.

LORI A. PULSIFER, CSR, RMR, CRR  
Certified Shorthand Reporter  
Idaho Certificate 354

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
 )  
 ) Case No.  
 Plaintiff, ) CR-04-127-S-RCT  
 )  
 vs. )  
 )  
 DAVID ROLAND HINKSON, )  
 )  
 )  
 Defendant. )  
 )

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BEFORE THE HONORABLE RICHARD C. TALLMAN  
JUDGE OF THE UNITED STATES CIRCUIT COURT  
SITTING BY DESIGNATION  
(Sitting with a Jury)

Boise, Idaho  
January 27, 2005 (Thr)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY  
(VOLUME 13, PAGES 2,860 THROUGH 2,892)

PREPARED FOR:  
WESLEY W. HOYT  
Attorney at Law

(COPY)

Reported by:  
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(Neither Mr. Nolan nor the defendant was present for the following proceedings.)

(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: Good morning, counsel.

MR. HOYT: Good morning, Your Honor.

THE COURT: Mr. Hoyt, I understand the Marshals have yet to get your client to the building here.

It seems to me that we can, at least, take care of the preliminary matters, if there are any, with regard to the transcript, unless you have an objection.

I will leave it entirely up to you, but I don't think this is a critical stage of the deliberations. But if you would prefer that we wait for him, I will do that.

MR. HOYT: Your Honor, I think we can proceed.

THE COURT: I do, too. Let's see, I guess I was given the proposed mark-up. Are you both in agreement, now, that there is no dispute over those provisions?

MR. SULLIVAN: Yes, Your Honor. We went back and forth and came up with a version that we both agree on.

THE COURT: Very well. Mr. Hoyt, that's

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acceptable to you?

MR. HOYT: That is acceptable, Your Honor.

THE COURT: Then we will go ahead, as soon as the jury is here, at 9:00, and we will send Ms. Pulsifer in.

And then I circulated, last night, a couple of proposed draft answers to the two questions. Have you both had a chance to look at those?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Mr. Hoyt?

MR. HOYT: I have, indeed, Your Honor.

THE COURT: Just for the record, with respect to the question of Mr. Harding's testimony, the answer from the court will be:

"You may not have a transcript of Mr. Harding's testimony. However, the court reporter will be permitted to read the admissible portions of the testimony to the jury.

"The court reporter is not permitted to answer any questions, and you should not engage in any discussion with one another while she is present.

"Your foreperson may instruct her to stop at any time and ask her to leave the room. She will not be permitted to return without express permission from the court."

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Is that acceptable to both sides?

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Mr. Hoyt?

MR. HOYT: Yes, Your Honor.

THE COURT: Have you had a chance to talk with Mr. Hinkson about the court's proposed answer to the question?

MR. HOYT: No, Your Honor.

THE COURT: Then I think we'd better wait until he arrives so that you, at least, have an opportunity to show him what we propose to do before we send it in.

You can, I think, just indicate to Ms. Longstreet if he has no objection --

MR. HOYT: All right.

THE COURT: -- rather than reconvene the court.

And then, secondly, I propose to answer their question: "What are the consequences if we agree on certain counts and are unable to agree on others? Would the fact that we are unable to agree on certain counts negate our verdict on other counts?"

The answer from the court will be: "The fact that you are unable to come to agreement on certain counts will not negate any verdict on other counts on

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1 which you can reach a unanimous agreement."

2 MR. HOYT: "To wit"?

3 THE COURT: I changed it to "on which," just  
4 to be more grammatically correct.

5 MR. SULLIVAN: "On which." I agree.

6 THE COURT: With that change, is that  
7 acceptable to both sides?

8 MR. HOYT: It is, Your Honor subject to my  
9 client's review of the matter.

10 THE COURT: All right. Did the Marshals give  
11 us any indication?

12 THE COURTROOM CLERK: About five more minutes.

13 THE COURT: Well, I think we can just wait.  
14 He should be here at 9:00. We are right before 9:00.

15 Is there anything else we need to take up?

16 MR. SULLIVAN: I don't believe so, Judge.

17 THE COURT: Okay.

18 MR. HOYT: How are we marking the transcript,  
19 Your Honor, that relates to Mr. Harding, the one that  
20 will be read by Ms. Pulsifer?

