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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, ) Case No.  
vs. ) 08-00026-04-CR-W-FJG  
CHRISTOPHER L. ELDER, )  
Defendant. )

TRANSCRIPT OF SENTENCING HEARING

On Tuesday, May 3, 2011, the above-entitled cause came on before the Honorable Fernando J. Gaitan, Jr., Chief United States District Judge, sitting in Kansas City, Missouri.

APPEARANCES

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TUESDAY, MAY 3, 2011

THE COURT: Good morning.

MR. OSGOOD: Good morning, Your Honor.

MR. BOHLING: Good morning, Your Honor.

THE COURT: We're here for purposes of sentencing in the matter of U.S. v. Christopher Elder.

Mr. Osgood, if you'll come forward with your client.

CHRISTOPHER ELDER, being duly sworn by the courtroom deputy, testified:

THE COURT: All right. Dr. Elder, have you had an opportunity to review your presentence report?

THE DEFENDANT: Yes, sir.

THE COURT: And do you feel you've had sufficient time to do that?

THE DEFENDANT: Yes, sir.

THE COURT: You have?

THE DEFENDANT: Yes, sir.

THE COURT: Did you also have the opportunity to discuss it with your counsel?

THE DEFENDANT: Yes, sir.

THE COURT: Do you feel that you and he have had sufficient time to review and discuss the report?

THE DEFENDANT: Yes, sir.

THE COURT: For the record, I've also

1 reviewed this report. It is my practice not to go over  
2 the report in detail at sentencing except to cover those  
3 areas for which there are objections, and I'll ask counsel  
4 if that's acceptable to he and his client.

5 MR. OSGOOD: It is, Your Honor.

6 THE COURT: And I note the objections  
7 are filed by the government in this case in addition to  
8 maybe one filed by the defendant as well.

9 MR. OSGOOD: I don't believe we had an  
10 objection, Your Honor. We may have had a clarification.  
11 We responded to their objection.

12 THE COURT: Why don't we do this: Why  
13 don't we give the government an opportunity to present  
14 their objection, and then we'll go from there.

15 MR. OSGOOD: Fine, Your Honor.

16 THE COURT: Thank you.

17 MR. OSGOOD: Can we have a seat?

18 THE COURT: Please.

19 MR. OSGOOD: Thank you.

20 MR. BOHLING: Your Honor, our objection  
21 was that the -- there should have been one more two-level  
22 enhancement for obstruction of justice pursuant to the  
23 Sentencing Guideline Section 3C1.1, Application Note 4(b).  
24 I think we outlined this in some detail in our sentencing  
25 memorandum with citations to the record and provided the

1 court with attachments with the relevant portions of the  
2 transcript.

3 Our argument is that Dr. Elder committed perjury  
4 at trial in a number of substantial ways. Probably the  
5 most important statement that he made that was not true  
6 was that he actually treated or saw the patients for whom  
7 he wrote the 544 prescriptions that ended up in Belton,  
8 Missouri.

9 THE COURT: Go ahead.

10 MR. BOHLING: I think the most  
11 substantial issue as far as perjury was the statement by  
12 the doctor at trial that he actually saw and treated the  
13 544 patients for whom that the prescriptions ended up in  
14 Belton, Missouri, and which were filled and which were,  
15 you know, part and parcel of the main part of our  
16 conspiracy in this case.

17 The evidence at trial was that he did indeed  
18 write the 544 prescriptions but that he did not see those  
19 patients. There were no patient files for any of those  
20 544 patients discovered anywhere. Several of the patients  
21 were deceased before the time of this proposed  
22 examination, and you'll remember that Ms. Cooks even  
23 testified that although she clearly was one of the people  
24 who was supposedly treated by Dr. Elder at the South Texas  
25 Wellness Center because it was her driver's license that

1 was provided to Missouri, and her name on the  
2 prescription, that she had never seen Dr. Elder, had never  
3 been treated by South Texas Wellness Center and had  
4 basically no idea how her information had ended up with  
5 him.

6 The evidence also showed that the prescription  
7 sheets that we -- that were found in Missouri, that were  
8 provided by Mr. Solomon by fax transmission typically,  
9 sometimes by mail, were organized by drug. They looked  
10 for all the world as though they were written to order and  
11 appears that the information and the driver's license in  
12 particular, the information on these patients was taken  
13 from other sources in Texas. Driver's licenses are  
14 typically copied by pharmacies, and we know that  
15 Mr. Parker, another person who may have had involvement  
16 here, owned the pharmacies.

17 So the evidence suggested that the identities of  
18 the patients for whom Dr. Elder wrote prescriptions were  
19 stolen. He never saw these people, and his assertion to  
20 the jury that he had was simply perjury. And for that  
21 reason and for some other -- also important but also more  
22 minor, perhaps, misrepresentations that were detailed in  
23 our memo, we are asking that the court impose the  
24 two-level perjury enhancement for obstruction of justice.

25 THE COURT: Thank you.

1 MR. OSGOOD: If I may, Your Honor.

2 First of all, the bed sheet lists were generated  
3 by Dr. Okose. They were not part of the Elder. That was  
4 the ten -- the eight or ten months after he left on  
5 January the 1st.

6 MR. BOHLING: That is incorrect, Your  
7 Honor. That is absolutely incorrect.

8 MR. OSGOOD: Excuse me. You may  
9 respond. May I speak?

10 I contend those were generated by Dr. Okose.  
11 Their own expert testified that he also was duped on  
12 occasion by patients coming in with false identities and  
13 false identification. I quoted his testimony in my motion  
14 for new trial. He said, If a patient comes in and I don't  
15 have anything else and they tell me that they're in pain,  
16 ultimately I write a prescription because I'm in the  
17 practice of healing people and I take them at good faith.

18 Over 500 prescriptions, they only found two  
19 deaths involved in those, and they found this woman they  
20 called in as a witness at the last minute who said she  
21 didn't go there but somebody using her ID did.

22 The records also belong to the South Texas  
23 Wellness Center. He was a part-time physician there,  
24 worked there, and when he left, the records belonged to  
25 them. I in fact filed a motion claiming he had an

1 expectation of privacy in those records trying to suppress  
2 them, and the court ruled that I had no standing to raise  
3 that issue.

4 Therefore, the court itself has ruled that those  
5 records belong to Ms. Johnson, Ada Johnson and Pleshette  
6 Johnson, the owners of the South Texas Wellness Center.  
7 They were immunized witnesses. They admitted to having  
8 given false testimony on several prior occasions in this  
9 case, and they were the ones that could not produce the  
10 records. And they were the ones that had the incentive to  
11 destroy those records because they themselves were  
12 integrally involved with Mr. Solomon.

13 So the absence of the records proves nothing,  
14 and they conceded -- both -- I should say Ms. Johnson.  
15 Only one testified. She conceded that Dr. Elder was there  
16 two or three days a week and saw patients. So it's very  
17 disingenuous for the government to say he never saw a  
18 single patient the whole time he worked there. That's  
19 just not the facts in the case.

20 I don't think if you look at the Brooks case, a  
21 case I tried in which my client testified, in the Brooks  
22 case -- and it went up on appeal -- and the 8th Circuit  
23 said merely because a defendant testifies at his trial is  
24 not conclusive that it's obstruction of justice or  
25 perjury, and they remanded it back and gave me the -- took

1 the two points off. And I quoted in there the specific  
2 findings that the court should make. They don't put an  
3 absolute duty on the court.

4 But if you read that, it's implied that the  
5 court should in very great detail go over the evidence and  
6 state why on the record they believe that the defendant  
7 perjured himself. I don't think the court should be  
8 burdened with this at this point. Probation didn't  
9 believe he committed perjury, and I don't think in  
10 totality that the record would support he committed  
11 perjury.

12 That's all I have.

13 MR. BOHLING: If I may.

14 If the court -- the sheets that we provided to  
15 the court are contemporaneous with the writing of Dr.  
16 Elder's prescriptions and reference Dr. Elder's patients  
17 specifically. They were faxed in that timeframe, August,  
18 September of 2004.

19 Dr. Okose didn't even become involved in this  
20 until later in the conspiracy in December, January of --  
21 December 2004, January of 2005. And those sheets clearly  
22 reference the very same prescriptions written by Dr.  
23 Elder. There's absolutely no question about that.

24 We would also point out that Dr. Elder himself  
25 represented to the Texas Medical Board in a letter in 2008

1 that was brought up in cross-examination that he had --  
2 that he said he had not treated the patients who were  
3 named in our indictment. And it's notable that the  
4 evidence suggests that Dr. Elder actually changed his  
5 story on this. He started out with the story that he had  
6 not written the prescriptions, which is why he wrote in  
7 block letters at the time of his writing sample very early  
8 in the case, and then at trial changed that to say he had  
9 actually written the prescriptions and then presumedly had  
10 seen the patients.

