

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

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)Case No.
5 vs.)08-00026-03/04-CR-W-FJG
6 TROY R. SOLOMON, et al.,)
7 Defendants.)

8 TRIAL TRANSCRIPT - VOLUME I OF VII

9 On June 21, 22, 23, 24, 28, 29, 30, 2010, the
10 above-entitled cause came on before the Honorable Fernando
11 J. Gaitan, Jr., Chief U.S. District Judge, sitting in
12 Kansas City, Missouri, and a jury.

13 APPEARANCES

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Government's 692	FedEx Tracking	256	256
Government's 693	FedEx Tracking	256	256
Government's 694	FedEx Tracking	256	256
Government's 695	FedEx Tracking	256	256
Government's 696	FedEx Tracking	256	256
Government's 697	FedEx Tracking	256	256
Government's 698	FedEx Tracking	256	256
Government's 699	FedEx Tracking	256	256

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Government's 701	FedEx Tracking	256	256
Government's 702	FedEx Tracking	256	256
Government's 703	FedEx Tracking	256	256
Government's 704	FedEx Tracking	256	256
Government's 705	FedEx Tracking	256	256
Government's 706	FedEx Tracking	256	256
Government's 707	FedEx Tracking	256	256
Government's 708	FedEx Tracking	256	256
Government's 709	FedEx Tracking	256	256
Government's 710	FedEx Tracking	256	256
Government's 711	FedEx Tracking	256	256
Government's 712	FedEx Tracking	256	256
Government's 713	FedEx Tracking	256	256
Government's 714	FedEx Tracking	256	256
Government's 715	FedEx Tracking	256	256
Government's 716	FedEx Tracking	256	256
Government's 717	FedEx Tracking	256	256
Government's 718	FedEx Tracking	256	256
Government's 719	FedEx Tracking	256	256
Government's 720	FedEx Tracking	256	256
Government's 721	FedEx Tracking	256	256
Government's 722	FedEx Tracking	256	256

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Government's 725	FedEx Tracking	256	256
Government's 726	FedEx Tracking	256	256
Government's 727	FedEx Tracking	256	256
Government's 728	FedEx Tracking	256	256
Government's 729	FedEx Tracking	256	256
Government's 730	FedEx Tracking	256	256
Government's 731	FedEx Tracking	256	256
Government's 732	FedEx Tracking	256	256
Government's 733	FedEx Tracking	256	256
Government's 734	FedEx Tracking	256	256
Government's 735	FedEx Tracking	256	256
Government's 736	FedEx Tracking	256	256
Government's 737	FedEx Tracking	256	256
Government's 738	FedEx Tracking	256	256
Government's 739	FedEx Tracking	256	256
Government's 740	FedEx Tracking	256	256
Government's 741	FedEx Tracking	256	256
Government's 742	FedEx Tracking	256	256
Government's 743	FedEx Tracking	256	256
Government's 744	FedEx Tracking	256	256
Government's 745	FedEx Tracking	256	256

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Government's 746	FedEx Tracking	256	256
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Government's 748	FedEx Tracking	256	256
Government's 749	FedEx Tracking	256	256
Government's 750	FedEx Tracking	256	256
Government's 751	FedEx Tracking	256	256
Government's 752	FedEx Tracking	256	256
Government's 753	FedEx Tracking	256	256
Government's 754	FedEx Tracking	256	256
Government's 755	FedEx Tracking	256	256
Government's 756	FedEx Tracking	256	256
Government's 757	FedEx Tracking	256	256
Government's 758	FedEx Tracking	256	256
Government's 759	FedEx Tracking	256	256
Government's 760	FedEx Tracking	256	256
Government's 761	FedEx Tracking	256	256
Government's 762	FedEx Tracking	256	256
Government's 763	FedEx Tracking	256	256
Government's 764	FedEx Tracking	256	256
Government's 765	FedEx Tracking	256	256
Government's 766	FedEx Tracking	256	256
Government's 767	FedEx Tracking	256	256
Government's 768	FedEx Tracking	256	256

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Government's 771	FedEx Tracking	256	256
Government's 772	FedEx Tracking	256	256
Government's 773	FedEx Tracking	256	256
Government's 774	FedEx Tracking	256	256
Government's 775	FedEx Tracking	256	256
Government's 776	FedEx Tracking	256	256
Government's 777	FedEx Tracking	256	256
Government's 778	FedEx Tracking	256	256
Government's 779	FedEx Tracking	256	256
Government's 780	FedEx Tracking	256	256
Government's 781	FedEx Tracking	256	256
Government's 782	FedEx Tracking	256	256
Government's 783	FedEx Tracking	256	256
Government's 784	FedEx Tracking	256	256
Government's 785	FedEx Tracking	256	256
Government's 786	FedEx Tracking	256	256
Government's 787	FedEx Tracking	256	256
Government's 788	FedEx Tracking	256	256
Government's 789	FedEx Tracking	256	256
Government's 790	FedEx Tracking	256	256
Government's 791	FedEx Tracking	256	256

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Government's 792	FedEx Tracking	256	256
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Government's 794	FedEx Tracking	256	256
Government's 795	FedEx Tracking	256	256
Government's 796	FedEx Tracking	256	256
Government's 797	FedEx Tracking	256	256
Government's 798	FedEx Tracking	256	256
Government's 799	FedEx Tracking	256	256
Government's 800	FedEx Tracking	256	256
Government's 801	FedEx Tracking	256	256
Government's 802	FedEx Tracking	256	256
Government's 803	FedEx Tracking	256	256
Government's 804	FedEx Tracking	256	256
Government's 804	FedEx Tracking	256	256
Government's 805	FedEx Tracking	256	256
Government's 806	FedEx Tracking	256	256
Government's 807	FedEx Tracking	256	256
Government's 808	FedEx Tracking	256	256
Government's 809	FedEx Tracking	256	256
Government's 810	FedEx Tracking	256	256
Government's 811	FedEx Tracking	256	256
Government's 812	FedEx Tracking	256	256
Government's 813	FedEx Tracking	256	256

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Government's 816	FedEx Tracking	256	256
Government's 817	FedEx Tracking	256	256
Government's 818	FedEx Tracking	256	256
Government's 819	FedEx Tracking	256	256
Government's 820	FedEx Tracking	256	256
Government's 821	FedEx Tracking	256	256
Government's 823	FedEx Tracking	256	256
Government's 824	FedEx Tracking	256	256
Government's 825	FedEx Tracking	256	256
Government's 826	FedEx Tracking	256	256
Government's 827	FedEx Tracking	256	256
Government's 828	FedEx Tracking	256	256
Government's 829	FedEx Tracking	256	256
Government's 830	FedEx Tracking	256	256
Government's 831	FedEx Tracking	256	256
Government's 832	FedEx Tracking	256	256
Government's 833	FedEx Tracking	256	256
Government's 834	FedEx Tracking	256	256
Government's 835	FedEx Tracking	256	256
Government's 836	FedEx Tracking	256	256
Government's 837	FedEx Tracking	256	256

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Government's 838	FedEx Tracking	256	256
Government's 839	FedEx Tracking	256	256
Government's 840	FedEx Tracking	256	256
Government's 841	FedEx Tracking	256	256
Government's 842	FedEx Tracking	256	256
Government's 843	FedEx Tracking	256	256
Government's 844	FedEx Tracking	256	256
Government's 845	FedEx Tracking	256	256
Government's 846	FedEx Tracking	256	256
Government's 847	FedEx Tracking	256	256
Government's 848	FedEx Tracking	256	256
Government's 849	FedEx Tracking	256	256
Government's 850	FedEx Tracking	256	256
Government's 851	FedEx Tracking	256	256
Government's 852	FedEx Tracking	256	256
Government's 853	FedEx Tracking	256	256
Government's 854	FedEx Tracking	256	256
Government's 855	FedEx Tracking	256	256
Government's 856	FedEx Tracking	256	256
Government's 857	FedEx Tracking	256	256
Government's 858	FedEx Tracking	256	256
Government's 859	FedEx Tracking	256	256
Government's 860	FedEx Tracking	256	256

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Government's 861	FedEx Tracking	256	256
Government's 862	FedEx Tracking	256	256
Government's 863	FedEx Tracking	256	256
Government's 864	FedEx Tracking	256	256
Government's 865	FedEx Tracking	256	256
Government's 866	FedEx Tracking	256	256
Government's 867	FedEx Tracking	256	256
Government's 868	FedEx Tracking	256	256
Government's 869	FedEx Tracking	256	256
Government's 870	FedEx Tracking	256	256
Government's 871	FedEx Tracking	256	256
Government's 872	FedEx Tracking	256	256
Government's 873	FedEx Tracking	256	256
Government's 874	FedEx Tracking	256	256
Government's 875	FedEx Tracking	256	256
Government's 876	FedEx Tracking	256	256
Government's 877	FedEx Tracking	256	256
Government's 878	FedEx Tracking	256	256
Government's 879	FedEx Tracking	256	256
Government's 880	FedEx Tracking	256	256
Government's 881	FedEx Tracking	256	256
Government's 882	FedEx Tracking	256	256
Government's 883	FedEx Tracking	256	256

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Government's 886	FedEx Tracking	256	256
Government's 887	FedEx Tracking	256	256
Government's 888	FedEx Tracking	256	256
Government's 889	FedEx Tracking	256	256
Government's 890	FedEx Tracking	256	256
Government's 891	FedEx Tracking	256	256
Government's 892	FedEx Tracking	256	256
Government's 893	FedEx Tracking	256	256
Government's 894	FedEx Tracking	256	256
Government's 895	FedEx Tracking	256	256
Government's 896	FedEx Tracking	256	256
Government's 897	FedEx Tracking	256	256
Government's 898	FedEx Tracking	256	256
Government's 899	FedEx Tracking	256	256
Government's 900	FedEx Tracking	256	256
Government's 901	FedEx Tracking	256	256
Government's 902	FedEx Tracking	256	256
Government's 903	FedEx Tracking	256	256
Government's 904	FedEx Tracking	256	256
Government's 905	FedEx Tracking	256	256
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Government's 909	FedEx Tracking	256	256
Government's 910	FedEx Tracking	256	256
Government's 911	FedEx Tracking	256	256
Government's 912	FedEx Tracking	256	256
Government's 913	FedEx Tracking	256	256
Government's 915	UPS Receipt	365	365
Government's 916	UPS Receipt	365	365
Government's 917	UPS Receipt	365	365
Government's 918	UPS Receipt	365	365
Government's 919	UPS Receipt	365	365
Government's 920	UPS Receipt	365	365
Government's 921	UPS Receipt	365	365
Government's 922	UPS Receipt	365	365
Government's 923	UPS Receipt	365	365
Government's 924	UPS Receipt	365	365
Government's 925	UPS Receipt	365	365
Government's 926	UPS Receipt	365	365
Government's 927	UPS Receipt	365	365
Government's 928	UPS Receipt	365	365
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Government's 932	UPS Receipt	365	365
Government's 933	UPS Receipt	365	365
Government's 934	UPS Receipt	365	365
Government's 935	UPS Receipt	365	365
Government's 936	UPS Receipt	365	365
Government's 937	UPS Receipt	365	365
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Government's 950	Photograph	934	934
Government's 951	Photograph	934	934
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Government's 960	Photograph	934	934
Government's 961	Photograph	934	934
Government's 962	Photograph	934	934
Government's 963	Photograph	934	934
Government's 964	Photograph	934	934
Government's 965	Photograph	934	934
Government's 966	Photograph	934	934
Government's 967	Photograph	934	934
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Government's 970	Photograph	934	934
Government's 971	Photograph	934	934
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Government's 973	Photograph	934	934
Government's 974	Photograph	934	934
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Government's 1064	Handwriting Sample	732	732
Government's 1065	Handwriting Sample	732	732
Government's 1066	Handwriting Sample	732	732
Government's 1067	Handwriting Sample	732	732
Government's 1068	Handwriting Sample	732	732
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1 MONDAY, JUNE 21, 2010 - VOLUME I OF VII

2 (The following proceedings were had in chambers:)

3 THE COURT: I'm not going to read all of
4 these names. I'm going to hand them out to the jury on
5 witness lists. I don't know if there's any changes to be
6 made on this list.

7 MR. LEWIS: None from Mr. Solomon, Your
8 Honor. Our names are on here.

9 THE COURT: I've looked at the witness
10 list for the government. There seems to be a lot of
11 redundancy in there. I'm going to deal with that as it
12 arises as I see it during the presentation of the
13 evidence.

14 This case from my point of view has to be
15 completed by next week. I'm going to be out of town the
16 following two weeks, so we're going to have to get it all
17 done and submitted and all that kind of stuff. I'm going
18 to be pushing you right along on this case. Just want you
19 to know.

20 MR. LEWIS: I don't think it will be a
21 problem with Mr. Johnson gone, Your Honor. We've signed
22 all 18 stipulations this morning. I certainly champion
23 your timeframe.

24 THE COURT: We need champions.

25 MR. OSGOOD: As you know, in the last
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1 trial we had, Your Honor, I did not put the defendant on
2 when the dust settled because I didn't think it was
3 necessary and I was right. You have my client's name on
4 here. We might want to take a big, black marker and mark
5 through it, just -- I mean, I'm 99.9 percent sure he's
6 going to testify.

7 THE COURT: He's going to be introduced
8 to the jury panel anyway.

9 MR. OSGOOD: That's okay. Leave it on
10 there. That's all right because I'm probably going to
11 mention it in opening. My opening statement will probably
12 imply he's going to testify. He's going to testify unless
13 something dramatic occurs.

14 MR. LEWIS: I don't think it's any
15 problem, Your Honor, especially given the fact we can say
16 this is a potential witness list.

17 THE COURT: Right. I don't think we've
18 mentioned this before, but I'm not for sure I want to
19 mention it again. In terms of the voir dire itself, I'll
20 be doing 95 percent of that. I have looked at your
21 questions. I'll be using some of those, couple of the
22 minimized standard questions because this is kind of a
23 different kind of case. I'm going to give each side 10 to
24 15 minutes for follow-up and to ask questions off the
25 list. I think you're going to find I'll have thoroughly

1 exhausted the list before -- I'm leaving you some things,
2 of course, but it's my practice to get through most of
3 those things.

4 Given the fact that we don't have Mr. Johnson,
5 do I need to cut back on the time for opening statement?

6 MR. OSGOOD: Please, Your Honor. I
7 thought you'd give us more because it's less complicated
8 and can get it over with quicker.

9 THE COURT: I'll give you what I
10 suggested and trust your judgment. If you don't need it
11 all, you won't take it all.

12 I want to make sure I understand how to
13 pronounce these drug names in here. Is it Lortab?

14 MR. RHODES: Yes.

15 THE COURT: Lorcet?

16 MR. BOHLING: Yes, Your Honor.

17 THE COURT: And there was Alprazolam?

18 MR. LEWIS: Alprazolam.

19 THE COURT: Okay.

20 MR. LEWIS: That's Xanax, Your Honor.

21 THE COURT: I'm familiar with that one.

22 MR. LEWIS: That might be easier.

23 MR. OSGOOD: Generic Xanax, is that what
24 it is?

25 THE COURT: Promethazine.

1 MR. LEWIS: You got it. Promethazine
2 with codeine and cough syrup.

3 THE COURT: What's this other one?

4 MR. OSGOOD: Fentanyl?

5 MR. RHODES: Phenergan, is that it?

6 THE COURT: How is it spelled?

7 MR. RHODES: Off memory, like
8 P-h-e-r-n-a-g-e-n, something like that.

9 MR. OSGOOD: Phenergan?

10 MR. LEWIS: I'm not sure. I think it's
11 g-i-n.

12 MR. RHODES: They probably won't hear
13 the term that much, Your Honor.

14 THE COURT: All right.

15 MR. RHODES: They won't hear it that
16 much.

17 THE COURT: I'll just mumble through.

18 Did you decide who was going to be the lead-off
19 person? Mr. Lewis?

20 MR. LEWIS: I will, Your Honor,
21 begrudgingly.

22 MR. OSGOOD: He's a high-dollar,
23 out-of-town attorney, Your Honor.

24 The last case we had on a couple of occasions
25 you did not object if we switched the order because

1 somebody was particularly --

2 THE COURT: No. Since it's just two of
3 you, it won't be as confusing as with three or four.

4 MR. OSGOOD: Somebody is one hundred
5 percent for one witness, we might switch at some point. I
6 think it will save some time.

7 THE COURT: Okay. These motions in
8 limine that have been filed by the government and by the
9 -- who was it, Solomon?

10 MR. LEWIS: I filed one, Your Honor.

11 MR. OSGOOD: The government's, I will
12 not ask or mention anything about that in opening. If I
13 get ready to ask a witness, I might ask him about his
14 status with one of the drug agents, that he's still
15 practicing. I'll come to the bench first.

16 MR. LEWIS: Your Honor, my motion is
17 very simple. Mr. Bohling got back to me so I don't think
18 we have a problem. For your benefit, here's a little
19 procedural history, Mr. Solomon gets indicted here in
20 Kansas City. There was already an investigation into one
21 of the unindicted coconspirators, a Dr. Okose, out of
22 Houston.

23 Mr. Bohling and Mr. Rhodes, through no fault of
24 their own, were kind of, I guess, left in the lurch. We
25 continued to press on the U.S. Attorney down there who's

1 in charge of that case, a very good friend of mine,
2 Mr. Burns, a notoriously slow mover, to be polite to my
3 friend.

4 He finally returns an indictment 45 days ago
5 against Solomon and Okose and a pharmacist who also used
6 to work at Ascensia but no longer. My motion in limine
7 was just to keep that case out of this one.

8 THE COURT: That was clear.

9 MR. LEWIS: I understand they're going
10 to mention Okose's name as he's an unindicted
11 coconspirator. I just don't want the skunk in the jury
12 box of another indictment.

13 THE COURT: That gets to their 404(b).

14 MR. BOHLING: We have no problem.
15 There's no reason to mention the existence of the other
16 indictment. I agree that would probably inject error into
17 the trial and shouldn't be done. We've made it pretty
18 clear that we've considered some of the subject matter of
19 that indictment to be inextricably intertwined with the
20 facts of our case and always have. So -- and I think that
21 will be clear during the course of the trial.

22 But as to mentioning the indictment, there's no
23 reason whatsoever to do that.

24 MR. LEWIS: I'm going to have to be on
25 my toes. I don't like to make -- I don't make many

1 objections, Your Honor. If I have to for the record or
2 something, absolutely I'll stand up and politely object,
3 but if the government could be mindful of this process, I
4 don't think I'll have to object much. There may be a
5 dispute as to what's inextricably intertwined and what's
6 404(b) and needs the gatekeeper in His Honor's blessing
7 before they get into it. I trust them to move cautiously
8 through that so that if we get to a point that I think is
9 not inextricably intertwined, is not -- is, in essence,
10 extraneous and needs to go through the trappings of 404(b)
11 and the gatekeeper's function, I'll make the objection.

12 But I think the government is aware and I can
13 tell His Honor understands the predicament.

14 THE COURT: Tell me, Mr. Osgood, about
15 this administrative proceeding that you've talked about.
16 I believe it was your motion.

17 MR. OSGOOD: It was. Well, it's a
18 motion against me to keep it out. He is -- he -- while
19 this case was going on, they served on him a subpoena for
20 patient records. He supplied those. These are the same
21 patients, some of them, that are mentioned to some extent
22 in this case at some point by name. He provided those.
23 He's under investigation. They cleared him on one of them
24 entirely.

25 On about five others they said you didn't do a
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1 very good job of recordkeeping, and you -- in their view
2 didn't spend enough time with the patient. But
3 therapeutically everything he did was correct.

4 Now, how -- you know, how you arrive at
5 conclusion three and say conclusion one and two was wrong,
6 I don't know, but they had an expert with a whole lot of
7 letters behind his name that was an MD that said that was
8 their conclusion. It's a tentative conclusion. He's got
9 a show cause to appear, as the government pointed out, and
10 explain item one and two that they have some problem with
11 and tell them why he's going to do a better job of record-
12 keeping from now on.

13 In balance I think that's a helpful piece of
14 evidence to me. So, again -- but I'll lay off of it until
15 we get to the point to where I want to bring it in and
16 then alert you. It will probably be through his
17 testimony, quite frankly. Maybe a question or two kind of
18 related of these agents, about you went out and
19 interviewed him, you suspended Dr. Okose's license, pulled
20 his DEA right to practice. You've allowed Dr. Elder clear
21 up until today to practice and dispense controlled
22 substances when you discretionally could have pulled his
23 ticket at any time. They have not done that.

24 I think that's some consciousness on their part
25 that they don't have a very good case against him.

1 THE COURT: And the investigation was
2 about similar circumstances?

3 MR. RHODES: Absolutely. We believe
4 that those patients are different from the patients that
5 are involved in our case. I believe the complaint arose
6 from after he had left South Texas Wellness Center as well
7 as the Westfield Medical Clinic. Those are issues that
8 were -- that are outside of our conspiracy period.

9 THE COURT: We're talking about conduct,
10 are we not?

11 MR. OSGOOD: And he even when he --
12 before he was indicted, he had signs, for example, on his
13 desk that's against the law to do this kind of stuff and
14 warnings and everything. And he left -- he worked at the
15 South Texas Wellness Center for only about four months
16 while this was going on. He left on January the 1st of
17 2005.

18 This conspiracy goes clear around the clock
19 until October, and hundreds, if not thousands, of
20 prescriptions were sent, not original prescriptions but
21 faxes during that cycle of the clock. There are some
22 original prescriptions of his that were sent up here.
23 He's going to say he didn't know that was happening.

24 Were sent up here during the '04 part of the
25 clock, from about August through November. He left this

1 South Texas Wellness Center and was gone entirely and
2 these scripts were still coming from that place in
3 particularly massive numbers of renewals where he had no
4 refills on his prescriptions.

5 And they were calling. Someone at South
6 Texas -- I believe we're going to suggest it was
7 Mr. Parker. I don't need to speak for you.

8 MR. LEWIS: But you're right.

9 MR. OSGOOD: I believe Mr. Parker had
10 his hand in that very heavily. The bottom line is Dr.
11 Elder didn't. He was off working somewhere else. They're
12 probably going to tell you that they were talking to each
13 other on the phone during that '05 cycle of the clock, and
14 they did. They knew each other, and they would call each
15 other once or twice a day sometimes.

16 So that's kind of it in a nutshell.

17 THE COURT: Okay. Well, I'll give it
18 some thought, and we'll discuss it further right before we
19 get --

20 MR. OSGOOD: I think as we go through
21 the trial, as I said, a lot of this will come clear to you
22 and make these rulings a lot easier.

23 In deference to Mr. Lewis, I probably am going
24 to emphasize Dr. Okose's role in this a little more
25 heavily than perhaps he would like, but Dr. Okose, I

1 think, had a direct relationship with somebody at this
2 pharmacy. Again, it might be Mr. Parker, for all I know.
3 I'm not going to point fingers at Mr. Solomon, but I'm
4 going to say we didn't know anything about it, that it was
5 Dr. Okose and --

6 MR. LEWIS: That won't be problematic.
7 It's that linkage that makes my nerves flare up.

8 MR. OSGOOD: Yep.

9 THE COURT: What happened to the
10 discussions about a plea with regard to Mr. Solomon?

11 MR. LEWIS: We communicated.
12 Unfortunately, Mr. Solomon has a mindset that, I believe,
13 is internally rationalized, and we're here to try this
14 case and enjoy your hospitality, Your Honor.

15 THE COURT: Understood. Anything else
16 from you all?

17 MR. RHODES: Nothing.

18 MR. OSGOOD: No, sir.

19 MR. LEWIS: No, sir.

20 THE COURT: As soon as we get the jury
21 up, we'll get going.

22 Thank you.

23 (Voir Dire Examination omitted at request of defense.)

24 AFTERNOON SESSION

25 (The following proceedings were had in the

1 presence of the jury:)

2 THE COURT: As your name is called, I'll
3 ask you come forward and be seated in the jury box.

4 COURTROOM DEPUTY ENSS: Rita Dewey,
5 Heather Johnson, Sandra Gonzales, Greg Mashburn, Shawn
6 Ryan, Lisa Noyes, Thomas Adams, James Jameson, Lori
7 Schneider, Lonnie Gay, Yvette Rinfret, Robert Kernell,
8 Carolyn Zawada, Stacey Gordon.

9 MR. LEWIS: Can we approach, Your Honor?

10 THE COURT: Yes.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. LEWIS: There is an error on our
14 scribbling. One of our strikes was intended to be
15 Mr. Jameson, who's 21. We have it reflected on our sheet.

16 THE COURT: Twenty-one?

17 MR. LEWIS: Yes, sir, 21, Mr. Jameson.

18 THE COURT: There was no request to
19 strike.

20 MR. LEWIS: No. We made an error on the
21 peremptory, Your Honor.

22 MR. OSGOOD: We thought we had another
23 one -- we struck out another one, and we inadvertently did
24 not strike him.

25 THE COURT: So what are you asking me to

1 do?

2 MR. LEWIS: Let us correct our strikes,
3 Your Honor.

4 THE COURT: What's that going to do to
5 the composition of the pool?

6 MR. OSGOOD: Change it.

7 THE COURT: Why should I let you do
8 that?

9 MR. LEWIS: It was an error, not
10 intended.

11 THE COURT: I'm sorry. I'm not prepared
12 to do that.

13 MR. OSGOOD: The other thing is Strike
14 No. 2, they struck one of the two Hispanic jurors. I
15 would like to make a Batson challenge at this point. They
16 should state a race-neutral reason for striking him as a
17 minority since we have minority clients.

18 MR. RHODES: I stated earlier, for one I
19 would like the record to show that the defendants are
20 black and that the juror that was struck is Hispanic. Two
21 different races. But the reason he was struck is because
22 of our belief that he cannot read efficiently and
23 effectively. That's why he was struck.

24 THE COURT: I think that's a legitimate
25 reason given the display of -- that I call nerves and they

1 called it something else. I think that's not biased.

2 MR. OSGOOD: Of course, I think there
3 were other jurors who exhibited similar behavior, ones
4 that didn't respond or ones that were confused.

5 THE COURT: All right. You made the
6 record.

7 Thank you.

8 (The proceedings returned to open court.)

9 THE COURT: I believe I was about to
10 thank those of you who were not selected for serving on
11 this particular panel for your patience and cooperation in
12 the selection of this jury.

13 I'll ask those of you who fit that category,
14 that is, those of you seated in the spectators' section to
15 return to the jury commissioner for further instructions.
16 You may leave at this time.

17 Thank you.

18 Those who are seated in the jury box have been
19 selected to serve as the jury and the alternates in this
20 case. I'll ask that you stand and raise your right hand
21 at this time to be sworn.

22 (Jury sworn.)

23 THE COURT: Thank you. Please be
24 seated.

25 A couple of points before I get in to reading to

1 you the preliminary instructions. You heard me state that
2 you are the jury and the alternates. There are two
3 alternates along with you at this point in time, but until
4 the case is given to the jury for deliberations, you all
5 function as members of this jury panel. So I don't want
6 somebody presuming they're going to be the alternate and,
7 therefore, don't have to pay much attention to the
8 evidence.

9 I think everyone should be very focused on the
10 evidence and the presentation of the evidence, whether
11 it's documentary or by way of testimony of witnesses.
12 Keep that in mind.

13 The other thing I want to make note to you is we
14 will be probably breaking in about an hour or hour and a
15 half, and we'll do that again this afternoon before the
16 evening is out. I do anticipate finishing by 4:30 or 5
17 today. I know this is your first day and you've got to
18 schedule accordingly, so we won't go real long today. But
19 I may go a little longer in the future just to keep the
20 case moving.

21 Okay. I'm going to read some preliminary
22 instructions for you, and then counsel may then make
23 opening statements before we hear the evidence.

24 (Instructions read.)

25 THE COURT: Okay. Before we begin, I

1 want to speak with counsel at the bench, please.

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 THE COURT: It is my understanding at
5 this time in opening statements there will be no reference
6 to collateral matters, be that 404(b) or administrative
7 collateral proceedings.

8 MR. OSGOOD: Okay.

9 MR. RHODES: Okay.

10 (The proceedings returned to open court.)

11 MR. RHODES: Good afternoon.

12 THE JURY: Good afternoon.

13 GOVERNMENT'S OPENING STATEMENT

14 MR. RHODES: Thank you for your service.

15 The role of a jury is to find out what happened.
16 You don't need a law degree, don't need a medical degree,
17 and you don't need a pharmacy degree. The most important
18 thing you bring to this courtroom is common sense.

19 Let me caution you this is not like TV.
20 Evidence is not going to always be presented in a logical
21 order. It will be taken out of its order. It's almost
22 like making a movie where scenes are shot out of order, so
23 I ask you to suspend your judgment until you have the
24 entire picture.

25 One defendant in this case is a doctor, and the

1 other defendant is a pharmacy owner. The defendants'
2 accomplices are Cindy Martin, who was the person that
3 introduced the defendant, Troy Solomon, or the name of
4 Troy Solomon and his business venture to Lynn Rostie, who
5 is a pharmacist.

6 Mary Lynn Rostie is commonly referred to as Lynn
7 Rostie, and Cynthia Martin will be commonly referred to as
8 Cindy Martin. They will admit their illegal gains. You
9 should look at them carefully and weigh everything they
10 say and compare it to the evidence that will be presented
11 here. Listen to the terms of the plea agreement
12 carefully, and only then after you have taken all of those
13 things into consideration, can you properly weigh whether
14 each is telling the truth.

15 Let me begin by saying a word about the
16 terminology of a pharmacy. Just like any field or
17 profession, it has its own jargon, but if we take it
18 slowly, break it down, we can understand it well enough to
19 do our jobs.

20 Drugs fall into three basic categories;
21 controlled substances, dangerous drugs, over-the-counter.
22 Controlled substances are drugs that are highly addictive,
23 are susceptible to abuse, and are organized in categories
24 called schedules, sometimes also called schedule drugs or
25 controlled schedule drugs. The higher the abuse

1 potential, the higher the schedule.

2 For example, CI is a drug which has no medical
3 use or application and has high potential for abuse like
4 LSD, heroin.

5 Controlled substance II is a drug which does
6 have a limited legitimate medical use but is highly
7 addictive such as morphine, cocaine, Opium.

8 Controlled substances III, IV, and V in
9 descending order are drugs which have legitimate medical
10 use and are less likely to lead to addiction than higher
11 schedules such as I and II. Examples of Schedule III are
12 hydrocodone, amphetamines. Examples of Schedule IV are
13 Alprazolam and Xanax. Examples of Schedule V,
14 promethazine with codeine, mostly your cough syrups.

15 Any of the controlled -- any of the schedule
16 drugs I through V have dangerous potential. But if not --
17 but if handled or controlled properly are wonderful
18 advantages of modern medicine.

19 Dangerous drugs, drugs, which are less
20 dangerous, not schedule but still require prescription
21 because there is some potential for abuse and because of
22 the high potential of allergic reactions. Examples,
23 Amoxicillin or diabetic drugs.

24 Then you have your over-the-counter drugs, a lot
25 of everyday pain, cough, and cold medicines. These drugs

1 have almost no risk of abuse or addiction.

2 The drugs in this case -- the drug you will hear
3 about in this case is hydrocodone mainly, a
4 widely-prescribed and used drug, commonly known as
5 Vicodin, Lortab, Lorcet, and which when combined with a
6 substance like acetaminophen, the stuff that's in Tylenol,
7 in ibuprofen, the stuff in Advil or Motrin, is a Schedule
8 III controlled substance. Hydrocodone is a wonderful
9 drug. It is effective and has an accepted medical purpose
10 to treat moderate to severe pain.

11 But hydrocodone is nevertheless subject to being
12 abused and is a highly addictive drug. If not used
13 properly, it can lead to addiction and abuse. If not
14 monitored properly, it can even lead to death.

15 The charges, there are several charges in this
16 case, counts for you to decide at the end of this case.
17 For the moment I will discuss Count I. In Count I the
18 government alleges that the defendants violated Title 21
19 U.S. Code, Section 841. That statute makes it illegal to
20 distribute or possess with an intent to distribute
21 controlled substances, the schedule drugs I just spoke
22 about, unless expressly authorized by law.

23 This is the statute that is used typically when
24 people are caught selling or possessing drugs like cocaine
25 or heroin, what we commonly know to be illegal street

1 drugs.

2 MR. OSGOOD: Your Honor, can we
3 approach?

4 (Counsel approached the bench and the following
5 proceedings were had:)

6 MR. OSGOOD: This case is not about
7 heroin or cocaine. This is a Schedule III, IV, and V
8 case. He's talked about all these dangerous drugs that
9 are not in this case and have nothing to do with it. Plus
10 he's arguing to the jury. He has not stated a single fact
11 yet about what he's going to prove. I'd like him to stop
12 giving a factual statement and stop talking about Schedule
13 I drugs.

14 MR. RHODES: Judge, this is going to be
15 a complicated case for them to understand. I'm trying to
16 make sure they can understand these are illegal drugs.

17 MR. OSGOOD: It's going to be more
18 complicated without getting to the point.

19 THE COURT: Okay. Let's move along.

20 (The proceedings returned to open court.)

21 MR. RHODES: This law in our common
22 sense tells us that -- means that ordinary citizens cannot
23 possess, distribute, or handle these kinds of illegal
24 drugs. But this law applies to other legal drugs,
25 Schedule III controlled substances. You will hear that

1 Cindy Martin approached Mary Lynn Rostie and told her
2 about a proposition of would she be willing to sell drugs
3 to these individuals who are highly-known athletes and
4 they don't want to be known.

5 So she got a pricing from Cindy Martin -- from
6 Lynn Rostie, and Lynn Rostie then decided to join in this
7 business venture. Lynn Rostie subsequently received a
8 package containing prescriptions, and first it started off
9 with a mixture of noncontrolled substances as the first
10 shipment. And then over time more original prescriptions
11 came in with the name of Dr. Elder.

12 She was receiving prescriptions that did not
13 have a full address on them. She had to subsequently get
14 driver's licenses in the mail or get the driver's license
15 from Cindy Martin and other packages. They then began --
16 what you will see is they began to prescribe the same kind
17 of controlled substances always the same way.

18 And within those controlled substances you will
19 see that the judge -- I mean, that Christopher Elder was
20 either prescribing Lorcet or Lortab, 120 dosages. Then he
21 would also prescribe the Xanax as well.

22 Defendants Solomon and Johnson -- Defendants
23 Solomon and Elder all reside in the Houston area. Solomon
24 owns a pharmacy called Ascensia Nutritional Pharmacy
25 located at 3003 South Loop West, Suite 450, Houston,

1 Texas.

2 During the initial period of the conspiracy in
3 August of 2004, Elder worked part time as a medical
4 director of South Texas Wellness Center, a clinic located
5 on the same floor as ANP in Suite 415. However, ANP was
6 not open for business until December 2004. Elder was not
7 the owner of South Texas Wellness Center or ANP.

8 After TMS filled these prescriptions, TMS would
9 mail these prescriptions in boxes, FedEx boxes, to the
10 South Texas Wellness Center addressed to Mr. Elder -- to
11 the Defendant Elder. These packages were then signed off
12 and subsequently delivered to ANP. These boxes would not
13 be opened.

14 You will hear evidence that the boxes would be
15 delivered to ANP but not opened. Then you will also hear
16 that the boxes would be put in a bag and that Delmon
17 Johnson, who was the pharmacy manager for ANP, Ascensia
18 Nutritional Pharmacy, would be seen sometimes boxing up
19 some of these boxes as well as filling others.

20 There was a period where it stopped, where the
21 prescriptions for Dr. Elder stopped and then became the
22 Okose, Dr. Peter Okose, prescriptions. Again, same drugs,
23 same strength being filled at TMS. This became such a
24 chore that sometimes it would take days, and you will hear
25 that Mary Lynn would say that she felt like it was

1 becoming unbearable as far as trying to fill all these
2 prescriptions and trying to do it in a short period of
3 time.

4 She would get paid -- Troy Solomon would send
5 money in the mail via UPS to Cindy Martin. Cindy Martin
6 would receive that money, take the cash, take out her part
7 of it, and then give the money to Lynn Rostie as payment
8 for those drugs. The TMS use of that money was used to
9 buy more and more hydrocodone.

10 You will find out -- you will hear evidence that
11 their purchases of hydrocodone were some of the largest in
12 the state. You will also hear that two patients to whom
13 Defendant Elder wrote prescriptions for were deceased
14 before the issuance of some of their substances.

15 The other thing about this case is, is that the
16 law requires that a doctor to prescribe a controlled
17 substance must be within the usual course. It must be
18 within that usual course of the doctor's professional
19 practice and for a legitimate medical purpose. There must
20 be a valid doctor/patient relationship, and the drugs
21 prescribed must be related to a condition suffered by the
22 patient.

23 This is part of the statute where it says doctor
24 and pharmacist can only dispense and distribute as
25 authorized by law. Without this foundation, an order for

1 controlled drugs is not a valid prescription. Legally it
2 is not a prescription at all without this foundation.

3 Without this foundation, doctors and pharmacists
4 are drug pushers, no different than creeps in the alley.
5 Okay. But we're talking about the doctors here, and we're
6 talking about the pharmacist, Lynn Rostie.

7 Doctor -- there was things about it that should
8 have been raising suspicions. Troy Solomon as -- his part
9 in being a part of this conspiracy, seeing -- there were
10 shipments where the prescriptions were being filled by
11 letters of the alphabet beginning with one whole shipment
12 of Js, another Johnson, Ts. All of this indicated that
13 these prescriptions were not within the usual course of
14 professional practice.

15 MR. LEWIS: Your Honor, I'm going to
16 object. This is argument. It's not what the evidence
17 will show.

18 THE COURT: Counsel, approach.

19 (Counsel approached the bench and the following
20 proceedings were had:)

21 MR. OSGOOD: I'll join the objection.

22 THE COURT: I assume you have somebody
23 who's going to testify to that.

24 MR. RHODES: That the drugs were --

25 THE COURT: It's not in the course of

1 the official practice.

2 MR. RHODES: That's what they're going
3 to reach -- yes.

4 MR. OSGOOD: He's instructing them on
5 the law. I didn't object but he's telling them what the
6 law says. That's the court's job.

7 MR. RHODES: I haven't reached that.
8 I'm trying to make examples out of it, Your Honor.

9 MR. OSGOOD: He's telling them what the
10 law is.

11 THE COURT: The objection is overruled.
12 (The proceedings returned to open court.)

13 MR. RHODES: The court will tell you at
14 the end of the case and will instruct you on the law in
15 this case.

16 There's a second count to this, conspiracy to
17 commit money laundering. That is charged with the
18 Defendant Troy Solomon. Through this mechanism you will
19 hear evidence that there is showing the intent to conceal
20 that money, taking those illegal gains, funnel it to
21 intent to conceal it, also to promote that crime. There
22 are also several other drug charges that specifically
23 involve certain named individuals who were -- whose names
24 were used to get all of these drugs.

25 You will hear from various witnesses in this
85

1 case. You will hear from witnesses who worked with or
2 spoke with the defendants in this case. You will hear
3 about the defendants' words.

4 After a review of the evidence without passion
5 or sympathy, but as judges of the facts, you will conclude
6 --

7 THE COURT: All right. You're getting
8 beyond opening. You're going into closing now. Let's
9 save that for closing, okay.

10 MR. RHODES: Okay. At the end I'm going
11 to come back to you after the presentation of all this
12 evidence and ask that you find these defendants guilty.

13 MR. LEWIS: May it please the court.

14 THE COURT: Yes.

15 MR. LEWIS: Thank you, Your Honor.

16 DEFENDANT SOLOMON'S OPENING STATEMENT

17 MR. LEWIS: Ladies and gentlemen of the
18 jury.

19 The real story of this case is why is Troy
20 Solomon here? I'm going to spend just a few minutes going
21 through what the evidence will show in an attempt to frame
22 that question for you, ladies and gentlemen, as this trial
23 proceeds.

24 But to first -- to get to why Troy Solomon is
25 here, we really need to know a little bit about his life

1 and how he got here. You're going to hear evidence as to
2 that. You're going to hear evidence about Troy Solomon's
3 life. You're going to hear that Troy was born in Houston,
4 Texas. He was the son -- a very proud, young man, raised
5 by his maternal grandmother, that he graduated from
6 Bellaire High School in 1982.

7 After leaving Bellaire High School, the evidence
8 will show you that Troy began to pursue a career in the
9 criminal justice field. He went to the University of --
10 Houston Community College and then the University of
11 Houston pursuing that criminal justice degree.

12 As time wore on and bills mount, Troy Solomon
13 realized he had to join the workforce and not just be a
14 full-time student. You will learn that Troy Solomon went
15 to work for the Texas Department of Corrections while he
16 was attending college and studying his criminal justice
17 degree, a fairly natural fit.

18 Well, Troy graduated from the Texas Department
19 of Corrections and went on to be a peace officer, a police
20 officer commissioned by the State of Texas with the
21 Houston Independence School District. He served as a
22 police officer with the HISD School District for a couple
23 of years.

24 Then he was offered another opportunity, still
25 in law enforcement, with the Houston Community College

1 police officers. He was hired, he was promoted. And
2 after several years, you will learn that he graduated all
3 the way to the rank of lieutenant.

4 Well, along this path in criminal justice, he
5 met the love of his life, married her, had one son named
6 Jacoby. You will hear a little bit about Troy's formative
7 years that I'm not going to belabor us with now. I'll
8 fast forward the clock.

9 Troy Solomon leaves Houston Community College
10 for pursuit of more money. It's an unfortunate
11 realization that we all know that many of our public
12 servants, teachers, police officers, firemen are
13 underpaid.

14 Well, he's got a mouth to feed and
15 responsibilities at hand, so he takes a try at sales.
16 He's got some friends in the car business who say, You
17 know, Troy, you're good with people, you have a way about
18 you, you've got a knack, why don't you come try this.

19 Well, he did. He was very successful selling
20 high-end luxury cars in Houston from Momentum BMW to other
21 luxury car dealerships. It was during his time in sales
22 in cars when he was approached about an amazing
23 opportunity to be the lead salesman for an up-and-coming
24 drug distribution company.

25 Now, Troy didn't know a whole lot about

pharmaceuticals, but he knew how to sell. And the people at the company were so impressed with him, they offered him his own route. He achieved salesman of the year, salesman of the month, all kind of accolades in a job selling pharmaceutical sales to various doctors and entities around town.

It was around this timeframe, while he's a very successful outside salesman for MP Total Pharmaceuticals, that he met Philip Parker. Now, I want you ladies and gentlemen to remember that name because the evidence will be replete with references to Philip Parker.

You will learn that at a church function in 2003, Troy Solomon met Philip Parker. He was introduced to Mr. Solomon by some parishioners at Mr. Solomon's church that Mr. Parker was visiting from Dallas. You will learn that Troy Solomon and Philip Parker sparked up a friendship.

Mr. Parker confided in Troy Solomon his problems, a very bitter divorce to a pharmacist in Dallas, and troubles getting through that divorce. He explained to Troy, this Mr. Parker, that he had a lot of experience in building and maintaining pharmacies, he had done some with his wife, and he was hoping to bring a business to Houston.

Now, you will learn from the evidence that Troy

1 Solomon was not interested. Philip Parker had to pursue
2 Troy about this repeatedly. This with my question the
3 evidence will show you is why Troy Solomon is here because
4 what the evidence will show you is Troy Solomon's
5 kindness, his empathy, his compassion for Philip Parker's
6 continual pleas of I'm in a bad way here, I've got to make
7 money, I've got a great idea, just need your help.

8 Troy finally said yes. And you will learn that
9 the yes led to the formation of Ascensia Pharmacy. Now,
10 you'll hear Troy Solomon is not a pharmacist. Closest
11 Troy Solomon ever came to being a pharmacist is when he
12 got the outside sales job selling pharmaceuticals to
13 various doctors' offices.

14 But what you will learn from the evidence is
15 Philip Parker was very experienced in this area. Not only
16 was Philip Parker an experienced pharmacy owner, he was a
17 lawyer, and that will become very important as the
18 evidence plays out in front of you, ladies and gentlemen.

19 Because you will hear -- the evidence will be
20 clear Troy Solomon from first approach by Philip Parker to
21 the time when he finally has to run Philip Parker off
22 always asked, Is this legit, you doing everything right,
23 we following the rules?

24 Well, that will be a very important bit of
25 testimony for you, ladies and gentlemen. I think you will

1 focus in on that to learn why Troy Solomon is here and not
2 Philip Parker.

3 Along in this maturation of their relationship
4 and Mr. Parker selling Troy Solomon on the idea of this
5 pharmacy, you will learn about a man named Delmon Johnson.
6 Now, Delmon Johnson was a jack-of-all-trades. He was good
7 with his hands building things. For lack of a better
8 word, he was a general contractor.

9 He had built several pharmacies, build-outs of
10 strip centers and the like for Mr. Parker in the past and
11 came down to Houston with Mr. Parker at Mr. Parker's
12 insistence to follow up on this project Parker was selling
13 Troy Solomon on. You'll learn that Delmon Johnson built
14 out the entire Ascensia Pharmacy according to Philip
15 Parker's detailed instructions. Mr. Johnson will tell you
16 without equivocation this was Philip Parker's deal.

17 Troy Solomon, you will learn, the evidence will
18 be clear, was not present in Ascensia Pharmacy until he
19 ran Philip Parker off. He was busy working 65 to 70 hours
20 a week in his outside sales job.

21 Parker promised Solomon, you will learn, he
22 didn't have to do the hands on. All he had to do was help
23 him with the capital. Help me get this thing started. We
24 can make millions. I'll run it. Delmon Johnson will help
25 me. We just need your help to get it started, Troy.

1 That, ladies and gentlemen, is what the evidence
2 will show you is why Troy Solomon is here. Mr. Johnson
3 and others will testify the procedures, the protocols, the
4 workings of the pharmacy were solely constructed by Philip
5 Parker, not Troy Solomon.

6 As the pharmacy gets going, Mr. Solomon gets a
7 little suspicious, and he starts to ask questions that all
8 of us would ask. Well, let me see the books, how are we
9 doing? Because he was sold on this idea with the thought
10 you open a pharmacy, you're not going to make money. It's
11 like any small business, you're not going to make money
12 for a while. You've got to develop a clientele,
13 relationship with doctors, et cetera, so don't expect to
14 make our money back, Mr. Solomon, for a year or two.

15 Well, to Troy's shock and amazement when he
16 looks at the books several months after opening, he learns
17 that the pharmacy has grossed over a million dollars.
18 Now, while he was pleasantly surprised, he was also
19 concerned. He wasn't there every day. He rarely stopped
20 by Mr. Johnson will tell you.

21 Mr. Johnson became the pharmacy manager. Philip
22 Parker, after he built the place, said let's keep Delmon
23 on. Mr. Johnson grew into the pharmacy manager;
24 day-to-day operations controlled by Mr. Johnson, he'll
25 tell you.

1 Well, as Mr. Solomon comes by periodically,
2 Mr. Johnson will tell you, for a few minutes once or twice
3 a week, he notices what's going on. There seems to be a
4 minimal amount of traffic. It's a new business so he's
5 not alarmed.

6 But then when he sees those books and he sees
7 that revenue, he wonders where's it all coming from. So
8 he asks Mr. Parker for the books of the company so he can
9 take a look. Well, as you might expect, the evidence will
10 show you Mr. Parker wasn't compliant. He had this reason
11 or that stall or this excuse as to why he couldn't produce
12 the books.

13 Finally, Mr. Solomon put his foot down. In
14 2005, he said, Give me the books or get out. Well, Parker
15 reluctantly gives him the books. You will learn that Troy
16 Solomon went to Fisher Accountants, a tax service in
17 Houston, people he had a prior relationship from doing his
18 wife and his taxes, and gave them the books.

19 Well, we always heard and the old adage proved
20 true, it's a small world because the evidence will show
21 you that Mr. Fisher was very familiar with Philip Parker.
22 He had done Mr. Parker's books on some other pharmacies
23 before.

24 And he told Troy Solomon, he said, Troy, I know
25 you're good people, I know where you come from, you've got

1 to get away from this crook. Troy sees his whole world
2 crashing down around him. Why? Why, he asks. Well,
3 you'll learn Mr. Fisher told Troy Solomon of his prior
4 dealings and that he was a crook and he needed to get away
5 from him.

6 Armed with this information, Troy Solomon goes
7 back to confront Philip Parker on what's going on, how are
8 we making all this money, you told me we wouldn't make
9 money for a couple of years, what's really going on? I
10 continue to ask you are we following the law, this is
11 legit, everything is being done according to law? Yes,
12 yes, yes.

13 Keep in the back of your mind, man that Troy
14 Solomon met at work, experienced with pharmacies, owned
15 many of them, and he's a lawyer. Troy Solomon is not a
16 lawyer. He's not a pharmacist. He's a father, a
17 salesman. So he had to take his information as reliable.

18 But when confronted, when he's been told by this
19 accountant you got a crook on your hands, he tells him, I
20 don't need you anymore. Well, Parker walks out, leaves
21 without much discussion.

22 Again, really concerned Troy Solomon. Delmon
23 Johnson didn't leave. He came with Parker but he stayed
24 there with Solomon, and he'll tell you about what was
25 going on and what was not going on. It will be very

1 important. It will be the only voice that you will hear
2 from inside Ascensia from start to today. I want you to
3 wait and listen very carefully to what Mr. Johnson has to
4 say, because he will explain to you through the evidence
5 why it is that Troy Solomon is here.

6 So we're there in '05. We've confronted Parker.
7 We're now very nervous. We've run him off. What does
8 Troy Solomon do? He's told by the pharmacist, Well, if
9 that's the case, you've got paperwork you've got to change
10 at the board of pharmacy.

11 So he goes to the board of pharmacy, gets the
12 paperwork, and to his surprise he is listed as the owner
13 of Ascensia, the sole owner on paperwork submitted by
14 Philip Parker back in 2004. Well, that wasn't the deal.
15 The deal was this was a 50/50, co-equity, Troy Solomon was
16 responsible for getting the financing to get this up and
17 running, and Philip Parker was responsible for running the
18 pharmacy.

19 Yet the state board of pharmacy paperwork that
20 Parker files, you'll see it, and you'll learn, it was
21 filed as Troy Solomon 100 percent owner. If not for the
22 CPA Fisher, if not for Troy Solomon's suspicions, ladies
23 and gentlemen, you would have a much different story that
24 the evidence would tell.

25 The most telling evidence you will see, kind of

1 be in the form of a timeline that I'm going to try to show
2 you as different pieces of the evidence come in, but you
3 will learn without controversy, without impeachment, no
4 doubt about it, Philip Parker left Ascensia. He was run
5 out by Troy Solomon in the fall of '05.

6 Well, the government's witnesses, Pharmacist
7 Rostie, will have to tell you, ladies and gentlemen,
8 because it's the truth, that as soon as Parker was gone,
9 these prescriptions stopped like you turned off a spigot.

10 So you may be in answering the question why Troy
11 Solomon is here, asking yourselves the same question all
12 of you have in your mind, Where is Philip Parker?

13 I want to leave you with a thought about some of
14 the government's evidence and what I think you will hear.
15 In addition to the testimony you will hear about Troy
16 Solomon, you're going to hear the testimony about the
17 Pharmacist Rostie and Mrs. Martin who made a deal with the
18 government. They have, the evidence will show you, sold
19 the testimony the government was looking to buy for their
20 freedom.

21 MR. RHODES: Objection, Your Honor. Can
22 we approach?

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. RHODES: He's starting argument.

1 THE COURT: I agree.

2 MR. RHODES: It's gone too far.

3 MR. LEWIS: I'll curtail my remarks,
4 Your Honor.

5 THE COURT: By the way, you've used your
6 time.

7 MR. OSGOOD: You're in my time.

8 THE COURT: That's what I said.

9 MR. LEWIS: I'm on my last page. He had
10 the option to go first, Judge.

11 I'll wrap it up.

12 (The proceedings returned to open court.)

13 MR. LEWIS: I don't want to step on
14 Mr. Osgood's time too much. I got a little excited there
15 so let me wind down. Let me wind down with this.

16 The only people you will hear in this courtroom
17 or see point a condemning finger at Troy Solomon are those
18 witnesses that made a deal with the government. That's
19 it.

20 THE COURT: That's still argument,
21 Mr. Lewis.

22 MR. LEWIS: The evidence will show the
23 only witnesses the government will bring in that vein are
24 the pharmacist and Ms. Martin. The evidence will never
25 show, there will be no evidence that Troy Solomon ever

1 took any of these pills and distributed them to anybody.

2 At the conclusion of the evidence I will stand
3 before you after Judge Gaitan has given you all of the
4 instructions that apply to this case, and I will ask you
5 to find Troy Solomon not guilty because the evidence that
6 they will produce, that the government will bring you will
7 wholly fail to prove beyond a reasonable doubt that Troy
8 Solomon broke any of the laws they accuse him of breaking.

9 Thank you, ladies and gentlemen.

10 DEFENDANT ELDER'S OPENING STATEMENT

11 MR. OSGOOD: Good afternoon. One of the
12 things that's going to be important in our defense is what
13 I want to refer to as "the clock," and the year clock is
14 what I'm talking about. I'm going to explain that in a
15 minute. Basically what I'm talking about is when
16 everything happened. That's going to be vitally
17 important.

18 The charges in this case, the first count that
19 Mr. Rhodes talked about was conspiracy to distribute these
20 drugs, and the indictment charges that it occurred between
21 August of '04 -- I want you to remember these dates --
22 August of '04 and October of '05, almost about 14, 15
23 months. Bear that in mind.

24 Now, as did my able cocounsel, I'm going to tell
25 you a little bit what the evidence is going to show in

1 terms of my client. He grew up on the East Coast. He was
2 basically a Project kid. I think he'll tell you -- he's
3 going to testify he was a high school athlete. He broke
4 his ankle in high school and was on crutches, and his mom
5 told him to stay home and the doctor told him to stay
6 home. And he hobbled to school because he from the time
7 he was in high school wanted to be a doctor, and he'll
8 tell you that he had perfect attendance in high school and
9 he hobbled down there in high school. That's the kind of
10 person he is.

11 Now, he went on to go to the University of
12 Virginia in Charlottesville. He'll tell you, if you don't
13 already know, that is a highly-prestigious university
14 located in Charlottesville, Virginia. From there he
15 applied, took his board exams, and applied and got
16 accepted at a teaching hospital in Pennsylvania, very,
17 very well-known, exclusive hospital.

18 From there he went to Baylor where he did his
19 residency. He did his internship at the hospital in
20 Pennsylvania. He got down to Baylor and finished his
21 residency there. He'll tell you he was seeing as many as
22 -- or was responsible for 140 patients a night while he
23 was a resident there. Tremendous. Everything you've ever
24 heard about or expected that a resident does, he did.

25 At some point in the period of being a resident

1 or an intern, he decided on what discipline he wanted to
2 get into. The discipline he chose, he'll tell you, was to
3 be a physical therapist and pain management specialist.
4 The evidence will show that he, as he sits here today, he
5 is a practicing -- today a practicing board certified pain
6 management -- double board certified pain management
7 specialist. His license to prescribe controlled
8 substances has not been pulled and he is practicing today.

9 Now, he will tell you he has also since been
10 certified to treat patients with what's called Suboxone,
11 which is a drug withdrawal drug, and that he gets people
12 off of addiction problems, not puts them on them. And we
13 will have evidence that -- from witnesses we're going to
14 call that he was very stingy in the drugs he prescribed.
15 Not everybody could get what they wanted when they came to
16 see him.

17 Now, in that vein our evidence is going to come
18 from many of the government witnesses. They've got --
19 they gave you a sheet there with a list of them. Many of
20 these witnesses we informed the government we would call
21 ourselves if they didn't call them because it's as
22 important to show what didn't happen as it is to show what
23 did happen. Many of these witnesses, as Mr. Lewis said,
24 will talk about what didn't happen.

25 Now, let's talk a little bit about what the

1 situation was here. You had a lot of names and
2 terminology thrown at you. The evidence is going to be
3 that there is a shop down in Belton, Missouri, called The
4 Medicine Shoppe. It's just a contract or not contract, a
5 -- what do I want to call it? Like a McDonald's, a
6 franchise. It's a franchise pharmacy.

7 This Ms. Rostie ran it and owned it and has
8 owned it for -- had been in the business for 30 years.
9 She struck up a relationship with this woman, Martin.
10 You're going to hear Martin testify. And Martin will tell
11 you that she began to bring packages of money up from
12 Houston, Texas, and they were in three and five thousand
13 dollar cash increments, and that they were shipping drugs
14 back to this pharmacy or this South Texas Wellness Center.

15 Now, the evidence is going to show that Dr.
16 Elder out of medical school took a part-time job at the
17 South Texas Wellness Center. Now, the South Texas
18 Wellness Center is owned by a couple of ladies named
19 Johnson. One of the Johnsons is a chiropractor. They
20 would refer pain patients to Dr. Elder, and he would see
21 them and he would write prescriptions for them. And he
22 worked there part time.

23 Now, during this same period of time his mother
24 developed Stage B breast cancer, so not only was he
25 working part time, but he was taking time off from his

1 part-time work to fly up to New Jersey or -- I'm sorry,
2 Connecticut, to see her. So he wasn't there all the time,
3 and he worked just part time. And he was there just part
4 of the day.

5 He'd write his prescriptions. He'll tell you he
6 wrote a prescription, he gave it to the patient, and the
7 patient took it somewhere to get it filled. He's going to
8 testify, and there will be original prescriptions seized
9 from The Medicine Shoppe here, he doesn't know how they
10 got here, he didn't authorize them, and he doesn't -- I
11 mean, he didn't authorize them to be shipped up here, and
12 he doesn't know anything about that.

13 Telling is going to be the fact that Martin
14 never met him, doesn't know him, and can't testify about
15 him. Ms. Rostie never met him, doesn't know him, can't
16 testify about him.

17 Really important is going to be the financial
18 information that they put in in this case. You heard the
19 figure "a million dollars" there that was made and
20 generated by the pharmacy down there in Texas, and you
21 heard -- you'll hear similar figures about this pharmacy
22 up here in Missouri.

23 They pull the financial records on these people,
24 and you're going to see that Ms. Rostie has never -- I
25 don't think she even today, the evidence will be, hasn't

1 paid taxes even as of today on all this money she got.
2 They were building houses, getting -- buying expensive
3 cars, investing in the stock market, and everything else.
4 They did complete financials on these people, and that's
5 why they're charged with money laundering. Dr. Elder is
6 not charged with money laundering.

7 The evidence will be that Dr. Elder lived in a
8 \$600 a month apartment in Texas while all this was going
9 on and drove a pickup truck. Equally telling is the fact
10 that today, as we sit here, he owes \$257,000 in student
11 loans, and he actually deferred his student loans because
12 he could not -- or didn't have the money to pay them at
13 the time. He's paying them now diligently every month.

14 One of the things you need to look at when you
15 go through the evidence in this case is where's the beef
16 as they used to say in the old commercial. They looked at
17 his financials. In 2004 and 2005 -- or for the years 2004
18 and 2005 the IRS audited him, and they did a thorough
19 audit. He had to take his accountant down.

20 And when the dust settled from that audit, he
21 had, like, \$5,000 on deposit with the IRS at the time.
22 When the dust settled, he got 200 and some dollars back in
23 a refund. They found nothing.

24 Now, what happened down there in Texas at this
25 South Texas Wellness Center? As I said, it was set up as

1 a -- and both of these Johnsons, I believe, are going to
2 testify. It was a chiropractic clinic, and they were
3 doing a combination of pain management and chiropractic.
4 And they'd refer patients to Dr. Elder, and he would write
5 the prescriptions.

6 Patient would leave with a prescription. He
7 didn't tell them where to go to get it filled. He wasn't
8 referring patients to a particular pharmacy or anything.

9 Unbeknownst to him, these prescriptions were
10 coming up to Kansas City. There will be some original
11 prescriptions of his that you'll see that came up here.

12 They stopped coming up here in originals on --
13 in late 2004. He left the South Texas Wellness Center and
14 quit the job in -- on January the 1st of 2005, and moved
15 on. After he left, and that's why I say this clock is
16 important, remember this clock, this year clock, after he
17 left in January of 2005, massive numbers of prescriptions
18 for refills were faxed from this shop here in Missouri
19 back to Texas and were filled, and the drugs were shipped
20 from Kansas City back to Texas long after he was gone.

21 Now, while he was there, what was the shipping
22 arrangement? There will be a lot of UPS records in this
23 case. They would box these drugs in Missouri and ship
24 them to Texas. Some of them or many of them were
25 addressed to him.

1 But when they arrived, the employees at South
2 Texas Wellness Center, these Johnsons, these two women
3 that have been immunized, they signed for these boxes.
4 And, as Mr. Lewis suggests, it appears that maybe
5 Mr. Parker or Mr. Johnson took them out the back door.
6 But the one fact that remains is Dr. Elder never signed
7 for any of these boxes and never received these drugs and
8 didn't know what was going on.

9 Again, on the clock he left in January of '05,
10 and it continued for another 10 or 12 months. That's when
11 this Dr. Okose comes into the picture, and his scripts all
12 start coming up here to Kansas City. I want you to look
13 carefully at the evidence for -- well, strike that. I'm
14 not going to argue my case.

15 After he left, this Ascensia Pharmacy opened up
16 that Mr. Lewis just talked about. That was after Dr.
17 Elder went on to what was called Westfield Medical Clinic
18 and then a couple of other places. The scripts that he
19 wrote that ended up up here, the original scripts, had on
20 them "no refills."

21 Now, this Ms. Rostie is going to testify that
22 she is 30 years as a pharmacist. She never once when she
23 would get these faxes for -- she would generate the faxes
24 for refills actually, their computer. They'd kick them
25 off and they'd send them down to Texas, which is just

1 contrary to what you would expect. When you want a
2 prescription refilled, there will be testimony you would
3 go down to your doctor and you would say, "I need my
4 prescription refilled." And the doctor would say, "Okay,
5 how you doing, how do you feel, any changes in your
6 condition?" And he would authorize maybe the refill.

7 Just the opposite occurred here. The evidence
8 will be that the pharmacy, this Rostie woman, generated
9 all these refill requests by fax and they went to Texas.
10 And they were authorized by somebody in Texas, not Dr.
11 Elder. According to the forms, they claim authorized by
12 Troy, but there's not going to be any testimony, I think,
13 that they actually called Troy -- or maybe there is. I
14 don't know. But Dr. Elder had nothing to do with that.
15 And massive numbers of these things were refilled on his
16 prescriptions that had on them "no refill."

17 The introduction that occurred between him and
18 Mr. Solomon occurred in the summer of '04, and he met
19 Mr. Solomon, and Mr. Solomon and he became friends. He'll
20 tell you they talked periodically on the phone, and there
21 will be some phone records here. They talked about
22 sports. They talked about various things. He will
23 testify that he made no agreement with Mr. Solomon on any
24 business relationship where Mr. Solomon represented him as
25 some kind of agent or something.

1 He had nothing to do with running these
2 pharmacies. He didn't even know Mr. Parker until the
3 indictment. He did not know Mr. Johnson until the
4 indictment. And he basically is kind of odd man out in
5 this thing. Never signed for any of these boxes of drugs
6 that were shipped down there. And, again -- I'm going to
7 wrap up now.

8 I want you to look at the facts and look at the
9 money trail in this case, look at the fact he's not
10 charged with money laundering. Ask yourself what his
11 motive would be for doing any of this because they sure
12 haven't put a nickel's worth of currency in his pocket.
13 Doesn't make sense.

14 I think you'll find him not guilty.

15 THE COURT: First witness.

16 MR. RHODES: Government calls Martin
17 Redd.

18 CLAUDE MARTIN REDD, being duly sworn, testified:

19 DIRECT EXAMINATION BY MR. RHODES:

20 Q What is your name?

21 A Claude Martin Redd.

22 Q Mr. Redd, where do you work?

23 A I work for the Drug Enforcement Administration in
24 Kansas City.

25 Q What do you do for a living?

1 A I'm a diversion investigator with DEA.

2 Q What is a drug investigator?

3 A Diversion investigator. What we do is we
4 investigate crimes related to registrants such as
5 physicians, manufacturers, distributors of controlled
6 substances.

7 Q And calling your attention to May 10, 2006, did
8 you on that date conduct a search of a business located at
9 547 North Scott, Belton, Western District of Missouri?

10 A Yes.

11 Q What was the name of the business?

12 A The Medicine Shoppe.

13 Q Was The Medicine Shoppe a pharmacy?

14 A Yes.

15 Q Was a search warrant obtained for the pharmacy?

16 A Yes, it was.

17 Q And does the search warrant describe the place to
18 be searched?

19 A Yes.

20 Q And does it authorize what items to look for?

21 A It does.

22 Q I'm now going to show you Exhibit No. 543 for
23 identification. What is Government's Exhibit 543?

24 A It's a United States federal search warrant.

25 Q And is that a true and accurate copy of the
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1 search warrant?

2 A Yes, it is.

3 MR. RHODES: Government moves to admit
4 what has been marked as Government's Exhibit 543 into
5 evidence.

6 MR. LEWIS: No objection for
7 Mr. Solomon, Your Honor.

8 MR. OSGOOD: No objection, Your Honor.

9 THE COURT: No. 3, is that correct?
10 What's the exhibit number?

11 MR. RHODES: It's 543, Your Honor.

12 Government moves to admit 543.

13 THE COURT: It will be received.

14 MR. RHODES: And will that please be
15 shown to the jurors.

16 Q (BY MR. RHODES) Now, does that state the place of
17 business of the pharmacy shop on that search warrant?

18 A Yes, it does.

19 Q Please tell me approximately how many people
20 helped you execute the search warrant?

21 A It was in excess of five.

22 Q And what was your assignment in the execution of
23 the search warrant at the Medicine Shoppe?

24 A My assignment was to collect any evidence if
25 there was any evidence to be seized and also transport it

1 back to the Kansas City district office, more or less be
2 the evidence custodian.

3 Q Now, upon arrival at the Medicine Shoppe, what,
4 if anything, happened?

5 A When we arrived at the Medicine Shoppe, a search
6 warrant was executed, and after the business was secured,
7 we went in there. We brought items in to -- such as
8 boxes, tape, markers, and started looking through what was
9 described in the attachment of the search warrants.

10 Q I'm handing you what's been marked as
11 Government's Exhibits 547 through 593. Did you review
12 these photos prior to coming here today?

13 A I have.

14 Q Are they a fair and true -- accurate depiction of
15 The Medicine Shoppe as it appeared on May 10th, 2006?

16 A Yes.

17 MR. RHODES: The government moves to
18 admit Government's Exhibits 547 through 593 into evidence.

19 MR. LEWIS: No objection from Defendant
20 Solomon, Your Honor.

21 MR. OSGOOD: No objection.

22 THE COURT: Be received.

23 Q (BY MR. RHODES) After -- as the evidence
24 custodian, did you recover the various items of the
25 evidence from The Medicine Shoppe?

1 A Yes.

2 Q Did you secure the evidence at the Medicine
3 Shoppe?

4 A Yes.

5 Q After the items of evidence were secured, what
6 did you do next?

7 A Well, as it was, while we were executing the
8 search warrant, when other people that were assisting in
9 the search warrant, when they would find something to be
10 of evidentiary value, they would call me. I would go to
11 their location, which may have been a room that was
12 previously denoted as either Room A, B, C, so on and so
13 forth, and I would go to that area. I would get the
14 evidence and then log it on a handwritten evidence log
15 that I made up.

16 Q Okay. And after you had gathered those items --
17 so you would be called to where the item was and then you
18 would respond?

19 A Correct.

20 Q And then you would box them up, those who needed
21 boxes. What about those items that were already boxed up?

22 A Then we would just merely seize the box with the
23 contents already in the box.

24 Q What is a Form DEA-12?

25 A It's an official receipt.

1 Q Okay. And I'm showing you what has been marked
2 as Government's Exhibit 544. What is it that you're
3 looking at? What is that?

4 A That is a DEA Form 12.

5 Q Is it a true and accurate copy of the forms used
6 in the search of TMS?

7 A Yes, it is.

8 MR. RHODES: Your Honor, the government
9 moves to admit 546 into evidence.

10 MR. BOHLING: 544.

11 MR. RHODES: Oh, 544 into evidence.
12 Sorry.

13 THE COURT: Objections?

14 MR. OSGOOD: No, Your Honor.

15 THE COURT: Okay. It will be received.

16 MR. RHODES: At this time, Your Honor, I
17 would like to read the stipulation of facts regarding the
18 chain of custody to the jury.

19 The undersigned parties agree and stipulate that
20 there is no dispute that the exhibits in this case that
21 were seized, marked, and sealed by members of the Drug
22 Enforcement Administration and other law enforcement
23 officers and that the exhibits were stored and maintained
24 pursuant to normal police practices. The undersigned
25 parties further agree and stipulate that the government's

1 exhibits have not been altered or changed in any way from
2 the date they were recovered by the law enforcement
3 officer.

4 Therefore, it is agreed and stipulated that a
5 step-by-step chain of custody for any exhibit introduced
6 into evidence shall not be required for its admission into
7 evidence. This stipulation is entered into in order to
8 save trial time and narrow the issues by avoiding the
9 necessity of calling witnesses to establish chain of
10 custody for the government's exhibits.

11 This stipulation shall be marked as an exhibit
12 and admitted into evidence and read to the jury.

13 I move to admit Government's Exhibit 1160 into
14 evidence, Your Honor.

15 MR. LEWIS: No objection.

16 MR. OSGOOD: No objection.

17 THE COURT: Be received.

18 Q (BY MR. RHODES) I'm now showing you what has been
19 marked Government's 545.

20 What is that?

21 A That is a consent to search.

22 Q Is it a true and accurate copy of the consent to
23 search document that was used that day?

24 A Yes, it is.

25 MR. RHODES: Government moves to admit
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1 Government's Exhibit 545 into evidence.

2 MR. LEWIS: No objection by Solomon,
3 Your Honor.

4 MR. OSGOOD: No objection.

5 THE COURT: Be received.

6 Q (BY MR. RHODES) Why was the consent search
7 needed?

8 A This was a part of the business, but it was a
9 different area which had a different door. And it was the
10 address of 549 North Scott, which was not covered in the
11 search warrant.

12 Q So Lynn Rostie signed for the consent for you to
13 search that place and you seized evidence from there as
14 well?

15 A That is correct.

16 Q Now, I'm going to show you what is marked in the
17 boxes of 547 of -- 1207.

18 What is it?

19 MR. OSGOOD: Does that have a number?

20 MR. RHODES: Yes, 1207. It's a box
21 containing other exhibits.

22 MR. OSGOOD: Okay.

23 Q (BY MR. RHODES) Was this box used to recover
24 items of evidence?

25 A Yes, it was.

1 Q And what type of items were recovered?

2 A It's miscellaneous prescription documents, copies
3 of prescriptions, and original folders, banded folders of
4 prescriptions.

5 Q Okay. Now, the various prescriptions and the
6 miscellaneous are also government exhibit evidence, items
7 that are inside that box, which are marked Government's
8 Exhibits 1207, 14 through 17, 25 through 28, 526, 527,
9 534, 539, and 542.

10 Are those exhibits in substantially the same
11 condition now as when you recovered them?

12 A Yes.

13 MR. RHODES: The government moves to
14 admit into evidence Government's Exhibit 1207, 14 through
15 17, 25 through 28, 526, 527, 534, 539, and 542.

16 MR. OSGOOD: Are they original
17 prescriptions or what are they? I have no objection to
18 them being admitted for chain-of-custody purposes. I
19 object to the relevancy of them until there's some
20 foundation to show that they're otherwise admissible, Your
21 Honor.

22 MR. RHODES: Your Honor, may we
23 approach?

24 THE COURT: Yes.

25 (Counsel approached the bench and the following
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1 proceedings were had:)

2 MR. RHODES: We're saying that's real
3 evidence. That's items that were recovered and falls
4 under -- as part of this case.

5 THE COURT: Normally I don't allow
6 speaking objections.

7 MR. OSGOOD: Sorry, Your Honor.

8 THE COURT: If you have an objection,
9 come forward.

10 Has this already been ruled on by the court?

11 MR. RHODES: Been ruled on?

12 THE COURT: Yes.

13 MR. RHODES: The business record part,
14 they're coming in as business records. We're saying they
15 can come in as real evidence as well because they were
16 recovered from that place of business.

17 MR. OSGOOD: I'll go along as you rule
18 that they may be business records, but they have to make a
19 relevancy standing also.

20 MR. RHODES: They are relevant. They're
21 the gist of why we're here.

22 THE COURT: Just because you grabbed a
23 bunch of stuff from a business doesn't make them relevant
24 to a proceeding.

25 MR. OSGOOD: Exactly.

1 MR. RHODES: He's saying that those are
2 prescriptions. Those are evidence markings that are
3 relevant to this case as far as each -- the evidence
4 items.

5 THE COURT: Have you seen these
6 exhibits, Mr. Osgood?

7 MR. OSGOOD: He's given us 1,100 pages
8 of exhibits. I've had copies of his exhibits. I assume
9 I've had them. I've got up to 1105.

10 THE COURT: How are they relevant? I
11 haven't seen them. I don't know what they are. You're
12 offering them en masse.

13 MR. OSGOOD: There's so many of them.

14 MR. RHODES: That's the problem. There
15 are so many of them. I was asking him and other witnesses
16 to review them outside the courtroom so we don't take up
17 all the time, but they have been given -- they've had
18 these exhibits. They know the exhibits.

19 THE COURT: What do they portray?

20 MR. RHODES: In that particular box I
21 believe they are prescriptions. Those are original
22 prescriptions written by Dr. Elder. There's bundles. We
23 can also ask him to describe --

24 MR. OSGOOD: Somebody needs to identify
25 them and say what they are and that's what we're here

1 about.

2 THE COURT: If they are, as you say they
3 are, Mr. Rhodes, they'll be received.

4 MR. RHODES: Okay.

5 (The proceedings returned to open court.)

6 Q (BY MR. RHODES) What are some of the items that
7 are in -- would you please describe a few of the items.

8 A This one particular Government's Exhibit 534 is a
9 fax prescription or a copy of a prescription with the
10 pharmacy filled sticker on the back of it, which usually
11 denotes that the prescription was filled by the pharmacy.
12 It usually represents the doctor, how much, quantity, what
13 strength of prescription, and the drug. Usually it has --

14 THE COURT: Who is the doctor?

15 THE WITNESS: It states Dr. Peter Okose.

16 THE COURT: Okay. We're not going to
17 receive that exhibit. I thought we were going to only
18 limit it --

19 MR. RHODES: Right. May we approach,
20 Your Honor?

21 THE COURT: Yes.

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 MR. RHODES: In our case we have an
25 underlying coconspirator which is Peter Okose. His

1 scripts are also part of our conspiracy theory, which is
2 as --

3 THE COURT: Why are we mixing this with
4 the 404(b)?

5 MR. RHODES: It has nothing to do with
6 the 404(b). We have not got to the 404(b).

7 THE COURT: My inclination is to not
8 allow the 404(b). This is evidence that is collateral.

9 MR. OSGOOD: This is when I talk about
10 the clock, this is after he left the clinic in January of
11 '05, and they're mixing and matching this stuff. It's
12 going to confuse hopelessly the jury.

13 THE COURT: That allows you to make your
14 point, doesn't it?

15 MR. OSGOOD: This occurred after January
16 of '05, when he left and Mr. Okose was involved.

17 THE COURT: Why don't we get some stuff
18 involving Dr. Elder before we start adding all this other
19 stuff.

20 (The proceedings returned to open court.)

21 Q (BY MR. RHODES) I'm now going to show you what
22 has been marked as Government's Exhibit 1208. Was this
23 box used to recover items?

24 A Yes, it was.

25 Q And what type of items are there that are found

inside that box?

A There seems to be just miscellaneous notebooks. There's some things from the internet that has been printed off, miscellaneous prescription information, more notebooks, some invoices from Cardinal Health for The Medicine Shoppe, and a three-ring binder that's labeled "McKesson."

Q Inside Government's Exhibit 1208 are exhibits marked 40, 43, 45, 47, 49, 51, 594, 595, 1186, 1188 --

MR. OSGOOD: You're going too fast.

MR. RHODES: I'm sorry. 1186, 1188.

MR. OSGOOD: I lost track at 47.

MR. RHODES: These items are listed in the exhibit list, 47, 49, 51, 594, 595, 1186, 1188, and 1189.

Would you please show him the example of
Government's Exhibit No. 40.

Q (BY MR. RHODES) Was that an item that was inside the box as well?

A Yes, it was.

Q Okay.

MR. RHODES: The Government moves to admit those.

Q (BY MR. RHODES) Are those items in substantially the same condition now as when they were recovered on May

1 10th, 2006?

2 A Yes.

3 MR. RHODES: Government moves to admit
4 into evidence Government's Exhibits 1208, 40, 43, 45, 47,
5 49, 51, 594, 595, 1186, 1188, and 1189 into evidence.

6 MR. LEWIS: And he has those up there?

7 MR. RHODES: Yeah. They're also --

8 MR. LEWIS: No objection by Mr. Solomon,
9 Your Honor.

10 MR. OSGOOD: I guess I don't object,
11 Your Honor.

12 THE COURT: I guess they'll be received.

13 MR. RHODES: Thank you.

14 THE COURT: Mr. Rhodes, before we go
15 through the litany here, I'd like to speak with you at the
16 bench.

17 (Counsel approached the bench and the following
18 proceedings were had:)

19 THE COURT: This box of exhibits you
20 just offered and I received, what are you going to do with
21 those?

22 MR. RHODES: Eventually we're going to
23 have witnesses explain the documents. Right now we're
24 just putting them in.

25 MR. OSGOOD: We agreed all this stuff
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1 was seized. That's part of the chain of custody.

2 MR. RHODES: There was some question
3 about whether or not they were going to agree after they
4 saw it from his --

5 MR. OSGOOD: I want to talk about the
6 stuff he wrote and signed. Show it to me.

7 MR. RHODES: He was holding back -- this
8 was the evidence that was seized from the place.

9 MR. OSGOOD: I said I will not object to
10 chain of custody.

11 THE COURT: You're just objecting to
12 relevancy, is that it?

13 MR. OSGOOD: That's right.

14 THE COURT: There's no objection to
15 chain of custody.

16 MR. OSGOOD: We signed a stipulation.

17 THE COURT: We'll testify to it and take
18 up the relevancy issues.

19 How many boxes like that do you have?

20 MR. RHODES: Three more. Three or five.

21 THE COURT: We don't need him for that
22 if we can stipulate; is that correct?

23 MR. LEWIS: Yes.

24 MR. RHODES: Okay. They're stipulating?

25 THE COURT: Right?

1 MR. OSGOOD: Yeah.

2 THE COURT: Is that in the witness
3 stipulation?

4 MR. OSGOOD: It is, Your Honor.

5 THE COURT: That he just read?

6 MR. OSGOOD: It is, Your Honor.

7 (The proceedings returned to open court.)

8 THE COURT: You know what? I think
9 maybe this might be a good time to take a break. Before
10 we do so, I want to instruct the jury to not discuss the
11 case among themselves or with others or allow anyone to
12 discuss it in your presence. We'll take about 15 minutes.

13 Rhonda will show you where the jury room is. If
14 we go over a little longer, it's just so you can have a
15 chance to get comfortable in your new surroundings. Thank
16 you.

17 (The following proceedings were had out of the
18 presence of the jury:)

19 THE COURT: It occurs to me we may be
20 wasting valuable time. Maybe you guys need to talk and
21 make sure you've got your stipulations stipulated to
22 appropriately, and then we don't have to spend time going
23 through boxes of stuff that we're not going to use right
24 now. Since they're going to be stipulated to based upon
25 chain of custody, wait until you have the witnesses who

1 will talk about the relevancy of those exhibits to this
2 proceeding. Okay. Take this time and use it, if you
3 would.

4 (A recess was taken.)

5 (The following proceedings were had in the presence of the
6 jury:)

7 CLAUDE MARTIN REDD, previously being sworn, resumed the
8 stand:

9 DIRECT EXAMINATION (continued) BY MR. RHODES:

10 Q You have before you Box 1209. Does that box
11 contain the names regarding the unindicted coconspirators
12 and the conspirators Troy Solomon and/or Elder within that
13 box?

14 A I'm aware that this box contains prescriptions.

15 Q Okay.

16 MR. RHODES: Government moves to admit
17 Government's 1209 into evidence.

18 MR. LEWIS: No objection from
19 Mr. Solomon, Your Honor.

20 MR. OSGOOD: Was that a yes to the
21 prescriptions it contained or you just said prescriptions?

22 THE WITNESS: You are correct.

23 MR. OSGOOD: So you don't know what's in
24 the box?

25 THE WITNESS: I said they were
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1 prescriptions inside the box.

2 MR. RHODES: Do you want him --

3 MR. OSGOOD: Are they of the people he
4 asked you about or do you know?

5 THE WITNESS: I would have to look. The
6 box has been unopened.

7 THE COURT: Open it up and let him take
8 a look.

9 Do you have a box cutter or something you can
10 open the box with and let him take a look.

11 Q (BY MR. RHODES) While we're looking at it, we'll
12 just show you the exhibit.

13 MR. RHODES: Can you show him on this
14 monitor Government's Exhibit 12?

15 Q (BY MR. RHODES) Mr. Redd, Exhibit 12, are those
16 the types of items you're seeing in the box?

17 A Yes.

18 THE COURT: Why don't we let him finish
19 looking through the box since he seems to need his memory
20 refreshed about what's in there.

21 THE WITNESS: Could you repeat the three
22 names, please?

23 Q (BY MR. RHODES) Okose, is that one of the names
24 you're seeing inside that box?

25 A Yes.

1 Q Are there any other doctors' names?

2 A There's a name of Elder.

3 Q Okay.

4 A And a name of B-o-t-t-o.

5 Q Okay.

6 MR. OSGOOD: Botto.

7 Q (BY MR. RHODES) Those are the three names?

8 A Yes.

9 MR. RHODES: The government is not
10 moving into evidence the entire box. Government moves
11 into evidence Exhibits 12, 13, 23, 24, 30, 517, and 520
12 through 525.

13 THE COURT: They will be provisionally
14 accepted.

15 MR. LEWIS: Mr. Rhodes, I lost you. 12,
16 13, 23, 24.

17 MR. RHODES: 30, 517, 520 through 525.

18 MR. LEWIS: Thank you, sir.

19 MR. RHODES: Uh-huh.

20 Q (BY MR. RHODES) I'm showing you what is marked as
21 Government's Exhibit 1210. What is it?

22 A They're faxes from The Medicine Shoppe.

23 Q Okay. And what are the names on the folders of
24 -- that's listed? Do you see the names of either Okose,
25 Botto, and/or Elder?

1 A There's all three names.

2 Q Okay. Is it in the same condition now as when
3 you substantially -- substantially same condition now as
4 when they were recovered on May 10, 2006?

5 A It looks to be, yes.

6 MR. RHODES: Government moves to admit
7 into evidence Government's Exhibits 29, 52 through 116,
8 118 to 130, 132 through 139, 141 through 143, 454 through
9 516, 1048.

10 THE COURT: Any objections?

11 MR. LEWIS: None from Mr. Solomon.

12 MR. OSGOOD: I'll just handle it on
13 cross, Your Honor. No objection.

14 THE COURT: They'll be received
15 provisionally.

16 Q (BY MR. RHODES) I'm showing you what has been
17 marked Government's Exhibit 1211. What is it?

18 A They seem to be banded folders of original
19 prescriptions.

20 Q Who are some of the doctors listed?

21 A I see the names Elder, Botto, also the name
22 L-e-c-h-i-n.

23 Q Are those bundles in the same condition now as
24 when they were recovered on May 10, 2006?

25 A They look to be, yes.

1 MR. RHODES: And the government moves to
2 admit into evidence 1211, 50, 1, 2, 3, 4, 5, 6, 7, 8, 9,
3 10, 11, 18 through 22, 31, 32, 35 through 42, 44, 46, 48,
4 530.

5 THE COURT: Objections?

6 MR. LEWIS: No, Your Honor.

7 MR. OSGOOD: If it's provisional, then I
8 have no objection.

9 THE COURT: They'll be received
10 provisionally.

11 Q (BY MR. RHODES) Now, I'm going to show you --

12 MR. RHODES: Can you pull up Exhibit
13 553, which has been previously admitted into evidence.

14 Q (BY MR. RHODES) Would you please tell us what is
15 depicted in Government's Exhibit 553? Will you please
16 show it to the jury?

17 A Yeah. Exhibit 553 is a picture of a metal bin
18 that contained this box and other boxes.

19 Q Okay. And Government's Exhibit 555, what is
20 depicted in that picture?

21 A This was the box that you previously had up here
22 with manila folders and prescription fax information.

23 Q And showing that it was found at The Medicine
24 Shoppe?

25 A Yes.

1 Q Prior to court today, did you review a video of
2 the search of The Medicine Shoppe?

3 A Yes.

4 Q Now, that video is marked as Government's Exhibit
5 546. Does Government's Exhibit 546 fairly and accurately
6 depict The Medicine Shoppe as it appeared on May 10, 2006?

7 A Yes, it does.

8 MR. RHODES: Government moves to admit
9 Government's Exhibit 546 into evidence.

10 MR. LEWIS: No objection, Your Honor.

11 MR. OSGOOD: No objection.

12 THE COURT: Be received.

13 MR. RHODES: May the video be shown to
14 the jury, Your Honor?

15 THE COURT: Yes.

16 Q (BY MR. RHODES) Can you tell us what are we
17 looking at?

18 A This is a video from the outside going into the
19 inside, the different rooms that were in the pharmacy.
20 This looks like the main area of the pharmacy where all of
21 the medicines, Band-aids, where this is the back of the --
22 behind the register and the counter where they made
23 drinks. Those were the controlled substances. That's a
24 storage room.

25 **That was moving back towards the administrative**

1 area where they had desks, computers, more controlled
2 substances, and that was the back door. I believe that
3 restroom was to the left of that.

4 That's the main pharmacy area again. This was
5 in an adjacent area they were doing construction in. That
6 F was representing a piece of paper where we noted -- each
7 room has to be a letter.

8 MR. RHODES: Okay. We can cease the
9 video at this point in time.

10 MR. OSGOOD: What exhibit number was
11 that, Your Honor?

12 THE COURT: I'm sorry?

13 MR. OSGOOD: Exhibit number on that
14 video?

15 THE COURT: 546, I believe.

16 MR. OSGOOD: Thank you.

17 MR. RHODES: No further questions of
18 this witness, Your Honor.

19 MR. LEWIS: No questions, Your Honor.

20 CROSS-EXAMINATION BY MR. OSGOOD:

21 Q I guess it appears from the photograph, then,
22 these boxes were in The Medicine Shoppe boxed this way
23 when you seized them?

24 A As far as this box and two other boxes that were
25 shown, yes.

1 Q Which box are we referring to when you say
2 "this"? We've got to put a number on it.

3 A Okay. Government's Exhibit 1211.

4 Q Was actually boxed this way in The Medicine
5 Shoppe?

6 A That's correct. This is their original box.

7 Q Were the prescriptions folded up this way with
8 these rubber bands the way they are?

9 A That is correct.

10 Q Okay. Now, we're getting somewhere.

11 Now, which other box did you seize that was
12 seized from The Medicine Shoppe that was seized the same
13 way?

14 A There was another box exactly like this that had
15 the original markings of the prescriptions.

16 Q Okay.

17 A And then there was a smaller box that had folders
18 and fax information.

19 Q Can we get one of those up here? I've got a
20 question about each of them.

21 MR. OSGOOD: I won't be too long, Your
22 Honor.

23 MR. BOHLING: It's 1209.

24 Q (BY MR. OSGOOD) This is 1209. This is another
25 box apparently we saw from the photo that was on those

1 racks back there; is that right?

2 A That's correct.

3 Q Did you inventory these individually and prepare
4 an inventory sheet as to what's in here for each and every
5 one of these?

6 A I prepared an evidence log that showed what was
7 in each box.

8 Q How did you identify the items in the box, by the
9 numbers on the exhibit itself? Obviously these little,
10 yellow stickers were not on there, were they?

11 A I'm not sure about that.

12 MR. OSGOOD: These yellow stickers were
13 not on there, were they?

14 MR. BOHLING: No. Your Honor, we added
15 those stickers as exhibit stickers. They're exhibit
16 stickers for court.

17 Q (BY MR. OSGOOD) Did you determine the date range
18 for each of these boxes?

19 A I did not, no.

20 Q Okay. So do we know whether or not, for example,
21 this box that has prescriptions in here, whether they were
22 issued in '04 or '05?

23 A I would not know.

24 Q Same question on here, do we know whether these
25 prescriptions are '04 or '05?

1 A No, sir, I would not know.

2 Q Okay. There's another box over here. What was
3 it?

4 A It was a --

5 Q These folders with the doctors' names on them,
6 were those prepared by you agents, or were those actually
7 in the box that way when you seized the records?

8 A Those, I believe, were exactly the way they are
9 prepared from The Medicine Shoppe. That wasn't added.

10 Q So someone had a file folder with a doctor's name
11 on it, is that right, that says "Fax forms from Elder"?

12 A That's correct.

13 Q All right. Now, these are Xerox copies of faxes,
14 aren't they, that were sent out?

15 A They appear to be, yes.

16 Q And did you do an inventory as to the dates those
17 were sent out?

18 A I did not, no.

19 Q Do you know the difference between an original
20 prescription and a fax back to Texas, for example, for
21 refills? Did you --

22 A I would be able to look at an original
23 prescription and tell you that it's an original
24 prescription, yes.

25 Q Certainly. Did you do an analysis of any of

1 these boxes to determine whether or not they were original
2 prescriptions coming from Texas as opposed to requests for
3 refills that were faxes sent back to Texas?

4 A No, sir.

5 Q And the times that that occurred, the sequence it
6 occurred in?

7 A No, sir.

8 Q You have any knowledge, for example, as to when
9 Dr. Elder worked at South Texas Wellness Center, the
10 dates?

11 A I do not, sir.

12 Q So basically you were just one of the people that
13 boxed this stuff up and carried it out?

14 A I was the evidence custodian that obtained all
15 the evidence or things that looked as evidence.

16 Q Okay. We've agreed with you that you didn't
17 monkey with the boxes?

18 A That's correct.

19 Q What we got here is what you got there?

20 A That's correct.

21 Q Okay. Now, we're getting somewhere.

22 Thank you.

23 A Yes, sir.

24 MR. OSGOOD: That's all, Your Honor.

25 THE COURT: Okay. Any follow-up?

1 Let this witness step down.

2 (Witness excused.)

3 MR. RHODES: Government calls Donna
4 Kerste.

5 DONNA KERSTE, being duly sworn, testified:

6 DIRECT EXAMINATION BY MR. RHODES:

7 Q What is your name?

8 A Donna Kerste.

9 Q Ms. Kerste, what do you do for a living?

10 A I'm retired.

11 Q You're retired.

12 Are you a former employee of The Medicine
13 Shoppe?

14 A I am.

15 Q Approximately when did you begin working at the
16 Medicine Shoppe?

17 A October 2004.

18 Q All right. And when did you cease working at The
19 Medicine Shoppe?

20 A October 2006.

21 Q Where is The Medicine Shoppe located?

22 A 547 North Scott in Belton, Missouri.

23 Q Okay. Now, what was your -- what were your
24 duties and responsibilities at The Medicine Shoppe?

25 A When I was hired, it was as front cashier clerk,
135

1 and as I was there longer, I took on added
2 responsibilities of being responsible for ordering all the
3 OTC stuff at the front end of the store, filing, answering
4 the telephone on occasion, pretty much whatever was asked
5 to be done.

6 Q Okay. Who was the pharmacist in charge at The
7 Medicine Shoppe?

8 A Lynn Rostie.

9 Q Is that Mary Lynn Rostie?

10 A Yes.

11 Q Was Mary Lynn Rostie also the owner of The
12 Medicine Shoppe?

13 A She was.

14 Q While working at The Medicine Shoppe, did you
15 become aware of any out-of-state prescriptions being
16 filled at The Medicine Shoppe?

17 A Yes.

18 Q Now, what was the name of the state that you
19 primarily saw that was the --

20 A What was -- I'm sorry?

21 Q What was the name of the state that you primarily
22 saw those prescriptions were coming from?

23 A Texas.

24 Q And do you know how the prescriptions were sent
25 to The Medicine Shoppe?

1 A Over the fax machine.

2 Q Over the fax machine. Do you know if there were
3 originals as well?

4 A I believe there was originally maybe something
5 that came in the mail but -- received that way instead.
6 But for the most part they just were -- I saw the fax
7 copies.

8 Q And did you see the names of the doctors involved
9 with the prescriptions?

10 A Dr. Elder and a Dr. Okose are the two that I
11 remember.

12 Q And were these prescriptions being filled at The
13 Medicine Shoppe?

14 A Yes.

15 Q Now, which employee was primarily responsible for
16 handling the Texas prescriptions?

17 A That would have been Jill Gerstner.

18 Q And what was Jill Gerstner's title at The
19 Medicine Shoppe?

20 A She was a pharmacy tech.

21 Q Okay. And from time to time -- were these like a
22 small amount of prescriptions being filled from Texas, or
23 was it a large amount?

24 A No. It was a large amount.

25 Q And would that be Jill's -- mainly her only job

1 was to --

2 A She handled pretty much everything from the entry
3 into the computer to getting them, you know, filled, and
4 they had to be boxed. They had to be scheduled for pickup
5 by FedEx.

6 Q From time to time did you help out with --

7 A On occasion I was asked to help either fill the
8 bottles or put them in a box. I was more responsible for
9 filing of old prescriptions.

10 Q Now, there was a Patty Webb who worked at The
11 Medicine Shoppe as well during your tenure?

12 A Yes.

13 Q What was her role at The Medicine Shoppe?

14 A She was also a pharmacy tech, but she was totally
15 responsible for the store's customer base in the local
16 area. So she would receive scripts, she would fill them.

17 Q When you were helping out filling the
18 prescriptions, what were the names of the drugs you
19 primarily saw?

20 A Alprazolam, promethazine, and hydrocodone and
21 those -- there was two different strengths of those, I
22 think, a 500 and a 650, I believe.

23 Q And that's -- you're referring to hydrocodone
24 having those two different strengths?

25 A Yes. There was two different strengths of the

1 hydrocodone.

2 Q Did The Medicine Shoppe receive prescription
3 refill orders as well from the state of Texas?

4 A I believe they were faxed to her also.

5 Q Now, you were generating so much business. When
6 the drug distributors would deliver, just tell us about
7 what the delivery looked like when they delivered drugs.

8 A When our orders are coming every day, we have
9 something coming in. Two primary vendors were McKesson
10 and Cardinal. When they come in, they're in great big
11 totes, plastic totes, and my job was to go through them,
12 match them against the bill of lading and --

13 Q Roughly how much -- if you -- you described for
14 the jury a big plastic tote that contained drugs that were
15 ordered from McKesson or Cardinal Health. Approximately
16 what percentage of that would be the hydrocodone and what
17 percentage would be the other drugs?

18 A They came -- the hydrocodone and that type of
19 stuff, in particular the hydrocodone, the totes are just
20 delivery tubs that come out from whoever. And they're
21 probably about this (indicated) long and they're about
22 this (indicated) deep. And they'll have whatever was
23 ordered in them. If it's the hydrocodone, they're stacked
24 in the bin, and then there would be another stack and --
25 whatever they could fit in is basically how they did it.

1 Q Okay. Do you know the name "Troy"?

2 A Yes. That's the only name that I'm aware of that
3 called the store on occasion, and I -- if I answered the
4 phone, I would transfer the call over to Jill or Lynn.

5 Q And how would you know it was Troy? Did he say
6 his name?

7 A Well, it's -- I mean, you answer the phone, you
8 ask me, I ask who's calling. Yeah, so that's how I would
9 know.

10 Q Okay. And who primarily talked to Troy?

11 A I believe Jill pretty much. On occasion if she
12 was busy or something, Lynn would take their call but
13 pretty much Jill.

14 Q Do you know Cindy Martin?

15 A Yes.

16 Q How do you know Cindy Martin?

17 A Cindy was a client of The Medicine Shoppe
18 initially is how I knew her, and later I know that she
19 came in. She would come by the store -- if it wasn't to
20 pick up prescriptions, she'd come by the store to see --
21 you said Mary Lynn Rostie. I know her as Lynn Rostie.

22 Q You can say Lynn Rostie.

23 A Right.

24 Q So when she would come in the store, she would go
25 visit Lynn Rostie?

1 A On occasion Jill but usually Lynn, yes.

2 Q Okay. And on October 20, 2005, were you present
3 when an inspector from the Missouri Board of Pharmacy came
4 to The Medicine Shoppe to do a routine inspection?

5 A Yes.

6 Q Did you assist him whenever he asked for certain
7 items or to make photocopies? Did you help out in any of
8 that regard?

9 A Yes. I was asked to go back and make copies and
10 that's what I did.

11 Q Were you present when the officers searched The
12 Medicine Shoppe on May 10th of 2006?

13 A I kind of walked into it. It was my late day. I
14 either worked 9 to 5 or 10 to 6. It was my late day, so I
15 didn't get there until ten. When I went to go in, I was
16 told I couldn't. Then I said I worked there. They went
17 in to talk to somebody. At that point I was escorted in
18 and told to sit at a certain table.

19 Q Do you know how the prescriptions from Texas were
20 shipped back to Texas?

21 A They're boxed up, and FedEx came and would pick
22 them up.

23 Q Would FedEx regularly come to the business to
24 come get these boxes?

25 A Yes.

1 Q Was that a large part of the business, all this
2 business from Texas?

3 A I'm not sure what you mean "a large part of the
4 business."

5 Q Well, you were --

6 A The store is basically local.

7 Q It's a local store. But you were selling a lot
8 of hydrocodone to Texas?

9 A Yes.

10 MR. RHODES: I have no further questions
11 of this witness.

12 CROSS-EXAMINATION BY MR. LEWIS:

13 Q Afternoon, ma'am.

14 A Good afternoon.

15 Q My name is Chip Lewis. I don't know that we've
16 ever met.

17 A No, sir.

18 Q I represent Troy Solomon. I'd like to ask you
19 just a couple of questions.

20 Is it Mrs. Kerste?

21 A Yes, sir.

22 Q Ms. Kerste, it's my understanding that you came
23 to work at The Medicine Shoppe sometime in 2004?

24 A Yes, sir.

25 Q Was that mid or late 2004?

1 A That would have been late. It was in October.

2 Q And it's further my understanding that you
3 noticed these faxes of prescriptions to be filled by The
4 Medicine Shoppe coming in early 2005?

5 A I would say probably. I honestly don't remember
6 timeframes, but I would say, yes.

7 Q Fair enough.

8 Well, you will recall that by the time of the
9 pharmacy inspection of 10/20/05, October 20th of '05, The
10 Medicine Shoppe was no longer receiving the faxes,
11 correct?

12 A Not to my knowledge. I wasn't -- I mean, I
13 wasn't working down where the fax machine is, et cetera.
14 So what I would see would be on the counter once it was
15 down at Jill's workstation.

16 Q Understood. And you were aware that these FedEx
17 boxes, once Pharmacist Rostie or Jill were finished
18 filling them, were FedEx'd back to Texas to the doctors
19 who had written the prescriptions?

20 A Yes.

21 MR. LEWIS: Pass the witness.

22 CROSS-EXAMINATION BY MR. OSGOOD:

23 Q Ma'am, my name is John Osgood. I represent
24 Dr. Christopher Elder.

25 Have you ever met Dr. Elder?

1 A No, sir.

2 Q Ever talked to him on the phone?

3 A Not to my knowledge.

4 Q Now, you remember my investigator came out and
5 talked to you, Mr. Reeder? Do you remember that?

6 A Yes.

7 Q You told him pretty much what you have told us
8 here today, didn't you?

9 A As far as I know.

10 Q Could you be a little bit confused about the
11 dates on this? I mean, this was in 2004, 2005. If I told
12 you there were scripts coming up there in 2004, would you
13 dispute that?

14 A I'm not aware of it. I was not aware of it.

15 Q Okay. You started in October of '04; is that
16 right?

17 A I did.

18 Q All right. Now, when the prescriptions were
19 boxed up and shipped to Texas, was there somebody's name
20 on them, do you remember? Did you box them?

21 A I honestly don't remember the name -- a specific
22 name on them.

23 Q Okay.

24 A But I wasn't involved with sending them out.
25 They were taken and put back behind my register for

1 pickup.

2 Q Did you and Ms. Rostie talk both socially and
3 professionally on the job?

4 A Somewhat, yes.

5 Q Did you and any other employees talk on a regular
6 basis?

7 A Somewhat, yes.

8 Q You talk about the business and how it's going
9 and what you're doing, what you're selling this week, the
10 increase in these amounts of drugs, that kind of thing?

11 A I didn't particularly, but, yeah, there was
12 conversations between the rest of the employees and Lynn
13 and myself.

14 Q All right. And my investigator asked you, didn't
15 he, do you remember him asking you, did you ever hear
16 anybody in those conversations talking about all of this
17 mention a name "Dr. Elder"? And you said no, didn't you?

18 A I don't believe so.

19 Q What did you say?

20 A I don't remember.

21 Q Well, did you ever hear any of these other people
22 talking about Dr. Elder being involved in some
23 prescription scheme?

24 A I believe the name came up. I know I saw it on
25 prescriptions.

1 Q Prescriptions?

2 A Yes.

3 Q That's all though.

4 But you never heard a bunch of conversation
5 going on about --

6 A About Dr. Elder?

7 Q Yeah. Elder is making tons of money because
8 we're running this illegal prescription --

9 A No, I never heard anything like that.

10 Q In fact, Ms. Rostie claimed she wasn't doing
11 anything wrong, didn't she?

12 A Yes, sir.

13 Q And you were a little bit surprised that she had
14 pled guilty and got into all this trouble, weren't you?

15 A A little bit, yeah.

16 Q Bottom line is, though, you never heard any
17 discussion about Dr. Elder doing specific things, all you
18 remember is you saw his name on prescriptions?

19 A I did not hear his name in reference to
20 day-to-day business, no.

21 Q Okay. Now, do you remember prescriptions in his
22 name coming up there after January 1 of 2005?

23 A I apologize. I don't remember dates.

24 Q Were a lot of these prescriptions still coming
25 from Texas after January 1 of 2005, clear up until

1 October?

2 A There were prescriptions coming through in 2005,
3 because that's when I remember them.

4 Q Okay. Now, you're not a pharmacy tech; is that
5 right?

6 A I am not.

7 Q You weren't dabbling in filling them or anything
8 like that? That would be, I think, impermissible.

9 A The only thing that I did was bottle up and box
10 up and that kind of stuff when I was asked to.

11 Q Okay.

12 MR. OSGOOD: That's all.

13 MR. RHODES: No further questions for
14 this witness, Your Honor.

15 THE COURT: Thank you, ma'am. You may
16 step down.

17 (Witness excused.)

18 JILL GERSTNER, being duly sworn, testified:

19 DIRECT EXAMINATION BY MR. RHODES:

20 Q What is your name?

21 A My name is Jill Gerstner.

22 Q Where do you live, Ms. Gerstner?

23 A I live at 11704 Fuller Avenue, Kansas City,
24 Missouri 64134.

25 Q Are you a former employee of The Medicine Shoppe?

1	A Yes, I am.
---	--------------

2 Q Approximately when did you begin working at The
3 Medicine Shoppe?

4 | A October 29th, 2001.

5 Q And when you began working at The Medicine
6 Shoppe, what was your title -- your job title?

7 | A I was a pharmacy technician.

8 Q And did your title or your responsibilities get
9 bigger or you take on more duties along -- when you worked
10 at The Medicine Shoppe?

11 | A Yes, sir, I did.

12 Q What were some of those other duties that you
13 took on?

14 A I became assistant manager. I was a privacy
15 officer having to do with HIPPA.

16 Q When did you stop working at The Medicine Shoppe?

17 A September 30th, 2008.

18 Q What were your duties as an assistant manager and
19 pharmacy tech at The Medicine Shoppe?

20 A I was the lead tech. I had to make sure that all
21 the drug -- the prescriptions were ordered in, the drugs,
22 that they were put back into inventory. I had to make
23 sure inventory was complete, type up scripts. I ran the
24 monthly statements and sent those out.

25 Q Now, calling your attention to August of 2004,

1 did The Medicine Shoppe begin filling prescriptions for
2 doctors who were located in Houston, Texas?

3 A What was that first word you used?

4 Q Did The Medicine Shoppe begin filling
5 prescriptions for doctors who were located in Houston,
6 Texas?

7 A Yes.

8 Q Okay. And how did The Medicine Shoppe come about
9 to be filling prescriptions for doctors who were located
10 in Texas?

11 A Cindy Martin came in and had a meeting with Lynn
12 Rostie.

13 Q And following that meeting, then what happened?

14 A She would bring in prescriptions for us to fill.
15 That's how it began.

16 Q Now, was Cindy Martin a frequent visitor during
17 that time period?

18 A Yes.

19 Q Now, when she would come visit, and I'm talking
20 about the time period of August 2004 through October 2005,
21 would she bring anything with her? Did she carry any
22 items from time to time or give out any packages?

23 A She would bring in scripts. She would bring in
24 payments for prescriptions that was sent to Houston in
25 envelopes.

1 Q And when you got that first shipment of scripts,
2 did you assist and help filling those scripts, filling the
3 prescriptions from Texas?

4 A Yes, I did. I typed them up.

5 Q And were you the one who primarily handled the
6 Houston business?

7 A Yes, sir, I was.

8 Q Okay. And when I tell -- take us through how is
9 -- when you got the prescription, tell us the data entry
10 and what would you do.

11 A We would get the prescription, we would type it
12 into the computer, print out all the labels, get all the
13 drugs together, and fill them, put the labels on.

14 Q Now, would the label be put on the bottle itself?

15 A Yes, sir.

16 Q And what would -- would a label also be put on
17 the prescription itself?

18 A Yes, sir, on the back of the prescription. The
19 pharmacist had to check it because it was a controlled
20 substance and initial it.

21 Q Okay. Now, was that mainly your duty, or from
22 time to time did you get help from other people in filling
23 the prescriptions from Texas, or was that, like, a
24 full-time event for you when you were filling those
25 prescriptions?

1 A As far as typing them?

2 Q Yeah, typing them out.

3 A Typing them, I mostly did that I would say 95
4 percent of the time. As far as filling, no, I didn't so
5 much as fill them.

6 Q Okay. Now, would -- the filling would be by
7 whom?

8 A Randy Rostie. We had a workflow machine that we
9 would put the drugs on that would tell us exactly how many
10 drugs were in there -- in that bottle, and they would just
11 go -- thrown in there, label put on them.

12 Q And then once you got the bottle filled up, would
13 someone sign off on it? Would that be Lynn Rostie?

14 A Yes, sir.

15 Q She would check the prescription?

16 A Yes, sir.

17 Q Now, once -- how many prescriptions would you
18 fill at a time or be on one date approximately?

19 A We could fill probably on an average 200, 250.

20 Q Prescriptions?

21 A Uh-huh.

22 Q At a time?

23 A Uh-huh.

24 Q Yeah. And did those prescriptions say the same
25 drug and everything time after time?

1 A It was whatever the doctor ordered. If he
2 ordered more Xanax -- excuse me, the correct term was
3 Alprazolam, 2 milligrams, that's what we would ship. If
4 he didn't want it then and he wanted the hydrocodone
5 10/500, that's what we would ship. We would ship whatever
6 the doctor ordered. It would not be the same every time.

7 Q Okay. I'm going to show -- now, before today you
8 were shown numerous prescriptions?

9 A Yes, sir.

10 Q Numerous faxes. Do you remember that?

11 A Yes, sir, I do.

12 Q And you remember going through those -- looking
13 at all these various prescriptions?

14 A Yes, sir.

15 Q Were these prescriptions and prescription faxes
16 and documents -- the items that were seized, were these
17 items that were kept in the normal course of business?

18 A Yes, sir, they were.

19 Q And were these records maintained by The Medicine
20 Shoppe?

21 A Yes, sir, they were.

22 Q And the act of filling those prescriptions and
23 those prescription refills, were those records made at or
24 near the act or the events appearing on them, the acts
25 being the entry that you said you would make on the

1 prescriptions as well as Randy and others helping out?

2 A Yes.

3 Q Now, were these documents prepared in the regular
4 course of the pharmacy practice conducted by Mary Lynn
5 Rostie and her staff?

6 A Yes, sir. We would do them then, uh-huh.

7 Q And when you were putting in information, would
8 these records be accurate?

9 A Yes, sir, to the best of my knowledge.

10 Q And was it the regular practice of The Medicine
11 Shoppe to keep such records?

12 A Yes, sir.

13 MR. RHODES: Your Honor, those records
14 were marked as Government's Exhibits 1 through 32, 35
15 through 143, 454 through 527, 530, 534, 539, 542, 594,
16 595, 1048, 1085, 1086, 1089 through 1103, 1186, 1188, and
17 1189. The government is now asking to move to have those
18 exhibits admitted into evidence.

19 THE COURT: Objections?

20 MR. LEWIS: None from Mr. Solomon, Your
21 Honor.

22 MR. OSGOOD: No, Your Honor.

23 THE COURT: They'll be received.

24 MR. RHODES: Would you please pull up
25 Government's Exhibit No. 1 into evidence.

1 Q (BY MR. RHODES) Would you please describe for us
2 what it is that is listed on this prescription?

3 A The name of the patient, the date the script was
4 written, the DEA number of the doctor, the doctor,
5 Christopher Elder, the address.

6 Q What address is listed there?

7 A 3003 South Loop West, Suite 415, Houston Texas
8 77054.

9 Q Going to page No. 2 of that document, now,
10 there's no address listed there?

11 A There is not.

12 Q Did you subsequently receive the addresses?

13 A When we did have the -- all the information, yes,
14 sir.

15 Q Okay. Turn to the second page of that.

16 Now, describe for us -- you were talking about
17 what you typed in. Would you please go through this with
18 the jury and explain to us what it is that we're looking
19 at.

20 A Okay. The first line is the prescription -- the
21 first line is the prescription number. The "C" represents
22 it's a controlled drug. The refill is 0 of 0 meaning that
23 this did not have a refill. The DEA number is for the
24 doctor. The patient's name, the date of birth, her
25 address, the date the script was written, the date it was

1 filled. We did not have her social security number. We
2 did not have the telephone number of the patient. And the
3 directions, take one tablet four times daily by mouth.

4 Q Okay. I'm going to show you -- is this the
5 original to that prescription? The jury is looking at a
6 scanned copy.

7 A Yes, sir.

8 Q Okay. And I'm also going to show you what is
9 marked as Government's Exhibit 2. Tell us what is it that
10 we're -- now, we see it's on notebook paper. That's the
11 original, right, with writing on it?

12 A Yes, sir.

13 Q Okay. Let's see Government's Exhibit No. 2.
14 What's on Government's Exhibit No. 2?

15 A Lindsay Lewis.

16 Q That's the same image we see it on TV, you have
17 the original of in your hand?

18 A Yes, sir. I have this right in front of me on
19 this screen. The name of the doctor, the address of 3003
20 South Loop West, Suite 415, Houston, Texas 77054, with the
21 telephone and fax, no DEA number, and the name of the
22 patient.

23 Q Again, what drug is being prescribed?

24 A Lorcet 10/650, take one tablet by mouth two times
25 daily; Xanax, which is the generic Alprazolam, which is

1 what we filled it with, 2 milligrams, take one tablet by
2 mouth tid meaning three times a day, Spense No. 90 with no
3 refills. It has the doctor's signature on it, and it has
4 Lynn Rostie sign off on it that she did check the drug.

5 Q What was the name of the doctor who's listed on
6 that?

7 A The doctor's name is Christopher L. Elder, MD.

8 Q The name of the patient is Lindsay Lewis?

9 A Yes, sir.

10 Q Okay. And was that -- if you flip over, was that
11 prescription filled? Does that indicate to us -- whenever
12 we see the stickers --

13 A Yes, sir.

14 Q The stickers indicate what to us? What does it
15 tell us?

16 A That it was filled and it was checked by the
17 pharmacist.

18 Q Now, the RPH, what does that stand for?

19 A Registered pharmacist. LR is Lynn Rostie's
20 initials.

21 Q And the DEA number, is that DEA number assigned
22 to --

23 A That is Lynn Rostie's DEA license number.

24 Q And does this writing -- do you recognize that
25 writing off to the side?

1 A Yes. Those are Lynn's initials.

2 Q Okay. I'm going to also show you -- give you the
3 original of what has been marked as Government's Exhibit
4 No. 3.

5 MR. RHODES: Can you pull that up,
6 please.

7 Q (BY MR. RHODES) Now, again, the jury has seen an
8 imaged copy of that original that you have in your hand.
9 What is the name on that prescription?

10 A Mark Ivey.

11 Q And what are the drugs being prescribed?

12 A Lortab, which is hydrocodone, 10/500, sig, take
13 one tablet by mouth four times daily, Dispense No. 120.
14 Xanax, generically filled Alprazolam, 2 milligrams. The
15 sig is one tablet three times daily, Dispense No. 90, no
16 refills. It was written by Christopher L. Elder, MD, 3003
17 South Loop West, Suite 415, Houston Texas 77054. It was
18 checked by Lynn Rostie and she dated it. And it was
19 signed by Dr. Elder.

20 Q Was this exhibit filled -- was this prescription
21 filled?

22 A Yes, sir, it was.

23 Q Now, in this one we see at the top RPHLR/JG?

24 A Yes, sir.

25 Q What does that mean?

1 A That means that Lynn Rostie was the pharmacist on
2 duty and that I actually typed this particular
3 prescription.

4 Q Okay. And that confirms that what is in that
5 prescription bottle -- are they called vials or bottles?

6 A Vials.

7 Q Vials. Was -- you put hydrocodone in there as
8 specified on the prescription and if you go -- if we scan
9 down, is that Alprazolam?