21 THE COURT: As I understood it, you both had  
22 marked in thick, black, felt pen the portions that you  
23 did not want read to the jury.

24 Let me check with Ms. Longstreet, but I  
25 believe that should scan electronically without any

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1 problems.

2 THE COURTROOM CLERK: We can mark it as  
3 Court's Exhibit No. 3.

4 THE COURT: We will mark it as Court's Exhibit  
5 No. 3 for the record.

6 Then I am signing and filing these answers so  
7 that will be in the record, as well. You will have it  
8 both in the transcript and in the court file.

9 MR. HOYT: You mean, the jury questions and  
10 answers?

11 THE COURT: Yes.

12 MR. HOYT: Very good.

13 THE COURT: So I think we have made as clear a  
14 record as I know how to make as to what we are doing.

15 THE COURTROOM CLERK: I generally seal those.

16 THE COURT: You are going to seal the  
17 questions and the answers.

18 THE COURTROOM CLERK: They won't have access  
19 to them.

20 THE COURT: We are giving copies to counsel.  
21 They will know what they look like.

22 THE COURTROOM CLERK: Okay.

23 THE COURT: All right. Counsel, I do  
24 appreciate your help on the questions; and I did take a  
25 look at some of the Ninth Circuit cases.

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1 I agree with Mr. Nolan's observation that we  
2 are not at a point yet where the jury is dead-locked. I  
3 am hoping that our proposed responses to these two  
4 questions will aid them in their ability to continue  
5 their fact-finding and complete their deliberations.

6 Let me also ask, as well, Mr. Hoyt, do you  
7 want us to set up a telephone link for Mr. Nolan if we  
8 have any further questions today?

9 MR. HOYT: I am listening, and I'm thinking.  
10 Yes. If we do have further questions, I think that it  
11 would be appropriate, Your Honor, to do that.

12 THE COURT: Ms. Longstreet, do we have a  
13 speaker phone in here?

14 THE COURTROOM CLERK: No.

15 THE COURT: We don't? Can you make  
16 arrangements with Clay to install one?

17 THE COURTROOM CLERK: We would have to do it  
18 in chambers or a different courtroom.

19 THE COURT: That will work. We can do it in  
20 my chambers or move to another one of the courtrooms  
21 that has a speaker phone in it.

22 MR. HOYT: Very good.

23 THE COURT: So if we call you for any further  
24 questions, we will tell you where to report, as soon as  
25 we figure out which courtrooms are available.

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1 MR. HOYT: Very good.

2 (Whereupon, the defendant entered the  
3 courtroom.)

4 MR. HOYT: If I might have a moment, Your  
5 Honor?

6 THE COURT: Of course, Mr. Hoyt. Take your  
7 time.

8 (Whereupon, an off-the-record discussion was  
9 held between Mr. Hoyt and the defendant.)

10 MR. HOYT: May it please the court?

11 I have consulted with my client, and we are in  
12 agreement. The two answers as proposed by the court are  
13 acceptable.

14 THE COURT: Very well. With that stipulation,  
15 I will hand the two answers to Ms. Longstreet, ask that  
16 she take those into the jury room as our response, and  
17 bring Ms. Pulsifer with her to leave Ms. Pulsifer in the  
18 jury room to begin reading the transcript of  
19 Mr. Harding's testimony as they have requested.

20 We will be in recess until further call.

21 (Whereupon, the court reporter read a portion  
22 of the trial transcript containing the testimony of  
23 James C. Harding to the jury.)

24 . . .

25 (Subsequently, the following proceedings were

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1 held outside the presence of the jury.)

2 THE COURT: Counsel, before we bring the jury

3 in, given the questions that we have previously had from

4 the jury, I propose to ask two questions before I allow

5 the jury to tender the verdict.

6 The first question would be to the Foreman:

7 Has the jury reached a verdict?

8 "Yes" or "no"?

9 And then, without telling me how the jury

10 stands numerically, is it unanimous as to each count?

11 "Yes" or "no"?

12 If he answers, "No," I propose to ask:

13 Is the jury dead-locked as to some of the

14 counts?

15 "Yes" or "no"?