11 But in 2008, he told the Texas Medical Board  
12 that he had not seen patients, so he actually contradicted  
13 himself on that point showing his perjury at trial.

14 There was also indicated at trial -- we didn't  
15 say he didn't see a single patient, but we did cross on  
16 the fact that he did not have enough time in the time he  
17 was at the South Texas Wellness Center to have seen as  
18 many patients as he wrote prescriptions for. It wasn't  
19 physically possible. I think that was clear to the jury.

20 The record here is really unimpeachable that  
21 there was perjury by Dr. Elder at trial.

22 MR. OSGOOD: Once again, I think what  
23 we're doing is lumping in what Mr. Solomon did, trying to  
24 say that Dr. Elder perjured himself. All of those bed  
25 sheet lists they're referring to, the faxes came from the

1 basement of Mr. Solomon, and they were in fact authorized  
2 by Mr. Solomon between Ms. Rostie and Mr. Solomon without  
3 the knowledge of Dr. Elder, which he testified to, and we  
4 showed those side-by-side comparisons. It was very clear  
5 his initials were on the original prescriptions and he  
6 wrote theirs.

7 When we showed the side-by-side of all those  
8 faxes and it was I believe finally -- I can't swear to it,  
9 but I thought Mr. Solomon admitted, yes, he was the one  
10 that scrawled those initials on those faxes. And every  
11 prescription that Dr. Elder wrote, he put no refills on  
12 them. So behind his back to generate massive profits on  
13 this, what happened was Rostie and Martin and Elder -- I  
14 mean, Rostie, Martin, and Solomon got together and used  
15 those original scrips to generate massive additional  
16 dollars of income off of them without his knowledge.

17 And there was no proof that he ever talked to  
18 Rostie here or that he was directly involved with her.  
19 She said she at one time early in the case may have had a  
20 four-way or three-way conversation with him. It just in  
21 balance doesn't show that he had knowledge of those faxes  
22 and was involved in that part of it. And he denied that  
23 on the stand.

24 And it was very clear when you looked at the  
25 side-by-side, that those were not his initials and that he

1 was not involved in the faxing of those and the  
2 prescriptions. Remember, the medication was always sent  
3 back to the South Texas Wellness Center. It wasn't sent  
4 to him. The best DA evidence in this case shows that he  
5 wrote prescriptions and was probably paid by the Johnsons  
6 for those prescriptions, and I don't think it supports the  
7 perjury.

8 THE COURT: Anything further from the  
9 government?

10 MR. BOHLING: Just the fact that many of  
11 the boxes were addressed to Dr. Elder. That was in  
12 evidence.

13 THE COURT: It's my belief that there is  
14 not clear and convincing evidence that Dr. Elder perjured  
15 himself, so I'm going to sustain -- overrule the objection  
16 raised by the government on that issue.

17 If you'll return to the podium, Mr. Osgood, with  
18 your client, we'll talk further.

19 MR. OSGOOD: Yes, Your Honor.

20 THE COURT: I did read the sentencing  
21 memorandums provided by counsel, and I don't know if you  
22 want to elaborate further at this time on what you believe  
23 to be an appropriate sentence for Dr. Elder.

24 MR. OSGOOD: I don't think it should be  
25 anything more than a very short period of incarceration,

1 Your Honor, enough to be a deterrent to others and to  
2 punish him. We go into great detail, as does he, about  
3 the fact that he has been significantly punished already.  
4 It will take him a decade to recover from this in terms of  
5 reputation and whatnot.

6 Hopefully he will get his license back at some  
7 point. There is a shortage of doctors, and he is a very  
8 bright, young man, and he has a lot to contribute in his  
9 life. So he needs to be punished based upon the  
10 conviction, which, of course, we intend to appeal, but  
11 nevertheless we stand by the jury verdict. He's been  
12 convicted so he has to be punished.

13 I don't think it should be anything lengthy  
14 taking into consideration the previous sentences the court  
15 has imposed for the two co-defendants. The fact that  
16 these are Schedule III and IV drugs and are not in and of  
17 themselves illegal to dispense, it's at best a dispensing  
18 violation. I don't think it calls for a substantial  
19 period of incarceration.

20 I wouldn't think more than a year and a day  
21 would be necessary to send the proper message to other  
22 physicians in the area and at the same time punish him.  
23 He's had a substantial financial punishment already, and  
24 that will continue.

25 His wife's pregnant and they're having a child.

1 They're basically living off of her income right now.  
2 There was no evidence that he made any substantial  
3 financial gains in this case. Indeed you will recall the  
4 testimony of the financial expert, they did a substantial  
5 analysis of the assets of all the defendants in this case  
6 except him. They didn't even bother to get his tax  
7 returns.

8 I think they were aware he got a refund the one  
9 year he was audited. They could have done a net worth  
10 method on him. They didn't. They chose not to do that to  
11 show he was exceeding his lifestyle. He was living in an  
12 apartment when this all occurred. He didn't make any  
13 great deal of money off this.

14 So I think the punishment should so reflect.

15 THE COURT: Okay. You can return to  
16 your seat. I think Mr. Bohling has some witnesses.

17 Is that still the case?

18 MR. BOHLING: Yes, Your Honor, it is.

19 MR. OSGOOD: Then Dr. Elder has a short  
20 presentation he would like to show the court on the slide,  
21 maybe 5, 10 minutes.

22 THE COURT: What about?

23 MR. OSGOOD: Just allocution, about his  
24 own situation.

25 THE COURT: Okay. I'll give him an

1 opportunity to do that once I hear from the government.

2 MR. OSGOOD: Thank you.

3 MR. BOHLING: We do intend to present  
4 witnesses. I guess I would ask counsel to the court the  
5 only purpose of calling the second witness is to talk  
6 about some numbers that were in an affidavit that was  
7 provided to the court on a money judgment issue. I'm not  
8 sure that's actually necessary unless John has a  
9 disagreement about what those numbers are.

10 MR. OSGOOD: I think we've briefed very  
11 well the forfeiture issues. I don't believe that he --  
12 again, in light of the fact that they did not see fit to  
13 impose the total amount on Ms. Martin, they gave her  
14 \$660,000 as opposed to the \$900,000, and that's just an  
15 arbitrary figure on their part, that she entered late and  
16 they weren't going to punish her as much financially.

17 Dr. Elder left and it went on for another ten  
18 months in which all the huge profits by Okose and all  
19 these people were generated. I don't think Dr. Elder  
20 should be anywhere near responsible for the total amount  
21 jointly and severally. We've briefed that.

22 MR. BOHLING: If I understand correctly,  
23 I don't believe there's a need to call my second witness  
24 solely for the purpose of indicating the same information  
25 that's already before the court in terms of an affidavit.

1 THE COURT: Yeah. The point that  
2 Mr. Osgood has made is one that we'll discuss.

3 MR. BOHLING: Right.

4 THE COURT: But beyond that --

5 MR. BOHLING: All right. In that case  
6 we'll call John Kowal.

7 MR. OSGOOD: This is the witness, Your  
8 Honor, that you ruled was inadmissible during the trial.  
9 This is the witness who is the street detective in Houston  
10 who purportedly was going to say purely through  
11 speculation that these drugs all went out on the street  
12 and must have been distributed even though they never  
13 produced a single witness to say I bought prescription  
14 medication with a label on it issued by Dr. Elder or  
15 Dr. Okose.

16 The government contended, of course, the bottles  
17 were dumped out and the pills were sold individually.  
18 There's no evidence of that, and there's no witness to  
19 support that. The court has, I think, ruled three times  
20 in the trial that his testimony is inadmissible and  
21 irrelevant. I would so move now to ask the court to not  
22 allow him to testify.

23 MR. BOHLING: Two points, Your Honor.

24 Number one, we were never going to call this  
25 witness to say what Mr. Osgood says. The point -- the

1 purpose of this witness is to give the court general  
2 information about this topic, that is, diversion of  
3 pharmaceutical drugs. There is much that I did not know  
4 before this case started that I learned, and I think it's  
5 relevant to the court's consideration of the proper  
6 sentence in this case.

7 So I certainly believe that what this witness  
8 has to offer is relevant by way of information about the  
9 general topic of the distribution of these types of drugs  
10 in the Houston, Texas area, which has unique issues much  
11 different from Kansas City.