10 A Yes, sir.

11 Q Now, I'm going to show you Government's Exhibit
12 No. 4. Is this also an original prescription?

13 A Yes, sir, it is.

14 Q Whose name is on it?

15 A Whose name -- who is the patient?

16 Q The patient's name.

17 A Cheryl Zarsky.

18 Q And the doctor?

19 A Christopher L. Elder.

20 Q What were the prescription drugs written for?

21 A Hydrocodone, Lortab 5/500, which we gave 5/500 in
22 hydrocodone, sig, take one tablet by mouth four times
23 daily, Dispense No. 120; Xanax, which we gave Alprazolam,
24 2 milligram, sig, take one tablet by mouth three times
25 daily, Dispense No. 90, no refills, signed by Dr. Elder,
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1 signed off by Lynn Rostie.

2 Q Now, I'm seeing -- it's kind of vague. What date
3 is written on the original prescription?

4 A It's stamped October the 26th, 2004.

5 Q How were you guys able to fill it so quickly and
6 -- I believe that's 10/27.

7 A It's stamped 10/26/04 and it's signed off on
8 10/27/04.

9 Q Okay. And did you give a heads up or did you
10 start the filling of that -- how is it it's 10/27? If
11 it's administered and given in Houston on 10/26, how were
12 you able to get that prescription and fill it so quickly?

13 A We would take -- and this is normally what Dr.
14 Elder would order, so we would fill vials full of this
15 particular drug.

16 Q Uh-huh.

17 A And then when I would type them up, all I had to
18 do was grab a drug, slap the label on, grab the drug, slap
19 the label on. The labels were already printed -- I mean,
20 excuse me. Strike that. Excuse me. The vials were
21 already filled.

22 Q So you pretty much knew what the order was going
23 to be, it was going to be 120 tablets?

24 A Yes.

25 Q For hydrocodone?

1 A Yes, sir.

2 Q And you knew there was going to be Xanax being
3 ordered?

4 A Yes, sir.

5 MR. RHODES: If we can go to page 2 of
6 that document.

7 Q (BY MR. RHODES) Again, I take it with your
8 initials at the top, you helped with the filling of the
9 prescription?

10 A Yes, sir, I typed the label.

11 Q You typed the label?

12 A Yes, sir.

13 Q Now, at the bottom there's a price listed there.
14 Could you explain to us what that means?

15 A Price \$40, that's what she sold it for. The cost
16 is what she paid for it. Insurance paid nothing because
17 it was a cash customer. Patient paid \$40. Usual and
18 customary, there is no -- nothing listed. It says the
19 customer paid cash, and it states there are no refills.

20 Q Okay. So that prescription was paid for with
21 cash and not with insurance?

22 A Absolutely.

23 Q I'm handing you what has been marked as
24 Government's Exhibit No. 5. Whose patient name is listed
25 on that one?

1 A Alice Hazel Coufer.

2 Q And what was the doctor's name listed?

3 A Christopher Elder.

4 Q Okay. What was the drug again?

5 A Hydrocodone, 10/650, sig, 1 tab by mouth.

6 Q What about the other drug?

7 A Okay. The other --

8 Q Just tell me the name of the drug.

9 A Okay, hon. Xanax is Alprazolam, 2 milligrams.

10 Q So Lortab is hydrocodone?

11 A Yes, sir.

12 Q And Xanax is Alprazolam?

13 A Yes, sir.

14 Q And is there a date listed on that original
15 prescription?

16 A The original prescription is dated 9/14/04.

17 Q Okay. And would you go to page 2, please.

18 So the name is -- is it Hazel Hollis? I know it
19 was the writing you were trying to interpret. The patient
20 is Hazel Hollis?

21 A Yes, sir.

22 Q And what does DW stand for?

23 A On the back here?

24 Q If you could look on the computer screen or on
25 the prescription itself, whichever makes you comfortable.

1 A DW is the date written.

2 Q So we have it written on --

3 A 9/14/04.

4 Q What does DF stand for?

5 A Date filled.

6 Q Now, could you please explain how can a
7 prescription be written in Houston on 9/14 and filled on
8 9/14? Is it, again, you --

9 A We knew what was coming. We knew what Dr. Elder
10 wanted.

11 Q Okay.

12 A So like --

13 Q All right. And, again, as we look at the bottle
14 -- now, I notice that the price -- tell us the price of
15 this product.

16 A Okay. This hydrocodone is a little more
17 expensive than the 10/500. The price is \$46.56. It costs
18 \$6.89. No insurance was involved. Patient paid \$41.91.
19 Usual and customary is not listed. Patient paid cash.
20 There is no refills. Why there was a difference, I cannot
21 explain that. I had nothing to do with pricing of drugs.

22 Q Okay. And that's the hydrocodone again?

23 A Yes, sir.

24 Q All right. I'm now handing you the original
25 prescription for Government's Exhibit No. 6.

1 A The name looks like Mary Gatten Perez. This is
2 for Lorcet 10/650, hydrocodone; Xanax, 2 milligrams,
3 Alprazolam, date written 9/14/07, signed off by Lynn on
4 9/14/07. It's signed by Dr. Christopher Elder.

5 Q All right. Now, it's, again, Lorcet and the
6 Xanax again. And then we have -- there's some writing at
7 the bottom. Do you know whose handwriting that is?

8 A Yes. That's Lynn Rostie's.

9 Q Can you make out what --

10 A Yes. It says, "Verified, Troy, phone."

11 Q And would you also call Troy or -- how often did
12 you have contact with Troy Solomon?

13 A Yes. I would call Troy and let him know --

14 Q Okay. Go ahead. You would let him know what?

15 A I would let him know how much we filled, how many
16 pieces, and how much money we were shipping.

17 Q How much prescriptions or money? You said money,
18 didn't you?

19 A The total amount.

20 Q You're talking about how much was owed?

21 A Yes, I would.

22 Q You would, okay.

23 And would you talk to him regularly?

24 A Whenever we had shipments going out or if he
25 wanted to answer via fax and make sure that I got the fax

1 back that we had sent.

2 Q Was that the only person you talked to that was
3 in Houston?

4 A Yes, it was, sir.

5 Q And was Troy the person who gave you instructions
6 on how to do things and what he wanted and when he wanted
7 the orders shipped?

8 A Not me directly, no, huh-uh.

9 Q You had conversations with others?

10 A Yes.

11 Q So your role -- whenever you talked to him, you
12 would give him updates about the shipments, when they were
13 going out?

14 A Yes.

15 Q And you would give him updates about how much was
16 owed on the account?

17 A Yes.

18 Q I'm going to show you Government's Exhibits 31
19 and 32. Are these also the original prescriptions?

20 A These are original prescriptions.

21 Q Okay. And that's with a different doctor?

22 A Yes.

23 Q What's the name of that doctor?

24 A Juan Botto.

25 Q Okay. And were those prescriptions filled as

1 well?

2 A Yes, they were.

3 Q And what is the name listed -- what is the
4 prescription listed on the -- what is the prescription
5 drug listed on the prescription?

6 A Promethazine with codeine.

7 Q Okay. How much was it filled for?

8 A One pint.

9 Q Okay. Now, did he regularly order -- did --
10 would the prescriptions with that name attached to it be
11 regularly for a pint of promethazine or did that
12 subsequently change?

13 A I do not remember.

14 Q Okay. All right. And let me show you what has
15 been marked --

16 MR. RHODES: Pull up Government's
17 Exhibit No. 7.

18 Q (BY MR. RHODES) Again, is that Mary Perez?

19 A Yes, it is.

20 Q Okay.

21 MR. RHODES: Will you pull up
22 Government's Exhibit No. 12.

23 Q (BY MR. RHODES) Now, I see -- will you tell us
24 what is that letter that appears upside down at the
25 bottom?

1 A To me it looks like an upside down F.

2 Q What does that stand for?

3 A I don't know.

4 Q You don't know.

5 And whose name is listed on that prescription,
6 or who signed off on that one?

7 A Lynn Rostie.

8 MR. RHODES: Okay. I would also like
9 for you to pull up what has been previously admitted
10 Government's Exhibit No. 49.

11 Q (BY MR. RHODES) Could you describe this list to
12 the jury?

13 A Yes. This would be the list of patients who had
14 incomplete data on their prescriptions. There you find
15 Amanda Allen's address, city, state, zip, and her date of
16 birth.

17 Q Okay. And so that date of it would appear to be
18 2/19. Now, what name is listed on the header of that fax?

19 A Troy Solomon.

20 Q Okay. Would you receive groups of names as we --
21 so we also see down there, is that Lindsay Lewis who we
22 spoke of earlier?

23 A Yes, sir.

24 Q What does LC stand for?

25 A Lorcet.

1 Q So when you had an incomplete address, you got a
2 handwritten list that came over the fax to you; is that
3 correct?

4 A No. I think the way it went is we got the
5 prescriptions. If they did not have the address, I had to
6 contact Troy and say, Hey, I need some address and a date
7 of birth, and he would fax them over to us.

8 Q Okay. And pulling up Government's Exhibit --
9 well, flip through. Let's go to the next page of the
10 document.

11 Again, we're seeing handwritten addresses and
12 names, and they came in that one bundle to supplement the
13 original prescriptions you had that were incomplete?

14 A Yes, sir.

15 Q Now, I point you -- and there is a fax number
16 listed. There's a partial under there. I guess it was
17 hole-punched. But the first three -- what are the first
18 three digits that you do see?

19 A As far as the phone number?

20 Q Yeah, the fax number.

21 A 281.

22 Q What are the last four digits you are making out?

23 A 9912.

24 Q Okay. And let's pull up Government's Exhibit No.
25 51. So you would use this list in addition to the

1 prescriptions you had earlier, correct?

2 A Yes, sir.

3 Q All right. Again, we have handwritten names and
4 lists being faxed in. And is there a fax number at the
5 top?

6 A Yes, there is.

7 Q And what digits can you see on that one?

8 A 28146912. There's hole punches in there.

9 Q Okay. Now, let's look at Government's Exhibit
10 456.

11 Now, what are we looking at here?

12 A This is the cover letter that we would send to
13 Troy for refills.

14 Q And why were you having contact with Troy? What
15 were you told about Troy? Why were you sending him the
16 faxes?

17 MR. LEWIS: Your Honor, I'll object to
18 what she was told about Troy as hearsay, Your Honor.

19 THE COURT: Sustained.

20 Q (BY MR. RHODES) What name did you fax that to?

21 A Troy.

22 Q And what's the date on that document?

23 A 11/12/2004.

24 Q Okay. And how many total pages were there to
25 this attachment?

1 A Ten including the coversheet.

2 Q Okay. And what note did you have written there?

3 A "Troy, here are RXs for refill authorization.
4 Can you get Dr. Elder to sign off as okay to refill these?
5 That way I would have official authorization for the
6 records. If there are any you don't want refilled, mark
7 them off. If okayed, we'll work on them this weekend to
8 go out next weekend. Thanks, Lynn."

9 Q And let's look at the attachments that you would
10 send. Let's look at the first page.

11 Now, describe to us what is that attachment?

12 A That attachment is what we pulled out of the
13 computer for prescriptions that needed refills that were
14 previously filled 9/6/04 through 9/13/04 for Dr. Elder.

15 Q So you're asking him for refill authorization?

16 A Yes, sir.

17 Q And tell us -- describe for us this document.
18 What's in the far right-hand column of this document? Is
19 that the drug?

20 A Yes, sir.

21 Q What are the various categories?

22 A We have the -- from left to right?

23 Q Yes.

24 A Is a prescription number. The type means there
25 were no refills. The date it was originally written. The

1 DAW code which in this case we put in 0. The customer's
2 name, address, city, state, the quantity dispensed, and
3 the type of drug.

4 Q And are those the various names of customers that
5 you were asking for refill authorization for?

6 A Yes, sir.

7 Q Okay. And this document is dated -- is this the
8 date that it would be printed out on that we see at the
9 top left-hand corner?

10 A Yes, sir, 11/8/04.

11 Q And 1043, was that military time that would be
12 used?

13 A Yes, sir.

14 MR. RHODES: Let's pull up Document 458.

15 Q (BY MR. RHODES) Again, it's the same drugs,
16 Alprazolam, hydrocodone?

17 A Yes, sir.

18 Q Now, describe to us this document.

19 A This is another fax coversheet. It has the date
20 it was faxed back to us, the time, the phone number,
21 Troy's name, to Troy from Lynn Rostie, date 11/12/2004,
22 phone number that it was faxed to, the total number of
23 pages including the cover, and RX refills was the subject.

24 Q Now, we have a document that clearly tells us the
25 number, the telephone number of the fax associated with

1 Troy Solomon. Would you please read into the record that
2 phone number?

3 A 1-281-469-9912.

4 Q Okay. And it was returned back to you to the
5 number of -- what number is that as listed back?

6 A 281 --

7 Q No. The -- your fax number.

8 A Oh. 816-331-7248.

9 Q Okay.

10 MR. RHODES: Now, can we get a full view
11 of this document?

12 Q (BY MR. RHODES) What would the signature at the
13 bottom indicate to you?

14 A That the doctor okayed it for refills.

15 Q Once you got the okay, the term -- the note at
16 the top is saying that you went ahead and filled it and --

17 A Yes, sir.

18 Q What date did you fill it? Does that tell us?

19 A It says, "Filled 11/15/04."

20 Q Okay. And Government's Exhibit 459, is that
21 another print selected prescription?

22 A It's another list that we printed out and faxed.

23 Q And are there various names, customer names,
24 quantity -- so are we looking at -- what's the quantity
25 amount for the hydrocodone?

1 A No. 120.

2 Q And for Alprazolam?

3 A No. 90.

4 Q And then -- and so forth.

5 So as we get a full view of this document, are
6 we seeing the same repetitive hydrocodone, Alprazolam,
7 hydrocodone, and so forth for each patient? Is that what
8 we're looking at?

9 A Yes, sir.

10 Q So we're seeing Tommy Lee Adams -- Tommy L.
11 Adams, hydrocodone, and he also got Alprazolam; is that
12 correct?

13 A That's what he was prescribed, yes.

14 Q That's what he was prescribed.

15 Let's look at Government's Exhibit 460. And
16 what is this?

17 A This is another fax coversheet that we faxed to
18 Troy for refills.

19 Q Okay. Now, it appears -- let's look at the top
20 -- that this was an incoming fax that you received. And
21 what date does -- was that filled?

22 A 11/30/04.

23 Q All right. So you received this fax?

24 A Yes.

25 MR. RHODES: Let's see a full view of
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1 this item.

2 Q (BY MR. RHODES) Is there a signature at the
3 bottom?

4 A Yes.

5 Q And there's some writing. What does that say?

6 A "Prometh with codeine okay."

7 Q So what is that telling us, what is that note
8 telling us?

9 A That Dr. Elder is telling us that we can fill
10 prometh with codeine.

11 Q Okay. Turning to Government's Exhibit 461, what
12 is depicted in this fax?

13 A Troy's name, the fax number, the date.

14 Q Whose handwriting is on this fax?

15 A That is my handwriting.

16 Q Okay. And is that the number that you faxed it
17 to, the 281-469-9912?

18 A Yes, sir.

19 Q Okay. And at the bottom, if you go to the bottom
20 of this document, now, we're seeing it's from The Medicine
21 Shope. Is this an incoming fax and where is that coming
22 from?

23 A Are you asking me to repeat the phone number?

24 Q No. It's a different -- yeah, would you tell me
25 what was the fax number for this one?

1 A 713-839-1530.

2 Q Now, can you make out the name to the left, and
3 if so, do you know what that is associated with?

4 A ST Wellness Centers.

5 Q Okay. Does that stand for -- what -- do you know
6 what that stands for?

7 A South Texas Wellness Centers.

8 Q Okay. Is that -- do you know about the shipments
9 and whether or not -- where the shipments were sent
10 initially of the drugs?

11 A When we initially got started, no, sir.

12 Q Okay. But after you got started, do you know
13 where the drugs were sent, shipments?

14 A Yes. They were sent to South Texas.

15 Q Okay.

16 A Yes.

17 Q All right. Let's see the full page.

18 Now, whose handwriting is this right in the
19 middle of the document?

20 A That is mine.

21 Q And what were you asking on that fax?

22 A "Per our conversation, see attached."

23 Q So did you have a conversation with Troy?

24 A Yes. I must have told him at that time that I
25 was sending him something for refills.

1 Q And what is the "PS"? What question are you
2 asking?

3 A "PS, will you need prometh codeine with your
4 hydro, Alprazolam scripts?"

5 Q Does the "hydro" stand for hydrocodone?

6 A Yes, sir.

7 Q What does the reply message say?

8 A "Prometh with codeine all, pints on 14 with
9 prometh codeine, per Troy."

10 Q Let's look at Government's Exhibit 462. Where is
11 that being faxed from?

12 A 281-469-9912.

13 Q Okay. And there's the date at the top of
14 12/4/04?

15 A Yes, sir.

16 Q What does that mean?

17 A I don't remember why that's there.

18 Q Okay. Let's see the full document.

19 Is that the same type of fax you would send out,
20 and what was the question being asked on this fax and
21 what's the answer?

22 A "Here are the RXs for refill authorization."
23 Excuse me. It was addressed to Troy. "Here are the RXs
24 for refill authorization. Can you get Dr. Elder to sign
25 off as okay to refill these? That way I would have

1 official authorization for the records. If there are any
2 you don't want refilled, mark them off. Thanks." It was
3 signed off.

4 Q And Government's Exhibit 466.

5 THE COURT: Mr. Rhodes, you might want
6 to give your witness a little water.

7 THE WITNESS: I'm sorry.

8 Q (BY MR. RHODES) What is the date on this fax that
9 it went out?

10 MR. RHODES: Let's see the entire
11 document, please.

12 A On the left?

13 Q (BY MR. RHODES) No. Right in the body of the
14 document. What was written in as far as --

15 A 12/9/04.

16 Q Okay. And it's sent to Troy. At the top, let's
17 see, there's some writing to the right, "Mailed 12/13/04"?

18 A Yes, sir.

19 Q Was that regarding the shipment?

20 A Yes, sir.

21 Q Shipment of drugs?

22 A Yes, sir.

23 Q Okay. And, again, there's a phone number there
24 that's listed at the top. I believe you already stated
25 that same phone number already a couple of times.

1 At the bottom of the document what is being
2 asked and what was the reply?

3 A "Troy, here are the RXs for refill authorization.
4 Can you get Dr. Elder to sign off as okay to refill these?
5 That way I would have official authorization for the
6 records. If there are any you don't want refilled, mark
7 them off. Thanks, Lynn."

8 **Looks like okay and the doctor signed off on**
9 **them, so we went ahead and filled them.**

10 Q And 467, tell us what's depicted on that fax --
11 what's stated in that fax.

12 A I need to have it blown up. I can't read it.

13 **Sorry.**

14 Q No. You're fine.

15 A December 13th, 2004.

16 Q All right. And there's writing in the top
17 right-hand corner?

18 A That's when the shipment was mailed.

19 Q Okay. And what is being asked?

20 A Here are RXs -- "Troy, here are RXs for refill
21 authorization. Can you get Dr. Elder to sign off as okay
22 to refill these? That way I would have official
23 authorization for the records. If there are any you don't
24 want refilled, mark them off. Thanks, Lynn."

25 **It's written, "Okay" and he signed off.**

1 Q And he signed off with the -- let's go to page 2.

2 With each of these -- is that the print selected
3 report again?

4 A Yes.

5 Q And that would be attached as well?

6 A Yes.

7 MR. RHODES: Would you please pull up
8 Government's Exhibit 516, please.

9 Q (BY MR. RHODES) And let's look at the header.
10 Now, whose name is at the top of this header?

11 A Lucy Solomon.

12 Q And is there a phone number?

13 A 281-469-9912.

14 Q Okay. And when was this done?

15 A 8/24/05.

16 Q Okay. And, now, the name of the doctors changed?
17 What doctor are we looking at?

18 A We're looking at Dr. Okose.

19 Q Okay. So what is the question you're asking for?

20 A "The attached list of prescriptions from
21 Dr. Okose is due for refills or will be shortly. Please
22 have the doctor review the list to make any deletions
23 necessary. We then will need the doctor's authorization
24 to fill these prescription. He can sign below and
25 indicate any refills, prescriptions authorized."

1 **The doctor signed off with one refill.**

2 Q Now, was there an attachment as well with that
3 one as --

4 MR. RHODES: Let's flip to the second
5 page.

6 Q (BY MR. RHODES) Let's look at that. What is that
7 telling us?

8 A It's telling us the prescription number, the date
9 it was written, the customer's name, the quantity, and the
10 drug.

11 Q All right. And what was the drug involved?

12 A Hydrocodone 10/650.

13 Q All right.

14 MR. RHODES: Let's pull up Government's
15 Exhibit No. 518 or Government's Exhibit 520.

16 Q (BY MR. RHODES) What are we looking at?

17 A You're looking at the date that it came in faxed,
18 the phone number of 281-469-9912. It was page 1.
19 Dr. Peter Okose, MD is the doctor.

20 Q All right. Let's look at the names. What name
21 do you see?

22 A I need to have it blown up, please.

23 **Howard Johnson, his address, his date of birth,**
24 **the date the script was written, the drug ordered, the**
25 **quantity, the directions.**

1 Q All right. And then the name of the other
2 patient or the other prescription?

3 A Jacqueline Johnson, her address, date of birth,
4 the date the script was written, the drug, the quantity,
5 the directions with one refill. Both of them, excuse me,
6 have one refill, and they were signed off by the doctor.

7 Q And what does the mark through the Soma mean?
8 Could not fill it?

9 A We did not fill Soma for Dr. Okose.

10 Q Okay. Next page, please.

11 So when it was sent to you, was it two
12 prescriptions on there together? The third name and the
13 fourth name of that fax was -- are those again Johnsons?

14 A Those are Johnsons. One's Jason. It looks like
15 the other one is Jamon.

16 Q These are being asked to be filled on the same
17 date of 4/7 of '05? They were written on the same date?

18 A Yes, sir.

19 Q We have the same date, same drug, preprinted
20 patch crossed out for the Soma?

21 A Yes, sir.

22 Q Next prescription. So now we're looking at --
23 what names are we looking at now?

24 A Jeff Johnson and Jimmy Johnson.

25 Q Same date?

1 A Yes, sir.

2 Q Okay. Next prescription.

3 So on this day it appears that the names
4 Johnsons was filled on this particular day; is that
5 correct?

6 A Yes, sir.

7 Q So for this one now we have -- what are the names
8 we're looking at now?

9 A Jody Johnson and Johnny Johnson.

10 MR. RHODES: All right. Let's go ahead
11 and look at the date filled. You see the date written as
12 4/7/05. Let's go to the next page with the date filled
13 prescription sticker.

14 Q (BY MR. RHODES) So this was written on what date?
15 Can you see it?

16 A It's reading 4/1/05.

17 Q Okay.

18 A Date filled was 4/16/05.

19 Q Okay. So these were the Johnsons -- these
20 prescriptions, they kept going as far as Johnson is
21 concerned, the name Johnson?

22 A (Witness nodded head.)

23 MR. RHODES: Let's go to Government's
24 Exhibit --

25 THE COURT: Can I speak with counsel,
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1 please.

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 THE COURT: You're going to end this?

5 MR. RHODES: We're going to move to a
6 couple of the latter. We'll move on. She's got a little
7 to go.

8 THE COURT: I told them earlier I was
9 going to let them go at 4:30.

10 MR. RHODES: We're not going to end at
11 this time. If you want to break or recess, that's okay.

12 MR. OSGOOD: On this one like Okose he
13 wrote 26 on the same day with Johnson. I don't have any
14 problem putting them in as a group one, and saying there's
15 25 more on the same page like this to speed things up.
16 You get 26 scripts here of every conceivable Johnson out
17 of the phone book here.

18 THE COURT: Is that right?

19 MR. RHODES: No. We can be done. She
20 needs to read this. They can see that there are 25
21 Johnsons on it.

22 MR. OSGOOD: That's what I'm saying.
23 There's 25 Johnsons on here and there's a different
24 Johnson and lot of Johnsons were doing business that day.

25 MR. BOHLING: Perhaps we can break it
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1 down and do it a little quicker with some other letters.

2 THE COURT: We'll recess and maybe you
3 can come up with a plan you guys can agree to, and we can
4 move faster tomorrow. Let's do that.

5 (The proceedings returned to open court.)

6 THE COURT: I'm going to suggest we go
7 home and get a good night's rest and be ready to do this
8 again tomorrow.

9 I'll ask that you not discuss this case among
10 yourselves or with others or allow anyone to discuss it in
11 your presence; that you, as my previous instruction, not
12 allow yourself to be exposed to any media coverage that
13 may pertain to this trial.

14 I'll ask that you report back at 8:30 tomorrow,
15 and we'll get started as soon thereafter as possible.

16 Any questions?

17 See you in the morning.

18 (Court adjourned at 4:34 p.m.)

19 END OF VOLUME I
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TUESDAY, JUNE 22, 2010

VOLUME II OF VII

(The following proceedings were had in the
presence of the jury:)

THE COURT: Good morning. Are you ready
to proceed, Mr. Rhodes?

MR. RHODES: Yes, Your Honor.

Welcome back, Ms. Gerstner.

THE WITNESS: Thank you.

JILL GERSTNER, previously being sworn, resumed the stand:

MR. RHODES: If we could show the
witness Government's Exhibit No. 521, please.

DIRECT EXAMINATION (continued) BY MR. RHODES:

Q What are we looking at here, Ms. Gerstner?

A A prescription from Dr. Peter Okose.

Q And what is the name listed?

A Arv Thomas, 10202 Forum, Houston, Texas, his date
of birth, the date the script was written, the drug,
quantity, directions.

Q Okay.

A With one refill and his signature.

Q All right. And is the Soma crossed out?

A Yes, it is.

MR. RHODES: Next page, please.

Q (BY MR. RHODES) So the date written for this
184

1 prescription is what date and date filled?

2 A Date written 4/16, date filled 4/16. '05 is the
3 year.

4 Q Okay. And next prescription, what's the name
5 listed there?

6 A Beverly Thomas, 10268 Massey, Silsbee, Texas. It
7 has her date of birth, the date the script was written,
8 the drug quantity, directions, one refill, and the
9 doctor's signature.

10 Q Now, this grouping of Ts, if there were 42 Ts in
11 this grouping of all names with Ts -- let's move on to the
12 next Government's Exhibit 522.

13 What is the name?

14 A Leona Johnson, 12898 Batson Prairie, Batson,
15 Texas, date of birth, date written, drug quantity,
16 directions, Soma's crossed out, one refill, and a
17 signature of the doctor.

18 Q Right below that there's another prescription.

19 Are we seeing the same date again, the date
20 written?

21 A Yes, sir.

22 Q And the last name begins with a J, Johnson?

23 A Yes, sir.

24 MR. RHODES: If we could go to the next
25 page.

1 Q (BY MR. RHODES) We have date written as?

2 A 4/1/05, date filled 4/18/05.

3 Q Okay. So this batch of Js, which is about 32
4 prescriptions, were all filled on the same date?

5 A Yes, sir.

6 MR. RHODES: Moving on to 523, please.

7 Q (BY MR. RHODES) Now, we have -- what name are we
8 seeing?

9 A Robert Thornton.

10 Q What's the date of the prescription?

11 A 4/7/05.

12 Q Okay. And what is the drug?

13 A Lorcet 10/650, the quantity, directions, one
14 refill, doctor's signature.

15 Q Okay. And right below that?

16 A Clinton Johnson, 3823 Zephyr, Houston, Texas
17 77021. Date, 4/7/05 was the date it was written. It has
18 his birth date on it, the drug, quantity, directions. The
19 Soma is crossed out. It has one refill, doctor's
20 signature.

21 Q Okay. Let's move on to the next page, please.

22 And whose handwriting is that?

23 A Lynn Rostie's.

24 Q And are we showing that this was filled on what
25 day?

1 A 4/18/05.

2 Q Okay.

3 MR. RHODES: 523.03, please.

4 MR. OSGOOD: What exhibit number is
5 that, counsel?

6 MR. RHODES: The same one, just page 3,
7 523.03.

8 Q (BY MR. RHODES) Now, we're seeing some extent --
9 but we're seeing the bottom of Ts. There's a T there at
10 the bottom one. What name is that?

11 A Gary Templete.

12 Q Okay. Let's go to the second page.

13 And there were 14 Ts in this grouping. This was
14 filled on 4/18 as well?

15 A Yes, sir.

16 Q Okay. 5/24, the name, please?

17 A Stephen Livings.

18 Q And the date?

19 A The date written was 5/20/05.

20 Q And the drug?

21 A Lorcet 10/650.

22 MR. RHODES: Next page.

23 Q (BY MR. RHODES) Date filled?

24 A 6/9/05.

25 Q 524.03, please.

1 The name and the date written, please?

2 A Juan Limones, 5/20/05.

3 Q And the drug?

4 A Lorcet 10/650.

5 Q And the prescription sticker, next page, please.

6 And the initials at the top, RPHLR, stands for?

7 A Lynn Rostie.

8 Q It was filled on what date?

9 A 6/9/05.

10 Q And in this grouping of Ls, there are 102
11 prescriptions that were filled on this date with the last
12 letter beginning with L -- with the last name beginning
13 with the letter L.

14 Exhibit 525, please. And what name are we
15 looking at?

16 A Melody Martin.

17 Q The date written?

18 A 5/24/05.

19 Q The drug?

20 A Lorcet 10/650.

21 Q Next prescription. Do the names on this list
22 begin with the letter M?

23 A The last name, yes.

24 Q Yeah, the last name.

25 A Yes, sir.

1 Q And was it the same drugs, same strength? Is
2 this one showing us -- what's the drug and the strength?

3 A The drug on this one is showing us Lorcet 10/650.

4 Q Let's scroll down to the second one.

5 A It's also showing the same drug on this
6 prescription.

7 Q These group of prescriptions which were written
8 on 5/24 and filled -- that show that they were filled,
9 flip to the next page, what date were they filled?

10 A 6/10/05.

11 Q These drugs filled on 6/10/05 were with the last
12 letter -- with the last name beginning with the letter M
13 was 132 prescriptions with the last letter M being filled
14 on that day.

15 Let's move to Government's Exhibit 526.

16 What's the name that we're looking at?

17 A Wendy Westmoreland.

18 Q And the date written?

19 A 6/7/05.

20 Q And is there a second --

21 A And the name is Carol Weylel and date written is
22 6/7/05.

23 Q And the drugs -- the drug listed -- the drug
24 prescribed?

25 A Lorcet 10/650.

1 Q Let's see the sticker, please. And when was the
2 prescription filled?

3 A 6/20/05.

4 Q Okay. And for the second one, what date was it
5 filled?

6 A 6/20/05.

7 Q And this grouping has the last name or the letter
8 begins with a W. There were 102 of these prescriptions
9 that were filled on that date with the last name beginning
10 with a W; is that correct? Well, that is what's in this
11 group.

12 A (Witness nodded head.)

13 Q 527. Now, what I'm showing you is a grouping --
14 what's the name listed?

15 A William Brown.

16 Q And this grouping has 120 Bs in it. Let's see
17 the sticker. Date written on June 14th. Date filled,
18 please?

19 A 6/29/05.

20 Q Okay. All right. This group had 120 Bs, and it
21 was filled -- these were all filled on the 6/29 date.

22 I'm now handing you what is marked or what has
23 been previously admitted as 595. Did you use that -- what
24 is it?

25 A This is a calendar book.

1 Q Did you use that calendar book in the course of
2 the business of this -- with the prescriptions from the
3 state of Texas?

4 A Yes, I did.

5 Q Okay. Looking at the page here on the screen,
6 could you please tell us what these notes mean?

7 A We were paid on the 17th for shipment, and we
8 sent out a shipment. We were paid on the 17th for a
9 shipment, and we sent out a shipment that day.

10 Q Okay. And, again, what does the word "out"
11 indicate?

12 A That indicates the shipment was sent out.

13 Q Okay. And that page?

14 A We were paid on the 29th. Out times two
15 represents that we sent two shipments out that day.

16 Q So we're talking about December going into
17 January.

18 MR. RHODES: Next page, please.

19 Q (BY MR. RHODES) What is that telling us?

20 A That's telling you we were paid on the 4th for a
21 shipment. We sent two shipments out on the 3rd. On
22 Thursday, the 6th, we were paid for shipments that went
23 out on the 13th, and we also sent out 45 pints.

24 Q And these are all regarding the Texas
25 prescriptions, correct?

1 A Yes, sir, they are.

2 Q Kind of same thing. Next page.

3 All right. What is this telling us?

4 A One shipment went out on Monday, the 24th, to
5 Dr. Okose, which is -- was a new doctor to us at that
6 time. On Thursday, the 27th, Dr. Elder's, paid us, and we
7 also sent out a shipment to him on 1/22/05.

8 Q Okay. And at the bottom?

9 A We were paid on Okose's shipment that was sent
10 1/24/05.

11 Q And that's your handwriting?

12 A Yes, sir, it is.

13 Q Next page, please.

14 Please tell us what we're looking at.

15 A On the 31st we sent Dr. Elder two shipments. We
16 sent Dr. Okose two shipments. On the 1st we sent
17 Dr. Botto one shipment. We were paid on the 2nd. The
18 Wednesday there, we were paid on Elder's two shipments
19 that were sent out the 31st, and we were paid on
20 Dr. Okose's two shipments that went out the 31st.

21 Q So and so forth this book keeps showing the names
22 of the doctors, the payment dates where you received money
23 and when it would be shipped out. Would you use this to
24 help you whenever you had to answer questions? How did
25 you use this document, or how did you use this book?

1 A Keep track of what went out, how many shipments,
2 and when we were paid.

3 Q Okay. I'm now going to show you -- and that's
4 all the way throughout that book with certain dates?

5 A Yes, sir.

6 Q All right. Turning your attention now to
7 Government's Exhibit No. 517, second page. This was
8 filled on what date?

9 A 4/13/05.

10 Q Okay. And the first page, again, the
11 prescription itself.

12 Is there a doctor's signature on this document?

13 A No, sir, there is not.

14 Q Okay. Should there have been a doctor's
15 signature on that page?

16 A Yes, sir.

17 Q Calling your attention, bringing up Government's
18 Exhibit 526. We've discussed this one.

19 One thing I wanted to -- I'm showing you what
20 has been marked as Government's Exhibit 526. Could you
21 read the fax header. It's not showing up clearly on the
22 --

23 A June 18th, '05, 9:30 a.m., Lucy Solomon,
24 281-469-9912, page 25.

25 Q Okay. Thank you.

1 MR. RHODES: 594.

2 MR. OSGOOD: Your Honor, could we
3 approach for a minute?

4 (Counsel approached the bench and the following
5 proceedings were had:)

6 MR. OSGOOD: We went through these
7 yesterday. We're repeating them.

8 MR. RHODES: We're showing the different
9 --

10 MR. OSGOOD: We went through 526 one at
11 a time, yesterday.

12 MR. RHODES: No, we didn't. The ones we
13 went through are the ones that are listed under our overt
14 acts. We were finished with that. We've got one more
15 document now to finish.

16 THE COURT: Okay.

17 MR. RHODES: Okay, okay.

18 (The proceedings returned to open court.)

19 Q (BY MR. RHODES) Let me show you 594, all right,
20 this second page. All right. What is written there?

21 A A telephone number of 832-794-0470 with the name
22 "Troy."

23 Q And is that your handwriting?

24 A Yes, sir, it is.

25 MR. RHODES: I have no further questions
194

1 of this witness, Your Honor.

2 CROSS-EXAMINATION BY MR. LEWIS:

3 Q Good morning, ma'am.

4 A Good morning.

5 Q Prior to me greeting you this morning, you and I
6 had never met?

7 A No, sir.

8 Q I'm Chip Lewis. I represent Troy Solomon. I'm
9 going to ask you a few questions, Ms. Gerstner. Is it
10 Gerstner?

11 A Gerstner, yes.

12 Q Thank you. Let's talk about, first, your contact
13 with Troy Solomon. You never met Troy Solomon, did you?

14 A No, sir.

15 Q As far as you know, he had never been to Kansas
16 City or The Medicine Shoppe?

17 A No, sir.

18 Q You spoke with him on the telephone, though?

19 A Yes, sir.

20 Q And in those conversations -- you had quite a few
21 conversations; is that fair?

22 A Yes, sir.

23 Q And in those conversations you found Mr. Solomon
24 to be accommodating?

25 A Yes, sir.

1 Q Responsive to, when I say "your requests," the
2 pharmacy's requests?

3 A Yes, sir.

4 Q Extremely polite?

5 A Yes, sir.

6 Q Now, in all of these discussions that you had
7 with Mr. Solomon, he never gave you any indication that he
8 feared you all were doing something illegal, did he?

9 A No, sir.

10 Q In reference to these conversations, faxes going
11 back and forth and the like, Mr. Solomon never gave you,
12 and when I say "you," again, the pharmacy, any directions
13 on pharmacy decisions; is that fair?

14 A Yes, sir.

15 Q He simply responded to your requests and provided
16 paperwork to the pharmacy as he and Pharmacist Rostie had
17 agreed; is that fair?

18 A Yes, sir.

19 Q So never in any of your discussions did he advise
20 you as to pharmaceutical decisions that should be made; is
21 that fair?

22 A Yes, sir.

23 Q It would be fair to say instead of pharmacy
24 decisions, his activities were paperwork? Is that fair to
25 you?

1 A Yes, sir.

2 Q Now, you have spent a little bit of time talking
3 to the grand jury about these FedEx packages that The
4 Medicine Shoppe would gather up once the orders were
5 filled and send back to Texas, right?

6 A Yes, sir.

7 Q In that context these FedEx boxes that you all
8 put together were delivered to the doctors in Texas,
9 right, as far as you know?

10 A That question I don't remember.

11 Q Okay. Do you remember at a prior proceeding
12 being asked about that, where the FedEx boxes were
13 shipped?

14 A No, sir, I don't remember that.

15 Q Fair enough.

16 MR. LEWIS: Your Honor, may I approach
17 the witness?

18 THE COURT: You may.

19 MR. LEWIS: Thank you, Your Honor.

20 Q (BY MR. LEWIS) Ms. Gerstner, I'm going to show
21 you a document and ask you to take a look at that, thumb
22 through it, make sure you're familiar with it.

23 A This is like a deposition?

24 Q You recall that?

25 A Yes, sir, I do.
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1 Q Let me direct your attention to -- you can keep
2 the document, ma'am -- page 9.

3 A Okay.

4 Q And if you would read silently to yourself that
5 highlighted portion that I showed Mr. Rhodes.

6 A Uh-huh.

7 Q Does that help refresh your memory, Ms. Gerstner?

8 A Yes, sir, it does.

9 Q So now that you've had an opportunity, in
10 fairness to you, to refresh your memory, the FedEx boxes
11 that The Medicine Shoppe put together were delivered back
12 to the Texas doctors, correct?

13 A Yes, sir.

14 Q And as far as you know, the doctors then
15 delivered these medications to their patients?

16 A Yes, sir.

17 MR. LEWIS: Thank you very much for your
18 time, Ms. Gerstner.

19 Pass the witness to Mr. Solomon, Your Honor -- I
20 mean -- I'm sorry -- Mr. Osgood.

21 MR. OSGOOD: You calling me --

22 MR. LEWIS: I forgot one thing, if I
23 may. I'm sorry, Mr. Osgood.

24 Pardon me, Ms. Gerstner.

25 Q (BY MR. LEWIS) Do you recall sometime around late
198

1 2004, maybe mid 2004, a gentleman by the name of Dean
2 Wagner coming to The Medicine Shoppe from the corporate
3 offices?

4 A Yes, sir.

5 Q And you were present at a meeting with Mr. Wagner
6 from corporate along with Pharmacist Rostie, correct?

7 A I don't remember a meeting with him.

8 Q Fair enough. You recall him coming to the
9 offices and meeting with Pharmacist Rostie?

10 A Yes.

11 Q And if you were not privy to the meeting, I won't
12 ask you to speculate, but do you recall being part of any
13 of that meeting?

14 A No, sir.

15 Q Fair enough.

16 MR. LEWIS: Thank you very much, ma'am.

17 Now I'll pass to Mr. Osgood.

18 Thank you.

19 CROSS-EXAMINATION BY MR. OSGOOD:

20 Q How do you do, ma'am?

21 A Just fine, thank you.

22 Q We've never met, have we?

23 A No, sir.

24 Q I believe I did have my private investigator talk
25 to you at one point, Mr. Reeder. You remember that?

1 A Yes, sir.

2 Q Okay. And you discussed the case with him, and
3 he asked you essentially some of the same questions that
4 you have been asked here today by the prosecutor; is that
5 right?

6 A Yes, sir.

7 Q All right. Now, let's refresh the jury because
8 it was yesterday, their memory a little bit. When did you
9 go to work there?

10 A October 29th, 2001.

11 Q All right. And were you employed there
12 continuously until this search was executed in October --
13 or May of '06?

14 A I was employed there until September 30th, 2008.

15 Q The shop is closed now; is that right?

16 A Yes, sir, it is.

17 Q Now, you were asked to speculate just a minute
18 ago about the drugs that were shipped to Texas. They were
19 -- let's properly characterize it. They were addressed to
20 the doctors, weren't they?

21 A Yes, sir.

22 Q You don't know that they were actually physically
23 shipped at least to Dr. Elder to a private address or
24 something that he had, do you?

25 A No, sir.

1 Q They actually were shipped to the South Texas
2 Wellness Center, weren't they?

3 A Yes, sir.

4 Q Were you aware that he left the South Texas
5 Wellness Center as a part-time doctor on January the 1st
6 of 2005?

7 A No, sir.

8 Q Did you ever learn that?

9 A No, sir.

10 Q And you in fact continued to ship shipments and
11 fill refills from Texas on these fax refills long after
12 that, didn't you?

13 A Yes, sir.

14 Q Clear up until October, if we talk about the year
15 as being a clock, right?

16 A Yes, sir.

17 Q Okay. Now, I believe you told the government
18 that you didn't believe you had done anything wrong during
19 this entire case; is that right?

20 A Yes, sir.

21 Q Well, let's just take one little, quick example.
22 I'm not going to belabor the point.

23 Did you fill a prescription that had a blank
24 name with no doctor's signature on it?

25 A Yes, sir.

1 Q Isn't that doing something wrong, ma'am?

2 A Yes, sir.

3 Q Okay. You did many things wrong at The Medicine
4 Shoppe, you and Ms. Rostie, didn't you?

5 A (No response.)

6 Q Let's talk about Dr. Okose. You seem perplexed.
7 I'll help you.

8 Dr. Okose is this doctor who, for want of a
9 better term, was using the alphabet soup prescriptions,
10 wasn't he?

11 A Yes, sir.

12 Q And you know what I mean by that, don't you?

13 A Yes, sir, I do.

14 Q A. Johnson, B. Johnson, C. Johnson, D. Johnson,
15 E. Johnson, right on down the alphabet, right?

16 A Yes, sir.

17 Q So when I talk alphabet soup, you and I are on
18 the same wavelength here, right?

19 A Yes, sir.

20 Q Now, Dr. Elder never did that during '04, when
21 you were filling his prescriptions, did he?

22 A No, sir.

23 Q And in fact you got some original prescriptions
24 from Dr. Elder between the late summer, early fall of '04,
25 up through January, didn't you?

1 A Yes, sir.

2 Q All right. Now, then the requests for refills
3 started coming in, didn't they?

4 A Yes, sir.

5 Q And the refills came in on a fax from whom?

6 A Troy Solomon.

7 Q And who else? Mrs. Solomon, right?

8 A Yes, sir.

9 Q And it had a big scrawl on that fax coversheet
10 that you referred to as a signature. It's not a signature
11 at all, is it?

12 A To us it was a signature.

13 Q All right. Let's call it up on the exhibit list
14 here, just a sample.

15 MR. OSGOOD: Would you please on the
16 screen place up 458, please, and blow that up, please.

17 Q (BY MR. OSGOOD) Now, is that what you are calling
18 Dr. Elder's signature, ma'am?

19 A I call that an "okay" with initials.

20 Q Now, what are those initials?

21 A To me I take them as CFD.

22 Q And the pattern was on the refills you got this
23 same coversheet, didn't you?

24 A Yes, sir.

25 Q Now, can you tell me whether or not that that is
203

1 a repetitive fax that you just used and kept in the office
2 there and attached to these things?

3 A Yes, sir, it's a repetitive fax and, as you see,
4 Lynn wrote the note on there in addition to it.

5 Q So we don't know whether she put his initials on
6 there or you did or somebody else did, do we? It was kept
7 in the office, wasn't it? It's a coversheet you used.

8 A Without the handwriting on it, it was, yes.

9 Q So you're telling me it was faxed back and faxed
10 back from Mr. Solomon or his wife and with these initials
11 on it?

12 A Yes, sir.

13 Q All right. Now, how long have you been a
14 pharmacist tech?

15 A Eight years.

16 Q In that time did you ever receive -- or I should
17 say generate requests for refills for patients yourself,
18 the pharmacy?

19 A Yes, sir. If somebody called in, wanted their
20 script refilled, it had no refills on it, we would doctor
21 fax through our program to the doctor a refill request.

22 Q Very good. What did you just tell me how that
23 would initiate? How would that initiate? What did you
24 just say?

25 A When the customer called in.

1 Q Exactly. Now, my question is, did you ever on
2 your own punch a button on the computer and punch out a
3 list of names and ask or send out a fax saying, Contact
4 these people and see if they need some more drugs? Did
5 you ever do that?

6 A No, sir, I did not.

7 Q So that was peculiar and unusual also?

8 A Yes, sir.

9 Q Now, at any time did you ever call up Dr. Elder
10 and say, Well, we got all these refills and you put no
11 refills on your prescriptions, what's going on here?

12 A No, sir. I never talked to Dr. Elder.

13 Q You never met him?

14 A I have never met him, sir.

15 Q Never talked to him on the phone?

16 A Never.

17 MR. OSGOOD: Stand up, Dr. Elder,
18 please, sir.

19 Q (BY MR. OSGOOD) You wouldn't know him other than
20 today you saw him in the courtroom, right?

21 A That's true, yes, sir.

22 Q Now, did you have a separate phone number for
23 him?

24 A No, sir.

25 Q Did you not state in your report at some point

1 that the phone number you had for the doctor, either you
2 or Ms. Rostie did, was in fact the Texas Wellness Center?

3 A All I knew is that I had Troy's phone number.

4 Q Okay. You had Troy's phone number?

5 A Yes, sir.

6 Q Now, did you understand the arrangement at the
7 Texas Wellness Center, that it was a chiropractic office,
8 and that he worked there part time, Dr. Elder?

9 A No, sir. That's not what I was told.

10 Q What were you told?

11 A I was told that he was a sports doctor.

12 Q When were you told that?

13 A When we first started doing this. That's the
14 type of business he was in.

15 Q Were you present when Mr. Van Fleet from the
16 pharmacy board came down to the place and seized
17 everything? I think you said you were late coming in that
18 day.

19 A I was there.

20 Q You were there?

21 A (Witness nodded head.)

22 Q Isn't it a fact that Ms. Rostie told Mr. Van
23 Fleet that the sports medicine business was what Dr. Okose
24 said in '05, to start the business up with Dr. Okose, he
25 was going to handle sports medicine people? It was

1 actually Dr. Okose, wasn't it?

2 A I didn't hear any conversation Ms. Rostie had
3 with Mr. Fleet.

4 Q Is it possible that you're confusing Dr. Okose
5 with Dr. Elder in terms of who was going to be the sports
6 medicine guy?

7 A It could be possible, yes, sir.

8 Q Okay. Now, let's call up -- well, strike that.

9 Let me read you some names and some dates.
10 Amanda Allen, that was Exhibit No. 1. Exhibit No. 2 was
11 Lindsay Lewis. Exhibit No. 3 was Mark Ivey. Exhibit No.
12 4 was Cheryl Zarsky. Then there's a Mary Perez who it
13 turns out was dead. We don't contend that she was a live
14 person.

15 Have you ever had people come in and try to
16 obtain a prescription and it turned out they weren't who
17 they said they were?

18 A No, sir, not to my knowledge.

19 Q Okay. That's never happened at your place?

20 A No, sir.

21 Q Okay. Would you agree with me that it's -- in
22 your business as a pharmacist, that it's quite conceivable
23 that people try to find doctors to get prescriptions that
24 they're not entitled to and sometimes use false
25 information or identification to get that prescription?

1 A It's possible, yes.

2 Q And the doctor is not an investigator or a
3 policeman, is he?

4 A No, sir.

5 Q He's in the business of healing people and
6 helping people, isn't he?

7 A Yes, sir.

8 Q Okay. So it's quite conceivable that Dr. Elder
9 never knew that Ms. Perez was in fact deceased and that
10 someone had a driver's license in her name?

11 MR. RHODES: Objection, Your Honor.

12 THE COURT: It's argumentative.

13 MR. OSGOOD: Okay.

14 Q (BY MR. OSGOOD) Now, where I was getting at with
15 those names, they're not alphabet soup, are they?

16 A No, sir.

17 Q Those were original prescriptions that you
18 received from somebody that came up here; is that right?

19 A Yes, sir.

20 Q Now, you don't know whether or not Dr. Elder
21 said, Take this prescription and give it to Troy Solomon
22 or not, do you?

23 A No, sir.

24 Q All you know is that it showed up at The Medicine
25 Shoppe and it was filled, right?

1 A Yes, sir.

2 Q And it arrived via who and how?

3 How did you get those early prescriptions from
4 Dr. Elder?

5 A From Cindy Martin.

6 Q Well, didn't you also get some in the mail?

7 A We did get some in the mail, yes.

8 Q All right. Did those appear to be valid
9 prescriptions?

10 A Yes, sir.

11 Q They were not massive numbers, were they?

12 A No, sir.

13 Q You put the names in the computer, though, didn't
14 you?

15 A Yes, sir.

16 Q And then you on your own or you, the Medicine
17 Shoppe, on your own initiate the refills, don't you? You
18 didn't get any calls from any patients?

19 A No, sir, we did not.

20 Q And Dr. Elder had in fact used a circle with a
21 line through it on his prescriptions, hadn't he?

22 A Yes, sir.

23 Q Tell these folks what that means.

24 A No refills.

25 Q Yet you on your own decide you're going to see if

1 they need some refills, aren't you?

2 A Yes, we did.

3 Q Are you a doctor?

4 A No, sir, I'm not.

5 Q Is Ms. Rostie a doctor?

6 A No, sir, she is not.

7 Q What on earth caused you or Ms. Rostie to decide
8 to see if you could sell some more prescriptions to people
9 Dr. Elder had seen and told no refills on? You didn't get
10 calls from those patients, did you?

11 A No, sir.

12 Q No one called up and said you filled my
13 prescription before and I'd like to get another dosage,
14 and I've been in to see the doctor and if you'll call him,
15 he'll say it's okay? That didn't happen, did it?

16 A No, sir.

17 Q You on your own sent them out?

18 A Yes, sir.

19 Q You were making huge amounts of money that way,
20 weren't you?

21 A I have no idea, sir. I do not know the
22 financial.

23 Q You were salary, weren't you?

24 A Yes, sir, I was.

25 Q And you were doing what you were told, weren't

1 you?

2 A Yes, sir, I was.

3 Q But you knew that wasn't right, didn't you?

4 A I did as the pharmacist instructed me, and that's
5 what I've always been told to do as long as I didn't feel
6 it was illegal.

7 Q Did you really believe that there was an Albert
8 Johnson and a Betty Johnson and a Charlie Johnson and a
9 Douglas Johnson all on the same day getting prescriptions
10 filled?

11 A I didn't give it a second thought.

12 Q I see.

13 Let me ask you this now: How is it that you
14 were able to fill these prescriptions that were supposedly
15 mailed from Texas on the same day that you got them?
16 That's not a very good question. Let me back up.

17 The scripts that you had, the original scripts,
18 you filled on the same date as the date on the
19 prescription in many instances, didn't you?

20 A Yes, sir, we did.

21 Q How did you do that?

22 A We always knew what the doctor prescribed, so we
23 were able to fill vials of that drug. And when we got the
24 labels made, we would put the labels on the vials.

25 Q All right.

1 MR. OSGOOD: Could we have 458 up,
2 please, again.

3 Q (BY MR. OSGOOD) Now, this is characteristic of
4 all these refill faxes, isn't it?

5 A Yes, sir, it is.

6 Q I'm not going to go through all of these
7 exhibits. There's about a dozen of them or something.

8 And they -- we've got Exhibits Nos. 474, 475 --
9 I'm sorry, 458, 59, 60, about nine of these you did on Dr.
10 Elder, okay, would you agree with that?

11 A Yes, sir.

12 Q I can show you the exhibits if we need to.

13 Nine of them between -- before January 1st, the
14 clock rolls around into the new year, nine of them. Then
15 they all started over with Dr. Okose, didn't they?

16 A Yes, sir, they did.

17 Q All right. Now, let's look at page 2 on this
18 script.

19 MR. OSGOOD: Can we blow that up,
20 please? Bigger, please. That's not very effective. Can
21 we get so we can read the names?

22 Q (BY MR. OSGOOD) Can you see the name on that one,
23 ma'am?

24 A Yes, sir, I can, Mabel Kayhan.

25 Q What's the next name?

1 A Anthony Falcon.

2 Q What's the next?

3 A Mike Pratt.

4 Q Give me some other names.

5 A Looks like Feldon Weibe -- oh, Sheldon Fletcher.
6 I'm sorry, sir.

7 Q Okay. That's good enough right there. Let's
8 just stop.

9 Those aren't alphabet soup, are they?

10 A No, sir, they are not.

11 Q Those were Elder patients that you took it upon
12 yourself to see if you could get an authorization for a
13 refill from somebody in Texas, didn't you?

14 A Yes, sir.

15 Q Now, do you know Mr. Parker? Did you ever meet
16 him?

17 A No, sir.

18 Q When you were getting these faxes from Texas, do
19 you know whether or not it was in fact being authorized by
20 this Mr. Parker, who was a bigshot there at that -- one of
21 those clinics, particularly during all of the Okose time?

22 A No, sir.

23 Q You didn't even know who he was, did you?

24 A No, sir.

25 Q Now, you filled thousands of these things for

1 Dr. Okose, didn't you?

2 A Yes, sir.

3 Q Comparatively speaking in '04, you filled a small
4 number of Elder original prescriptions, I mean, in the
5 greater scheme of things of a pharmacy; is that right?

6 A Yes, sir.

7 Q You don't know how those prescriptions got to
8 Kansas City, do you?

9 A No, sir.

10 Q Have you ever gotten a prescription yourself for
11 medication? I mean, there's probably not a human being in
12 the room who hasn't. You've gotten prescriptions before,
13 haven't you?

14 A Yes, sir.

15 Q When you get your prescription, the doctor
16 doesn't tell you what pharmacy you've got to use, does he?

17 A No, sir.

18 Q He hands you a prescription and says, Get this
19 filled, doesn't he?

20 A Yes, sir.

21 Q Depending on what it is, sometimes when you get
22 to the pharmacy, depending on how you look and what the
23 pharmacist thinks, the pharmacy has a duty to call the
24 doctor, don't they?

25 A Yes, they do.

1 Q Let's take something like Vicodin, for example.
2 What is Vicodin?

3 A Vicodin is hydrocodone.

4 Q Okay. And if a potential patient were to go into
5 a pharmacy that they didn't trade at before and it's a
6 doctor that that pharmacy has never heard of before,
7 what's that pharmacy required to do?

8 A Call the doctor and verify the script.

9 Q Why?

10 A Because we'd never seen the patient before and
11 never seen the doctor, done business with the doctor
12 before.

13 Q And yet you did that for thousands of people for
14 this Dr. Okose, didn't you?

15 A Yes, sir.

16 MR. OSGOOD: Can I have just a minute,
17 Your Honor?

18 THE COURT: You may.

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

21 REDIRECT EXAMINATION BY MR. RHODES:

22 Q Just brief redirect.

23 You were shown Government's Exhibit 458.

24 MR. RHODES: And also would you pull up
25 456.

1 Q (BY MR. RHODES) Now, this is showing what, that
2 you sent out the fax, 456? Is that the same, duplicate?

3 A Yes, it is.

4 Q Okay. So you did seek authorization from
5 someone. Who did you send it to?

6 A Troy Solomon.

7 Q And why did you send it to Troy Solomon?

8 A Troy Solomon would call and ask us when the next
9 shipment was going out. We would tell him there are no
10 refills, we need an okay from the doctor.

11 Q Okay.

12 A That is why all the faxing went on.

13 Q And the faxing went all the way up to August of
14 2005?

15 A Yes.

16 MR. RHODES: Okay. No further
17 questions.

18 MR. LEWIS: Nothing further from
19 Mr. Solomon.

20 Thank you, ma'am.

21 RECROSS-EXAMINATION BY MR. OSGOOD:

22 Q Well, again, the doctor had told you no refills
23 in his original -- at least my client in his original
24 prescriptions, hadn't he?

25 A (No response.)

1 Q What possessed you to call Mr. Solomon to see
2 about refills for a doctor who had written no refills?
3 Wouldn't you call the doctor, ma'am?

4 THE COURT: I think we've gone over that
5 already.

6 MR. OSGOOD: All right. That's all.
7 Thank you.

8 THE COURT: Any further questions for
9 this witness?

10 MR. RHODES: No.

11 THE COURT: You may step down, ma'am.

12 (Witness excused.)

13 JACQUE LESLIE, being duly sworn, testified:

14 DIRECT EXAMINATION BY MR. RHODES:

15 Q What is your name?

16 A Jacque Leslie.

17 Q Where do you work, Ms. Leslie?

18 A I work for the United States Postal Service.

19 Q What is your job title?

20 A My job title right now is the manager of post
21 office operations.

22 Q And as the manager of post office operations,
23 what are your duties and responsibilities?

24 A I oversee 120 post offices in the 644 and 646
25 area.

1 Q How long have you worked for the post office,
2 postal service?

3 A For the postal service I've worked there 22
4 years.

5 Q And as part of your duties, were you asked to
6 look up certain addresses to see if they were valid
7 addresses?

8 A Yes. I'm the former manager of address
9 management systems, and I was asked to do that, yes.

10 Q And what did you use to look up that information?

11 A I used the address management's systems database
12 to look up those addresses.

13 Q Okay. You were asked if 461 Makey Road -- let me
14 hand you what is marked -- show you what's marked as
15 Government's Exhibit 1172. Do you recognize that?

16 A Yes, I do.

17 Q Was that a letter written by you?

18 A Yes.

19 Q Is that a true and correct copy of the letter
20 that was sent from you to Ms. Nelson at the U.S.
21 Attorney's Office?

22 A Yes, it is.

23 MR. RHODES: Government moves to admit
24 Government's Exhibit 1172 into evidence.

25 THE COURT: Hearing no objections --
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1 THE WITNESS: -- that we do not deliver
2 to.

3 THE COURT: I'll receive the exhibit.

4 MR. RHODES: Thank you.

5 Q (BY MR. RHODES) You were asked --

6 MR. OSGOOD: I don't object to the
7 exhibit, Your Honor. I'll cover it on cross.

8 Q (BY MR. RHODES) 451 Makey Road, would you tell us
9 whether or not that was an address?

10 A On which one?

11 Q The first one. I don't know if you can clearly
12 see that.

13 A 451 Makey Road was not a valid address in our
14 database underneath that zip code in that city, state.

15 MR. RHODES: Please show it to the jury.

16 Q (BY MR. RHODES) And that was the first address
17 that you were talking about?

18 A Yes, uh-huh.

19 Q Would you please tell us about the second
20 address?

21 A 12219 Victory is not a valid address in Springs,
22 Texas 77389, in that zip code.

23 Q Okay. The third one?

24 A And the third one, the 1111 Chwack, 77532 is not
25 a valid address in Crosby, Texas 77532.

1 Q Once again, what does "not a valid address" mean?

2 A It means that's not a good address in the AMS
3 database or the postal service database.

4 Q Okay. And the last address?

5 A 2584 Holiday is not a valid address in Port
6 Bolivar, Texas 77650.

7 Q Okay. So when you would put in the zip code,
8 would it bring up the city as well or --

9 A Yes. It brings up the city, state, uh-huh.

10 Q The city, state for that zip code?

11 A Yes.

12 MR. RHODES: No further questions of
13 this witness, Your Honor.

14 THE COURT: Mr. Osgood.

15 CROSS-EXAMINATION BY MR. OSGOOD:

16 Q Could you tell me why the internet shows 451
17 Makey Road as developed apartments in Houston, Texas?

18 A No, I could not.

19 Q So, again, tell me what "invalid" means?

20 A It's not an address that is in our database. The
21 postal service gets our addresses from the state, or the
22 county supplies us with the addresses. And then we put
23 those addresses into our database, and we have to carry
24 whatever addresses that we deliver mail to. So if that
25 apartment complex does not receive mail, we would not have
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1 to carry it in our database.

2 Q So you don't know whether these are valid
3 addresses or not, you just don't have a record of them
4 where you work, do you?

5 A They're not valid addresses in our database.

6 Q For mail delivery?

7 A Uh-huh.

8 Q They could be a valid address from somebody's
9 living there if they decided not to sign up for mail?

10 A Could be.

11 Q And if they're poor people and they move around a
12 lot and live in poor housing areas and whatnot, it's quite
13 possible they don't get mail, isn't it?

14 A Usually they'll get mail. They'll get fliers or
15 they'll get something like that. But if for some reason
16 the city has not supplied the postal service with those
17 addresses, then they could not be in our database.

18 Q So this really doesn't tell us those are
19 nonexisting addresses, does it?

20 THE COURT: All right, Mr. Osgood.
21 We've gone back and forth on this. Let's move to
22 something else.

23 MR. OSGOOD: That's all.

24 MR. RHODES: No further questions.

25 THE COURT: Thank you.

1 (Witness excused.)

2 MR. RHODES: Government calls Lynn
3 Rostie.

4 MR. OSGOOD: Your Honor, I need to
5 correct something for the record. I don't want to mislead
6 the government or anyone else.

7 The address was 451 Maxey Road that was the
8 Villa Apartments, so apparently it's not Makey Road.
9 There was a -- the internet pulled up a different address.
10 I don't want to mislead the jury.

11 THE COURT: We're talking about a
12 different address altogether?

13 MR. OSGOOD: Yes, sir. That cross was
14 not valid, I mean, that part of it.

15 MR. BOHLING: Your Honor, Ms. Rostie is
16 indisposed at the moment, so we're going to do a short
17 witness.

18 KIRSTEN WALTERS, being duly sworn, testified:

19 DIRECT EXAMINATION BY MR. RHODES:

20 Q What is your name?

21 A Kirsten Walters.

22 Q Where are you employed, Ms. Walters?

23 A Drug Enforcement Administration.

24 Q How long have you been employed with the Drug
25 Enforcement Administration?

1 A Seven years.

2 Q And what do you do for the Drug Enforcement
3 Administration?

4 A I'm an intelligence research specialist.

5 Q Prior to working for the Drug Enforcement
6 Administration, where did you work?

7 A I worked for Los Angeles County Sheriff's
8 Department.

9 Q And what was your job assignment at the Los
10 Angeles County Sheriff's Department?

11 A I was a crime analyst.

12 Q As part of your training as an intelligence
13 analyst, what kind of training did you do?

14 A I was sent to a nine-week basic intelligence
15 academy at Quantico, Virginia.

16 Q Okay. All right.

17 MR. RHODES: Your Honor, if I could read
18 a -- briefly summarize a stipulation of facts. It's
19 pretty lengthy here.

20 This is marked as Government's Exhibit 1151
21 which is signed by the parties and agreed to. There are
22 various numbers that are assigned to the government's
23 exhibits. Everybody agreed that telephone number
24 816-331-6040, 816-331-6041, and 816-331-7248 are Virtual
25 Communication phones subscribed to by Rostie Enterprises,
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1 LLC at The Medicine Shoppe. And that is marked -- those
2 records were admitted -- are admitted as Government's
3 Exhibit No. 580 -- 598, excuse me.

4 With regard to telephone number 816-331-7364, it
5 is an AT&T phone subscribed to by Cindy Martin. These
6 records are admitted as Government's Exhibit 599.

7 With regard to Telephone No. 713-665-0309, it is
8 an AT&T phone subscribed to by Ascensia Nutritional
9 Pharmacy at 3003 South Loop West, Suite 450, Houston,
10 Texas. These records -- these phone records are admitted
11 as Government's Exhibit 606.

12 Further, with regard to Telephone Nos.
13 713-665-4400 and 713-665-0309 are AT&T phones also
14 subscribed to Ascensia Nutritional Pharmacy at the same
15 address that I previously mentioned, and these are records
16 admitted as Government's Exhibit 1161.

17 Telephone No. 713-696-9995 is an AT&T phone
18 subscribed to by Chris Elder, MD, 3010 Little York Road,
19 Houston, Texas 77093. These records are admitted as
20 Government's Exhibit No. 609.

21 The telephone number of 281-987-2345, which is
22 subscribed to an Albert Franklin, is admitted as
23 Government's Exhibit 617. The Telephone No. 281-469-9912
24 and 281-469-9913 are subscribed to Troy Solomon and Lucy
25 Solomon. These phone records are admitted as Government's

1 Exhibit No. 604.

2 Telephone No. 713-880-5654 is a phone subscribed
3 to by Dana Fields. These records are admitted as
4 Government's Exhibit 613.

5 Telephone No. 713-791-9755 is a phone subscribed
6 to Christopher Elder admitted as Government's Exhibit 608.

7 There are also phone records for Government's
8 Exhibit 620, Government's Exhibit 1162, Government's
9 Exhibit No. 596, Government's Exhibit No. 618,
10 Government's Exhibit 605, which is a phone subscribed to
11 Troy Solomon, Government's Exhibit 619. There are phone
12 records for Government's Exhibit No. 600, which is
13 subscribed to a phone by Cynthia Martin, the number being
14 913-636-3029.

15 There are phone records for Government's Exhibit
16 600. For Cynthia Martin, again, Government's Exhibit 615.
17 There are phone records for Government's Exhibit No. 616.
18 There are phone records for Government's Exhibit No. 612,
19 Government's Exhibit No. 610. There are phone records for
20 Government's Exhibit No. 597, phone records for
21 Government's Exhibit No. 611, phone records for
22 Government's Exhibit No. 607, phone records for telephone
23 numbers listed for Government's Exhibit 614.

24 The undersigned defendants reserve their right
25 to object to admissibility of these above business records

1 based on relevance. By entering into this stipulation,
2 the defendants in no way admit their guilt. This
3 stipulation is entered into evidence in order to save
4 trial time and narrow the issues by avoiding the necessity
5 of calling as witnesses the aforementioned records
6 custodian.

7 The government asks that those records be
8 admitted into evidence.

9 MR. LEWIS: No objection.

10 THE COURT: Pursuant to the stipulation,
11 they will be received as exhibits.

12 Q (BY MR. RHODES) Now, have you reviewed various
13 phone records --

14 A Yes.

15 Q -- in this case?

16 A Yes.

17 Q Did you help create some charts to describe those
18 events?

19 A I did.

20 Q I'm now showing you the following exhibits,
21 1110 --

22 MR. RHODES: Will you show her 1111,
23 1113, 1193, 1194.

24 Q (BY MR. RHODES) Are these the records that you
25 summarized?

1 A Yes.

2 Q And how did you go about preparing the
3 government's exhibits that you were shown using those
4 phone records?

5 A I used a software program called Pen-Link to
6 enter and manage phone data, and it's -- can be compared
7 to Excel spreadsheet where it's just used to sort and
8 manage data. So it's -- you don't have to scroll through
9 pages of hard copy records.

10 Q All right. Are Government's Exhibits 1110
11 through 1113 and 1193 and 1194 a fair and accurate summary
12 of those phone records?

13 A Yes.

14 MR. RHODES: Government moves to admit
15 into evidence Government's Exhibits 1110 through 1113 and
16 Government's Exhibits 1193 and 1194.

17 MR. LEWIS: Is that for demonstrative
18 purposes?

19 MR. RHODES: Yes.

20 MR. LEWIS: No objection from
21 Mr. Solomon.

22 THE COURT: Hearing none, they will be
23 received.

24 MR. RHODES: All right.

25 Q (BY MR. RHODES) Let's show to the jury

1 Government's Exhibit No. 1110.

2 What is this -- what is depicted in this?

3 A Phone calls with a date range in 2004 and 2005,
4 which show calls from the phone number on the top to the
5 two phone numbers on the bottom.

6 Q And what is the name associated with the phone
7 number on the top?

8 A Troy Solomon.

9 Q Okay. And the two different phone numbers on the
10 bottom?

11 A Christopher Elder.

12 Q During that period of August 3 of 2004, to
13 November 21 of 2005, how many phone contacts were there?

14 A 473.

15 Q Okay. And with regard to August 4 of 2004, to
16 November 17th, 2005, how many contacts were there between
17 Defendant Troy Solomon's cell phone and Defendant Elder's
18 home phone?

19 A 85.

20 Q Now, what does that mean, the 473, that there
21 were actual calls made to that phone?

22 A Those are telephone connection records, so those
23 would be a raw count from the telephone records themselves
24 that were provided by the phone company.

25 Q So it's not that he picked up every time, but
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1 they would just be contacts or connections made?

2 A It could have been voicemails. It could have
3 been -- yeah, they're just connection records.

4 Q Okay. Now, going to Government's Exhibit 1111,
5 what is depicted in this chart?

6 A These are phone calls back and forth between the
7 phone subscribed to Troy Solomon and the phone subscribed
8 to Cindy Martin, both cell phones.

9 Q And how many phone connections were there for
10 Troy to Cindy Martin between August 10 of 2004 and
11 November 25 of 2005?

12 A 476.

13 Q And how many phone connections were there for
14 Cindy Martin calling Troy Solomon between the dates of
15 August 5, 2004 and September 7, 2007?

16 A 820.

17 Q Please pull up Government's Exhibit 1112, please.
18 Please describe to us what's depicted in this chart.

19 A Calls back and forth between a telephone
20 subscribed to Troy Solomon's home phone and The Medicine
21 Shoppe.

22 Q Okay. So with regard to his home phone, between
23 the dates of August 16, 2004 and October 26, 2005, how
24 many times does it show the connections to The Medicine
25 Shoppe?

1 A 12.

2 Q And how many times does it show The Medicine
3 Shoppe calling Troy Solomon's home phone number?

4 A 34.

5 Q Okay. Look at Government's Exhibit 1113. What
6 is depicted in this chart?

7 A These are calls to and from fax machines at a
8 phone subscribed to Troy Solomon's phone and one to The
9 Medicine Shoppe.

10 Q So it's fax to fax?

11 A Uh-huh, yes.

12 Q This is done between the dates of -- what dates
13 are those listed?

14 A September 2004 to August 25th, 2005.

15 Q So how many phone connections were there fax to
16 fax from Defendant Solomon to The Medicine Shoppe?

17 A 122.

18 Q And how many phone contacts were there from The
19 Medicine Shoppe to Defendant Solomon?

20 A 85.

21 Q All right. If you can now pull up Government's
22 Exhibit 1193.

23 What is depicted in Government's Exhibit 1193?

24 A Telephone calls made from a cell phone subscribed
25 to Christopher Elder to a different -- no, a cell phone

1 and a home phone subscribed to Troy Solomon.

2 Q Okay. With regard to the date of August 3, 2004
3 to December 27, 2005, how many phone connections were
4 there between Defendant Elder's cell phone and Defendant
5 Solomon's cell phone?

6 A 549.

7 Q And with regard to the date of August or the time
8 period, I should say, of August 11, 2004 to February 22nd,
9 2005, how many phone connections were there between
10 Defendant Elder and Defendant Solomon, home phone?

11 A 14.

12 Q Okay. Moving to Government's Exhibit 1194, would
13 you please tell the jury what's described in this summary?

14 A These are calls to and from Troy Solomon's phone
15 subscribed to Troy Solomon, a cell phone, and The Medicine
16 Shoppe, two different numbers to The Medicine Shoppe.

17 Q And between August 16, 2004 and October 28, 2005,
18 how many phone connections were there from the cell phone
19 to The Medicine Shoppe?

20 A 141.

21 Q And how many phone connections were there from
22 The Medicine Shoppe to Defendant Solomon's cell phone?

23 A 173.

24 Q And this was for the period of July 23rd, 2004 to
25 February 23rd, 2006?

1 A Yes.

2 MR. RHODES: I have no further questions
3 for this witness, Your Honor.

4 CROSS-EXAMINATION BY MR. OSGOOD:

5 Q You said it was a database that you liken to
6 Excel. Excel is, of course, a spreadsheet?

7 A Correct.

8 Q Did you in fact enter all of these records into
9 that database system?

10 A Yes.

11 Q Can you tell me how many phone calls, for
12 example, there was between Mr. Solomon and Dr. Elder in
13 the timeframe of August through December 31st?

14 A Not without re-reviewing the records. I mean, I
15 don't have that committed to memory.

16 Q Were you aware that he had left the employment of
17 the South Texas Wellness Center on January the 1st of
18 2005?

19 A No.

20 Q You hadn't reviewed the other reports in this
21 case?

22 A No.

23 Q All right. Now, you have phone calls between
24 Mr. Solomon and Mr. Elder. Can you -- did you cluster
25 those? Can you tell me whether or not there was a large

1 number, for example, in one month and then very small
2 numbers in another month?

3 A I couldn't tell you that off the top of my head.
4 I could sort it that way.

5 Q You didn't make any attempt to break these phone
6 calls down as to frequency to try and tie them to events
7 in this case?

8 A No.

9 Q Did the prosecutor ask you to do that?

10 A No.

11 Q Was that a capability you had?

12 A I suppose it is, yeah.

13 Q But you don't -- you can't tell us whether or
14 not, for example, there were large numbers of calls in one
15 month and maybe one or two calls in another month?

16 A Not off the top of my head.

17 Q You can't tell me whether or not all the vast
18 majority of these calls were made in the '04 timeframe and
19 very few made in the '05 timeframe, can you?

20 A Not off the top of my head.

21 Q Now, let me ask you something else. How many
22 calls were made by Dr. Elder to or from The Medicine
23 Shoppe, either he initiated it or The Medicine Shoppe
24 initiated it or he initiated it?

25 A I don't know. I'd have to look at the data
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1 | again.

2 Q Well, do you have a chart showing calls between
3 Dr. Elder and --

4 A I don't have one in front of me. There may be
5 one. I could sort it that way.

6 MR. OSGOOD: Could we have the exhibits
7 up again, please, and flash them by very quickly.

8 Q (BY MR. OSGOOD) Who is that? That's Dr. Elder
9 and Mr. --

10	A Solomon.
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11 Q -- Solomon, okay. That's all the calls you found
12 for Dr. Elder and Mr. Solomon, right?

13 A For that time period.

14 MR. OSGOOD: Flash the next one up,
15 please.

16 Q (BY MR. OSGOOD) Dr. Elder is not involved with
17 that. Did you look for calls between Dr. Elder and
18 Ms. Martin?

19 A I don't recall if I did.

20 Q If you found some, they would be on the chart,
21 wouldn't they?

22 A If someone asked me to make a chart that said
23 that, it may --

24 Q Well, what were you asked to do?

25	A Create charts showing the contact between the
----	---

1 specific numbers.

2 Q Specific numbers?

3 A Uh-huh.

4 Q So if there was a contact between 913-636-3029
5 and Dr. Elder's number, you'd have it on a chart here,
6 wouldn't you?

7 A Well, not if I wasn't asked to prepare that
8 chart.

9 Q I thought you said you were asked to prepare a
10 chart for specific contact between specific numbers?

11 A Yeah. But I don't know -- I don't recall if that
12 was one of the charts I was asked to prepare. If it's not
13 -- I'm asked to do a lot of things, but not all of it is
14 here in a chart.

15 Q Weren't you asked to find out who called who
16 among this group of four people and when and how many
17 times?

18 A Yes.

19 Q All right. So we don't have any charts for Dr.
20 Elder other than his calls to Mr. Solomon, do we?

21 A Correct.

22 Q Okay. Now we're getting somewhere.

23 He didn't call Ms. Martin, did he?

24 A If there's not a chart there that says that, then
25 I guess --

1 Q All right. Next chart, please.

2 He didn't call The Medicine Shoppe or they
3 didn't call him, did they?

4 A Correct.

5 Q Next chart, please.

6 That's another Medicine Shoppe one.

7 Next chart, please.

8 And that's the one you've got where he talked to
9 Dr. Elder where you can't tell us the frequency or the
10 times or the breakouts; is that right?

11 A Correct.

12 Q Okay.

13 MR. OSGOOD: That's all.

14 Thank you.

15 MR. RHODES: No redirect, Your Honor.

16 THE COURT: All right. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Why don't we take a break at
19 this time, maybe 15 minutes or so. I'll ask the members
20 of the jury not to discuss the case among themselves or
21 with others or allow anyone to discuss it in your
22 presence. We'll stand in recess.

23 Thank you.

24 (A recess was taken.)

25 (The following proceedings were had in the

1 presence of the jury:)

2 MR. RHODES: Your Honor, the government
3 calls Lynn Rostie.

4 MARY LYNN ROSTIE, being duly sworn, testified:

5 DIRECT EXAMINATION BY MR. RHODES:

6 Q Would you please state your full name for the
7 record?

8 A Mary Lynn Rostie.

9 Q And, Ms. Rostie, are you sometimes referred to as
10 Lynn Rostie?

11 A Yes.

12 Q Ms. Rostie, where did you go to college?

13 A I went to college at UMKC School of Pharmacy.

14 Q And when did you become licensed as a pharmacist?

15 A 1974.

16 Q After you became licensed as a pharmacist, where
17 did you work?

18 A I first worked part time at Scagg's Drug Store.

19 Q And after you worked at Scagg's Drug Store, where
20 did you work after that?

21 A I worked a number of places. I worked at
22 Venture. That was a department in the department store --
23 pharmacy in the department store. I worked at Medisave.
24 I worked at -- up -- on Sundays I worked at a retail
25 pharmacist friend, Berbiglia's Pharmacy. I worked at Osco

1 for one year, and then after that I went to Price Chopper
2 Pharmacy and then to Treasury. Treasury changed to
3 Eckerd. Then I started working for The Medicine Shoppe.

4 Q Now, at some point -- now, you became -- you
5 first started working at The Medicine Shoppe. And what
6 was the location of that -- the city?

7 A In Belton, Missouri.

8 Q Belton, Missouri. So you were first an employee
9 there?

10 A Yes, that's correct.

11 Q And then at some point you became an owner of The
12 Medicine Shoppe?

13 A Yes.

14 Q When did that occur?

15 A July 1st of 2001.

16 Q Were you also the pharmacist in charge at The
17 Medicine Shoppe?

18 A Yes.

19 Q I'm going to only show you what is marked as
20 Government's Exhibit 1169. Is this the plea agreement you
21 entered into with the government?

22 A Yes, it is.

23 Q Going to the next to last page of this document,
24 is that your signature --

25 A Yes, it is.

1 Q -- on that document?

2 A Correct.

3 Q Is this a true and accurate copy of the plea
4 agreement?

5 A Yes.

6 MR. RHODES: May we approach?

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 MR. RHODES: Your Honor, there were
10 concerns about the factual basis being included in the
11 plea agreement. It is the government's understanding that
12 we're going to move for the admission, but if asked by the
13 jury for the plea agreement, that we would redact
14 paragraph three.

15 MR. OSGOOD: I object. It's not
16 admissible. It's not a complete document at that point.

17 THE COURT: I would never send a plea
18 agreement to the jury.

19 MR. RHODES: Okay. We'll just talk
20 about the plea agreement. That's it.

21 MR. LEWIS: I'm not going to object to
22 any discussions about the plea agreement.

23 (The proceedings returned to open court.)

24 Q (BY MR. RHODES) I'm also going to show you what
25 is marked as Government's Exhibit 1170. What is that

1 document?

2 A Got to focus a little bit. A confidential
3 supplement to the plea agreement.

4 Q Okay. And pursuant to that -- let me see the
5 last page.

6 Did you sign that document as well? Is this
7 your signature?

8 A Not on that page, no.

9 Q Sorry.

10 A Yes, that's my signature.

11 Q Now, as far as the plea agreement, you agreed to
12 surrender your license?

13 A That is correct.

14 Q And you pleaded guilty to conspiracy to
15 distribute drugs and conspiracy to commit money
16 laundering?

17 A That is correct.

18 Q Calling your attention to approximately August of
19 2004, were you approached by Cindy Martin with a business
20 proposal?

21 A Yes, I was.

22 Q And how do you know Cindy Martin?

23 A I first met Cindy Martin when we both worked at
24 Treasury Drug in Belton.

25 Q And did -- and when was that approximately when
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1 you worked at Treasury Drug?

2 A Approximately 1994.

3 Q Okay. So when she came into the business, you
4 had already known her on that day in August -- with the
5 business proposition?

6 A Yes, that is correct.

7 Q And what was the proposition?

8 A She said she had a gentleman friend, Troy
9 Solomon, who was working with physicians from the Houston
10 area, and they were looking for a pharmacy to fill
11 prescriptions for high-profile patients.

12 Q And what was your response?

13 A I told her that I might be interested, yes.

14 Q Okay. Showing you what has been marked as
15 Government's Exhibit 602. What is it?

16 A That is a business card from Cindy Martin for
17 when she worked at Countrywide Home Lenders.

18 Q Okay. Now, was that card given to you?

19 A Yes. It was given to me by Cindy Martin --

20 Q It was?

21 A -- the first time she talked to me about the
22 business proposition.

23 Q Okay. And is that business card in the same
24 condition now as when it was recovered from you?

25 A Yes, it is.

1 Q Okay.

2 MR. RHODES: The government moves to
3 admit Government's Exhibit 602 into evidence.

4 THE COURT: Hearing no objection, it
5 will be received.

6 Q (BY MR. RHODES) Now, the front of the card, whose
7 name is listed?

8 A Cindy Martin.

9 Q And on the back of the card, what was written?

10 A Cindy Martin wrote Troy Solomon's name, a phone
11 number where he could be reached. She also wrote her
12 first name and her cell phone number, and then there is --
13 she wrote down the name of three different medications
14 that they wanted me to price.

15 Q So they were asking you to price it?

16 A Price them, yes. Price was a consideration as
17 well as confidentiality.

18 MR. LEWIS: I object to the
19 characterization. I understood Ms. Rostie to say this was
20 Cindy Martin's handwriting.

21 THE WITNESS: That is correct.

22 MR. LEWIS: That clears it up then, Your
23 Honor.

24 Q (BY MR. RHODES) Cindy Martin --

25 A Yes, Cindy Martin's handwriting.

1 Q And with those drugs that they wanted you to
2 price?

3 A Correct.

4 MR. OSGOOD: Excuse me, Your Honor.

5 (Counsel approached the bench and the following
6 proceedings were had:)

7 MR. OSGOOD: I object to the use of the
8 word "they." She had a conversation with Ms. Martin.
9 Unless she had a conversation with these doctors, that
10 implies they had some input. You said they wanted --

11 MR. LEWIS: That's why I asked the
12 question, Judge. I don't want to impute too much to
13 people who weren't in the conversation.

14 MR. RHODES: Okay. I'll correct it.

15 MR. OSGOOD: She said.

16 (The proceedings returned to open court.)

17 Q (BY MR. RHODES) So she asked for pricing on the
18 drugs?

19 A That is correct.

20 Q All right. And based off having received that
21 business card, what did you do?

22 A I priced the prescriptions for her. I was
23 supposed to get back to her. It was several days and I
24 believe she called me back and wanted to know what the
25 prices were.

1 Q Did you tell her the prices?

2 A Yes, I did.

3 Q And did you subsequently engage in any telephone
4 conversations as well during that same time period with a
5 Defendant Troy Solomon?

6 A Yes, I did. I talked to Troy Solomon on at least
7 two occasions --

8 Q And --

9 A -- prior to then.

10 Q And what was the topic of those telephone
11 conversations?

12 A The topic was discussing the price of the drugs
13 and how we would get them to Houston, that kind of thing.

14 Q Okay. And were there certain drugs being asked
15 about the pricing where could there be a cheaper way of
16 doing it, or what was the gist of that conversation?

17 A Yes. They wanted to know if I could give them a
18 less expensive price on them. The promethazine that was
19 listed here, I priced promethazine tablets and found out
20 from Troy in subsequent conversations that he meant
21 promethazine with codeine. So I had to price that.

22 Q Okay. Following that conversation, did you
23 subsequently start to receive prescriptions from Texas?

24 A Yes, I did.

25 Q Do you recall the name of the doctor on the first
245

1 shipment of the prescriptions?

2 A Dr. Christopher Elder.

3 Q Now, please tell us early on were these original
4 prescriptions or were these faxed prescriptions?

5 A These were original prescriptions.

6 Q And the jury's already seen the original. Let's
7 pull up Government's Exhibit No. 1. That wasn't
8 photocopied. That was an original prescription.

9 What was that for?

10 A That was for the Lorcet 10/650 or hydrocodone
11 10/650 is the generic that we sent, also for Xanax 2
12 milligram or Alprazolam 2 milligram.

13 MR. RHODES: Page 2, please. Just the
14 top portion.

15 Q (BY MR. RHODES) All right. RPHLR, what does that
16 stand for?

17 A That means that I was the pharmacist who was
18 filling prescriptions that day.

19 Q I'm going to show you --

20 MR. RHODES: Let's put up Government's
21 Exhibit 36.21.

22 Q (BY MR. RHODES) Handing you what is Government's
23 Exhibit 36.21, is this kind of an original script you
24 would receive?

25 A Yes, it is.

1 Q And could you please tell us what name is listed?

2 A Sue -- you're referring to the patient?

3 Q Yeah, patient's name.

4 A Sue Gibson.

5 Q And the drugs?

6 A The drugs are hydrocodone 10/500 and Alprazolam 2
7 milligram.

8 Q And what's the date?

9 A The date on this is August 17th of '04.

10 Q Now, you have some notations at the bottom. Is
11 that your handwriting at the bottom?

12 A Yes, it is.

13 Q What does it say and what does it mean?

14 A Okay. Product selection is circled on the
15 left-hand side, and it says, "Verified 8/18 per phone,
16 Troy," and "sub okay" means substitution okay.

17 Q What were you going to substitute?

18 A It was written for the brand name Lortab and
19 Xanax, and I substituted the hydrocodone and Alprazolam
20 because that's what we had priced originally.

21 Q All right. And would you go to the next page,
22 please.

23 Is that what you were referring to?

24 A Yes, it was.

25 Q And when was it filled?

1 | A It was filled on August 18th of 2004.

2 Q Okay. So how were you able to fill a document
3 that was written on August 17th, 2004, in Texas and fill
4 it on August 18th, 2004, in Missouri?

5 A This original batch of prescriptions was sent to
6 Cindy Martin overnight, and she brought them to me in an
7 envelope that said "Medicine Shoppe."

8 Q And I'm not going to have you go through every
9 single one of these prescriptions, but could you tell me
10 is it the same language as you flip through them at the
11 bottom that's on the front portion, bottom portion of the
12 prescription? Does it keep saying "verified"?

13 A Yes, it does. And also I would have verified the
14 date at that time because the doctor hadn't written a date
15 on there, and Troy said to use the 17th.

16 Q Okay. And for the most part are they the same
17 type of prescriptions mostly for Lortab and Xanax?

18 A Yes, they are.

19	Q Okay.
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20 A There's promethazine.

21 Q And promethazine?

22 A Promethazine with codeine and Amoxicillin on this
23 one I found here.

24 Q Thank you.

25 With regard to Government's Exhibit 39.40 --
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1 MR. LEWIS: What number, please?

2 MR. RHODES: 39.40.

3 Q (BY MR. RHODES) I'm going to show you the
4 original. What is the name?

5 A David Eakvin.

6 Q What is the date?

7 A It is dated 9/18/04. That's the date that I
8 wrote in.

9 Q Okay. Are you reading -- so you wrote in the
10 date?

11 A Yes, after I called to verify the prescription by
12 phone.

13 Q All right. Let's -- and who did you call?

14 A Troy.

15 Q Let's go to page 2. So we have date written,
16 9/8, and date filled. So that was done on the same day
17 because you wrote a phone number -- I mean, you wrote in
18 the date?

19 A Yes, I did.

20 Q Okay. But you sought verification from the
21 Defendant Troy Solomon?

22 A Yes, I did.

23 Q Now, there is not an address listed on the front.
24 How did you get the address? Go back to page 1.

25 A I got the addresses sent to me by Troy Solomon.

1 Q Okay.

2 A He had a list of addresses and also their
3 driver's licenses which had the address on it.

4 Q Okay. And at the bottom is that your signature?

5 A Yes.

6 Q Now, I'm not going to have you go through all of
7 these. I'll just have you flip through them, tell me if
8 all the prescriptions say Dr. Christopher Elder using his
9 pad and whether or not it says "verified by Troy" at the
10 bottom?

11 A Yes, it does.

12 Q And those are original scripts?

13 A That is correct.

14 Q I'm now going to show you what has been marked as
15 Government's Exhibit 38.01. Would you please explain that
16 document?

17 A This document is a prescription that was faxed to
18 the pharmacy by Troy Solomon on September 1st. We didn't
19 fill the prescription until I received the original copy
20 from the physician, so I wanted both an original and a
21 copy -- a faxed copy of both.

22 Q Okay. So you have the original stapled -- it's
23 on top of the underlying fax. Is that what that --

24 A Yes.

25 Q -- exhibit is?

1 And there's no date. Just a prescription
2 without an address, a date; is that correct?

3 A That is correct.

4 Q Okay. Then let's go to one of the stickers.

5 What are we looking at here?

6 A This is the sticker that is generated by the
7 computer when we fill a prescription.

8 Q Did you put that on top of the fax?

9 A Yes.

10 Q Okay. And there appears to be an address listed
11 at the bottom?

12 A Yes. That's the address of the patient, address
13 and date of birth that was written there on the original
14 fax copy -- on the fax as it was sent to me.

15 Q Can you read the fax header? Are you able to see
16 it?

17 A Yes. It says, "September 1st, 2004, 1413."
18 There's a phone number. It says, "Troy Solomon."

19 Q Okay. I'm going to hand you a stack, not going
20 to ask for you to read all of them. Did you virtually do
21 the same thing with this stack of prescriptions as was
22 done with that first one, with filling in the fax?

23 MR. OSGOOD: What's the exhibit number,
24 please?

25 MR. RHODES: It was 38.01.
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1 MR. OSGOOD: She has 38 up there now,
2 the entire packet?

3 MR. BOHLING: Yes, that's correct.

4 A Yes, that's correct, the same thing.

5 Q (BY MR. RHODES) Please pull up Government's
6 Exhibit 37.

7 I'm handing you what has been previously
8 admitted as the original of Government's Exhibit 37. Is
9 that an original prescription?

10 A Yes, it is.

11 Q And which doctor's name is listed?

12 A Dr. Christopher Elder.

13 Q And at the bottom, what is written by you?

14 A I've got product selection permitted circled and
15 verified 9/1 per phone with Troy and substitution was --
16 sub okayed.

17 Q Okay. I'm going to just hand you a stack of
18 prescriptions and ask you just to flip through it and tell
19 me whether or not these prescriptions all say Dr. Elder
20 and whether or not you wrote "verified by phone." This is
21 Government's Exhibit No. 37.

22 A That is correct.

23 MR. OSGOOD: The date on that was all
24 '04?

25 MR. RHODES: All '04, yes. You want to
252

1 have her --

2 MR. OSGOOD: No, that's okay.

3 Q (BY MR. RHODES) Was it the same date?

4 A It was --

5 Q Would you like to look at this stack again and
6 flip through them?

7 A I've got the one up here. It was written 8/31
8 and verified on 9/1.

9 Q And when you flip through the date on all of
10 these and verify the date, were they all written on 8/31?
11 Just flip through the top portion, please.

12 A Yes, they were.

13 Q Now, I'm showing you Government's Exhibit 42.51.

14 MR. OSGOOD: You say 42.51?

15 MR. RHODES: Yes.

16 Q (BY MR. RHODES) I'm going to hand you the
17 original of what's been imaged on the screen here. Who
18 are those prescriptions written by?

19 A Dr. Christopher Elder.

20 Q And what is the drug listed?

21 A Lorcet 10/650 and Xanax 2 milligrams.

22 Q And do you have verifications written at the
23 bottom?

24 A Yes. Verified phone with Troy.

25 Q And is that your signature at the bottom as well?

1 A Yes, it is.

2 Q Now, I'm noticing that you -- it appears you
3 signed it on 9/14/04 and then -- let's go back to the top
4 of that prescription.

5 There's also a -- the date was 9/14/04. Let's
6 go to the second page, please. How did you receive that
7 on the same date, fill it on the same date?

8 A I called Troy to verify that -- what the date
9 was, and he said to put date written 9/14/04.

10 Q So that's your handwriting?

11 A Yes, it is.

12 Q As far as in the date?

13 A Yes, sir.

14 Q Okay. I'm going to show you -- please pull up
15 Government's Exhibit 46.65.

16 I'm handing you prescriptions from Government's
17 Exhibit 46. Are those original prescriptions?

18 A Yes, they are.

19 Q And are they written by Dr. Elder?

20 A Yes.

21 Q Okay. And what's the date?

22 A The date is 9/30/04. It's written in on this
23 one, and we've got some of them with a stamp of September
24 30, '04.

25 Q Okay. What were the drugs being prescribed, if

1 you can see it on your screen?

2 A That's the Lorcet 10/650 or hydrocodone and Xanax
3 2 milligram or Alprazolam generic.

4 MR. RHODES: Would you please pull up
5 Government's Exhibit 36.01.

6 Q (BY MR. RHODES) This is still from the -- is this
7 an original prescription?

8 A Yes, it is.

9 Q What's the drug?

10 A The drug is Lorcet 10/650 or hydrocodone and
11 Alprazolam 2 milligram -- Xanax 2 milligram or Alprazolam.

12 Q Okay. Thank you.

13 And at the bottom what does it read?

14 A Product selection is again circled, verified by
15 the phone through Troy, 8/18, sub okay meaning
16 substitution was okay.

17 Q Okay. Who was in charge of the shipment of the
18 drugs to Texas? Who was primarily responsible for -- how
19 were the drugs -- once they were filled and in your shop,
20 who would ship the drugs or be responsible for the
21 shipment and entering in the information?

22 A Entering the information in -- for shipment you
23 mean?

24 Q For shipment of the drugs to Texas.

25 A That would have been me entered into the FedEx.

1 Q So you had a FedEx account?

2 A Yes, I did.

3 MR. RHODES: At this time I'd like to
4 read into the record a stipulation of facts regarding
5 Federal Express records that if a witness -- as custodians
6 of record for Federal Express, and I'm just going to
7 summarize this stipulation.

8 That the following records, that each exhibit is
9 a business record of a regularly-conducted activity
10 pursuant to Federal Rule of Evidence 8036, and it lists
11 Government's Exhibit 621 through Government's Exhibit 913.
12 The above listed exhibit is admissible without calling the
13 custodian of records to testify, although other witnesses
14 would be available to testify to the information within
15 the records department. The defendants reserve the right
16 to object based on relevance.

17 The government offers Stipulation 1150 into
18 evidence, Your Honor, and to the records contained within
19 that exhibit.

20 THE COURT: Hearing no objection, it
21 will be received.

22 MR. RHODES: Would you please pull up
23 Government's Exhibit 621.

24 Q (BY MR. RHODES) Now, tell me what is -- can you
25 see that clearly?

1 A Can you make it a little bit larger for me?

2 Q Would that be something you would get on -- you
3 said you would get online. How would you go about making
4 the arrangements for the shipment of the drugs to Texas?

5 A We would get online and generate a request for
6 shipping and the shipping label through FedEx's hardware
7 for shipping or their software for shipping.

8 Q Okay. And what you have here is -- so you're the
9 sender?

10 A That is correct.

11 Q And who are you sending the package to?

12 A Dr. Chris Elder.

13 Q And what address is listed there?

14 A 3003 South Loop West, Suite 415, Houston, Texas.

15 Q All right. So you would be the person who would
16 be responsible for the shipment of those drugs to Texas,
17 correct?

18 A Yes.

19 Q Now, at some point you started filling other
20 prescriptions as well, is that correct, other doctors'
21 prescriptions?

22 A That is correct.

23 Q Who were the other doctors or the doctors'
24 prescriptions that you filled from the state of Texas?

25 A Dr. Peter Okose and Dr. Juan Botto.

1 Q Okay. And would you also send those packages as
2 well FedEx?

3 A Yes, I would.

4 Q Okay. And you started doing Juan Botto roughly
5 around the period of 2005?

6 A That is correct.

7 Q Okay.

8 MR. RHODES: Let's pull up Government's
9 Exhibit 842.

10 Q (BY MR. RHODES) Okay. Now, I notice that the --
11 although the name on the address is the same, the suite
12 number changed from 415 to we're now seeing 450.

13 Why the change?

14 A That occurred when we had more than one occasion
15 where there wasn't anybody to sign for the package in the
16 morning at the other suite number, and Troy told me to
17 send it to the Suite 450 because there was somebody there
18 earlier who would be able to sign for it. They were all
19 shipped first overnight.

20 Q Ms. Rostie, how were you paid?

21 A I was paid in cash.

22 Q From whom?

23 A Cindy Martin would bring the cash.

24 Q How would she bring it?

25 A She would bring it in an envelope and sometimes

1 she -- it would be in the -- in a brown envelope. And
2 sometimes it would be in a bag from Lendcare that she just
3 would -- a shopping bag like thing that she would bring it
4 in.

5 Q What was the usual dollar amounts that would be
6 in that brown envelope?

7 A It varied between five and fifteen thousand,
8 something like that.

9 Q And it would be all cash?

10 A Yes.

11 Q Did you find that to be unusual or -- that you
12 always got paid by cash and not by check?

13 A Yes, I did. Cindy was supposed to have been
14 receiving a check and cashing it.

15 Q Okay. But the check could have been sent
16 directly to you, it didn't have to be sent to Cindy, you
17 were the one that was doing the business, correct?

18 A Yes.

19 MR. LEWIS: Your Honor, I object.
20 That's leading.

21 MR. RHODES: I was just trying to move
22 along.

23 THE COURT: Sustained.

24 Q (BY MR. RHODES) Then what was the business
25 arrangement? Why was it that the money had to be sent to

1 Cindy?

2 A Originally I was supposed to receive a check from
3 the South Texas Wellness Center. On the original shipment
4 I didn't get one in a timely manner, and this was all
5 based on receiving the money in a timely manner, the
6 prices that I gave her. So they said they were sending a
7 check to Cindy, and then she would bring me the money to
8 get it to me quicker that way.

9 Q Now, what was Cindy's role in getting the money
10 to you? Was she paid?

11 MR. LEWIS: I object. That calls for
12 speculation.

13 MR. RHODES: No. She knows.

14 THE COURT: If she knows.

15 MR. LEWIS: The predicate needs to be
16 laid, Your Honor.

17 MR. RHODES: Okay.

18 Q (BY MR. RHODES) What was Cindy's purpose in the
19 arrangement? Was she to get paid?

20 A She originally found the business, and she wanted
21 a finder's fee of \$5 per prescription.

22 Q Okay.

23 A From me.

24 Q So you were to pay her \$5 per prescription?

25 A That is correct.

1 Q And would you give her her cut of the payment
2 once you received the cash or before the cash reached you?

3 A She would take her cut of the payment before she
4 received -- before I received the cash.

5 Q Okay. And you still would receive between \$5,000
6 and \$15,000?

7 A Yes.

8 Q Did you also receive photocopies of state IDs as
9 well?

10 A Yes, I received photocopies of state IDs and
11 driver's licenses on the prescriptions originally.

12 Q I want to show you what has been marked and
13 previously admitted as Government's Exhibit 1197.

14 MR. OSGOOD: What exhibit number,
15 please?

16 MR. RHODES: 1197.

17 Q (BY MR. RHODES) Do you recognize this exhibit?

18 A Yes. It's an invoice from my pharmacy.

19 Q Is this a document that's created by your
20 business?

21 A Yes, it was.

22 Q Is this something that is regularly kept or
23 maintained in your place of business?

24 A Yes.

25 Q And are the events made at or near the time when
 261

1 you recorded this information?

2 A Yes, they are.

3 MR. RHODES: The government moves to
4 admit Government's Exhibit 1197 into evidence.

5 MR. OSGOOD: No objection.

6 THE COURT: Hearing none, it will be
7 received.

8 MR. RHODES: Okay. Will you please
9 display the exhibit.

10 Q (BY MR. RHODES) What is it that we're looking at?

11 A This is an invoice to South Texas Wellness Center
12 for the hydrocodone and Alprazolam that was shipped to
13 them.

14 Q And what's the date listed?

15 A September 9th of 2004.

16 Q Now, I see that there's this invoice. Did you
17 send any other invoices to South Texas Wellness Center?

18 A No, I don't believe I did.

19 Q Why not?

20 A Troy said not to send them.

21 Q To -- he did not want any invoices to be sent to
22 him?

23 A That is correct.

24 Q And referring back, who was -- who first told you
25 the address to put on the FedEx boxes?

1 A I checked it with Troy, but I put the address of
2 the South Texas Wellness Center where he wanted me to --
3 requested I send it to.

4 MR. RHODES: Can I have a minute, Your
5 Honor?

6 THE COURT: Yes.

7 Q (BY MR. RHODES) Let's pull up Government's
8 Exhibit 478. This is a copy of a fax, incoming fax.
9 Could you please tell us when you initiated the faxes, why
10 was it important to get the signature of the doctor?

11 A I wanted the signature of the doctor in order to
12 show that the doctor had actually authorized the refills.

13 Q Why did you deal with Troy Solomon rather than
14 with the doctors themselves?

15 A Troy said that the quickest way to get the
16 information back and forth through the doctor was through
17 him.

18 Q To go through him?

19 A Yes.

20 Q Okay.

21 A He was the doctor's agent.

22 MR. RHODES: I have no further questions
23 for this witness.

24 MR. OSGOOD: I think I'm going first,
25 Your Honor, if that's permissible.

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THE COURT: Sure.

MR. OSGOOD: Can I have Packet 39,
please? I want the real thing.

CROSS-EXAMINATION BY MR. OSGOOD:

Q Ms. Rostie, I represent Dr. Elder. We've never
met, have we?

A No.

Q You and Dr. Elder have never met, have you?

A No.

Q Okay. Wouldn't know him if you saw him, would
you?

A No.

Q Other than in this courtroom?

A That is correct.

Q Let me show you Government's Exhibit No. 39.
These are original prescriptions in '04 for him. Would
you agree with me on that?

A Yes.

Q Can you see them okay? If I could stand up here.
I don't want to get in front of the jury.

You see his signature there?

A Yes, I do.

Q You see his signature there?

A Yes.

Q Pretty much the same, isn't it? Pretty much the
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1 same on that one, isn't it?

2 A Yes.

3 Q Pretty much the same on that one, isn't it?

4 A Yes.

5 Q Pretty much the same on that one, isn't it?

6 A Correct.

7 Q If we go through this, you're convinced these are
8 original prescriptions that he wrote and signed, aren't
9 you?

10 A Yes, I am.

11 Q And you filled them, didn't you?

12 A Yes, I did.

13 Q And you're responsible as a pharmacist to look at
14 signatures and be sure that they're correct, right?

15 A Yes.

16 Q All right.

17 MR. OSGOOD: Now, pull that exhibit back
18 up you had, please, that fax for refills. Let me give you
19 some numbers here. 478 would be a good start.

20 Blow up the signature block, please.

21 Q (BY MR. OSGOOD) Does that look anything at all
22 like his signature there?

23 A That looks like initials.

24 Q Does it look like any of his initials in any of
25 these that --

1 A The C looks the same on it, but as far as that
2 goes, we don't have to have the physician's signature
3 himself -- itself on a refill. It can be a -- one of his
4 agents.

5 Q Oh, that's the first time we've heard that. So
6 you're suggesting that this might have been signed by
7 somebody else and that would have been okay with you?

8 A Yes. That's done all the time.

9 Q You would agree with me, then, that is -- maybe
10 you won't. The jury will be able to look at it. That's
11 somewhat dramatically different than the signatures on
12 these documents, these scripts?

13 A Yes.

14 Q So when we were -- the government witnesses
15 referred to that as a signature, you're saying that's
16 initials, and it doesn't look anything like his signature
17 on these scripts, does it?

18 A That is correct.

19 Q Now, something else, you picked out specific ones
20 that had some missteps on them, I guess, without the date
21 or something. Were you aware that in Texas at the time
22 that all a script had to have on it was the name of the
23 person and the medication and the signature of the doctor?
24 Did you know that?

25 A No, I wasn't aware of that.

1 Q You didn't try to find out what you needed to do
2 to be working in Texas as a pharmacist until way after the
3 fact, didn't you?

4 A I was concerned with the federal regulations
5 concerning filling the prescriptions, not those overriding
6 state regulations.

7 Q You would agree with me also that these
8 prescriptions are random names here and they're not in any
9 kind of alphabetical order or anything, are they?

10 A That is correct.

11 Q This is not what I call alphabet soup
12 prescriptions where it's A. Johnson, B. Johnson, C.
13 Johnson, D. Johnson, that kind of thing, are they?

14 A That is correct.

15 Q Now, look at this script. It's the first one on
16 the top. Tell me what's illegal, wrong, impermissible, or
17 incorrect about that?

18 A The only thing that's on there is I verified it
19 by phone from Troy on the -- put the date on it, the date
20 it was written.

21 Q No. You didn't listen to my question.

22 What about that -- you've been a pharmacist how
23 many years, ma'am?

24 A More than 30 years.

25 Q What's wrong with that script? Anything? It
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1 looks like a valid script to me, doesn't it?

2 A Yes.

3 Q All right. And it was for Schedule III drugs
4 that are prescribed for pain medicine, isn't it?

5 A Yes.

6 Q Were you aware that Dr. Elder was a certified
7 double boarded pain management specialist?

8 A Yes, I was.

9 Q How did you know that?

10 A I went to the -- on the internet to a Texas Board
11 of Medical -- board website and checked his credentials
12 there. I saw he was a pain management specialist. I
13 believe Troy also told me he was pain management.

14 Q I believe recently you yourself have been -- I'm
15 not trying to pry into your private business. You've been
16 seeing a physician because you've been ill lately; is that
17 right?

18 A That is correct.

19 Q Are you getting prescription medicine from your
20 physician?

21 A Yes.

22 Q Does he tell you what pharmacy to go to when he
23 gives you a prescription?

24 A No, he doesn't.

25 Q Have you ever had a doctor tell you, you got to
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1 go to this particular pharmacy to fill this?

2 A No, I haven't.

3 Q And have you in the past before all of this
4 arrangement, were you ever paying any local physicians
5 here in Kansas City to shuffle patients your way?

6 A No, I wasn't.

7 Q And were you basically depending on walk-in trade
8 for your prescriptions?

9 A That is correct.

10 Q Isn't that the way the pharmacy business works?

11 A Primarily.

12 Q All right. So when Dr. Elder wrote these
13 original prescriptions here for Xanax, for pain medicine,
14 for a patient, this one is David E-a-k-u-i-n, I believe,
15 however you pronounce that.

16 A E-a-k-v-i-n.

17 Q When he wrote that prescription and handed it to
18 this patient, can you explain how it got to Kansas City?

19 A It was sent to me.

20 Q By whom?

21 A By Troy Solomon.

22 Q Through this Ms. Martin?

23 A Yes.

24 Q Okay. Some she hand delivered and some were
25 mailed to you; is that right?

1 A That is correct. So I can't tell you if that one
2 was mailed direct to me or not.

3 Q Now, you said you checked out Dr. Elder on the
4 internet so you had some confidence that a double boarded
5 certified pain management specialist was writing
6 prescriptions for pain medicine. That didn't give you any
7 concern or alert, did it?

8 A No.

9 Q And these all appear to be valid prescriptions
10 for pain medication, don't they?

11 A Correct.

12 Q Not a thing wrong with them, is there?

13 A No.

14 Q And if this was all that the government found
15 when they looked in your records, there wouldn't be any
16 problem, and none of us would be here today, would we?
17 Even you wouldn't be here?

18 A That's correct.

19 Q You wouldn't have pled guilty to doing bad
20 things, would you --

21 A No.

22 Q -- if this is all we were dealing with?

23 Now, you did business with Dr. Elder from around
24 -- well, I say you did business with him.

25 You were getting original scripts of Dr. Elder

1 from around August through about December, weren't you?
2 You got them long after that, but I'm talking about these
3 originals were coming in. The first series of originals
4 --

5 A Probably someplace in there.

6 Q From August to -- were you aware that he left the
7 South Texas Wellness Center and went to work at another
8 clinic?

9 A I was aware he was working at another clinic.

10 Q You in fact told the government at one point that
11 he was a full-time employee at South Texas?

12 A No, I never told the government he was a
13 full-time employee.

14 Q You didn't tell Mr. Van Fleet that during your
15 interview at the --

16 A Not to my knowledge.

17 Q During the search.

18 Okay. If he put that down, then that's just an
19 error in his report?

20 We'll ask him about it. He's going to testify.

21 A That's correct. I would have no basis to know if
22 he worked full time or how long he -- how much he worked
23 for South Texas.

24 Q Were you aware he was an employee of the South
25 Texas Wellness Center?

1 A I assumed he was, yes.

2 Q All right. Now, in fact when you shipped your
3 packages of drugs, you shipped them to the South Texas
4 Wellness Center, didn't you?

5 A To Dr. Elder at the South Texas Wellness Center.

6 Q You didn't get anything back from FedEx saying
7 that -- or, did you, saying that the shipment had been
8 received and who signed for it? Did you get something
9 back like that?

10 A I had, I think, on a -- on one occasion I did get
11 something back like that because we had trouble of a
12 package that was delivered late, and we were trying to
13 track it down.

14 Q Did you normally check tracking on these things
15 every day?

16 A No. I normally talked to somebody there that
17 said that they had -- or Troy usually that said that the
18 package had arrived.

19 Q So you don't know who signed for them once they
20 got there?

21 A That is correct.

22 Q Were you aware of the setup of the South Texas
23 Wellness Center, that there was a chiropractor and her
24 mother that owned it?

25 A No, I was not.

1 Q And that they were into rehab? You didn't know
2 that?

3 A No.

4 Q Okay. The invoice that you prepared that we
5 looked at a few moments ago, the first invoice, it was
6 invoiced to whom?

7 A I believe it was Dr. Elder at South Texas
8 Wellness Center. Maybe it was just South Texas Wellness
9 Center.

10 Q Pardon?

11 A It could have been just South Texas Wellness
12 Center.

13 Q Well, let's look at it.

14 A South Texas Wellness Center.

15 Q Is it up there now?

16 A Yes.

17 Q You didn't invoice it to Dr. Elder, did you?

18 A No.

19 Q And later after the year clock runs out in
20 December, in January you started doing large volume
21 business with Dr. Okose, didn't you?

22 A Yes.

23 Q Massive amounts of drugs, weren't they?

24 A (Witness nodded head.)

25 Q And Dr. Botto also?

1 A Yes.

2 Q And where did you send those?

3 A To the same address.

4 Q Okay. You say you were -- were you aware that
5 Dr. Elder had left by then, was no longer even working
6 there?

7 A I was under the understanding that he was working
8 at more than one location.

9 Q Okay. And you were sending drugs for all of
10 these doctors to this address; is that right?

11 A Yes. That was what Troy wanted me to do.

12 Q Okay. Now, at some point, then, you make a
13 decision on your own, I guess, to generate these refill
14 requests. Is that an accurate statement?

15 A Troy requested that we do.

16 Q So are you saying that was Troy that put you up
17 to that?

18 A Troy requested that we send him the refill.

19 Q Now, when -- you've been in this business 30
20 years; is that right?

21 A Yes.

22 Q These prescriptions, and we can get them out and
23 show them to you again, the originals, invariably every
24 one said "no refill" on them from Dr. Elder, didn't they?

25 A I believe so.

1 Q We don't want to leave anything hanging or
2 anything on speculation or belief.

3 Here's another packet. This is Government's
4 Exhibits 42.51 to 42.156. Is there a symbol that's used
5 characteristically for refill?

6 A He's got a zero.

7 Q Zero with a slash through it?

8 A Yes.

9 Q How does a pharmacist with 30 years of experience
10 interpret that?

11 A That means no refills.

12 Q There's a reason for no refills, isn't there,
13 with this kind of medication?

14 A (Witness nodded head.)

15 Q I know you're not a doctor, but you've been in
16 this business a long time. Doctor wants to see the
17 patient again, doesn't he?

18 A That can be one of the reasons, yes.

19 Q Well, what would be some other reasons?

20 A Some of the offices keep track of refills very
21 carefully and actually record your refill down.

22 Q When you -- you ever have a patient come in who
23 had gotten a script from you before and ask for a refill
24 from you?

25 A Yes.

1 Q And what do you do in that instance?

2 A We contact the physician's office.

3 Q So that's the way it gets into the system, isn't
4 it, the patient comes in and says --

5 A Yes.

6 Q -- you know, I had Vicodin and I got out of the
7 hospital, I've been taking Vicodin and it's worn off and
8 I've still got a lot of pain, can I get this refilled, and
9 you tell them, no, it's got a zero with a slash through
10 it, I can't refill it. What do you do then when the
11 patient says, "I'm still hurting"?

12 A We either call or fax the physician's office for
13 an okay to refill.

14 Q And what typically will happen then? I assume a
15 variety of things can happen. The doctor can say, Send
16 them back to see me, it's okay, or --

17 A He can either okay a refill or he can deny it.
18 They can deny it and tell me to ask the patient to contact
19 them, yes.