16 If he says, "Yes," we can do either one of two

17 things. I can send the jury back in, and we can talk

18 about it at that point; or I would propose to give an

19 Allen charge.

20 Your response?

21 MR. SULLIVAN: I would like to see the Allen

22 charge, of course, Your Honor. I'm sure Mr. Hoyt would,

23 too. Other than that, I think that would be fine.

24 THE COURT: I won't send them back in if you

25 are in agreement that those are the answers to give to

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1 the question, which I will give the Allen instruction,

2 which is 7.7 of the Ninth Circuit Model Rules.

3 Is that acceptable?

4 MR. HOYT: That's acceptable.

5 THE COURT: Fine. Bring in the jury.

6 (Whereupon, the following proceedings were

7 held in the presence of the jury:)

8 THE COURT: Mr. Steele, as the foreperson of

9 the jury, "yes" or "no," has the jury reached a verdict?

10 THE FOREPERSON: On some counts.

11 THE COURT: Without telling me how the jury

12 stands numerically, is it unanimous as to each count?

13 "Yes" or "no"?

14 THE FOREPERSON: To some of the counts. To

15 some of the counts.

16 THE COURT: Is the jury dead-locked as to some

17 of the counts? "Yes" or "no"?

18 THE FOREPERSON: Yes.

19 THE COURT: Very well. I am now going to give

20 you a supplemental instruction.

21 Members of the jury: You have advised that

22 you have been unable to agree upon a verdict as to each

23 of the eleven counts in this case. I have decided to

24 suggest a few thoughts to you.

25 As jurors, you have a duty to discuss the case

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1 with one another and to deliberate in an effort to reach

2 a unanimous verdict if each of you can do so without

3 violating your individual judgment and conscience.

4 Each of you must decide the case for yourself

5 but only after you consider the evidence impartially

6 with your fellow jurors.

7 During your deliberations, you should not

8 hesitate to re-examine your own views and change your

9 opinion if you become persuaded that it is wrong.

10 However, you should not change an honest

11 belief as to the weight or effect of the evidence solely

12 because of the opinions of your fellow jurors or for the

13 mere purpose of returning a verdict.

14 All of you are equally honest and

15 conscientious jurors who have heard the same evidence.

16 All of you share an equal desire to arrive at a verdict.

17 Each of you should ask yourself whether you

18 should question the correctness of your present

19 position.

20 I remind you that, in your deliberations, you

21 are to consider the instructions I have given you as a

22 whole.

23 You should not single out part of any

24 instruction, including this one, and ignore others.

25 They are all equally important.

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1 You may now retire and continue your

2 deliberations.

3 Please rise.

4 (Whereupon, the jury was excused from the

5 courtroom; and the following proceedings were held

6 outside their presence:)

7 THE COURT: Ladies and gentlemen, please be

8 seated. We are going to take the jury back down to the

9 jury room that they have been conducting their

10 deliberations in.

11 The court will be in recess subject to any

12 further communications from the jury.

13 (Recess.)

14 (Subsequently, the following proceedings were

15 held outside the presence of the jury:)

16 THE COURT: All right. Do we have Mr. Nolan

17 on the phone, or did that not work?

18 MR. HOYT: Your Honor, I just reached

19 Mr. Nolan; and he said that he would be on standby if

20 there were any further questions or issues, such as

21 another Allen issue.

22 THE COURT: Well, here is what I've got. I

23 have got another note from the jury that says:

24 "Judge Tallman:

25 "The jury is dead-locked on three counts and

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1 has reached unanimous decisions on the other eight  
2 counts. We do not believe that we will be able to  
3 resolve this dead-lock.

4 "Thanks, Jim Steele," who is the foreperson.  
5 What we can do --

6 MR. HOYT: May I? Since we have a question,  
7 may I go ahead and get Mr. Nolan? It will only take a  
8 moment. I have him on speed dial.

9 THE COURT: Absolutely.

10 MR. HOYT: Let me get him.

11 THE COURT: Okay.

12 MR. HOYT: We figured out, by experimentation,  
13 that it worked through this microphone.

14 (Whereupon, Mr. Hoyt placed a telephone call  
15 to Mr. Nolan and, subsequently, the following  
16 proceedings were held:)

17 MR. HOYT: Mr. Nolan, you are now on speaker  
18 phone. The judge has advised us -- we are in session,  
19 and the judge has advised us that there is another note  
20 from the jury.