12 THE COURT: I'll hear it.

13 MR. BOHLING: Thank you.

14 JOHN KOWAL, being duly sworn by the courtroom deputy,  
15 testified:

16 DIRECT EXAMINATION BY MR. BOHLING:

17 Q Please state your name and spell it.

18 A John Kowal, K-o-w-a-l.

19 Q How are you employed?

20 A I'm a police officer with the City of Houston.

21 Q How long have you had that position?

22 A Over 28 years.

23 Q Okay. What's your educational background?

24 A I graduated from the University of Illinois in  
25 Chicago with a degree in criminal justice.

1 Q What year?

2 A 1982.

3 Q When did you start with HPD?

4 A September of 1982.

5 Q And have you been involved in narcotics  
6 enforcement for a long period of time?

7 A I've been assigned to the narcotics division for  
8 a little over 24 years.

9 Q When did you start working on drug diversion type  
10 cases?

11 A Approximately 1988, 1989.

12 Q What types of duty assignments have you had  
13 within the department that have dealt with this topic?

14 A I've had -- I investigate any criminal act in  
15 regard to prescription drugs. With that I've been  
16 assigned to a DEA task force solely assigned to  
17 investigate criminal acts in regard to prescription drugs.  
18 I'm also currently assigned to a group of approximately  
19 six officers that do nothing but investigate criminal acts  
20 in regard to prescription drugs.

21 Q Have you had any training in this area?

22 A I had numerous training over the years regarding  
23 prescription drug abuse in the investigations of  
24 prescription drugs through the DEA Academy in Quantico,  
25 Virginia, through local DEA schools, through our Texas

1 Department of Public Safety Schools as well as continuous  
2 education training through the Houston Police Department  
3 Academy.

4 Q Do you teach in this area?

5 A Yes, sir, I do.

6 Q Please describe for us the classes you teach and  
7 where those occur.

8 A I normally instruct to local medical boards like  
9 the Harris County Medical Society. About every year I do  
10 a two-hour block in regard to the latest trends of  
11 prescription drug abuse to the University of Houston  
12 School of Pharmacy.

13 Q And what kinds of topics have you learned about  
14 or taught about dealing with drug diversion?

15 A Basically what we instruct in regard to is the  
16 latest trends of prescription drug abuse to common drugs  
17 that are typically abused and how they're abused as well  
18 as how they're put into the illicit market of Houston.

19 Q What kinds of investigations have you been  
20 involved with?

21 A We deal in all different kinds of investigations  
22 from starting of the fraudulent prescription case all the  
23 way up to investigation of a licensed medical personnel  
24 such as a doctor or a pharmacist that may commit criminal  
25 acts.

1 Q And can you describe for us the nature of the  
2 problem with diverted pharmaceutical drugs in Houston,  
3 Texas, over the last, let's say, 10 to 15 years?

4 A Not only in Houston, Texas, but across the  
5 country, the number one drug abuse problem now that people  
6 don't realize is prescription drug abuse through  
7 statistics provided by DEA and the CDC in Atlanta. There  
8 are approximately two people that go to the emergency room  
9 for prescription drug abuse or overdose compared to  
10 heroin, cocaine, marijuana, methamphetamine combined.

11 **Houston, along the Gulf Coast area, has been**  
12 **unfortunately at the forefront of that problem for years**  
13 **now, prescription drug abuse. Namely, hydrocodone sold**  
14 **under trade names like Vicodin, Lortab; alprazolam, which**  
15 **is also known as Xanax; and then promethazine with codeine**  
16 **cough syrups, codeine cough syrups.**

17 Q Is Houston considered to be a source city for  
18 prescription drugs?

19 A Yes, sir, it is.

20 Q What factors have contributed to that?

21 A Houston has a large medical complex, one of the  
22 world's largest medical centers. Along with that, we've  
23 had probably anywhere from 2,500 to 3,000 pharmacies  
24 licensed in the area. Due to that it draws a lot of  
25 doctors, pharmacists, nurse practitioners, physician's

1 assistants to the area as well as the temperate climate.  
2 There's a large homeless population. A lot of people live  
3 outdoors year round.

4 Q What about state law in Texas, does that  
5 contribute in any way?

6 A There's -- Texas unfortunately was a little bit  
7 behind in regard to laws in prescription drug abuse. We  
8 still don't have a doctor shopping law whereas a person  
9 could prostitute an illness, go from doctor to doctor. It  
10 has an act within the Medical Practice Act where a doctor  
11 basically can treat pain with no other questions asked  
12 basically through prescriptions.

13 Q And are you familiar with pain clinics?

14 A Yes, sir, I am.

15 Q And is there a particular issue with pain clinics  
16 in the Houston, Texas area?

17 A That's our number one issue in regard to narcotic  
18 enforcement now in Houston, Texas, is the pain clinic  
19 problem.

20 Q And why is that?

21 A What we define a pain clinic is in Houston,  
22 Texas, pain management is a little -- legitimate form of  
23 medical practice, and it's a needed medical practice. But  
24 what we've determined in Houston, there's probably over  
25 250 to maybe 300 clinics where they operate solely for the

1 use or solely to produce money irregardless of the type of  
2 treatment that's offered just for the dispensation of  
3 controlled substances, mainly hydrocodone and alprazolam.

4 Q Do you know what -- have you ever heard of  
5 something called the Houston Cocktail or the Texas  
6 Cocktail?

7 A Infamously that is associated with Houston and,  
8 yes, sir, I have.

9 Q What is it?

10 A It's a combination of drugs such as hydrocodone,  
11 alprazolam, and Soma, or you can substitute Soma with  
12 promethazine with codeine cough syrup that are written  
13 indiscriminately by a physician on a prescription where  
14 somebody may go to the pain clinic they prescribe, pay  
15 anywhere from \$80 to \$100 cash and for no other reason  
16 than to say you have pain and maybe a cough, you get that  
17 prescription written to you.

18 Q What happens to the drugs after they're -- after  
19 the prescription is written?

20 A After the prescription is written, sometimes the  
21 prescriptions are actually written to a patient.  
22 Sometimes they're faxed to a specific pharmacy. The  
23 prescriptions are directed by usually the clinic owner or  
24 operator to be filled at a specific pharmacy. The  
25 pharmacies we're talking about are not what you would

1 normally think of your pharmacy -- like we have in Houston  
2 a CVS, a Walgreens, one of your chain drug stores.  
3 They're faxed -- they're directed to a specific pharmacy  
4 that's usually in a storefront location hidden behind a  
5 wall with no front-end merchandise, no other regard for  
6 any type of Band-aids, personal products that you would see  
7 at your local pharmacy.

8 Q And just briefly what is drug diversion?

9 A Drug diversion, the way we look at it is any  
10 criminal act in regard to prescription drugs. Namely, you  
11 take illicit drugs such as hydrocodone or alprazolam or  
12 the cough syrups and you use it and you transfer it to the  
13 illicit market where it's bought and sold just like you  
14 would think of cocaine, heroin, and marijuana.

15 Q What methods of diversion exist in Houston?

16 A Our number one method of diversion right now is  
17 pain clinics and the indiscriminate prescribing by  
18 licensed practitioners, whether they're a medical doctor,  
19 a physician's assistant, or a nurse practitioner. We also  
20 have areas where people organize fraudulent prescription  
21 rings where prescriptions are generated for a fee and  
22 filled at pharmacies which I described. The drugs are  
23 then collected in bulk quantity. Each one of these  
24 prescriptions when you see them written, is usually  
25 written for like 120 tablets of hydrocodone, 60 tablets of

1       alprazolam, and 90 tablets of Soma, which is a muscle  
2       relaxant, and then if you see promethazine with codeine on  
3       there, it's usually listed as 240 milliliters or 8 ounces.

4             Q   Is there -- through your investigations and your  
5       training, have you identified a drug distribution chain  
6       for diverted pharmaceutical drugs?

7             A   Yes. Through numerous investigations over the  
8       years, we equate it similar to what you would be familiar  
9       with a methamphetamine or a heroin distribution network  
10      where there's a hierarchy. The drugs are gathered at the  
11      lower level, given to one individual, prepackaged in bulk  
12      quantity, and then distributed throughout the Gulf Coast  
13      area and then beyond Louisiana, Oklahoma, Arkansas,  
14      Missouri.

15            Q   In this drug distribution chain, how is business  
16      usually transacted?

17            A   It's all cash business.

18            Q   Why?

19            A   It's like any other drug, people don't  
20      understand -- if you think about it, any other drug, you  
21      deal in cash and cash only so it can't be trailed.  
22      There's no record. The biggest problem is what to do with  
23      the cash once you get it.

24            Q   Are diverted pharmaceutical drugs like  
25      hydrocodone particularly desirable?

1           A Yes, sir, they are. If you think about it, when  
2 you go to buy hydrocodone in an illicit manner on the  
3 streets in Houston, whether it's in Houston or in  
4 Missouri, you know what you're going to get. You may have  
5 been a crack cocaine addict or a heroin addict. When you  
6 went to that street corner to buy that heroin or cocaine,  
7 you never knew what its purity was. You never knew what  
8 you were going to get.