20 Q And that's typically the way a refill gets into
21 the system, isn't it?

22 A Yes.

23 Q Now, you had all of these original prescriptions
24 in your database, didn't you?

25 A Yes.

1 Q And so then you start on your end without any --
2 well, strike that.

3 You never got any calls from any of his patients
4 saying, I understand you filled my script or I gave it to
5 Troy Solomon to send up to you and you sent me the
6 medicine? You never got any calls from any patients like
7 that, did you?

8 A No.

9 Q In the entire time that this went on, the 18
10 months?

11 A That's correct.

12 Q You on your own -- I guess you say Troy put you
13 up to it, but we know -- we don't have a record of him
14 putting you up to it. We do have a record --

15 MR. RHODES: Objection, Your Honor. May
16 we approach?

17 (Counsel approached the bench and the following
18 proceedings were had:)

19 MR. RHODES: He's trying to argue to the
20 jury rather than ask a question.

21 MR. OSGOOD: I'll ask a question. I'll
22 withdraw that. Didn't mean to push your button.

23 (The proceedings returned to open court.)

24 MR. OSGOOD: Can we have one of the
25 refill documents up, please.

1 Q (BY MR. OSGOOD) Let's look at 458, please. What
2 do you got up there? That one will do.

3 This is another one of these with the squiggly
4 little thing across here it at the bottom. This went out
5 originally as a fax to Mr. Solomon. Is that what you're
6 saying? And it was faxed back?

7 A Yes.

8 Q And this one was faxed back from, according to
9 the top --

10 A To Troy Solomon.

11 Q Okay. Now, the first time that this occurred,
12 didn't that raise a red flag for you?

13 A No, it didn't.

14 Q Well, tell me how it is you thought that these
15 patients ought to be getting refills when there was "no
16 refill" on the prescription, none of them had contacted
17 you, and none of them had ever been in your shop?

18 A Generally pain management's physicians see
19 patients for an extended period of time and keep them on
20 the same medication for a long period of time.

21 Q Well, I'll give you the benefit of the doubt and
22 let's just say that for whatever reason you decided that
23 it would -- you were going to do a service for the patient
24 by contacting them to see if they needed a refill. Who's
25 the doctor?

1 A Dr. Elder.

2 Q Did Mr. Solomon have a medical degree?

3 A No.

4 Q You've been in this business 35 years.

5 THE COURT: Counsel, approach the bench.

6 Q (BY MR. OSGOOD) Can he issue a prescription?

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 THE COURT: We're going in circles now,
10 Mr. Osgood. She's already said that sometimes the
11 assistants do that. Let's move on.

12 MR. OSGOOD: I'll speed it up.

13 (The proceedings returned to open court.)

14 Q (BY MR. OSGOOD) Bottom line, you were originating
15 these yourself and they were filled?

16 A I did not originate it myself. I did it upon
17 request of Mr. Solomon. Yes, I -- an agent of a physician
18 can authorize a refill. That happens all the time. We
19 rarely have a doctor call us on the phone and say this is
20 doctor so and so, it's okay to refill this prescription.
21 When we get a fax, it's not necessarily the doctor's
22 signature on it. It can be a signature of someone acting
23 as agent.

24 Q What do you mean by "agent"? Explain that. I
25 mean an agent I thought was somebody you went to to get a

1 book written or --

2 THE COURT: I think she's already
3 covered this area once, Mr. Osgood.

4 MR. OSGOOD: Okay.

5 Q (BY MR. OSGOOD) Now, after January 1st, you also
6 issued prescriptions on Dr. Elder, didn't you?

7 A Filled prescriptions, yes.

8 Q Filled prescriptions.

9 From January 1st around to that October
10 timeframe when you were doing all of the ones for Okose,
11 did you also have Elder prescriptions in that batch, in
12 that timeframe, that part of the clock?

13 A Part of the time, yes.

14 Q And were a lot of those faxed?

15 A Yes, they were faxed, authorizations to fill, to
16 refill.

17 Q No originals came in anymore after the end of the
18 year, did they, of '04?

19 A I don't believe so.

20 Q Okay. And you were comfortable with the
21 arrangements so you didn't check to see the other side of
22 the clock? From January of '05, until October when this
23 all blew up, you didn't check, did you, on a regular
24 basis? You didn't call Dr. Elder, did you?

25 A No, not Dr. Elder.

1 Q And the entire time -- I think I may have asked
2 you this, but in the entire time that you were involved
3 with this, you never, ever called him, did you, and
4 initiated a call to him?

5 A Yes, I did.

6 Q Where you initiated a call to him? You called
7 him at his phone number?

8 A Yes, I did.

9 Q What number did you call?

10 A I'm sorry that's been so long ago, I can't tell
11 you what the phone number was. It's the phone number that
12 was listed on the prescription blank.

13 Q Would it have been the South Texas Wellness
14 Center?

15 A Yes, the South Texas Wellness Center.

16 Q Okay. Now, you had e-mails, did you not, and you
17 had Cindy Martin in your e-mail list, didn't you?

18 A Yes.

19 Q You had Troy Solomon in your e-mail list, didn't
20 you?

21 A Possibly, yes.

22 Q Troysolomon@emptotalcare.com, does that ring a
23 bell?

24 A It's been so long ago, I --

25 Q All right.

1 A -- couldn't tell you.

2 Q If I showed you a list of some of the e-mails
3 that the government found in your computer, would you
4 recognize those?

5 McKesson is on there a lot, I think, which was
6 your supplier; is that right?

7 A Yes.

8 Q Various sales e-mails, people you would do
9 business with?

10 A Yes, this is people I did business with.

11 Q Are there other doctors on there, the doctors'
12 offices?

13 A I've got an e-mail from Jay at doctor -- well,
14 there's no e-mail address there. I believe it was just a
15 phone number plus he gave me his number.

16 Q You did not have Dr. Elder's e-mail address, did
17 you, eldermd@yahoo.com? You can look at it all you want.
18 Trust me it's not on there.

19 A No.

20 Q You never e-mailed him either then, did you?

21 A No.

22 Q Now, the government showed you probably five or
23 six prescriptions during direct that had what I would call
24 glaring errors on them, things that were omitted or you
25 needed to know, right, like a date?

1 A That is correct.

2 Q But those were just three or four examples of
3 hundreds of prescriptions, of original prescriptions of
4 Dr. Elder that you ended up with; is that correct?

5 A That's correct.

6 Q By and large the vast, vast majority of them were
7 all legitimate prescriptions, as we discussed when I first
8 started talking to you, for pain medicine?

9 A Yes.

10 Q By a pain management specialist?

11 A As far as I can tell, yes.

12 MR. OSGOOD: I think I'm about done,
13 Your Honor, if I could have a minute.

14 Q (BY MR. OSGOOD) Now, Ms. Rostie, how much money
15 did you make off of this entire arrangement with these
16 doctors in Texas?

17 A I couldn't tell you exactly because I had
18 expenses on top of just the cost of the prescription
19 medicine itself.

20 Q Haven't you agreed to give back, like, \$900,000
21 in profits that you admitted were ill-gotten gain?

22 A No.

23 Q You're not on -- I'll let cocounsel cover that.

24 MR. OSGOOD: That's all, Your Honor.

25 CROSS-EXAMINATION BY MR. LEWIS:

1 Q Good morning, ma'am.

2 A Good morning.

3 Q My name is Chip Lewis. Almost afternoon.

4 My name is Chip Lewis. I represent Troy
5 Solomon. I don't think you and I have ever had the
6 opportunity to talk before.

7 A No, we haven't.

8 Q Well, I'm going to try to not cover any area that
9 Mr. Osgood has, so let me orientate you to where I want to
10 start.

11 Let's follow up where Mr. Osgood left.

12 MR. LEWIS: First, Your Honor, we would
13 offer as Solomon Exhibit No. 2 the e-mail list that
14 Mrs. Rostie identified and tendered to Mr. Rhodes.

15 MR. RHODES: No objection.

16 THE COURT: It will be received.

17 Q (BY MR. LEWIS) Let's talk about -- turn the clock
18 back to when Cindy Martin first approached you about this
19 deal and proposal that she had.

20 A Okay.

21 Q That would have been Julyish of 2004 or the like?

22 A Would have been in August of 2004.

23 Q Okay. Now, around the time that Ms. Martin came
24 to you with this proposal, you had a visit from a
25 gentleman by the name of Dean Wagner, correct?

1 A Yes.

2 Q And for the ladies and gentlemen of the jury,
3 Mr. Wagner was one of the corporate hierarchy or
4 supervisors for The Medicine Shoppe corporate offices,
5 right?

6 A Yes. He was a district manager.

7 Q And as a district manager, he called on you from
8 time to time to check on your pharmacy, right?

9 A That is correct.

10 Q And on the occasion that I'm talking about, Jill
11 Gerstner was present when he came to visit, if you recall?

12 A I don't recall. She probably was.

13 Q Okay. In fairness to you, it's been awhile since
14 you've talked with anybody or been debriefed about this,
15 hasn't it? It's been some time, hasn't it?

16 A Yes.

17 Q How many times in total have you met with the
18 government or its agents?

19 A I'm not positive. Half a dozen or something or
20 more than that if you count when the DEA came in or when
21 Mr. Van Fleet came in with the original investigation.

22 Q Okay. So between half a dozen and 8 to 10,
23 something in that neighborhood, is that fair, Mrs. Rostie?

24 A Something like that.

25 Q Okay. Now, turning back to that visit from the
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1 district manager, Mr. Wagner. At that meeting in this
2 same timeframe of Martin's proposal, he told you -- in
3 fact, he emphasized the fact that you needed to increase
4 sales at the pharmacy, right?

5 A Yes. He's always doing that.

6 Q And he certainly did that again in this same time
7 period that Martin is approaching you, didn't he?

8 A That is correct.

9 Q The deal that you made with Martin for these
10 Texas prescriptions did in fact astronomically increase
11 your sales revenue, true?

12 A Eventually, yes.

13 Q I want to talk to you about a few specific things
14 now. I'm going to another subject. Some of the
15 confirmations -- some of the conversations you had with
16 Mr. Solomon and the other doctors, Elder, Okose, Botto,
17 okay?

18 A Okay.

19 Q All right. At one point in time during filling
20 these Texas prescriptions, you had a conversation with who
21 you thought was Dr. Elder, right?

22 A With Dr. Elder and Troy, yes.

23 Q And in that conversation who you thought was Dr.
24 Elder -- and it may well be. I just don't want to
25 castigate somebody else for having a conversation that we

1 don't have recorded.

2 So assuming you're right, Dr. Elder and Troy
3 Solomon, during that initial or near initial conversation,
4 you start dispensing these medicines, Dr. Elder confirmed
5 with you that these were legitimate prescriptions for his
6 patients, correct?

7 A Correct.

8 Q That wasn't Troy Solomon, that wasn't anybody's
9 agent, that was the doctor himself?

10 A Yes, that is correct.

11 Q There is -- do you recall there being an instance
12 when you started filling these Texas prescriptions that
13 the same patient name was submitted by Dr. Okose or under
14 a Dr. Okose prescription and under a Dr. Elder
15 prescription?

16 A Yes, I do.

17 Q And that was very memorable, wasn't it?

18 A Well, it was --

19 Q I mean, in the grand scheme of these Texas
20 prescriptions, that stood out?

21 A Yes.

22 Q Caused you concern?

23 A Any time I see two different physicians writing
24 the same medication or close to the same medication, yes.

25 Q Especially when we're talking about controlled

1 substances?

2 A Correct.

3 Q You did something about that, didn't you?

4 A Yes. I called Troy and asked him if Dr. Elder
5 was aware that he was also -- that I had also received
6 prescriptions from Dr. Okose for the same patient.

7 Q And in that conversation Troy Solomon told you,
8 Don't fill those prescriptions, those doctors wouldn't
9 have it that way, and please don't fill those
10 prescriptions?

11 A That is correct.

12 Q Back to Cindy Martin's proposal with you. She
13 told you from the outset that she wanted a cut, right?

14 A Yes, she did -- well, after the first --

15 Q After introducing to you when you all get the
16 figures right, she says, "I want a cut," right?

17 A Yes.

18 Q And she took her cut, didn't she?

19 A Yes, she did.

20 Q Religiously?

21 A Yes. I assume she did.

22 Q Now, you don't know whether or not she was also
23 cutting a deal with the other side of the equation, do
24 you?

25 A That is correct.

1 Q So for all you know, she could have been cutting
2 a deal for a cut of your cost plus the doctors on the
3 other side?

4 A That is correct.

5 Q The money that she took for her cut, you didn't
6 account for that in any tax situation, did you?

7 A I never received the money, no.

8 Q Right. So it wasn't --

9 A She actually took it.

10 Q So it wasn't income to you, she took it
11 beforehand is my point?

12 A Correct.

13 Q Would have been her tax liability if it's income
14 to her?

15 A Yes.

16 Q In discussions with Ms. Martin, she assured you
17 that all of these Texas prescriptions were in her words
18 aboveboard, right?

19 A Yes, as far as she knew.

20 Q Right. And putting this in its proper light for
21 the ladies and gentlemen of the jury, she had experience
22 in the pharmacy field, right?

23 A Yes. She had been a pharmacy technician for a
24 number of years. She was a front-end supervisor and
25 pharmacy technician at Treasury when I worked there as a

1 pharmacist.

2 Q So based on your very vast and detailed, long
3 experiences as a pharmacist, would you say that she was
4 fairly well informed about the procedures, policies of
5 pharmacy?

6 A Definitely.

7 Q Certainly more so than any of us that have never
8 been -- worked in a pharmacy or exposed to such?

9 A That is correct.

10 Q Along the lines of the conversation you had in
11 which Dr. Elder confirmed these were legitimate scripts
12 with legitimate patients, you had a similar conversation
13 with Dr. Okose, correct?

14 A Yes.

15 Q And Dr. Okose assured you all the prescriptions
16 that he was sending you were legitimate?

17 A That is correct.

18 Q And that was Dr. Okose, not Troy Solomon, right?

19 A That is correct.

20 Q Now, let me ask you about a statement of Cindy
21 Martin. Would it be fair to characterize Cindy Martin as
22 not involved in the filling of Texas prescriptions or the
23 payment arrangements? Would that be accurate?

24 A No, it would not. She was not involved in the
25 filling, but she was definitely involved in the payment.

1 MR. LEWIS: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 Q (BY MR. LEWIS) Mrs. Rostie, I want to show you
5 what I've marked for identification purposes as Solomon
6 Defendant's Exhibit No. 3 and ask you to take a look at
7 that.

8 A Yes.

9 Q Do you recognize that, ma'am?

10 A Yes. That's an e-mail I sent to Cindy concerning
11 the packages from -- that went to Texas.

12 Q Yes, ma'am.

13 MR. LEWIS: Your Honor, after tendering
14 to Mr. Rhodes for his inspection, I would move this piece
15 of evidence into -- move this item into evidence.

16 MR. RHODES: No objection, Your Honor.

17 THE COURT: Hearing no further
18 objection, it will be received.

19 Q (BY MR. LEWIS) Let me see if I can position this.

20 Mrs. Rostie, will you just read the header, and
21 we don't need all the specific fax numbers, quantities,
22 but just the header and that sentence that goes with --
23 underneath the header for the ladies and gentlemen. It's
24 kind of hard to see.

25 A It's extremely hard to see. It says, "Shipment
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1 will go out tomorrow on new package you brought. FedEx
2 couldn't pick up today because" -- I can't see the -- that
3 side of the --

4 Q Let me help you out.

5 MR. LEWIS: Your Honor, may I approach
6 the witness?

7 THE COURT: Yes.

8 Q (BY MR. LEWIS) Here you go, ma'am.

9 A The subject on it is "Numbers."

10 **"Shipment will go out tomorrow on new package**
11 **you brought." In parentheses, "FedEx couldn't pick up**
12 **today because of weather when we got it ready right after**
13 **noon."**

14 Q Fair enough. Thank you, Mrs. Rostie.

15 Now, in relation to the revenue generated, you
16 made a good point for the ladies and gentlemen of the
17 jury. You said eventually Mrs. Martin's proposal led to
18 an astronomical increase in your revenue, right?

19 A That is correct.

20 Q And the "eventually" is important in your answer,
21 isn't it?

22 A Yes.

23 Q Because originally the scripts, these original
24 scripts that Mr. Osgood went through with you, there were
25 only 15, maybe 20 involved in those original scripts you

1 were writing for Dr. Elder's patients, correct?

2 A There were always more than 15 or 20
3 prescriptions.

4 Q I don't mean to tie you to a certain number.
5 What I'm trying to convey to the ladies and gentlemen, the
6 numbers got off the charts once Okose started sending his
7 request for refills on his patients, et cetera?

8 A That is correct.

9 Q And, thusly, your banking deposits, the revenue
10 that you were generating, reflected that great increase in
11 revenue, didn't it?

12 A Yes, it did.

13 Q Now, time-wise, we start July, August of 2004,
14 with the Texas prescriptions, correct?

15 A August, yes.

16 Q The prescriptions -- the Texas -- the process of
17 filling the Texas prescriptions or receiving anything
18 stops in '05, October, I believe, or earlier?

19 A It was October of '05.

20 Q Do you recall a meeting that you had with
21 government agents including an Assistant United States
22 Attorney, Stuart Burns, January of '05?

23 A Not specifically.

24 Q Okay. Well, let me see if I can help.

25 MR. LEWIS: If I may have one moment to
 293

1 help orient the witness, Your Honor.

2 Mr. Osgood, do you have the exhibit, the date
3 being --

4 MR. OSGOOD: I can tell you. You
5 talking about the meeting --

6 MR. LEWIS: Burns, yes, sir. I'm sorry,
7 here it is, 3/31/09.

8 THE COURT: Can I speak with counsel for
9 just a moment, please.

10 (Counsel approached the bench and the following
11 proceedings were had:)

12 THE COURT: How much longer do you have?

13 MR. LEWIS: Couple more.

14 THE COURT: How much redirect do you
15 have?

16 MR. RHODES: About 10 or 15 minutes
17 probably.

18 MR. LEWIS: Mine is probably 10 or 15.
19 If you want to take lunch, I have no problem breaking it
20 up. All I'm going to do now is go through the plea
21 agreement and I'm done, but it could take a few minutes.
22 As you can see, I'm very judicious with time.

23 MR. OSGOOD: I've got to come back a
24 little bit on the phone call because we originally had a
25 ruling that I may have opened the door to it, about the

1 phone calls weren't supposed to be admitted. There was an
2 in limine granted, didn't meet the test on reliability and
3 the person on the other end --

4 MR. LEWIS: That's why I said someone --

5 MR. OSGOOD: Shame on you.

6 MR. LEWIS: I apologize.

7 THE COURT: Why don't we take a break.

8 MR. LEWIS: Fair enough.

9 (The proceedings returned to open court.)

10 THE COURT: Why don't we take a break,
11 take a lunch break. I don't expect the break will be much
12 longer than 40 minutes. I'd like to keep the trial
13 moving. That's why I do it that way. So why don't we
14 plan on resuming about a quarter till. I need everybody
15 back in the jury room, ready to go so we can get started.

16 Again, I'll ask that you not discuss the case
17 among yourselves or with others or allow anyone to discuss
18 it in your presence.

19 Thank you.

20 (The noon recess was taken.)

21 AFTERNOON SESSION

22 (The following proceedings were had in the
23 presence of the jury:)

24 MARY LYNN ROSTIE, previously being sworn, resumed the
25 stand:

1 CROSS-EXAMINATION (continued) BY MR. LEWIS:

2 Q Mrs. Rostie, over the lunch break to save some
3 time, you were able to review the interview I was talking
4 about?

5 A Yes, the interview in 2009, not 2005.

6 Q I apologize. I was talking about the events of
7 2005. Pardon me.

8 Okay. So let's go back to that interview in
9 2009, with government agents. It is true that back in
10 January of 2005, Dr. Okose comes on the scene to -- for
11 you to fill the prescriptions for his patients, correct?

12 A Correct.

13 Q And at the onset of that, Troy Solomon -- in
14 fairness, Troy Solomon made it a point of asking you to
15 call Okose, talk to him about this, and ensure that this
16 was legitimate, correct?

17 A Correct.

18 Q And that was Mr. Solomon's request of you?

19 A Yes. But that's also what I did with Dr. Elder.

20 Q I understand. I'm not disparaging you at all in
21 that regard. I'm just trying to make the point for the
22 ladies and gentlemen that Troy Solomon asked you, implored
23 you to talk to Okose, make sure this was all legitimate,
24 right?

25 A Correct.

1 Q Now, as a pharmacist up here in Belton, Missouri,
2 you found yourself in a position of having to rely on the
3 good faith of others, right?

4 A Correct.

5 Q The good faith of the doctors who were giving you
6 the prescriptions, right?

7 A Correct.

8 Q Now, there came a point in time where this idea
9 of requesting the refills in advance came up, right?

10 A Correct.

11 Q And that was your idea, correct?

12 A No, it wasn't. What happened was that -- it
13 wasn't totally. What happened was Troy called and he
14 wanted me to fill prescriptions that would be up for
15 refill. And I said, Well, you don't have any more than
16 that, you don't need a date and all that? I said, The
17 simplest thing is that if I fax you a list, then you're
18 going -- the doctor is going to have the name, the
19 medication, everything on it, and in that regard it was my
20 idea to generate the fax on my end.

21 Q And that's what I wanted to clarify.

22 A Right.

23 Q It was your idea to send the refill list back
24 down to Texas with the necessary information that you've
25 just detailed, right?

1	A Correct.
---	------------

2 Q And also in fairness to you, Mrs. Rostie, you've
3 gone through some considerable health problems over the
4 last several years?

5	A Yes.
---	--------

6 Q As such, you were not as productive at work as
7 you would like to be?

8	A Correct.
---	------------

9 Q Through no fault of your own medical issues, but
10 as a result, you had to rely somewhat on Ms. Gerstner and
11 your husband to help you verify some of these
12 prescriptions, right?

13	A Yes.
----	--------

14 Q And I don't know that it was discussed for the
15 ladies and gentlemen of the jury, but your husband worked
16 at the pharmacy with you, right?

17	A Yes.
----	--------

18 Q He served kind of a jack-of-all-trades; is that
19 fair?

20 A Yes. He also was a certified -- he was a
21 registered technician, a pharmacy technician too.

22 Q He helped with the coffee bar and the retail
23 section of your pharmacy?

24	A Correct.
----	------------

25 Q He also helped with some computer issues because

1 he was very well versed in that?

2 A Correct.

3 Q Last subject on this piece. In fairness to you,
4 the -- all these drugs were coming from one source, one
5 wholesaler, right?

6 A Yes, they were.

7 Q McKesson; is that right?

8 A McKesson.

9 Q Does it strike you as almost unbelievable that
10 McKesson didn't flag your account?

11 A Yes, it does.

12 Q Tell the ladies and gentlemen of the jury why.

13 A Normally it was my understanding that a
14 wholesaler was -- had a responsibility to inform first the
15 pharmacy themselves and give us a chance to say why we had
16 more utilization of controlled substances, but then also
17 the DEA and other authority -- you know the authorities if
18 it became a problem where I was doing a whole lot more
19 than any others in the area.

20 Q That never happened, did it?

21 A No.

22 Q Turn to the last area for my questions with you,
23 and that's the deal -- the plea agreement you made with
24 the government. Okay?

25 A Okay.

1 Q Let's talk about some aspects of that.

2 First benefit of this deal to you is a dismissal
3 of quite a few charges; is that right?

4 A Yes.

5 Q In fact, the government agreed with you that they
6 would dismiss all but two counts against you, right?

7 A Yes.

8 Q And excluding the forfeiture counts, there were
9 some 20 charges against you, right?

10 A Yes.

11 Q In fact, Counts 3 through 6 were illegal
12 distribution of contraband, controlled substances, right?

13 A I believe so.

14 Q As well as Counts 7 through 10, illegal
15 distribution of controlled substances, correct?

16 A Yes.

17 Q Counts 11 and 12, illegal distribution of
18 controlled substances?

19 A Yes.

20 Q Count 13, unlawful use of a facsimile, correct?

21 A I believe so.

22 Q And then Counts 14 and 15, money laundering,
23 correct?

24 A Yes.

25 Q And, finally, Counts 16 through 20, additional
300

1 money laundering charges, right?

2 A I believe so, yes.

3 Q And your deal with the government, they dismissed
4 all of those charges I've just delineated, correct?

5 A Yes.

6 Q Next, they have also agreed, the government has
7 promised you in your deal, that they will not prosecute
8 you for any other federal crimes in this district arising
9 out of these transactions that we're here about, correct?

10 A Yes.

11 Q So, in essence, anything you tell them above and
12 beyond what they ask you about related to this pharmacy
13 issue, you will not be prosecuted for, correct?

14 A I assume so.

15 Q And that's in fact what your plea agreement calls
16 for?

17 A Yes.

18 Q Let's talk about some of the benefits to you
19 initially through this agreement.

20 You were allowed to voluntarily surrender,
21 correct?

22 A Yes.

23 Q And to -- I'm sorry about that. My vernacular is
24 a little legalese. When the indictment was filed against
25 you and all of the others, your attorney was contacted and

1 they were allowed to bring you down, not get arrested, in
2 essence, right?

3 A Correct.

4 Q They also agreed to a bond. You were not
5 detained, correct?

6 A Correct.

7 Q They've agreed to push back any sentencing
8 hearing, correct?

9 A Correct.

10 Q Now, there are also some -- in that -- under that
11 auspice of other crimes that you weren't indicted for but
12 they're not going to prosecute, I'd like to talk about a
13 couple of things. Are you familiar with the federal crime
14 of structuring?

15 A No.

16 Q Well, I'm going to try to give you a lay
17 definition, and the judge will instruct the jury on the
18 total definition. But you need it to ask you a question
19 in fairness.

20 The crime of structuring under the federal law
21 is avoiding reporting requirements that a bank might have.
22 For instance, the one we think of the most is deposits,
23 10,000 or above in cash, the bank is going to produce a
24 CTR. You're aware of that?

25 A No, I wasn't.

1 Q Okay. You made specific denominations of cash
2 during this Texas prescription ordeal, right?

3 A Yes.

4 Q And those denominations were always below
5 \$10,000, correct?

6 A Can you clarify that?

7 Q Yes, ma'am. Whenever you would take any of the
8 cash from the Texas prescriptions, you would hold some of
9 it in your safe as to not unduly raise the common amounts
10 of your deposits in your bank, right?

11 A Okay. So you're referring to deposits?

12 Q Yes, ma'am.

13 A Yes.

14 Q I'm sorry. I stepped on your answer. I
15 apologize.

16 A Yes.

17 Q Those denominations were usually three, four,
18 five thousand, something like that, right?

19 A Yes.

20 Q Never over \$10,000, right?

21 A I don't believe so.

22 Q But sometimes you would receive from the orders
23 you filled more than \$10,000 at once, correct?

24 A Yes.

25 Q Sometimes as much as \$15,000?

1 A Correct.

2 Q But you never deposited those amounts in total,
3 you would break it up, right?

4 A Yes.

5 Q Tell the ladies and gentlemen of the jury why.

6 A Well, why I was doing it was so that my business
7 wouldn't jump up so much one day and Medicine Shoppe -- or
8 one month. The Medicine Shoppe would expect if you can do
9 that one month, then you can do it the next month, and
10 they just keep wanting you to increase more business
11 because they get a percentage of the business.

12 Q And that goes back to the conversation we had
13 about Mr. Wagner's pushing you to increase sales, et
14 cetera?

15 A Yes.

16 Q Now, originally you spoke with some federal
17 agents when they raided your pharmacy back in 2006, I
18 believe?

19 A I believe it was, yes.

20 Q And in all candor, you didn't -- you weren't
21 completely truthful with those agents at that first
22 interview, were you?

23 A Probably not.

24 Q For instance, not to belabor the point, but you
25 did not disclose to them that you had bank accounts at

1 banks other than the Allen Bank, correct?

2 A No. I -- well, yes, I did. I said I had a bank
3 account at the Bank of America. I think you're possibly
4 referring to a bank account that I put a CD in at First
5 Horizon. At that point I was very shaken up --

6 Q I understand.

7 A -- that they were there. So they asked where my
8 -- I did my banking, and I told them where I did my
9 banking, at Allen Bank, and then my payroll banking was
10 through Bank of America. That's what -- who I considered
11 my banks.

12 Q You failed to mention the \$100,000 certificate of
13 deposit. And was there another \$50,000 certificate of
14 deposit?

15 A I believe so, yes.

16 Q You corrected that later, right?

17 A Yes.

18 Q My point being, you were not ever prosecuted for
19 false statement to a federal officer, were you?

20 A No, I was not.

21 Q But in all candor, as you sit here today, you
22 were dishonest with the federal agents originally,
23 correct?

24 A I guess you would call that dishonesty, but, I
25 mean, I didn't think of it at the time that he asked me

1 who I banked with. I told him who I banked with normally,
2 and, like I say, you have that happen to you and stop your
3 business, it's very unsettling.

4 Q I understand. There were a couple of others --
5 without belaboring the point, there were a couple of other
6 statements that you made at that initial interview by the
7 federal agents that were untrue; is that fair?

8 A Possibly.

9 Q Yet the government has not sought to prosecute
10 you for a violation of Title 18, Section 1001, making a
11 false statement to a federal officer, correct?

12 A Correct.

13 Q Now, Mr. Rhodes mentioned the surrender of your
14 pharmacy license?

15 A Yes.

16 Q You did that on September the 28th of 2008?

17 A Yes.

18 Q And your deal with the government allows you to
19 regain that license as early as September the 29th, 2011,
20 correct?

21 A I believe so.

22 Q Let's talk a little bit about your assets. In
23 your deal with the government, there's some conversation
24 about money that you're liable for jointly and severally
25 with other defendants, correct?

1 A Yes.

2 Q That total is \$991,114 to be exact, that's your
3 deal, right?

4 A If you say that's the exact number, yes.

5 MR. LEWIS: May I approach the witness,
6 Your Honor?

7 THE COURT: You may.

8 Q (BY MR. LEWIS) I'm going to show you from page 7
9 of your plea agreement, make sure this is yours from the
10 signature on the back. To help us expedite, I'll refer
11 you to that page 7.

12 A Yes.

13 Q So the \$991,000 and change reflects your
14 agreement, the deal you made with the government about the
15 money that you profited from with these Texas
16 prescriptions, fair enough?

17 A Yes.

18 Q During this timeframe, summer of '04, through
19 October of '05, you did some renovations on The Medicine
20 Shoppe, right?

21 A Yes, I did schedule renovations.

22 Q And some of those renovations were paid for by
23 the money that you were making off the Texas
24 prescriptions, right?

25 A Yes.

1 Q Now, the government didn't levy against The
2 Medicine Shoppe or seize any portion of The Medicine
3 Shoppe to secure those renovations, did they?

4 A No.

5 Q Similarly, during this timeframe you and your
6 husband purchased a new house, correct?

7 A Correct.

8 Q And you made a down payment on that home from the
9 proceeds of these Texas prescriptions, right?

10 A From the proceeds of The Medicine Shoppe, which
11 we could say was the Texas prescriptions, yes.

12 Q The government hasn't levied against your home,
13 have they?

14 A No, not that I know of.

15 Q They haven't informed you of any intent to do so,
16 have they?

17 A No.

18 Q Let's turn to the subject of taxes and tax
19 liability. As I understand it from the government, you
20 last filed a federal income tax return for the year 2003?

21 A I've also filed 2009, yes.

22 Q Okay. But there's an intervening 2004 through
23 2008?

24 A Correct.

25 Q Now, the government has not charged you with

1 failure to pay federal income tax, have they?

2 A I've paid estimated income taxes. I just haven't
3 filed --

4 Q Okay.

5 A -- a return for those, yes.

6 Q I'm sorry. And they have not prosecuted for any
7 tax evasion, have they?

8 A No.

9 Q Now, in addition to the -- some of the profits
10 you've shared with the ladies and gentlemen of the jury
11 from these Texas prescriptions, your husband also
12 benefited from this work, didn't he, in that he was paid a
13 salary?

14 A Yes. But he was before then too.

15 Q Right. Not saying --

16 A Right.

17 Q -- that you did anything improper in paying him,
18 just he also profited off the business at The Medicine
19 Shoppe, right?

20 A Yes.

21 Q And we've established The Medicine Shoppe revenue
22 jumped greatly there in early '05, right?

23 A Yes.

24 Q So he also benefited from the additional income
25 that the Texas prescriptions were producing?

1 A Yes.

2 Q The government has not threatened to prosecute
3 your husband, have they?

4 A No.

5 Q Let's talk lastly about the effect of your deal
6 with the government. As your agreement, what we've
7 reviewed, it is the sole determination of these lawyers as
8 to what your sentence will be or what they will recommend
9 based on the testimony you're giving?

10 MR. RHODES: Objection, Your Honor.

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. RHODES: He is misstating the law.
14 He is saying we are going to determine her sentence. We
15 don't. The judge makes the determination of the final
16 sentence.

17 MR. LEWIS: My question is the sole
18 determination as to whether there will be any request for
19 downward departure is made by the government as outlined
20 in her signed letter agreement.

21 THE COURT: That's different than what
22 you stated. I just looked at what you said.

23 MR. LEWIS: I did it inartfully, Your
24 Honor.

25 (The proceedings returned to open court.)

1 Q (BY MR. LEWIS) I apologize, Mrs. Rostie. I
2 probably should have put a few more steps in here. I'll
3 slow down for a second.

4 Part of your deal with the government is you
5 were to cooperate, provide testimony at their request,
6 correct?

7 A Correct.

8 Q And that if you did that, in their sole
9 determination they could make a motion with the sentencing
10 judge to reduce your sentence, to do whatever the court
11 deems right but only in the sole determination of the
12 government that you should receive the benefit of your
13 deal, right? You understand that?

14 A Yes.

15 Q In essence, they hold the cards. If they don't
16 file anything with the court, you don't get the benefit of
17 your deal, do you?

18 A They can -- it's my understanding that I've got
19 the sentence predetermined anyway. It's --

20 MR. LEWIS: Can I approach the witness,
21 Your Honor?

22 Q (BY MR. LEWIS) Let me show you, ma'am, the letter
23 agreement, August the 13th, 2008, Mrs. Rostie. Make sure
24 that's the agreement that you signed with the government.

25 A Okay.

1 Q And let me refer you -- will you read paragraph
2 six and seven to yourself.

3 So relative to your deal with the government,
4 you understand, as you sit here, Mrs. Rostie, it is the
5 sole determination of the attorneys with the United States
6 Attorney's Office as to whether they will request any
7 favorable sentence or departure downward for you, correct?

8 A Any departure downward from the normal sentencing
9 guidelines, yes.

10 Q And you're hopeful that they'll do that, right?

11 A Yes.

12 Q That's why you're here, right?

13 A I'm here anyway.

14 Q Well, they subpoenaed you to be here, correct?

15 A Yes. That's what I'm saying. I'm going to be
16 here regardless.

17 Q Your lawyer can't force them to file anything,
18 can he?

19 A No.

20 Q Judge Gaitan, with all the power of our senior
21 and Chief U.S. District Judge for this district, he can't
22 force them to file that departure, can he?

23 A Correct. But it's his ultimate determination. I
24 guess that's what my problem was. It's his ultimate
25 determination, not the prosecutor's, what my sentence is.

1 Q Right. But he can't do anything to lower your
2 sentence under the departure in your deal unless the
3 government in their sole determination files a motion
4 requesting him to do so? You understand that, right?

5 MR. RHODES: Objection, Your Honor. Can
6 we approach?

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 MR. RHODES: Again, he's misstating --
10 he's saying you can't do anything. We do -- we're getting
11 way off track here with the --

12 MR. OSGOOD: There's a mandatory
13 minimum. I think that's what you're addressing.

14 MR. LEWIS: My question is phrased just
15 as I wanted it. I don't want to put anything on the court
16 because it's not proper, but the fact of the matter is the
17 government --

18 THE COURT: I understand what you've
19 said. Unfortunately she's fighting it. Maybe she doesn't
20 understand it.

21 MR. LEWIS: I know.

22 THE COURT: I think basically what
23 you're talking about is a downward departure motion filed
24 by the government.

25 MR. OSGOOD: And there's a mandatory
313

1 minimum. The only way you come off that mandatory minimum
2 is with that motion.

3 THE COURT: That's what he said within
4 the guidelines below the normal guideline range. I think
5 we're just passing each other here.

6 MR. LEWIS: I'm not trying to be
7 confrontational with this woman. That's not my style.

8 THE COURT: You're getting good at it.

9 MR. OSGOOD: Ask her about the mandatory
10 minimum.

11 MR. LEWIS: Okay.

12 (The proceedings returned to open court.)

13 Q (BY MR. LEWIS) Ms. Rostie, I apologize because
14 I'm using a lot of legal terms and skipping over a bunch
15 just for efficiency sake. Pardon me. I'm going to
16 backtrack a few steps and make sure we're on the same
17 page, okay?

18 A Okay.

19 Q All right. Your deal with the government is you
20 will give testimony such as you're doing today at their
21 request in hopes that they will file a downward departure
22 requesting the sentencing judge reduce your sentence,
23 right?

24 A Yes.

25 Q And you understand that it is solely their

1 determination that counts, right?

2 A For the downward departure, yes.

3 Q Exactly. You also understand in your case the
4 two counts that you've pled to, that there's a mandatory
5 minimum involved, right?

6 A Yes.

7 Q And the only way --

8 MR. RHODES: Objection, Your Honor. May
9 we approach?

10 (Counsel approached the bench and the following
11 proceedings were had:)

12 MR. RHODES: Your Honor, this statement,
13 sentencing rights, there is no mandatory minimum in this
14 case. There's mandatory maximum but there's no mandatory
15 minimum. They're misstating what the sentence is here.

16 MR. OSGOOD: There's a guideline memo.

17 THE COURT: Guideline memo is what you
18 mean.

19 MR. BOHLING: The guidelines law --

20 MR. OSGOOD: It's discretionary.

21 MR. RHODES: It's discretionary.

22 MR. LEWIS: I understand. I tried to
23 break it down without legalese.

24 THE COURT: I think we've spent way too
25 much time on this. It's time to move on.

1 MR. LEWIS: I was ready to move on.

2 (The proceedings returned to open court.)

3 Q (BY MR. LEWIS) To put a bow on this as best I
4 can, Mrs. Rostie, you understand, do you not, that to have
5 the effect of a downward departure, we've got a thing in
6 the federal system that you're familiar with called
7 "sentencing guidelines," right?

8 A Correct.

9 Q Your lawyer's explained that to you, right?

10 A Yes.

11 Q Your lawyer's also explained to you the
12 implications of your deal with the government, right?

13 A Yes.

14 Q Do you understand the only way that you can --
15 well, your testimony, part of your deal is if the
16 government is satisfied with your testimony, they have in
17 their sole discretion the opportunity to file that
18 downward departure, right?

19 A Yes.

20 Q And you want them to do that, don't you?

21 A Of course.

22 Q And in wanting them to do that, you're doing what
23 you can to please them, right?

24 A I'm sworn to tell the truth, and that's what I'm
25 doing.

1 Q The fact of the matter is you realize if they're
2 unsatisfied with your testimony, it's in their sole
3 discretion not to file the motion, true?

4 A Correct.

5 MR. LEWIS: Thank you very much, ma'am.

6 Your Honor, I pass the witness.

7 REDIRECT EXAMINATION BY MR. RHODES:

8 Q Ms. Rostie, you were not told that you had to
9 give good testimony; you were told to tell the truth,
10 correct?

11 MR. LEWIS: Objection, Your Honor,
12 that's leading.

13 A Correct.

14 THE COURT: Overruled.

15 Q (BY MR. RHODES) Are you here telling the truth?

16 A Yes, I am. I'm sworn to tell the truth and
17 that's what I'm doing.

18 Q Show you Government's Exhibit 37. You stated
19 that you called the number on the prescription pad for --
20 to call Dr. Elder. Did you call that number? Can you see
21 it?

22 A Yes. Yes, I believe that's the number I called.

23 Q Okay.

24 A Yes.

25 Q And did you talk to Dr. Elder?

1 A No, I didn't at that time.

2 Q Right. Did you ask for Dr. Elder?

3 A I asked to speak to Dr. Elder, and I believe I
4 asked to speak to Troy first.

5 Q Okay. You were -- you stated that the
6 prescriptions -- you stopped filling the prescriptions in
7 October 2005. Why?

8 A I stopped filling the prescriptions when I had a
9 routine investigation -- not investigation -- a routine
10 audit by the state board of pharmacy, and he was
11 questioning those prescriptions from Texas. So I
12 immediately stopped.

13 Q You stopped because of that inspection?

14 A Yes.

15 Q Now, I want to show you Government's Exhibit No.
16 42, and now let's see Government's Exhibit No. 43.

17 Now, were these the handwritten prescriptions
18 that were faxed to you?

19 A Yes, they were.

20 Q And were they in relation to the Dr. Elder
21 prescriptions?

22 MR. LEWIS: I'm going to object. For
23 clarification, I think these are just addresses and not
24 prescriptions.

25 MR. RHODES: Well, the names and
 318

1 addresses supplement the prescriptions.

2 A Yes, they were.

3 Q (BY MR. RHODES) You also stated that you started
4 filling another doctor's prescriptions in January of 2005?

5 A Yes.

6 Q But before then you exclusively filled the
7 prescriptions of Dr. Elder from August 2004 until roughly
8 approximately January of 2005?

9 A That is correct.

10 Q You were shown an e-mail list, Defendant's
11 Exhibit No. 2. Remember seeing this list earlier?

12 A Yes.

13 Q What means did you use to primarily talk to Troy
14 Solomon?

15 A Telephone.

16 Q And did you also talk to him by fax -- or
17 communicate with him by fax?

18 A Communicate by fax, yes.

19 Q Was that your way of talking to him?

20 A That's mainly the -- was through fax, yes, after
21 we got things started.

22 Q And you were satisfied with the responses via fax
23 or via telephone?

24 A Either way.

25 Q Either way?

1 A Yes.

2 Q So you didn't need to use the e-mail for them?

3 A No. I wasn't even aware that I had his e-mail in
4 my address. He possibly sent me one at one time, and it
5 would be in my address book.

6 MR. RHODES: I have no further questions
7 of this witness, Your Honor.

8 MR. OSGOOD: Just a second, Your Honor.

9 RECROSS-EXAMINATION BY MR. OSGOOD:

10 Q You remember testifying before the pharmacy board
11 hearing?

12 A Yes, I do.

13 Q Did you tell the pharmacy board hearing officer,
14 quote, At what point did you actually speak to somebody on
15 the other end of the telephone who was representing
16 himself to be the physician?

17 You remember that question?

18 A (Witness nodded head.)

19 Q "Answer: I actually spoke to Dr. Elder the first
20 time when Dr. Elder called and Troy called me on a two-way
21 or three-way call."

22 Do you remember giving that testimony?

23 A Yes.

24 Q So you didn't call them first, you got a call on
25 a three-way call, didn't you?

1 A From Dr. Elder, yes.

2 Q Well, you got a call from --

3 A From somebody --

4 Q From somebody.

5 A -- who was identified as Dr. Elder, yes.

6 Q You don't know whether that was Mr. Parker or
7 President Obama, do you?

8 A No.

9 Q You didn't know their voice, did you?

10 A No.

11 Q You didn't initiate the call, did you, to a
12 number that you knew to be the South Texas Wellness Center
13 contrary to what you've testified to?

14 A I thought I did. I thought I did. I could have
15 called back.

16 Q Would it be fresher in your memory back when you
17 gave that testimony or today?

18 A Probably back then. But --

19 Q Okay. Well, I appreciate your candor.

20 A Yeah.

21 Q And in that testimony you said you got a call
22 from Texas. It was a three-way call. You didn't know the
23 voice of Dr. Elder, did you?

24 A No.

25 Q You didn't initiate a phone call even to the

1 South Texas Wellness Center. So that call could have come
2 from anywhere, couldn't it?

3 A Oh, that call probably.

4 Q Could have come from anywhere?

5 A Yeah.

6 Q And you had never met Dr. Elder?

7 A No.

8 Q Didn't recognize his voice?

9 A No.

10 Q And that's your basis supposedly for initiating
11 this whole operation was that phone call?

12 A Yes.

13 MR. OSGOOD: That's all.

14 MR. LEWIS: Very briefly, Your Honor.

15 RECROSS-EXAMINATION BY MR. LEWIS:

16 Q I neglected to ask you, Mrs. Rostie, you never
17 met Troy Solomon before walking in this courtroom, had
18 you?

19 A No.

20 MR. LEWIS: Thank you, ma'am.

21 Nothing further, Your Honor.

22 MR. RHODES: Nothing further, Your
23 Honor.

24 THE COURT: All right. You can step
25 down, ma'am.

1 (Witness excused.)

2 MR. RHODES: Government calls its next
3 witness, Brenda Vifquain.

4 BRENDA VIFQUAIN, being duly sworn, testified:

5 DIRECT EXAMINATION BY MR. RHODES:

6 Q Would you please introduce yourself to the jury?

7 A My name is Brenda Vifquain, and I'm an operations
8 manager with FedEx here in Kansas City.

9 Q Ms. Vifquain, what are your duties as the
10 operations manager?

11 A I manage up to 100 employees, couriers, service
12 agents in basically on-road tasks, scheduling, organizing,
13 planning, staffing.

14 Q How long have you worked at the Federal Express?

15 A Almost 22 years.

16 Q All right. Would you please describe for us the
17 delivery of a package? What's the procedure? What
18 happens when it -- when the package is delivered?

19 A Okay. A package comes either in over the counter
20 or a courier picks it up. It goes through our system and
21 is tracked by a tracking number on the package, and then
22 on the other end it is -- the courier delivers it to the
23 location of where it's supposed to go by address, not by
24 name but by address.

25 Q Okay. And how are delivery records kept by

1 FedEx?

2 A At our location here in Kansas City we keep them
3 90 days but indefinitely in Memphis in our hub, our main
4 office.

5 Q In 2004 and '05, was there a certain scanner that
6 was used to show that a package had been delivered?

7 A A tracker.

8 Q A tracker. It's called a tracker.

9 What is a tracker?

10 A It was a device that was used to scan, and it was
11 about this (indicated) big. And they held it and they
12 scanned it -- the bar code, and that told us where that
13 package was all through the system. They used it also to
14 enter -- when they delivered it, they entered the name, or
15 if they were releasing the package with the release, they
16 would put the number in.

17 Q Okay. Let's pull up an example. Let's go with
18 Government's Exhibit No. 625, which has been previously
19 admitted.

20 Would you please describe for us what it is that
21 we're looking at.

22 A This is a printout of what the information was
23 that went into the delivery or the pickup side. It has
24 the tracking number of where the package was going.

25 That's what kept track of the package, the date it was
324

1 shipped, the shipper's name, the recipient, and the
2 address of where the recipient was.

3 Q Okay. Go ahead.

4 A And then down below is the delivery, who signed
5 for it, and the date and the signature and the time.

6 Q So on this particular exhibit in this instance,
7 the person -- was this package signed?

8 A Yes. It shows that it has a signature there,
9 yes.

10 Q Then there is a name listed?

11 A Correct.

12 Q And it's C. Edon.

13 Tell us how does that work, does a delivery
14 person try to get the name or do they guess? What happens
15 here?

16 A They try to get the name. They should get the
17 name and then enter it. Of course, we have some crews who
18 go there consistently so they enter it. But they should
19 be asking for it and putting them in, yes.

20 Q All right. Page 2, please. Would you please
21 describe for us what it is that we're looking at here.

22 A This is a complete listing of everything that is
23 connected to that air bill, and it starts out with the air
24 bill number. And that sequence number is connected to a
25 number on the scan on a delivery signature record. So

1 it's a bunch of -- the delivery signature record that the
2 courier carries has a bunch of scanning codes, and that is
3 connected to that sequence number. The forms code is
4 whether it's a cons tag or if it's an --

5 Q And it is showing September package. What does
6 that mean up near the top? Is that the date?

7 A You get -- package created. That was just the
8 date of the package, when it was --

9 Q That's the date of the package?

10 A Correct.

11 Q Okay.

12 A It was picked up on that date at that time,
13 timestamped.

14 Q And it is showing as the recipient?

15 A Actually that shows at a location. So that
16 package was taken to a location and dropped off. That OJC
17 is the location where it was dropped off at.

18 Q Okay. And then it was sent -- is that the
19 address of where that package was sent to?

20 A It was sent -- the recipient would be down below.

21 Q The recipient.

22 A Is down below is South Texas Wellness Centers,
23 3003 South Loop West, Suite 415, Houston.

24 Q Okay. Let's see Government's Exhibit 626.

25 Again, the signature box is, again, we're seeing
326

1 that -- this package was signed for?

2 A Yes.

3 Q Okay. Let's go with Government's Exhibit 634.

4 Now, it looks as though -- let's see, there's a
5 name typed out, C. Carlos. Can you clearly see the name
6 "C. Carlos" in that particular line?

7 A (Witness nodded head.)

8 Q Are you telling us there are instances where the
9 delivery person is trying to give his best guess at what
10 that signature is?

11 A Yes, definitely I'm sure they are and especially
12 if someone walks off and they don't have someone there to
13 tell them.

14 Q Okay. Let's see, Government's Exhibit 645. Here
15 the signature is much more clear, and part of the first
16 name is given?

17 A That's what it looks like, yes.

18 Q All right. Let us review Government's Exhibit
19 621.

20 Would you explain this document to us?

21 A There's a tracking number, a ship date, a service
22 base number that's associated with an air bill or how the
23 package is being delivered, the pieces, the type of
24 service or the shipment that is being shipped, and where
25 it's being received at. And those are all codes that

1 FedEx has for different codes for -- that associate to
2 different things.

3 **For example, shipping/receiving is the code for**
4 **-- is three code. No reference information. That's extra**
5 **for a customer to put in there if they wanted an attention**
6 **to or something like that. And then --**

7 Q Next page, please.

8 A Here's the shipper's customer number, which is an
9 account number. I do believe that's what their account
10 number is associated to that name. That's the shipper.
11 And then the company of the shipper and the shipper's
12 address.

13 Q Okay. Next page, please.

14 A You have the shipping city where it's being
15 shipped out of, the state, and the zip code, and the
16 shipper city recipient which sometimes is associated with
17 the customer's account number, and some of them have them
18 there and some of them do not. Then the recipient's name
19 and the recipient's company name.

20 Q Okay. Next page.

21 A You have the recipient's address. As you can
22 see, sometimes it was punched in as Suite 415 or the
23 actual address. That comes off the bar code as well
24 sometimes. If they scan it that way, it will show that
25 address two different ways. Recipient's city and the

1 state and the zip code.

2 Q And what's listed under the recipient? What's
3 the last name?

4 A The recipient under --

5 Q At the top highlighted.

6 A T. Solomon.

7 Q Okay.

8 A And the delivery date of when it was delivered
9 and the time.

10 Q Okay. Next page.

11 A Here you have the origin location number. This
12 is associated with a FedEx location number. That 2873 is
13 where it was coming out of and then the destination which
14 is the destination location number as well associated with
15 our numbers that are associated with that that go into a
16 hub. So HOUA is a hub that goes out of Houston.

17 Q Okay.

18 A And then you have an invoice number associated
19 with this entire document and the invoice date.

20 Q What is the invoice date?

21 A Of when it was actually --

22 Q Yeah. If you can -- can you see it? I don't
23 know if your screen --

24 A When it was actually charged?

25 Q Yes. So it was actually charged on August 26th

1 on that first line?

2 A Correct.

3 Q Of 2004?

4 A Correct.

5 Q Okay. Go back to the full screen.

6 A Then it has the net charge amount of how much
7 that shipment was charged for and the shipping weight and
8 then the declared value of this -- on the package.

9 Q What does "declared value" mean?

10 A It is from FedEx's standpoint is the limit of the
11 liability that we will take on.

12 Q Uh-huh.

13 A And the customer pays extra above \$100 default of
14 a package. So this was paid extra above that, the \$4,200.

15 Q Okay. To value the package, make sure --

16 A Right.

17 Q All right. So early on -- these packages, the
18 net charge was \$109. You see 107. Could you keep
19 scrolling down?

20 A It was -- that \$109, I believe, is inclusive of
21 the amount that they are paying also for the declared
22 value, but the declared value is on there of how much they
23 were paying for that.

24 Q And seeing 172, what is this middle line number
25 meaning again?

1 A That middle one is the weight.

2 Q Okay. So the weight of this package was -- is
3 that in pounds or ounces?

4 A It's in pounds.

5 Q It was 30 pounds --

6 A Uh-huh.

7 Q -- sent and cost \$109. Okay.

8 MR. RHODES: You can start scrolling
9 again. Twenty-four.

10 Q (BY MR. RHODES) Let's stop at the 156. How many
11 pounds was it for \$156?

12 A 52 pounds for the declared value of \$3,400.

13 Q And what about the one for the \$173 charge?

14 A It was a weight of \$54 with a declared value of
15 \$4,500.

16 Q Okay. 54 pounds, not --

17 A 54 pounds. Sorry.

18 Q All right. Let's scroll down. And that's for --
19 okay.

20 MR. RHODES: I have no further questions
21 of this witness, Your Honor.

22 CROSS-EXAMINATION BY MR. OSGOOD:

23 Q Now, were there two different suite numbers used
24 when these were delivered over the course of time in your
25 records?

1 A I'm not sure about that.

2 Q You didn't study these records, you just --

3 A I did study some of them, yes, but I think there
4 was a 450 for sure.

5 Q Yes. And a 3 -- or a 415, is that it, the other
6 one? 415 and 450.

7 A I remember the 415, yes.

8 Q And the two businesses were co-located. Was one
9 of them Ascensia Pharmacy and the other South Texas
10 Wellness Center?

11 A I remember the South Texas Wellness Center.

12 Q And did you later then -- they all went to South
13 Texas, you just changed the suite number. Did you know
14 that 415 was Ascensia Pharmacy?

15 A I did not deliver them, sir.

16 Q Well, I mean, I guess you -- I mean, UPS in a
17 more generic sense. You probably were just told to change
18 the suite number, right?

19 A It would be FedEx. But --

20 Q Sorry. That's your competitor, isn't it? I use
21 FedEx too.

22 A Okay. Could you --

23 Q You guys are better.

24 A Could you ask me the question one more time?

25 Q Yeah. You just got a notice to change the suite

1 number probably and that's what went in the records?

2 A There's nothing there that shows that there was
3 an indication of that.

4 Q Okay. Just -- it just shows up in the records as
5 a different suite number at some point?

6 A Possibly, yes.

7 Q Okay. And I apologize, I was looking at another
8 document over there when you talked about this.

9 When they're signed for, the way these were
10 shipped, just anybody on the premises can sign for them?

11 A Correct. As long as they deliver them to the
12 correct address, yes. It's not person -- the person
13 that's on there, yes.

14 Q Okay. So basically bring it in, sit it on the
15 counter, and somebody scribbles their name on it?

16 A Correct, yes.

17 Q And there were, as we saw from the exhibits they
18 put up there, there were a number of different people sign
19 for these over the course of all that time; is that right?

20 A Yes, there were.

21 Q Okay. You ever get any complaints back from a
22 Dr. Elder that packages were supposedly addressed to him
23 and he wasn't getting them?

24 A I don't know that I would have had that
25 information to be able to --

1 Q What would happen if somebody called up and said
2 things aren't being delivered as they're supposed to be?
3 Would there be any notations in your records?

4 A Some traces. There would be what we call a trace
5 that we could be able to possibly document and go back and
6 look.

7 Q Were you asked to look and see if there were any
8 traces in --

9 A No.

10 Q -- connection with these records to see if any of
11 them had been misdelivered or not delivered where they
12 were supposed to?

13 A No.

14 Q And what would happen if there was a request for
15 a trace? What would occur?

16 A A trace is followed up at the station level of
17 where it's being delivered, and they follow up and get
18 information back within 30 minutes usually. And then it's
19 a documented piece of paper that shows that possibly.

20 Q From what you saw, then, with the records, are we
21 to assume that whoever was getting these on the other end
22 was satisfied with the system and the delivery?

23 A Yes.

24 MR. OSGOOD: Okay. Thank you.

25 MR. RHODES: No redirect, Your Honor.
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1 THE COURT: Thank you very much.

2 (Witness excused.)

3 THE COURT: Who's up next?

4 MR. BOHLING: United States calls
5 Cynthia Martin.

6 THE COURT: Thank you.

7 MR. OSGOOD: Your Honor, while she's
8 getting on the stand being sworn, may I run around the
9 corner for a second?

10 THE COURT: Okay. I have a stopwatch
11 on.

12 MR. OSGOOD: You can go ahead and start
13 without me. I know what she's going to say.

14 CYNTHIA MARTIN, being duly sworn, testified:

15 MR. BOHLING: You want me to go ahead?

16 THE COURT: Yes, please.

17 DIRECT EXAMINATION BY MR. BOHLING:

18 Q Please state your name and spell your first and
19 last name.

20 A Cynthia Martin, C-y-n-t-h-i-a, M-a-r-t-i-n.

21 Q What city do you live in?

22 A Belton, Missouri.

23 Q How long have you lived in Belton, Missouri?

24 A Since 1965.

25 Q And what is your current age?

1 A Fifty-one.

2 Q Did you go to high school here in town?

3 A In Belton, yes.

4 Q And what year did you graduate?

5 A 1977.

6 Q What did you do after you got out of high school?

7 A I went into sales.

8 Q And did you leave the workforce for some period
9 of time?

10 A I did.

11 Q Was that to have kids?

12 A Yes, sir.

13 Q When you came back into the workforce, what kind
14 of -- approximately when was that that you came back and
15 started working again?

16 A Probably 1985.

17 Q What were you doing back in '85, just generally,
18 what kind of jobs?

19 A I went to work for a company, Treasury Drug, and
20 I think they're now CVS. I worked for a pharmacy.

21 Q How long did you work for Treasury?

22 A Oh, my goodness, '92, I think.

23 Q So about seven years?

24 A No, no, no. '97. It was about 12 years.

25 Q About 12 years?

1 A Yeah, '97.

2 Q At some point did Treasury change its name to
3 Eckerd?

4 A Yes, they did.

5 Q What were your job duties at Treasury Drug?

6 A I started working in the pharmacy waiting on the
7 counter, and worked my way up till I was an assistant
8 manager of the pharmacy.

9 Q While you were at Treasury Drug, did you meet a
10 woman named Lynn Rostie?

11 A Yes, I did.

12 Q And you remember approximately when you first met
13 Ms. Rostie?

14 A Oh, gosh, maybe '92, '93, something like that.

15 Q And what role did Ms. Rostie play at Treasury or
16 perhaps Eckerd at that point?

17 A She was a fill-in pharmacist. She would travel
18 wherever Treasury would need her to go, and she would come
19 to our pharmacy and fill in, be the staff pharmacist for
20 the evening or the day.

21 Q Did you develop a friendship with Ms. Rostie?

22 A Yes.

23 Q And did you continue to keep in touch with her
24 even after you left Treasury Drug?

25 A We did.

1 Q Now, do you know whether Mrs. Rostie started her
2 own business at some point?

3 A She did.

4 Q What was the name of that business?

5 A She owned The Medicine Shoppe in Belton.

6 Q Were you a client or a patient of The Medicine
7 Shoppe?

8 A Oh, I don't know that I got my -- I didn't get my
9 prescriptions filled there. I got them filled where I
10 worked.

11 Q Approximately 1997, did you get a new job?

12 A I did.

13 Q Where did you start working?

14 A I went to work for a company called CIT.

15 Q What does CIT do?

16 A We provided financing for manufactured home
17 dealers, RV dealers, boat dealerships. We did all the
18 financing for them.

19 Q And what was your job with CIT?

20 A I started doing data entry and worked my way up
21 to a credit manager where I would approve credit for folks
22 that had applied for a loan through our company.

23 Q Now, when you were at CIT, did you make the
24 acquaintance of a person named Troy Solomon?

25 A I did.

1 Q And when you first encountered Mr. Solomon, was
2 that by in person or by phone?

3 A By phone.

4 Q Okay. And what was the occasion of having
5 telephone contacts with Troy Solomon?

6 A He had submitted application for one of his
7 customers to our facility for a manufactured home loan,
8 and then it was my job once those loans had been approved
9 to call back and visit with the person that had submitted
10 it to us and basically get the business, make sure that
11 once it was approved, that it was coming back to us.

12 Q Where did Mr. Solomon work at that time?

13 A I believe it was a Fleetwood dealership.

14 Q And what's that?

15 A I'm sorry. A manufactured home facility where
16 the -- you know, folks would come in and look at the model
17 homes and decide which one they wanted to buy, if they had
18 to order it or whatever. He worked for -- I think he did
19 the financing on that end for them.

20 Q And back in this -- approximately what year was
21 it that you first met Mr. Solomon through this
22 professional contact by phone?

23 A Probably 2000.

24 Q And did you continue to talk to him on the phone
25 from time to time between 2000 and 2002?

1 A Yes.

2 Q And did you develop a -- more of a friendly
3 relationship in your phone conversations?

4 A That was -- that was the job that we were --
5 there was three or four of us that that was our job to
6 basically build relationships with those dealers, be it
7 the manufactured home, the RV dealer, the boat dealer, was
8 to become friends with us so they would want to give us
9 the business.

10 Q Now, before we go further, I want to kind of take
11 a little timeout here and discuss another subject.

12 You were originally charged in the indictment in
13 this case, correct?

14 A Yes.

15 Q Okay. And you have entered a plea of guilty in
16 this case?

17 A Yes.

18 Q Do you remember approximately when you entered
19 that plea?

20 A January -- no, December of '08.

21 Q Did you enter that plea pursuant to what's called
22 a plea agreement that you entered with the United States?

23 A Yes.

24 Q Okay.

25 MR. BOHLING: If we could turn off the
 340

1 monitor for the jury for the moment.

2 Thank you. If we could put up 1167. If we
3 could kind of blow up the top so we can see that.

4 Q (BY MR. BOHLING) Do you recognize this exhibit,
5 ma'am?

6 A Uh-huh, yes.

7 Q And I know you're not seeing the whole document,
8 but does this appear to be a copy of the plea agreement
9 that you entered into with the United States?

10 A Yes.

11 Q And if we could show the last page of that
12 document.

13 And do you recognize your electronic or your
14 signature for filing on the --

15 A Yes.

16 Q And is -- as far as you know, is this a fair and
17 accurate copy of the plea agreement that you signed and
18 entered into with the United States?

19 A It looks like the one that I signed, yeah.

20 MR. BOHLING: Your Honor, I move Exhibit
21 1167 into evidence with some modifications as agreed to by
22 counsel.

23 MR. LEWIS: No objection with those
24 modifications, Your Honor.

25 THE COURT: It will be received.
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1 Did you have an objection, Mr. Osgood?

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 MR. OSGOOD: We didn't receive the
5 previous one.

6 THE COURT: It's received for the
7 purposes of this testimony.

8 MR. OSGOOD: That's okay. As long as
9 it's not admitted.

10 THE COURT: It won't go to the jury.

11 MR. OSGOOD: We need to tell the jury
12 that because if they think it's an exhibit, they're going
13 to be asking for it with a note.

14 THE COURT: I'll tell them at the time
15 of submission that everything that's been received you
16 got.

17 MR. OSGOOD: Okay. Fair enough.

18 MR. BOHLING: Thanks.

19 (The proceedings returned to open court.)

20 Q (BY MR. BOHLING) Now, Ms. Martin, in addition to
21 that plea agreement that we just looked at, did you also
22 sign a supplemental letter dealing generally with the
23 subject of your cooperation with the government?

24 A I believe I did.

25 MR. BOHLING: If we could show -- again,
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1 if we could turn off for the jury. Sorry. We're still
2 turned off, aren't we? If we could show 1168, page 1.

3 Q (BY MR. BOHLING) Do you recognize this as being
4 the letter dated December 12, 2008, that had some
5 provisions dealing with your cooperation with the United
6 States?

7 A Yes.

8 Q Okay. If we could show page 5.

9 And this one is actually a wet ink signed copy
10 that you signed?

11 A Yes.

12 Q Now, if we could look at page 2 of this exhibit.
13 Now, generally you agreed to provide truthful testimony
14 and other cooperation to the United States, correct?

15 A Yes.

16 Q In exchange for that, you understand that the
17 United States may file a motion with the court that will
18 sentence you -- that allows the court to make a departure
19 in your case?

20 A Correct.

21 Q That departure would be below what the normal
22 sentencing guidelines would call for?

23 A Yes.

24 Q And so you understand those provisions of the
25 agreement?

1 A Yes.

2 Q If we could then pick up where we left off, I
3 believe we were in 2002, and you had had some telephone
4 conversations with Mr. Solomon. Did you ever meet
5 Mr. Solomon personally?

6 A I did.

7 Q And when was the first occasion in which you met
8 Mr. Solomon personally?

9 A May of 2002.

10 Q Okay. And was this in another city beside Kansas
11 City?

12 A Texas.

13 Q And what city in Texas?

14 A Dallas, Texas.

15 Q Why did you go? What was your occasion for going
16 to Dallas, Texas, at that time?

17 A I had taken a job with Countrywide Home Loans,
18 and I was going to Dallas for training. And at that time
19 Mr. Solomon came to Dallas, and we met for the first time.

20 Q So even though you had changed jobs, you
21 continued to be in contact telephonically with
22 Mr. Solomon?

23 A Yes.

24 Q And what kind of things did you discuss at that
25 time when you were no longer working for CIT?

1 A I had gone to work for Countrywide Home Loans so
2 I was kind of seeing another avenue of the finance world.
3 And where Mr. Solomon had already been in that field for
4 quite sometime, he was my guidance into a new field, into
5 a different division of the home financing divisions.

6 Q Now, was Mr. Solomon attending the same
7 conference?

8 A No, he was not.

9 Q Did he just come up, as far as you know, to meet
10 with you?

11 A As far as I know.

12 Q Okay. Now, would it be fair to say at that time
13 that you began a more romantic relationship with
14 Mr. Solomon?

15 A That would be fair.

16 Q Okay. An intimate relationship?

17 A Yeah.

18 Q Did you stay at a hotel?

19 A Yes.

20 Q And since that time, and we'll discuss this, but
21 you've seen Mr. Solomon on a number of occasions since
22 2002?

23 A Oh, three or four.

24 Q Okay. And do you see Mr. Solomon in court here
25 today?

1 A Yes.

2 Q And could you please point him out to us by his
3 location in the courtroom.

4 A He's right behind you there.

5 MR. BOHLING: Your Honor, may the record
6 reflect that the witness has identified the Defendant Troy
7 Solomon?

8 THE COURT: It will.

9 Q (BY MR. BOHLING) Was this just a weekend meeting
10 in Dallas with Mr. Solomon?

11 A It was.

12 Q Did you continue to remain in touch with him by
13 telephone after the Dallas meeting?

14 A Yeah.

15 Q And when was the next time you met Mr. Solomon
16 personally?

17 A The next weekend.

18 Q Where was that?

19 A In New Orleans.

20 Q And was that over a holiday weekend?

21 A It was.

22 Q Which holiday?

23 A Memorial Day holiday.

24 Q And was there any business purpose for this trip,
25 or was this just a trip with Mr. Solomon?

1 A It was just a pleasure trip.

2 Q And where did you stay on that occasion, do you
3 remember?

4 A We were on Bourbon Street, and I cannot think of
5 the name of the hotel.

6 MR. BOHLING: And if you could bring up
7 Exhibit 1177. If we could highlight the -- this top half
8 of the exhibit, I think.

9 Q (BY MR. BOHLING) Do you recognize Exhibit No.
10 1177?

11 A Yes.

12 Q What is that, ma'am?

13 A An itinerary for plane reservations to go to New
14 Orleans.

15 Q Is that for your travel?

16 A Yes.

17 Q Okay. And is this for the trip that we're
18 talking about here over Memorial Day of 2002?

19 A Correct.

20 MR. BOHLING: Your Honor, I would move
21 Exhibit 1177 into evidence.

22 MR. LEWIS: No objection, Your Honor.

23 THE COURT: Hearing none, it will be
24 received.

25 MR. BOHLING: Let's go to Exhibit 1179
 347

1 before we publish.

2 Q (BY MR. BOHLING) What is Exhibit 1179?

3 A It looks like a -- you know, like your boarding
4 pass.

5 Q And this is for the flight from Houston to New
6 Orleans?

7 A Correct.

8 Q If we could go to the next page, that's also a
9 boarding pass, Kansas City to Houston?

10 A Correct.

11 Q And then the next page. That's another boarding
12 pass on a different airline from Dallas/Fort Worth to
13 Kansas City?

14 A Correct.

15 Q And all of these are -- relate to your trip down
16 to New Orleans in May of 2002; is that correct?

17 A Right.

18 MR. BOHLING: Your Honor, I would move
19 Exhibit 1179 into evidence.

20 MR. LEWIS: No objection, Your Honor.

21 MR. OSGOOD: No objection.

22 THE COURT: It will be received.

23 Q (BY MR. BOHLING) If we can go back to 1177 and if
24 we could turn on the jury monitor at this point.

25 So this is the -- just so we can show the jury,
348

1 if we can blow that up for them. That's the receipt for
2 the -- generally for the travel that we talked about?

3 A Correct.

4 Q And then if we could go to 1179.

5 And that's just an example of -- this is the one
6 on Continental Airlines of your flight from Houston to New
7 Orleans?

8 A Correct.

9 Q So you flew from Kansas City down to Houston
10 initially on this trip?

11 A The weekend of Memorial Day, yes.

12 Q And did you meet Mr. Solomon in Houston at that
13 point?

14 A Yes.

15 Q Okay. And did the two of you then fly from
16 Houston to New Orleans together?

17 A Yes.

18 Q And there's some other trips here, but who paid
19 for Mr. Solomon's travel?

20 A I did.

21 Q Okay. And why did you pay for Mr. Solomon's
22 travel on these trips?

23 A He asked me to do that.

24 Q Did he give you a reason?

25 A He didn't want his soon-to-be ex-wife to know

1 where he was going and what he was doing.

2 Q What was her name?

3 A Lucy.

4 Q Now, when you paid for these trips, did you get
5 reimbursed by Mr. Solomon?

6 A Yeah.

7 Q And how did that reimbursement usually occur?

8 A He paid me cash when we got there.

9 Q And when you were on these trips with
10 Mr. Solomon, how did he usually pay for items?

11 A Cash.

12 Q Later in 2002, did you have an occasion to take
13 one additional trip where you met Mr. Solomon?

14 A Yes.

15 Q Where did you travel?

16 A I went to Houston.

17 Q When was that?

18 A Like 4th of July.

19 MR. BOHLING: If we could turn off the
20 jury monitor again and bring up Exhibit 1176, page 8.

21 Q (BY MR. BOHLING) If we can look at this, can you
22 identify this document for us, if you can?

23 A It was a charge receipt or a charge bill that
24 would come to me that I would retain for expense reports
25 with my job.

1 Q And does this one have some information relating
2 to your trip down to Houston and Galveston?

3 A Right. It shows that on the 2nd of July that
4 there was a ticket bought from Continental for me to fly
5 to Houston.

6 MR. BOHLING: Your Honor, I would move
7 Exhibit 1176, page 8 into evidence.

8 MR. LEWIS: No objection, Your Honor.

9 MR. OSGOOD: No objection.

10 THE COURT: It will be received.

11 MR. BOHLING: If we could turn that back
12 on for the jury.

13 Q (BY MR. BOHLING) So this is showing payment for
14 your trip on Continental Airlines from Houston to Kansas
15 City?

16 A Correct.

17 Q Now, on this particular trip or on these two
18 trips actually, New Orleans and the Houston trip, did you
19 take some photographs?

20 A Yes.

21 Q Okay. And if we could --

22 MR. BOHLING: If we can turn it off
23 again. If we can bring up 1180.

24 Q (BY MR. BOHLING) Is that a photograph that you
25 took?

1 A Yes.

2 Q Do you remember where you took that photograph?

3 A In New Orleans at the hotel.

4 Q Okay.

5 MR. BOHLING: Your Honor, I would move

6 --

7 Q (BY MR. BOHLING) Who is depicted in that
8 photograph?

9 A That's Troy Solomon.

10 MR. BOHLING: I would move Exhibit 1180
11 into evidence.

12 MR. LEWIS: No objection, Your Honor.

13 MR. OSGOOD: No objection.

14 THE COURT: Be received.

15 MR. BOHLING: If we could publish that
16 to the jury, please.

17 Q (BY MR. BOHLING) And then if we could look at
18 1181.

19 Do you know where this picture was taken?

20 A That was in Galveston.

21 Q And who's pictured there?

22 A That's Troy Solomon.

23 MR. BOHLING: Your Honor, I would move
24 1181 into evidence.

25 MR. LEWIS: No objection.

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MR. OSGOOD: No objection.

THE COURT: It will be received.

MR. BOHLING: If we may publish that to the jury.

Thank you. And then if -- sorry. Turn that off one more time.

Q (BY MR. BOHLING) Then look at 601. Where was that picture taken?

A That was taken in New Orleans.

Q And who is depicted in that picture?

A That's myself and Mr. Solomon.

Q Did you have somebody else take that for you?

A Yes.

MR. BOHLING: Your Honor, I would move Exhibit 601 into evidence.

MR. LEWIS: No objection, Your Honor.

THE COURT: It will be received.

MR. BOHLING: If we could publish that to the jury, please.

Q (BY MR. BOHLING) And then look at 1182.

THE COURT: Can I speak with counsel for a moment, please?

(Counsel approached the bench and the following proceedings were had:)

THE COURT: I'm wondering where you're
353

1 going with all of this.

2 MR. BOHLING: I just want to provide
3 evidence of the association. I think I can move on.

4 THE COURT: I think you've got more than
5 enough of that.

6 MR. BOHLING: Thank you.

7 (The proceedings returned to open court.)

8 Q (BY MR. BOHLING) We're going to go on here.

9 A Okay.

10 Q While you were in Houston, did you go around town
11 with Troy?

12 A Yes.

13 Q Did he introduce you to anyone?

14 A Not really at that time.

15 Q Do you remember meeting a person named Dana?

16 A Not on that occasion.

17 Q Okay. Was that on a different occasion?

18 A Yes.

19 Q Okay. When was that?

20 A Probably two years, three years after that.

21 Q Okay. I'll ask about that in a moment.

22 Now, when you were in Houston, did Mr. Solomon
23 show you anything?

24 A We drove by his house.

25 Q And did Mr. Solomon tell you anything about the
354

1 house?

2 A That it was his house.

3 Q And did you take a picture of his house?

4 A Yes.

5 Q With the court's indulgence, I would like to show
6 you Exhibit No. 1195. What does that show us?

7 A That's -- No. 3 is, like, a picture of his house,
8 No. 4, No. 5, 6, and 7.

9 Q And this is like a photo print sheet from
10 Walgreen's?

11 A Right.

12 Q That contains the prints from your pictures from
13 that trip?

14 A Right.

15 MR. BOHLING: Your Honor, I would move
16 1195 into evidence.

17 MR. OSGOOD: No objection.

18 MR. LEWIS: None, Your Honor.

19 THE COURT: It will be received.

20 Q (BY MR. BOHLING) If we could highlight that,
21 that's the house Mr. Solomon showed you in Houston?

22 A Yes.

23 Q Did you actually go inside it?

24 A No.

25 Q Did Mr. Solomon tell you anything at that time or
355

1 at any time about his personal background?

2 A That he was married and in the middle of a
3 divorce.

4 Q Did he tell you about his parents?

5 A Yes. He told me his parents were doctors, that
6 he had, you know, two children, one little boy that was --
7 probably at that time I think he was four, Jacoby. And
8 then he had an older son that was about my daughter's age.
9 So I kind of had, you know, a little bit of the background
10 on the family.

11 Q Did Mr. Solomon tell you that he would send you
12 some pictures once you returned to Kansas City?

13 A Right.

14 Q And did he send you an envelope filled with some
15 photographs?

16 A Right.

17 Q I'm going to show you what's been marked as
18 Exhibit 1185. Do you recognize that --

19 A That was the envelope that he sent the pictures
20 to me in.

21 Q Okay.

22 MR. BOHLING: Your Honor, I move Exhibit
23 1185 into evidence.

24 MR. LEWIS: No objection.

25 THE COURT: Be received.

1 MR. OSGOOD: No objection.

2 THE COURT: It will be received.

3 Q (BY MR. BOHLING) What's the return address on
4 that envelope?

5 A 5833 Sun Forest, Houston, Texas.

6 Q Were you familiar with that address?

7 A I guess I figured that was his return address.

8 Q Okay. But you don't know whether you'd ever been
9 to that house yourself?

10 A I don't know if that address correlates with the
11 house I was seeing. I'm not sure.

12 Q Okay. And in fact if we can look at 1184, was
13 that a picture that was contained in the envelope?

14 A He sent me those pictures.

15 Q Okay. And then were there also some pictures of
16 the house or what appeared to be the interior of a house?

17 A Yes.

18 Q And one of those had Mr. Solomon in it?

19 A Yes.

20 Q Do you remember viewing those pictures out of
21 court?

22 A Yes.

23 MR. BOHLING: Your Honor, I would move
24 Exhibit 1184 and Exhibits 1183.1 through 11 into evidence.

25 MR. LEWIS: No objection.

1 MR. OSGOOD: No objection.

2 MR. BOHLING: If we could just publish
3 that one and not all of them.

4 Q (BY MR. BOHLING) So that was a picture of
5 Mr. Solomon that was inside the envelope that we've
6 already looked at?

7 A Yes.

8 Q Okay. Now, did there come a time when
9 Mr. Solomon came to Kansas City?

10 A Yes.

11 Q When was that?

12 A August of '02.

13 Q Did you pay for his ticket up to Kansas City?

14 A Yes.

15 Q We can turn off the monitor for a moment. Could
16 you please bring up 1176.04.

17 What is this exhibit?

18 A That's also a copy of my charge bill.

19 Q And is this reflective of your payment for his
20 travel to Kansas City in August of 2002?

21 A Yes.

22 MR. BOHLING: Your Honor, I would move
23 1176, page 4 into evidence.

24 MR. LEWIS: No objection, Your Honor.

25 THE COURT: It will be received.

1 MR. BOHLING: If we may publish that.

2 Thank you.

3 Q (BY MR. BOHLING) So it's the entry here on
4 September 4th, it says, "Mr. Troy Solomon, Kansas City to
5 Houston and back?"

6 A Yes.

7 Q And, again, did he reimburse you for that?

8 A Yes.

9 Q Was that in cash again?

10 A Yes.

11 Q Now, after Mr. Solomon's trip to Kansas City, did
12 your relationship with him change?

13 A Yes.

14 Q In what way?

15 A We didn't get together. We didn't travel. I
16 didn't travel to Houston, and he didn't come back up here
17 any longer.

18 Q So in a sense your romantic relationship ended at
19 that point?

20 A Yes.

21 Q Did you enter into a relationship or find a
22 relationship with a new person?

23 A Yes.

24 Q Did you still talk to Mr. Solomon on the phone
25 after 2002?

1 A Yes. We were still friends.

2 Q And what kind of subjects would you discuss?

3 A We would talk about business, you know. I was
4 working in the mortgage field, and I would ask, you know,
5 him questions. And, you know, we would talk about the
6 kids and just general.

7 Q At some point did you lose your job with
8 Countrywide?

9 A I did.

10 Q When was that?

11 A August of '05 -- no, wait a minute, '04.

12 Q And shortly after that, did Mr. Solomon contact
13 you on the phone essentially to discuss a business
14 proposition?

15 A He did.

16 Q Do you remember approximately when that occurred?

17 A August of '04.

18 Q And do you know what Mr. Solomon's employment was
19 at this time?

20 A He had worked for a pharmaceutical company
21 selling diabetic meters and monitor strips and that type
22 of thing. He had taken a job with a company doing that.

23 Q What did Mr. Solomon ask you about in this August
24 2004 telephone conversation?

25 A He knew that I had had past experience working in
360

1 a pharmacy, and he asked if I knew any pharmacists there
2 in town that -- locally that I might know that might be
3 interested in possibly mail ordering prescriptions for
4 doctors that he knew that had high-profile customers that
5 wanted confidentiality with their medications that they
6 were taking.

7 Q What did you tell him?

8 A I told him that there were a couple of
9 independent pharmacies there in Belton that I could
10 possibly talk to.

11 Q And as a result of that phone conversation, did
12 you contact anyone?

13 A I did.

14 Q Who did you talk to?

15 A I talked to a Lynn Rostie at The Medicine Shoppe.

16 Q Did you actually meet her at her place of
17 business?

18 A I did.

19 Q And do you remember taking a business card to
20 Ms. Rostie during -- and giving it to her during that
21 meeting?

22 A I did.

23 MR. BOHLING: If we could put up Exhibit
24 602, which is already in evidence and highlight that.

25 Q (BY MR. BOHLING) Is that your business card,
361

1 ma'am?

2 A That was my business card for Countrywide, yes.

3 Q And if we could look at the back, whose
4 handwriting is that?

5 A Mine.

6 Q And we see the entry for Troy Solomon at
7 832-794-0470?

8 A Correct.

9 Q Do you recognize that number?

10 A I would say that has to be Troy's number.

11 Q Is that a number that you called frequently?

12 A You know, with having a cell phone, my numbers
13 are programmed into my cell phone, so I don't know
14 numbers. I just look up names, and numbers are already
15 assigned to that in my phone book.

16 Q But this is a number that you wrote down --

17 A I did.

18 Q -- as a contact number for Mr. Solomon?

19 A I did.

20 Q And then you wrote down your own number?

21 A Yes.

22 Q Now, you have some information about different
23 types of medication. Where did you get that information?

24 A From Troy.

25 Q Okay. And you had been involved in the

1 pharmaceutical field?

2 A Yes.

3 Q You knew that these medications were by and large
4 controlled substances?

5 A I knew that they were for pain and that type of
6 thing, yes.

7 Q Now, when Mr. Solomon gave you the names of these
8 medications being of special interest, did you ask him any
9 questions about why those particular medications versus
10 others?

11 A When he -- when he originally had talked with me
12 about seeing if there was somebody that would be
13 interested in doing this mail order for those, they would
14 be athletes and people of notoriety. You know, if you've
15 got an athlete that's, you know, injured and you've got
16 specs and all, I can understand why they would want to
17 have the medications and the confidentiality. HIPPA
18 wasn't as prominent as it is now back then. So I can
19 understand why those medications could be used for
20 somebody that had an injury.

21 Q Okay. Did you expect to have any further
22 involvement in this transaction after your initial meeting
23 with Mrs. Rostie?

24 A No, I didn't.

25 Q And how did you leave it with Ms. Rostie, you had
363

1 the meeting, you gave her the card, essentially what was
2 your understanding of what was going to happen next?

3 A When I had originally talked with Lynn and then I
4 went to The Medicine Shoppe and met with her and gave her
5 this card, you know, I just basically told her here's
6 Troy's number, if you want to do this, you do your due
7 diligence. If you feel like this is something that you
8 can do or want to do, give him a call. These are the
9 medications that he's interested in. Is that anything
10 that you possibly could supply for their patients? And I
11 kind of left it in her ballpark.

12 Q What's the next thing that happened with regard
13 to you in connection with this proposal of selling drugs
14 to Texas?

15 A Once, I guess, that Lynn decided she wanted to go
16 ahead and do this endeavor with Mr. Solomon, then they
17 started shipping the medications, and the next thing I
18 knew there was an envelope delivered at my home with
19 payment for those medications.

20 Q I'm going to show you what's been marked as
21 Exhibit 915. Then if we could actually take this second
22 side right here. I think that's the earlier one.

23 Do you recognize this as a receipt for a UPS
24 shipment?

25 A Yes, sir.

1 Q And this receipt is dated Thursday, September 2,
2 2004. Do you recall that as being the earliest shipment
3 of money that you received, or do you have a recollection
4 today?

5 A I would say it would have to have been in
6 September, but I can't tell you that this was the exact
7 date.

8 Q Okay. But you do recall receiving these
9 shipments in UPS packages?

10 A Yeah.

11 MR. BOHLING: Your Honor, we'd like to
12 move in all of the UPS receipts, and I'm sure my
13 colleagues will tell me precisely -- I believe it is -- I
14 believe I have it here. It would be Exhibits 915 through
15 941. We would move those into evidence.

16 MR. RHODES: That's right.

17 THE COURT: Hearing no objection,
18 they'll be received.

19 MR. BOHLING: If we could display that
20 to the jury.

21 Thank you.

22 Q (BY MR. BOHLING) Were you surprised when you
23 received a UPS envelope containing cash?

24 A I was.

25 Q What did you do?

1 A I called Troy.

2 Q What did Troy tell you?

3 A He told me just to take it to Lynn.

4 Q Did you argue with him on that point or did you
5 just do it?

6 A I just did it.

7 Q Did Troy tell you that you had any role in this
8 business proceeding?

9 A When I first originally met with Lynn, he
10 instructed me that I was basically going to be like a
11 broker and that I should discuss with Lynn what she felt
12 like was fair to pay me for my role of being -- like a
13 finder's fee with those prescriptions.

14 Q Did you have a discussion with Ms. Rostie?

15 A I did.

16 Q And was there a decision made about what your
17 commission or brokerage fee was going to be?

18 A We had decided on \$5.

19 Q Five dollars?

20 A A prescription.

21 Q So for every single prescription you received \$5?

22 A Correct.

23 Q How did you get paid your portion or commission?

24 A My understanding it was going to come from Lynn,
25 but it didn't happen that way.

1 Q How did it actually happen?

2 A It was Lynn or Troy or Jill would talk, and they
3 let me know how much -- how many prescriptions there were.
4 And I was told to take out so much money from that
5 prescription receipt and take it to Lynn.

6 Q Told by whom?

7 A Troy.

8 Q So essentially there would be an accounting of
9 how many prescriptions were involved with the particular
10 payment?

11 A I was surprised at the first one when it came
12 that way that I thought it was supposed to go to Lynn, but
13 it came to me instead. And then it was cash.

14 Q Let's talk about that. Approximately how much
15 cash would come in one shipment?

16 A It started out fairly small in the beginning, you
17 know, and it just continued to get larger and larger. You
18 know, it -- this was supposed to be for a few patients in
19 the beginning, and toward the end it had to be that we
20 were filling prescriptions or they were filling
21 prescriptions for their whole complex. I don't know. I
22 know that there was a lot of money.

23 Q How many times a week would you get a shipment of
24 cash?

25 A Once or twice.

1 Q So this continued from September 2004 through
2 October of 2005?

3 A Yes.

4 Q Okay. How much space physically would this cash
5 take up? How big was the package?

6 A It would come in just a regular UPS envelope.

7 Q What kind of denominations of bills were usually
8 included?

9 A Twenties, fives.

10 Q Were they new bills or used bills?

11 A Old bills.

12 Q Were they bundled up in any way?

13 A Sometimes they had rubber bands around them.

14 Usually --

15 Q You know -- I'm sorry. Go ahead. I didn't mean
16 to interrupt. Go ahead.

17 A They'd have rubber bands around them or, you
18 know, sometimes bands like the bank has.

19 Q Okay. That's what I was going to ask you. You
20 know what a bank band is?

21 A Right.

22 Q Did you recognize any particular banks that were
23 used on the bands?

24 A No. I don't know that I really paid any
25 attention.

1 Q Did you count the money?

2 A Yes.

3 Q And I think you've already told us that once you
4 counted the money and were told how much money was your
5 commission, you would essentially hold that back from that
6 shipment?

7 A I did.

8 Q So what would you do with the money that
9 remained?

10 A Store it in a drawer.

11 Q At some point did you take it to Ms. Rostie?

12 A I would take the money to Ms. Rostie, yes.

13 Q And how would you transport it to Ms. Rostie?

14 A In a bag.

15 Q Okay. Could you tell us what kind of bag?

16 A Sometimes in the envelope that it came in or in a
17 -- I worked for a company named Lendcare. They had little
18 bags and I'd put them in that bag and take it, you know,
19 to her.

20 Q Now, during this time period from August 2004
21 through October 2005, who were you in communication with
22 to make all of this work? What would be the lines of
23 communication to essentially set up this whole process of
24 the money coming in and the prescriptions going out?

25 A It varied. Sometimes I would talk to Jill. Jill

1 worked for Lynn. Sometimes talk to Troy, you know, and we
2 just talked back and forth. It was never really a set
3 process, you know, that they were going to call -- they
4 called me and let me know, and sometimes I'd check with
5 them, you know. Very rarely did I talk to Lynn. It was
6 usually Jill and Troy.

7 Q So you discussed topics like how much was owed?
8 Did you discuss that topic with Jill?

9 A She would tell me how many prescriptions they had
10 sent out.

11 Q Would you discuss with Mr. Solomon when the
12 payment was expected, when he was going to pay?

13 A That would be discussed.

14 Q Would he tell you when to expect the next
15 envelope of money?

16 A Yes.

17 Q So he would usually, other than the first time,
18 he'd usually call you when or at sometime before you
19 actually received the shipment --

20 A Correct.

21 Q -- to tell you the money was coming?

22 A Correct.

23 Q Okay. Now, at any point did Mr. Solomon say
24 anything to you about the subject of depositing money in
25 amounts over \$10,000?

1 A He did. He told me not to do it.

2 Q And we're talking about U.S. currency just to be
3 correct?

4 A Correct.

5 Q Did he tell you why you shouldn't deposit U.S.
6 currency in excess of \$10,000 into a bank?

7 A Because he did say that's a big flag, don't do
8 that.

9 Q Did you say anything to him or ask him why that
10 was a concern that it was a flag?

11 A I didn't ask him.

12 Q Did you declare your income to the Internal
13 Revenue Service from the commissions you received from the
14 prescriptions?

15 A I did not.

16 Q Why not?

17 A I thought originally when this endeavor came
18 together that Lynn was basically going to be the one that
19 was going to be paying me. I thought it was going to come
20 from her. I didn't receive anything from her. I didn't
21 report it.

22 Q Was that the wrong thing to do?

23 A It was.

24 Q At some point during this time period between
25 August and October, did you begin to realize that there

1 was something wrong here?

2 A I did.

3 Q When approximately was that?

4 A Probably December, January. It just kept getting
5 bigger and bigger and bigger, and I didn't know how to
6 stop it.

7 Q Did you express your misgivings to Mr. Solomon?

8 A I was concerned that it was becoming so large,
9 you know. I didn't know how to stop it.

10 Q Did you ever call law enforcement or make any
11 attempt like that?

12 A I didn't.

13 Q Would it be fair to say that you were receiving a
14 fairly substantial amount of money from what was going on
15 and you weren't necessarily prepared to stop doing it?

16 A That's correct.

17 Q Now, I'd like to direct your attention to October
18 20th, 2005. First of all, I'd like to show you Exhibit
19 941, which is in evidence. We can highlight that. This
20 is another UPS receipt.

21 Now, you see, again, the date here is Wednesday,
22 October 19th, 2005?

23 A Correct.

24 Q Okay. And I believe if you'll -- and if your
25 memory will serve, that this was the last shipment that we

1 show on the UPS records. Would that be approximately
2 right, as far as you remember?

3 A Correct.

4 Q And the shipping address is 5833 Sun Forest,
5 correct?

6 A Correct.

7 Q And that's the same address we saw on that
8 earlier envelope that you received from Troy Solomon that
9 contained those photographs, correct?

10 A Correct.

11 Q Now, if we go to the next day, October 20th,
12 2005, do you recall hearing about a pharmacy inspection
13 that was being conducted at The Medicine Shoppe?

14 A Correct.

15 Q Where were you when you heard about this pharmacy
16 inspection?

17 A I don't remember.

18 Q How did you hear about it?

19 A I believe it was on TV or on -- I can't remember
20 if it was TV or paper.

21 Q We're talking about the inspection. You may be
22 getting confused with the warrant. There was the later
23 search warrant.

24 A Uh-huh.

25 Q I just want to make sure we're clear.

1 You remember -- you know the name of a person
2 named Frank Van Fleet?

3 A Correct.

4 Q And you know that Mr. Van Fleet went into
5 Ms. Rostie's pharmacy at some point?

6 A Correct.

7 Q And you did learn about that?

8 A I did.

9 Q How did you learn about that?

10 A I don't recall. I know that -- I don't remember
11 if -- I don't recall. I don't remember exactly. I know
12 that she had an inspection.

13 Q Okay. You did learn about that; you just don't
14 remember the details?

15 A I don't remember exactly. But I did know that
16 there was an inspection.

17 Q And do you remember at the time of the inspection
18 whether or not Mr. Solomon contacted you?

19 A He did.

20 Q Okay. And if we could show Exhibit 600 dash --
21 page 423, so 600.423 which should be in evidence. Okay.
22 Getting too old.

23 So we're looking at -- do you recognize this as
24 being a phone record of yours that we've reviewed
25 previously?

1 A Correct.

2 Q Is this for your cell phone?

3 A Yes.

4 Q And if we look down at 10 -- this is for October
5 21st, 2005. You see a call from Houston, Texas, from
6 832-794-0470?

7 A Correct.

8 Q And that, I think -- that was the same number
9 that you gave to Lynn Rostie as the contact number for
10 Troy Solomon, right?

11 A Correct.

12 Q Do you recall having a conversation then with
13 Troy Solomon on or around this date?

14 A He did. He called but it was just all niceties.
15 He was calling to see how I was and what was going on, and
16 I don't know at that time if I even knew that the pharmacy
17 had been inspected or it had not shown up on the -- okay.
18 I'm getting -- I guess I'm confused about the --

19 Q Right. Just talking about the inspection.

20 A The inspection.

21 Q Correct. Mr. Van Fleet's inspection.

22 A All right. With the inspection, yes, that he
23 called about the inspection.

24 Q Okay. And what did he say with reference to the
25 inspection?

1 A You know, just was it something normal, you know,
2 and I -- my understanding was it was about the time that
3 Lynn should have the normal inspection.

4 Q Did he express any concerns about the inspection?

5 A He really didn't.

6 Q Okay. And without going through the time
7 necessarily of showing them, I would tell you that there
8 are phone records we reviewed for October 31st, 2005, and
9 November 2nd, 2005, that are in evidence that show other
10 conversations. So do you remember having other phone
11 calls with Mr. Solomon around that time?

12 A We -- you know, we talked back and forth several
13 times.

14 Q Now, I will take you now forward in time to May
15 3rd, 2006, and do you recall learning at some point that
16 on that date there were search warrants done in Houston,
17 Texas?

18 A I didn't know at that time that they had done
19 searches in Houston. They were searching the pharmacy
20 down there, but Troy made a phone call to me. He never
21 said that they were being searched. He was just calling
22 to see how things were going and had I talked to Lynn and
23 what was going on up here, but he never said anything
24 about the searches going on there. I believe now that he
25 was looking for information to find out if they were being

1 searched here.

2 Q Did you at some point discover that there had
3 been search warrants at Ascensia Nutritional Pharmacy and
4 South Texas Wellness Center?

5 A Later. Later I did, yes.

6 Q And at the point in which you discovered that,
7 did you have contact with Mr. Solomon?

8 A I don't believe I did.

9 Q Were you concerned or worried about the fact
10 there had been search warrants down in Texas?

11 A The search warrants in Missouri concerned me.

12 Q And let's talk about that. There was a search as
13 we --

14 THE COURT: Mr. Bohling, let me stop you
15 now. I think it's a good time for a break. You seem to
16 be working on steam right now.

17 MR. BOHLING: I'm close to the end, I
18 promise.

19 THE COURT: Ladies and gentlemen, we'll
20 take a recess, about 15, maybe 20 minutes, and ask that
21 you not discuss the case among yourselves or with others
22 or allow anyone to discuss it in your presence. We'll
23 stand in recess for that period of time.

24 Thank you.

25 (A recess was taken.)

1 (The following proceedings were had out of the
2 presence of the jury:)

3 MR. BOHLING: Your Honor, there's
4 actually quite a bit of evidence in this vein that I'd
5 like to describe to you. Ms. Martin's going to testify
6 about three different phone calls. One of them occurred
7 the night before her proffer, her proffer interview, which
8 was July 21st, 2006. This was the subject of her prior
9 testimony hearing, which these gentlemen were present for,
10 so it's no surprise.

11 What she will testify to is that Mr. Solomon and
12 an unknown person, who was called the judge on the phone
13 call, told her essentially that they were aware that she
14 was coming in for the proffer interview. And she was told
15 by both of them that she did not really need to volunteer
16 anything and particularly that her role -- she should
17 describe her role in the conspiracy as simply making the
18 introduction and not to mention the money or the cash
19 payments.

20 In fact, Ms. Martin did not mention the money or
21 the cash payments the first time she met with the
22 government. The next phone call then is another call from
23 Mr. Solomon back to Ms. Martin after the proffer,
24 immediately after the proffer essentially establishing
25 that she had followed his directions, which she had. It

1 was only at a later interview that Ms. Martin admitted to
2 us that she had received cash as she's describing in court
3 today.

4 There is a second communication the night before
5 her plea in December of 2008, in which Mr. Solomon called
6 her and said -- that's when he made the statement, You
7 don't want to do this, you don't want to plead and
8 cooperate with the government essentially.

9 There is a third incident with another witness,
10 Pleshette Johnson, which has also been the subject of
11 testimony by Ms. Johnson in open court with these
12 gentlemen present which happened in Houston in which --
13 they work in the same building. She works at South Texas
14 Wellness Center. She was a chiropractor there.

15 They were on the elevator together, and
16 Mr. Solomon said to her essentially that her mother, Ada
17 Johnson, and Pleshette should not tell the government
18 about cash payments that will be the subject of evidence
19 here at trial that he made to them in the amount of about
20 \$20,000. As you know, it's fairly important because those
21 packages are going into South Texas Wellness Center in
22 this circumstance where he's making cash payments to them
23 of \$20,000 to help them keep their business afloat. He's
24 saying to her you shouldn't have told the government about
25 those cash payments.

1 Our view is that this is simply evidence of the
2 case. It's evidence of his state of mind and his
3 consciousness of guilt. It's not 404(b) in any way. It
4 is simply evidence of Mr. Solomon's statements that are
5 incriminating, so I -- if they're prejudicial, they're
6 prejudicial only because Mr. Solomon probably should have
7 kept his mouth shut and not made such statements.

8 But he did and I think the relevance is -- it's
9 simply beyond question nor do I believe they are 404(b) in
10 any sense. They are simply evidence of his consciousness
11 of his guilt in this case.

12 MR. LEWIS: Your Honor, they are by
13 definition acts outside of the indictment. Therefore,
14 they're extraneous. They're not offering them because
15 they put it in a positive light. Therefore, they are
16 extraneous bad acts that must be analyzed under 404(b).
17 It's as elementary as hearsay.

18 You can tell by Mr. Bohling's proffer to the
19 court it is exactly that, evidence of bad character meant
20 to make the jury think he's a bad actor. Therefore, he
21 must be guilty of something.

22 And I go on to point out to the court, the third
23 conversation with Pleshette Johnson has nothing to do with
24 this witness, so I'm not going to address that. We can
25 save that for whenever His Honor wants to take it up.

1 But with Ms. Martin herself, the first
2 conversation involves a third party she can't even
3 identify. And we don't know if it's the third party
4 making the statements about what to say or not say, et
5 cetera. I mean, it is just replete with pitfalls that
6 404(b) and 403 caution us should not be injected in a
7 trial. It does nothing to prove a single element or overt
8 act in the indictment. It's outside the pattern and the
9 time of the conspiracy.

10 MR. BOHLING: Your Honor, I would say
11 that's irrelevant. If he confessed in 2008, that would be
12 relevant. This is in the nature of a confession. It's an
13 incriminating statement by Mr. Solomon. It is -- from
14 that standpoint it is simply like any other statement that
15 we would offer against a party opponent.

16 MR. LEWIS: A confession I would argue,
17 Your Honor, has a lot more indicia of reliability. All
18 the safeguards of the code of criminal proceeding that
19 require recordings, warnings, et cetera, are incumbent
20 upon a statement. This isn't a statement. This is a
21 cooperating witness with a longstanding personal
22 relationship with Mr. Solomon that the government is
23 gratuitously trying to pull out some very prejudicial
24 comments that do not at all -- I invite Mr. Bohling, what
25 element of the case, what element of the indictment do

1 those statements go to support?

2 MR. BOHLING: It goes to the money
3 laundering count because he is trying -- he's trying very
4 hard to get two witnesses not to tell us about the cash.
5 That's --

6 MR. LEWIS: Put Ms. Johnson aside.
7 She's not here.

8 MR. OSGOOD: Can I stick my nose in for
9 30 seconds here? It is clearly a crime because it's
10 threatening and intimidating a federal witness if you
11 believe her testimony that she later says I felt
12 threatened for myself and my daughter. And to the extent
13 it could be chargeable as a federal crime, it is, as
14 Mr. Lewis says, classic 404(b).

15 I'm concerned, again, that it's slopover
16 evidence against my client that's going to make him -- the
17 jury think that he's a thug. And that's all they're
18 offering this for is to try and cast Mr. Johnson in the
19 role of a thug to bolster these photographs that they put
20 up. They didn't ask us for a picture of him in a suit.
21 They put up pictures of him that looks like he's almost in
22 orange jailhouse stuff. We didn't object to that.
23 They're doing everything they can to make these guys look
24 bad.

25 MR. BOHLING: The fact that it is --
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1 might independently be a crime does not automatically make
2 it 404(b). The first question is whether it's admissible
3 as evidence of our case, which it is. It is a statement
4 by a party opponent that is made essentially in the nature
5 of a confession.

6 THE COURT: What about in the context of
7 this: It may be relevant, but the value of it may be
8 outweighed by the prejudice.

9 MR. LEWIS: That's why I cited 403, Your
10 Honor.

11 THE COURT: I'm not finished, Mr. Lewis.

12 MR. LEWIS: I'm sorry, Your Honor. I
13 did not mean to interrupt.

14 THE COURT: It is not required to be an
15 essential element of your case unless the -- I don't know
16 about the money laundering because we haven't really
17 gotten into that as of this time. What I'm going to do is
18 sustain the objection and wait until the case develops.
19 If we need to call her back, I'll let you do that.

20 MR. BOHLING: Okay.

21 THE COURT: Got it?

22 MR. BOHLING: Yes, Your Honor.

23 (The following proceedings were had in the
24 presence of the jury:)

25 CYNTHIA MARTIN, previously being sworn, resumed the stand:

1 DIRECT EXAMINATION (continued) BY MR. BOHLING:

2 Q Good afternoon. I believe that we were about to
3 the point where we were discussing the search warrant at
4 The Medicine Shoppe in Belton, Missouri.

5 Did you come to learn about the fact that there
6 had been a search warrant executed at The Medicine Shoppe?

7 A Yes.

8 Q How did you learn that?

9 A You know what, I don't really recall because the
10 search warrant -- you're talking about the inspection, the
11 inspection?

12 Q No, ma'am. I'm talking about the search warrant,
13 the actual search warrant conducted by the DEA in Lynn
14 Rostie's shop.

15 A Right. And that was in May?

16 Q Yeah. That was in 2000 -- spring of 2006.

17 A In May, yeah. That was actually on the news.

18 Q And once you learned about that, did you contact
19 Mr. Solomon?

20 A Yes.

21 Q Okay. Why did you contact Mr. Solomon?

22 A You know, I think he had contacted me a few days
23 before that just talking generalities, you know, of how's
24 everything going and all of that. And then afterwards
25 when Lynn was searched, I contacted him, and that's when I

1 found out they had been searched there also.

2 Q What did you discuss with Mr. Solomon in the
3 phone call that you made after you learned about the
4 search?

5 A What was going on, why were they, you know -- I
6 still didn't understand why they were searching, that if
7 Lynn had done her due diligence and that everything was
8 okay for her to ship those -- if that was indeed the case
9 on what they were looking for, then it should be fine.
10 You know, why are they searching her pharmacy? I was
11 concerned.

12 Q Okay. And what was Mr. Solomon's response?

13 A He told me it was no big deal, nothing to worry
14 about, that everything was fine.

15 MR. BOHLING: If we could bring up
16 Exhibit 600, page 483.

17 Q (BY MR. BOHLING) Again, we're looking at your
18 phone records. This is for the date of May 3rd, 2006. Do
19 you recall that being the date there were search warrants
20 that were executed in relation to this case?

21 A It was the early part of May, yes.

22 Q Okay. And if we look at 2:34 p.m., we see a call
23 from 832-794-0470?

24 A Correct.

25 Q So you talked to Mr. Solomon on that day?

1 A Correct.

2 Q If we can kind of scroll down there, the other
3 way I think.

4 So you recall talking to Mr. Solomon on the date
5 or shortly after the search warrant was done in Houston,
6 Texas?

7 A Correct.

8 Q Okay. And what was that conversation?

9 A We just talked about that -- well, it was after
10 Lynn had been searched that we talked about his pharmacy
11 being searched. Prior to that I do believe he had been
12 searched, but when we had talked or whatever, he never
13 relayed to me that he had been searched at that time.

14 Q And what did Mr. Solomon say about that search?

15 A About his?

16 Q Yes.

17 A When we finally talked about that, just that they
18 were searching him and it was no big deal.

19 Q Okay.

20 MR. BOHLING: I think that's all the
21 questions I have.

22 CROSS-EXAMINATION BY MR. LEWIS:

23 Q Good afternoon, Ms. Martin.

24 A Good afternoon.

25 Q I'm going to jump around quite a bit because,
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1 frankly, I don't have near as many questions to ask you as
2 I thought I did.

3 A Okay.

4 Q I'm sure everybody will be happy to hear that.

5 I'm going to kind of start from the back,
6 something you just talked about.

7 You made a comment a couple of times about when
8 you made this proposal to Mrs. Rostie, you were counting
9 on her doing due diligence I think was your word?

10 A Correct.

11 Q And by "due diligence," you mean making sure this
12 all checked out, it was aboveboard and legitimate?

13 A Correct.

14 Q After communicating that to her, you, in essence,
15 had to rely in good faith on her conforming with the law,
16 true?

17 A Correct.

18 Q Just as the chain goes, she would have had to in
19 good faith rely on the doctors to have been aboveboard, et
20 cetera?

21 A Correct.

22 Q Okay. Because you, like other folks in this
23 chain, didn't talk to everybody in the chain, right?

24 A Correct.

25 Q Fair enough. Okay.
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1 Let's talk about the relationship that you and
2 Troy Solomon shared prior to the Texas prescription
3 proposal --

4 A Okay.

5 Q -- for lack of a better word.

6 You all were good friends?

7 A We were friends, yes.

8 Q In fairness to Mr. Solomon, you confided in him a
9 lot for business advice and the like at times?

10 A Correct.

11 Q And he was always very helpful?

12 A Correct.

13 Q Even after the romantic relationship ended, you
14 continued to talk a lot, be friendly, just not intimate,
15 fair?

16 A Correct.

17 Q In fact, you all talked on the telephone a lot.
18 Is that fair?

19 A We did talk a lot, yes.

20 Q To put it in terms of numbers, in a one-year
21 period from, let's say, August of '04 to November of '05,
22 how many times do you think you all would make
23 communication?

24 A I couldn't even -- I couldn't even guess.

25 Q Would you be surprised to know that the

1 government charts would indicate almost 1,300 times?

2 A Back and forth in --

3 Q Yes, ma'am. Not all you. Both of you.

4 A I thought it was me.

5 Q No, ma'am.

6 A You know what, I wouldn't be -- in a two-year
7 period?

8 Q Year and two months actually.

9 A I wouldn't be surprised.

10 Q And he's a chatty person?

11 A Yes.

12 Q Are you fairly outgoing?

13 A Yes.

14 Q Chatty?

15 A Yes.

16 Q So separate and apart before the Texas
17 prescription begins, you all stay in pretty close contact
18 phone-wise?

19 A We didn't talk as much after August, September of
20 '02. We talked occasionally. I don't know if that's
21 1,300 times or not, you know, but that was before we
22 didn't have as much constant contact.

23 Q Fair enough.

24 So before that timeframe, you had more, what you
25 would term, constant contact, and then when the Texas

1 prescription takes off, you're having a lot more contact
2 again?

3 A Yes, sir.

4 Q Okay. Fair enough.

5 That timeframe you're talking about, help us
6 orient back to a time when you left a position that you
7 had for a transition to Countrywide. What timeframe was
8 that?

9 A That was like -- I left my job with -- CIT ended
10 in May of '02, but I'd already gone to work for
11 Countrywide in March of '02. CIT had said if anybody got
12 a job because the -- this division had shut down, that
13 they would pay, you know, that time until May. So it
14 looked like I was still working until May for them, but I
15 had actually gone to work for Countrywide. I was the only
16 one that had secured a job, and I was the only one they
17 had to do that for. But they paid me and I went to work
18 for Countrywide in March of '02.

19 Q Good for you.

20 During that transition to Countrywide, you
21 leaned on Mr. Solomon for some advice about the finance
22 industry, et cetera?

23 A Absolutely.

24 Q You all were close then. It was several months
25 after there that you describe you're not as close; is that

1 right?

2 A Correct.

3 Q Okay. Now, let's fast forward a little bit and
4 get into 2004. Troy Solomon was working as an outside
5 salesman for a pharmaceutical durable medical equipment
6 company, correct?

7 A Correct.

8 Q And you were very well aware of that, right?

9 A Correct.

10 Q He bragged on his successes, his promotions, his
11 awards for salesman of the year, et cetera?

12 A Correct.

13 Q Wasn't shy about that, was he?

14 A No.

15 Q And you understood by all appearances, some of
16 you all's trips or the houses, et cetera, that he was
17 doing well in that position?

18 A Correct.

19 Q It was clearly a full-time job, right?

20 A Correct.

21 Q And his specific calling card, if you would, for
22 that company was durable medical equipment and diabetic
23 needs. Do you recall that?

24 A That was my understanding.

25 Q Okay. From him obviously?

1 A Correct.

2 Q Let's talk about you've approached Rostie with
3 the proposal, you communicate for Mr. Solomon, give her
4 the business card. Then you start getting money, right?

5 A Correct.

6 Q It's my understanding that you would receive the
7 money in the UPS envelopes, right?

8 A Correct.

9 Q And originally the money would be banded
10 together, right?

11 A Correct.

12 Q Later on your fee would be separate, it wouldn't
13 be banded, right?

14 A Not necessarily.

15 Q Okay. Let me ask you about that.

16 Do you recall visiting with Ms. Watterson,
17 Mr. Rhodes, Mr. Bohling, and Ms. Nelson, ladies and
18 gentlemen at this table, back in December of 2008,
19 specifically, December the 9th?

20 A December the 9th of '08?

21 Q Yes, ma'am.

22 MR. LEWIS: May I approach the witness
23 to help her, Your Honor?

24 THE COURT: Yes.

25 Q (BY MR. LEWIS) I'll show it to you. Just glance
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1 through this, see if it helps you remember, Ms. Martin.

2 A Okay.

3 Q Does that help refresh your memory about that
4 meeting?

5 A This must have been right before the plea
6 agreement?

7 Q Yes, ma'am. I believe that was December the 12th
8 or thereabouts, and this was a few days before.

9 A Right.

10 Q You got that back in your mind's eye?

11 A I think so.

12 Q Fair enough.

13 Do you recall at that meeting sharing with the
14 ladies and gentlemen from the government here that your
15 money would not be banded? Do you recall saying that?

16 A I don't recall.

17 Q Okay.

18 MR. LEWIS: May I approach the witness,
19 Your Honor?

20 THE COURT: Yes.

21 Q (BY MR. LEWIS) If I may get a little closer to
22 you, I'm going to direct your attention -- for the
23 government, I am on page 4, paragraph 8.

24 A Okay.

25 Q So do you recall now telling these folks that

1 your broker fee was not banded?

2 A You know what, it's been five years. Those
3 little bitty details I don't remember them all.

4 Q I appreciate that. Are you saying you never said
5 that or you just don't recall?

6 A I'm not going to say I didn't say that. I don't
7 recall now after five years. I don't recall.

8 Q Now, this interview would have been just a year
9 and a half ago, December 9th, 2008.

10 As you think back, receiving the money, do you
11 in fact recall that your broker fee after this gets
12 started would be separate than the banded money to pay?

13 A Sometimes some of the money came banded, and
14 sometimes it didn't. And it was never divided.

15 Q Fair enough. Let's talk about the second part of
16 that equation because that's really where I want to go.

17 You do remember bank bands being on the money,
18 right?

19 A There were some, yes.

20 Q You don't recall which, Bank of America or who
21 stamped it?

22 A I don't.

23 Q But you do recall seeing those?

24 A I know that there were some bank bands.

25 Q Fair enough. Let me show you what has been
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1 admitted as Defendant's Exhibit No. 3.

2 MR. LEWIS: May I approach, Your Honor?

3 THE COURT: You may.

4 Q (BY MR. LEWIS) Ask you if you recognize this,
5 ma'am?

6 A No, I don't.

7 MR. OSGOOD: Your Honor, I've got
8 exhibits marked as defendant's exhibits in sequence too.
9 We probably should refer to these --

10 MR. LEWIS: I will call all of mine
11 Solomon Exhibit.

12 MR. OSGOOD: So we don't get confused on
13 the record.

14 A This e-mail address somewhat looks like mine but
15 it's not.

16 Q (BY MR. LEWIS) Thank you very much.
17 So you don't recall receiving this?

18 A I never received that. It's not the right e-mail
19 address.

20 Q Fair enough.

21 It looks as if Ms. Rostie attempted to e-mail
22 you but she got the address wrong?

23 A I never got anything like that.

24 Q Thank you.

25 Okay. Do you recall or can you help us count
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1 how many times you have met with the government regarding
2 this case?

3 A Three or four times.

4 Q Do you recall when you originally met with them?
5 Does July of '06 sound correct?

6 A July of '06?

7 Q Yes, ma'am.

8 A July of '06 would have been probably when we did
9 a proffer.

10 Q Yes, ma'am.

11 A Yes.

12 Q Would that have been your first meeting with the
13 government?

14 A Possibly, yes.

15 Q Do you recall any meetings before that?

16 A I don't recall any.

17 Q Okay. Do you recall meeting with the government
18 on that December the 9th, 2008 date?

19 A You know, I don't -- I know that I came and did
20 the plea agreement, and we did that like on Friday like
21 the 10th or 11th of December. That was pretty traumatic.