21 The jury has indicated that it is dead-locked  
22 on three and has unanimous verdicts on the other eight.  
23 And we are ready to proceed.

24 Your Honor, where do you think we are at this  
25 point?

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1 THE COURT: Mr. Nolan, I will read it. For  
2 your benefit, I will read the note again.

3 It says: "The jury is dead-locked on three  
4 counts and has reached unanimous decisions on the other  
5 eight counts. We do not believe that we will be able to  
6 resolve this dead-lock."

7 Did you hear that, Mr. Nolan?

8 MR. HOYT: Did you hear that, Mr. Nolan?

9 MR. NOLAN: Yes, I did. Yes. And my  
10 suggestion is that you agree to allow it, if the Judge  
11 is willing to take the verdicts, and to declare the  
12 remaining a hung jury.

13 THE COURT: Let me suggest this: The Ninth  
14 Circuit Model Instructions -- the Committee recommends a  
15 Post-Allen charge inquiry under Ninth Circuit 7.8 and  
16 the comment -- I will read it into the record -- says:

17 "If the jury indicates that it is dead-locked  
18 after an Allen charge is given, the Committee recommends  
19 asking the foreperson of the jury the following:

20 "In your opinion, is the jury hopelessly  
21 dead-locked?

22 "If the foreperson's response is 'yes,' then  
23 ask the foreperson:

24 "Is there a reasonable probability that the  
25 jury can reach a unanimous verdict if sent back to the

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1 jury room for further deliberation?

2 "If the foreperson's response is 'no,' then  
3 ask the following question of the entire panel:

4 "Do you feel there is a reasonable probability  
5 that the jury can reach a unanimous verdict if sent back  
6 to the jury room for further deliberations?"

7 Now, I believe that that post-Allen charge  
8 inquiry contemplated the situation where they are unable  
9 to reach agreement on any count.

10 Here, they have indicated that they have  
11 reached a unanimous decision on eight of the eleven  
12 counts.

13 Let me first ask Mr. Sullivan: What is the  
14 Government's position on the Post-Allen charge inquiry?

15 MR. SULLIVAN: Your Honor, I first want to  
16 note we have had trial for approximately three weeks and  
17 only two days of deliberations.

18 This is very early in the deliberations for  
19 them to be claiming to be dead-locked, to the extent  
20 that they wouldn't be able to resolve it if they  
21 underwent further deliberations.

22 I would suggest the court forego questioning  
23 them at this point. They have only deliberated two  
24 days. I would suggest we release them for the day, let  
25 them go home, and come back tomorrow and begin their

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1 deliberations again.

2 And if we get another note, then we go through  
3 the process suggested by the Committee.

4 THE COURT: All right. Let me hear then from  
5 the defense.

6 MR. HOYT: All right. Mr. Nolan, did you hear  
7 that?

8 MR. NOLAN: I heard most of it. My  
9 understanding is that the court has indicated a possible  
10 scenario of questions, and that the Government said they  
11 didn't want that, that they wanted to send the jury back  
12 for further deliberations and see what they say  
13 tomorrow. Am I correct?

14 MR. HOYT: I think that's a good summation.

15 MR. NOLAN: All right. My request, on behalf  
16 of Mr. Hinkson, would be that the court go through the  
17 colloquy that the court is proposing on the basis,  
18 number one, that they have demonstrated that they are  
19 able to agree which is, I think, a factor to consider in  
20 whether or not to force them to continue to deliberate.

21 If you had a situation where they had not  
22 agreed, you might be talking about some kind of  
23 hostility or jumping to opinion.

24 But the fact that they were able to agree, I  
25 think, indicates that they are and have considered this

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1 at some length and in good faith.

2 They have shown a split for quite some time,  
3 from the notes from the jury. They appear to be working  
4 and have worked very hard, and I think it should be  
5 resolved now by way of accepting it.

6 Going through the colloquy that the court  
7 recommends allows a jury who disagrees to be able to  
8 say, "No, I want to spend more time." If they all  
9 agree, I think it would be inappropriate to send them  
10 back to further deliberate.