9           **You were going to spend your last \$20, \$30 on**  
10 **the unknown whereas on hydrocodone, when you go to**  
11 **purchase it, it's made, it's produced, it's inspected by**  
12 **the U.S. Government here, and you know that through what**  
13 **that stamp says on it. Usually the inscription on the**  
14 **pill like a Watson 503, it's a green tablet, you know**  
15 **you're getting the hydrocodone, or a Watson 540, it's a**  
16 **blue tablet, you know it's going to be 10/500 milligrams**  
17 **of hydrocodone. Or a Xanax, you know, you call it a bar**  
18 **because it comes in bar shape. It will have the initials**  
19 **GG on it. Soma, it will be produced by a company, be**  
20 **inscribed with Dan 5510 I believe it is. You know what**  
21 **that is.**

22           **You're buying a known commodity. You're not**  
23 **wasting your money if you're trying to acquire drugs in an**  
24 **illicit manner as opposed to cocaine or heroin,**  
25 **methamphetamine.**

1 Q Directing your attention back to the 2004, 2005  
2 timeframe, were you familiar with the pricing of diverted  
3 prescription drugs on the street?

4 A Yes, sir.

5 Q And approximately -- let's take hydrocodone for  
6 example. On a per pill basis, about how much was that  
7 back in that timeframe?

8 A Back in that timeframe, you're talking about just  
9 at the local retail level, if you were an individual  
10 consumer going to buy it in an illicit manner on the  
11 street, you can pay between two to three dollars a tablet  
12 for it.

13 Q What if that was sold in bulk, in a bulk  
14 transaction?

15 A In a bulk transaction like any other commodity,  
16 the more you buy, the bigger break you get. You may  
17 purchase it more for the two, two and a quarter type  
18 aspect of it, \$2.25, \$2.50, just depending on how many you  
19 buy.

20 Q Has that number changed over time?

21 A Yes, sir, it has.

22 Q How so?

23 A It's gone up. Recently just in the past few  
24 weeks we've done undercover investigations of buying  
25 hydrocodone in bulk quantity. When I'm talking "bulk,"

1 I'm talking 500 to 1,000 tablets in an illicit manner from  
2 a person in an undercover capacity. Those prices have now  
3 ranged in Houston where the source is at between \$4 and \$5  
4 a tablet.

5 Q I'd like to return to your discussion of the  
6 overdose issue with these types of drugs. Do you know for  
7 what year overdose information is -- the most recent year  
8 for which that information is available?

9 A Due to righting the prescription problem not only  
10 in Houston, Harris County, but across the country, we  
11 conducted a survey or an analyst did with the Harris  
12 County Medical Examiner's where all bodies dying under  
13 suspicious circumstances and not under the care of a  
14 doctor would be taken to. I believe that year was 2007 to  
15 2008, somewhere around there.

16 Q And what was determined about the role of  
17 prescription medications in those overdose deaths?

18 A There were approximately a little over 1,500  
19 overdose deaths in Harris County. Harris County  
20 encompasses Houston, Texas, for the majority of the area.  
21 Houston encompasses all -- almost all of Harris County,  
22 approximately three to four million people.

23 **There were over 1,500 overdose deaths due to**  
24 **prescription drugs or 1,500 overdose deaths in regard to**  
25 **drugs itself, and about 67 percent of those, two-thirds,**

27

1       **over two-thirds actually, prescription drugs played a part**  
2       **in it.**

3           Q   And how does that compare to numbers, let's say,  
4       of 10 years or 20 years earlier?

5           A   It drastically increased.  Years ago when I first  
6       started, there was -- the data wasn't kept on the  
7       prescription drug overdose death.  It was more of the  
8       clandestine drugs you would talk about of heroin and  
9       cocaine, but just through my observations through the  
10      years, it's a drastic increase.

11          Q   What is drug driving?

12          A   Drug driving is one of our, I would say, worse  
13      case phenomena right now whereas people under the  
14      influence of prescription drugs at any time of the day or  
15      night take their drugs, usually not as directed, usually  
16      bought in an illicit manner, and then operate a motor  
17      vehicle on the streets mainly in like Houston or Harris  
18      County or even here.  It's our latest growing source of  
19      deaths throughout the country.

20          Q   Have you seen an increase in drug driving in the  
21      Harris County area since the prescription drug problem  
22      started?

23          A   Yes, sir.  We work closely with our traffic and  
24      accident investigation division in regard to drug driving,  
25      acquiring prescription records, medical records.  The

1 calls we get have increased dramatically over the last  
2 probably about five to seven years.

3 MR. BOHLING: Just one moment.

4 Thank you. That's all the questions I have for  
5 Officer Kowal.

6 CROSS-EXAMINATION BY MR. OSGOOD:

7 Q Morning.

8 A Morning.

9 Q You said a large part of the problem apparently  
10 is attributable to Texas law?

11 A Texas doesn't have -- it was behind in regard to  
12 laws on the books in regard to doctor shopping, pain  
13 management, regulation of pain management clinics, the  
14 mere fact that doctors can basically prescribe for pain  
15 and pain alone.

16 Q Was this the case in 2004, 2005?

17 A Yes, sir.

18 Q Has that been changed now?

19 A We're -- I have testified in Austin --

20 Q Has that been changed now, sir?

21 A Yes, sir.

22 Q So there's new law now in place?

23 A Right.

24 Q So are they required to use computer analysis,  
25 then, to prevent doctor shopping?

1 A No, sir.

2 Q How do you prevent doctor shopping?

3 A Doctor shopping is incumbent upon the physician  
4 and the -- right now in the state of Texas what I can  
5 speak for would be incumbent upon the physician and the  
6 pharmacist to determine if a patient they are seeing is  
7 having drug-seeking behavior, if that person has ever been  
8 to a different doctor for that same ailment or that same  
9 symptom in a certain timeframe and if he has gotten that  
10 prescription filled at pharmacies. Most reputable  
11 pharmacies are interlinked now as far as CVS or Walgreens  
12 throughout the country where I can -- they can run your  
13 name if you have a prescription and say, hey, you've  
14 gotten this prescription filled several times in the past  
15 month through other stores.

16 Q All right. I'll grant you that.

17 What about the doctor, how does the doctor know  
18 that his patient has been to other doctors?

19 A The doctor should know that by a one-to-one  
20 doctor/patient relationship where he would ask the patient  
21 have you been to any other physicians for this. What we  
22 instruct now is for doctors to have the patient sign at  
23 least a form to say that, no, I'm not being treated by any  
24 other doctor for this ailment.

25 Q How long have you been a police officer?

1           A   Over 28 years.

2           Q   And you honestly suggest to this court that these  
3 patients are then going to say, Yes, I'm an addict, I'm  
4 doctor shopping, and I've been to ten other doctors and --  
5 but I think you ought to just give me a wink and a nod and  
6 write the prescription anyway? You honestly are telling  
7 this court that some patient is going to do that if  
8 they're engaged in illegal theater?

9           A   I can't speak for what patients should or should  
10 not do. I would say I recommend it to the doctors to ask  
11 that question. How the patients answer that question, I  
12 can't speak to that.

13          Q   What if the patient says, No, you're the first  
14 physician I've seen, how is the doctor supposed to know,  
15 sir?

16          A   If the doctor knows and deals with the pharmacy,  
17 what happens is the relationship between a doctor/patient  
18 relationship is established. If he talks to -- then he  
19 will work with a pharmacist and say, Here, I want you to  
20 go here and get your records all under one umbrella,  
21 usually a reputable pharmacy like a Walgreens, to make  
22 sure that the prescriptions are not going -- are getting  
23 filled from anywhere else.

24          Q   Okay.

25          A   And then once that's done --

1 Q Okay. If you can answer my questions, we'll get  
2 through this quicker and not give me a narrative answer,  
3 please.

4 Now, you have a problem with pain clinics, don't  
5 you, in Texas?

6 A In Texas we do.

7 Q All right. And have you been to pain clinics  
8 where there's patients lined up out in the parking lot and  
9 people are going in and buying or getting prescriptions,  
10 coming out and selling them right in the parking lot?