22 Q I understand.

23 A So a little bit before I think we did discuss
24 what was going to be and how it was going to process and
25 all of that.

1 Q Fair enough.

2 So your best recollection that would be meeting
3 number two?

4 A Possibly, yes.

5 Q Do you recall a meeting on April the 1st of 2009,
6 and present then would have been Connie Overton from the
7 DEA, your lawyer, and a U.S. Attorney named Stewart Burns?

8 A And was that here?

9 Q Not sure if that was here or in Houston.

10 A There was some kind of a hearing here if that's
11 when you're talking about.

12 MR. LEWIS: May I approach the witness
13 very quickly.

14 Q (BY MR. LEWIS) Let me show you this and see if it
15 helps you, Ms. Martin. I'm not going to ask you any
16 specifics about the meeting.

17 A Okay, okay. We met several times.

18 Q Okay. And you are referring to in addition to
19 this April 1st -- you do remember this occasion after
20 looking at this?

21 A I do.

22 Q Okay. You reference another meeting that might
23 have been a few weeks after April 21st of 2009, we met in
24 the magistrate judge's courtroom?

25 A Correct.

1 Q You met with the government before that hearing,
2 right?

3 A Correct.

4 Q Okay. So in fairness to you, these are long time
5 periods, but you're comfortable saying half a dozen or so
6 meetings with the government?

7 A Probably.

8 Q Okay. Fair enough.

9 Now, on, as you said, December the 12th of 2008,
10 then or about, you entered a plea agreement with the
11 government, right?

12 A Correct.

13 Q And you made a deal in which you agreed to
14 cooperate and provide testimony to the government in
15 exchange for them moving for a downward departure,
16 reducing your sentence, right?

17 A I did.

18 Q Let's talk about some of the parts of your deal.

19 They dismissed -- you pled guilty to Count I and
20 conditionally guilty to Count II, correct?

21 A Correct.

22 Q They dismissed the remaining counts, right?

23 A Yes.

24 Q And they also agreed in your plea agreement not
25 to prosecute you for any other acts that might arise out

1 of this -- these charges, this scenario, true?

2 A Correct.

3 Q They also agreed to allow you to -- they did let
4 you voluntarily surrender instead of being arrested,
5 right?

6 A Correct.

7 Q Agreed to let you stay out on bond, right?

8 A Correct.

9 Q Push back any sentence hearing or determination
10 of sentence, correct?

11 A Correct.

12 Q They also did not -- well, let's turn to another
13 angle.

14 There was -- Mr. Bohling talked about some of
15 the tax ramifications and decisions you made relative to
16 the money you received. I want to talk about that for one
17 moment.

18 A Okay.

19 Q You filed a tax return for those years?

20 A I did.

21 Q For '04?

22 A I did.

23 Q For '05?

24 A I did.

25 Q And just to be safe, for '06?

1 A I have.

2 Q In any of those tax returns, did you claim any of
3 the money you received from these Texas prescriptions?

4 A I did not.

5 Q And the government has not sought to prosecute
6 you for tax evasion, have they?

7 A Not yet.

8 Q You don't have any fear that they will, do you?

9 A Do I have any fear? Yes.

10 Q Have they threatened that against you?

11 A No, they have not.

12 Q Okay. They haven't made any inference that they
13 were going to prosecute you for tax evasion, have they?

14 A They haven't talked about that.

15 Q So the fear you talk about is just a general fear
16 you have, nothing that these fine lawyers have said to you
17 or your lawyers communicated to you?

18 A I'm sorry. I don't understand your statement.

19 Q I understand that some of the contact is not
20 directly with you. You have lawyers that are here with
21 you. Mr. Hobbs' office represents you, correct?

22 A Correct.

23 Q So much of the information you get flows from the
24 United States Attorney's office to your lawyer to you,
25 right?

1 A Yes, absolutely.

2 Q Through that chain, not invading your
3 attorney/client privilege, but through that chain they've
4 communicated no threats of prosecution for tax evasion?

5 A No.

6 Q Now, from some of the proceeds that you received,
7 your broker fee, you bought your daughter a car. Is that
8 fair?

9 A Not necessarily.

10 Q Well, you put the money -- the cash, your
11 proceeds into an account that had other money in it,
12 right?

13 A Right.

14 Q Out of that account you bought your daughter's
15 car?

16 A Right. At that time when I was working, I was
17 working as a mortgage broker, an account rep, and I was
18 making really good money at that time. Before that time I
19 had made considerable money, so I had money to buy her a
20 car.

21 Q I understand. My point being, in all candor that
22 money came from commingled funds --

23 A It was commingled, yes.

24 Q Yet the government did not attempt to take your
25 daughter's car back, did they?

1 A They have not.

2 Q They haven't threatened to do so, have they?

3 A They wouldn't want it back.

4 Q I can understand.

5 A Absolutely.

6 Q The government has not levied on your home, have
7 they?

8 A As far as I know, they have not. I think that
9 there is an order where I couldn't sell my house if I
10 wanted to.

11 Q Right.

12 A Yeah.

13 Q So they have not encumbered your home to levy
14 against you for the proceeds from the Texas prescriptions,
15 have they?

16 A No.

17 Q And in return for these items the government has
18 done for you, you have agreed to provide testimony,
19 correct?

20 A I provided them anything that they asked me of or
21 whatever I had, I gave to them freely.

22 Q Physical evidence, testimony, et cetera?

23 A Correct.

24 Q Okay. Now, it is your sincere hope that in
25 addition to the things I've delineated here that the
402

1 government has done for you, that they will ultimately
2 recommend you get probation, correct?

3 A That's what I'm hoping for.

4 Q And you understand, Ms. Martin, the only way you
5 get to a place where a sentencing judge can give you
6 probation in this case would be if the government files
7 their 5K motion?

8 MR. BOHLING: Objection. May we
9 approach?

10 MR. LEWIS: I can try it another way.
11 If we still need to approach, I will.

12 MR. BOHLING: Okay.

13 Q (BY MR. LEWIS) You understand in the federal
14 system there are sentencing guidelines, correct?

15 A Not all of them probably.

16 Q Not that you understand them all. You understand
17 that's the procedure?

18 A The procedure, yes.

19 Q And the crimes based on, you know, the money
20 involved, your involvement, et cetera, determines a
21 guideline range. Did Mr. Hobbs explain that to you?

22 A Yes, I understand that.

23 Q The only way -- do you understand that the
24 government in their sole discretion decides whether to
25 file a motion to ask the judge to go below that guideline

1 range to probation? Do you understand that?

2 A That there has to be a motion for that?

3 Q Yes, ma'am.

4 A Yes.

5 Q And you understand that motion is in the sole
6 discretion of these lawyers, correct?

7 A Correct.

8 Q So as you sit here today, this is a very
9 important day to you, isn't it?

10 A It is.

11 Q In hopes, as you've honestly said to us that you
12 get probation, it is your hope that they will do what you
13 hope they do, they said they would do; is that right?

14 A Correct.

15 MR. LEWIS: Thank you, Ms. Martin.

16 Can I have one moment, Your Honor?

17 THE COURT: You may.

18 MR. LEWIS: I'll pass the witness to
19 Mr. Osgood, Your Honor.

20 Thank you, Ms. Martin.

21 CROSS-EXAMINATION BY MR. OSGOOD:

22 Q Ms. Martin, my name is John Osgood. I represent
23 Dr. Christopher Elder. You identified the defendant,
24 Mr. Solomon, in court. Would you look around the
25 courtroom and tell me if you can identify Mr. Elder, Dr.

1 Elder?

2 A I don't know Dr. Elder. I would surmise that
3 he's the gentleman sitting with you.

4 Q Sitting with me because I'm the lawyer?

5 A But I don't recognize him upon sight.

6 Q Okay. So you've never seen him prior to today --

7 A One other time when we had a court appearance for
8 this case.

9 Q Okay. But apart from that --

10 A I've never seen him.

11 Q Throughout the course of events, never had
12 occasion to meet him, did you?

13 A No, sir.

14 Q Okay. Now, after the arrangement was made with
15 Mr. Solomon, you say, I believe, or according to UPS
16 records or FedEx, whatever they are, I believe they're
17 UPS, you got an envelope with some cash in it?

18 A Yes, sir.

19 Q And we put that date on September the 9th, as I
20 recall. Is that about the date?

21 A I think that's what the package said.

22 Q Now, did that package have any original
23 prescriptions in it?

24 A No. I don't believe -- no.

25 Q Okay. And that surprised you a little bit, you

1 said?

2 A That it didn't have prescriptions in it?

3 Q No, no, that you got the package period.

4 A Oh, that I got the package, yes.

5 Q And when was the -- can you put a date on when
6 you might have received -- or did you receive any packages
7 ever with original scripts in it?

8 A You know, I think there was a package at one time
9 that had pages like copy paper pages, and I really didn't
10 pay any attention to them. I just left them in the
11 envelope and took them to Lynn with the money.

12 Q But you do not remember --

13 A There was only one time.

14 Q You do not remember, then, receiving any original
15 scripts of Dr. Elder?

16 A No.

17 Q All right. So you can't tell us if there were
18 original scripts seized at The Medicine Shoppe, how they
19 got there, could you?

20 A Original prescriptions would be like on a
21 prescription pad?

22 Q Yeah. Let me show you some here.

23 MR. OSGOOD: If I may look in your box,
24 is that okay?

25 MR. BOHLING: They're right here.

1 A No.

2 Q (BY MR. OSGOOD) Government's Exhibit 37.

3 A There were never any prescriptions like that in
4 the bag.

5 Q Now, you worked in the pharmacy industry for a
6 while, didn't you?

7 A Yes.

8 Q You would know these things if you saw them?

9 A Absolutely.

10 Q And does this look to you like -- were you a
11 tech?

12 A I was.

13 Q So you were actually reviewing and filling
14 prescriptions under the supervision and guidance of a
15 pharmacist?

16 A Yes.

17 Q You know what these things look like and can read
18 them and understand them, right?

19 A Absolutely.

20 Q Does that look like a valid prescription to you
21 for pain medication?

22 THE COURT: I think we've already
23 covered that, Mr. Osgood.

24 MR. OSGOOD: I understand.

25 A Yes.

1 MR. OSGOOD: This is for her
2 credibility, Your Honor. Not going to go through all of
3 them.

4 Q (BY MR. OSGOOD) So you would know if you had seen
5 those, wouldn't you?

6 A Right. That never came in any of those UPS bags.

7 Q All right. Now, were you aware of these refill
8 faxes that were going from The Medicine Shoppe back to
9 Texas, have anything to do with that or anybody?

10 A After I made the introduction to Lynn and Troy
11 and I would take the money to her, I never touched any of
12 the prescriptions. I never had any -- I didn't help her
13 fill prescriptions, you know, doing -- put any pills in
14 the bottles, any of that thing, tape boxes. I didn't get
15 into any of that. That was all their business.

16 Q All right. Did you ever have occasion to meet
17 this Mr. Parker?

18 A I don't know Mr. Parker.

19 Q Were you aware at some point in time that
20 Mr. Solomon opened his own pharmacy called Ascensia
21 Nutritional Pharmacy?

22 A I didn't know that until sometime -- it had been
23 quite a while since we knew each other. I don't know
24 exactly when he did open it, but I know that when Lynn was
25 being searched, that they were searching that pharmacy,

1 and that's kind of when I was finding out that that
2 pharmacy did indeed belong to Mr. Solomon.

3 Q And it was, of course, co-located in that
4 building with South Texas Wellness Center. Or did you
5 know that?

6 A I didn't know that.

7 Q All right. Let me ask you this: On the day of
8 the search I believe you received a call or you called
9 him, I don't remember what your testimony was, from
10 Mr. Solomon?

11 A We talked, yes.

12 Q You say you don't know him, so I guess it's safe
13 to assume you never, ever had any conversations with Dr.
14 Elder or anybody representing himself to be Dr. Elder?

15 A I've never talked to Dr. Elder on the phone, no.

16 Q And from start to finish on this thing?

17 A Never.

18 Q Don't know him?

19 A Not that I recall.

20 Q Now, on your July 27, '06, interview, you
21 candidly denied involvement and denied everything pretty
22 much you've told us here today, didn't you?

23 MR. BOHLING: Objection. May we
24 approach?

25 (Counsel approached the bench and the following
409

1 proceedings were had:)

2 MR. OSGOOD: This is within the
3 timeframe of the conspiracy.

4 MR. BOHLING: If he goes in this
5 direction, it's opening the door.

6 THE COURT: That's true.

7 (The proceedings returned to open court.)

8 MR. OSGOOD: I'll withdraw that
9 question. I'm done.

10 REDIRECT EXAMINATION BY MR. BOHLING:

11 Q You understand that under your cooperation
12 agreement, your first obligation is to tell the truth,
13 correct?

14 A Absolutely.

15 MR. LEWIS: For the record I'm going to
16 object to the leading.

17 THE COURT: It is leading, Mr. Bohling.
18 Mr. Rhodes did it too. I thought it was innocuous enough,
19 but I don't know where you're going, if you're intending
20 to lead.

21 MR. BOHLING: That's fine.

22 Q (BY MR. BOHLING) What is your obligation under
23 the plea agreement -- under the cooperation agreement?

24 A I'm sorry?

25 Q What is your obligation under the cooperation

1 agreement?

2 A To tell the truth.

3 Q If you fail to tell the truth, what is your
4 understanding of whether or not you'll get the benefit of
5 any downward departure motion from the government?

6 A It's all null and void.

7 Q So the quickest way for you to make that deal go
8 away is to not tell the truth?

9 A Correct.

10 Q And if you didn't tell the truth, what is your
11 understanding of whether or not you would be subject to
12 further criminal prosecution?

13 A My understanding is I would be prosecuted
14 further.

15 Q And have you given the testimony you've given
16 here today because of some perception of what you want the
17 government to have you do or because you're telling the
18 truth?

19 MR. LEWIS: Your Honor, I'm going to
20 object. That's improper bolstering.

21 THE COURT: Sustained.

22 MR. BOHLING: I'm done.

23 Thank you.

24 MR. LEWIS: Nothing further, Your Honor.

25 MR. OSGOOD: No, Your Honor.

1 THE COURT: Thank you.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 MR. RHODES: The government calls Frank
5 Van Fleet.

6 FRANK VAN FLEET, being duly sworn, testified:

7 DIRECT EXAMINATION BY MR. RHODES:

8 Q Would you please state your name for the record.

9 A It's Frank Van Fleet.

10 Q Where do you work, Mr. Van Fleet?

11 A I work for the Missouri Board of Pharmacy.

12 Q What do you do for them?

13 A I'm an inspector.

14 Q How long have you been an inspector with the
15 Missouri Board of Pharmacy?

16 A Ten years.

17 Q Before working with the Missouri Board of
18 Pharmacy, did you work for any other licensing board
19 governing the practice of pharmacy?

20 A Yes, I did.

21 Q When?

22 A I worked for the Board of Pharmacy in California
23 for 21 years.

24 Q During your tenure as an inspector, approximately
25 how many pharmacy inspections have you conducted?

1 A Thousands.

2 Q Okay. Are you a licensed pharmacist?

3 A Yes.

4 Q And have you ever been in charge of a pharmacy?

5 A In charge --

6 Q Have you ever been in charge of a pharmacy?

7 A You mean the PIC?

8 Q Yes, the pharmacist in charge.

9 A Yes.

10 Q We've heard that term throughout the trial
11 proceedings. What is a pharmacist in charge?

12 A A pharmacist that takes responsibility for the
13 running of the pharmacy according to the law in the state
14 in which it's licensed.

15 Q And as an inspector for the Missouri Board of
16 Pharmacy, are you familiar with the pharmacy regulations
17 for the state of Missouri as well as the federal
18 regulations?

19 A Yes.

20 Q Calling your attention to October 20, 2005, did
21 you conduct an inspection of a pharmacy in Belton,
22 Missouri?

23 A Yes, I did.

24 Q And what was the name of that pharmacy?

25 A The Medicine Shoppe.

1 Q Why did you inspect that?

2 A It was just a routine inspection.

3 Q And when conducting a routine inspection, what do
4 you do?

5 A I look at the records of the pharmacy, make sure
6 they're according to the standards of the state.

7 Q And when you arrived for the inspection, were
8 there any employees there?

9 A Yes, there were.

10 Q Who were the employees?

11 A Cashier Donna Kerste, Pharmacy Technician Jill
12 Gerstner, and Relief Pharmacist Steve Langley.

13 Q And who was the pharmacist in charge at TMS?

14 A That was Lynn Rostie.

15 Q Was she present the day you came for an
16 inspection?

17 A No.

18 Q All right. So upon arrival on the 20th of 2005
19 -- October 20th, 2005, what did you do?

20 A I presented at the pharmacy there at the
21 prescription department and informed them of who I was and
22 why I was there.

23 Q And after you informed them of who you were and
24 the purpose of your visit, then what happened?

25 A I was invited into the prescription area.

1 Q And where did you -- did you ask for any
2 particular items or --

3 A Yes. I --

4 Q What did you ask for?

5 A I asked for the last controlled substance
6 inventory. I asked for order forms, C2 order forms, and I
7 asked, I believe, for the compound log and for the
8 pharmacist's signature log.

9 Q Okay. And having obtained those items, what did
10 you do?

11 A I was shown a desk that I could work at, and I
12 put those items on the desk.

13 Q And did you look through those items?

14 A Not at that time.

15 Q Then what did you do next?

16 A I walked over to the wall where the licenses were
17 posted to make sure they were all current, and while I was
18 there -- they were posted on the wall near the door to the
19 storeroom where the prescription files were kept. And
20 while there at the -- checking the licenses, I asked to
21 look at prescription files.

22 Q You asked could you look at the prescription
23 files?

24 A I asked for prescription files.

25 Q Okay. And what did you see or what happened?

1 A Well, they showed me the file cabinet where the
2 prescriptions were filed and opened a drawer where the
3 current file was supposed to be. I chose a bound -- they
4 file them in hundreds, in bound books of a hundred. So I
5 selected one of those books that was marked C3 to 5, and
6 then I also got a C2 file and a noncontrolled prescription
7 file.

8 Q And did you look through these files?

9 A I did. I went over to the desk and sat down and
10 opened up the C3 to 5 prescription file.

11 Q And what, if anything, did you find?

12 A Well, I found, as I started looking through it,
13 that all the prescriptions were for the same thing, the
14 same quantity, written by the same doctor, the same
15 directions, the same date. They were all faxed from
16 Houston, Texas.

17 Q And how many pages, do you recall?

18 A There were 28 pages with two prescriptions per
19 page.

20 Q What was unusual about that?

21 A Everything. The fact that the drugs were
22 preprinted on the blank, were the same on every blank,
23 Lorcet 10 over 650, which is the highest strength of the
24 C3 narcotic that it is.

25 MR. OSGOOD: Your Honor, excuse me. I
 416

1 don't believe we've identified who the doctor is, and
2 that's pretty important here.

3 Q (BY MR. RHODES) What is the name of the doctor?

4 A Peter Okose.

5 Q Okay. And let me show you Government's Exhibit
6 1085.

7 THE COURT: Can I speak with counsel
8 just a minute.

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 THE COURT: You guys know this case much
12 better than I, but I'm just curious as to what's adding to
13 the mix that hasn't already been told to us.

14 MR. OSGOOD: Quite a bit from my
15 perspective because I want to cross-examine him on his
16 failure to quantify and segregate this information.
17 They've got thousands of these things, and my defense is
18 there are only a few in the early timeframe. Then they
19 went to the fax-type situation and the refills were bogus
20 coversheet and whatnot, and my client dropped out of this
21 thing entirely on January the 1st. And it went on around
22 the clock clear to October.

23 MR. LEWIS: I have good news. I don't
24 have any questions.

25 THE COURT: I'm asking for information.
417

1 I don't think -- I mean, what I'm hearing about so far is
2 already in the record about the bogus prescriptions and
3 the refills and all of that stuff. What does he add to
4 that?

5 MR. RHODES: Right. He was the person
6 who initially came in earlier there, but now we're getting
7 to the unusualness, the unusual course -- practice as far
8 as filling these prescriptions, same strength, same
9 substance we're seeing all the time.

10 THE COURT: Didn't we already have that?

11 MR. OSGOOD: That's with respect to
12 Okose some earlier. Remember, the evidence is zero that
13 my guy was doing that. He wasn't using the alphabet soup.
14 I kind of want to put this in to say the difference
15 between the two, so I'm kind of on his side on this one a
16 little bit. I don't know why he wants to put it in.

17 MR. BOHLING: The thing for Mr. Van
18 Fleet -- it might be different from hearing it from
19 Ms. Rostie or other people.

20 THE COURT: Nobody is disputing that,
21 are they?

22 MR. RHODES: There have been attacks on
23 the credibility of them saying only items would be
24 favorable to the government. Here you have someone --

25 THE COURT: I can't imagine that the
418

1 defendants would dispute -- it's already been -- I'll let
2 you go ahead and do it. I'm just -- I see it as adding on
3 time and not providing --

4 MR. OSGOOD: I think we could speed it
5 up some, quite frankly. He's got about a 15-page report
6 that I'm going to hone in on how it breaks down on
7 numbers. That's what I'm going to do.

8 MR. RHODES: I'll bring it into
9 evidence.

10 (The proceedings returned to open court.)

11 Q (BY MR. RHODES) What did you notice about -- I'm
12 showing you 1085. What did you notice about Government's
13 Exhibit 1085?

14 A Well, again, it was preprinted with the names of
15 the drugs, one of which was crossed off on every
16 prescription I looked at, all for the same quantity, same
17 strength, same directions. Also there was one refill on
18 each. They were all faxed from Houston, Texas, which is
19 highly unusual, and I noticed out of the 56, 32 of these
20 were for Johnson, someone named Johnson, different
21 Johnsons.

22 Q Okay. Now I'm showing you Government's Exhibit
23 1086. What did you find unusual about this batch,
24 suspicious or unusual?

25 A Well, again, they're all the same thing, exactly
419

1 the same thing. Everybody got the same thing. Another
2 thing is they were from patients that were all over Texas
3 and Louisiana.

4 Q Okay. Now, show you Government's Exhibit 1087.

5 MR. BOHLING: That's not in evidence
6 yet.

7 MR. RHODES: Okay.

8 Q (BY MR. RHODES) At some point you sent a letter,
9 what was it, with Peter Okose, Dr. Okose's office?

10 A Yes. I went back and looked at another
11 prescription file.

12 MR. RHODES: I want you to -- would you
13 please pull up -- black out --

14 Q (BY MR. RHODES) Okay. Who wrote that letter?

15 A I did.

16 Q You did? That's the letter you wrote.

17 To whom did you address the letter?

18 A I addressed it to Robert Kleman.

19 Q Do you recognize it as being your letter?

20 A Yes.

21 Q Is that a fair and accurate copy of it?

22 A Yes.

23 MR. RHODES: Government moves to admit
24 into evidence Government's Exhibit 1087.

25 MR. OSGOOD: No objection.
420

1 THE COURT: Hearing none, it will be
2 received.

3 MR. RHODES: Would you please publish it
4 to the jury.

5 Q (BY MR. RHODES) Could you read to us the letter
6 that you had sent or the fax coversheet more specifically
7 that you had sent?

8 A Yeah. I addressed it to Robert Kleman, who was
9 introduced to me as the office manager of Peter Okose when
10 I called him to verify these prescriptions. It's dated
11 Friday, 10/21/05, and I said, This four-page fax -- oh,
12 it's confidential.

13 But I just said, "Mr. Kleman, per our
14 conversation, here are three examples of prescriptions
15 found in a local pharmacy supposedly faxed from your
16 office. You told me the office doesn't fax prescriptions.
17 Please have Dr. Okose verify if these prescriptions are
18 legitimate or not and let me know. This is just the tip
19 of the iceberg. Thank you for your time." And then I
20 gave him my telephone and fax.

21 Q All right. And did you subsequently receive
22 either -- a fax in return?

23 A I did.

24 Q Okay. I would now like to show you what has been
25 marked as Government's Exhibit 1088.

1 MR. RHODES: Please black out.

2 Q (BY MR. RHODES) Is this a copy of the reply that
3 was faxed back to you?

4 A Yes.

5 Q Okay. And is that a true and accurate copy of a
6 letter that you received?

7 A It looks as though it is.

8 Q Okay.

9 MR. RHODES: Government moves to admit
10 Government's Exhibit 1088 into evidence.

11 THE COURT: Hearing no objection, it
12 will be received.

13 MR. RHODES: Okay. Would you please
14 publish it to the jury.

15 Q (BY MR. RHODES) All right. What does the letter
16 say?

17 A It's a response to my fax, and it's from Robert
18 Kleman, office manager, Peter Okose, MD, dated 10/21/05.
19 It says, "Mr. Van Fleet, I have consulted with Dr. Okose,
20 and he verified that the prescriptions are legitimate. He
21 also verified that he authorized the faxing of the
22 prescriptions to the pharmacy. I must add that this was a
23 prior practice, but at the present time we do not fax
24 prescriptions. We wish to thank you for drawing this to
25 our attention so we can be fully informed of any

prescription from this office."

Q Did you believe the contents of this letter?

A No.

Q What did you do?

A I got an investigation number from the office and
I called DEA.

Q And did you talk to several agents or did you talk to -- who did you --

A I called Judi Watterson.

Q And notified her?

A I just told her what I had found in the pharmacy.

Q And did you subsequently interview Lynn Rostie?

A I did.

Q And when was that, if you can recall?

A Well, that was the 25th of October.

Q Okay. And based off that interview, were you satisfied with the answers that she had supplied you?

A As far as?

Q As far as did you feel like further investigation was needed?

A Oh, absolutely.

Q Okay. I'm now going to show you what is marked
as Government's Exhibit 1089.

What can you tell us about those prescriptions?

A Well, I can tell you that, again, they're all the

1 prescriptions I found under Dr. Elder's name were for the
2 same two drugs, both controlled substances. One was an
3 analgesic, narcotic analgesic, Lorcet 10 over 650, and the
4 other was an anti-anxiety controlled drug, a Xanax, 2
5 milligrams. Again, all had the same directions, just,
6 again, many of them -- all of them -- well, I can't say
7 "all" maybe, but faxed from Texas, different places in
8 Texas.

9 Q Okay. And Government's Exhibit 1090, was that
10 the same as far as your findings as well? What was it
11 about 1090?

12 A Well, the same thing, the same two drugs, Lorcet
13 and Xanax, everybody gets the same strength, same
14 directions, same quantity. It's just the same thing.

15 Q And Government's Exhibit 1091.

16 A There, again, the same thing.

17 Q Okay. Could you please tell us what that is?

18 A This is a summary from the computer system in the
19 pharmacy showing the number of prescriptions --

20 Q Okay.

21 A -- for hydrocodone/APAP 10 over 500 over a period
22 of 6 weeks, 6 months, 12 months.

23 Q So the way we should read this is --

24 MR. OSGOOD: Objection.

25 MR. RHODES: All right.

1 Q (BY MR. RHODES) Tell us what does that mean.

2 A Well, I was just wanting to -- in order to use
3 the electronic data processing system, pharmacies have to
4 be able to generate reports based on patient name, based
5 on drug, based on prescriber, and so what I asked for in
6 this case was a utilization report for the
7 hydrocodone/APAP 10 over 500 tablets, which there were
8 also prescriptions for.

9 **So what this shows, then, over a 12-month period**
10 **is that there were 4,466 prescriptions for a quantity of**
11 **534,555 dosage units. The length of time, over a 359-day**
12 **period, average of 12.4 prescriptions per day, 1,489**
13 **tablets per day, quantity RX -- they were all 120. So I**
14 **don't know how the 119.6 got in there.**

15 Q Okay. What's at the bottom?

16 A Well, there again, it's just a -- it's a recap of
17 the total.

18 Q That was up above?

19 A Prescriptions, quantity, dispensed, and so forth.

20 Q Okay. Now, that's for --

21 A This is the same thing for the 10/650 on the
22 hydrocodone/APAP, so it's quantities for the 6 weeks, 6
23 months, and 12 months.

24 Q Okay. And next one, which drug is mentioned?

25 A This is -- same thing for Alprazolam 2 over the
425

1 same period of time, again, showing the total number of
2 prescriptions, quantity dispensed, and so forth.

3 Q What is Alprazolam?

4 A It's a benzodiazepine used for anxiety. It's a
5 Schedule IV.

6 Q All right. Next page, please.

7 A And, again, this is for Alprazolam 2 over the
8 same period of time showing, again, the total number of
9 prescriptions, the total quantity dispensed.

10 Q And what's the total quantity dispensed?

11 A This one happens to be 257,700.

12 Q Okay. And going back -- okay. Going back to
13 that hydrocodone, let's go back to that.

14 What was the total quantity dispensed for the
15 hydrocodone? I believe, that's 10,650.

16 A It was too big to fit into the space allotted
17 there on the printout.

18 Q Are you referring to the asterisk?

19 A Yeah. That's why -- the asterisk is a place
20 marker. It couldn't fit the total number in there that
21 were dispensed.

22 Q Okay. Now, I'm going to direct your attention to
23 the Government's Exhibit 1092.

24 What are we looking at?

25 A Well, this is a drug usage report from 1/1/05 to
426

1 10/25/05, and this is for the hydrocodone/APAP 10 over
2 500. It's also for the hydrocodone/APAP 10 over 650.
3 APAP is acetaminophen.

4 Q All right. Now, is that for prescriptions only
5 or --

6 A Yes. And this is -- these are for those written
7 by Dr. Okose, just Dr. Okose.

8 Q And there's a column that got a number reference.
9 Is that a percentage number or -- do you know what the
10 various columns are for?

11 A Well, the NDC number shows the brand dispensed.
12 The DEA column shows the schedule that it falls in. Then
13 we have -- I'm not sure what the class and quantity are on
14 there. I don't know what those numbers stand for.

15 **But the number of new prescriptions is 5,933 for**
16 **that period of time, and the total dispensed -- let's see.**
17 **What it shows -- number of cash. But they were all cash**
18 **prescriptions. None of these were insurance, so,**
19 **therefore, number of cash prescriptions total were 10,959,**
20 **including the refills.**

21 Q Page 2, please.

22 Now, is this for -- which doctor is this for?

23 A This is the total for Dr. Elder.

24 Q Okay. Describe to us the numbers.

25 MR. OSGOOD: What's that exhibit number,
427

1 please?

2 MR. RHODES: 1092.

3 MR. OSGOOD: What? 1092?

4 MR. RHODES: 1092.

5 A This printout shows, again, the dates from
6 September 1st of '04 to October 25th of '05, and the -- it
7 has the drug names over in the far left. The reason some
8 of these are listed more than once is because there's more
9 than one brand that was dispensed. So the NDC number
10 shows that there were two dispensed -- two brands
11 dispensed for Alprazolam 2, and then you can derive the
12 rest based on the name of the drug and see how many times
13 it's listed.

14 **The 10/500 is listed three times, so there were**
15 **three different brands dispensed, and so forth. So -- and**
16 **then the NDC just shows the brand. The DEA class on**
17 **Alprazolam is 4. On the narcotic analgesic is 3. And**
18 **then the bottom one there is promethazine with codeine**
19 **which is a Schedule V cough syrup. Those were included on**
20 **Dr. Elder's totals, and so that just shows the number of**
21 **new, number of refill, and number of -- total number which**
22 **would be the number of cash because they were all cash.**
23 **Again, no insurance.**

24 Q (BY MR. RHODES) What's the total number for new
25 number? Is that new number of prescriptions?

1 A Yes.

2 Q And what's that number?

3 A That number is 14,636.

4 Q And the column -- CAS is the cash column again,
5 right?

6 A Yes.

7 Q Meaning that they were paid with cash?

8 A Yes.

9 Q And is that 15 --

10 A 15,504 total prescriptions.

11 Q All right. Let's go to the next page.

12 All right. 1095. Now, how did you come in
13 contact with that sheet of paper?

14 A Because I asked Lynn Rostie for a list of contact
15 information for the various people on the prescriptions or
16 that she had brought up in our interview.

17 Q And I'm going to show you Government's Exhibit
18 1098. What was it about Government's Exhibit 1098?

19 A Well, everybody was getting refills at the same
20 time. It wasn't individual patients getting refills.
21 Rostie was sending anywhere from three to seven pages of
22 prescription numbers, and this is a fax coversheet
23 showing, Here are RXs for refill authorizations. Can you
24 get Dr. Elder to sign off as okay to refill these? That
25 way I could have official authorization for the records.

1 If there are any you don't want refilled, mark them off.

2 Q All right. And Government's Exhibit No. 1100.
3 Go to the next page.

4 What was it about this exhibit?

5 A It looks like this is one of those sheets that
6 came behind the coversheet of the fax.

7 MR. OSGOOD: Can we identify the doctor,
8 please, Your Honor?

9 THE COURT: Does it show the doctor on
10 there?

11 MR. RHODES: It's on the front
12 coversheet.

13 A Dr. Okose.

14 Q (BY MR. RHODES) Dr. Okose.

15 A I believe this is one of several sheets connected
16 to the coversheet asking for refills.

17 Q All right. And let's go to Government's Exhibit
18 1102. What are we looking at here?

19 A This looks like a utilization report for
20 promethazine with codeine syrup from 9/1/04 to the last RX
21 number.

22 Q 1103, what was wrong with this prescription?

23 A This is one of those when I was looking through
24 the utilization report for promethazine with codeine under
25 Dr. Elder's name -- not under Dr. Elder's name. I had

1 gotten a utilization report for promethazine with codeine,
2 and so I noticed in looking through that, that Dr. Botto's
3 name all of a sudden appeared with pages of these
4 prescriptions for promethazine with codeine for a pint
5 each.

6 **So I called Rostie and asked her who Dr. Botto**
7 **was, and she said, Oh, I forgot to mention him. He was**
8 **the third doctor involved in faxing prescriptions from**
9 **Houston, Texas, and he only wrote for promethazine with**
10 **codeine. That's all I found under his name.**

11 MR. RHODES: I have no further questions
12 of this witness.

13 MR. OSGOOD: May we approach a minute?

14 (Counsel approached the bench and the following
15 proceedings were had:)

16 MR. OSGOOD: I just wanted an idea on
17 timing, Your Honor.

18 THE COURT: Five o'clock.

19 MR. OSGOOD: Okay.

20 (The proceedings returned to open court.)

21 CROSS-EXAMINATION BY MR. OSGOOD:

22 Q Mr. Van Fleet, you and I have never met other
23 than today outside during the lunch hour. I think I
24 talked to you a little bit and kind of gave you a heads up
25 on what I was going to ask you, didn't I?

1 A Yes.

2 Q I told you I didn't want to sandbag you or try to
3 trick you or anything, right?

4 A Yes.

5 Q We had a pleasant conversation, and I pretty much
6 told you where I was going. Well, that's where I'm going.

7 There were four doctors involved altogether in
8 this stuff or maybe more if you can tell me, a Dr. Botto,
9 a Dr. Lechin, L-e-c-h-i-n, Dr. Elder, and Dr. Okose?

10 A I'm not familiar with that Lechin or whatever his
11 name was.

12 Q If you look at the script he just showed you, I
13 believe his name is on the Botto prescription.

14 A I don't know.

15 Q Okay. You looked at basically -- on a routine
16 inspection, you started looking first at these Okose
17 prescriptions, didn't you?

18 A Yes.

19 Q And certain things jumped off the page completely
20 just immediately?

21 A (Witness nodded head.)

22 Q What I've been referring to in the trial here as
23 "the alphabet soup problem." What do I mean by that?

24 A Well, that means that there were days when all
25 prescriptions were for A -- names beginning with A and B.

1 There were days when all began with G and H. There were
2 lots of Johnsons, Thompsons, Halls.

3 Q There would be an A. Thompson, a B. Thompson, a
4 C. Thompson, a D. Thompson, and so on?

5 A Correct.

6 Q Very suspicious?

7 A Absolutely.

8 Q And then that caused you to pull more records and
9 you were concentrating on Dr. Okose in his '05
10 prescriptions, right?

11 A I was.

12 Q And you got to talking to Mr. -- Mrs. Rostie and
13 you took an initial statement from her and then later you
14 talked to her on the 25th, as I recall; is that right?

15 A Yes.

16 Q Now, eventually at some point she said also there
17 was a Dr. Elder involved, didn't she?

18 A Yes.

19 Q And then you began to pull his records, didn't
20 you?

21 A Yes.

22 Q Did you find any alphabet soup records for him?

23 A Not in the few prescriptions I pulled.

24 Q Okay. Let me show you one, for example.

25 MR. OSGOOD: I'll be quick, Your Honor.
 433

1 I know we've been over this a little bit. This is the
2 expert.

3 Q (BY MR. OSGOOD) Take a look at Government's
4 Exhibit 7 here. First of all, did you look up Dr. Elder
5 to see what his qualifications were and what kind of
6 physician he was?

7 A No.

8 Q Has anybody since told you that he was a double
9 boarded pain management specialist?

10 A Oh, I think Lynn Rostie might have mentioned that
11 he was a pain specialist, pain management.

12 Q What's Suboxone?

13 A It's used for detox, office detox, as well as
14 being a pain medication.

15 Q Would you be surprised to learn that he is also
16 authorized to administer Suboxone?

17 A No.

18 Q All right. As a pain specialist, that's what you
19 would expect, right?

20 A (Witness nodded head.)

21 Q They're dealing with their patients that have
22 serious pain problems and sometimes they've got to take
23 them off of the stuff?

24 A Okay.

25 Q I'm not putting words in your mouth, please.

1 You're a pharmacist with many years' experience.
2 If I say something that is wrong, I want you to correct
3 me, please.

4 You agree with that statement?

5 A I don't know that all --

6 MR. RHODES: Your Honor, can we
7 approach?

8 (Counsel approached the bench and the following
9 proceedings were had:)

10 MR. RHODES: I believe this question is
11 calling for speculation.

12 MR. OSGOOD: He's an expert.

13 THE COURT: What was the question?

14 MR. OSGOOD: The question was is
15 Suboxone a drug that takes you off of -- if you have a
16 patient that has gotten hooked on your medication,
17 sometimes you put them on Suboxone to take them off it.

18 THE COURT: Your objection is?

19 MR. RHODES: He was calling for
20 speculation about it. He is a pharmacist and an
21 investigator, but he's trying to get into the -- his
22 expertise in the medical -- benefits of that drug, and
23 that's what --

24 MR. OSGOOD: He has to know. He fills
25 it. I'll move on.

1 (The proceedings returned to open court.)

2 Q (BY MR. OSGOOD) Did you know what kind of doctor
3 this Dr. Okose was?

4 A No.

5 Q You weren't aware he was a general practitioner
6 or something?

7 A I'm not aware of what either doctor was except
8 that Lynn was told what kind of patients they see.

9 Q Now, promethazine with codeine is a decongestant
10 and cough medicine, isn't it?

11 A Cough, yeah.

12 Q Basically for cough?

13 A Basically.

14 Q If you've got this green phlegm you're hocking
15 up, is that something you'd expect to see on a script?

16 A Perhaps.

17 Q The codeine, what, eases the pain? I know you're
18 not a physician, but you've been doing this long enough, I
19 respect your opinion.

20 A For cough.

21 Q For cough. The two together work together to
22 alleviate the congestion and the cough?

23 A Right.

24 Q Doesn't have anything to do with pain, does it?

25 A Probably not. You wouldn't prescribe that for
436

1 pain.

2 Q There were pints and pints and pints of this
3 promethazine with codeine prescribed by Dr. Botto -- I
4 mean Dr. Okose, wasn't there?

5 A No.

6 Q There weren't pint amounts?

7 A I think they were under Dr. Elder's name.

8 MR. OSGOOD: Can we put the usage
9 reports up there again to show him.

10 Q (BY MR. OSGOOD) I stand corrected. There was
11 promethazine with codeine for Dr. Elder, 5,484 new
12 prescriptions that were faxed, right?

13 A If that's what was on the printout, whatever is
14 on the printout.

15 Q Where I'm going with this is you've got original
16 prescriptions in front of you there, haven't you?

17 A Yes.

18 Q And they are not for promethazine with codeine,
19 are they, none of them?

20 A The ones in front of me aren't.

21 Q They are for legitimate pain management, are they
22 not?

23 A I don't know.

24 Q Well, what -- an anxiety drug and a pain
25 medicine?

1 A They could be for that.

2 Q Okay.

3 A I don't know that these are. Lorcet would be
4 used for pain.

5 Q That's what I'm getting at.

6 A If that's what you're asking me.

7 Q The drug itself -- what does the literature say
8 those two drugs are used for?

9 A Right. One would be for pain and one would be
10 for anxiety.

11 Q Taken together normally for pain management?

12 A Not necessarily.

13 Q Could be?

14 A Could be.

15 Q Could be.

16 Now, you had these original prescriptions from
17 Dr. Elder and they stopped at some point. You stopped
18 finding originals before you got to the January period
19 where the massive faxes began to occur, didn't they?

20 A Well, honestly, I didn't look through all of Dr.
21 Elder's prescriptions because I got the printout instead.

22 Q All right. Let's look, for example, at the --
23 let me give you this prescription.

24 MR. OSGOOD: Would you pull up the fax
25 renewal exhibit again, please. You just had it up. That

1 will do nicely.

2 Q (BY MR. OSGOOD) Now, this was the -- that's all
3 right. Just the way you've got it.

4 This was the so-called fax renewal that had a
5 bunch of requests for renewals attached to it, isn't it?

6 A Yeah. It was one of them.

7 Q You in your report actually said in one instance
8 it looked like the initials were different on some of
9 these than on the prescriptions, didn't you?

10 A The signatures.

11 Q The signatures. Look at Dr. Elder's original,
12 that's clearly not his signature, is it? Doesn't appear
13 to be. I know you're not a handwriting expert, but as a
14 pharmacist looking at stuff, it would cause you concern,
15 wouldn't it?

16 A I noticed they were different.

17 Q Okay. These, of course, are just a faxed list
18 that's generated from the pharmacy back to the field,
19 isn't it?

20 A I believe it went to Troy Solomon.

21 Q Okay. Was that unusual?

22 A Absolutely.

23 Q And all of Dr. Elder's prescriptions said "no
24 refills" on them, didn't it?

25 A I don't recall that.

1 Q Well, there's been some testimony to that, and
2 you can quickly look through these to -- just as a sample.
3 There's a zero with a slash through it on all of those?

4 A Okay.

5 Q Would you accept my word for that?

6 A I would.

7 Q We'll save some time. All right.

8 So these faxes were generated then and refills
9 were apparently approved on the basis of this fax?

10 A Correct.

11 Q And we've already been over this too, so very
12 quickly, that's very unusual, isn't it? Because when you
13 get a refill, normally the patient says -- he initiates it
14 and says I need a refill and you have exchange between the
15 patient and the doctor?

16 A One patient at a time.

17 Q Exactly. And, now, interestingly, did you take a
18 look at the names on the refills for Dr. Elder on these
19 fax coversheets? Were they in fact names not in
20 alphabetical order, just names of scripts that he had
21 previously written?

22 A I don't think I understand the question.

23 Q All right. You had the alphabet soup
24 prescriptions that were written by Dr. Okose?

25 A Yes.

1 Q You already told me you didn't find that for Dr.
2 Elder?

3 A Correct.

4 Q Then on these renewals, these renewals were
5 nothing more than an attempt to renew legitimate
6 prescriptions he'd written, original ones? Would you
7 agree with that?

8 A They were an attempt to refill prescriptions.

9 Q That's what I mean.

10 A Yeah.

11 Q So were you aware that he -- when you were doing
12 your analysis, were you aware that he no longer even
13 worked at South Texas Wellness Center after January the
14 1st of 2005?

15 A No.

16 Q Okay. Now, one of the things, and I don't fault
17 you because nobody told you to do it, but what you did not
18 do on these breakout charts is you don't have any way to
19 tell us how much or how many drugs were filled or
20 prescriptions were filled between, let's say, the first
21 date was September the 9th and December the 31st for the
22 -- my client, do you?

23 A I just got the one length of time.

24 Q So you've got -- if -- my point is if he was only
25 there from September, October, November, December, that's

1 just four months, isn't it?

2 A Yes.

3 Q And your usage charts and everything look at how
4 many months, sir?

5 A Up to 15.

6 Q And that was when this massive flow of
7 prescriptions started with Dr. Okose in around January,
8 wasn't it?

9 A Let's see, Okose was January.

10 Q And then when you got to looking good, you also
11 found a similar pattern with massive flows of
12 prescriptions candidly for Dr. Elder?

13 A Well, my flow was over the whole time. I mean, I
14 don't know when the flow started.

15 Q My point is those were generated via fax, a fax
16 request from Texas, weren't they?

17 A Yes.

18 Q You didn't have original prescriptions for that.
19 So if there was a scheme here between Okose and other
20 people, it would appear a similar pattern for Dr. Elder
21 during that January to October timeframe, would you agree
22 with that?

23 A Well, I don't know. I didn't break it down into
24 January to October. I broke it down in September to
25 October.

1 Q So you have no way to really tell us what the
2 breakout is, do you?

3 A The only breakout I have is the length of time I
4 did. I was interested in totals.

5 Q Can you tell me when these prescriptions for
6 promethazine with codeine that this pain doctor supposedly
7 issued, when they commenced?

8 A I don't know.

9 Q So you would agree with me it's quite plausible
10 and probable that they commenced at the same time that all
11 the massive number of faxes were coming from Texas after
12 January the 1st?

13 A It's possible.

14 Q Quite possible. Can't rule it out, can you?

15 MR. RHODES: Objection, Your Honor.

16 THE COURT: The record will speak for
17 itself on this issue.

18 MR. OSGOOD: That's my point. You --

19 THE COURT: All right, Mr. Osgood.

20 Let's move on to another topic.

21 Q (BY MR. OSGOOD) All right. Now, you interviewed
22 Ms. Rostie on the 25th and you did a question-and-answer
23 session with her, didn't you?

24 A Yes.

25 Q And were those -- was that -- is that a

1 transcription, or is that your recollection that you
2 dictated afterwards?

3 A My recollection.

4 Q Okay. Did she tell you this business about
5 Dr. Okose having problems or having high-profile patients
6 that were athletes or something?

7 A High-profile, occupational, sports, and pain
8 management patients.

9 Q Is that the first time you heard that from her?

10 A About Dr. Okose?

11 Q Yes.

12 A Yes.

13 Q Okay. And then later when she mentioned Dr.
14 Elder, did she use the same explanation for him?

15 A She said everything was done exactly the same
16 way, cash. Everything was mailed to Troy. Everything --
17 no insurance. Everything was exactly the same for both.

18 Q And she said she didn't want to keep anything
19 from you, I believe, was the line you have in your
20 interview?

21 A That's when she brought up Dr. Elder.

22 Q But she in fact did keep something from you?

23 A Well, I don't know.

24 Q Wasn't there another doctor that later she said I
25 didn't tell about him either, Dr. Botto?

1 A Oh, I forgot about him. Dr. Botto.

2 Q So she forgot about one-third of the scheme?

3 A Well, I don't -- I mean, I guess. I don't --

4 Q Okay. I've got one last question for you here,
5 maybe two.

6 In your report that you wrote, you wrote a
7 15-page report, didn't you? The usage per Dr. Elder is
8 actually a 13-month period, is it not?

9 A Okay.

10 Q In your report, is that what it says?

11 A Thirteen months.

12 Q Again, you can't tell us whether -- or when that
13 occurred.

14 MR. OSGOOD: Can I have just a minute,
15 Your Honor, with my client?

16 Q (BY MR. OSGOOD) You never contacted or tried to
17 contact or call Dr. Elder, did you?

18 A No.

19 Q And ask a similar question like you did of
20 Dr. Okose?

21 A No, I didn't.

22 Q Okay. Did you ask or contact Mr. Solomon and ask
23 him if -- a similar question, if he was his office
24 manager?

25 A No.

Q Okay. And at the time, this was October of '05, Dr. Elder was over at a place called Westfield Medical Clinic or Pineville Medical. I can't remember which. Did you call either one of those places and attempt to speak to him or any of his office staff?

A No.

Q Why not?

A Well, after the answers I got from Dr. Okose, I didn't feel it was any need. I certainly didn't need to determine these were fraudulent prescriptions. The other thing is --

Q Slow down a minute. I don't understand what you're telling me.

Clearly Okose's were fraudulent because they're alphabet soup and they're suspect and he's not a pain doctor and there's a lot of problems with his.

Are you lumping him in the same category as Dr. Elder?

A Yes.

Q Why?

A I had no reason to do otherwise. Not with that.
But I was focusing on the pharmacy. I wasn't focusing --

Q I think that's a better answer. You're looking at the pharmacy, aren't you?

A Sure. That falls under my jurisdiction. The

1 doctor doesn't.

2 Q Okay. So if you had fault with Dr. Elder, it
3 would have been over the faxed stuff and the massive
4 numbers and the refills without him calling and whatnot?

5 A I don't know how many prescriptions are involved
6 in the written things because I only got a few examples.
7 I didn't look through those.

8 Q Final question, if all you had before you were
9 these original prescriptions for pain medicine from a
10 doctor that are properly filled out, you wouldn't have any
11 problem, would you?

12 A I can't say that.

13 Q What is it about this batch right here that would
14 be suspicious? Take your time.

15 A Well, again, they're all identical. Everybody
16 gets the same drug, same quantity, same directions.

17 Q It's pain management and he's a pain management
18 specialist.

19 THE COURT: All right. You're starting
20 to argue with the witness, Mr. Osgood.

21 MR. OSGOOD: Okay. Thank you. That's
22 all.

23 MR. LEWIS: I have one, Your Honor, just
24 one.

25 CROSS-EXAMINATION BY MR. LEWIS:

1 Q Afternoon, Mr. Van Fleet.

2 A Afternoon.

3 Q Can you see that, Mr. Van Fleet?

4 A I can.

5 Q How quickly did Dr. Okose, his office manager,
6 respond to your request?

7 A Same day.

8 Q So an immediate response assuring you that the
9 prescriptions were legitimate?

10 A Yes.

11 MR. LEWIS: Thank you, sir.

12 Nothing further, Your Honor.

13 MR. RHODES: No redirect, Your Honor.

14 THE COURT: Okay. Thank you.

15 (Witness excused.)

16 THE COURT: How about if we call it a
17 day?

18 MR. RHODES: That's fine, Your Honor.

19 THE COURT: Again, I'll ask the members
20 of the jury to not discuss the case among themselves or
21 with others or allow anyone to discuss it in their
22 presence or allow themselves to be exposed to any media
23 coverage.

24 I'll ask you report back tomorrow at 8:15.

25 We'll get started as soon thereafter as possible.

1 Thank you.

2 (The following proceedings were had out of the
3 presence of the jury:)

4 MR. BOHLING: Your Honor, I did want to
5 make you just aware, this is going a little bit faster
6 than we thought, and our only issue is that we have a
7 number of witnesses who are coming in from Houston. We
8 had originally divided those between a couple of days
9 thinking we were not actually going to be quite this far
10 along. We are in the process of trying to get some of
11 them on a plane now because we want to make sure we fill
12 tomorrow. But we will do our best absolutely to do that.

13 We have some witnesses, because of the Thursday,
14 Friday break, we have witnesses like doctors who are kind
15 of specially scheduled to come in on Monday. But I just
16 want to make you aware that we are trying to fill every
17 available moment with witnesses and will do our best to do
18 that. We'll certainly let you know in the morning where
19 we are with getting everybody here.

20 THE COURT: You need to talk to your
21 colleagues in your office about how I move cases,
22 Mr. Bohling.

23 MR. BOHLING: We were well aware of
24 that. We appreciate it. I'm not complaining. It's good
25 to get it moved and it has moved well. It was our

1 miscalculation. But we're doing everything we can.

2 THE COURT: Rather than dragging it out,
3 if you don't need to use the whole day tomorrow, let us
4 know because I have plenty of other things I can do.

5 MR. BOHLING: Thank you. That's fine.
6 Certainly we can do that, and some of it is just timing
7 issues.

8 THE COURT: How many people do you have
9 scheduled to come in on Monday?

10 MR. LEWIS: I think we'll be to our case
11 by then.

12 MR. OSGOOD: You're calling Catizone,
13 aren't you?

14 MR. BOHLING: Yes, sir, the doctor. I
15 may revisit some of that.

16 THE COURT: Who was the doctor?

17 MR. BOHLING: Dr. Morgan. We had
18 Officer Kowal for Monday, but we're going to move -- he
19 asked to move up, but we're going to bring him in earlier.

20 MR. OSGOOD: He's the one you ruled
21 couldn't testify until you were satisfied it was relevant.

22 MR. BOHLING: Correct. That's why we
23 have to put him after some of these Houston witnesses.

24 THE COURT: You're being ambitious about
25 that, I think.

1 MR. BOHLING: We had Dr. Morgan. My
2 goal is to have as little to do on Monday as possible as
3 I'm sure yours is as well. I do think we have enough to
4 fill two days if we can get these folks in here.

5 THE COURT: I'd like to have a list of
6 tomorrow's expected witnesses from you.

7 MR. BOHLING: Of course.

8 THE COURT: If you can give me
9 Thursday's, that would be helpful as well.

10 MR. BOHLING: Of course.

11 THE COURT: I understand it's just a
12 projection.

13 MR. BOHLING: Thank you. Of course.

14 MR. LEWIS: Your Honor, on scheduling,
15 if you have a moment, we anticipate, we, Mr. Solomon and
16 I, that we will have only two witnesses, Mr. Solomon, if
17 the evidence continues, and I think I know where we're
18 going, and Delmon Johnson.

19 Mr. Bohling was very considerate and polite
20 enough to let me know yesterday evening that they were no
21 longer going to call Delmon Johnson. He was gracious
22 enough to keep him under subpoena so he's not really --
23 I'm going to make the arrangements for him to fly up.

24 But in all candor, as the court is aware, we're
25 strapped for money. Basically this is now coming out of

1 my pocket. That's fine. I'm going to keep working very
2 hard, doing all I have to do, but I'd like as much time as
3 possible to schedule Mr. Johnson's flight up here to save
4 money.

5 THE COURT: When did you plan to bring
6 him, Monday?

7 MR. LEWIS: That's what I was thinking,
8 but I -- I mean, I know this is fluid, but all the advance
9 notice we can get would be greatly appreciated.

10 MR. OSGOOD: I had thought Tuesday for
11 my case. I've got two witnesses coming from Houston also.

12 THE COURT: And you've scheduled them to
13 come in Tuesday?

14 MR. OSGOOD: I have them -- they're
15 supposed to be served right now, and they're supposed to
16 be checking with my secretary. I'm supposed to be giving
17 them an update. I gave them an instruction sheet, said
18 call or e-mail, told them to get on Priceline and book
19 something that's reasonable. So I can't tell you for sure
20 they've been served, but I was going to tell them to come
21 when you told me to tell them to come.

22 THE COURT: Well, again, not knowing
23 what Monday poses for the government, they just have this
24 one person.

25 MR. BOHLING: That's very difficult to
452

1 tell right now because things could slow down again. So I
2 -- Monday is a little bit too far away for me for my
3 crystal ball to really see, but if things go the way
4 they're going, I think we can reduce our Monday load
5 considerably.

6 MR. LEWIS: What prospective folks do we
7 have, not in order or anything?

8 MR. BOHLING: Sure. For tomorrow we
9 have Bobby Parikh from the UPS store. He should be fairly
10 short. Ada Johnson, Pleshette Johnson, Susan Richards
11 from DEA, short, June Howard from ARCOS, also short,
12 Charlotte Washington from DEA.

13 MR. OSGOOD: The Johnsons will take
14 awhile. They could eat up most of the morning --

15 MR. BOHLING: Yes.

16 MR. OSGOOD: -- between the two of them.
17 They're the owners of the Southwest Texas Wellness
18 practice.

19 MR. BOHLING: We are trying to bring in
20 Diane Hearn and Cheryl Floyd from Houston to move them up
21 a day to get them in on Wednesday instead of Thursday.
22 Quan Pham is scheduled for tomorrow. There's a
23 possibility that we could have a short witness, Leah
24 Swicegood, tomorrow or she may bump into Thursday. She's
25 local so we can put her in anywhere.

1 So that's -- that's actually a pretty full day
2 for tomorrow especially if we can get Ms. Hearn and
3 Ms. Floyd in here. They'll take a little bit. They're
4 medium. I would call them medium witnesses. And then for
5 Thursday we have Elora Dominick, Lillian Zapata, and
6 Maggie Ortega either Thursday or -- is Maggie coming in
7 early or she's still on Thursday? She could come up
8 tomorrow. Connie Overton from DEA. Then we have
9 Ms. Nelson, who is at the counsel table with us.
10 Obviously she's here so that's easy. Then we have Officer
11 Kowal. So that's actually already into a pretty
12 substantial day. We have Ms. Watterson to testify.

13 Again, we may cut this down. I don't want to
14 imply that every single one of those people are going to
15 testify. I see your face and I understand that. I think
16 we can cut some of this presentation down.

17 THE COURT: I still think you ought to
18 be able to get your guy up here Monday.

19 MR. LEWIS: That's what I'm hearing too.

20 MR. BOHLING: I think that's fair.

21 MR. LEWIS: One thing, we have some of
22 these witnesses here, and I certainly don't want to
23 interfere with the government's order of presentation, but
24 if we could make tomorrow a long day, as long as we can,
25 then we get to get on a plane Thursday as early as

1 possible, get home, get to work, do all the things I do to
2 get everybody prepared and have our case on Monday.

3 It would make more sense if it fits the court's
4 docket, a longer day tomorrow than on Thursday.

5 THE COURT: We'll see. I'm not willing
6 to stay here all night with you guys, 5:30, six maybe,
7 nothing longer than that.

8 MR. LEWIS: I understand. That's too
9 long for the jury too. I understand.

10 THE COURT: Exactly. But I think -- I
11 think if you work on your cocounsel, we can cut down some
12 of the time.

13 MR. LEWIS: I'll try. I'll try, Your
14 Honor.

15 MR. BOHLING: Thank you, Judge. I just
16 wanted to make you aware of that.

17 (Court adjourned at 4:47 p.m.)

18 END OF VOLUME II

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WEDNESDAY, JUNE 23, 2010

VOLUME III OF VII

(The following proceedings were had in the
presence of the jury:)

THE COURT: Good morning.

Are you ready to proceed, Mr. Rhodes?

MR. RHODES: We'll call Bobby Parikh.

BOBBY PARIKH, being duly sworn, testified:

DIRECT EXAMINATION BY MR. RHODES:

Q What is your name?

A Bobby Parikh. That's my nickname. But my real
name is Bhagirath Parikh.

Q Okay. And are you a business owner?

A Yes.

Q What business do you own?

A The UPS store.

Q Where is your UPS store located?

A It's at 13280 Northwest Freeway, Houston, Texas
77040.

Q And how long have you been an owner of that UPS
store?

A For 15 years.

Q Okay. And did you begin as a part-time owner and
then became the owner of that business?

A Yes.

1 Q How many employees do you have?

2 A Two.

3 Q Is the UPS store like a franchise?

4 A Yes.

5 Q I want to draw your attention to the records,
6 your business records, the UPS records.

7 MR. RHODES: Pull up Government's
8 Exhibit 915.

9 Q (BY MR. RHODES) Now, first, do you know the
10 defendant in this case? Do you know Troy Solomon?

11 A Yes.

12 Q And do you see him here in the courtroom?

13 A Yes.

14 Q Okay. Would you please point him out?

15 A He's right there.

16 Q And is he wearing --

17 MR. RHODES: Okay. Let the record
18 reflect -- is that Troy Solomon?

19 THE WITNESS: Yes.

20 Q (BY MR. RHODES) Would you please describe to us
21 this record that you're seeing.

22 A This is a shipping record.

23 Q And what is the date on the shipping record?

24 A It's September 2nd, 2004.

25 Q Okay. And could you please explain to us what's
457

1 the expected delivery date?

2 A September 3rd, 2004.

3 Q And from whom was the package being sent?

4 A Troy Solomon.

5 Q And what address is that that is listed?

6 A It's 7914 Chategu Point Lane, Houston, Texas
7 77041.

8 Q And where was that package sent?

9 A It's going to Ms. Cindy Martin, 7906 East 159th
10 Street, Belton, Missouri 64012-5360.

11 Q All right. And could you explain to us the
12 charges to the right?

13 A His total was \$22.36.

14 Q \$22.33?

15 A .36.

16 Q .36. Is that the charge -- how was that being
17 shipped?

18 A It was next day air.

19 Q Okay. And let's go to Government's Exhibit 916.
20 Go to the left-hand corner.

21 Now, where is that being shipped and -- where's
22 it being shipped from? What's the address listed?

23 A It's 5833 Sun Forest, Houston, Texas 77092.

24 Q And where is it being shipped to?

25 A Medicine Shoppe, Lynn Rostie, 547 North Scott
458

1 Avenue, Belton, Missouri 64012-1762.

2 Q On what date was the package sent?

3 A On September 30th, 2004.

4 Q Okay. And how many pounds was that package?

5 A It was 0.25, which is about a quarter pound.

6 Q Quarter pound?

7 A .25, yes.

8 Q Okay. Drawing your attention to Government's
9 Exhibit No. 922, now, I notice that on some of the
10 receipts it says from ST and on others Troy Solomon. Was
11 that the same person?

12 A Yes.

13 Q Could you tell me what was the weight of the
14 package that was sent?

15 A It's 1.51 pounds.

16 Q Okay. And to whom was it sent, just the first
17 name.

18 A It's Cindy Martin, 7906 East 159th Street,
19 Belton, Missouri 64012-5360.

20 Q Okay. And the cost?

21 A It's \$38.02.

22 Q 38.02.

23 Now, I'm drawing your attention to Government's
24 Exhibit 924. What was the weight of that package?

25 A It's 2.81 -- 2.8 pounds.
459

1 Q What does the 14 by 8 by 3 indicate?

2 A That's the size of the box.

3 Q So it was a box that was being sent?

4 A Right.

5 Q And it was about this long or could you with your
6 hand show us how big a box that is?

7 A It's 14 inches. It's 8 and 3-inch thick.

8 Q Okay. Thank you.

9 And where was it shipped to and from whom was it
10 shipped?

11 A It was shipped from ST, 5833 Sun Forest, Houston,
12 Texas 77092, and shipped to is Cindy Martin, 7906 East
13 159th Street, Belton, Missouri 64012-5360.

14 MR. RHODES: And to the right of that
15 exhibit -- no, I'm sorry, to the lower left-hand corner.
16 Bottom half. I'm sorry.

17 Q (BY MR. RHODES) What was the size of this
18 package?

19 A 16 by 12 by 3.

20 Q Okay. And it was shipped from who?

21 A ST.

22 Q ST. Is that Troy Solomon?

23 A Yes.

24 Q Why did your system have both an ST and a Troy
25 Solomon?

1 A I don't know. The employee probably created an
2 ST, you know, so we have two records, you know.

3 Q Okay. And was it, again, shipped to Cindy
4 Martin?

5 A Yes.

6 Q Now, I'm calling your attention to Government's
7 Exhibit 930.

8 Who is that shipped from and to and what's the
9 date of the shipment on this one if you can see?

10 A I can't read the date, you know, on this one.

11 Q Okay.

12 A Looks like it's April.

13 Q All right. It appears to be April -- what was
14 the expected delivery date?

15 A It's April 8th.

16 Q Okay. And let's look to the right to see if it
17 was next day or -- that can help us out.

18 So what was the weight of this package?

19 A It's 36.4 pounds.

20 Q And what was the size of the package?

21 A 18 by 12 by 8.

22 Q What does "declared value" mean?

23 A It was \$300.

24 Q So is that some type of insurance that was
25 being --

1 A Yes.

2 Q Let's look at the bottom of that.

3 What was the cost?

4 A It was \$25.80.

5 Q Okay. It was shipped by ground?

6 A Yes.

7 Q Turning your attention to Government's Exhibit --

8 And who was it addressed to?

9 A It was addressed to Medicine Shoppe, Lynn Rustic,
10 547 North Scott Avenue, Belton, Missouri 64012-1762.

11 Q What is listed under the description of goods?

12 A Says "medicine."

13 Q Okay. All right. Thank you.

14 Turning your attention to Government's Exhibit
15 941, what is the date of this delivery?

16 A October 19th, 2005.

17 Q And who was it shipped from?

18 A ST, 5833 Sun Forest, Houston, Texas 77092.

19 Q And let's look at the cost.

20 A It's 38.25.

21 Q And what is the size?

22 A It's 12.5 by 11.13 by 2.25 inches.

23 Q Okay. So during this time period Troy Solomon
24 was a regular customer of your store?

25 A Yes.

1 Q And Troy Solomon is the person who actually sent
2 those packages?

3 A Yes.

4 Q Okay. So there were at least 30 packages sent
5 through UPS -- through your store?

6 A Yes.

7 Q And when he arrived with the packages, did you
8 have to box them up?

9 A No.

10 Q You just had to put a tag on it and then send
11 them out?

12 A Yes. We just process it.

13 Q Okay.

14 MR. RHODES: I have no further questions
15 of this witness.

16 CROSS-EXAMINATION BY MR. LEWIS:

17 Q Good morning, sir.

18 A Good morning.

19 Q I'm sorry, I didn't quite hear the pronunciation
20 of your last name. I'd like to get it right.

21 How do you say your last name, sir?

22 A Parikh.

23 Q Parikh?

24 A Parikh.

25 Q Will you spell it for me?

1 A Yes. P as in Paul, A as in apple, R as in
2 Robert, I as in Indiana, K as in king, and H as in
3 Houston.

4 Q Parikh?

5 A Parikh.

6 Q Thank you, sir.

7 Now, you met Mr. Solomon because he came into
8 your store and opened a UPS account with you, correct?

9 A There was no UPS account. He just came and
10 shipped the package.

11 Q Okay. He opened an account with your store,
12 correct?

13 A No. An account was not opened.

14 Q The billing numbers, the Solomon, and the ST you
15 talk about, that's an account, right?

16 A Yeah. If you call that as account, yes.

17 Q That's what I meant. I'm sorry for the mixup in
18 terminology. I wasn't disputing what you said.

19 A Okay.

20 Q He came in -- what would you like to call it
21 instead of an account?

22 A Just a customer comes and ships, you know.
23 Account means, you know, like they just pay later on or
24 receivables or payables. People come in, they have an
25 account, and we charge them monthly.

1 Q So Mr. Solomon, when he came into your store, he
2 would pay you on the spot?

3 A No. We have his credit card on the file, so he
4 would charge to his credit card.

5 Q So he did have a credit card account on file with
6 you?

7 A Yes.

8 Q Thank you.

9 He would come in and deal with you very often?

10 A If I'm there, yes.

11 Q And you're there quite often?

12 A Not all the time but yes.

13 Q I understand.

14 A Okay.

15 Q Mr. Parikh, I'm not quarreling with anything you
16 have to say. I get the sense you think I'm trying to be
17 difficult.

18 A No. That's fine.

19 Q Okay. You came to be friendly with Mr. Solomon
20 when he would come in your store?

21 A Yes.

22 Q He was very nice to you?

23 A Yes.

24 Q In fact, he made a charitable donation to a
25 school that you support, correct?

1 A Not a school but, you know -- nonprofit
2 organization, you know.

3 Q And he made a donation?

4 A Yes.

5 Q You never saw Troy Solomon or suspected he was
6 doing anything improper or illegal in using the services
7 that you provided, did you?

8 A No.

9 MR. LEWIS: Thank you very much,
10 Mr. Parikh.

11 I pass the witness, Your Honor.

12 CROSS-EXAMINATION BY MR. OSGOOD:

13 Q How do you do, sir. My name is John Osgood. I
14 represent Dr. Christopher Elder.

15 Do you know, Dr. Elder?

16 A No.

17 Q Ever met him?

18 A No.

19 Q Know him if you saw him here in court?

20 A No. I don't know who he is.

21 Q And never shipped anything in your place?

22 A No.

23 Q Now, do you know most of your customers?

24 A Yes.

25 Q By sight? I believe you said you had two

1 employees; is that right?

2 A Right.

3 Q If he had been in your place shipping something
4 on a regular basis, the odds are you would recognize him
5 and know the name?

6 A I don't know what -- whom you're talking about.

7 Q I said it's probable, is it not, that if he was a
8 regular customer of yours, you would know his name or
9 recognize his name?

10 A Most of the time, yes, we do.

11 Q And probably most of the time you'd recognize his
12 face, would you not?

13 A Yes, if he was a regular customer.

14 Q You don't know him and he never shipped anything?

15 A No. As far as I know, no.

16 Q Never picked anything up, did he?

17 A No.

18 Q Okay. Now, the exhibits that you identified,
19 914, 915, 916, 917, 918, 919, 920, 921, 22, 1, 2, 3, 4, 5,
20 6, 7, 8, 9, nine of those shipments were in 2004? Does
21 that recollect with what you saw up here?

22 A Yes.

23 Q And then the rest of them started after 2005,
24 didn't they?

25 A Okay, yes.

1 Q I'm not trying to put words in your mouth, sir,
2 because this is important. I don't want to tell you what
3 to testify to. If you remember, please say so. If you
4 don't, we'll put the exhibits back up here again.

5 Does that --

6 A I don't remember all these numbers that you're
7 talking about, you know.

8 MR. OSGOOD: Government stipulate with
9 me that those were the exhibits in '04 and the remainder
10 were in '05?

11 MR. RHODES: The numbers are more than
12 nine. There's three each page. You're talking about at
13 least 30.

14 MR. OSGOOD: Okay.

15 MR. BOHLING: There were 19 in 2004.

16 Q (BY MR. OSGOOD) All right. There were 19
17 according to the government in 2004. Then the rest of
18 them, all these huge numbers were in 2005, according to
19 the government?

20 A Okay.

21 MR. OSGOOD: Okay. Thank you.

22 That's all I have.

23 THE COURT: Are we finished with this
24 witness?

25 MR. RHODES: Yes, we are, Your Honor.

1 THE COURT: You may step down, sir.

2 (Witness excused.)

3 MR. BOHLING: United States calls
4 Pleshette Johnson.

5 PLESHETTE JOHNSON-WIGGINS, being duly sworn, testified:

6 DIRECT EXAMINATION BY MR. BOHLING:

7 Q Good morning, ma'am.

8 A Good morning.

9 Q Would you please state your name and spell your
10 first and last name.

11 A My name is Pleshette Johnson-Wiggins. And my
12 spelling is P-l-e-s-h-e-t-t-e, Johnson, J-o-h-n-s-o-n.

13 Q What city do you live in?

14 A I live in Sugar Land, Texas.

15 Q What city do you work in?

16 A Houston, Texas.

17 Q How old are you, ma'am?

18 A Thirty-five years old.

19 Q How long have you lived in the South Texas area?

20 A All my life.

21 Q And what is your occupation?

22 A I am a licensed chiropractor.

23 Q Can you describe for us your educational
24 background?

25 A I attended Howard University and then I graduated

1 in '98. Then I came back home to Houston and attended
2 Texas Chiropractic College where I received my doctor of
3 chiropractic.

4 Q Howard University is in Washington DC?

5 A Uh-huh, yes.

6 Q Once you returned to Texas and after you received
7 your chiropractic degree, what kind of employment did you
8 seek?

9 A Actually I opened up my own clinic, chiropractic
10 clinic.

11 Q Okay. Was that South Texas Wellness Center?

12 A That was the second one.

13 Q Okay. And before we go further, I want to ask
14 you about another subject.

15 A Okay.

16 Q You understand that you're testifying here
17 pursuant to what's called a grant of immunity?

18 A Yes.

19 Q Okay. And what does that mean to you?

20 A Immunity?

21 Q Yes, ma'am. How was that explained to you?

22 A It was explained that whatever information we
23 give would not be held against us for lack of proper
24 terminology.

25 Q And maybe to ask it in a little more legal way,

1 that the government couldn't use your testimony against
2 you in a later criminal prosecution?

3 A Correct.

4 Q As long as you are truthful?

5 A Yes.

6 Q And that came about as a request from your
7 attorney?

8 A Yes.

9 MR. OSGOOD: Objection.

10 MR. BOHLING: I'll proceed, Your Honor.

11 Q (BY MR. BOHLING) What was the first clinic in
12 which you worked?

13 A The first clinic was Southern Rehab --
14 Rehabilitation.

15 Q Was that located in Houston?

16 A Yes.

17 Q And you said -- that was your own practice or
18 your own clinic?

19 A Yes.

20 Q And when did that clinic begin?

21 A That clinic started in 2002.

22 Q Where was it located?

23 A It was in southwest Houston off of West Bellfort
24 and Chimney Rock.

25 Q How long did that clinic -- what was the life of

1 that clinic? When did it end?

2 A That clinic ended in maybe 2002 to 2003, around
3 that time. I'm not absolutely positive.

4 Q And why did the clinic cease operation?

5 A The -- my business partner and I went our
6 separate ways.

7 Q After that experience, did you start a second
8 clinic?

9 A Yes.

10 Q And what was the name of that clinic, ma'am?

11 A That was South Texas Wellness Centers.

12 Q When did you start the South Texas Wellness
13 Center?

14 A In 2004.

15 Q And who was involved with you in beginning that
16 business?

17 A Initially it was just a -- my mother and I when
18 we first started.

19 Q What is your mother's name?

20 A Ada Johnson.

21 Q What was your mother's role in the business to
22 be?

23 A Mom's role was to basically be the clinical
24 director, to help run the day-to-day operations, and keep
25 things going.

1 Q What was your role in the clinic?

2 A My role was to see and examine and treat patients
3 who came in for personal injury, workers' comp,
4 chiropractic care.

5 Q When did the clinic begin operations?

6 A Oh, the clinic began operations maybe around
7 April, April or May of 2004. I don't really remember
8 exactly, but it was definitely in 2004.

9 Q What was the address of the clinic?

10 A 3003 South Loop West, Suite 415, Houston, Texas
11 77047.

12 Q So that was located in a building?

13 A Yes.

14 Q An office building?

15 A It was in a professional building.

16 Q And what floor of the building was the clinic
17 located on?

18 A Fourth floor.

19 Q Can you describe for us the physical layout of
20 the clinic?

21 A Yes. When you go through the doors, there's a
22 lobby, and to the right there is another door. When you
23 go through there, there are two exam rooms. If you go
24 back through the lobby and go to the left, through the
25 left door, that's our Rehab A and where we do physical

1 therapy also. And then in the back of the building -- of
2 the suite, you know, that's the back office where the copy
3 machines are, the file cabinets, things like that.

4 Q At some point did South Texas Wellness Center
5 hire a medical director?

6 A Yes.

7 Q When was that?

8 A In 2004.

9 Q Who was the first medical director hired?

10 A Our first medical director that we hired was
11 Okezie Okezie, Dr. Okezie.

12 Q And that is a different person from Dr. Peter
13 Okose, right?

14 A Yes, sir.

15 Q How long did Dr. Okezie stay with the clinic?

16 A Maybe a month or two maybe.

17 Q After he left, did you hire a new medical
18 director?

19 A Yes.

20 Q Who did you hire at that point?

21 A We then hired Christopher Elder, Dr. Elder.

22 Q Okay. And did you then work with Dr. Elder for a
23 period of several months after that?

24 A Yes, sir.

25 Q And did you see him most business days of the

1 week?

2 A We saw him on his scheduled days of the week.

3 Q Okay. Do you see Dr. Elder in the courtroom here
4 today?

5 A Yes.

6 Q And can you please identify him for us?

7 A That's (indicated) Dr. Elder standing.

8 MR. BOHLING: May the record reflect the
9 identification of Dr. Christopher Elder?

10 THE COURT: It will.

11 Q (BY MR. BOHLING) Why did South Texas Wellness
12 Center hire a medical director?

13 A We needed a medical director to add diversity to
14 our clinic, so we were doing physical medicine and rehab
15 with Medicare and Medicaid. And we needed a medical
16 director in addition for, you know, family medicine and
17 other specialties.

18 Q What were the hours of operation or hours that
19 South Texas was open during the day?

20 A Our clinic opened in the mornings, I want to say,
21 around nine, and usually it just depended -- we closed
22 depending on, you know, when the last patient was
23 scheduled or was going to be there. So maybe roughly nine
24 to four.

25 Q Describe the nature of your business. Were your

1 patients walk-in patients, continuing patients? What kind
2 of patient base did you see?

3 A It would just depend. If they were personal
4 injury or workers' comp, they were coming so many times
5 out of the week for a period of time. If they were family
6 medicine or weight management or pain management, you
7 know, they came in every 30 days if they needed to come
8 back for a follow-up.

9 Q What were Dr. Elder's hours?

10 A Dr. Elder's hours, I want to say, in 2004, he
11 worked two days out of the week, and they were in the
12 morning time.

13 Q And did that change later on? Did his work hours
14 change?

15 A Later on the hours did change, became less
16 frequent.

17 Q How many patients would come to the clinic for
18 Dr. Elder specifically during the day that you remember?

19 A It just would really depend on if they were
20 coming for Medicare or family. I really don't remember.
21 At the time there weren't a lot of patients coming into
22 the facility.

23 Q Okay. There generally weren't a lot of patients
24 coming in?

25 A Not at that time, no.

1 Q Do you recall that Dr. Elder saw, perhaps, five
2 patients a day, four to five patients a day?

3 A Maybe. Some days he might not have seen any, so
4 it would just depend.

5 Q And when did Dr. Elder leave South Texas Wellness
6 Center?

7 A I want to say it was toward the end of that year,
8 toward the end of 2004.

9 Q Okay. Did he tell you why he was leaving the
10 practice?

11 A He didn't -- there weren't a lot, a lot of
12 patients there for him, and at the time I don't remember
13 exactly if he told us exactly why he was leaving. I don't
14 remember.

15 Q Do you know a person named Troy Solomon?

16 A Yes.

17 Q How did you first meet Troy Solomon?

18 A Mr. Solomon was introduced to us through mutual
19 people that we knew.

20 Q And when he was introduced to you, was there a
21 purpose to the introduction, a reason why you were meeting
22 him?

23 A Yes.

24 Q What was the purpose for the introduction?

25 A We were looking for investors into the company.

1 Q Do you remember approximately when this was?

2 A This was in 2004 as well, maybe mid 2004, May or
3 June or July. I don't remember.

4 Q Do you remember whether this was before or after
5 Dr. Elder was hired by your clinic?

6 A Before.

7 Q Did you and your mother come to an agreement with
8 Troy Solomon about an investment?

9 A Yes.

10 Q And did Troy Solomon in fact invest in your
11 business?

12 A Yes.

13 Q And what was the form of payment of those
14 investments?

15 A How did he pay us for the investment?

16 Q Yes, ma'am.

17 A He gave us cash.

18 Q And do you know approximately how much cash total
19 he gave to you and your mother?

20 A Approximately -- I don't know the obviously exact
21 number but approximately maybe 25,000 or 30,000, maybe.

22 Q How did you use this money when he gave it to
23 you?

24 A The money was invested into the clinic to help
25 pay the overhead and to help fund our different programs

1 that we had.

2 Q Did you enter any kind of written agreement with
3 Mr. Solomon memorializing this arrangement?

4 A No. There was no written agreement.

5 Q Did you have some kind of oral agreement with
6 him? That means that you talked about regarding this
7 money, how it would be used, and how it would be repaid?

8 A Yes.

9 Q What was your oral agreement with him?

10 A The oral agreement was that we were going to pay
11 him back once after the marketing, the patients started
12 coming in, and we had the profit to pay him back his
13 money.

14 Q So you didn't have a time table or a specified
15 time by which you were supposed to pay him back?

16 A I don't recall having a specific time to pay him
17 back. I don't remember that part.

18 Q Do you remember the amounts of the individual
19 payments?

20 A No, I don't remember the amounts.

21 Q Do you recall them ranging from about \$2,500 to
22 \$10,000?

23 A Is this a one-time payment or --

24 Q No, no, ma'am. He didn't -- did he pay you all
25 \$30,000 at one time?

1 A No, sir.

2 Q So he paid you at -- I take it different times he
3 gave you different amounts of cash?

4 A Yes.

5 Q Okay. Do you remember approximately how much was
6 in each of those individual payments of cash?

7 A Honestly, no. It just would depend on, you know,
8 what particular bills were due or the overhead that needed
9 to be covered at the time.

10 Q So you would communicate to Mr. Solomon what your
11 financial needs were at a particular time, is that fair?

12 A Yes.

13 Q And then the payment would be something that
14 would help you cover those needs at that time?

15 A Yes.

16 Q Okay. Did you count the money?

17 A Yes.

18 Q Did you give Mr. Solomon a receipt?

19 A No, I don't recall giving him a receipt.

20 Q Do you recall the denominations of the money,
21 twenties, hundreds?

22 A They may have been a mixture.

23 Q Do you remember if the bills were new like they
24 came out of an ATM or if they were older bills?

25 A I don't remember.

1 Q Do you remember if they were banded or secured in
2 any way?

3 A They may have had a rubber band or something. I
4 don't -- they weren't loose, so they were probably
5 secured.

6 Q Was the money inside of another container when it
7 was given to you?

8 A Yes. He would bring it in a bag. Is that what
9 you're asking?

10 Q Yes, bag, envelope.

11 A He didn't just have it in his hand.

12 Q Right. That's what I'm asking.

13 A Uh-huh.

14 Q You remember the nature of the container that was
15 used?

16 A It would just depend. I didn't pay that close
17 attention to it. It was either a bag or an envelope or --
18 you know, something to hold it.

19 Q Who gave you -- actually physically gave you the
20 money?

21 A Mr. Solomon.

22 Q And do you remember at what location or locations
23 that would occur?

24 A Usually they were at South Texas at the clinic.

25 Q And do you remember how often he provided money

1 to you, on how many occasions?

2 A I don't remember how many occasions.

3 Q Do you have an estimate based on your memory?

4 A Well, maybe twice a month. I don't know. It
5 would just depend because --

6 Q When did these payments start?

7 A As soon as he came on board with us so maybe mid
8 2004, when he came on board.

9 Q When did the payments end?

10 A Maybe three or four months after. I don't know.
11 I don't remember exactly when they ended.

12 Q And did you and your mother pay back the full
13 amount of the \$30,000 that he gave you?

14 A I do not remember. I didn't really oversee or
15 stay in close knowledge as far as how much was being paid
16 back to him and when and exactly how much.

17 Q Your mother might have more personal knowledge of
18 that?

19 A She may be able to answer that better, yes.

20 Q Now, did -- as far as part of this agreement to
21 provide operating capital to your business, did
22 Mr. Solomon receive any ownership interest in your
23 business?

24 A Ownership, no.

25 Q Did there come a time when he expressed interest

1 in becoming a part owner of South Texas Wellness Center?

2 A At one point we did discuss it.

3 Q When was that?

4 A Within 2004, sometime in that timeframe.

5 Q Okay. Do you remember it being closer to the
6 beginning of the year or end of the year?

7 A Probably towards the middle part since he
8 started -- he invested with us maybe around May or June.

9 Q Now, who was involved in the discussions about a
10 potential ownership interest being given to Mr. Solomon?

11 A It was myself and my mother and Mr. Solomon and
12 the attorney there whose office we met with.

13 Q And was Dr. Elder involved in those discussions?

14 A And one more person was there. Philip --
15 Mr. Parker --

16 Q Mr. Parker?

17 A -- was there. Dr. Elder was not. I don't recall
18 him being there.

19 Q What -- do you recall that the -- okay.

20 As part of this potential involvement of
21 Mr. Solomon, do you recall there being a discussion of how
22 income from the clinic would be divided?

23 A At the meeting I do not recall.

24 Q It's not necessarily at that one meeting but in
25 general.

1 A In general pertaining to the business paperwork
2 -- when we discussed it, whether or not we were going to
3 form the entity, it may have been discussed. I don't
4 remember the percentage, but the -- when he came in as
5 just an investor, yes, we discussed different percentages.
6 That was totally separate then -- that.

7 Q Okay. And as part of that percentage discussion,
8 what types of income was to be shared with Mr. Solomon?

9 A What do you mean "what types"?

10 Q From your clinic. Like did you have Medicare and
11 Medicaid payments, weight management payments, that kind
12 of thing?

13 A Yes. They were different percentages broken down
14 depending on the revenue coming in from different sources.
15 Yes, Medicare was a certain percentage. Weight management
16 was a certain percentage, and pain management was a
17 certain percentage.

18 Q And under the proposal who was going to share in
19 those payments?

20 A Those percentages were broken down between the
21 clinic, Mr. Solomon, and then Dr. Elder.

22 Q Okay. So why was Dr. Elder involved in that
23 discussion?

24 A That was done at the clinics, and that was what
25 was proposed to us. So we -- we listened and we agreed

1 upon it at the time.

2 Q Who made the proposal?

3 A I don't remember which one made the proposal, but
4 it was brought to us.

5 Q Did you discuss this proposal with Mr. Solomon
6 and Dr. Elder?

7 A At the clinic at that time, yes.

8 Q Okay. And were Mr. Solomon and Dr. Elder, were
9 they the two people asking to receive a percentage of the
10 clinic profits?

11 A It was brought to us that way, so I guess, yes.

12 Q Okay. From your personal observation, do you
13 know if Mr. Solomon and Dr. Elder knew each other?

14 A Before?

15 Q At any time.

16 A While Dr. Elder was working with us?

17 Q Yes, ma'am.

18 A Well, they -- yes, they knew each other then.

19 Q Okay. You don't know if they knew each other
20 before Dr. Elder came to work at the clinic?

21 A I don't know absolutely if they knew each other
22 before.

23 Q Okay. Did you observe them in each other's
24 company, personally observe them together?

25 A Before?

1 Q No, ma'am. At the clinic.

2 A At the clinic. Dr. Elder was usually at the
3 clinic, and Mr. Solomon was not there regularly or a lot.

4 Q Right. But what I'm asking you was whether you
5 ever saw -- on any occasion whether you saw the two of
6 them together?

7 A On any occasion, yes.

8 Q And do you know -- did they appear to be friends?

9 A They appeared to be friends.

10 Q Did you and your mother agree to the proposal to
11 split the payments with Mr. Solomon and Dr. Elder?

12 A Yes.

13 Q And did you do that?

14 A Yes.

15 Q How long did that arrangement last?

16 A It did not last long, and, you know, initially
17 that's what we agreed upon. But it did not last long.

18 Q All right. Why didn't it last long?

19 A At the time the patients were not coming in, and
20 the patients that would come, we had to, you know, break
21 up the percentage between two other people. And we were
22 getting the lesser percentage out of everything.

23 Q Did the ending of the financial relationship
24 coincide with Dr. Elder's leaving the clinic?

25 A I don't absolutely recall if it coincided.

1 Q Was there a relationship between the two things?

2 A I really don't remember.

3 Q Okay. Do you recall Mr. Solomon saying that when
4 Dr. Elder left the clinic, that Mr. Solomon no longer
5 wanted to be an investor?

6 A It may have been around that same time. I'm not
7 absolutely sure. But it seems like everything was towards
8 the end of that year.

9 Q Ma'am, do you recall talking to AUSA Rhodes and I
10 and Agent Watterson on about November 14, 2008, when we
11 had an interview with you --

12 MR. OSGOOD: Can we approach, please?
13 (Counsel approached the bench and the following
14 proceedings were had:)

15 MR. OSGOOD: He's about to make himself
16 a witness in his own case if he starts asking her about
17 what she said and what she told him.

18 MR. BOHLING: We have Agent Watterson
19 here.

20 MR. OSGOOD: You better bring it up with
21 Agent Watterson or I will give you a subpoena if you say,
22 "Did you tell me."

23 MR. BOHLING: It's on the report.

24 MR. OSGOOD: I don't care. If you're
25 injecting your credibility into this --

1 MR. BOHLING: That was not my intention.

2 MR. OSGOOD: Okay. That's why I came to
3 the bench. Confine it to did you tell Watterson.

4 MR. BOHLING: Okay. Fair enough.

5 (The proceedings returned to open court.)

6 Q (BY MR. BOHLING) Do you recall having that
7 meeting at the U.S. Attorney's Office in Houston with
8 Agent Watterson in attendance?

9 A I do recall a meeting, yes.

10 MR. BOHLING: If I may approach the
11 witness, Your Honor.

12 THE COURT: You may.

13 Q (BY MR. BOHLING) I'd like to direct your
14 attention to a report of that investigation. If you could
15 just read this paragraph to yourself.

16 A Where?

17 Q There at the top.

18 MR. BOHLING: I'm on page 4, top of the
19 page, gentlemen.

20 A Okay.

21 Q (BY MR. BOHLING) Does that refresh your
22 recollection as to any statements made by Mr. Solomon at
23 the time Dr. Elder left?

24 A Yes.

25 Q Okay. And what -- do you have now a present

1 recollection of what was said?

2 A I understand that Dr. Elder left towards the end
3 of the year.

4 Q Yes.

5 A Which was around the same time that Mr. Solomon
6 was no longer an investor.

7 Q Do you recall Mr. Solomon saying that he no
8 longer wanted to be an investor because Medicare
9 reimbursements took a long time to process and personal
10 injury cases were slow to settle?

11 MR. LEWIS: Your Honor, I'm going to
12 object. That's leading and also improper refreshment.

13 THE COURT: Leading and what?

14 MR. LEWIS: Improper refreshment. She
15 said I don't recall.

16 THE COURT: Sustained.

17 Q (BY MR. BOHLING) Do you recall that Mr. Solomon
18 -- did Mr. Solomon say why he no longer wanted to invest
19 in your business?

20 A At the time in 2004?

21 Q Yes, ma'am.

22 A I can't remember now exactly what he said in
23 2004.

24 Q Okay. Do you know whether or not Mr. Solomon and
25 Dr. Elder socialized together?

1 A I don't know for sure.

2 Q Did Dr. Elder ever say whether or not he spent
3 time with Mr. Solomon?

4 A I don't recall if he said he spent time with
5 Mr. Solomon.

6 MR. BOHLING: Your Honor, may I approach
7 the witness?

8 THE COURT: Yes.

9 Q (BY MR. BOHLING) Would it help you to look at a
10 report of that interview?

11 A This is the interview from 2008?

12 Q Yes, ma'am.

13 A Because it's really hard to -- yes.

14 MR. BOHLING: Okay. It's paragraph 8,
15 page 4, gentlemen.

16 Q (BY MR. BOHLING) Ma'am, does that help to refresh
17 your recollection on this point?

18 A Yes.

19 Q Okay. And do you recall whether or not Dr. Elder
20 said anything about socializing with Mr. Solomon?

21 A Dr. Elder?

22 Q Yes.

23 A They may have mentioned it in between times when
24 Mr. Solomon would come up there.

25 Q Come up there?

1 A To the clinic, to the clinic, to the clinic.

2 Q That's fine.

3 Do you recall whether or not Mr. Solomon would
4 ever come to South Texas Wellness Center and meet with Dr.
5 Elder?

6 A Sometimes.

7 Q And where would they meet, do you remember?

8 A In one of our offices.

9 Q Now, I'd like to take you back to the earlier
10 part of 2004. When South Texas Wellness Center started as
11 a business, was the Ascensia Nutritional Pharmacy in the
12 building at that time?

13 A When we first started, no.

14 Q Yes, ma'am.

15 A No.

16 Q Do you know did you have any discussions with
17 Mr. Solomon about Mr. Solomon locating a business in that
18 building?

19 A No.

20 Q When did you first become aware that Ascensia
21 Nutritional Pharmacy was going to locate in the same
22 building as your business?

23 A After, I guess, they signed their lease and they
24 were working on it and building it out.

25 Q You actually saw the pharmacy being constructed?

1 A When we started, it was not there, so, yes.

2 Q And do you remember approximately when the
3 pharmacy opened for business?

4 A It was in 2004, and approximately maybe middle to
5 the latter part of the year. I don't really remember.

6 Q Do you recall that at some point there were boxes
7 delivered to your clinic?

8 A Yes.

9 Q Okay. Do you remember when that started?

10 A I don't -- that may have been towards -- it was
11 towards definitely the time that they were building out
12 the pharmacy and getting ready to open it up. As far as
13 like a month, probably the middle part of 2004.

14 Q So the boxes started to be delivered to South
15 Texas before the pharmacy was opened?

16 MR. LEWIS: Your Honor, I object.
17 That's leading.

18 THE COURT: I think it's consistent with
19 her prior testimony.

20 A I don't remember for sure if the pharmacy was
21 open at the time, but if -- it was at least around the
22 very beginning.

23 Q (BY MR. BOHLING) Do you recall to whom the boxes
24 were addressed?

25 A When I saw the box -- boxes, I only saw maybe two
492

1 or three or maybe, you know, between one and three. They
2 were -- they had Ascensia Pharmacy on them. They had the
3 name of the pharmacy on it.

4 Q Do you recall seeing any boxes addressed to South
5 Texas Wellness Center?

6 A I did not see any boxes addressed to South Texas
7 Wellness Centers.

8 Q Did you sign for any of the boxes?

9 A I don't recall if I signed for any. I may have
10 signed for one. I'm not for sure. I don't recall.

11 Q Do you know whether or not other employees of
12 South Texas Wellness Center signed for the boxes?

13 A Other employees may have, yes, signed for the
14 boxes.

15 Q Did you ever have a conversation with Mr. Solomon
16 about that?

17 A The boxes being brought to us?

18 Q Well, before the boxes came, did you have a
19 conversation with Mr. Solomon?

20 A It was mentioned to us, yes.

21 Q And do you remember what he said?

22 A It was mentioned that if no one was there to
23 receive the boxes, could we sign for them.

24 Q Did he tell you what was in the boxes?

25 A At the time he did mention -- because I asked,

1 well, what are the boxes for? He mentioned that they were
2 vitamins or supplements.

3 Q Did you, yourself, ever do anything that tended
4 to support that?

5 A Like?

6 Q Pick it up and shake it.

7 A I don't remember picking it up and shaking the
8 box.

9 Q Do you recall ever hearing the box rattle?

10 A On one of the boxes -- I was not there to see
11 most of the boxes delivered. On one of them -- I only
12 really remember seeing two boxes. On one of them I think
13 when we picked it up -- you know, you could hear something
14 in the box that may have sounded like vitamins or
15 supplements.

16 Q How often did the deliveries start to come?

17 A They started coming on a regular basis, and we
18 had to tell the gentleman, you know, we weren't going to
19 sign for them.

20 Q By "the gentleman," who are you referring to?

21 A The FedEx deliverer.

22 Q Who is "we"? Who told the FedEx driver?

23 A Ada.

24 Q Do you recall when that occurred?

25 A Soon after the guy was bringing the boxes.

1 MR. BOHLING: Can we please put up
2 Exhibit 682, which is in evidence. If you could highlight
3 the top part.

4 Q (BY MR. BOHLING) Ma'am, this is a FedEx receipt
5 that's in evidence in the trial. Do you see what the
6 shipping date is there?

7 A Yes.

8 Q And can you read that for the jury?

9 A January 17th, 2005.

10 Q And you see who the recipient is?

11 A Yes.

12 Q And that's Dr. Christopher Elder at South Texas
13 Wellness Centers?

14 A Yes.

15 Q Suite 415, is that the correct suite number?

16 A That is our suite number.

17 Q Okay. Do you recall seeing at the time that
18 these were addressed to Dr. Elder?

19 A Did I see these boxes?

20 Q Yes. Did it come to your attention that these
21 boxes were addressed in this manner?

22 A No.

23 Q So you see on January 17th, 2005, that that one
24 is -- is it indeed addressed to your business -- the
25 actual suite number for your business?

1 A Yes.

2 MR. BOHLING: If we could go to the next
3 document, 683.

4 Q (BY MR. BOHLING) And you'll see that this is --
5 the date there is January 18th, 2005, the next day?

6 A Uh-huh, yes.

7 Q And do you see a change in the address at that
8 point from the prior slip?

9 A I see a suite change.

10 Q Okay. And what's the suite?

11 A 450.

12 Q And do you know what business is located at Suite
13 450?

14 A Not ours.

15 Q Do you --

16 A So the suite -- I don't really know the suite
17 numbers --

18 Q Okay.

19 A -- on the fourth floor.

20 Q Do you know whether or not that is the suite
21 number for Ascensia Nutritional Pharmacy?

22 A It may be.

23 Q Is Ascensia Nutritional Pharmacy located on the
24 fourth floor of that building?

25 A It is on the fourth floor.

1 Q Do you know why the suite number changed between
2 January 17th, 2005 and January 18th, 2005?

3 A No.

4 Q Now, when these boxes would come to -- when they
5 were still coming to South Texas Wellness Center, what was
6 done with them?

7 A One of the gentleman who worked for us at the
8 time would take the boxes to the pharmacy.

9 Q Who was that?

10 A Carlos.

11 Q And why would he take the boxes to the pharmacy
12 if they were addressed to your business?

13 A The FedEx driver would come early in the mornings
14 before anyone was at the pharmacy, and so if we were
15 there, he would leave them with us or ask us to sign, you
16 know, for them.

17 Q Do you recall that there was an occasion when Dr.
18 Elder took one of the packages?

19 A Just on -- I recall one occasion.

20 Q Do you remember when that was?

21 A I do not remember -- it was in 2004, so I don't
22 remember if it were the latter part or, you know, kind of
23 in the middle part, the mid part of the year.

24 Q Do you know whether the package that Dr. Elder
25 took was addressed to him?

1 A I want to say it had Dr. Elder's name on it.
2 That's why we told him.

3 Q Did this box or package look similar to the other
4 boxes or packages that were received before and after?

5 A I only remember seeing one other package, one
6 other box, and it was similar just in it may have been
7 like just a white box.

8 Q Do you know -- do you have personal knowledge of
9 what Dr. Elder did with the box?

10 A Personal knowledge?

11 Q Yes, ma'am.

12 A No.

13 Q Did you see where he went when he took it as far
14 as you could see?

15 A Well, I mean, he headed toward, you know, the
16 elevator or the front of the floor to where the elevators
17 are or the pharmacy was.

18 Q So he headed out of South Texas Wellness Center?
19 He left your business premise?

20 A Well, he left our suite, yes.

21 Q Okay. And at that time he had the box?

22 A Yes.

23 Q During this time your mother had a cell phone?

24 A Yes.

25 Q Okay. And do you recall her cell phone number?

1 A Back then I do not recall the cell phone number.

2 Q Okay.

3 A I mean, it may have started with 832.

4 Q Would it assist you in refreshing your
5 recollection if I showed you the report?

6 A Yes.

7 MR. BOHLING: May I approach the
8 witness?

9 THE COURT: You may.

10 MR. BOHLING: Page 5, gentlemen, top of
11 the page.

12 A Yeah, that was it. Uh-huh.

13 Q (BY MR. BOHLING) Does that help to refresh your
14 recollection on this point?

15 A Yes.

16 Q Do you recall your mother's cell phone number at
17 that time?

18 A Yes.

19 Q Can you tell us what it was?

20 A The 832-721-4261. I don't remember the last
21 four.

22 Q Was it correct when you told us during the
23 interview?

24 A Back then, yes.

25 Q Was it 832-721-1456?

1 A That sounds like it, yes.

2 Q And did your mother stop using that phone number
3 at some point?

4 A She broke her phone or she had to get her phone
5 replaced, so, yes.

6 Q Do you remember approximately when that happened?

7 A When she had to replace her phone? No, I don't
8 remember exactly when.

9 Q I'd like to show you what's been marked as
10 Government's Exhibit 1198. Do you recognize that
11 document?

12 MR. OSGOOD: May we approach, Your
13 Honor?

14 THE COURT: Yes.

15 (Counsel approached the bench and the following
16 proceedings were had:)

17 MR. OSGOOD: He's about to show her a
18 grand jury subpoena, which I don't believe is relevant and
19 has prejudicial implications. He can ask her if she got a
20 subpoena and what was subpoenaed and she can respond to
21 it. I don't see the reason to put a grand jury subpoena
22 into this case.

23 MR. BOHLING: Key point of evidence in
24 the case, Your Honor.

25 THE COURT: What's key about it?
 500

1 MR. BOHLING: We asked for records from
2 the South Texas Wellness Center for a subset of the
3 patients that reflected in the Dr. Elder prescriptions
4 that were at The Medicine Shoppe.

5 MR. OSGOOD: I have no problem asking
6 whether he subpoenaed and read the list to her or
7 whatever, but I don't think the documents should be given
8 to the jury.

9 MR. BOHLING: I don't have a problem
10 with that.

11 THE COURT: It's just a subpoena?

12 MR. BOHLING: What's important is the
13 attachment. If that's the issue, that's fine, we'll go to
14 the attachment. I don't need to move in the subpoena if
15 that's the issue.

16 THE COURT: All right.

17 (The proceedings returned to open court.)

18 Q (BY MR. BOHLING) Do you recall receiving a
19 subpoena from the grand jury in Kansas City in this case?

20 A I do not recall seeing this particular document.

21 Q Okay. That's fine. If we could go to the next
22 page.

23 MR. OSGOOD: Objection.

24 MR. BOHLING: I haven't even asked a
25 question, Your Honor.

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. OSGOOD: She just said she has no
4 recollection of getting the subpoena, so she would have no
5 recollection of the --

6 THE COURT: She didn't say she got it,
7 but she did say she didn't have a recollection of the
8 subpoena, Mr. Osgood.

9 MR. OSGOOD: Okay.

10 (The proceedings returned to open court.)

11 Q (BY MR. BOHLING) Do you recall whether the
12 government asked your business to look for some patient
13 files?

14 A Yes.

15 MR. BOHLING: If we can look at the next
16 page.

17 Q (BY MR BOHLING) Do you recognize that list,
18 ma'am?

19 A Yes.

20 Q What is that?

21 A This was a list of the particular charts that the
22 government wanted us to look for.

23 MR. BOHLING: Your Honor, I would move
24 in 1198 and just page -- this will be page 3 and then I
25 believe it goes over to the next page and page 4 only.

1 MR. OSGOOD: I have no objection to
2 those pages, Your Honor.

3 THE COURT: Okay. They will be
4 received.

5 Q (BY MR. BOHLING) When you received this list of
6 patient names, did your business attempt to locate these
7 files?

8 A Yes.

9 Q And were you able to find them?

10 A No, sir.

11 Q Could you please describe to us where are the
12 patient files kept at South Texas Wellness Center?

13 A The patients' charts are kept in the file area.

14 Q And where is that?

15 A That is in the back office. When you come in,
16 you have to go through the doors and go into the back.

17 Q Are they filed alphabetically?

18 A Yes.

19 Q And are they secured?

20 A Yes.

21 Q How are they secured?

22 A They have locks. To get to those doors, those
23 doors are locked as well so to even enter that part of the
24 clinic.

25 Q Who would have access to that part of the clinic?

1 A During normal business hours?

2 Q We can start there, sure.

3 A Any of the employees.

4 Q And when a patient comes in, how is a file
5 created or pulled?

6 A When a patient comes in, the file is created
7 after they fill out the application and we put it
8 together. When they come back, their file -- their chart
9 is pulled off the shelf.

10 Q And once the patient leaves or you're done with
11 the patient, what happens with the chart?

12 A We put it back on the shelf.

13 Q Okay.

14 A We file it.

15 Q And so you told us that you were not able to
16 locate any of these -- any patient files under these names
17 at South Texas Wellness Center when you were requested to
18 look for those?

19 A When we were requested, if I recall correctly, we
20 were not able to find these charts.

21 Q Now, after you were unable to find the charts,
22 did you contact anyone?

23 A I -- we may have contacted Dr. Elder.

24 Q Okay. And do you have a recollection of
25 contacting Dr. Elder?

1 A I think we mentioned it to him.

2 Q Okay. Did you ask Dr. Elder about the medical
3 files?

4 A We may have asked Dr. Elder back then about these
5 charts and that we did not have them.

6 Q Did Dr. Elder make any response to you on that
7 subject?

8 A I want to say he may have had them, and it may
9 have had something to do with his vehicle was vandalized
10 or something happened to his vehicle or something with
11 where the charts may have been.

12 Q Ma'am, do you recall discussing this subject with
13 us -- or with Agent Watterson at the November meeting?

14 A I do remember being asked about the charts.

15 Q Would it assist you in refreshing your
16 recollection to take a look at that report?

17 A Yes.

18 MR. BOHLING: Your Honor, may I approach
19 the witness?

20 THE COURT: Yes.

21 MR. BOHLING: I'm on page 5, paragraph
22 12.

23 Q (BY MR. BOHLING) If you could just read to
24 yourself I believe it's paragraph 12 and then over to the
25 next page.

1 A Uh-huh, uh-huh. Okay.

2 Q Now, ma'am, has that assisted you in refreshing
3 your recollection on this point?

4 A Yes.

5 Q Do you recall what Dr. Elder said when you asked
6 him about the charts?

7 A Yes. That they were in the vehicle that was
8 stolen or set on fire or --

9 Q Did he -- just to back up a moment, did he tell
10 you how he came to be in possession of those charts?

11 A Well, we were unable to locate the charts. We
12 called to ask if, you know, he was finishing the charts or
13 if he had them. And so he agreed -- he said, yes, he had
14 them and that they were in his vehicle when the vandalism
15 occurred.

16 Q Did you ask him how they came to be in his
17 possession?

18 A We didn't specifically ask him how they came to
19 be in his possession. I don't recall us asking him that.

20 Q That's fine. And do you remember whether -- did
21 you have a face-to-face conversation with him at some
22 point about this?

23 A Yes. We did talk to him face to face at some
24 point.

25 Q And where was that?

1 A At a restaurant in Meyerland, Fadi's
2 Mediterranean.

3 Q And what did he tell you about his truck?

4 A That it had been stolen -- that it was stolen.
5 He didn't have it.

6 Q Did you ask for the return of the files?

7 A We didn't ask for the return of the files because
8 from my understanding, the files were in the vehicle when
9 they were stolen -- when the vehicle was stolen.

10 Q Okay. Did you ask Dr. Elder why the government
11 had issued a subpoena for the medical files?

12 A I don't remember if we -- I'm quite sure we asked
13 him why are they asking for these files. I'm quite sure
14 we did.

15 Q Do you remember what he said?

16 A Dr. Elder -- honestly I don't remember what he
17 told us.

18 Q Would it help refresh your recollection to review
19 the report?

20 A Yes.

21 MR. BOHLING: I'm on page 6, top of the
22 page.

23 MR. LEWIS: Your Honor, may we approach
24 for one moment?

25 (Counsel approached the bench and the following
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1 proceedings were had:)

2 MR. LEWIS: I have no problem with the
3 government -- with the court's permission to take five
4 minutes and let her read this instead of having to do
5 this. I know Mr. Bohling is struggling mightily. I
6 empathize with him. It may be more efficient to let her
7 read her report before he finishes.

8 MR. OSGOOD: I assume she's looked at
9 it.

10 MR. BOHLING: Yes. It's been -- since
11 she came up last night, it's been awhile.

12 THE COURT: It is going painfully slow.

13 MR. BOHLING: I'm happy to do it either
14 way. We're getting closer to finishing, although there
15 are some other subjects to cover. It might actually be
16 helpful.

17 THE COURT: Well, let's keep going.

18 (The proceedings returned to open court.)

19 Q (BY MR. BOHLING) Ma'am, has that refreshed your
20 recollection on this point?

21 A Yes.

22 Q Do you recall what Dr. Elder's response was to
23 your question about why a subpoena had been issued?

24 A Yes.

25 Q What was it?

1 A He didn't know at the time -- he didn't know.

2 Q Now, going back again to 2004, the summer of
3 2004, into the fall, did your business have prescription
4 pads?

5 A Yes.

6 Q And do you recall how the prescription pads were
7 acquired for the business when Dr. Elder came to the
8 business?

9 A They were ordered through Mr. Solomon.

10 Q And how did it come to be that they were ordered
11 through Mr. Solomon?

12 A When mentioned that Dr. Elder would need
13 prescription pads, he said he knew someone who could print
14 them.

15 Q And so who arranged to actually have the
16 prescription pads printed?

17 A To actually have them printed, Mr. Solomon.

18 Q Okay. That was through his connection?

19 A Yes.

20 Q And once the prescription pads were printed, to
21 whom were they provided?

22 A We received -- we got a box of the prescription
23 pads.

24 Q And by "we," you mean?

25 A The clinic, Ada and I.

1 Q Okay. What was the clinic's practice as far as
2 providing the prescription pads to Dr. Elder?

3 A The prescription pads were locked up, and as he
4 came on his certain days, you know, he would ask for a
5 pad.

6 Q Do you remember approximately how many
7 prescription sheets were on each pad?

8 A I don't recall the exact number. It may have
9 ranged between 25 to 50 per pad.

10 MR. BOHLING: This is Exhibits 37.01 to
11 37.81.

12 Q (BY MR. BOHLING) I'm showing you what's been
13 entered into evidence as Exhibits 37.01 through 37.81.
14 These are the original prescriptions. Do you recognize
15 that prescription pad?

16 A That's how they looked.

17 MR. OSGOOD: I can't hear, Your Honor.

18 A That is how they looked.

19 Q (BY MR. BOHLING) So do these appear to be
20 prescriptions written out of the pads being used by your
21 business in 2004?

22 A Yes.

23 Q How would Dr. Elder get a new prescription pad if
24 he needed one?

25 A If he needed one, he would mention it to one of
510

1 us, and we would get him one.

2 Q Were there any occasions when he would leave
3 South Texas Wellness Center with a prescription pad?

4 A Yes.

5 Q How often did that happen?

6 A It -- I don't remember how often, but there were
7 times that he would leave with them or forget to give them
8 back to us.

9 Q And I think you have told us previously that he
10 would see very few patients per day.

11 A Yes.

12 Q And you said there were 25 to 50 prescriptions on
13 each pad?

14 A Yes.

15 Q Okay. So when he would come back the next day,
16 would he request a new pad?

17 A Yes.

18 Q Should there have been prescriptions --

19 MR. OSGOOD: Objection, that's
20 speculative.

21 THE COURT: Sustained.

22 Q (BY MR. BOHLING) Did you ever question Dr. Elder
23 about his need for a new pad?

24 A I don't recall if we questioned him.

25 Q Would it assist you to take a look at the report

1 as to your recollection on that point?

2 A Yes.

3 Q It's page 6, paragraph 14.

4 Does that refresh your recollection as to the
5 question?

6 A That does.

7 Q Okay. And do you remember whether or not you
8 ever questioned Dr. Elder about his need for a new pad?

9 A We may have questioned him as to where is the
10 other pad.

11 Q And do you recall his response?

12 A It may have been I forgot it or it was just, you
13 know, brushed off.

14 Q And are you familiar with Dr. Elder's
15 handwriting?

16 A Yes.

17 Q And from what context are you familiar with it?

18 A Him doing exams in our charts.

19 Q Okay.

20 MR. BOHLING: If I may approach.

21 Q (BY MR. BOHLING) I'm showing you that same
22 exhibit. This is Exhibit 37.01. Patient's name is Adams.

23 Do you see a signature?

24 A Yes.

25 Q Do you recognize it?

1 A It looks -- yes.

2 Q And whose signature does it look like?

3 A It looks like Dr. Elder.

4 Q Do you have a fax machine located at your
5 business?

6 A Yes.

7 Q Did you have one back in 2004?

8 A Yes.

9 Q Where is it located within the office?

10 A Behind the doors, the locked doors.

11 Q Do you recall the phone number for that machine?

12 A Yes.

13 Q What is it?

14 A 713-839-1530.

15 Q Did your clinic back in 2004, 2005, ever have a
16 relationship with an out-of-state pharmacy?

17 A No.

18 Q Did your clinic ever direct patients where to
19 take their prescriptions?

20 A We gave them choices.

21 Q Okay. Describe that for us.

22 A If the patient came in to see the doctor and a
23 prescription was written, you know, they had a choice as
24 to what pharmacy they could take it to.

25 Q And did you give them some information about

1 potential pharmacies?

2 A Yes.

3 Q And was Ascensia Nutritional Pharmacy one of
4 those?

5 A That was one of them, yes.

6 Q Obviously, that would have been after ANP opened
7 for business?

8 A Yes.

9 Q Was it the practice of the clinic to provide the
10 prescriptions to the patients upon their -- end of their
11 examination?

12 A Not -- that wasn't our practice -- in 2004, I
13 don't recall allowing the patients to take their
14 prescription with them.

15 Q Okay. What if it was an original prescription?

16 A I don't recall.

17 Q Did there come a time when the clinic started
18 faxing prescriptions directly?

19 A Yes.

20 Q Was there some concern behind that practice?

21 A There was concern, yes.

22 Q And what was the concern that caused that
23 practice to start?

24 A We did not want patients duplicating the
25 prescriptions or going everywhere with the prescriptions

1 with the doctor's information.

2 Q Okay. Now, directing your attention specifically
3 to the type of prescriptions that we've seen here in
4 court, the prescription -- the original prescriptions on a
5 pad.

6 A Right.

7 Q Would those have been faxed, or would those have
8 been given to the patient, if you know?

9 A The smaller ones?

10 Q Yes, ma'am, just like we've seen.

11 A If those were written, they would have been
12 possibly given to the patient.

13 Q Do you recall when the practice of faxing
14 prescriptions started?

15 A Possibly in 2005. I don't really know for sure.

16 MR. BOHLING: Just a moment, Your Honor.
17 That's all the questions I have of Ms. Johnson.
18 Thank you.

19 THE COURT: Should we take a break now
20 and then start the cross? I think so.

21 Why don't we take about a 15-minute break. I'll
22 ask you not discuss the case among yourselves or with
23 others or allow anyone to discuss it in your presence.

24 Thank you.

25 (A recess was taken.)

