

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

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

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

Boise, Idaho
January 21, 2005 (Fri)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS RE: TRIAL TO A JURY
(VOLUME 9, PAGES 1,997 THROUGH 2,299)

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

THE COURT: Good morning.

Mr. Hoyt or Mr. Nolan?

MR. HOYT: Yes, Your Honor. We have a matter to take up.

MR. NOLAN: I am going to try to --

MR. HOYT: Let's do the witness first, if it's okay with you.

Your Honor, we have a witness here who has a flight at 11:00 o'clock this morning and needs to be to the airport by 10:00. We would like to interject her.

THE COURT: In the middle of Mr. Hinkson?

MR. HOYT: We have advised the Government. I don't think there is an objection.

MR. SULLIVAN: No objection.

THE COURT: Fine. We will take Ms. Burke. Are planes flying? This weather is --

MR. HOYT: I think there have been a bunch of flights cancelled. She has the reservation. We don't know what to do. The fog may lift.

THE COURT: The court certainly has no objection to taking her out of order.

Mr. Nolan?

MR. NOLAN: I am going to try to make this as

1 succinct as possible. Mr. Hoyt wishes to ask Mr. Hinkson
2 on the stand about his understanding about a conspiracy.

3 Here is the evidence that we have of the
4 conspiracy:

5 A witness by the name of Bott (sic.), who is
6 on our witness list --

7 MR. HOYT: Webb.

8 MR. NOLAN: Webb -- excuse me -- overheard in
9 the year 2000 Arnette --

10 THE COURT: Hasalone?

11 MR. NOLAN: -- Hasalone speaking to
12 Mr. Gunderson who is someone -- anyway, Mr. Gunderson,
13 saying that, in effect, she is going to try to get
14 everything she can from Mr. Hinkson, et cetera.

15 Mr. Gunderson --

16 MR. HOYT: And put him in jail.

17 MR. NOLAN: And put him in jail.

18 Mr. Gunderson has a longstanding hostility
19 toward Mr. Hinkson because of the Art Bell matter where
20 Mr. Hinkson allegedly said something that he and
21 Mr. Gunderson got into it about. And Mr. Gunderson is a
22 good friend of Mr. Hilder, and Mr. Harding is associated
23 with Mr. Hilder.

24 MR. HOYT: And Henderson.

25 MR. NOLAN: And that Mr. -- and that he has,

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1 at this time, a belief that all of these people are
2 involved in a conspiracy to get him.

3 To the extent that he was aware at the time,
4 he was aware of certain things at the time of the
5 events, that would show his hostility towards Mr. Albers
6 and Ms. Hasalone.

7 THE COURT: In 2000?

8 MR. NOLAN: In, I believe --

9 MR. HOYT: Yes, Your Honor, in 2000, 2001,
10 2002, 2003.

11 MR. NOLAN: He was not aware of the connection
12 to Gunderson and Hilder until the nature of this case --
13 until this case was going on.

14 And, therefore, his bias and attitude -- his
15 attitude on the stand today about these people is
16 relevant to show his state of mind or bias.

17 THE COURT: At that time?

18 MR. NOLAN: Well, no. I'm sorry. His bias --
19 his testimony now -- his state of mind now on bias is, I
20 think, the connection that we can get in on that.

21 In other words, as he's testifying now, he has
22 this belief that Harding, Hilder, and Gunderson are
23 involved in the conspiracy with Hasalone.

24 Now, this question is very important to the
25 defendant. We have these other witnesses lined up. I

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1 suggested to counsel that maybe we didn't need to call
2 those witnesses if Mr. Hinkson could testify as to his
3 belief in this conspiracy, rather than put on all of
4 these witnesses who would say there was a conspiracy.

5 THE COURT: Let me hear from the Government,
6 and then let me ask you a few legal questions.

7 MR. NOLAN: Right. Again, I've just tried to
8 succinctly state it.

9 THE COURT: I think I understand your request.
10 Go ahead, Mr. Sullivan.

11 MR. SULLIVAN: It sounds like Mr. Nolan is
12 trying to wrap the hearsay exception of state of mind
13 around a set of facts that are not otherwise proveable.

14 But because Hinkson believes it, even if they
15 are outlandish, if the moon is made of blue cheese and
16 if he believes it, he can testify to it. State of mind
17 has some limits on it, I'm sure.

18 THE COURT: Here is my legal question. If I
19 understand Mr. Nolan correctly, he is seeking to
20 introduce, under the co-conspirator exception of Federal
21 Rule of Evidence 801(D)(2)(e), statements that were made
22 in 2000 by persons in regard to a conspiracy about which
23 the court has heard virtually no evidence, at least
24 certainly not evidence that is sufficient to establish a
25 prima facie case that such a conspiracy existed.

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1 So at this point in the trial, I am not going
2 to permit, under 801(D)(2)(e), those statements to be
3 admitted because I just don't see that such a conspiracy
4 actually existed, which may mean that you are going to
5 have to bring in those other witnesses in order to lay
6 the foundation. I would certainly then permit you to
7 recall Mr. Hinkson at that point.

8 But I recall yesterday at sidebar, when this
9 whole issue came up with respect to the Hilder
10 conspiracy -- I know Mr. Hoyt was expressed some concern
11 that, you know, everyone was surprised and making light
12 of it.

13 Frankly, the court was surprised because it's
14 the first time the court has heard any suggestion of
15 such a conspiracy.

16 So at this point, I don't think that the state
17 of mind exception is broad enough to permit Mr. Hinkson
18 to testify to what his state of mind was as a result of
19 hearing these statements he would be testifying to which
20 would have to come in under 801(D)(2)(e); but before the
21 jury could hear them, in order to lay the foundation so
22 that he could then say, "Once I heard that, then it
23 changed my state of mind," thus and so.

24 Am I making any sense here? That is the way
25 I'm trying to analyze this thing.

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1 MR. NOLAN: I think that it may be that we are
2 anticipating some cross-examination. In other words, if
3 his credibility is challenged or a bias is established,
4 then we might be able to ask him on the stand: Do you
5 feel there is a conspiracy among these people?

6 THE COURT: I think that might be a fair
7 question, depending upon how the cross goes.

8 MR. NOLAN: Right, right.

9 THE COURT: Which sort of might eliminate the
10 whole evidentiary issue that I'm wrestling with under
11 the 801(D)(2)(e) issue.

12 MR. NOLAN: I don't think I can bring it in on
13 the direct. Depending upon what happens on cross, we
14 may be able to say, "Do you think it's a conspiracy?"
15 It may be relevant based on the cross.

16 THE COURT: I think if it is going to come in
17 without laying the prima facie foundation, the rules
18 otherwise contemplate that is the only other way I know
19 how to do it.

20 MR. NOLAN: Thank you very much.

21 THE COURT: Thank you, Mr. Nolan.

22 MR. SULLIVAN: I note, if we are going to
23 discuss conspiracy, if they are going to attempt to
24 enter what is otherwise a hearsay statement under the
25 801(D)(2)(e) exception, which is not really an

1 exception --

2 THE COURT: It is not hearsay, as a matter of
3 law.

4 MR. SULLIVAN: There has to be one proof of a
5 conspiracy, as Your Honor stated, but the exception --
6 it goes on that the statement to be admitted, under (e),
7 must be by a co-conspirator of a party and not just some
8 conspiracy that exists out there somewhere. It must be
9 a conspiracy of a party.

10 THE COURT: You are absolutely right.
11 Mr. Hinkson cannot testify to statements of another
12 co-conspirator in a conspiracy in which he was not a
13 member.

14 That is your point; right?

15 MR. SULLIVAN: Exactly. And that the
16 Government was not a member of a conspiracy. First of
17 all, the rule only applies to a party. It's a statement
18 of a party.

19 That's the basis of the -- you know, like any
20 admission, it's a statement of a party. So if the
21 statement of the party is admissible against the
22 defendant, it's a statement by the Government. It's
23 admissible as a party.

24 But Mr. Gunderson and Mr. Hilder and the whole
25 crew of mock conspirators are not a party.

1 THE COURT: Well, it also seems to -- I think
2 you are absolutely correct as a matter of law.

3 I will let you respond to that, Mr. Nolan. I
4 think Mr. Sullivan is right, now that he reminds me of
5 the application of the rule.

6 The other problem is this clearly is a
7 collateral issue with respect to the attempt to impeach
8 Mr. Harding. Under 803(b), what you are asking me to do
9 is to allow you to prove up by extrinsic evidence the
10 existence of such a conspiracy as it would inform the
11 jury as to Mr. Harding's bias and motive in testifying
12 against Mr. Hinkson.

13 I think, in the exercise of my discretion,
14 based upon the state of the record at this point, I am
15 not going to permit it.

16 MR. NOLAN: It may very well be, though, that
17 we can establish that Mr. Hinkson believes there is a
18 conspiracy. To the extent that he can say why he
19 believes there is a conspiracy, it's not for the truth
20 of the matter and it might be admissible for that --

21 THE COURT: No, because the problem is what
22 you are really trying to introduce it for is to get in,
23 through Mr. Hinkson's so-called state of mind, his
24 belief as to why Mr. Harding is testifying against him
25 and Harding's motive. I don't think that's proper

1 impeachment of Harding. I don't think you can do it
2 that way.

3 MR. NOLAN: I think that we have resolved, as
4 far as right now, for the benefit of the jury,
5 Mr. Hinkson's -- the question of Mr. Hinkson.

6 As far as whether or not we are allowed to
7 call those witnesses, we might want to address that
8 later today --

9 THE COURT: All right.

10 MR. NOLAN: -- and, you know, give it some
11 more thought.

12 THE COURT: Let's handle it this way:
13 Mr. Hoyt, when you get to that point on redirect of
14 Mr. Hinkson, before you ask the question, call for a
15 sidebar so that we don't get, you know, bogged down in
16 front of the jury over it.

17 MR. HOYT: Understood. It seems to me -- I
18 think I understand the court's ruling -- that it
19 wouldn't, in any event, be appropriate for me on his
20 direct examination to ask him a series of questions, so
21 I won't do that. I won't do that.

22 THE COURT: Okay.

23 MR. HOYT: What I am hearing is that, should
24 some examination during cross bring up the subject, he
25 may be allowed to testify about that; and then there is

1 the further issue as to whether or not we can get into
2 the subject of his conspiracy. And that's something we
3 can just take up later?

4 THE COURT: Yes.

5 So that we are clear on it at this point, my
6 ruling is:

7 It is not admissible through Mr. Hinkson's
8 testimony on his direct examination.

9 Depending upon how the cross-examination goes,
10 if you feel on redirect that the door has been opened by
11 the Government, when you get to that point in your
12 redirect examination, single me for a sidebar so I will
13 know where we are going.

14 MR. HOYT: Excellent. One quick question:
15 Has the court received from the National Records any
16 response yet?

17 THE COURT: No. And I can tell you I was
18 expecting a Federal Express package to be delivered
19 yesterday from my office in Seattle, and it didn't make
20 it to Boise because of the fact that the Boise Airport
21 was closed.

22 So I am afraid that those air courier services
23 may be suffering from these fog-related weather problems
24 that we are experiencing here in Boise.

25 And I haven't received anything, as far as I

1 know, unless Ms. Longstreet has received an e-mail or
2 phone call.

3 THE COURTROOM CLERK: No. I checked this
4 morning.

5 THE COURT: We haven't heard from anybody at
6 the Records Center.

7 MR. HOYT: We did follow up. We know the
8 package that we sent was received.

9 THE COURT: Great.

10 MR. HOYT: And, B, they did go ahead and put
11 the records that were requested in an overnight pouch,
12 probably Fed-Ex, and it was sent out yesterday. Of
13 course, we have the local fog problem.

14 THE COURT: Hopefully, it will be here by
15 Monday, in which case I think it will still be timely.

16 Mr. Sullivan?

17 MR. SULLIVAN: Judge, I have one document that
18 I would like to turn over to the court on this matter
19 for in-camera review to be done when these other
20 documents reach you. We do have one document.

21 THE COURT: Is it a 302?

22 MR. SULLIVAN: No. It's a document from the
23 Department of the Navy.

24 THE COURT: Is this in regard to Mr. Swisher?

25 MR. SULLIVAN: Yes.

1 THE COURT: All right. Well, let me take a
2 look at it. Okay. Let's bring in the jury.

3 (Whereupon, the following proceedings were
4 held in the presence of the jury:)

5 THE COURT: Mr. Hinkson, would you resume the
6 witness stand, please?

7 MR. HOYT: Your Honor, were you going to
8 permit us to call our witness out of order?

9 THE COURT: With the court's permission,
10 ladies and gentlemen, because of a witness travel
11 problem, I am going to allow the defense to interrupt
12 the examination of Mr. Hinkson so that we can call a
13 witness who is going to try and make an 11:00 o'clock
14 flight out of here this morning.

15 With that, go ahead.

16 MR. HOYT: Thank you, Your Honor. At this
17 time Mr. Hinkson would call Samantha Burke.

18 THE COURT: Ms. Burke, would you step forward
19 and be sworn, please?

20 THE COURTROOM CLERK: Please raise your right
21 hand.

22 * * *

23 SAMANTHA BURKE,

24 having been called, sworn, testified as follows:

25 THE COURTROOM CLERK: Thank you. Please take

1 the stand. If you would, state your name and spell your
2 last name for the record, please.

3 THE WITNESS: Samantha Burke, B-u-r-k-e.

4
5 DIRECT EXAMINATION

6 BY MR. HOYT:

7 Q. Good morning, Ms. Burke.

8 A. Good morning.

9 Q. Ms. Burke, where do you live?

10 A. I live in Yakima, Washington.

11 Q. And what formal education do you have in the
12 way of post high school?

13 A. I have a pharmaceutical tech degree.

14 Q. And from what institution did you receive that
15 degree?

16 A. That was Big Bend Community College in Moses
17 Lake, Washington.

18 Q. Have you ever worked in a pharmacy situation?

19 A. Yes, I have. I worked in two pharmaceuticals.

20 Q. And have you ever worked at WaterOz?

21 A. Yes, I did.

22 Q. Do you remember when you started at WaterOz?

23 A. I started at WaterOz on October 29th of 2002.

24 Q. What was your last day that you worked at
25 WaterOz?

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1 A. December 1, 2004.

2 Q. By whom were you hired?

3 A. By Jeri Gray.

4 Q. And was Mr. Hinkson at WaterOz when you were

5 hired?

6 A. No. He was out of the country.

7 Q. And when did he return to WaterOz?

8 A. I believe, a couple weeks.

9 MR. TAXAY: Objection.

10 THE COURT: Overruled.

11 BY MR. HOYT:

12 Q. Did you work with Mr. Hinkson?

13 A. Yes, I did.

14 Q. And what were your job assignments at WaterOz?

15 A. I was to answer the telephone, customer

16 service and telephones, like, take orders. I also did a

17 copy -- all of the copying work. And, also, I created

18 the newsletter the last two months that I was working

19 there.

20 Q. And during that period of time, did you get to

21 know Mr. Hinkson?

22 A. Yes, I did.

23 Q. And did you ever hear Mr. Hinkson make any

24 threats towards either Mr. Albers or towards federal

25 officials?

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1 A. Yes, I did.

2 Q. At one point in time, were you aware that she

3 lived in Mr. Hinkson's house?

4 A. Yes, I was.

5 Q. When she first arrived, how did she treat

6 Mr. Hinkson?

7 A. She seemed to be a very health-conscious woman

8 and her goals were to, you know, get a job and --

9 MR. TAXAY: Objection. Non-responsive.

10 THE COURT: Sustained. That is not

11 responsive.

12 BY MR. HOYT:

13 Q. How did she treat Mr. Hinkson when she first

14 arrived?

15 MR. TAXAY: Objection.

16 THE COURT: Sustained.

17 MR. HOYT: Your Honor, that question is a

18 specific question designed to impeach the testimony of

19 Ms. Bates.

20 THE COURT: With that representation, I will

21 allow it. Go ahead.

22 MR. TAXAY: Your Honor, it calls for a

23 conclusion and opinion.

24 THE COURT: I am going to allow her to answer

25 the question. Let's see how it goes.

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1 A. No, I didn't.

2 Q. Did you observe how it was that Mr. Hinkson

3 worked at WaterOz?

4 A. Yes, I did. He was very, very, very observant

5 and busy with everything.

6 MR. TAXAY: Objection. Beyond the scope.

7 Relevance.

8 THE COURT: I agree. Sustained.

9 BY MR. HOYT:

10 Q. Were you there -- that is, in the sense of --

11 were you working at WaterOz when the Government raid

12 occurred on November 21, 2002?

13 A. No, we didn't work that day.

14 Q. Now, after that time, did you ever meet a

15 person by the name of Arnie Bates?

16 A. Yes, I did.

17 Q. And who was the worker at WaterOz who was the

18 closest in age to Ms. Bates?

19 MR. TAXAY: Objection.

20 THE COURT: I am assuming he is laying a

21 foundation. I will overrule it and allow her to answer

22 that question.

23 THE WITNESS: I was.

24 BY MR. HOYT:

25 Q. Did you socialize with Ms. Bates?

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1 Go ahead.

2 BY MR. HOYT:

3 Q. How did she treat Mr. Hinkson?

4 A. At first, she treated Mr. Hinkson like she was

5 very health conscious and that she was an innocent gal

6 that needed a place to work and needed a home.

7 MR. TAXAY: Objection.

8 THE COURT: I am going to -- ladies and

9 gentlemen, you may disregard that last answer. Let me

10 see counsel at sidebar.

11 MR. HOYT: I would move to strike the answer.

12 THE COURT: I am striking the question and the

13 answer. Do you want to ask another question? Let's do

14 that.

15 BY MR. HOYT:

16 Q. Did she seem to have any personal interest in

17 Mr. Hinkson?

18 MR. TAXAY: Objection.

19 MR. HOYT: This is the impeaching question.

20 THE COURT: I think it is. Overruled.

21 Go ahead.

22 MR. TAXAY: Calls for a conclusion.

23 THE WITNESS: Yes, she did.

24 BY MR. HOYT:

25 Q. What was that?

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1 A. She seemed, to me, as though she wanted to be
2 with David and that she was looking --

3 MR. TAXAY: Objection.

4 THE COURT: Sustained.

5 Counsel, you have to lay a foundation as to
6 what she observed, not what Ms. Burke assumed or
7 speculated.

8 BY MR. HOYT:

9 Q. Ms. Burke, were you able to see Mr. Hinkson
10 and Ms. Bates together from time to time while you were
11 working there?

12 A. Yes.

13 Q. And did you see the way that she treated him?

14 A. Yes.

15 Q. And did those observations assist you in
16 making the conclusions that you just arrived at?

17 A. Yes.

18 Q. And did you feel like she had a personal
19 interest in Mr. Hinkson at that time?

20 MR. TAXAY: Objection. Conclusion.
21 Relevance.

22 THE COURT: Sustained. Sustained. It is also
23 leading. Please have her testify to her observations.

24 BY MR. HOYT:

25 Q. What was your observation, Ms. Burke?

1 A. What I observed was that I felt that Arnie was
2 attracted to David.

3 MR. TAXAY: Objection.

4 THE COURT: Not what you felt. What you saw.
5 I just want you to tell the jury, as best you can
6 remember or explain it, what you saw about Ms. Bates.

7 THE WITNESS: I saw that Arnie Bates was
8 making a pass toward David.

9 BY MR. HOYT:

10 Q. And that was at first. Did that change over
11 time?

12 A. Yes, it did.

13 Q. And after she had been there for a while, how
14 did she begin to treat Mr. Hinkson?

15 A. Then she treated David like she was not really
16 interested in him.

17 MR. TAXAY: Objection.

18 THE COURT: Sustained. You have to confine
19 it, counsel, to specific observations.

20 BY MR. HOYT:

21 Q. Let's go with specific observations. What did
22 you observe about the way she treated him?

23 A. She treated him --

24 Q. Did she borrow his car?

25 A. Oh, she totally, yeah, borrowed his car. She

1 used him, basically.

2 Q. She lived in his house?

3 A. She lived in his house, borrowed his car, used
4 him for money. She had no interest in him personally.

5 MR. TAXAY: Objection. Move to strike.

6 THE COURT: The jury will disregard the last
7 portion of that answer as to whether she had an interest
8 in him.

9 BY MR. HOYT:

10 Q. She gave the appearance that she was a prim
11 and proper person when she arrived; is that right?

12 A. Yes, yes.

13 MR. TAXAY: Objection.

14 THE COURT: Sustained. The jury will
15 disregard the question and the answer.

16 BY MR. HOYT:

17 Q. I want the specifics now. Did you become
18 suspicious of Arnie Bates while she was working at
19 WaterOz?

20 MR. TAXAY: Objection.

21 THE COURT: Sustained. Improper question.

22 BY MR. HOYT:

23 Q. What job assignment was Arnie Bates given when
24 she first started working at the factory?

25 A. She worked one day in bottling; and then she

1 worked upstairs scanning documents, court documents.

2 Q. Now, you talked to her personally?

3 A. Yes, I did.

4 Q. Based upon your perception of her, did she
5 have any interest in WaterOz?

6 MR. TAXAY: Objection.

7 THE COURT: Sustained.

8 BY MR. HOYT:

9 Q. Do you know -- did she move her belongings --
10 strike that.

11 Did she indicate to you that her intention was
12 to move to Grangeville and work at WaterOz permanently?

13 MR. TAXAY: Objection. Hearsay.

14 THE COURT: Sustained.

15 MR. HOYT: I think it goes to impeachment, and
16 it's an exception.

17 THE COURT: Let me see counsel at sidebar.

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

20 THE COURT: Mr. Hoyt, I think I know what you
21 are trying to do. It is the way that you are going
22 about it that is causing all of these objections which
23 are proper on the part of the Government.

24 What she is doing is she is, essentially,
25 testifying to hearsay and to what her own impressions

1 were.

2 If Ms. Bates said something to her that is
3 inconsistent with what Ms. Bates testified to, you can
4 simply ask her about the impeaching statement; and
5 that's it. You can't do much more with a witness like
6 this.

7 MR. HOYT: In addition to that, Your Honor,
8 there are some concrete facts. Ms. Bates did not move
9 her belongings to Grangeville, even though she said she
10 wanted to move there.

11 So I was trying to get into the area of the
12 concrete facts of why she believed that Ms. Bates was
13 not interested in WaterOz.

14 THE COURT: Why don't you just ask her, in a
15 non-leading fashion, "Do you know whether or not she
16 moved her belongings? At what period of time?" et
17 cetera.

18 Instead, the way you are asking the question,
19 you are, basically, just eliciting hearsay and her
20 impressions. That is not proper impeachment.

21 (Whereupon, the following proceedings were
22 held in open court, in the presence of the jury:)

23 BY MR. HOYT:

24 Q. Ms. Burke, did Arne Bates move her belongings
25 to Grangeville?

1 A. No, she didn't.

2 MR. TAXAY: Objection. Foundation.

3 THE COURT: Overruled. Why don't you lay a
4 foundation, counsel? Sustained.

5 BY MR. HOYT:

6 Q. You indicated that you socialized with
7 Ms. Bates?

8 A. Yes, I did.

9 Q. And did you get to know her well enough to
10 know where her belongings were located?

11 A. They were located in Grangeville -- or Boise.
12 Actually, they were in Boise; and whatever she carried
13 on her was in Grangeville.

14 Q. So she had a few personal items with her in
15 Grangeville?

16 A. Right.

17 Q. The question is: Did she manifest, by her
18 conduct, an interest in WaterOz?

19 MR. TAXAY: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. HOYT:

22 Q. What did you observe about her interest in
23 WaterOz?

24 MR. TAXAY: Objection. Same question.

25 THE COURT: Sustained.

1 BY MR. HOYT:

2 Q. You indicated that she worked one day in the
3 bottling plant?

4 A. Yes.

5 Q. After she worked in the bottling plant, did
6 she ever seek to be assigned to any other part of the
7 health product manufacturing of WaterOz?

8 MR. TAXAY: Objection. Foundation.

9 THE COURT: Sustained.

10 BY MR. HOYT:

11 Q. You said she was scanning documents; is that
12 correct?

13 A. Yes.

14 Q. Did scanning documents involve anything
15 related to the manufacturing of health products?

16 MR. TAXAY: Objection. Foundation.

17 THE COURT: I will allow that.

18 THE WITNESS: No.

19 BY MR. HOYT:

20 Q. And what were the circumstances under which
21 Ms. Bates terminated her employment at WaterOz?

22 MR. TAXAY: Objection. Foundation.

23 THE COURT: Sustained.

24 BY MR. HOYT:

25 Q. Are you personally familiar with the

1 circumstances? Did you observe the circumstances under
2 which she terminated at WaterOz?

3 A. Yes, I did.

4 Q. And would you please advise the court and jury
5 what the circumstances were?

6 A. It was supposedly her birthday March 13th or
7 14th, and we went to the bar after work and drank. And
8 she was out all night long, till about 4:00 o'clock in
9 the morning, and --

10 MR. TAXAY: Objection. Non-responsive.

11 THE COURT: I think that's all right.

12 Go ahead. Just ask another question,

13 Mr. Hoyt.

14 BY MR. HOYT:

15 Q. You said she was out till 4:00 o'clock in the
16 morning. What happened the next day at work?

17 A. She never showed back up. She said she was
18 hung over, and she never did come back to work.

19 Q. She never did come back to work ever?

20 A. To work, right, yes.

21 Q. She was finished at WaterOz at that point?

22 A. Yes.

23 MR. HOYT: No further questions.

24 THE COURT: Thank you, Mr. Hoyt.

25 Cross-examination?

1 CROSS EXAMINATION 2026
2 BY MR. TAXAY:
3 Q. Ms. Burke, you weren't with Ms. Bates 24 hours
4 a day; isn't that right?
5 A. Right.
6 Q. You don't know what she was doing when she
7 wasn't with you?
8 A. Right. I don't know.
9 Q. You testified that she borrowed Mr. Hinkson's
10 car?
11 A. Yes, she did, on one occasion.
12 Q. And "borrow" means Mr. Hinkson let her have
13 it; right?
14 A. Usually, yes.
15 Q. You said that she lived in his house?
16 A. Yes.
17 Q. She did so with Mr. Hinkson's permission;
18 correct?
19 A. Yes.
20 Q. You spoke about her drinking until 4:00
21 o'clock in the morning. I assume you were with her, and
22 that's how you know this?
23 A. Yes.
24 MR. TAXAY: One second, Your Honor.
25 THE COURT: Sure.

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1 BY MR. TAXAY: 2027
2 Q. This evening that you guys went out till 4:00
3 o'clock to the bar, is that the last time you saw
4 Ms. Bates?
5 A. I saw her one other time when she came to get
6 her stuff from WaterOz.
7 Q. Since then, you haven't had any contact with
8 her?
9 A. No.
10 MR. TAXAY: Nothing further.
11 THE COURT: Anything further, Mr. Hoyt?
12 MR. HOYT: Nothing further, Your Honor. She
13 may be excused.
14 THE COURT: Thank you, Ms. Burke. You are
15 excused. I hope you catch your 11:00 o'clock flight.
16 Thank you.
17 Mr. Hinkson, would you resume the witness
18 stand, please?
19 * * *
20 DAVID ROLAND HINKSON,
21 having been called, previously sworn, testified as
22 follows:
23 THE COURT: Good morning, Mr. Hinkson. I
24 remind you, sir, that you are under oath.
25 MR. HOYT: Excuse me, Your Honor.

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1 THE COURT: Certainly. 2028
2 MR. HOYT: We have great air conditioning in
3 here today.
4 THE COURT: At least it's cooler in here today
5 than it was yesterday.
6 MR. HOYT: Yes, indeed.
7
8 FURTHER DIRECT EXAMINATION
9 BY MR. HOYT:
10 Q. Good morning, Mr. Hinkson.
11 A. Good morning.
12 Q. Mr. Hinkson, would you please tell the jury:
13 Do you have a criminal record?
14 A. No, I have never had any problem with the law.
15 Q. Have you ever been stopped by police?
16 A. Yes.
17 Q. And what was that all about?
18 A. I have had about four speeding tickets in my
19 entire life.
20 Q. Have you ever had a parking ticket?
21 A. No.
22 Q. Have you ever been stopped --
23 MR. SULLIVAN: I object. I object to this.
24 THE COURT: Sustained.
25

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1 BY MR. HOYT: 2029
2 Q. Was there an incident near Teton, Idaho?
3 A. Yes.
4 Q. Briefly, tell us what happened.
5 MR. SULLIVAN: Your Honor, I object if this is
6 something about being stopped for speeding.
7 THE COURT: If that's what it relates to, the
8 objection is sustained.
9 MR. HOYT: It doesn't relate to speeding, Your
10 Honor.
11 THE COURT: All right. Go ahead.
12 BY MR. HOYT:
13 Q. Mr. Hinkson --
14 MR. SULLIVAN: I would ask for a question
15 rather than an incident.
16 THE COURT: Yes. Why don't we do it that way?
17 BY MR. HOYT:
18 Q. After the Teton Dam flood, did you work on
19 the clean-up operation?
20 A. Yes. I volunteered to clean up the Teton Dam
21 mess.
22 Q. As a result of that, did you find some
23 snowmobiles that had been carried away in a flood?
24 THE COURT: Counsel, let me see -- I think I
25 know where you are going. The Government is objecting.

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1 Let me talk to you.

2 (Whereupon, the following sidebar discussion
3 was held outside the presence of the jury:)

4 THE COURT: What do you seek to elicit? That
5 he was investigated for the theft of a snowmobile? I
6 mean, it's not impeaching. I don't know how it's
7 relevant.

8 MR. HOYT: It shows the contact that he's had
9 with police in the past, the level of his cooperation.
10 it goes to general character. I think we are entitled
11 to show the jury some background. Especially since the
12 Government says that he is a law violator, I think that
13 his history is relevant to the subject.

14 THE COURT: If they tried to impeach him on
15 the subject, I wouldn't allow them do it because it's
16 not proper impeachment.

17 MR. HOYT: It will be mentioned by Dr. Duke.
18 It's in his report. He asked him if he had ever had any
19 contact with police, and he mentions this incident.

20 If he doesn't have a chance to -- I don't want
21 to have it come out later, not having given him the
22 opportunity -- it's, like, two more questions just to
23 get it out.

24 MR. SULLIVAN: Your Honor, it has nothing to
25 do with the case. He's trying to put on good character

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1 testimony that he -- I don't know exactly what he did.
2 If he was investigated, so what? I mean, it means, I
3 guess, no charges so, therefore, there was nothing, so
4 that's good character evidence.

5 THE COURT: Is that it? I mean, is that what
6 he is going to say?

7 MR. HOYT: He has talked about those
8 snowmobiles, and he had receipts for them. He had
9 purchased them, and so that ended the investigation
10 right there.

11 THE COURT: Then what is the relevancy? The
12 fact that somebody was investigated for a crime and is
13 either not charged or acquitted is not admissible.

14 MR. NOLAN: The only problem I had when I
15 heard the question was Mr. Hinkson said, "I have never
16 been," and I remembered that Dr. Duke had referred to
17 that, that he had been investigated about this.

18 THE COURT: I'm going to decide over the
19 weekend whether and how much of Dr. Duke's testimony is
20 coming in. I don't know until I hear from Dr. Duke what
21 the relevancy is, in terms of establishing a
22 psychological opinion.

23 The fact that somebody has been investigated
24 but never charged with a crime -- I just don't see what
25 that has to do with anything.

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1 MR. NOLAN: All I am saying is that I can
2 understand his follow-up question because we don't want
3 to appear as if Mr. Hinkson is lying when Dr. Duke gets
4 on the stand and says something about this incident.
5 That was my thought.

6 THE COURT: Let me do this: If Mr. Hoyt
7 thinks it's this important -- I question the relevancy
8 of it, but I think we probably spend more time arguing
9 about whether it's admissible or not than if we just let
10 it in.

11 But I'm going to let it in only because you
12 say that Dr. Duke is relying on it in forming whatever
13 his opinions are.

14 MR. SULLIVAN: I have another matter that is
15 related but separate. I seek permission of the court to
16 make my very first question to Mr. Hinkson on
17 cross-examination, "Isn't it true you are a convicted
18 felon?"

19 THE COURT: With his answer, I think that's a
20 fair question on cross-examination. I'm going to allow
21 you to ask that question.

22 MR. NOLAN: Isn't there an issue about whether
23 or not sentencing is required before you are, in fact,
24 convicted?

25 THE COURT: I had my Law Clerk research that;

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1 and the answer is it comes in as a conviction, although
2 you can establish on redirect that the matter has not
3 yet been appealed and, therefore, is not final yet.

4 MR. NOLAN: That goes back and forth,
5 depending upon the purpose. I have been reading stuff.

6 THE COURT: I thought about it. I have had
7 some research done, and that's what I understand the
8 Ninth Circuit law to be on that subject. You know,
9 that's as much as I need to say now.

10 (Whereupon, the following proceedings were
11 held in open court, in the presence of the jury:)

12 MR. HOYT: May I have the last question read
13 back by the court reporter?

14 (Whereupon, the last question and answer were
15 read back by the court reporter.)

16 BY MR. HOYT:

17 Q. Mr. Hinkson, can you briefly tell us what
18 happened?

19 A. Yes, I was arrested for looting.

20 Q. Related to the snowmobiles?

21 A. Yes. I found them.

22 Q. And were you able to provide some
23 documentation as to those?

24 A. Well, I called up the owners and tried to
25 return them; and the owners didn't want them back

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1 because they were going to get new ones for free. And
2 so I got a bill of sale signed for each one and I --
3 MR. SULLIVAN: I object. Unresponsive.
4 THE COURT: Sustained.
5 BY MR. HOYT:
6 Q. Were you able to present a bill of sale for
7 those items to the police?
8 A. Yes.
9 Q. Did that end the investigation?
10 A. Yes.
11 Q. Mr. Hinkson, have you been convicted by a jury
12 of the tax charges as have been discussed here in this
13 case, specifically, on May 5th of 2004?
14 A. Well, the Government thinks --
15 THE COURT: Just "yes" or "no."
16 THE WITNESS: -- I was convicted.
17 THE COURT: "Yes" or "no," were you convicted?
18 MR. SULLIVAN: Your Honor, I didn't hear the
19 answer.
20 THE COURT: The court reporter will re-read
21 the question and the answer.
22 (Whereupon, the previous question and answer
23 were read back by the court reporter.)
24 BY MR. HOYT:
25 Q. Is the answer "yes" or "no"? "Yes" or "no"?

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1 A. Okay. I will say "yes" then.
2 Q. Have you been sentenced on those charges yet?
3 A. No.
4 Q. Has the case been appealed yet?
5 A. No.
6 Q. Now, Mr. Hinkson, you were arrested on April
7 4, 2003, related to these alleged threats, as testified
8 by Agent Long; isn't that correct?
9 A. Yes, I was.
10 Q. And how long was it before the Government
11 indicted you on this offense?
12 A. Eighteen months.
13 Q. In Mr. Harding's discussion about the body
14 wire, Mr. Harding said that there was a long pause and
15 that you stared at his chest and that, from that, he
16 presumed that you were aware he was recording.
17 MR. SULLIVAN: I object to the summarization
18 of the testimony.
19 MR. HOYT: I am laying a foundation.
20 THE COURT: Overruled. I think it's a fair
21 foundational question.
22 BY MR. HOYT:
23 Q. Do you recall that general testimony, sir?
24 A. Yes, I do.
25 Q. And, Mr. Hinkson, were you aware, on the night

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1 of March 27, 2003, when you had the conversation with
2 Mr. Harding, that he was recording you?
3 A. No. I had no idea.
4 Q. After the raid of November 21, 2002, were
5 records concerning your credit with credit companies
6 removed? Did you discover they were removed?
7 A. Yes. The files were taken from the factory.
8 MR. SULLIVAN: I object. Relevance.
9 THE COURT: Sustained.
10 BY MR. HOYT:
11 Q. After the raid, was your credit shut down?
12 A. Yes.
13 MR. SULLIVAN: I object.
14 THE COURT: Sustained. Irrelevant.
15 BY MR. HOYT:
16 Q. Mr. Swisher contended in his testimony that,
17 at one point in time, you had asked him to murder your
18 former wife, Marie Hinkson, now Towerton. Do you recall
19 that?
20 A. Yes.
21 Q. Do you have any reason or motivation to want
22 her killed?
23 A. No.
24 MR. SULLIVAN: Asked and answered.
25 THE COURT: It is cumulative, counsel. You

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1 asked him that yesterday. Sustained.
2 BY MR. HOYT:
3 Q. In the tape-recorded radio interview that was
4 played for the jury, you are talking to a radio
5 announcer; is that correct?
6 A. Yes, that's correct.
7 Q. And what was the name of that program? Do you
8 recall?
9 A. I don't remember.
10 Q. Would the term "The Agitator Hour" refresh
11 your recollection?
12 A. Yes.
13 Q. Now, is this a regular program that goes on,
14 to your knowledge?
15 A. I don't know because it was the first time I
16 was ever on it, I think.
17 Q. Now, you had -- you had been a radio talk show
18 host, yourself?
19 A. Yes. 1,000 shows I've done.
20 Q. And do you recall, at the beginning of the
21 tape recording, what the approach of the announcer was?
22 Was it -- was it a spoof? Was it very serious? What
23 was going on? What type of a program was it?
24 MR. SULLIVAN: I object, Your Honor. It calls
25 for a characterization.