11 A Yes, sir.

12 Q Did you investigate Dr. Okose? Was that going on  
13 in some of his clinics?

14 A I'm familiar with the Dr. Okose case.

15 Q That was going on in his clinic, wasn't it?

16 A Yes, sir.

17 Q That's pretty clear drug diversion, isn't it?

18 A Yes, sir.

19 Q Now -- and you have those kind of pain clinics  
20 all over Houston, Texas, don't you?

21 A Yes, sir.

22 Q You in fact visited Dr. Elder's clinic in 2005, I  
23 believe, didn't you?

24 A I don't -- I think it was later than that.

25 Q 2006 maybe?

1 A Maybe seven.

2 Q When you went in there, you saw a person in a  
3 wheelchair, didn't you? You remember that?

4 A I don't remember the person in the wheelchair.

5 Q Did you see any people hanging around outside  
6 buying, selling drugs?

7 A Not on that date.

8 Q And did it appear to be a reputable clinic  
9 operating properly?

10 A I only spent a couple of minutes in there.

11 Q You spent some time in there talking to him,  
12 didn't you?

13 A I could tell you what the circumstances were of  
14 why I was at that clinic.

15 Q Please do, please do.

16 A I was called not by the doctor, Christopher  
17 Elder, but also in my duties I investigate people who  
18 obtain drugs through the use of fraudulent prescriptions.  
19 A pharmacy within the area contacted the Houston Police  
20 Department in regard to a prescription that they thought  
21 may be fraudulent. The patrol officer, uniformed patrol  
22 officer, who was dispatched to the location, then  
23 contacted the narcotics division, who contacts us to go  
24 out there. I went out to the pharmacy, talked to the  
25 pharmacist, who I knew from another location also, and

1 then she directed me to Dr. Elder's clinic which was in  
2 the same strip center.

3 Q And you went in and he talked to you and  
4 cooperated with you, didn't he?

5 A I went in, presented my credentials, gave my  
6 business card and asked if he did write a prescription,  
7 which he didn't -- it wasn't fraud.

8 Q You did not follow up or find anything unusual  
9 about that, did you? He appeared to be a reputable doctor  
10 operating a proper pain clinic, didn't he?

11 A I only talked to Dr. Elder for about two or three  
12 minutes on that particular day. I did not form an opinion  
13 on what he did or didn't do.

14 Q You sure it was only that amount of time, sir?  
15 Could it have been longer?

16 A It maybe could have been five minutes.

17 Q You had confidence in him, didn't you?

18 A The only thing I asked the doctor if he wrote  
19 that prescription or not.

20 Q Oh, no, no, sir. You confided in him information  
21 about a grand jury investigation you were involved in and  
22 you were about to testify in a grand jury and you told him  
23 that you were going to testify against a meth addict who  
24 had severed the penis of another -- of a spouse, didn't  
25 you?

1           A Yes. And they were under the influence of  
2 prescription drugs.

3           Q But you had enough confidence in Dr. Elder that  
4 you told him secret grand jury information on a one-to-one  
5 basis, didn't you, sir?

6           A No, sir. The grand jury didn't take place at  
7 that time.

8           Q But you were scheduled to testify, weren't you?

9           A No, not yet.

10          Q You were scheduled to testify in this grand jury  
11 investigation? You told him you were going to testify,  
12 didn't you?

13          A No, sir. I -- I was scheduled to -- not to  
14 testify. The grand jury was seeking a person who had  
15 knowledge in regard to prescription drug abuse in the  
16 Houston area. A district attorney approached me and said,  
17 Hey, would you be able to do that if called, and I said  
18 yes. And we talked about, you know, the person that was  
19 under the influence of prescription drugs.

20          Q But the way I know this is it came from you  
21 through my client, didn't it? That's how I know about it,  
22 isn't it?

23          A If your client told you.

24          Q And he did.

25                   And you told him, didn't you?

1 A We discussed the -- it was --

2 Q All right.

3 A It was recently a case that was on TV. It was a  
4 horrific case. It was in the newspapers and on TV.  
5 Everybody knew about it.

6 Q If he had been a disreputable doctor engaged in  
7 this pain clinic fraud and misconduct, you wouldn't have  
8 told him that, would you?

9 A I have no opinion in regard to Dr. Elder at the  
10 time.

11 Q All right. Let's go to something else. You know  
12 what NADDIS is?

13 A Yes, sir.

14 Q What is NADDIS?

15 A NADDIS, I'm not too sure of the acronym, national  
16 -- it's a database provided by the DEA through the DEA  
17 where they register not only maybe witnesses,  
18 complainants, criminal suspect data information in regard  
19 to license plates, telephone numbers. It's basically a  
20 database through the DEA.

21 Q It's an intelligence gathering system, isn't it?

22 A Somewhat, yes.

23 Q Does the Houston Police Department also have a  
24 similar system of inputting data into a database where you  
25 can check and cross-check for various suspects and --

1 A Not that sophisticated, no, sir.

2 Q But do you have one?

3 A Not similar to NADDIS, no, sir.

4 Q Do you have a computer system at the Houston  
5 Police Department?

6 A Yes, sir, we do.

7 Q Do you maintain intelligence information in the  
8 Houston Police Department?

9 A You would have to define "intelligence  
10 information."

11 Q All right. Do you, for example, when you contact  
12 somebody on the street and they have illicit drugs, do you  
13 debrief them?

14 A We can't talk to them informally.

15 Q Let's say you make a hand buy of drugs on the  
16 street or some of these kind of pills, Schedule III or --  
17 two or three pills on the street and you arrest them, do  
18 you attempt to interview them?

19 A Yes, sir.

20 Q And do you write down in your report what they  
21 have to say?

22 A The only database that we have --

23 Q Would you please answer my question, sir? Do you  
24 interview them?

25 A It's a report of investigation if there's an

1 arrest made.

2 Q All right. And is that report and investigation  
3 filed under a defendant's name or a subject's name in some  
4 kind of system that the Houston Police Department  
5 maintains?

6 A No, sir. It's filed under a specific case  
7 number, not a name or anything else. You would need  
8 assigned a case number.

9 Q Do you ask that person where did you get the  
10 drugs?

11 A Yes.

12 Q And if the person says I got the drugs from  
13 Jones, then do you go interview Jones or attempt to follow  
14 up on the investigation?

15 A If the information is credible and reliable.

16 Q And if you go to Jones and Jones is a big dealer,  
17 are there occasions where Jones decides it's best for him  
18 to cooperate and describe his sources and he gets a break  
19 and he's prosecuted but you go after the big guy?

20 A Usually we would try to make --

21 THE COURT: You're getting a little far  
22 afield.

23 MR. OSGOOD: I'll wrap it up in a second  
24 because it's important.

25 THE COURT: All right.

1 Q (BY MR. OSGOOD) Do you do that?

2 A Not -- we don't operate just on information or  
3 hearsay from another individual. What we would do is we  
4 would try to open up an investigation on Jones first to  
5 see if there's any criminal activity, and arrest and  
6 charge him before we would offer him any type of deal.

7 Q But my point is, with this big problem, you're  
8 attempting to get back to the doctor that's the source of  
9 this, aren't you?

10 A There's several sources in prescription drug  
11 abuse, not necessarily --

12 Q The pharmacy with the doctors, you try to get  
13 back to the doctor, don't you?

14 A It could be a doctor, it could be a pharmacist,  
15 nurse practitioner, a person who steals drugs.

16 Q All right. In all of your investigation of all  
17 these problems in Houston, Texas, in all the time you've  
18 been working down there, including up to and until today,  
19 do you have a report or any information from a credible  
20 witness or anything that -- where Dr. Elder's name was  
21 ever brought up as being responsible for drug diversion in  
22 Houston, Texas?

23 A I don't have any information, but I don't have  
24 the computer system with me here either.

25 Q If you had it, you would have brought it,

1 wouldn't you, sir?

2 A No, sir.

3 MR. OSGOOD: Okay. Thank you.

4 MR. BOHLING: No further questions for  
5 the government.

6 Thank you.

7 THE COURT: Thank you.

8 MR. BOHLING: Since we decided we were  
9 good on the numbers, I don't think we have any additional  
10 evidence.

11 THE COURT: Okay.

12 MR. OSGOOD: We just have allocution by  
13 Dr. Elder this morning.

14 THE COURT: Okay. I'm prepared to hear  
15 that.

16 THE DEFENDANT: Good morning, Your  
17 Honor. I'd like to thank you for allowing me --

18 MR. OSGOOD: You've got to speak up.

19 THE DEFENDANT: I'd like to thank you  
20 for allowing me the opportunity to address the court on my  
21 behalf. As you may know, I am from -- originally from  
22 rural South Carolina, subsequently moved to New Haven,  
23 Connecticut. By all means had a pretty typical childhood  
24 upbringing, single parent household. Went to high school,  
25 excelled academically, athletically, involved within the

1 National Honors Society, president of the student council,  
2 finished in the top 10 percent of my class.

3 As a result of academic achievement, I was  
4 invited to participate in research at the Yale University  
5 School of Medicine as a fresh -- as a junior. And from my  
6 junior year in high school until I graduated from the  
7 University of Virginia, I would spend my summers  
8 conducting medical research, and that medical research was  
9 primarily focused on hematology and oncology. In  
10 particular I worked with one of the world's foremost  
11 experts on sickle cell anemia as well as a disease called  
12 beta thalassemia, which is very prevalent among blacks and  
13 people of Mediterranean descent.

