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2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE WESTERN DISTRICT OF MISSOURI  
                    WESTERN DIVISION

4 UNITED STATES OF AMERICA,            ) Case No. 08-00026-03-CR-W-FJG  
  )  
5                   Plaintiff,            ) Kansas City, Missouri  
  ) October 21, 2008  
6 v.                                        )  
  )  
7 CHRISTOPHER L. ELDER,                )  
  )  
8                   Defendant.           )  
  )  
\_\_\_\_\_)

9  
10                   TRANSCRIPT OF EVIDENTIARY HEARING  
11                   BEFORE THE HONORABLE SARAH W. HAYS  
                    UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

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25

(Court in Session at 1:39 p.m.)

THE COURT: All right. Good afternoon.

MR. BOHLING: Good afternoon, Your Honor.

THE COURT: We're here on the case of *United States vs. Christopher Elder*, Case No. 08-26-CR-W-FJG. If counsel would state their appearance, for the record.

MR. BOHLING: Curt Bohling and Rudolph Rhodes for the United States.

MR. OSGOOD: John Osgood on behalf of Dr. Elder, who is present.

THE COURT: All right. Is everyone ready to proceed?

MR. BOHLING: The United States is ready, Your Honor.

THE COURT: All right.

MR. OSGOOD: We're ready, Your Honor.

THE COURT: All right. You may call your first witness.

MR. BOHLING: Thank you, Your Honor. We would call Judi Watterson to the stand.

THE COURT: Come forward and be sworn.

JUDI WATTERSON, GOVERNMENT'S WITNESS, SWORN

THE COURT: Mr. Osgood, can you move the microphone? Just where -- I think she's having trouble picking you up. You know, we're recording this.

MR. OSGOOD: Oh, sure.

THE COURT: Just -- our sound system, these days you pretty much have to be speaking into the microphone.

1 MR. OSGOOD: Is that better, Your Honor?

2 THE COURT: Yeah. Thank you.

3 DIRECT EXAMINATION

4 BY MR. BOHLING:

5 Q. Good afternoon. Would you please state your name and spell  
6 your first and last name for the record?

7 A. Judi, J-U-D-I, Watterson, W-A-T-T-E-R-S-O-N.

8 Q. How are you employed?

9 A. I'm a Diversion Investigator for the Drug Enforcement  
10 Administration.

11 Q. What's your duty station?

12 A. I'm in Overland Park, Kansas.

13 Q. How long have you been a diversion investigator?

14 A. Approximately 22 years.

15 Q. What are your duties as a diversion investigator?

16 A. We enforce the laws and regulations pertaining to  
17 prescription controlled substances.

18 Q. In your capacity as diversion investigator, have you been  
19 assigned to work on a criminal case involving Dr. Elder and a  
20 number of other criminal defendants?

21 A. Yes, I have.

22 Q. During your course of work on that case, did you make contact  
23 with a person named Diane Hearn?

24 A. Yes.

25 Q. And can you spell that name for the court reporter?

1 A. D-I-A-N-E, H-E-A-R-N.

2 Q. Where does Diane Hearn work?

3 A. She works at Westfield Medical Clinic in Houston, Texas.

4 Q. What is her job title there?

5 A. She's a director or the office manager.

6 Q. Okay. And what -- could you describe for us why you made  
7 contact with Ms. Hearn?

8 A. We made contact with Ms. Hearn to determine when Dr. Elder  
9 worked at Westfield Medical Clinic, and we made contact with her  
10 to discuss if she could recognize his handwriting.

11 Q. Okay. When did you speak or approximately when did you speak  
12 to Ms. Hearn about when and for how long Dr. Elder worked at the  
13 clinic?

14 A. She was sent a letter in 2006, requesting that information,  
15 and she responded by letter back to our office.

16 Q. What information did Diane Hearn provide to you in that  
17 letter in June of 2006?

18 A. She told us about the employment of Dr. Christopher Elder at  
19 Westfield Medical Clinic and the dates and who he worked for.  
20 Originally he was part of a physicians' service and then he  
21 became an employee there.

22 Q. How long did Dr. Elder work for Westfield Medical Clinic?

23 A. He worked there from approximately February 2005 through  
24 March, early March 2006.

25 Q. At a later date did you talk to Ms. Hearn about, as you have

1 just mentioned, whether or not she had an ability to recognize  
2 Dr. Elder's handwriting?

3 A. I did. Myself and Agent Brendan Fitzpatrick traveled to her  
4 clinic, and that was on July 10<sup>th</sup> of 2008.

5 Q. Did you ask her about whether or not she was, in fact,  
6 familiar with Dr. Elder's handwriting?

7 A. We did.

8 Q. And did you ask her specifically about what documents she  
9 might have seen during the course of his employment that would  
10 have had his handwriting on it?

11 A. Yes. She mentioned that he had to sign timesheets. He would  
12 make notes in patient charts, just general business documents at  
13 the clinic. Write prescriptions.

14 Q. Did Ms. Hearn indicate to you whether or not she saw these  
15 documents that contained Dr. Elder's handwriting?

16 A. She did.

17 Q. Did she tell you whether or not she felt that she was  
18 familiar with Dr. Elder's handwriting based on seeing it during  
19 this work relationship?

20 A. Yes, she did.

21 Q. After you had this discussion with her on July 10<sup>th</sup>, 2008,  
22 did you show her anything?

23 A. Yes. We showed her copies of ten prescriptions.

24 Q. And did these prescriptions relate in any way to the  
25 Indictment in this case?

1 A. Yes, they did.

2 Q. And did these -- what did these prescriptions have on them  
3 that you were directing her attention to?

4 A. They had handwriting on them. All prescriptions contain, of  
5 course, you know, a patient name, the drug, directions for use  
6 and a doctor's signature.

7 Q. Was she able to identify any of the handwriting on the  
8 prescriptions that you showed to her?

9 A. Yes. She affirmed that they were all what appeared to be Dr.  
10 Elder's handwriting and signature.

11 Q. Okay.

12 MR. BOHLING: Your Honor, that's all that I have. I  
13 would just make clear for the record that we're not going to  
14 offer the out-of-court procedure that I just went over with the  
15 witness in court. We would instead have an in-court  
16 identification procedure with the witness. But I would concede  
17 that the out-of-court procedure is obviously relevant to the  
18 Court's determination of the in-court procedure.