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1 THE COURT: The tape is in evidence.
 2 Sustained. The jury will have to draw its own
 3 conclusions.
 4 MR. HOYT: The full tape is not in evidence.
 5 THE COURT: Well, your question is improper.
 6 MR. HOYT: One moment, please.
 7 MR. NOLAN: We would move offer a piece of
 8 evidence, Your Honor. It's probably best to take it up
 9 at the bench.
 10 THE COURT: On this same subject?
 11 MR. HOYT: We can do it at another time. It
 12 doesn't have to be done now; but our purpose would be to
 13 be offering it through this witness, i.e., to have him
 14 authenticate the balance of the tape.
 15 THE COURT: Why don't you have him
 16 authenticate whatever it is you want him to
 17 authenticate. Go ahead. We will see where we go.
 18 BY MR. HOYT:
 19 Q. Mr. Hinkson, do you remember the broadcast of
 20 January 8, 2003?
 21 A. Yes, I do.
 22 Q. And there was a portion of it that was played
 23 here for the jury?
 24 A. Yes.
 25 Q. Was that the full tape?

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1 A. No.
 2 MR. HOYT: Your Honor, we would tender -- and
 3 I'm sure you want to take that up with us as a legal
 4 matter later. We would tender the balance of the tape
 5 that wasn't played for the jury and ask that we can do
 6 that at a later point in time.
 7 THE COURT: Let me take a look at it at the
 8 recess.
 9 MR. NOLAN: We want to have a foundational --
 10 whatever you think is necessary.
 11 THE COURT: You have done that. If I rule it
 12 admissible, you can play it. If I don't, then you
 13 won't.
 14 BY MR. HOYT:
 15 Q. Hinkson, as a matter of speech, do you use
 16 metaphors?
 17 A. Yes, constantly.
 18 Q. In the recording by Mr. Harding of March 27th,
 19 you make the following statement at page 36, starting at
 20 line 1.
 21 My question is -- I want to read you -- let's
 22 see. Let's see if we can put that before the witness.
 23 The easiest way might be with the exhibit book.
 24 Your Honor, may I approach?
 25 THE COURT: Sure.

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1 MR. NOLAN: Mr. Hoyt, I have it here.
 2 MR. HOYT: Exhibit H?
 3 MR. NOLAN: It's page 36 of the transcript.
 4 MR. HOYT: Page 36, okay. It's missing from
 5 this book.
 6 THE COURT: It should be -- isn't that 4-A,
 7 Exhibit 4-A, the transcript of the --
 8 MR. HOYT: It is also Exhibit 4-A.
 9 MR. NOLAN: I have the transcript page here.
 10 MR. HOYT: All right. May I put it on the
 11 Elmo, Your Honor?
 12 THE COURT: Yes. Go right ahead.
 13 BY MR. HOYT:
 14 Q. Mr. Hinkson, do you recall that you made this
 15 statement starting at the top of the page: "The feds
 16 are good for something, sport."
 17 And Mr. Harding said to you: "Good for sport.
 18 Did you bring the sporting feds today, Wilson? Yes, I
 19 did."
 20 And then you respond to him: "I got two IRS
 21 (inaudible) we are going to hunt them. Got the hound
 22 dogs ready? Yeah. (Inaudible) this one, white one.
 23 Yeah."
 24 And then Mr. Harding says to you: "Do you
 25 think there are good guys in the system, though, that

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1 just don't know?"
 2 Mr. Hinkson: "They quit."
 3 My question to you is: Were you speaking
 4 literally or metaphorically when you said, "We are going
 5 to hunt them?"
 6 A. Just metaphorically.
 7 Q. Why would you use that metaphor?
 8 A. There was a movie on TV about this where they
 9 had done this and we were -- I was kind of joking about
 10 this movie.
 11 Q. Is that the kind of humor that you follow?
 12 A. Not usually. I mean, I -- I was just BS'ing
 13 with Mr. J. C.
 14 MR. HOYT: Your Honor, subject to some
 15 follow-up questions that would relate to the tape
 16 recording of the radio interview and the portions that
 17 were not played previously, at this time, no more
 18 questions of Mr. Hinkson.
 19 THE COURT: Very well. Thank you, Mr. Hoyt.
 20 I will allow you to re-open if I admit that portion that
 21 you want to play.
 22 MR. HOYT: Thank you.
 23 THE COURT: Cross-examination?
 24
 25

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CROSS EXAMINATION

1 BY MR. SULLIVAN:

2 Q. Mr. Hinkson, let's start with last things
3 first. This passage that Mr. Hoyt just read to you that
4 started out on page 36, "The feds are good for
5 something, sport," you think that's funny, don't you?

6 A. Well, they hunt me. Yeah, it's funny.

7 Q. So you are hunting them?

8 A. No.

9 Q. Isn't it correct that the -- you didn't get
10 this from a movie, did you?

11 A. No. There was a movie where they took these
12 two agents and they took them out in the outback and
13 they hunted them.

14 Q. You found that amusing?

15 A. It was a good movie.

16 Q. You found that amusing?

17 A. No.

18 Q. The passage starts at page 135.

19 THE COURT: 35 or 135?

20 MR. SULLIVAN: I'm sorry. 35.

21 MR. HOYT: What line, counsel?

22 BY MR. SULLIVAN:

23 Q. Let's start at line 12. J. C. starts out
24 saying: "No, the feds, how are they staying healthy?"
25

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1 Mr. Hinkson: "Nobody is opposing them."

2 Informant: "Why?"

3 Hinkson: "You go to jail, nobody cares."

4 Informant: "You think somewhere somebody just
5 starts killing, go, okay. This is enough. They're not
6 railroading me anymore."

7 Mr. Hinkson: "That was a true story where
8 they are hunting those people, turn them loose, hunt
9 them like animals."

10 Informant: "Yeah. Yeah."

11 Hinkson: "But they kidnapped two IRS agents.
12 They turned them loose and hunted them. True story."

13 You thought that was a true story,

14 Mr. Hinkson?

15 A. I think the movie was based on that, yes, I
16 do.

17 Q. And you thought that true story was
18 entertaining?

19 A. Hollywood did, I think.

20 Q. Did you? You did, didn't you?

21 A. It was just a movie. It was a plot.

22 Q. You followed up that conversation with what
23 appears at page, 36 and you join in the fun.

24 You say: "The feds are good for something,
25 sport." And that expresses what you think of the feds,

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1 doesn't it?

2 A. I think there are some federal agents that are
3 very bad, and I think there are some good ones that are
4 trying to do their job and honor the Constitution.

5 Q. You further say: "I got two IRS (inaudible)
6 we are going to hunt them. Got the hound dogs ready?
7 Yeah. (Inaudible) this one, white one. Yeah."

8 When you say, "I got two IRS," what are you
9 referring to? The two IRS agents you are going to hunt?

10 A. I wasn't referring to anybody.

11 Q. You weren't referring to Jerold Vernon, the
12 revenue agent; and Steve Hines, the criminal
13 investigator?

14 A. No. I was just kind of BS'ing.

15 Q. Mr. Hoyt asked you if you used metaphors, just
16 a few moments ago; correct?

17 A. Yes, he did.

18 Q. Let me ask you this question, if this was a
19 metaphor, from page 25 of the radio interview on "The
20 Agitator Hour."

21 MR. HOYT: One moment, please, counsel.

22 THE COURT: Counsel, you are going to have to
23 enlarge that.

24 BY MR. SULLIVAN:

25 Q. Could we have the exhibit from the book? Page

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1 25 of Government's Exhibit 5A, starting at 740. At 740,
2 "DH," which is David Hinkson, do you see that on the
3 monitor?

4 A. Yes, I do.

5 Q. It reads: "About a week ago, but we sent her
6 another letter and she's in default as of Friday this
7 week again. That will be the fifth time."

8 You are talking about Nancy Cook?

9 A. Yes, I was, actually.

10 Q. You follow then with: "We're trying to give
11 her every opportunity to cough it up. We want that
12 stuff."

13 "Well, yeah."

14 And you follow with: "We got a
15 fifty-million-dollar lawsuit and that's the evidence we
16 need to finish her off. We need it."

17 Was it literal or a metaphor when you said you
18 needed it or wanted it to finish her off?

19 A. Well, I'm asking for my discovery here. To
20 "finish her off" would mean that she's going to lose in
21 court.

22 Q. It doesn't mean that you were going to finish
23 her off, in the metaphorical sense, that you were going
24 to kill her?

25 A. No. It reads the way it's supposed to read.

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1 It says "finish her off." It's the lawsuit. We are
2 talking about a lawsuit here.

3 Q. Those are your choice of words here; correct?

4 A. That's what it says.

5 Q. "Finish her off."

6 Let me ask you if this was also literal or
7 metaphorical when you said, at page 48 of the radio
8 interview, starting at 1454: "Well, I have to file a
9 motion to put her in contempt." You were, again,
10 referring to Ms. Cook?

11 A. Yes, I was.

12 Q. It says: "Well, no. She's -- she's
13 denying --"

14 You say: "Somebody has to. Somebody has to
15 say I motion to put her in contempt."

16 Announcer: "Well, no. Wait a minute. No.
17 Wait a minute. The judge -- this was the judge's order.
18 If somebody's not obeying the judge's order --"

19 And you say: "It's great. It's great because
20 she has to dismiss everything. If she doesn't have it
21 turned over, it's over for her."

22 Was that metaphorical or literal?

23 A. It's absolutely metaphorical. What I'm saying
24 here is she won't give me my discovery. If she won't
25 give me my discovery, she has to dismiss the phony

1 accusations against me.

2 By the way, I never got my discovery.

3 Q. Did I ask you that question, sir?

4 THE COURT: The jury will disregard what
5 Mr. Hinkson just volunteered. It's not responsive to
6 the question. It's stricken.

7 MR. HOYT: Discovery has been mentioned many
8 times and I'm --

9 THE COURT: Counsel, I have ruled.

10 MR. HOYT: I'm not arguing about that. I
11 wonder if we could have a definition of the term
12 "discovery" in a lawsuit so the jury might understand.

13 THE COURT: I will allow -- you can handle
14 that on redirect. I think the jury knows what discovery
15 is.

16 Go ahead.

17 BY MR. SULLIVAN:

18 Q. You didn't mean, again, "kill her," just in
19 some other metaphorical sense, but that things would go
20 badly for her in the lawsuit?

21 A. Yes.

22 Q. But you continued in that statement. After
23 you say, "It's over for her," you say, "And if she turns
24 it over knowing that she forged that indictment, she's
25 toast."

1 Is that metaphorical or literal?

2 A. That means that she's going to go to jail.

3 Q. By the way, she never went to jail, did she?

4 A. No. She kidnapped me.

5 Q. You went to jail?

6 A. Right. I was kidnapped.

7 Q. So when you say, "She's toast," you weren't
8 referring to killing her; right?

9 A. No. I think she just should be in jail where
10 she belongs.

11 Q. That was your choice of words, though, to say,
12 "She's toast"?

13 A. It sure was.

14 Q. You say you were kidnapped, Mr. Hinkson?

15 A. Yes, I do.

16 Q. You know there was a court order for your
17 arrest; correct?

18 A. I don't believe so.

19 Q. You were brought before Magistrate Judge
20 Williams on --

21 A. There was no attached oath and affirmation;
22 therefore, it was an invalid arrest warrant.

23 Q. So you must have moved to have the charges
24 dismissed on that basis; correct?

25 A. It depends upon which case we are talking

1 about now.

2 Q. Which case are you talking about?

3 A. You are asking the questions. Why don't you
4 rephrase it so I know what case you are talking about?

5 Q. I will. You said you were kidnapped. Which
6 case were you kidnapped in?

7 A. I would say, both of them.

8 Q. Okay. It doesn't matter which one I'm asking
9 about; is that correct?

10 A. That's correct.

11 Q. Your first kidnapping would have been
12 11/21/02?

13 A. Yes.

14 Q. And you know there was an arrest warrant
15 issued by a Federal Judge for your arrest on that date?

16 A. No Federal Judge signed that arrest warrant.

17 Q. So you must have moved to have the case
18 dismissed on that basis; right?

19 A. No, I didn't. You said "Federal Judge." It
20 was a Magistrate.

21 Q. He is a Federal Judge, sir.

22 A. I didn't know Magistrates were Federal Judges.

23 Q. So the answer to my other question was, no,
24 you didn't move to dismiss on the basis that there was
25 no signed arrest warrant; right?

1 A. I don't remember if I did or not.

2 Q. You spent a lot of time preparing for your
3 testimony in this case, have you not?

4 A. I've spent zero time because I was supposed to
5 be on Monday or Tuesday of next week, not today.

6 Q. So your testimony is you haven't spent any
7 time preparing to testify, is that it?

8 A. I have not spent any time preparing for this
9 testimony.

10 Q. After you were arrested 11/21, you contend
11 that was a kidnapping?

12 A. Absolutely.

13 Q. And you told Judge Williams that; correct?

14 A. I told him I didn't understand the nature and
15 the cause.

16 Q. And you told him, "The defendants have
17 kidnapped the plaintiff"?

18 A. Yes, I did.

19 Q. And he didn't -- excuse me. He said, "That's
20 your civil suit;" right?

21 A. I think he said that, yes.

22 Q. Your second kidnapping was April 4, 2003?

23 A. Yes.

24 Q. And that, again, was based upon a warrant
25 signed by a Federal Judge?

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1 A. Without an oath and affirmation.

2 Q. And you were detained on that arrest warrant,
3 weren't you?

4 A. I was put on hold.

5 Q. You were put on hold?

6 A. That's what you call it when you put somebody
7 in jail with no bond or bail for 22 months. You call it
8 a hold.

9 Q. Didn't the judge who signed the warrant call
10 it a revocation of bond for violation of the terms of
11 your bond?

12 A. I think he said something about I violated my
13 release -- my release -- I'm not sure if I worded quite
14 exactly right, but I don't have it in front of me so --

15 Q. You know that the reason for your arrest on
16 April 4th was because there was an arrest warrant issued
17 for your violation of bond?

18 A. There was an arrest warrant issued for making
19 threats.

20 Q. Which violated your bond?

21 A. But there were no threats.

22 Q. You know you were -- you had your bond
23 violated -- that is, revoked -- because of threats?

24 A. There were no threats. There was no evidence
25 of a threat ever entered into the court until 22 months

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1 later.

2 Q. You had a hearing before a Federal Judge,
3 didn't you?

4 A. I never had a --

5 Q. Let me finish the question. You had a hearing
6 before a Federal Judge on the revocation of bond, too,
7 didn't you?

8 A. I have never had a bond or bail hearing in 22
9 months.

10 Q. You had one on April 9, 2003?

11 A. That was not a bond and bail hearing.

12 Q. And it was before --

13 A. It was not a de novo hearing.

14 THE COURT: Wait for the question,
15 Mr. Hinkson.

16 BY MR. SULLIVAN:

17 Q. That was before Judge Mikel Williams who had
18 set your bond, wasn't it?

19 A. I have never been on bond, that I know of.

20 THE COURT: Mr. Hinkson, did you have a
21 hearing before Judge Mikel Williams on April 9, 2003?
22 "Yes" or "no"?

23 THE WITNESS: Yeah, there was a hearing.

24 BY MR. SULLIVAN:

25 Q. All right. And you were seeking to be

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1 released on bond again; correct?

2 A. I had no chance to prepare for that hearing so
3 I don't know what -- you said I'm seeking something?

4 Q. You were represented by Brit Groom; correct?

5 A. He showed up, yes.

6 Q. Is there a difference between showing up and
7 being represented, Mr. Hinkson?

8 A. When there is no time to prepare, I don't
9 think it's such good representation.

10 Q. And after the Judge ordered you held on the
11 revocation of your bond, you appealed that to a District
12 Court Judge, also; right?

13 A. We appealed the improper detention, yes.

14 Q. Right. And the District Court Judge affirmed
15 the ruling of the Magistrate?

16 A. With no detail, yes.

17 Q. So you have had at least two hearings on the
18 revocation of bond; correct?

19 A. They were not bond and bail hearings. They
20 were not de novo hearings. So the answer is "no." I
21 have never had a bond or bailing hearing de novo. No, I
22 have not.

23 Q. When the District Court Judge upheld the
24 Magistrate Judge, you took an appeal to the Ninth
25 Circuit Court of Appeals about the revocation of your

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1 bond; true?

2 A. Yes, I did.

3 Q. So you had another review, a third review;

4 correct?

5 A. Yes, I did.

6 Q. And you were still held in jail because you

7 were found to have violated the terms of your bond and

8 to be a flight risk?

9 A. There has never been any evidence presented to

10 this court to show that I had ever made a threat at that

11 time.

12 Q. Agent Long testified at the first hearing on

13 April 9th; correct?

14 A. He committed five counts of perjury on that.

15 It's proven on the record.

16 Q. The Judge believed his testimony; correct?

17 A. Third-party hearsay is not evidence.

18 Q. The Judge didn't reject his testimony? He

19 accepted his testimony as accurate and truthful, didn't

20 he?

21 A. What he said was the perjury didn't matter or

22 something like that.

23 Q. Everyone perjures themselves against you; is

24 that correct, Mr. Hinkson?

25 A. It's proveable perjury. It's on the record.

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1 THE COURT: Mr. Hinkson, answer Mr. Sullivan's

2 question.

3 The court reporter will read back the

4 question.

5 (Whereupon, the previous question and answer

6 were read back by the court reporter.)

7 THE WITNESS: Everybody you have brought to

8 court.

9 BY MR. SULLIVAN:

10 Q. So I am also a part of those who bring perjury

11 against you, Mr. Hinkson?

12 A. I have no evidence that you personally did it.

13 Q. But you believe it?

14 A. I know that you know I'm innocent, and you are

15 prosecuting a person that you know is innocent.

16 Q. And you made that allegation against Dennis

17 Albers, too, didn't you?

18 A. I sure did.

19 Q. And you made that allegation against Nancy

20 Cook, didn't you?

21 A. Yes, I did.

22 Q. You made -- you make allegations without proof

23 against lots of people, don't you, Mr. Hinkson?

24 A. No, not lots of people.

25 Q. You accused Steve Hines of trying to murder

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1 you?

2 A. I think he did. He had a handgun in his hand.

3 Q. You had absolutely no proof of such a thing

4 that he was trying to murder you?

5 A. Well, we are all entitled to our opinion. I

6 didn't wave a gun in your face.

7 Q. You accuse Nancy Cook of being a member with

8 Mr. Hines to murder you on 11/21; correct?

9 A. No, I don't think Nancy Cook was there.

10 Q. She wasn't there, but you later accused her of

11 being a part of the plot to murder you?

12 A. No. She's not part of a plot to murder

13 anybody. She is just the prosecutor.

14 MR. NOLAN: Could I approach briefly, Your

15 Honor? I don't mean to interrupt.

16 THE COURT: Yes.

17 (Whereupon, the following sidebar discussion

18 was held outside the presence of the jury:)

19 MR. NOLAN: I would ask the court to admonish

20 the jury that any finding by a previous court or judge

21 regarding any threats or anything is not relevant to

22 whether or not he is guilty of those charges today, in

23 light of the cross-examination.

24 THE COURT: I think that's proper. Unless the

25 Government objects, I will give that limiting

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1 instruction now.

2 MR. SULLIVAN: Your Honor, he claims there

3 were no -- there was no evidence produced, that everyone

4 perjured himself. For the court to tell the jury now

5 that they shouldn't consider, you know, what happened in

6 those hearings --

7 THE COURT: No. I think Mr. Nolan's request

8 is more limited. He just wants me to tell the jury that

9 they are not to consider, in deciding whether or not

10 Mr. Hinkson is guilty of the counts in the indictment,

11 any decisions by a Federal Judge in connection with

12 holding him without bail.

13 (Whereupon, the following proceedings were

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

15 THE COURT: Ladies and gentlemen, I need to

16 give you another limiting instruction.

17 You just heard some testimony in response to

18 Mr. Sullivan's questions about decisions by other

19 Federal Judges and Courts of Appeal concerning the

20 reasons for holding Mr. Hinkson without bail.

21 You are not to consider the fact that other

22 judges have ruled upon some of the evidence in making

23 that determination, in evaluating the evidence that you

24 are hearing here in court, in deciding whether or not

25 Mr. Hinkson is guilty of the offenses charged in the

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1 Indictment. Do you understand that?
 2 Okay. I see everybody nodding their head
 3 "yes."
 4 Thank you, Mr. Nolan.
 5 Go ahead, Mr. Sullivan.
 6 BY MR. SULLIVAN:
 7 Q. Mr. Hinkson, you just now said you don't
 8 believe you ever said that Nancy Cook was part of the
 9 plot to murder you with Steve Hines?
 10 A. She didn't show up on the property. She
 11 plotted to bring these phony, false indictments against
 12 me.
 13 Q. Could I have a "yes" or "no" answer? Did you
 14 accuse her of plotting to murder you?
 15 A. I don't know. I don't think so.
 16 Q. Didn't you put out on a website something
 17 relating to your arrest, something called "David
 18 Hinkson's Day of Terror at the Hands of Satan's Foot
 19 Soldiers"?
 20 A. I didn't put that on the Internet.
 21 Q. So where it says, "I, David Hinkson," wasn't
 22 you?
 23 A. I wrote the article; but a bunch of other
 24 people kind of massaged it, also. So, you know, it's --
 25 Q. It's not quite your work? It's someone else's

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1 work?
 2 A. It would be a combination of different people
 3 that were active in writing that story, yes.
 4 Q. But you started it, and it's your version of
 5 what happened on 11/21/02?
 6 A. I think the rough story is my version, yes.
 7 Q. Didn't you say the following in that rough
 8 story: "After thinking about the whole situation, I
 9 believe that the defendants, Nancy Cook and Steve Hines,
 10 orchestrated the raid on WaterOz and my home for the
 11 sole purpose of murdering me and ending the lawsuit that
 12 was filed against them by me in the amount of fifty
 13 million dollars." You wrote that, didn't you?
 14 A. In the rough draft, yes, I wrote that.
 15 Q. So you just forgot that you accused a Federal
 16 Prosecutor of trying to murder you?
 17 A. I said "orchestrated," didn't I? I don't have
 18 it in front of me so --
 19 Q. It says: Nancy Cook and Steve Hines,
 20 together, orchestrated the raid for the sole purpose of
 21 murdering me.
 22 A. I think that was their purpose, yes.
 23 Q. Of course, you had no proof of such a thing?
 24 A. No proof?
 25 Q. Yes. You had no proof. You were not there to

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1 hear anyone talk about, "Let's go murder Dave Hinkson"?
 2 A. A SWAT team and machine guns aimed at my house
 3 and ear plugs in is no proof?
 4 Q. You made it up as you were preparing this,
 5 just to try to influence the public, didn't you?
 6 A. No. I think that -- I think what you did was
 7 very vicious, surrounding my house.
 8 Q. You prepared this document, "David Hinkson's
 9 Day of Terror at the Hands of Satan's Foot Soldiers," to
 10 influence the public when they read it; right?
 11 A. Well, yes. I think that was to influence the
 12 public, yes.
 13 Q. And it was the same purpose in going on "The
 14 Agitator Hour," to influence the public; correct?
 15 A. Yes, I did.
 16 Q. Because you were facing trial on the tax case?
 17 A. And the FDA charges.
 18 Q. With the FDA charges and the structuring of
 19 money charges; right?
 20 A. Yes.
 21 Q. And you hoped, by putting your message out in
 22 this fashion, you could influence the public in your
 23 favor?
 24 A. Oh, I would think so, yeah.
 25 Q. That could help you with any jury that heard

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1 your tax case?
 2 A. I don't know if very many people saw the
 3 letter. I don't know if that would help with my jury.
 4 Q. You hoped it would when you put it out on the
 5 website and did the radio show?
 6 A. I don't think it had anything to do with the
 7 jury. I think it was just me exposing my perception of
 8 what is being done to me.
 9 Q. And in order to expose this corruption, you
 10 made up a lot of lies about Nancy Cook and Steve Hines?
 11 A. I don't think those are lies. I think they
 12 orchestrated to get me any way they could.
 13 Q. You claimed Steve Hines came through the door
 14 with a silver handgun --
 15 A. Yes, I did.
 16 Q. -- on 11/21? And you claim that he -- they
 17 were -- they, the agents present, were going to kill you
 18 and put that gun in your dead fingers? I think you used
 19 that expression; correct?
 20 A. Somewhere I think I said that, yes.
 21 Q. Right?
 22 A. I'm not sure where.
 23 Q. Of course, that didn't happen, did it?
 24 A. No, because I said, "It's on the headboard,"
 25 and I don't think they expected me to answer that way.

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1 I really believe that they were holding the silver
2 handgun to plant it in my hands. That is my belief
3 system.
4 Q. That's your belief system so that, therefore,
5 makes it true?
6 A. It's my belief system. And when I wrote that,
7 I expressed it as my belief of what happened.
8 Q. Now, you had a handgun there, right?
9 A. Yes. Two of them, actually.
10 Q. When you refer to "on the headboard," you are
11 referring to a gun of your own?
12 A. Yes, it was.
13 Q. Was it registered to you?
14 A. I don't know.
15 Q. Where did you get it?
16 A. Years ago. I don't know. Las Vegas
17 somewhere.
18 Q. But you have had it -- do other people know
19 it's yours?
20 A. I don't understand what you mean.
21 Q. Did you show it to anybody? Did you take it
22 out with some of the people to go shooting?
23 A. No, I don't think it's ever been shot but one
24 time.
25 Q. But you have shot it, right?

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1 Q. The fact that nothing happened at all doesn't
2 influence your belief system, does it?
3 A. Nothing happened at all?
4 Q. Right. No one shot you? No one planted a gun
5 on you?
6 A. They were planning to shoot if I would have
7 looked out the window, I believe.
8 Q. And that didn't happen either, did it?
9 A. That's because I didn't go to the window.
10 Q. They could have pushed you to the window,
11 couldn't they?
12 A. No. Then they would get shot, maybe.
13 Q. You said there was -- when you came back from
14 the bond hearing, you found urine in the bathtub?
15 A. I did, and ear plugs all around the house.
16 Q. And because you are skilled in chemistry, you
17 must have taken a sample of the urine in the tub to
18 prove your allegation?
19 A. No. I just had somebody clean it up.
20 Q. Because you are sure that they were planning
21 to kill you, you must have taken photos of the urine in
22 the tub?
23 A. We took photos of everything.
24 Q. You took photos of what, sir?
25 A. Footprints, the muddy footprints, the doors

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1 A. One time, yes.
2 THE COURT: Counsel, the record is a little
3 confused here. I believe the witness testified that he
4 had two guns, and you are asking him about one.
5 BY MR. SULLIVAN:
6 Q. I'm talking about the one you said was on the
7 headboard.
8 A. Yeah. It was a .45.
9 Q. You had a .45 on the headboard?
10 A. Uh-huh.
11 Q. Was there anything that stopped the agents
12 from taking that gun and putting it in your dead fingers
13 if they wanted to?
14 A. I think they didn't know who was all storming
15 into the room. They were surprised, I think, to see me
16 laying there. They all had ski masks on.
17 Q. Yes.
18 A. I think they hesitated in their plan. That's
19 my belief.
20 Q. And that, therefore, makes it true?
21 A. In my mind, yes.
22 Q. So Nancy Cook and Steve Hines didn't
23 orchestrate it that well; is that correct?
24 A. I don't think it went according to the plan
25 they hoped.

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1 that got battering-rammed, the urine in the bathtub --
2 we took a video of everything that was done.
3 Q. Oh, you didn't mention that on direct, did
4 you?
5 A. Nobody asked me about a video on direct.
6 MR. SULLIVAN: Your Honor, I would like to
7 have the document that I was reading from marked as the
8 next exhibit.
9 THE COURT: Very well.
10 MR. HOYT: Is that in? Is that already in?
11 THE COURT: I think it's previously been
12 marked as Exhibit 7; is that correct, Mr. Sullivan?
13 MR. SULLIVAN: Yes, Your Honor.
14 THE COURT: All right.
15 THE COURTROOM CLERK: Do you want it 7-A or do
16 you want it 13? We could do 7-A or 13.
17 THE COURT: Do we have another 7?
18 THE COURTROOM CLERK: We have a 7.
19 THE COURT: It's already marked as 7.
20 THE COURTROOM CLERK: He just wanted this
21 portion.
22 THE COURT: Do you want the whole thing or
23 just the portion?
24 MR. SULLIVAN: The whole thing, Your Honor.
25 THE COURT: The whole thing. All right.

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1 Would you like it shown to the witness?
 2 MR. SULLIVAN: Yes, Your Honor.
 3 THE COURT: Ms. Longstreet?
 4 THE COURTROOM CLERK: Did you admit it, Your
 5 Honor?
 6 THE COURT: I haven't admitted it yet,
 7 Mr. Sullivan. Let's have him authenticate.
 8 MR. SULLIVAN: What is the number, please,
 9 your Honor?
 10 THE COURT: 7, counsel.
 11 BY MR. SULLIVAN:
 12 Q. I am showing you Government's Exhibit 7, a
 13 printout of the document I was just reading from, "David
 14 Hinkson's Day of Terror." Do you recognize it?
 15 A. Yeah. I have seen it before.
 16 Q. Who were the other people who you say helped
 17 you draft it?
 18 A. Well, it kind of went everywhere. I know that
 19 Rod Remlin pitched in and helped write it. Just a
 20 variety of different people. I didn't even come up with
 21 the title.
 22 Q. Who did?
 23 A. I'm not sure.
 24 MR. SULLIVAN: Your Honor, I move the
 25 admission of Government's Exhibit 7.

1 MR. HOYT: No objection.
 2 THE COURT: Government's Exhibit 7 is
 3 admitted.
 4 (Whereupon, Government's Exhibit No. 7 was
 5 received in evidence.)
 6 BY MR. SULLIVAN:
 7 Q. I am showing you Government's Exhibit 7 to the
 8 jury, the document entitled "David Hinkson's Day of
 9 Terror at the Hands of Satan's Foot Soldiers," by David
 10 Hinkson.
 11 THE COURT: Can you focus that, Mr. Sullivan?
 12 BY MR. SULLIVAN:
 13 Q. The passage I read to you is from page two,
 14 the yellow underlining, the yellow highlighting. Do you
 15 see that, Mr. Hinkson?
 16 A. Yes, I do.
 17 Q. At the bottom of the page -- let me ask you
 18 this: Is it your contention, sir -- let me show you the
 19 second page of the document. Do you see where it says,
 20 "In light of the fact that I have always made myself
 21 available and accessible to the court and defendant
 22 Hines and Cook . . ." Do you see that?
 23 A. Yes. I see that, yeah.
 24 Q. How did you make yourself accessible to the
 25 courts and Mr. Hines and Mr. Cook?

1 A. All you have to do is come and knock on the
 2 door.
 3 Q. How did you make yourself accessible to
 4 Mr. Hines and Ms. Cook?
 5 A. I was never in hiding.
 6 Q. How did you make yourself accessible to the
 7 court?
 8 A. I guess you just serve papers like you
 9 normally would anybody else.
 10 Q. Isn't it true, sir, that you were invited to
 11 meet with Special Agent Hines during his investigation
 12 and you declined?
 13 A. I think he cancelled.
 14 Q. Didn't he invite you to have a meeting, and
 15 you didn't show up?
 16 A. No.
 17 Q. Isn't it true you were invited to appear
 18 before the Grand Jury to testify?
 19 A. I do remember that, yes.
 20 Q. And did you make yourself accessible to the
 21 Grand Jury by doing that?
 22 A. Yes. I was going to come, but there was
 23 stipulations in there as to what I had to say; and,
 24 therefore, I decided, under direction of counsel, not to
 25 go.

1 Q. That invitation appears in Government's
 2 Exhibit 1, your civil lawsuit; correct?
 3 A. I'm not sure.
 4 THE COURT: Counsel, would this be a good
 5 time, while you are looking at that, to take our morning
 6 recess?
 7 MR. SULLIVAN: I have it, Your Honor.
 8 THE COURT: All right. Go ahead.
 9 MR. SULLIVAN: All right. We need the break,
 10 Your Honor.
 11 THE COURT: All right. Ladies and gentlemen,
 12 we will take our fifteen-minute recess at this time.
 13 (Recess.)
 14 (Whereupon, the following proceedings were
 15 held outside the presence of the jury.)
 16 THE COURT: I know you have stuff to take up
 17 with me, but let me dispose of the letter that was
 18 tendered to me this morning for in-camera review.
 19 For the record, it has got two dates on it,
 20 the most recent of which is a January 10, 2005, letter
 21 from the Department of Navy Headquarters, United States
 22 Marine Corps, to Mr. Ben Keeley, K-e-e-l-e-y, of the
 23 Idaho Division of Veterans Services, from Lieutenant
 24 Colonel K. G. Dowling, D-o-w-l-i-n-g, who is the
 25 Assistant Head for the Military Awards Branch.

1 Having reviewed it, I assume the Government
2 has no objection if it's disclosed to the defense. I
3 believe it to be Giglio material.

4 MR. SULLIVAN: Yes, Your Honor.

5 THE COURT: Very well. Ms. Longstreet, would
6 you provide copies to defense counsel?

7 THE COURTROOM CLERK: All three of them to the
8 defense?

9 THE COURT: I think the Government has a copy.
10 We will keep one for the court record. She does have --
11 oh, give the third one to the Government.

12 MR. SULLIVAN: Sorry.

13 THE COURT: That's all I had. What have you
14 got? Somebody wanted to see me? No? That was it?

15 THE COURTROOM CLERK: You don't want this
16 marked or anything?

17 MR. NOLAN: I would ask that it be a court
18 exhibit.

19 THE COURT: Let's do that. Let's give it a
20 court exhibit number and make it a part of the record
21 that way.

22 THE COURTROOM CLERK: Court's Exhibit No. 1 is
23 marked.

24 THE COURT: Very well.

25 THE COURTROOM CLERK: And sealed, Your Honor?

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1 THE COURT: Yes.

2 Mr. Hinkson, why don't you resume the witness
3 stand. As soon as you do that, we will bring in the
4 jury.

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

7 THE COURT: Mr. Sullivan, I believe there was
8 a question pending that you can restate or I can have
9 the court reporter read it back, if you would like,
10 however you want to do it.

11 MR. SULLIVAN: If we could have it read back,
12 the last question?

13 (Whereupon, the previous question was read
14 back by the court reporter.)

15 BY MR. SULLIVAN:

16 Q. Mr. Hinkson, showing you Bates number 65 from
17 Government Exhibit 1, your civil lawsuit, do you
18 recognize this letter?

19 A. No, I don't recognize it.

20 Q. Did you attach it to your civil lawsuit?

21 MR. HOYT: Your Honor, just for clarification,
22 objection. I think it was attached to a Memorandum in
23 Support. The lawsuit was filed on April 16th, and it
24 would be a physical impossibility to have attached the
25 May 22nd letter; so that's my objection.

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1 THE COURT: It appears to be -- am I correct,
2 Mr. Hoyt, it appears to be attached to a portion of
3 Exhibit 1 that begins at Bates 044, captioned
4 "Memorandum in Support of Objection to Certification"?

5 MR. HOYT: Yes, Your Honor. I believe that
6 was an August 27, 2002, filing.

7 THE COURT: With that clarification,
8 Mr. Sullivan, you may proceed.

9 BY MR. SULLIVAN:

10 Q. That was part of your lawsuit, correct?

11 MR. HOYT: Objection, Your Honor. I don't
12 mean to be hypertechnical, but it may have been raised
13 as a part of a motion that came up in the lawsuit. It
14 doesn't necessarily mean that it was, quote, "part of
15 the lawsuit."

16 THE COURT: Sustained.

17 Why don't -- Mr. Sullivan, perhaps you can
18 just ask the question directly without showing the
19 letter. That might be the better way to do it.

20 BY MR. SULLIVAN:

21 Q. Isn't it true, sir, you were invited to appear
22 before the Grand Jury?

23 A. In reading that letter, we asked -- my lawyer
24 asked, first, that I see the Grand Jury -- and then that
25 letter was in response to our -- so the answer is "yes"

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1 on that.

2 Q. You were invited to appear and testify before
3 the Grand Jury?

4 A. Yeah. After my lawyer requested it, yes.

5 Q. And after he requested it, you were invited to
6 do so?

7 A. Correct.

8 Q. And you were given a date that you could
9 appear?

10 A. Correct.

11 Q. But you didn't? You declined that invitation?

12 A. It was declined --

13 THE COURT: "Yes" or "no," Mr. Hinkson? Did
14 you decline it?

15 THE WITNESS: Well, we didn't show up.

16 BY MR. SULLIVAN:

17 Q. Now, isn't it true that one of your complaints
18 about the Grand Jury was that Ms. Cook only put people
19 before it as witnesses who were unfriendly to you?

20 A. That's very true.

21 Q. Did you consider Jeri Gray to be unfriendly to
22 you?

23 A. No. In fact, she's adopted me as her son.

24 MR. SULLIVAN: I move to strike, Your Honor.

25 THE COURT: If you wish.

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1 MR. SULLIVAN: All right. I will withdraw it.

2 Q. Jeri Gray adopted you as her son? Very good.

3 A. She did, yes.

4 Q. And she appeared before that Grand Jury;

5 right?