14 MR. OSGOOD: Your Honor, could we call  
15 our expert up here and have her run this -- this is  
16 Mrs. Elder -- with the court's permission?

17 THE DEFENDANT: I'm sorry, Your Honor.

18 Subsequently, as a result of the research that I  
19 did in sickle cell anemia and oncology at the University  
20 of -- school of medicine, I then went on to obtain at the  
21 University of Virginia, located in Charlottesville,  
22 Virginia, where I received a bachelor in biology in '93.

23 After graduating from UVA, I moved back to New  
24 Haven for approximately two years, and during those two  
25 years while I was employed, I also made time to serve as a

1 tutor for an organization that was founded in '62 in  
2 Syracuse called Literacy Volunteers of America. The  
3 primary objective of that was just to teach the folks who  
4 were completely illiterate, could not read, could not  
5 write. I didn't realize how great the problem was in this  
6 country until I became a tutor for this organization.

7 Next slide.

8 After I completed working for two years, I  
9 decided I wanted to further my education, which had been  
10 my goal all along. I attended the Medical College of  
11 Pennsylvania located in Philadelphia, graduated in 1999.  
12 After four years of study, these gentlemen at the top --  
13 that's Dr. Foye. He's a board certified anesthesiologist.  
14 The gentleman next to him is Dr. Bourne, who is a board  
15 certified internist. The gentleman next to him is  
16 Dr. Abernathy, who is the great grandson of Reverend  
17 Abernathy of the civil rights era. And next to them would  
18 be me.

19 The picture in the far corner is just a picture  
20 of the campus that I attended.

21 Here is a picture of Congresswoman Giffords, and  
22 the gentleman adjacent to the congresswoman is the  
23 foremost world-renowned leader in traumatic brain injury  
24 who was also my mentor when I graduated from the Texas  
25 Institute of Rehabilitation & Research.

1           The gentleman not on the screen is a gentleman  
2           by the name of William Donovan. He devised a scale which  
3           we use today to determine the extent and severity and  
4           prognostic factors of people who suffer spinal cord  
5           injuries. The reason why I am showing you the slide is to  
6           kind of show you the pedigree and the lineage of which my  
7           educational background comes from.

8           In 2004, Your Honor, my mother was diagnosed  
9           with Stage IIa, which is pretty early breast cancer. I  
10          also had to make time to study for my written medical  
11          board examinations, so 2004 was quite a busy and hectic  
12          year, not just on a personal level but also on a  
13          professional level, which required me not to obtain  
14          full-time work but just piecemeal work because I had to  
15          fly back to coordinate the care of my mother with her  
16          oncologist as well as her surgeon.

17          After I passed the written board examination,  
18          which is a two-year process, I was then invited to the  
19          Mayo Clinic where I had an oral examination with three  
20          experts, 45-minute intervals, so not much shucking or  
21          jiving with the experts in their fields.

22          I became certified in -- by the American Board  
23          of Pain Medicine in '06. When I realized that there is a  
24          problem with opioids, I said the next logical thing for me  
25          to do is learn how to take some of these people off. So I

1 got certified by the American Academy of Addiction  
2 Psychiatry to take people off.

3 I am not a believer in taking people off of  
4 narcotics with Methadone. That's kind of like giving  
5 someone something stronger to get them off of something  
6 weaker. It's really counterintuitive to the way that I  
7 was taught to think.

8 This picture of my office, and, as you heard  
9 during trial, as far as pain goes, I don't believe that  
10 medications are the only alternatives to treat pain. You  
11 have ultrasound. You have diathermy. We have electrical  
12 stimulation. We have weight reduction. We have hot  
13 packs. We have injections.

14 In fact, the item that you see there with the  
15 machine, that's called a C-arm. That's where I can place  
16 injections into the lumbar spine or the cervical spine and  
17 ensure that I'm not going to hit anyone's spinal cord.  
18 So, you know, when everybody thinks about pain, I don't  
19 necessarily think about pills. I think that I did attest  
20 to that during my testimony.

21 Your Honor, the significance of this slide was,  
22 as the court is aware, in 2004 and in 2005, I was audited.  
23 I met with an attorney who pulled my transcript, and he  
24 said, Dr. Elder, this is the reason why you were audited.  
25 When I worked for South Texas Wellness Center, they were

1 not a well-put-together organization, and I said, Well,  
2 because you guys do not have an EFT and you cannot receive  
3 money from the state of Texas, I do have that.

4           However, I'm fully aware that when these checks  
5 are issued by Medicare, they're going to come to my name.  
6 The only way I'm going to re-allocate these funds are that  
7 you sign this affidavit. They were agreeable. When the  
8 IRS looked at me for two years -- and they were satisfied  
9 with the result of this affidavit. And in fact out of  
10 \$31,000, I was within \$100 of the money that they thought  
11 that I received that I could account for.

12           Here is the refund that I received back from the  
13 IRS as a result of the two-year audit which was in the  
14 order of \$212.36. We can clearly see on the left-hand  
15 corner this is where I lived during the conspiracy phase,  
16 '04, '05. I lived in a 625-square-foot apartment. No  
17 sprawling mansion to prejudice or bias jurors. I lived  
18 pretty much the way that a resident lives, and I worked at  
19 nights after I left the hospitals. This is the single  
20 life.

21           Now, to me any scheme, especially the scheme of  
22 the noncerebral nature that this scheme entailed, of  
23 course, there's gains. There's Mr. Solomon had \$770,000.  
24 Ms. Rostie six hundred -- Ms. Rostie, 2.9 million,  
25 Ms. Martin, \$660,000.

1           A wise man, who happens to be to the left of me,  
2           said, Motive for criminals and motive for conspirators is  
3           profit, money. That's what drives them. That's what  
4           makes the scheme work.

5           Next slide, next slide.

6           Your Honor, according to the government, there's  
7           a quote -- according to the government's case, Your Honor,  
8           they didn't bother to do a financial analysis of me. I  
9           find that very disingenuous and actually insulting that  
10          they would do an investigation of everyone involved with  
11          the exception of me. That didn't -- that doesn't make  
12          good common sense to anyone.

13          Mr. Rhodes stated that he believed that, you  
14          know, the motive for me was monetary, but we couldn't  
15          prove it. And if you can't prove it, then I don't know  
16          how you could not have proved it. The way I came up with  
17          it is you didn't look, or when you looked, you didn't find  
18          what you came to look for.

19          I am asking most graciously for this court to  
20          have leniency when determining my sentence for a number of  
21          reasons. One of the most important reasons is that I  
22          would like to be present for the birth of our first child,  
23          who is due in July of this year.

24          As the court knows, I have no prior criminal  
25          history. I don't pose a risk to anyone. In fact, after

1 the jury arrived at its verdict, I met with the Texas  
2 Medical Board, and after reviewing the charts of six  
3 patients, five of whom were on Schedule II, on the very  
4 highly-addictive medications, the Texas Medical Board had  
5 absolutely nothing to say.

6 They said, We cannot find a single instance  
7 where you violated a single federal practice act. In  
8 fact, they were complimentary toward the way I practiced  
9 medicine. They admired my note keeping and also my chain  
10 of thought.

11 When the panel convened, they said, Dr. Elder,  
12 if there were a way that we could not step on the court's  
13 toes in Missouri, we would because we can't find anything  
14 that you have done wrong despite the investigation that  
15 we've conducted on you.

16 I've been punished since this verdict was  
17 announced. I've been punished financially. I've been  
18 punished psychologically, emotionally. It's taken a toll  
19 on my wife who has to see a high-risk -- a GYN specialist  
20 due to the stress and strain of this -- of these  
21 particular circumstances.

22 I'm now a convicted felon. A guy who's never  
23 had a misdemeanor is now a convicted felon. And the  
24 stigma attached to that is a stigma that encroaches on a  
25 local, a state, and a national level.

1           By a national level, we're reported to an  
2 organization called the National Data Practitioner Bank,  
3 which just keeps a record and let's everyone know, hey,  
4 this guy was convicted of this, convicted of dispensing  
5 medications. No, that -- that was just hard for me to  
6 fathom.

7           In light of all of the things -- in light of all  
8 things considered, I still have financial obligations that  
9 I have to fulfill, despite my license being suspended by a  
10 body who didn't believe in the suspension, but they didn't  
11 want to disrespect a federal court. My wife is in her  
12 seventh month of pregnancy, and we are counting on her  
13 income because I cannot practice my craft that I worked so  
14 hard to achieve and master, not once but twice.

