

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 19, 2005 (wed)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY
(VOLUME 7, PAGES 1,471 THROUGH 1,722)

Prepared for:
WESLEY W. HOYT
ATTORNEY AT LAW

Reported by:
Lori A. Pulsifer, CSR, RMR, CRR
QNA Court Reporting
E-mail: realtimeqna@msn.com
Telephone: (208) 484-6309

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APPEARANCES

FOR THE PLAINTIFF:

Mr. Michael Patrick Sullivan
Assistant United States Attorney
U.S. Department of Justice
10th and Constitution, N.W.
Room 2644
Washington, D.C. 20530

A N D

Mr. Michael D. Taxay
Assistant United States Attorney
U.S. Department of Justice
601 D Street, N.W.
Suite 6500
Washington, D.C. 20530

FOR THE DEFENDANT:

Mr. Wesley W. Hoyt
Attorney at Law
HC 66, Box 313A
Kooiscia, Idaho 83539

A N D

Mr. Thomas Nolan
Attorney at Law
NOLAN, ARMSTRONG & BARTON, LLP
600 University Avenue
Palo Alto, California 94301

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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. Houser, if you would, step forward and
3 resume your place on the witness stand.
4 * * *
5 JO ANN HOUSER,
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. Houser.
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 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. Your husband, is that Mr. Del Houser?
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 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 --

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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.

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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 cut, 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?

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 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. TAVAY: 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 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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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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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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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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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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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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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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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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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

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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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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.

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?

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1 Q. What time was it now? Pushing 7:30 in the

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?

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1 A. Yes.

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?

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1 A. No, I did not.

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

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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?

1537

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.

1539

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

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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

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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

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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. 1552
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. 1554
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? 1553
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. 1555
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 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 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 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 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 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 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 Palmado:)

3 THE COURT: Ms. Palmado, 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 Palmado 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?
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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 1612
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.
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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

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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;

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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 leafleting 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.

MR. NOLAN: The concern I have is the

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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.

At this time, I would ask the court to find an

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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?

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

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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.

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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

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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 1676
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 1678
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? 1677
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 1679
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.

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

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

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.

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 * * *

2 C E R T I F I C A T E

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 5th day of April 2005.

10
11 LORI A. PULSIFER, CSR, RMR, CRR
12 Certified Shorthand Reporter
13 Idaho Certificate 354
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