6 A. She was forced to appear, yes.

7 Q. Did she appear or didn't she?

8 A. She appeared.

9 Q. She wasn't your enemy, was she?

10 A. No.

11 Q. And Grant Walton appeared before the Grand

12 Jury, likewise?

13 A. Yes, he did.

14 Q. He wasn't your enemy?

15 A. No. He's a good man.

16 Q. Bruce Meinen appeared before the Grand Jury,

17 and he wasn't your enemy?

18 A. That's true. He's a good man, too.

19 Q. But in the interview on "The Agitator Hour",

20 you claim that Ms. Cook only put people unfriendly to

21 you before the Grand Jury; right?

22 A. If that's what I said, that's what I said.

23 Q. Well, you knew it was false when you said it?

24 A. Well, every person that ever seems to have

25 been fired from WaterOz has been taken and put in front

1 of a Grand Jury.

2 Q. Do you admit, when you said on "The Agitator

3 Hour" that Ms. Cook only put unfriendly people before

4 the Grand Jury, that that was a false statement because

5 you knew at least three friends of yours had been put

6 before the Grand Jury?

7 MR. HOYT: Your Honor, I think that is

8 argumentative.

9 THE COURT: I think it's a fair question.

10 "Yes" or "no"?

11 THE WITNESS: I -- it's probably a

12 misstatement.

13 BY MR. SULLIVAN:

14 Q. A misstatement?

15 A. Unless, of course, of the time line. It

16 depends upon when they were in front of the Grand Jury,

17 and it would depend when I made the statement.

18 Q. You appeared on "The Agitator Hour" after your

19 indictment; correct?

20 A. I believe so.

21 Q. Didn't you appear on "The Agitator Hour" on

22 January 8, 2003?

23 A. I don't have a recollection; but if you say

24 so, it's okay.

25 Q. By the way, didn't you say on "The Agitator

1 Hour" that you have a photographic memory?

2 A. I have a pretty good memory.

3 Q. You don't remember the date that you appeared

4 on "The Agitator Hour"?

5 A. It didn't seem important enough to remember

6 the date.

7 Q. But you recall that it was after your

8 indictment; correct?

9 A. Yeah, I would agree with that.

10 Q. And you knew that those three people, Jeri

11 Gray, Bruce Walton and -- excuse me -- Grant Walton and

12 Bruce Meinen all appeared before the Grand Jury before

13 your indictment?

14 A. That's true.

15 Q. They all appeared in 2002?

16 A. Okay.

17 Q. Was it a -- referring to Government's Exhibit

18 Exhibit 5-A, the radio transcript -- let me put it on

19 the monitor.

20 Q. Page seventeen, line 494, was it a

21 misstatement at this point when the announcer asked:

22 "Who were the people that -- who were the people that

23 they called into this Grand Jury that were saying all

24 this?"

25 And you answered: "Anybody that I ever fired

1 or didn't like me."

2 And you answered: "They found them all."

3 A. It's true.

4 Q. That's what you said; right?

5 A. Yes.

6 Q. You knew that was false when you said it?

7 MR. HOYT: Objection, Your Honor. It

8 mischaracterizes the whole transaction. He didn't

9 say -- he was asked previously: Did you say --

10 THE COURT: Counsel, you can bring it up on

11 redirect. Your objection is overruled. It's a fair

12 question on cross-examination.

13 BY MR. SULLIVAN:

14 Q. Was that a misstatement when you made that

15 statement that I just read?

16 A. Well, I didn't exclude the people that were

17 friends; so I would say, yes, it's probably a

18 misstatement.

19 Q. Because you knew that Mr. Walton, Mr. Meinen,

20 and Miss Gray had all appeared before the Grand Jury in

21 2002; right?

22 A. Yes.

23 Q. Another one of your friends, a fourth friend,

24 appeared before the Grand Jury in 2002. You knew that

25 was Mr. Swisher; right?

1 A. Yes. I was aware he was in front of the Grand
 2 Jury, yes.
 3 Q. And he was your friend in 2002, wasn't he?
 4 A. He was a tester, an acquaintance. I wouldn't
 5 call him my friend.
 6 Q. And you accused -- strike that.
 7 And you also accused Nancy Cook of putting
 8 people before the Grand Jury who lied about you; right?
 9 A. Absolutely.
 10 Q. And you took that very personally, didn't you?
 11 A. Yes. I would take it personal, yes.
 12 Q. You took it so personal that you decided to do
 13 something about it?
 14 A. Yeah. I sued her.
 15 Q. You did more than that, didn't you,
 16 Mr. Hinkson?
 17 A. I can't think of anything else.
 18 Q. Same page, seventeen, starting at 491: "God,
 19 everything is a lie that they said. They sat there day
 20 after day hearing orchestrated lies against me."
 21 A. Yes.
 22 Q. "I do take that kind of personal."
 23 A. Yeah. You would take it personal if somebody
 24 is lying against you in front of the Grand Jury.
 25 Q. I am going to show you again Government's

1 Exhibit 7, a document entitled "Hinkson's Day of
 2 Terror." Referring to the second page, you made the
 3 statement at the very bottom, yellow highlighted, "I was
 4 not, and am not, planning on going anywhere;" correct?
 5 A. That's what it says on the paper.
 6 Q. What is the date that you made that statement
 7 on this paper?
 8 A. I don't know. What's it dated?
 9 Q. Do you see the date that I'm pointing to at
 10 the top of Exhibit 7?
 11 A. Yes.
 12 Q. It says published November 29, '02?
 13 THE COURT: Excuse me, counsel. I think there
 14 is a "12" there. I think it's December.
 15 MR. SULLIVAN: It's 11/29/02.
 16 THE COURT: Where are you looking? I'm
 17 looking at something that says "published."
 18 MR. HOYT: Published 12/10/02.
 19 THE COURT: Are you looking at a different
 20 piece of paper than I am?
 21 MR. HOYT: Do you want to borrow my copy? Go
 22 ahead.
 23 BY MR. SULLIVAN:
 24 Q. I'm sorry. Your Honor is correct.
 25 "12/10/02," do you see that at the top? It's yellow

1 highlighted.
 2 A. Yes.
 3 Q. So at that point in time, you had been
 4 indicted and arrested and you made your appearance
 5 before Judge Mikal Williams; correct?
 6 A. Yes.
 7 Q. And he had released you on bond; correct?
 8 A. No.
 9 Q. He didn't release you on bond?
 10 A. No. He just released me on -- he called it
 11 O.R., I believe.
 12 Q. Right.
 13 A. On my own recognizance because he said I never
 14 had a criminal record and I was not a threat.
 15 Q. And you had to sign a document that was an
 16 O.R. bond?
 17 A. Well, I didn't know it was a bond. There was
 18 no money attached, but I did not sign it.
 19 Q. You were ordered to sign it; correct?
 20 A. Yes, I was ordered to sign it.
 21 Q. And then you did?
 22 A. No, I didn't.
 23 Q. You didn't sign it?
 24 A. No.
 25 Q. Showing you Government's Exhibit 5-A, the

1 transcript of the radio interview, you talked about
 2 appearing before Judge Williams on the radio interview,
 3 didn't you?
 4 A. I don't recall. But if this is what it says,
 5 I will go with it.
 6 MR. HOYT: Is there a page?
 7 BY MR. SULLIVAN:
 8 Q. Page 40, starting at 1216. Excuse me. Start
 9 at 1208. Starting at 1208, you said -- on "The Agitator
 10 Hour," you are referring to your appearance before Judge
 11 Williams at this point, are you not?
 12 A. Yes, I am.
 13 Q. You said: "I'm confused. I don't know the
 14 nature and the cause. He says . . ." That's the judge;
 15 correct?
 16 A. I would believe so.
 17 Q. ". . . Well, what's nature? I said, well, I
 18 think it means you don't have legislative, concurrent,
 19 or subject matter jurisdiction to hear this case, sir.
 20 "He says, 'Well, well, well, uh, uh, I'll
 21 plead for you.' He can't do that." Quote, unquote,
 22 "'Not guilty.' Boom. 'You're going home, son. I'm
 23 going to CR you today. You get to go home.'"
 24 That was you saying the judge was going to
 25 release you on your own recognizance; right?

1 A. That's what I said, yes.

2 THE COURT: Mr. Sullivan, when you read that,
3 could you read a little slower? The court reporter is
4 racing to keep up with you.

5 MR. SULLIVAN: I'm sorry, Your Honor.

6 Q. You said: "And I said, 'Well, I don't know.
7 I've never been arrested before. I don't know anything
8 about O.R.'"

9 "He says, 'Well, you've got a contract in
10 front of you. You want to read it real quick?'"

11 "Well, I could have thumbed through it; but I
12 says, 'Well, I don't like it. What happens if I don't
13 want to sign this thing?'"

14 "He says, 'If you don't sign that piece of
15 paper, we're going to leave you in jail till you do.'"

16 It continues over and you say: "Just that I
17 agree to have a probationary officer and not
18 leave . . ."

19 You meant -- you understood, by "not leave,"
20 you were saying that you would make all court
21 appearances; correct?

22 A. I can't read where you're quoting.

23 Q. Can you read it now?

24 A. Yes. Go ahead.

25 Q. "I agree to have a probationary officer and

1 not leave . . ." You said that?

2 A. I think that's what I said, yes.

3 Q. And you understood that you had to make all
4 appearances before the court; right?

5 A. Yes, I understood that.

6 Q. And that's what you meant by saying "not
7 leave"?

8 A. Yeah. I was told I can't leave.

9 Q. That was a condition of bond; right?

10 A. Yes.

11 Q. It goes down -- you state: "I said, let me
12 get this straight. You kidnap me and you're my captors,
13 and this whole thing is a fraud and, basically, the
14 kidnapers are not going to let me go unless I sign this
15 piece of paper under threat . . ."

16 You were referring to signing the O.R. bond,
17 weren't you?

18 MR. HOYT: " . . . under threat; right?"

19 THE WITNESS: Yes.

20 THE COURT: Counsel?

21 THE WITNESS: " . . . under threat; right,"
22 yes.

23 BY MR. SULLIVAN:

24 Q. And you were referring to signing the O.R.
25 bond?

1 A. Correct.

2 Q. Didn't you just tell us a few minutes ago you
3 didn't sign the O.R. bond?

4 A. I never signed it.

5 Q. It continues. It says: " . . . unless I sign
6 this piece of paper under threat; right?"

7 "He says, 'Yeah, yeah, yeah.'"

8 "I says, 'I was hoping you'd say that.' And I
9 picked up the pen; and I said, 'Let this be my
10 handwriting,' which makes it not my signature."

11 And you signed the O.R. bond?

12 A. No.

13 Q. Did you put a pen in your hand and write
14 "David R. Hinkson"?

15 A. Yes, I did that. That's not my signature.

16 Q. Because you said some magic words?

17 A. No. It's a canon of law. It's not your
18 signature unless there is free agency. It's one of the
19 basic concepts of the Constitution and Civil Rights.

20 Q. By saying, "Let this be my signature"?

21 A. No. I said, "Let it be my handwriting."

22 Q. You made your signature invalid; is that
23 correct?

24 A. No. It was my handwriting.

25 Q. Is it correct that you thought you made the

1 bond invalid?

2 MR. HOYT: Objection, Your Honor. I think --
3 I think, first of all, I feel counsel has been arguing
4 with the witness, number one. And number two --

5 THE COURT: There is some arguing going on
6 here, counsel; and I think it's over what constitutes a
7 signature. I think the jury understands Mr. Hinkson's
8 position.

9 Mr. Sullivan, I think you have made your
10 point. Move on to another subject.

11 BY MR. SULLIVAN:

12 Q. Isn't it true, sir, when you signed the bond
13 or whatever you did, you had no intention of complying
14 with the bond?

15 A. Well, I was planning on complying with it
16 because I agreed to.

17 Q. Right. You said you wouldn't leave; right?

18 A. I said I wouldn't leave; but I also asked the
19 judge if I could go to California to give the speaking
20 engagement that I was already scheduled to speak at, the
21 forum.

22 Q. Your intention was to flee before trial, was
23 it not?

24 A. I have never planned on fleeing before trial.

25 Q. Isn't it correct that you tried to obtain a

1 passport after this bond hearing?

2 A. I didn't try. I did obtain one.

3 Q. And wasn't one of the conditions of the bond

4 that Judge Williams told you about was not to obtain a

5 passport?

6 A. He demanded that I turn over my passport is

7 what he demanded.

8 Q. And didn't he say, "And don't obtain another

9 passport"?

10 A. I don't remember him saying that but I'm -- I

11 believe he probably did.

12 Q. Do you recall Judge Mikel Williams saying, at

13 that hearing, page 11 of the transcript:

14 "THE COURT: All right. So it's O.R. release,

15 pretrial supervision, surrender passport, not obtain a

16 new passport, reside in his residence and travel

17 restricted to the Continental United States."

18 Do you recall Judge Williams advising you of

19 that?

20 A. Yes, I do.

21 Q. So you knew, at that point in time, at that

22 initial appearance on 11/21/02, that you were to

23 surrender your passport; correct?

24 A. Yes, I did.

25 Q. And not obtain a new passport?

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1 Q. Yes. So there was a further hearing when it

2 became known that you had tried to obtain a second

3 passport; correct?

4 A. There was a second hearing, yes.

5 Q. And this time, the judge put you on \$100,000

6 appearance bond?

7 A. Yes, he did.

8 Q. But the terms stayed the same, otherwise;

9 correct?

10 A. Correct.

11 Q. You still had to make all court appearances;

12 correct?

13 A. Correct.

14 Q. You couldn't leave the Continental United

15 States?

16 A. That's true.

17 Q. Yet you planned to flee before trial to the

18 Island of Antigua?

19 A. That is not true.

20 Q. Because you didn't intend to stand trial;

21 correct?

22 A. That is not correct.

23 Q. And if you hadn't been arrested on April 4,

24 2003, you would have fled to Antigua?

25 A. That is not true.

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1 A. That is correct.

2 Q. Correct?

3 A. Yes.

4 Q. And you agreed to that?

5 A. I agreed to that.

6 Q. But that was a false statement when you told

7 Judge Williams that, wasn't it?

8 A. I don't believe it was a false statement.

9 Q. Because you went out and obtained a new

10 passport?

11 A. I applied for a new one so that I could submit

12 it.

13 Q. And you violated the term of that bond, didn't

14 you?

15 A. I don't believe I did because there was

16 reasons why this happened the way it did.

17 Q. You understood that the bond was a promise

18 from you to the court to be released? You would abide

19 by the terms of the bond?

20 A. Right. And because of that, he made me sign

21 another bond for \$100,000 because I --

22 Q. Your promise to the court was not one you

23 intended to keep; correct?

24 A. Oh, I intended to keep it. So in answer to

25 your question, I intended to keep it.

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1 MR. SULLIVAN: Excuse me, Your Honor. I need

2 a moment.

3 THE COURT: Do you need the lights,

4 Mr. Sullivan? Would you like the lights, counsel, to

5 help you see?

6 MR. SULLIVAN: No. I will find it.

7 THE COURT: That won't help?

8 BY MR. SULLIVAN:

9 Q. Page 11 of the tape transcript between J. C.

10 Harding and Mr. Hinkson -- excuse me. It's not 11.

11 On page 150, didn't you tell Mr. Harding that

12 you were headed for Antigua?

13 A. I don't know. I would have to read the

14 statement.

15 Q. Okay. Showing you page 150.

16 THE COURT: Counsel, you have got two pages

17 superimposed there.

18 BY MR. SULLIVAN:

19 Q. Starting at line 1, the informant says:

20 "Right."

21 You say: " -- and I am orchestrated to go to

22 prison and I end up in Antigua or wherever I end up,

23 never allowed to come back to my country, yeah. Or if I

24 was sitting in a jail cell for the next 400 years, I'd

25 pay for that. But right now I think God is going to

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1 take care of them." 2090
2 So you referred to going to Antigua, didn't
3 you?
4 A. I did.
5 Q. That's because you were planning on going to
6 Antigua?
7 A. No, that's not the reason I mentioned Antigua.
8 Q. Antigua is an island in the Carribean?
9 A. Yes. It's a very nice island.
10 Q. You have been there before?
11 A. I have not.
12 Q. How do you know it's a nice island?
13 A. I have seen pictures.
14 Q. Didn't you tell J. C. Harding that you saw
15 yourself as a future Antiguan?
16 A. Yes, I made that statement.
17 Q. Wasn't that in context to how you were going
18 to leave the country so you wouldn't have to stand
19 trial?
20 A. No.
21 Q. Showing you page 141 of the transcript between
22 you and Mr. Harding on tape -- let me ask this: Isn't
23 it true that, to facilitate your fleeing the country,
24 you tried to liquidate assets by getting big loans on
25 your property?

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1 A. Yes. 2092
2 Q. Not that you sought him out?
3 A. Margie brought him because she was a mortgage
4 broker and she was trying to earn a commission, and she
5 brought him because she knew we needed to refinance
6 because we had a balloon on the property.
7 Q. So your testimony is that you sought a loan,
8 but you weren't trying to encumber your property so that
9 you could leave?
10 A. I sought the loan for two years, before I was
11 indicted, from Dan Vaughn. Marjorie is a friend of Dan
12 Vaughn's.
13 Q. Dan Vaughn testified here?
14 A. Yes. He was here yesterday, yes. So she
15 brought him over because it was an excellent loan and an
16 excellent interest rate, and he wanted me to agree to
17 the terms.
18 Q. My question was: You were seeking a loan, a
19 legitimate loan, and you were not trying to encumber
20 your property with liens or mortgages so you would have
21 enough money to flee?
22 A. I was not. I rejected his loan. I didn't
23 want to reject it, but I decided not to borrow any
24 money.
25 Q. Let me show you page 141 of the transcript of

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1 A. It's not true. 2091
2 Q. You did try to get loans on your property,
3 didn't you?
4 A. It's not true.
5 Q. You spoke to a man, namely -- excuse me -- Lee
6 Sternburg, to borrow \$600,000?
7 A. Yes. He came to my factory and proposed that
8 I borrow \$600,000 at six-percent interest.
9 Q. That's a good loan rate, isn't it?
10 A. It was excellent.
11 Q. And he, of course, wanted some sort of
12 security or collateral for that loan; correct?
13 A. He just needed my signature.
14 Q. This time, you would actually sign?
15 A. I always keep my word, yes.
16 Q. And when did this happen?
17 A. I think it was maybe about a week before
18 Harding showed up.
19 Q. And it's your testimony that Mr. Lee Sternburg
20 proposed this loan arrangement to you?
21 A. Yeah. He came with another woman. Her name
22 was Margie Anderson, I believe.
23 Q. My question was --
24 A. Yes.
25 Q. Mr. Sternburg proposed it to you?

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1 the tape recording between you and Mr. Harding, starting 2093
2 at line 3.
3 Didn't you say: "They moved the trial all the
4 way to the end of the year."
5 Harding. "Oh, they moved it past September
6 now?"
7 Hinkson: "Yeah, sometime. I don't know
8 exactly when."
9 Harding: "(Inaudible) enjoy yourself."
10 Hinkson: "I got the next -- I got the next
11 June, July, August. I got at last five months before I
12 even got to worry about the trial starting."
13 The informant: "Well --"
14 Mr. Hinkson: "I've arranged to put loans on
15 everything. The feds didn't lien anything."
16 The informant: "Put loans on -- I don't
17 understand. You just started borrowing money against
18 all your shit?"
19 Hinkson: "Everything."
20 Informant: "Smart."
21 Hinkson: "I'll have a million dollars worth
22 of debt, and it will all be in an offshore bank. Give
23 me two weeks."
24 And you follow with: "See, that's brilliant.
25 That's smart."

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1 Hinkson: "I'm working hard."
2 Informant: "Dude," I would rather you think
3 like that."
4 Hinkson: "Future Antiguan."
5 You said those words, did you not?
6 A. I did.
7 Q. When you were talking with Mr. Hinkson (sic.)
8 that particular day of the tape recording --
9 MR. HOYT: Your Honor, I know counsel didn't
10 mean to say this; but he said, "When you were talking
11 with Mr. Hinkson."
12 MR. SULLIVAN: It happened before.
13 THE COURT: Yes. We all do it. Just start
14 your question again.
15 BY MR. SULLIVAN:
16 Q. I'm sorry. Mr. Hinkson, when you were talking
17 to Mr. Harding on March 27, 2003, the day of the taping,
18 didn't you believe that he might be a fed or an
19 informant?
20 A. No, sir.
21 Q. Didn't you tell Special Agent Long, when he
22 interviewed you on April 4, 2003, that you had believed
23 that he had been an informant?
24 A. No, sir.
25 Q. You didn't tell Agent Long that?

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1 A. I didn't tell Agent Long anything.
2 Q. You didn't tell him anything?
3 A. No, I didn't, not with regards to this matter.
4 Q. I see. But you did hear him testify about
5 things regarding this matter; right?
6 A. I heard -- I heard his lies, yes.
7 Q. I see. And do I understand that you're
8 telling the jury that what he testified to was not true?
9 A. Totally lies. Totally untrue.
10 Q. Another perjurer against you?
11 A. He is really good at it.
12 Q. I see.
13 A. Uh-huh.
14 Q. But you deny that you knew Mr. Hinkson (sic.)
15 was an informant; right?
16 A. Yes.
17 THE COURT: You said "Mr. Hinkson" again.
18 THE WITNESS: Please do.
19 BY MR. SULLIVAN:
20 Q. You deny knowing Mr. Harding was an informant?
21 A. Yes, I deny that.
22 Q. You deny saying it to Agent Long?
23 A. I deny that, yes.
24 Q. Didn't you tell -- didn't you even tell Chad
25 Croner in the Ada County Jail that you knew he was an

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1 Informant?
2 A. I did not tell Chad Croner that, no.
3 Q. On the tape between you and Mr. Harding, isn't
4 it true that you were very careful in what you said?
5 A. Careful? I think I was talking really stupid.
6 Q. All right. But you never once said, "I hope
7 these people die;" right?
8 A. No. I said, "I want God to smite them." I
9 think I said that.
10 Q. Right.
11 A. Yes.
12 Q. But you didn't say it on the -- you didn't
13 say, "I hope someone dies," on the tape, did you?
14 A. I don't think so.
15 Q. It's because you were being very careful?
16 A. No, I wasn't being careful or I wouldn't have
17 talked so stupid for four hours.
18 Q. What was so stupid about what you were saying,
19 Mr. Hinkson?
20 A. The conversation, prior to this end, was
21 totally stupid.
22 Q. Who was stupid? You or Mr. Harding?
23 A. Me. I was very stupid.
24 Q. Because you said things that made it sound
25 like you had discussed with Mr. Harding hiring him as a

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1 hit man; right?
2 A. No. We were talking about stupid things,
3 about girls and stuff like that.
4 Q. We didn't even play that part of the tape.
5 A. I know. Thank you for that.
6 Q. Yes. We played the parts where Mr. Harding
7 says, "You shouldn't say stuff like that or someone will
8 take you up on it;" right?
9 A. What's the question?
10 Q. I said that we played the parts where Harding
11 says to you, "You shouldn't say stuff like that or
12 someone will take you up on it?"
13 A. You played that part, yes.
14 Q. We did. Those were his words to you; right?
15 A. I believe so.
16 Q. And you knew what he meant?
17 A. No. I don't know what the word "it" meant,
18 and I really wasn't even listening to what he was
19 saying. I was just talking at him.
20 Q. You don't know the meaning of "it"?
21 A. I don't. He's not a conversationalist.
22 Q. J. C. Harding is not a conversationalist?
23 A. I don't think it's possible to have a
24 conversation with this man.
25 Q. You knew he was a stand-up comedian, did you

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1 not?

2 A. I don't find him funny. No, I did not know
3 that.

4 Q. You knew he was a radio talk show host?

5 A. Oh, yeah. That was the guise he gave for
6 showing up.

7 Q. And you know, from your own experience in that
8 area, that radio talk show hosts have to be good
9 conversationalists?

10 A. Good BS'ers, too.

11 Q. Sir, do you deny that, on April 4, 2003, you
12 told Agent Long that Judge Lodge has never made a
13 correct ruling during his entire career on the bench?

14 A. If that's what I said on that wire, then
15 that's probably what I said.

16 Q. I'm not talking about the wire. I'm talking
17 about the conversation, the interview by you -- excuse
18 me -- of you by Agent Long on April 4, 2003, at the
19 Kooekia Substation.

20 A. No. I deny that. I never had a conversation
21 with Agent Long.

22 Q. Do you deny that you used to criticize Judge
23 Lodge?

24 A. No, I don't deny that.

25 Q. And you used to say very insulting things

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1 about him?

2 A. I'm not sure how to answer that question.

3 Q. Didn't you say that Judge Lodge was worse than
4 Adolf Hitler?

5 A. I said that in my kitchen. I remember reading
6 that on the wire.

7 Q. Right. At page 170 of the conversation with
8 Mr. Harding, you said: "All I'm saying is these people
9 are so wicked and evil that they deserve to be smitten
10 by God today. These are bad people. I got on the radio
11 and I said that Judge Lodge was worse than Adolf
12 Hitler."

13 A. If that's what the transcript says, I must
14 have said it.

15 Q. And it continues: "This man sits there and
16 throws innocent people in prison every single day.
17 That's his job description. And he's wicked. What have
18 I got to lose? He already hates my guts. He already is
19 going to rule against me every chance he has. I might
20 as well tell the world he's a damn bastard from hell.
21 What the hell."

22 That's what you said about Judge Lodge?

23 A. Yeah, in my kitchen.

24 Q. You believe Judge Lodge is wicked?

25 A. I do.

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1 Q. He puts innocent people in prison every single
2 day?

3 A. Yes, I think he does. And I think you do,
4 too.

5 MR. SULLIVAN: Move to strike.

6 THE COURT: The jury will disregard the last
7 answer.

8 BY MR. SULLIVAN:

9 Q. Then you say: "What have I got to lose?"
10 Right?

11 A. Yeah, I guess.

12 Q. Because he hates your guts?

13 A. I don't think he likes me.

14 Q. He hates your guts?

15 A. That's what I said.

16 Q. He's going to rule against you every chance he
17 gets?

18 A. Yes.

19 Q. And when you said that about Judge Lodge -- he
20 was the judge assigned to handle your tax case, wasn't
21 he? Do you have to think about it?

22 A. Yeah. He had never made a ruling in my case
23 at that point. It was just, basically, Williams. I
24 know, eventually, he was going to be involved, I
25 believe; but at that point, he had never done anything

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1 to me.

2 Q. My question was: He was the Judge of your
3 criminal tax case; right?

4 A. Yeah. After -- yeah, I think so.

5 Q. And you just now said, at that point, he had
6 never done anything to you?

7 A. He hadn't.

8 Q. Is that your testimony?

9 A. Yeah.

10 Q. All right. Hadn't he thrown out your civil
11 lawsuit?

12 A. I didn't know it was thrown out. I'm not sure
13 what day it was thrown out.

14 Q. Wasn't it thrown out in February, a month
15 before you said these words?

16 A. Is that the date that it shows? I don't know.

17 Q. You don't remember?

18 A. I don't remember.

19 Q. I am showing you Government's Exhibit 1, all
20 of the pleadings from your civil lawsuit. You are
21 familiar with it; correct?

22 A. A little bit, yeah.

23 Q. You wrote it, didn't you?

24 A. No. Rich Bellon wrote it.

25 Q. Oh, Rich Bellon wrote it?

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1 A. Yes.

2 Q. I see. You didn't write it?

3 A. I didn't.

4 Q. Let me go back. Showing you, from Exhibit 1,
5 a document with Bates stamp 073. It's at the very end,
6 the document entitled "Judgment;" correct?

7 A. Yes.

8 Q. It says: "On February 11, 2003, the court
9 entered an order dismissing this action;" correct?

10 A. That's what it says.

11 Q. And the action is David Hinkson vs. Steve
12 Hines, et al.?

13 A. Okay.

14 Q. Correct? It says: "Based upon that order,
15 and the court being fully advised in the premises, it is
16 hereby ordered and adjudged that plaintiff's cause of
17 action is dismissed in its entirety;" right?

18 A. That's what it says.

19 Q. And it's signed by Judge Lodge?

20 A. I think so. I wasn't there to witness it. I
21 don't know.

22 Q. Well, you received this pleading in the mail;
23 right?

24 A. I don't remember getting it; but I'm sure I
25 must have gotten it.

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1 Q. You were the plaintiff?

2 A. I was the plaintiff, yes.

3 Q. You were suing for fifty million dollars?

4 A. I was.

5 Q. And Judge Lodge has now dismissed your suit in
6 its entirety?

7 A. Yes.

8 Q. So he had done something to you at this point;
9 right?

10 A. Yeah. He ruled wrong.

11 Q. Again, he ruled wrong?

12 A. "Again"? No. I said, "He ruled wrong." I
13 didn't say, "Again."

14 Q. I'm sorry. Don't you think he has always
15 ruled wrong?

16 A. That's what I said and I -- I was upset about
17 some other things he did.

18 Q. That's right. You had a whole bunch of
19 reasons to be upset at Judge Lodge, didn't you?

20 A. Just that one. On a personal basis, I mean --

21 Q. When did you retain Richard Bellon to prepare
22 your civil lawsuit?

23 A. I'm not sure what date he started. It would
24 have been just a guess here. I would guess, maybe April
25 of 2002, maybe.

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1 Q. Didn't you file the lawsuit on April 16, 2002?

2 A. Okay. So then he would have been hired about
3 a month before that.

4 Q. And you knew he had legal training; right?

5 A. He claimed he was a lawyer in California. I
6 knew he wasn't supposedly, at that time, licensed in
7 Idaho. He claimed he wrote a book, which I found out he
8 did not write.

9 Q. You also found out he was convicted of
10 assaulting an IRS officer, too?

11 A. Yeah. I found out that when he was barred
12 from coming into the courtroom.

13 Q. You approved of that, didn't you; that he had
14 assaulted an IRS officer?

15 A. I didn't know anything about it.

16 Q. You found out about it later, as you just told
17 us?

18 A. Well, I found out he had mishandled a female
19 IRS agent is what I found out.

20 Q. And you didn't have any problem with
21 Mr. Bellon being convicted of assaulting an IRS officer,
22 did you?

23 MR. HOYT: Your Honor, I think we are going
24 way far afield right here.

25 THE COURT: Overruled.

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1 BY MR. SULLIVAN:

2 Q. You didn't have any problem with Mr. Bellon
3 having been convicted of assaulting an IRS agent, did
4 you?

5 MR. HOYT: Objection. Vague.

6 THE COURT: Overruled.

7 MR. HOYT: The problem --

8 THE COURT: Overruled. Sit down, Mr. Hoyt.

9 THE WITNESS: Ask the question again, please.

10 BY MR. SULLIVAN:

11 Q. For the third or fourth time, you didn't have
12 any problem with the fact that Mr. Bellon had been
13 convicted of assaulting an IRS officer?

14 A. I never had even thought about it.

15 Q. So when did he start preparing all of your
16 pleadings in the civil suit?

17 A. I told you it would have been about a month
18 before the lawsuit was filed because it took him a month
19 to write it.

20 Q. All right. And you consulted with him that
21 whole time?

22 A. Yes. On a daily basis, we were in
23 communication.

24 Q. Because he didn't know the facts as you
25 alleged them to be independently of asking you; correct?

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1 A. Well, he went on the Internet; and he
 2 downloaded all of the files. He was looking at all of
 3 the other stuff; and he put it together on his own,
 4 pretty much. But, yes, I was in contact with him.
 5 Q. Sure. You had to sign the complaint?
 6 A. Yes, I did sign the complaint. I read it
 7 first.
 8 Q. You had to sign all of the pleadings; correct?
 9 A. I did.
 10 Q. Mr. Bellon would bring you the pleadings to
 11 have you review them?
 12 A. Yes.
 13 Q. And then you would sign them?
 14 A. Correct.
 15 Q. So he is the author, even though you signed
 16 them?
 17 A. That is correct.
 18 Q. When you were on "The Agitator Hour," the
 19 radio interview show, did you lie about who prepared the
 20 civil pleadings?
 21 A. I might have lied at that point. If I said
 22 that I did the work, then, yes, I would have misstated
 23 the facts.
 24 Q. Let me show you page eighteen of the
 25 transcript of the interview on "The Agitator Hour."

1 Starting at 528, line 528, you say: "That kind of
 2 messes up the investigative power of the Grand Jury,
 3 don't you think?"
 4 The announcer said: "It's manipulation is
 5 what it is."
 6 And you say: "Well, yeah. Well, that's why I
 7 sued her for the fifty million for prosecutorial
 8 misconduct and Grand Jury tampering. And I did it pro
 9 se, which means no lawyer."
 10 A. That's correct.
 11 Q. "It's a war of a titan." Excuse me. There is
 12 sixty -- strike that.
 13 "There's sixty motions back and forth in that
 14 thing. It a war of a titan."
 15 That's what you said on "The Agitator Hour;"
 16 correct?
 17 A. Yes. "Titans," I think, with an "s."
 18 Q. Yeah. And you took credit by saying you
 19 handled this matter pro se, without a lawyer?
 20 A. Well, I didn't mention that Bellon wrote it at
 21 that point; but I didn't take credit necessarily for it
 22 either.
 23 Q. You said you did it pro se?
 24 A. That means that the person who signed it is
 25 not a lawyer. I signed it because it was my name on it

1 and not a lawyer's.
 2 Q. Is that what "pro se" means, Mr. Hinkson?
 3 A. Well, I believe that when you file it in your
 4 own name and you don't have a lawyer, it's called "pro
 5 se."
 6 Q. It means you did it yourself, that you
 7 represented yourself, doesn't it?
 8 A. Well, maybe that's your definition; but it
 9 wasn't mine.
 10 Q. Isn't it true you just made it up in this
 11 courtroom that Richard Bellon did the civil pleadings?
 12 A. Well, I have probably ten witnesses that will
 13 testify to it; but you wouldn't let them speak about
 14 this.
 15 Q. I wouldn't?
 16 A. No. You cut them off every time Wes tried to
 17 let this information come in.
 18 Q. You blame Richard Bellon for a lot of your
 19 problems, don't you, Mr. Hinkson?
 20 A. No. He wasn't a problem, initially.
 21 Q. So you blame him for a lot of your problems
 22 later?
 23 A. It would depend on the time.
 24 Q. Let me ask you this: In your direct
 25 examination yesterday, did you claim that you went to

1 Coeur d'Alene to find out what date the Grand Jury had
 2 been sitting and whether or not it had disbanded? Did
 3 you do that?
 4 A. No, I didn't.
 5 Q. Did you say you did that?
 6 A. It was in Boise that we checked. It was the
 7 Boise Grand Jury that we checked.
 8 Q. Okay. Tell me about that. What was it -- did
 9 you do it, or did Mr. Bellon do it?
 10 A. Well, I checked in the courthouse and there
 11 was no -- there was no record showing that the Grand
 12 Jury had been extended.
 13 Q. How did you do that? How did you check that?
 14 A. You go to the Clerk's Office.
 15 Q. Did you know what Grand Jury, particularly, to
 16 ask about?
 17 A. Well, we did at the time. I mean, Rich Bellon
 18 had kind of laid it out for me.
 19 Q. I see. Rich Bellon supplied you with the
 20 information?
 21 A. Correct.
 22 Q. Okay. What is it that he told you?
 23 A. He said that the Grand Jury had ceased to
 24 exist, and we wanted to get a certified copy of that.
 25 Q. Okay. And so you did that?

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1 A. I remember -- that's my recollection.

2 Q. So where is that certified copy?

3 A. I don't have a clue. I have been deprived of

4 all of my legal papers.

5 Q. You, of course, couldn't have had one of your

6 lawyers go get you another certified copy of the

7 document; right? That was impossible?

8 A. Well, I made the accusation that there was no

9 file stamps. Later on, some paperwork appeared to show

10 that the Grand Jury had been extended. And it's my

11 belief that they just created this paperwork, because

12 some of it is not file stamped.

13 Q. I see. It's your belief system, again, that

14 there was some phonying up of paperwork?

15 A. Yes. That's why I wanted the certified copy

16 to prove it.

17 MR. SULLIVAN: I would like a new document

18 marked as Government's Exhibit 13.

19 THE COURT: Exhibit 13? Very well.

20 MR. SULLIVAN: Your Honor, I would like to

21 have marked a two-page document as Government's Exhibit

22 13. It is a certified court document from the Clerk of

23 the District Court for District of Idaho.

24 THE COURT: Does the document have a title,

25 counsel?

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1 MR. SULLIVAN: Yes, Your Honor. "Motion and

2 Order to Extend Term of Northern 2001 Grand Jury."

3 THE COURT: Very well. You are offering it at

4 this time?

5 MR. SULLIVAN: I offer it at this time.

6 THE COURT: Any objection, Mr. Hoyt?

7 MR. HOYT: No objection.

8 THE COURT: Government's Exhibit 13 is

9 admitted.

10 (Whereupon, Government's Exhibit No. 13 was

11 received in evidence.)

12 BY MR. SULLIVAN:

13 Q. Let me show you Government Exhibit 13,

14 Mr. Hinkson. Do you see this document that is signed at

15 the bottom by Thomas E. Moss, United States Attorney?

16 A. I do.

17 Q. And it's dated the 26th day of April 2002?

18 A. Yes, I see it.

19 Q. And it's entitled "Motion and Order to Extend

20 Term of Northern 2001 Grand Jury;" correct?

21 A. I see it.

22 MR. SULLIVAN: May I publish to the jury, Your

23 Honor?

24 THE COURT: You may.

25 THE WITNESS: I can't see the top of it.

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1 MR. HOYT: It's published.