19 THE COURT: Mr. Osgood.

20 CROSS-EXAMINATION

21 BY MR. OSGOOD:

22 Q. When was the Indictment in this case, ma'am?

23 A. It was in February of 2008.

24 Q. And when you obtained the Indictment did you have a positive  
25 identification of handwriting from anyone?

1 A. No, we did not.

2 Q. Did you tell the grand jury you had a positive identification  
3 of handwriting from someone?

4 A. I don't recall.

5 Q. Could you have?

6 A. I don't recall.

7 Q. Do you recall the date that you got your first report on  
8 handwriting that was just a probable?

9 MR. BOHLING: Your Honor, I'm going to object to this.  
10 If I understand the issue framed by Mr. Osgood's motion, it is as  
11 to the identification by Ms. Hearn. And I'm not seeing --

12 MR. OSGOOD: Goes to impeachment, Your Honor. Her  
13 credibility is in serious issue and it's all tied to the  
14 handwriting. She told a grand jury under oath that they had a  
15 positive identification of handwriting and they didn't.

16 THE COURT: Well, there's no question I'm going to let  
17 him --

18 MR. BOHLING: I understand.

19 THE COURT: -- do some initial -- we don't have a jury  
20 here -- some initial inquiry. You'll just have to make your  
21 objections. It does seem to be kind of far afield of what we're  
22 doing. But --

23 MR. BOHLING: Yes, Your Honor.

24 THE COURT: -- based on his representation it's  
25 relevant, we're at least going to go somewhat down that road.

1 BY MR. OSGOOD:

2 Q. Do you recall one of the grand jurors asking you why the  
3 other two doctors were not indicted, but Dr. Elder was?

4 A. Yes.

5 Q. And what did you tell them?

6 A. I'd have to reread my transcript.

7 Q. Page 20, line 9, please.

8 A. Line 9, "Apparently so." I'm not sure what that's an answer  
9 to though.

10 Q. Why was Dr. Elder on the Indictment and none of the other  
11 doctors are? Do you recall your answer?

12 A. Yes, I do.

13 Q. And what was your answer?

14 A. That Dr. Okose is being investigated by the Houston office.

15 Q. And Dr. Botto you thought was credible.

16 A. And Dr. Botto, we thought they were possibly forged.

17 Q. You did not do a handwriting on Dr. Botto though, did you?

18 A. We did not.

19 Q. Because you thought he was credible?

20 A. Well, there are certain judgments that go into that.

21 Q. All right. And then a grand juror asked you if you checked  
22 the signatures on Dr. Elder, and read what you told the grand  
23 jury, ma'am.

24 A. "Yes. We had checked because he" --

25 Q. Read it. Just read it into the record, if you would, please.



1 A. "We had some of Dr. Elder's prescriptions checked, because he  
2 -- I actually interviewed Dr. Elder and he said some of them had  
3 signatures, some of the prescriptions did not." Do you want me  
4 to continue?

5 Q. Continue.

6 A. "So, some of the ones that he said that he did not think  
7 contained his signature we had a handwriting expert check those.  
8 And the handwriting expert said that, yes, those were his  
9 signature." "Okay."

10 Q. Now, stop. You said, yes, those were his signatures, didn't  
11 you? You didn't qualify at all, did you?

12 A. I don't think I was given the opportunity.

13 Q. Well, I wasn't in the grand jury with you.

14 A. Oh, I'm sorry. I didn't realize what you were asking. Say  
15 that again, please.

16 Q. You did not qualify that answer in the grand jury transcript.  
17 You said, yes, I had them checked and their his signatures.

18 A. We had a handwriting expert check those.

19 Q. But the handwriting expert didn't say they were his  
20 signature, did they, ma'am? He said, probably.

21 A. That's all part of their -- the way that they work on those.  
22 It's a situation where a handwriting expert -- it's like a DNA  
23 expert. You can't say it's a hundred percent. You have to say  
24 it's a probability.

25 Q. Isn't there a probable and highly probable and confirmed

1 handwriting, three standards?

2 A. I don't know all their ratings though.

3 Q. But you told the grand jury that it was his signature. Now,  
4 after the Indictment you thought it was necessary, I guess, to  
5 get a second handwriting expert involved in the case, didn't you?

6 A. That was a decision made between myself and the United States  
7 Attorney's Office.

8 Q. Okay. Now, incidentally, you write reports when you do these  
9 investigations, don't you?

10 A. I do.

11 Q. Was there any point in time where you ever interviewed, let's  
12 say, Ms. Martin, one of the defendants in this case, and you were  
13 told to withhold writing your report until further notice from  
14 the prosecutor?

15 A. Yes. That's correct.

16 Q. That's not policy, is it, ma'am?

17 A. Our policy is to do what the United States Attorney's Office  
18 would like us to do in the investigation.

19 Q. Ms. Martin lied extensively in that interview, didn't she,  
20 based on your judgment, about money and how the transactions were  
21 handled and everything?

22 A. I did not believe everything she said in that interview.

23 Q. And you were told to withhold writing a report on that by the  
24 prosecutor, weren't you?

25 MR. BOHLING: Your Honor, I have to object to this. I

1 think we're way, way off --

2 MR. OSGOOD: It goes to her credibility, Your Honor, as  
3 to how she operates.

4 MR. BOHLING: I'm not seeing how any of these questions  
5 go to the agent's credibility. She said she was asked to do this  
6 by somebody else.

7 MR. OSGOOD: Contrary to policy.

8 THE COURT: Well, I think --

9 MR. BOHLING: That's his question, not her answer.

10 THE COURT: All right. I'll give you a little bit of  
11 leeway --

12 MR. OSGOOD: I'll move on.

13 THE COURT: -- but you need to move on.

14 MR. OSGOOD: I'll move on. All right.

15 BY MR. OSGOOD:

16 Q. Now, so you get a second handwriting expert who gives you  
17 another opinion and he gives you a highly probable that time,  
18 doesn't he?

19 A. I'd have to see the report.

20 Q. Okay. Incidentally, you had the first report three days  
21 before you went to the grand jury, didn't you?

22 A. You know, I don't remember the timeline off the top of my  
23 head.

24 Q. I can show it to you. Would you accept from me --

25 A. Sure.

1 Q. -- the report was written three days prior?

2 A. Sure.

3 Q. Do you want to see it?

4 A. That's fine. I --

5 Q. Okay. Now, you made a decision then to go down and see Ms.  
6 Hearn, didn't you?

7 A. This year?

8 Q. Yes.

9 A. Yes. Uh-huh.

10 Q. Now, you could have referred that by -- to another agency to  
11 just go over and interview her in Houston, couldn't you?