11 THE COURT: I will note for the record that  
12 the Committee note cites to a Ninth Circuit 1978  
13 decision, *Arnold vs. McCarthy*, 566 F.2d 1377, 1387.

14 It indicates seven factors that the court  
15 should consider before declaring the jury hopelessly  
16 dead-locked; and they inclined:

- 17 1. A timely objection by the defendant;
- 18 2. The jury's collective opinion that it  
19 cannot agree;
- 20 3. The length of the deliberations of the  
21 jury;
- 22 4. The length of the trial;
- 23 5. The complexity of the issues presented to  
24 the jury;
- 25 6. Any proper communications which the Judge

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1 has had with the jury; and

2 7. The effects of possible exhaustion and the  
3 impact which coercion of further deliberations might  
4 have on the verdict.

5 I'm trying to factor those in. I would say  
6 that we did have eleven days of testimony, a full day of  
7 argument. Jury deliberations commenced last Wednesday  
8 morning -- I guess it was yesterday -- the 26th, at  
9 approximately 9:00 a.m.

10 The jury deliberated until approximately 12:30  
11 yesterday, took an hour luncheon recess, and then  
12 deliberated again until approximately 5:00 o'clock last  
13 night.

14 Then they requested a read-back of  
15 Mr. Harding's testimony. That commenced at about ten  
16 after 9:00 this morning, the 27th of January. It took  
17 until approximately 10:40 a.m.

18 They resumed deliberations, took a luncheon  
19 recess at approximately 12:40 p.m., until about 1:30 or  
20 1:40 p.m., and then sent out the note at about 2:20 p.m.  
21 that we addressed the last time we met.

22 The court gave an Allen charge at  
23 approximately 3:10 p.m. today, the 27th; and it is now  
24 almost 5:00 p.m. Mountain Standard Time.

25 I think we ought to, at least, inquire as to

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1 whether or not, in the collective opinion of the jury,  
2 further deliberations might prove fruitful if we send  
3 them home for the evening and lets them come back fresh  
4 in the morning.

5 Depending upon how that question is answered,  
6 we can poll each individual juror and ask that and, at  
7 that point, see whether or not it's fruitless to have  
8 them deliberate further.

9 How does that sound, Mr. Sullivan?

10 MR. SULLIVAN: Agreeable, Your Honor.

11 THE COURT: Mr. Hoyt or Mr. Nolan?

12 MR. HOYT: Mr. Nolan, first of all, did you  
13 understand what it was the Judge said?

14 MR. NOLAN: What I heard -- what I heard was  
15 that he thinks he should ask the jury now about whether  
16 or not they think, by coming back, it would make a  
17 difference, or words to that effect.

18 I agree that the court, at this point, should  
19 question the jurors and then make a decision based upon  
20 the response from the jurors.

21 THE COURT: Very well. With that  
22 understanding, go ahead, Mr. Hoyt.

23 MR. HOYT: And, Your Honor, for the record,  
24 the defendant is placing an appropriate -- any further  
25 Allen charge objection on the record.

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1 THE COURT: I am not proposing to give a  
2 further Allen charge at this point. The only indication  
3 in the comments is simply a Post-Allen inquiry, which is  
4 what I am proposing to do, and then whether or not they  
5 think that further deliberations will be fruitful on the  
6 three counts on which they cannot reach agreement. I  
7 don't propose to further instruct them.

8 MR. HOYT: All right. Excellent. Thank you,  
9 Your Honor.

10 MR. NOLAN: Thank you, Your Honor. I will  
11 hang up unless I'm needed again.

12 THE COURT: Very well, Mr. Nolan. We will  
13 call you and let you know as soon as we get some answers  
14 here.

15 MR. HOYT: Talk to you later. Bye.

16 (Whereupon, Mr. Nolan hung up the telephone.)

17 THE COURT: Let's bring in the jury.

18 (Whereupon, the following proceedings were  
19 held in the presence of the jury.)

20 THE COURT: Mr. Steele, as the foreperson of  
21 the jury, I understand, from your note, that you have  
22 reached a unanimous agreement as to some counts but are  
23 dead-locked as to others; is that correct?