2 BY MR. SULLIVAN:

3 Q. "Comes now United States Attorney for the

4 District of Idaho and hereby moves the court for an

5 order extending the Northern 2001 Grand Jury through the

6 31st of July 2002. The reason for such extension is

7 that the panel is involved in several investigations

8 which are complex." Do you see that?

9 A. Uh-huh. I see it.

10 Q. And the second page of this certified court

11 document is an order, which no one can read: I will

12 read it.

13 "Order.

14 "The United States Attorney has moved the

15 court for an order to extend the term of the Northern

16 2001 Grand Jury to and including July 31, 2002.

17 "Upon good cause shown, it is hereby ordered

18 that the Northern 2001 Grand Jury is hereby extended to

19 and including July 31, 2002.

20 "Signed April 29, 2002.

21 "Honorable Larry M. Boyle, Chief U.S.

22 Magistrate Judge."

23 When you made the accusation against Nancy

24 Cook that the Grand Jury had disbanded in May 2002, you

25 knew that was a false accusation, didn't you?

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1 MR. HOYT: Your Honor, I will object. It

2 assumes facts not in evidence. I think he said --

3 THE COURT: The fact has now been in evidence.

4 MR. HOYT: I think he said that the Grand Jury

5 had been disbanded in April, before he filed his

6 lawsuit.

7 THE COURT: Well, I'm going to allow the

8 question. Your objection is overruled based upon

9 Government's Exhibit 13. Counsel certainly has a

10 good-faith basis to ask the question.

11 MR. SULLIVAN: May I have my question read

12 back?

13 (Whereupon, the pending question was read back

14 by the court reporter.)

15 BY MR. SULLIVAN:

16 Q. Can you answer that question?

17 A. Well, when I checked the record in Boise, I

18 didn't find those papers. Is that on file in Boise?

19 Q. I ask the questions, sir. So are you telling

20 the jury that your accusation against Ms. Cook was based

21 on some misunderstanding?

22 A. No, no. I didn't find these papers when I

23 checked; therefore, I would say that there is no proof

24 as to what day this paperwork was created.

25 Q. You also accused her of forging the

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1 Indictment; correct?

2 A. I did.

3 Q. Based upon the fact, as you believed it, the

4 Grand Jury had disbanded in May of 2002; right?

5 A. That's true.

6 Q. So you believed that, if there had been no

7 Indictment returned in May of 2002, then any other

8 Indictment afterwards must have been forged; right?

9 A. In discovery, she refused to give us the

10 Minutes. There were no Minutes. There has to be

11 Minutes, but there aren't any Minutes.

12 Q. You were represented in the tax case by

13 lawyers; correct?

14 A. Not initially. I was pro se initially.

15 Q. You were represented by a Mr. Mahathy

16 initially?

17 A. Initially.

18 Q. You were represented by Mr. Groom in April of

19 2002?

20 A. Yes, that's true.

21 Q. And after November of 2002, when you were

22 arrested, you were -- excuse me. That's when you

23 retained Mr. Mahathy, after November 21, 2002; right?

24 A. I believe so.

25 Q. And you retained Mr. Groom sometime in early

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1 2003?

2 A. Well, Rich Bellon suggested that we needed a

3 lawyer of record; so Rich Bellon worked with Mr. Groom

4 full time at that point on the case. Okay.

5 Q. Okay. And based on Mr. Bellon's suggestion,

6 you are claiming you retained Mr. Groom?

7 A. Yes. Mr. Bellon felt that, even though he was

8 doing the work --

9 THE COURT: No, no. Mr. Hinkson, we don't

10 care what Mr. Bellon felt. The question was whether or

11 not, based upon his suggestion, you retained Mr. Groom.

12 THE WITNESS: Yes, I did.

13 BY MR. SULLIVAN:

14 Q. Actually, you had a series of lawyers even

15 after Mr. Groom; right?

16 A. Correct.

17 Q. You were always represented through 2003,

18 weren't you?

19 A. I believe so.

20 Q. All the way through 2004?

21 A. Yes, I believe so.

22 Q. Right through trial?

23 A. Yes.

24 Q. And your lawyers, whoever they were at the

25 various times, filed motions for discovery; right?

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1 A. Yes.

2 Q. Which means demanding various kinds of

3 documents from the Government to assist you in your

4 defense; right?

5 A. We are talking about the first case now only?

6 Q. We are talking about the tax case.

7 A. The tax case?

8 Q. Right.

9 A. Yes.

10 Q. Right. And you never alleged, at any time, in

11 any motion regarding the Grand Jury, that Ms. Cook

12 forged the Indictment, did you?

13 A. I don't think so. I don't have it in front of

14 me. I haven't read it for years so I don't --

15 Q. You think you would forget whether or not you

16 moved to dismiss the Indictment because the AUSA, the

17 prosecutor in the case, forged the Indictment? You

18 would forget such a thing?

19 A. Well, I'm not sure if I remember. I do

20 remember there was a referral.

21 THE COURT: Just a minute, Mr. Hinkson. Wait

22 for the next question.

23 BY MR. SULLIVAN:

24 Q. Well, you have never been adverse from

25 preparing affidavits and submitting them in various

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1 lawsuits you have been involved with; correct?

2 A. I'm pretty good at writing affidavits, yes.

3 Q. You never prepared an affidavit and attached

4 it to any kind of motion to dismiss the tax case

5 alleging that Nancy Cook forged the Indictment, did you?

6 A. I don't recall one. I don't remember.

7 Q. All right. Because that would be a really

8 significant kind of allegation to make, wouldn't it?

9 A. Well, I don't think we -- it would be a

10 significant allegation, yes.

11 Q. And you know that no such motion to dismiss,

12 based on that allegation, was ever made in your tax

13 case; correct?

14 A. Well, she wouldn't give discovery; so I would

15 say "correct."

16 Q. And you didn't file anything that had your

17 affidavit saying Ms. Cook forged the Indictment, did

18 you?

19 A. Not that I remember.

20 Q. You only say that over the public radios;

21 right?

22 A. Oh, I said it on the radio, yes.

23 Q. That's right. Because you don't have to

24 provide proof over the public radio; right?

25 A. That's true.

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1 Q. You do have to provide proof when you are in a
 2 court of law making a motion to dismiss; right?
 3 A. That's true.
 4 Q. Proof means facts?
 5 A. Uh-huh.
 6 Q. You don't worry about facts, do you,
 7 Mr. Hinkson?
 8 A. I try to gather them every chance I get.
 9 Q. You make allegations without knowing any facts
 10 to back them up?
 11 A. I don't think that's a safe statement.
 12 Q. Didn't you, in this courtroom, yesterday, make
 13 an accusation against Detective Mealer with no facts to
 14 back up such an accusation?
 15 A. I did?
 16 Q. Yeah.
 17 A. I don't remember an accusation.
 18 THE COURT: Counsel, would this be a good
 19 place to stop? I will let you pick the time, but we are
 20 right up against the noon hour.
 21 MR. SULLIVAN: May I have one minute, Your
 22 Honor?
 23 THE COURT: Sure.
 24 BY MR. SULLIVAN:
 25 Q. When you went -- you were arrested on April 4,

1 2003, at the Kookia Substation; right?
 2 A. Yes.
 3 Q. And you had gone there to report a burglary or
 4 a theft to Detective Scott Mealer?
 5 A. Yes.
 6 Q. And it was at that place that you got arrested
 7 by Special Agent Long?
 8 A. Yes.
 9 Q. And you resent the fact that Sergeant Mealer
 10 set you up for that arrest?
 11 A. Well, it wasn't a nice thing to do.
 12 Q. Plus, you didn't trust Sergeant Mealer?
 13 A. That's true.
 14 Q. That's why you had the tape recorder in your
 15 pocket?
 16 A. That's true.
 17 Q. And, yesterday, you blurted out in front of
 18 the jury that the person you were accusing of stealing
 19 your money --
 20 THE COURT: Counsel, before you go here, I
 21 thought I struck that question and the answer. Do you
 22 want to go there again?
 23 MR. SULLIVAN: I do.
 24 THE COURT: All right. All right. Go ahead.
 25 BY MR. SULLIVAN:

1 Q. You blurted out that Sergeant Mealer was
 2 having an affair with that person; correct?
 3 A. That is correct.
 4 Q. And you did it because you resent the fact
 5 that he set you up for the arrest?
 6 A. No.
 7 MR. SULLIVAN: This would be a good time to
 8 stop.
 9 THE COURT: Ladies and gentlemen, as my have
 10 been clear from that last exchange, you may disregard my
 11 instruction to you yesterday with respect to striking
 12 the statement that Mr. Hinkson said about Detective
 13 Mealer having an affair, since Mr. Sullivan now wants to
 14 inquire about it.
 15 With that, we will be in recess until 1:15
 16 this afternoon.
 17 Don't talk about the case. Keep an open mind.
 18 Don't let anybody talk to you about it. Don't do any
 19 research. We will see you back here at 1:15.
 20 (Lunch recess.)
 21 MR. SULLIVAN: May I proceed, Your Honor?
 22 THE COURT: You may.
 23 BY MR. SULLIVAN:
 24 Q. Mr. Hinkson, did you try to hack into Judge
 25 Lodge's files by computer?

1 A. No, I did not.
 2 Q. Did somebody else?
 3 A. No.
 4 Q. Are you a hacker?
 5 A. I'm not computer literate.
 6 Q. May I ask you if you didn't say in the taped
 7 conversation between you and Mr. Harding, page 163 --
 8 lights -- top of the page: " . . . that the NSA
 9 attacked me last week, accused me of --"
 10 Informant: "The NSA? You mean the National
 11 Security Agency?"
 12 And you say: "And the FBI."
 13 "What?"
 14 Mr. Hinkson: "They accused me of hacking."
 15 I am going to skip down to line 16.
 16 "They shut off my computer."
 17 "Did they tell you?"
 18 Mr. Hinkson: "No. They said I was hacking.
 19 I'm a hacker. All I did is download the Judge's files
 20 to prove that he rules wrong every time for the last
 21 eighteen years."
 22 Did you say that to J. C. Harding?
 23 A. I said I was not a hacker.
 24 Q. Did I read it wrong? Line eighteen?
 25 A. You are misinterpreting it.

1 Q. Did I read it wrong at line eighteen when I
 2 read?
 3 Mr. Hinkson: "No. They said I was hacking.
 4 I'm a hacker."
 5 A. Yeah. There is the word "not" missing there.
 6 But read either way, it still means I'm saying I'm not a
 7 hacker. You are misinterpreting it, the way you're
 8 reading it.
 9 Q. Did you download Judge Lodge's files to prove
 10 that he rules wrong every time for the last eighteen
 11 years?
 12 A. Rich Bellon went on the public access for the
 13 Federal Court System, and he downloaded a whole bunch of
 14 Judge Lodge's cases.
 15 Q. Where does it say Richard Bellon downloaded
 16 the Judge's files?
 17 A. It does not.
 18 Q. It says, ". . . I did . . ."? It says, "All I
 19 did is download the Judge's files." That means you did?
 20 A. Well --
 21 Q. Correct?
 22 A. It was metaphorically speaking. Rich Bellon
 23 is the one that downloaded them.
 24 Q. It's Rich Bellon who is responsible; is that
 25 your testimony?

1 A. It's not a matter of being responsible. It's
 2 not a crime to look at public domain.
 3 Q. Well, it's a crime to lie though, isn't it,
 4 under oath?
 5 A. I wasn't under testimony.
 6 Q. Well, you are now?
 7 A. Yeah. I am now, yes.
 8 Q. And you said it was Bellon?
 9 A. It was.
 10 Q. And you are under oath?
 11 A. Yes, I am.
 12 Q. At that previous time, you said it was you?
 13 A. I wasn't giving testimony when I was talking
 14 to Mr. Harding.
 15 Q. So you could lie to Mr. Harding?
 16 MR. HOYT: Your Honor, he is badgering the
 17 witness. He said he spoke metaphorically.
 18 THE COURT: Sustained. The jury will decide.
 19 BY MR. SULLIVAN:
 20 Q. And the reason -- well, the reason that there
 21 was any downloading of Judge Lodge's files is because
 22 you were unhappy with his ruling dismissing your
 23 lawsuit; right?
 24 A. No. Wrong.
 25 Q. Weren't you unhappy with him about that?

1 A. It wasn't a big deal.
 2 Q. Then why did you call him -- at page 162 of
 3 the Harding-Hinkson tape, why did you call him
 4 ". . . more evil than Adolf Hitler and a slut . . ."
 5 A. Well, I don't believe that just dismissing one
 6 civil case would cause enough hostility from me to have
 7 made those statements.
 8 Q. Well, were you so hostile that you also said,
 9 "And I ripped him an ass so big you could drive the
 10 Grand Canyon through it"? That's pretty hostile, isn't
 11 it?
 12 A. It wasn't about him dismissing my case.
 13 Q. So you are hostile toward him for some other
 14 reason?
 15 A. Yes, I am.
 16 Q. But you admit you were hostile?
 17 A. It wasn't personal. It's just I know he's a
 18 very bad person.
 19 Q. When did you stop filing income tax returns,
 20 Mr. Hinkson?
 21 A. 1994, I believe.
 22 Q. You testified in your own tax case prosecution
 23 last April or May; correct?
 24 A. Yes, I did.
 25 Q. You took the stand there, like you're doing

1 now?
 2 A. Yes, I did.
 3 Q. And you were under oath then, as you are now?
 4 A. Yes.
 5 Q. Starting at line 6, page 1157, did you testify
 6 at your own tax structuring trial to the following:
 7 "And had you been an income tax filer up until
 8 that point in time?"
 9 Answer: "Yes, we were."
 10 Question: "And then, as you were working at
 11 the Tropicana through this period, did you stop filing
 12 tax returns?"
 13 Answer: "Well, I stopped filing -- I believe
 14 it was 1989. I don't have the record in front of me."
 15 Is that the testimony you gave under oath at
 16 your own previous trial?
 17 A. I really don't remember when I quit filing. I
 18 believe, at that time, I was being -- going with my
 19 understanding that -- during the trial, I think,
 20 evidence was presented that '94 was my last one; but I'm
 21 not sure.
 22 Q. So you're not sure whether it was '94 or five
 23 years earlier than that, 1989?
 24 A. I'm not really positive.
 25 Q. And I think you told us you stopped filing

1 because you read the entire Internal Revenue Code and
2 Supreme Court decisions; correct?

3 A. Yes. I have, yes.

4 Q. All right. So that was just some principal
5 position you took that you were not entitled -- excuse
6 me -- you weren't required to file tax returns?

7 A. It is my belief at this point that it's
8 voluntary and nobody is required to file under the
9 current law as written.

10 Q. Isn't it true your principal position that you
11 took that you didn't have to file also saved you a lot
12 of money?

13 A. No. I never had any profit or income,
14 pursuant to the law, because every penny I made went
15 back either into expansion or tax-deductible things; and
16 I knew I did not have a tax liability.

17 In the raid, they stole all of my
18 tax-deductible receipts; so I was not allowed to make a
19 defense.

20 Q. I see.

21 MR. HOYT: I object to going into this area.
22 Are we going to relitigate the tax case?

23 THE COURT: I realize that you are laying a
24 foundation here. If you could get to the point, I would
25 appreciate it, Mr. Sullivan, because I have the same

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1 concern Mr. Hoyt does.

2 BY MR. SULLIVAN:

3 Q. Well, at your tax trial, when you testified
4 last year, you were shown tax returns that you had
5 prepared; correct?

6 A. No. I did not prepare them.

7 Q. I said, "that you had prepared." Someone
8 prepared them for you?

9 A. They weren't tax returns. They were just
10 statements of income.

11 Q. They were 1040s, were they not?

12 A. They were on 1040 forms.

13 MR. HOYT: Your Honor, I think this was an
14 issue in the tax case.

15 THE COURT: He is laying a foundation. I
16 think he's entitled to lay it for impeachment. Go
17 ahead. Overruled.

18 BY MR. SULLIVAN:

19 Q. You had a lady named Peggy Newman, an
20 accountant in Las Vegas, prepare Form 1040 income tax
21 returns for you in the late 1990s and even into the
22 early 2000s, didn't you?

23 A. She printed them out.

24 Q. "Yes" or "no"?

25 A. She printed them out. The way you asked the

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1 question, no.

2 Q. And you provided her with information about
3 your finances so she could do that; right?

4 A. I provided her with some figures, yes.

5 Q. All right. And you had her prepare your tax
6 returns?

7 A. No, not correct.

8 Q. And you consider them not your tax returns
9 because you didn't sign them?

10 A. That and the figures were not correct on them.

11 Q. Well, the figures came from you, didn't they?

12 A. Not entirely, no.

13 Q. But you used those tax returns for a purpose
14 that benefited you?

15 MR. HOYT: Your Honor, I don't know where we
16 are going. It could just drag on.

17 THE COURT: I assume you are getting to
18 Eighteen USC 1001?

19 MR. SULLIVAN: Yes, Your Honor.

20 THE COURT: Let's get to it.

21 MR. SULLIVAN: There is another purpose, as
22 well, Your Honor.

23 THE COURT: All right. Go ahead.

24 BY MR. SULLIVAN:

25 Q. You had those tax returns prepared, and you

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1 used them for a purpose that was beneficial to you?

2 A. They weren't tax returns that were prepared as
3 tax returns.

4 Q. What term would you like me to use?

5 A. They were, basically, a profit and loss
6 statement.

7 Q. On a Form 1040; right?

8 A. That's correct.

9 Q. And you used those Form 1040 profit and loss
10 statements to secure loans from financial institutions;
11 correct?

12 A. It was private money on those, I think. It
13 was not -- it was not institutions, like you say.

14 Q. You secured a loan from something called CLS
15 Mortgage Company, didn't you?

16 A. Right. That was a private lender, like forty
17 or fifty different investors.

18 Q. Does it matter if they are a private or a
19 public corporation, to you, Mr. Hinkson? You submitted
20 those -- whatever you want to call them -- financial
21 information forms on the 1040s; right?

22 MR. HOYT: Your Honor, objection. We went
23 into this in depth.

24 MR. SULLIVAN: No, we haven't, Your Honor.

25 MR. HOYT: We went into this in depth in the

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1 tax case. He used them as financial statements there.
 2 The discussion was made about the difference between a
 3 bank and private lenders.
 4 THE COURT: I understand.
 5 MR. HOYT: Even Mr. Dan Vaughn alluded to this
 6 yesterday, how he had to get hard money because he
 7 wouldn't sign tax returns.
 8 THE COURT: Counsel, that's fine.
 9 Your objection is overruled, Mr. Sullivan.
 10 You may go ahead with your attempt to impeach him.
 11 MR. SULLIVAN: Could my last question be read
 12 back, please?
 13 (Whereupon, the pending question was read back
 14 by the court reporter.)
 15 BY MR. SULLIVAN:
 16 Q. You did that; right?
 17 A. I submitted it to CLS, yes.
 18 Q. And that was to secure a loan?
 19 A. Yes.
 20 Q. And other institutions required you to sign
 21 those returns, didn't they?
 22 A. Nobody has ever required me to sign them.
 23 Q. Are you testifying that you never signed one
 24 to secure a loan?
 25 A. I have never signed one to secure a loan.

1 Answer: "Well, they said they had to have tax
 2 returns; and I told them that I had not signed them, nor
 3 had I filed them, and they said, 'Well, we don't care
 4 about all of that, but we want you to sign this form
 5 because it has to go in our file so that we can verify
 6 with the IRS that you signed them.'
 7 "And I told them I didn't sign them, and so I
 8 put 'Forced to Sign as a Condition of Funding' above my
 9 signature after I told them this."
 10 Was that your testimony?
 11 A. Yes.
 12 Q. So when you needed a loan, you would sign
 13 documents, wouldn't you?
 14 A. Just the loan documents.
 15 Q. Right. Now, sir, you said the tax returns
 16 that you had the lady in Las Vegas prepare for you
 17 showed that you owed substantial amounts of income tax,
 18 didn't they?
 19 A. They weren't accurate because they were just
 20 financial statements.
 21 Q. Did they show that you owed substantial
 22 amounts of income tax?
 23 A. I don't believe so.
 24 Q. All of those income tax returns you didn't
 25 sign were moved into evidence in your trial, weren't

1 Absolutely.
 2 Q. Are you quibbling about signing?
 3 A. No, I'm not.
 4 Q. Such as you said, "Let this be my
 5 handwriting," or something?
 6 A. Not even my handwriting.
 7 Q. Sir, did you give this testimony at your tax
 8 trial last year, under oath, starting at 1250, page 21.
 9 Question by the prosecutor -- Mr. Bradley, was
 10 it?
 11 A. I don't know. Why don't you put it on the
 12 screen?
 13 Q. Question: "Mr. Hinkson, finally, I would like
 14 to show you Government Exhibit 76 which is in evidence,
 15 which is the W-9 form. Do you remember that coming in
 16 through the CLS Mortgage people?"
 17 Answer: "Yes, I do."
 18 Question: "Can you see your signature there?"
 19 Answer: "Yes, I do."
 20 Question. "It says, 'Signature, Forced to
 21 Sign as a Condition of Funding,' quote, unquote. Did
 22 you write that there?"
 23 Answer: "I did."
 24 Question: "Why did you write that there,
 25 sir?"

1 they?
 2 A. I would assume so.
 3 MR. HOYT: Your Honor, may we approach at
 4 sidebar?
 5 THE COURT: I think that might be a good idea.
 6 (Whereupon, the following sidebar discussion
 7 was held outside the presence of the jury.)
 8 MR. HOYT: Your Honor, Mr. Hinkson has
 9 admitted that he was convicted of the tax counts. And
 10 what I see counsel trying to do here is to go back
 11 through and relitigate. This is more like a 404(b) sort
 12 of argument of, you know, prior bad acts or something.
 13 You know, the man has been convicted. He
 14 can't say anything more than that. It just doesn't seem
 15 proper to go through all of the individual items of
 16 evidence that were used at the tax case against him.
 17 He's had wide latitude, and we haven't really gotten
 18 anywhere.
 19 MR. SULLIVAN: Counsel, on his direct, tried
 20 to paint a picture of Mr. Hinkson to the jury that he's
 21 a humanitarian that wants to cure the world of every
 22 disease known to man, that all he does is work hard at
 23 his plant in order to do this, that he is curing
 24 tuberculosis, et cetera, et cetera.
 25 This is a completely different view of the man

1 that is being presented to the jury that, while he is
2 doing all of these humanitarian acts and standing on
3 principal, he is not filing tax returns and he is
4 benefiting, quite substantially, financially.

5 THE COURT: The court has the same concern
6 that Mr. Hoyt has articulated. I think the way to get
7 there, counsel, is to just confront him directly with
8 the fact that, as a result of the fact that he engaged
9 in this conduct, he has received substantial amounts of
10 money that he paid no income taxes on, hundreds of
11 thousands of dollars -- I think that the only thing you
12 can do with a witness like this so to simply confront
13 him with that. Let him answer any way he wants.

14 The problem -- and I agree with Mr. Hoyt --
15 the problem is, if you ask him the kind of open-ended
16 questions you are asking him, you are just inviting him
17 to go back in and testify again to all of the things
18 that the tax court jury heard and rejected.

19 And he's been convicted of that, and I do
20 think that you can get to the point more directly
21 without going into this much detail.

22 MR. SULLIVAN: I am going to go right to it.
23 I think I have laid sufficient foundation to confront
24 him and impeach him in testimony where he admitted that
25 these tax returns show tax due and owing.

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1 On this particular one, I would ask: "You
2 hadn't paid that \$35,000, had you?"

3 "No."

4 THE COURT: If you can get right to it, I will
5 allow you to go that far. Otherwise, I think we have
6 heard enough on the tax case.

7 (Whereupon, the following proceedings were
8 held in open court, in the presence of the jury:)

9 BY MR. SULLIVAN:

10 Q. Page 1212, line 2. Did you give this
11 testimony under oath at your tax trial?

12 Question by Mr. Bradley: "Then it says,
13 quote, 'Estimated Tax Payments and Amount Applied on
14 line 53, \$35,000. Do you know where she got that number
15 from?'"

16 Answer: "I really don't. I mean, I can
17 speculate."

18 Question: "You hadn't paid that \$35,000, had
19 you?"

20 Answer: "No."

21 Is that the testimony you gave last year,
22 April or May?

23 A. I didn't read it on the screen, so I'm not
24 sure.

25 THE COURT: If you want to, show it to him to

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1 refresh his recollection. Otherwise, the question and
2 answer will stand.

3 BY MR. SULLIVAN:

4 Q. Do you see it on the screen where I am
5 pointing?

6 THE COURT: You can show it to the jury, since
7 you have already read it. You are going to need to
8 enlarge it, counsel.

9 BY MR. SULLIVAN:

10 Q. Did you give that testimony?

11 A. That's what it says on the screen. I don't
12 recall but --

13 Q. Do you recall being shown your 1998 1040
14 prepared by Peggy Newman and being asked about your tax
15 due and owing in?

16 A. I do not remember.

17 MR. HOYT: Your Honor, objection. Counsel, I
18 thought, was going to get right to it, ask the one
19 question, and move on.

20 THE COURT: I think this is a different year.

21 MR. SULLIVAN: It is a different year.

22 THE COURT: I will permit him to ask on the
23 different year.

24 MR. HOYT: Your Honor, I am just wondering if
25 I have to bring in a bunch of witness to counter this

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1 testimony.

2 THE COURT: I ruled at sidebar that he could
3 get to the question of money otherwise due and owing.
4 That's what he is doing. Overruled.

5 BY MR. SULLIVAN:

6 Q. Were you shown by Mr. Bradley your 1980 --
7 excuse me -- 1998 1040 prepared by Peggy Newman? Do you
8 recall that?

9 A. I don't.

10 Q. And do you recall that that tax return showed
11 you owing \$58,000?

12 A. I don't recall, but I'm sure it's not a tax
13 return if it's not signed.

14 Q. Did you give this testimony to these
15 questions?

16 1215, counsel.

17 Question: "Exhibit 42 is your 1998 1040
18 prepared by Peggy Newman. Do you recognize her
19 signature, sir?"

20 Answer: "Yeah, I recognize her signature."

21 Question: "On this return, the total amount
22 of tax that year was \$58,000 on line 56. Is that what
23 it says?"

24 Answer: "That's what it says."

25 Question: "And your total payments were

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1 \$57,000 that year?" 2138
2 Answer: "That's what it says."
3 Question. "You didn't pay that \$57,000?"
4 Answer: "No, I didn't pay that."
5 Was that your testimony at that time, sir?
6 A. I haven't seen it on the screen.
7 MR. SULLIVAN: May I show it to the --
8 THE COURT: Yes, you may.
9 MR. SULLIVAN: Page 1215, starting with line
10 9.
11 THE COURT: Move it up just a little bit,
12 Mr. Sullivan. There you go.
13 THE WITNESS: Well, it says I testified to it;
14 so I believe it. I don't recall it.
15 BY MR. SULLIVAN:
16 Q. The truth of the matter is, Mr. Hinkson, that
17 you are a successful businessman because you never paid
18 your taxes?
19 A. I don't think that's true, no.
20 Q. Do you claim that you are a successful
21 businessman because you had a superior product that sold
22 well?
23 A. No, I don't think that's correct either.
24 Q. Well, you didn't have the same overhead that
25 other businessmen do, did you?

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1 A. I had more overhead than other businessmen. 2139
2 Q. You didn't have the overhead of having to pay
3 taxes; correct?
4 A. I paid a lot of taxes during those years.
5 Q. You didn't pay your income taxes?
6 A. I paid any tax that I legally owed.
7 Q. As a matter of fact, you didn't pay any Idaho
8 State tax either, did you?
9 MR. HOYT: Your Honor, how deep are we going
10 to go into this?
11 THE COURT: I will sustain the objection.
12 I think that's enough on the tax case,
13 Mr. Sullivan.
14 MR. SULLIVAN: Yes, Your Honor.
15 Q. Mr. Hinkson, you also accused Nancy Cook of
16 having forged the search warrant that was used to search
17 the plant on 11/21/02?
18 A. Yes, I did. I believe I did. Do you have a
19 transcript to show me or something?
20 Q. Government Exhibit 1 -- excuse me. It's not
21 1. It's the transcript of the radio interview.
22 THE COURT: 5-A.
23 MR. SULLIVAN: 5-A, Your Honor.
24 Q. Page 26, line 782. Does this refresh your
25 memory?

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1 You said: "Now, the next part of the crime -- 2140
2 notice she's the criminal -- is on the 21st of November.
3 She created a search warrant to search my factory. She
4 signed the judge's name to it and never file stamped it
5 in."
6 Does that refresh your memory?
7 A. Yes.
8 Q. On page 27, line 804, you said in the radio
9 interview: "So she never took that to court. She just
10 created that, signed the name on it, and never bothered
11 to take it to court."
12 You are referring to the search warrant for
13 the plant; right?
14 A. I'm not sure. I would have to read more of
15 that. Was it the search warrant, or was it the
16 Indictment?
17 Q. Are you telling me -- all right. You accused
18 her of forging the Indictment, too, didn't you?
19 A. Yes, I did.
20 Q. And you don't recall whether you accused her
21 of forging the search warrant, also?
22 A. Well, there was no affidavit attached to it;
23 and I don't think it was proper.
24 Q. Well, my question was: Are you forgetting
25 whether or not you accused her of forging a search

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1 warrant? 2141
2 A. If that's what I said, then I would agree
3 that's probably what I said. And it's my belief that it
4 is a fraud, yes.
5 Q. Okay. And at this point in time, on January
6 8, 2003, when you gave this radio interview, you still
7 had your lawsuit against Nancy Cook and Steve Hines in
8 court; right?
9 A. What day?
10 Q. Your lawsuit hadn't been thrown out of court
11 or dismissed yet on January 8, 2003; right?
12 A. Okay. I agree with that.
13 Q. Okay. And did you ever, at any time in that
14 lawsuit, complain that your civil rights had been
15 violated by Nancy Cook for forging an Indictment or
16 forging a search warrant?
17 A. She wouldn't give the discovery, so I had no
18 way of absolutely proving it because she refused to
19 cooperate.
20 THE COURT: Mr. Hinkson, that's not responsive
21 to the question. The question is: At any time in the
22 lawsuit, did you complain that she had violated your
23 civil rights by forging an Indictment or forging a
24 search warrant? Just answer that question.
25 THE WITNESS: I don't remember. I would have

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1 to read it at this point.

2 BY MR. SULLIVAN:

3 Q. Did you attempt to amend the complaint by

4 alleging that she violated your civil rights by forging

5 the indictment, forging the search warrant, and plotting

6 to murder you?

7 A. No. I don't recognize that testimony or that

8 statement.

9 Q. Those would be pretty significant civil rights

10 violations if somebody had committed them; is that

11 correct?

12 A. I think that would be serious, yes.

13 Q. But you didn't file anything or seek relief in

14 court for those alleged violations?

15 A. I don't know. I haven't read the civil suit

16 in three and a half years -- or three years.

17 Q. Your testimony is you don't know whether you

18 included in your complaints that she forged the

19 indictment, et cetera, forged everything against you?

20 You don't remember that?

21 A. I don't remember that, no.

22 Q. Sir, in 2003, were you the legal owner of

23 WaterOz?

24 A. In 2003?

25 Q. Yes.

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1 THE COURT: Thank you.

2 BY MR. SULLIVAN:

3 Q. Your criminal trial was last year?

4 A. Yeah. I remember there was a trial.

5 Q. Right. And that was in 2004; right?

6 A. I guess so.

7 Q. Is that where you say it was established --

8 they established that you were the owner of WaterOz?

9 MR. NOLAN: Can we approach, Your Honor?

10 THE COURT: Yes, please.

11 (Whereupon, the following sidebar discussion

12 was held outside the presence of the jury:)

13 MR. NOLAN: I know the least about this of

14 everybody here, but it seems to me that he may have made

15 representations that he didn't own the place on a number

16 of occasions.

17 He may have even testified that way. There

18 may be all sorts of things about who owned what. The

19 jury made a determination or the court made a

20 determination.

21 The fact that he took a position back then

22 that may or may not have turned out to be true I don't

23 think is something that is appropriate to get into.

24 MR. SULLIVAN: I am not trying to establish

25 that this was a proven fact at his criminal trial in

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1 A. I think they established that at the trial.

2 They said I was a legal owner of the business.

3 Q. Who established?

4 A. This court did.

5 Q. But you had been claiming earlier -- you had

6 claimed before your trial -- your trial was in 2004;

7 right? Correct?

8 A. I really don't remember the exact time.

9 Q. You don't remember having your trial last

10 year?

11 MR. HOYT: Which trial, counsel?

12 Objection. Date.

13 BY MR. SULLIVAN:

14 Q. You don't remember this trial?

15 THE COURT: Let's see if we can help

16 Mr. Hinkson remember what trial we are talking about.

17 BY MR. SULLIVAN:

18 Q. Before this trial, you only had one other

19 trial; correct?

20 MR. HOYT: Your Honor, there are other cases

21 that have been talked about.

22 THE COURT: That's what Mr. Hoyt's concern is.

23 Can you help him out?

24 MR. SULLIVAN: The criminal trial is what I

25 meant.

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1 2004. I am trying to establish that he has tried to

2 hide assets for a number of years, and he's done it by

3 claiming he is not the legal owner of WaterOz. I think

4 that goes to deceitful conduct.

5 THE COURT: It is true that that was a portion

6 of the proof that the court heard at the last trial but

7 it's going to -- it will take so much time to establish

8 all of that. Unless you are trying to lay the

9 foundation so that you can set him up for impeachment,

10 fine.

11 Otherwise, you are reopening the entire tax

12 case; and I don't think that's going to help any of us.

13 And it certainly --

14 MR. SULLIVAN: Your Honor, I will avoid doing

15 that. I have specific transcript pages to ask him those

16 questions which I think show his inconsistency in these

17 areas.

18 THE COURT: Well, let's --

19 MR. SULLIVAN: If he would answer the

20 question --

21 THE COURT: You have to deal with the witness

22 as he is, and he is a very evasive witness who doesn't

23 respond directory to questions.

24 I mean, I had the same problem with him when

25 Mr. Hoyt was examining him. He is just a tough witness.

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1 So do the best you can. But let's get to the impeaching ²¹⁴⁶
2 stuff, okay?
3 (Whereupon, the following proceedings were
4 held in open court, in the presence of the jury:)
5 BY MR. SULLIVAN:
6 Q. In 2003, were you the legal owner of WaterOz?
7 "Yes" or "no"?
8 MR. NOLAN: Your Honor, does that call for a
9 legal conclusion?
10 THE COURT: It does call for a legal
11 conclusion. Sustained.
12 BY MR. SULLIVAN:
13 Q. Did you believe, in 2003, that you owned
14 WaterOz?
15 A. No.
16 Q. Sir, when did you hire Mr. Richard Bellon for
17 any capacity?
18 A. I said earlier that I thought it was a month
19 before the civil lawsuit was filed. That's my best
20 recollection.
21 Q. Did you hire him to be some sort of legal
22 advisor?
23 A. Yes. He was supposed to do legal work for me,
24 for the -- yes, for me.
25 Q. Was he also supposed to assist you in running

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1 WaterOz? ²¹⁴⁷
2 A. Absolutely not.
3 Q. Wasn't he part of your management team of
4 WaterOz?
5 A. Yes. Once we had a problem, we wanted him to
6 help solve the problem; and we had some management
7 meetings with my father, Jeri Gray, me, Charlie.
8 Q. Was the answer, "yes," he was a part of your
9 management team then?
10 A. I believe he was, for a brief period of time.
11 It would have been in January of '03.
12 Q. That what?
13 A. That he was meeting with us and trying to help
14 us resolve some problems. They were, like, manager
15 meetings.
16 Q. The question is: Was he a member of your
17 management team, not whether he was trying to help you?
18 A. These are just words. They are semantics.
19 THE COURT: Counsel, now you are quarreling
20 with the witness.
21 THE WITNESS: He was, basically, asked to help
22 negotiate some serious problems we were having with
23 Mr. Swisher.
24 BY MR. SULLIVAN:
25 Q. Sir, in the taped conversation that you had

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1 with Mr. Harding on March 27, 2003, didn't you say the ²¹⁴⁸
2 following?
3 MR. HOYT: Page?
4 MR. SULLIVAN: 76.
5 MR. HOYT: It was excluded, counsel.
6 MR. SULLIVAN: Page 76.
7 MR. NOLAN: I'm not sure this is in evidence.
8 THE COURT: I don't think it is but I assume
9 that you are going to -- well, go ahead and ask your
10 question. Let me hear it and see if there is an
11 objection.
12 BY MR. SULLIVAN:
13 Q. In the conversation, the taped conversation
14 with Mr. Harding, do you recall having a conversation --
15 one topic of your conversations was about firing or
16 hiring an employee?
17 A. Yes. That was the girl that robbed my house.
18 Q. Right. And Harding says: "Bizarre. You're
19 not going to hire her back? Please say, 'No.'"
20 MR. HOYT: Your Honor --
21 THE COURT: I am going to sustain the
22 objection. This is not a permissible area,
23 Mr. Sullivan. Move on to something else.
24 BY MR. SULLIVAN:
25 Q. Sir, with regard to your WaterOz products,

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1 have you -- you have claimed they can cure tuberculosis; ²¹⁴⁹
2 is that right?
3 A. God cures the tuberculosis.
4 Q. You don't think you are God, do you?
5 A. No.
6 Q. But you say you can cure tuberculosis, don't
7 you?
8 A. I just don't like the way you used the word.
9 Q. I'm sorry. Do you think you can cure
10 tuberculosis?
11 A. I think silver kills all viruses known to man;
12 and if you breathe silver vapor, tuberculosis will die.
13 Q. My question is, sir: Any of these products
14 that you sell and have been selling for a number of
15 years, have you ever patented them with the U.S. Patent
16 Office?
17 MR. HOYT: Your Honor, I will object. I
18 think, if we are going to go into this area, we really
19 do need to approach at sidebar. There is a whole litany
20 of issues here, now that counsel has brought it up, that
21 we would be happy to address.
22 THE COURT: Let's not do it in this fashion.
23 Are you trying to lay a foundation for impeachment here,
24 Mr. Sullivan?
25 MR. SULLIVAN: I'm not. I think I know the

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1 answer and I think that will --

2 THE COURT: So do I. If that's the case, then
3 I sustain the objection. Move on to another area.

4 BY MR. SULLIVAN:

5 Q. Sir, you know who Kay Walsingham is; correct?

6 A. Yes.

7 Q. She was the secretary of your previous
8 attorney, Brit Groom?

9 A. Yes.

10 Q. You have known her for a while; correct?

11 A. Yes.

12 Q. You used to go into Mr. Groom's law office and
13 speak with her?

14 A. Yes, I have spoke to her.

15 Q. And you used to say things in front of her
16 that you hoped Dennis Albers would die; correct?

17 A. No.

18 Q. You never said that in front of Kay
19 Walsingham?

20 A. No.

21 Q. Did you ever say in front of -- didn't you say
22 in front of Kay Walsingham that you hoped Dennis Albers'
23 wife and children would die?