12 A. I'm sorry. Could you repeat that?

13 Q. You could have farmed that interview out to an agent in  
14 Houston, couldn't you?

15 A. It's possible, sure.

16 Q. But you elected instead to go personally?

17 A. Right.

18 Q. So, handwriting was pretty important to you?

19 A. I think it's important.

20 Q. And did you check Ms. Hearn's record prior to going down  
21 there?

22 A. Ms. Hearn's -- what kind of record?

23 Q. Well, her record, for example, that DEA fined her \$75,000 for  
24 various violations when she was working with her husband who's a  
25 doctor?

1 A. I knew her husband had had some issues in the past, yes.

2 Q. And did you talk to her about that at the time?

3 A. We did not.

4 Q. That didn't come up?

5 A. It did not come up.

6 Q. All right. Did you tell her that she would likely be  
7 contacted by an investigator for the defense at some point in  
8 time?

9 A. I told her that it was possible.

10 Q. Just that it was possible?

11 A. Right.

12 Q. And what advice did you give her, ma'am, if she was?

13 A. We told that it was her choice as to who she wanted to speak  
14 with or not speak with.

15 Q. Now, do know if her husband's license was pulled as a result  
16 of the DEA investigation?

17 A. I believe it was.

18 Q. And how old a lady is she?

19 A. I don't know her age. She's an older lady.

20 Q. Now, you wrote a report, did you not, as a result of that  
21 trip down there and that investigation, dated July 22<sup>nd</sup>, 2008,  
22 did you not? Would it help to see it?

23 A. Yes.

24 Q. Do you recognize that?

25 A. Yes.

1 Q. All right. Incidentally, there's a distribution that shows  
2 on these, on a lot of them. Do you know what those distribution  
3 codes mean? I don't know that it's on this report.

4 A. Yes. Uh-huh.

5 Q. Where all did you distribute these reports?

6 A. SARI is a DEA internal office in Washington.

7 Q. Washington, D.C.?

8 A. Uh-huh.

9 Q. Okay. So, these do go to Washington?

10 A. Not the paper, they go electronically.

11 Q. Electronic. But Washington has a copy of this report  
12 electronically?

13 A. Yes. They should.

14 Q. They should? That's policy?

15 A. They should.

16 Q. Okay. Now, in the report you say -- you ask her first if she  
17 worked for the Westfield Medical Clinic and she confirmed that,  
18 is that right?

19 A. Yes. She -- I mean, she -- we knew she was the director or  
20 the office manager there.

21 Q. You asked her first if she could recognize his handwriting  
22 before you showed her anything, didn't you?

23 A. Right.

24 Q. And then you provided her with ten copies, ten prescriptions  
25 that were faxed, is that right?

1 A. No. They were photocopies.

2 Q. So, they were photocopies of faxed prescriptions?

3 A. No. They were photocopies of prescriptions. There was, I  
4 believe, ten prescriptions shown to her, and I believe two might  
5 have been faxed and the others would have been copies of  
6 originals.

7 Q. Where did you get the originals?

8 A. At the Medicine Shoppe.

9 Q. Do you know which were which, which had signatures and which  
10 did not?

11 A. Yeah. I can look at them. Okay. These first six would be  
12 copies of originals, the next one is a fax, and the next several  
13 are faxes.

14 Q. Now, how do you know that? This one has a fax number at the  
15 top of the page?

16 A. Right.

17 Q. So, you're assuming these were originals because there's no  
18 fax numbers at the top of the page?

19 A. No. I know those are originals.

20 MR. BOHLING: Your Honor, I'd ask the Court if Mr.  
21 Osgood would have any objection to marking that as an exhibit?

22 MR. OSGOOD: No. I don't have any objection. That's  
23 fine.

24 THE COURT: Yeah.

25 BY MR. OSGOOD:

1 Q. And were these all written in 2004 then?

2 A. They're all from 2004, those written ones.

3 Q. Now, did you at any point in time, or could you have simply  
4 shown her the prescriptions and asked her if she recognized the  
5 handwriting?

6 A. You mean original prescriptions or --

7 Q. Originals or even these copies you took with you?

8 A. We showed her the copies.

9 Q. But you laid the stage first by asking her could she  
10 recognize Dr. Elder's handwriting, didn't you?

11 A. Right.

12 Q. And you laid the groundwork by saying -- by then showing her  
13 prescriptions with his name written at the top, didn't you?

14 A. Right.

15 Q. So, you did not at any time simply show her these suspect  
16 prescriptions and say, do you know whose handwriting this is?  
17 You didn't do that, did you?

18 A. Right.

19 Q. In other words, you led her significantly and told her who  
20 you were interested in and showed her?

21 A. I wouldn't agree with that statement, but --

22 Q. Now, did she equivocate or was she positive?

23 A. She was positive.

24 Q. And what was the basis of that positive identification? Did  
25 she say?



1 A. I don't believe -- she just knew because she had worked with  
2 him for over a year and had seen him write business documents and  
3 medical documents while working at the clinic.

4 Q. And how long has she worked there?

5 A. I don't know how long she has worked there, but Elder worked  
6 there approximately a year.

7 Q. Okay. Now, you had other prescriptions written allegedly by  
8 Dr. Botto, didn't you? A number of them.

9 A. There were prescriptions, right.

10 Q. And you had prescriptions written by Dr. Okose, didn't you?  
11 A number of them.

12 A. Yes. At the Medicine Shoppe? Is that what you're referring  
13 to?

14 Q. Yes, ma'am. Yes, ma'am.

15 A. Okay.

16 Q. So, you had at least three sets of prescriptions written by  
17 three different doctors that are all suspect, for want of a  
18 better term, didn't you?

19 A. Right.

20 Q. Was there any reason why you could not mask the top of the  
21 names on the prescriptions where the doctor's name appears and  
22 simply show her a sampling of the three doctors' prescriptions  
23 and say, do you recognize the handwriting on any of these?

24 A. I guess you could do that.

25 Q. And that wouldn't have been any trouble at all, would it?

1 A. It would be trouble to mask them, but we knew that Dr. Botto  
2 had not worked there and we knew that Dr. Okose had not worked  
3 there.

4 Q. And you were trying to figure out whether or not these  
5 prescriptions were signed by Dr. Elder, right?

6 A. Right.

7 Q. So, a fairer procedure would have been simply to mask the  
8 tops of the prescriptions and lay out a prescription, two or  
9 three from each of the three suspect doctors, and asked her if  
10 she recognized any of them. You could have done that, couldn't  
11 you, with minimal difficulty?