15           So as you decide my fate, it is my sincere hope  
16 that you will have mercy upon me and consider these  
17 special circumstances.

18           Thank you for your time.

19           THE COURT: Thank you.

20           You have something you want to say?

21           MR. BOHLING: Yes, I do, Your Honor.

22           Thank you.

23           Your Honor, this is a very important sentencing.  
24 As Officer Kowal outlined, the diversion and illicit use  
25 of pharmaceutical drugs is really our 21st century drug

1 problem. It is escalating at a massive rate. It is  
2 causing medical problems, overdose deaths, sometimes in  
3 very young people, drug driving. It is a menace to all of  
4 us, and it is the issue that you will hear about going  
5 forward for probably the rest of our lives in terms of  
6 being the drug problem in this country.

7 This drug problem is made possible unfortunately  
8 in large part by doctors who are complicit in some manner  
9 and means in the diversion of pharmaceutical drugs. And  
10 that is particularly true in Houston, Texas, as you heard.

11 The jury by its verdict found that Dr. Elder was  
12 an integral part of a large-scale drug conspiracy. This  
13 conspiracy involved at least two million dosage units of  
14 hydrocodone, alprazolam, and other controlled substances.

15 According to the figures given by Officer Kowal,  
16 in 2004, those would have brought \$2 million to \$4 million  
17 on the street. The court will remember that the ANP  
18 Pharmacy in Houston and the Belton pharmacy, the one that  
19 Ms. Rostie ran, during the time of the conspiracy became  
20 two of the largest providers of hydrocodone in their  
21 respective areas. I believe Ms. Rostie's pharmacy became  
22 the largest provider of hydrocodone in the state of  
23 Missouri, which is absolutely outstanding given that it  
24 was a small, struggling pharmacy before that. It became  
25 so because of his involvement in this conspiracy.

1           The ANP Pharmacy, which opened in December of  
2           2004, became something like the second or third highest  
3           provider of hydrocodone in the Houston area, which is also  
4           astounding given that it didn't even have a walk-up  
5           business.

6           The extent of this conspiracy was huge. It is a  
7           big, big deal. This conspiracy could not have gotten off  
8           the ground if it were not for Dr. Elder. It was because  
9           of his involvement, his medical license, and his  
10          credibility, that Ms. Rostie would fill these  
11          prescriptions at all in the first place.

12          Without that, it never would have happened.  
13          Everything kind of went down hill from there, but it --  
14          the first part of the conspiracy Ms. Rostie was pretty  
15          much requiring that I's be dotted and T's be crossed. And  
16          because Dr. Elder was a licensed, known physician, she  
17          went ahead and started to fill these prescriptions.  
18          Without that, this never, ever happens, at least not here  
19          in Belton, Missouri. His role is absolutely  
20          indispensable.

21          By its verdict, the jury found that he wrote  
22          these prescriptions but that they were fictitious and  
23          false and that the evidence absolutely shows beyond a  
24          question, beyond a shadow of a doubt that that is the  
25          truth.

1                   These patients did not go to the South Texas  
2 Medical Center. These were not patients of the South  
3 Texas Medical Center, and you must be satisfied that that  
4 is true. He cannot be found guilty if that is not true.

5                   They were dead. They were identity theft  
6 victims. All of this information came from some other  
7 place other than South Texas Wellness Center. So what did  
8 he do? He sat down with information given to him by other  
9 co-conspirators, and he wrote out these prescriptions  
10 absolutely fake. He never saw a patient. He knew that.

11                   Has he ever taken responsibility for that  
12 action? He has not. He takes no responsibility  
13 whatsoever.

14                   This is absolutely critical. If we are to stem  
15 the tide of narcotic drugs and diversion in this country,  
16 then we must hold accountable those who use their licenses  
17 and their educations to further conspiracies like this.

18                   It has to be done. If there's to be deterrence  
19 both of this doctor and of others who would misuse their  
20 medical licenses in this way to cause pain and suffering  
21 to people across this country, there must be a strong  
22 sentence.

23                   And we ask that that sentence be at the top of  
24 the guideline range because without that, there simply  
25 cannot be the deterrence that's required because this man

1 through his actions, through his license, is a linchpin to  
2 this conspiracy. Without him it cannot happen.

3 Without his writing fake prescriptions,  
4 fraudulent prescriptions, it cannot happen. He cannot be  
5 a doctor in those circumstances. He cannot use his  
6 license and his access to write prescriptions for  
7 controlled substances to write false prescriptions, to  
8 take millions of dosage units of these substances and have  
9 them diverted to the street.

10 And we did have evidence of that in this trial.  
11 That cannot happen. So we think it is absolutely  
12 imperative that this court give him the strongest possible  
13 sentence because nothing else will send the signal to  
14 people in his situation that they cannot use their medical  
15 licenses to become drug dealers.

16 Thank you.

17 MR. OSGOOD: Can I have just a minute?

18 THE COURT: Sure you can do it in a  
19 minute, Mr. Osgood?

20 MR. OSGOOD: Probably two, Your Honor.

21 Try as they will, Dr. Elder was somewhat of a  
22 dupe in this. He admitted he wrote the 500 prescriptions,  
23 and there's evidence he saw patients. Again, he says he  
24 didn't see a single patient. That's just not true from  
25 the evidence in the case.

1           Moreover, he wrote "no refills" on them, and he  
2 was, while he was part of the conspiracy based on the  
3 verdict, he was victimized to some extent by his people he  
4 was involved with. He was naive. He was studying to get  
5 board certified, and he was going down to this clinic.

6           He wrote these prescriptions, and he was in  
7 essence a minor participant. Albeit he was the doctor and  
8 it takes a doctor to write the prescriptions, but he's  
9 still a minor participant in this. As he said, he's been  
10 substantially punished, and it's something that he'll live  
11 with for the next decade.

12           But I fear that his -- the characterization of  
13 him as the linchpin of this case is just an outrageous  
14 misstatement. He was not the linchpin. In fact, he moved  
15 on on January 1st, and they got in bed with Dr. Okose, and  
16 he generated another, I don't know how many million  
17 dollars, six or eight million, something like that,  
18 whatever the figure is.

19           They just moved on past him, and I think a  
20 sentence of -- a light sentence of incarceration would  
21 serve all the deterrent necessary in the case. He's -- as  
22 he said, he's been punished financially, emotionally,  
23 psychologically, and so in terms of punishment, it's  
24 there.

25           In terms of deterrence, the mere conviction and

1 the loss of license is a deterrent to other doctors. I,  
2 again, would point to the cross-examination of Mr. Kowal.  
3 If they actually had evidence that he made substantial  
4 financial gains, they would have had it here in court.

5 They chose not to do a net worth deposit on him.  
6 They could have very easily seen if his financial  
7 expenditures exceeded his financial intake. They didn't  
8 even bother to do that.

9 THE COURT: All right. Mr. Osgood, you  
10 are repeating.

11 MR. OSGOOD: All right. I think the  
12 court has got the picture.

13 THE COURT: I get the gist of it,  
14 Mr. Osgood.

15 MR. OSGOOD: But I think a year and a  
16 day would be more than severe and significant.

17 MR. BOHLING: May I have two remarks?

18 THE COURT: If there's something  
19 different than you've already said, yes, but if you're  
20 going to repeat, then --

21 MR. BOHLING: Yes. It's something  
22 different.

23 I guess the first point would be that other than  
24 Dr. Elder's testimony, there's not a shred of evidence  
25 that any of these patients were actually seen at South

1 Texas Wellness Center by him, not a medical record.

2 THE COURT: You're repeating.

3 MR. BOHLING: The second point is he did  
4 not actually go out of the conspiracy. The court will  
5 remember the evidence that on February 1st and 2nd, 2005,  
6 when he started at Westfield, he had the prescriptions  
7 that he wrote for patients he saw there photocopied, which  
8 were then provided to Mr. Solomon, which were then faxed  
9 to Missouri, and which were also filled at ANP multiple  
10 times. So those were actually filled many times.

11 That was completely illegitimate, and there was  
12 actually telephonic communication between the doctor and  
13 Mr. Solomon at the time the fax was sent to Missouri.  
14 That actually was very compelling evidence of the doctor's  
15 guilt and also evidence that he did not disassociate  
16 himself with the conspiracy.

17 THE COURT: I'll ask if either counsel  
18 knows of any legal reason why the court should not impose  
19 a sentence at this time.

20 MR. OSGOOD: No, Your Honor.

21 You want us at the podium?

22 THE COURT: Wherever you want,  
23 Mr. Osgood.

24 MR. BOHLING: Nothing from the  
25 government, Your Honor.

1 Thank you.

2 THE COURT: Okay. I have given  
3 considerable consideration to the arguments of counsel  
4 previous to this time based upon the sentencing  
5 memorandums and then based upon the arguments presented  
6 today and of course the defendant's allocution.