24 A. Dennis Albers doesn't have children. And the
25 answer is "no."

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1 Q. I thought he had a daughter, sir. Didn't you
2 tell us yesterday that he had a daughter?

3 A. Yes, an older daughter who is a lawyer and a
4 very nice lady. The word "children" refers to younger
5 people.

6 THE COURT: Well, Mr. Hinkson, I think the
7 jury understands what the word "children" means.

8 BY MR. SULLIVAN:

9 Q. Didn't you say in front of Kay Walsingham that
10 you hoped -- or you wanted Mrs. Albers and her children
11 to be tortured in front of Mr. Albers?

12 A. No, absolutely not.

13 Q. You do like Mrs. Walsingham, though, don't
14 you?

15 A. Yes, I have always liked her.

16 Q. She's not one of your enemies, is she?

17 A. No.

18 Q. You have never sued her, have you?

19 A. She's never sued me is a better way of saying
20 it.

21 Q. Okay. She's never sued you; right?

22 A. Right.

23 Q. And you've never sued her?

24 A. Right.

25 Q. Now, you do sue people regularly, of course?

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1 A. No. I'm not the aggressor.

2 Q. In the litigation between you and Mr. Bellon,
3 it's correct that he sued you; right?

4 A. Yes. He sued me, yes.

5 Q. And then you filed a counterclaim against him?
6 Yes?

7 A. Yes, I did, even though I didn't participate
8 in it. I was in jail.

9 Q. And then you filed a claim -- that is, you
10 sued Mr. Swisher and made him a third-party respondent;
11 correct?

12 A. Yes, because he seized the factory.

13 THE COURT: The answer is "yes" or "no," not
14 why you did it.

15 THE WITNESS: Yes.

16 THE COURT: The jury will disregard why.

17 THE WITNESS: It is my understanding that,
18 yes, we did.

19 BY MR. SULLIVAN:

20 Q. And when was that that you did that,
21 approximately?

22 A. I'm not sure. I would just be able to guess.
23 I don't have a calendar in jail. Just every day is the
24 same.

25 THE COURT: Mr. Hinkson, this is not a place

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1 from which we make speeches. We answer questions.

2 BY MR. SULLIVAN:

3 Q. Now, the litigation between you and
4 Mr. Bellon, wasn't that because he claimed to be your
5 partner?

6 A. He claimed it, yes, verbally.

7 Q. Well, you had a written agreement with him,
8 didn't you?

9 A. No, sir.

10 Q. Didn't you dictate an agreement to Brit Groom
11 for him to prepare for you?

12 MR. HOYT: Your Honor, objection. There is a
13 court order that finds that there is no basis for a
14 written agreement.

15 MR. SULLIVAN: I object to counsel's speeches.

16 THE COURT: So do I. Counsel, the objection
17 is overruled. You brought this up yesterday on direct,
18 and I think Mr. Sullivan is entitled to explore it on
19 cross.

20 BY MR. SULLIVAN:

21 Q. Mr. Hinkson, didn't you dictate to Mr. Groom,
22 Brit Groom, your attorney, a document that encompassed a
23 partnership between you and Mr. Bellon?

24 A. It was a future partnership that was being
25 proposed, yes.

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MR. SULLIVAN: Let me show you a document.

The next exhibit number?

THE COURT: Fourteen, I think, counsel.

MR. SULLIVAN: Thank you. Fourteen? Thank you.

THE COURTROOM CLERK: Plaintiff's Exhibit No. Fourteen is marked.

BY MR. SULLIVAN:

Q. If you will, look at the screen in front of you at Government's Exhibit fourteen for identification.

Do you recognize this particular document?

A. I don't think I have ever read it.

Q. Do you see the back, the second page?

A. Yes, I see there is a second page.

Q. Do you recognize Mr. Groom's signature?

A. I don't really know what Mr. Groom's signature looks like, so I can't say I recognize it.

Q. Mr. Groom used to file motions on your behalf in the criminal case, the tax case; correct?

A. As my lawyer, yes.

Q. And he would sign those pleadings, wouldn't he?

A. As a lawyer, yes.

Q. Okay. And you would review those pleadings, wouldn't you?

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A. Yes. Before I filed him, yes.

Q. You would see his signature on the back page, the last page of those pleadings?

A. Yes.

Q. This is the signature of Mr. Groom on the screen in front of you, isn't it?

A. I don't know for sure, but I believe it is.

Q. You know what this is, don't you, Mr. Hinkson?

A. Yeah. It was read to me on the phone.

Q. Because you were in jail, and you dictated this partnership agreement to Mr. Brit Groom; correct?

MR. NOLAN: Can we object on the basis that it calls -- he is making a legal conclusion?

THE COURT: I will overrule the objection. The document does contain that word, and I think it's appropriate.

The jury, however, will be instructed that they are not to draw any conclusion as to whether it is or is not a legal partnership agreement; but the document does contain the words "partnership agreement."

MR. SULLIVAN: Yes, Your Honor.

Q. Mr. Hinkson, isn't it correct that this document was created by Mr. Groom as you dictated it to him over the telephone?

THE COURT: To him or to Mrs. Walsingham?

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MR. HOYT: Your Honor?

MR. SULLIVAN: To both, Your Honor.

MR. HOYT: Can we approach?

THE COURT: Yes. I want to hear where we're going on this.

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

MR. SULLIVAN: Your Honor, they presented and their defense includes a version of this litigation that they like to call "The Bellon Take-Over."

I want to show the jury that there was a legal basis. There was a legitimate, legal dispute, based upon the document that this witness has identified he dictated, this document to Brit Groom; and it represents a partnership.

MR. HOYT: Your Honor, we already have a legal determination in this issue between Mr. Bellon and Mr. Hinkson. Mr. Groom even testified about it in the court up in Idaho County.

The court ruled, on December 12, 2003. For the purposes of the temporary restraining order, he found that this document didn't have any validity and it wasn't a legal agreement. I don't understand why we are trying to relitigate all of these cases.

THE COURT: Let me just say this: As I

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understand the purpose of Mr. Sullivan's line of inquiry, which you, Mr. Hoyt, opened the door to yesterday on direct examination of Mr. Hinkson, the Government is now attempting to impeach Mr. Hinkson with the document that he admits he dictated to Mr. Groom's law office.

And you have suggested, in your examination of Mr. Hinkson, that there was a conspiracy by Mr. Bellon and Mr. Swisher and others to takeover the company and to take it away from Mr. Hinkson and that's why they are all testifying against him.

Mr. Sullivan is entitled to show that Mr. Hinkson was discussing, at least at this point in time, engaging in some kind of a joint venture with Mr. Bellon. That is impeaching. Your objection is overruled.

Proceed.

MR. NOLAN: Can I just, first of all, say --

THE COURT: Let me just say that I have been very generous about allowing both lawyers; but I want one lawyer to state the position for each side, and it will be the lawyer handling the witness. You can whisper in Mr. Hoyt's ear, and he can be your mouthpiece. I want to do this one at a time.

(Whereupon, the following proceedings were

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

2 THE COURT: Proceed, Mr. Sullivan. The
3 objection is overruled.

4 MR. SULLIVAN: Your Honor, I move the
5 admission of Exhibit fourteen.

6 THE COURT: I will admit it for the purposes
7 of impeachment. It's not coming in yet as substantive
8 evidence.

9 (Whereupon, Government's Exhibit No. 14 was
10 received in evidence for the purposes of impeachment.)

11 MR. SULLIVAN: May I display it on the
12 projector?

13 THE COURT: Why don't you, first -- yes. All
14 right. You may do that. I will give a limiting
15 instruction.

16 Ladies and gentlemen, what I mean by this is
17 that, where a party is using either a document or a
18 prior statement of the witness to try and impeach or
19 discredit the witness, you may not consider the content
20 of the statement or the document for its truth.

21 But you may consider it to the extent that you
22 find that, depending upon how the witness responds to
23 it, it is not consistent with prior testimony that the
24 witness has given.

25 With that understanding, you may display it to

1 the jury.

2 BY MR. SULLIVAN:

3 Q. Mr. Hinkson, on the screen before you is a
4 document that is headed, or titled at the top,
5 "Partnership Agreement;" is that correct?

6 A. Yes.

7 Q. And it's dated Thursday, July 24, 2003?

8 A. Yes.

9 Q. And then it is followed by the words, "Mr.
10 David Hinkson and Richard Bellon agree, as follows;"
11 correct?

12 A. Correct.

13 THE COURT: Could you enlarge that a little
14 bit, counsel? It's hard to read.

15 BY MR. SULLIVAN:

16 Q. And this purported to be some kind of a
17 partnership agreement between you and Mr. Bellon;
18 correct?

19 A. Correct.

20 Q. And you were in jail at the time you dictated
21 it to Mr. Brit Groom, right?

22 A. Correct.

23 Q. And he prepared it and he signed it; correct?

24 A. I don't know if that's his signature but --

25 Q. And then Cathryn Walsingham, his secretary,

1 also signed it, to witness it; correct?

2 A. I don't know what her signature looks like,
3 but I believe you.

4 Q. And it bears a handwritten inscription at the
5 bottom with the name Richard Allen Bellon; correct?

6 A. That's what it says on the screen.

7 Q. You didn't see him write that?

8 A. I was in jail.

9 Q. You didn't see Ms. Walsingham or Mr. Groom
10 sign it either?

11 A. No, I did not.

12 Q. But you did see this document later, during
13 the litigation; correct?

14 A. I'm not sure if I have ever seen it.

15 Q. Mr. Hoyt represented you in that litigation;
16 correct?

17 A. Yes. I'm sure he saw it.

18 Q. At the very bottom of page one, does it not
19 read: "Mr. Bellon shall have management authority over
20 the operation of the WaterOz facility with consultation
21 with Mr. Hinkson."

22 MR. HOYT: Your Honor, I object to the form of
23 the question. Counsel is well aware of the court decree
24 that finds that this --

25 THE COURT: Counsel, no more speaking

1 objections. The objection is overruled.

2 Mr. Hinkson, did you dictate those words or
3 not?

4 THE WITNESS: I don't believe so. I don't
5 have a copy of the tape.

6 BY MR. SULLIVAN:

7 Q. Are you alleging that Mr. Groom didn't take it
8 down correctly when you dictated it?

9 A. I wouldn't know. They have recorded every
10 conversation I ever made to Mr. Bellon. I believe there
11 are, like, 300 tapes.

12 THE COURT: No. Mr. Hinkson, that's not
13 responsive to what Mr. Sullivan asked you.

14 THE WITNESS: I don't know. I mean, I don't
15 remember.

16 BY MR. SULLIVAN:

17 Q. When is the first time -- do you recall ever
18 seeing this document before? "Yes" or "no"?

19 A. No, I have never seen it.

20 Q. You have never seen it?

21 A. No.

22 Q. You were being sued on the basis of this
23 document, and you are telling the jury you never saw it?

24 A. Correct.

25 Q. That particular litigation between you and

1 Mr. Bellon was settled by everyone dropping their
2 claims; correct?
3 A. I believe so.
4 Q. And the litigation between you and Mr. Swisher
5 that accompanied it was settled by you and Mr. Swisher
6 walking away from your claims; correct?
7 A. I believe so but I wasn't -- I wasn't there.
8 Q. You were asked on direct examination whether
9 or not you tried to find out where Ms. Cook, Mr. Hines,
10 or Judge Lodge lived? Do you remember that question?
11 A. Yes.
12 Q. I think you told us you didn't make such an
13 effort; right?
14 A. I never did.
15 Q. Isn't it true you did know where they all
16 worked, however?
17 A. I don't know where they worked, for sure.
18 Q. But you wrote letters and sent them to Steven
19 Hines, didn't you?
20 A. I think my secretaries called to find out
21 his -- well, his address -- wasn't his return address on
22 the letter?
23 THE COURT: Mr. Hinkson, that's not the
24 question. The question is --
25 THE WITNESS: I just responded to the address

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1 that was on his correspondence, I believe.
2 BY MR. SULLIVAN:
3 Q. That's the address for this building, isn't
4 it?
5 A. I wouldn't know.
6 Q. You couldn't find a street address in Boise if
7 you wanted to?
8 A. I didn't try.
9 Q. But you did know where he worked? "Yes" or
10 "no"?
11 A. No, I didn't know where he worked.
12 Q. You did know the address, the return address,
13 for his letters, though, didn't you?
14 A. If they were on his return address, yes.
15 Q. And you knew that Nancy Cook was in the U.S.
16 Attorney's Office in Coeur d'Alene, too?
17 A. No, I did not know that.
18 Q. You didn't know that?
19 A. No.
20 Q. Mr. Hoyt moved into evidence, after you
21 identified this exhibit, Defendant's Exhibit F-7. Do
22 you recall this exhibit, sir? Defendant's F-7?
23 A. Yes, I do, actually.
24 Q. You remember that? It was only yesterday.
25 Yes?

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1 A. Yes.
2 Q. It has a return address for Mr. Hines, doesn't
3 it?
4 A. Yes. On this paper, it does.
5 Q. Does that refresh your memory that you did
6 know that he had a return address?
7 A. I already said I knew he had a return address.
8 Q. You said you didn't know if he had a return
9 address, didn't you?
10 A. That's not what I said. I thought I said that
11 I had an address that was on his paperwork for a return
12 address.
13 Q. And you said you didn't know where he worked?
14 A. I don't know where he works. That's just his
15 mailing address.
16 Q. So you think that doesn't necessarily mean
17 that's where he works; right?
18 A. I don't know where he works.
19 Q. Did you tell Chad Croner that you had a mob
20 lawyer?
21 MR. HOYT: Your Honor, where is this going?
22 THE COURT: Well, I think there was testimony
23 to that effect by Mr. Croner. Overruled.
24 BY MR. SULLIVAN:
25 Q. Did you tell him that?

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1 A. No.
2 MR. HOYT: My objection is to relevance, Your
3 Honor.
4 THE COURT: I'm allowing it for impeachment,
5 Mr. Hoyt. Overruled.
6 BY MR. SULLIVAN:
7 Q. Did you tell Chad Croner in jail that you had
8 a mob lawyer?
9 A. No, I did not use those words.
10 Q. In Las Vegas, when you were a paralegal, did
11 you have a mob lawyer?
12 A. Well, he's an Italian lawyer; but, you know
13 he's not a mob lawyer.
14 Q. Haven't you called him a mob lawyer?
15 A. There's been times when I referred to him as
16 that, yes.
17 Q. You referred to him that way to Mr. Croner,
18 too, didn't you?
19 A. Not that I remember, no.
20 Q. If you would, look at page 156 of the
21 transcript with J. C. Harding. Didn't you say, at line
22 16 -- start at 15.
23 "And I got it. I got a Harvard law professor
24 using my account, my dad, Rich Bellon, in Vegas a mob
25 lawyer. I was trained in Vegas by a mob lawyer. I was

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1 trained by a mob attorney."
 2 You said that to Mr. Hinkson (sic.); right?
 3 THE COURT: Mr. Harding?
 4 MR. SULLIVAN: I'm sorry. Mr. Harding. I
 5 keep doing that.
 6 THE COURT: MR. SULLIVAN, would you write on a
 7 piece of paper and just put the name "Harding" on it and
 8 stick it under his nose?
 9 MR. SULLIVAN: Or put it on my forehead.
 10 THE COURT: I'm not sure you would see it on
 11 your forehead.
 12 BY MR. SULLIVAN:
 13 Q. You said that to Mr. Harding, didn't you?
 14 A. Yes, I did.
 15 Q. You said it to Chad Croner, didn't you?
 16 A. No I didn't.
 17 Q. How else would he know you had a mob lawyer in
 18 Las Vegas, sir?
 19 A. I'm sure you prompted him.
 20 Q. Is that another one of your accusations that
 21 you make against federal officials, based upon no fact,
 22 Mr. Hinkson?
 23 MR. HOYT: I object.
 24 THE COURT: Overruled.
 25 You can answer that, Mr. Hinkson.

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1 THE WITNESS: I think he got information off
 2 my legal paperwork stolen from my jail cell.
 3 BY MR. SULLIVAN:
 4 Q. Your testimony has now changed? I must have
 5 prompted him? Someone stole your information? Is that
 6 your new testimony?
 7 A. I'm not going to give any testimony on that.
 8 Q. Why not?
 9 A. Could you restate the question?
 10 Q. Never mind.
 11 Counsel also moved into evidence Defendant's
 12 Exhibit F-4. Do you recall this document?
 13 A. Yes. I saw it yesterday, yes.
 14 Q. This is the document that -- you did a mass
 15 mailing when Dennis Albers was running for District
 16 Attorney; is that correct?
 17 A. I don't believe that's correct.
 18 Q. All right. Tell us what F-4 is.
 19 A. I think it's a letter to the Idaho Supreme
 20 Court. Go back to the top. It will tell you what it
 21 is. It says it was addressed to the Idaho Supreme
 22 Court, State Bar Association, and the Mayor, and
 23 Grangeville City Council.
 24 Q. Are you testifying that you didn't include
 25 this in your mass mailing to the voters in Idaho County?

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1 A. That is correct; that was never mailed out.
 2 Q. Is it your testimony you sent it to the Idaho
 3 Supreme Court and the other persons listed at the very
 4 top?
 5 A. That would be my testimony, yes.
 6 Q. In this letter, you accuse Mr. Albers of
 7 having orchestrated -- do you follow my finger -- having
 8 orchestrated a lawsuit against you based upon perjury;
 9 correct?
 10 A. Absolutely.
 11 Q. And you allege, "Dennis Albers has further met
 12 with federal agents while acting as a prosecutor, City
 13 of Grangeville, in an attempt to destroy me and my
 14 family for the purposes of taking property he is not
 15 entitled to;" correct?
 16 A. Correct.
 17 Q. At the very bottom of this letter, the last
 18 sentence, did you write to the addressees at the top,
 19 the following:
 20 "After fifteen days, if I do not hear from
 21 you, I will consider that you granted Dennis an implied
 22 immunity and are, thus, sanctioning Dennis Albers'
 23 activities by silence."
 24 A. Yes, I did.
 25 Q. Was that supposed to mean that, if they didn't

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1 go along with you, you were accusing them of some
 2 impropriety?
 3 A. I think that's what it says. I think it
 4 states that I will state that they will be in agreement
 5 that this activity of his is okay.
 6 MR. SULLIVAN: Excuse me, Your Honor. I have
 7 lost another document.
 8 THE COURT: Go ahead. Take your time,
 9 counsel.
 10 BY MR. SULLIVAN:
 11 Q. Sir, during the conversation with Mr. Harding
 12 on March 27th, did Mr. Harding tell you, at page 136,
 13 line 10 -- line 1 -- Mr. Harding said at the top: "So
 14 when does that happen, though? Do you get close to
 15 losing and you go, okay, I've got to whack these guys?"
 16 And you say: "I am only one guy."
 17 Didn't you understand Mr. Harding to be saying
 18 "whack these guys" -- that he was talking about
 19 murdering them?
 20 A. I think he was speaking metaphorically.
 21 Q. Like you do?
 22 A. I did, at that time, yes.
 23 Q. And you said say, "I'm only one guy." Is that
 24 metaphorical, too?
 25 A. Yeah. I feel overwhelmed.

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1 Q. Meaning you were only one guy, and you
 2 couldn't whack three guys by yourself; right?
 3 A. No. I can't fight the whole world by myself.
 4 Q. And then at page -- excuse me -- same page,
 5 line 12, where it says --
 6 A. It's talking about people in Grangeville.
 7 Q. But Harding says: ". . . made the joke in
 8 front of that guy the other day about killing those
 9 three feds . . ." What joke had you made the other day
 10 about killing three feds?
 11 A. I do not know of any joke, and I do not know
 12 if I even was listening to him.
 13 Q. You don't know if you were listening to him?
 14 A. No. He just sort of talked, and I really
 15 didn't pay much attention to what he was saying.
 16 Q. Because you didn't say to him, in response,
 17 "What joke?" or, "Killing what feds?" did you?
 18 A. I really -- I wasn't really having a
 19 conversation with him. It was more like he was just
 20 kind of doing what he does, yacking away; and I wasn't
 21 really listening to most of it.
 22 Q. Were you listening when he said,
 23 ". . . killing those three feds . . ." or were you
 24 listening when he said, ". . . if you keep doing that
 25 in front of people, somebody is going to fuck with you

1 or somebody is going to whack one of them mother
 2 fuckers -- no, you think that's funny."
 3 You were laughing at that point, weren't you,
 4 Mr. Hinkson?
 5 A. No.
 6 Q. Why did he say, "No, you think that's funny"?
 7 A. Everything he said --
 8 Q. Do you think that's funny?
 9 A. Everything he said here was staged for you
 10 guys that were listening.
 11 Q. So you are saying you weren't laughing when he
 12 talked about whacking people?
 13 A. I wouldn't laugh about that.
 14 Q. Were you listening when he said, "But somebody
 15 is going to whack one of them mother fuckers and they
 16 are going to go, 'Well, that's funny, because Dave is
 17 always saying that he will pay you money to do it'?"
 18 Did you hear him what he he said that?
 19 A. I didn't remembering hearing him. What was my
 20 response?
 21 Q. Your response was: "(Inaudible) comes out of
 22 here. She's got everything else."
 23 A. I can't see.
 24 THE COURT: You have to move it up, counsel.
 25 MR. SULLIVAN: Sorry.

1 THE WITNESS: I was talking about the girl
 2 that robbed my house, so it was non-responsive. I
 3 really wasn't listening to him.
 4 BY MR. SULLIVAN:
 5 Q. Right. You were trying to avoid engaging in a
 6 conversation because you knew he was wired?
 7 A. No. I was very depressed that day because
 8 this woman had robbed my house.
 9 Q. At page 137, line 3, don't you indicate that
 10 you are listening to him when he asked the question at
 11 line 3:
 12 "My point being, if you're going to do it,
 13 commit to it somewhere. IF you're not going to do it,
 14 shut the fuck up. That's serious. That's from a
 15 friend. Are you listening to me at all?"
 16 And you say: "Yeah. No, the only thing I can
 17 do is if it's going to get that ugly is I need to leave
 18 the country and never come back and (inaudible) like the
 19 American people."
 20 He says: "I would rather you do that than
 21 hurt somebody."
 22 You were listening then, weren't you?
 23 A. I don't understand the word "it" or "that,"
 24 and I really wasn't really listening to what he was
 25 saying; and that's why I respond and the way I did, I

1 believe. My response is non-responsive.
 2 Q. That's because you suspected he was wearing a
 3 wire; right?
 4 A. No. I didn't have any idea he was wearing a
 5 wire. Harding is not somebody you would take serious.
 6 THE COURT: Wait for the next question,
 7 Mr. Hinkson.
 8 The jury will disregard that last statement.
 9 BY MR. SULLIVAN:
 10 Q. Were you listening to Mr. Harding when he
 11 said, at page 149, line 3: "I want to know something
 12 for sure. This is dead serious what I'm asking you
 13 this. You talked to me about this on a couple of
 14 occasions. Do you want to do it? Do you not want to do
 15 it?"
 16 You say: "What?"
 17 He says: "You know what I'm talking about. I
 18 can handle it."
 19 You say: "What?"
 20 He says: "Your problem with the three
 21 wisemen."
 22 And your response is: "I'm just suing them."
 23 You knew who he meant by "the three wisemen,"
 24 didn't you?
 25 A. No, I did not.

1 Q. Did you say, at line 12: "I don't know what
2 you're talking about, J. C." You didn't say that, did
3 you?

4 A. No.

5 Q. You said, "I'm just suing them," right?

6 A. That's what it says there.

7 Q. So you knew he was talking about the three
8 feds; right?

9 A. No.

10 Q. And, in fact, on this date, March 27, 2003,
11 you weren't suing anybody, were you, because your
12 lawsuit had been thrown out?

13 MR. HOYT: Objection. It calls for a legal
14 conclusion.

15 THE COURT: Overruled.

16 BY MR. SULLIVAN:

17 Q. Isn't that true?

18 A. I don't think so.

19 Q. Your lawsuit had been thrown out, so you
20 wanted the three wisemen and the wise lady murdered?

21 A. No.

22 MR. SULLIVAN: Nothing further, Your Honor.

23 THE COURT: Very well.

24 Redirect, Mr. Hoyt?

25 MR. HOYT: Yes, Your Honor.

1 THE COURT: I think we will go another fifteen
2 or twenty minutes, and then I will let the jury go home
3 for the day.

4 Let me just ask: Can everybody last another
5 fifteen or twenty minutes? Okay.

6
7 R E D I R E C T E X A M I N A T I O N

8 BY MR. HOYT:

9 Q. Mr. Hinkson, do you recall the testimony of
10 Mr. Harding when he said his reference to the three
11 wisemen? Was he speaking in code?

12 A. Yes, he was speaking in code.

13 Q. Mr. Hinkson, did you, in fact, appeal the
14 decision of Judge Lodge after he dismissed your case?

15 A. Yes, I did.

16 Q. So you were suing the authorities that you had
17 a dispute with; right?

18 A. Yes.

19 Q. Now, Mr. Hinkson, do you have the book in
20 front of you that contains Exhibit J?

21 A. No.

22 THE COURT: Let's get it, Ms. Longstreet.

23 THE WITNESS: This goes to F. Do you have a
24 J?

25 THE COURTROOM CLERK: I just go to I, counsel.

1 THE WITNESS: This is just F.

2 THE COURT: It should look something like
3 this.

4 THE COURTROOM CLERK: Let me see if I have it
5 over here.

6 THE COURT: Shall I give him my copy,
7 Mr. Hoyt?

8 MR. HOYT: That would be fine.

9 THE COURT: Mr. Hinkson, I am handing you
10 Exhibit J.

11 BY MR. HOYT:

12 Q. Mr. Hinkson, can you identify Exhibit J?

13 A. A transcript, yes.

14 Q. Okay. What is it?

15 A. It says it's a transcript of a temporary
16 restraining order hearing on the 11th and 12th of
17 December of 2003 at 9:16 a.m.

18 Q. Okay. And can you turn over to what is marked
19 as page 355, at Bates number 380?

20 A. Uh-huh.

21 Q. Do you see the portion where it begins, on
22 line eighteen, "The Court"?

23 MR. SULLIVAN: Judge, I object.

24 THE WITNESS: Yes.

25 THE COURT: Sustained. This exhibit is not in

1 evidence yet, is it, counsel?

2 MR. HOYT: I'm just asking him --

3 THE COURT: You can't ask him about the
4 contents of it until it's admitted into evidence. We
5 are doing this by the rules, Mr. Hoyt.

6 BY MR. HOYT:

7 Q. Mr. Hinkson, can you identify this exhibit
8 that says the transcript -- my question is: Can you
9 identify the portion of the transcript that is depicted
10 in Exhibit J?

11 A. Do I recognize it?

12 Q. Yes.

13 A. I wasn't there; but I recognize that it's a
14 transcript of the hearing, yes.

15 Q. Is it a transcript of the court's findings and
16 determinations as a result of the temporary restraining
17 order dispute?

18 A. Yes.

19 THE COURT: The jury will disregard the
20 answer.

21 Mr. Sullivan, what is your objection?

22 MR. SULLIVAN: He, obviously, can't establish
23 a foundation of personal knowledge. This is hearsay.

24 THE COURT: Sustained.

25 MR. HOYT: We move the admission of Exhibit J.

1 THE COURT: That exhibit will not be allowed,
2 based upon the prior objection.
3 MR. HOYT: As a self-authenticating document?
4 THE COURT: Overruled. It is not admissible.
5 BY MR. HOYT:
6 Q. As a result of the hearing of December 12th,
7 Mr. Hinkson, what happened to the claim of Mr. Bellon
8 that he had a valid contract with you?
9 A. Well, I think --
10 MR. SULLIVAN: I object, Your Honor, unless he
11 has some personal knowledge.
12 THE COURT: Sustained.
13 BY MR. HOYT:
14 Q. Do you -- are you aware, personally aware, of
15 what happened to Mr. Bellon's claim?
16 A. I was on the phone for --
17 THE COURT: Just a minute. Just a minute. It
18 has to come in through hearsay.
19 Counsel, aren't you going to have Mr. Groom
20 testify?
21 MR. HOYT: Mr. Groom was not counsel of record
22 on this case.
23 THE COURT: I see, okay. That is a problem.
24 You still have a hearsay problem.
25 MR. HOYT: Mr. Hinkson was on the phone during

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1 this hearing from the jail.
2 THE COURT: I see. Very well. With that
3 representation, you may proceed.
4 BY MR. HOYT:
5 Q. Mr. Hinkson, are you aware of what happened in
6 this proceeding?
7 A. Yes.
8 Q. And what happened?
9 THE COURT: Well, no, counsel. That's too
10 broad. Let's do it with a leading question.
11 BY MR. HOYT:
12 Q. All right. Mr. Hinkson, as a result of the
13 claims for temporary restraining order of WaterOz, are
14 you aware of the Judge's finding?
15 A. Yeah. He, basically, removed the people that
16 had seized the factory. He ordered them out.
17 MR. SULLIVAN: Your Honor, I move to strike
18 the characterization of "seized the factory."
19 THE COURT: Overruled.
20 BY MR. HOYT:
21 Q. Now, Mr. Hinkson, you talked about the Grand
22 Jury Minutes that you wanted to get in discovery from
23 Nancy Cook. Do you recall that testimony?
24 A. Yes.
25 Q. How would obtaining those Grand Jury Minutes

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1 have helped you in your lawsuit against Nancy Cook?
2 A. It would have proven a misconduct.
3 Q. Who had possession and control of the Grand
4 Jury Minutes?
5 A. The court.
6 THE COURT: Just a minute.
7 MR. SULLIVAN: Unless he can show personal
8 knowledge, speculation.
9 THE COURT: Sustained. The court -- the jury
10 will disregard the last answer.
11 MR. HOYT: Your Honor, not at this moment but
12 I would like to make an offer of proof on this subject.
13 THE COURT: I understand, counsel. I think I
14 know an awful lot about Grand Jury proceedings, and that
15 was a proper objection. Move on to the next question.
16 BY MR. HOYT:
17 Q. Now, Mr. Hinkson, did you disagree with the
18 Internal Revenue Service as to how your income and
19 expenses should be calculated?
20 A. Yes.
21 Q. And when you were submitting information in
22 loan packages to lenders, did you include 1040 forms
23 that had been prepared by an accountant?
24 A. No.
25 Q. Did the lenders obtain that information from

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1 your accountant?
2 A. I did not have an accountant at that time.
3 Q. What were you doing the night that Mr. Harding
4 came to your house and ultimately tape recorded the
5 conversation March 27th?
6 A. It had been a long week; and I was just,
7 basically, taking it easy for the day.
8 Q. Were your children there that evening?
9 A. Yes, they were.
10 Q. Were you preparing dinner for them?
11 A. Yes, I was.
12 Q. Were you occupied in various kitchen
13 activities?
14 A. Yes, I was. I was making dinner.
15 Q. You were making dinner while Mr. Harding was
16 talking to you?
17 A. I was.
18 THE COURT: Counsel, you are leading.
19 BY MR. HOYT:
20 Q. Did your children ever come up and speak to
21 you during the time that you were talking to
22 Mr. Harding?
23 A. I think they interrupted a few times there.
24 You could hear them in the background.
25 Q. Now, counsel for the Government attempted to

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1 suggest that you were intending to flee with a passport;
2 is that correct?
3 A. That's incorrect.
4 Q. They intimated that that's --
5 A. Yes, that's correct.
6 Q. Mr. Hinkson, where was your passport at the
7 time that you were arrested?
8 A. I believe it was at the Ukrainian Embassy.
9 Q. Why was it at the Ukrainian Embassy?
10 A. I had sent it in to get travel permission.
11 They stamp it authorizing you to come to that country.
12 Q. And why were you planning on going to the
13 Ukrainian Embassy as of November 21, 2002?
14 A. I was planning to go to the Ukraine to pick up
15 my fiancée; and we were going to go to Bangkok,
16 Thailand, for a week and then we were flying to Africa.
17 Q. And were you going to meet with anyone in the
18 Ukraine when you went there?
19 A. Well, I always met with Roman and his
20 doctor --
21 THE COURT: Didn't we go through this in some
22 detail when you had him on direct yesterday?
23 BY MR. HOYT:
24 Q. Were you -- were you able to get your passport
25 back from the Ukrainian Embassy?

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1 A. No. They said they couldn't find it.
2 Q. Was there a government agent named Gayler who
3 was pressing you to turn in your passport?
4 A. He said, if I didn't turn it in, he was going
5 to immediately have me arrested.
6 Q. And in response to that statement by
7 Mr. Gayler, what did you do?
8 A. That's when I applied for another one. But it
9 wasn't a secret.
10 Q. What do you mean, "It wasn't a secret"?
11 MR. SULLIVAN: I object to the --
12 THE COURT: The jury will disregard
13 Mr. Hinkson's comments as to whether or not it was a
14 secret.
15 THE WITNESS: Okay.
16 BY MR. HOYT:
17 Q. Did you make the information available to
18 Mr. Gayler that you had applied for a back-up passport
19 since your passport was lost?
20 A. Well, yes. I explained to him that I didn't
21 have it, but he didn't believe me. He kept getting more
22 and more vocal about it. He said I had to turn it over.
23 Q. And so what did you do to comply with his
24 demands?
25 A. It was a double-edged -- I wanted to --

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1 THE COURT: Just what did you do, Mr. Hinkson?
2 Don't characterize it.
3 THE WITNESS: I wanted to turn one over to
4 him.
5 THE COURT: No. Mr. Hinkson, not what you
6 wanted. What did you do?
7 THE WITNESS: Oh, I applied for another one
8 for the purpose of surrendering it to him. And I
9 believe the court was going --
10 THE COURT: Mr. Hinkson --
11 THE WITNESS: -- to allow me --
12 THE COURT: Just stop with you applied for
13 another one. Wait for the next question.
14 THE WITNESS: Okay.
15 BY MR. HOYT:
16 Q. When you declined to show up or for the Grand
17 Jury, Mr. Hinkson, had you asked to be able to speak
18 freely to the Grand Jury?
19 A. Yes, I did.
20 Q. And what were you told?
21 A. I was --
22 MR. SULLIVAN: Objection. Time?
23 THE COURT: I am going to allow it since you
24 tried to impeach him.
25 MR. SULLIVAN: Some foundation?

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1 THE COURT: If you could, establish a time
2 frame and who gave him whatever instruction he was told.
3 BY MR. HOYT:
4 Q. Was the time frame the same as the time frame
5 for the letter that was written that has now been
6 discussed in your prior testimony?
7 A. Yes.
8 Q. And during that time frame, who did you talk
9 to about the possibility of Grand Jury testimony?
10 A. Mr. Baxley.
11 Q. What did you learn about your ability to speak
12 freely to the Grand Jury?
13 A. I was told I could not speak freely to them.
14 Q. What were you -- what restrictions were to be
15 placed upon your testimony?
16 A. I think they are in the letter.
17 MR. SULLIVAN: Object.
18 THE COURT: You are not going to testify what
19 the letter said. What did you understand the
20 restrictions to be?
21 THE WITNESS: I understood the restrictions
22 were -- basically, I was there to just be roasted; and I
23 was not going to be allowed to defend myself.
24 BY MR. HOYT:
25 Q. Now, Mr. Sullivan made quite a -- strike that.