12 A. I don't think that's necessary. I mean, that's not really  
13 what we --

14 Q. That's not my question. Could you have done that with  
15 minimal difficulty?

16 A. It could be done. Yeah. In the world of -- in the, you  
17 know, in the big picture, sure, you could do it.

18 Q. Well, I mean, it's not a time thing. You took time to fly  
19 down there. You had to rent a car, didn't you, or were picked up  
20 by another agent?

21 A. Right.

22 Q. You spent a day or two down there, didn't you?

23 A. Right.

24 Q. So, you devoted that time to getting there to do this  
25 investigation, it would have been a simple procedure. I'm not

1 saying the law requires it, but I'm saying a fairer, simpler  
2 procedure would have been simply to mask the top and lay out,  
3 instead of nine, lay out 20 with a sampling of each of them and  
4 say, do you recognize any of these. Then we'd know for sure,  
5 wouldn't we?

6 A. I don't agree with that statement.

7 Q. Well, I know you don't, but would you agree with me that that  
8 could have been done?

9 A. It could have been done. I don't agree that it would have  
10 been simpler to do that.

11 Q. And what would have been more involved or detailed?

12 A. Well, like I said, I wouldn't have -- I wouldn't have shown  
13 her Dr. Botto's prescriptions or Dr. Okose's, because it had  
14 already been established that they didn't work there. And so --

15 Q. We know that. But that would have been a neutral sampling  
16 for her to pick out which ones she thought were Dr. Elder's,  
17 wouldn't it?

18 A. We don't --

19 MR. BOHLING: I'm going to object at this point, if I  
20 may.

21 BY MR. OSGOOD:

22 Q. Have you done a photo lineup, ma'am?

23 MR. BOHLING: This is both repetitive and argumentative.

24 THE COURT: It's repetitive. Sustained.

25 BY MR. OSGOOD:

1 Q. Have you ever done a photo lineup?

2 A. I have.

3 Q. You don't just show them four or five pictures of the same  
4 person in different poses, do you?

5 A. I don't think you can compare this to a photo lineup.

6 MR. OSGOOD: Would you please, Judge, tell her to answer  
7 the question?

8 MR. BOHLING: And I will object to the question. It's  
9 argumentative and irrelevant.

10 THE COURT: You may answer the question. His objection  
11 is noted for the record.

12 THE WITNESS: Could you repeat the question?

13 BY MR. OSGOOD:

14 Q. When you do a photo lineup you don't take five different  
15 poses of a one defendant and have it in a profile and a frontal  
16 and squatting and standing and running a marathon and show all  
17 those photos to the person and ask him if he could identify them,  
18 do you?

19 A. Right.

20 Q. You put a fair sampling of other people in there, don't you?

21 A. Right.

22 Q. That's all.

23 THE COURT: All right. Any redirect?

24 MR. BOHLING: Yes, Your Honor. Thank you.

25 REDIRECT EXAMINATION

1 BY MR. BOHLING:

2 Q. Mr. Osgood asked you about some issues that Ms. Hearn's  
3 husband had had with DEA. Do you recall that?

4 A. Yes.

5 MR. BOHLING: Would you like your -- have that?

6 (Off Record Talking)

7 MR. BOHLING: Oh, I'll wait a moment while he marks  
8 that.

9 THE COURT: All right. That's fine. Well, we need to  
10 make a record what it's marked as.

11 MR. OSGOOD: We'll mark it as Defendant's Exhibit #1,  
12 Your Honor, for the hearing.

13 THE COURT: All right. Any objection to the Court  
14 admitting Defendant's Exhibit #1 for purposes of this hearing?

15 MR. BOHLING: No, Your Honor.

16 MR. OSGOOD: It's both his statement and the attached  
17 documents, Your Honor.

18 THE COURT: All right.

19 MR. BOHLING: That's fine. No objection.

20 THE COURT: Defendant's Exhibit #1 is admitted.

21 (Off Record Talking)

22 BY MR. BOHLING:

23 Q. Do you know the name of Diane Hearn's husband off -- by  
24 chance?

25 A. I believe it's R.E. -- the initials R.E. Hearn.

1 Q. And do you know when Mr. Hearn's troubles with DEA occurred?

2 A. I know that sometime in 2000 he surrendered his DEA  
3 registration.

4 Q. Now, Mr. Osgood asked you a question or put into a question a  
5 statement about asserting that Diane Hearn had been fined  
6 \$75,000, I believe. Do you have any independent knowledge of  
7 whether that statement is true or not true?

8 A. I don't know.

9 Q. Has the issue of Mr. Hearn's issues, past issue with DEA,  
10 ever come up in conversations between you and Diane Hearn?

11 A. It has not.

12 Q. Has any issue about Diane Hearn's past troubles with DEA, if  
13 they actually existed, ever come up between you and Diane Hearn?

14 A. It has not.

15 Q. Okay. Has she ever asked you for any kind of accommodation  
16 or special treatment as a result of her being a witness in this  
17 case?

18 A. No, she has not.

19 Q. Now, I'd like to ask you about the procedure you used to show  
20 Ms. Hearn the examples of handwriting. You did ask her first  
21 about her familiarity or lack of familiarity with Dr. Elder's  
22 handwriting, correct?

23 A. Right.

24 Q. If she had told you that she was not familiar with the  
25 handwriting, what would you have done?

1 A. I wouldn't have shown her the prescriptions.

2 Q. Why not?

3 A. Because then she couldn't make any judgment about them.

4 Q. Okay. Going to the question that Mr. Osgood asked you about  
5 the photo lineup, do you remember that?

6 A. Right.

7 Q. Are you -- if you established that a witness is well  
8 acquainted with a person that would want -- you would want  
9 identified, what is your understanding about whether you're  
10 required to do a photo lineup at that point?

11 A. Well, within our agency, the photo lineups are done, it's  
12 hard to explain all the circumstances. But basically, a photo  
13 lineup is done -- I don't know how to best put this -- to give a  
14 witness or somebody who is involved in an investigation as a  
15 witness the opportunity to have a choice of photographs of  
16 suspected persons involved in the activity that's illegal. Our  
17 agency has never done writing lineups, so to speak. It's not a  
18 policy in our agency. I've never heard of that.

19 Q. If you established that the witness was not sufficiently  
20 familiar with the handwriting then, I think as you've told us,  
21 you simply would not ask them to identify it?

22 A. Right.

23 Q. Okay. I last -- I wanted to ask -- well, a couple more lines  
24 of questioning. At some point did you receive a phone call from  
25 Diane Hearn about a contact that she had received from the

1 defense investigator?