24 THE FOREPERSON: Correct.

25 THE COURT: In your opinion, is the jury

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1 hopelessly dead-locked on those counts on which they  
2 cannot reach agreement?  
3 THE FOREPERSON: Yes, Your Honor.  
4 THE COURT: Is there a reasonable probability  
5 the jury can reach a unanimous verdict if sent back to  
6 the jury room for further deliberations as to those  
7 counts?  
8 THE FOREPERSON: No, sir.  
9 THE COURT: All right. Counsel, unless --  
10 well, let me ask one other question.  
11 Do you think that if I sent you all home for  
12 the evening that you could have a good night's rest and  
13 come back here tomorrow morning to continue  
14 deliberations and that you might be able to reach a  
15 unanimous verdict as to all counts?  
16 Let me ask each one of you that question.  
17 Having that question in mind, Mr. Casey?  
18 TRIAL JUROR CASEY: No.  
19 THE COURT: Mr. Taylor?  
20 TRIAL JUROR TAYLOR: No.  
21 THE COURT: Mr. Bennett?  
22 TRIAL JUROR BENNETT: No.  
23 THE COURT: Mr. Steele?  
24 THE FOREPERSON: No, sir.  
25 THE COURT: Mr. Sawin?

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1 THE COURT: Mr. Steele, would you hand the  
2 signed verdict form to the bailiff, please?  
3 Mr. Hinkson, would you please rise and face  
4 the jury?  
5 All right. Madam Clerk, would you please read  
6 the verdict?  
7 THE COURTROOM CLERK: Should I just say "no  
8 verdict"?  
9 THE COURT: Yes.  
10 THE COURTROOM CLERK: We, the jury, find as  
11 follows:  
12 As to Count 1, no verdict;  
13 As to Count 2, no verdict;  
14 As to Count 3, no verdict;  
15 As to Count 4, not guilty;  
16 As to Count 5, not guilty;  
17 As to Count 6, not guilty;  
18 As to Count 7, guilty;  
19 As to Count 8, guilty;  
20 As to Count 9, guilty;  
21 As to Count 10, not guilty.  
22 As to Count 11, not guilty.  
23 So say we all.  
24 Signed, Jim Steele, Foreperson.  
25 Dated January 27, 2005.

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1 TRIAL JUROR SAWIN: No.  
2 THE COURT: Mr. Blatt?  
3 TRIAL JUROR BLATT: No.  
4 THE COURT: Ms. Howell?  
5 TRIAL JUROR HOWELL: No.  
6 THE COURT: Ms. Haynes?  
7 TRIAL JUROR HAYNES: No.  
8 THE COURT: All right. Ms. Crawford?  
9 TRIAL JUROR CRAWFORD: No.  
10 THE COURT: Ms. Palmado?  
11 TRIAL JUROR PALMEDO: No.  
12 THE COURT: Mr. Lee?  
13 TRIAL JUROR LEE: No, Your Honor.  
14 THE COURT: Ms. West?  
15 TRIAL JUROR WEST: No.  
16 THE COURT: Counsel, based upon the jury's  
17 response, I propose at this time to ask the foreperson  
18 to tender the verdict.  
19 I will review it and proceed to receive the  
20 verdict as to those counts on which the jury has reached  
21 a unanimous agreement.  
22 Is that acceptable to the Government?  
23 MR. SULLIVAN: Yes, Your Honor.  
24 THE COURT: Mr. Hoyt?  
25 MR. HOYT: Yes, Your Honor.

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1 THE COURT: Would the parties like the jury  
2 polled?  
3 Mr. Sullivan?  
4 MR. SULLIVAN: Yes, Your Honor.  
5 THE COURT: Mr. Hoyt?  
6 MR. HOYT: Yes, Your Honor.  
7 THE COURT: Madam Clerk, would you please poll  
8 each member of the jury?  
9 THE COURTROOM CLERK: Ladies and gentlemen, as  
10 I read your name, just answer "yes" or "no." Answer  
11 "yes" if this is your verdict; "no" if it is not, as I  
12 read it.  
13 Mr. Casey? Is this your verdict?  
14 TRIAL JUROR CASEY: Yes.  
15 THE COURTROOM CLERK: Mr. Taylor, is this your  
16 verdict?  
17 TRIAL JUROR TAYLOR: Yes.  
18 THE COURTROOM CLERK: Mr. Bennett?  
19 TRIAL JUROR BENNETT: Yes.  
20 THE COURTROOM CLERK: Mr. Steele?  
21 THE FOREPERSON: Yes.  
22 THE COURTROOM CLERK: Mr. Sawin?  
23 TRIAL JUROR SAWIN: Yes.  
24 THE COURTROOM CLERK: Mr. Blatt?  
25 TRIAL JUROR BLATT: Yes.