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

3 PLESHETTE JOHNSON-WIGGINS, previously being sworn, resumed
4 the stand:

5 THE COURT: Are you ready to proceed,
6 Mr. Osgood?

7 MR. OSGOOD: I am, Your Honor.

8 CROSS-EXAMINATION BY MR. OSGOOD:

9 Q Ms. Johnson, my name is John Osgood. I represent
10 Dr. Elder. We've never met, have we?

11 A No.

12 Q Never talked.

13 Now, I did have a private investigator try to
14 contact you, a Mr. Mark Reeder. Do you remember talking
15 to him?

16 A No.

17 Q You remember refusing to talk to him, I guess?
18 He would have called you on the telephone from Kansas City
19 and told you he represented me and he had questions for
20 you.

21 A He would have called me personally?

22 Q Yes, ma'am.

23 A I do not recall speaking to --

24 Q Okay. Now, incidentally, you have met with the
25 government prosecutors -- I'm sorry -- the government

1 agents a number of times, haven't you?

2 A I've met with them more than once, yes.

3 Q Do you remember how many times?

4 A Maybe two or three times.

5 Q Well, there would have been the time in May of
6 '06, when they raided Ascensia and South Texas Wellness
7 Center, that would be one?

8 A Okay.

9 Q Now, something else, if I ask you a question and
10 you don't understand the question, I want you to stop me
11 and say, "Reask the question," because I kind of bumble
12 and fumble sometimes. I don't want to confuse you, okay?

13 A Okay.

14 Q Can we have that agreement?

15 A Yes.

16 Q If I suggest an answer to you, which I'm entitled
17 to do with cross-examination, you don't have to agree with
18 me if you don't agree with me. You understand that?

19 A Yes.

20 Q In other words, I don't want to put words in your
21 mouth, Ms. Johnson. I just want the truth out of you and
22 your best recollection.

23 MR. BOHLING: Objection.

24 THE COURT: Pardon me?

25 MR. BOHLING: I'm objecting to those
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1 comments.

2 THE COURT: Go ahead, Mr. Osgood. Keep
3 it brief, would you.

4 MR. OSGOOD: I understand.

5 Q (BY MR. OSGOOD) You understand this exchange is
6 to get at what happened?

7 A I understand.

8 Q With those ground rules in place then, you say
9 you talked to the government about three or four times is
10 your recollection?

11 A I recall two or three.

12 Q Okay. Well, you had a meeting in June of 2008.
13 Would that refresh your memory?

14 A I know it was in 2008.

15 Q Sorry, 5 November 2008 and 8 June of 2009. I
16 don't want to confuse you.

17 A I recall meeting with them twice.

18 Q Okay. Besides the first meeting at -- during the
19 search. So it would be three times?

20 A Okay.

21 Q Now, did they show you your reports on this last
22 meeting in 2009, in Houston, these reports we've talked
23 about here, the prosecutor's been showing you?

24 Did you get the opportunity to look at those and
25 read those before your meeting with them?

1 A I don't recall reading these before I met with
2 them.

3 Q You do not?

4 A I do not remember --

5 Q You don't remember?

6 A -- reading those.

7 Q Okay. Now, you are a college graduate, aren't
8 you?

9 A Yes.

10 Q And you are a graduate of a chiropractics school
11 which would be advanced education, right?

12 A Yes.

13 Q And there are requirements that you have pretty
14 good credentials and rigorous -- strike that.

15 You're well educated, right?

16 A I would think so.

17 Q And you have to remember details about patients
18 from time to time, don't you?

19 A From time to time, yes.

20 Q And there are certain things in your practice as
21 a physician or a chiropractor, at least, that are
22 important and that's why you keep notes and charts; is
23 that right?

24 A Yes.

25 Q But by and large you also require -- you use your
519

1 own memory on many of these events, don't you, in dealing
2 with patients?

3 A Yes.

4 Q If a patient came in today and you -- he started
5 coming to see you in 2004, you would probably remember
6 details of that visit, wouldn't you?

7 A It would just depend on the situation.

8 Q Do you know how many times today here you've said
9 "I don't recall"? I put a little checkmark down each time
10 you used the phrase "I don't recall" or "don't remember."
11 Five, 10, 15, 20, 25, 30, 35, 40, 43, 46 times, ma'am,
12 you've said "I don't recall" on the stand here today.

13 Is there something wrong with your memory?

14 A There's nothing wrong with my memory, no.

15 Q You're not suffering from any disease or
16 affliction or anything that would cause loss of memory,
17 are you, ma'am?

18 A No.

19 Q Pardon?

20 A No.

21 Q Okay. Now, you were immunized by the United
22 States government, weren't you?

23 A Yes.

24 Q Now, did you at any time ever meet with Dr. Elder
25 and enter some kind of agreement with him that you and the

1 business South Texas Wellness Center would engage in some
2 kind of prescription fraud where you would send massive
3 numbers of prescriptions to Kansas City?

4 A No.

5 Q And you got profits from that and shared profits
6 with Dr. Elder?

7 A No.

8 Q Did you ever give Dr. Elder any money other than
9 his salary at South Texas Wellness Center?

10 A No.

11 Q Did he ever give you any money other than the
12 reimbursement of the Medicare checks?

13 A No.

14 Q You know what I'm talking about with that?

15 A Yes.

16 Q Explain that to the jury, please, what he did for
17 you and your business.

18 A Initially the Medicare checks before we were able
19 to get our clinic route number were written to Dr. Elder
20 as being the physician seeing the patients.

21 Q And then he turned that money over to you?

22 A Yes.

23 Q And you signed a document for him, a receipt, for
24 those funds, didn't you?

25 A For that incident, yes.

1 Q And you remember that very clearly, don't you?

2 A Yes.

3 Q Why is it you remember that so clearly and you
4 can't remember --

5 THE COURT: Let's not be argumentative,
6 Mr. Osgood.

7 MR. OSGOOD: I'm sorry, Your Honor.

8 Q (BY MR. OSGOOD) All right. Now, what was your
9 business arrangement with Mr. Philip Parker? Did you have
10 any?

11 A We didn't have a business arrangement with Philip
12 Parker.

13 Q Mr. Parker showed up at some of these meetings.
14 You said he was at one of these meetings where you were
15 talking about investments and whatnot?

16 A He was at one of them.

17 Q What was that about?

18 A At the time that meeting we went to was about the
19 two companies creating another entity to do medical
20 services.

21 Q All right. Did you know Mr. Troy Marsaw?

22 A Yes.

23 Q What was your relationship with Mr. Troy Marsaw?
24 Was he an investor?

25 A Troy Marsaw was an investor after Mr. Solomon

1 left, yes.

2 Q When would that have started?

3 A Maybe in 2005. I'm not absolutely sure.

4 Q Did you accept cash from Mr. Marsaw?

5 A Mr. Marsaw, I don't remember if he gave us cash
6 or a check.

7 Q His name is spelled M-a-r-s-a-w; is that correct?

8 A Yes.

9 Q Did you have any kind of a written agreement with
10 him, a contract?

11 A I don't recall. I don't remember.

12 Q Now, was there a written agreement between you
13 and Mr. Solomon?

14 A We did not have a written agreement, no.

15 Q Now, you testified on direct that you had this
16 meeting and the three of you agreed to a business
17 breakout, is that correct, that certain profits were going
18 to go to certain people and you put that in to effect in
19 '04?

20 A We talked about it, yes.

21 Q You said you actually entered into the agreement
22 and it lasted for a while and then you dissolved it on
23 direct?

24 A It fizzled out, yes.

25 Q In your statements did you tell the government

1 that there was never any agreement reached, that you just
2 discussed it?

3 A They're two separate --

4 Q I'm talking about the --

5 A -- agreements.

6 Q I'm talking about the one where Dr. Elder was
7 present and the three of you were going to -- he was going
8 to get a percentage for pain management and you were going
9 to get a certain percentage for your chiropractic work and
10 somebody else was -- I guess, Mr. Solomon was going to get
11 a percentage for another part of it, that agreement, that
12 discussion?

13 A Yes. But it was broken down. Certain
14 percentages were given to each -- to each three of us per
15 pain management.

16 Q Yes.

17 A So if it's out of the 100 percent, then Dr. Elder
18 got a percentage, Mr. Solomon got a percentage, and then
19 we got a percentage.

20 Q And you said you actually reached that agreement?

21 A For that, yes.

22 Q Well, take a look at your statement here in
23 November of 2000 -- I'm sorry, November 14th of '08. Read
24 that paragraph and see if that refreshes your memory.

25 A Okay.

1 Q Now, having read that, was an agreement actually
2 reached or just discussed?

3 A It was definitely discussed.

4 Q Did you not tell Agent Overton that no such
5 agreement was ever put into effect, it was just discussed?

6 A I remember it being discussed, and I vaguely
7 recall some of the few patients that came, the money may
8 have been divided up into those little --

9 Q You in fact gave Dr. Elder a 1099 at the end of
10 2004, didn't you?

11 A Yes.

12 Q And he left on January the 1st, didn't he?

13 A Of 2005?

14 Q Yes, ma'am.

15 A It may have been in December of 2004. I'm not
16 absolutely positive.

17 Q He wasn't there after the clock rolled over?

18 A No.

19 Q Now, you saw these UPS shipments that were
20 addressed to him in -- at your address of South Texas
21 Wellness Center in 2005, didn't you? Do you remember
22 seeing those?

23 A On the screen?

24 Q Yes, ma'am.

25 A Yes.

1 Q Did you call him up and say, There are packages
2 here for you, why are they here?

3 A We never saw those packages in 2005.

4 Q Somebody at your place signed for them, didn't
5 they?

6 A I have no idea.

7 Q And then was that when the address was changed to
8 the fourth floor in '05, if you know?

9 A I don't know.

10 Q Okay. Now, you said he -- that one package
11 arrived and it was a different colored box than you'd seen
12 previously, it was a white box or something?

13 A The box I saw was white.

14 Q Okay. Now, why did you not keep any ledger or
15 books or anything about the investments that Mr. Solomon
16 was putting into your business?

17 A At the time we did not think it was needed.

18 Q Were you using QuickBooks or anything like that?

19 A No.

20 Q What were you using? How were you accounting for
21 your profits and your losses and your potential deductions
22 that you were going to give your accountant at the end of
23 the year?

24 A We were keeping up with it through our bank
25 records.

1 Q How would that show your expenses?

2 A With checks and your debit card.

3 Q Okay. Now, did your father work there at the
4 time, Luther Johnson?

5 A My dad has never worked at the clinic.

6 Q I thought I read some reports where he was
7 involved in some of the bookkeeping.

8 A It's a family-owned business.

9 Q Okay.

10 A So when you're saying did he work there --

11 Q Well, maybe "work" is the wrong term. Was he
12 involved in the accounting and the tracking money and
13 taking money in and paying money out, or was that
14 principally your mother?

15 A I'm quite sure it was all three of us.

16 Q Did you file a tax return for the year 2004, as a
17 business?

18 A I don't know.

19 Q Well, who would know that? You're the
20 chiropractor there and the owner of the business. Who
21 would know that?

22 A Well, I'm not the sole owner of the business.

23 Q Is it incorporated?

24 A It's an LLC. But I'm quite sure my CPA would
25 know for sure.

1 Q Do you remember signing a tax return for 2004 or
2 2005?

3 A I don't remember.

4 Q Okay. Did you discuss with your CPA this
5 arrangement where you would get cash from an investor in
6 lump sums?

7 A I do not remember discussing the specifics with
8 our CPA.

9 Q You said at some point Mr. Solomon paid you back.

10 A What do you mean Mr. Solomon paid us back?

11 Q I mean you paid him back.

12 A Yes.

13 Q And how did you pay him back?

14 A Usually in cash.

15 Q And did you report that to your accountant?

16 A I have no idea.

17 Q What were you doing for the most part at South
18 Texas Wellness Center?

19 A I would see patients that were personal injury
20 and workers' comp.

21 Q Okay. Who was the office manager?

22 A Ada was the office manager.

23 Q Ada being your mother?

24 A Yeah.

25 Q And, now, you said you were set up and a patient
528

1 would come in and fill out a patient sheet; is that right?

2 A Yes.

3 Q Now, isn't it true that during this period in
4 '04, you were also working somewhere else?

5 A Yes.

6 Q Where were you working, ma'am?

7 A I also worked at a clinic in Houston certain days
8 out of the week.

9 Q How many days out of the week?

10 A At the time I think it was two days out of the
11 week, one to two days out of the week in Houston.

12 Q Do you remember the days?

13 A I don't remember the days.

14 Q Were they days when perhaps Dr. Elder was there
15 and you were gone?

16 A Usually I would be there. It just would depend
17 on when new patients were scheduled.

18 Q Now, when you had your interview with the -- this
19 last one in Houston with Agent Overton, this nine-page
20 report that we're talking about, this is not a signed
21 statement, is it? This is a report with what was said
22 prepared by Agent Overton. Would you agree with me?

23 A Yes.

24 Q You did not sign that, did you?

25 A I didn't sign anything.

1 Q I mean, they didn't give it to you and say, Read
2 this over and sign it and indicate it's true and correct?

3 A No.

4 Q Or put you under oath or anything like that?

5 A No.

6 Q Did you ever give them a sworn statement of any
7 kind?

8 A I don't recall it being sworn, giving a sworn
9 statement when we met with them.

10 Q Okay. I'm not talking about this one. I mean,
11 are there any other statements out there that I don't
12 have, for example, a sworn statement where they prepared a
13 text for you and you said I swear and affirm that's true?

14 A I don't recall that.

15 Q Okay. Did you testify in front of the grand
16 jury?

17 A No.

18 Q All right. Now, during this interview, in
19 fairness to you, were they suggesting to you some of what
20 happened here and you just kind of confirmed it? I think,
21 yeah, now that I remember it, that's probably what
22 happened, similar to what we're doing here today?

23 A I don't recall them suggesting.

24 Q Well, this was only, again, nine months ago.
25 Well, it was about a year ago, about a year ago when you

1 last met with them. Would that be accurate? In Texas?

2 A We met with them in June of 2009?

3 Q Okay.

4 A No. I'm asking.

5 Q I believe so.

6 A I don't recall the specific month.

7 Q Do you remember the general setting of the
8 interview? Where did it take place at?

9 A In downtown Houston.

10 Q Okay. And was Ms. Overton putting questions to
11 you?

12 A What's Ms. Overton's first name?

13 Q Connie.

14 A I remember her asking one or two questions, a few
15 questions.

16 Q Well, did you just sit down and give them all
17 this information that appears in this nine-page report?
18 What I'm trying to get at is who was carrying the ball
19 here?

20 A Various people were asking questions. She was
21 not the only person asking questions in that particular
22 meeting.

23 Q And were they questions where you could just
24 affirm something happened, or did they ask you and you
25 went into detail?

1 A The meeting was more so as towards things that
2 were said previously.

3 Q By somebody else?

4 A To get clarity or some more specifics.

5 Q So they had other reports that they were reading
6 from and asking you did this happen on a prior occasion?

7 A The one in 2009, was our second time meeting with
8 them.

9 Q Okay. All right.

10 A Downtown.

11 Q Now, that's the one where you were immunized.
12 What were you immunized from?

13 A The second meeting was the one we were immunized?

14 Q I believe so, yes, ma'am. They told you, you
15 weren't going to be prosecuted for anything, all you had
16 to do is tell them everything you knew.

17 A I don't remember if it was the first or second
18 meeting.

19 Q Well, I'm suggesting to you it was the second. I
20 can show you the report, save some time. Can we agree it
21 was the second one? You had your lawyer there, I think.

22 A The lawyer was there both times.

23 Q Okay. I don't -- I'm not so concerned about when
24 it was, ma'am, as to why were you immunized?

25 A That was per our attorney's advice.

1 Q But did you feel you'd done something wrong?

2 A No.

3 Q Today do you feel you had some problems maybe
4 with taxes that were of concern?

5 A No.

6 Q All right. Did they accuse you in any way of
7 being involved in this conspiracy that they allege
8 happened between Missouri and Kansas -- I mean, Missouri
9 and Texas?

10 A I do not believe I was accused of anything, no.

11 Q Okay. Well, bottom line is, you didn't do
12 anything illegal, as far as you know, with Dr. Elder?

13 A Yes, that's true.

14 Q That's true, isn't it?

15 A (Witness nodded head.)

16 Q Now, let's talk a little bit about the patient
17 files.

18 You and your mother owned the clinic, we can
19 agree on that?

20 A Yes.

21 Q Dr. Elder was an employee, wasn't he?

22 A He was an independent contractor, yes.

23 Q You gave him a 1099?

24 A Yes.

25 Q The files actually belonged to you, didn't they?

1 A The files belonged to the doctor. He's an
2 independent contractor.

3 Q You kept the files in the filing cabinet?

4 A The ones that were given back in -- received back
5 to the lady, yes, she did file them back.

6 Q Okay. You filled out the initial intake sheet in
7 the front office, didn't you?

8 A The application was filled out by the patient.

9 Q It's an intake sheet they get when they come into
10 the front desk, right?

11 A Yes.

12 Q You even color coded some of the files, didn't
13 you?

14 A Some of the files are color coded, yes.

15 Q Can you refresh the jury's memory on that?

16 A Depending on what the patient is coming in for,
17 the folders are different colors. So if it's personal
18 injury, it's a certain color. If it's work comp, it's a
19 certain color. If it's family medicine, Medicare,
20 Medicare/Medicaid, pain management, it's a certain color.

21 Q All right. Now, in -- let's talk about these
22 prescription pads. You ordered -- I'm sorry. Mr. Solomon
23 ordered blank pads for Dr. Elder; is that right?

24 A Yes.

25 Q And you kept them in your office; is that right?

1 A They were kept in Ada's office locked.

2 Q Okay. Now, the layout, we've seen some
3 photographs earlier, but I don't remember, was there one
4 or two exam rooms?

5 A Two.

6 Q Two exam rooms.

7 And there's an office area where the
8 receptionist is, I guess?

9 A Yes.

10 Q And then you had an office there; is that right?

11 A Yes.

12 Q Now, isn't it true that when Dr. Elder was not
13 seeing patients in the exam room, he'd sometimes use your
14 office?

15 A Sometimes, yes.

16 Q Okay. And did you tell the agents at some point
17 in time that he was a good doctor and --

18 A He is a good doctor.

19 Q Okay. I think you said he was a bit arrogant
20 sometimes?

21 A He was what?

22 Q You said, I think, at some point he was a good
23 doctor but he was arrogant?

24 A I guess I said that.

25 Q Okay. Well, you've dealt with a lot of doctors
535

1 in your lifetime, and doctors tend to be arrogant, don't
2 they? Their time is limited and they tend to be sharp and
3 quick with people?

4 A Some are, yes.

5 Q But he was professional the whole time, what I'm
6 getting at, while he was there, wasn't he?

7 A Yes.

8 Q And you knew he was a board certified pain
9 management specialist, didn't you?

10 A At the time we knew he was a licensed PMR doctor,
11 yes.

12 Q You did not check out his credentials? PMR, you
13 mean pain management --

14 A No, physical medicine and rehabilitation --

15 Q Okay. He's board certified in that also, isn't
16 he?

17 A To my knowledge, yes.

18 Q Were you happy with what he was doing there as an
19 employee for you?

20 A Yes, when the patients were there, yes.

21 Q Now, these pads -- you said at some point
22 sometimes he would take a pad home?

23 A Yes.

24 Q And then you said sometimes he'd bring it back
25 the next day?

1 A Sometimes, yes.

2 Q Sometimes he'd forget them?

3 A Yes.

4 Q And you would give him another one, and he'd just
5 say -- he laughed it off or said, you know, I guess I
6 forgot it or it's at home or something?

7 A Yes.

8 Q Okay. Now, he is a physician and he's entitled
9 to have his own prescription pads, isn't he?

10 A Yes.

11 Q Okay. Now, the initial order you made, you
12 actually had prescription pads left when he left the
13 business, didn't you?

14 A Yes.

15 Q What did you do with those?

16 A They remained locked away.

17 Q They remained there throughout the year 2005,
18 while you were involved with Ascensia Pharmacy down -- or
19 up -- was it down the hall or above you?

20 A Down the hall. It was on the same floor.

21 Q Same floor.

22 Now, when did that pharmacy open again, ma'am?

23 A In 2004, maybe mid 2004.

24 Q Well, they were doing the buildout then?

25 A Well, the buildout.

1 Q Were you familiar with the buildout agreement on
2 the -- who was managing what and who was there?

3 A I was familiar with who was there.

4 Q Now, Mr. Johnson, unrelated to you or your
5 mother, Delmon Johnson, do you know him?

6 A Yes, I know who he is.

7 Q Tell me about his role in the development of
8 Ascensia Pharmacy in the 2005 timeframe.

9 A In 2004, I do remember him doing the buildout on
10 the pharmacy and then he stayed -- he worked there.

11 Q Okay. And when Ascensia got up and running, you
12 were faxing prescriptions to them?

13 A I don't recall if we were faxing prescriptions or
14 if the patient took their prescription to the pharmacy.

15 Q Would there be any reason to fax a prescription
16 to them? They're just down the hallway.

17 A There may have been. I don't recall.

18 Q Didn't you tell us on direct that you were
19 concerned about patients shopping and doctor shopping and
20 one of the things you would do is keep the original and
21 fax the script down the hallway?

22 A That is -- that was a concern.

23 Q So you had Dr. Elder's prescription pads and you
24 also had an original prescription issued by Dr. Okose
25 during this timeframe, didn't you?

1 A A prescription for what? To Dr. Okezie?

2 Q Did you have any relationship with Dr. Okose?

3 No, not Okezie.

4 A Oh, Dr. Okose. I don't even know who Dr. Okose
5 is.

6 Q All right. But you did have Elder's prescription
7 pads there after he left?

8 A The ones that were left stayed locked in the
9 cabinet, yes.

10 Q And you did say, I believe, on direct that you
11 actually kept the original prescription pads of other
12 prescriptions, I guess, written by doctors who came in and
13 replaced him. Who would that be, Botto?

14 A We kept -- what? Could you repeat that?

15 MR. BOHLING: May we approach?

16 Objection. May we approach?

17 (Counsel approached the bench and the following
18 proceedings were had:)

19 MR. BOHLING: Counsel is deliberately
20 misstating facts to confuse the jury. He knows Dr. Okose
21 never worked there. It is improper.

22 MR. OSGOOD: I'm testing her memory and
23 trying to find out what happened.

24 MR. BOHLING: He's not ethically --

25 THE COURT: I agree with that.

1 Objection sustained.

2 (The proceedings returned to open court.)

3 Q (BY MR. OSGOOD) Who replaced Dr. Elder as the
4 managing physician?

5 A Dr. Elder was replaced with maybe Dr. Wilkerson.

6 Q Wilkerson. And how did you handle
7 Dr. Wilkerson's prescription pads?

8 A At that time Dr. Wilkerson had a larger
9 prescription. It was typed up. He did not have
10 individual pads.

11 Q Okay. And did you fax those, or did he write
12 them and people left with them?

13 A They were written and then they were faxed to the
14 particular pharmacy that the patient chose.

15 Q So you kept his originals too in the files in the
16 office?

17 A In his chart.

18 Q Okay.

19 MR. OSGOOD: I'm about done, Your Honor.

20 Q (BY MR. OSGOOD) Now, the -- Mr. Solomon came over
21 to the office sometimes, did he not?

22 A Yes.

23 Q To visit?

24 A Yes.

25 Q Visited with you on occasion?

1 A He's come to see us, yes.

2 Q And visited with your mother?

3 A Yes.

4 Q And visited sometimes with Dr. Elder?

5 A Yes.

6 Q He was a personable guy, wasn't he?

7 A Yes.

8 Q Sociable?

9 A Yes.

10 Q Likeable and talkative?

11 A Yes.

12 Q Talked about sports and -- have you heard --
13 probably maybe not to you, but you've heard him talk about
14 sports to Dr. Elder?

15 A I don't recall anything about sports.

16 Q If you don't recall, that's fine.

17 But bottom line is he was a pretty nice guy and
18 pretty sociable?

19 A Yes.

20 Q And he would call a lot of times and just ask how
21 you're doing and how's your mother?

22 A He would call us every now and then, yes.

23 Q And he appeared to be friendly with Dr. Elder,
24 who was your physician on duty?

25 A Yes.

1 Q Now, who did you meet first, Mr. Solomon or Dr.
2 Elder?

3 A Mr. Solomon.

4 Q And then you were referred to Dr. Elder by this
5 Okezie Okezie?

6 A Yes.

7 Q Do you remember the spelling on his name?

8 A Yes.

9 Q Would you help the court reporter with that,
10 please?

11 A It is O-k-e-z-i-e.

12 Q And Okose is O-k-o-s-e. Well, you wouldn't know.
13 You never dealt with him?

14 A Yeah, I don't know.

15 Q They're two different people entirely?

16 A Yes.

17 Q So is he the one that introduced you to Dr.
18 Elder?

19 A Dr. Okezie?

20 Q No, this first Okezie Okezie.

21 A Yes. He introduced us to Dr. Elder.

22 Q They'd done residency together at Baylor, I
23 believe?

24 A Yes.

25 Q And he was a good and competent doctor also,
542

1 wasn't he, the first one, Okezie Okezie?

2 A Yes.

3 Q Did he recommend Dr. Elder to you?

4 A He did, yes.

5 Q And based in part on that recommendation, you
6 hired him; is that right?

7 A Yes.

8 Q You actually had a meeting at Dr. Okezie Okezie's
9 home, didn't you, if you remember?

10 A I don't remember having a meeting at Dr. Okezie's
11 home with Dr. Elder, but I -- Dr. Elder could have been
12 there. I don't remember.

13 Q Now, when was the last time that you actually had
14 any contact with Dr. Elder?

15 A Oh, the last time was when we met at the
16 restaurant.

17 Q And you remember what year that was?

18 A Honestly maybe 2008.

19 Q Okay. And at that time was he driving a
20 different car other than his pickup?

21 A At that time, yes.

22 Q And isn't it a fact that's when he told you about
23 the fire on his truck because you said, What happened to
24 your truck?

25 A I don't remember if that's when he specifically

1 told me or if I asked what happened to your truck.

2 Q He showed up in a different vehicle?

3 A He was in a different vehicle.

4 Q You expected to see his truck?

5 A I don't know if I expected to see his truck.

6 Q Okay. When he worked for you, he was driving an
7 older pickup, wasn't he?

8 A He drove a truck.

9 Q When he was working for you and all this was
10 going on, he lived -- if you know, didn't he live in the
11 same apartment he was in when he went through residency?

12 A I don't know.

13 Q Okay. Again, I don't -- didn't know whether he
14 talked about that or not.

15 You said he was a personal guy to some respects,
16 right?

17 A Yes.

18 Q And quiet?

19 A Dr. Elder?

20 Q Yes, ma'am.

21 A I think he's an outgoing person.

22 Q Okay. Now, where was the fax machine located in
23 your office at?

24 A The fax machine was behind the reception area.

25 Q Okay. And is -- was that a work area with a
544

1 table and maybe a copy machine and a fax machine?

2 A It was an area with a computer, the phone, and a
3 fax machine.

4 Q Okay. Now, did you have landlines into there, or
5 did you rely principally on cell phones?

6 A We had landlines.

7 Q Okay. You remember ever getting any phone calls
8 while you were there or maybe your mother mentioned to you
9 phone calls from The Medicine Shoppe in Kansas City?

10 A I don't remember getting any phone calls from The
11 Medicine Shoppe while I was there.

12 Q Now, who would answer the phone when an incoming
13 call would come in?

14 A We had a medical administrative assistant that
15 answered the phone.

16 Q And if a call were to have come in for Dr. Elder,
17 how would you have handled that call?

18 A She would have taken a message if he was not
19 available.

20 Q Okay. Let's say he's sitting in your office
21 waiting to see a patient or something and is available, is
22 there an intercom system, or would she just get up and go
23 in and say, There's a call for you?

24 A She would probably get up and just let him know
25 that he had a call.

1 Q Was the phone within earshot of where you were
2 sitting?

3 A In the office?

4 Q Yes, ma'am.

5 A Yes, there was a phone in the office.

6 Q Would that be the phone, for example, if she took
7 a call for him, that he would use?

8 A Yes.

9 Q Did you ever hear him on the phone talking to
10 anybody about medicine in Missouri, and prescriptions sent
11 to Missouri or anything in the whole time?

12 A No.

13 Q He ever mention any Medicine Shoppe in Missouri
14 to you?

15 A No.

16 Q He ever suggest to you that he and Mr. Solomon
17 had any kind of arrangement involving prescriptions in
18 Missouri?

19 A No.

20 Q He just came to work, did his job, and left,
21 didn't he?

22 A Yes.

23 MR. OSGOOD: Okay. That's all.

24 Thank you. Just a minute, Your Honor. I need
25 to consult with my client, see if I missed anything.

1 MR. LEWIS: While Mr. Osgood does that,
2 I have a public service announcement, the United States
3 won the World Cup game, one to nothing in the 90th minute.

4 MR. OSGOOD: That's all, Your Honor.

5 MR. LEWIS: Probably the most exciting
6 thing we'll hear today.

7 May I proceed, Your Honor?

8 THE COURT: Yes, please.

9 CROSS-EXAMINATION BY MR. LEWIS:

10 Q Good morning, Ms. Johnson.

11 A Good morning.

12 Q You and I have met before?

13 A Yes.

14 Q And you know that I represent Mr. Solomon?

15 A Yes.

16 Q I have just very few questions. The government
17 and Mr. Osgood have fairly covered the waterfront. First
18 of all, I want to reiterate what I think you made clear,
19 you met -- you and your mother, Ada Johnson, met
20 Mr. Solomon through mutual friends or mutual
21 acquaintances, Rob and Jackie Williams, correct?

22 A Yes.

23 Q And the Williamses run what we might refer to as
24 an adult day care, adult-assisted living facility?

25 A Yes.

1 Q It was through that introduction from the
2 Williamses that you all came to know Mr. Solomon?

3 A Yes.

4 Q And in fairness to you, over time Mr. Solomon
5 became a lot closer friends with your mom than with you?

6 A Yes.

7 Q Okay. You later learned, Ms. Johnson, that
8 Ascensia Nutritional Pharmacy began servicing some of the
9 needs of Jackie and Rob Williams' clinic or their -- what
10 would you call that place?

11 A It was an adult day care.

12 Q Okay. So at some point in time Ascensia began
13 servicing any prescription needs they had?

14 A I don't know.

15 Q Okay. Fair enough.

16 Let's turn to Ascensia and your knowledge of the
17 facility.

18 You were aware that Ascensia was managed by
19 Philip Parker?

20 A Yes.

21 Q And you also were aware that Philip Parker had
22 moved from Dallas to Houston to begin managing that
23 pharmacy?

24 A I was aware he relocated.

25 Q Yes, ma'am. And you were also aware that he and
548

1 his ex-wife had owned several pharmacies previously and
2 contemporaneous with Ascensia?

3 A I knew they had owned a pharmacy in the past.

4 Q At least one?

5 A At least one. He mentioned it.

6 Q You were aware, Ms. Johnson, that Philip Parker
7 was also managing a pharmacy on the east side of Houston
8 while managing Ascensia?

9 A Yes, later on, yes.

10 Q Yes, ma'am.

11 Now, not only was Mr. Parker a pharmacy owner
12 and manager, he was also an attorney, correct?

13 A He did tell us that, yes.

14 Q In fact, if we can -- and, pardon me, because
15 everything's been covered, I'm going to jump around for a
16 few places.

17 The timeframe we're talking about, '04 into
18 early '05, that point in time, while Mr. Parker was
19 running Ascensia Pharmacy, you were aware that Mr. Solomon
20 had a full-time job as a pharmaceutical sales rep?

21 A Yes.

22 Q The daily goings-on at Ascensia, once it got up
23 and running, you would not see Mr. Solomon working there
24 very frequently, would you?

25 A Not in -- no.

1 Q Now, in late '04, you have talked about some
2 meetings, some business proposals, some ideas that South
3 Texas Wellness Center had in conjunction with Ascensia
4 maybe starting a joint venture?

5 A Well, it was with Troy Solomon.

6 Q Okay. I want to talk about that.

7 This discussion -- and let's break this up
8 because I got a little confused.

9 There's an arrangement with Mr. Solomon to
10 become just an investor in South Texas Wellness Center
11 originally, right?

12 A Yes.

13 Q Let's put that aside. I want to talk about the
14 next business venture, if we could.

15 A Yes.

16 Q You all had a meeting. When I say "you all," you
17 and your mother, Ada Johnson --

18 A Yes.

19 Q -- representing South Texas Wellness Center with
20 Philip Parker and Troy Solomon representing Ascensia,
21 correct?

22 A Yes.

23 Q And that meeting took place at an attorney
24 Anthony Van Wart's office?

25 A Yes.

1 Q At this discussion proposal, ideas are shared.
2 You all discuss possible arrangements, correct?

3 A Yes.

4 Q You also reviewed some documents reflecting the
5 business idea or proposal, correct?

6 A Yes.

7 Q Those documents themselves were in fact prepared
8 by Philip Parker, correct?

9 A They were prepared by -- I don't remember who
10 they were prepared by, but there were documents.

11 Q Okay. Let me in fairness to you, let me show you
12 --

13 MR. LEWIS: May I approach, Your Honor?

14 THE COURT: You may.

15 Q (BY MR. LEWIS) Ms. Johnson, in fairness to you, I
16 want you to first look at this and make sure this is you,
17 and then if you would turn to page 29 and check that
18 highlighted portion out. Take your time. Okay.

19 Having an opportunity to look at this, does it
20 help refresh your memory as to who prepared those
21 documents?

22 A Yes.

23 Q And it was Philip Parker?

24 A Yes.

25 Q Okay. At some point in time -- jump to another
551

1 topic, at some point in time once Ascensia gets up and
2 running, South Texas Wellness Center has patients that get
3 their prescriptions filled at Ascensia?

4 A Yes.

5 Q And that's not -- you didn't make them go there
6 or anything like that, it was just an option with some
7 other pharmacies that patients asked?

8 A Correct.

9 Q At South Texas Wellness Center, you all never had
10 any problems with your patients getting their
11 prescriptions filled at Ascensia?

12 A No.

13 Q The government and Mr. Osgood asked you some
14 questions about conversations with either Dr. Elder or
15 Mr. Solomon. I want to talk about that for one second.

16 You never had any discussions with Troy Solomon
17 about doing anything conspiratorial or illegal with
18 prescriptions, did you?

19 A No.

20 Q Never even heard of such, did you?

21 A No.

22 Q From your perspective in the same office suite,
23 did you ever observe Troy Solomon do anything that you
24 thought was criminal related to Ascensia and
25 prescriptions?

1 A No.

2 Q Now, relative to the original -- this is kind of
3 an odd question, but I need to ask it of you because
4 you're a Houstonian familiar with the area.

5 Sugar Land, Texas, you live near Sugar Land?

6 A Yes.

7 Q Is it fair for the ladies and gentlemen of the
8 jury that that's a prominent suburb of Houston?

9 A I guess.

10 Q Well, it's about 10 miles outside the loop?

11 A Yes.

12 Q Okay. And it's a fairly nice, developed
13 community, good place to live, right?

14 A Yes.

15 Q If someone were to compare the location and
16 proximity of Sugar Land to Houston versus Louisiana to
17 Houston, are those way off?

18 A Yes.

19 Q Okay. And I apologize for the obtuse question
20 but it's for foundation later.

21 Thank you.

22 Now, we mentioned Attorney Van Wart at the
23 second business meeting or so -- venture we talked about.
24 You had a business relationship with Mr. Van Wart?

25 A Yes.

1 Q And that was one of he was a PI lawyer, a
2 personal injury lawyer, who might refer clients who were
3 victims of an accident or the like to your clinic for
4 services?

5 A Yes.

6 Q You were also aware that Mr. Van Wart had done
7 some legal work for Ascensia in the past or Troy Solomon?

8 A For Troy Solomon.

9 Q Correct.

10 A Yes.

11 Q You were aware of that, right?

12 A Yes.

13 Q Talking about the -- Mr. Solomon's original
14 investment in South Texas Wellness Center, you all were
15 looking for investors to have the startup capital to cover
16 your operating expenses, correct?

17 A Yes.

18 Q And the way this worked is when you were -- or
19 more principally your mother had bills coming due, things
20 that needed to be paid, you would solicit Mr. Solomon as
21 an investor to help with that capital contribution?

22 A Yes.

23 Q And he was very responsive to your all's need?

24 A Yes.

25 Q And in fact the investments totaled, I think you

1 approximated, \$25,000 to \$30,000 roughly? I'm not trying
2 to pin you to a number, ma'am.

3 A I think so.

4 Q That neighborhood?

5 A I think so.

6 Q And you did not have the opportunity, you or your
7 mother, to finish paying him back for that investment?

8 A I do not recall if we paid him back.

9 Q Fair enough. It might be a fairer question for
10 your mother.

11 But let me ask you this: Irrespective of how
12 much payment or your knowledge of that, to your knowledge,
13 Troy Solomon never hired a lawyer to seek any money back,
14 did he?

15 A No.

16 Q He never demanded any money back from you or your
17 mother?

18 A No.

19 Q He certainly never filed suit against you ladies,
20 did he?

21 A No.

22 Q The prescription pads that we talked about, that
23 was one example of an overhead cost that Mr. Solomon
24 helped defray and also he knew somebody that was a
25 printer, correct?

1 A Yes, he did.

2 Q And those scripts were delivered to South Texas
3 Wellness Center, correct?

4 A They were -- if I recall correctly, they were
5 brought to us by Mr. Solomon.

6 Q And in the --

7 A In a box.

8 Q In the box. You could tell they were a complete
9 box set that he gave to you all, correct?

10 A They were filled in the box.

11 Q Right. The box was full? I think you're making
12 the same point as me. There didn't appear to be any -- a
13 pad or two missing, right?

14 A At the time I don't think so.

15 Q Fair enough.

16 MR. LEWIS: May I have one moment, Your
17 Honor?

18 THE COURT: Yes.

19 MR. LEWIS: Thank you very much, ma'am.

20 Your Honor, I will pass the witness. Have a
21 good trip home.

22 THE WITNESS: Thank you.

23 MR. LEWIS: Yes, ma'am.

24 REDIRECT EXAMINATION BY MR. BOHLING:

25 Q I just have a brief follow-up question.

1 We had talked about some of the practices with
2 regard to the prescription pads that were just asked
3 about.

4 Just to make clear, did -- were medicines ever
5 dispensed by South Texas Wellness Center?

6 A No.

7 Q Okay. So did you ever order medicines of any
8 type for patients, have them delivered back to the clinic,
9 and then delivered to patients?

10 A No.

11 Q So when a patient received a prescription,
12 whether it was original or faxed, the patient had to go to
13 another business, the pharmacy, to pick that up?

14 A Yes.

15 MR. BOHLING: Thank you.

16 That's all I had, Your Honor.

17 MR. OSGOOD: No, Your Honor.

18 THE COURT: Any follow-up, Mr. Lewis?

19 MR. LEWIS: No, sir.

20 Thank you, Your Honor.

21 THE COURT: Thank you.

22 (Witness excused.)

23 MR. BOHLING: Your Honor, at this time
24 the government would move into evidence the following
25 exhibits, Exhibit 144 -- the first exhibit in this series

1 is 144 and the last exhibit is 259. So it would be
2 Exhibits 144 through 259, inclusive.

3 Then the next set of exhibits would begin at
4 Exhibit No. 984, and it would go through Exhibit 1,041.
5 So 984 through 1,041, inclusive.

6 THE COURT: No objections?

7 MR. OSGOOD: No objection.

8 Could I have the first series again, please.

9 THE COURT: 144 through 259.

10 MR. OSGOOD: Through 159?

11 THE COURT: 259.

12 MR. BOHLING: At this time, Your Honor,
13 the United States would call Quan Pham.

14 QUAN PHAM, being duly sworn, testified:

15 DIRECT EXAMINATION BY MR. BOHLING:

16 Q Good morning, ma'am.

17 A Good morning.

18 Q In a loud and clear voice, would you please state
19 your name and spell both your first and last name.

20 A My name is Quan Pham, Q-u-a-n, P-h-a-m.

21 Q What city do you live in?

22 A I live in Pearland, Texas.

23 Q Can you spell that city for us?

24 A P-e-a-r-l-a-n-d, Pearland.

25 Q Pearland. Thank you.

1 How old are you, ma'am?

2 A I'm 57.

3 Q What is your educational background?

4 A I have a Bachelor's Degree in Pharmacy.

5 Q Where did you get that degree?

6 A In University of Houston, Texas.

7 Q What year did you receive your degree?

8 A In 1991.

9 Q And what is your profession?

10 A I am a pharmacist.

11 Q Are you employed right now?

12 A Yes, sir.

13 Q Where do you work?

14 A I'm working at Memorial Hermann Hospital in

15 Houston, Texas.

16 Q What's your job title there?

17 A Staff pharmacist.

18 Q How long have you been with Memorial?

19 A I've been with Memorial Hermann since 2005.

20 Q I'd like to direct your attention back to the

21 year 2004. Do you recall that at that time you became

22 employed with the Ascensia Nutritional Pharmacy?

23 A Yes, I do.

24 Q And how did you learn about that job opening?

25 A I read on the newspaper -- on the internet on

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1 careerjob.com.

2 Q Did you submit an application?

3 A Yes, I did.

4 Q And after you submitted that application, did
5 anybody contact you?

6 A They did.

7 Q Who contacted you?

8 A We have -- it was Philip Parker.

9 Q Do you remember approximately when he first
10 talked to you about this opening?

11 A I think it was back in June of 2004.

12 Q Did you meet personally with Mr. Parker?

13 A Yes, I did.

14 Q Where did you meet, if you remember?

15 A We have a -- we met -- I met him in a restaurant,
16 Papa John's -- Pappadeaux Restaurant.

17 Q And was this in June of 2004, this meeting, or --

18 A Yes.

19 Q -- was it later?

20 Was anybody else present besides you and
21 Mr. Parker?

22 A We have Mr. Solomon with Philip.

23 Q Do you know Mr. Solomon's first name?

24 A His first name we call him Troy Solomon.

25 Q And do you see Mr. Solomon here in the courtroom
560

1 today?

2 A Yes, I do. That's (indicated) him.

3 Q Thank you.

4 And what was discussed at this meeting at
5 Pappadeaux Restaurant?

6 A We discussed about the job, that they need a
7 full-time pharmacist, and they wanted to open a door-
8 closed pharmacy. So that's what I need, so I -- you know,
9 I come to talk to them about it.

10 Q You said -- you used the phrase "a door-closed
11 pharmacy." Can you explain that for us?

12 A The door-closed pharmacy is the door -- the
13 pharmacy that, you know, normally they do the mail orders
14 or they do the -- they have the prescription that either
15 faxed to the pharmacy from the doctor's office or they
16 have the -- and we just fill the prescription and then we
17 deliver it to the pharmacy. So we don't have the patient
18 -- the customer come to the pharmacy. All we can do the
19 mail orders like for the inhalers, for insulin orders,
20 things like that.

21 Q Okay. Now, after this meeting was over, when did
22 you next hear from either Mr. Parker or Mr. Solomon?

23 A As I remember, it's somewhere in the -- somewhere
24 in June 2004.

25 Q Okay. And do you remember who contacted you?

1 A Mr. Parker.

2 Q Okay. And do you remember what you discussed on
3 that occasion?

4 A We discussed more about, you know, the plan for
5 the pharmacy, and we talked about the -- you know, what we
6 have to do to open the pharmacy, like, the application and
7 the location. And, you know, about the -- how the --
8 things needed for a pharmacy.

9 Q Did you provide any assistance after that in
10 helping to complete any of those tasks in order to open
11 the pharmacy?

12 A I did because I helped them to review application
13 because they have to have a pharmacist in charge to apply
14 for the pharmacy with the state board pharmacy. So I
15 helped them with the paperwork.

16 Q So you allowed them to use your name as the
17 pharmacist in charge on the opening paperwork of the
18 pharmacy?

19 A Yes, sir.

20 Q Now, at some point did you actually start working
21 for the business once it opened?

22 A I really start working for the pharmacy in the
23 middle of December of 2004.

24 Q And do you know whether that is when the pharmacy
25 opened its doors first for business?

1 A It's on a -- on 6/10 in Houston, Texas.

2 Q Okay. And I probably wasn't very clear with my
3 question.

4 Was middle of December 2004, when Ascensia
5 Nutritional Pharmacy actually opened for business and
6 started?

7 A Yes, sir.

8 Q And actually became an open business?

9 A Yes, sir.

10 Q Okay. And you were the first pharmacist at that
11 business?

12 A Yes.

13 Q Now, once you started working at the pharmacy,
14 first of all, can you tell us who else was working at the
15 pharmacy at the time that you started there?

16 A At that time it's just me and we have Delmon.

17 Q Do you know Delmon's last name?

18 A Delmon -- I forgot. It's been too long.

19 Q That's okay. And you were the pharmacist in
20 charge?

21 A Yes, sir.

22 Q And what was Delmon's job?

23 A Delmon is -- was a -- the guard. He was
24 responsible for, you know, open and close and, you know,
25 do whatever I need him to do in the pharmacy.

1 Q And just so we're clear, you said guard,
2 g-u-a-r-d?

3 A G-u-a-r-d, that's right.

4 Q Thank you. Would anybody else be present at the
5 pharmacy during day-to-day operations besides you and
6 Delmon?

7 A I -- we have Mr. Parker and Mr. Solomon and the
8 -- this one lady that she come for the -- I think she do
9 the paperwork on the computer for Parker and -- for
10 Mr. Parker and Mr. Solomon, and that's it for the first --
11 when we first opening. That's all.

12 Q Did you have an understanding about who owned the
13 pharmacy?

14 A Yes.

15 Q What was your understanding about who owned the
16 pharmacy?

17 A We have Mr. Parker and Mr. Solomon, you know,
18 co-owners of the pharmacy.

19 Q Okay. Now, how -- during the day, how much would
20 Mr. Solomon be there typically, if you recall?

21 A He just be there for a short period of time. He
22 just was -- come in and stay, like, for an hour or so.

23 Q Do you remember if that was at a particular time
24 of day?

25 A I don't remember.

1 Q How about Mr. Parker, how often would he be
2 there?

3 A Mr. Parker, he normally he -- we don't have the
4 exact time he stop by. He just in and out any time. I
5 don't remember exactly when.

6 Q Now, did you have particular types of
7 prescriptions that you filled?

8 A We have some prescription for, like, diet pills
9 and some prescription for the hormone replacement, and
10 also we have the prescription for pain.

11 Q Okay. So there were prescriptions for pain
12 management drugs?

13 A Yes, sir.

14 Q And do you recall a particular doctor who wrote
15 quite a few of those prescriptions?

16 A Dr. Okose.

17 Q Do you remember Dr. Okose's first name?

18 A I'm not sure. It's William or -- I don't
19 remember.

20 Q And can you describe the prescriptions -- first
21 of all, were the prescriptions from Dr. Okose brought in
22 by patients? Did patients actually walk those
23 prescriptions into the pharmacy?

24 A No. We have -- Mr. Parker brought the
25 prescriptions back to the pharmacy. I don't -- I didn't

1 have patients. I didn't see patients at all.

2 Q Did anyone besides Mr. Parker also bring
3 prescriptions back to the pharmacy from Dr. Okose?

4 A I just -- I recall that just Mr. Parker, and
5 sometimes -- I don't know who because you know when I come
6 in in the morning, the prescriptions were there already,
7 and, you know, Delmon would show it to me. So I don't
8 exactly know.

9 Q Okay. And you described that there would be
10 prescriptions there first thing in the morning.

11 Would there be one prescription or more than one
12 prescription?

13 A I have more than one. I have like 150
14 prescriptions.

15 Q And did these prescription -- did the actual
16 prescription, original prescriptions, contain any
17 preprinted writing on them?

18 A They have -- it's a preprinted prescription.
19 It's the -- contain hydrocodone and Soma. So it's the
20 preprinted prescription.

21 Q Okay.

22 MR. BOHLING: Could we show Government's
23 Exhibit 144, please.

24 Sorry. That's not the one I wanted.

25 Q (BY MR. BOHLING) Well, in any case were all the
566

1 prescriptions for the same drugs?

2 A Yes, they were for the same drug.

3 Q Okay. Those drugs were, as you've described to
4 us, hydrocodone?

5 A Hydrocodone and Soma.

6 Q Okay. And how long would it take you to fill
7 that many prescriptions for those drugs?

8 A It take me -- it took me more than -- like if
9 they gave me the prescription the day -- today, it take me
10 like one day or more to fill all the prescriptions.

11 Q Okay. And do patients come to pick up these
12 prescriptions in the pharmacy?

13 A No.

14 Q What happened to the prescriptions at the end of
15 the day?

16 A After I fill the prescriptions and we have
17 everything back in the prescription bag with the
18 information for the patients, then they pack them in a big
19 box. And after that, you know, I don't know where they go
20 to. They told me that they deliver it to the doctor's
21 office, and from the doctor's office, they will dispense
22 to the patient.

23 Q Who told you that these would be delivered to the
24 doctor's office?

25 A Mr. Parker and Mr. Solomon. They say the same
567

1 thing.

2 Q And who actually packed the bags of prescriptions
3 into the boxes as you described?

4 A It's -- it was Delmon and Mr. Solomon and also --
5 I think that's it.

6 Q Did you have any assistance in preparing these
7 prescriptions at some point?

8 A After we start working with the prescriptions, I
9 have -- they hire a pharmacy technician to help me out,
10 and they also have a lady from -- I think from the next
11 door office came to help me with the -- putting the
12 patient information into the computer system.

13 Q Can you describe the box into which these
14 prescriptions were placed, its approximate size and
15 appearance?

16 A It was a big box, the carton with box for
17 shipping, the brown color.

18 Q Okay. And do you recall -- did you ever
19 personally see who took the box at the end of the day once
20 it was filled and completed?

21 A I recall Troy did it and also Delmon.

22 Q Did you ever contact Dr. Okose's office with any
23 questions about these prescriptions?

24 A I did.

25 Q Was that on more than one occasion?

1 A Yes, sir.

2 Q Can you tell us about the first time that you
3 contacted Dr. Okose's office with questions?

4 A I called Dr. Okose's office because on the
5 prescription I need some information about the patient
6 like the patient allergic to anything, and -- for some
7 prescriptions they don't have the age of the patient on
8 it.

9 Q What kind of information were you able to receive
10 in response to your inquiries?

11 A Could you say that again?

12 Q When you asked them these questions about the
13 patients and allergy information, what was the response
14 from Dr. Okose's office?

15 A When I call, he say that the -- when I call and
16 ask about the allergy of the patient, he told me that they
17 have a green spot on the prescription. But I said -- I
18 told him that I don't see any green spot, so he told me
19 that, okay, they will -- if I don't see the green spot,
20 that means the patient don't have allergy.

21 Q And who is it that you talked to on the phone?

22 A I talked to -- when I call, I guess somebody pick
23 up the phone, but then after that they transfer me to Dr.
24 Okose.

25 Q So you talked to Dr. Okose directly?

1 A Yes, sir.

2 Q And do you recall calling him about an issue
3 having to do with a Soma prescription?

4 A I did. I call him about a Soma because the
5 patient is more than 65-year-old, and Soma is not good for
6 the -- for people over 65. It have some side effect for
7 the patient. So I call. And after that they cross out
8 the Soma on the prescription.

9 Q So after you called, the Soma portion of the
10 prescription started to be crossed out?

11 A Yes, sir.

12 Q Now, at any time did Mr. Solomon or Mr. Parker
13 ever talk to you about your phone calls to Dr. Okose?

14 A Just one time Mr. Parker told me that Dr. Okose
15 was upset because I keep calling their office almost every
16 day, and Mr. Parker say he don't want to lose the business
17 with Dr. Okose. So, you know, he told me that I have any
18 question, I can talk to -- ask him or Mr. Solomon, let
19 them call Dr. Okose.

20 Q Okay. Now, you talked about getting this stack
21 of prescriptions. Would that be every single day that you
22 would get a stack of prescriptions from Dr. Okose?

23 A It's not every single day. You know, just, you
24 know, after I finish with one stack of prescriptions and
25 they deliver it, they will bring back another stack of

1 prescriptions. Just depend on how long does it take me.

2 Q So if it took you more than one day to complete
3 the first stack, then you wouldn't get the second stack
4 until you were -- until that first stack was completed?

5 A Yes, sir.

6 Q Were there about the same number of prescriptions
7 in each stack?

8 A It's different. The first time they brought it,
9 152 prescriptions. The second time I think it's less than
10 that, and the -- I think one time he brought back like 200
11 prescriptions. It's not the same number.

12 Q At some point did you begin to question in your
13 own mind about the legitimacy of what was happening?

14 A I start questioning myself about it from the
15 beginning because as a pharmacist, I don't feel
16 comfortable, you know, filling prescription without seeing
17 my patients and, you know, without talking to them or
18 without asking them if the medication work for them, help
19 them.

20 **So I need to see the patient or at least I need**
21 **to have a chance to call them. I don't have the phone**
22 **number on the prescription.**

23 Q For the patients?

24 A For the patients, right.

25 Q Did you ever try to contact a patient yourself to

1 -- by your own means?

2 A I did. But, you know, most of that phone number
3 -- I didn't have the phone number of the patients. And I
4 called up Okose's office to write it down, but they say
5 that that's -- his clinic is a pain management clinic and
6 is very sensitive cases because he don't want me to call
7 the patients. Sometimes the patient have chronic pain
8 because of the cancer or a car accident or something like
9 that, and they don't want people to call them and talk
10 about it.

11 Q So you were not able to get the phone numbers
12 from Dr. Okose's clinic?

13 A I did go to the phone book and find out a few
14 numbers, and I did call them.

15 Q Okay. And when you talked to the patients, what
16 -- how many patients do you think you called?

17 A I called three patients. But I actually could
18 talk to only one.

19 Q And what did that patient tell you?

20 A They just say, yes. They didn't say anything but
21 just -- I asked them, Did you receive the Vicodin and Soma
22 from Ascensia Pharmacy? And they said, Yes. I say, Does
23 that help you, relieve your pain? And they say, Yes.

24 Q Okay. Did you raise your concerns with
25 Mr. Parker?

1 A I did. I told Mr. Parker that, you know, as a
2 pharmacist, I -- I don't think that what we doing is
3 right.

4 Q Did he make any response to you?

5 A He say that the -- he being the -- he was the
6 owner of the five pharmacies and he know about -- he knew
7 everything about the pharmacy law, and he say that it's
8 okay for us to do it, there's nothing wrong with it.

9 Q Did you ever discuss your concerns with
10 Mr. Solomon?

11 A I did.

12 Q Okay. And what did Mr. Solomon say in response?

13 A Mr. Solomon say the same thing that, you know,
14 what we do is right. We have the patient, we have the
15 doctor's in good, you know, stature. We have the patient.
16 We have the prescription with the name of the doctors on
17 it and he signed the prescription. So it's okay, nothing
18 wrong about it.

19 Q Did you continue your employment with Ascensia
20 Nutritional Pharmacy past January 2005?

21 A I continue working over there until January 21st,
22 2005.

23 Q And if we could put up Exhibit 984.

24 Ma'am, do you recognize that letter that's in
25 front of you on the screen?

1 A Yes. This is my resignation letter.

2 Q The first line says, "Due to a serious health
3 problem and confusions, I would like to resign my position
4 as pharmacist in charge at Ascensia."

5 Was that accurate? Was that the actual reason
6 you wanted to resign?

7 A No, it was not. It was just the reason I put on
8 my paper.

9 Q What was the reason you wanted to resign from
10 Ascensia?

11 A The reason I wanted to resign because I feel
12 like, you know, what I'm doing is -- was wrong. I feel
13 very uncomfortable by, you know, every day I send like
14 20,000 of Vicodin and few thousand of Soma to somewhere
15 that I don't exactly know. As a pharmacist, I think it's
16 wrong.

17 Q So when you filled one of those bundles, that
18 would be as many as 20,000 separate dosage units of
19 Vicodin?

20 A Yes. Because, like, we have 50 prescriptions,
21 and we have 120 -- 120 Vicodin per prescription. It would
22 be a lot.

23 Q And if we can please show 985, the next exhibit.

24 What does this document reflect, ma'am?

25 A This document I send to the state board pharmacy.
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1 Just for the pharmacy law when you resign from one
2 pharmacy, you have to send them the information that you
3 no longer working for the pharmacy.

4 Q So this reflects your change of employment?

5 A Yes, sir.

6 Q Okay. If we could show Exhibit 987.

7 Do you recognize that area?

8 A Yes, sir.

9 Q What is it?

10 A This is the -- in front of the pharmacy.

11 Q That's the Ascensia Nutritional Pharmacy?

12 A Ascensia Nutritional.

13 Q Okay. And Exhibit 990, please.

14 Do you recognize that area?

15 A No.

16 Q Okay. If we could do Exhibit 999.

17 What are we seeing there, ma'am?

18 A We see the hydrocodone and acetaminophen, the
19 bottle of hydrocodone and acetaminophen.

20 Q And is this the -- can you describe to us is this
21 the bottle in its wholesale form or as it would come into
22 the pharmacy?

23 A Yes, sir.

24 Q Okay. I guess what I'm asking is, would you --
25 it says there -- I think it says right there there are 500

1 tablets in that particular bottle?

2 A Yes, sir.

3 Q So what would you do with this bottle in relation
4 to a prescription that you might receive?

5 A We have to count the number of tablets and put in
6 the prescription bottle.

7 Q So you would take the medication out of these
8 larger bottles, count it out, and then put it into a
9 smaller prescription bottle?

10 A Yes, sir.

11 Q Okay.

12 MR. BOHLING: Just a moment, ma'am.

13 That's all the questions I have.

14 Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. LEWIS:

16 Q Good morning, ma'am.

17 A Good morning.

18 Q My name is Chip Lewis. I represent Mr. Solomon.

19 A Yes, sir.

20 Q I'm going to ask you just a few questions,
21 Mrs. Pham. If there's anything you don't understand,
22 please just tell me to repeat my question, and I'll make
23 sure you and I are on the same page.

24 A Yes, sir.

25 Q I first want to talk to you about the meeting you
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1 described. You answer an ad in the paper, correct?

2 A Internet.

3 Q Okay. Posted online, correct?

4 A Yes, sir.

5 Q And you called the number that was listed?

6 A Yes, sir.

7 Q And got Philip Parker?

8 A Yes, sir.

9 Q You made arrangements to meet Mr. Parker,
10 correct?

11 A Yes, sir.

12 Q And that meeting was at the Pappadeaux Restaurant
13 in Houston?

14 A Yes, sir.

15 Q Originally at that meeting it was just you and
16 Mr. Parker as Mr. Solomon had to join you later, correct?
17 He was late to the meeting, in other words?

18 A Yes, sir.

19 Q And you understood he was coming from work and
20 that's why he was late?

21 A I don't -- I didn't remember that.

22 Q Fair enough.

23 You knew that Mr. Solomon at this time was
24 working as a pharmaceutical sales representative, correct?

25 A Yes, sir.

1 Q Now, in relation to your job as the pharmacist in
2 charge, you had to do a lot of things, correct?

3 A Yes, sir.

4 Q And Mr. Parker assisted you with those things,
5 correct?

6 For instance, let me break it down. Ordering
7 drugs, the stock, was done by Mr. Parker, correct?

8 A Yes, sir.

9 Q The pricing was discussed with Mr. Parker,
10 correct?

11 A Yes, sir.

12 Q The computer systems and et cetera were set up by
13 Mr. Parker, correct?

14 A Yes, sir.

15 Q And you were aware -- you could tell as a very
16 experienced pharmacist yourself that Parker knew the
17 business, correct?

18 A Yes, sir.

19 Q And in fact you knew -- you'd learned that he
20 owned five other pharmacies, correct?

21 A Yes, sir.

22 Q It was apparent to you -- and to help you out,
23 does Delmon Johnson ring a bell as to who Delmon was,
24 Delmon Johnson?

25 A Yes, sir.

1 Q You were -- observed Mr. Johnson and Mr. Parker
2 interact, correct, Delmon?

3 A Yes, sir.

4 Q And it was clear they were friends?

5 A Yes, sir.

6 Q They had a prior relationship as friends?

7 A Yes, sir.

8 Q Now, once you get hired on at Ascensia, let's
9 talk about the day-to-day operations, okay?

10 A Yes, sir.

11 Q In 2004, okay?

12 A Yes, sir.

13 Q Mr. Johnson was there all the time, correct?

14 A Yes, sir.

15 Q Mr. Parker, I believe you said, was there many
16 different times during the day, correct? It was kind of
17 random when Mr. Parker would be there, correct?

18 A Yes, sir.

19 Q Now, Mr. Solomon was much less frequent. He
20 would come by from time to time for an hour or so and
21 leave, correct?

22 A Yes, sir.

23 Q The prescriptions that were delivered to the
24 pharmacy, those prescriptions were bought by -- brought to
25 the pharmacy by Mr. Parker and Mr. Johnson, correct?

1 A Not all of them because I -- as I say, that, you
2 know --

3 Q I understand. The ones that you saw that weren't
4 already there were brought by Parker or Delmon Johnson,
5 correct?

6 A The one that's already there, I really don't
7 know.

8 Q I'm sorry. That's my fault.

9 A Oh.

10 Q There were some prescriptions that would be there
11 in the morning when you got there, right?

12 A Yes, sir.

13 Q You have no idea who brought those because you
14 weren't there?

15 A Yes, sir.

16 Q Let's talk about the ones that actually came in
17 while you're there. Those would have been brought by
18 Mr. Parker or Delmon Johnson, correct?

19 A Yes, sir.

20 Q Now, let's turn your attention to you filled the
21 prescriptions, they're then boxed up, and delivered to the
22 doctor's office or to the patients, correct?

23 A I fill the prescription, but the box -- box it up
24 and deliver it, I don't --

25 Q You didn't do that, right?

1 A Yes.

2 Q The boxing of the prescriptions that you filled
3 was done by Delmon Johnson, correct?

4 A It's by Delmon and also by Mr. Solomon.

5 Q Let me stop you there.

6 MR. LEWIS: Your Honor, may I approach
7 the witness?

8 THE COURT: You may.

9 Q (BY MR. LEWIS) Ms. Pham, in fairness to you,
10 these details are several years ago?

11 A Yes, sir.

12 Q Since the time of the event, you have met with
13 agents for the government a couple of times, correct?

14 A Yes, sir.

15 Q The last time would have been in November of
16 2008, November 5th, 2008, at 919 Milam in Houston, Texas,
17 the U.S. Attorney's Office?

18 A The last time was on --

19 Q Let me let you look at this. Read that under the
20 heading of "synopsis" and see if that helps orient you to
21 the meeting I'm talking about. Okay. Do you remember
22 this meeting?

23 A Yes, sir.

24 Q Okay. I'm going to turn your attention --

25 MR. LEWIS: As I said, Mr. Bohling.
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1 Q (BY MR. LEWIS) -- to the second page and have you
2 read here at paragraph -- where you see my finger is, "The
3 bags were." Will you read those two sentences, one, two,
4 three, just the remainder of that paragraph beginning at
5 "the bags" to yourself silently, Ms. Pham.

6 A (Witness complied.)

7 Q Now, having had a chance to read that, in
8 fairness to you, in November of 2008, you stated to the
9 government agents that Mr. Johnson would box up the
10 prescriptions that you had filled, correct?

11 A Yes, sir.

12 Q No mention of Mr. Solomon, correct?

13 A But Mr. Solomon was there.

14 MR. LEWIS: Objection, Your Honor,
15 nonresponsive.

16 MR. BOHLING: I object to the objection.
17 She gets to answer the question.

18 THE COURT: The question was pertaining
19 to the report, I think.

20 MR. LEWIS: Yes, sir. It was a
21 yes-or-no question.

22 THE COURT: Go ahead.

23 A Yes.

24 Q (BY MR. LEWIS) Thank you.

25 And then Mr. Johnson after he had packed the
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1 boxes would take them out of the pharmacy, correct?

2 A Yes, sir.

3 Q Now, as you have testified, you got suspicious
4 about these Okose prescriptions, they bothered you,
5 correct?

6 A Yes, sir.

7 Q And to ally or to address your concerns, you
8 tried to contact some of the patients, correct?

9 A Yes, sir.

10 Q And as you told the ladies and gentlemen of the
11 jury, the patients that you were able to get a hold of
12 verified, yes, in fact they had received their
13 prescriptions from Ascensia as expected, correct?

14 A Yes, sir.

15 Q You understood one of Mr. Delmon Johnson's
16 functions was to be the driver for Ascensia, right, drive
17 the car?

18 A Yes, sir.

19 Q And in driving the car, he would take the
20 prescriptions and deliver them to the patients, correct?

21 A Yes, sir.

22 Q The responsibilities for ordering the supply, the
23 drugs for the pharmacy, was done by Mr. Parker, correct?

24 A Yes, sir.

25 Q And when those drugs came in from the wholesaler,
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1 Mr. Johnson would unpack the boxes and stock the shelves,
2 correct, Delmon?

3 A For that question, I was the one who unpack and
4 put it on the shelf.

5 Q Did Delmon Johnson help you?

6 A Yes, he did.

7 Q Fair enough. At one point in time in your
8 employment there you had a question about the pricing of
9 the pain medication, correct?

10 A Yes, sir.

11 Q And you took that concern to Mr. Parker, didn't
12 you?

13 A Yes, sir.

14 Q During your time at Ascensia, you never received
15 any prefilled vials, did you; for instance, a prescription
16 bottle that was already filled? That didn't happen, did
17 it?

18 A No, sir.

19 Q While you were at Ascensia, there would be FedEx
20 deliveries from time to time, correct?

21 A Yes, sir.

22 Q And Mr. Delmon Johnson would pick up those FedEx
23 boxes, correct?

24 A If it's for the pharmacy.

25 Q Correct.

1 A Yes, for the pharmacy.

2 Q When you became concerned about the Okose
3 prescriptions and you questioned -- you called Dr. Okose
4 to actually speak to him about it, correct?

5 A Yes, sir.

6 Q After that discussion, Mr. Parker came to you and
7 confronted you about calling Dr. Okose, correct?

8 A Yes, sir.

9 Q He didn't want you calling Okose anymore, did he?

10 A He didn't.

11 Q When you had this discussion with Mr. Solomon
12 about your concerns, he told you that we must rely on the
13 doctors, the prescriptions are signed, they're valid on
14 their face, correct?

15 A Yes, sir.

16 MR. LEWIS: Can I have one moment, Your
17 Honor?

18 THE COURT: You may.

19 Q (BY MR. LEWIS) Last question, Ms. Pham. In
20 fairness to you related to my last question about
21 Mr. Solomon talking with you and you all having to rely on
22 the doctors that they were doing their job correctly, that
23 was something you weren't comfortable with, correct?

24 A No, sir.

25 Q I might have put a double negative in.

1 Were you comfortable with that?

2 A With the prescription?

3 Q With having to rely on the good faith that the
4 doctors were conforming to the law?

5 A No, sir.

6 MR. LEWIS: Thank you, ma'am.

7 Your Honor, I pass the witness.

8 CROSS-EXAMINATION BY MR. OSGOOD:

9 Q How you doing, ma'am?

10 A Doing good.

11 Q My name is John Osgood. I represent
12 Dr. Christopher Elder. Have you ever met Dr. Elder?

13 A No, sir.

14 Q You in fact filled a prescription for him while
15 you were at --

16 A Yes, I did. I have a few prescriptions for the
17 diet pills and for his patient -- and the hormone
18 replacement for his patient.

19 Q And that was what, maybe Bontril, would that --
20 if you remember. I know there's several different kinds.

21 A Yes, sir.

22 Q Is that an appetite suppressant of some kind?

23 A Yes, sir.

24 Q And that's the only prescription you ever got
25 from him, as far as you remember?

1 A Yes, sir.

2 Q And the other one was what, I guess -- I thought
3 there was only one. There was two you said, Bontril, and
4 --

5 A Bontril and some -- I can't remember.

6 Q Did a patient bring that script in?

7 A I couldn't remember that, if the patient brought
8 it in or --

9 Q You knew he was on the same floor?

10 A Yes. He was on the --

11 Q Working down the hallway?

12 A I don't -- I didn't know exactly, but I knew
13 that, you know, he call -- not he call, but the -- I do
14 remember either Troy or Philip told me to order those
15 medications for Dr. Elder's patients.

16 Q So Dr. Elder -- someone told you that Dr. Elder
17 was going to be --

18 A To write prescription for those diet pills.

19 Q Are those controlled substances?

20 A It was controlled substances.

21 Q They're, what, amphetamine I think is the main
22 ingredient?

23 A Right. It's the derivative of amphetamine for --
24 to suppress the appetites.

25 Q Commonly referred to as diet pills, I think?

1 A We call diet pills.

2 Q Call them diet pills. Was there anything about
3 that that -- I know you've talked about the concern about
4 the other thing. Was there anything about that that was
5 irregular or caused you concern?

6 A No, not about that.

7 Q Okay. And that is -- it was a pain management
8 and a weight clinic down the hallway, wasn't it?

9 A Yes, sir.

10 MR. OSGOOD: Okay. Thank you, ma'am.

11 REDIRECT EXAMINATION BY MR. BOHLING:

12 Q Ma'am, I'd like to return your attention -- we
13 were talking about the boxes that were filled at the end
14 of the day with the Okose prescriptions.

15 A Yes, sir.

16 Q And you did say that Mr. Johnson would sometimes
17 take those. Did Mr. Solomon ever also take those boxes?

18 A I remember on that Saturday when I have to come
19 in and fill those prescriptions, Mr. Solomon was the one
20 who pick up the box.

21 Q So you had enough prescriptions at one time that
22 you had to come in on the weekend to finish that stack?

23 A Yes, sir.

24 Q Okay. And on that occasion Mr. Solomon took the
25 box?

1 A Yes, sir.

2 Q Okay. Now, if -- correct me if I'm wrong, but I
3 believe you actually managed to speak to just one patient
4 from the Okose prescriptions, personally speak to them?

5 A I did personally -- personally spoke to them,
6 but, you know, I'm not sure about their condition because
7 it seemed like, you know, they just -- they sleeping.
8 They not totally awake, so whatever I asked --

9 THE COURT: I don't think her response
10 is responsive to your question. Maybe you should state
11 the question again.

12 MR. BOHLING: Okay.

13 Q (BY MR. BOHLING) Just to start, there was only
14 one patient that you spoke to?

15 MR. LEWIS: Objection, Your Honor;
16 leading and asked and answered.

17 THE COURT: I asked him to repeat the
18 question.

19 MR. LEWIS: I'm sorry, Your Honor. Just
20 objecting to Mr. Bohling, not the court.

21 Q (BY MR. BOHLING) I just want to make sure I'm
22 clear that how many patients -- of the Okose patients that
23 you attempted to contact, how many did you actually get to
24 talk to personally?

25 A I actually talked to one patient.

1 Q Okay. And then you were telling us you had some
2 concern about that patient's mental state when you spoke
3 to them?

4 A Yes, sir.

5 Q And you did tell us that they told you that they
6 had received their prescription?

7 A Yes. They just say yes for all the questions I
8 ask.

9 Q Okay. Did you ask them, just asking you whether
10 you asked them whether they received their prescription
11 from Ascensia or from a different pharmacy?

12 A I did ask them did you receive a prescription
13 from Ascensia Nutritional Pharmacy.

14 Q Okay. And they said they received their
15 prescription?

16 A Yeah, they said yes.

17 MR. BOHLING: Thank you. That's all I
18 have.

19 MR. OSGOOD: Nothing, Your Honor.

20 MR. LEWIS: I have one thing.

21 May I approach the witness, Your Honor?

22 THE COURT: You may.

23 RE CROSS-EXAMINATION BY MR. LEWIS:

24 Q Ma'am, I'm going to show you a report of an
25 interview that's dated October 25th, 2006. Do you recall
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1 meeting with investigators for the government back in
2 2006?

3 A Yes, sir.

4 Q I'm going to refer your attention to paragraph 5
5 of this document, and I'm going to highlight this to make
6 this easier on you. Single spaced is kind of difficult.

7 Can you read that highlighted section to
8 yourself?

9 A (Witness complied.)

10 Q Okay.

11 A Yes, sir.

12 Q It is in fact true, Mrs. Pham, that you disclosed
13 to the agents for the government that you had contacted
14 three patients by telephone, correct?

15 A I called three patients by telephone, but, you
16 know, only one that I can really talk to. The other two
17 that's the family of somebody, an older patient.

18 Q Fair enough. Would you read the highlighted
19 section then for fairness for the ladies and gentlemen of
20 the jury.

21 A Okay.

22 Q Read it out loud, please. I'll read it and make
23 sure -- if I read anything incorrectly, you tell me, okay?

24 MR. BOHLING: Can we come to the bench,
25 Your Honor?

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. BOHLING: I don't think there's any
4 foundation laid for her reading this as impeachment. This
5 is not her report.

6 MR. LEWIS: We've used the report to
7 refresh her memory as if it was a rendition. What's good
8 for the goose is good for the gander.

9 THE COURT: It has been used to refresh
10 her memory. I think he's right.

11 MR. LEWIS: May I read it, Your Honor?

12 THE COURT: Yes.

13 (The proceedings returned to open court.)

14 MR. LEWIS: May I approach the witness,
15 Your Honor?

16 THE COURT: Yes.

17 Q (BY MR. LEWIS) Ma'am, referring you back to that
18 statement, does that refresh your memory as to how many
19 patients you contacted?

20 A I remember I can find three phone numbers out of
21 few hundred patients.

22 Q And you did that by using the phone book
23 yourself?

24 A By using the phone book by myself and then I call
25 three members. But actually, you know, I have only one

1 people, you know, really talk to me.

2 Q Okay. But in the report it reflects that three
3 people confirmed receipt of the scripts, correct?

4 A That's on the -- yeah, on the report.

5 Q Thank you, ma'am.

6 You spoke to the ladies and gentlemen of the
7 jury about a Saturday. That was the only Saturday that
8 you ever worked at Ascensia, correct?

9 A Yes, sir.

10 Q And so it was a very unique occasion, correct?

11 A Yes, sir.

12 Q And being it was a Saturday, you didn't have
13 child care, you had to bring your son with you, correct?

14 A Yes, sir.

15 Q And Mr. Solomon agreed to come up to the pharmacy
16 and assist you that day, correct?

17 A Yes, sir.

18 Q And on that day, after assisting you when you all
19 had filled the prescriptions, he took the box, correct?

20 A Yes, sir.

21 MR. LEWIS: Thank you, ma'am.

22 Nothing further, Your Honor.

23 MR. OSGOOD: I don't have anything, Your
24 Honor.

25 MR. BOHLING: Nothing further.

1 THE COURT: Thank you. You may step
2 down.

3 (Witness excused.)

4 THE COURT: Okay. We'll take our lunch
5 recess at this time. I'll ask, as I have before, that you
6 not discuss the case among yourselves or with others or
7 allow anyone to discuss it in your presence. We'll break
8 until about 20 till.

9 Thank you.

10 (A recess was taken.)

11 (The following proceedings were had out of the
12 presence of the jury:)

13 MR. BOHLING: I did have one matter to
14 make counsel aware of. As they may have guessed, we
15 brought both Pleshette Johnson and her mother here, but we
16 did not see the need to call Ada Johnson because we think
17 her testimony would be somewhat repetitive. Frankly,
18 she's a handful.

19 So I wanted to make these gentlemen aware of
20 that. She is here. If they would like to subpoena her
21 for the defense case, this would be the time because she
22 can be hard to locate.

23 MR. LEWIS: I don't think there's a
24 need. She's under subpoena. We just ask the government
25 not to release her. If we need to call her back,

1 obviously it's our expense.

2 MR. BOHLING: Okay. I'll defer to
3 counsel.

4 MR. OSGOOD: Who is it?

5 MR. BOHLING: Ada Johnson. I'm not
6 going to call her. If you want her back, I'm just letting
7 you know you need to make those arrangements.

8 MR. LEWIS: She's welcome to fly home.
9 We would ask she remain under subpoena.

10 MR. OSGOOD: After Pleshette, I can
11 understand why.

12 MR. BOHLING: It is largely repetitive.
13 There's nothing I would get out of Ada that's different.

14 MR. OSGOOD: Let me look at her report.
15 I'll let you know at one o'clock if I want her. That
16 fair?

17 MR. BOHLING: That's fair. I will tell
18 you in all candor, Judge, these have been two of the most
19 difficult witnesses I've ever dealt with in my life. If
20 she's going to come back, I might think it would be a good
21 idea --

22 MR. OSGOOD: If she's under subpoena, I
23 assume you can just put her in a hotel. We don't have to
24 pay her until --

25 MR. LEWIS: Until Monday or Tuesday?

1 MR. OSGOOD: That might be cheaper than
2 flying her back.

3 MR. BOHLING: I might want to bring her
4 into the courtroom and make sure we're all clear.

5 THE COURT: Let's make sure she sticks
6 around until after the lunch break.

7 MR. BOHLING: Yes. We will do that.

8 (The noon recess was taken.)

9 AFTERNOON SESSION

10 (The following proceedings were had in the
11 presence of the jury:)

12 MR. BOHLING: Can we approach for just a
13 minute?

14 THE COURT: Yes.

15 (Counsel approached the bench and the following
16 proceedings were had:)

17 MR. BOHLING: I was just going to check
18 in on Mrs. Johnson. I think they'd like to be on their
19 way.

20 MR. OSGOOD: We'll do everything but
21 give her a ride to the airport.

22 MR. LEWIS: I'm fine with them leaving
23 as long as they've explained that Ms. Ada Johnson remains
24 under subpoena if we have to call her back at our
25 financial obligations.

1 MR. OSGOOD: Just give us a phone
2 number.

3 MR. BOHLING: If I could have one moment
4 to tell her.

5 (The proceedings returned to open court.)

6 MR. RHODES: The government calls June
7 Howard.

8 JUNE HOWARD, being duly sworn, testified:

9 DIRECT EXAMINATION BY MR. RHODES:

10 Q Would you please state your name.

11 A June Howard.

12 Q Ms. Howard, who is your employer?

13 A The U.S. Department of Justice, Drug Enforcement
14 Administration.

15 Q What is your title?

16 A I am the targeting and analysis unit chief for
17 the operations section of the office of diversion control.

18 Q How long have you been employed by the Drug
19 Enforcement Administration?

20 A I am three months shy of 28 years.

21 Q What is your educational background?

22 A I have a Bachelor of Arts degree and a Political
23 Science in Sociology and a few graduate level courses.

24 Q Now, have you been working for the DEA since you
25 graduated from college?

1 A I have, yes.

2 Q And can you tell the jury the various jobs you
3 have had with the DEA?

4 A Yes. I worked as a budget assistant for a year,
5 worked in the HR department for a year, and the remaining
6 time has been in the office of diversion control as an
7 analyst and information systems specialist and a
8 supervisor.

9 Q What is "an analyst"?

10 A An analyst -- well, it depends on what data
11 you're looking at, but primarily depending on the unit
12 you're in, you gather the data and you analyze it and
13 provide trends, and so forth.

14 Q Explain what the unit does and what your
15 responsibilities are as the chief of the unit.

16 A Yes. As the unit chief of the targeting and
17 analysis unit, I have 14 analysts, and I am required to
18 oversee each of the analysts that gather the data. That's
19 primarily it, maintain the database, oversee the personnel
20 in the unit.

21 Q How long has the ARCOS database existed?

22 A It's been in existence since the early '70s. I'd
23 say about '74, '75, somewhere in there.

24 Q And have you been overseeing the ARCOS database
25 for the past 20 years?

1 A I have, yes.

2 Q What is ARCOS?

3 A ARCOS is an acronym, Automation of Reports and
4 Consolidated Orders Systems. It's a mainframe database
5 that houses about 600 million transactions, drug sales
6 transactions from the point of manufacture to the point of
7 sale.

8 Q Does it include other controlled substances?

9 A It includes all Schedule I's, all Schedule II's
10 and all Schedule III narcotics.

11 Q Does it include noncontrolled prescriptions?

12 A It does not.

13 Q So ARCOS only compiles data of certain Schedule
14 II drugs?

15 A Correct. All Schedule IIs and then just those
16 that are narcotics in Schedule III.

17 Q Who are the participants in ARCOS?

18 A If you are a manufacturer of any of those
19 schedules or a distributor or wholesaler of any of those
20 schedules, you are required by law to report to ARCOS the
21 monthly or quarterly sales and purchases of those
22 products.

23 Q So approximately how many manufacturers are we
24 talking about?

25 A We have a total of about 1,600, what we call,
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1 ARCOS participants, and about 300 to 350 are
2 manufacturers. The remaining are distributors.

3 Q What data is collected and how?

4 A The data is collected various ways. There are
5 three ways to submit the data, via the internet, a CD, or
6 a paper form. There's specific fields of information.
7 The primary fields of information are what is your DEA
8 number, what is the product that you are buying or
9 selling, how much of that product are you buying or
10 selling, and on what date, and they submit that, again, on
11 a monthly or quarterly basis.

12 Q So the data includes a specific pharmacy that the
13 drugs were sold to?

14 A Correct. Yes, I'm sorry. I did leave that out.
15 If you -- they identify themselves by their DEA number,
16 and then the individual that they are buying from or
17 selling to, their DEA number, is also listed on this
18 report.

19 Q And are the pharmacies registered with the DEA?

20 A Yes, they are.

21 Q What is done with the information compiled by the
22 ARCOS system?

23 A The data comes in. It gets compiled, number
24 crunched, and so forth. Then it's put into a mainframe
25 database used by our investigators as an online system.

1 Q Who is it given to?

2 A The only individuals that have access to it are
3 our diversion investigators and our agents online, but we
4 get requests, we get numerous requests from field
5 investigators, agents, newspapers, journalists, freedom of
6 information requests, and so forth.

7 Q Are the participants in ARCOS giving the DEA the
8 information voluntarily or are they required by law?

9 A They are required by law to report this
10 information.

11 Q And there are federal regulations that they must
12 follow?

13 A Yes, there are.

14 Q How often is reporting done?

15 A Monthly -- they have the option of monthly or
16 quarterly.

17 Q What, if any, procedures exist to verify the
18 information that is given to the DEA by the participants?

19 A Within the system there are internal audits to
20 check every field of information that is submitted by the
21 registrants. We call those edit checks.

22 Q Now, what does the edit check do?

23 A It actually verifies whether or not the DEA
24 number is correct, whether the -- what's called an NDC
25 number, that represents the drug product, make sure that

1 is correct. The individual that you are describing that
2 you sold to or purchased from, that their DEA number is
3 proper. If it's a Schedule II product, you must have an
4 order form. It has to make sure it's a legitimate order
5 form and that the date has month, month, day, day, year,
6 year in it.

7 Q Okay. So there are yearly reporting requirements
8 for the manufacturers and the distributors?

9 A Yes. In addition to their monthly or quarterly
10 reporting, they are required to submit a yearly --
11 end-of-year inventory report.

12 Q Manufacturers have to make similar reports about
13 what they sell to the distributors?

14 A That is correct.

15 Q All right. So all drug distributors have to
16 report all controlled sales to all pharmacies?

17 A All drug distributors of Schedules I, II and
18 Narcotic III. If they sell to -- what we call the retail
19 level, pharmacies, hospitals, doctors, and so forth, are
20 required to report that information on a monthly or
21 quarterly basis.

22 Q Are you able to determine how much an individual
23 pharmacy purchased of a specific drug in a given time
24 period?

25 A Yes.

1 Q From all the distributors?

2 A Correct.

3 Q How do you search for a specific drug given their
4 various names, generic versus name brand, et cetera?

5 A That's why each registrant is given a unique DEA
6 number, and we search everything by DEA number.

7 Q Did you do that for The Medicine Shoppe purchases
8 of hydrocodone products?

9 A Yes, we did.

10 Q Did you also do that for Ascensia Nutritional
11 Pharmacy for the purchase of hydrocodone products as well?

12 A Yes.

13 Q All right. Now, did you help prepare what is --
14 I'm going to show you Government's Exhibits 1118, 1119,
15 1173, 1174, and 1175.

16 A Yes. I assigned the request to the analyst,
17 oversee it while it's being worked on, and then I approve
18 it at the end.

19 Q So you did the approval of those?

20 A I did, yes.

21 MR. RHODES: Okay. Government moves to
22 admit into evidence Government's Exhibits 1118, 1119,
23 1173, 1174, and 1175.

24 MR. LEWIS: No objection, Your Honor.

25 MR. OSGOOD: No objection.

1 THE COURT: They'll be received.

2 Q (BY MR. RHODES) Let's pull up Government's
3 Exhibit 1118, please.

4 Now, this chart was approved by you before --

5 A Yes, it was.

6 Q What is the time period that we're looking at
7 here?

8 A The time period here covers January 1st, 2005,
9 through October 31st, 2005.

10 Q Would you please explain this chart to the jury?

11 A Yes. We would -- the analyst would query the
12 database and request a listing of every retail pharmacy in
13 the five digit zip code of 77054 that purchased the drug
14 hydrocodone from January 1st, 2005, through October 31st,
15 2005. Then they would rank the pharmacies highest to
16 lowest, and then create a PowerPoint chart based on that
17 information.

18 Q And what is this telling us here with regard to
19 Ascensia Nutritional Pharmacy?

20 A On the left-hand side we have the legend of the
21 total number of units in increments of 500,000, so starts
22 with 500,000 units, which is a tablet or capsule, going up
23 to 4 million units. And we have here the top ten in the
24 five digit zip code with the first one being Ascensia
25 Nutritional Pharmacy, the number one pharmacy in that five
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1 digit zip code purchasing 3,557,900 units. Then we have
2 the remaining nine pharmacies in that five digit zip code
3 to round out the top ten.

4 Q And this is for those pharmacies in that zip code
5 area?

6 A Correct.

7 Q Okay. Let's go to Government's Exhibit 1119.

8 Would you please explain to the jury what it is
9 that we're looking at here in this exhibit.

10 A Yes. The analyst extracted all the information
11 on the pharmacies in the state of Missouri that purchased
12 hydrocodone from January 1st to October 31st, 2005, and
13 then ranked highest to lowest from the first pharmacy to
14 -- highest to lowest with the top 25 pharmacies in the
15 state of Missouri.

16 **We have on the left-hand side the 400,000 to 2**
17 **million in increments of 400,000, and that, again,**
18 **represents tablets or capsules, individual tablets or**
19 **capsules, and the first registrant in the state of**
20 **Missouri that purchased the largest amount of hydrocodone**
21 **is Rostie Enterprises. They purchased 1,932,300 units of**
22 **hydrocodone for the time period referenced above. Then we**
23 **have the remaining 24 pharmacies that purchased that same**
24 **drug in the state.**

25 Q So Rostie Enterprises purchased over a million

1 more dosage units of hydrocodone?

2 A Than the -- yes, that is correct.

3 Q Than the second highest?

4 A Than the second highest registered pharmacy in
5 that state.

6 Q They were the highest in the state of Missouri
7 during that time period?

8 A That's correct, for that timeframe.

9 Q All right. Moving on to the next government's
10 exhibit, 1173.

11 What is depicted in this chart?

12 A This is a listing of all of the pharmacies, all
13 pharmacies in the five digit zip code 77054 that bought
14 hydrocodone from August 1st through December 31st, 2004.
15 So it lists every single pharmacy ranked from highest to
16 lowest with Ascensia Nutritional Pharmacy being fifth out
17 of the ten pharmacies that are listed.

18 Q So for this zip code --

19 A I'm sorry. Nine pharmacies that are listed.

20 Q So there's nine pharmacies?

21 A Nine pharmacies in that five digit zip code in
22 the state of Texas.

23 Q You started your data from August 1 through the
24 end of the year, 2004, correct?

25 A That is correct.
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1 Q And that's 83,000 dosage units for Advanced
2 Pharmacy Services. And Ascensia Nutritional Pharmacy has
3 how many?

4 A 7,000 dosage units.

5 Q Okay. All right. And the highest had 83.
6 Second highest had 15,400.

7 Let's move on to Government's Exhibit 1174.
8 Would you please read the top?

9 A Yes. This is the top 25 retail pharmacies in
10 Missouri, for purchases of hydrocodone from August 1st
11 through December 31st, 2004. All the -- every pharmacy
12 that purchased that drug was ranked, sorted and ranked
13 from highest to lowest, and we listed the top 25 again in
14 the state of Missouri for that timeframe referenced. And
15 Rostie Enterprises was the third registrant, the third
16 highest registrant in the state for that timeframe with a
17 purchase of 223,900 units of hydrocodone.

18 Q Okay. Do you happen to know how many pharmacies
19 there are in the state of Missouri?

20 A I do not know that off the top of my head.

21 Q Okay. And let's look at Government's Exhibit
22 1175. What are we looking at here?

23 A This is the number of retail pharmacies, the top
24 25 retail pharmacies in the state of Texas that bought
25 hydrocodone from January to October 31st, 2005, again,

1 sorted and ranked from highest to lowest. And Ascensia
2 Nutritional Pharmacy is ranked second in the state for
3 that timeframe. They purchased 3,557,900 dosage units.

4 MR. RHODES: I have no further
5 questions.

6 MR. OSGOOD: You're a database
7 specialist; is that right?

8 MR. RHODES: Excuse me.

9 MR. OSGOOD: Sure. Got another
10 question?

11 MR. RHODES: I've got another question.
12 Sorry about that.

13 MR. OSGOOD: That's okay. No problem.

14 MR. RHODES: Government moves to admit
15 Government's Exhibits 1200 and 1201.

16 THE COURT: Hearing no objections, they
17 will be received.

18 DIRECT EXAMINATION (resumed) BY MR. RHODES:

19 Q Would you please tell us what is depicted in
20 Government's Exhibit 1200?

21 A Okay. In 1200 we look at every pharmacy in the
22 state of Missouri, that purchased hydrocodone from August
23 1st, 2004, through October 31st, 2005. From August 1st
24 through December 31, 2004, there were 1,131 pharmacies
25 that purchased hydrocodone. Their average purchase was

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1 34,892 units. We then compared that to the number of
2 units that Rostie Enterprises purchased which was 223,900.
3 So that's Rostie's total units purchased for that
4 timeframe, and next to it is the average purchase by
5 pharmacies -- need to see the top again, please -- in the
6 state of Missouri for the same timeframe.

7 **Right next to it is January 1st through October**
8 **31st, 2005. On the left-hand side there were 1,932,300**
9 **units purchased compared to the average purchase by 1,192**
10 **pharmacies for that same timeframe. And their average**
11 **purchase was 70,225 units.**

12 Q Thank you. And Government's Exhibit 1201.

13 A And we did the same here in the state of Texas.
14 On the left-hand side with the first bar you see it says
15 7,000 units, that's the number of units that were
16 purchased by Ascensia Nutritional Pharmacy compared to the
17 average purchase by pharmacies during that same timeframe.
18 There were 3,977 pharmacies that bought hydrocodone, and
19 their average purchase was 47,464 units for -- that was
20 the August through December 31st, 2004.

21 **And then the same for January through October**
22 **31st, 2005, Ascensia purchased 3,557,900 units compared to**
23 **the average purchase by pharmacies during that same**
24 **timeframe of 93,799 units. There were 4,105 units -- I'm**
25 **sorry -- 4,105 pharmacies in the state that purchased that**

1 **drug, and that was their average purchase.**

2 MR. RHODES: If I may confer for a
3 second.

4 I pass the witness.

5 CROSS-EXAMINATION BY MR. OSGOOD:

6 Q Ma'am, I represent Dr. Elder. Were you involved
7 at all in the investigation in this, or are you strictly
8 retrieving -- or had your people retrieve the data from
9 the database itself?

10 A Strictly retrieve the data from the database.

11 Q And I'm familiar with low-level database
12 management using such things as Access and the old dBASE
13 and that kind of thing. You use probably a mainframe
14 built around an SQL database?

15 A It is a mainframe database, that's correct.

16 Q What's the system you use?

17 A It's M204 is what it's called.

18 Q Is it proprietary for the government?

19 A Yes, it is.

20 Q Okay. Now, I assume like any database, it has
21 fields for data entry?

22 A That is correct.

23 Q And tell the folks -- I don't know how many of
24 them -- maybe we got some computer people here. A field
25 is a field name. I guess a good example would be last

1 name, first name, middle initial, street address, city,
2 state, zip code, and you would -- you break it down.
3 Basic rule of database management is to break it down into
4 as many fields as you can so you've got better data
5 retrieval. Is that accurate?

6 A I'm not sure what the question is. You kind of
7 went on with it.

8 Q When you create your field, the more precise you
9 can be on a field and the more you break it down, the
10 easier it is to manipulate the data and get an answer when
11 you're searching?

12 A Sure, yes.

13 Q So, in other words, you have a single field for
14 zip code probably?

15 A Yes.

16 Q You have a single field for the state and a
17 single field for the city?

18 A Yes.

19 Q And the street?

20 A Correct.

21 Q So you could say using dBASE code, I don't know,
22 or SQL, display all last name, comma, first name, comma,
23 zip code, and it would bring up the last name, the first
24 name, and a zip code, wouldn't it?

25 A Yes.

1 Q Or you could say "display all zip code, state,"
2 and it would bring up all the zip codes for that state?

3 A That's correct.

4 Q So that's the way you manipulate data, isn't it?

5 A Yes.

6 Q Now, pharmacies maintain prescription information
7 in databases, don't they?

8 A Yes, they do.

9 Q Is there any requirement as to what database
10 system they use?

11 A Now, we're talking about two different things.
12 Prescriptions we do not capture.

13 Q No, no. I know you don't. I'm kind of using
14 your expertise here. I know it's a little bit off, and if
15 necessary, I guess I could ask you to come back later.

16 MR. OSGOOD: But I figure we'll cover it
17 now, Your Honor.

18 THE COURT: We'll see.

19 Q (BY MR. OSGOOD) What kind of database would a
20 typical pharmacy maintain at least to meet your
21 requirements for reporting?

22 A That's not something I can answer.

23 Q DEA reporting. You don't know?

24 A I do not know.

25 Q Okay. Well, I was hoping you did. I'll get to
 612

1 the main point then.

2 Now, when you retrieved your data from -- that
3 you prepared your charts around, you used the DEA number
4 of the business itself, didn't you?

5 A The DEA number of the pharmacy, that's correct.

6 Q All right. And that would be a field in your
7 database?

8 A That's correct.

9 Q Now, is it not true that doctors have their own
10 DEA number?

11 A Yes, they do.

12 Q Were you asked to retrieve any data, or does your
13 database have the capability of retrieving this data for
14 individual doctors?

15 A It does.

16 Q Were you asked, for example, by the government,
17 who sent you their request -- ARCOS requires a request,
18 doesn't it?

19 A Yes, it does.

20 Q In fact, on the website I -- this is the first
21 time I've heard of it, but I found the data that's got to
22 be submitted to you for a request. There's, like, six
23 things, aren't there?

24 A There's several items on that request form.

25 Q Okay. Did the government ask you to make charts

1 like this for Dr. Elder using his DEA number?

2 A No.

3 Q So we could know -- if he used his DEA number, we
4 would know precisely how much of this particular
5 prescription he ordered, wouldn't we, and when he ordered
6 it?

7 A We would know what drugs he purchased.

8 Q Yes, ma'am.

9 A Yes.

10 Q And in the years, '04 and '05?

11 A Correct.

12 Q You just looked at the pharmacy as a whole and
13 looked at every possible prescription they wrote then?

14 A Every drug they purchased, yes.

15 Q Okay. Now, can we throw up one of the charts
16 again, please. Let's start with 1118. We'll just work
17 our way through.

18 Now, this is January 1, '05, to October 31, '05;
19 is that correct?

20 A That's correct.

21 Q In your database you said something along --
22 using ordinary language, show me all prescriptions -- I
23 mean, all drugs purchased for hydrocodone for the state of
24 Missouri or for zip code 77054; is that right?

25 A That's correct.

1 Q Okay. Display all hydrocodone, comma, zip code
2 77054 would be a typical query?

3 A Sure, yes.

4 Q And it would pop up?

5 A That's correct.

6 Q That shows a massive number that Ascensia got in
7 Texas in that timeframe, doesn't it?

8 A Yes.

9 Q All right.

10 MR. OSGOOD: Can we have the next chart,
11 please, 1119.

12 Q (BY MR. OSGOOD) Now, this is for hydrocodone in
13 Missouri; is that not right?

14 A Yes.

15 Q You entered a similar query, Display all for drug
16 equals Rostie Enterprise, DEA number, comma, drug
17 hydrocodone. That would be a typical query?

18 A Well, more typical of this query would be, Give
19 me every pharmacy that bought hydrocodone for that
20 timeframe in the state of Missouri.

21 Q Yeah, English language. I'm trying to put it in
22 database perspective, give the jury an idea of how you do
23 a search and a query.

24 A Okay.

25 Q I think we're on the same sheet of music, aren't
615

1 we?

2 A Yes, we are, yes.

3 Q All right. So this just shows that Rostie under
4 their DEA number purchased that much hydrocodone?

5 A Yes.

6 Q That doesn't tell us how much went to Dr. Okose,
7 does it?

8 A It does not.

9 Q Doesn't tell us how much went to Dr. Botto or
10 Dr. Lechin or any of these other doctors or, for that
11 matter, my client, Dr. Elder?

12 A It does not, correct.

13 Q Okay.

14 MR. OSGOOD: Can we have the next chart,
15 please?

16 Q (BY MR. OSGOOD) That would be 1173.

17 Now, in 1974, you made -- 1974. Excuse me.
18 1174, exhibit, you made a similar query using a similar
19 kind of query language for the purchase of hydrocodone for
20 77054. That's in Texas; is that right?

21 A Yes, it is.

22 Q And that shows -- I haven't done the math on it,
23 but that shows a fairly low level purchased by Ascensia,
24 doesn't it, 7,000?

25 A Yes.

1 Q And we would call that average?

2 A We would call that average, yes.

3 Q Would that be suspicious in your mind?

4 A No.

5 Q Okay. Do you know anything about Advance
6 Pharmacy Services, ever heard of them?

7 A I do not.

8 Q Okay. They're in Texas somewhere though?

9 A Yes, they are.

10 Q They had 83,000 that year.

11 All right.

12 MR. OSGOOD: Can I have the next chart,
13 please, 1174.

14 Q (BY MR. OSGOOD) Now, a similar query is made to
15 the database again, asking for everything between August
16 the 1st and December the 31st of 2004?

17 A Yes.

18 Q And you get this display. Of course, during this
19 timeframe Rostie Enterprise is number three in the state
20 on hydrocodone?

21 A That's correct.

22 Q Now, again, you queried the database by their DEA
23 number, not by Dr. Elder's DEA number or Dr. Okose's DEA
24 number?

25 A That is correct.
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1 Q Had you queried it by Dr. Elder's DEA number, you
2 could have a chart here and tell us exactly how many
3 prescriptions were written under his DEA number in this
4 timeframe, couldn't you?

5 A How much of the drug that he purchased.

6 Q Yes.

7 A Correct.

8 Q Government did not ask you to do that, did they?

9 A They did not.

10 Q Did they ask you to do it for Dr. Okose?

11 A They did not.

12 Q They did not. Any other doctor?

13 A No.

14 Q They did not.

15 MR. OSGOOD: Now, can we have the next
16 chart, please.

17 That would be 1175.

18 Q (BY MR. OSGOOD) I don't want to be repetitive.
19 Same questions. If I asked you the same things, it would
20 be the same answers about DEA numbers and database query
21 and everything for this chart?

22 A That's correct.

23 Q Same question about not asking about these other
24 people?

25 A Correct.

1 MR. OSGOOD: Okay. Can we have 1200
2 now, please.

3 Q (BY MR. OSGOOD) Now, from August 1st, 2004, to
4 October 31st, 2005, that is a 15-month period, isn't it --
5 or 12?

6 A Yes.

7 Q And this is for hydrocodone; is that right?

8 A Yes, it is.

9 Q And this is a summary chart of the other charts
10 we just talked about?

11 A That's correct.

12 Q So, again, it doesn't reflect anything other than
13 Rostie Enterprise's DEA number?

14 A That's correct.

15 Q And it doesn't even break it out by year on this
16 chart, does it?

17 A It does. August through December 2004 on the
18 left and January through October '05 on the right.

19 Q So it's about 223,000. So it was dramatically
20 lower in -- dramatically lower in '04 than it was in '05,
21 wasn't it?

22 A That's correct. Different timeframes, but, yes.

23 Q Now, the other thing is -- where I was going with
24 my questions about pharmacies, there is no way for you to
25 break out any request on an initial -- I don't know how to

1 phrase this even.

2 There's no distinction between an initial
3 prescription for this medication and a refill in terms of
4 your database? It just shows stuff that was shipped from
5 point A to point B, doesn't it?

6 A That is correct.

7 Q So we don't know whether these numbers reflect a
8 small number of prescriptions that call for this stuff,
9 then followed by a large number of refills by fax?
10 There's no way we can tell that, is there?

11 A Only what was bought from point A to point B.

12 MR. OSGOOD: Thank you very much.

13 THE WITNESS: Thank you.

14 MR. RHODES: Can I ask a couple of
15 questions.

16 REDIRECT EXAMINATION BY MR. RHODES:

17 Q Just to be clear, if you were to run the query of
18 the DEA of a doctor, it would only show drugs purchased by
19 that doctor?

20 A That's correct.

21 Q It would not show drugs prescribed by that
22 doctor?

23 A That's correct.

24 Q Because pharmacies purchase drugs?

25 A Yes.

1 Q Is that correct?

2 A That is right.

3 THE COURT: Are we finished with this
4 witness?

5 MR. OSGOOD: I don't have any more
6 questions, Your Honor.

7 THE COURT: Thank you.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 MR. RHODES: Government calls Sunny
11 Chin.

12 SUNNY CHIN, being duly sworn, testified:

13 DIRECT EXAMINATION BY MR. RHODES:

14 Q Would you please state your name.

15 A Sunny Chin.

16 Q Mr. Chin, what is your profession?

17 A I'm a pharmacist, pharmacist in charge of C&G
18 Pharmacy in Houston, Texas.

19 Q And how long have you been a pharmacist in charge
20 at C&G Pharmacy?

21 A Since 1998.

22 Q Mr. Chin, did you receive a subpoena in this
23 case, and did you produce prescription sheets for
24 prescriptions filled at C&G Pharmacy?

25 A Yes, I did.

1 Q And as far as the address -- what's the address
2 of C&G Pharmacy?

3 A 11618 Aldine Westfield Road, Houston, Texas
4 77093.

5 Q Were these records kept in the normal course of
6 business?

7 A Yes, sir.

8 Q And were they produced in response to the
9 subpoena?

10 A Yes.

11 Q And was each of these business records a record
12 of a regularly-conducted activity?

13 A Yes.

14 MR. RHODES: Government moves to admit
15 Government's Exhibits 261 through 305 into evidence.

16 MR. OSGOOD: No objection.

17 THE COURT: Hearing none, they'll be
18 received.

19 MR. RHODES: No further questions of
20 this witness, Your Honor.

21 CROSS-EXAMINATION BY MR. OSGOOD:

22 Q Mr. Chin, I represent Dr. Elder. Do you know Dr.
23 Elder?

24 A Yes.

25 Q When did you first meet Dr. Elder?

1 A January of 2005.

2 Q And do you know what clinic he was with?

3 A He was working for Westfield Medical Clinic.

4 Q Okay. And was it in reasonable proximity of
5 where your pharmacy is?

6 A Yes, sir.

7 Q How far away?

8 A Right next door across the hall.

9 Q Is that in a mall area?

10 A No. It's a freestanding building.

11 Q Okay. What's -- I mean, is it a commercial area
12 around there?

13 A Yes, commercial area.

14 Q How would you describe the neighborhood?

15 A I'm sorry, sir?

16 Q How would you describe the neighborhood?

17 A The neighborhood is -- it's mainly Hispanic,
18 majority of it. There's businesses around us.

19 Q It would be low income, the area?

20 A Yes, it would be low income.

21 Q Did you ever have occasion -- strike that. Were
22 prescriptions brought into your pharmacy by patients?

23 A Yes. That's how we normally get business.

24 Q And were they in alphabetical order? Did you get
25 an Anderson, A. Anderson, B. Anderson, C. Anderson?

1 A No. Not unless they're husband and wife coming
2 in together.

3 Q Would you typically require them to produce any
4 kind of identification?

5 A Yes, we do.

6 Q Did they have driver's licenses?

7 A Yes, sir.

8 Q And was there anything irregular about the
9 prescriptions that you got from Dr. Elder?

10 A No.

11 Q Would occasionally a patient grouse about what
12 they were getting?

13 A Would you please --

14 Q Would a patient sometimes complain about the type
15 of medication they were getting or the strength of it?

16 A No.

17 Q Okay. You never called Dr. Elder and talked to
18 him and said, Is it okay to approve this script or they
19 want to change it or you need to talk to this person?

20 A The only reason I would call him is if it was
21 maybe written incorrectly or the quantity wasn't added
22 onto the prescription.

23 Q All right. Now, was -- no doctor is infallible,
24 I take it. You see doctors make mistakes on prescriptions
25 sometimes; is that correct?

1 A That's correct.

2 Q And part of your job is to watch that yourself?

3 A Yes, sir.

4 Q A doctor and a pharmacist are a team to a certain
5 extent; are they not?

6 A Yes, sir.

7 Q Work closely together?

8 A Right.

9 Q What kind of medication was Dr. Elder prescribing
10 generally? Was there a pattern?

11 A This was a pain clinic. It was normally a pain
12 reliever, muscle relaxer, and something for anxiety.

13 Q Okay. That would be Xanax?

14 A Right. For anxiety.

15 Q Soma maybe?

16 A For the muscle relaxer, yes.

17 Q And what else?

18 A Hydrocodone for the pain.

19 Q Hydrocodone. Now, would that be a typical
20 prescription for a pain patient?

21 A In my practice, yes.

22 Q Is there anything unusual about two people with
23 similar types of complaints getting the same prescription?

24 A No.

25 Q That happens all the time?

1 A Yes, it does.

2 Q Okay. And was there anything about any of these
3 prescriptions that caused a red flag for you?

4 A Not at that time, no.

5 Q Was there a time when there was?

6 A No.

7 Q Now, did you have some contact with the DEA or
8 Mrs. Hearn concerning some of his prescriptions?

9 A Yes, I did.

10 Q Tell us about that, please.

11 A They asked me if I had any prescriptions written
12 on certain dates from -- actually the first two months he
13 was working there and I told them yes.

14 Q And you provided those to them?

15 A That's what I got subpoenaed was for those
16 records.

17 Q Now, did you ever receive any faxes from Dr.
18 Elder?

19 A From doctor?

20 Q From Dr. Elder. Did he ever send prescriptions
21 across the way or down the hall or whatever it is by fax?

22 A No.

23 Q People who walked in had an original?

24 A Had an original, yes.

25 Q Okay. And, now, the state of Texas has -- by and
626

1 large, most doctors have gone to a form now that if you
2 photocopy it, it says "copy" on it. Is that accurate?

3 A That's correct.

4 Q Was there a big change in the law in Texas as to
5 what all belonged on a prescription at some point in time,
6 like 2008 or something?

7 A I don't recall that law.

8 Q Okay. Was there a change in -- I mean, might not
9 have been a law but maybe a recommendation by the
10 governing bodies or agencies or whatnot?

11 A Yes. They did start requiring that.

12 Q Requiring what, sir?

13 A That once -- if a prescription was photocopied,
14 it would write "void" on the face of the prescription.

15 Q Okay. Was there any time in Texas where you
16 could just write the name of the person on the
17 prescription and the prescription itself and give it to
18 you?

19 A Yes.

20 Q Didn't have to have an address, did it?

21 A At one time, yes. Early in my career it was that
22 way.

23 Q It was what, that you didn't have to have an
24 address?

25 A No.

1 Q And what about date of birth?

2 A No.

3 Q Basically the doctor, particularly if you knew
4 the doctor, he writes the prescription and it's got his
5 name at the top and he signs off on it and you can fill
6 it?

7 A Yes.

8 Q And that's, again, a matter of trust between --
9 to some extent, I guess, between the doctor and the --

10 A Knowing the doctor, yes, and having a
11 professional relationship, yes.

12 Q You know when that stopped?

13 A With Dr. Elder?

14 Q No, no. When the Texas Medical Board or whoever
15 it is or the pharmacy board, when they got stricter about
16 what all has got to be on a prescription?

17 A I'll probably give you the wrong date if I give
18 you a date.

19 Q Just a ballpark.

20 A Probably in the last three years.

21 Q Last three years?

22 A Yeah.

23 Q So in '04 and '05, it was pretty lax?

24 A Yes.

25 MR. OSGOOD: That's all.
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1 Thank you, sir.

2 THE COURT: Follow-up?

3 MR. RHODES: No.

4 THE COURT: Thank you.

5 (Witness excused.)

6 MR. BOHLING: United States calls

7 Magdalena Ortega.

8 MAGDALENA Q. ORTEGA, being duly sworn, testified:

9 MR. BOHLING: Mr. Osgood has requested

10 of me that he -- he misplaced or couldn't find in

11 particular some information. He would like to go copy it

12 with the court's indulgence.

13 MR. OSGOOD: This is the one that I for

14 whatever reason don't have a copy of.

15 Thank you.

16 DIRECT EXAMINATION BY MR. BOHLING:

17 Q Would you please state your full name and spell

18 both your first and last name.

19 A Magdalena Q. Ortega, M-a-g-d-a-l-e-n-a, middle

20 initial Q, last name Ortega, O-r-t-e-g-a.

21 Q How old are you, ma'am?

22 A Fifty-seven.

23 Q What city do you live in?

24 A Houston, Texas.

25 Q How long have you lived in the Houston area?

1 A All my life.

2 Q How are you employed?

3 A I'm a certified pharmacy technician for C&G
4 Pharmacy.

5 Q Where is C&G Pharmacy located?

6 A 11618 Aldine Westfield, Houston.

7 Q How long have you worked for C&G Pharmacy?

8 A At that location since '98, but I've been with
9 the owner since '82.

10 Q In addition to being a pharmacy technician, are
11 you also a notary public?

12 A Yes, I am.

13 Q How long have you been a notary public?

14 A I've had to renew, I think, it's every three --
15 at least four years, five years. I've had to renew it
16 once since the original date.

17 Q Were you a notary public in 2005, 2006 timeframe?

18 A Yes, sir.

19 Q And do you keep a record of your notarizations?

20 A Yes, sir.

21 Q What do you call that?

22 A The notary log.

23 Q And did you keep a record back in that timeframe,
24 2005, 2006?

25 A Yes, sir.

1 Q Do you know a Dr. Christopher Elder?

2 A Yes, I do.

3 Q And how do you know Dr. Elder?

4 A He worked at the Westfield Clinic right across
5 the hall from the pharmacy.

6 Q Did Dr. Elder ever ask you to notarize any
7 documents?

8 A Yes, sir, he did.

9 Q And when he did so, did you make a record of
10 that?

11 A Yes, I did.

12 Q Did you keep them in your notary book?

13 A Yes, sir.

14 MR. BOHLING: Your Honor, I would move
15 Exhibit 1166 into evidence, which is the notary book.

16 THE COURT: Hearing no objections --

17 MR. OSGOOD: I don't have any objection,
18 Your Honor.

19 THE COURT: -- it will be received.

20 MR. BOHLING: If we could put 1166, page
21 3 up on the screen and highlight entry 25. I'm sorry. I
22 probably meant blow up.

23 Q (BY MR. BOHLING) What is that entry reflecting?

24 A It's a letter that he had me notarize for him.

25 Q Okay.

1 A With his signature.

2 Q And when a person -- is there a procedure that
3 you use consistently when you do a notarization?

4 A Other than asking for ID and I request for two
5 people to be there if it's going to be requiring two
6 people, or if I personally know them, then I just say I
7 personally know them. Otherwise, I need their driver's
8 license.

9 Q So you would make a note in the log if you
10 personally know that person?

11 A Yes, sir.

12 Q And in fact you made such a note in this entry, I
13 believe, for Dr. Elder?

14 A Yes, sir, uh-huh.

15 Q And then who actually signs the log and provides
16 this other information?

17 A The only other person that signs it is me, and
18 then the person that is getting the notary -- the paper
19 notarized.

20 Q Okay. So in this case that signature we see
21 would be that of Dr. Elder?

22 A Yes, sir.

23 Q And if we could look at page 7, entry 52, if we
24 could pull that up, please.

25 And what does this entry reflect?

1 A It was the -- I don't remember if it was -- I
2 know I had to notarize something for his custody for his
3 child one time and something for a home, but that is his
4 signature.

5 Q Okay. Do you recall notarizing an affidavit for
6 Dr. Elder at some point?

7 A Yes, I did.

8 MR. BOHLING: And if we could look at
9 Exhibit 1047, please.

10 Before we look at that, I would move 1047 into
11 evidence.

12 THE COURT: Hearing no objections, it
13 will be received.

14 Q (BY MR. BOHLING) Do you recognize Exhibit 1047,
15 ma'am?

16 A Yes, sir.

17 Q What is it?

18 A It's relating to the subpoena for a grand jury
19 that he was sent.

20 Q Okay. And are you the notary on this document?

21 A Yes, sir.

22 Q And when you are a notary, is the person then
23 required to be there personally?

24 A Yes, sir.

25 Q And do they sign the document in front of you?

1 A Yes, sir.

2 MR. BOHLING: If we could blow up the
3 top paragraph of the part that begins -- yeah, that's
4 good. Okay. If we could scroll down.

5 Q (BY MR. BOHLING) Ma'am, this isn't too long, so I
6 would ask you, can -- I know you probably weren't
7 expecting to read something, but could you just read this
8 text to the jury as we scroll through it?

9 A "In May 2007, I received a grand jury subpoena
10 for medical records relating to the South Texas Wellness
11 Center. Shortly after receiving the subpoena, I
12 instructed my attorney to write a letter to the Assistant
13 U.S. Attorney handling this matter to tell him that I do
14 not have control or possession of any records named in the
15 subpoena. I also agreed to send this affidavit for
16 purposes of the grand jury.