2 A. Yes, I did.

3 Q. And do you remember approximately when you received that  
4 phone call?

5 A. That would have been on August 21<sup>st</sup> of 2008.

6 Q. What did Ms. Hearn tell you during the course of that phone  
7 call?

8 A. That she had been contacted by Mark Reeder, who was  
9 representing Dr. Elder, and he wanted to talk to her, and that  
10 she didn't want to talk to him.

11 Q. Did she tell you what she had told Mr. Reeder, specifically,  
12 about whether the DEA had given instructions about not to speak?

13 A. Yes. She had told Mr. Reeder -- she said she told Mr. Reeder  
14 that DEA had instructed her not to speak to him.

15 Q. And had you ever given her such an instruction?

16 A. I had not.

17 Q. Okay. What did you do after you received that information  
18 from Ms. Hearn?

19 A. I called Rudy Rhodes to let him know that this had happened.  
20 And he gave me Mark Reeder's cell phone number and asked me to  
21 call Diane Hearn back and ask her if she could call Mr. Reeder  
22 and let him know that it was her decision not to speak with him.

23 Q. Did you contact Ms. Hearn after you talked to Mr. Rhodes?

24 A. Yes. I contacted her on August 22<sup>nd</sup>, the next day.

25 Q. Was that by telephone?



1 A. It was by telephone.

2 Q. When did you tell her in that conversation, ma'am?

3 A. I asked her if she would be willing to call Mr. Reeder and to  
4 let him know that it was her decision not to speak with him, and  
5 if she wanted to, she could. It was simply her choice. We don't  
6 put any directive on that. And she said she would and she called  
7 him back. She called me again later to say that she had called  
8 Mr. Reeder.

9 Q. And did she tell you anything about her conversation with Mr.  
10 Reeder?

11 A. Yeah. She said that he was rude with her on the phone. He  
12 didn't want to hear what she had to say and just kept  
13 interrupting her.

14 Q. Okay. And one more question. Have you, and this has to do  
15 with the question about the reports from the Okose investigation  
16 in Houston --

17 A. Yes.

18 Q. -- that Mr. Osgood asked you about that. Have you personally  
19 checked the reports from the Okose investigation in Houston?

20 A. I was able to do that in July --

21 Q. Of 2008?

22 A. -- of this year. Uh-huh.

23 Q. And when you made that review did you pull out reports that  
24 you believed were relevant to the case here?

25 A. I did.

1 Q. And did you provide them back to the U.S. Attorney's Office?

2 A. Yes, I did.

3 Q. And do you know whether or not there are plans for you and  
4 the two AUSAs here to go to Houston to make another check of the  
5 file there?

6 A. Yes. There are plans.

7 Q. All right.

8 MR. BOHLING: Thank you, Your Honor. That's all I have.

9 RECROSS EXAMINATION

10 BY MR. OSGOOD:

11 Q. Now, you subjectively decided what was part of this case and  
12 what was part of that case down there, and you made a decision as  
13 to what to turn over to us out of the Okose investigation?

14 A. Yes. It's a separate investigation.

15 Q. Now, I take it what you're telling us is then you did not  
16 give those instructions to Ms. Hearn and that she lied to Mr.  
17 Reeder. Let's just call it what it is, she lied to Mr. Reeder?

18 A. She told him something that I didn't tell her to say.

19 Q. Did she tell him, according to your conversation with her,  
20 did she admit that she told him that you had instructed her not  
21 to talk to him, DEA?

22 A. She said that she told Mr. Reeder that DEA had said not to  
23 talk to any investigators.

24 Q. That was a lie.

25 A. It was -- that's right. It was incorrect. It was not the

1 truth.

2 Q. Well, let's call it what it is, ma'am, it's a lie. And I'll  
3 quit asking the question if you'll just --

4 A. It --

5 Q. -- either it was or wasn't, yes or no. Was it a lie?

6 A. It's a lie.

7 Q. Thank you.

8 MR. BOHLING: I have nothing.

9 THE COURT: Okay.

10 EXAMINATION BY THE COURT:

11 Q. I just have a couple of questions.

12 A. Uh-huh.

13 Q. I can't tell from this report, how long did you meet with  
14 her?

15 A. I'd say we met less than an hour.

16 Q. And what did you tell her about, you know, the purpose of  
17 meeting with her to ask her about Dr. Elder?

18 A. We had told her -- she already knew that he was under  
19 investigation.

20 Q. And how did she know that?

21 A. I had asked her back in 2006 to provide us with Dr.  
22 Elder's --

23 Q. That was the employment information?

24 A. Yeah. The employment information.

25 Q. But at that point had you told her that he was under

1 investigation, that's why you wanted that information?

2 A. Well, then she had received a grand jury subpoena, too.

3 Q. Okay.

4 A. And then while we were there in July of this year, we asked  
5 her if she knew if Dr. Elder had been indicted, and she had not.

6 Q. She didn't know he had been indicted?

7 A. She didn't know.

8 Q. But you told her that he had?

9 A. Yes.

10 Q. And what else did you tell her?

11 A. Let's see.

12 Q. Now, did you tell her that at the outset of your meeting or  
13 at what point in time did you tell her that?

14 A. No. That came up later.

15 Q. After she had already identified the handwriting or before?

16 A. Right. Right.

17 Q. I'm sorry. After?

18 A. After. Yes.

19 Q. All right. Okay. What else did you tell her about the  
20 investigation?

21 A. I think that was about it. We told her, like I said  
22 previously, that she might be contacted by someone representing  
23 Dr. Elder. And at that point she said she had not been contacted  
24 by anyone.

25 Q. Your report is fairly short. So, I guess, I'm just trying to

1 figure out what topics you touched on, if you've met with her,  
2 even if it was for less than an hour. I mean, this report is  
3 very short.

4 A. Yeah.

5 Q. Anything else that you can remember?

6 A. It was basically about the handwriting. It really did.

7 Q. And did she identify every single one of these prescriptions  
8 that's attached to Defendant's Exhibit #1 as being Dr. Elder's  
9 handwriting?

10 A. She did.

11 Q. And did you have any discussions about whether the  
12 handwriting appeared different on some of the prescriptions?

13 A. We did not.

14 Q. And did she express any reservation or concern about some of  
15 the signatures appeared different?

16 A. She didn't.

17 Q. And did you ask her about that or any questions like that?

18 A. No. Because when we showed them to her, she was very  
19 definite that she recognized the writing.

20 Q. And did you ask her how often she had an opportunity to  
21 review prescriptions that he filled out?

22 A. She said it was -- I mean, it was a regular thing that she  
23 would see because she's the manager there. She would see his  
24 handwriting on documents in the business. She would see  
25 prescriptions and she would see signatures.