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1 MR. SULLIVAN: Form of the question.
 2 THE COURT: Don't characterize. Just ask a
 3 question.
 4 BY MR. HOYT:
 5 Q. You were asked about statements that were made
 6 in the account of your arrest and how those statements
 7 might have appeared in the press. Do you recall that?
 8 A. Yes.
 9 Q. Are you aware of false statements made by the
 10 Government that have appeared in the press?
 11 A. Yes.
 12 MR. SULLIVAN: Objection, Your Honor.
 13 THE COURT: Sustained. Counsel, that's not a
 14 proper question on a number of grounds.
 15 BY MR. HOYT:
 16 Q. At the original detention hearing dated April
 17 9, 2002, four days after your arrest, Mr. Hinkson --
 18 THE COURT: 2002 or 2003?
 19 MR. HOYT: I'm sorry. The court is correct;
 20 it's 2003.
 21 Q. On April 9, 2003, Mr. Hinkson, were there --
 22 was there any live testimony given by Mr. Harding?
 23 A. No.
 24 Q. Was there live testimony given by Ms. Bates?
 25 A. No.

1 Q. Did you or your lawyer have the opportunity to
 2 cross-examine either Ms. Bates or Mr. Harding?
 3 A. No.
 4 Q. How was their information presented to Judge
 5 Williams?
 6 A. Agent Long presented it, and I put the
 7 transcript in.
 8 Q. What transcript did you put in?
 9 A. The body wire was not wanted to be used by
 10 Mr. Agent Long. He didn't want it in.
 11 MR. SULLIVAN: Objection.
 12 THE COURT: Sustained.
 13 MR. SULLIVAN: Move to strike.
 14 THE COURT: The jury will disregard the last
 15 question and answer.
 16 BY MR. HOYT:
 17 Q. Did you offer as an exhibit the body wire
 18 recording at the April 9, 2003, hearing?
 19 A. Brit Groom did, at my request.
 20 Q. How was the information from Harding and Bates
 21 presented at --
 22 THE COURT: Counsel, that's not relevant.
 23 MR. HOYT: No further questions.
 24 THE COURT: Very well. Mr. Sullivan, let me
 25 just ask you how long you --

1 MR. SULLIVAN: Just a few minutes, Your Honor.
 2 THE COURT: Let's see if we can finish up with
 3 Mr. Hinkson.
 4
 5 RE CROSS EXAMINATION
 6 BY MR. SULLIVAN:
 7 Q. Isn't it true, Mr. Hinkson, at the April 9,
 8 2003, hearing on the revocation of your bond, the tape
 9 between you and Mr. Harding had not yet been
 10 transcribed?
 11 A. That's not true.
 12 Q. It's your testimony that --
 13 A. You are right; it wasn't transcribed. The
 14 actual disc was put into evidence.
 15 Q. So the transcript at that point didn't exist;
 16 right?
 17 A. Correct.
 18 Q. So nobody was reading transcripts, as we have
 19 done here; right?
 20 A. Correct.
 21 Q. Your testimony is you declined to testify
 22 before the Grand Jury because you thought you would be
 23 roasted?
 24 A. Yeah. Another metaphor.
 25 Q. You choose those kind of metaphors all the

1 time, don't you?
 2 A. Yes, I do.
 3 MR. SULLIVAN: I have nothing else, Your
 4 Honor.
 5 THE COURT: Anything further?
 6 MR. HOYT: Nothing further, Your Honor.
 7 THE COURT: Very well. Mr. Hinkson, you may
 8 stand down.
 9 Ladies and gentlemen of the jury, we are, once
 10 again, at a weekend break. I want to remind you, as I
 11 have told you many times, until the trial is over, you
 12 are not to discuss this case with anyone, including your
 13 fellow jurors, members of your family, people involved
 14 in the trial, or anyone else, nor are you allowed to
 15 permit others to discuss the case with you.
 16 If anyone approaches you or tries to talk to
 17 you about the case, please let me know immediately.
 18 Do not read or listen to any news reports of
 19 the trial. Do not do any outside research, and that
 20 includes Internet searches or Dun & Bradstreet searches,
 21 related to the people or entities discussed during the
 22 trial.
 23 Finally, you are reminded to keep an open mind
 24 until all of the evidence has been received and you have
 25 heard the arguments of counsel, the instructions of the

1 court, and the views of your fellow jurors.

2 I wish you all a pleasant weekend. Be back
3 here at 9:00 a.m.

4 Please stay healthy. I do not want to lose
5 any more of you. We will see you back here at 9:00
6 o'clock on Monday morning.

7 (Whereupon, the jury was excused from the
8 courtroom, and the following proceedings were held
9 outside the presence of the jury.)

10 THE COURT: Counsel, we will be in recess for
11 about ten minutes and take up that other matter.

12 (Recess.)

13 THE COURT: Counsel, a couple things before we
14 get started with our two psychologists.

15 I have received, just within the last few
16 minutes, the response from the National Personnel
17 Records Center. It is about a half-inch-thick stack of
18 materials which I will review this weekend.

19 I can tell you that a quick review of the file
20 indicates that Mr. Swisher was, in fact, involved in top
21 secret activities; and it appears that he was awarded
22 the medals that he claims that he was awarded.

23 What I plan to do is go through the file
24 carefully over the weekend, make sure that there is
25 nothing in there that I am not permitted to disclose.

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1 It looks like the records have been declassified, but I
2 want to satisfy myself of that.

3 And what I would propose to do would be to
4 have you come in early on Monday morning and let you
5 take a look at the entire file in chambers, and then I
6 will seal them or return them to the National Personnel
7 Records Center. They do not appear to be impeaching,
8 based upon my quick review.

9 MR. NOLAN: What is interesting is the letter
10 that was given to us today.

11 THE COURT: It is all in there. It looks like
12 they have copies of the correspondence with Mr. Hoyt.
13 And as I say, it is about a half-inch thick. I did not
14 have time to go through all of it in fifteen minutes,
15 but it does not look like it is impeaching.

16 MR. NOLAN: May I also indicate that he is
17 under the court's -- I mean, he hasn't been excused.

18 THE COURT: I understand, yes.

19 MR. NOLAN: I don't want the defense to
20 contact him. I don't want any of us to contact him. I
21 would appreciate it if the court would allow us to have
22 the Marshal contact him.

23 THE COURT: We can tell the Marshal to have
24 him come back but I don't want to -- I'm thinking of a
25 word here. I don't want to pre-judge my preliminary

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1 review; but based upon what I saw, I don't think you are
2 going to want to bring him back for that reason.

3 MR. NOLAN: I thought that the letter we just
4 got today from the prosecutor seemed to say that some of
5 the things are impossible. I'm sure the court will
6 figure it out.

7 THE COURT: I want to do it carefully. I will
8 review everything. I wanted to, at least, give you the
9 preliminary indications so you have some idea over the
10 weekend where that is going.

11 The other thing is you should have received
12 copies of the court's draft of final jury instructions.
13 I want you to have a chance to review them over the
14 weekend, and we will have an instruction conference next
15 week as soon as we see where the evidence is going.

16 At this point, is the defense still thinking
17 that you may rest on Monday?

18 MR. NOLAN: I believe so.

19 Isn't that the case?

20 THE COURT: Mr. Hoyt?

21 MR. HOYT: I think so.

22 THE COURT: And then does the Government have
23 any idea how long their rebuttal case might take?

24 MR. SULLIVAN: We are planning a rebuttal
25 case, Your Honor; but it would be very short.

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1 THE COURT: We might be to the jury by mid
2 week, after closing arguments?

3 MR. SULLIVAN: Yes, sir.

4 THE COURT: Let's proceed. Mr. Nolan?

5 MR. NOLAN: Yes. I would like to call
6 Dr. Duke, please.

7 THE COURT: Dr. Duke, would you step forward
8 and be sworn, please?

9 MR. SULLIVAN: As a preliminary matter, would
10 it be okay if the Government's psychologist sat at
11 counsel table?

12 THE COURT: That's fine. There is no jury
13 here. I would like the two psychologists to hear one
14 another. That's perfectly appropriate.

15 * * *

16 JERRY D. DUKE, Ph.D.,

17 having opinion called, sworn, testified as follows:

18 THE COURT: First of all, Mr. Nolan, before
19 you proceed, let me thank both doctors for making
20 themselves available on such short notice to the court.

21 I know you are very busy, and I appreciate
22 your accommodating us.

23 Go ahead, Mr. Nolan.

24 THE COURTROOM CLERK: If you would, state your
25 name and spell your last name please for the record.

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1 THE WITNESS: Jerry Don Duke, D-o-k-e.

2 THE COURTROOM CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. NOLAN:

5 Q. You are a Ph.D.; is that correct?

6 A. You are correct. Yes.

7 Q. And you brought with you a file today;
8 correct?

9 A. Yes.

10 Q. It would be your entire file; correct?

11 A. Yes.

12 Q. And you would be happy to give that to the
13 Government at any point so that they can make a complete
14 copy of the file and the court can also review the
15 entire file; is that correct?

16 A. Yes.

17 MR. NOLAN: I would like to show you and mark
18 for identification a resume. I would like to mark it as
19 an exhibit.

20 THE COURT: Counsel, I think I have seen that.
21 Go ahead and mark it.

22 MR. NOLAN: Was it attached somewhere?

23 THE COURT: I have a copy of Dr. Duke's C.V.

24 MR. NOLAN: I didn't know it was attached.
25

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1 All right. Fine.

2 THE COURT: I assume the Government stipulates
3 to his credentials and that he is a qualified
4 psychologist to enter an opinion.

5 MR. TAXAY: The Government would like to voir
6 dire on that subject.

7 THE COURT: You would? All right. Go ahead,
8 Mr. Taxay. I guess we are going to have to do it the
9 old-fashioned way. Let's do it quickly. I do want to
10 get Mr. Nolan to the airport.

11 MR. NOLAN: Thank you.

12 THE COURT: Let's do this. I have the C.V. I
13 have read it. Why don't we let Mr. Taxay ask whatever
14 questions he wants to ask him?
15

16 VOIR DIRE EXAMINATION

17 BY MR. TAXAY:

18 Q. Dr. Duke, good afternoon.

19 A. Hello.

20 Q. Your Ph.D. -- you got it from California Coast
21 University?

22 A. Yes.

23 Q. That's not an accredited -- that's not an
24 accredited -- it doesn't have an accredited Ph.D.
25 program; is that right?

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1 A. It's actually nationally approved by the
2 National Education Association, which is a little
3 better.

4 Q. It's not accredited by any national
5 associations; is that correct?

6 A. It's approved.

7 Q. That's not my question.

8 A. I don't believe the "accreditation" word was
9 used, no.

10 Q. So to your knowledge, it's not accredited?

11 A. Yes.

12 Q. And have you heard of the American
13 Psychological Association?

14 A. Yes, I have.

15 Q. That's the national body that standardizes
16 academic training; isn't that right?

17 A. Partly, yes.

18 Q. And they, also, standardize internships and
19 things like that?

20 A. Yes, they do.

21 Q. And that's the group that -- well, when we
22 talk of accreditation, that's the group I'm talking
23 about. The California Coast University is not
24 accredited by the APA?

25 A. That's correct.

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1 Q. Now, there is another sort of accreditation.
2 The distance learning -- I'm sorry -- the Distance
3 Education and Training Council, have you heard of that?

4 A. I think so, yes.

5 Q. Now, California Coast University is not -- its
6 Ph.D. program is also not accredited by the Distance
7 Education and Training Council; isn't that right?

8 A. I'm not sure.

9 MR. TAXAY: Your Honor, I have here an
10 Internet printout from the Distance Education and
11 Training Council's website detailing accredited
12 universities -- accredited programs, programs that have
13 been accredited by them; and California Coast is not on
14 that list.

15 I would tender that to the court.

16 THE COURT: Very well. Why don't we mark
17 that? I guess it would be Exhibit 15.

18 THE COURTROOM CLERK: Plaintiff's Exhibit No.
19 15 is marked.

20 BY MR. TAXAY:

21 Q. Now, California Coast University, that's a
22 school that allows -- let's see. I'm reading from the
23 website. Basically, that an individual's multiple
24 learning experiences can be measured and assessed for
25 academic comparability and equivalency. Is that your

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1 understanding of California Coast?

2 A. I think that was part of the statements made
3 in the catalogs.

4 Q. Well, let me ask you this: Did you get some
5 credit for prior experiences?

6 A. Yes.

7 Q. How many classes did you actually take at
8 California Coast University?

9 A. I don't have my transcript here; but it was
10 enough to qualify me to sit on the licensing boards, the
11 national licensing boards; and I was approved by
12 California to be able to sit on those licenses boards.

13 Q. How many classes did you take, sir?

14 A. I don't remember.

15 Q. More than five?

16 A. Yes.

17 Q. More than ten?

18 A. I don't remember exactly.

19 Q. When you say the school has been approved,
20 specifically approved by whom?

21 A. My understanding -- I don't have the
22 information here; but my understanding, at that time, it
23 was the National Education Association.

24 A. And I was approved in California, again,
25 because of the full dissertation and the requirements

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1 met, to sit on the licensing board in California.

2 Q. Did you know that -- have you ever heard of
3 the United States General Accounting Office?

4 Q. GAO?

5 A. Yes.

6 Q. Do you know that the GAO was recently had an
7 investigation into federal employees? This is what --
8 it has what the report is called. Federal employees
9 have obtained degrees from diploma mills and other
10 unaccredited schools, some at government expense?

11 A. I don't know about that, no.

12 Q. Did you know that California Coast University
13 is highlighted amongst a small handful of schools that
14 are unaccredited?

15 A. I don't know about that.

16 MR. TAXAY: Your Honor, the Government would
17 tender this GAO report.

18 THE COURT: Very well. We will mark it as
19 Exhibit 16, and both Exhibits 15 and 16 will be admitted
20 for purposes of this hearing only at this point.

21 (Whereupon, Government's Exhibit Nos. 15 and
22 16 were received in evidence for this hearing only.)

23 MR. TAXAY: Your Honor, I have highlighted
24 certain sections of it. I could give you the
25 unhighlighted copy.

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1 THE COURT: I would prefer the highlighted
2 one, since it's just me.

3 MR. NOLAN: Do you have a copy for me?

4 THE COURT: Yes, provide a copy for the
5 defense.

6 THE COURTROOM CLERK: Plaintiff's Exhibit 16
7 is marked.

8 THE COURT: Both exhibits are admitted.

9 MR. TAXAY: Counsel, do you have an extra copy
10 of his resume handy?

11 MR. NOLAN: Yes.

12 BY MR. TAXAY:

13 Q. I don't have one in this package. I found it.
14 Sorry. Thank you.

15 Now, you were talking about national
16 registries a moment earlier. Were you talking about the
17 American Psychotherapy Association as a national
18 registry?

19 A. No.

20 Q. Let's talk about that first. That's listed on
21 your professional affiliations, the American
22 Psychotherapy Association; and it says you have a
23 diplomat?

24 A. Yes.

25 THE COURT: Counsel, if you have an extra

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1 copy, I don't have mine. I sent my law clerk to go get
2 it for me.

3 THE COURTROOM CLERK: Thank you.

4 THE COURT: Maybe we should mark this as an
5 exhibit, just so we have a clear record. Let's give
6 this one number 17.

7 THE COURTROOM CLERK: Plaintiff's Exhibit No.
8 17 is marked.

9 THE COURT: And it will be admitted for
10 purposes of this hearing.

11 (Whereupon, Government's Exhibit No. 17 was
12 received in evidence for this hearing only.)

13 BY MR. TAXAY:

14 Q. Now, this American -- underneath your
15 professional affiliations, it says you are a member of
16 the American Psychotherapy Association and you are a
17 diplomat. You don't -- to become a member of that
18 organization, you don't need a Ph.D.; isn't that
19 correct?

20 A. Correct.

21 Q. A Master's Degree in psychology would be
22 sufficient?

23 A. To be a member, I believe so, yes.

24 Q. Now, the international -- I'm sorry. Your
25 professional affiliations also include the International

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1 College of Prescribing Psychologists Fellow Diplomat.
 2 You are not licensed to prescribe medications in the
 3 State of Idaho; isn't that right?
 4 A. Correct. No psychologist is.
 5 Q. Basically, if you pay a fee, you can join
 6 these two organizations?
 7 A. No.
 8 Q. You have to have a Master's in psychology?
 9 A. That's not correct.
 10 Q. Okay. Tell me what the requirements are for
 11 these organizations. First, the American Psychotherapy
 12 Association?
 13 A. You have to apply with your history and a
 14 letter and your credentials, and they take those to a
 15 board and they either approve you for membership status
 16 or various other statuses.
 17 I think there might be an affiliate and, also,
 18 a diplomat. And with the college of prescribing
 19 psychologists, international college, that was a 150
 20 hour classroom hour, face-to-face with professors over a
 21 period of two or three years to earn the diplomat.
 22 Q. Let's get to the American Psychotherapy
 23 Association. To achieve diplomat status, you don't need
 24 a psychologist -- a Ph.D.; correct? A Master's would do
 25 it?

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1 A. You know, I think so. I think certain people
 2 with certain credentials and experience and
 3 contributions to the field may be able to achieve
 4 diplomat status. I don't have any of that information
 5 in front of me, but I believe you might be correct on
 6 that.
 7 Q. I actually have a printout from the American
 8 Psychotherapy Association, and I will read it to you.
 9 What it says is that diplomat status is only available
 10 to applicants who have achieved a minimum of a Master's
 11 Degree from a regionally-accredited institution and a
 12 psychotherapy-related field. All applicants must have a
 13 minimum of four years professional psychotherapy
 14 experience.
 15 THE COURT: Mr. Taxay, slow down just a little
 16 bit for the court reporter.
 17 MR. SULLIVAN: I apologize. Thank you, Your
 18 Honor.
 19 Q. Is that consistent with your understanding of
 20 what it means to be a diplomat with the American
 21 Psychotherapy Association?
 22 A. I don't have that in front of me but if that's
 23 what you read, then I suppose that's --
 24 Q. Now, the American Psychotherapy Association
 25 goes by the initials APA?

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1 A. Yes.
 2 Q. That's different than the American
 3 Psychological Association; is that right?
 4 A. Yes.
 5 Q. The American Psychological Association is the
 6 entity that accredits programs at a national level;
 7 isn't that right?
 8 A. They do some, yes.
 9 Q. It's the leading organization; isn't that
 10 right?
 11 A. You know, for psychologists, I suppose it
 12 still is. It's changing some. It has over the years.
 13 Q. You are not a member of the APA, the American
 14 Psychological Association?
 15 A. I'm an ex-member of the APA. I used to be a
 16 member.
 17 Q. Well, your school is not accredited by the
 18 APA, the American Psychological Association; is that
 19 right?
 20 A. That's right.
 21 Q. So you are not eligible to be a member of the
 22 American Psychological Association; isn't that right?
 23 A. That's not right.
 24 Q. So is it your testimony that you don't need --
 25 to become a member of the American Psychological

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1 Association, you do not need to come from an accredited
 2 APA program?
 3 A. I had a Master's Degree accredited. And at
 4 one time, I was a member of the American Psychological
 5 Association.
 6 MR. NOLAN: Your Honor, at this time the
 7 Government would tender a printout from the American
 8 Psychotherapy Association that describes the
 9 requirements to become a diplomat.
 10 THE COURT: Very well. We will mark it as
 11 Exhibit 18 and admit it for purposes of this hearing.
 12 (Whereupon, Government's Exhibit No. 18 was
 13 received in evidence for this hearing only.)
 14 MR. TAXAY: Counsel, I will get you copies of
 15 this.
 16 THE COURTROOM CLERK: Plaintiff's Exhibit No.
 17 18 is marked.
 18 BY MR. TAXAY:
 19 Q. With respect to your membership in the
 20 American Psychological Association, your membership was
 21 at the Master's level and not at the Ph.D. level?
 22 A. That's been a while ago, yes.
 23 Q. You have never been a member of the American
 24 Psychological Association at the Ph.D. level; right?
 25 A. It shows not to be, that's true.

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1 Q. Isn't it true that you are not eligible for it
2 because you didn't come from an American Psychological
3 Association's accredited institution?

4 A. I am eligible, if I want to apply, to become a
5 member of the American Psychological Association.

6 Q. Not to quarrel with you, Dr. Doke, but they
7 won't accept you at the Ph.D. level, is that right,
8 because you don't come from an American Psychological
9 Association accredited Ph.D. program?

10 A. There are different levels of membership, and
11 at that also changes over the years. I haven't checked
12 lately, but I can certainly become an associate member.
13 Again, there are different levels of membership in the
14 American Psychological Association.

15 Q. So you are not eligible, though, for their
16 highest level of membership; is that correct?

17 A. If that's the way you want to put it, that's
18 correct.

19 Q. The American Psychotherapy Association doesn't
20 require an entrance exam, right? You don't need to take
21 a test?

22 A. Exactly.

23 Q. One question I forgot to ask about California
24 Coast University --

25 THE COURT: Mr. Taxay, I don't want to

1 interrupt your deposition here; but I want to really get
2 to the heart of the matter.

3 Unless there is something else that I need to
4 know about Dr. Doke's background, I would really like to
5 get into the substance of his proposed testimony
6 regarding Mr. Hinkson.

7 MR. TAXAY: Just one more item then, Your
8 Honor.

9 THE COURT: All right. Go ahead.

10 BY MR. TAXAY:

11 Q. Dr. Doke, have you ever heard of the National
12 Register of Health Service Providers in Psychology?

13 A. Yes.

14 Q. That's a register that psychologists who
15 qualify can be -- are included in this book, the
16 Register, right here?

17 A. Yes.

18 Q. Now, what do you understand this Register is?

19 A. You know, I haven't looked at that for a long
20 time. I really don't need to do that in order to do my
21 work.

22 Q. Fair. You are not in this book?

23 A. Right.

24 Q. You are not in the National Register of Health
25 Service Providers in Psychology?

1 A. That's correct.

2 Q. You don't qualify to be in this book because
3 you didn't come from an accredited program; isn't that
4 right?

5 A. I'm not sure if that's correct or not.

6 Q. You can't get in this book because you don't
7 have the qualifications; is that right?

8 A. I'm not sure.

9 MR. TAXAY: That's all right now.

10 THE COURT: All right. Mr. Nolan, you don't
11 need to redirect on this. For purposes of this hearing,
12 I am going to allow Dr. Doke to testify. Let's get to
13 the meat of it.

14 MR. NOLAN: Thank you.

15 FURTHER DIRECT EXAMINATION

16 BY MR. NOLAN:

17 Q. Were you retained to do an evaluation of
18 Mr. Hinkson?

19 A. Yes, I was.

20 Q. And he is the person seated here in the
21 courtroom; is that correct?

22 A. Yes. He is in the blue sweater with the white
23 shirt underneath.

24 THE COURT: For the record, the Dr. Doke has
25

1 identified Mr. Hinkson.

2 BY MR. NOLAN:

3 Q. And you were hired to do a psychological
4 assessment; is that correct?

5 A. Yes.

6 Q. At the time you saw him, he was in custody;
7 correct?

8 A. Correct.

9 Q. Your proposed testimony may relate to 2000,
10 2001, 2002, and his personality characteristics or
11 psychological make-up at that time.

12 Do you believe that you can offer an opinion
13 in regards to that time period, in light of the fact
14 that you saw him while he was in custody and were asked
15 to evaluate his present condition?

16 A. Yes, I can.

17 Q. All right. Are there two types of sort of
18 diagnoses? You used the words yesterday with me, and I
19 can't remember. One never changes, and the other is
20 situational?

21 A. I think we were talking about personality
22 traits and personality states.

23 Q. Personality traits and personality
24 straights -- I'm sorry -- and personality states?

25 THE COURT: You lost me on that one, counsel.

1 MR. NOLAN: I lost myself. Personality traits
2 and personality states.

3 THE COURT: S-t-a-t-e-s?

4 THE WITNESS: Yes.

5 BY MR. NOLAN:

6 Q. The states vary, depending upon the
7 circumstances?

8 A. Yes.

9 Q. And the traits remain the same?

10 A. Pretty much.

11 Q. Pretty much the same?

12 A. Yeah.

13 Q. So in your testimony, your proposed testimony,
14 you would be talking about personality traits; correct?

15 A. More -- yes, more than the states.

16 Q. And you would be comfortable being able to be
17 cross-examined as to whether or not, for example, how --
18 how you diagnose him, whether that diagnosis is
19 effective for the years 2000, 2001, 2002?

20 A. I believe so, yes.

21 Q. All right. In regards to the methodology in
22 determining whether or not someone has certain
23 personality traits, is there a methodology that is
24 accepted in the psychological community?

25 A. Yes.

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1 Q. All right. And does that methodology include
2 taking a history from the patient?

3 A. Yes.

4 Q. And does that include a family history?

5 A. Yes.

6 Q. Does that include a vocational history?

7 A. Yes.

8 Q. An education history?

9 A. Yes.

10 Q. A medical history?

11 A. Yes.

12 Q. And a legal history?

13 A. Yes.

14 Q. Does it also involve observations of the
15 patient and their behavior?

16 A. Yes.

17 Q. Does it involve trying to, under certain
18 circumstances, confirm information from sources other
19 than the patient itself?

20 A. Yes.

21 Q. Does that include administration of standard
22 psychological tests?

23 A. Sometimes.

24 Q. All right. And does that also include
25 reviewing other doctors' reports who may have examined

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1 the patient?

2 A. If they are available, yes.

3 Q. In regards to Mr. Hinkson, did you see him on
4 at least -- did you see him, personally, on three
5 occasions?

6 A. I saw him personally on 10/25/04, 10/28/04,
7 and 11/28/04, yes.

8 Q. And I don't mean to lead you too much, but you
9 have your notes there. You saw him for two hours on
10 each of those times; is that correct?

11 A. Yes.

12 Q. And that was a person-to-person encounter in
13 the jail; correct?

14 A. Yes.

15 Q. You also had a conversation with him, did you
16 not, on the telephone?

17 A. Yes.

18 Q. And that lasted approximately how long?

19 A. On 10/29/04, one hour.

20 Q. And did you administer psychological tests?

21 A. Yes.

22 Q. To Mr. Hinkson?

23 A. Yes.

24 Q. And those were traditional, not unusual
25 psychological tests; correct?

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1 A. They were -- for the situation in the jail and
2 the exam I was asked to do, they were acceptable and
3 traditional, yes.

4 Q. What were those tests?

5 A. The mental status checklist by
6 psychological -- well, they call it PAR. It's a testing
7 manufacturing company that is widely used by
8 psychologists.

9 The mental status checklist also used by them,
10 both generated from -- both generated by the examiner
11 and the patient and then --

12 THE COURT: I'm sorry, Dr. Duke. It sounds to
13 me like you are talking about the same checklist. Are
14 we still on the mental status checklist, or are there
15 two different checklists?

16 THE WITNESS: Two different.

17 THE COURT: Could you clarify that, Mr. Nolan?
18 BY MR. NOLAN:

19 Q. Yes. If you could, just briefly give us the
20 generic name of the tests that you performed.

21 A. The mental status checklist was one, and then
22 the quick view was another one.

23 THE COURT: Quick view?

24 BY MR. NOLAN:

25 Q. Quick view?

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1 A. Yes, social history. And then I also gave the
2 Beck Depression Inventory.

3 Q. Would you repeat that?

4 A. Beck, B-s-c-k, Depression Inventory II, which
5 is the second edition.

6 Q. How many years of experience have you had in
7 doing evaluations?

8 A. 39.

9 Q. And do you believe that these tests are
10 reliable that you used?

11 A. Absolutely.

12 Q. And the results of these tests, do you believe
13 that they are reliable?

14 A. Yes.

15 Q. And are there ways in which these tests are
16 designed so that you can make that determination?

17 A. Yes.

18 Q. And do you believe that you interviewed
19 Mr. Hinkson for a sufficient number of hours to offer an
20 opinion as to his psychological traits and make a
21 diagnosis?

22 A. Yes.

23 Q. And did you talk to his lawyer and get certain
24 facts from his lawyer, Mr. Hoyt?

25 A. Yes.

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1 Q. Were there any experimental techniques used in
2 your evaluations?

3 A. No.

4 Q. Did you deviate from any normal practices that
5 you would use?

6 A. No.

7 Q. Based upon your evaluation and your assessment
8 and your work, were you able to make a diagnosis?

9 A. Yes.

10 Q. Do you have confidence in the diagnosis that
11 you made?

12 A. Yes.

13 Q. Are those diagnoses as to personality traits
14 that you believe exist as to Mr. Hinkson?

15 A. Yes.

16 MR. NOLAN: Now, in regards to your -- I want
17 to give the court some idea of the question that I might
18 try to ask.

19 THE COURT: I would appreciate that.

20 MR. NOLAN: All right. Again, I'm taking into
21 account that the Government objected to the general
22 nature of the previous questions; and I don't disagree
23 with them, so I have tried to formulate them.

24 THE COURT: Okay.

25

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1 BY MR. NOLAN:

2 Q. Let me ask you whether or not these are
3 questions you feel you can answer as a psychologist and
4 an expert to assist the trier of fact.

5 As a hypothetical, based upon your
6 psychological evaluation of David Hinkson, do you have
7 an opinion as to whether David Hinkson would be more or
8 less likely than a person without his psychological
9 make-up to truly threaten someone or actually intend to
10 solicit the murder of someone? That's one way of asking
11 the question.

12 Is that something that you feel you can
13 answer, based upon your experience?

14 A. Would you repeat the question, please?

15 Q. All right. Let me try it -- let me try a
16 different question because I'm trying to find the right
17 one.

18 Are there aspects of Mr. Hinkson's character
19 that have been determined by you through your
20 psychological evaluation and assessment that might be
21 considered by a jury as making him more likely to truly
22 solicit the murder of someone?

23 A. No.

24 Q. I mean, is that a question that you think you
25 can assist the jury in determining?

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1 A. Yes.

2 Q. If so, what are those? And what are your
3 reasons? That would be one of the questions.

4 Another possible question is --

5 THE COURT: Let's not do it in a compound
6 fashion. Let's him explain the basis.

7 MR. NOLAN: I was --

8 THE COURT: You want to lay out the questions
9 first?

10 MR. NOLAN: I'm trying to lay out two or three
11 questions so that, if we all agree that someone has a
12 better one, we will see what he says on it.

13 THE COURT: Mr. Nolan, do it any way you want.

14 MR. TAXAY: Your Honor, the Government --

15 THE COURT: Let me hear from Mr. Taxay.

16 MR. TAXAY: The Government objects to the
17 procedure. It almost suggests that we have this rolling
18 set of theories as to what he might be able to testify
19 to. I mean, Dr. Duke has an opinion or he doesn't have
20 an opinion. That's what we are here to hear.

21 THE COURT: Maybe we should do it the more
22 traditional way, Mr. Nolan.

23 Doctor, do you have an opinion? What is that
24 opinion? And let me hear what he has to say because you
25 are leading him an awful lot. I will not let you do

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1 that in front of the jury.

2 MR. NOLAN: Okay. What I'm --

3 THE COURT: I realize you are asking him

4 hypothetically.

5 MR. NOLAN: What I'm trying to do is to

6 formulate the kind of question that would be relevant

7 based upon what he would say and so we will ask --

8 THE COURT: Let me hear what his diagnosis or

9 opinion is.

10 MR. NOLAN: That's fine.

11 THE COURT: Let's go from there.

12 BY MR. NOLAN:

13 Q. If you can, tell the judge what your diagnosis

14 is and how that diagnosis and your opinion is relevant

15 to the issues in this case.

16 MR. TAWAY: Your Honor, I mean, the relevance

17 to the issues in this case is not something for this

18 witness to determine.

19 THE COURT: Well, as I understand Mr. Nolan's

20 question, he would like Dr. Doke to give us his opinion

21 with regard to Mr. Hinkson's personality traits.

22 MR. TAWAY: Right. We would love to hear

23 that.

24 THE COURT: As they relate to Mr. Hinkson's

25 ability to form the intent to solicit the murder of

1 someone?

2 MR. NOLAN: That's right.

3 THE COURT: I would like to know what he's

4 going to say. There is no jury here. You are not being

5 hurt yet.

6 I haven't ruled on whether or not he is going

7 to be allowed to do this. I would like to know what

8 he's going to say. I mean, that's the whole purpose of

9 this hearing.

10 MR. TAWAY: Agreed.

11 THE COURT: Dr. Doke, with that clarification,

12 can you help the court?

13 THE WITNESS: Yes, Your Honor.

14 On Axis I, I put: Rule out delusional

15 disorder. And that was based upon not only my interview

16 but the history and all of the records I read and the

17 testing. I also put, under Axis I, post-traumatic

18 stress disorder, base.

19 THE COURT: Doctor, I read your report. If

20 you were asked in front of the jury, "Do you have an

21 opinion as to his personality traits and, if so, what

22 would that opinion be?" --

23 THE WITNESS: My opinion on his personality

24 traits is that he is in that spectrum of paranoid

25 personality disorder. That's the closest, probably most

1 reliable.

2 In addition, I did put in my report a very

3 descriptive, you know, accounting of that, where it came

4 from, and I quoted Millon who is a nationally- and

5 internationally-recognized expert.

6 THE COURT: It would help the court if you

7 could explain what it is that causes you to conclude

8 that he has a paranoid personality disorder.

9 THE WITNESS: Okay. The testing and my mental

10 status interview, all of the records I reviewed, and all

11 of the other standard elements that I used end up with

12 my psychological evaluation.

13 THE COURT: All right.

14 BY MR. NOLAN:

15 Q. What does that mean, Doctor?

16 THE COURT: That's kind of general.

17 BY MR. NOLAN:

18 Q. Doctor, if you might do me a favor, pretend

19 you are just talking to the Judge. Tell the Judge,

20 without going through all of the detail -- tell him what

21 this means, as far as your assessment of David Hinkson.

22 A. Okay. One of the things we evaluate, Your

23 Honor, is their overall belief system, their thoughts,

24 how they perceive the world, and whether those things

25 are more or less longstanding, pervasive traits or those

1 are situational types of things, whether or not they are

2 consistent in the personality structure over a long

3 period of time and whether or not they meet some of the

4 criteria in the literature and so on.

5 So I was impressed with the nature of his

6 belief system, the way he perceived reality, the way he

7 perceived things that were going on.

8 Based upon a standard, for example, when most

9 people believe that way -- in order to have a

10 personality diagnosis -- you do have to deviate some

11 from the norm.

12 THE COURT: In the tests that you

13 administered, is there some kind of a test score that

14 would help you conclude that he deviates from the norm?

15 THE WITNESS: There is -- we didn't use the

16 MMPI-II or the Millon. Because of the nature of the

17 interview and so on, I didn't necessarily feel that that

18 was necessary.

19 Those tests are adjuncts and those are helpful

20 as collateral information. Most of the research shows

21 that clinicians, licensed psychologists, people that

22 diagnose on a regular basis are better, overall, at

23 diagnosing than the personality inventory.

24 They are not diagnostic tools. They are

25 helpful in clarifying certain deviations within the

1 person on certain personality traits.
 2 THE COURT: So you are relying more upon
 3 your -- what was it -- 39 years of experience in
 4 evaluating individuals who possess paranoid personality
 5 characteristics?

6 THE WITNESS: I relied more on that and my
 7 interview and the records than I did any psychometric --

8 THE COURT: Any objective test score?

9 THE WITNESS: Yes.

10 THE COURT: Mr. Nolan, go ahead.

11 BY MR. NOLAN:

12 Q. Thank you. In regards to someone with that
 13 type of personality characteristic, how is that
 14 relevant -- if it is, how is that relevant to whether or
 15 not they may be more likely or less likely to carry out
 16 verbal threats?

17 A. I don't see it that way when I interview
 18 someone.

19 THE COURT: See what that way?

20 THE WITNESS: I don't see their personality
 21 trait or that diagnosis as necessarily relevant to
 22 whether or not they would have done something. I see it
 23 more, as a clinician, as a diagnostic category with
 24 which we can treat someone.

25 We can understand someone better; and if there

1 are other questions related to that personality, we
 2 would certainly consider that personality.

3 THE COURT: Dr. Doka, I think, if I understood
 4 Mr. Nolan's question and your answer -- I'm a little
 5 confused by your answer. What we are trying to get at,
 6 I think, is propensity.

7 Would an individual with Mr. Hinkson's
 8 diagnosis of paranoid personality disorder be the type
 9 of a person who would be prone to solicit acts of
 10 violence from other people, or would he be prone to
 11 carry out acts of violence? Can you help us there?

12 THE WITNESS: I can do that. On page eight, I
 13 believe, I quoted Millon. And at the bottom of the
 14 page, we talk about the stages of this personality
 15 diagnosis quoted out of Millon. And if I may, on page
 16 nine --

17 THE COURT: Go ahead.

18 THE WITNESS: Quote, "During the second stage,
 19 all personality functions disintegrate. According to
 20 Schneider's theory, they can split into either the
 21 combative type or the eccentric type.

22 The combative can be actively quarrelsome
 23 about their fallacious beliefs, complaining bitterly
 24 about injustices done to them, often seeking retribution
 25 and are frequently litigious."

1 THE COURT: But that doesn't really help me
 2 with the question about whether or not a person
 3 diagnosed in that fashion would or would not be inclined
 4 to solicit harm from the objects of these beliefs or
 5 harm to the -- can you help us with that?

6 THE WITNESS: I think it would be less likely
 7 that they would, in my opinion. I base it, also, on
 8 what Millon says because, if they do disintegrate more,
 9 it would be the eccentric type.

10 His demeanor over the years, his behavior --
 11 lack of aggression, lack of assault, battery, things
 12 like that -- as far as we know, has been vocal. They
 13 have been verbal. They have been protests, marches,
 14 radio shows, very outspoken, very verbal-type things.