17 **"Between approximately July 2004 and July 2005,**
18 **I worked as a doctor for temporary hire at the South Texas**
19 **Wellness Center, but I did not maintain control or**
20 **possession of any records generated during my employment**
21 **contract with the center. At the time I worked at the**
22 **center and to the best of my knowledge, Ada and Pleshette**
23 **Johnson owned or had control of the center's records. I**
24 **have no personal knowledge regarding the current**
25 **whereabouts of the requested materials.**

1 **"I previously gave the information set forth in**
2 **Paragraphs 2, 3, and 4 to DEA diversion investigators**
3 **Connie Overton and Charlotte Washington and later to a**
4 **woman calling herself Judi Watterson.**

5 **"I acknowledge the foregoing is a true and**
6 **correct statement to the best of my knowledge."**

7 **It's signed Christopher Elder and then my**
8 **notary.**

9 Q What is the date? If we could just highlight the
10 date? It's at the bottom.

11 A I can see it's June -- 13th day of June 2007.

12 Q Thank you, ma'am.

13 Now, in addition to -- obviously you also --
14 your primary job is a pharmacy technician?

15 A Yes, sir.

16 Q In that role would you see prescriptions written
17 by Dr. Elder?

18 A Yes, sir.

19 Q How often did you see such prescriptions?

20 A While he was employed there, every day.

21 Q Okay. Did you become familiar with his signature
22 and handwriting?

23 A Yes, sir.

24 Q And do you recall that out of court earlier you
25 were shown some prescriptions and asked whether or not

1 that was -- that appeared to be his handwriting?

2 A Yes, sir.

3 MR. BOHLING: If we could put up Exhibit
4 1166.11.

5 Gentlemen, I think these are already in evidence
6 in another form.

7 I would move in for the record 1166.11 through
8 1166 -- no. Actually 1166 is -- it's in evidence, Your
9 Honor. I just moved it in.

10 Q (BY MR. BOHLING) And, ma'am, I know that's a --
11 that's on the screen there, but do you recognize that
12 prescription or in general terms recognize that
13 prescription?

14 A Yes, sir.

15 Q And what is it?

16 A You --

17 Q What -- is that -- what clinic is that from?

18 A Westfield Medical Clinic.

19 Q Okay. And do you recognize the doctor's
20 signature there?

21 A Yes, sir, Dr. Elder.

22 Q And to your knowledge there was never any
23 question about the authenticity of the prescriptions that
24 came through Westfield?

25 A No, sir.

1 MR. BOHLING: Thank you, ma'am. I think
2 that's all I have.

3 CROSS-EXAMINATION BY MR. OSGOOD:

4 Q Did you work for Mr. Chin?

5 A I do work for Mr. Chin.

6 Q You do still?

7 A Yes, sir.

8 Q And you, I believe, told the agents you never had
9 any problem with his prescriptions; is that right?

10 A Correct.

11 Q Were a lot of them the same for these pain
12 medicines?

13 A Pretty much, yes, sir.

14 Q Was he a pain doctor, as far as you know?

15 A Yes, sir.

16 Q Pain -- double board certified pain management
17 specialist?

18 A Uh-huh.

19 Q And Westfield Medical --

20 A Well, he went and told us he became certified.

21 Q Uh-huh. My point is they were treating pain
22 patients in his clinic; were they not?

23 A Yes, sir.

24 Q Is the clinic -- I think we were told it's
25 located in a -- kind of a business area?

1 A It's -- no. It's in -- yeah, sort of,
2 subdivision, yeah.

3 Q Let me ask you this: Were there people hanging
4 around outside the clinic all the time?

5 A Other than patients?

6 Q Yes, ma'am.

7 A Not that I know of.

8 Q Well, I mean, did you ever see patients hanging
9 around outside trying to barter their prescriptions or
10 sell their prescriptions to each other or that kind of
11 thing?

12 A I never saw them but I heard there were some
13 people doing it. I never saw it for myself.

14 Q Is that a common thing you've got to be concerned
15 about in the pain business?

16 A Yes, sir.

17 Q Even though they come in with a valid driver's
18 license and a valid complaint, they sometimes will abuse
19 --

20 A Well, usually -- it usually would be a patient of
21 ours that would be waiting to see the doctor, and they
22 would come in and tell us that somebody had been already
23 out there asking.

24 Q Trying to buy it?

25 A Not necessarily our patients selling but they

1 would be asked.

2 Q They would report that to you and say there's
3 some jerk out here trying to buy my medicine?

4 A Yes, sir.

5 Q Because it is a pain management clinic and they
6 know people are getting prescriptions for it?

7 A Correct.

8 Q Now, was there -- my question was, was there a
9 large crowd of those kind of people outside every day --

10 A No, sir.

11 Q -- because this clinic was known as a pill mill
12 where you could get this kind of stuff?

13 A No.

14 Q That wasn't a pill mill, was it?

15 A No.

16 Q You know what I mean by a "pill mill"?

17 A Yeah.

18 Q Now, do you know Dr. Peter Okose and his clinic?

19 A No, sir.

20 Q Okay. Now, is there anything odd to you as a
21 pharmacist about Patient A getting a prescription for
22 Xanax and Lorcet and Patient B getting the same
23 prescription for Xanax and Lorcet if they're both pain
24 patients?

25 A No.

1 Q That's a common prescription for pain medication?

2 A Yes, sir.

3 Q See them day in, day out, don't you?

4 A Yes, sir.

5 Q Over and over again?

6 A All day long.

7 Q I guess you could argue that maybe there's too
8 much pain medication or pain treatment going on in America
9 but that's just a --

10 A Yes, sir.

11 Q -- opinion question, isn't it?

12 A You're right. Yes, sir.

13 Q Doctors make that decision based on their best
14 judgment, don't they?

15 A Correct.

16 Q You never saw Dr. Elder do anything wrong?

17 A No, not to my knowledge.

18 MR. OSGOOD: Thank you, ma'am.

19 THE COURT: Any follow-up?

20 MR. BOHLING: Yes.

21 REDIRECT EXAMINATION BY MR. BOHLING:

22 Q Ma'am, these are some of the prescriptions we've
23 been talking about.

24 A Uh-huh.

25 Q These are the originals.

1 A Uh-huh.

2 Q In this stack they start -- and just take a look.

3 A Uh-huh.

4 Q Is that from Westfield Medical Clinic?

5 A Yes, sir.

6 Q Who signed that prescription?

7 A Dr. Elder.

8 Q What's the date on that prescription?

9 A 2/4/05.

10 Q And we don't need the patient's name, but what's

11 that prescription written for?

12 A Hydrocodone, Xanax.

13 Q Take a look at the next one. Same date?

14 A 2/4/05.

15 Q Same doctor?

16 A Yes, sir.

17 Q What's the prescription?

18 A Hydrocodone and Xanax.

19 Q Take a look at the next one.

20 A 2/4/05.

21 Q Same doctor?

22 A Yes, sir, hydrocodone and Xanax.

23 Q What's it written for? Sorry. You told me.

24 A Uh-huh.

25 Q Next one.

1 A Same date, hydrocodone and Xanax.

2 Q Next one?

3 A Same date. Oh, this is hydrocodone and Soma.

4 Q And next one.

5 A Same date, and it's for hydrocodone and Soma.

6 Q Is there a particular strength and frequency for
7 the hydrocodone on these?

8 A There's actually two that are popular which is
9 10/500 and the 10/650. Once in a while you'll get a
10 Vicodin ES, but it's always the same as -- there's two
11 strength of the hydrocodone. It would be the 10/650 or
12 the 10/500, and he'll write for one of those. The Soma
13 will be the 350 milligrams and the Xanax will be too, and
14 the Valium is usually 10 milligrams.

15 Q Go ahead. Is that the same date?

16 A 2/4. Yes, this is written for hydrocodone and
17 Valium 10.

18 Q Okay.

19 A Same date written for just the Xanax.

20 Q Okay.

21 A This is -- looks like it's the date of birth --
22 2/4/05. Just the hydrocodone.

23 **Same day, 2/4/05, written for the hydrocodone**
24 **and Xanax.**

25 **Same date, 2/4/05, written for the hydrocodone**

1 and Xanax.

2 Also same date. This is written for Valium and
3 Soma.

4 Same date written for just hydrocodone.

5 Same date written just for hydrocodone.

6 Same date written for hydrocodone and Xanax.

7 Same date written for hydrocodone, a different
8 strength of hydrocodone.

9 Q Okay.

10 A And Xanax 2. This one was written on 2/4/05.

11 This is a Vicodin HP which has an ibuprofen in
12 it but it's also hydrocodone.

13 2/4/05 also written for hydrocodone and Soma.

14 2/4/05 written for hydrocodone and Soma.

15 2/4/05 written for the hydrocodone and Soma.

16 Q And these are all for Dr. Elder, right?

17 A Yes, sir. They're all Dr. Elder.

18 This is 2/4/05 written for Vicodin and Trazodone
19 which is a -- helps people relax, sleep.

20 Q Okay.

21 A This one also written on 2/4/05 and it's just
22 hydrocodone.

23 2/4/05 written for hydrocodone and Soma.

24 2/4/05 written for hydrocodone and Soma as well.

25 This is on 2/4/05. This is written for Darvon,

1 65, which is a pain medication too, not in the same
2 family, but it is a pain control medicine, medication.

3 Q Okay.

4 A 2/4/05 written for hydrocodone and Soma.

5 2/4/05 also, this is for hydrocodone and Valium
6 5 milligrams. This was sometimes a little different.
7 Usually it's written for 10. This one was for 5.

8 This is a 2/3 of '05, written for hydrocodone.

9 Q Okay. We'll go ahead and stop on 2/4.

10 A Okay.

11 Q I'm not going to count them all. I've got over
12 20. Is that fair?

13 A Yes, sir.

14 Q You found nothing odd about the fact that 20
15 patients in one day have the same basic type of
16 prescription?

17 A No, sir.

18 MR. OSGOOD: Objection. It's not the
19 same, Your Honor. She read a dozen different variations.
20 That's mischaracterizing the evidence.

21 MR. BOHLING: I'll strike the question,
22 Your Honor.

23 MR. OSGOOD: You done?

24 MR. BOHLING: No.

25 MR. OSGOOD: Oh.

1 Q (BY MR. BOHLING) You've worked there for a number
2 of years?

3 A Yes, sir.

4 Q Would it be fair to say that if we looked at
5 other days, we would see a similar pattern?

6 A You would see the same pattern for the same
7 medication and maybe a different strength but it's the
8 same medication.

9 Q Okay. I guess my question would be, did you ever
10 voice any concern about the fact that that many patients
11 receiving similar, not identical, medications from the
12 same doctor?

13 A Did I voice any opinion to Dr. Elder about it?

14 Q Or to anyone.

15 A We might have voiced it to ourselves in the
16 pharmacy but we filled them.

17 MR. BOHLING: Thank you.

18 RE CROSS-EXAMINATION BY MR. OSGOOD:

19 Q Do you get -- do you ever fill insulin
20 prescriptions?

21 A Yes, sir, we do.

22 Q And is not an insulin prescription the same every
23 time you get it?

24 A Not always. Depends --

25 Q But pretty much the same?

1 A It will be -- depending on the insulin on the
2 type the doctor writes for.

3 Q So the patient may go see the doctor and today he
4 needs to change the strength of his insulin a little bit?

5 A Not --

6 Q Or a different brand?

7 A No. Usually when they prescribe for insulin,
8 they'll have them be on it for a while before they can
9 change the strength on it.

10 Q Okay. But if Dr. Jones treats patients with
11 diabetes, you'd expect to get multiple insulin
12 prescriptions from Dr. Jones, wouldn't you?

13 A Yes.

14 Q And if a pain management doctor is seeing people
15 with chronic back pain, with arthritis, with all kinds of
16 residual pain from accidents, you expect to get these
17 medications, don't you?

18 A Yes, sir.

19 Q And that was a pain management clinic, wasn't it?

20 A Yes, sir.

21 Q And they were signed by the doctor?

22 A Yes.

23 Q And they were not all the same, were they?

24 We almost --

25 A Just the strengths were different.

1 Q Strengths were different. The type was
2 different. There was Soma, there was Xanax, there was --

3 A Valium.

4 Q And hydrocodone. Only hydrocodone. Sometimes it
5 was mixed with the muscle relaxant?

6 A Yes, sir.

7 Q Is that right?

8 A Yes.

9 Q Basically it treats pain and muscle -- and
10 relaxes the muscles to alleviate the pain, doesn't it?

11 A Yes, sir.

12 Q Did you -- now, having said all that, is there
13 anything unusual about these prescriptions he just went
14 through with you realizing that the doctor is a pain
15 management doctor?

16 A No, sir. It would be common for him to write for
17 that.

18 MR. OSGOOD: Thank you, ma'am.

19 MR. BOHLING: Nothing further.

20 THE COURT: May this witness step down?

21 MR. BOHLING: Yes, sir.

22 THE COURT: Thank you, ma'am.

23 (Witness excused.)

24 MR. BOHLING: Government calls Diane
25 Hearn.

1 DIANE HEARN, being duly sworn, testified:

2 DIRECT EXAMINATION BY MR. BOHLING:

3 Q Good afternoon, ma'am.

4 A Hello.

5 Q Would you please state your name and spell your
6 first and last name.

7 A Diane Hearn, D-i-a-n-e, H-e-a-r-n.

8 Q What town do you live in?

9 A Seabrook, Texas.

10 Q How old are you, ma'am?

11 A Seventy.

12 Q How are you employed?

13 A I'm the director of a medical clinic in Houston.

14 Q What's the name of your medical clinic?

15 A Westfield Medical.

16 Q Where is Westfield Medical Clinic located?

17 A Oh, it's in the Aldine area in Houston, physical
18 address is 11618 Aldine, Westfield.

19 Q And just to be clear, are you a doctor or a
20 pharmacist yourself?

21 A No.

22 Q When was the Westfield Medical Clinic opened?

23 A In '98, October.

24 Q What type of practice does the clinic maintain?

25 A Basically pain management.

1 Q What is your role in the clinic?

2 A Director.

3 Q And what does that mean? What do you do?

4 A Just generally office manager, front office.

5 Q Did there come a time when your business hired
6 Dr. Christopher Elder?

7 A Yes.

8 Q And do you remember when that occurred?

9 A Yes, sir. June -- I mean, February 1, 2005.

10 Q How did you hire Dr. Elder? How did he come to
11 your attention?

12 A I had contacted a company called Unisource, and
13 he was employed through them.

14 Q At some point did he become a permanent employee
15 of your business as opposed to a contractor?

16 A Yes.

17 Q When did that happen?

18 A June the 3rd, '05.

19 Q And when did he leave Westfield?

20 A March the 9th, '06.

21 Q At the time of his initial employment in February
22 of 2005, was Dr. Elder the only physician in your
23 practice?

24 A Yes.

25 Q Did Dr. Elder tell you where he had worked
649

1 before?

2 A Somewhat. I didn't know details really.

3 Q Do you recall -- go ahead. I'm sorry.

4 A He had made rounds at different hospitals -- not
5 -- I didn't get into specifics. We kind of leave that up
6 to Unisource and their group. That's what they do.

7 Q Did Dr. Elder bring any patients with him from a
8 previous practice that you recall?

9 A No.

10 Q Who else worked at the clinic besides yourself
11 and Dr. Elder at that time?

12 A Cheryl Floyd.

13 Q What was her job title?

14 A She was his nurse.

15 Q What were Dr. Elder's hours?

16 A We're there Tuesday through Friday 9 to 5 and
17 then Saturday 9 to 1.

18 Q When Dr. Elder worked at Unisource, how was he
19 compensated?

20 A I would send in time sheets to them and they in
21 turn paid him.

22 Q Did that method change when he became an
23 employee?

24 A Yes.

25 Q How was he compensated when he was an employee?

1 A I guess by the patient, the number of patients
2 that we saw each day.

3 Q Was there some kind of split between the business
4 and Dr. Elder on each patient?

5 A It was a percentage. I'm sorry. I totally
6 wasn't prepared for that. Percentage between the two of
7 us.

8 Q Do you recall during this timeframe approximately
9 how many patients would be seen by the clinic each day?

10 A Average probably 50, 40 to 50.

11 Q How were the patients processed as they go
12 through the clinic?

13 A We would do some processing up front, vital
14 signs. Then Cheryl would carry them back with their
15 charts to his office. He would see them there.

16 Q And was there a patient file or chart for each
17 patient?

18 A Yes.

19 Q Where were those kept?

20 A Out in the front office.

21 Q How were they organized?

22 A How were they what?

23 Q How were they organized?

24 A What do you mean?

25 Q How would you find one if you needed it?

1 A Alphabetically.

2 Q Were they secured?

3 A Yes.

4 Q How were they secured?

5 A Well, they were not in sight of the front window.

6 Q I couldn't quite hear you.

7 A They weren't visible from the front window.

8 Q Did employees of the clinic have access to the
9 patient files?

10 A Yes.

11 Q If a new patient came in, I take it a file would
12 have to be created?

13 A Right.

14 Q How did that occur?

15 A We get some information from them, fill out quite
16 a few reports. Usually each doctor has his own request on
17 how we do that. Each one is different. A lot of history,
18 pain wise, medical reports, something of that nature. We
19 get them approved by him, and then we proceed with making
20 their chart.

21 Q Now, in -- if it's an existing patient, what is
22 the procedure?

23 A They sign in, we pull the chart. They pay up
24 front. Cheryl takes over at that point, does the vital
25 signs, takes them to him.

1 Q Okay.

2 MR. BOHLING: If I may approach the
3 witness for a moment.

4 Q (BY MR. BOHLING) I'm going to show you what's
5 been entered into evidence as Exhibit 346, I think,
6 patient Marvin Phillips. Do you recognize that document,
7 ma'am?

8 A Yes.

9 Q What is it?

10 A It's our medical script. Not the one we use now
11 but at that time.

12 Q And at that time this is dated, I think, February
13 2nd, 2005?

14 A Correct.

15 Q Okay. So in February of 2005, this is the form
16 that you used?

17 A Yes.

18 Q And does it have your business name across the
19 top?

20 A Yes.

21 Q Okay. Now, in February of 2005, do you recall
22 what your practice was with regard to whether or not you
23 made photocopies of these types of prescriptions within
24 the office?

25 A We did at that time, yes.

1 Q Do you know when that practice began?

2 A When he came.

3 Q By "he" you're referring to?

4 A Dr. Elder.

5 Q Is there a particular reason why that practice
6 began?

7 A He requested that himself.

8 Q Do you remember if you asked him why he had made
9 such a request?

10 A No. I did not question him.

11 Q Okay. Was that a practice that had been done
12 previous to Dr. Elder arriving at the clinic?

13 A No. Each doctor has their specific way that they
14 want it handled. We didn't question him. It's the way he
15 wanted it done so we did it.

16 Q So did you actually give a copy of the
17 prescription to Dr. Elder?

18 A Yes, at the end of the day, uh-huh.

19 Q And how long did this practice continue?

20 A I can't be certain. At some point he said
21 doesn't matter anymore. Probably a couple of months that
22 was done, three at the most.

23 Q In addition to giving a copy to Dr. Elder, were
24 any additional copies made?

25 A No.

1 Q Is there a photocopier in your clinic?

2 A Yes.

3 Q Where is it located?

4 A In the front office.

5 Q And did all the employees have access to the
6 photocopier?

7 A Yes.

8 Q Do you have any personal knowledge of what
9 happened to the prescription copies after you gave them to
10 Dr. Elder?

11 A No.

12 Q Are you familiar with a pharmacy called Ascensia
13 Nutritional Pharmacy?

14 A No.

15 Q You're familiar with a pharmacy called C&G?

16 A Yes.

17 Q If you know, do you know whether your patients
18 tend to have their prescriptions filled at a particular
19 pharmacy?

20 A For convenience sake, most of the time in the
21 building. The script is given to them. They can go to
22 the pharmacy of their choice.

23 Q Now, what part of Houston is your business
24 located in?

25 A Northwest, almost to Humble. That's Aldine area.
655

1 That's -- I don't know the area that well either, but it's
2 referred to as the Aldine area. It's off 59.

3 Q It's in the northwest part of town?

4 A Yes.

5 Q Do you -- are you generally familiar with where
6 200 Loop Road would be, that area?

7 A 200 Loop?

8 Q South Loop. Where the South Loop would be in
9 Houston?

10 A No.

11 Q Now, at some point did you receive a request from
12 the government to look in your files and see if there were
13 any patients with particular names?

14 A Yes.

15 MR. BOHLING: Gentlemen, I would move
16 into evidence Exhibit 1196 but only that patient name
17 list, probably pages 3 and 4. Let's start with page 3. I
18 think that would be right. Let's go to page 3.

19 It will be for the record pages 2 and 3 of this
20 exhibit will be the ones we'll ask to be admitted into
21 evidence.

22 THE COURT: What was the exhibit number
23 again?

24 MR. BOHLING: 1196, Your Honor.

25 THE COURT: Pages 2 and 3?

1 MR. BOHLING: Yes, sir.

2 THE COURT: Hearing no objections, it
3 will be received.

4 MR. OSGOOD: I thought it was already
5 in.

6 MR. BOHLING: It's a duplicative copy.
7 We sent one to each business.

8 MR. OSGOOD: Okay.

9 MR. BOHLING: It is the same
10 information.

11 Q (BY MR. BOHLING) Did you look for patient files
12 under these names?

13 A Yes. This was the first group that I received,
14 right?

15 Q Yes, ma'am.

16 A No. We -- there's some names that are close, not
17 anything that's exact.

18 Q Okay. And I think you're a little ahead of me.
19 But were you able to locate any of these patient names in
20 your files?

21 A No.

22 Q And then did you write a letter in response back
23 to the government indicating the result of your search?

24 A Yes.

25 MR. BOHLING: Your Honor, I move Exhibit
657

1 1075 into evidence.

2 MR. OSGOOD: No objection.

3 MR. BOHLING: If we could put 1075 up on
4 the screen.

5 THE COURT: It will be received.

6 Q (BY MR. BOHLING) This is a letter dated November
7 6, 2006?

8 A Yes.

9 Q And is that your signature there?

10 A Yes.

11 Q And this is simply the letter that told us that
12 you had not found any of the patient names?

13 A Right.

14 Q Now, does your clinic fax any prescriptions?

15 A No, never.

16 Q You have never had that practice?

17 A No.

18 Q Did you receive a second request concerning some
19 names from the government?

20 A Yes.

21 Q Okay. And if we could --

22 MR. BOHLING: I would move Exhibit 1076
23 into evidence just --

24 THE COURT: Objection?

25 MR. OSGOOD: No objection.
658

1 THE COURT: It will be received.

2 MR. BOHLING: If we could put Exhibit
3 1076 up.

4 Q (BY MR. BOHLING) Okay. And do you recognize this
5 exhibit, ma'am? We can blow that up for you. It's hard
6 for me to read too.

7 A Yes.

8 Q What is this exhibit?

9 A I'm sorry?

10 Q What is this that we're looking at, if you recall
11 it?

12 A It's just my fax back to them, back to
13 Ms. Watterson.

14 Q Okay. And if we could go down to the second
15 page. If we could make that a little bigger so we can see
16 it.

17 Now, is that your handwriting on this fax?

18 A Yes.

19 Q And if we go down -- first of all, obviously we
20 have a last name and first name for the patient?

21 A Uh-huh.

22 Q You have to say yes for the record.

23 A Yes.

24 Q And then there's a checkmark. And that's a
25 written-in checkmark?

1 A Right.

2 Q Did you write that?

3 A Yes.

4 Q What does that checkmark signify, ma'am?

5 A These indicate that I had a chart on that person.
6 First one has same name four times. Had a chart on that
7 person. Should have been a script in that chart. Was no
8 script. Normally there's a script in these charts that's
9 a copy.

10 Q Okay. And I just -- I'm going to slow down a
11 little bit so I understand this.

12 For Joe Alexander, I'm not quite sure why the
13 name is on there four times but you've got the notation,
14 "Have chart." So that means, if I understand what you're
15 saying, that your business had a chart for a patient named
16 Joe Alexander?

17 A Yes.

18 Q And then you've got that "no script."

19 A Right.

20 Q Now, what is the significance of that? Why is
21 that an issue, whether or not there's a prescription in
22 there?

23 A Some charts -- during that particular time
24 period, during the dates that these were sent, other -- it
25 was just my own worksheet really. Other charts had

1 scripts in them, copies that we put in them. These did
2 not. These are missing the copy.

3 Q Okay. At what point did you start putting a copy
4 of the prescription into the charts?

5 A Well, we started using the copies of the scripts
6 in January of 2001, so it's a long time ago. But I
7 believe they -- we started putting that duplicate -- not
8 always. I just don't know actually when we started that
9 procedure of putting them in the chart. We prior to that
10 had just the in number order boxes of the copies.

11 Q Okay.

12 A At this point, though, we were keeping charts --
13 scripts in the chart.

14 Q Okay. So essentially if you went back to a
15 particular patient chart and they had received a
16 prescription in the past, you would expect to find a copy
17 of that prescription?

18 A Right.

19 Q But -- so then for Joe Alexander, for example,
20 you looked but there was no copy of a prescription?

21 A Correct.

22 Q For other patients there was a copy of a
23 prescription?

24 A Right. In that period of time, yes, sir.

25 Q If we look, for example, at --

1 MR. BOHLING: If we could just scroll up
2 a bit.

3 Q (BY MR. BOHLING) Okay. If we look at Jerry
4 Brewer?

5 A Uh-huh.

6 Q What is indicated there for Mr. Brewer?

7 A The copies of the controlled substance weren't
8 there. The copy of -- of course, Adipex is but Adipex
9 script was there. There again, no one told me to do this.
10 I was just putting them down because I noticed the absence
11 of scripts in these charts where the scripts in other
12 charts were there.

13 Q Okay. So if we went down the list, essentially
14 you make the same kind of notations for every patient who
15 was included?

16 A Right.

17 Q Do you remember where you received this list
18 from?

19 A Yes.

20 Q Where was that?

21 A From you all, from DEA.

22 Q Now, when we met in Texas, you had looked -- you
23 had given us some examples of Dr. Elder's -- things that
24 Dr. Elder had written or written upon?

25 A Yes, sir.

1 Q And you recall identifying those examples for us?

2 A Yes, sir.

3 MR. BOHLING: Your Honor, I would move
4 into evidence Exhibits 1077, 1078, 1079, 1080, and 1081.

5 THE COURT: Hearing no objections,
6 they'll be received.

7 MR. OSGOOD: Just a minute, Your Honor.
8 Let me look and see what those are.

9 MR. BOHLING: I can certainly say for
10 the record 1077 is a handwritten note. 1078 is a 5-page
11 professional services agreement. 1079 are two pages of
12 signed e-mails. 1080 are timecards that are signed.

13 MR. OSGOOD: I don't have any objection.

14 THE COURT: Okay. They're in.

15 Q (BY MR. BOHLING) Are you familiar with Dr.
16 Elder's handwriting?

17 A Yes, in the charts. I can identify them in the
18 charts.

19 Q I'd like to show you Exhibit 1083.1, which is in
20 evidence already in another form.

21 And this is the prescription we showed you I
22 think in the original when we were meeting with you
23 before.

24 A Right.

25 Q Do you -- did you -- do you recognize that
663

1 signature?

2 A To my knowledge, that looks like his signature,
3 yes.

4 Q And for the record this is a prescription for
5 Hazel Hollis written with -- the printing on the top is
6 Christopher Elder from 3003 South Loop West in Houston.

7 MR. BOHLING: Just a moment, Your Honor.

8 MR. OSGOOD: If it saves time, I'll
9 stipulate he wrote that prescription, Your Honor.

10 MR. BOHLING: I certainly will accept
11 that stipulation, Your Honor. That's fine.

12 Thank you, sir.

13 I believe that's all we have of this witness.

14 Thank you very much.

15 CROSS-EXAMINATION BY MS. OSGOOD:

16 Q Mrs. Hearn, I believe we met once before in
17 another proceeding earlier in this case; is that right?
18 Were you up here once before?

19 A Not here.

20 Q You were not. Okay.

21 A No.

22 Q Been a long time. I can't remember. I thought
23 we had.

24 A No.

25 Q All right. I represent Dr. Elder.
664

1 A Okay.

2 Q Did you tell the government that you thought the
3 reason he made the personal copies at first was because he
4 wanted to be sure he was being paid correctly?

5 A Yeah. It's really hard to remember exactly what
6 each doctor has requested and why. I might have spoken
7 out of turn. I don't -- I didn't know the reason. The
8 fact that he wanted them was enough for me.

9 Q It was a couple of months and it stopped?

10 A Right.

11 Q And he was being paid by you based on the number
12 of patients he saw?

13 A At that time -- he was being paid by Unisource in
14 the beginning.

15 Q That's what I meant.

16 A Right.

17 Q At first. Then you hired him full time?

18 A Yes, sir.

19 Q Liked his work, didn't you?

20 A Right.

21 Q Good doctor?

22 A Absolutely.

23 Q And in fact I think you told him he was a tough
24 doctor to get narcotics from, he was strict?

25 A He was.

1 Q Now, I take it from that, then, that he was not
2 handing out pain medication to just anybody that walked
3 through the door?

4 A No.

5 Q You're the owner of the clinic?

6 A Yes.

7 Q You weren't running a pill mill there, were you,
8 ma'am?

9 A Were we?

10 Q Yes.

11 A No, not when he was there.

12 Q You know what I mean by "running a pill mill,"
13 don't you?

14 A Absolutely.

15 Q Tell these folks of the jury what a pill mill is.
16 I mean, you own this place.

17 A Well, basically they're still run, and we've done
18 it the wrong way and we've done it the right way. So he
19 did it the right way. Records were required. We usually
20 always called on the records. He insisted on it. He ran
21 a tight ship.

22 Q Okay. And, now, is there anything unusual about
23 seeing a doctor -- I mean, doctors got this down to a
24 science. You've got examination rooms?

25 A Uh-huh.

1 Q You can put a patient in two or three different
2 examination rooms, can't you?

3 A Right.

4 Q You can do the -- have the nurses and other
5 people do the workup on them on the charts and everything?

6 A Right.

7 Q They maximize time, don't they?

8 A Right.

9 Q So the doctor is basically jumping from
10 examination room to examination room. The patient is in
11 there sitting on the little bed or whatever it is ready to
12 be seen when he gets in there, right? Is that accurate?

13 A We've done it different ways. Different doctors
14 want different -- he wanted to see them in his office.

15 Q He actually spent more time with them than a lot
16 of doctors do?

17 A Oh, yes, he did.

18 Q Okay. And were you seeing other kind of patients
19 with -- you weren't a general practice clinic?

20 A He did see some medical. Mostly pain. He did
21 treat other illnesses.

22 Q Okay.

23 A Yes.

24 Q Okay. Now, what's the main medicine that's
25 prescribed for his -- hydrocodone a typical --

1 A Hydrocodone, uh-huh.

2 Q Xanax to relax them?

3 A Xanax and Soma.

4 Q That's a muscle relaxant?

5 A Right.

6 Q Your husband is actually a doctor himself, isn't
7 he?

8 A He was.

9 Q Retired, out of the business now?

10 A He passed away.

11 Q Okay. I'm sorry to hear that.

12 A Thank you.

13 Q Was that recently?

14 A A year ago.

15 Q Okay. I knew that was not --

16 A He was retired but he did --

17 Q Okay. So you've got a long background in the
18 medical profession?

19 A Yes.

20 Q Proud of your business?

21 A Absolutely.

22 Q And wouldn't have kept Dr. Elder there if you
23 thought he was doing anything wrong, would you?

24 A No.

25 Q In fact, you said it hurt your feelings that he
668

1 was charged in here, didn't you?

2 A Absolutely.

3 MR. OSGOOD: Thank you, ma'am.

4 THE COURT: Follow-up?

5 MR. BOHLING: Yes, sir.

6 REDIRECT EXAMINATION BY MR. BOHLING:

7 Q Ma'am, I did want to have a few follow-up
8 questions.

9 I think you told us in June of 2006, that the
10 payment changed for Dr. Elder and he went to a split or a
11 percentage I think you said?

12 A Yes.

13 Q And what was charged for an office visit at
14 Westfield at that time?

15 A I believe it was 60. He has a better memory than
16 I do. I believe that was the charges then.

17 Q Sixty dollars?

18 A I believe.

19 Q And what was the split between Westfield --

20 A Fifty percent. And I had the expenses.

21 Q I'm sorry?

22 A Fifty percent and I bear the expenses.

23 Q So that means, if I understand right, that Dr.
24 Elder received \$30 for each patient seen?

25 A Yes.

1 Q Okay. And I think you testified on direct that
2 there were 40 to 50 patients a day?

3 A Generally, yes.

4 Q I apologize here for my slowness, but so by my
5 math, that would be \$1,600 a day for one-half of the
6 percentage?

7 A Correct.

8 Q That's right.

9 A If I'm right with the monthly fee. We've changed
10 it, not frequently. We started out with 40. I believe we
11 increased it to 60. Now it's another amount, so I'm
12 thinking while he was there, it was 60.

13 Q Okay. But you believe that's approximately in
14 the ballpark, correct?

15 A Ballpark.

16 Q Okay. So at that point -- and I'm sorry, how
17 many days a week did Dr. Elder work?

18 A Tuesday through Friday. Half a day on Saturday.

19 Q Okay. So that's four and a half -- excuse me,
20 again, for being slow here.

21 So I'm getting in the neighborhood of \$8,000 a
22 week. Does that sound right? That would be one-half of
23 the percentage?

24 A Sounds right.

25 Q And were these cash patients, ma'am?

1 A Yes.

2 Q No insurance taken?

3 A No.

4 Q Okay. I'll just ask you, are you aware of the
5 fact that a number of these patients received
6 prescriptions for hydrocodone and other narcotic pain
7 killers?

8 A Was I aware of it?

9 Q Yes.

10 A Yes.

11 Q Would it be -- would it be fair to say this: If
12 your clinic drastically scaled back the number of --

13 MR. OSGOOD: I'm going to object to the
14 leading question.

15 THE COURT: Sounds like it.

16 MR. BOHLING: I'll try and get it so we
17 can all agree on it, Your Honor. I'm happy to do that.

18 Q (BY MR. BOHLING) Do you have any concern that
19 patients come to your clinic specifically to get
20 hydrocodone and other controlled substances?

21 A Probably so. They know what type practice it is,
22 and -- for the most part they're there for a good reason.

23 Q Okay.

24 MR. BOHLING: That's all I have.

25 Thanks.

1 RECROSS-EXAMINATION BY MR. OSGOOD:

2 Q In spite of your diligence, Mrs. Hearn, it sounds
3 like you're a pretty diligent lady, occasionally somebody
4 will slip one in on you, won't they, with a phoney
5 driver's license or something like that?

6 A Never had that happen.

7 Q You don't know it has. It's possible it could
8 have happened, you just don't know it?

9 A Possible.

10 Q Because you were pretty strict about it?

11 A Very.

12 Q Now, you in fact, even though these were cash
13 payments, you paid your taxes, didn't you?

14 A Yes.

15 Q And you kept good books and had an accountant,
16 didn't you?

17 A Yes, sir.

18 Q And you paid a lot of taxes, didn't you?

19 A Yes, sir.

20 Q You gave Dr. Elder a 1099 for \$200,000, didn't
21 you?

22 A Yes, sir.

23 Q Which he paid taxes on -- or you don't know that
24 he paid taxes on it?

25 A No.

1 Q You gave him a 1099 that went to the Internal
2 Revenue Service for \$200,000 for those ten months or
3 whatever it was or -- about a year?

4 A Uh-huh. Right at it.

5 Q Is there anything unusual about seeing that
6 number of patients based on your many years of running a
7 clinic and being married to a doctor yourself?

8 A No, not really. That's a fair number and he saw
9 them all.

10 Q Okay. Good doctor?

11 A Good doctor, that's right. Good for me.

12 MR. OSGOOD: Thank you.

13 THE COURT: Anything further of this
14 witness?

15 MR. BOHLING: No, sir, no, sir.

16 Thank you.

17 THE COURT: Thank you. You can step
18 down.

19 (Witness excused.)

20 MR. BOHLING: Your Honor, I'd kind of
21 like to review where I am with witnesses. I'm not sure if
22 I need to call the next one. Can we take a break?

23 THE COURT: This is as good a time as
24 any to take a break. We'll take a 15-minute break. I'll
25 ask you not discuss the case among yourselves or with

1 others. We'll be in recess.

2 (A recess was taken.)

3 (The following proceedings were had out of the
4 presence of the jury:)

5 MR. BOHLING: We have Officer Kowal
6 here. We can put him on tomorrow.

7 THE COURT: I don't think so. I don't
8 think I'm going to allow his testimony.

9 MR. BOHLING: Can we make a pitch?

10 THE COURT: You can make a record if you
11 like. You can do that either today or tomorrow.

12 MR. BOHLING: I would rather do it
13 tomorrow. I do have some witnesses who I think are
14 relevant to what I would argue to you, so that probably
15 makes more sense.

16 THE COURT: Okay.

17 (The following proceedings were had in the
18 presence of the jury:)

19 MR. RHODES: We call Leah Swicegood.

20 LEAH SWICEGOOD, being duly sworn, testified:

21 DIRECT EXAMINATION BY MR. RHODES:

22 Q Would you please state your name for the record?

23 A My name is Leah Swicegood, S-w-i-c-e-g, as in
24 girl, -o-o-d, as in David.

25 Q Ms. Swicegood, where do you work?

1 A I work for the Internal Revenue Service here in
2 Kansas City.

3 Q What do you do for them?

4 A My primarily responsibility is court witness
5 coordinator. I testify in criminal and civil trials and
6 prepare IRS documents for those trials.

7 Q Are you a custodian of the records for the IRS?

8 A I am.

9 Q And how long have you done that work?

10 A I've done this position since 2001. I've been
11 employed with the Internal Revenue Service since 1990.

12 Q Ms. Swicegood, I'm handing you what has been
13 marked Government's Exhibits 1128, 1129, 1132, and 1133.

14 Ms. Swicegood, can you tell me what these
15 exhibits are?

16 A These are certificates of official record of the
17 Internal Revenue Service. They're all sealed and stamped
18 that say they're true and accurate copies of the records
19 that we have.

20 Q And is that signified by the blue sheet on top
21 that it is a true and accurate copy?

22 A 1128 and 1129 have the blue sheet. 1132 and 1133
23 only bear the seal.

24 Q Okay.

25 MR. RHODES: Government moves to admit
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1 into evidence Government's Exhibit 1128, 1129, 1132, and
2 1133.

3 MR. LEWIS: No objection, Your Honor.

4 MR. OSGOOD: No objection.

5 THE COURT: They'll be received.

6 Q (BY MR. RHODES) Would you please pull up Exhibit
7 No. 1128.

8 Now, we're now looking at 1128. Could you tell
9 me who this return is for and what year?

10 A This tax return is for Troy and Lucy Solomon for
11 the tax year ending 2004.

12 Q What does "TRPRT print, do not process" mean?

13 A This is a tax return print. That's what the
14 TRPRT stand for, print, do not process. This return was
15 received by the Internal Revenue Service electronically.
16 Of course, that came to us on magnetic media tape, so
17 there was no paper transaction. So when we want a copy of
18 the tax return, we order this tax return print, and those
19 figures then follow the tax return and show up on the same
20 lines that they would have had a paper return come to us.
21 Because it looks so much like a paper return, it says at
22 the top "Do not process" so this return isn't processed
23 twice.

24 Q And what was the total -- what was -- what's on
25 line 7?

1 A Line 7 reflects the wages, salaries, and other
2 tips from your Form W-2, and on this tax return \$84,801.

3 Q Now, was this a joint tax return?

4 A It was.

5 Q So would this be the wages of both the husband
6 and the wife?

7 A Yes, sir, it would be.

8 Q That would be on line 7?

9 A Yes.

10 Q Now, let me see, and as far as the deductions,
11 that next page, let me see -- what can you tell me?

12 A On line 38 is where you would put your standard
13 deduction or your itemized deductions, and in this case it
14 was an itemized deduction. And their deduction was
15 \$33,736. That then gives you a subtotal of the \$50,815
16 and then the deduction for each exemption.

17 **In this case there were three, the husband,**
18 **wife, and child for \$9,300. That leaves a subtotal then**
19 **of \$4,515 [sic] in taxable income. That tax on \$41,515**
20 **would be the \$5,514 reflected on line 45. Then there are**
21 **two additional credits on line 49 and 51. Those would be**
22 **the education credits and the child tax credit. So that**
23 **\$1,129 would be removed from the \$5,514 leaving a tax due**
24 **and owing of \$4,385.**

25 Q All right. Next page, please. What is this that

1 we're looking at?

2 A This is a Form 2004 W-2. It was issued to Lucy
3 Solomon. That's about halfway down in the middle of the
4 page, and at the top it shows from a company NHMCCD. This
5 shows her wages and how much withholding was withheld from
6 her check.

7 Q Okay. The next page. What does this tell us?

8 A This is also a Form W-2 for the year 2004. This
9 is from a company, MP TotalCare, Incorporated to a Troy
10 Solomon. Box 1 shows the wages. Box 2 shows the federal
11 income tax withheld.

12 Q All right. And that amount was that was
13 withheld?

14 A His wages were \$59,347. The federal tax withheld
15 would be \$8,955.

16 Q Okay. Next page.

17 A This is the education credit. She -- that we saw
18 the credit for \$129.

19 Q Next page.

20 A This is the Schedule A of the itemized
21 deductions, and this is where you -- if you're not going
22 to use the standard deduction, where you would itemize
23 your deductions. In this case lines 5 and 6 together are
24 \$2,412. Those are taxes that were paid. This is where
25 you would report your mortgage interest, in this case

1 \$1,002, where you would put your gifts to charity, in this
2 case \$9,500 gifts to charity, and also your job expenses.
3 Down at the bottom their job expenses were \$20,822 for
4 total itemized deductions of \$33,736.

5 Q And next page, please.

6 A This is the itemized employee business expense
7 report, and this shows the deductions that were listed on
8 the prior page, the job expenses. In this case they were
9 vehicle expenses and other business expenses. The total
10 of those expenses was \$19,313.

11 Q Okay. And the next page.

12 A The last page is the non-cash charitable
13 deductions. We had deductions of \$9,500. Of that \$5,000
14 of it were gifts of clothing, shoes, and furniture to
15 Goodwill.

16 Q Okay. And let me see that front page one more
17 time.

18 What is line 12?

19 A Line 12 is where you would report a business
20 income. If you had a business that, for example, say, you
21 sold Avon sales and you had sales of that, you're going to
22 have cost of your goods sold and what profit you make.
23 Then you would report that on line 12 as your business
24 income.

25 Q Okay. And let's go to Government's Exhibit 1129.

1 Could you tell me who this tax return is for and what
2 year?

3 A This is also for Troy and Lucy Solomon. This is
4 a 2005 tax return. Because it doesn't have the words at
5 the top, this was actually a paper return that was
6 submitted to the Internal Revenue Service in Austin,
7 Texas.

8 Q Okay. Now, again, we're back to line 12.

9 A Line 12 would be a business income, and it tells
10 you to attach a Schedule C. In this case rather than a
11 profit, there shows a loss of this business of \$1,305.

12 Q And the number -- the total income for that year?

13 A \$59,130.

14 Q All right. And the adjusted gross income?

15 A \$59,130. That carries over from line 37 over to
16 line 38 of the next page.

17 Q Okay. And let's go to the Schedule C. What is
18 this telling us?

19 A This shows that it's a business, that the name of
20 the owner is Troy Solomon, that the principal business or
21 profession are pharmaceutical sales. It has a code there
22 for pharmaceutical sales, and it shows the income and
23 deductions for that business.

24 Q And what is the gross income showing?

25 A The gross receipts or sales is \$93,750. That's

1 on line 1. The profit amount on this is \$1,305 loss. So
2 line 28 shows that total expenses of \$95,055.

3 Q Okay. Next page. What are we looking at here?

4 A This is the second page. Typically it would be
5 the back page of Schedule C. It just shows some of the
6 other expenses that are listed on the back -- I mean, on
7 the front as far as the cell phone and miscellaneous
8 expenses. It also shows us -- I'm sorry. At the very
9 top. I should have gone to the top first.

10 Q Yeah. Cost of goods?

11 A It shows us that line 40 says, Add lines 35
12 through 39, which tells us if there was any inventory at
13 the beginning of the year. So if you carry your inventory
14 over, if you had any purchases of inventory, any of that.
15 So all of that shows us there was no inventory at the
16 beginning of the year. There was no inventory at the end
17 of the year, and the cost of the goods sold was nothing.

18 Q All right. Does it show us a beginning purchase
19 or time of the year?

20 A This is a calendar year tax return, so it would
21 have been January 1st, 2005, through December 31st, 2005.

22 Q Okay. What are we looking at here?

23 A These are the cell phone and miscellaneous
24 deductions under the "other expenses," and those are then
25 carried forward to the expense section of the return.

1 Q Okay. And back to the body of this document, can
2 you tell us what is the adjusted gross income for this tax
3 year?

4 A It's going to be line -- yeah, 37 or 38, \$59,130.

5 Q Okay. All right. Let's look at Government's
6 Exhibit 1132. What does this tell us?

7 A This is a certification of lack of record. It
8 says that a search was done for the person or company. In
9 this case it was a company, LP Income or -- excuse me, LP,
10 Incorporated. That a search was done for an 1120, which
11 is just like a 1040, but it's for a corporation. So
12 instead of for an individual, it's for a business for the
13 tax year that ended December 31st, 2004.

14 **And our records show that we did not receive a**
15 **Form 1120 from this business, and it also has the taxpayer**
16 **identification number to the right of the LP,**
17 **Incorporated. Taxpayer identification number for a**
18 **business, that's just like an SSN, but it only has the one**
19 **dash in it. So it's two numbers and then seven. So under**
20 **this name or this taxpayer identification number, there**
21 **was no tax return filed for 2004 for that company.**

22 Q 1133.

23 A It's the exact same as the one we just looked at,
24 but this is for the tax period ending December 31st, 2005,
25 so neither of those years was there a tax return filed for

1 this company.

2 Q Okay.

3 MR. RHODES: No further questions of
4 this witness.

5 CROSS-EXAMINATION BY MR. LEWIS:

6 Q Good afternoon, ma'am.

7 A Good afternoon.

8 Q On the 2005 joint return by Mr. Troy Solomon and
9 Mrs. Lucy Solomon, will you look at the preparer's
10 identification?

11 A I can't read the signature, but it appears that
12 the firm name is QJF Professional Services in Houston,
13 Texas.

14 Q So it was filed by a professional tax preparer,
15 it would appear?

16 A It would have been completed by this preparer,
17 yes, sir.

18 Q And as far as the search for -- help me with your
19 area of expertise -- the certification of a lack of a --
20 was it Form 1020 you said?

21 A These are 1120s. They're corporation income tax
22 returns.

23 Q Okay. Are there times where those tax returns
24 are delayed or for some reason not filed until subsequent
25 years? You see that sometimes in your profession?

1 A Yes, we do.

2 MR. LEWIS: Thank you, ma'am.

3 Nothing further, Your Honor.

4 CROSS-EXAMINATION BY MR. OSGOOD:

5 Q How did the -- or why and how did it come to pass
6 that you generated these records for court here today?

7 A I actually didn't generate these records. There
8 was an ex parte done for these records, and they were
9 disclosed by the disclosure office.

10 Q Okay. Explain to the folks what an "ex parte
11 request" is.

12 A An ex parte request is done by the U.S.
13 Attorney's Office requesting that the IRS turn over these
14 records.

15 Q That does not require a court order from the
16 judge, does it?

17 A I don't -- to tell you the truth, I don't know.
18 I don't work in disclosure, so the records that I handle
19 are typically criminal cases. These come through the
20 disclosure office.

21 Q Do you not typically get requests in white collar
22 cases, white collar prosecutions, or money laundering
23 cases for tax records for people?

24 A I do when there are tax charges on the case.
25 When there are not tax charges, they go through the

1 disclosure office.

2 Q No. What I mean is do you testify in all of
3 these cases?

4 A I do if requested, yes.

5 Q Okay. I don't -- I'm not concerned about the
6 procedure to generate them. I'm talking about the types
7 of cases that you testify in.

8 A I do.

9 Q You typically testify in money laundering cases,
10 wire fraud cases, mail fraud cases, that kind of thing?

11 A That's correct.

12 Q And the purpose is to show, perhaps, that there's
13 a difference between what's on the tax return and massive
14 amounts of money that somebody may have earned?

15 A That could be one of the reasons why I'm
16 requested to testify.

17 Q For example, were you requested in this case to
18 get tax returns on Lynn Rostie?

19 A No, I was not.

20 Q Were you requested to get tax returns on Cindy
21 Martin?

22 A No, I was not.

23 Q We have an exhibit. How would we have gotten
24 Cindy Martin's tax returns in this case?

25 A I was not requested to get any of these records.
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1 That request would have gone through the disclosure
2 office, but these were the only records that I was
3 presented with to testify to.

4 Q All right. Do you know -- we're not
5 communicating very well.

6 Who did you talk to before you came here to
7 testify today?

8 A The U.S. Attorney's Office and I received an
9 authorization from disclosure to come and testify.

10 Q And the U.S. Attorney's Office basically is the
11 one that generated these requests for tax returns?

12 A That's true.

13 Q Did you get a request, you or this office or
14 anybody in the great Internal Revenue Service out there in
15 Never Neverland, did they get a request for the tax
16 returns for Dr. Elder?

17 A They may have, but I wasn't privy to that
18 information. These were the only information that I was
19 provided.

20 Q So you don't know whether or not the IRS was
21 asked to get his returns and they were disclosed and they
22 just aren't here today and weren't used, do you?

23 A I do not.

24 Q You don't know, then, whether or not he in fact
25 got a 1099 for \$200,000 in --

1 MR. RHODES: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. RHODES: We're not arguing to the
4 jury.

5 MR. OSGOOD: Okay.

6 Q (BY MR. OSGOOD) Who could we call from the IRS to
7 find that out?

8 A I'm sure there's a copy of the ex parte that was
9 done by the U.S. Attorney's Office but I don't have it.

10 Q I see.

11 MR. OSGOOD: May we approach, Your
12 Honor?

13 THE COURT: Yes.

14 (Counsel approached the bench and the following
15 proceedings were had:)

16 MR. OSGOOD: We never received copies of
17 the ex parte requests in discovery. We received these
18 returns, but I think they probably sent an ex parte for my
19 client's tax returns because he was audited in '04 and '05
20 and got a refund.

21 THE COURT: And?

22 MR. OSGOOD: I would like to see that ex
23 parte request as part of the discovery. I think it's --

24 MR. RHODES: It's not. We have told him
25 time and time again we did not seek the records of his

1 client. So, he's just making an argument that's not
2 there.

3 MR. OSGOOD: My client will testify to
4 it. I'll move on.

5 THE COURT: You'll have that
6 opportunity.

7 MR. OSGOOD: I'll move on.

8 (The proceedings returned to open court.)

9 Q (BY MR. OSGOOD) Last question, the only tax
10 returns you brought here, then, was on Mr. Solomon?

11 A I didn't bring any of them, but these are the
12 only tax returns that I have reviewed.

13 Q Well, okay.

14 A I just wanted -- I didn't bring these with me.

15 Q All right. You understand what I asked you. I
16 asked you are those the only returns you're here to
17 testify about, ma'am?

18 THE COURT: I think she answered her
19 question. No need to be argumentative with this witness,
20 Mr. Osgood.

21 MR. OSGOOD: I apologize.

22 THE COURT: Are there any further
23 questions of this witness?

24 MR. OSGOOD: No, Your Honor.

25 MR. RHODES: No, Your Honor.

1 THE COURT: Thank you.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 MR. BOHLING: May we approach?

5 THE COURT: Yes.

6 (Counsel approached the bench and the following
7 proceedings were had:)

8 MR. BOHLING: If it's all right with the
9 court, I think we can stop for the day. I'm sure we'll
10 fill the day tomorrow and be -- and just have the two
11 short witnesses on Monday.

12 THE COURT: Well, I don't want to fill
13 it up. Do you have other witnesses today that you have?

14 MR. BOHLING: Potentially. We could
15 probably do one.

16 THE COURT: I'd like to take one because
17 if we could, I'd like to finish early tomorrow.

18 MR. BOHLING: That's fine.

19 Then just -- with counsel here on point of
20 procedure, we can read all these stipulations or we can
21 simply enter these, simply move the documents into
22 evidence.

23 MR. LEWIS: You can do it either way.
24 I'm not going to object.

25 MR. OSGOOD: I don't care.
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1 MR. BOHLING: It would be much shorter.

2 MR. OSGOOD: We don't need as much
3 detail as on the other ones.

4 MR. BOHLING: We'll wait until the end
5 of the day.

6 THE COURT: Are you talking about you
7 have a witness production to read into the record?

8 MR. OSGOOD: About exhibits or what?

9 MR. BOHLING: What I'm proposing since
10 we seem to be doing this now, if we simply move the record
11 into evidence, we don't have to read the whole
12 stipulation.

13 THE COURT: Okay.

14 MR. OSGOOD: Basically custodian
15 stipulations.

16 THE COURT: Okay.

17 (The proceedings returned to open court.)

18 MR. BOHLING: We call Judi Watterson.

19 JUDI WATTERSON, being duly sworn, testified:

20 DIRECT EXAMINATION BY MR. BOHLING:

21 Q Please state your name and spell your first and
22 last name for the record.

23 A Judi, J-u-d-i, Watterson, W-a-t-t-e-r-s-o-n.

24 Q How are you employed?

25 A I work for the Drug Enforcement Administration.
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1 I'm a diversion investigator.

2 Q How long have you worked for the Drug Enforcement
3 Administration?

4 A I've worked for the Drug Enforcement
5 Administration for about 24 years.

6 Q What does a diversion investigator do?

7 A We enforce the laws and regulations regarding
8 pharmaceutical controlled substances to ensure that they
9 stay within the legal system.

10 Q And what kind of activities are you involved in
11 as part of that job?

12 A We have a variety of duties. We conduct
13 inspections at manufacturing plants, distribution centers,
14 pharmacies, physicians' offices. We get involved in
15 criminal investigations and civil investigations.

16 Q Did you at some point become involved in an
17 investigation involving The Medicine Shoppe Pharmacy in
18 Belton, Missouri?

19 A Yes.

20 Q How did you get involved in that investigation?

21 A I received a call from Frank Van Fleet, the
22 Missouri Pharmacy Board inspector, in the fall of 2005,
23 after he had made a visit to The Medicine Shoppe in
24 Belton, Missouri.

25 Q And as a result of receiving that call from
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1 Mr. Van Fleet, did you initiate an investigation at the
2 federal level?

3 A Yes, I did.

4 Q Okay. And are you the chief case agent for that
5 investigation?

6 A Yes.

7 Q Now, I'd like to ask you about some of your
8 activities during this investigation. My first question
9 is, have you had an occasion to interview Dr. Christopher
10 Elder?

11 A Yes.

12 Q Okay. What was the date of that interview?

13 A We interviewed Christopher Elder on October 26th,
14 2006, I believe.

15 Q Okay. You remember it being October --

16 A October 25th. I'm sorry.

17 Q That's fine.

18 Where did that interview take place?

19 A That took place at his medical office in Houston,
20 Texas.

21 Q And was anyone else with you at the time of that
22 interview?

23 A Another investigator named Connie Overton.

24 Q And where within the medical office did the
25 interview take place?

1 A It was in Dr. Elder's personal office.

2 Q How did you introduce yourself to Dr. Elder?

3 A I introduced myself as a diversion investigator
4 with DEA, and I showed him my credentials.

5 Q Did you read Dr. Elder what are known as Miranda
6 rights?

7 A No.

8 Q Why not?

9 A There was no arrest or custody situation.

10 Q Now, where was -- was Dr. Elder sitting during
11 the interview?

12 A Yes.

13 Q And where was he sitting?

14 A At his desk.

15 Q Where were you sitting?

16 A In a chair on the other side of the desk.

17 Q How did you begin the interview?

18 A We -- after we identified ourselves, we went back
19 to his office, and he agreed to the interview. And then
20 he basically -- we asked him for his background, and he
21 provided me with his curriculum vitae.

22 Q Where is his office located, if you remember?

23 A The office was at 3010 Little York Road, Houston,
24 Texas.

25 Q And you did mention his curriculum vitae. What

1 did his curriculum vitae show?

2 A Well, basically it's a review of someone's
3 education and work experience.

4 Q Did that reflect his certifications?

5 A Yes.

6 Q And what did it show about his certifications,
7 ma'am?

8 A That in 2006, he became board certified in pain
9 management -- or pain medicine, excuse me, by the
10 Diplomate of the American Board of Pain Medicine, and in
11 2005, he became board certified by the Diplomate of the
12 American Board of Physical Medicine and Rehabilitation.

13 Q Did you ask Dr. Elder if he had ever worked at
14 South Texas Wellness Center?

15 A Yes, I did ask him if he worked there.

16 Q What was his response?

17 A He said that he had worked there but he was not
18 sure, it was only for a few months.

19 Q Okay. Did he describe whether his work was full
20 time or part time?

21 A He said he worked there part time two to three
22 days a week.

23 Q Did he say whether he worked at other locations
24 for other employers during that time period?

25 A Yes. He worked at Methodist Hospital in Houston
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1 and for Whitaker Medical, which was a locum tenens agency.

2 Q Did he say who he worked for at South Texas?

3 A Yes. He stated he worked for Ada and Pleshette
4 Johnson, and that they paid his -- you know, his salary
5 there.

6 Q Did he say how he was supplied with prescription
7 pads while he was at South Texas?

8 A Yes. The owners supplied him with the
9 prescription pads.

10 Q Did you ask him how many patients he typically
11 saw per day at South Texas?

12 A Yes, we did ask him that, and he said he couldn't
13 remember the number of patients.

14 Q What -- did he tell you what kind of medical
15 problems he treated while at South Texas?

16 A Yes. He gave us a fairly lengthy list of medical
17 problems that he treated.

18 Q What did they include?

19 A They included chronic pain, all kinds of chronic
20 pain, anxiety, sleep disorders, atrophy, burns, cervical
21 disease, RSD, lumbar disorders, and obesity.

22 Q Did he tell you why he had left South Texas
23 Wellness Center?

24 A Yes. He said he didn't get along with Pleshette
25 Johnson and he wanted to own his own practice.

1 Q Okay. Did you ask him whether or not South Texas
2 Wellness Center dispensed medication to patients during
3 his time there?

4 A I did ask him that, and he said they did not
5 dispense medication.

6 Q Did you ask him about what was included within
7 South Texas Wellness Center's medical files?

8 A I specifically asked him if the files would have
9 included photocopies of the patient's driver's license or
10 ID, and he said he didn't know.

11 Q Okay. And did you -- okay.

12 A And we asked him basically if he was sure because
13 he would have been looking in the charts, and he did not
14 change his response.

15 Q Okay. Did you ask him when he started working at
16 Westfield Medical Clinic?

17 A Yes. He said he did not know.

18 Q Did he tell you when he stopped working at
19 Westfield Medical Clinic?

20 A Yes. He worked at Westfield through the end of
21 2005, as a full-time employee, and he said he also worked
22 independently through 2005.

23 Q Did he tell you what his work hours were while
24 there?

25 A Yes. His work hours at Westfield were 9 a.m. to
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1 4 p.m. or 5 p.m. Monday through Friday.

2 Q And did he --

3 MR. OSGOOD: Your Honor, may we
4 approach?

5 (Counsel approached the bench and the following
6 proceedings were had:)

7 MR. OSGOOD: It appears to me she's
8 reading from her report in her lap right now.

9 THE COURT: Me too.

10 MR. OSGOOD: I object to that.

11 MR. BOHLING: That's fine.

12 MR. OSGOOD: I would also object while
13 we're here to the leading questions.

14 MR. BOHLING: I was being very careful
15 not to be leading, Your Honor. I thought I was being
16 fair. There's a difference between a direct question and
17 a leading question.

18 THE COURT: I didn't note that, but I
19 note it appears she's reading from her report.

20 MR. BOHLING: That's fine. Agents often
21 testify from reports. I thought that would be acceptable.
22 If not, that's fine. That's my misunderstanding.

23 THE COURT: Offer these reports into
24 evidence.

25 MR. BOHLING: If there would be no
697

1 objection, I would be happy to do that.

2 MR. LEWIS: No objection from me.

3 MR. BOHLING: Okay. That's fine. I
4 assumed there would be an objection.

5 MR. LEWIS: Your Honor, one point of
6 procedure, not to fault the government, I know they're
7 moving along, I didn't bring my Judi Watterson reports
8 here. I'm going to let Mr. Osgood go first and make a
9 couple of copies. I don't want to -- I don't mind walking
10 out and doing it, but I wanted you to know what I'm doing
11 and don't want to be disrespectful to the court. I didn't
12 bring that. They didn't tell me she was testifying.

13 MR. OSGOOD: I think the witness needs
14 to testify from recollection and he needs to refresh her
15 memory. There's a proper way to do that.

16 MR. BOHLING: I'm fine with that.

17 MR. OSGOOD: I ask her to surrender her
18 reports for the testimony here and testify from memory.

19 THE COURT: Okay.

20 MR. BOHLING: That's fine.

21 (The proceedings returned to open court.)

22 Q (BY MR. BOHLING) Okay. We can pick up where we
23 left off.

24 Was he asked whether or not any of his patients
25 followed him from South Texas Wellness Center to Westfield

1 Medical Clinic?

2 A Yes, he did.

3 Q What was his response?

4 A He said that some of them did.

5 Q Okay. Did he tell you how many?

6 A He thought approximately 70.

7 Q Did you ask him about whether he prescribed
8 Lortab and Lorcet?

9 A Yes.

10 Q What was his response?

11 A He said he did, that they were good for
12 replacements for Vioxx and another medication.

13 Q Did you ask him about whether he prescribed
14 Xanax?

15 A Yes.

16 Q And what was his response?

17 A He did.

18 Q Did you ask him about whether he prescribed
19 promethazine with codeine?

20 A Yes, I did ask him that.

21 Q What was -- and what is promethazine with
22 codeine?

23 A It's a codeine-based cough syrup.

24 Q What was Dr. Elder's response to that question?

25 A He said he wouldn't, that he would refer that
699

1 person to an internal medicine doctor.

2 Q He said he would not prescribe promethazine with
3 codeine?

4 A Right.

5 Q Did you ask him about his practice as far as
6 refills for patients?

7 A Yes, I did.

8 Q And what did he tell you?

9 A He said that he may require a patient to come in
10 for a refill, but it depended on the situation.

11 Q Okay. Did you ask him how he met Troy Solomon?

12 A Yes, I did.

13 Q What was his response?

14 A He met Troy Solomon when he worked at South Texas
15 Wellness Center.

16 Q Did he tell you when he had last had contact with
17 Mr. Solomon?

18 A Yes. He thought it was around April of 2005,
19 when he picked up his 1099 for tax purposes.

20 Q Did you ask him whether he was -- whether he had
21 been asked to issue prescriptions basically to give to
22 Mr. Solomon?

23 A I did ask him that.

24 Q What did he say?

25 A He said he was not asked by Mr. Solomon to write
700

1 prescriptions or asked by Mr. Solomon to give Solomon
2 prescriptions for the purpose of Solomon filling them on
3 behalf of his patients.

4 Q Okay. Did you ask him whether he had any
5 knowledge of controlled substances being shipped from The
6 Medicine Shoppe in Belton to South Texas Wellness Center?

7 A I did ask him that, and he said he didn't have
8 any knowledge of that.

9 Q Okay. Did you ask him about the Federal Express
10 records in this case?

11 A I did.

12 Q And how did you couch that question?

13 A I don't recall exactly, but I asked if he had
14 signed for any of the packages. And he did -- he said he
15 did not, that if they had his signature, they were
16 forgeries.

17 Q Did you ask him whether he would remember any of
18 the employee names from South Texas Wellness Center?

19 A I did ask him that. He said they had high
20 turnover so he didn't remember.

21 Q Did you show him any prescriptions that were
22 filled by The Medicine Shoppe and ask him about whether
23 they contained his handwriting?

24 A Yes. I had quite a few documents with me that
25 day that I showed him, and I did show him some

1 prescriptions from The Medicine Shoppe.

2 Q What did he say about those prescriptions?

3 A Well, there were a series of documents, and some
4 of the prescriptions he said did contain his handwriting.

5 Q And did he have a different answer about other
6 documents?

7 A Yes.

8 Q What was that?

9 A There were other prescriptions where he said he
10 wasn't sure. There were handwritten list of patients --
11 or people's names and addresses, and he said he did write
12 those.

13 Q Okay. Do you know what -- is that list in
14 evidence in this trial?

15 A I believe so.

16 Q Okay. And did you show him the facsimile
17 transmittal sheets?

18 A Yes, I did show him some of those.

19 Q Okay. And what did he say about the initials on
20 those sheets?

21 A He said that he did not write those.

22 Q Did you ask him whether he was involved in
23 arranging for patient prescriptions to be filled at The
24 Medicine Shoppe?

25 A I did ask him that.

1 Q What was his response?

2 A He said he was not involved.

3 Q Okay. Did you ask him whether he knew where his
4 own patients had filled their prescriptions?

5 A He said his patients take them to the pharmacy of
6 their choice.

7 Q Okay. Now, during the interview did Dr. Elder
8 say anything to you about the focus of your investigation?

9 A Yes. He interrupted quite a bit during the
10 interview and wanted to know why we were focusing on him.
11 And he actually asked us why we weren't investigating
12 other doctors, other white doctors in Houston instead of
13 him, a black doctor.

14 Q Okay. And did you ask him about the names of
15 those other doctors?

16 A Yes. He was asked to provide names of other
17 doctors he thought that we should investigate.

18 Q Okay. Now, following up on that, I'd like to ask
19 you a few questions about some of the exhibits.

20 MR. BOHLING: If we could bring up
21 Exhibit 605.581, page 581 of this exhibit, and then if
22 you'll go down to entry 248 and 249.

23 Q (BY MR. BOHLING) Before we focus in, do you
24 recognize this exhibit, ma'am?

25 A Yes. This would be phone calls made on May 3rd,
703

1 2006, from Troy Solomon's cell phone.

2 Q And that's that 832-794-0470 number?

3 A Right.

4 MR. BOHLING: If we can go then down to
5 -- I'm sorry, entries 248 and 249, and if we could make
6 those bigger.

7 Q (BY MR. BOHLING) What do we see on entries 248
8 and 249?

9 A Okay. Those are on May 3rd. One of them is at
10 2:45 p.m. There was an incoming call from 713-896-9995.
11 I believe the "five" means approximately five minutes in
12 length.

13 Q Okay. And then what's the next entry reflect?

14 A The same date, 2:51 p.m., same telephone number.
15 It says "Houston, Texas," so that would be an outgoing
16 call for approximately six minutes.

17 Q And have you identified the owner of the phone
18 number 713-896-9995?

19 A Right. That was subscribed to by Christopher
20 Elder.

21 Q Okay. So this is a telephonic contact or
22 communication between a number -- the cell phone number
23 registered to Mr. Solomon and a number registered to
24 Mr. Elder -- Dr. Elder?

25 A Right, right.

1 Q And that occurred on May 3rd, 2006?

2 A Yes.

3 Q And Dr. Elder had told you in the interview that
4 his last contact had been in April 2005?

5 A Correct.

6 Q And, then, if we could look at page -- the next
7 page, 582, entry 310.

8 What does entry 310 reflect in this record?

9 A Okay. The date would be May 4th, 2006, and at
10 6:21 p.m. there was a connection with 832-483-6657, a call
11 wait for approximately 5 minutes.

12 Q And have you identified in your investigation the
13 owner of the number 832-483-6657?

14 A Yes. That's subscribed to by Christopher Elder.

15 Q What happened on May 3rd, 2006?

16 A That was the date there was a federal search
17 warrant served at Ascensia Nutritional Pharmacy.

18 Q Okay. I'd now like to turn your attention to
19 Exhibit 1048. Okay. I think this is the -- do you
20 recognize this exhibit?

21 A Yes.

22 Q And what does this exhibit show?

23 A This was a faxed list. There's a fax header on
24 it, and it's handwritten names, dates of birth, addresses.
25 It's got the -- it says, "Patients, 2/1/05," and this was

1 a list I showed to Dr. Elder the day I interviewed him.

2 Q And what -- remind us what did Dr. Elder say
3 about the handwriting on this list?

4 A That this contained his handwriting.

5 Q And if we could look at the top, please.

6 What's the number, the fax number on the header?

7 A It's 281-469-9912.

8 Q And I believe that's been the subject of
9 evidence. Do you recall who is the owner of this number?

10 A That would be Troy Solomon's fax number.

11 Q And what's the date of this fax?

12 A February 3rd of 2005.

13 Q Okay. And the patients who are listed here, to
14 what medical practice are they relevant?

15 A Westfield Medical Center.

16 Q And where did we come across this list?

17 A This list was found at The Medicine Shoppe in
18 Belton, Missouri.

19 Q Now, I also would like you to take a look at
20 Exhibit 50.95. Do you recognize this exhibit?

21 A Yes.

22 Q And what does this exhibit reflect?

23 A It reflects a prescription that was found at The
24 Medicine Shoppe in Belton, Missouri.

25 Q Okay. And who is the writer of the prescription?

1 A Christopher Elder.

2 Q And what is the prescription for?

3 A Promethazine with codeine.

4 Q Okay. And in reviewing the prescriptions found
5 at The Medicine Shoppe, were there --

6 MR. OSGOOD: Counsel, could we point out
7 the date on that, please?

8 MR. BOHLING: Yes.

9 Q (BY MR. BOHLING) Go ahead, ma'am.

10 A October 26th, 2004.

11 Q Okay. That's fine.

12 And in reviewing the prescriptions at The
13 Medicine Shoppe, did you find several -- a number of them
14 that were written by Dr. Elder for promethazine with
15 codeine?

16 A Yes.

17 Q Okay. And Dr. Elder had told you during his
18 interview that he did not write prescriptions for
19 promethazine with codeine?

20 A Yes.

21 Q I'd now like to turn your attention to
22 Mr. Solomon. Did you have occasion to conduct an
23 interview with Mr. Solomon?

24 A Yes.

25 Q Do you recall the date?

1 A That would have been on May 3rd, 2006.

2 Q Where did this interview take place?

3 A At Ascensia Nutritional Pharmacy.

4 Q And what was your occasion for being at the
5 Ascensia Nutritional Pharmacy that day?

6 A I was at Ascensia Nutritional Pharmacy in the
7 afternoon of that day after a search warrant had already
8 been served there.

9 Q Was Mr. Solomon present at Ascensia when the
10 search warrant team first arrived?

11 A It was my understanding he was not there.

12 Q Did he arrive later in the day at the business
13 premises?

14 A Uh-huh, yes.

15 Q And where within Ascensia did your interview take
16 place?

17 A It would have been in, I believe, his office at
18 the pharmacy.

19 Q And who was present besides yourself and
20 Mr. Solomon, if anyone?

21 A Yes. There were several other law enforcement
22 personnel there.

23 Q Did you ask Mr. Solomon about when he opened
24 Ascensia Nutritional Pharmacy?

25 A Yes. It was in November or December 2004.

1 Q Did he tell you whether or not he had a business
2 partner?

3 A He did. He said Philip Parker was his partner.

4 Q And did he indicate to you whether he had another
5 job?

6 A He did. He worked at MP TotalCare.

7 Q And did he still work for MP TotalCare at the
8 time of the search warrant?

9 A I don't recall.

10 Q Did he indicate whether or not he still had a
11 partnership with Mr. Parker?

12 A No. He said the partnership had ended.

13 Q Did he tell you when?

14 A He said about the beginning of the year -- of
15 that year, 2006.

16 Q Did you ask him about whether he had met Cindy
17 Martin?

18 A I had asked him not directly about how he met
19 Cindy Martin but how he had come to be involved in
20 dealings with Missouri.

21 Q Okay. And when you asked him how he became
22 involved in dealings in Missouri, what did he say?

23 A He had met a lady named Cindy -- he couldn't
24 remember her last name -- at a convention in approximately
25 2005.

1 Q And where was Cindy from according to
2 Mr. Solomon?

3 A Missouri.

4 Q And what happened, then, with regards to Cindy if
5 Mr. Solomon told you?

6 A Cindy introduced him to a pharmacy in Missouri.

7 Q Did Mr. Solomon give you the name of the pharmacy
8 in Missouri?

9 A He did not.

10 Q Did he -- was he able to remember it or did you
11 ask him?

12 A I don't recall.

13 Q Did Mr. Solomon tell you whether or not
14 prescriptions were sent from Ascensia Nutritional Pharmacy
15 to the pharmacy in Missouri?

16 A He told me that he had faxed prescriptions to the
17 pharmacy in Missouri.

18 Q Did he tell you why he had started doing that?

19 A He said that it was because Ascensia could not --
20 didn't have a big enough line of credit to buy wholesale
21 drugs from their -- you know, from their wholesaler and so
22 they didn't want to turn away customers.

23 Q Okay. Now, at that time did you realize that
24 Ascensia had not opened for business until December of
25 2004?

1 A I did not.

2 Q So you did not follow up and ask him about that?

3 A Right.

4 Q Did he tell you how Ascensia received the
5 prescriptions to fax to Missouri?

6 A The customers brought them into Ascensia.

7 Q Okay. And then did he tell you how the
8 medications were then returned?

9 A That the customers picked them up.

10 Q And where -- did he tell you where they would be
11 picked up?

12 A At Ascensia.

13 Q Okay. Did you ask him from where he had sent the
14 faxes?

15 A Yes. He said they were sent from his home.

16 Q Did he tell you they were also sent from
17 Ascensia?

18 A Yes.

19 Q And did he give you a home address at that time?

20 A Yes, he did.

21 Q And do you remember what it was?

22 A I don't have it memorized, no.

23 Q If I showed you a report, would that help you?

24 A Yes. Okay. The home address was 10101
25 Chesterfield, Houston, Texas 77051.

711

1 Q And did he -- as long as we're here, did he give
2 you a phone -- his home phone number?

3 A Yes. 281-469-9912.

4 Q And is that the same phone number we've seen on
5 the faxes in court?

6 A Yes, uh-huh.

7 Q Did you ask Mr. Solomon how long it would take
8 for the turnaround on the medications?

9 A Two to three days.

10 Q And did you have any follow-up questions on that?

11 A Yes. I wanted to know why a customer would wait
12 that long to get a prescription filled when there were
13 many pharmacies in Houston, Texas, and he said that it was
14 because they had loyal customers.

15 Q Did Mr. Solomon tell you about any conversations
16 he had with his pharmacist?

17 A Yes. He asked his pharmacist, Bede, I think it's
18 B-e-d-e, Ndkua, N-d-k-u-a, I believe, if it was legal to
19 fill prescriptions out of state.

20 Q Okay. And what did Mr. Ndkua tell him according
21 to Mr. Solomon?

22 A That Mr. Solomon said that Mr. Ndkua said it was
23 legal to do that.

24 Q Okay. And did he tell you whether or not he
25 called anyone else about that question?

1 A Yes. Mr. Solomon asked -- or said he called the
2 Texas Board of Pharmacy and spoke with someone who he
3 could not name that told him that that was okay.

4 Q Was Mr. Solomon asked which physicians'
5 prescriptions were being sent to Missouri?

6 A Yes, we asked him that. Initially he couldn't
7 remember and then later in the interview he said Dr. Elder
8 and Dr. Okose.

9 Q Was Mr. Solomon asked about how the Missouri --
10 the pharmacy in Missouri was paid for filling the
11 prescriptions?

12 A Yes. He said that it was his understanding that
13 Philip Parker was paying them.

14 Q Okay. Did he say whether or not he, that is
15 Mr. Solomon, was personally paying them?

16 A He said he was not.

17 Q Okay. Did he make any statements ultimately
18 about whether or not the pharmacy in Missouri had been
19 paid?

20 A He thought that they had not been paid.

21 Q Okay. Did he tell you why he thought this?

22 A He said somebody called, a woman called him about
23 it from Missouri.

24 Q Okay. Did Mr. Solomon state that after that
25 call, whether he had sent any payment himself to Missouri

1 in any form?

2 A He said he had not.

3 Q Did you ask Mr. Solomon why the Missouri pharmacy
4 would continue to fill prescriptions if they had not been
5 paid for?

6 A I did ask him that.

7 Q What was his response?

8 A His response was he didn't know.

9 Q Did you ask him about whether he had any
10 agreements or referrals with physicians?

11 A Yes, I did ask him that.

12 Q What was his response?

13 A He did not.

14 Q Did you ask him about his relationship with the
15 South Texas Wellness Center?

16 A Yes.

17 Q And what did he say?

18 A He knew the owners of the South Texas Wellness
19 Center.

20 Q Did he name them?

21 A Yes, the Johnsons.

22 Q Did you ask him about the FedEx records and the
23 packages that were sent to South Texas Wellness Center?

24 A Yes.

25 Q Okay. And do you remember specifically what you

1 asked him?

2 A I do not recall.

3 Q Do you recall what he said about that?

4 A I asked him if he knew about them, that they were
5 addressed to South Texas Wellness Center, and he didn't
6 know why they were addressed to South Texas Wellness
7 Center.

8 Q Did you ask him about the faxes that were
9 received from the Missouri pharmacy?

10 A Right, I did. Basically if he was involved in
11 receiving the faxes requesting refills?

12 Q Yes.

13 A Okay. And he -- and whether or not he was
14 involved with getting physicians to sign off on those
15 refill requests, and he said he was not.

16 Q Okay.

17 MR. BOHLING: If I can get a drink of
18 water, that would be appreciated.

19 Thank you. Much better.

20 Thank you.

21 Q (BY MR. BOHLING) Did you have an occasion to
22 conduct a second interview with Mr. Solomon? Oh, I'm
23 sorry. No, you didn't. That's my bad.

24 Did you prepare a summary chart of phone calls
25 involving Mr. Solomon on May 3rd, 2006?

1 A Yes, I did.

2 MR. BOHLING: Your Honor, I would move
3 into evidence Exhibit 1191 if it's not already in.

4 MR. LEWIS: No objection.

5 MR. BOHLING: If we could show Exhibit
6 1191.

7 THE COURT: It's in now.

8 Q (BY MR. BOHLING) Can you tell us what this -- how
9 you compiled this chart?

10 A Yes. This would have come off his -- Troy
11 Solomon's cellular telephone records for the date of May
12 3rd, 2006.

13 Q And why did you focus on that date?

14 A That was the day there was a search warrant at
15 Ascensia Nutritional Pharmacy.

16 Q Okay. If we can go down the list, were you able
17 to identify who Albert Franklin is?

18 A Yes, as far as his phone number. That's his
19 phone number.

20 Q And if we can go down to -- first of all, what
21 time of day was the search warrant actually conducted?

22 A The warrant was served in the morning, early --
23 the first thing in the morning.

24 Q Okay. And if we -- who is -- and who is present
25 at Ascensia among Ascensia employees at the time of the

1 warrant?

2 A I believe Delmon Johnson was there and Bede Ndkua
3 and possibly a pharm tech.

4 Q Okay. So I'd like to direct your attention to
5 the 9:49 a.m.

6 Who was called by Mr. Solomon on that occasion?

7 A That's Peter Okose, Dr. Peter Okose.

8 Q Okay. And then looking at the next entry, the
9 third entry down there, Ada Johnson -- that's Ada Johnson?

10 A Yes, Ada Johnson of South Texas Wellness Center.

11 Q Okay. And what was Ada Johnson's role at South
12 Texas Wellness Center?

13 A She was an owner.

14 Q Then we look at 10:05 and 10:07. Who are those
15 two calls to?

16 A That's Dr. Peter Okose.

17 Q And Dr. Okose is one of the doctors whose
18 prescriptions ended up in Missouri?

19 A Right.

20 Q Okay. And then the next call after that, is that
21 to Ada Johnson again?

22 A Correct.

23 Q And then if we go down to 10:33 a.m., that's Dr.
24 Okose again?

25 A Correct.

1 Q And then do you know who Dr. Cynthia McNeil is?

2 A I believe she's a physician that works in the
3 same building on the same floor as Ascensia Nutritional
4 Pharmacy.

5 Q Then we have a call at 10:41 a.m. Who is that?

6 A That's Delmon Johnson. He was the manager at
7 Ascensia Nutritional Pharmacy.

8 Q Okay. And if we go down, we see 11:32 and 11:50,
9 two more calls with Delmon Johnson.

10 A Correct.

11 Q One of them is fairly lengthy, 17 minutes?

12 A Correct.

13 Q Okay. And then 11:58, who is the call with?

14 A Dr. Peter Okose.

15 Q How long was that call?

16 A About three minutes.

17 Q At 12:56 who was called there?

18 A Ada Johnson, approximately six minutes.

19 Q And then at 1:02 and 1:33 there are two more
20 calls to whom?

21 A With Delmon Johnson.

22 Q And we see Dr. Okose again at 1:59?

23 A Correct.

24 Q And then at 2:33 p.m., who was called?

25 A Cindy Martin.

1 Q And that's the witness that we heard from here in
2 the trial who lives in Missouri?

3 A Yes.

4 Q And then who are the next two calls to?

5 A Dr. Christopher Elder.

6 Q And those are the calls that we reviewed
7 previously, correct, on the original records?

8 A Right.

9 MR. BOHLING: If we could go to the next
10 page.

11 Q (BY MR. BOHLING) Okay. At 5:05 we see another
12 short call to Peter Okose?

13 A Correct.

14 Q And then Delmon Johnson again at 5:45?

15 A Yes.

16 Q 7:09 we see Peter Okose again?

17 A Correct.

18 Q 7:51 p.m. we see Ada Johnson again?

19 A Correct.

20 Q 8:37 there's an 18-minute call with Cindy Martin?

21 A Correct.

22 Q Okay. And followed immediately by a 13-minute
23 call with Ada Johnson?

24 A Correct.

25 Q Okay. I think that's good.

1 Now, I'd like to direct your attention to --
2 actually I'm going to do that later. I'd like to go
3 through some other topics first.

4 MR. BOHLING: If we could put up Exhibit
5 37.66. It should be in evidence.

6 Q (BY MR. BOHLING) Do you recognize that exhibit?

7 A Yes.

8 Q And what is it?

9 A This is a prescription that was found at The
10 Medicine Shoppe that was filled by Lynn Rostie.

11 Q What is the date of the prescription?

12 A The date is August 31st, 2004.

13 Q When was it filled?

14 A It was filled 9/1/2004.

15 Q And who is the doctor?

16 A Christopher Elder.

17 Q And you note the address. Could you please read
18 the address?

19 A 5833 Sun Forest Drive, Houston, Texas.

20 MR. BOHLING: And if we could bring up
21 another exhibit at the same time. For this other one,
22 could we please bring up Exhibit 1185.

23 Q (BY MR. BOHLING) And Exhibit 1185, is this the
24 envelope in which Cindy Martin received the pictures?

25 A Yes.

1 Q From Mr. Solomon?

2 A Yes, it is.

3 Q What's the return address on that?

4 A 5833 Sun Forest, Houston, Texas.

5 Q And what is your -- from your investigation, what
6 is your understanding of who owns 5833 Sun Forest?

7 A Troy Solomon.

8 Q And who lived there in 2004, 2005?

9 A Philip Parker and Delmon Johnson.

10 Q Okay. Do you have any information that the
11 person listed on this prescription, Cache Doria Perry,
12 ever lived during this timeframe at 5833 Sun Forest,
13 Houston, Texas?

14 A No.

15 Q We could go back to the prescription.

16 MR. OSGOOD: What exhibit number is it?

17 MR. BOHLING: 37.66.

18 Q (BY MR. BOHLING) If you'll note there is
19 definitely different handwriting in this exhibit?

20 A Yeah.

21 MR. LEWIS: Object, Your Honor.

22 Mr. Bohling is testifying.

23 MR. BOHLING: I thought --

24 MR. OSGOOD: I don't object.

25 THE COURT: Sustained.

1 MR. BOHLING: Okay.

2 Q (BY MR. BOHLING) As you examine this exhibit --
3 I'll go back.

4 Do you recall testimony from Mrs. Rostie that at
5 times she would write things into prescriptions?

6 A Yes.

7 Q Do you see any indication of that on this
8 prescription?

9 A Yes. I think the address, the date, her
10 signature, and the "verified with Troy via phone" at the
11 bottom is all.

12 Q Okay. Did you attempt to reconstruct how this
13 address got in this prescription?

14 A I'm not sure what you're asking.

15 Q We saw during trial that there are times when
16 there have been either mailed or faxed lists of patient
17 names or in some cases driver's licenses?

18 A Right.

19 Q And Mrs. Rostie used those to fill some of this
20 information in?

21 A Oh, yes, uh-huh, yes.

22 Q Were you able to track this particular address
23 back to one of those faxes?

24 A I was not.

25 Q Okay. And did you -- were you able to track it

1 -- track this group of prescriptions back to some
2 communication that supplied this information?

3 A Yes.

4 Q Okay. But did it supply it for the whole group
5 of prescriptions?

6 A It did not.

7 Q So do you know, as you sit here today, how that
8 information got onto that prescription?

9 A No.

10 MR. BOHLING: Okay. I'd like to bring
11 up Exhibit 35.67. Okay. And on the next screen, can we
12 do two screens, please, Exhibit 37.64.

13 Q (BY MR. BOHLING) And I think to be fair, the one
14 on the right was earlier in time. So if we could look at
15 the prescription on the right, when was that prescription
16 dated?

17 A Okay. That one is dated August 31st, 2004.

18 Q And who is the doctor on that prescription?

19 A That was Christopher Elder.

20 Q Who is the patient on that prescription?

21 A Cecilia Paz.

22 Q Can you spell that for the record, just the last
23 name?

24 A P-a-z.

25 Q And what is the address on that prescription?

1 A 1305 7th Street, Corpus Christi, Texas.

2 Q Okay. And, now, if we could look at the
3 prescription on the left, what is the date of that
4 prescription if there is one?

5 A The date section is empty, but Lynn Rostie has a
6 signature at the bottom.

7 Q What's the date with her signature?

8 A January 5th, 2005.

9 Q Okay. And what is the doctor name on this
10 particular prescription?

11 A This one is attributed to Juan Botto.

12 Q What's the name of the patient?

13 A Cecilia Paz.

14 Q Is that the same name that we see on the other
15 prescription?

16 A Yes.

17 Q What is the address on the prescription?

18 A It's 1210 7th Street, Houston, Texas.

19 Q So it's not -- would it be fair to say it's not
20 identical to the other address?

21 A Correct.

22 Q But it does contain one common element which is
23 they're both on 7th Street?

24 A Right.

25 MR. LEWIS: I'm going to object. That's
 724

1 misstating it.

2 MR. BOHLING: If counsel has a
3 correction, I'm certainly happy to hear it.

4 MR. LEWIS: I think the jury can see it.
5 It's 1305.

6 MR. BOHLING: If I was unclear, I meant
7 that the 7th Street is the only point of intersection
8 between the two addresses. Everything else is different.

9 THE WITNESS: Right.

10 MR. BOHLING: That's what I meant to
11 say. If we could bring up Exhibit 1172, and if you could,
12 please highlight the middle section.

13 Q (BY MR. BOHLING) Do you recognize this as the
14 document showing the invalid addresses we talked about
15 yesterday?

16 A Yes.

17 Q If we could bring up on the other side Exhibit 1.
18 And what is the name of the patient on Exhibit
19 1?

20 A Amanda Allen.

21 Q Is that one of the patients listed in one of our
22 counts?

23 A Yes.

24 Q And what is -- the address for Amanda Allen I
25 think we have to find elsewhere, right?

1 A Right.

2 Q If we look at the back, what is the address
3 listed for Amanda Allen?

4 A 451 Makey Road, Houston, Texas.

5 Q Okay. Then if we look at the first entry on
6 Exhibit 1172, that's for 451 Makey Road, Houston, Texas?

7 A Right.

8 Q Showing that's not the valid address?

9 A Right.

10 Q If we would bring up on the Amanda Allen side,
11 Exhibit 49.1. And then what is that -- before we
12 highlight it, what is that exhibit?

13 A This was found at The Medicine Shoppe, and it's a
14 list of names and addresses that correspond to
15 prescriptions from Dr. Elder.

16 Q Okay. And is the first entry there for Amanda
17 Allen?

18 A Yes.

19 Q Does that show that 451 Makey Road address?

20 A Yes, it does.

21 Q And what is the fax header, fax number?

22 A It's Troy Solomon.

23 Q Okay. If we can now bring up on this side of the
24 equation Exhibit 2, and who is the patient on this
25 exhibit?

1 A Lindsay Lewis.

2 Q Is this also a count in the indictment?

3 A Yes.

4 Q And, again, there is no address information for
5 this one?

6 A Right.

7 Q And if we could bring up 49.1 on this side.

8 Okay. This is the same page you were just
9 looking at, and you can -- so that contains the address
10 information that was supplied for Lindsay Lewis?

11 A Right.

12 Q Is that the same address, the Victory address, as
13 is found to be a not valid address by the postal service?

14 A Right.

15 Q If we could bring up Exhibit 3 on this side.

16 Who is the patient on this?

17 A Mark Ivey.

18 Q And is he one of the counts in the indictment?

19 A Yes.

20 Q And if we could go to Exhibit 51.1, do you
21 recognize the nature of this exhibit?

22 A Yes. This was another set of faxed names and
23 addresses that were faxed to The Medicine Shoppe.

24 Q And who is this fax from?

25 A This fax is from Troy Solomon.

1 Q And then if we look down -- and that has the Mark
2 Ivey information?

3 A Correct.

4 Q I believe Mr. Ivey's -- that there's -- we can
5 have it pushed out on the other side.

6 But you see that Holiday address?

7 A Yes.

8 Q Now, one difference, it says Port Bolivar, Texas
9 on the USPS report and Gail, Texas on the fax?

10 A Yeah.

11 Q What's the common element though between the two?

12 A It's the zip code.

13 Q Okay. Meaning that zip code appears to be in
14 Port Bolivar and not Gail?

15 A Yes.

16 Q And then, finally, if we can do Exhibit 4.

17 Who is the -- who is the patient?

18 A Cheryl Zarsky.

19 Q Okay. Is this also a count?

20 A Yes.

21 Q Okay. If we can go back to Exhibit 51.1.

22 And is this where we find the address
23 information for Ms. Zarsky?

24 A Yes.

25 Q And is that one of the addresses that -- the
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1 Chwack address that is found not to be a valid address?

2 A Correct.

3 Q Thank you. Moving on to a new topic.

4 You recall today some testimony about receipt of
5 some subpoenas and attachments with patient names?

6 A Yes.

7 Q Okay. Can you explain why you sent a list of
8 patients both to South Texas Wellness Center and to
9 Westfield?

10 A Yes. Those were patients who were issued
11 prescriptions that were filled at The Medicine Shoppe and
12 the issuing physician was Christopher Elder.

13 Q Okay. If we can bring up page 11 -- or Exhibit
14 1198, page 3.

15 What is that, ma'am?

16 A That's the list that was attached to the
17 subpoenas.

18 Q Okay. And did you get these names from a
19 particular grouping of patients?

20 A Yes, I did.

21 Q And what did you call that grouping?

22 A I believe that was Group F.

23 Q And if we could bring up an exhibit on the other
24 side, Exhibit 48.1.

25 This is Amanda Allen and Ms. Allen's name is on
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1 the sheet, right?

2 A Yes.

3 Q Okay. And to your recollection, are all of the
4 names on Government's Exhibit 48, is that the group that
5 was placed onto this list?

6 A The list includes the group I called Group F plus
7 the people that were in the counts on the indictment.

8 Q Okay. But what they have in common is they were
9 all Dr. Elder's patients who were sent to Missouri, that
10 we found in Missouri?

11 A Right.

12 Q And what's the date on that particular
13 prescription?

14 A That's October 19, 2004.

15 Q Okay. And did you send this -- 1198, page 2 --
16 or page 3. I'm sorry. Okay.

17 Did you send this identical list to both South
18 Texas Wellness Center and to Westfield?

19 A Yes.

20 Q In the case of South Texas Wellness Center, did
21 you receive any patient files back as a result of the
22 subpoena?

23 A I did not.

24 Q And for the Westfield subpoena, did you receive
25 any patient files back as a result of the subpoena?

1 A I did not.

2 Q Okay. Now, in addition to this list, did you
3 also send a separate fax list of patients to Diane Hearn
4 at Westfield?

5 A Yes.

6 MR. BOHLING: If we could bring up
7 Exhibit 1076, the second page, please. And you can make
8 that the sole exhibit, just the 1076. Okay. If we go to
9 page 2.

10 Q (BY MR. BOHLING) What did these patients
11 represent? Why did you select them?

12 A These were patients who were supposedly patients
13 of Westfield Medical Center and had been prescribed
14 controlled substances by Dr. Elder while he worked there.

15 Q During the search warrant of The Medicine Shoppe,
16 were there any Westfield prescriptions found?

17 A Yes.

18 Q And do these names correspond to the Westfield
19 prescriptions found at The Medicine Shoppe?

20 A I believe so.

21 Q And this is the response that you got back from
22 Mrs. Hearn?

23 A Yes.

24 Q Now, I'd like to change our focus to the
25 prescriptions that were found at Ascensia Nutritional

1 Pharmacy.

2 First of all, let me ask -- no. Sorry. Let's
3 go to another topic.

4 Were you present when Dr. Elder came in to give
5 some writing exemplars?

6 A Yes.

7 Q When was that?

8 A I don't recall the date.

9 Q Okay. Where did that occur?

10 A That occurred at the United States Attorney's
11 Office in Kansas City, Missouri.

12 Q Okay. Now, if we could bring up Exhibit 1052.1.

13 MR. BOHLING: I'm sorry. I don't know
14 if I moved this in yet or not. Could we turn off the jury
15 monitor, please.

16 MR. OSGOOD: The exemplars he filled
17 out, you can move them in en masse, Your Honor. I don't
18 have any objection.

19 MR. BOHLING: Very good. I would like
20 to move in Exhibits 1052 through 1073, Your Honor.

21 Thank you, John.

22 THE COURT: Okay. Hearing no
23 objections, they'll be received.

24 MR. BOHLING: Now, if you could put back
25 up Exhibit 1052.1.

1 Q (BY MR. BOHLING) What is this exhibit?

2 A This is handwriting collected the day of the
3 exemplars, and these are the handwritings of Christopher
4 Elder.

5 Q Now, I notice was there any question that came up
6 about writing in cursive versus not during the exemplar?

7 A Yes. The gentleman that was conducting the
8 handwriting seminar that day had asked for some --

9 MR. OSGOOD: I'm going to object. We're
10 getting into the area of expert testimony.

11 MR. BOHLING: I don't see how. She's
12 simply describing what happened.

13 THE COURT: Come up.

14 (Counsel approached the bench and the following
15 proceedings were had:)

16 MR. OSGOOD: He's trying to elicit
17 information from her that perhaps he was disguising his
18 handwriting or not being as cooperative maybe. That would
19 be for the handwriting expert. It's very subjective.

20 MR. BOHLING: She is simply going to say
21 what happened. She is not going to try to guess as to his
22 state of mind.

23 THE COURT: What is it you're surmising
24 she's going to say?

25 MR. BOHLING: That he said he didn't
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1 write in cursive and that's why this is in printing as you
2 see it. That's all.

3 MR. OSGOOD: That's okay.

4 THE COURT: All right. How much time
5 are you going to spend with her?

6 MR. BOHLING: I'm close to the end,
7 probably 15 more minutes perhaps.

8 THE COURT: And you have quite a bit for
9 her?

10 MR. OSGOOD: Yes.

11 THE COURT: I think we'll start in the
12 morning.

13 MR. OSGOOD: Good idea.

14 MR. BOHLING: Thank you.

15 (The proceedings returned to open court.)

16 MR. BOHLING: Perhaps I misunderstood.

17 Do you want me to continue now?

18 THE COURT: Yes.

19 MR. BOHLING: Very good.

20 Q (BY MR. BOHLING) Okay. Going back to my
21 question, this -- you were telling us what the person
22 conducting the exemplar had said about cursive writing.
23 Please continue.

24 A Okay. There was a gentleman named Dan McCarty
25 that was instructing Dr. Elder on what he wanted him to

1 write that day, and he asked Dr. Elder to write in
2 cursive. And Dr. Elder said he did not write in cursive.

3 Q So was this handwriting you see written by Dr.
4 Elder?

5 A Right.

6 Q Now, if we could bring up Exhibit 1054.

7 What is this, ma'am?

8 A That is another writing that Dr. Elder was
9 requested to provide that day.

10 Q And how did you come up with the text for this
11 sample?

12 A They were taken off of actual prescriptions.

13 Q Okay.

14 MR. BOHLING: If we could put Exhibit
15 130 on the other side of this, please.

16 Q (BY MR. BOHLING) So is the exhibit on the right
17 that has the number 4030 on it, is that the exhibit from
18 which you took the handwriting exemplar language?

19 A Yes.

20 Q So that should be the same text as the
21 handwriting exemplar?

22 A Yes.

23 Q Okay. And so the exhibit on the left is the
24 actual handwriting exemplar given by Dr. Elder that day?

25 A Yes.

1 Q Now, I'm going to use this occasion to jump into
2 another subject, but it's going to involve this Marvin
3 Phillips. We can go ahead and put that one -- you can go
4 ahead and take that off the screen too.

5 Okay. So if we could put Exhibit 130 back up.

6 Now, where was this exhibit found?

7 A At The Medicine Shoppe in Belton, Missouri.

8 Q Okay. And is this one of the Westfield
9 prescriptions that appeared to have been faxed from Texas
10 to Missouri?

11 A Yes.

12 MR. BOHLING: And then if we can on the
13 next -- also put up with this Exhibit 346. All right.
14 Now -- let's leave it. If we could leave it as it is.

15 Q (BY MR. BOHLING) Where does this exhibit come
16 from?

17 A This exhibit came from C&G Pharmacy in Houston,
18 Texas.

19 Q Okay. Is this exhibit identical to the first
20 prescription on Exhibit No. 130?

21 A Yes, I believe so.

22 Q Okay. And in all respects?

23 A Yeah. There's a line through the Soma.

24 Q Right. Except for that one?

25 A Yes.

1 Q And then if we can look at page 2 of Exhibit 346,
2 what are we looking at here?

3 A That would be the back of the prescription where
4 the pharmacy places a sticker saying that they have filled
5 that prescription.

6 Q Okay. And where was this prescription filled?

7 A That was filled at C&G Pharmacy in Houston,
8 Texas.

9 Q So it appears in this case that the patient took
10 the -- this original prescription to C&G and had it filled
11 in the normal course?

12 A Yes.

13 Q And then an exact duplicate of that prescription
14 with the same number from the pad, 4030, ends up at The
15 Medicine Shoppe in Missouri?

16 A Right.

17 Q Even though the actual patient had already filled
18 that prescription in Texas?

19 A Right.

20 MR. BOHLING: Okay. If we could look at
21 Exhibit 10 -- actually, 116. Put on this side 116, and
22 put on this side Exhibit 332.

23 Q (BY MR. BOHLING) Before we do that, if we could
24 look at Exhibit 116, who is the patient?

25 A I believe it's Janice Jackson.

1 Q Okay. And where was this prescription found?

2 A That was a fax that was sent to The Medicine
3 Shoppe.

4 Q So this was found in The Medicine Shoppe's search
5 warrant?

6 A Right.

7 Q Then on the right side where was that
8 prescription filled?

9 A At C&G Pharmacy.

10 Q If we looked at the second page, would it show a
11 sticker that would show that was filled?

12 A Yes.

13 Q Okay. And is this -- are these two prescriptions
14 identical?

15 A Yes.

16 Q Okay.

17 MR. OSGOOD: Your Honor, can we
18 approach?

19 THE COURT: Yes.

20 (Counsel approached the bench and the following
21 proceedings were had:)

22 MR. OSGOOD: They appear to be
23 identical. She is not qualified to say they are
24 identical. I'd like that cleared up. They're Xeroxes,
25 they're copies, subject to all kind of alterations and cut

1 and paste.

2 THE COURT: I think it's proper to say
3 they appear to be identical.

4 Mr. Bohling, how much longer do you have with
5 her? Last time you were confused.

6 MR. BOHLING: I'm sorry. I forgot that
7 I had -- I forgot I had some charts to do. We can break
8 any time you want, because the charts will probably take a
9 few minutes. I probably have 20 minutes.

10 (The proceedings returned to open court.)

11 Q (BY MR. BOHLING) Just to be clear, the
12 prescription in Missouri is a photocopy, correct?

13 A Correct.

14 Q And the prescription in Texas is an original?

15 A Correct.

16 Q The original prescription was filled by a patient
17 in Texas?

18 A Correct.

19 Q And the photocopied prescription was faxed to
20 Missouri?

21 A Right.

22 Q Even though that prescription itself was filled
23 by the patient in Texas?

24 A Right.

25 Q Okay. Now, how many total duplicate

1 prescriptions did you find between C&G and The Medicine
2 Shoppe?

3 A I believe there were about 90.

4 Q And in addition were there duplicate
5 prescriptions that -- in exactly the same way were there
6 prescriptions that the originals were filled at C&G and
7 copies, photocopies of the prescriptions were found at
8 Ascensia Nutritional Pharmacy in Houston, Texas?

9 A Yes.

10 Q And how many duplicates were there between C&G
11 originals and copies found at Ascensia Nutritional
12 Pharmacy?

13 A I believe it was approximately 84.

14 Q Now, was there any overlap between those two
15 categories?

16 A No.

17 Q So there were either duplicates in Missouri or
18 duplicates at ANP?

19 A Correct.

20 Q But not one that was all three places?

21 A Correct.

22 MR. BOHLING: Okay. Turning our
23 attention to ANP, if we can bring up Exhibit 219. Okay.
24 And then on the other side can we bring up Exhibit 409.

25 Q (BY MR. BOHLING) Now, who is the patient on this?

1 A This is Frederick Oliveriez.

2 Q And for the exhibit on the left, which is Exhibit
3 219, I believe, where was that exhibit found? Where is
4 that from?

5 A That's from Ascensia Nutritional Pharmacy.

6 Q Okay. And for the exhibit on the right, where
7 was that exhibit from?

8 A C&G Pharmacy.

9 Q Could we look at page 2 of the exhibit on the
10 right, which is, I think, 409.

11 What does that sticker reflect?

12 A That reflects that that prescription got filled.

13 Q Okay. So the prescription was filled at C&G?

14 A Right.

15 Q And that prescription was an original
16 prescription?

17 A Yes.

18 Q Okay. Now, if we look at the prescription on the
19 left, was that a copy?

20 A That's a photocopy.

21 Q Which you can tell.

22 Was that prescription filled?

23 A Yes.

24 Q And if we could focus in on the name, Frederick,
25 please.

1 What name was that prescription filled under?

2 A Frederick Oliverez.

3 Q Okay. And, now, if on the right we can bring up
4 Exhibit No. 220, please.

5 Now, who is the prescription for on Exhibit 220
6 on the right?

7 A The written part or the sticker part?

8 Q The written part to begin with.

9 A Frederick Oliverez.

10 Q Does that have a number on the prescription pad
11 of 4460?

12 A Yes.

13 Q Is that identical to the number on Exhibit 219?

14 A Yes.

15 Q Where did we find or where did we get Exhibit
16 220?

17 A That also came from Ascensia Nutritional
18 Pharmacy.

19 Q Okay. Now, if you can focus, please, here and
20 here. So the written part of the prescription has the
21 same text. That's true, right?

22 A I believe so, yes.

23 Q Now, the sticker, is there a difference between
24 the names on the sticker?

25 A No.

1 Q Well, isn't it -- isn't Oliverez is spelled with
2 an E in one case and an A in the other case?

3 A I'm sorry. That's correct. The spelling is a
4 little different, yes.

5 Q When was the first Frederick Oliverez
6 prescription filled?

7 A That would have been filled on February 15, 2005.

8 Q When was the second prescription filled where we
9 have the identical text on the written prescription but a
10 different name? When was that filled?

11 A February 24th, 2005.

12 Q Now, if we can go back to the prescription
13 itself.

14 How much Lortab did this man receive if we can
15 --

16 A Yeah. It's 90 dosage units.

17 Q And how long should that have lasted him?

18 A It depends on the directions for use. One tablet
19 three times a day so it's approximately a month's supply.

20 Q Okay. And how much time elapsed between the two
21 prescriptions being filled?

22 A It's less than ten days.

23 Q Okay. And, of course, the prescriptions are
24 actually issued on the sticker in names that have been
25 changed from the name on the original prescription?

1 A Right.

2 MR. BOHLING: Okay. Now, if you can
3 bring up on this side, we can start again from new,
4 Exhibit 229. Then on this side can you bring up Exhibit
5 414.

6 Q (BY MR. BOHLING) Where does Exhibit 229 come
7 from?

8 A Ascensia Nutritional Pharmacy.

9 Q Okay. Where does Exhibit 414 come from?

10 A That was from C&G Pharmacy.

11 Q Okay. And, again, was the C&G an original that
12 was filled at C&G Pharmacy?

13 A Yes.

14 Q And this may be an obvious question, but it
15 certainly wouldn't be proper or expected that a patient
16 would fill the same prescription in two pharmacies at the
17 same time?

18 A No.

19 Q And in fact the patient would have had to have
20 given up the original prescription to C&G at the time the
21 prescription was filled?

22 A Right.

23 Q Which is why we have it?

24 A Yes.

25 Q Now, if we -- are these two prescriptions
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1 identical in text?

2 A Yes.

3 Q And they're both Prescription Pad No. 4405?

4 A Yes.

5 Q If we can bring up on the right side Exhibit 230.

6 Where is Exhibit 230 from?

7 A That's from Ascensia Nutritional Pharmacy.

8 Q Okay. And, again, was this also a photocopy,

9 Exhibit 230?

10 A Yes.

11 Q And if we can highlight the sticker information,
12 please, on both. Okay.

13 Have the -- has the name changed, the spelling
14 of the name?

15 A Yes. One of them is Ramoro (phonetic) and one is
16 Romero (phonetic).

17 Q When was the original Ramoro (phonetic)
18 prescription filled by Ascensia Nutritional Pharmacy?

19 A That was February 15th of 2005.

20 Q When was the next one filled?

21 A March 2nd, 2005.

22 Q If we can take a look at the original
23 prescription, please. Actually we don't have to do that.

24 This is -- it's right here, isn't it? It's 90
25 hydrocodone, one tablet by mouth three times daily?

1 A Correct.

2 Q That's just the same as what we saw?

3 A Yes.

4 Q So that should not be refilled before at least 30
5 days have elapsed?

6 A Right.

7 Q And you found other examples of this same type of
8 practice?

9 A Yes, we did.

10 Q We won't go through all of those.

11 This is not necessarily isolated?

12 A Correct.

13 Q Okay. Did you produce some charts digesting some
14 information from your investigation?

15 A Yes.

16 Q And are those charts 1109, 1114, 1116, 1117,
17 1191, and 1192?

18 A Yes.

19 MR. BOHLING: Your Honor, I would move
20 those exhibits into evidence.

21 MR. OSGOOD: Can you say them again?

22 MR. BOHLING: 1109, 1114, 1116, 1117,
23 1191, 1192.

24 THE COURT: Hearing no objections,
25 they'll be received.

1 MR. BOHLING: Could you please publish
2 1109.

3 Q (BY MR. BOHLING) What does this chart depict,
4 ma'am?

5 A That is a chart regarding deposits of cash made
6 by The Medicine Shoppe into Allen Bank during 2004 and
7 2005. The left side of the chart depicts the deposit slip
8 date, and the right side depicts when there was a cash
9 deposit of at least \$2,000.

10 Q In looking at the title, it says "Deposits/cash
11 from STWC." Does that -- what does that mean in this
12 context?

13 A That was basically -- this chart was done back in
14 2006, and at the time we thought that the payments were
15 coming from South Texas Wellness Center and later found
16 out that they came from Cindy Martin.

17 Q Okay. So this represents the cash deposits made
18 by The Medicine Shoppe?

19 A Regarding money received for the payment of the
20 Texas prescriptions basically.

21 Q And just looking at the top half of the chart
22 here, what's the pattern?

23 A It's going to be less than, I believe, 5,000 per
24 time.

25 Q And if we can scroll down.

1 So the numbers get a little bit bigger but are
2 pretty consistently in the \$3,000 to \$4,000 range, \$3,000
3 range really?

4 A Yes.

5 Q Thank you.

6 MR. BOHLING: Could you put up 1114.

7 Q (BY MR. BOHLING) And what does this depict?

8 A This is a chart regarding telephone records.
9 This is showing telephone calls from The Medicine Shoppe
10 fax number to Ascensia Nutritional Pharmacy's fax number
11 between the dates of November 15, 2004 through March 25,
12 2005.

13 Q Okay. So this is -- so this is to Ascensia, the
14 business?

15 A Right.

16 Q And how many such faxes were there in this
17 timeframe?

18 A There were 11.

19 Q If we could show Exhibit 1116, please.

20 If we could maybe blow that one up a bit. Would
21 you please explain this chart to us?

22 A This chart was made from the prescriptions found
23 at The Medicine Shoppe that were written prescriptions
24 between August 17, 2004 and October 26, 2004, that
25 involved Christopher Elder.

1 Q Okay. And let's take the first entry as an
2 example.

3 What's the date shown there?

4 A The date -- this would be the date written on the
5 prescription, so the first one is August 17, 2004. The
6 total number of patients that there were prescriptions for
7 is 78. The next entry would be the number of patients
8 that were prescribed both hydrocodone, 120 dosage units,
9 and Alprazolam, 90 dosage units, is 63. And then the next
10 column is the number of patients who were prescribed
11 promethazine with codeine. That would be 15.

12 Q Okay. And then for August 31st, 2004?

13 A There would be 51 total patients, 50 getting --
14 sorry. Fifty-one getting the combination of hydrocodone
15 and Alprazolam.

16 Q Okay. And so we could interpret that chart all
17 the way down for every date?

18 A Yes.

19 Q The only thing I'll ask you about is there's an
20 entry for undated. Why did you place that entry that way?

21 A Because I was putting the date written, so if you
22 look on the actual prescription, it was blank on that
23 part.

24 MR. BOHLING: Could you put up 1117,
25 please. Thank you.

1 Q (BY MR. BOHLING) And what does this chart show?

2 A This chart goes with the last chart. It's
3 basically showing how there were patients who ended up in
4 groups together where once they initially got
5 prescriptions filled, how there was a pattern of refills
6 throughout the timeframe. So we've got our numbers like
7 we had on our last chart. I gave each group a letter
8 number. So where there were 51 patients, I call that
9 Group A, for example.

10 Q Okay.

11 A And then on the left is the date ranges that the
12 prescriptions were filled at The Medicine Shoppe, and then
13 the color coding on the left, I believe you have to go to
14 the end of the chart to see the color coding. So that
15 kind of purple color represents hydrocodone and Alprazolam
16 were filled together. And then the blue would be
17 hydrocodone, Alprazolam, and promethazine with codeine.
18 The yellow would be hydrocodone and promethazine with
19 codeine.

20 Q Okay. So this shows us a pattern of how the
21 patients basically were refilled together through time?

22 A Yes.

23 Q And so those are the refills that would come in
24 on the faxes?

25 A Right.

1 Q We can go back to the bigger chart.

2 So were these refills based off of the original
3 prescriptions that were written?

4 A Yes. So the first set for each group would be
5 originals.

6 Q And how many times might one patient get refilled
7 during the course of this time?

8 A They tended to run 10 to 12 repeats over time.

9 Q So one patient would be -- would by the end of
10 this, by October of 2005, might have been refilled ten
11 times?

12 A Right.

13 Q Okay. So for one patient if that's 120 tablets
14 of hydrocodone, that's 1,200 tablets of hydrocodone
15 generated by one original prescription?

16 A Yes.

17 Q And then chart 1192, what does this chart show?

18 A This chart is another phone chart based off of
19 telephone records we received, Ascensia Nutritional
20 Pharmacy calls to and from The Medicine Shoppe between
21 December 6, '04 and November 18, '05. So we're showing
22 the landline phone number of Ascensia Nutritional Pharmacy
23 as 713-665-4400, and the landline at The Medicine Shoppe
24 is 816-331-6040. So within this timeframe there were nine
25 outgoing calls from ANP to The Medicine Shoppe and 43

1 calls going from The Medicine Shoppe to ANP.

2 Q Okay. So these are voice lines, not fax lines?

3 A Yes.

4 MR. BOHLING: Could I have just a
5 moment, Your Honor.

6 Counsel reminds me I do need to do one more
7 thing.

8 Your Honor, I've got a couple of stipulations to
9 read and some questions on that.

10 The first stipulation is a stipulation of facts
11 regarding certificates of death in Texas. "The parties
12 agree and stipulate that if called as a witness, Geraldine
13 Harris, the state registrar for vital statistics for the
14 Department of State Health Services in Texas, by virtue of
15 her position would testify that she received a subpoena
16 and in response produced on or about the date of July
17 31st, 2008, the death certificates of Hazel Hollis and
18 Mary Perez.

19 "If called as a witness, Ms. Harris would
20 testify that these records of vital statistics were kept
21 pursuant to law by public office of the State of Texas,
22 and the following records were produced in response to the
23 subpoena. Each exhibit is a record of the vital statistic
24 pursuant to Federal Rule of Evidence 803.9. Government's
25 Exhibit 33 is a certified copy of a death certificate for

1 Hazel Hollis, and Government's Exhibit 34 is a certified
2 copy of a death certificate for Mary Perez."

3 Now, Your Honor, I would move Government's
4 Exhibits 33 and 34 into evidence.

5 MR. OSGOOD: No objection.

6 THE COURT: Hearing none, they'll be
7 received.

8 MR. BOHLING: There's a second
9 stipulation which is quite similar as to certificates of
10 death in Louisiana. Assuming that there's no objection, I
11 would simply move in the following two exhibits,
12 Government's Exhibit 531, a certificate of death for Carol
13 Danage, D-a-n-a-g-e, and Government's Exhibit 535, a
14 certificate of death for Charles McKelvey,
15 M-c-K-e-l-v-e-y.