1 Q. Okay. But focusing for a minute on prescriptions, she said  
2 she regularly, as an office manager, saw his signature on  
3 prescriptions?

4 A. Yes.

5 Q. And did you ask her in what context?

6 A. We didn't really get into depth on that.

7 Q. Okay. Well, I mean, normally, is it your understanding when  
8 a doctor fills out a prescription, then he gives the prescription  
9 to the patient?

10 A. Yeah. She said that. Oh, she did say that earlier on they  
11 were duplicates. And so they were keeping a duplicate, and then  
12 that had stopped.

13 Q. And when did that stop?

14 A. She said that was in 2005.

15 THE COURT: All right. Any follow-up anyone wants to  
16 ask?

17 MR. BOHLING: No.

18 FURTHER RECROSS EXAMINATION

19 BY MR. OSGOOD:

20 Q. Well, there are things that you left out of the report the  
21 Judge asked you about?

22 A. I guess. The reports can't cover everything because we don't  
23 tape the discussions or --

24 Q. I understand.

25 A. Yeah.

1 Q. You made a subjective determination as to what's, in your  
2 view, important to put in the report and you put it in there and  
3 that it's important, essentially linked to the case?

4 A. Correct.

5 Q. Now, do you remember interviewing, for example, Mr. Lynch, a  
6 physician's assistant for Dr. Elder?

7 A. I did not interview him.

8 Q. And that was Ms. Overton?

9 A. I believe so.

10 Q. Okay. I assume she would prepare a report in a similar  
11 fashion?

12 MR. BOHLING: Objection. We're asking about another  
13 agent's report.

14 MR. OSGOOD: I apologize.

15 THE COURT: Yeah. Why don't you rephrase the question?

16 BY MR. OSGOOD:

17 Q. The policy is it's clearly you don't put everything down  
18 that's said in an interview. By policy you make the  
19 determination of what dovetails into the investigation you've  
20 got?

21 A. Right.

22 Q. Do you have any obligation to put down so-called exculpatory  
23 information?

24 A. Could you give a definition of that, please?

25 Q. Well, if you interview a witness and let's say Ms. Hearn said

1 Dr. Elder is a fine doctor, he's honest, I don't believe that he  
2 would ever do anything wrong, that kind of thing.

3 A. Yes. We do that.

4 Q. You put that in the reports?

5 A. Yeah.

6 Q. Okay. All right. That's all. Oh, one -- I'm sorry. One  
7 other question. The call back to her was prompted, was it not,  
8 by the motion I filed to dismiss? I assume you got a call from  
9 the prosecutor telling you the next day, because you called --

10 A. Actually -- go ahead.

11 Q. And you called the next day right after the -- as a matter of  
12 fact, you called the morning I filed the motion, didn't you?

13 A. Well, actually, Diane Hearn said that Mark Reeder told her  
14 there would be something filed.

15 Q. Okay. And it was and then you called?

16 A. Right.

17 Q. Okay. That's all.

18 MR. BOHLING: Well, I'm sorry. One quick question on  
19 that.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. BOHLING:

22 Q. Didn't you, in fact, call Ms. Hearn before there was anything  
23 filed in court by Mr. Osgood?

24 A. She called me first.

25 Q. Right. So, she called you and told and you spoke to Mr.



1 Rhodes --

2 A. Uh-huh.

3 Q. -- before Mr. Osgood had filed the motion in court?

4 A. I believe so, yes.

5 Q. Thank you.

6 MR. OSGOOD: I believe that's all I have, Your Honor.

7 MR. BOHLING: And that's all I have.

8 THE COURT: Thank you very much. You may step down.

9 MR. BOHLING: And, Your Honor, that will be our only  
10 witness of the United States' representatives. So, thank you  
11 very much.

12 MR. OSGOOD: Very briefly, I have a couple questions of  
13 Mr. Reeder, who is here, Your Honor.

14 MARK D. REEDER, DEFENDANT'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. OSGOOD:

17 Q. Would you state your full name, please?

18 A. Mark Douglas Reeder.

19 Q. And are you employed, sir?

20 A. I'm sorry?

21 Q. Your occupation?

22 A. I'm a private investigator.

23 Q. Are you duly licensed by the State of Missouri?

24 A. Licensed in -- at this time in Kansas City, the State of  
25 Kansas and in Independence, Missouri.

1 Q. And do you do routine contract work for attorneys such as  
2 myself?

3 A. Yes, I do.

4 Q. Do you also engage in work for the court?

5 A. I work for the court through appointments.

6 Q. And you have, in fact, recently been appointed, have you not,  
7 to be an investigator for a *pro se* litigant in Kansas?

8 A. Yes.

9 Q. And you've testified in federal court before?

10 A. Numerous times.

11 Q. And you've worked on capital cases that the court appointment  
12 was approved by the chief judge here?

13 A. Yes, I have.

14 Q. All right. How long have you been doing your line of work,  
15 sir?

16 A. Twenty-two years.

17 Q. And you're a former policeman?

18 A. Yes, I am.

19 Q. Sergeant in the Kansas City Police Department?

20 A. Yes, I am.

21 Q. And were you hired by me on a contract basis to do an  
22 investigation in this case?

23 A. Yes, sir.

24 Q. Have you conducted a number of interviews?

25 A. Yes, I have.

1 MR. OSGOOD: For the record, Your Honor, I think I told  
2 you earlier, I turned that discovery all over to the defense this  
3 morning.

4 BY MR. OSGOOD:

5 Q. Did you have occasion to attempt to interview Ms. Hearn?

6 A. Yes, I did.

7 Q. You've been in court during the hearing here, so we can cut  
8 to the chase. What did she tell you in the initial conversation?