15 That fits into this type. I just used this
 16 Millon to bolster that up, and I do think it would be
 17 less likely for him to do anything but be litigious.

18 THE COURT: Less likely for him to do it
 19 himself? Do you understand he is not charged in this
 20 case with actually doing it himself? He is charged with
 21 soliciting or inducing or offering money or other things
 22 of value to someone else to do it for him.

23 Is that -- does that make a difference, in
 24 your opinion?

25 THE WITNESS: Yes, Your Honor. I think he

1 would be more litigious. I think he would use the law.
 2 I think he would use it, like he did in Nevada when he
 3 had the protests against the commissioners and got one
 4 fired because of some injustices.

5 THE COURT: Because of the fact that you would
 6 expect, based upon this disorder, that he would not do
 7 such a thing, you would not expect him to ask someone
 8 else to do it for him? Is that what you are saying?

9 THE WITNESS: Right. If he asked anybody to
 10 do anything, it would be through legal issues, based on,
 11 again, my -- based on my opinion as a psychologist, on
 12 his history, on the nature of all of my evaluations and
 13 his responses, I believe he would use legal means to do
 14 that, in my opinion.

15 THE COURT: Okay. All right. Go ahead,
 16 Mr. Nolan.

17 MR. NOLAN: That's, basically, it. I would
 18 like -- I would like to just farm the question so we
 19 don't violate any of the rules.

20 THE COURT: Please, do.

21 BY MR. NOLAN:

22 Q. But that's basically -- I take it, you feel
 23 that -- let me ask you this: Do you feel that this kind
 24 of diagnosis of paranoia and --

25 THE COURT: Paranoid personality?

1 BY MR. NOLAN:

2 Q. -- paranoid personality and the second axis
3 was -- I can't remember.

4 A. That was Axis II.

5 Q. Axis I was paranoia?

6 A. Post-traumatic stress disorder, rule out
7 delusional disorder.

8 Q. Delusional disorder?

9 A. Yes.

10 Q. That a jury may be more likely to believe that
11 he would be inclined to use unlawful means and misuse
12 the personality characteristics that they might see, not
13 knowing that the psychological community actually might
14 draw a different conclusion?

15 THE COURT: Mr. Nolan, do you want him to --
16 do you want him to testify as to how an average juror
17 would misperceive somebody who suffers from paranoid
18 personality disorder?

19 MR. NOLAN: No. What I think I want to do is
20 establish the need for the psychologist because of the
21 fear of the jury misinterpreting the behavior and
22 drawing a conclusion that would be contrary to the
23 psychological community's conclusion.

24 THE COURT: Well, I mean the jury obviously --
25 I don't think you quarrel with this under Rule 704(b).

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1 The jury has to make the ultimate determination as to
2 whether Mr. Hinkson did, with intent, make solicitations
3 and engage in true threats.

4 MR. NOLAN: Right.

5 THE COURT: So I'm not sure what question you
6 are asking him here that wouldn't violate 704(b) on this
7 issue.

8 MR. NOLAN: I don't think I want to ask him
9 that in front of the jury. I am asking him that because
10 it's kind of like if no one knows about Tourette
11 syndrome.

12 I mean, a lot of people would interpret the
13 swearing as being the person swearing; and you'd need an
14 expert to come in and say, "No, it's a disease."

15 All I am saying is that, when you are dealing
16 with somebody that is vocal and you are pushing this
17 issue, they are more likely -- a jury may be more likely
18 to assume that they are more likely to commit the crime
19 because of that characteristic.

20 Therefore, the need for the jury to be
21 informed that there are personality characteristics and
22 diagnoses that they should be aware of, that there are
23 certain characteristics they may not be aware of about
24 those people. That was the only reason I was asking
25 that question.

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1 THE COURT: That's fine.

2 MR. NOLAN: I wasn't going to necessarily ask
3 it in front of the jury.

4 THE COURT: That one -- I will give you a
5 written ruling on all of this. That one is more
6 troublesome to me, as I understand the case law.

7 MR. NOLAN: Because you are, basically,
8 telling the jury they don't know what they are talking
9 about?

10 THE COURT: Right.

11 MR. NOLAN: I'm saying that I think one of the
12 criteria for admission has to be: Does the jury need
13 some assistance, you know, or can the jury determine it
14 on their own?

15 THE COURT: Let me ask Dr. Duke: When you
16 say, on Axis I, that you are ruling out delusional
17 disorder, can you tell me what you mean by that? Are
18 you saying he is not delusional, in your opinion?

19 THE WITNESS: We are ruling out a specific
20 diagnosis of delusional disorder. We are pretty sure,
21 and there is a strong reason to rule that out. We want
22 to be more sure.

23 MR. NOLAN: May I follow up?

24 THE COURT: Absolutely.
25

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1 BY MR. NOLAN:

2 Q. This is something the medical -- it's like
3 every time I've talked to them. They didn't understand
4 our concern from a legal point of view.

5 If I understand it correctly, it means you are
6 pretty sure he is delusional; and what has to happen is
7 you have to rule it out by all sorts of further tests
8 and examinations and things like that.

9 Like, you are not going to diagnose it yet
10 but, boy, it's awfully close? Am I fair in that
11 assessment of what it is?

12 A. Yes, yes.

13 THE COURT: Thank you, Mr. Nolan. That was
14 very helpful. Then the other question, Dr. Duke, is:
15 Under the Axis I diagnostic impression, you indicate
16 post-traumatic stress disorder.

17 Were you able to identify, in your taking of
18 the history of the patient, what would have
19 precipitated -- what cause would have precipitated the
20 PTSD?

21 THE WITNESS: Okay. As we know it in his
22 case, it was the being taken away from his work, some
23 sabotage. My understanding is there were some things
24 that happened at his business by coworkers that had
25 betrayed him and that he was uprooted.

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1 PTSD, generally, is a situation that most
2 people don't experience. In addition, it has an extreme
3 effect on that person. It may not affect all persons
4 the same.

5 Just like War veterans, Vietnam Veterans,
6 there is a certain percent that experience the exact
7 same situations that have severe PTSD and a percent that
8 don't.

9 THE COURT: So the traumatic event here with
10 this patient would be the upheaval in his business life
11 when he perceived that others were attempting to
12 dispossess him of everything that he had built?

13 THE WITNESS: I think there were other
14 factors, Your Honor. That was one. The other one was
15 his description of his arrest and some of the things
16 that happened that he considered to be very abusive.

17 Again, it's his perception, also, that they
18 were so far out of the norm and so unlike anything he
19 had experienced before that I do believe the symptoms
20 that I saw not only with my own evaluation but with the
21 testing were that he was suffering.

22 THE COURT: All right. Mr. Nolan, anything
23 further?

24 BY MR. NOLAN:

25 Q. One last question. You reviewed Dr. Engle's

1 report; correct?

2 A. Yes.

3 Q. And did he also come to a diagnosis?

4 A. Yes.

5 Q. And was that similar to yours, as far as the
6 axes?

7 A. Yes, yes.

8 MR. NOLAN: That's all I have. Thank you.

9 THE COURT: All right. Mr. Taxay?

10 MR. TAXAY: Yes, Your Honor. Thank you.

11 MR. NOLAN: By the way, Judge, I think I have
12 plenty of time. The plane doesn't leave until 6:30 but,
13 you know, it was just --

14 THE COURT: I know you have got a lot going
15 on.

16 MR. NOLAN: I wanted you to know that, looking
17 at the clock, I have plenty of time.

18 THE COURT: Good. I know you are concerned
19 about your mother, and you have my empathy. I hope it
20 all works out for your family.

21 MR. NOLAN: I appreciate it.

22 THE COURT: Go ahead, Mr. Taxay.

CROSS EXAMINATION

2 BY MR. TAXAY:

3 Q. Dr. Doko, in your 39 years of experience, have
4 you made other diagnoses of people with PFD?

5 A. Yes, I have.

6 Q. And have you tracked their later history to
7 see if they became violent or were non-violent?

8 A. Some I worked with over a long period of time.

9 Q. Did you track fifty percent of the people?

10 A. Probably not.

11 Q. So you don't -- you just don't know the
12 long-term history of these people after your diagnosis
13 with PFD; correct?

14 A. On my particular diagnosis of the people that
15 I experienced? Was that your question?

16 Q. Yes.

17 A. Actually, no. I didn't track all of them over
18 a long period of time. I worked in the prison for quite
19 a while. I worked at the county jail for fourteen
20 years. I worked in the forensics unit. I ran the
21 forensics unit.

22 Q. I understand. My very specific question --
23 you have answered it. Thanks. In large measure, your
24 conclusion that people with PFD are more violent or have
25 a tendency to be less violent, there is some speculation

1 in there; isn't that right?

2 A. Yes. There always is.

3 Q. I mean, a substantial amount -- because the
4 basis for your opinion is your own patient population?
5 You have testified that you didn't track, down the line,
6 at least fifty percent of your patients; is that right?

7 MR. NOLAN: I object to that question, in that
8 it's compound.

9 THE COURT: It is compound. Why don't you
10 break it up, counsel? Sustained.

11 BY MR. TAXAY:

12 Q. The first question -- the first question is:
13 Your conclusion that people with PFD are less likely to
14 be violent involves some speculation on your part;
15 right?

16 A. Yes.

17 Q. And, indeed, the reason why it's speculative
18 is that you haven't tracked the history of your own
19 patients who have had PFD, isn't that right?

20 A. No.

21 Q. Well, you don't know whether or not they were
22 violent; isn't that right? The fifty percent that you
23 didn't track?

24 A. Correct.

25 Q. And because of that phenomenon that most

1 psychologists -- most psychologists don't track the
2 history of their patients down the line; is that right?

3 A. Correct.

4 Q. And because of that phenomenon, isn't that why
5 people use various tools, standardized tools to assess
6 risk for violence?

7 A. It depends on the circumstances. It wouldn't
8 be generally done unless there was a specific request
9 for that.

10 Q. Well, in the field of forensic psychology --
11 are you familiar with that term?

12 A. Yes.

13 Q. What does that term mean to you?

14 A. Forensic psychology?

15 Q. Yes, sir.

16 A. Well, it has to do with legal matters,
17 testifying in court, litigation, court proceedings,
18 psychological work that is related to the justice
19 system.

20 Q. And that's, on some level, a subspecialty of
21 psychology; right?

22 A. It can be, yes.

23 Q. And the big issue, isn't it, is reliability?
24 When you are testifying in court on these important
25 subjects, forensic psychologists want to employ the most

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1 reliable methods and procedures to ensure the accuracy
2 of their opinions?

3 A. Yes.

4 Q. And so forensic psychologists have a battery
5 of tests that they can use to assess personality;
6 correct?

7 A. Yes.

8 Q. For example, that Millen Inventory that you
9 mentioned earlier, that's such a test; right?

10 A. Yes.

11 Q. You didn't run that test; correct?

12 A. Correct.

13 Q. Now, there are, also, various tools that
14 forensic psychologists use to assess the risk of
15 violence; isn't that correct?

16 A. There are some.

17 Q. For example, you have heard of the HCR-20,
18 Assessing Risk for Violence?

19 A. I don't use that one.

20 Q. But you have heard of it?

21 A. Yes.

22 Q. This is one of those tools that forensic
23 psychologists use to assess the risk of violence in
24 patients; isn't that right?

25 A. Some do, yes.

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1 Q. You didn't use it?

2 A. No.

3 Q. There is another one called the -- another
4 tool, similar tool, called the Violence Risk Appraisal
5 Guide. You have heard of that?

6 A. Uh-huh.

7 THE COURT: You have to say "yes" or "no,"
8 Dr. Duke.

9 THE WITNESS: Yes.

10 BY MR. TAYLOR:

11 Q. That, too, is another test, inventory, that
12 forensic psychologists use to assess the risk of
13 violence in patients; isn't that right?

14 A. Yes.

15 Q. And you didn't run that test either, did you?

16 A. Correct.

17 Q. In fact, you didn't use any of these tools to
18 assess risk of violence; isn't that right?

19 A. That's correct.

20 Q. I mean, you are basing this on two things, as
21 I understand it -- correct me if I'm wrong -- your
22 subjective evaluation of Mr. Hinkson, that's one;
23 correct?

24 A. Yes.

25 Q. And, two, your understanding of his background

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1 and history; correct?

2 A. Partly, yes.

3 Q. Okay. Are there other factors that play a
4 major role in your opinion that Mr. Hinkson is less
5 likely to be violent?

6 A. Other than those I testified to, the training
7 that we have often is when you are asked a question of
8 violence and a prediction, on a somewhat informal level,
9 the best predictor is past history; and you get the best
10 history you can, police records if you can, and so on.

11 MR. TAYLOR: Your Honor, I am just asking a
12 very specific question here.

13 Q. Your opinion that Mr. Hinkson is less likely
14 to be violent is based on, as I understand it, two
15 things: Your subjective evaluation of Mr. Hinkson, not
16 having done any of these specific tests, and his past
17 history; correct?

18 A. Yes.

19 Q. Did anything else form the basis of that
20 opinion?

21 A. My experience.

22 Q. So your subjective evaluation, your
23 experience, and your past history.

24 Now, you testified earlier that you didn't
25 track the history of at least half of your patients. So

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1 is there other experience that you are referring to
2 here?

3 A. Well, over the years, many, many, many --
4 having worked with many violent patients, we did a study
5 at the Corrections Department. When I worked at the
6 prison, we had almost 600 and some inmates and their
7 histories of violence.

8 I came up with a partial checklist to try to
9 predict whether or not they might re-offend and some
10 things like that. I just pulled from lots of experience
11 working with people of different diagnoses and some
12 without a diagnosis.

13 Q. In terms of this survey that you did, was that
14 a research survey?

15 A. Yes.

16 Q. Did you publish a paper?

17 A. Excuse me?

18 Q. Did you publish a paper?

19 A. No.

20 Q. Was it peer reviewed?

21 A. Yes.

22 Q. By whom?

23 A. The people I worked with and --

24 Q. The other people involved in this study?

25 A. Yes, some of the people involved with the

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1 study and some psychologists that asked for it after I
2 gave a presentation that were using it.

3 I got a little feedback that it was helpful.
4 It wasn't specifically to measure recidivism for
5 violence. It was different things, but that was one of
6 the issues.

7 Q. Now I'm confused. This survey on which you
8 are relying -- what was the purpose of it?

9 A. The purpose of the survey was to assess
10 whether or not we would be able to get a risk scale or a
11 probability scale for repeat sex offenders.

12 Q. So this concerns sex offenders?

13 A. Yes. Part of that was a propensity to be
14 violent. We did a lot of research on histories on how
15 they measure violence and whether or not that was a part
16 of the scale.

17 Q. So just so I understand this survey, it was of
18 600 inmates to determine the propensity for violence by
19 sex offenders?

20 A. That was part of the rating scale. It was an
21 issue as to whether or not they might be violent, act
22 out in a violent way.

23 Q. What was the -- I apologize. I'm having
24 trouble understanding this survey. Could you just --

25 THE COURT: The court is confused, too. Let

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1 me ask a few questions.

2 Dr. Duke, was this a study that was done while
3 you worked for the Idaho Department of Corrections?

4 THE WITNESS: Yes.

5 THE COURT: Was it done at the Idaho State
6 Penitentiary?

7 THE WITNESS: Yes, yes.

8 THE COURT: What year was the study done?

9 THE WITNESS: I think it was '86, '87.

10 THE COURT: Were you a staff psychologist at
11 the prison at that time?

12 THE WITNESS: Yes.

13 THE COURT: The people that you said reviewed
14 this were other psychologists working for the Department
15 of Corrections?

16 THE WITNESS: Yes. And then, after that,
17 after giving a presentation to other licensed
18 psychologists in the community, they were using it.

19 THE COURT: Here in Boise?

20 THE WITNESS: Yes. Mostly, yes.

21 THE COURT: Go ahead, counsel.

22 BY MR. TAXAY:

23 Q. This study is not published; correct?

24 A. Right.

25 Q. What was the error rate?

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1 A. We didn't do a lot of statistical -- we didn't
2 follow up with it a lot over the years. It was just
3 done as a survey to see if -- back in those days, to see
4 if we could come up with measures that were a little
5 more comprehensive than those that were in the
6 literature.

7 Q. You don't have any idea what the error rate
8 is? Is that fair to say?

9 A. We didn't do an error rate.

10 Q. Is it utilized currently, this study?

11 A. What?

12 Q. Is this study utilized currently by anybody?

13 A. I'm not sure. I would imagine the scale is
14 used by some people. I know one lady from Texas, back
15 in the '80s, wrote to me and said she had been using it
16 and found it to be very helpful.

17 It wasn't -- it's not a scientific measure,
18 necessarily. It's a tool to narrow some of the factors
19 that might be involved in not only treating these people
20 but trying to reduce the rates of recidivism, plus
21 trying to focus on what past record may contribute to
22 their risk.

23 Q. Would you explain error rate for the court?

24 A. You know, I have been out of the actual
25 experimental psychology for a while but it's -- one of

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1 the ways of looking at it is, over time, what error you
2 might have, like a probability, or --

3 Q. How about this --

4 A. -- how likely it is that a person with a
5 certain score would have the same score or the
6 probability that a person with a score on a test might
7 have characteristics of other people that have that
8 score. That's, basically, what we do.

9 Q. Is it fair to call error rate, basically, the
10 extent -- the percent -- the extent to which -- the
11 extent to -- the extent of --

12 THE COURT: Why don't you start over, counsel?

13 BY MR. TAXAY:

14 Q. Let me start over. Is it fair to say that
15 error rate would be the percentage of incorrect
16 predictions?

17 A. Not always. It could be false positives and
18 false negatives, both, and a percent with which -- there
19 are statistical reliability measures.

20 There are statistical measures that are
21 scientific and very esoteric that they use to determine,
22 if you will, error rate, over time what might happen,
23 the probability that you might be making an error.

24 They did it with -- pharmaceutical companies
25 do it, well and not well; and psychologists try to do

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1 it, trying to be a science as much as possible, so that
2 some of the measures they use, they believe, over time,
3 are not only valid and measure what they say they are
4 going to but are reliable over time. There is lots of
5 different kinds of reliability.

6 Q. These measures determine reliability of the
7 survey and the checklist and its usefulness; correct?

8 A. Kind of what you can predict. You are talking
9 about error rate. I think that's probably what you are
10 talking about more than anything.

11 Q. None of those, as you described them,
12 scientific statistical measures have been applied to
13 determine the reliability of your survey and your
14 checklist; right?

15 A. On the sex offender checklist, we did some
16 measures, some statistical measures; but it wasn't
17 reviewed over time or replicated, no. It wasn't
18 followed over a period of time to see if -- right.

19 Q. We will move on.

20 THE COURT: Let me ask one follow-up question.

21 Dr. Duke, with regard to the 600 same sex
22 offenders, how many of those 600 would have been
23 diagnosed with paranoid personality disorder?

24 THE WITNESS: Very few. Most of them were not
25 clinically diagnosed.

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1 THE COURT: All right. And of the 600, how
2 many of them tested for a propensity for violence in
3 connection with their section --

4 THE WITNESS: Very few. Excuse me, Your
5 Honor. I guess it's considered a violent crime.

6 THE COURT: Sex offender?

7 THE WITNESS: Yes.

8 THE COURT: In the federal system, it is.

9 BY MR. TAXAY:

10 Q. Dr. Duke, this checklist that you are
11 mentioning, you didn't use it? You didn't apply it to
12 Mr. Hinkson's case; right?

13 A. No.

14 Q. You didn't utilize it here?

15 A. No.

16 Q. So you said earlier -- I'm trying to track the
17 bases for your opinion. You said your subjective
18 evaluation of Mr. Hinkson's past history, your
19 experience -- and when you explained your experience,
20 you described this checklist?

21 You didn't use this check list to evaluate
22 whether or not Mr. Hinkson is more or less likely to
23 tend toward a violent solution?

24 A. I didn't use that specific checklist. I used
25 my experience in developing it, which is the question

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1 you asked me, what experience I drew upon, and how do I
2 arrive at that decision.

3 Q. Mr. Hinkson's past history, let's talk about
4 that. The total sum of your knowledge of his past
5 history is based upon Mr. Hinkson's representations and
6 counsel's representations; isn't that right?

7 A. Partly.

8 Q. You did an independent factual investigation?

9 A. No.

10 THE COURT: So what else do you have besides
11 what the patient and his lawyer told you?

12 THE WITNESS: I relied -- I saw some letters
13 that had been written by family members. I was assured,
14 as I said in my psychological, that he did not have a
15 criminal history or a battery history or that he'd ever
16 been arrested for a crime or accused of one.

17 BY MR. TAXAY:

18 Q. These are the things that Mr. Hinkson's lawyer
19 and Mr. Hinkson told you?

20 A. Those, plus the documents I had that were
21 given to me by the attorney, yes.

22 Q. You don't know whether any of those things are
23 true, whether those statements are true or not true;
24 right?

25 A. I just relied on the expertise and the

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1 professionalism of the attorneys.

2 Q. Because you don't know whether it is true or
3 not true, isn't it the case that the standard in
4 forensic psychology is not to engage in fact-finding?

5 A. I wouldn't say that's really true. If I can
6 answer that question based upon my opinion --

7 Q. Isn't it the standard in forensic psychology,
8 also, not to rely on facts as stated by defense counsel?

9 A. You do -- you use whatever you have and you
10 come up with an opinion based upon your best judgment
11 within the scope of your practice and within the scope
12 of what you're asked to do.

13 Q. I'm asking about the standard.

14 THE COURT: Let me ask: Dr. Doka, if you are
15 concerned, with regard to your Axis diagnosis, that the
16 patient may suffer from a delusional disorder, would
17 that influence how much you rely upon the veracity of
18 what the patient tells you?

19 THE WITNESS: It would help me question the
20 veracity, and I think I mentioned that in my report.

21 THE COURT: So you would question the veracity
22 of patients that you might expect to be delusional?

23 THE WITNESS: I always question the veracity
24 of a patient.

25 THE COURT: I'm sorry. Mr. Taxay, go ahead.

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1 BY MR. TAXAY:

2 Q. In terms of the standard that forensic
3 psychologists employ, that's the specific question that
4 I'm asking right here.

5 Do you disagree that the standard that
6 forensic psychologists employ is not to accept as fact
7 statements by counsel and the defendant regarding the
8 defendant's conduct?

9 A. I didn't -- I wouldn't agree with that 100
10 percent. If I may --

11 Q. Do you agree with it somewhat?

12 A. If it's a standard, you know, that you get
13 from a manual on forensic psychologists, like a subset
14 of forensic psychologists that call themselves "forensic
15 psychologists" and what qualifies them to be forensic
16 psychologists, they do have -- there is a division, I
17 believe, with the APA, of forensic psychologists; and I
18 believe that they have outlined and documented certain
19 standards.

20 Some of those are used, but professional
21 judgment is the most important thing. Both Dr. Engle
22 and myself chose not to use scales that would predict
23 violence, personality inventories, or other standardized
24 tests for the purposes of the evaluations we were asked
25 to do.

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1 Q. Actually, Dr. Engle did a personality
2 inventory. He used the Millon Inventory. He was not
3 asked to assess risk of violence, so he didn't use an
4 inventory there.

5 A. I am not aware that he used the Millon. I do
6 not have a copy of it. To this minute, I was not aware
7 he conducted a Millon.

8 Q. I apologize. I misspoke. Dr. Engle did not
9 use the Millon test because he was not evaluating
10 Mr. Hinkson's personality. He was looking at one very
11 specific question, competency; and it was in that area
12 that he applied a test.

13 A. And I was looking in a much more general and
14 clinical overview of this person.

15 Q. You chose not to run any tests?

16 A. I did run tests.

17 Q. Not any tests on personality?

18 A. Exactly. And I explained that earlier.

19 Q. And no tests on risk of violence, risk
20 assessment?

21 A. That's right. Correct. That's correct.

22 THE COURT: Thank you, Dr. Doka.

23 MR. NOLAN: May I just interrupt?

24 THE COURT: Yes.

25 MR. NOLAN: I discovered yesterday that there

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1 could be tests that would be helpful; but, because of
2 the lateness, however we would submit that -- if counsel
3 wanted to have those tests administered over the
4 weekend, we would be happy to make that available. In
5 other words, my concern was notice requirements.

6 THE COURT: That was the court's concern. If
7 you recall, the court was a little perturbed at the
8 beginning of the trial.

9 MR. NOLAN: For good reason.

10 THE COURT: I'm not haranguing anybody. I'm
11 saying the problem that late notice of this nature
12 creates is this problem; and that is that, as I
13 understand it, our two doctors were asked to evaluate
14 Mr. Hinkson with regard to a different issue.

15 And now you want them to testify to something
16 different, and there are other tests that they might
17 have done had they understood that that's what you
18 wanted them to do.

19 MR. NOLAN: That's correct.

20 THE COURT: The question is whether there is
21 enough time to do it between now and when we would need
22 them to testify next week. I will certainly hear from
23 counsel.

24 I appreciate your offer, Mr. Nolan.

25 MR. NOLAN: I'm saying I am offering it. I

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1 didn't determine it until last night and then I said,
 2 you know -- he said, "Can we do it?"
 3 I said, "It's too late."
 4 In light of that -- anyway --
 5 THE COURT: That was the basis for the court's
 6 concern on the first day of the trial -- or on Friday, I
 7 guess it was, the 7th of January, when we addressed this
 8 issue at some length.
 9 Go ahead, Mr. Taxay.
 10 MR. TAXAY: The Government's position is it's
 11 too late.
 12 THE COURT: You have made that abundantly
 13 clear. I have that in mind.
 14 Go ahead.
 15 MR. HOYT: I would be happy to talk further on
 16 that subject.
 17 THE COURT: No, you don't need to argue
 18 further on that matter.
 19 BY MR. TAXAY:
 20 Q. Moving to a slightly different subject now,
 21 Dr. Duke, looking at your report on page ten, you say
 22 that -- from page ten to eleven: "There is no evidence
 23 that local persons who aggressively pursue their
 24 beliefs, such as on talk shows, could resort to
 25 violence."

1 is nothing you can cite? No article? No study?
 2 A. There are some studies. Obviously, there are
 3 thousands, hundreds of thousands of them out there.
 4 When I wrote that statement, I knew of no reason to
 5 believe that we could say that people that make these
 6 statements, who are very verbal and so on, are going to
 7 resort to violence just because they --
 8 MR. TAXAY: The Government objects to this.
 9 It's non-responsive. I'm trying to get the --
 10 THE COURT: You have got the court reporter
 11 confused. She is trying to get one of you to complete a
 12 sentence.
 13 MR. TAXAY: I apologize, Your Honor.
 14 THE COURT: Let's back it up.
 15 THE WITNESS: Why don't --
 16 THE COURT: I will read the question.
 17 "Other than your own personal experience,
 18 there is nothing you can cite? No article? No study?"
 19 And Dr. Duke started to answer, "There are
 20 some studies. Obviously, there are thousands, hundreds
 21 of thousands of them out there. When I wrote that
 22 statement, I knew of no reason to believe that we could
 23 say that people that make those statements, who are very
 24 verbal and so on, are going to resort to violence just
 25 because they -- "

1 There are no studies that support that
 2 statement; correct?
 3 A. And I qualified that, such as people that are
 4 on talk shows that make very inflammatory statements,
 5 like the Jay Leno Show and even the presidential debate.
 6 Q. There are no studies that support that
 7 statement in your report; correct?
 8 A. That was my statement.
 9 Q. I'm saying --
 10 A. No evidence of mine, no evidence that I felt
 11 we had or I had in my report to suggest that. I didn't
 12 say there was never -- there was no studies or no -- I
 13 had no evidence to suggest, and I did not know of any
 14 evidence that would suggest that vocal persons who
 15 aggressively pursue their beliefs, such as on talk
 16 shows, could resort to violence. That's what I meant.
 17 Q. This is just your personal opinion; right,
 18 that there is no evidence? It's just your personal
 19 opinion?
 20 A. I didn't know of any when I wrote that
 21 statement.
 22 Q. Okay. There is nothing you can cite that
 23 would support that statement?
 24 A. Just --
 25 Q. Other than your own personal experience, there

1 Dr. Duke, you didn't finish your statement.
 2 Just because they what?
 3 THE WITNESS: Just because they are very vocal
 4 and aggressively pursue their beliefs, such as people on
 5 talk shows or, you know, Jay Leno or the debates where
 6 people say a lot of things and are very aggressive about
 7 it, very verbal, it doesn't mean they are going to
 8 resort to violence. That's what I meant.
 9 BY MR. TAXAY:
 10 Q. I would like to restate the same question. I
 11 think it's pretty much a "yes" or "no" answer. There is
 12 no study, no scientific study, no article that you can
 13 cite in support of that statement in your report; isn't
 14 this right? Yes or no?
 15 A. I don't know.
 16 THE COURT: You know of none?
 17 THE WITNESS: I don't know.
 18 THE COURT: You can't name one?
 19 THE WITNESS: I can't name one that I would
 20 name my -- just, again, this was based on my belief of
 21 my interview and my experience and what I have been
 22 taught and, probably, imperical evidence.
 23 I guess we would have to have a study of
 24 everybody on a talk show and everybody on the Tonight
 25 Show and so on and everybody in a debate.

1 Especially in politics, and attorneys, they
2 make a lot of statements that are very aggressive that
3 don't necessarily -- what I said was: Because somebody
4 is verbal and aggressively pursues their beliefs does
5 not mean they are going to resort to violence. And I
6 think probably most psychologists would back that up.

7 MR. TAXAY: I will move on.

8 THE COURT: I think we have got as much as we
9 are going to get out of Dr. Duke on that question.

10 BY MR. TAXAY:

11 Q. "There is no evidence that vocal persons who
12 aggressively pursue their beliefs could resort to
13 violence?"

14 What about people who bomb abortion clinics?
15 Isn't that inconsistent with this statement?

16 A. What's the question?

17 Q. In this statement here, you said, "There is no
18 evidence that vocal persons who aggressively pursue
19 their beliefs could resort to violence."

20 What about people who bomb abortion clinics?
21 That is well-known in the public record.

22 A. What's the question, though?

23 Q. Is that inconsistent with your statement? You
24 say there is no evidence. Would you consider people who
25 bomb abortion clinics to be people who vocally express

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1 their point of view and then resort to violence?

2 A. When I made that statement, it was a general
3 statement. There is always -- I suppose there may be
4 exceptions.

5 Just like when you were talking about error
6 rate, there is always a probability that there is an
7 error of prediction, just like with pharmaceutical
8 companies who put medicine out in the public and there
9 are people that die.

10 Q. When you say there is no evidence, that's a
11 mistake in your report?

12 A. It depends on what evidence -- I had no
13 evidence. I thought I clarified that.

14 Q. Okay. The next sentence is: "The literature
15 on personality characteristics and dynamics support
16 Mr. Hinkson's patterns of behavior to be litigious
17 rather than violent."

18 You don't cite anything, no literature here.
19 What literature are you talking about?

20 A. I did cite the literature on Millon, as I
21 testified to earlier today; and I quoted that
22 literature.

23 Q. Where in that literature that you just quoted
24 does it say that people with PFD are less likely to be
25 violent?

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1 A. My statement was that literature on
2 personality characteristics -- and I probably should
3 have put, "See page such and such, Millon" -- and
4 dynamics support what I say.

5 All I was saying is that I have literature to
6 support my impression, my opinion, about his patterns of
7 behavior to be litigious.

8 So the Millon literature, in addition to my
9 clinical findings, his past history, as well as I knew
10 it and had -- the information I had, you know -- I can
11 testify under oath that I didn't have -- those things
12 support that he would probably be litigious.

13 Q. Okay. So that I'm clear, the Millon -- the
14 portion in your report that cites Millon, that doesn't
15 include the reference to people with PFD being less
16 likely to be violent; correct?

17 A. What was that statement, again? Excuse me.

18 Q. What I'm trying to figure out is where in
19 Millon does it say that people with this personality
20 disorder are less likely to be violent?

21 You say that -- you quote a portion of Millon
22 in your report, but nowhere in that quote do I see any
23 reference to propensity for violence.

24 A. I will quote it again from page nine.
25 "According to Schneider's theory, they can split into

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1 either the combative type or the eccentric type. The
2 combative
3 can be actively quarrelsome about their fallacious
4 beliefs, complaining bitterly about injustices done to
5 them, often seeking retribution and are frequently
6 litigious."

7 I believe that supported my statement that
8 Mr. Hinkson, in my opinion as a psychologist, with my
9 interview and all of the information I had, would
10 probably be litigious. That's all I said.

11 THE COURT: Dr. Duke, I think the question he
12 is asking you -- and the court is having the same
13 problem.

14 I read what you wrote on page nine, quoting
15 Schneider; but it doesn't show any link between people
16 who have a litigious behavior and violence. There isn't
17 anything about violence there.

18 THE WITNESS: Exactly. That's my point.
19 There is no support that -- why mention violence if
20 there is nothing to indicate violence?

21 THE COURT: Let me ask the question a
22 different way. Are you suggesting that, because
23 Schneider doesn't link litigiousness to violence, that,
24 therefore, Schneider concludes that there is no such
25 link?

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1 THE WITNESS: No, no.

2 THE COURT: All right. Go ahead, Mr. Taxay.

3 BY MR. TAXAY:

4 Q. But there is literature out there that links
5 paranoid personalities with increased risk for violence;
6 isn't that right?

7 A. I reviewed some literature -- I believe it was
8 on adolescents -- if that's the literature you are
9 referring to. There is a great deal of literature.
10 There are --

11 Q. And that literature says, if you have paranoid
12 personality, you are more likely to be violent; correct?

13 A. I don't know of any literature that is
14 accepted to be entirely 100 percent reliable or valid.
15 It applies to --

16 Q. I'm asking what the literature -- the
17 literature that you are aware of, what does it say with
18 respect to the link?

19 A. Well, I would have to review the literature.

20 MR. NOLAN: I would ask that the court
21 instruct the parties --

22 THE COURT: Mr. Taxay, you have to slow down
23 and let the witness answer the question. You are
24 talking over one another, and you are not allowing
25 Dr. Duke to finish his answer before you are asking him

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1 another question.

2 MR. TAXAY: I appreciate that, Your Honor; and
3 I apologize. I'm trying to move this along because we
4 are getting a lot of non-responses.

5 THE COURT: I agree. But your job is to ask
6 him questions to try and clarify it. I will do my best
7 to hold him to the question.

8 MR. TAXAY: Thank you, Your Honor.

9 THE COURT: The problem Mr. Nolan is talking
10 about is a different problem. Do you understand the
11 problem, Mr. Taxay?

12 MR. TAXAY: No, I don't. Maybe I missed it.

13 THE COURT: You are not allowing the witness
14 the time to finish his answer before you start your
15 question. All right. So just take a deep breath, let
16 Dr. Duke finish, and you can ask your next question.

17 MR. TAXAY: I was trying to make -- that's
18 okay.

19 THE COURT: We are not that rushed.

20 MR. TAXAY: All right.

21 THE WITNESS: May I ask if he has an exhibit?
22 I'm trying to find mine. It might speed things up if I
23 can see what literature he is referring to.

24 THE COURT: Do you have something that --
25

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1 BY MR. TAXAY:

2 Q. I do. I'm happy to show it to Dr. Duke in a
3 moment. Right now, I'm interested in the literature
4 that Dr. Duke was citing.

5 A. I'm not citing any literature. There was some
6 literature faxed to me yesterday on some studies -- I
7 think they were on adolescents -- and there were some
8 statements made.

9 We don't necessarily accept that as absolutely
10 true, that it 100 percent applies to everybody, is
11 reliably generalized to the whole population and
12 everybody with a paranoid personality. There is a great
13 deal of error of measurement.

14 I would be glad to review that and give you an
15 interpretation. We could go to other literature that
16 has other studies that have probably replicated those
17 studies. There are thousands of them out there.

18 If you take one study -- some were done on
19 adolescents -- and try to apply it to this case, you
20 know, we are in a wide margin of error there.

21 MR. NOLAN: May I assist? May I try to assist
22 counsel and the court?

23 THE COURT: That would help us all.

24 MR. NOLAN: There was an article that was
25 attached to a pleading by the Government that we gave to

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1 the doctor which we believe was the basis of --
2 everybody is drawing conclusions.

3 If we could just establish, Doctor, did you
4 get an article? Did you see -- in its title such and
5 such?

6 THE COURT: Is that the article?

7 MR. TAXAY: No, I'm not there yet. I'm happy
8 to get there in a minute.

9 MR. NOLAN: If that's not the article --
10 that's what the Doctor thought, and that's the problem.

11 THE COURT: Let's help out Dr. Duke here.

12 BY MR. TAXAY:

13 Q. The first thing is -- I guess I would like to
14 follow up right now on something that Dr. Duke just
15 said.

16 Dr. Duke, you said there are a number of
17 studies out there regarding risk of violence and that it
18 would be very cumbersome to take a look at those and
19 make a judgment as to how that body of scientific
20 literature might apply to Mr. Hinkson; correct?

21 A. That was not my evaluation. I'm just, more or
22 less, here to testify on what I did, what I believe on
23 my evaluation.

24 You can question me about all of the
25 literature in the world; and I can't, under oath, tell

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1 you, with the truth, the whole truth and nothing but the
2 truth, that that literature definitely is going to apply
3 to what I was asked to do and testify to today. I don't
4 think that's even appropriate.