7 I've studied the presentence report, and, of  
8 course, having been privy to the trial and the evidence  
9 presented at that trial, I come away with a different take  
10 on Dr. Elder's role in this offense than what the  
11 government has proposed that I take here.

12 Clearly Dr. Elder was found guilty by this jury  
13 of complicity in this conspiracy. I'm not sure that I  
14 agree with the government's proposition that he was the  
15 linchpin here. My guess is that from the evidence, that  
16 if Dr. Elder hadn't done it, they would have found someone  
17 else to do it.

18 My interpretation of Dr. Elder's participation  
19 in this conspiracy was of gross negligence, not anything  
20 more than that. He has a responsibility that he didn't  
21 fulfill. The reason why he didn't fulfill it, I'm not  
22 sure. I don't see it for financial gain necessarily  
23 because I didn't see that to be the issue here. So I see  
24 it being most likely gross negligence.

25 The factors -- I looked at the sentencing

1 guidelines, and I do believe the sentencing guidelines are  
2 greater than necessary to achieve the goals of sentencing  
3 for Dr. Elder. Again, because I take a different  
4 interpretation of the evidence than the government, then  
5 the question becomes consideration of the 3553 factors.

6 I've looked at those factors in trying to get a  
7 sense for the appropriate sentence. It is pretty obvious  
8 from the evidence that the conduct of the defendant, as  
9 articulated in this trial, is a substantial departure from  
10 what his conduct has been up until that time or had been  
11 up until that time.

12 No question that the conduct resulted in serious  
13 crime, as has been articulated by the government in their  
14 argument today and by the -- we didn't need to hear from  
15 the detective from Houston. We know it's a bad thing. We  
16 know the activity with prescription drugs is bad, and  
17 that's why I think a sentence of incarceration is  
18 appropriate here.

19 The question then becomes what sentence would be  
20 appropriate to reflect the seriousness of the offense,  
21 promote a respect for the law, be just punishment, protect  
22 the public from the defendant and other factors that the  
23 court is required to consider.

24 I think a sentence of 15 months meets that goal  
25 from my point of view. I think the defendant, the fact

1 that he is a convicted felon, that he's lost his license,  
2 that he will be subject to the restrictions of probation,  
3 that he is at low risk of recidivism, it's my belief that  
4 the sentence also reflects a deterrent to people in his  
5 profession. I think he's been punished and will be  
6 punished for a long, long time beyond the 15-month  
7 sentence that the court will impose here today.

8 Dr. Elder, as I -- my sense is that you still  
9 haven't come to grips with the severity of your conduct in  
10 terms of the gross negligence that you engaged in and  
11 allowed this whole thing to explode in the fashion that it  
12 has. I trust that at some point in time you will.

13 I'm sentencing the defendant to custody of the  
14 Bureau of Prisons for 15 months on Counts 1, 3, 4, 5, 6,  
15 7, 8, 9, and 10 to be served concurrently. Upon release,  
16 he will be placed on supervised release for two years on  
17 each count to run concurrently.

18 A fine of \$500 on each count for a total of  
19 \$4,500. Lump sum payment of that amount will be due  
20 immediately. If unable to pay the full amount, the  
21 defendant shall make payments of 10 percent of earnings  
22 while incarcerated and monthly payments of \$100 or 10  
23 percent of gross income, whichever is greater while on  
24 supervision.

25 While the fine is still owed, the defendant

1 shall notify the U.S. Attorney's Office of any change of  
2 residence within 30 days. Interest and penalties are  
3 waived.

4 Special assessment of \$900 or \$100 per count is  
5 due immediately. While on supervised release, he shall  
6 comply with the standard conditions that have been adopted  
7 by this court plus the following special conditions: That  
8 he not incur new credit charges or open additional lines  
9 of credit without approval of the probation office while  
10 the court-ordered financial obligation is outstanding. He  
11 shall submit his person, residence, office, or vehicle to  
12 a search conducted by a U.S. Probation Officer at a  
13 reasonable time in a reasonable manner based upon a  
14 reasonable suspicion of contraband or evidence of a  
15 violation of a condition of release.

16 Failure to submit to a search may be grounds for  
17 revocation. Defendant shall warn any other residents that  
18 the premises may be subject to searches pursuant to this  
19 condition.

20 It is further ordered that the defendant be  
21 responsible in way of forfeiture for \$991,114 to be  
22 jointly and severally liable with the other defendants in  
23 this case.

24 Anything further?

25 MR. OSGOOD: No, Your Honor.

1 MR. BOHLING: Your Honor, just for the  
2 record, we would like to simply note our objection to the  
3 rejection of the two-level enhancement for obstruction of  
4 justice for the reasons I outlined in court and in our  
5 papers and will also note an objection to the 15-month  
6 sentence basically for the reasons that I stated in my  
7 allocution I think in terms of how the 3553 factors should  
8 be weighed.

9 And also from the government, Your Honor -- I  
10 think given what you have said -- we did have a request  
11 for immediate incarceration. I don't think probably  
12 realistically that was in your plan. We would ask he be  
13 given a date to report.

14 I believe that the defense has asked that he be  
15 allowed to stay out pending the appeal. We do object to  
16 that very strongly, but would ask for a reporting date  
17 sometime in the next four to six weeks.

18 MR. OSGOOD: One of the factors on  
19 granting bond pending appeal -- I've cited them all in my  
20 memorandum. One of the factors is if he serves a sentence  
21 before the appeal can be decided, then that's grounds for  
22 releasing him on appeal.

23 We have a substantial issue I raised in the  
24 motion for new trial dealing with the expert's testimony.  
25 I think that's the strongest issue in the case on

1       sufficiency of the evidence.  If we were to prevail on  
2       that, that they did not present a sufficient amount of  
3       evidence to get over the element of violation of national  
4       practice, I think I said remand for new trial.  Actually  
5       it would be -- it would be dismissal because of  
6       insufficiency of the evidence.  That's the linchpin of our  
7       appeal, I think, at this point.

8               I know the court has overruled that, but the  
9       standard is if we were to prevail on appeal, would the  
10      court grant us relief.  Certainly if we prevailed on that,  
11      the court would have no other choice than to -- the court  
12      of appeals to grant us relief and dismiss the case.

13              So I think there's a reasonable basis for  
14      leaving him out on appellate bond at this point, Your  
15      Honor.

16              MR. BOHLING:  Your Honor, we believe  
17      that that issue is not a substantial issue because our  
18      theory is, again, that there were -- there was no  
19      patient/doctor interaction.  Given that, there can be no  
20      issue about the standard of care.  The cases we cited to  
21      the court were quite clear that in a case like this, the  
22      evidence that we presented, which did include expert  
23      evidence on many salient points, is more than sufficient  
24      for a jury to make that finding.

25              THE COURT:  I agree with you on that  
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1 point, but I think the stronger argument is the one that  
2 it may take longer than 15 months to get the appeal  
3 resolved by the 8th Circuit.

4 You probably have a better sense of that than I  
5 do.

6 MR. BOHLING: I don't have any reason to  
7 think it would take that long. The 8th Circuit has really  
8 pushed us on getting appeals done. I'm happy to make sure  
9 that we don't -- sometimes we ask for extensions on these.  
10 I'll make every effort to get this done in time. It's not  
11 a problem.

12 THE COURT: Why don't we do it this way:  
13 I'm going to give Dr. Elder 90 days to self-surrender.  
14 We'll have a better idea in 90 days where that appeal  
15 process will be. Mr. Osgood, you feel free to come back  
16 before the court at that time and let me know.

17 I'm sure you'll be inquiring about that.

18 MR. OSGOOD: I will.

19 THE COURT: Mr. Bohling can do the same.

20 MR. BOHLING: Yes, Your Honor. We will,  
21 of course.

22 MR. OSGOOD: I was just told by counsel,  
23 who does lots of appeals, that he says the average time in  
24 the 8th Circuit is around eight or nine months now.

25 I thought it was a little longer than that.

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THE COURT: They got all boots on the ground up there now, I guess.

MR. OSGOOD: I don't know.

THE COURT: Ninety days. What's the date, Rhonda?

THE COURTROOM DEPUTY: July 25th.

THE COURT: When is your child due?

THE DEFENDANT: July 4th.

MR. OSGOOD: Thank you very much. We appreciate that.

THE COURT: All right. Thank you.

MR. BOHLING: Thank you, Your Honor.

\* \* \* \* \*

REPORTER'S CERTIFICATE

I certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Registered Merit Reporter