9 A. I called her and identified myself. Made it very clear who I  
10 was, that I wasn't misrepresenting myself. That I worked for  
11 you, you represented Dr. Elder. I work with and for you, and  
12 that I had been given some information from you and a report from  
13 the DEA that I needed to cover with her. And I needed to ask her  
14 questions concerning the report and took my direction from you on  
15 some other questions that I needed to cover with her, and I  
16 needed a few minutes of her time. And explained to her that if  
17 this wasn't a good time, that I could call her later, and make a  
18 different arrangement whatever. I'm being very cordial with her,  
19 business-like, not rude. And explained to her that I needed her  
20 time. And she immediately told me that they, quote/unquote,  
21 "they" told me not to talk to you. And I said, is "they" an  
22 attorney and she said, no, "they" is not an attorney. And I  
23 said, well, who is "they"? And she said, well, "they" told me  
24 that you would be coming by or calling me on the phone or someone  
25 like you, an investigator or something to that effect. That they

1 would be coming by to talk to you -- or talk to me, her. And  
2 that I was not to talk to them. And I said, who -- I said -- I  
3 asked her for the name. I said, who is "they"? I kept pressing  
4 her for "they" when she said it wasn't an attorney. And asked  
5 her, I think -- I can't recall. I think I did ask her if she was  
6 involved in the case and she told me she wasn't. So, I asked her  
7 who "they" were and she --

8 Q. What was the demeanor on the phone at this point?

9 A. She wasn't antagonistic. She was much like me. She was just  
10 carrying on a conversation. I mean, she was maybe a little bit  
11 excited because, you know, I called her out of the clear blue, as  
12 she explained to me that she was told that someone like me would  
13 be coming by or calling her on the phone. You know, I didn't  
14 call ahead of time and ask to speak with her or set any kind of  
15 an appointment. I just called and introduced myself. She  
16 answered the phone.

17 Q. Okay.

18 A. I didn't have to explain to anyone else. I mean --

19 Q. Well, what happened next in this conversation?

20 A. Well, she just told me that -- that when she said -- when I  
21 kept pressing her for "they," she said "they" is the DEA. And I  
22 told her that I didn't think that that was permissible for the  
23 DEA to tell her that she could or could not talk. That in a  
24 sense they were practicing law and issuing legal advice. And if  
25 she doesn't an attorney, "they" can't tell her not to talk to me.

1 Q. So, at that point did she hang up on you?

2 A. We conversed a little bit longer. I didn't -- as  
3 Investigator Watterson explained to her, explained, I did tell  
4 her -- I said -- I told her, I said, well, you know, if you're  
5 sure that "they" is the DEA, that you'll be in Kansas City in  
6 court testifying, because I said I don't think they can do that.  
7 And at that point she says, I'm not going to talk to you anymore.  
8 They told me not to talk to you and I'm not talking to you and  
9 hung up.

10 Q. All right. Then you conveyed that information to me?

11 A. Immediately.

12 Q. Yeah. Did I file a motion to your knowledge?

13 A. To my knowledge you did.

14 Q. And alleging misconduct in a motion. And then what's the  
15 next thing that happened?

16 A. The next day I get a call.

17 Q. The very next day.

18 A. The very next day. I get a call. I think it's somewhere  
19 around 11 o'clock or whatever. And I get a call and I looked at  
20 the -- I've got Caller ID. I looked at it, it was Diane Hearn.  
21 And I was, you know, what does she want. Because it -- by the  
22 time the first conversation was over with, I mean, the  
23 cordialness had gone out of it. And so I answered the phone and  
24 says this is Diane Hearn. And I said, okay. And she said, well,  
25 we talked yesterday and I said, yeah, I remember that. And she

1 says, I need to clear a few things up. And I said, well, I don't  
2 know what you need to clear up, ma'am. This -- I mean, our  
3 conversation is over with. When you told me yesterday "they"  
4 told you not to talk to me and that I explained to you that more  
5 than likely you would be in Kansas City in a courtroom testifying  
6 about this. And she said, I need to clear something up with you.  
7 And I said, well, what is it that you need to clear up. She says  
8 -- she started out, she says, I never told you the DEA told me  
9 not to talk. And I said, you never said the DEA told you not to  
10 talk? And I said, you don't remember telling me yesterday that  
11 when I asked you and kept pressing you who "they" was and you  
12 finally told me the DEA, and I asked you for the agent's name,  
13 and I even -- I do believe I gave her Ms. Watterson's name, but I  
14 couldn't get Mr. Fitzpatrick out before she hung up. And she  
15 told me that -- at that point she says -- I said, you're the one  
16 that told me that "they" told you not to talk. And then she  
17 finally says, well, I did say that, but I misspoke. And I said,  
18 so, now you're saying that you told me that you lied, but you're  
19 trying to tell me that you lied when you said "they" told you not  
20 to talk and now you're saying you misspoke when you told me that.  
21 I said, what's the truth? And she says, I misspoke. That's the  
22 truth. They never told me not to talk. And I said, they never  
23 told you that I'd be coming by or calling you on the phone or  
24 anything like that and preparing you for the inevitable that  
25 somebody would be getting in touch with you? And says, I mis-

1 spoke. It's all my fault.

2 Q. Okay. Let me ask you one final question. Did you have  
3 occasion to learn of her husband's problems with the DEA?

4 A. I believe in the communication from you and Dr. Elder, it was  
5 explained to me that her husband was taken out of that office in  
6 handcuffs in front of his patients.

7 Q. While she was there?

8 A. While she was there.

9 Q. Okay. Do you know how old a lady she is?

10 A. I have no clue. I don't know. I've never tried to establish  
11 a date of birth on her or anything like that. She sounded, you  
12 know, just a middle-aged person that didn't have any trouble  
13 talking on the telephone. I mean, she didn't feeble if that  
14 was --

15 Q. Was your original intent when you called her to ask her about  
16 this various procedures we've been talking about here, about how  
17 handwriting was taken and how long it occurred and some of the  
18 questions the Judge asked and that I asked?

19 A. Yes, sir.

20 Q. And that was my instruction to you was to explore that?

21 A. Yeah. Ask her if she was shown specimens from different, you  
22 know, either a trick specimen or a real one and see if you can  
23 pick out the real one or trick one, no matter who authored it.  
24 And I could ever get to that.

25 Q. She didn't want to talk about that?

1 A. She told me she wasn't going to talk to me. And then that's  
2 when I told her that she'd be talking to somebody here in court.

3 Q. Thank you.

4 MR. OSGOOD: Do you need this, Curt?

5 MR. BOHLING: Yes, Thank you.

6 CROSS-EXAMINATION

7 BY MR. BOHLING:

8 Q. Good afternoon, Mr. Reeder.

9 A. Good afternoon, sir.

10 Q. I want to make sure I'm clear on this. Did Ms. Hearn tell  
11 you during your first conversation, did she mention the name of  
12 D.I. Watterson?