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1 THE COURTROOM CLERK: Ms. Howell?

2 TRIAL JUROR HOWELL: Yes.

3 THE COURTROOM CLERK: Ms. Haynes?

4 TRIAL JUROR HAYNES: Yes.

5 THE COURTROOM CLERK: Ms. Crawford?

6 TRIAL JUROR CRAWFORD: Yes.

7 THE COURTROOM CLERK: Ms. Palmado?

8 TRIAL JUROR PALMEDO: Yes.

9 THE COURTROOM CLERK: Mr. Lee?

10 TRIAL JUROR LEE: Yes.

11 THE COURTROOM CLERK: Ms. West?

12 TRIAL JUROR WEST: Yes.

13 THE COURTROOM CLERK: All in the affirmative,  
14 Your Honor.

15 THE COURT: Very well. The court will accept  
16 the verdict as to Counts 4, 5, 6, 7, 8, 9, 10, and 11  
17 and order it filed.

18 I will declare a mistrial as to Counts 1, 2,  
19 and 3.

20 Ladies and gentlemen of the jury, I would like  
21 to thank you for your efforts to reach a unanimous  
22 agreement on all of the counts.

23 I will accept your verdict on those counts on  
24 which you have reached a unanimous verdict; but I am  
25 obligated by law to declare a mistrial as to the

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1 remaining counts on which you were unable to reach  
2 agreement.

3 At this time, I will discharge you from  
4 further jury service with the thanks of the court.

5 You are relieved of all of the restrictions  
6 that I previously imposed upon you. You may choose to  
7 talk about the case with anyone you wish, or you may  
8 choose not to speak with anyone. It is entirely up to  
9 you.

10 The court will meet with you privately in the  
11 jury room to say good bye and to thank you, each of you  
12 personally, for your jury service.

13 You may now retire to the jury room.

14 THE COURTROOM CLERK: Please rise.

15 (Whereupon, the jury was excused from the  
16 courtroom; and the following proceedings were held  
17 outside their presence:)

18 THE COURT: As to the custodial status of  
19 Mr. Hinkson, under 18 USC Section 3143(a)(1), the court,  
20 quote, "shall order that a person who has been found  
21 guilty of an offense and who is awaiting imposition or  
22 execution of sentence be detained unless the judicial  
23 officer finds by clear and convincing evidence that the  
24 person is not likely to flee or pose a danger to the  
25 safety of any other person or the community if

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1 released."

2 In light of the jury's verdict, the defendant  
3 now bears the burden of showing that he is not a flight  
4 risk or a danger to the community.

5 I am relying upon United States vs. Wheeler at  
6 795 F.2d 839, 840, Ninth Circuit, 1986.

7 There is no presumption that release is  
8 appropriate, and the Government does not have the burden  
9 of proving by clear and convincing evidence that the  
10 defendant is a flight risk or a danger to others.

11 The defendant has not introduced evidence  
12 sufficient to meet his burden of showing by clear and  
13 convincing evidence that he is not a flight risk or a  
14 danger to others.

15 Prior to trial, the court held that pretrial  
16 detention was required because the defendant was  
17 awaiting sentencing in the tax case and, also, because,  
18 under applicable pretrial detention standards of proof,  
19 the court was satisfied that he was a flight risk and a  
20 danger to others or to the community, as outlined in my  
21 order, docket number 129, denying the defendant's motion  
22 for a de novo detention hearing.

23 Following the jury's verdict of guilty in the  
24 tax case, this court ordered the defendant detained  
25 under Section 3143(a)(1).