16 THE COURT: Hearing no objections,
17 they'll be received.

18 MR. BOHLING: If we can bring up
19 Government's Exhibit No. 5.

20 Q (BY MR. BOHLING) What is this exhibit?

21 A It's a prescription for Hazel Hollis that we
22 found at The Medicine Shoppe.

23 Q And we see on the second page that there's some
24 address information for Hazel Hollis.

25 A Yes.

1 Q And this Hazel Hollis is one of the people that
2 we determined had -- is deceased?

3 A Correct.

4 Q And if we can look at Government's Exhibit No.
5 33, if we can just find the date that she died. It's
6 right there on the top.

7 A The date of death is March 9, 2004.

8 Q Okay. If we can go back to the prescription,
9 please.

10 What's the date of the prescription?

11 A That's September 14, 2004.

12 Q When was the fill? Also filled September 14th of
13 2004?

14 A Yes, right, correct.

15 Q And who is the doctor on the prescription?

16 A Christopher Elder.

17 Q And is this -- is this prescription part of count
18 -- I think it's Count IX of the government's case?

19 A It is a count in the case.

20 Q Then if you bring up Exhibit 6, who is this
21 prescription for?

22 A Mary Perez.

23 Q Okay. And is Mary Perez -- given the information
24 you had about her, did you determine that she was
25 deceased?

1 A Yes.

2 Q Okay. And if we could look at Exhibit 34,
3 please.

4 What was the date of her death?

5 A May 21, 2004.

6 Q And what's the date of the prescription?

7 A September 14, 2004.

8 Q Okay. If we could focus back, this prescription
9 is written by Dr. Elder?

10 A Yes.

11 Q Okay. And it's written on a South Texas Wellness
12 Center prescription pad?

13 A Yeah.

14 Q And from talking to doctor -- your -- what you've
15 already testified to with your interview, Dr. Elder did
16 not begin working at South Texas until what time?

17 A I believe he was working there during that time.

18 Q Okay. In September of 2004?

19 A Yes.

20 Q But when did he start?

21 A Oh, he started in, I believe, it was late spring
22 or so of 2004.

23 Q Okay. Looking at Government's Exhibit 534 -- and
24 do you recognize this exhibit?

25 A Yes.

1 Q Okay. Who is the patient?

2 A Charles McKelvey.

3 Q And if we can bring up Exhibit 535, what was his
4 date of death?

5 A February 9, 2005.

6 Q And what's the date of the prescription?

7 A May 24, 2005.

8 Q Okay. And, finally, if you could bring up the
9 prescription for Carol Danage.

10 Do you see that prescription?

11 A Yes, Carol Danage.

12 Q And if we could bring up Exhibit 531, what is her
13 date of death there?

14 A The date of death is November 7, 2004.

15 Q What date was the prescription written?

16 A January 18, 2005.

17 Q Okay. And these last two, Danage and McKelvey,
18 these were for Dr. Okose?

19 A Dr. Okose.

20 Q Okay. And in each case, both for Hollis, Perez,
21 Danage, and McKelvey, were all these prescriptions
22 presented to The Medicine Shoppe?

23 A Yes.

24 Q And were they all filled?

25 A Yes.

1 Q Okay. And they all are -- represent counts in
2 the indictment to your knowledge?

3 A I don't believe so.

4 Q Some of them do, some of them don't. I could be
5 -- that's fine. I'm getting a little punchy here.

6 MR. BOHLING: Okay. Anything else?

7 I believe that I'm done.

8 Thank you.

9 THE COURT: I think we all may be
10 getting a little punchy, Mr. Bohling. We'll call it a day
11 at this time.

12 I'll ask again you not discuss the case among
13 yourselves or with others or allow anyone to discuss it in
14 your presence nor allow yourself to be exposed to any
15 media coverage that may pertain to this trial.

16 I'm going to ask that you report back tomorrow
17 at 8:30, and we'll get started as soon thereafter as
18 possible.

19 Any questions?

20 Have a good evening.

21 (Court adjourned at 4:39 p.m.)

22 END OF VOLUME III

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THURSDAY, JUNE 24, 2010

VOLUME IV OF VII

(The following proceedings were had in the presence of the jury:)

THE COURT: Good morning. Please be seated.

Are you ready to go?

MR. BOHLING: Yes, Your Honor. I believe we're ready for cross.

MR. LEWIS: Did you want to put the exhibits in now?

MR. RHODES: No.

MR. LEWIS: May I proceed, Your Honor?

THE COURT: Yes.

JUDI WATTERSON, previously being sworn, resumed the stand:

CROSS-EXAMINATION BY MR. LEWIS:

Q Good morning, Agent Watterson.

A Good morning.

Q I'm going to, as is my penchant, just pick a few areas and try to stick to those areas to expedite this. I'll be jumping around a lot, so if I jump around too much, just stop me.

First I want to talk about May the 3rd of 2006. You were part of the team that was present at the Ascensia Nutritional Pharmacy when they ran a search warrant,

1 right?

2 A Yes. But I came later in the day.

3 Q All right. And that was -- thank you for that.
4 That will eliminate a lot.

5 You're aware that Ascensia traditionally opened
6 at 9 a.m., correct?

7 A I'm not aware.

8 Q As the lead investigator in this case, you're
9 aware of most of the interviews that took place in this
10 case, right?

11 A There were actually two cases going on at once.

12 Q I understand that.

13 My question is, relative to the interviews done
14 in this case, you're fairly aware of most of them,
15 correct?

16 A Right.

17 Q And I believe it was your testimony that the
18 search at Ascensia started at six in the morning or
19 something like that?

20 A I don't believe I said a time.

21 Q Very early in the morning if you would like your
22 exact testimony.

23 Did you mean before 9 a.m.?

24 A I really don't know what time it started.

25 Q Okay. Let's talk about when you get there, do
759

1 | you recall what time that was?

2 A I know it was in the afternoon. I don't know the
3 exact time.

4 Q Had Mr. Solomon arrived yet?

5 A I don't recall.

6 Q You are aware that based on your investigation,
7 that Mr. Solomon was not present for the morning part of
8 the search at least?

9 | A That's my understanding, yes.

10 Q You also learned that he was out of town when the
11 search started, correct?

12 A I know that some agents were attempting to call
13 him on his cell phone.

14 Q And they eventually got him on his cell phone,
15 correct?

16	A Right.
----	----------

17 Q And he agreed to drive all the way back to
18 Houston, correct?

19 | A He drove back, yes.

20 Q He's under no obligation to do that, was he?

21 | A No.

22 Q He wasn't under arrest, he wasn't subpoenaed to
23 be at that location, et cetera, correct?

24	A Right.
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25 Q So it was his voluntary decision to come to the
760

1 pharmacy during the search?

2 A Right.

3 Q He didn't bring a lawyer with him?

4 A No.

5 Q At some point in time you, Agent Richards, Agent
6 Callahan, Agent Statlander, and Investigator Corpone asked
7 Mr. Solomon if he would answer some of your questions,
8 correct?

9 A Right.

10 Q Was this in his office, or what part of the
11 pharmacy were you all questioning him in?

12 A It was in his office.

13 Q And that's not a real big office, is it?

14 A Well, there's actually a conference table in
15 there.

16 Q About the size of the jury box or so?

17 A The table?

18 Q No. The room.

19 A No. It was wider than that.

20 Q How much wider?

21 A I'd say it came out to at least this piece of the
22 wood here.

23 Q Near where the court reporter's back is --

24 A At least.

25 Q -- for the record?

Maybe -- what do you think, to the wall, is that
15, 20 feet?

A I don't know.

Q Okay. Well, there's Troy Solomon and five federal agents in that room, correct?

A I think so.

Q No one else is present?

A Right.

Q As you begin to ask questions, he doesn't ask for a lawyer, does he?

A Right.

Q Although it would have been perfectly within his right to say, "I don't want to answer any questions right now," correct?

A Correct.

Q Or, "I'd like to speak to a lawyer before I answer any questions," correct?

A Correct.

Q He chose not to do that and answered your questions, correct?

A Yes.

Q At some point in time during this encounter with Mr. Solomon, agents go through his cell phone, correct?

A I don't know about that.

Q Well, you were very well aware of all of the

1 numbers that were taken out of his cell phone from your
2 investigation, correct?

3 A We got numbers from his call records.

4 Q Understand. But you're also familiar with the
5 fact that agents took numbers out of his cell phone that
6 day, correct?

7 A I'm not aware of that.

8 Q Okay. So it's your testimony, as the case agent,
9 you're not aware of that fact?

10 A Well, like I said, there were two investigations
11 going on at the same time.

12 Q And I'm talking about the work that you're doing
13 there with Mr. Solomon the day of the search. If you
14 don't know, you don't know. I'm not suggesting --

15 A Yeah, I don't know.

16 Q Fair enough. Okay.

17 Let's talk about some of the other information
18 you gathered in your investigation about Mr. Solomon,
19 specifically Mr. Solomon.

20 In your interview with Mr. Elder that you
21 testified yesterday -- Dr. Elder.

22 MR. LEWIS: Apologize, Doctor.

23 Q (BY MR. LEWIS) Dr. Elder verified for you that
24 Troy Solomon had never asked him to write any
25 prescriptions, correct?

1 A Correct.

2 Q Now, as this is going on, the search of Ascensia
3 on May 3rd of 2006, there are other searches happening
4 contemporaneously, correct?

5 A Correct.

6 Q Tell us about those searches, just where they
7 were and what times relative to May 3rd of 2006?

8 A The other searches were all part of the other
9 investigation that was in Houston, and I don't have all
10 the details on those other searches. I know South Texas
11 Wellness Center was searched.

12 Q Correct.

13 A And Dr. Okose's office. I believe two office
14 locations.

15 Q Two for Okose, yes, ma'am.

16 A Another pharmacy that I don't recall the name,
17 possibly two other pharmacies.

18 Q One of them being Eastside Pharmacy. Does that
19 ring a bell?

20 A Possibly, yeah.

21 Q Let's turn to -- well, first of all, for the
22 ladies and gentlemen of the jury, this -- these interviews
23 that you did, that you testified to yesterday, are any of
24 those recorded, audio or videotape recorded?

25 A No, they are not.

1 Q So we are left with the only memorialization
2 being your agent reports that you put together after the
3 interview in your DEA-6s?

4 A Right.

5 Q You are aware, are you not, Agent Watterson, that
6 Ascensia Nutritional Pharmacy on the date of this search
7 was equipped with a surveillance system, correct?

8 A I think I did hear that, yes.

9 Q Have you ever reviewed the footage from that day?

10 A No.

11 Q Let's jump back to Mr. Solomon's interview, his
12 voluntary answering of questions.

13 One of the ladies, a co-agent, I think she's
14 based out of Houston, DEA diversion investigator, much the
15 same as you do here in Kansas City by the name of Susan
16 Richards?

17 A Yes.

18 Q And that's the same Susan Richards that was here
19 yesterday?

20 A Right.

21 Q She occupies kind of a parallel position just in
22 a different jurisdiction. Is that fair?

23 A Yes.

24 Q She's one of the folks that was present when you
25 all interviewed Solomon?

1 A Right.

2 Q So you interview Solomon. Upon interviewing him,
3 he tells you he's got a co-owner by the name of Philip
4 Parker or had a co-owner by the name of Philip Parker,
5 correct?

6 A Right.

7 Q Tells you that Ascensia Nutritional Pharmacy
8 opened for business in late November to December of '04,
9 correct?

10 A Right.

11 Q Now, as an agent with a vast amount of experience
12 and expertise, you're aware somewhat of the workings --
13 the business workings of a pharmacy, right?

14 A Yes.

15 Q It wouldn't surprise you that a startup mom and
16 pop -- not a commercial chain, for instance -- pharmacy
17 might not have a lot of inventory starting up, true?

18 A Right.

19 Q They may have to outsource to get that inventory,
20 true?

21 A I don't know what you mean by "outsource."

22 Q Well, they may have to use another pharmacy, use
23 someone that has credit, capital, inventory already built
24 up, right?

25 A No, I'm not aware of that.

1 Q Okay. Well, you are aware that Mr. Solomon told
2 you they had limited amounts of credit upon opening,
3 correct?

4 A That was his statement, right.

5 Q You were also aware that Mr. Solomon was a
6 full-time pharmaceutical sales rep for MP TotalCare up
7 until the time he ran Mr. Parker off?

8 A I think that's correct.

9 Q You're also aware from your interview with
10 Mr. Solomon, that the pharmacist in charge on the day of
11 this search, Mr. Bede, informed you all that he had been
12 the pharmacist in charge for about a year or so?

13 A Yes. I'm not sure how long he'd been there, but
14 I believe it would be in one of those interview reports.

15 Q He had been there for some time before the search
16 is all I'm driving at?

17 A Yes.

18 Q Fair enough. While interviewing Mr. Solomon
19 about these prescriptions and your all's concerns, the
20 reason you're there for the search warrant, Mr. Solomon
21 informed you that he had run this out-of-state
22 prescription arrangement by Mr. Bede, correct?

23 A Yes.

24 Q And that Mr. Bede had told him it was perfectly
25 legal, correct?

1 A Yes.

2 Q Additionally, in Mr. Solomon's interview he
3 disclosed that Philip Parker handled the payment end of
4 Ascensia's business and made the payments, correct?

5 A I think so, yes.

6 Q And in fairness to you, Agent Watterson, you have
7 authored a lot of DEA-6s in this case, right?

8 A Right.

9 Q When I say "DEA-6," can you tell the ladies and
10 gentlemen what that means?

11 A That's just the number of the form we use to
12 write our reports on.

13 Q Report of investigation basically?

14 A Yes.

15 Q Your form.

16 And in this case there's countless amounts that
17 you've written, so if you need to refresh your memory,
18 please don't hesitate to ask me, I'll be happy to bring
19 the report to you.

20 A Okay.

21 Q I want to turn quickly to some other interviews
22 conducted under your watch.

23 One of those interviews was a Dr. Botto,
24 correct?

25 A Yes.

1 Q Upon interviewing Dr. Botto, you were able to
2 confirm that he didn't know Troy Solomon, correct?

3 A Right.

4 Q And you have no reason, as you sit here today, to
5 believe Mr. Botto was being untruthful with you, do you,
6 about that?

7 A Right.

8 Q Also interviews conducted the day of the search,
9 Pleshette Johnson, the lady that testified here yesterday
10 while you were in the courtroom?

11 A Right.

12 Q She was interviewed, right?

13 A Right.

14 Q As well as her mother, Ada Johnson, correct?

15 A Correct.

16 Q Another lady that was here yesterday. She didn't
17 come in the courtroom but she was here?

18 A She was here.

19 Q Now, in getting the information from those folks,
20 did you ever ask them -- let's go one at a time. That's
21 not fair to you.

22 Did you ever ask Dr. Botto about a relationship
23 with Philip Parker?

24 A No.

25 Q Now, I'm going to ask you about some local

1 geography in Houston, so if you don't know, I completely
2 understand.

3 MR. LEWIS: Let's talk about, if we
4 could, Ms. Nelson, Exhibit 35. If you would just blow up
5 the top, ma'am. Just the -- that's it. Perfect.

6 Thank you, ma'am.

7 Q (BY MR. LEWIS) On the right side of that screen
8 there's an address for the Lechin/Botto offices, one of
9 their offices, 3923 Woodlawn, Pasadena, Texas. You see
10 that?

11 A Uh-huh.

12 Q Pasadena, Texas is on the southeast side of
13 Houston. You familiar with that?

14 A No, I didn't know that.

15 Q Fair enough. Assuming arguendo that I'm right,
16 don't take it for my word but for this purpose of our
17 questions.

18 The Eastside Pharmacy, the one we spoke about
19 where another warrant was run, during the course of your
20 investigation you learned that Philip Parker was
21 associated with that pharmacy as well, correct?

22 A I believe so.

23 Q Okay. Would you be surprised to learn that
24 Botto's Woodlawn office on the southeast side of Houston
25 is within, what I would call, a stone's throw of Eastside

1 Pharmacy?

2 A No. I didn't know about the locations.

3 Q Would it surprise you to learn that?

4 A I don't know. I don't really have an opinion on
5 that.

6 Q Fair enough.

7 MR. LEWIS: While we're on local
8 knowledge, if we could, Ms. Nelson, could we pull up 1172,
9 Government's Exhibit 1172. If you would, just blow up the
10 body.

11 Thank you, ma'am.

12 Q (BY MR. LEWIS) You're familiar with Exhibit 1172,
13 correct?

14 A That's the Jacque Leslie letter?

15 Q Yes, ma'am. The lady that testified here about
16 her search of various addresses through the postal system.

17 A Yes.

18 Q And the significance -- explain to the ladies and
19 gentlemen the significance in your investigation of this
20 exhibit.

21 A Well, these are the addresses associated with the
22 prescriptions that are the four counts on our indictment.

23 Q Right. And the significance is to the indictment
24 and to the charges presented to our ladies and gentlemen
25 of the jury that these addresses didn't exist in the U.S.

1 Postal System?

2 A Right.

3 Q Okay. Let me show you what I'll mark for
4 identification as Solomon Exhibit No. 4 just for ID sake.
5 See if I can get this to work today.

6 Okay. Kind of hard to see with my high-tech
7 exhibit here. Let me see if I can turn it up.

8 Can you see that?

9 A Huh-uh.

10 MR. LEWIS: May I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 Q (BY MR. LEWIS) Let me see what I've written on
14 here. Then I'll put it back on the screen.

15 A Okay.

16 Q Now, in reference to that top address that we
17 were talking about, 451 M-a-k-e-y, what I want to ask you
18 in fairness, Agent Watterson, is if someone mistook --
19 we've seen a lot of handwriting, handwritten addresses,
20 hundreds and hundreds in this case, right?

21 A Yes.

22 Q If someone mistook, for instance, a pharmacy tech
23 or whoever is typing in a prescription, one of those Xs
24 for a K, they may have Maxey Road instead of Makey Road.
25 Is that fair?

1 A Sure.

2 Q Would you be surprised to know that 451 Maxey
3 Road is in fact an address in Houston, Texas, which Amanda
4 Allen was associated with? Would that surprise you?

5 A It's possible.

6 Q And it's very possible, given the handwriting
7 we've seen in this case, that somebody could, for
8 instance, have mistaken a K for an X? Is that fair?

9 A That's fair.

10 Q Turn to one of the other witnesses we've heard
11 from, Pharmacist Rostie, and your conversations with her.

12 When talking with Pharmacist Rostie about
13 Mr. Solomon, she told you that it was her understanding
14 from her dealings with him and the other folks in this
15 case, Dr. Elder, Okose, the folks at Ascensia, that the
16 prescriptions that she was filling and sending back to
17 Texas were being delivered to the patients at their
18 doctors' offices, correct? That was Rostie's position?

19 A I think so, yes.

20 Q Lastly, I want to talk to you about your
21 interview or interviews with Delmon Johnson. Please
22 remind the ladies and gentlemen of the jury who Delmon
23 Johnson was -- is.

24 A Delmon Johnson is an employee of Ascensia
25 Nutritional Pharmacy.

1 Q And at some point in time -- now, he did the
2 buildout, right?

3 A Right.

4 Q At some point in time after that buildout, he
5 kind of takes over some of the day-to-day duties to be
6 fair?

7 A Sure, yeah.

8 Q He was originally interviewed the day of the
9 search, correct?

10 A Yes.

11 Q And Mr. Johnson, just like Mr. Solomon, did not
12 ask for a lawyer, did he?

13 A I don't recall. I wasn't present.

14 Q Fair enough. You've had the opportunity to
15 review the interview that he gave May the 3rd of 2006,
16 correct?

17 A We have a copy of it.

18 Q In your case file?

19 A I believe so.

20 Q Okay. And Mr. Johnson disclosed Philip Parker's
21 identity immediately, did he not?

22 A I'd have to see the report.

23 Q Fair enough.

24 MR. LEWIS: Might I have one moment,
25 Your Honor?

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THE COURT: Yes.

MR. LEWIS: Tell you what, I'll swing back to that. I don't want to waste our time.

THE WITNESS: Okay.

Q (BY MR. LEWIS) We'll fast forward to there was a second interview that was conducted by you on October 25th of 2006 of Mr. Johnson?

A Right.

Q Might be fair to focus on that, so I'll ask you about that.

Mr. Johnson, Delmon Johnson -- I hesitate to use just Johnson -- Delmon Johnson told you that he made the daily deliveries of the prescription -- the Texas prescriptions to the various doctors' offices, correct?

MR. BOHLING: Objection, hearsay.

THE COURT: I'm sorry. I didn't hear the question.

Q (BY MR. LEWIS) Delmon Johnson disclosed to you that he made the patient -- the Texas prescription deliveries, correct?

MR. BOHLING: That was my objection.
Hearsay.

THE COURT: Come up.
(Counsel approached the bench and the following proceedings were had:)

1 THE COURT: If he's a part of the
2 conspiracy, how is it hearsay?

3 MR. LEWIS: They used co-conspirator
4 statements. We're entitled to do so.

5 MR. BOHLING: It's outside the
6 co-conspiratorial --

7 MR. LEWIS: It's about the statements
8 within the conspiracy.

9 THE COURT: Overruled.

10 MR. LEWIS: Thank you.

11 (The proceedings returned to open court.)

12 Q (BY MR. LEWIS) Let me reframe that question for
13 you, Agent Watterson, in fairness to you.

14 Delmon Johnson told you that he in fact was the
15 person that delivered the Texas prescriptions to the
16 various patients at the doctors' offices, correct?

17 A He made deliveries.

18 Q Of the prescriptions, correct?

19 A I don't believe he said he made the deliveries of
20 the Texas prescriptions. You mean the ones that came from
21 The Medicine Shoppe?

22 Q All prescriptions. He was the guy that made the
23 deliveries?

24 A He made deliveries.

25 Q Of prescriptions?

1 A Of prescriptions.

2 Q Okay. Thank you.

3 And he also told you he kept a log of those
4 deliveries, correct?

5 A I'm not sure about that.

6 Q Okay. We'll come back to that too.

7 A Okay.

8 MR. LEWIS: Mr. Osgood, would you grab
9 those Johnson interviews?

10 MR. OSGOOD: I certainly will.

11 Q (BY MR. LEWIS) Let's talk about -- you testified
12 for the ladies and gentlemen of the jury about a series of
13 phone calls that Mr. Solomon made on the day of the
14 search?

15 A Yes.

16 Q You recall that?

17 Now, those calls were from his cell phone,
18 correct?

19 A Yes.

20 Q And they were to various people that we've heard
21 testimony about, Dr. Elder, Dr. Okose, Delmon Johnson,
22 Cindy Martin?

23 A Yes.

24 Q That about cover the waterfront?

25 A I think so.

1 Q They were multiple calls --

2 MR. LEWIS: Thank you, sir.

3 Q (BY MR. LEWIS) They were multiple --

4 MR. OSGOOD: Remember where you got
5 them.

6 MR. LEWIS: Yes, sir.

7 Q (BY MR. LEWIS) They were multiple calls to these
8 common cast of characters, true?

9 A Yes.

10 Q Did you ever learn -- in fairness to you, you
11 might not have, so if you don't, you don't.

12 Did you ever learn why Mr. Solomon was in fact
13 out of town that day?

14 A No.

15 Q According to your testimony, and I believe you're
16 about right, there were probably about five searches going
17 on that day relative to the same group of people, true?

18 A Yes.

19 Q From even a law enforcement standpoint, that's
20 hard to manage, very chaotic, you were moving from
21 location to location?

22 A Right.

23 Q In fairness to Mr. Solomon, it was a surprise to
24 him that you all came and searched Ascensia?

25 A Right.

1 Q Nobody told him you all were coming?

2 A No.

3 Q Might produce the type of excitement in someone
4 to call those folks that you're doing business with, et
5 cetera, and ask them what's going on, fair?

6 A Fair.

7 Q Let's cover that Johnson piece real quickly and
8 we're almost done.

9 MR. LEWIS: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 Q (BY MR. LEWIS) Agent Watterson, I'll show you
13 your DEA-6 of the October 25th, 2006 interview of
14 Mr. Johnson, and just if you'll start there and read
15 through those lines, it may refresh your memory.

16 A All right. Okay.

17 Q Do you recall now that Delmon Johnson at least
18 told you that he made the deliveries of the prescriptions?

19 A He did make deliveries. He also said that he did
20 not deliver prescriptions that were not from Ascensia.

21 Q I appreciate that. That wasn't my question.

22 A Okay.

23 Q He told you in your October 25th, 2006 interviews
24 he made the deliveries for Ascensia?

25 A He made deliveries for Ascensia.

1 Q And that he maintained a log --

2 A Yes.

3 Q -- of those deliveries?

4 A He maintained a log.

5 Q Thank you.

6 And in fairness to you, let me show you DEA-6 of
7 the May 3rd, 2006 interview of Delmon Johnson at Ascensia
8 and refer you -- for fairness to you, these aren't
9 numbered as well as you do your reports -- just that top
10 paragraph. If you'd read that silently to yourself.

11 A All right.

12 Q Thank you, Agent Watterson.

13 Thank you, ma'am.

14 Now, relative to Delmon Johnson's May 3rd, 2006
15 interview, he disclosed Mr. Parker's involvement in
16 Ascensia, correct?

17 A Yes.

18 Q Told you about Parker hiring him for the
19 buildout, correct?

20 A Correct.

21 Q About Parker then hiring him to stay on and
22 assist with the duties and responsibilities of running a
23 pharmacy, correct?

24 A Correct.

25 Q Okay. Last subject.

1 We have seen a number of faxes that have Troy
2 Solomon's name or his wife, Lucy Solomon's name on them in
3 this case, correct?

4 A Correct.

5 Q In fairness to you, you naturally concluded that
6 Mr. Solomon created the documents that he faxed, true?

7 A Correct.

8 Q But in fairness to Mr. Solomon, as you sit here
9 today, Agent Watterson, for example, let's -- I apologize.

10 Now, as you sit here today in fairness to you,
11 you now know this is not Troy Solomon's handwriting,
12 correct?

13 A I do not know that.

14 Q Okay. Well, through this investigation you
15 employed the use of a handwriting analysis for a number of
16 documents, correct?

17 A Right.

18 Q Did you ever bother to ask them to analyze this
19 document in --

20 A I don't --

21 Q -- comparison to known writing of Troy Solomon?

22 A No.

23 Q So as you sit here today, you have absolutely
24 nothing to suggest to these ladies and gentlemen that Troy
25 -- that's Troy Solomon's writing, correct?

1 A That hasn't been brought up, right.

2 Q Let me rephrase my question. Maybe I did it
3 unartfully.

4 You have absolutely no evidence for this -- for
5 these ladies and these gentlemen that that's Troy
6 Solomon's handwriting, do you?

7 A Not to date, correct.

8 Q You do have from a number of witnesses, I won't
9 belabor the point by listing them all, evidence that
10 Philip Parker was the one running Ascensia Pharmacy up
11 until Troy Solomon quit his full-time job and Parker left,
12 correct?

13 A Could you repeat that?

14 Q You have evidence, testimony from a number of
15 folks, all the folks associated with Ascensia, for
16 instance, Delmon Johnson, Lillian Zapata, Nduka Bede, that
17 Philip Parker was running the pharmacy while Mr. Solomon
18 was out doing his full-time job with MP TotalCare,
19 correct?

20 A That sounds right.

21 Q Now, in your investigation it was revealed that
22 the fax number on all these faxes with Troy or Lucy
23 Solomon was from a home fax machine in Mr. Solomon and
24 Mrs. Solomon's home, correct?

25 A Right.

1 Q And you are aware as a full-time pharmaceutical
2 rep, that's a pretty busy job, correct?

3 A I don't know much about that business.

4 Q Fair enough. I will not ask you about that.

5 You can tell from these multiple faxes that
6 there was never a certain time of day or a pattern as to
7 when these faxes would be sent from Mr. Solomon's home
8 fax, correct?

9 A Right. I don't have a pattern. The time of day
10 is usually on there.

11 Q Right. And they're very random if you compare
12 them. Is that fair?

13 A Possibly.

14 Q You haven't compared them?

15 A The times?

16 Q Yes. If you haven't, I understand.

17 A No.

18 Q Would you be surprised if upon comparison, they
19 are very random? There is no pattern, for instance, it
20 was eight o'clock every morning or noon?

21 A Right. Okay.

22 Q That sound fair?

23 A Sure.

24 Q And truth be told, these faxes start during the
25 buildout of Ascensia, correct?

1 A I believe so.

2 Q Prior to, we can assume buildout's happening,
3 office isn't fully equipped yet, fair?

4 A Okay.

5 Q If you don't have a facsimile at Ascensia but you
6 have one at your home office, that may be why you're
7 sending faxes from your home, fair?

8 A That's fair.

9 Q Last questions. In your investigation, the
10 totality of the -- all of the interviews and everything
11 you've seen, I want to ask you a series of questions about
12 that.

13 Is there anything, any interviews, anything you
14 can point the ladies and gentlemen of the jury to that
15 would negate the following: Philip Parker running the
16 pharmacy at its inception asks Troy Solomon to send these
17 faxes? Anything to the contrary in your investigation?

18 A No.

19 Q And in fact Philip Parker was interviewed on
20 August the 6th of 2009, correct?

21 A I'd have to see the report.

22 Q Okay.

23 MR. LEWIS: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.
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1 Q (BY MR. LEWIS) I'll reframe my question because
2 it is rather lengthy, but it's the last one.

3 Prior to showing you this, I asked you, for lack
4 of a better word, my theory Mr. Parker asked Troy Solomon
5 to fax these prescriptions.

6 Now, referring to the interview Philip Parker
7 gave, he said nothing to the contrary, did he?

8 A Oh, I'm sorry. I didn't read through the whole
9 report. It wasn't my interview so I don't know what was
10 said.

11 Q I understand. I will let you verify.

12 A Okay.

13 Q And the question is just simply, nothing in his
14 interview to the contrary?

15 A Okay. Yes. This was a telephone interview by
16 Connie Overton of the Houston office.

17 Q He stated nothing to the contrary, did he?

18 A Right.

19 MR. LEWIS: Pass the witness, Your
20 Honor.

21 Thank you, Agent.

22 THE WITNESS: Uh-huh.

23 CROSS-EXAMINATION BY MR. OSGOOD:

24 Q Let me ask you a little bit about these DEA-6s.
25 We've thrown that number out. Those are basically the

1 reports that DEA agents prepare, right?

2 A Right.

3 Q They're like FBI calls them FB-302s, and I guess
4 each agency has their own moniker. But basically it's
5 just a report, right?

6 A Right.

7 Q And you typically interview a witness and prepare
8 a report; is that right?

9 A Right.

10 Q And that report is supposed to reflect the good,
11 the bad, and the ugly, isn't it?

12 A I suppose, yes.

13 Q The truth, whatever the witness says; is that
14 right?

15 A Well, it doesn't include extraneous information.

16 Q Exactly. If the witness tells you we got to
17 hurry up, I've got to go down to the 7-11 and pick up some
18 milk for the baby, that's not going to be in the report?

19 A That's right.

20 Q It's going to focus on what's important to the
21 case, whether or not the person has knowledge of the
22 facts, right?

23 A Right.

24 Q What he knows or she knows about the facts?

25 A Yes.

1 Q What they can tell you about who's involved or
2 maybe he's not involved for that matter?

3 A Okay.

4 Q I'm -- you've been doing this long enough that
5 I'm not trying to put words in your mouth now.

6 A Okay.

7 Q By "okay," I guess you mean you agree with me?

8 A Okay.

9 Q If you don't, please tell me so.

10 A Sure.

11 Q Thank you.

12 So my point is, sometimes you'll interview a
13 witness and they'll give you information that will send
14 you in one direction; sometimes you interview a witness
15 and they'll send you in another direction?

16 A Okay.

17 Q And it may be that you were focusing on one
18 person and then after the interview you're suddenly
19 focusing on somebody else in addition or in lieu of, fair
20 statement?

21 A That's fair.

22 Q Now, is there a policy when -- in your office as
23 to when you dictate your report after you conduct your
24 interview?

25 A Yes.

1 Q Timeline?

2 A Right.

3 Q What is the timeline?

4 A The DEA timeline is approximately five days.

5 Q Okay. Now, how long you been doing this,
6 Ms. Watterson?

7 A Twenty-four years.

8 Q Did you interview Ms. Jill Gerstner?

9 A Yes.

10 Q On November the 1st of 2000 -- no, I'm sorry.
11 That's the wrong day. On May the 23rd, 2008?

12 A If that's what the report says.

13 Q All right. Let me show you the report here just
14 so we know what we're talking about.

15 Now, refresh the folks' memory as to who
16 Ms. Gerstner was. We've had a lot of witnesses testify.

17 A She's a pharmacy technician at the Medicine
18 Shoppe.

19 Q All right. And when you got your call from
20 Mr. Van Fleet, you obviously had the same concerns he did,
21 that there were massive numbers of prescriptions there
22 that looked irregular?

23 A Right.

24 Q So you and he talked and made a decision that it
25 was appropriate to conduct an investigation, and

1 ultimately you went to a judge and a judge agreed with you
2 and issued you a search warrant, didn't he?

3 A Right.

4 Q And then you appeared at the place and conducted
5 your search and gathered your evidence?

6 A Right.

7 Q In the course of doing that, you interviewed
8 various persons at the business; is that correct?

9 A Right.

10 Q Now, did you then prepare your DEA-6 after you
11 interviewed Ms. Gerstner on a timely basis?

12 A Yes. I had it prepared. It wasn't signed off
13 until later.

14 Q Isn't it true that she was a potential subject at
15 the time?

16 A What do you mean "subject."

17 Q A potential person involved that might be one of
18 the people that had committed an offense at the pharmacy
19 shop.

20 A Yes. She had worked at the pharmacy.

21 Q So she had her fingers in the pie in terms of
22 filling prescriptions and doing various things and --

23 A Yes. She was an employee of Ms. Rostie.

24 Q And you were looking at her, you were as an
25 agent?

1 A We were looking at the pharmacy.

2 Q Yes, ma'am. I agree.

3 Did -- were you instructed by the federal
4 prosecutor to withhold writing this report?

5 A Well, he didn't ask me to withhold writing the
6 report. He asked me to place the report on hold. I had
7 written it already.

8 Q In 25 years have you ever had a federal
9 prosecutor tell you to put a report on hold?

10 A Actually I have not.

11 Q Did you find that strange?

12 A Yes.

13 Q And you in fact put it in your report being a
14 conscientious agent to cover yourself in case this came
15 up, didn't you?

16 A It's in there for DEA purposes.

17 Q Okay. And that was Mr. Rhodes that asked you to
18 withhold that report, wasn't it?

19 A I believe so.

20 Q Now, was this the only report that has this same
21 caveat in it?

22 A I think there's one more.

23 Q There's two. He did that twice. Who was the
24 other witness?

25 A I don't recall off the top of my head.

1 Q Okay. Thank you. But there was another one. I
2 remember seeing it myself.

3 Now, you went out eventually and interviewed Dr.
4 Elder, didn't you?

5 A Right.

6 Q Interviewed him twice?

7 A No. I've only interviewed him once.

8 Q I thought you interviewed him -- okay. Maybe it
9 was your partner interviewed him one time. I want to talk
10 about the November 1st, '06, interview which you prepared
11 a report on timely.

12 A Okay.

13 Q And he was cooperative? It was contentious a
14 little bit?

15 A A little contentious.

16 Q It was contentious. He's there. He's a busy
17 doctor. You guys badged him and said who you were. You
18 didn't arrest him. I mean, from your perspective you were
19 polite and doing your job, right?

20 A Correct.

21 Q Okay. But he, according to your testimony on
22 direct, was a little bit upset and why are you here and,
23 you know, why are you looking at me, and I guess like some
24 African-Americans, he felt maybe that he was being singled
25 out, didn't he?

1 A He did.

2 Q Okay. Now, you asked him or informed him that
3 FedEx records indicate he signed for packages, plural,
4 shipped from TMS. He stated if so, those were forgeries,
5 didn't he?

6 A Right.

7 Q In fact, there is only one FedEx package in the
8 entire bunch that's got a signature "Chris" on it, and he
9 has since told you or he told you at the time he didn't
10 sign any of them, didn't he?

11 A Right.

12 Q So if there's one and says "Chris," he's
13 answering you if you got signatures, they're forged?

14 A Yes.

15 Q You in fact tried to suggest to him he had signed
16 multiple times in that interview, didn't you?

17 A It does say "packages."

18 Q Okay.

19 A I don't believe there was anything --

20 Q That could just be the way you wrote it up. You
21 weren't trying to mislead him, were you?

22 A No, I was not.

23 Q Okay. I'll give you that.

24 Now, again, you put down the details that were
25 important in the report. I mean, we didn't talk about his

1 kids or what he's doing or his mother or anything like
2 that. Or did you?

3 A I don't believe so.

4 Q All right. Did he tell you that he worked at
5 South Texas Wellness Center few days a month?

6 A Yes. He said he worked at South Texas Wellness
7 Center --

8 Q Or few days a week. I'm sorry.

9 He told you he was part time two or three days a
10 week; did he not?

11 A Yes.

12 Q Mostly worked at Methodist Hospital?

13 A Worked at Methodist during the same time.

14 Q Okay. And stated he was paid by Ada and
15 Pleshette Johnson and that they supplied him with
16 prescription pads for issuing prescriptions. He told you
17 that, didn't he?

18 A Yes.

19 Q And they confirmed that, didn't they?

20 A Yes.

21 Q He told you that he was treating patients with
22 chronic pain of all kinds?

23 A Right.

24 Q Anxiety?

25 A Yes.

1 Q Sleep disorders?

2 A Yes.

3 Q Atrophy. Can you help us out, I don't know what
4 that is.

5 A That's when your muscles start to disintegrate.

6 Q Okay. And which can be painful, I guess?

7 A I guess.

8 Q And he said burns. He's not a burn specialist.
9 I assume he was treating pain from residual burn scar
10 tissue?

11 A I don't know the details.

12 Q Okay. And here's one, really test your
13 knowledge, Ceryical, C-e-r-y-i-c-a-l. Do we know what
14 that is? We'll ask him, I guess.

15 And some other disease called RSD and lumbar
16 disorder. So he was treating a lot of different kinds of
17 patients?

18 A Right.

19 Q Would you agree with me?

20 A I would agree.

21 Q Now, is it also true that it was a -- somewhat of
22 a general practice there that it was a wellness center and
23 people were coming in, overweight people, people with
24 aches and pains and that kind of thing?

25 A At South Texas?

1 Q Yes, ma'am.

2 A It was my understanding it was mostly workmen's
3 comp and pain.

4 Q Okay. Is it possible, for example, that a person
5 with upper respiratory problems and congestion would also
6 be a pain patient?

7 A I don't think so.

8 Q I mean, during flu season, for example?

9 A I don't know.

10 Q Okay. Now, he told you they did not dispense
11 medication to patients, didn't he?

12 A Right.

13 Q He told you he would write the scripts and give
14 them to the patient and the patient would leave with the
15 script?

16 A Right.

17 Q Said he was seeing anywhere from 10 to 50
18 patients a day, didn't he?

19 A Right.

20 Q Now, in your many years of doing this, you've
21 heard the testimony here, you've been here in the
22 courtroom, you understand that doctors, unlike lawyers,
23 maybe we see one person, two persons a day, doctors see
24 many patients at a time because they've got it down to a
25 science, don't they?

1 A Yes.

2 Q They have exam rooms and they have their nurses
3 and their tech people, and they'll jump from room to room
4 to room?

5 A Okay.

6 Q Well, again, you say okay. Is that a you agree
7 or disagree?

8 A Well, some don't have a lot of support staff.

9 Q Okay. I'll give you that.

10 A Okay.

11 Q Okay. You're being very agreeable, ma'am.

12 Again, I don't want you to say okay if you don't
13 believe it's okay, okay?

14 A Yes.

15 Q That's a lot of okays.

16 He told you that he was never paid by Solomon or
17 anybody else for handing out prescriptions; in other
18 words, selling prescriptions?

19 A Right.

20 Q And that was one of your concerns, wasn't it?

21 A Right.

22 Q And he told you he never sent any money of any
23 type to the Texas Medical Center other than these cash
24 receipts that he obtained through his bank that belonged
25 to the center?

1 A I'm sorry, I didn't follow that.

2 Q Okay. You have an affidavit where he made the
3 Johnsons sign for cash he gave them back or money he gave
4 them back because he was getting Medicare payments and
5 they didn't have an account set up?

6 A Oh, yes. Yes, I remember that.

7 Q Now, were you aware he got audited in 2004 and
8 2005?

9 A The -- by the IRS?

10 Q Yeah, ma'am.

11 A I believe we got that through your discovery.

12 Q Were you aware then -- you are aware, then, he
13 got actually a refund from the IRS when the dust settled,
14 \$250 or something?

15 A I don't recall. But, okay.

16 Q Okay. In your entire investigation have you ever
17 put large sums of hidden cash or money in his pocket?

18 A In his pocket, no.

19 Q Well, I mean, in -- in other words, did -- was he
20 engaged in extravagant spending or something?

21 A I don't have any information for that.

22 Q Were you aware that he had -- that he today has
23 \$250,000 in student loans that he's paying?

24 A I believe that was brought up in your discovery.

25 Q We sent you a document to that effect, didn't we?
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1 A I believe so.

2 Q Now, he told you he kept some photocopies of the
3 prescriptions he was writing at South Texas originally to
4 -- as comfort zone?

5 A At Westfield.

6 Q At Westfield. I'm sorry. Okay.

7 He said he did that for less than a month, I
8 think, or month or two?

9 A Yes. That sounds right.

10 Q Then we get to the -- I don't know whether you
11 jumped around, but it makes sense in the sequence here of
12 your report, you talked to him about these fax
13 transmittals from Missouri, don't you?

14 A Yes.

15 Q And these are the ones with the scrawl line that
16 Mr. Van Fleet told us looked like it was somebody else's
17 signature?

18 A They're the ones that we've shown to Jill
19 Gerstner and I believe Lynn Rostie when they testified.

20 Q Okay.

21 A I think Frank too.

22 Q That's the coversheet that has all the list of
23 names that renew prescriptions or requests for renewals
24 generated by Missouri?

25 A Yes.

1 Q And all of his prescriptions, your originals that
2 you have, say "no refills" on them, don't they?

3 A Yes.

4 Q And yet the shop on its own, on its own
5 initiative, generated these faxes and sent them to Texas?

6 A The faxes were sent to Texas.

7 Q Okay. He told you he knew nothing about that,
8 didn't he?

9 A Well, we showed him some of the faxes, I believe.

10 Q And he said --

11 A And he said they weren't his.

12 Q He didn't write the initials and he was not aware
13 of them?

14 A Right.

15 Q Okay. About done.

16 You also interviewed Ms. Diane Hearn, didn't
17 you?

18 A Yes.

19 Q At one point in a prior hearing I erroneously
20 candidly suggested that you told her not to talk to my
21 private investigator. Do you remember that?

22 A Yes, I remember that.

23 Q And in fact in a transcript I suggested that it
24 was DEA that said don't talk to my investigator and you
25 then subsequently said, No, you never made any such

1 statement to her; is that correct?

2 A Yes. I did not tell her that.

3 Q That's true, you didn't tell her not to talk to
4 my investigator?

5 A Right.

6 Q And Mr. Reeder, I believe, said in his report
7 that it was "they." She said, "They told me not to talk
8 to you."

9 MR. BOHLING: Objection, hearsay.

10 THE COURT: Sustained.

11 Q (BY MR. OSGOOD) You didn't tell her not to talk
12 to anybody though?

13 A Right.

14 Q Okay. Now, do you know who her husband is? He's
15 deceased now, I understand.

16 A He's deceased.

17 Q But he had his DEA license pulled too?

18 MR. BOHLING: Objection. May we
19 approach?

20 THE COURT: Yes.

21 (Counsel approached the bench and the following
22 proceedings were had:)

23 MR. BOHLING: First of all, if he's
24 going to do this, he should have done it with Ms. Hearn.
25 Secondly, I can't imagine how this is relevant. Her

deceased husband's licensure status sometime in the past is irrelevant.

MR. OSGOOD: It is relevant to my defense. It will become apparent how it's relevant.

THE COURT: It won't become apparent
with this witness. Objection sustained.

(The proceedings returned to open court.)

Q (BY MR. OSGOOD) Now, on your sheet that you did your breakout of phone calls on the day of the search, the search -- what time did you get there, ma'am?

A Which search?

Q In Missouri.

A In Missouri at the Medicine Shoppe? Is that the one you're referring to?

Q Yes.

A It was after nine o'clock, I believe.

Q Okay. And you were concluded, what, by noon?

A At the Missouri search, no. It was about 5 or 5:30.

Q Okay. Were people coming and going during the time?

A What do you mean by "people."

Q Well, were there customers coming in that had to be turned away?

A No. No one else was allowed in the front door

1 after we started the search.

2 Q How many employees did you have in there at the
3 time?

4 A The -- Donna Kerste, Jill Gerstner, Randy Rostie,
5 Patty Webb, Lynn Rostie, although I believe Donna Kerste
6 came in late.

7 Q Okay. Now, you interviewed everybody there; did
8 you not?

9 A I believe we did.

10 Q All of the techs, including Randy Rostie, her
11 husband, the people that handled the payroll, and the
12 various persons that we've talked about in this case?

13 A Yes.

14 Q They were all interviewed and you wrote reports
15 on all of those, didn't you?

16 A I believe so.

17 Q Then one of the techniques that the government
18 uses in these investigations -- having been on the other
19 side, I know this -- you go get the phone records to see
20 if you generated any phone activity as a result of your
21 searches, don't you?

22 A Right.

23 Q To try and say, Well, they must have known each
24 other, they called each other and talked about it?

25 A Right.

1 Q You have a lot of phone calls back and forth
2 between what I'll call the principals in this case, the
3 people that have been mentioned throughout this case, lots
4 of phone activity all day long, didn't you?

5 A Yes.

6 Q Dr. Okose, I think, was called -- I lost track at
7 six or seven or eight times during that day?

8 A He was called several times.

9 Q A number of times. And --

10 MR. BOHLING: May we approach?

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. BOHLING: I just want to clarify
14 because I think we're getting very confused here. He was
15 asking her about the Missouri search. The chart she
16 prepared for Dr. Okose was the Houston search which was on
17 a different day in a different city. Just so we're clear.

18 MR. OSGOOD: March the 6th, correct?

19 MR. BOHLING: May 3rd. You're mixing it
20 up. Her chart is about Houston, May 3rd, that you were
21 asking her initially.

22 MR. OSGOOD: I'll clarify it. Thank
23 you.

24 (The proceedings returned to open court.)

25 Q (BY MR. OSGOOD) Like many of us, my facts are
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1 jumbled in my mind, I guess, a little bit. The phone
2 chart involved the phone calls in Houston?

3 A Right.

4 Q Okay. Not in Missouri?

5 A Right.

6 Q But the point is the same. On that day there
7 were all these phone activities going on. Dr. Okose was
8 called six, seven, eight times, right?

9 A He was --

10 MR. BOHLING: Just for the record, can
11 we have a clarification which day we're talking about?

12 MR. OSGOOD: May the 3rd, the day of the
13 search.

14 MR. BOHLING: Which search?

15 MR. OSGOOD: In Texas.

16 MR. BOHLING: Thank you.

17 A Okay. Dr. Okose was called several times.

18 Q (BY MR. OSGOOD) And other people were called back
19 and forth. How many times was Dr. Elder called?

20 A I believe there was at least two calls that day.

21 Q There were two, a call that lasted a couple of
22 minutes and then a call back that lasted seven minutes; is
23 that right?

24 MR. OSGOOD: Can we have the exhibit,
25 please?

1 MR. BOHLING: Sure.

2 Q (BY MR. OSGOOD) And that was late in the evening,
3 wasn't it?

4 MR. BOHLING: No. It was noon time.

5 MR. OSGOOD: Was it? That's why I want
6 the exhibit.

7 MR. BOHLING: We'll find it.

8 A They're at the bottom of the page.

9 Q (BY MR. OSGOOD) All right. Now, what does
10 "incoming" mean?

11 A The call came in to the phone record, the phone
12 listed on the phone record.

13 Q And who does the phone record belong to?

14 A Troy Solomon.

15 Q So actually it was Dr. Elder that called Troy
16 Solomon on that day, didn't he?

17 A That's correct. There's one for an incoming.

18 Q And that lasted for five minutes, is that right,
19 based on your records?

20 A Yeah.

21 Q And then Dr. Elder was called back. If that call
22 lasted for five minutes, it was over at 2:50, right?

23 A Yeah. These are approximate times. The phone
24 company might have rounded up.

25 Q Okay. Well, give or take a minute.

1 Apparently, then, he turns around and calls Dr.
2 Elder back on the same number?

3 A Yes.

4 Q So they had a 10-, 11-minute call one time in the
5 afternoon there that was initiated by Dr. Elder, wasn't
6 it?

7 A It appears that way, yes.

8 Q So nobody during that day otherwise called up Dr.
9 Elder and said this is going on over here based on your
10 records?

11 A Right. I don't have a phone record for
12 everybody.

13 Q Okay. Now, did you check the e-mails in this
14 case?

15 A No.

16 Q Okay. Now, the four counts that you've got as
17 substantive counts in addition to the conspiracy in this
18 case, these are the people with the four addresses, aren't
19 they?

20 A Right.

21 Q Now, did you agree when your witness, Mr. Chin,
22 said that you were not required to put addresses on
23 prescriptions in Texas until about 2008?

24 A I don't know Texas law for pharmacy.

25 Q You interviewed Mr. Chin and you guys called him
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1 as a witness; is that right?

2 A I served him a subpoena and collected records
3 from him.

4 Q Okay. Do you have any reason to believe that's
5 not true, that you didn't have to put addresses on
6 prescriptions in those days?

7 A I would believe Mr. Chin.

8 Q Okay. Now, in fact the original prescriptions,
9 when you pull them up, the handwriting is clearly
10 different from this prescription as to who put the address
11 in, isn't it?

12 A Yes, on some of those.

13 Q You can see that. I mean, that jumps off the
14 page, doesn't it?

15 A Ms. Rostie has said she's added some of the
16 addresses.

17 Q And based on your investigation, who do you
18 believe wrote that fax that came up that had these names
19 and addresses on it?

20 A Which fax are you referring to?

21 Q The one that had the list of those names on it to
22 supply the addresses like the Makey address?

23 A There's four or five of those sets of handwritten
24 lists. I don't believe the same person wrote all of them.

25 Q All right. Any reason to believe Dr. Elder wrote

1 those? I don't think you believe that.

2 A Well, we showed him one list that had names when
3 I was at his office.

4 Q I'm talking about this one, critical one.

5 A The one with the Makey?

6 Q Yes.

7 A Okay. And so the question was?

8 Q Do you have any reason to believe he wrote that
9 list?

10 A No, I don't.

11 Q Okay. Did he seem surprised by what you were
12 confronting him with, disturbed, and upset that this was
13 going on?

14 A Well, I had never met him before. You know, most
15 doctors when we go in to talk to them are a little nervous
16 because it's the DEA.

17 Q Okay. You guys kind of got a reputation of
18 striking fear in some of these doctors, particularly the
19 ones that deal in pain medicine, don't you?

20 A Right.

21 Q You've got a lot of power?

22 A Right.

23 Q You've got the power of livelihood over them?
24 You know what I mean by that?

25 A Yes, I do.

1 Q You can pull their ticket at any time?

2 A For cause.

3 Q For cause.

4 Up until today has the DEA pulled Dr. Elder's
5 ticket?

6 A No. It's up --

7 Q You're allowing him to still write pain
8 prescription medication in Texas, aren't you?

9 A Right. He's up for renewal.

10 Q Okay. You're sitting on that but you sent a
11 letter to a physician's assistant saying it's okay -- or
12 one of the pharmacists it's okay for him to prescribe this
13 stuff because his application is in hold right now, didn't
14 you?

15 A Right. It's in hold.

16 Q He can write all of this stuff --

17 THE COURT: All right, Mr. Osgood.

18 MR. OSGOOD: Okay. I'm sorry. I'll go
19 on now. About done.

20 Q (BY MR. OSGOOD) The last question, when you went
21 out to Westfield Clinic and interviewed people, who all
22 did you interview?

23 A At Westfield?

24 Q Yes, ma'am.

25 A Diane Hearn and Cheryl Floyd.

1 Q Those are the only two you interviewed, isn't it?

2 A I think so.

3 Q How many employees were there, how many other
4 employees working in Westfield?

5 A I don't know.

6 Q Were you there physically for that interview?

7 A I interviewed Diane Hearn and Cheryl Floyd at
8 Westfield.

9 Q What was the layout of that clinic?

10 A You go in and there's a waiting room, and then
11 there's a check-in desk. Then you have to go through a
12 door, down a hallway where you get to offices.

13 Q Telephones, fax machines, copy machines, all that
14 stuff in there?

15 A Yeah. I didn't see the whole office though.

16 Q Okay. Patient waiting rooms?

17 A Probably. I can't recall seeing. There must be.

18 Q You weren't searching the place. You were there
19 to do interviews?

20 A Right.

21 Q That's fair to you. You weren't there to draw a
22 map of it or anything like that?

23 A Right.

24 Q There were a lot of other employees there that
25 you did not interview?

1 A There might have been a front desk lady there
2 that we didn't interview.

3 Q And people working in the clinic itself, nurses
4 and that kind of thing?

5 A They don't have a large staff.

6 Q Okay. But unlike Missouri, you did not make a
7 conscious effort to round up everybody that was there and
8 interview all of them, did you?

9 A Right. Because it wasn't a search.

10 MR. OSGOOD: I believe that's all, Your
11 Honor.

12 REDIRECT EXAMINATION BY MR. BOHLING:

13 Q I'd first like to ask you, to follow up on
14 Mr. Lewis' questions, about Delmon Johnson. You have also
15 interviewed Mr. Johnson more recently, correct?

16 A Yes.

17 Q Did you ask Mr. Johnson about whether or not he
18 made deliveries of controlled substances?

19 A Right.

20 Q And what is a controlled substance?

21 A It's a schedule drug that the government decides
22 needs to be scheduled because it's addictive or --

23 Q That's fine.

24 A Okay.

25 Q Hydrocodone is a controlled substance?

1 A Right.

2 Q And that's the main one we're talking about in
3 this case?

4 A Yes.

5 Q When you asked Mr. Johnson whether he made
6 deliveries of controlled substances at any time, what did
7 he say?

8 A He said he did not. He tended to deliver the
9 maintenance drugs, things like insulin, high blood
10 pressure medication.

11 Q Did Mr. Johnson give a reason why or one reason
12 why he would not deliver controlled substances?

13 A He said that they -- I'm sorry. I can't remember
14 what he said.

15 Q Well, would there be a security concern?

16 A Yes. It would be a security concern definitely.

17 Q In other words, somebody might steal them from
18 him?

19 A Right.

20 Q And, of course, in this case we'd be talking
21 about boxes and boxes and boxes of controlled substances?

22 A Right.

23 Q Okay. Did Mr. Johnson tell you what happened to
24 the boxes from Missouri, the ones that were addressed to
25 South Texas Wellness Center?

1 A Yes. They were -- he retrieved a lot of them,
2 and they were loaded into Philip Parker's and Troy
3 Solomon's cars.

4 Q And did Mr. Johnson tell you what happened to the
5 drugs for the Okose prescriptions that were prepared in
6 house at Ascensia Nutritional Pharmacy?

7 A Those drugs were boxed up, and they were taken
8 out of the pharmacy and loaded into cars.

9 Q Whose cars?

10 A Philip Parker's and Troy Solomon's.

11 Q And did Mr. Johnson tell you when Philip Parker
12 left the pharmacy?

13 A Yes. He said it was around tax time which would
14 be about April in 2005.

15 Q And then after Mr. Parker left, who was left at
16 the pharmacy?

17 A It would have been Troy Solomon and himself and
18 the pharmacy staff.

19 Q Was Mr. Parker physically present at the pharmacy
20 according to Mr. Johnson after April of 2005?

21 A No.

22 Q Now, if we could look at Exhibit 49.

23 Now, at the time we were doing handwriting
24 analysis, in your investigation did you have known,
25 identified writings for Troy Solomon --

1 A Yes.

2 Q -- at that point?

3 A Yes.

4 Q At that point you did?

5 A I'm sorry?

6 Q At the point in which you did the handwriting
7 exemplars?

8 A Yes.

9 Q Okay. What were they?

10 A They were bank records.

11 Q Okay. But more recently you remember receiving
12 an envelope from Cindy Martin?

13 A Yes.

14 Q And that was within the last few weeks?

15 A Correct.

16 Q Okay.

17 MR. BOHLING: If we could put up 1185 on
18 the split.

19 Q (BY MR. BOHLING) Now, you notice in the Sun
20 Forest address, how is Houston spelled?

21 A H-o-u.

22 Q Is that consistent across the known writings of
23 Troy Solomon that you see?

24 A Yes.

25 Q Okay. And if we can look at Amanda Allen, do
814

1 those appear to be similar?

2 A To me they are.

3 Q And do you see the H-o-u there?

4 A Yes.

5 MR. BOHLING: And if we take that page
6 back out on the Amanda Allen side, please.

7 Q (BY MR. BOHLING) There's H-o-u on every single
8 one of those entries, correct?

9 A Right.

10 MR. BOHLING: If you would bring up on
11 this side Exhibit 35.1.

12 Q (BY MR. BOHLING) Now, this is the first script in
13 the Juan Botto series?

14 A Okay.

15 Q You were asked about Dr. Botto and your interview
16 with him. Did he tell you how these prescription pads got
17 out?

18 A He didn't. He thought they might have been
19 stolen though.

20 Q Okay. At some time in the past?

21 A Right.

22 Q Like several years before, if you remember?

23 A I don't recall that.

24 Q Okay. That's fine.

25 Now, if we would -- first of all, does it appear
 815

1 that there's one set of handwriting or more than one set
2 of handwriting on this prescription?

3 A More than one.

4 Q Okay. And where is the differentiation?

5 A The patient name and address section looks
6 different than the prescription section.

7 Q Okay.

8 MR. BOHLING: And if we can highlight
9 the patient name, please, and address portion.

10 Q (BY MR. BOHLING) And, again, if we could
11 particularly look at -- actually Houston is written out,
12 correct, on the top line?

13 A On the top line, yes, but that's Lake Houston
14 Parkway.

15 Q Oh, that's actually the street address?

16 A Right.

17 Q Lake Houston Parkway.

18 And then below that is the town?

19 A Right.

20 Q And how is the town spelled?

21 A H-o-u.

22 Q And how does that compare to the return address
23 on the Cindy Martin envelope from Mr. Solomon?

24 A It's similar.

25 Q Okay. It says H-o-u.

1 Would you say that the handwriting is very
2 similar in appearance?

3 MR. LEWIS: Your Honor, first, I'm going
4 to object to the leading.

5 Second, there's no foundation laid that Agent
6 Watterson is in fact familiar with Troy Solomon's writing.

7 MR. BOHLING: I believe there has been.

8 MR. LEWIS: She said she had records.

9 THE COURT: Approach the bench, please.
10 (Counsel approached the bench and the following
11 proceedings were had:)

12 MR. LEWIS: I have no problem giving
13 some leeway asking about that. He's now getting too close
14 to an expert about handwriting comparison, et cetera. It
15 only lengthens now a recross about the opportunities they
16 had, the ample resources, to compare this writing over
17 years and years and they haven't done it.

18 MR. BOHLING: I think, first of all, I
19 think she has laid the foundation she's seen this writing
20 in the financial records and other places. Secondly, I
21 think it's a comparison ultimately for the jury to analyze
22 if it's the same writing.

23 MR. LEWIS: That's my point. He's
24 pointed it out. It's now repetitive.

25 MR. BOHLING: I'll withdraw my last
817

1 question.

2 THE COURT: Okay.

3 (The proceedings returned to open court.)

4 MR. BOHLING: Could we put the next
5 prescription up on this side? Okay. And go ahead and --

6 Q (BY MR. BOHLING) Do we see the same pattern here
7 with the two different -- distinctly different types of
8 handwriting?

9 A Yes.

10 Q If we could highlight that first block.

11 Again, the only thing I want to point out here
12 is does that also have H-o-u?

13 A Right.

14 Q And if we looked at all of the Exhibit 35 series,
15 would that be a consistent feature, that it would say
16 H-o-u?

17 A Yes.

18 Q That's all I have on that.

19 Now, if we could look at Exhibit 516, do you
20 recognize this exhibit as being a fax, one of the faxes in
21 the series of faxes we've discussed?

22 A Right.

23 Q And in fact isn't this the last -- the very last
24 fax or one of the latter faxes?

25 A A later one, yes.

1 Q Right. Maybe not the last one.

2 This is August. And if we look at the fax
3 header, that's the same fax header we've seen from the
4 Solomon residence?

5 A Right.

6 Q And this is after Mr. Johnson says that
7 Mr. Parker left the pharmacy?

8 A Right.

9 Q Now, I'd like to follow up on some questions
10 about Philip Parker.

11 You do know, if I understand correctly from
12 Mr. Lewis, that he was a pharmacy owner?

13 A Yes.

14 Q All right. And certainly one of the questions in
15 this case is where the address and patient information
16 came for the initial -- for the initial prescriptions that
17 were sent to Missouri?

18 A Right.

19 Q So would you disagree as an investigator with the
20 proposition that I think Mr. Lewis basically advanced to
21 you that those could have come from Mr. Parker's pharmacy?

22 A Right.

23 Q I just wanted to ask you one question from
24 Mr. Osgood's series of questions -- well, maybe a couple
25 of questions from Mr. Osgood's series of questions.

1 The prescriptions, the original prescriptions
2 written by Dr. Elder that were sent to Missouri, now, some
3 of those had no addresses?

4 A Correct.

5 Q Did others have addresses that were written in by
6 Dr. Elder?

7 A I don't recall.

8 Q Okay. But certainly the prescriptions would
9 speak to that?

10 A Right.

11 MR. BOHLING: I think that's all I have.

12 Thank you.

13 MR. LEWIS: No, Your Honor.

14 RECROSS-EXAMINATION BY MR. OSGOOD:

15 Q Two brief questions, Your Honor.

16 You also had an envelope that you showed to Dr.
17 Elder and the return address on it had his name and
18 apparently it was sent up to Missouri; is that correct?

19 A Right.

20 Q And on that envelope it was very, I don't know
21 what to call it, stiff or what, but it was very pronounced
22 handwritten letters in large letters, wasn't it?

23 A It was large letters.

24 Q And they were printed?

25 A Right.

1 Q And it said, Christopher Elder -- it said
2 "Dr. Christopher Elder" on it, didn't it?

3 A I believe so.

4 Q He said I would never write my name that way, I'm
5 a physician. I would write "Christopher Elder, MD" on it,
6 didn't he?

7 A Yes.

8 Q He denied it was his handwriting, didn't he?

9 A Yes.

10 Q In fact it had H-o-u, Texas, on it and he told
11 you, I'd never write Houston, Texas, that way either,
12 didn't he?

13 A Correct.

14 Q He denied that was an envelope that he knew
15 anything about and didn't know anything about the Missouri
16 pharmacy, didn't he?

17 A Right. He said the envelope was not his writing.

18 Q Okay. And do we know whether or not that's
19 Mr. Parker's writing?

20 A No, we don't know that.

21 Q Okay. But he did tell you that wasn't an
22 envelope I sent up there and somebody sent an envelope up
23 there with my return address on it or my name?

24 A Right. He said it wasn't his writing on the
25 envelope.

1 Q And that would be consistent with what we've just
2 heard here, what the prosecutor has asked you about, the
3 same kind of H-o-u?

4 A I believe it did have H-o-u.

5 MR. OSGOOD: Okay. Thank you, ma'am.

6 MR. BOHLING: Can we put -- if I may be
7 indulged with one brief question.

8 Can we put that up. I believe it's Exhibit
9 1188.

10 FURTHER REDIRECT EXAMINATION BY MR. BOHLING:

11 Q If we can take the return address first. So we
12 see what Mr. Osgood asked you does have the H-o-u?

13 A Correct.

14 Q And then if we could look at the body, you notice
15 that that's spelled, as Mr. Osgood pointed out to you,
16 Lynn Rostic?

17 A Correct.

18 Q Do you recall yesterday that when Bobby Parikh
19 testified, that one of the UPS records also showed Lynn
20 Rostic as the name?

21 A Yes.

22 Q Spelled exactly the same way?

23 A Yes.

24 Q We know from Bobby's testimony that Mr. Solomon
25 sent those?

1 A Correct.

2 MR. BOHLING: So I think I'm going to
3 agree with my learned counsel.

4 MR. OSGOOD: Thank you.

5 THE COURT: If you're through with this
6 witness, you may step down.

7 THE WITNESS: Thank you.

8 MR. OSGOOD: Your Honor, while they're
9 calling the next witness, I'm going to step out.

10 MR. BOHLING: I must do the same thing.
11 I must be getting old. Excuse me for just a moment.

12 CONNIE OVERTON, being duly sworn, testified:

13 DIRECT EXAMINATION BY MR. RHODES:

14 Q What is your name?

15 A Connie Overton.

16 Q Ms. Overton, where do you work?

17 A I work for the Drug Enforcement Administration.

18 Q And what do you do at the DEA?

19 A Currently I'm group supervisor.

20 Q At which field division are you a group
21 supervisor?

22 A I'm in the Atlanta field division. I work in the
23 Columbia district office.

24 Q How long have you worked at the DEA?

25 A Been with the DEA since October of 1999.

1 Q Which field division were you assigned to in
2 2006?

3 A The Houston field division.

4 Q And were you a diversion investigator at that
5 time?

6 A Yes.

7 Q Calling your attention to June 6th, 2006, did you
8 interview the defendant Dr. Christopher Elder?

9 A Yes, I did.

10 Q And what was the purpose of the interview?

11 A The purpose of the interview was to follow up on
12 some prescriptions that were found at the Medicine Shoppe
13 in Belton, Missouri.

14 Q Now, were you alone or were you with another
15 person?

16 A I believe at the time I was with another
17 diversion investigator.

18 Q Okay. And where did you interview him?

19 A At his office.

20 Q And is that the office on Little York Road?

21 A Yes.

22 Q Did you ask him if he knew Troy Solomon?

23 A Yes, I did.

24 MR. OSGOOD: Your Honor, I'm going to
25 ask that he ask direct questions, not suggest the answer.

1 THE COURT: If you want to speak to me,
2 come up to the bench.

3 (Counsel approached the bench and the following
4 proceedings were had:)

5 MR. OSGOOD: Did you ask him this, did
6 you ask him that, it's leading.

7 MR. RHODES: I'm just going through the
8 topic area.

9 MR. OSGOOD: Well, did you talk about
10 certain items or something would be -- you know, you're
11 suggesting the answer.

12 MR. RHODES: I'm not suggesting the
13 answer. I'm guiding her to the topic area, did you ask --

14 MR. OSGOOD: Ask her what she talked
15 about, what did you ask him.

16 THE COURT: You can ask -- you can set
17 the topic area up.

18 MR. RHODES: Okay.

19 (The proceedings returned to open court.)

20 Q (BY MR. RHODES) Concerning questions regarding
21 Troy Solomon, what did he tell you?

22 A I asked him about the prescriptions that were
23 found there, and I also asked him if he knew Troy Solomon.

24 Q And what did he tell you?

25 A He stated that he knew him from working at South
825

1 Texas Wellness Center.

2 Q And what about the employment -- you asked him
3 about his employment at South Texas Wellness Center?

4 A Yes. I asked him had he worked there, and he
5 stated that he worked there for a short period of time and
6 from there that's where he knew Troy Solomon.

7 Q All right. And did you ask him about the
8 relationship between -- whether he had one with Troy
9 Solomon?

10 A Yes. I asked him in regards to his relationship
11 with Troy Solomon, if it was a business relationship with
12 him. Again, he stated it was from his employment at South
13 Texas Wellness Center.

14 Q And that was it?

15 A And that was it. He didn't have a personal,
16 social relationship with him.

17 Q Did you ask him whether or not Troy Solomon
18 represented him?

19 A Yes, I did.

20 Q What did he say?

21 A He said no.

22 Q Did you ask him about The Medicine Shoppe?

23 A Yes, I did.

24 Q And what did he say?

25 A He said he didn't know about the prescriptions

1 that were there.

2 Q Did you ask him about any of the prescriptions
3 recovered, that he did not know that they were there as
4 well?

5 A Yes. I had prescriptions with me.

6 Q And what did he say about those prescriptions?

7 A He recognized the names as his patients on the
8 prescriptions, but he didn't know that they were filled at
9 The Medicine Shoppe.

10 Q Now, following this search of Ascensia
11 Nutritional Pharmacy, did you contact the Defendant Troy
12 Solomon?

13 A Yes, I did.

14 Q And how did you make contact with him?

15 A Via his cell phone.

16 Q And what did you ask him?

17 A I asked him about the prescriptions that were
18 found at The Medicine Shoppe and wanted to see if he would
19 maybe come in and speak with us in regards to the
20 information or -- in regards to his business relationship
21 with Dr. Okose and the other prescriptions that were found
22 at Ascensia.

23 Q What did he tell you?

24 A He stated at the time that he did fax those
25 prescriptions and that he was in the process of moving and

1 he couldn't come in right away, he'd have to come in at a
2 later date.

3 Q So he said he faxed those prescriptions to --
4 from Dr. Okose and Dr. Elder's prescriptions?

5 A No. He didn't mention Dr. Elder.

6 Q What did he admit to faxing?

7 A Just faxing the prescriptions to The Medicine
8 Shoppe.

9 Q Okay. If -- may I show you your report to
10 refresh your --

11 A Yes.

12 Q Please read that top paragraph.

13 A Troy Solomon --

14 Q No. Read it to yourself. I'm sorry. Refresh
15 your memory.

16 A Okay.

17 Q Okay. Is your memory refreshed?

18 A Yes.

19 Q Okay. What did he admit to about the faxing of
20 the other prescriptions?

21 A He admitted that he faxed those prescriptions to
22 The Medicine Shoppe.

23 Q From Dr. Okose and Elder?

24 A Yes.

25 MR. RHODES: No further questions.
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1 CROSS-EXAMINATION BY MR. OSGOOD:

2 Q The date of your interview was what, ma'am?

3 A I'm sorry?

4 Q The date of your interview.

5 A I believe is dated June 6th of 2006.

6 Q And that would have been, what, about a month
7 after the search in Texas?

8 A Yes, sir.

9 Q And did you later receive some correspondence
10 from a, for lack of a better term, civil practitioner
11 lawyer in Texas that works with medical boards and that
12 kind of thing, a Ms. -- I'm not asking you about the
13 content. But did you have some contact with a Jennifer
14 Boland?

15 A Yes, I did.

16 Q Okay. She's the -- one of these people that
17 represents people for the medical board, if you know?

18 A Yes.

19 Q And did you in your report indicate -- I don't
20 know whether you put it in your report or not. At some
21 point you indicated that Dr. Elder was cooperative?

22 A Yes.

23 Q And he in fact offered to come up and testify
24 without a lawyer before the grand jury, didn't he?

25 A I'm sorry, could you repeat that?

1 Q Did he offer you or someone in the government
2 that he would come up and testify to the grand jury
3 without -- and he didn't even have a lawyer at the time?

4 A Who was that when you're referring to "he"?

5 Q Dr. Elder.

6 A At the time of the interview he was very
7 cooperative, yes.

8 Q Okay. And he told you, again, that he didn't
9 know anything about -- he didn't know Lynn Rostie at all,
10 did he? Name was a total surprise to him?

11 A Yes.

12 Q And that he had never sent any scripts up to
13 Missouri?

14 A Yes.

15 Q He just wrote his scripts and the patient left
16 with them?

17 A (Witness nodded head.)

18 Q Was he upset when he saw that and did he pick
19 up -- or did you show him any of the ones that had the
20 address that had been added in?

21 A I showed him some prescriptions, yes.

22 Q And he said some of those are mine and some of
23 those I didn't write that on there?

24 A He recognized the patients' names on the
25 prescriptions, yes.

1 Q But the address was not his handwriting, he
2 picked up on that, didn't he?

3 A No.

4 Q Okay. Did you show him those four that we're
5 talking about here or other ones?

6 A I showed him what was on -- was stated in the
7 report.

8 Q Okay. Well, maybe you can help me.

9 Do we know which prescriptions those were?

10 A Let me see that one.

11 Q Yes, ma'am.

12 A Okay. I showed him those four prescriptions.

13 Q All right. And he said some of those I recognize
14 as my patients, but I didn't put that address in there, I
15 don't know anything about that?

16 A He stated that he recognized the patients' names.

17 Q Okay. He told you that he'd -- that he knew
18 Mr. Solomon?

19 A Yes.

20 Q From South Texas?

21 A Yes.

22 Q And didn't deny he knew him or that he didn't
23 have any contact with him?

24 A Yes.

25 Q Said he worked there about five months and he
 831

1 left, didn't he, over a contract disagreement?

2 A Yes.

3 Q He said Solomon was not his -- did you use the
4 word "agent" when you talked to him?

5 A I believe I may have, yes.

6 Q And did he profess some degree of confusion as to
7 what an agent is, how could a doctor have an agent? He
8 said, No, he's not my agent, that's ridiculous or
9 something to that effect?

10 A Yes.

11 Q And said he did not represent him in any
12 professional manner?

13 A Yes. That's what he said.

14 Q And then he told you that with respect to the
15 patients' names you had, that since he was an employee, he
16 left the files with the place where he was employed by?

17 A Yes.

18 Q Okay. And I think the final thing he told you
19 was that he had moved from his apartment at 3010 Little
20 York Road on April the 24th of '06, didn't he?

21 A Moved from his apartment?

22 Q He had moved from his current location -- I'm
23 sorry. I'm confusing you and I'm confused.

24 Did you talk about where he lived at the time?

25 Did you get address information on him, home address

1 information?

2 A No.

3 Q Okay. In your investigation did you determine
4 where he lived at any point in time, home address?

5 A I believe I had driver's license information on
6 him.

7 Q And what did it indicate? You're familiar with
8 Houston. You worked there and lived there, right?

9 A Yes.

10 Q Did he live in an apartment complex there?

11 A Yes, according to the driver's license.

12 Q And did he drive a pickup?

13 A I'm sorry?

14 Q Do you know what automobile he was driving at the
15 time? Was he driving a pickup?

16 A No. I didn't know what vehicle he drove.

17 Q Okay. But he wasn't living in any palatial
18 mansion like was described here. I don't remember who --
19 what witness it was where it was a large -- I guess Ada
20 Johnson or Pleshette Johnson, I'm sorry, lives in a very
21 exclusive neighborhood in Houston, doesn't she?

22 A I'm not aware of where Ms. Johnson lives.

23 Q I'm sorry. Again, I'm not being fair to you.
24 You weren't in here during that testimony, were you?

25 A No.

1 Q Okay. I apologize. You wouldn't know that.

2 MR. OSGOOD: Thank you. That's all.

3 THE COURT: Nothing?

4 MR. LEWIS: Oh, no, Your Honor.

5 THE COURT: Any follow-up?

6 MR. RHODES: No, Your Honor.

7 THE COURT: All right. Thank you,

8 ma'am.

9 (Witness excused.)

10 THE COURT: Why don't we take a short

11 recess.

12 We'll recess for about 15 minutes or so. I'll
13 ask the jury to recall my admonition about not discussing
14 the case among themselves or others or allowing anyone to
15 discuss it in their presence.

16 We'll stand in recess.

17 Thank you.

18 (A recess was taken.)

19 (The following proceedings were had out of the
20 presence of the jury:)

21 MR. LEWIS: Your Honor, I wanted to --
22 to avoid objections and running back and forth, the
23 government is about to call Lillian Zapata, who is one of
24 the employees of Ascensia during the time of the
25 conspiracy, I believe. Is that right, Mr. Bohling?

1 MR. BOHLING: Yes. She started in
2 January of '05.

3 MR. LEWIS: In her two DEA-6 renditions
4 of her report, there are several extraneous matters.
5 Mr. Bohling and I have discussed some of them. For
6 instance, there's -- she testifies about employees
7 drinking on the job, people smoking marijuana,
8 extramarital sex with Mr. Solomon. Again, I don't know
9 that they go to any issues in the indictment. I think
10 under 403 they're better served out of this case -- and
11 404.

12 Mr. Bohling makes a good point I will concede.
13 Part of her testimony is going to go to when Philip Parker
14 leaves, and that kind of intersects her personal
15 relationship with Troy Solomon. So although I don't think
16 it's relevant, I'm not going to object about the
17 discussions about their intimacy as long as we don't get
18 into --

19 MR. BOHLING: I won't emphasize it. I
20 do think the jury has a right to know that.

21 THE COURT: Her being Zapata?

22 MR. LEWIS: Yes.

23 MR. BOHLING: They had a sexual
24 relationship during this time, and it's not something I'm
25 going to emphasize. But I absolutely think it's something

1 that's relevant, that the jury has a right to know. It
2 also goes to the fact that she was with him at different
3 times and observed different things. She went around town
4 with him, and there's some testimony that's very relevant
5 there.

6 MR. LEWIS: I can live with they had an
7 intimate relationship. I didn't want a whole lot of
8 sordid -- there's talks about wining and dining, hotel
9 rooms, and all this.

10 MR. BOHLING: Don't need it. We can all
11 agree.

12 MR. LEWIS: The drinking and the
13 marijuana?

14 MR. BOHLING: Don't need that.

15 MR. LEWIS: I think we'll be fine then,
16 Your Honor.

17 THE COURT: Okay. Thank you.

18 (The following proceedings were had in the
19 presence of the jury:)

20 THE COURT: Are you ready to proceed,
21 Mr. Bohling?

22 MR. BOHLING: Yes, Your Honor. The
23 United States calls Lillian Zapata.

24 LILLIAN ZAPATA, being duly sworn, testified:

25 DIRECT EXAMINATION BY MR. BOHLING:

1 Q Good morning, ma'am.

2 A Morning.

3 Q In a loud and clear voice could you please state
4 your name and spell your first and last name.

5 A Lillian Zapata, L-i-l-l-i-a-n, Z-a-p-a-t-a.

6 Q How old are you, ma'am?

7 A Twenty-seven.

8 Q What is your city of residence?

9 A Dell Valley, Texas.

10 Q What is -- are you currently employed?

11 A Yes.

12 Q Where do you work?

13 A Sales Techs Associates.

14 Q Now, I'd like to direct your attention back to
15 early 2005. Did there come a time when you were hired by
16 a firm called Ascensia Nutritional Pharmacy?

17 A Correct.

18 Q And where is that located?

19 A Houston, Texas.

20 Q Were you living in the Houston area at the time?

21 A Texas City, 45 minutes away from Houston.

22 Q How did you find out about the job opening?

23 A Newspaper ad.

24 Q Did you know anything about Ascensia Nutritional
25 Pharmacy or the people who worked there before you applied
837

1 for the job?

2 A No.

3 Q Who contacted you about the job opening?

4 A What do you mean who contacted me?

5 Q I assume you -- did you submit a resume?

6 A I called -- there was a number on there, on the
7 ad I called and was told to come in for an interview.

8 Q Who did you interview with?

9 A Delmon Johnson, Philip Parker was present, and
10 Troy Solomon.

11 Q What was the position for which you were
12 interviewing?

13 A Pharmacy technician.

14 Q Had you had any prior experience in that field?

15 A No. I had just gotten my certification.

16 Q And perhaps can you tell us about your
17 educational background?

18 A Currently?

19 Q Yes.

20 A In October I'll be finished with my bachelor's in
21 criminal justice.

22 Q From?

23 A University of Phoenix.

24 Q And at that time what kind of educational
25 background did you have back in 2000 --

1 A My high school -- my high school diploma.

2 Q Were you hired to fill the position as a pharmacy
3 technician?

4 A Yes.

5 Q When did you start your job?

6 A In January of 2005.

7 Q What were your duties as a pharmacy technician?

8 A To fill prescriptions, input the information,
9 label the vials, pharmacy technician duties.

10 Q Did you actually physically place pills inside
11 the prescription bottles?

12 A There was a machine that counted them, so I
13 really didn't have to put them in one by one.

14 Q Describe this machine for us. Where was it
15 located within the office?

16 A In the back of the pharmacy.

17 Q How big was it?

18 A The machine or the pharmacy?

19 Q The machine.

20 A Oh. I'm not good with sizes, but I mean it was a
21 pretty good square shape.

22 Q How did it work?

23 A You put the pills in the top and then it
24 generated the pills down this kind of chute-type tunnel,
25 and you placed the vial underneath so the pills would go

1 into the vial.

2 Q Were there particular types of medications that
3 were contained in these machines?

4 A Well, not in the machines, but when I would place
5 them myself in there, it would mainly consist of Lortab,
6 Lorcet, Xanax, Soma, Amoxicillin.

7 Q And what was the purpose of this machine?

8 A To fill the vials.

9 Q Did that allow that to happen faster than it
10 would manually?

11 A Yes.

12 Q Who was the pharmacist in charge at Ascensia when
13 you first started working there?

14 A When I first started, it was Quan Pham.

15 Q And how long did your time overlap with her time?

16 A Oh, she was only there for, like, a month that I
17 was there, if that.

18 Q Okay. And then I take it she left employment?

19 A Yes.

20 Q Now, after Quan Pham left the employment, was
21 another pharmacist in charge immediately hired?

22 A No.

23 Q How long was there between the hiring of -- or
24 the leaving of Quan Pham and the hiring of a new
25 pharmacist?

1 A At least a month.

2 Q Was there a pharmacist in charge -- have you ever
3 heard the term "relief pharmacist"?

4 A Yes.

5 Q Was there a relief pharmacist?

6 A No.

7 Q Was there any pharmacist on the premises?

8 A No.

9 Q So who was filling the prescriptions during that
10 month?

11 A I was.

12 Q And was there a pharmacist approving
13 prescriptions during that month?

14 A No.

15 Q Did you have any concerns about that?

16 A Yes.

17 Q Did you voice those concerns to anyone?

18 A Yes.

19 Q To whom did you voice your concerns?

20 A To Troy Solomon.

21 Q And what did you say to Mr. Solomon?

22 A Just that I didn't feel that I was the one
23 needing to fill these prescriptions being fresh out of
24 pharmacy tech school. I knew that a pharmacist was
25 supposed to be signing off on these medications and one
841

1 | wasn't present.

2 Q Did Mr. Solomon respond to you?

3 A All he said was that he was in the process of
4 hiring one.

5 Q Was a pharmacist eventually hired?

6	A Yes.
---	--------

7 | Q What was the name of that person?

8 A Bede Ndkua. I can't pronounce his last name.
9 Bede.

10 Q Okay. And do you remember approximately when
11 Bede was hired?

12 A It had to have been at least a month when I was
13 doing it by myself and then he came on.

14 Q So would that put it sometime in the winter of
15 2005? Would that be a fair statement?

16 A No. Probably more like March if I was hired in
17 January.

18 Q Okay. Now, did -- what is a prefill
19 prescription?

20 A Prefilled prescriptions were basically vials that
21 were filled with either Lortab, Lorcet, Xanax beforehand
22 before an actual prescription -- you know, paper document
23 was submitted. So we had them already stocked and
24 shelved.

25 Q So these vials were packaged for distribution to

1 patients before a prescription was ever received?

2 A Correct.

3 Q And did you prefill prescription vials while you
4 were at Ascensia Nutritional Pharmacy?

5 A Yes.

6 Q Did that also -- in addition to the substances
7 you already named, did that also include promethazine with
8 codeine?

9 A Yes.

10 Q And what form is that in, ma'am?

11 A Liquid.

12 Q Would that be called a syrup?

13 A Yes.

14 Q Did you ever work beyond normal business hours in
15 order to prefill vials?

16 A There was one night that I can recall I worked
17 later than usual to fill bottles, yes.

18 Q Did you ever work on weekends?

19 A Yes.

20 Q And did anyone within the pharmacy direct you to
21 do this, to prefill medications?

22 A Yes.

23 Q Who directed you to do that?

24 A Both Delmon and Troy.

25 Q Do you recall receiving stacks of prescriptions?

1 A Yes.

2 Q Please tell us about how that occurred.

3 A Well, in the morning when I'd get there, you log
4 into the computer, and then Delmon would come from the
5 office with a stack of prescriptions, usually about 120 of
6 them, if not more. He would hand them to me, and I would
7 start entering in the prescriptions.

8 Q Were these prescriptions written for common
9 medications, the same types of medications?

10 A They were all for Lorcet, Lortab, Xanax, or Soma.

11 Q Other than those four medications, were they ever
12 written for anything else?

13 A Well, the promethazine and Amoxicillin.

14 Q Okay. So basically you've listed, other than
15 those medications, which would be six medications, were
16 they ever written for any other medication?

17 A There was a handful of times when we got -- we
18 had prescriptions for children with like ADD, so I would
19 fill those prescriptions.

20 Q Right. Were the ADD prescriptions, were those
21 part of the stacks that Mr. Johnson gave you?

22 A No.

23 Q They came in separately?

24 A Yes.

25 Q Okay. Was -- do you know whether or not there
844

1 was a doctor in the same building who treated patients
2 like that?

3 A Yes. With ADD?

4 Q Yes.

5 A No, not within our building for the ADD children,
6 no.

7 Q Did you -- were you familiar with a physician who
8 had those types of patients?

9 A For the ADD patients?

10 Q Yes.

11 A Okay. No.

12 Q Turning your attention back to the stacks of
13 prescriptions, were they from the same doctor or different
14 doctors?

15 A The same doctor.

16 Q And do you remember the name of the doctor?

17 A Dr. Okose.

18 Q Did you ever ask where the prescriptions came
19 from?

20 A Yes.

21 Q Who did you ask?

22 A I believe I asked Delmon.

23 Q And do you remember if you ever asked Mr. Solomon
24 about that?

25 A I can't recall if I directly asked him, but I do
845

1 know that I asked Delmon.

2 Q And what response was given as to where those
3 prescriptions came from?

4 A The response given was that Parker and Solomon
5 had a relationship with Okose and a deal that they would
6 fill prescriptions for these patients because they
7 couldn't -- they were too sick to walk themselves to the
8 pharmacy. So these prescriptions would be filled by our
9 pharmacy, and then Delmon would in turn after all the
10 prescriptions were filled and packaged in a box, Delmon
11 was the one responsible to deliver to Dr. Okose.

12 Q And when you say "deliver to Dr. Okose," was it
13 specifically stated where those prescriptions were to go?

14 A I never knew the location of where Dr. Okose's
15 office was.

16 Q Okay. And I guess that's what I'm asking is was
17 it stated that they were to go to Dr. Okose's office?

18 A Yes.

19 Q As opposed to individual patients?

20 A Correct.

21 Q Okay. And you talked about a box. Can you
22 describe to us the process of how these prescriptions were
23 prepared and then boxed?

24 A After I filled the vials, I would attach the
25 proper prescription label to the bag, staple it, and we

1 would have all these bags in the cardboard box, you know,
2 small size moving box type, and we would pack them in
3 there. And Delmon would tape them up.

4 Q Okay. And what would happen to the box, as far
5 as you could see, after it was prepared and taped up?

6 A It was pushed to the corner.

7 Q And which -- I'm sorry, which corner are you
8 describing for us?

9 A Okay. So the pharmacy, of course, is like a
10 square. So to the left side where the windows would face,
11 he would push it off to the side where the windows were.

12 Q Did you ever personally see what would happen to
13 it after it had been pushed to the corner?

14 A No.

15 Q Okay. At some point would the box be gone?

16 A Yes.

17 Q Do you ever recall occasions on which the
18 computer would not allow you to fill prescriptions for Dr.
19 Okose?

20 A Yes.

21 Q How often would that happen?

22 A There was a handful of times when it was too soon
23 or the patient had already had that prescription.

24 Q What would you do when the computer kicked a
25 prescription back?

1 A I would let Delmon know, and he would take those
2 prescriptions from me and go to the office and grab a
3 couple more to replace those.

4 Q So you would still be filling the same 120
5 prescriptions during that day?

6 A Correct.

7 Q Now, do you recall signing for FedEx deliveries?

8 A Yes.

9 MR. BOHLING: Okay. And if we could put
10 up 894 and highlight that.

11 Q (BY MR. BOHLING) This appears to be a delivery on
12 September 28th, 2005?

13 A Correct.

14 Q And is that your signature?

15 A Yes, it is.

16 Q If we can go back to the top of the document.

17 And this package was addressed to Mr. Solomon at
18 South Texas Wellness Center, Suite 450?

19 A Correct.

20 Q Do you recognize Suite 450?

21 A Yes.

22 Q And what was Suite 450?

23 A The pharmacy.

24 Q Was that South Texas Wellness Center, Suite 450?

25 A I'm not sure. I think the pharmacy then was 400
 848

1 if that says Suite 450.

2 Q All right.

3 A It's been years.

4 Q You don't remember?

5 A (The witness shook head.)

6 Q Did you ever ask anybody why this parcel was
7 addressed to Troy Solomon at South Texas Wellness Center?

8 A No. I would just sign for packages. I never
9 really looked at -- I saw Troy's name and I would sign. I
10 never looked at anything under that, just the common --
11 just sign and, you know, get the package, and go on with
12 work.

13 Q Can you describe for us what these packages
14 looked like?

15 A They were cardboard boxes.

16 Q Do you remember the approximate size?

17 A No, I don't. Like a small moving box.

18 Q Okay. Maybe one point of reference, you know
19 what a box that contains copy paper, you ever seen that?

20 A Yes.

21 Q How would it compare to that, a box that contains
22 a whole, you know, refill of copy paper?

23 A Little bit wider than that, little bit -- and a
24 little bit bigger, so width and height wise it would be a
25 little bit bigger.

1 Q Did the boxes look identical to each other or
2 were they different?

3 A I can't answer that. I don't -- I don't
4 remember.

5 Q Okay. Once you signed for the box, what would
6 you do with it?

7 A Let Delmon know. And he would be the one to take
8 it from there.

9 Q Did you see where Delmon took the box?

10 A Some boxes he would open, and some of them would
11 contain prescription bottles from wholesalers. Other
12 boxes he would just take and put in the office.

13 Q And whose office was that?

14 A The main -- in the pharmacy, the main office.

15 Q After they went to the main office, did you ever
16 personally observe what happened to them?

17 A No.

18 Q Did you ever ask about them?

19 A No.

20 Q I'd like to turn your attention back to Bede, the
21 pharmacist in charge. How many hours would he work a day
22 at ANP?

23 A Three to four.

24 Q What did he do while he was there?

25 A He would sit in the back corner either on his
850

1 phone or just sitting there.

2 Q Did he check the prescriptions that you filled?

3 A No.

4 Q Did he initial the prescriptions?

5 A No.

6 Q And do you know whether or not he ever asked
7 Mr. Solomon for a salary increase?

8 A I believe he did, yes.

9 Q Do you know whether he received that salary
10 increase?

11 A I do not know if he did.

12 Q After Bede arrived there, did you notice a new
13 pattern develop with patients at ANP?

14 A Yes.

15 Q Can you describe that for us?

16 A After Bede arrived, we started doing, I guess you
17 would say, business with the South Texas Wellness Center,
18 and there would be a handful of patients coming from there
19 and having prescriptions filled for the same medications
20 that were being filled for Okose's patients.

21 Q Okay. So that would be the Lortab and Lorcet,
22 that kind of thing?

23 A Correct.

24 Q And do you recall whether those people had
25 someone meeting them?

1 A Yes.

2 Q Describe that relationship for us.

3 A The way I saw it was these individuals that had
4 the actual prescriptions in their hands, to me looked like
5 crackheads, and the person that was the leader or in
6 charge was basically the person with the money. And so he
7 would pay for these prescriptions that these other
8 individuals brought in.

9 Q Did you find that to be suspicious?

10 A I found it odd, yes.

11 Q Okay. How many groups like this would come in
12 during a day?

13 A Two to three groups, maybe more on some days.

14 Q Did you talk to anyone else in the pharmacy about
15 these people?

16 A (The witness shook head.)

17 Q Did you ever ask questions about it?

18 A No.

19 Q Okay. Do you recall any comments that were made
20 by Mr. Solomon or Mr. Johnson about these people?

21 A All they would say is just hurry and fill their
22 prescriptions so they can get out, I don't want these kind
23 of people in my lobby.

24 Q Do you know a person named Ada Johnson?

25 A Yes.

1 Q How do you know Ms. Johnson?

2 A She worked over at south -- at the wellness
3 center over there.

4 Q Did you ever see Ada Johnson at Ascensia
5 Nutritional Pharmacy?

6 A Yes.

7 Q And how often did you see her there?

8 A Again, a handful of times come in looking for
9 Solomon.

10 Q Do you know whether she ever had meetings with
11 Mr. Solomon?

12 A Yes.

13 Q And do you know where those meetings took place?

14 A Most times in the office at Ascensia and the
15 other times at Ada's wellness center.

16 Q Were you present in those meetings?

17 A No.

18 Q Do you remember whether -- when those meetings
19 occurred the door would be opened or closed?

20 A Closed door.

21 Q Do you know Pleshette Johnson?

22 A Yes.

23 Q And did Pleshette Johnson come to Ascensia at
24 times?

25 A Yes.

1 Q Who was she looking for?

2 A Solomon.

3 Q Do you recall ever taking a call from someone who
4 identified themselves as Peter Okose?

5 A Yes.

6 Q Okay. And who did the caller ask for?

7 A For Bede.

8 Q Do you recall any statements that Mr. Solomon
9 made about whether Mr. Parker knew Peter Okose?

10 A I'm sorry?

11 Q Did Mr. Solomon ever state anything about whether
12 Mr. Parker knew Mr. Okose?

13 A From Solomon's words he claimed that Parker was
14 the one who knew Okose first, and Parker was the one who
15 introduced Okose to Solomon.

16 Q Okay. Did Mr. Solomon ever make a statement
17 about Mr. Parker and business documents?

18 A Yes. He said Parker's name was used because he
19 was an attorney and if anything went down, Parker's name
20 would be on business papers.

21 Q Now, at some point did you begin dating
22 Mr. Solomon?

23 A Yes.

24 Q Approximately when did that happen?

25 A Late February, early March.

1 Q At some point did he give you a car?

2 A Yes.

3 Q When did that happen?

4 A I don't know the specific date but maybe a month
5 after the relationship began.

6 Q Now, do you recall during your -- during dating
7 Mr. Solomon that you ever rode around in his car with him?

8 A Yes.

9 Q What type of car did he have?

10 A A BMW.

11 Q And do you remember a time when you drove into
12 Houston with him?

13 A Yes.

14 Q And when was that approximately?

15 A Again, I can't give you an approximate date. Not
16 sure of when it was. I mean, April, May.

17 Q And can you tell us what happened on that
18 occasion?

19 A We went into a part of Houston that I would
20 consider the ghetto, and we pulled over to the side. And
21 another vehicle pulled behind us. He got out of his
22 vehicle -- Troy got out of his vehicle and opened the
23 back, took a box out, handed it to this black male, and
24 they exchanged words. I don't know what was said.

25 **He got back into his vehicle and said to me, "I**
855

1 **bet you didn't know you were riding with three million**
2 **dollars."**

3 Q By "he," you mean?

4 A Troy Solomon.

5 Q Were you surprised by that statement?

6 A Yes.

7 Q How big was the box that Troy took out of the
8 trunk?

9 A Again, like a small moving box.

10 Q Did Mr. Solomon on other occasions make any
11 statements to you about how much money he made?

12 A Well, he said he made his first million by 30.
13 He always claimed that money was never an issue. He
14 flaunted it around like, I mean, he had all the money that
15 he needed.

16 Q When did you leave the employment of Ascensia
17 Nutritional Pharmacy?

18 A October 2005.

19 Q Why did you leave the employment of Ascensia
20 Nutritional Pharmacy?

21 A Mainly because of what was going on in the
22 pharmacy started to not seem right. More of the patients
23 coming in, it just wasn't the way a pharmacy technician, I
24 feel, should have operated and, you know, falling out with
25 him as well. It was just I needed to cut ties from the

1 bad.

2 Q Okay. And if I can direct your attention to --
3 little out of order.

4 But back to Mr. Parker, do you recall an
5 occasion in which there was an argument that you witnessed
6 between Mr. Parker and Mr. Solomon?

7 A Yes.

8 Q And when did that occur?

9 A I don't remember when it occurred, but I do
10 remember that it occurred over a timecard of mine.

11 Q Okay. And tell us about the argument.

12 A I know that Parker wrote me up -- I can't even
13 remember why -- and the argument that happened was Troy
14 saying, "There's no reason to write her up. Where's it
15 going to go? There's nobody above us." He ripped up the
16 paper in front of Parker, and after that I walked out of
17 the office.

18 Q Okay. Now, after that argument occurred, did you
19 see Mr. Parker in the pharmacy anymore?

20 A Not as much.

21 Q And did you have an understanding about whether
22 he was still involved with the pharmacy?

23 MR. LEWIS: Your Honor, I'm going to
24 object to that. It sounds to me -- it would be based on
25 speculation or hearsay unless there's a foundation.

1 Q (BY MR. BOHLING) When you say "not as much" --
2 I'll go back to that question.

3 How often would Mr. Parker be in the pharmacy
4 before the argument took place?

5 A Before the argument?

6 Q Yes.

7 A He would be in there as much as Delmon and
8 Solomon. On a frequent basis.

9 Q And then after the argument, how often was
10 Mr. Parker in the business?

11 A Out of a week, maybe two days.

12 MR. BOHLING: One more question, Your
13 Honor. I just have to find some information. You can
14 never find something you need.

15 Q (BY MR. BOHLING) Ma'am, do you recall being
16 interviewed on July 11th, 2007, or thereabouts?

17 A Yes.

18 Q And do you recall discussing this issue with the
19 agent of when the argument occurred?

20 A I'm sorry?

21 Q Do you remember discussing with the agent when
22 the argument occurred?

23 A Between?

24 Q Mr. Parker and Mr. Solomon.

25 A I believe I told her, yes.

1 Q Would it assist your recollection to be able to
2 review that report of the investigation?

3 A I'm sorry. Say that again.

4 MR. LEWIS: I would object. The witness
5 is not claiming her memory is deficient. It's improper
6 refreshment.

7 THE COURT: Counsel, approach the bench
8 because I missed part of that.

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 MR. LEWIS: The witness stated she
12 thought it was in -- gave a timeframe she thought it was
13 in, the '05 time period. She stated that. She didn't say
14 I don't remember. Therefore, it would be improper to
15 refresh her memory. She's given an answer. If he wants
16 to impeach this witness, that's different. He's got to
17 lay that predicate.

18 MR. BOHLING: I could impeach her.

19 MR. LEWIS: If he wants to do it that
20 way, that's fine. It's not refreshment.

21 THE COURT: What did she say?

22 MR. BOHLING: She said she didn't
23 remember.

24 MR. LEWIS: She gave us a date. She
25 said she didn't remember specifically. She's going along

1 the chronology of the time period.

2 THE COURT: I don't think she gave a
3 date either.

4 MR. BOHLING: I don't think she did.

5 MR. LEWIS: Fair enough, Your Honor.

6 (The proceedings returned to open court.)

7 Q (BY MR. BOHLING) Ma'am, I'm going to show you
8 that report I just referenced. If you could look at
9 paragraph 12 and please read that to yourself.

10 Thank you.

11 Does that assist in refreshing your recollection
12 as to when that argument took place?

13 A Yes.

14 Q And do you have a present recollection today of
15 when that argument took place?

16 A Are you talking about a specific date?

17 Q In general, a general timeframe.

18 A Again, April, May, it was the spring.

19 Q Okay. Thank you.

20 MR. BOHLING: That's all I have, Your
21 Honor.

22 Thank you very much.

23 CROSS-EXAMINATION BY MR. LEWIS:

24 Q Good morning, Ms. Zapata. It's good to see you
25 again. Let me ask you just a few questions.

1 Let me kind of go backwards at this. You left
2 Ascensia pharmacy in October of '05?

3 A Correct.

4 Q Now, in all fairness, your relationship with
5 Mr. Solomon was -- he was kind to you; is that fair?

6 A Yes.

7 Q He was generous with you?

8 A Yes.

9 Q And he defended you?

10 A Yes.

11 Q For instance, when you had an automobile -- Texas
12 City is a good bit away from where Ascensia was, right?

13 A Correct.

14 Q Forty-five minutes or so down the Gulf Freeway?

15 A Yes.

16 Q So transportation was vitally important for you?

17 A Correct.

18 Q You had a young child?

19 A Correct.

20 Q Mr. Solomon became aware of the car problems you
21 were having, did he not?

22 A Yes.

23 Q You had trouble in fact getting your car to start
24 in the parking lot sometimes at Ascensia, right?

25 A Correct.

1 Q And without you asking, he found you a used car
2 and gave it to you for transportation, didn't he?

3 A Correct.

4 Q Didn't ask you for money?

5 A No.

6 Q Didn't dock your pay?

7 A No.

8 Q And when you left, he didn't ask you to pay him
9 back or give him the car back, did he?

10 A Correct.

11 Q And when we're talking about "the car," tell us
12 what type of automobile it was.

13 A It was a '93 Mercury Marquis.

14 Q So it wasn't a brand new BMW or anything like
15 that?

16 A No.

17 Q But it served your needs as reliable
18 transportation for work and for your son?

19 A Correct.

20 Q At one point in time while you were working at
21 Ascensia, the need arose for you to have oral surgery?

22 A Yes.

23 Q And Mr. Solomon helped you with that?

24 A Correct.

25 Q Didn't ask you to repay him?

1 A No.

2 Q Your relationship with Mr. Solomon, I would say
3 you grew closer over time; is that fair?

4 A Yes.

5 Q And in growing closer, you had the opportunity to
6 get to know each other a little bit better?

7 A Yes.

8 Q In all honesty, Ms. Zapata, Mr. Solomon at times
9 was a little braggadocio about himself or things he'd
10 done, et cetera?

11 A What are you referring to?

12 Q Oh, just talking -- for some of the things you
13 said, made his first million before he was 30?

14 A Yes.

15 Q I think your words were he often told stories
16 with you?

17 A Yes.

18 Q In your private moments, your relationship
19 together, that's fair?

20 A Yes.

21 Q Did you feel that sometimes he was trying to
22 impress you?

23 A At times, yes.

24 Q And as an attractive lady, you've had men, you
25 know, try that with you before?

1 A Correct.

2 Q So you kind of recognize that. You've got a BS
3 detector for lack of a better word?

4 A Yes.

5 Q Now, let's turn to the workings of the pharmacy
6 for just a couple of moments. You would show up in the
7 morning and there would be prescriptions ready for you to
8 begin your workday, correct?

9 A Correct.

10 Q And Delmon Johnson is the one who would open the
11 pharmacy in the morning?

12 A Yes.

13 Q Those prescriptions that were already there, you
14 just had to assume who left them because you didn't see
15 them, correct?

16 A I'm sorry?

17 Q When you got there in the morning, there was
18 already a stack there. You just assumed Johnson had left
19 them for you?

20 A No. He gave them to me directly.

21 Q Okay. I understood that. Were they sometimes
22 already there at your workstation or Delmon would come in
23 and hand them to you?

24 A I would -- Delmon and I would always arrive
25 around the same time.

1 Q Let you in the building?

2 A Correct.

3 Q Because you didn't have keys?

4 A Correct. And either I was putting my stuff up,
5 my purse, my belongings, and then I would walk back to the
6 front. So Delmon -- I had to walk by the computer. No
7 prescriptions were there. After my belongings were put
8 up, the prescriptions were there.

9 Q And it would be, again, Delmon that would bring
10 them to you?

11 A Correct.

12 Q You'd start your workday?

13 A Correct.

14 Q Now, in relation to the question Mr. Bohling
15 asked, you understood that the relationship with Okose was
16 one that Parker had formed previously?

17 A Correct.

18 Q And in fact -- you got a little bit concerned
19 about this clientele that was showing up with these
20 prescriptions, right?

21 A Yes.

22 Q Mr. Solomon shared a -- the similar concern with
23 you, didn't he?

24 A Not that I can recall.

25 Q Do you recall learning that Troy Solomon went to
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1 meet Okose and find out if he actually had a clinic and
2 these were legitimate scripts? Do you remember that?

3 A No, I don't.

4 Q Okay. Do you remember your original interview
5 with Agents Watterson and Overton, they came to Austin,
6 Texas, to talk to you?

7 A Yes.

8 Q Do you remember telling them that Parker had the
9 relationship with Okose?

10 A Yes.

11 Q And that Solomon had only met Okose once?

12 A Yes.

13 Q You understood those prescriptions you would be
14 given by Delmon Johnson would be first obtained by either
15 Delmon himself or Mr. Parker, correct?

16 A Correct.

17 Q The gap in time where Pharmacist Pham leaves and
18 the pharmacy is looking for another pharmacist, let's try
19 to pinpoint that. Do you know what your start date was?

20 A Not the specific date.

21 Q Fair enough. When is your birth date?

22 A January 26th.

23 Q Let's use that. You think it was before or after
24 your birthday?

25 A Before.

1 Q Okay. So sometime between January 1st and the
2 26th is a fair estimate?

3 A Correct.

4 Q Do you -- you recall when Bede started as the
5 pharmacist in charge?

6 A Not a specific date.

7 Q Let me help you with that.

8 MR. LEWIS: Your Honor, may I approach
9 the witness?

10 THE COURT: Yes.

11 Q (BY MR. LEWIS) Ms. Zapata, I'm going to show you
12 what purports to be a summary of your interview from
13 February 28th of 2009.

14 Take a look at the front real quick, make sure
15 this is your interview. Then if you would read silently
16 to yourself just the top here, paragraph six, that first
17 sentence. If you'd look at paragraph six, I think it's
18 page 3.

19 A After this, right?

20 Q That's your interview, right?

21 A Yes.

22 Q If you'd turn to I think it's page 3.

23 Yes, ma'am, just that first sentence in
24 paragraph six. Does that help refresh your memory?

25 A Yes.

1 Q And you told the investigators back when they
2 interviewed you that Bede started February, possibly March
3 of '05?

4 A Correct.

5 Q The setup at Ascensia you kind of described. We
6 had a waiting room out front?

7 A Uh-huh, yes.

8 Q Then behind the doors we had the glass
9 prescription windows for the pharmacist, right?

10 A Yes.

11 Q And then there was some offices, a conference
12 room, Troy's office, et cetera, behind the pharmacy or to
13 the side?

14 A It was -- the office is to the left. If you're
15 walking in, office is to the left, the lobby, and then the
16 pharmacy.

17 Q And when you said -- I'm sorry. I didn't help
18 you with the transition.

19 We talked about these deliveries that you signed
20 for.

21 A Correct.

22 Q You gave them to Delmon, correct?

23 A Correct.

24 Q And Delmon would put them in the back of the
25 pharmacy, not in Troy Solomon's office, right?

1 A Correct.

2 MR. LEWIS: May I have one moment, Your
3 Honor?

4 THE COURT: Yes.

5 MR. LEWIS: Thank you, ma'am. Have a
6 safe trip home.

7 THE WITNESS: Okay.

8 MR. LEWIS: Pass the witness to
9 Mr. Osgood, Your Honor.

10 MR. OSGOOD: I don't have anything.

11 MR. LEWIS: I'll pass her back to
12 Mr. Bohling then.

13 MR. BOHLING: No, sir. We're done.
14 Thank you.

15 THE COURT: Thank you. You may step
16 down.

17 (Witness excused.)

18 MR. RHODES: Government calls Robert
19 Klemen.

20 ROBERT KLEMEN, being duly sworn, testified:

21 DIRECT EXAMINATION BY MR. RHODES:

22 Q What is your name?

23 A Robert Klemen.

24 Q Mr. Klemen, where do you live?

25 A I live in Splendora, Texas.

1 Q And what do you do for a living?

2 A Right now I work in air filtration.

3 Q And were you formerly employed at the Universal
4 Medical Clinic?

5 A Yes, sir.

6 Q When did you begin working for the Universal
7 Medical Clinic?

8 A In 1996.

9 Q Who was the owner of the Universal Medical
10 Clinic?

11 A Dr. Peter Okose.

12 Q And what type of practice was that?

13 A General practitioner.

14 Q Now, when you began working for the Universal
15 Medical Clinic, what were your job duties?

16 A Anything from helping front desk clear to the
17 back door. I'm an X-ray tech. I would take X-rays plus
18 help out everywhere around the clinic.

19 Q You speak a little softly. If you could kind of
20 speak into the microphone a little bit. I don't know if
21 everyone can hear you clearly.

22 A Okay.

23 Q Thank you. And what was the location of that
24 clinic?

25 A I was told because I forgot what the address was.

1 It's 10200 Houston Freeway on I-10 East.

2 Q All right. What type of doctor was Dr. Okose?

3 A General practitioner.

4 Q At that time what type of patients did he treat
5 primarily?

6 A Workers' comp, personal injury, just anybody that
7 come in for your average colds.

8 Q Now, at some point did Dr. Okose open up a pain
9 management practice?

10 A Yes, sir.

11 Q Approximately when did that happen?

12 A I really don't know because it all started so
13 slowly that I didn't even know we were doing it when we
14 were doing it.

15 Q Okay. If I were to show you a report of an
16 interview of you to help refresh your memory, do you
17 believe that something like that could help you?

18 A Yes.

19 Q Just read it to yourself.

20 A Okay.

21 Q Is your memory refreshed?

22 A Yes, sort of. I say I still don't know exactly
23 when it started because it only started two or three, and
24 then next thing you know it was five or ten.

25 Q Okay.

1 A Even for --

2 Q Approximately what year, when did the practice
3 start? You didn't read the --

4 A Yes. It says 2003.

5 Q Okay. Now, did the patient load increase when he
6 opened a pain management practice?

7 A Yes, sir.

8 Q And when the practice became pain management,
9 what was the method of payment?

10 A Cash.

11 Q Okay. Were checks, credit cards, or insurance
12 allowed?

13 A No, sir, not at first. Right before they closed
14 him down, he did take some.

15 Q Did his clinic subsequently open up a new clinic?

16 A Yes, sir.

17 Q And what was the location of the second clinic?

18 A I don't know the exact address, but it was on
19 Federal Road down from clinic number one, shall we say.

20 Q Both clinics were on Federal Road, is that what
21 you're telling us?

22 A Yes.

23 Q Did the clinic employ physician assistants?

24 A Yes, sir.

25 Q How many were employed approximately?

1 A I'm going to say five, six.

2 Q Okay. And what were your duties? Did you become
3 the office manager?

4 A At that time, yes.

5 Q And what were your duties as the office manager?

6 A To train new MAs, to help out with filing, to
7 look over charts for the doctor, to make sure there's
8 enough documentation.

9 Q As the office manager, were you responsible for
10 handling the cash proceeds?

11 A Yes, sir.

12 Q Now, what exactly did that entail as far as
13 handling the cash proceeds?

14 A Well, the person up front would receive the cash,
15 and I was in charge of petty cash, which meant I'd go to
16 the bank, get \$5 bills for change. And I kept enough on
17 hand that when Rodney would come to me, say, Hey, I need
18 some fives, I could do that. At the end of the day cash
19 would be turned over to me, which I would turn over to the
20 doctor. He would want to deposit X number of dollars,
21 which was always different.

22 Q Do you know the cash amounts that were being
23 deposited?

24 A Not perfectly, but I'm going to say anywhere from
25 \$2,500 to \$3,500 per day.

1 Q And in the pain management practice were there
2 what you would consider busy days and slow days?

3 A Yes, sir.

4 Q As far as patient load?

5 A Starting on Monday slow to Friday very busy.

6 Q And when you say "slow," how many patients or
7 customers would there be on a slow day?

8 A Just guessing, 50 to 75.

9 Q And on a busy day -- what day of the week would
10 you consider a busy day?

11 A When they interviewed me, I thought 200, but I
12 was told by some people could have been 400.

13 Q Oh. What was your memory of it?

14 A Two hundred.

15 Q Two hundred. Okay.

16 And were the patients given a paper prescription
17 or what type of prescription?

18 A Paper prescription, yes, sir.

19 Q Now, were they allowed to fill their
20 prescriptions at any place, or were they told to fill
21 their prescription at a certain place?

22 A Any place.

23 Q Did the -- did Dr. Okose trust you with the
24 clinic's finances?

25 A Yes.

1 Q How much money would you estimate that the clinic
2 made?

3 A A two-year period I estimate right around ten
4 million.

5 Q How did the clinic operate when Dr. Okose was out
6 of town on business or vacation?

7 A He would get paperwork documentation signed by a
8 doctor of his choosing, I guess, to oversee the clinic
9 while he was out of the country.

10 Q And with regard to the prescription pads, what
11 would he do?

12 A I'm sorry?

13 Q With regard to the prescription pads.

14 A They were usually kept in his safe in the office
15 -- in his office.

16 Q Would he prepare prescription pads before he
17 left?

18 A Yes, sir.

19 Q And then what would happen? Would he give them
20 to the physician's assistants, or how would that work when
21 he wasn't there?

22 A When he left town, he would always give them a
23 pretty ample supply of prescription pads, and should they
24 run out, I could go into the safe and give them whatever
25 prescription pad they needed.

1 Q Were they presigned?

2 A Yes, sir.

3 Q Now, you said you were in charge of the office
4 safe as well when you were doing the petty cash?

5 A Yes.

6 Q How much money was kept in the office safe?

7 A When he was there, I am not sure, but when he was
8 not there, I would store all cash in the safe because I
9 told him there's no way I'm taking this home with me.