13 A. I mentioned the name D.I. Watterson. I asked her when she --  
14 when she kept insisting "they" and I kept asking her who "they"  
15 was, and then when I finally got her to tell me that "they" was  
16 the DEA, and I said, which agent in the DEA? Because I knew that  
17 from my readings that there was more than one. And I asked her,  
18 I said, well, I've got a couple names here and I'd like to, you  
19 know, because I think she told me she couldn't remember. Now,  
20 that you ask me that question, that's my recollection. She told  
21 me couldn't remember. And I said, well, I'd like to give you a  
22 couple names. I mean, we were still talking at that point even  
23 though she was saying that "they" had told her not to talk. Then  
24 I said, was D.I. Judi Watterson, I said, was that one of them.  
25 And she says, something to the effect it could have been, I don't



1 know, something like that. And I tried to -- and before I could  
2 get out Fitzpatrick, she says, I'm done talking to you and hung  
3 up.

4 Q. Did you call Ms. Watterson after that conversation to ask her  
5 about whether she had given such instruction?

6 A. No. That's not my job.

7 Q. Did you call anybody else in the DEA to ask whether they had  
8 given her such instruction?

9 A. That's not my job.

10 Q. I'm sorry.

11 A. I don't -- I don't --

12 Q. I thought you were an investigator.

13 A. I am an investigator, but I -- my -- I work for Mr. Osgood.

14 Q. I see.

15 A. I visited with Mr. Osgood about it. I take my direction and  
16 my lead from Mr. Osgood and his client. And Mr. Osgood never  
17 asked me to try to confirm that and call Ms. Watterson. I don't  
18 know Ms. Watterson's phone number. I try to keep my limited  
19 contact with the investigators for the Government in a cordial  
20 hello and stuff like that, because I don't want any malfeasance  
21 accused on my part. So, I --

22 Q. The short answer is you did not call anyone at DEA, anyone  
23 you knew to be involved with the case, to ask them whether or not  
24 they had given such instruction to any witness?

25 A. I talked to Mr. Osgood. I did not talk to the DEA.

1 Q. The next day when Ms. Hearn called you back and told you that  
2 she had never received instructions not to speak to you, you told  
3 her that you did not believe her, correct?

4 A. That is correct.

5 Q. Okay. You told her that without talking to any investigator  
6 from the DEA to confirm or deny what she was telling you?

7 A. That is correct.

8 Q. So, you had no basis to say that you did not believe her?

9 A. I had the basis that I had was is that she was calling -- she  
10 opened the conversation up with, I need to clear something up.  
11 And I said, what's that? And she says, I misspoke or something  
12 to that effect that led me to believe that she now wanted to  
13 change her version of what went on.

14 Q. Yeah. And my question is you never checked out, either her  
15 first statement or her second statement with the people who  
16 supposedly made the statement, who told her not to --

17 A. Yeah.

18 Q. -- supposedly told her not to talk to anyone?

19 A. I doubt very seriously whether Mr. Watterson would answer a  
20 question like that from me. And that's, I mean --

21 Q. You never asked her, that's my question.

22 A. I never asked that and I doubt that she would ask me that  
23 question -- or answer that for me.

24 Q. Okay. When Ms. Hearn called the second time you basically  
25 didn't want to talk to her about the subject?

1 A. As far as I was concerned I had gotten what I needed  
2 according to what Mr. Osgood told me.

3 Q. So, essentially what you and Mr. Osgood were looking for was  
4 the result, i.e., to have the case dismissed, whether or not that  
5 result was actually based on facts since you didn't further  
6 investigate what had happened?

7 A. Well, I don't -- I didn't know that he was going to file a  
8 motion to dismiss the case. I assumed that what he was going to  
9 do was file a motion to bring Ms. Hearn up here and he would  
10 examine her and he would ask her the questions that he wanted me  
11 to ask her under oath in court. That's what I understood the  
12 motion to be, because I never -- I never said anything about her  
13 coming up and testifying at a motion to dismiss. I told her she  
14 would be here answering Mr. Osgood's questions.

15 Q. So, in other words, Mr. Osgood told you not to look further  
16 into it, a motion was filed, and as far as you were concern that  
17 was that?

18 A. As far as I was concerned there was nothing else to do.

19 Q. Thank you. That's all I have.

20 A. Uh-huh.

21 MR. OSGOOD: Nothing further.

22 THE COURT: Thank you very much. You may step down.

23 All right. Anything further?

24 MR. OSGOOD: I think that's it, Your Honor.

25 THE COURT: Anything further for the Government?

1 (Off Record Talking)

2 MR. BOHLING: Yes. I'm sorry. We're done, Your Honor.  
3 Thank you.

4 THE COURT: All right. Thank you very much. We'll be  
5 in recess.

6 MR. OSGOOD: Your Honor, on discovery, again, if can  
7 just go back to that for a second, the Court left it open for me  
8 to file an amended Rule 17(c) motion. Do you recall that?

9 THE COURT: I'd have to go back and check, but -- that.  
10 I do remember that --

11 MR. OSGOOD: It was overly broad.

12 THE COURT: -- there was a 17(c) motion out there that  
13 was very, very broad.

14 MR. OSGOOD: So, what I did instead, rather of bothering  
15 you a second time with it, is I went ahead and issued a trial  
16 subpoena to the Texas Medical Board *duces tecum* with appearance  
17 of the custodian in court. I'm assuming that we'll hear from  
18 them ahead of time.

19 THE COURT: Well, did you check with my office to put it  
20 at a time where if they do show up we're even going to be here?

21 MR. OSGOOD: Well, I set it for the start of the trial  
22 with a cover letter telling them --

23 THE COURT: Oh, the first day of trial.

24 MR. OSGOOD: -- to call -- the first day of trial,  
25 telling them to call if they wanted a more precise time to be

1 here. So, I assume we'll hear from them.

2 THE COURT: Okay.

3 MR. OSGOOD: So, I think that issue is moot now.

4 THE COURT: Okay. All right. I appreciate that.

5 Anything further?

6 MR. BOHLING: No, Your Honor. Not from us. Thank you.

7 MR. OSGOOD: No.

8 THE COURT: All right. We'll be in recess.

9 (Court Adjourned at 2:33 p.m.)

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INDEXWITNESSES FOR  
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WITNESSES FOR  
THE DEFENDANT:DIRECTCROSSREDIRECTRECROSS

Mark Reeder

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EXHIBITS:MARKEDADMITTED

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5 I certify that the foregoing is a correct  
6 transcript from the electronic sound recording of the proceeding  
7 in the above-entitled matter.

8  
9 /s/ Lissa C. Whittaker  
Signature of transcriber

October 27, 2008  
Date

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