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1 In addition to the substantial evidence before  
2 the court when it rendered that order, the court now has  
3 to consider the fact that the defendant has been found  
4 guilty by a jury of soliciting the murders of federal  
5 officers in Counts 7, 8, and 9 of the Superseding  
6 Indictment.

7 That conduct for which the defendant has now  
8 been found guilty by proof beyond a reasonable doubt  
9 constitutes a direct attack on the safety of federal  
10 judicial, prosecutorial, and law enforcement officers  
11 and the due administration of justice.

12 I note, also, that the defendant committed the  
13 crimes for which the jury has now convicted him of while  
14 he was on pretrial release following his November 21,  
15 2000, arrest on the tax case Indictment, which is Case  
16 No. 02-CR-142-S-RCT.

17 In addition, the court credited the testimony  
18 introduced at trial that, while the defendant has been  
19 incarcerated pending sentencing in the tax case and  
20 trial on these charges here, the defendant has continued  
21 to engage in efforts to solicit murders as recently as  
22 November 2004.

23 The court finds that this past misconduct  
24 demonstrates, beyond question, that to release the  
25 defendant would place the lives and safety of others and

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1 the community at large in jeopardy.

2 Furthermore, the defendant remains  
3 incarcerated subject to sentencing following the jury's  
4 guilty verdict in the tax case.

5 For these reasons, the court holds that  
6 release pending sentencing is prohibited by 18 USC  
7 Section 3143(a) (1) and finds by proof beyond a  
8 reasonable doubt that no conditions will adequately  
9 protect the safety and security of the community.

10 Alternatively, the court reiterates its prior  
11 findings that, if released, the defendant would flee the  
12 jurisdiction to avoid punishment for his crimes.

13 The defendant is remanded to the custody of  
14 the United States Marshal.

15 Sentencing shall be scheduled for March 28,  
16 2005, commencing at 9:00 a.m. Mountain Time in Boise.

17 Will the clerk read the attendant dates to  
18 that order?

19 THE COURTROOM CLERK: Yes, Your Honor.

20 MR. SULLIVAN: Excuse me, Your Honor. Could I  
21 bring up one matter? Mr. Taxay and I have another trial  
22 that starts March the 15th that may go two weeks.

23 THE COURT: All right.

24 MR. SULLIVAN: Could we make the sentencing  
25 date a little later?

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1 THE COURT: Do you want a longer date than  
2 March 28th?

3 MR. SULLIVAN: Yes, please.

4 THE COURT: Let's see. Alternatively, I can  
5 schedule it for April 25, 2005, at 9:00 a.m. here in  
6 Boise.

7 Very well. The clerk will read the dates that  
8 are attendant to that date.

9 THE COURTROOM CLERK: Date of sentence, April  
10 25, 2005, at 9:00 a.m. before Judge Tallman;  
11 Original report due to counsel March 21, 2005;  
12 Notification of objections by counsel due  
13 April 4, 2005;

14 Final report due to court and counsel April  
15 18, 2005.

16 THE COURT: Anything further that the court  
17 needs to take up at this time?

18 MR. SULLIVAN: Nothing further from the  
19 Government.

20 THE COURT: Mr. Hoyt?

21 MR. HOYT: Your Honor, if I might have a  
22 moment to consult with co-counsel?

23 THE COURT: Of course.

24 (Whereupon, Mr. Hoyt places a telephone call  
25 to Mr. Nolan.)

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1 MR. HOYT: Your Honor, counsel is wondering if  
2 it is jurisdictional to file a Motion for New Trial  
3 within seven days or can we get some time?

4 THE COURT: I will give you thirty days.

5 MR. HOYT: That's all we have. Thank you.

6 THE COURT: Very well. The court will be in  
7 adjournment.

8 Thank you, all, for your efforts.

9 (Whereupon, the court stood adjourned.)

10 \* \* \*

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C E R T I F I C A T E

I, LORI A. FULSIFER, certify that I made a  
shorthand record of the matter contained herein, and  
that the foregoing typewritten pages contain a full,  
true, and accurate transcript of said shorthand record,  
done to the best of my skill and ability.

DATED this 27th day of April 2005.

LORI A. FULSIFER, CSR, RMR, CRR  
Certified Shorthand Reporter  
Idaho Certificate 354

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