5 Maybe I shouldn't say that.

6 THE COURT: I will decide whether it's
7 appropriate or not.

8 Go ahead, Mr. Taxay.

9 BY MR. TAXAY:

10 Q. You understand that there is literature out
11 there on this subject; correct?

12 A. I saw some yesterday on this particular
13 subject of personality types and prediction of violence.

14 Q. Prior to offering your opinion, you made no
15 effort whatsoever to see what the scientific literature
16 said about the propensity for violence in those people
17 that had PPD; correct?

18 A. I, again, will testify that the basis of my
19 report and my evaluation was what I have testified to
20 earlier.

21 THE COURT: Doctor, the question is very
22 simple. He is just asking you whether or not you
23 reviewed any scientific literature about propensity for
24 violence in people with PPD at the time you wrote the
25 report. Did you look at such literature or not?

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1 THE WITNESS: No. I used the Millon mostly,
2 yes.

3 THE COURT: All right. Thank you.

4 MR. TAXAY: I'm happy to turn to this article
5 that was attached to the Government's pleading. I have
6 a copy of it here for you that I can give you.

7 May I approach, Your Honor?

8 THE COURT: Let's establish whether Dr. Doke
9 has seen it. If so, ask your question.

10 BY MR. TAXAY:

11 Q. Have you seen the Nestor article of 2002,
12 Dr. Doke?

13 A. I don't recall the name of the article. I'm
14 trying to find it here.

15 Q. I have a copy readily available.

16 THE COURT: That might be the quickest way to
17 do it.

18 THE WITNESS: Thank you. Yes, I have seen it.

19 BY MR. TAXAY:

20 Q. When did you first see this?

21 A. Yesterday.

22 Q. Have you had a chance to read it?

23 A. Excuse me?

24 Q. Have you had a chance to read it?

25 A. I didn't read every line of this, no.

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1 Q. Do you know who Paul Nestor is?

2 A. He wrote for the American Journal of
3 Psychiatry, a Ph.D.

4 Q. Do you know of him by reputation?

5 A. No.

6 Q. I will turn you to the second page of this
7 article. It's page number is 1974. I would like to you
8 focus in on the section that begins with the header
9 "Personality Disorders."

10 A. Okay.

11 Q. The first sentence says: "Longitudinal
12 studies have provided strong evidence of personality
13 disorders representing a significant clinical risk for
14 violence."

15 What do you understand that to mean?

16 A. That some studies have shown strong evidence
17 of personality disorders representing a significant
18 clinical risk for violence.

19 Q. Okay. Is that inconsistent with your opinion
20 that you have offered in this case?

21 A. This study -- is that a yes or no question?

22 Q. Yes. Is this statement inconsistent with the
23 opinion that you have offered in this case?

24 A. Yes.

25 Q. People with PPD are less likely to be violent?

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1 A. Yes.

2 Q. And on what basis do you reject those other
3 studies?

4 A. Well, this study -- as I said earlier, it was
5 my opinion, based upon my interview, my clinical
6 judgment, the testing I used, the history I had in my
7 interview.

8 And, also, this study, number two, has to do
9 with an old study, 1978. It was a long time ago. There
10 has been lots of time since then to replicate the
11 studies to show whether they are true or not or, in
12 fact, accepted.

13 Number three, this is done on adolescents in
14 early adulthood. Mr. Hinkson is not an early adult or
15 an adolescent. It doesn't apply to him.

16 THE COURT: Dr. Doke, doesn't that last
17 sentence that Mr. Taxay referred you to cite to
18 footnotes 7 and 26 of the article?

19 THE WITNESS: Yes.

20 THE COURT: That's what those numbers in
21 parentheses mean?

22 THE WITNESS: Those are references to other
23 articles, yes.

24 THE COURT: Thank you.

25 BY MR. TAXAY:

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1 Q. And, Dr. Doke, those footnotes -- I'm not sure
 2 where you are getting this 1978 stuff.
 3 THE COURT: That's why I asked the question.
 4 That's not how I read the footnotes.
 5 BY MR. TAXAY:
 6 Q. If you look at the footnotes -- they are
 7 numbers 7 and 26 -- to me, they look like they refer to
 8 studies in the year 2000 and --
 9 A. You are right. I made a mistake. This was
 10 done at the American Journal of Psychology in 2002 or --
 11 THE COURT: 2000?
 12 THE WITNESS: 2002.
 13 THE COURT: 2002?
 14 MR. TAXAY: The article is 2002. The
 15 footnotes reflect the earlier dates. Two thousand --
 16 THE COURT: And 1998?
 17 MR. TAXAY: Yes, Your Honor.
 18 THE COURT: Is that right, Dr. Doke?
 19 THE WITNESS: Yes. Well, the article, by
 20 Johnson, was 2000, American Journal of Psychiatry, that
 21 was footnote 7; and footnote 26 was Benman and Fallon,
 22 Bacarro in 1998.
 23 THE COURT: Thank you.
 24 THE WITNESS: I erred on that.
 25

1 BY MR. TAXAY:
 2 Q. I would like to focus you in on some language
 3 a little bit deeper in that same paragraph. The
 4 sentence, second to the last sentence, begins with the
 5 words, "In fact . . ." Do you see that sentence, sir?
 6 A. Yes.
 7 Q. I will read it to you, Dr. Doke. "In fact,
 8 increased symptoms of DSM-IV cluster A or cluster B
 9 personality disorder corresponded to a greater
 10 likelihood of violence in the community during
 11 adolescents and adulthood."
 12 PFD, paranoid personality disorder, that's a
 13 cluster B personality disorder -- I'm sorry -- a cluster
 14 A personality disorder, isn't it?
 15 A. Yes.
 16 Q. That's inside -- I mixed up that question.
 17 THE COURT: You also lost the court. What
 18 page are you on, counsel?
 19 MR. TAXAY: I apologize, Your Honor. Page
 20 1974, the section that reads "Personality Disorders,"
 21 the first paragraph, second-to-the-last sentence.
 22 THE COURT: I'm with you.
 23 BY MR. TAXAY:
 24 Q. "In fact, increased symptoms of DSM-IV cluster
 25 A or cluster B personality disorder corresponded to a

1 greater likelihood of violence in the community during
 2 adolescence and early adulthood."
 3 Isn't it true that paranoid personality
 4 disorder is a cluster A disorder?
 5 A. He is both of these, yes. Yes. But --
 6 Q. Just -- PFD is a cluster A?
 7 A. I believe it's a cluster B.
 8 Q. In any event, you read this to say that people
 9 with PFD are more likely to be violent?
 10 A. No. That's not a conclusive statement.
 11 Q. Dr. Doke, I think, to clear up a preliminary
 12 matter, I have here the DSM-IV; and it shows paranoid
 13 personality disorder to be a cluster A personality
 14 disorder.
 15 A. Okay. It says cluster A or cluster B here. I
 16 was trying to answer your question.
 17 Q. Would you like to see this DSM-IV?
 18 A. No. That's all right.
 19 THE COURT: So have we resolved that it is
 20 cluster A, Doctor?
 21 THE WITNESS: Yes.
 22 THE COURT: Thank you.
 23 BY MR. TAXAY:
 24 Q. So doesn't this say that people with cluster A
 25 diagnoses like PFD are -- have a greater likelihood of

1 violence in the community during adolescence and early
 2 adulthood?
 3 A. That's what the article says, yes.
 4 Q. Your conclusion is inconsistent with that, as
 5 well?
 6 A. Well, actually, this would support my
 7 conclusion.
 8 Q. Would you explain that, please?
 9 A. Because he had no -- as far as I know, in my
 10 testimony here today under oath, he had no adolescent or
 11 early adulthood violence.
 12 So if he had pervasive cluster A paranoid
 13 personality disorder most of his life, he had it in
 14 childhood and he had it in adolescence and early
 15 adulthood. He wasn't violent, so he is an exception.
 16 So, again, this article does not apply to him.
 17 I would never use this, as a clinician, to believe a
 18 patient that I had or the many, many, many patients I
 19 have had with paranoid personality disorder were going
 20 to be violent.
 21 Q. So it boils down to your gut instinct versus
 22 a bunch of scientific --
 23 A. It's my experience. It's probably what most
 24 psychologists would testify to, if they were honest.
 25 Q. So we are clear, this is about your gut

1 instinct?

2 A. It's more than gut instinct. It's
3 professional opinion. And I believe that would be
4 corroborated by most psychologists.

5 They would not use this article unless they
6 used it to say, gee, you know, I have a paranoid
7 personality here that was never violent; and this
8 article says they should have been violent in
9 adolescence and early adulthood. Gee, that doesn't
10 apply.

11 That's nothing new in our business. These
12 studies do not always apply to our patients, just
13 because they have a label.

14 Q. Okay.

15 A. And I believe -- I'm not sure but I believe
16 even Dr. Engle, in his report, if I may --

17 THE COURT: We are running a little short on
18 time.

19 MR. TAXAY: I have just a couple more
20 questions.

21 THE COURT: Go ahead.

22 BY MR. TAXAY:

23 Q. You testified this week in another case, isn't
24 that right, Dr. Duke?

25 A. Excuse me?

1 Q. You testified this week in another case;
2 right?

3 A. Yes, I did.

4 Q. And in that case, your patient, the defendant,
5 you diagnosed him with FPD; correct?

6 A. You know, I don't know whether --

7 THE COURT: Did you testify in open court
8 about it?

9 THE WITNESS: It was in a county hearing.

10 THE COURT: So it was in a public hearing in a
11 courthouse?

12 THE WITNESS: Yes.

13 THE COURT: You are not violating any patient
14 confidences if you have already disclosed it publicly.

15 BY MR. TAXAY:

16 Q. You diagnosed this patient with a paranoid
17 personality disorder this week?

18 A. I don't have the records here. I see many,
19 many, many people a week. I believe his diagnosis was
20 schizo-effective, and that's what we addressed in the
21 court. He had -- I believe he did have Axis II paranoid
22 personality.

23 Q. Did you diagnose this patient with paranoid
24 personality disorder?

25 A. I believe so, yes.

1 Q. And this patient had a history of violence;
2 isn't that right?

3 A. He had a history of some misdemeanor
4 altercations, yes.

5 Q. And, in fact, he was charged with aggravated
6 assault; correct?

7 A. That's correct.

8 MR. TAXAY: Your Honor, that's all for now.

9 THE COURT: Anything else, Mr. Nolan?

10 MR. NOLAN: No, Your Honor.

11 THE COURT: Dr. Duke, thank you. You may step
12 down. You are excused for the time being. We may need
13 to recall you next week.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: Mr. Taxay, does the Government
16 intend to call Dr. Engle or shall the court hear
17 argument?

18 MR. TAXAY: We will call Dr. Engle.

19 THE COURT: Dr. Engle, would you step forward
20 and be sworn?

21 Thank you, Dr. Duke.

22 DR. DUKE: You are welcome, Your Honor. Thank
23 you.

24 THE COURT: Have a nice weekend.

25 MR. NOLAN: May Dr. Duke remain?

1 THE COURT: Yes. I would like him to hear, if
2 he has time.

3 * * *

4 ROBERT CRAIG ENGLE, Ph.D.,

5 having been called, sworn, testified as follows:

6 THE COURTROOM CLERK: Thank you. Please take
7 the stand. You can adjust that mic however it works
8 best for you.

9 If you would, state your name and spell your
10 last name for the record, please.

11 THE WITNESS: Robert Craig Engle, E-n-g-l-e.

12 THE COURTROOM CLERK: Thank you.

13 D I R E C T E X A M I N A T I O N

14 BY MR. TAXAY:

15 Q. Dr. Engle, what is your profession?

16 A. I'm a licensed psychologist in Idaho. I have
17 a private practice here in Boise.

18 Q. Where do you -- you have a Ph.D.?

19 A. University of Nevada, Reno, 1985.

20 Q. How long have you been a practicing
21 psychologist?

22 MR. NOLAN: I stipulate that he is qualified.

23 THE COURT: I have read Dr. Engle's C.V. With
24 that stipulation, go forward.
25

1 BY MR. TAXAY:

2 Q. Thank you. The National Registry of -- let me

3 cite it correctly -- the National Register of Health

4 Service Providers in Psychology --

5 THE COURT: Counsel, I don't think I need to

6 hear what amounts to impeachment. I would really like

7 to get to the heart here with regard to Dr. Engle's

8 testimony with regard to Mr. Hinkson.

9 BY MR. TAXAY:

10 Q. Would you explain what forensic psychology is?

11 THE COURT: Counsel, I know what forensic

12 psychology is. Let's move on.

13 BY MR. TAXAY:

14 Q. In forensic psychology, would you explain

15 whether forensic psychologists use tests?

16 THE COURT: Counsel, let's get to Mr. Hinkson.

17 You can assume the court is with you up to this point.

18 MR. TAXAY: Very well, Your Honor. We are not

19 offering Dr. Engle for the purpose of providing an

20 opinion on Mr. Hinkson.

21 THE COURT: The reason I suggested to you that

22 you might want to call Dr. Engle is that the Finley

23 decision gave the Government the option to do that at

24 the Daubert hearing.

25 If you don't intend, at this point, to have

1 him testify with regard to Mr. Hinkson until after

2 Dr. Doka testifies, that's fine.

3 I will hear argument with regard to whether or

4 not Dr. Doka's testimony will be admissible which is,

5 basically, the purpose of the hearing.

6 MR. TAXAY: Well, we can -- our thought is

7 that we haven't formulated a psychological opinion on

8 Mr. Hinkson's propensity for violence.

9 THE COURT: Let me ask you this: Because

10 Mr. Nolan has offered it, let's ask Dr. Engle while we

11 have him.

12 Dr. Engle, if you do need to testify next week

13 with regard to countering Dr. Doka or discussing

14 Mr. Hinkson's propensity for violence based on a

15 diagnosis of paranoid personality disorder, do you need

16 to conduct any further tests or evaluation of him prior

17 to formulating such an opinion?

18 THE WITNESS: Judge, it would certainly be

19 useful. It goes to the certainly with which an opinion

20 could be expressed.

21 THE COURT: Could you do that over this

22 weekend? Would you have time to do that? We may be

23 getting to this testimony as early, I think, as maybe

24 Monday afternoon.

25 You are not going to have to prepare a written

1 report. I will excuse you from any obligation to do

2 that.

3 Although, counsel, you will have to provide an

4 oral summary of Dr. Engle's opinion to defense counsel

5 prior to his testimony.

6 MR. TAXAY: Your Honor, would it be useful to

7 hear from Dr. Engle on the accepted methodologies that

8 are employed by forensic psychologists?

9 THE COURT: That might be helpful in helping

10 the court formulate its ruling over the weekend. Thank

11 you.

12 BY MR. TAXAY:

13 Q. Dr. Engle, would you -- sort of getting to the

14 meat of it here, would you please explain how forensic

15 psychologists go about formulating their opinions so

16 that they can testify in court?

17 MR. NOLAN: Could I suggest a question?

18 THE COURT: Sure.

19 MR. NOLAN: That is, based upon what the prior

20 testimony was, is there anything that he left out or

21 that you disagree with, in terms of the forensic -- the

22 methodology?

23 THE COURT: Will you accept -- I hesitate to

24 call it a friendly amendment -- Mr. Nolan's amendment to

25 your question, Mr. Taxay?

1 MR. TAXAY: I think it's important to hear

2 from Dr. Engle, as a forensic psychologist, how it is

3 they go about their job.

4 THE COURT: I will let you conduct that

5 examination. If Mr. Nolan wants to ask questions, I

6 will let him do it.

7 BY MR. TAXAY:

8 Q. Dr. Engle, please explain.

9 A. The customary methodology used in establishing

10 diagnostics in a forensic context requires a much higher

11 standard than the criteria used in clinical practice.

12 As Dr. Doka testified, the gathering of

13 history from the patient, the observation of the patient

14 is certainly relevant and important.

15 The collaboration of third-party information,

16 the verification of the third-party information is

17 absolutely critical in forensic reports, since

18 defendants have a vested interest, almost always, in how

19 they present themselves in the evaluation.

20 Psychological testing is also critical in

21 forensic evaluations since it adds a layer or an element

22 of objectivity to what is, essentially, a subjective

23 evaluation of how the defendant comes across to the

24 psychologist.

25 Thirdly, the evaluation needs to be specific

1 to the issues that are relevant. If we are trying to
2 predict violence or a solicitation for violence, there
3 are, as you indicated in your examination of Dr. Doka,
4 specific tests which can help and which most probably
5 would help in bringing an objective basis to an
6 expression of that prediction.

7 Q. Now, having heard Dr. Doka's testimony with
8 respect to how he went about arriving at his diagnosis,
9 do you have a professional opinion as to whether or not
10 he followed the standards that are accepted amongst
11 forensic psychologists?

12 A. I would say that Dr. Doka's evaluation is
13 typical of a clinical psychologist and not what is done
14 in a forensic psychologist's evaluation.

15 MR. NOLAN: Object. Non-responsive.

16 THE COURT: Overruled.

17 BY MR. TAXAY:

18 Q. Do you have any specific objections -- can you
19 identify specifically how you view his approach to be
20 inconsistent with the standard in forensic psychologist?

21 A. Utilization of psychological testing, a survey
22 of the scientific literature specifically pertinent to
23 the questions he is being asked. And I was unclear from
24 Dr. Doka's report what third-party information he had
25 exactly and to what extent that had been verified or

1 not.

2 Q. So the failure to do those things is what you
3 are focused on?

4 A. I would add them, yes.

5 Q. Is it consistent with the standard amongst
6 forensic psychologists to rely on defense counsel's
7 denials?

8 A. No.

9 Q. Is it inconsistent with the standard of --

10 MR. NOLAN: Did I --

11 THE COURT: The answer was "no."

12 MR. NOLAN: "No." Thank you.

13 BY MR. TAXAY:

14 Q. Is it inconsistent with the standard among
15 forensic psychologists to rely on defense counsel's
16 denials?

17 A. It's highly inconsistent to rely on assertions
18 by either side.

19 Q. Are there any other points that you think are
20 significant with respect to deficiencies in Dr. Doka's
21 methodology?

22 A. No.

23 MR. TAXAY: No further questions.

24 THE COURT: Mr. Nolan?

25

CROSS EXAMINATION

2 BY MR. NOLAN:

3 Q. I take it, you have never relied upon a police
4 report in forming your opinions for forensic purposes?

5 A. Certainly.

6 Q. Have you ever relied upon a police report in
7 forming your opinion?

8 A. I just said yes.

9 THE COURT: He said, "Certainly."

10 BY MR. NOLAN:

11 Q. I'm sorry. I take it, they are more reliable
12 than defense lawyers?

13 A. I don't know.

14 Q. What about prosecutors? Do you rely upon what
15 they tell you?

16 A. No.

17 Q. And the police are part of the other party,
18 are they not?

19 A. I don't know their source of information.

20 Q. Isn't the defense lawyer a source of
21 information?

22 A. With a prejudicial bias, I think.

23 Q. The police don't have a prejudicial bias; is
24 that right?

25 A. Hopefully not.

1 THE COURT: Nothing further?

2 MR. NOLAN: I have no further questions.

3 THE COURT: I'm sorry, Dr. Engle. I'm not
4 sure I ever allowed you to answer my question. Would
5 you be able to conduct any further evaluations of
6 Mr. Hinkson over this weekend?

7 THE WITNESS: Judge, I have been thinking
8 about that, as I have been answering. I cannot imagine
9 that I could administer and score and interpret the
10 necessary tests by Monday.

11 THE COURT: All right. Okay. Anything
12 further with regard to evidence before I hear argument?

13 MR. TAXAY: No, Your Honor.

14 THE COURT: All right. Dr. Engle, you may
15 step down. Thank you very much.

16 I appreciate both of you coming.

17 Let's see. I think the Government has the
18 laboring oar since the defense has endorsed Dr. Doka and
19 you have moved in limine to preclude Dr. Doka's
20 testimony.

21 Let me assure you both I have read your
22 memoranda. I have read the supporting -- the key
23 supporting cases.

24 So let's get Mr. Nolan to his airplane and
25 keep your argument to the point.

1 MR. TAXAY: Okay, Your Honor. Your Honor, I'm
2 no going to rehash all of the points made in our --

3 THE COURT: I have them in mind.

4 MR. TAXAY: -- response. I would like to
5 highlight a few things.

6 Dr. Duke's proposed testimony is crystal ball
7 testimony. Is it more or less likely that the defendant
8 would have done it?

9 That's not the kind of testimony that is
10 permissible for psychologists. The case law is clear
11 that the very limited band of permissible testimony
12 relates to things that go to whether or not the
13 defendant could form the requisite state of mind.

14 That's what is not -- that is not in play
15 here. Dr. Duke would testify not about the defendant's
16 state of mind or a condition that would affect it but,
17 rather, whether or not he was more likely to have
18 committed the act with which he has been charged.

19 That is rank propensity evidence. It is
20 inadmissible under Rule 40(a). We did not cite that in
21 our brief. I apologize for that.

22 The Government posits that this crystal ball
23 evidence has no role in a federal trial. It is the role
24 of the jury to make a jump as to whether or not this
25 happened.

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1 Turning my attention, briefly, to this Finley
2 case, Your Honor, again, the Finley case focuses in on
3 that very issue: What sort of psychological testimony
4 would be permissible?

5 It's not the central issue in the case but
6 it's definitely in play there. When you read the text
7 of that opinion, there is much discussion about ability
8 to form intent.

9 That's the kind of psychological evidence that
10 is in play. Something that I think is worth noting here
11 is that, in the Finley case, the court talks about the
12 methodology that was employed by the psychologist and,
13 essentially, it proves this Millon Clinical Multi-Axis
14 Inventory to arrive at conclusions.

15 This is the very MMPI test that the Government
16 says should have been done here if the defense wanted to
17 put on a witness to testify about personality
18 characteristics. It wasn't done.

19 That's on page 1006, I believe, Your Honor of
20 the opinion, reference to this -- yes, 1006 -- reference
21 to the MMPI.

22 Another item that the Government would
23 highlight is that Dr. Duke's opinion is hardly
24 scientific. It's gut instinct based upon his own
25 personal experience.

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1 He has admitted that he has not followed the
2 patient history, his patients' history, at least half of
3 them. When he has a gut instinct, it's really not based
4 on even good data within his own practice.

5 There is substantial data that is available
6 outside of his practice that Dr. Duke knowingly and
7 intentionally decided not to look at to make a judgment.

8 THE COURT: I don't want to -- I'm going to be
9 fair to Dr. Duke. He wasn't asked originally to do this
10 kind of an evaluation, although defense counsel is,
11 obviously, now asking him to do something that he didn't
12 completely test for. I think that's the problem.

13 MR. TAXAY: That's a fair point, and I
14 apologize.

15 THE COURT: I don't want to impugn the
16 integrity of either of our two professionals here. They
17 did what they were asked to do. Now they are being
18 asked to do something different, as I understand the
19 problem.

20 MR. TAXAY: I don't meet to impugn Dr. Duke's
21 integrity.

22 You raised another very good point which is
23 that -- this is item two in our motion, our brief --
24 that they prepared -- the defense prepared an expert
25 report sometime ago. Most of the issues about which

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1 they want to have Dr. Duke testify really weren't the
2 subject of that report.

3 The Government identifies those items that
4 weren't really mentioned in the report. But to the
5 extent there is any aspect of propensity for violence in
6 the report, it wasn't the focus of the report; and, as a
7 consequence, Dr. Duke's opinion is not completely
8 formulated on that subject. And so it would be
9 unreliable testimony and confusing to the jury and
10 certainly not helpful.

11 THE COURT: All right. Mr. Nolan?

12 MR. NOLAN: Yes. Thank you very much, Your
13 Honor.

14 First of all, Dr. Duke did not not do -- his
15 purpose in doing the evaluation was not focused on this
16 kind of testimony.

17 THE COURT: I understand that. So let's go
18 right to the heart of it, which is, if that's the case,
19 then why should the court permit him to testify when, by
20 his own testimony, he hasn't done the types of things
21 that one would do, from a professional psychologist's
22 standpoint, in order to render a credible opinion on the
23 subject?

24 MR. NOLAN: I was going to be very brief.

25 THE COURT: I'm sorry, Mr. Nolan. Go ahead.

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1 MR. NOLAN: What I'm trying to say is: I
2 looked at the report. I then filed a supplemental
3 memorandum which said, based upon what he did, I want to
4 offer him.

5 The court saw that, indicated to the
6 Government it had an opportunity to do additional tests.

7 We are before the court without the kind of
8 tests that would make his testimony grade "A" testimony.
9 We are borderline on the tests that he performed; I'm
10 conceding that.

11 What I'm trying to say is, if we did have an
12 opportunity to do the kinds of tests, we could not
13 because it was too late for us to submit it; and we
14 understand that.

15 And so, you know, we are at a place where I
16 think the issue is not the issue of whether it should be
17 admitted or not, based upon, you know -- that's been
18 decided by Finley.

19 The question is: Does it meet the criteria?

20 THE COURT: I don't think so, Mr. Nolan.
21 Finley doesn't say that I can't exclude it. It says, if
22 I do exclude it, I'd better articulate the reasons why
23 and I'd better make findings under Daubert as to why the
24 testimony is not admissible.

25 And one of the grounds, I think, if I

1 understand Daubert correctly, is essentially whether or
2 not the methodology that the expert employed in this
3 case would be recognized by his peers as sufficient to
4 render the opinion that you want him to render.

5 That's what the court is having a problem with
6 right now.

7 MR. NOLAN: I agree. What I meant was that,
8 as to the issue of admissibility, the Daubert
9 methodology is where we are failing.

10 THE COURT: Yes.

11 MR. NOLAN: When I say "failing," I think -- I
12 think we have met it; but I am conceding it's weak
13 because we don't have the tests on the violence issue
14 and that connection. I'm suggesting that I barely made
15 it.

16 But I think that's where it focuses. It
17 doesn't focus on, under proper circumstances, this
18 wouldn't otherwise be admissible testimony.

19 THE COURT: I agree with you, Mr. Nolan. I
20 think that, if both of the psychologists had been tasked
21 with the job of assessing Mr. Hinkson in order to render
22 this opinion and there was adequate time to do it and
23 they conducted the kind of tests that they needed to
24 conduct in order to do it, then it would be admissible
25 under Finley.

1 MR. NOLAN: I'm not conceding it.

2 THE COURT: I understand that. I'm not ruling
3 yet.

4 MR. NOLAN: Exactly.

5 THE COURT: I am posing the question. I want
6 you to help me. The laboring oar, I think, is yours
7 because, as I understand the evidentiary record,
8 everything that could have been done in order to
9 formulate what you call a class "A" opinion hasn't been
10 done.

11 And as I understand Dr. Engle's testimony,
12 there is not enough time between today, Friday, and the
13 next trial day, Monday, in order do it.

14 MR. NOLAN: All I would say about that is the
15 Government had the opportunity. What I am saying is we
16 can go in -- the Government had the opportunity to do
17 the class "A" for plenty of time, from the day that this
18 trial started.

19 In other words, it's kind of like the court is
20 saying, you know, to the Government, "You had the
21 opportunity to prepare for that in case I let it in,"
22 and they just barely made it, that kind of thing.

23 Now, for example, we could do the report over
24 the weekend; but the court wouldn't allow that, I don't
25 think.

1 THE COURT: It isn't a question of generating
2 a report, as I understand it. It's a question of
3 conducting --

4 MR. NOLAN: The examination?

5 THE COURT: Yes. As Dr. Engle testified,
6 scoring the tests, interpreting them -- I'm not a
7 psychologist, so I don't know how much work is involved.
8 I heard Dr. Engle say that it takes a significant amount
9 of time to do that.

10 MR. NOLAN: I believe doctor -- I would
11 submit, for the purpose of an offer of proof, that we
12 could do those tests this weekend, get them scored, and
13 be prepared on Monday if we were allowed to do so. You
14 know, so I am making that representation as an offer of
15 proof.

16 THE COURT: Let me ask you another question.
17 I'm looking at the defendant's supplemental memorandum
18 of authorities regarding experts which the court
19 received late on January 6, 2005.

20 It outlines three areas that Dr. Duke will not
21 be asked to render an opinion on. "B" is whether he has
22 an opinion that Mr. Hinkson had the intent necessary to
23 commit the offense.

24 Now, when you were posing questions to
25 Dr. Duke, that's what I was hearing. Did I --

1 MR. NOLAN: Whether or not the personality
2 characteristics and the diagnosis make it more or less
3 likely that he would have the intent. In other words --

4 THE COURT: You are citing Finley for the
5 proposition that -- I must say I have a difficult time
6 following my colleague's opinion in Finley.

7 MR. NOLAN: I have that feeling.

8 THE COURT: But it's a subtle distinction that
9 may elude me. The distinction, as I understand it, is
10 that the expert can offer, I guess, by way of
11 explanation, background information to aid lay jurors in
12 understanding how paranoid personality disorder would
13 affect Mr. Hinkson's ability to form the intent to
14 solicit the murder of federal officials; but that the
15 jury still has to make the ultimate finding as to
16 whether he, in fact, did.

17 MR. NOLAN: Absolutely. The way the
18 examination is done in California -- when diminished
19 capacity was eliminated but you still have the due
20 process intent issue, you get into the way you formulate
21 the questions.

22 It's not did he have the intent, but is there
23 something about it which the jury should understand in
24 deciding whether there exists the intent?

25 THE COURT: Are you, essentially, pursuing now

1 a diminished capacity?

2 MR. NOLAN: No. I was using it as a metaphor.

3 THE COURT: Because there was no 12.2 notice
4 of it.

5 MR. NOLAN: No. I'm suggesting that there is
6 a shift away from taking anything away from the jury,
7 and the idea that someone would say he did not have the
8 intent is improper.

9 But there is something to say that, because of
10 this, he might not have had the intent, not that he did
11 or didn't; but there is something you should be aware of
12 and that you should consider in deciding whether he had
13 the intent.

14 THE COURT: Whether or not he had the ability
15 to form the intent?

16 MR. NOLAN: That would be an undiminished
17 capacity, whether he had the ability.

18 THE COURT: Isn't that, essentially, what you
19 are trying to get before the jury, that you want them to
20 consider this psychological evaluation and Dr. Duke's
21 testimony in order to help them decide whether or not he
22 had the intent on the dates in question?

23 MR. NOLAN: That's right, because he has a
24 diagnosed -- a disorder which affects him in a way
25 different than other people so that his behavior -- his

1 behavior may not be interpreted in the same way.

2 It's a matter of helping them interpret his
3 behavior. I mean, that's the way I see it. Again,
4 Finley -- well, it actually -- if you look at Finley,
5 Finley goes a lot further than we are going. First of
6 all, they didn't diagnose --

7 THE COURT: The reason we are having the
8 hearing is because of Finley. The court is not going to
9 make the same mistake the trial judge made in Finley.

10 MR. NOLAN: I am hoping, if I don't win, it's
11 not going to be published.

12 THE COURT: I don't have any control over
13 that, in this case.

14 MR. NOLAN: I thought you could publish
15 things. I'm not --

16 THE COURT: I can publish things at the
17 District Court level but not the Federal Court level.

18 MR. NOLAN: In any event, I think, with the
19 Court's permission, we will do the tests and try to
20 score them.

21 But, yes, the court has, really, to decide
22 whether or not, in this instance, I think, we have
23 sufficiently done the tests to meet the burden -- hurdle
24 over the right tests to make that conclusion.

25 THE COURT: This might -- well, let me --

1 Mr. Taxay, would you like to respond?

2 MR. TAXAY: Just a few points, Your Honor.
3 Your Honor, I think an important point to keep in mind
4 here is the defendant denies he made any of these
5 statements. The defendant's position is that he didn't
6 make these solicitations.

7 THE COURT: I understand that. I assume
8 Dr. Duke would say that's an aspect of potential
9 delusion.

10 MR. HOYT: I haven't heard that expert opinion
11 yet.

12 THE COURT: I'm not rendering one. Let me
13 just hear your argument.

14 MR. TAXAY: The defendant denies that he made
15 the statements; and so Dr. Duke's opinion is whether or
16 not he was likely to do it, not what did he mean when he
17 said this, because the defense doesn't concede that he
18 went to J. C. Harding and said, "Look, I will pay you
19 \$10,000 to kill these people."

20 They don't admit that. And so this evidence
21 really is designed to get before the jury a reason to
22 think he didn't make those statements.

23 It's not -- it's not really designed to inform
24 the jury as to his intent when he made them because the
25 defendant denies that he made them.

1 THE COURT: Your position is it's almost like
2 an indifferent defense. I didn't make the statements.
3 If you find that I didn't --

4 MR. TAXAY: -- I didn't mean it.

5 THE COURT: Mr. Nolan, how do you respond to
6 that point?

7 MR. NOLAN: They offered the tape. If they
8 are going to argue that there is nothing in that tape
9 that the jury may use to infer he is guilty of the
10 crimes, then --

11 THE COURT: I don't hear them making that
12 offer.

13 MR. NOLAN: I don't either. Part of it has to
14 do with the jury understanding those statements in the
15 tape.

16 THE COURT: Go ahead. Mr. Taxay, anything
17 further?

18 MR. TAXAY: It's way too late.

19 THE COURT: All right. I'm sorry. I don't
20 mean to cut you off.

21 Anything else, Mr. Nolan?

22 MR. NOLAN: No, Your Honor.

23 THE COURT: Here is what I am going to do: I
24 do need to think about this, but you also need a quick
25 answer to the question.

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1 at least, preliminarily say I will allow you to, at
2 least, call Dr. Duke to offer testimony with regard to
3 what a paranoid personality type is.

4 I think enough of an evaluation has been
5 conducted to do that. Whether I am going to allow him
6 to go the next step and offer the opinion that was
7 elicited here is the question I am wrestling with under
8 Finley and under Rule 704(b). That one I don't want to
9 decide on the fly.

10 MR. NOLAN: So the generic, "What is a
11 paranoid personality and what are their
12 characteristics?" without getting into whether there is
13 a connection to violence?

14 THE COURT: I might let you go further than
15 that. The Government might decide whether they want to
16 call Dr. Engle to testify in rebuttal to that.

17 I think, in light of that question that we got
18 from the juror earlier, mid trial, about concerns with
19 regards to whether Mr. Swisher had ever conducted any
20 kind of an evaluation, at least one juror has a question
21 about his mental condition.

22 And, frankly, I want to thank both doctors
23 because the reports that you did and your testimony here
24 today has been helpful to the court in better
25 understanding a little bit more about Mr. Hinkson.

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1 If you will, supply me with e-mail addresses.
2 And did those fax numbers that I used last weekend work?
3 Everybody got copies? I faxed my rulings -- maybe it
4 was two weeks ago, I guess, at the start of the trial on
5 Sunday, afternoon -- to both sides. Did you get them?

6 MR. TAXAY: We did, Your Honor.

7 THE COURT: Mr. Hoyt, you got yours?

8 MR. HOYT: Yes, Your Honor, we got ours.

9 THE COURT: I don't know if I have an e-mail
10 address for the Government.

11 MR. TAXAY: I can supply that.

12 THE COURT: Would you do that? I will try to
13 get you a ruling just as quickly as I can. I hope to
14 have it out by tomorrow afternoon.

15 I don't know if that will be enough time,
16 Mr. Nolan, but that's the best I can do because,
17 frankly, the late filing of the motion has jammed the
18 court, as well.

19 I will do my best to get you an intelligent
20 ruling in written form. I will get it as early this
21 weekend as I can finish it.

22 MR. HOYT: Is the court in a position where it
23 can make a decision on the lateness issue, as to the
24 testing?

25 THE COURT: Let me say this: I think I can,

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1 So I am going to deny the motion in limine to
2 preclude Dr. Duke from testifying.

3 What I will issue this weekend is a ruling as
4 to how far his testimony will go, what the scope of that
5 testimony will be.

6 MR. NOLAN: And, again, we will be
7 conducting -- we will start conducting some tests.
8 Whether the court allows them not necessarily for the --

9 THE COURT: I don't think you need my
10 permission. In light of that ruling, the Government can
11 decide, you know, whether there is adequate time or
12 what, if anything, they want Dr. Engle to do.

13 MR. NOLAN: Great.

14 THE COURT: That's as much as I feel
15 comfortable doing at 5:10.

16 Safe travels. I hope your mother recovers
17 quickly.

18 MR. NOLAN: Thank you.

19 THE COURT: And we will see everybody -- why
20 don't you plan on being here at 8:30 on Monday morning
21 so that you can review with me in chambers the Swisher
22 personnel file.

23 And then, Mr. Taxay, I do need, as I indicated
24 the other day, the redacted form of the Indictment and a
25 proposed form of verdict. I'd better have those by

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1 Monday, as well.
 2 MR. TAXAY: Yes, Your Honor.
 3 THE COURT: Anything further?
 4 MR. NOLAN: No. Thank you very much, Your
 5 Honor.
 6 THE COURT: We will be in recess. Thank you
 7 all for your help on this difficult issue.
 8 (Whereupon, the court stood in recess.)
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C E R T I F I C A T E

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4 I, LORI A. PULSIFER, certify that I made a
5 shorthand record of the matter contained herein, and
6 that the foregoing typewritten pages contain a full,
7 true, and accurate transcript of said shorthand record,
8 done to the best of my skill and ability.
9 DATED this 8th day of April 2005.

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LORI A. PULSIFER, CSR, RPR, CRR
 Certified Shorthand Reporter
 Idaho Certificate 354