10 Q Was it a lot? Was it more than 10,000?

11 A Yes, sir.

12 Q Was it more than 50,000, would you estimate?

13 A Over a one or two-week period, yes. Close to
14 100,000.

15 Q Now, did Universal Medical Clinic dispense drugs
16 to the patients?

17 A No, sir.

18 Q At any time did pharmacies make any deliveries of
19 any controlled substance prescriptions to the clinic?

20 A No, sir.

21 Q When did you end your employment at Universal
22 Medical Clinic?

23 A The DEA closed him down 2006.

24 Q Have you heard of Ascensia Nutritional Pharmacy?

25 A No, sir.

1 Q Have you heard of Troy Solomon?

2 A Yes, sir.

3 Q You have. And how have you heard about Troy
4 Solomon?

5 A He would come to the front, and since a lot of
6 times I was in my office, sometimes they would ring me a
7 certain person was there, at this particular time that
8 Troy Solomon had come to the front. I'd call the doctor,
9 he had a telephone in his office, said such and such is
10 here, Troy Solomon is here. He'd say, Oh, okay, bring him
11 on back.

12 Q Have you heard of Philip Parker?

13 A No, sir.

14 Q You haven't heard of Philip Parker.

15 And have you heard of Delmon Johnson?

16 A No, sir.

17 Q Now, you said that you -- did you remember
18 receiving a letter from Missouri Board of Pharmacy?

19 A Yes, sir.

20 Q Okay.

21 MR. RHODES: Will you please bring up
22 1087?

23 Q (BY MR. RHODES) Do you remember seeing that
24 letter?

25 A Yes, sir.

1 Q All right. And following that letter, what did
2 you do when you were asked that question?

3 A I talked to Mr. Van Fleet on a Saturday -- no,
4 I'm sorry. He had called me in the office and told me he
5 was going to fax something to me. I told him, Okay. I
6 received that. I took it directly to the doctor and left
7 it there for him to see.

8 Q Okay. Calling your attention to Government's
9 Exhibit 1088, this is a typewritten letter. Do you
10 remember responding to Mr. Van Fleet's inquiry?

11 A Yes, sir. I'm assuming you want me to --

12 Q Tell us about that, yes.

13 A Yes, sir. I took that to the doctor. He came to
14 me a couple hours later and said, Yes, we did send some.
15 I don't remember his exact excuse for the whole thing. He
16 had a letter typed up and said, Send this to Mr. Van
17 Fleet. I believe I signed it even to let him know, yes, I
18 did discuss this with the doctor and this is what
19 happened.

20 MR. RHODES: May I have a moment?

21 Q (BY MR. RHODES) Now, during that time that Dr.
22 Okose was working there, would he take money from the
23 petty cash, or at the end of the day when you gave it back
24 to him, did he take it home with him, or did he put it in
25 a deposit? Tell us about that.

1 A Part he would put in deposit, and what he did
2 with the rest of it, I don't know. I'm just assuming that
3 he took it home.

4 Q Okay. Did you see him take his part?

5 A I would hand him whatever was left over. He
6 would take from that. What he did with it, I don't know.
7 I just would take it to him, drop it on his desk.

8 Q Okay. How much did he take?

9 A Whatever was left of the proceeds for that day.
10 Let's say I would deposit 2,500 -- for example, let's say
11 \$10,000 brought in, I would deposit 2,500 or whatever he'd
12 want me to. He would get the rest.

13 Q Okay. So he would tell you what to deposit?

14 A Yes, sir.

15 Q And then he would take the rest?

16 A Yes, sir.

17 Q Fair enough. You didn't know what he did with it
18 once you gave him the rest?

19 A No, sir.

20 MR. RHODES: Thank you. No further
21 questions of this witness.

22 CROSS-EXAMINATION BY MR. LEWIS:

23 Q Morning, Mr. Klemen.

24 A Good morning.

25 Q My name is Chip Lewis. I represent Troy Solomon.

1 I don't think we've ever had the pleasure of meeting.

2 A No, sir.

3 Q I'm going to just ask you a couple of questions.

4 If there's anything I ask that you're unclear about,
5 please make me repeat myself until you understand what I'm
6 trying to ask.

7 A Yes, sir.

8 Q You're familiar with the Houston area?

9 A Yes, sir.

10 Q Good. I needed somebody that was.

11 Pasadena, we know Pasadena is an area southeast
12 of Houston, Texas?

13 A Yes.

14 Q It would be a little south of where Dr. Okose's
15 various pain clinics were, right?

16 A Yes.

17 Q For lack of a better diagram, we have Interstate
18 10 that dissects Houston pretty much in half, right?

19 A Yes, 45, I-10.

20 Q Makes a T right through the heart of Houston?

21 A Yes, sir.

22 Q Pasadena would be in that lower right quadrant of
23 the T, right?

24 A Lower left, I believe if you're -- yes.

25 Q You're looking at my T. You make the T.

1 A I make the T north and it would be south --

2 Q East?

3 A East.

4 Q East is that way if north is up there?

5 A Yes.

6 Q Okay. The pharmacy is on Federal Road. That's
7 I-10 East, right?

8 A Yes.

9 Q Not the pharmacies. The clinics on Federal?

10 A Yes.

11 Q I-10 east headed out of Houston, we get Federal
12 Road, Baytown, Channelview, et cetera?

13 A Yes, yes.

14 Q Headed towards Louisiana, right?

15 A Yes, sir.

16 Q And you were very -- well, let me ask you this,
17 sir: You knew who Philip Parker was, right?

18 A No, sir.

19 MR. LEWIS: May I approach the witness,
20 Your Honor?

21 THE COURT: You may.

22 Q (BY MR. LEWIS) Do you remember being interviewed
23 by Connie Overton on December 6th, 2008?

24 A Yes.

25 Q You came to their field office, the DEA field
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1 office?

2 A Yes, sir.

3 Q Let me show you this. Look at this front page,
4 make sure that's the interview I'm talking about. That
5 look like it?

6 A Pretty much, yes, sir.

7 Q All right. Let me direct you to the highlighted
8 portion here on page 4 of the third bullet point. Read
9 that silently to yourself, Mr. Klemen.

10 A Okay.

11 Q In fact, you told Agent Overton you remembered
12 Philip Parker coming to the clinic about once a week to
13 see Okose, correct?

14 A That must have been what I said, yes.

15 Q You recall September 16th, 2008, getting a call
16 from an investigator Mark Reeder?

17 A No, sir.

18 Q Okay.

19 A I'm not saying he didn't. I just don't remember.

20 Q That's fair enough. Let me see if I can help
21 you.

22 Do you remember getting a message from your wife
23 when you got out of the shower that an investigator from
24 Missouri had called?

25 A Yes.

1 Q And do you recall during that conversation
2 Mr. Reeder asking you if you knew any of the following
3 people: Christopher Elder, Troy Solomon, Cindy Martin, or
4 Lynn Rostie? Do you remember him asking you that?

5 A I remember him asking me several names, yes, sir.

6 Q Do you remember telling him as reference to those
7 four names, that he had only heard of those names when --
8 you had only heard those names when he mentioned them to
9 you?

10 A Yes, sir.

11 MR. LEWIS: Thank you, sir.

12 Pass the witness.

13 CROSS-EXAMINATION BY MR. OSGOOD:

14 Q I take it by your answer, you wouldn't know
15 Christopher Elder from Adam?

16 A No, sir.

17 Q Did you ever -- strike that.

18 MR. OSGOOD: That's all.

19 Thank you.

20 THE COURT: Any follow-up?

21 MR. RHODES: No, Your Honor.

22 THE COURT: Thank you, sir.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: You want to take a break?

1 MR. RHODES: Yes.

2 THE COURT: Why don't we take our lunch
3 recess at this time, and why don't we plan on wrapping
4 that up about 10, 15 after and get started and keep
5 pressing through the day.

6 I'll ask again you not discuss this case among
7 yourselves or with others or allow anyone to discuss it in
8 your presence.

9 Thank you.

10 (The noon recess was taken.)

11 AFTERNOON SESSION

12 (The following proceedings were had in the
13 presence of the jury:)

14 MR. BOHLING: Your Honor, I just have
15 some housekeeping matters to take care of before our next
16 witness. First, I'd like to move Exhibit 1050 into
17 evidence.

18 THE COURT: Hearing no objections, it
19 will be received.

20 MR. BOHLING: Then I would like to move
21 some exhibits into evidence based on stipulation. I'll
22 try to save a little time on that. The first is a set of
23 exhibits that come from a Walgreen's store in Houston,
24 Texas which is located at 2727 FM 1960 Road. The exhibits
25 are Exhibit 443 through Exhibit 452, inclusive. These are
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1 original prescriptions.

2 THE COURT: Okay. They'll be received
3 pursuant to the stipulation.

4 MR. BOHLING: The next set of exhibits
5 are Bank of America records. They are the financial
6 records for Rostie Enterprises and Mary Lynn Rostie.
7 Those exhibits are Government's Exhibits 1137, 1144, and
8 that's it.

9 The next set of exhibits are exhibits from Allen
10 Bank & Trust. They are financial records for Rostie
11 Enterprises and Mary Lynn Rostie, and the exhibit number
12 is 1141.

13 The next exhibits are bank records from Wells
14 Fargo Bank. They are financial records for Troy Solomon.
15 The exhibit number is 1138, and I believe the account is
16 LP, Inc.

17 The next exhibit is Washington Mutual Bank
18 records. This is an Ascensia Nutritional Pharmacy
19 account, and it is Government's Exhibit 1139.

20 And then the -- next set of exhibits are records
21 from McKesson, which is a pharmaceutical wholesaler. They
22 are for Rostie Enterprises purchases from February 2004
23 through June 2006. Those exhibits are 1106 and 1107.
24 That is all for exhibits that we are going to move in.

25 THE COURT: I'll show those all received
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1 pursuant to the stipulation.

2 MR. BOHLING: There is a second -- or
3 another stipulation which is a stipulation of facts
4 regarding institutions insured by the Federal Deposit
5 Insurance Corporation.

6 The parties have agreed that the following
7 banking or financial institutions are institutions insured
8 by the Federal Deposit Insurance Corporation. They are
9 Bank of America, Allen Bank & Trust, Wells Fargo Bank, and
10 Washington Mutual Bank.

11 Thank you, Your Honor.

12 MR. RHODES: Government calls Lori
13 Nelson.

14 LORI NELSON, being duly sworn, testified:

15 DIRECT EXAMINATION BY MR. RHODES:

16 Q Please state your name for the record.

17 A Lori Nelson.

18 Q And where do you work, Ms. Nelson?

19 A For the U.S. Attorney's Office.

20 Q What is your title in the United States
21 Attorney's Office?

22 A Financial analyst.

23 Q How long have you worked for the United States
24 Attorney's Office?

25 A Five years.

1 Q What is your educational background?

2 A I have a bachelor's degree in accounting from
3 Central Missouri State University. I also have a Master's
4 of the Arts in accounting from Central Missouri State.

5 Q Can you tell the jury the various jobs you have
6 held since graduating from Missouri State University?

7 A As soon as I graduated, I -- I've always been in
8 banking, continued as a bank teller until I could find a
9 job that suited my degree. Then after eight months I
10 began working for the Missouri Division of Finance as a
11 bank regulator. I was a bank regulator or bank examiner
12 for nine years with them rising to the level of senior
13 bank examiner. Once I left the Missouri Division of
14 Finance, I began working for the U.S. Attorney's Office.

15 Q What is a financial analyst?

16 A A financial analyst is someone who assists in the
17 investigations, looking into anything basically involving
18 the money. We follow the money flow and do that to assist
19 with money laundering as well as asset forfeiture.

20 Q As a financial analyst in conducting this
21 investigation, did you review and analyze bank records and
22 other financial records?

23 A Yes, I did.

24 Q And in preparation for your testimony here today,
25 did you create charts that pulled information from the

1 various financial records?

2 A Yes, I did.

3 Q And what was the purpose of creating those
4 charts?

5 A When you're looking at bank accounts, there's a
6 lot of records, you know, with the deposits, withdrawals.
7 It's a lot easier to just consolidate that into just the
8 raw numbers. So that was -- the purpose for the charts
9 was to not have to look at individual account information,
10 be able to look at the numbers that we needed to look at.

11 Q Okay. I'm going to show you what has been marked
12 as Government's Exhibit 1145.

13 MR. RHODES: I'd move to admit Exhibits
14 1143, 1145 into evidence.

15 MR. OSGOOD: I don't have any objection.

16 THE COURT: They'll be received.

17 Q (BY MR. RHODES) Would you please -- now, you've
18 heard evidence that money came from Houston and went to
19 Belton, Missouri?

20 A Yes.

21 Q Okay. Would you please tell us what is depicted
22 in Government's Exhibit 1145?

23 A This is a synopsis of Cynthia Martin's cash
24 deposits over the timeframe that we have been discussing
25 this week. We know that the money she has stated came

1 through the UPS flow from Houston, Texas, to her in cash,
2 and she has also told us that she deposited some of that
3 cash. This is what she was referring to.

4 Q Now, what is the largest amount that was
5 deposited in cash into that bank account?

6 A Looks like in October of 2005, she deposited
7 \$9,500.

8 Q And what about the July range of deposits?

9 A Approximately \$10,000 over that month.

10 Q And October 17th?

11 A Was 9,500 cash in that one instance.

12 Q All right. So these were concentrated dates --

13 A Yes.

14 Q -- close in time?

15 Moving to Government's Exhibit 1143.

16 A This is, again, a synopsis of Rostie Enterprises
17 which Rostie Enterprises is doing business as The Medicine
18 Shoppe. So this would be The Medicine Shoppe's monthly
19 deposits not only for our timeframe but also for a few
20 months before and a few months after. The area in gray is
21 actually the timeframe in which the prescriptions were
22 filled which shows that during that timeframe, there was
23 an increase in her monthly deposits at that time.

24 Q It reached over \$200,000, is that what we're
25 seeing here?

1 A Yes. In a one-month timeframe she would go over
2 \$200,000.

3 Q And what is the total amount of deposits between
4 that time period?

5 A During that timeframe of August of '04 to October
6 of '05, her total deposits were \$2,943,653.37.

7 Q And let's go back to a broad view of the exhibit.
8 And did the deposits start to decrease, kind of
9 drop back down?

10 A Yes. As you can see from October to November,
11 October she deposited \$192,000. The very next month the
12 deposits went down to \$140,000.

13 Q Okay.

14 MR. RHODES: Government moves to admit
15 into evidence Government's Exhibit 1120, 1121, 1122.

16 MR. OSGOOD: No objection.

17 MR. LEWIS: No objection.

18 THE COURT: They'll be received.

19 MR. RHODES: Would you please put up
20 Government's Exhibit 1120.

21 Q (BY MR. RHODES) What is Government's Exhibit
22 1120?

23 A This is a comparison of Mr. Solomon's tax return
24 filed in 2004, along with the cash deposits for LP,
25 Incorporated doing business as Ascensia Nutritional

1 Pharmacy for 2004 as well.

2 Q And what does this tell us?

3 A It shows, as we've already seen with
4 Ms. Swicegood, that in 2004, there was total income on the
5 tax return from wages of \$84,801. We also see \$11,550
6 that was deposits into the business account, and what this
7 is showing is that that \$11,550 was not included on that
8 tax return.

9 Q Okay. So it wasn't included on the tax return
10 for the \$11,550?

11 A Correct.

12 Q Government's Exhibit 1121.

13 A This is a similar chart showing that in 2005 we
14 have from the tax return total wages of \$60,139. We also
15 have business income. We have seen before the Schedule C
16 from that tax return showing that there were sales,
17 pharmaceutical sales is what was stated on the Schedule C,
18 \$93,750 worth of total sales for a business loss of \$1,300
19 approximately with a final total income of \$59,130. On
20 the other side we are showing the total deposits for LP,
21 Incorporated during that timeframe of \$718,094 that is not
22 being reflected on the other side.

23 Q And what amount of the \$718,000 was cash
24 deposits?

25 A Approximately -- from what I was able to
891

1 determine, \$369,000 in cash deposits. There were some
2 deposits in which I was unable to get from the bank a
3 determination of what that deposit was. So there could be
4 more cash than the \$369,000, but that's the determination
5 that I can say at least \$369,000 of that \$718,000 is cash.

6 Q Okay. Going to Government's Exhibit 1122.

7 A This is just a consolidation of the previous two
8 charts showing that during the timeframe that we have been
9 discussing, 2004, 2005, there was a total of \$143,931
10 reported with an additional \$729,644 that was not included
11 on those returns.

12 Q Okay.

13 MR. RHODES: I have no further questions
14 of this witness.

15 CROSS-EXAMINATION BY MR. OSGOOD:

16 Q Now, did your office submit an ex parte request
17 to get those tax returns?

18 A Yes, we did.

19 Q Did you submit a similar ex parte request to get
20 Dr. Elder's tax returns?

21 A No, I did not.

22 Q Why?

23 A At the time of the investigation we had a
24 financial line that we were following, following the money
25 from Texas to Missouri, and then following the

pharmaceuticals back to Texas. And he was not given to me as somebody to include in the ex parte at that time.

Q Well, the investigation started on May the 3rd of 2006; did it not?

A Yes.

Q And the indictment occurred in 2008; did it not?

A I believe so.

Q The indictment clearly spelled out what the charges are in the case; did it not?

A Correct.

Q The theory is that Dr. Elder was involved with these other people in this massive scheme to generate huge amounts of income from Missouri, didn't it?

A He was involved in the drug conspiracy side, yes.

Q That was your theory?

A Yes, correct.

Q Don't you think it would have been important to get his tax returns and do a financial workup on him to see whether or not he in fact got any money, ma'am?

A At the time of the investigation we knew that this was all flowing in cash, and we understood that payments were being made in cash. And we really didn't expect to find a trace of that cash at that time, and we did not do a financial investigation on Mr. Elder.

Q You know what -- you're talking about a bank

1 deposit method of investigation, right?

2 A Correct.

3 Q There's also the net worth basis of investigation
4 in tax cases, isn't there, where you look to see whether
5 or not the person's net worth, in other words, what they
6 got, what they've spent, what they've acquired in cars and
7 houses and what they've paid off in loans and that kind of
8 thing would show their net worth and then you would
9 compare that to reported income for the year? You're
10 familiar with that system of accounting?

11 A Yes, I am.

12 Q You could have done a net worth investigation on
13 Dr. Elder, couldn't you?

14 A Yes, we could have.

15 Q And you could have told the jury, then, if you
16 had done that whether he was living in a house out in that
17 high dollar area that we heard Pleshette Johnson was
18 living in versus the apartment he was living in?

19 A Yes, we could have.

20 Q You didn't do that, did you?

21 A No, sir.

22 Q Were you aware or did you find out that he was
23 audited in 2004 and 2005?

24 A At a later date.

25 Q And in fact he had \$5,000 on deposit with the
894

1 IRS, and after the audit, they gave him back \$250. Is
2 that your recollection, something in that neighborhood?

3 A From what I have heard.

4 Q And that was the year that he got a 1099, his
5 best year he'd had yet, he got a 1099 showing \$200,000
6 worth of income which he paid close to \$100,000 in taxes
7 or something in that neighborhood?

8 A Okay.

9 Q All right. But you did not look into his
10 finances?

11 A No, sir, I did not.

12 Q Now, you said that he wasn't a target early in
13 the investigation.

14 A Financial target, sir.

15 Q Well, just a -- he was a target in the
16 investigation?

17 A Correct.

18 Q To get a total picture of him, don't you think it
19 would have been helpful after 2008, you got -- this is
20 2010 -- it doesn't show on my watch. This is 2010, 12:30
21 on June the 24th, you had all that time, over two years
22 and some months to do a financial on him, didn't you?

23 A If it would have been approached to me to do one,
24 I would have done so.

25 Q Well, who was -- who was your boss in this case?
895

1 A I have -- I'm not sure what you mean.

2 Q Who directly were you working for? Who first
3 brought this indictment?

4 A Who brought the indictment would have been
5 Mr. Rhodes.

6 Q Mr. Rhodes. He was directing you as to what to
7 do and what not to do?

8 A He's not the only person. We were all discussing
9 it, but it never came up to do a financial investigation
10 at that time.

11 MR. OSGOOD: Okay. Thank you.

12 THE COURT: Anything further of this
13 witness?

14 MR. RHODES: No, Your Honor.

15 THE COURT: Thank you.

16 MR. RHODES: Government calls Don Lock.

17 DON LOCK, being duly sworn, testified:

18 DIRECT EXAMINATION BY MR. RHODES:

19 Q Sir, would you please state your name.

20 A My name is Don Lock, L-o-c-k.

21 Q And what type of work do you do, Mr. Lock?

22 A I do forensic consulting.

23 Q Where is your office?

24 A My office is located in Jefferson City, Missouri.

25 Q Are you self-employed?

1 A Yes, I am.

2 Q How long have you been self-employed?

3 A I've been self-employed for approximately ten
4 years.

5 Q What does a forensic consultant do?

6 A A forensic consultant or a forensic examiner is
7 one who examines evidence pertaining to legal proceedings.
8 So it could be, say, you hear of forensic document
9 examiners or forensic pathologists. The term "forensic"
10 is nothing but a legal term telling us that it does deal
11 with legal proceedings.

12 Q Do you work in the area of questioned documents?

13 A Yes, I do.

14 Q What is a "questioned document"?

15 A A questioned document would be any material that
16 conveys a message, visible, invisible, partially invisible
17 that might be under special scrutiny. A questioned
18 document could be handwriting. It could be typewriting.
19 It could be paper, ink, copiers, printers, currency,
20 passports. So you kind of get a feel for a questioned
21 document, but primarily questioned document examiners deal
22 primarily with handwriting and related matters.

23 Q How long have you been engaged in the discipline
24 of forensic document examination?

25 A In the area of questioned documents or
897

1 handwriting well over 35 years.

2 Q Now, what training and experience do you have in
3 the field of forensic document examination?

4 A Before I became self-employed as a forensic
5 document examiner, I worked for the Missouri State Highway
6 Patrol State Crime Lab in Jefferson City for approximately
7 30 years in the area of questioned documents and related
8 fields. So upon retiring after approximately 30 years
9 with the state crime lab, then I became incorporated under
10 Don Lock, Incorporated as a forensic consultant. And
11 going back to his question, successfully completing an
12 apprenticeship program back in the mid '70s, in the area
13 of questioned documents and continuously working in the
14 area of questioned documents for, as I said, approximately
15 35 years, attending numerous FBI schools in the area, the
16 U.S. Secret Service questioned documents school, attending
17 schools in this state, and training sessions in schools
18 throughout the United States. I've lectured on the local
19 and the international level in the area as well.

20 Q About how many documents have you examined?

21 A I'm going to give you a very conservative opinion
22 and say tens of thousands, tens of thousands, many
23 thousand.

24 Q Have you ever qualified to testify in court
25 before as an expert examiner of questioned documents?

1 A Yes, I have.

2 Q How many times?

3 A I have testified in the area of questioned
4 documents for, there again, several hundred times, and
5 I've testified in local, state, federal, and in the
6 military court system in the area of questioned documents.
7 I think I've testified in every federal courthouse in this
8 state, in virtually every county courthouse which is like
9 114 counties. I've testified in virtually every
10 courthouse in the state of Missouri and many courthouses
11 many times, so I've testified a few times.

12 Q Okay. How are questioned documents examined and
13 compared?

14 A Questioned documents are examined and compared,
15 first of all, by making -- if we're looking at
16 handwriting, we make a close and critical study of any
17 material that might be provided to me and then make a
18 side-by-side type comparison of any known exemplars that
19 might be provided to me. So it's -- it's not -- the
20 procedure is not as difficult as one might think, you
21 know. We don't need million dollar pieces of equipment,
22 but we need that training and experience. So, once again,
23 just making a side-by-side type comparison and examining
24 the individual characteristics in the writing.

25 Q What are the basic principals in the use of
 899

1 handwriting as the means of identification?

2 A No two things are alike, therefore, no two people
3 or their product, and that would be handwriting, are
4 alike. Handwriting is an unconscious act, and handwriting
5 habits are very stable. So these are the three premises
6 upon which we base a handwriting comparison, unconscious
7 and handwriting habits are very stable.

8 Q For purposes of the record I'm handing you
9 Government's Exhibits 1 through 6, 463, Government's
10 Exhibit No. 460, Government's Exhibit 499, and 625.

11 MR. OSGOOD: Are those the original --

12 MR. RHODES: These are the original
13 questioned documents.

14 MR. OSGOOD: They're the original
15 scripts?

16 MR. RHODES: Yes.

17 MR. OSGOOD: Original scripts. I don't
18 have any problem with it. I'll stipulate he wrote the
19 original scripts you've got. Save some time.

20 A And what was your question again?

21 Q (BY MR. RHODES) Can you identify it?

22 A Yes. The government's exhibits that you just
23 handed me I can identify. They have my initials and a
24 number that I assign to them on each document so I'll be
25 able to identify each document.

1 Q Okay. And what were you asked to do?

2 A The Exhibits 1 through 6 and Government's
3 Exhibits 463, 499, 460, and Government's Exhibit 625,
4 these were submitted to me, and I was asked to examine the
5 writing on the documents and make a comparison to some
6 known exemplars that were provided to me.

7 Q Okay. Now, I'm going to hand you what has been
8 marked for purposes of the record as Government's Exhibits
9 1052 through 1073.

10 MR. BOHLING: May we approach, Your
11 Honor?

12 (Counsel approached the bench and the following
13 proceedings were had:)

14 MR. BOHLING: John, not just the ones in
15 here, all the original scripts?

16 MR. OSGOOD: The original ones, sure,
17 sure. Does he have the script, one that has the added
18 name on it? He has the original of one, right?

19 MR. BOHLING: Yeah. He has the original
20 of one.

21 MR. OSGOOD: Can I look at it?

22 (The proceedings returned to open court.)

23 MR. OSGOOD: Yeah. I'll stipulate to
24 all of them.

25 Can I see Exhibit 1, Mr. Lock?

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. OSGOOD: That's fine. That will
4 save some time. I'll stipulate the original prescriptions
5 are his prescriptions in his handwriting.

6 MR. BOHLING: All of them?

7 MR. OSGOOD: All the ones you've got up
8 there on The Medicine Shoppe, those are his original
9 prescriptions. We don't deny that.

10 (The proceedings returned to open court.)

11 MR. BOHLING: I guess if I could
12 announce the government and the defense will that
13 stipulate all the original prescriptions were written by
14 Dr. Elder.

15 MR. OSGOOD: Well, to the extent that
16 they were --

17 (Counsel approached the bench and the following
18 proceedings were had:)

19 MR. OSGOOD: By the evidence in the case
20 it's clear that names or addresses were added to them.

21 MR. BOHLING: Right.

22 MR. OSGOOD: I don't know how we clarify
23 that.

24 MR. BOHLING: I can clarify that.

25 MR. OSGOOD: It's pretty clear from the
 902

1 evidence, but I'm not admitting he wrote those addresses.

2 Can I get him to announce that to the jury?

3 (The proceedings returned to open court.)

4 MR. BOHLING: To clarify our
5 stipulation, you've heard some handwriting was added by
6 other people like Lynn Rostie. They are not stipulating
7 that that is Dr. Elder's obviously. It is only the
8 handwriting that is clearly Dr. Elder's.

9 Q (BY MR. RHODES) I'm handing you for the record
10 Government's Exhibits 1052 through 1073. What is it?

11 A The exhibits that you just handed me are and were
12 provided to me as known handwriting exemplars or
13 handwriting samples of one Mr. Christopher Elder, and
14 these exemplars that were provided to me are known as
15 requested exemplars. These are exemplars that were -- an
16 individual will approach or ask an individual to provide
17 them with handwriting samples and these are requested.

18 **Then there's another type of exemplar that we**
19 **see occasionally that is called "collected." This is**
20 **where you might go out and collect some known handwriting**
21 **samples. There are two types of handwriting samples and**
22 **these are requested.**

23 Q All right. For purposes of the record, I'm
24 handing you Government's Exhibits 443 through 452,
25 Government's Exhibit 1048, Government's Exhibit 52 through
903

1 143, Government's Exhibit 1047 and Government's Exhibit
2 1050 just for purposes of the record.

3 MR. RHODES: These are known exemplars.

4 MR. OSGOOD: Can I see them?

5 MR. RHODES: Yeah, sure.

6 A The exhibits that were just handed to --

7 MR. OSGOOD: Is there a question, Your
8 Honor?

9 THE WITNESS: Sorry.

10 Q (BY MR. RHODES) Can you identify those?

11 A Yes, I can. I'm sorry.

12 Q Please identify them.

13 A The exemplars that were -- yes, the exemplars
14 that were just handed to me I am able to identify them.
15 They do have my identifiers on them, and these were
16 submitted to me as being known handwriting samples of one
17 Mr. Christopher Elder.

18 Q Okay. Now, what were you asked to do with these
19 documents?

20 A I was asked to examine the questioned writing and
21 compare it to the known writing that was provided to me.

22 Q Okay. Specifically I just want to hear about do
23 you have an opinion as to the writing on Government's
24 Exhibits 625, 460, 499, and 463 which are your faxes -- I
25 mean, your questioned documents?

1 A Are you --

2 Q Not the prescriptions.

3 A You said Exhibits 1 through 6?

4 Q No. I don't want to hear about 1 through 6. He
5 stipulated to those being the handwriting. Just these.

6 A Oh, okay.

7 **Yes, I do.**

8 Q Okay.

9 MR. OSGOOD: May I see those, please?
10 Okay.

11 A I do have an opinion.

12 Q (BY MR. RHODES) What is that opinion?

13 A It is my opinion that the writing on Government's
14 Exhibits 625, 460, 499, and 463, that it is highly
15 probable or -- I am virtually certain that the initials
16 were written by one Mr. Christopher Elder.

17 Q Explain to the jury "highly probable."

18 A I found a similar combination of writing habits
19 with no basic or structural differences. Now, you heard
20 me say that I -- that it's highly probable or I am
21 virtually certain that they were written by this
22 individual. You say, well, why are we saying "I am
23 virtually certain" rather than as the other ones that were
24 stipulated to, "positively"? Well, where I just said
25 "highly probable" or "virtually certain," it has nothing

1 to do with doubt, nothing.

2 MR. OSGOOD: I'm going to object, Your
3 Honor.

4 (Counsel approached the bench and the following
5 proceedings were had:)

6 MR. OSGOOD: He's trying to define
7 reasonable doubt and make this -- these things beyond a
8 reasonable doubt, and his report says "highly probable,"
9 and he can ask him questions that he's -- he's rambling on
10 in a narrative fashion.

11 MR. RHODES: He was asked to explain
12 what is highly probable, and that's what he's explaining.
13 That's his definition of highly probable.

14 MR. OSGOOD: That needs to be a
15 question-and-answer session.

16 THE COURT: I think -- I don't know what
17 he's going to say. You know what he's going to say.

18 MR. RHODES: Right.

19 THE COURT: I think if he goes into the
20 burden-of-proof issue, then if he doesn't get that
21 straight, then the court will straighten it out.

22 MR. OSGOOD: Okay. Thank you.

23 (The proceedings returned to open court.)

24 Q (BY MR. RHODES) Do you have two different
25 gradations of highly probable and positive, that you're

1 positive that's writing, and the difference between those
2 two?

3 A Yes. There is a difference -- there is a
4 different wording between John Doe is identified or, shall
5 we say, there is a difference between Christopher Elder is
6 identified as the writer or is highly probable. There are
7 two different terms that we, as document examiners, use.

8 Q And for your finding of highly probable, what
9 were the factors that went into that finding?

10 A Quality and quantity. So those are the
11 factors -- to answer this gentleman's question, those are
12 the factors that go into the highly probable opinion.
13 Once again, there isn't doubt, but here I'm -- two things
14 occur here.

15 **Number one, I'm looking at some -- I'm looking**
16 **at quantity. We're just looking at some initials. When**
17 **we're looking at quality, it's not the best in the world.**

18 **However, everything that I see here points**
19 **toward Mr. Elder. Nothing points away from him. So, in**
20 **essence, I'm giving you a conservative opinion, but I do**
21 **that because, once again --**

22 THE COURT: Let me interrupt you. I
23 think he's answered the question.

24 MR. RHODES: Okay. You've answered.

25 Q (BY MR. RHODES) Did you examine all of the known
907

1 exemplars provided to you?

2 A Yes, I did.

3 Q And was there an observation or any observations
4 made?

5 A Yes.

6 Q What was that observation?

7 A The biggest observation that I made was that --
8 you know, earlier I talked about or briefly had talked
9 about requested exemplars and collected exemplars. Well,
10 in examining the requested exemplars that were provided to
11 me, I observed characteristics associated with -- it did
12 not reflect a true and accurate representation of this
13 individual's writing ability. In comparing the requested
14 exemplars to the other known exemplars, yes, I was clearly
15 able to see that they were written by the same person.

16 **However, the exemplars that were provided to me**
17 **that the individual provided in the collected -- I mean,**
18 **in the requested form were written slowly, deliberately,**
19 **and heavy characteristics of trying to disguise and give**
20 **you an unfavorable known exemplar.**

21 Q Is this the exhibit you're referring to --

22 A Yes, it is.

23 Q -- when you were talking about deliberate and
24 slow?

25 A Right. You can see -- or I can see that the
 908

1 writing is done very slowly, very deliberately, same pen
2 pressure, and then if you compare it to other known
3 samples that were provided to me, then you can clearly see
4 -- if you just put them side by side without really
5 closely examining them, you would think you're looking at
6 two different writers. That's how heavily this individual
7 in my opinion attempted to disguise the exemplars.

8 Q Is that what you're speaking of when you look at
9 the screen side by side?

10 A I am talking about the -- yes, all of those. All
11 of those exemplars were written slowly and deliberately,
12 and in my opinion did not reflect a true and accurate
13 representation of this individual's writing style and
14 ability. So it was done very deliberately, period.

15 MR. RHODES: I have no further questions
16 of this witness, Your Honor.

17 CROSS-EXAMINATION BY MR. OSGOOD:

18 Q Mr. Lock, did all of the documents you have have
19 Dr. Elder on them? I notice you've referred to him as
20 Mr. Elder throughout your testimony. Don't they all say
21 Dr. Elder on them?

22 A Right. I'll apologize. If you would suggest
23 that I address him as doctor, I can do that.

24 Q He is a doctor, sir.

25 A But I don't know he's a doctor. I just know that
909

1 he was Mr. Elder. This is usually the way I address
2 people. I'm sorry if I offended anyone.

3 Q All right. Now, the handwriting examples that he
4 gave you, he appeared in the office of the United States
5 Attorney here; is that right? You were there?

6 A I'm sorry?

7 Q Were you there when he gave these handwriting
8 examples?

9 A No, I was not.

10 Q They were given -- they were given and taken by
11 another examiner, weren't they?

12 A I don't know who obtained the handwriting
13 exemplars. I don't know that. I do not know.

14 Q You know a Mr. Dan McCarty?

15 A I don't know who obtained them. I only know that
16 they were exemplars of Dr. Elder.

17 Q Do you know Dan McCarty?

18 A Yes, I do. I know of Dan McCarty.

19 Q He is a forensic document examiner here in Kansas
20 City; is he not?

21 A I can't -- I don't know.

22 MR. OSGOOD: Would the government
23 stipulate with me that it was Mr. Dan McCarty that took
24 these exemplars?

25 MR. RHODES: Yes, sir.

1 Q (BY MR. OSGOOD) Okay. Now, you've heard that?

2 A No, I didn't hear that.

3 Q They'll stipulate with me it was Mr. Dan McCarty,
4 another examiner, that took these handwriting samples?

5 A I know Dan McCarty. I've not seen him in maybe
6 15 years, but I do know that --

7 Q We can save some time if you'd answer my
8 questions.

9 A I know of him. I know of him. I do not know him
10 professionally, okay, but I do know the name.

11 Q As a document examiner?

12 A I don't know that. I --

13 Q Okay.

14 A Yeah, okay. You have to allow me to answer your
15 question. I knew Mr. McCarty --

16 THE COURT: Wait a minute, wait a
17 minute, wait a minute. Either you know him as a document
18 examiner or you don't.

19 A No, I do not know him as a document examiner.

20 Q (BY MR. OSGOOD) Then how are these documents even
21 valid? If he's not a document examiner, he wouldn't be
22 qualified to take these exemplars, would he?

23 A Anyone, anyone is qualified to obtain handwriting
24 samples. Anyone on the jury here is qualified to obtain
25 these handwriting samples, okay. The only thing you have

1 to be able to do is maybe make a five-minute appearance in
2 a courtroom and say I was the one who obtained them. You
3 don't have to have any qualifications to obtain
4 handwriting samples because you're simply --

5 THE COURT: All right. That's enough,
6 that's enough, Mr. Lock.

7 MR. OSGOOD: Could we have the exhibits
8 of the refill sheets up, please.

9 Q (BY MR. OSGOOD) Now, this is the signature that
10 you're telling us is highly probable that Dr. Elder wrote?

11 A Correct.

12 Q You say you have -- let's put aside the samples
13 that were submitted to the other document examiner. In
14 your known samples, show me a signature in any of those
15 known samples that you can lay side by side that would
16 look like that?

17 A In comparing --

18 Q Can you please answer the question? Do you have
19 a known initial signature somewhere that you can lay side
20 by side with that and show it to us? Do you have one,
21 sir?

22 A I can show you --

23 Q That's a yes-or-no question, sir.

24 A It can't be answered with a yes or no.

25 Q Either you have it or you don't.

1 MR. RHODES: May we approach?

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 MR. OSGOOD: This guy is a charlatan,
5 Your Honor.

6 MR. BOHLING: I have no problem -- I
7 understand his point. Nobody should come in this court
8 and be subject to being yelled at. It is not in accord
9 with the dignity of the court.

10 THE COURT: Part of it is his
11 testifying. I agree with your objection, Mr. Bohling.

12 MR. OSGOOD: I'll slow down.

13 THE COURT: And it may not be a yes-or-
14 no answer. He just needs to take into consideration he's
15 already said certain elements are instruction.

16 The problem is he can't remember all the way
17 beyond the question. He did it in direct and he's doing
18 it on cross, and we've got to keep him under control.

19 MR. BOHLING: I understand that. But I
20 don't think the way it's being done is appropriate.

21 THE COURT: I'm going to sustain the
22 objection to that.

23 MR. BOHLING: Okay.

24 (The proceedings returned to open court.)

25 Q (BY MR. OSGOOD) The question was, do you have an
913

1 example of this to lay side by side? And I'm going to
2 allow you to explain your answer.

3 A In the handwriting field we have what's called
4 natural variation. Now, if this gentleman is asking me
5 can I find another one -- another sample that I can
6 precisely overlay this one, no, I hope not because you
7 will never find one. No two people will ever write the
8 same way twice. We all have a little natural variation.

9 **However, in the exemplars that were provided to**
10 **me, there were some initials. And to answer your**
11 **question, I'm looking at one. I'm looking at several**
12 **actually. I'll just hand these to you, and you can look**
13 **at -- you could put them side by side. And are they going**
14 **to be precisely the same? As I said earlier, I hope not.**
15 **If they are, then they were either traced or we have a**
16 **simulation. We need natural variation.**

17 MR. OSGOOD: May I publish these to the
18 jury, Your Honor?

19 THE COURT: Why don't you publish them
20 so they can be seen by all of us.

21 MR. OSGOOD: All right. If this will
22 work, I'd be glad to.

23 Q (BY MR. OSGOOD) Those are his initials there.
24 Are we looking at those?

25 A Would it be possible, sir -- would it be possible
914

1 to put the one on one screen and one on the other screen?

2 Is that possible?

3 Q I don't think so.

4 A Are you able to put them side by side because
5 now -- now they have to use their memory, but if you were
6 to put them side by side, they would be able to see the
7 similarities that I'm talking about.

8 Q Is that good for you?

9 A That's fine.

10 Q Let me ask you some questions. That C has a
11 backward slant to it, doesn't it?

12 A I think both of them have a backward slant.

13 Q That has a forward slant?

14 A I don't -- by definition, I don't really
15 understand what you're talking about.

16 Q One C looks like it's leaning over. The other C
17 looks like it's leaning back. The D has a telltale, long
18 slash after it, doesn't it?

19 A But that goes back to a natural variation. It's
20 going to vary a little bit. The slant is varying a little
21 bit. But if you would allow me -- you're looking for
22 dissimilarities. If you allow me, I'll show you the
23 similarities.

24 Q I'm -- you know, you're -- counsel for the
25 government can do that.

Let's look at some similarities. That's one natural one, right, or one real one there.

Here's another real one.

A Do you want to talk about the first one?

Q I want to ask my questions, sir. Look at the initials on these two original prescriptions. They're almost an overlay, aren't they? They're very close, the style, the dot, the C, the D are very close, aren't they? Let's look at another one of the original ones that we've got here.

Very close in style of writing, C, the E, the D,
the characteristic back slash on the D.

Let's look at another one. Laid that right over the top there.

You see that one?

A I do.

Q That one up there, there's a precise pattern here, isn't there? You clearly, if you were asked to examine these, would say the same person wrote all these initials on these prescriptions, wouldn't you? You'd say not highly probable, you would say he did, wouldn't you?

A I would have to look at them and examine them.

Q Okay. Now, again, this is the one that you are claiming he wrote, right?

A I am saying --

1 Q Highly probable?

2 A I'm saying it's highly probable that it was
3 written by --

4 Q You just didn't have one of those, did you?

5 A No. There were several.

6 Q Here's another one.

7 Those two -- I don't know that I can get them
8 both on the page. Do you see the similarity in those two?

9 A There is some similarity.

10 Q In those two. Distinct from the other ones I've
11 shown you.

12 How much are you being paid to come up here and
13 give this testimony, sir?

14 A I'm not being paid a dime to testify.

15 Q How much were you paid --

16 A I'm not -- please let me answer.

17 **I'm not being paid a dime to testify. I am**
18 **simply paid by the attorneys to make an honest examination**
19 **and comparison, render a report, and to the best of my**
20 **knowledge, ability, come here today and explain to you the**
21 **results of my examination. I don't get paid to testify.**
22 **That's a word that we don't use.**

23 Q All right. Let me rephrase it, sir.

24 You are an expert witness?

25 A Yes, sir.

1 Q You set fees for expert witness testimony; do you
2 not, sir?

3 A Yes, I do.

4 Q What are your fees for appearing as an expert
5 witness today?

6 A I receive 175 an hour, four-hour minimum for
7 appearing here today and giving you the results of my
8 findings.

9 Q And how much -- you've been here all day by the
10 way; have you not?

11 A I've been here late morning.

12 Q Now, how much were you paid for the -- as an
13 expert for your examination of the documents out of court?

14 A In all the work I've done here?

15 Q Yes, sir.

16 A I think -- now, I'm not trying to give you a
17 false answer, but I think in the area of approximately
18 \$1,000 I have been paid so far for the examinations and
19 the -- that I've conducted and the reports that I've
20 rendered in this case. Approximately \$1,000 give or take.

21 Q All right.

22 MR. OSGOOD: Could we have one of the
23 exhibits? I believe it's No. 1 up with the address in it.

24 MR. BOHLING: Sure.

25 MR. OSGOOD: Thank you. With the
 918

1 address. I'm about done, Your Honor. We're looking for
2 an exhibit. Blow that up a little bit.

3 MR. BOHLING: This isn't it.

4 Q (BY MR. OSGOOD) Let me ask you this while we're
5 doing this: Were you shown any government exhibits that
6 the government asked you to distinguish between particular
7 handwriting on prescriptions to determine whether or not
8 addresses had been put in later?

9 A No.

10 Q Okay. Have you ever seen this or were you asked
11 to examine this and compare the body of the prescription
12 perhaps to the top up here?

13 A Is that one of --

14 Q I don't think you were given that one, sir, in
15 fairness to you.

16 A Okay.

17 Q But you had the capability, would you not, to
18 tell whether or not the body of the prescription and the
19 signature was written -- by the way, there's some of those
20 telltale initials again. You see them, don't you, down in
21 the corner there?

22 A If I were asked to do so, I would make -- once
23 again, I would make a very close and critical study of
24 them and attempt to tell you if they were or were not
25 written by the same person.

1 Q Okay. Now, are you -- you're a forensic guy.
2 Are you familiar with computers and the use of scanners
3 and that type of thing?

4 A I am familiar with them. I know of them.

5 Q Well, are you capable, for example, under the old
6 -- strike that.

7 Formerly when people used Xerox machines to
8 falsify documents, you could usually, as a forensic guy,
9 testify that there were telltale, little lines and you
10 could sometimes identify what had been a cut and paste
11 document on a Xerox machine, couldn't you?

12 A Yes.

13 Q By very close examination, by blowing it up or
14 whatnot?

15 A It can -- it can be done. You used the words
16 "cut and paste" where you use a copier and you transfer a
17 signature from one page to another. That's cut and paste.
18 It can be done. Sometimes it's more difficult.

19 Q But it's -- sometimes under the old law you and
20 I, as old as we are, are familiar with, under the old type
21 of this problem, you -- even if you used that white tape,
22 you'd have that little telltale line that you examiners
23 could find, couldn't you?

24 A No, no. If it's done properly with a copier,
25 there's virtually -- I can do it. I've done it many times
 920

1 to see if it can be done. You can very successfully
2 transfer a signature from point A to point B with a
3 copier, and if you're just moving a small portion, at
4 times it can be very difficult to detect.

5 Q Did you have an original of these documents?

6 A No, I did not.

7 Q I was going to ask you -- I didn't -- you already
8 answered my question. You can't even tell whether or not
9 that was a cut-and-paste signature then?

10 A That is right. That is right. I can't -- I can
11 only tell you of my opinion. But can I tell you it was a
12 cut and paste? I can't do that.

13 Q Okay. You can tell me it was faxed, though, can
14 you not, from the fax header on the top of it?

15 A Right. The upper portion is telling me it is a
16 fax and the actual examination. I can look at the
17 signature itself, the initials itself. I don't have to
18 look at the telltale signs at the top of the page. A fax
19 copy, the writing has a jigsaw effect, and this is what
20 we're picking up here. It was truly a fax copy.

21 Q Okay. Which distorts to some extent too, the
22 signature, doesn't it?

23 A I'm sorry?

24 Q It distorts to some extent the quality of the
25 item?

1 A It can, it can, but, you know, there again, does
2 it?

3 Q Okay. All right.

4 MR. OSGOOD: I believe that's all, Your
5 Honor.

6 CROSS-EXAMINATION BY MR. LEWIS:

7 Q Afternoon, sir.

8 A Good afternoon.

9 Q I just have one question as we're all ready to
10 go. You never were -- the government never asked you to
11 perform any of your analysis on Troy Solomon's
12 handwriting, did they?

13 A No. I'm sorry?

14 Q What didn't you hear?

15 A I'm sorry. I didn't hear your question.

16 Q The government didn't ask you to perform any such
17 analysis on Troy Solomon's handwriting, did they?

18 A On another individual's handwriting?

19 Q Troy Solomon.

20 A No, not to my knowledge.

21 MR. LEWIS: Thank you.

22 MR. RHODES: Brief redirect, Your Honor.

23 Can we pull up Government's Exhibits 37 and 46.

24 REDIRECT EXAMINATION BY MR. RHODES:

25 Q Could you please tell us what are the points of
 922

1 similarities between these two?

2 A The -- I can find some similarities here, but I
3 found more similarities with the one that the gentleman
4 had up earlier. You can look at the initial strokes, the
5 terminal strokes, the way the -- if you look at the --

6 THE WITNESS: Your Honor, would you
7 allow me to -- can I --

8 THE COURT: You can mark on that if you
9 like.

10 THE WITNESS: I have a -- would you
11 allow me to use a laser pointer?

12 THE COURT: It's over there.

13 THE WITNESS: Okay.

14 A If you look at the Cs, as he said, this one, if
15 you look at these two, one is slanted a bit differently,
16 but I had many of them to look at. And I saw them -- I
17 saw natural variation, and I saw that they were -- that
18 they did have different forms of slant.

19 **The big thing that you see here in the C is the**
20 **narrowness of the C. It's not a big, fat C. It's more of**
21 **a narrow C. And if you look at the top of the C, you can**
22 **see that it -- that if you didn't know differently, it**
23 **would almost look like an L because it's just -- it is so**
24 **narrow. Okay. That's on the initial stroke.**

25 **Then the second letter, you can see some**

1 similarities in this one and similarities in the question
2 and the known. Now, one big similarity that I saw in one
3 that the other attorney had up earlier was what we call
4 height ratio, and that was where -- in this -- quite often
5 this individual will have different heights of the
6 letters.

7 There again, see, if you look at the Cs in the
8 two, they are very, very similar in that they're very
9 narrow, not much of a, what we call, beginning stroke. If
10 you look at that beginning stroke, it has -- it has almost
11 no beginning stroke. If you were going to do this the way
12 you were taught in school in copybook form, you'd have to
13 come down and create this big loop before you created the
14 C.

15 Here, this gentleman doesn't do that. This is
16 where -- and this is what allows us to identify people.
17 Now, if you look at the terminal stroke, the terminal
18 stroke is the same way. The terminal stroke in copybook
19 form, you were taught to come around and make an
20 underhanded loop to create the C and make it look like a
21 C. This individual does not do that.

22 And, once again, the second letter is basically
23 the same way, the initial strokes, terminal strokes. And
24 in looking at all of the exemplars provided to me, once
25 again, I did find a combination of writing habits, and I

1 talked about natural variation. We all have natural
2 variation meaning every time you write your signature,
3 it's going to be a little different.

4 Some people have a tremendous amount of natural
5 variation and some people have none. Some people say,
6 well, women have less variation. Well, there's no way of
7 determining that. But you will find that we all have a
8 little bit --

9 MR. OSGOOD: Your Honor, I object to the
10 narrative here.

11 MR. RHODES: Thank you for your
12 explanation.

13 No further questions.

14 RE CROSS-EXAMINATION BY MR. OSGOOD:

15 Q Everything you just described for us, these are
16 known original prescriptions, not prepared for court or
17 anything, but just prescriptions issued, sir.

18 What you've just described as these telltale
19 signs are very apparent in these initials of Dr. Elder,
20 aren't they, written on different days at different times?

21 A And your question is?

22 Q Well, they're clearly what you've described here
23 as minor variations but very repetitive type of initials?

24 A Right. I'm seeing some natural variation.

25 Q But very close. And the D, the E, and the

1 upstroke on the E and all of that?

2 A Right. So we're seeing some natural variation
3 which would -- you know, initially one would think,
4 okay --

5 Q Please just wait -- we'll get through this
6 quicker this way. The answer is yes. I'm agreeing with
7 you.

8 Then this last one here is even a little bit
9 different because the D goes down low, doesn't it?

10 A It appears to be going down low.

11 Q Okay. Now, those all look pretty much the same,
12 don't they?

13 A (No response.)

14 Q This is the faxed signature, distinctly
15 different. There's another one of the faxes, distinctly
16 different, but very close to the one I just showed you.
17 And here's the third one, distinctly different, but very
18 close to the ones I just showed you.

19 These three were clearly written by the same
20 person, weren't they? Not probably. Were. These were
21 all written by the same person.

22 A (No response.)

23 MR. OSGOOD: That's all I have, Your
24 Honor.

25 MR. RHODES: Very briefly, Your Honor.
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1 I know your patience.

2 FURTHER REDIRECT EXAMINATION BY MR. RHODES:

3 Q Okay. Here's a known. Compare those. What's
4 the similarities between those two?

5 THE COURT: I think we've walked this
6 path.

7 MR. RHODES: Not with these particular
8 documents.

9 THE COURT: It's the same disparity
10 between the signatures, and it's not going to get any
11 better if we spend another hour doing this.

12 MR. RHODES: No further questions, Your
13 Honor.

14 May we approach, Your Honor?

15 THE COURT: Sure.

16 (Counsel approached the bench and the following
17 proceedings were had:)

18 MR. RHODES: That's our evidence for
19 today.

20 MR. BOHLING: I was going to --
21 Mr. Kowal is still here. Perhaps this isn't the best
22 timing after an expert witness, but I do think that the
23 government has made an adequate factual basis on Mr. Kowal
24 as to his -- I believe the government has made a very
25 strong factual predicate on Mr. Kowal.

1 Our evidence today really does tie this into
2 street level distribution. We've shown that the drugs,
3 tremendous number of drugs unaccounted for. They did not
4 go to patients. They did not go back to clinics. We have
5 the evidence today about Mr. Solomon driving into Houston
6 with a delivery, \$3 million. We had the evidence today
7 Mr. Solomon had thousands of dollars of cash in his
8 account, and what I would like to call the officer for is
9 essentially to talk about street narcotics, when you sell
10 these things on the street, the existence of the market in
11 Houston. And basically that's really the two main points,
12 that these things are sold on the street in Houston like
13 illegal drugs.

14 MR. OSGOOD: There is absolutely no such
15 evidence. I'd concede what he just said. We heard
16 testimony about his client. There is no such testimony
17 about my client. They didn't do financials on him. He
18 paid his taxes on time. There is this evidence we just
19 heard. I think it's highly prejudicial to me to allow
20 this witness to testify and suggest he's part of the
21 street distribution ring when there's not a single thing
22 that ties it to him. You've got the ball here.

23 MR. LEWIS: No, I don't. I think the
24 judge's ruling is right. You've got things to argue, but
25 you don't have any reason to admit Kowal's testimony.

1 That is too far afield. Your arguments are made by your
2 testimony.

3 MR. BOHLING: I know. But the missing
4 link here is the reason we have narcotics witnesses, and I
5 believe this is the type of witnesses routinely approved
6 by the court, no different.

7 MR. LEWIS: Leave it to the discretion
8 of the trial judge.

9 THE COURT: All the cases I've read.

10 MR. BOHLING: I agree.

11 THE COURT: What I see here is minimal
12 relevance, but what relevance that it is, is outweighed by
13 the prejudice of it. So I'm not going to allow it.

14 MR. BOHLING: Okay. Thank you, Your
15 Honor.

16 MR. RHODES: May this witness be
17 excused?

18 THE COURT: Yes.

19 (The proceedings returned to open court.)

20 THE COURT: You may step down.

21 (Witness excused.)

22 THE COURT: Your patience has been
23 rewarded. We finished with the last witness for the day.
24 As you know, we're not going to be here on Friday, but we
25 will be here Monday at 8:15. We'll move forward. I still
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1 think the objective that I gave you in terms of completion
2 of the evidence will be met.

3 So you've got a big weekend. I know there's a
4 temptation to talk about this case to significant others
5 and whoever, either verbally or through the internet. I
6 would ask you to resist that urge because it would
7 definitely be prejudicial to the parties in this case. I
8 know you are getting a pretty good array of testimony
9 here, and you'll have to base your decision ultimately
10 upon the facts that you hear here and not any that are
11 gathered from some other location.

12 Any questions?

13 Have a good weekend.

14 Thank you.

15 (The following proceedings were had out of the
16 presence of the jury:)

17 THE COURT: One of the things I would
18 ask of you since I don't think there's been an effort,
19 maybe there has been one, to kind of look over the
20 instructions that may be submitted. I know all the
21 evidence is not in yet, but try to come up with some
22 commonality and to the extent there isn't some alternative
23 instructions with any authority that you believe
24 appropriate to support that by Monday.

25 MR. OSGOOD: I think they're pretty good
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1 right now. You guys are going to have to revise them,
2 though, because there's only two defendants.

3 MR. BOHLING: Oh, sure. Good point,
4 John.

5 MR. OSGOOD: You get that on file
6 tomorrow sometime, I'll --

7 MR. LEWIS: I've been studying theirs
8 today, and I don't see any problem with their
9 instructions. The only thing we're going to ask is the
10 good-faith instruction we've already submitted to the
11 court with authority.

12 THE COURT: I'll have to take a look at
13 that. I just want to make sure we don't waste time next
14 week going through instructions.

15 MR. LEWIS: Our witness will be flown in
16 Sunday night and ready to go as soon as they're done.

17 MR. BOHLING: We should not take very
18 long on Monday morning, I wouldn't think.

19 THE COURT: And you'll have somebody
20 backed up in case we need to get to them, Mr. Osgood?

21 MR. OSGOOD: I will. I'm having my
22 people come in Monday now, Monday afternoon late.

23 THE COURT: Thank you.

24 (Court adjourned at 1:30 p.m.)

25 END OF VOLUME IV
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1 MONDAY, JUNE 28, 2010

2 VOLUME V OF VII

3 (The following proceedings were had out of the
4 presence of the jury:)

5 THE COURT: I wanted to get kind of an
6 idea what our day is going to look like. I understand the
7 government has one witness, Dr. Morgan.

8 MR. BOHLING: That's correct. I was
9 going to ask after Dr. Morgan if we could take perhaps
10 three minutes for everybody to go through the exhibit
11 list. As you know, it's 1,200 exhibits. We determined
12 that I think there are things that are in that may not be
13 marked as in. I thought if we could go through with
14 counsel and Rhonda, that would be the most efficient way
15 to make sure we're all on the same page.

16 THE COURT: You want to do that now? I
17 don't know how long Dr. Morgan is going to be, but I don't
18 want to break after a short witness and then --

19 MR. LEWIS: We're going to have motions
20 for directed verdict judgments of acquittal at the close
21 of their evidence, but I would anticipate the court would
22 take those --

23 THE COURT: That can be done up at the
24 bench, so why don't you take a few minutes now to do that.

25 MR. BOHLING: Very good. That's fine.
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1 (A recess was taken.)

2 (The following proceedings were had out of the
3 presence of the jury:)

4 MR. BOHLING: Good morning, Your Honor.

5 THE COURT: That was ten minutes in dog
6 years.

7 You got it worked out?

8 MR. BOHLING: I think so. We are going
9 to reoffer some exhibits just for an abundance of caution.
10 Our records show that they're in, but we're not
11 necessarily agreeing with the court.

12 The first set of exhibits we would reoffer is
13 Exhibits 261 through 440, which are the C&G prescriptions.

14 MR. OSGOOD: No objection.

15 MR. LEWIS: Your Honor, I'm not going to
16 say anything unless I have a problem.

17 THE COURT: They will be received.

18 MR. BOHLING: Our next -- we would
19 reoffer Exhibits 543 through 593, 543 through 593,
20 inclusive.

21 MR. OSGOOD: No objection.

22 THE COURT: Okay. They'll be received.

23 MR. BOHLING: We're going to offer
24 Exhibit 942, UPS spreadsheet of shipping data.

25 MR. OSGOOD: I don't think that was ever
933

1 offered, but I don't have any problem with it.

2 MR. BOHLING: It might not have been,
3 Your Honor.

4 THE COURT: Okay. It will be received.

5 MR. BOHLING: We are going to reoffer
6 Exhibits 944 through 979, inclusive, South Texas Wellness
7 Center search.

8 MR. OSGOOD: No objection.

9 THE COURT: They will be received.

10 MR. BOHLING: We will reoffer -- no, I'm
11 not going to do that one actually.

12 MR. OSGOOD: Which one?

13 MR. BOHLING: 1083. That was the Diane
14 Hearn, Christopher Elder sheet. I thought I offered it.

15 MR. OSGOOD: Okay.

16 MR. BOHLING: Do you have an objection
17 if I offer it?

18 MR. OSGOOD: You asked her to compare
19 handwriting exhibits, didn't you? You didn't.

20 MR. BOHLING: I did on one exhibit, yes,
21 but whether -- I thought I asked her about the ones we had
22 shown her.

23 MR. OSGOOD: Bring her back if you want.

24 MR. BOHLING: That's fine. We will not
25 reoffer that.

1 We will reoffer Exhibit 1112 which is a chart.

2 MR. OSGOOD: That's actually a chart
3 on -- cocounsel may wish to address that.

4 THE COURT: No objection, it will be
5 received.

6 MR. LEWIS: No, Your Honor.

7 MR. BOHLING: I think we're looking
8 good.

9 MR. OSGOOD: I thought that -- on the
10 tax returns on Ms. Martin, I thought those were talked
11 about and shown to her and should be in, Your Honor.

12 MR. BOHLING: I never showed her her tax
13 return during her direct examination unless Mr. Osgood
14 did.

15 THE COURT: I don't recall that.

16 MR. BOHLING: We discussed the fact that
17 she didn't declare. She did say that. That was just oral
18 testimony.

19 MR. OSGOOD: You want to put them in?

20 MR. BOHLING: I wasn't going to.

21 MR. OSGOOD: I can imagine why. I'd
22 like for them to be in, but, you know, I've been
23 accommodating to you.

24 MR. BOHLING: I will be happy to have
25 them in, John, if you could remind us what they are.

1 MR. OSGOOD: Martin tax returns. I'll
2 give you those later to save some time, Judge.

3 THE COURT: Okay. Government's got one.
4 Defendant has two witnesses. Do you have any here today,
5 Mr. Osgood?

6 MR. OSGOOD: I have the defendant's
7 mother. I have Mr. Reeder that I'm trying to call right
8 now. He turned his phone off. Then I have a Mr. Lynch
9 flying in that should be here this afternoon, and then
10 I'll have the defendant. Cocounsel is going first.

11 THE COURT: I understand. I'm just
12 trying to figure out how the day is going to be filled up.

13 MR. BOHLING: Your Honor, the Cindy
14 Martin tax return is 1135. We're fine with that coming
15 in.

16 THE COURT: No objection, it will be
17 received.

18 MR. OSGOOD: No.

19 THE COURT: Ready?

20 MR. OSGOOD: I think so.

21 MR. BOHLING: Yes, sir.

22 (The following proceedings were had in the
23 presence of the jury:)

24 THE COURT: Good morning, ladies and
25 gentlemen of the jury. We had a few details we wanted to
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1 get ironed out before we brought you in, but I believe
2 we're ready to get started now.

3 MR. BOHLING: Yes, Your Honor. United
4 States calls Dr. Morgan.

5 RICHARD LLOYD MORGAN, MD, being duly sworn, testified:

6 DIRECT EXAMINATION BY MR. BOHLING:

7 Q Good morning, sir.

8 A Good morning.

9 Q Would you please state your name and spell your
10 last name.

11 A Richard Lloyd Morgan, M-o-r-g-a-n.

12 Q What city do you live in?

13 A Lenexa, Kansas.

14 Q How old are you?

15 A Fifty-five.

16 Q How are you employed?

17 A I am employed by St. Joseph Pain Management
18 Associates in Kansas City.

19 Q And are you a medical doctor?

20 A I am.

21 Q Please tell us about your educational background.

22 A I grew up in Emporia, Kansas, and went to high
23 school there. Went to -- summer cold. It doesn't seem
24 right.

25 **I went to the University of Kansas for**

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1 undergraduate and for medical school. I did an anesthesia
2 residency at St. Luke's Hospital and then a fellowship in
3 critical care and pain management in the Mayo Clinic,
4 completing that in 1985.

5 Q Please describe your professional experience as a
6 doctor.

7 A I've been in private practice in Kansas City,
8 Missouri at St. Joseph's Medical Center since 1985,
9 serving in the department of anesthesia and also having a
10 private practice for pain management from the time I
11 started. In 2007 I left the operating room, and I no
12 longer provide anesthesia services. I only do pain
13 management at this time.

14 I also do palliative care and Hospice work. I
15 finished a fellowship in Hospice -- I'm sorry. I took the
16 board exam for Hospice and palliative care medicine in
17 2008, and I have a subspecialty qualification in Hospice
18 and palliative care. I serve also as a medical director
19 for Grace Hospice in Kansas City.

20 Q Do you have any other board certifications?

21 A I also have added qualifications in pain
22 management awarded by the American Board of Medical
23 Specialties as a subspecialty of anesthesia.

24 Q Where are you licensed?

25 A I'm licensed in Missouri and Kansas.

1 Q Have you ever done any presentations?

2 A I've done many presentations to both lay groups
3 and physician groups in small conferences and a few
4 conferences that have been attended more widely.

5 Q Now, pain management, is that a recognized
6 subspeciality?

7 A It is.

8 Q And can you define that field for us?

9 A Pain management has come to mean many things to
10 people. There are different types of pain clinics. Some
11 term themselves interventional clinics. Many
12 anesthesiologists do this sort of clinic where they
13 provide only injections for treatment.

14 **Other clinics are more rehabilitative in nature.**
15 **Physicians who specialize in rehabilitative medicine will**
16 **sometimes provide pain management. Then our clinic I**
17 **would consider a comprehensive pain management clinic**
18 **where we do a variety of different things to help provide**
19 **comfort for patients.**

20 Q Would you describe pain management as an evolving
21 field?

22 A Absolutely.

23 Q In what sense?

24 A Well, as we continue to learn more about the
25 causes of pain and its treatment, treatments change over
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1 time as we learn better how to take care of our patients.

2 Q When dealing with pain management medications,
3 are there any issues or problems that you have to be
4 cognizant of?

5 A Yes.

6 Q What are those?

7 A Well, in particular many people have come to view
8 the opioid class of medications as the only treatment for
9 pain, so there are many people who prescribe narcotics for
10 pain management. Even nonnarcotic medications such as
11 Tylenol, which we've heard a lot about lately, and drugs
12 like ibuprofen or naproxen have potential complications
13 and risks. So any medication that's prescribed for pain
14 needs to be carefully weighed for its potential benefits
15 and risks.

16 **Other medications like the scheduled**
17 **medications, we have other responsibilities to make sure**
18 **those are provided safely to the patients that we provide**
19 **them for -- that we prescribe them for.**

20 Q Are there differences between patients who
21 present for pain medication treatment?

22 A Yes.

23 Q Can you please describe those for us.

24 A Well, every patient is different. Some are
25 young, some are old. Some have good tolerance to one

1 class of medications. Some can't tolerate a certain class
2 at all for a variety of reasons. Even drugs like, again,
3 your simple drugs we can buy over the counter like
4 anti-inflammatory drugs, ibuprofen or Motrin or naproxen
5 or Aleve, there's a lot of people who can't take those
6 medications because they cause irritation to their
7 stomachs or have other side effects.

8 **Same holds true for every class of medicines.**
9 **Each medicine for each individual patient needs to be**
10 **tailored carefully to make sure you are providing them**
11 **proper medication for each individual patient.**

12 Q I'd like to turn your attention to prescriptions.
13 I take it you have written prescriptions in your
14 professional life?

15 A Yes.

16 Q Quite often?

17 A Yes.

18 Q Okay. Are you familiar with the types of
19 information that should be on prescriptions?

20 A Yes.

21 Q And particularly for Schedule III and Schedule IV
22 controlled substances?

23 A Yes.

24 MR. OSGOOD: Your Honor, may we
25 approach?

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. OSGOOD: If he's getting ready to
4 give general information about prescriptions, this is
5 charged as a crime involving Dr. Elder in Texas. There
6 were two distinct rules in Texas. They changed
7 dramatically in '08. I would ask he confine his testimony
8 to Texas, not Missouri or not Kansas or not in general.

9 MR. BOHLING: I think he's going to talk
10 about what they're required to put down and what medical
11 practitioners do now and in particular --

12 MR. OSGOOD: What they should put down
13 and what they're required to put down in Texas are two
14 different issues entirely.

15 MR. BOHLING: It's relevant to our case
16 as to what's required to be put on there. That's
17 relevant, whether it's required.

18 THE COURT: Do you know whether it's
19 required in Missouri or Kansas?

20 MR. BOHLING: Yes. I think he'll say
21 the address wasn't. Not sure the address is. But the
22 date is.

23 MR. OSGOOD: The prescription was
24 written in Texas.

25 THE COURT: I think you can
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1 cross-examine him on that.

2 MR. BOHLING: Okay.

3 (The proceedings returned to open court.)

4 Q (BY MR. BOHLING) What kind of information do you
5 generally place on a prescription?

6 A A patient's name, date of prescription, drug,
7 strength of tablet, number of tablets provided,
8 instructions for use, refills, and for Schedule II
9 narcotics, we're required now to place patient's address
10 on the prescription.

11 Q Was that true in 2004?

12 A I don't believe so.

13 Q Okay. So in 2004 the address information was not
14 required?

15 A Not required.

16 Q And is there a particular reason why the date
17 information is of importance?

18 A Yes.

19 Q Why is that?

20 A Well, particularly for scheduled medications or
21 drugs that have some potential for misuse or abuse, the
22 date of the prescription will allow prescriber and
23 pharmacy to understand when those medications were
24 prescribed so that we can keep track of how many
25 prescriptions have been issued for that particular

1 medication and for what period of time.

2 Q Is a prescription without a date a valid
3 prescription?

4 A I don't believe so.

5 Q Now, you had an occasion to review some fax
6 records from this case?

7 A Yes.

8 Q And from your review did you -- did anything
9 strike you in particular about the records that you looked
10 at?

11 A Yes.

12 Q What was that?

13 A Well, all of the prescriptions in each batch of
14 patients that I reviewed were identical or nearly
15 identical providing the same medication at the same dose
16 with the same number of tablets in combination with
17 another medication, again, in the same number, the same
18 dose. And that was true for nearly the entire lot or
19 batch of prescriptions that I reviewed, all prescribed or
20 filled on the same day.

21 Q And what did you -- what is it about that that
22 you found unusual?

23 A Well, in my practice, and I think nearly all
24 physicians I know that prescribe medication, we tailor our
25 prescriptions to our patient. In other words, an older

1 patient may not tolerate a certain medicine, so you try
2 it, you may have to try something different. Or a patient
3 may have an allergy to a medication which either causes a
4 severe reaction or something mild like nausea or vomiting
5 or headache, or constipation may be a problem.

6 **So there are a number of side effects with**
7 **medication which would make you choose one medication for**
8 **one patient and another medication for the other. It**
9 **would be extremely unusual in my practice or in the**
10 **physicians that I work with or that I'm familiar with for**
11 **them to prescribe the exact same medication to every**
12 **patient they see.**

13 Q And for patients that you see, just in your own
14 practice during the day, do you prescribe them exactly the
15 same medication and combination of medications?

16 A No.

17 Q How much variation is there in the type of
18 prescriptions they might receive?

19 A Considerable.

20 Q And would they all actually receive the
21 prescription for a pain medication?

22 A No.

23 Q Why not?

24 A Some of my patients either don't want an opioid
25 medication, or they've had experience with them and have

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1 had significant side effects, or it may not be indicated
2 for the condition they have.

3 Q What about the combination of hydrocodone with
4 promethazine or Phenergan with codeine, does that seem
5 unusual?

6 A That's an unusual combination in my practice.

7 Q Why?

8 A Well, codeine and hydrocodone are both opioid
9 medications, so they perform the same action, albeit
10 somewhat differently. Promethazine is a medicine that's
11 used for a variety of reasons. It's an anti-nausea
12 medicine, so it could certainly be used for that. When
13 it's provided in a syrup form, as it was in these
14 prescriptions, it's generally used as a cough suppressant.

15 **To prescribe those two medications in**
16 **combination, I think that would be unusual and certainly**
17 **would be unusual in my practice and in my experience of**
18 **physicians who prescribe pain medicine.**

19 Q Now, is it a practice within the medical
20 community to keep medical records?

21 A Yes.

22 Q And can you describe what form those medical
23 records take for each patient?

24 A Well, it's incumbent upon each physician to keep
25 records for a variety of reasons. You need to show that

1 you've seen the patient and assessed them and made efforts
2 to determine what the cause of their pain is. This should
3 be documented on the record.

4 A physical exam needs to be part of the visit to
5 some extent, and the exam can encompass a variety of
6 different things, both mental state of the patient and the
7 physical condition that you're treating.

8 You also need to acknowledge what medications
9 the patient is taking and if there are any other
10 medications the patient's taking, as well as the allergies
11 that they have. Then for patients that you've seen on
12 more than one occasion, a follow-up to assess both the
13 effectiveness of the medicine, whether or not there have
14 been any side effects from the medication, how the
15 medication has been taken, and whether or not there have
16 been any other complications or problems with the
17 medicines that would change the way you might prescribe
18 them or alter the way that you might prescribe them in the
19 future.

20 Q Would a lack of records for patients who received
21 opioid prescriptions be of concern?

22 A Yes.

23 Q Why?

24 A Most physicians would have a difficult time
25 keeping track or remembering exactly what they've

1 prescribed or what the reaction of each individual patient
2 was to a particular medicine, so having a written
3 documentation for that would be important.

4 **It's also clearly important if a patient changes**
5 **practice and goes to another physician, to have a medical**
6 **record that shows what sorts of medications you've used is**
7 **important as well. Of course, there are many other**
8 **reasons as well, including reimbursement issues and**
9 **keeping track of medication for insurance purposes. And**
10 **when we're dealing with scheduled medications that have**
11 **some potential for misuse or abuse, there are obviously**
12 **legal ramifications as well.**

13 Q Okay. We discussed promethazine with codeine.
14 Do you know whether that's known by a particular name on
15 the street?

16 A Well, I did find out later on that it had been
17 used --

18 MR. OSGOOD: Objection.

19 (Counsel approached the bench and the following
20 proceedings were had:)

21 MR. OSGOOD: I don't think there's any
22 foundation for any "found out later on." He has no
23 personal knowledge of this it doesn't sound like, and he's
24 going to give us some street jargon for drugs that there's
25 no evidence in the case to support.

1 MR. BOHLING: I think it's from his
2 research as an expert in the field that he learned this.

3 THE COURT: It's not been set up to be
4 testified to that way. Sustained.

5 MR. BOHLING: All right. Very good.

6 (The proceedings returned to open court.)

7 Q (BY MR. BOHLING) Do you know from your own
8 personal, professional experience whether promethazine
9 with codeine is a drug that is sometimes abused?

10 A Yes, I do know that.

11 Q Okay. And how is it abused?

12 A It's taken in ways that are contrary to the way
13 it's been prescribed by the physician.

14 Q And do you know if it's used in combination with
15 other substances?

16 A I know that through my own research.

17 Q Okay.

18 MR. BOHLING: Thank you. That's all I
19 have for Dr. Morgan.

20 CROSS-EXAMINATION BY MR. OSGOOD:

21 Q Doctor, I represent Dr. Christopher Elder who is
22 seated over here at counsel table with me and is also a
23 board certified pain management specialist. You and I
24 have never spoken or talked before today, have we?

25 A No.

1 Q And I never used you as an expert in any prior
2 cases, and I don't think you've been on any I've been
3 involved in. Would that be accurate?

4 A That's true.

5 Q You are, among other things besides being a
6 full-time practitioner, then, I guess you are from time to
7 time an expert witness in cases? Would that be accurate?

8 A No.

9 Q Have you ever testified in a case before?

10 A No.

11 Q This is your first time?

12 A Yes.

13 Q All right. I want to talk a little bit about you
14 and your practice actually, and I want to start with the
15 intake procedure. Let's say -- you have two kinds of
16 patients that are going to come, a new patient or a repeat
17 patient. Would that be accurate?

18 A Yes.

19 Q Let's take a new patient, for example. You have
20 an office in Johnson County; is that right?

21 A It's in Jackson County, Missouri.

22 Q Jackson County. And is it downtown Kansas City
23 or midtown or --

24 A St. Joseph Medical Center, 435 and State Line.

25 Q That's a fairly affluent neighborhood, would that

1 be an accurate statement?

2 A The neighborhood is, yes.

3 Q And it is not a public hospital like Truman?

4 A No.

5 Q So you take certain free patients mandated by the
6 government, but by and large all of your patients are
7 insured patients at that hospital; is that right?

8 A We have patients who pay their own bills, and we
9 do take government-sponsored programs such as Medicare and
10 Medicaid.

11 Q But by and large the people particularly that are
12 admitted to the hospital, I assume, are insured, other
13 than a small percentage, insured by one of those
14 organizations?

15 A Are you talking about private insurance or
16 public, or are you talking about government-sponsored
17 insurance?

18 Q What I'm trying to get at is, poor people don't
19 normally go to your hospital; they go to Truman, don't
20 they?

21 A No. That's incorrect.

22 Q That's not accurate?

23 A That is an incorrect statement.

24 Q Well, educate us on that because I was -- I guess
25 I'm confused about it. I thought Truman was the public
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1 hospital, and most of the poor folk, particularly inner-
2 city people, went there.

3 A Well, that's not true. Patients can go to
4 whichever hospital they would like. Many of our patients
5 have Social Security disability, Medicare, Medicaid
6 benefits.

7 Q Well, but those are --

8 A And those patients are very poor, many of them.
9 And we have a very substantial patient population that I
10 would consider poor. I mean, they don't -- they're living
11 well below the standard of care --

12 Q I didn't express myself very well. I meant
13 people who don't have -- I consider Medicare and Medicaid
14 a legitimate insurance program, sir.

15 A Yes.

16 Q I'm talking about people who are not Medicare or
17 Medicaid patients, who have no insurance, who are homeless
18 or unemployed or for whatever reason don't have any
19 resources, they go to Truman, don't they?

20 A Many of them do, I think.

21 Q Okay. Now, is your clinic or your office in the
22 hospital itself?

23 A It is.

24 Q Let's take the initial patient who walks in. You
25 have an intake proceeding -- or procedure?

1 A Yes.

2 Q What happens on intake?

3 A The patient is given information -- a sheet of
4 information where they document their medical history.
5 It's a fairly extensive six-page questionnaire where we
6 ask them questions about why they're there, where their
7 pain is, what sorts of pain descriptors they have,
8 location, how they would describe it, medications that
9 they take, allergies that they have, past medical history,
10 whether or not they use alcohol or tobacco, social
11 history, occupational history, a review of systems, and
12 then we also have what we call an impacted pain score. So
13 that's all filled out by the patient before I see them for
14 the first time.

15 Q All right. And then that goes in the file, I
16 presume?

17 A Well, no. It comes with the patient to the back
18 when I interview them along with a nurse for the initial
19 intake.

20 Q All right. Who ultimately creates the file in
21 your office?

22 A Describe "create."

23 Q The blue or yellow or red folder that's got a
24 name on it and marked and put on the file cabinet with all
25 this information in it.

1 A I have a contribution to the record. The nurse
2 has a contribution to the record. There's some
3 administrative portions to the record, and they're filed
4 by one of the employees of our office into a stack of
5 paper files.

6 Q So you've got a number of people that are
7 handling that record and taking care of it and ultimately
8 are responsible for certain input to it. Would that be a
9 fair statement?

10 A Yes.

11 Q Now, doctors' time is limited and precious and so
12 you do that for time conservation, don't you?

13 A Have someone else file the record?

14 Q No, no, sir. This initial intake procedure we've
15 described, that you very ably described as to what happens
16 when you get this new patient, that's to help you as the
17 physician to focus in on what the problem is in the exam
18 room; is that right?

19 A Yes. And to understand the whole patient and the
20 medical history.

21 Q All right. And so before you even go in the exam
22 room, I assume your nurse or your medical tech is taking
23 blood pressure and vital signs and that sort of thing and
24 also charting that. Would that be accurate?

25 A That's correct.

1 Q So then the patient comes in the exam room. You
2 have more than one exam room?

3 A Yes.

4 Q And so you're very likely maybe even in another
5 exam room with a patient when patient number two is being
6 set up in one of the other exam rooms so that you can go
7 straight to the other room; is that right?

8 A Yes.

9 Q Now, let's take the new patient. Let's say that
10 this patient comes in with a soft tissue injury from a car
11 wreck that year and he's been to his regular physician and
12 his regular physician has done an MRI on him and done
13 x-rays and concludes that he has intractable -- say that
14 word for me, please.

15 A Intractable.

16 Q -- intractable pain and he refers him to you,
17 that would be one type of patient, would you agree?

18 A Yes.

19 Q And then let's assume that you have a repeat
20 patient who has serious rheumatoid arthritis and his hands
21 are contorted and his elbows and he can't move his hands,
22 and you've seen him for a long period of time, and you
23 have him on opioids of some kind. You with me here?

24 A Yes.

25 Q You would do different things with those two
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1 patients probably, wouldn't you?

2 A Yes.

3 Q Which one would you spend the most time with?

4 A The new patient.

5 Q Pardon?

6 A The new patient.

7 Q Even though his injuries are far less dramatic
8 than the old patient -- than the previous patient that
9 I've described with all of the illnesses?

10 A Well, typically. If the patient that I'm seeing
11 that I followed for many years is stable in regards to
12 their condition, albeit not doing well but they're stable,
13 then I may not spend as much time.

14 Q Then you might spend a few moments asking if
15 there have been any changes, any significant factors that
16 would affect what you saw the last time the patient was
17 there and spend a few minutes on how you doing and good
18 bedside manner and renew his prescription. Would that be
19 fair?

20 A There's generally some --

21 Q I don't mean to demean your profession, sir. I
22 realize that you guys spent many years getting to where
23 you are, and I understand a lot -- you absorb a lot just
24 from seeing that patient, don't you?

25 A Yes.

1 Q Now, there are two terms that I'm familiar with
2 when you assess a patient like this new patient with the
3 soft tissue injury. There's symptoms and there's signs.
4 You familiar with that terminology?

5 A Yes.

6 Q Explain that to the ladies and gentlemen of the
7 jury, please.

8 A Well, a symptom is something that the patient
9 would experience, and a sign is something that you might
10 see when you examine the patient.

11 Q So that is in some way a measure of determining
12 whether or not that patient is being truly honest with you
13 in assessing his level of pain, is it not?

14 A Well, it's very difficult to assess pain.

15 Q There's no pain meter?

16 A Exactly. No pain meter.

17 Q But the point is if a person is there to obtain
18 illicit drugs and he's giving certain symptoms, you can
19 with your many years of experience also use your signs
20 criteria to determine whether or not that is in some
21 instances accurate, can you not, by probing around on the
22 patient and poking here and poking there and --

23 A Yes. There are some inconsistencies at times
24 with patients in their pain and what you find on physical
25 exam.

1 Q And that becomes suspicious. So that would be
2 part of the initial evaluation of a new patient is what
3 I'm getting at?

4 A Yes.

5 Q Whereas this other fellow who is all crippled up
6 or -- and not necessarily just an arthritis or arthritic
7 patient, but patients with four or five fused disks in
8 their back that you've seen for a long time and have had
9 orthopedic surgery and complain constantly of sciatic
10 nerve pain or what have you, that's the intractable pain,
11 isn't it?

12 A That is intractable pain.

13 Q That person you're reasonably assured, are you
14 not, if there haven't been any changes in the x-rays or
15 the MRIs or anything, that his condition hasn't changed?

16 A That's true.

17 Q And so you spend far less time with him?

18 A I wouldn't say far less time, but I would spend
19 less time than a new problem that I'm trying to diagnose.

20 Q Sure. And this other fellow we talked about --
21 we mentioned scheduled drugs or you did in your direct.
22 Schedule II drugs are the really strong opioids, are they
23 not, like morphine and fentanyl?

24 A Well, the scheduling was something that was
25 termed by the FDA in the 1970s to try and determine how

1 potent drugs are and what their potential is for misuse.

2 Q But the Schedule II is -- the higher the schedule
3 number, the more potential for both abuse and overdose and
4 complications. Would that be accurate?

5 A No. It's the other way. The lower the schedule.
6 So Schedule II is considered to be more potent than a
7 Schedule III.

8 Q That's what I mean. It's susceptible to grave
9 dangers?

10 A Yes.

11 Q You can die from an overdose of morphine.

12 Now, morphine was one of the early drugs, was it
13 not, and there have been all the synthetics and everything
14 to replace it?

15 A Uh-huh. Morphine is considered prototype for
16 opioids.

17 Q Yes. And fentanyl, for example, is a synthetic;
18 is it not?

19 A That's correct.

20 Q But it has the same effect, actually stronger
21 than morphine. Would that be accurate?

22 A We use something called equal potent dosing so
23 you know we can -- we can make each medication equally
24 potent depending on how much you give of that medication.

25 Q Now, do you do postoperative care?

1 A Yes.

2 Q And is there a difference in types of pain
3 management certification? You're -- in view of the fact
4 that you're also an anesthesiologist, would you -- and I
5 don't, again, mean to demean it, but would you be what's
6 called "a needle guy"?

7 A I do perform injections in my practice, but we
8 prefer to think of our practice as a comprehensive --

9 Q I understand.

10 A Because there are anesthesiology-based clinics
11 where they do not prescribe any medication, and all they
12 do is injections. We do a variety of things including
13 using many referral sources. It's part of my practice.

14 Q Okay. But you do administer these potent
15 Schedule II drugs?

16 A Yes.

17 Q Postoperative, don't you?

18 A Postoperatively, yes.

19 Q And, now, in the items you looked at in here, you
20 didn't see any Schedule II narcotics at all, did you?

21 A No.

22 Q This was basically -- so we can really rule
23 Schedule II out of this case. What we're talking about
24 are Schedule III and IV drugs, would that be accurate?

25 A Yes.

1 Q Those are the lower dosage and less potent
2 opioids. Would that be correct?

3 A Yes.

4 Q Now, we talked about scripts. Did you have a
5 chance to take a look at the Texas requirements for what
6 was to go on a prescription in '04 and '05?

7 A I did.

8 Q And is it not true that it did not require the
9 name or the date?

10 A I was not aware of that, that -- you cannot write
11 a prescription for a patient without having the patient's
12 name on the prescription.

13 Q I'm sorry. Did I say name? I meant address.

14 A Yes, you did.

15 Q I stand corrected. I didn't mean to confuse you.

16 Is it not true that you could write a
17 prescription in '04 and '05 with just the patient's name
18 and the items you checked off in your report, the name and
19 strength, the number of pills, that kind of thing?

20 A And the date, yes.

21 Q Well, I think there's some question as to whether
22 or not the date had to go on there.

23 Let me go another direction then. You said you
24 thought a prescription without a date is invalid. What
25 should the pharmacist do the second he sees that

1 prescription?

2 A In my experience any prescription that I write
3 that neglects a date, and there have been a few where I've
4 written it and not remembered to place a date, I've
5 received a phone call from the pharmacist.

6 Q Exactly. That was going to be my next question.
7 You're not infallible, are you, Doctor?

8 A No.

9 Q You're busy and sometimes you miss something,
10 don't you?

11 A Yes.

12 Q Okay. And you would expect the pharmacist to get
13 on the phone and say, Dr. Morgan, I've known you many
14 years and I know you're a fine physician and everything,
15 but I got a patient in here and it's for Soma and there's
16 no date on the prescription, I'd like for you to verify
17 this and tell me what date to write down?

18 A Yes.

19 Q And you would authorize the pharmacist then to
20 write the date down, wouldn't you?

21 A Yes.

22 Q And then the patient would be taken care of?

23 A Yes.

24 Q Okay. And that has happened with you?

25 A Yes. On individual prescriptions.

1 Q I understand. I understand.

2 Now, did you see fax cover letters that had
3 renewal requests generated by the pharmacy back to the
4 physician in this case?

5 A I believe I did see those faxes.

6 Q That is highly unusual, is it not, Doctor, and
7 strange where the pharmacy would send a list of patients
8 and say renew these -- get the doctor to initial off on
9 these so we can renew these?

10 A On multiple patients?

11 Q Yes, sir.

12 A Yes, that's odd.

13 Q That's odd, peculiar?

14 A Yes.

15 Q All right. Were you told or did you -- were you
16 asked to distinguish between those fax cover sheets with
17 the names attached and original prescriptions written by
18 Dr. Elder, or did you just lump them all together in your
19 examination?

20 A Could you clarify the question, please?

21 Q Well, the government showed you a number of
22 things -- I guess we can go -- best way to express a
23 question sometimes is a picture.

24 MR. OSGOOD: Can we have Exhibit No. 1
25 up, please?

1 Q (BY MR. OSGOOD) Now, that's Amanda Allen. That
2 has a date stamped in it of October the 19th, '04. Can
3 you see that okay, Doctor?

4 A Yes.

5 Q And can you read that prescription?

6 A Yes.

7 Q Tell the jury what it is.

8 A Lorcet 10/650, dispense 120, sig, 1 tablet by
9 mouth, po. That part is a little difficult, q -- perhaps
10 q2 hours.

11 Q All right.

12 A Xanax, 2 milligrams.

13 Q Now, what is Xanax's typical effect on an
14 individual who's taking it?

15 A Sedation.

16 Q What is Lorcet's typical?

17 A Sedation.

18 Q All right. Is there anything unusual about
19 prescribing those two together that way for a legitimate
20 pain patient if you examined them and determined they had
21 legitimate complaints and you felt that was a way to treat
22 their ailment?

23 A Well, in -- as just a solitary prescription, I
24 don't find it terribly unusual for the proper patient.
25 But in my practice --

1 Q Okay.

2 A Well --

3 Q That's --

4 MR. OSGOOD: Show me Exhibit No. 2,
5 please. That was Amanda Allen.

6 Q (BY MR. OSGOOD) Is that a similar prescription?

7 A I think it's an identical prescription to -- the
8 same medications.

9 Q With a different patient?

10 A Yes.

11 Q With a stamped date?

12 A Yes.

13 MR. OSGOOD: Show me Exhibit No. 3,
14 please.

15 Q (BY MR. OSGOOD) That is a similar prescription
16 with a similar kind of patient, is it not?

17 A It's changed slightly.

18 Q What is different?

19 A Says tid on the Xanax rather than q2 hours as it
20 did on the other prescriptions.

21 Q So they are different?

22 A In that situation those prescriptions are
23 different.

24 Q If these are real, live patients, two out of
25 three got the same thing but the third one got something

1 different?

2 A In that situation.

3 Q And number four, please?

4 A And the dates are different as well. That was on
5 October 26th. The others were on October -- you'll have
6 to go back. I think they were on the 19th. It was a
7 little bit grainy on the second prescription.

8 Q What about this one?

9 A That was also written on October 26th. The first
10 two that you showed me were on October 19th.

11 Q All right.

12 A These two are written on October 26th, but
13 they're identical on the 26th.

14 Q Okay. But what about this one, is it the same or
15 different?

16 A Actually the Lortab has changed to qid. It
17 doesn't say q2 hours.

18 Q So it's a different prescription also?

19 A On those situations, yes.

20 Q Show me No. 4, please.

21 I'm going to be fair to you. I'm going to show
22 you this other stuff too. But let's just isolate these
23 four prescriptions that are the four charges in the
24 indictment here. If that was a real, live patient and
25 they went in to see Dr. Elder, he examined them and he

1 wrote that prescription and gave it to them, he treated
2 the four -- two out of the four the same, the other two
3 were different, weren't they?

4 A In the instructions on how to take the medicine,
5 that is correct, but the medicines that he prescribed were
6 identical.

7 Q Well, those are recognized pain medications?

8 A One is a pain medication. The other one is an
9 anxiolytic and sedative.

10 Q All right. But without having the full patient
11 record and everything here to review today, you can't
12 second guess what he did in those four cases, can you?

13 A No.

14 Q They appear to be regular on their face, nothing
15 unusual or sinister or anything about them, is there?

16 A No.

17 Q Okay. Let's pull up, if we could, please --
18 strike that. I'll save some time.

19 Would you find it unusual if somebody like a Dr.
20 Okose faxed a sheet up and he had requests for medication
21 or renewals were approved for a string of Johnson --
22 patients named Johnson, Albert Johnson, Bobby Johnson,
23 Charlie Johnson, D. Johnson, E. Johnson, Fred Johnson, and
24 so on and so forth? That's pretty bizarre too, isn't it?

25 A Yes.

1 Q And that would obviously be some kind of --
2 something wrong with that, wouldn't there, dramatically?

3 A It's unusual.

4 Q Have you ever scheduled all your patients on the
5 same day by alphabet?

6 A No.

7 Q Okay. Now, you said you saw a group of exhibits.

8 MR. OSGOOD: Can I have the original
9 packet we were using in court the other day?

10 MR. BOHLING: You can if we can remember
11 what it was.

12 MR. OSGOOD: I just grabbed a couple at
13 random here out of the box.

14 Q (BY MR. OSGOOD) Now, you were shown -- I don't
15 know whether you were shown these two packets, but these
16 were seized from The Medicine Shoppe -- please go ahead --
17 from The Medicine Shoppe down in Belton. They are
18 original prescriptions written by Dr. Elder that ended up
19 here in Kansas City. Do you have any record of what you
20 actually saw, Doctor, so we could reconstruct what you
21 looked at?

22 A I can't tell you exactly what I saw. It was --
23 when I reviewed the initial prescriptions, it was sometime
24 ago.

25 Q I understand. Did you do that at their office or
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1 | how did that work?

2	A Yes.
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3 Q Okay. So they selectively showed you stuff to
4 look at?

5 | A I had a number of different files to look at.

6 Q There's like 1,100 exhibits here. Did you look
7 at all those?

8 | A No.

9 | Q How many do you think you looked at?

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10 |         A Multiple batches.
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11 Q This is the one I just pulled out of random out
12 of that box, just a grab bag, 37. Let's take a look at
13 some of these. You leaf through them and tell me is every
14 one of those identical, or are there different medications
15 on each one? You might want to fold them over so we don't
16 change their order on them.

17 A How many do you want me to review?

18 Q That's good. There appears to be variation in
19 the type of medication and the dosage?

20 A No. Those are all identical.

21	Q The medication is identical.
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22 A They're all identical. You're welcome to look
23 through those.

24 Q What is it for?

25	A Lorcet 10/650, 1 tablet four times daily, number 969
----	--

1 120; Xanax 2 milligrams, 1 tablet po tid, number 90.

2 Same. And that's the same. That's the same. That's the
3 same, as is that one and that one and that one and that
4 one.

5 Q Okay.

6 A These are all the same.

7 Q Okay. So you're saying because they're the same,
8 there's something wrong with that? Again, you didn't --
9 these aren't your patients?

10 A I would say that it is extremely unusual in my
11 experience, both personally and from other pain physicians
12 that I know, to prescribe the exact same medications in
13 combination to the exact -- to different patients.

14 Q Well, if you treated the same kind of patient for
15 similar illnesses, you said there were other choices other
16 than opioids to start with, did you not?

17 A Yes.

18 Q And those were what again, Tylenol, and what
19 other kinds of medications?

20 A Are you speaking only about medication now, or
21 are you just talking about a comprehensive approach to the
22 patient?

23 Q Comprehensive approach.

24 A In a comprehensive approach, you may not use
25 medication at all. Most patients don't want to take

1 medicine in my experience. Some do, I guess.

2 But there is certainly a rehabilitative approach
3 to many soft tissue injuries is appropriate as an initial
4 step. Most physicians would start treatment with a
5 nonnarcotic analgesic first because the side effects
6 generally are fewer. Then in follow-up you might move
7 towards an opioid medication, usually starting slowly and
8 titrating the effect because some patients may get by on
9 one or two tablets a day or lower dose. So it's a
10 systemic -- or systemized approach.

11 Q In your earlier testimony I -- or your testimony
12 earlier when he started questioning you, I think you said
13 there's been a move to opioids because there is a feeling
14 in your profession that it is just a better medication?

15 A Well --

16 Q Overall?

17 A I think that's a complicated answer.

18 Q Okay. Let me help you a little bit.

19 Isn't it a fact there have been documented
20 problems with some of these, and there's a term -- maybe
21 you can help me -- to describe these nonopioid medications
22 that cause stomach bleeding and symptoms like that?

23 A That's true.

24 Q And there's been a lot of deaths from actually
25 that kind of treatment?

1 A There's no medication free of side effects, and
2 there are complications with each medication.

3 Q Some statistics I looked at, and maybe you've
4 seen this and know, that there were as many deaths from
5 stomach bleeding from medication as there were AIDS last
6 year?

7 A I can't tell you the exact number, but I know
8 there have been a number of deaths contributed to
9 medication-related gastrointestinal bleeding.

10 Q Every one of those scripts you saw had "no
11 refill" on it, didn't it?

12 A Yeah, I believe that's correct. I'd have to look
13 at it again.

14 Q I can show it to you again. If you take my word
15 for it --

16 A Sure. I don't believe there were any refills in
17 this.

18 Q Do you give refills on these medications?

19 A Yes.

20 Q Is there a reason not to give medications?

21 A Yes, there's a reason not to give refills.

22 Q All right. Particularly with a first-time
23 patient, wouldn't it be prudent not to give a refill so
24 you can get that patient back in to see whether or not
25 that medication is working?

1 A That would be one reason not to give a refill.

2 Q When a patient comes in for a second visit, do
3 you have any obligation to determine whether or not he's
4 been using that medication correctly?

5 A Well, there's no way we can tell absolutely that
6 a patient has been using a medication exactly as you
7 prescribed it.

8 Q You could give them a urinalysis test to see if
9 they've been taking it at all as opposed to --

10 A Urinalysis is certainly something that we're
11 doing more of to try and determine compliance with
12 medication, but, as you can imagine, it has its
13 limitations.

14 Q Sure. Now, you're probably less apt to have
15 somebody trying to obtain opioids for illicit purposes
16 than perhaps Truman Hospital like you talked about, just
17 by virtue of the socioeconomic conditions and more crime
18 occurs. Is that a fair statement?

19 A I don't think I can say that.

20 Q So you get people trying to scam you too out
21 there?

22 A Well, I'm not sure I'd use the word "scam," but I
23 think there are people that are -- that would use the
24 medication for a nontherapeutic purpose.

25 Q Okay. Which could be selling it or giving it to
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1 somebody else or other reasons? I don't know.

2 A Yes, misusing it, taking it inappropriately.

3 Q Okay. So we're basically talking about
4 compliance. And results would be something you'd look at
5 on the second visit, wouldn't you?

6 A Yes.

7 Q So if somebody has a rotator cuff injury with
8 severe pain and their doctor has them walking the wall to
9 get mobility back, and when they come in, they have 90-
10 percent mobility, and they come back a month later and
11 they've got 180-percent mobility without pain, would you
12 continue them on that medication or consider reducing it
13 or doing something else?

14 A You said "without pain," so I would certainly if
15 they weren't needing pain medication further, you'd talk
16 to them about tapering off and titrating off their
17 medication.

18 Q And that would be a reason to write "no refills"
19 on there, to get them back in the office again to
20 determine both compliance and results. Would that be a
21 fair statement?

22 A That would be one reason.

23 Q All right. But you don't do that?

24 A No. I do that.

25 Q Well, have you -- do you sometimes give them a

1 refill though?

2 A Your question earlier was do you write for
3 refills, and the answer is, yes, I do. But not for every
4 patient.

5 Q What's the criteria you use to issue a refill?

6 A I'm sorry. To allow a refill on a prescription?

7 Q Yes, sir. On an opioid.

8 A On a chronic pain patient, you mentioned one
9 earlier. Let's take, for example, a patient who's been
10 opioid dependent for a number of years, doing very well,
11 very functional, who's been on a very stable dose of
12 medication, rather than requiring them to come see me once
13 a month, which is expensive to them and to the system, and
14 I have a good working relationship with them, I might
15 allow them to get two additional refills on that same
16 medication and I see them at 90-day intervals.

17 Q What's Suboxone?

18 A Suboxone is a combination opioid analgesic that
19 also contains an opioid antagonist. It can be taken for
20 patients who have -- you have concerns about how they
21 might utilize the medication.

22 Q There are little receptors in the brain that
23 opioids attach to; is that right?

24 A They're in the brain and in other places in the
25 body as well.

1 Q They can induce a euphoric feeling for someone,
2 particularly if they're abusing it?

3 A That's one of the potential effects of opioids.

4 Q The Suboxone, for example, and I believe
5 previously Methadone was used the same way, is used, is it
6 not, to block those receptors, to get people off this
7 stuff?

8 A There's a misstatement there because Methadone is
9 a pure opioid --

10 Q Pardon?

11 A Methadone is a completely different type of drug.

12 Q Let's just concentrate on Suboxone.

13 Does it block the receptors?

14 A Not completely.

15 Q But it helps?

16 A It has -- it has a complicated pharmacologic
17 action whereby you have a medication that blocks the
18 receptors as well as attaches to the receptor and provides
19 some of the positive effects.

20 Q Is that a drug then that's used in treating
21 addicts?

22 A It has some role in treating addiction, but it
23 can also be used in the treatment of pain by a proper
24 practitioner.

25 Q Would you tell the folks the difference between

1 addiction and dependency, please, as you understand it.

2 A Well, there is a significant difference there.
3 The best way probably is to give examples.

4 **Dependence is someone who takes a medication**
5 **prescribed by a physician in the way that a physician**
6 **prescribes it for a therapeutic purpose, and it allows**
7 **them to improve and be more functional whereas addiction**
8 **--**

9 Q Let's stop right there. Obviously someone with
10 diabetes is dependent upon insulin. Would that be a fair
11 statement?

12 A Yes.

13 Q Okay. Now, describe addiction for us.

14 A Addiction is a misuse of a medication taken in a
15 way not prescribed by a physician for a nontherapeutic
16 purpose, and there are a number of what we call drug
17 aberrant behaviors which would be red flags or indications
18 of misusing medication. Overutilizing medication, taking
19 all medication at one time, or using all your prescription
20 up within the first ten days, having a craving for that
21 medication which goes beyond its purpose, which is to
22 relieve pain, would all be indicators of potential
23 addiction.

24 Q Would you agree with me that dependency can
25 develop into addiction?

1 A Yes.

2 Q Particularly with opioids?

3 A Yes.

4 Q And are you one of those pain management
5 physicians that's qualified to administer Suboxone and
6 work with patients who are addicted?

7 A In my practice I don't do that. We have -- I
8 have a partner who provides Suboxone for patients.

9 Q That's another subspeciality of pain management?

10 A It's a small subspeciality, but, yes, you have to
11 be certified in order to use those medications.

12 Q Exactly. That's an important certification,
13 isn't it?

14 A It is.

15 Q These drugs cause problems and somebody's got to
16 treat those problems. Is that accurate?

17 A It's true.

18 Q Okay. Now, in your practice have you ever later
19 determined that somebody used false identification in
20 obtaining a prescription from you?

21 A Yes.

22 Q That's happened to you?

23 A Yes.

24 Q You're not a detective, are you?

25 A No.

1 Q You're in the treatment business and you're
2 trained from the time you first enter medical school to
3 help people, aren't you?

4 A Yes.

5 Q You like to believe that when they come in,
6 they're telling you the truth, and your objective is not
7 to investigate them but to help them?

8 A Yes.

9 Q And if you have been scammed in the past like
10 that with false identification, it's a breakdown in maybe
11 the intake system or they just had good false
12 identification or something. Would that be a fair
13 statement?

14 A Yes.

15 Q How many times do you think that's happened to
16 you out of the many hundreds or thousands of patients
17 you've seen?

18 A Talking about --

19 Q Somebody running some false identification by you
20 that you found out about after the fact?

21 A We haven't identified it that frequently.

22 Q Okay. But it happens?

23 A Yes. I would -- for example, I was trying to
24 think the last time that happened. I can't remember
25 exactly. If you asked me when that last occurred, I

1 couldn't tell you. It's not something that happens on a
2 regular basis.

3 Q But a couple out of a thousand would not be
4 unusual to you?

5 A Oh, I think that would be --

6 Q Low?

7 A Well, I think that's as accurate as anything
8 else. Depends a little bit on your type of practice.

9 Q All right. So that does happen?

10 A Yes.

11 Q Now, do you take cash in your practice?

12 A I'm sure we do.

13 Q Okay.

14 A I'm not --

15 Q There's nothing illegal or wrong about taking
16 cash, is there, as long as you account for it and pay
17 taxes on it?

18 A Yes.

19 Q And back to poor people again, uninsured, their
20 only recourse is going to be pay cash, is that an accurate
21 statement, if they want treatment?

22 A Yes.

23 Q I mean, we hear the numbers. Do you agree with
24 the numbers there are 40 million uninsured in the United
25 States of America today?

1 A I believe in those numbers.

2 Q All right. And those people have pain and
3 injuries just like everybody else, don't they?

4 A Yes.

5 Q And in fact would you agree with me that in a
6 poor neighborhood with poor people, they're going to tend
7 to have greater health problems because of lack of
8 proactive care and prevention and knowledge about diet and
9 all the things that more affluent people might have an
10 advantage over them on?

11 A I think what you're saying is true, that there is
12 evidence that people of lower socioeconomic class have
13 more health problems.

14 Q Greater health problems?

15 A Yeah.

16 Q More incidences of diabetes, more incidents of
17 heart problems, the full panel. Would that be a fair --

18 A Well, I think statistically you could say overall
19 their health problems are worse.

20 Q Okay. But they need health treatment just like
21 everybody else, don't they?

22 A Yes.

23 Q And so what's a typical MRI cost when you get one
24 of these pain patients in?

25 A I couldn't tell you the exact figure. Depends on
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1 what --

2 Q We're talking \$2,000 anymore, aren't we?

3 A Thousands of dollars.

4 Q Thousands of dollars. So if you were able for
5 poor people, for example, to talk somebody into giving
6 MRIs for \$500, that would be a pretty good deal, wouldn't
7 it?

8 A Not for the patients in my clinic.

9 Q I don't follow you.

10 A They don't have \$500. I mean, it would be a good
11 deal, but they still wouldn't be able to afford the MRI.

12 Q I understand. But I mean if it's a patient with
13 no insurance, 500 is better than 2,500, isn't it?

14 A Five hundred dollars in cash, again, when you're
15 talking about the very poor?

16 Q Yes.

17 A The patients in my practice wouldn't have \$500.

18 Q What would you do for somebody like that if you
19 needed to -- you need x-rays and you need MRIs to
20 determine the level of treatment and the pain and the
21 problem you've got with that patient? You just gonna turn
22 them away?

23 A Well, this is a problem we deal with every day.
24 How do we get diagnostic studies that are important paid
25 for? I may personally want to get that exam done, but I

1 have to find somebody who's willing to do that exam for
2 free or no cost. What happens is they're often --
3 patients who don't get those exams, and they --

4 Q You rely on the symptoms and signs and your best
5 judgment as a physician and your good faith and belief in
6 -- that most humans are pretty decent and you go ahead and
7 prescribe the medicine, don't you?

8 A If it -- if I believe they need medicine, that's
9 what I would do.

10 Q Okay. Because you're in the art of healing and
11 helping, aren't you?

12 A Yes.

13 Q Okay.

14 MR. OSGOOD: I believe this would be a
15 good point to sit down, Your Honor.

16 Could I have just a minute to see if I missed
17 anything here?

18 One last question, if I might.

19 Q (BY MR. OSGOOD) These prescriptions that all have
20 this 0 with the slash through them on refills which
21 indicate no refills --

22 A Yes.

23 Q -- why would a pharmacist fill that on their own
24 initiative without calling it?

25 A Are you talking about a refill prescription?

1 Q Yes. Why would they refill that prescription
2 without contacting the doctor or talking to him?

3 A They shouldn't if it says no refills.

4 Q And that would be irregular and probably illegal,
5 wouldn't it?

6 A A pharmacist should not refill a prescription
7 that a physician has requested no refills.

8 Q Without calling and talking to them?

9 A Exactly.

10 MR. OSGOOD: All right. Thank you, sir.

11 THE WITNESS: Yes, sir.

12 REDIRECT EXAMINATION BY MR. BOHLING:

13 Q Just to be clear, do Schedule III opioid drugs
14 like hydrocodone have potentially serious side effects?

15 A Yes.

16 Q What are those?

17 A We talked earlier about equal potency of
18 medications. Depending on the dose and the amount of
19 medication that's taken, hydrocodone can cause serious
20 overdose and can have all of the same complications that
21 any other opioid can.

22 **In addition, hydrocodone carries with it**
23 **additional problem. That's it doesn't exist in a solitary**
24 **form. It's always combined with another medication, at**
25 **least at this point. So it's always hydrocodone and APAP,**

1 which is Tylenol, or there is a medication called
2 Vicoprofen which is hydrocodone mixed with ibuprofen.

3 So when you take hydrocodone, if you were to
4 take in excess, you could potentially also take the
5 combination medication in excess. Since Tylenol is an
6 important drug these days, we know that excessive, over
7 4,000 milligrams of Tylenol a day can cause liver failure,
8 that someone who misused their hydrocodone prescription
9 could not only have problems with their hydrocodone, but
10 they could potentially become toxic on acetaminophen or
11 Tylenol if it was done on a long-term or regular basis.

12 Q And have you seen deaths from the abuse of
13 hydrocodone because of these side effects?

14 A I've seen it but very rarely. Although it's
15 discussed very readily and actively in the literature and
16 there's been a lot of talk about it just this year about
17 Tylenol toxicity, in my personal experience I've seen it
18 only a few times. I'm talking about the nonnarcotic abuse
19 or potential. Much more common are the problems that
20 develop with overdose of the opioid medications.

21 Q Okay. Now, if we could put up Government's
22 Exhibit 1116, please.

23 Now, you recall counsel showing you some
24 prescriptions that were all for the same two medications?

25 A Yes.

Q And those were hydrocodone or Lorcet 10/650 dose
on the prescription? Do you remember?

A Yes.

Q And also Alprazolam or Xanax?

A Yes.

Q Okay. And those medications or the ones you saw
were always together?

A Yes.

Q And this chart I believe shows an overview of all those prescriptions. If you look at the first entry for August 17th, 2004, you'll see that there were 78 patients who had prescriptions written by the pharmacy in Missouri on the same day. Is that of concern?

A Well, as I said earlier, I find it highly unusual that all of those patients would be on the same medication.

Q Okay. Would it be of concern that the same doctor had 78 prescriptions filled by patients, 78 prescriptions that he wrote all dated on the same day?

A Yes.

Q Why?

A Well, that's a very high number of patients to see on a single day.

Q And then if you'll see the entry there, 63 of those 78 patients received both the hydrocodone product,

1 either Lorcet or Lortab, and Alprazolam together. Would
2 that be unusual?

3 A Yes.

4 Q Would it be highly unusual?

5 A Yes.

6 Q Why?

7 A As I stated earlier, each patient's different.
8 Each patient is an individual, and for each patient to
9 require the exact same medications for a chronic pain
10 condition, it would be highly unusual.

11 Q And then if we look down, I won't go through
12 every entry, but, for example, you see the next entry.
13 There are 51 of Dr. Elder's prescriptions filled, and all
14 51 of those patients filled on that same day had both the
15 hydrocodone product and Alprazolam. Would that be unusual
16 for the same reasons you described to us?

17 A Yes.

18 Q If you go down the list, I think you would see
19 the same pattern for all of those.

20 In looking at those as a whole, i.e., August
21 17th through October 26th, all of those prescriptions with
22 that pattern, would you -- in your professional opinion,
23 is that possible from the normal practice of medicine?

24 A Possible in?

25 Q From the normal practice of medicine?

1 A No, that would not -- that would be extremely
2 unusual. I mean, it's possible, but it would be extremely
3 unusual.

4 MR. BOHLING: Thank you. That's all I
5 have.

6 RE CROSS-EXAMINATION BY MR. OSGOOD:

7 Q Doctor, you on a number of these saw a date stamp
8 on these prescriptions, didn't you?

9 A Yes.

10 Q There's no way to tell whether or not these
11 original prescriptions were collected by somebody else
12 prior to sending them to Missouri and sent them in batches
13 and date stamped them at the time, is there?

14 A There's no way of telling that.

15 Q He might have seen these patients on individual
16 days and they were collected in mass and then sent to
17 Missouri? That's plausible and possible, isn't it?

18 A That's plausible and possible.

19 Q One other thing I didn't ask you, and I don't do
20 this to embarrass you, but it's a fact. The government
21 has agreed to a contract, I guess, with you to pay you for
22 your time because you are a physician to be here today?

23 A Yes.

24 Q I'm just curious, how much are you being paid as
25 an expert witness?

1 A I think it's \$300 an hour.

2 Q And that's for, what, a half day minimum or
3 something or full day?

4 A No. It's per hour.

5 Q Per hour?

6 A Per hour of my time.

7 Q That you actually left the office and been here?

8 A Yes.

9 Q We need to get you off the stand then and save
10 the taxpayers some money.

11 Thank you.

12 A I'm sorry?

13 Q Nothing. I said we need get you off the stand to
14 save the taxpayers some money.

15 A Thank you.

16 MR. OSGOOD: Thank you.

17 THE COURT: Thank you, Doctor.

18 You may step down.

19 (Witness excused.)

20 MR. BOHLING: Your Honor, that is our
21 last witness. The government will rest our case at this
22 time.

23 THE COURT: Okay.

24 MR. LEWIS: Can we approach, Your Honor?

25 THE COURT: Yes, please.

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. LEWIS: By and through the attorney
4 of record, Mr. Solomon would move for a judgment of
5 acquittal pursuant to Rule 29 of the Federal Rules of
6 Criminal Procedure based on the fact that no reasonable
7 trier of fact on the evidence that the government has
8 presented could conclude Mr. Solomon is guilty of all the
9 charges in the indictment.

10 Furthermore, the evidence is insufficient to
11 sustain a conviction on those charges. Specifically the
12 government has wholly failed to prove beyond a reasonable
13 doubt that Troy Solomon in concert with anyone else
14 delivered these controlled substances to an unauthorized
15 or unintended recipient. As the court is aware, the
16 government's theory is that we were getting all these
17 prescriptions from Kansas City and from Okose and selling
18 them on the street.

19 There is -- the record is absolutely devoid of
20 any evidence of such illegal distribution. For those
21 reasons and that reason specifically, we would ask the
22 court for a judgment of acquittal as to all of the
23 distribution counts and the conspiracy count against
24 Mr. Solomon as well as the related money laundering
25 charges.

1 Thank you, Your Honor.

2 MR. OSGOOD: I would adopt his argument
3 in total and add that there has been a failure to link my
4 client to the underlying conspiracy, and, therefore, all
5 the evidence that's come in against him with respect to
6 Okose and the other patients that would be coconspirator
7 -- otherwise coconspirator evidence is out of the case.

8 Again, I echo what he says. I don't believe
9 they've established the distribution and the conspiracy.
10 I move for judgment of acquittal under Rule 29.

11 MR. BOHLING: Your Honor, as to that
12 first point, the government has made a compelling case,
13 both circumstantial and direct, that these pharmaceutical
14 drugs were diverted to street user sales. What we have
15 shown is that there's a tremendous number of drugs that
16 were ordered, both from the Missouri side and Houston
17 through Dr. Okose's connection. We've shown those charts
18 that were astronomical.

19 The evidence shows that those drugs were
20 ostensibly for the patients in South Texas Wellness Center
21 and the patients at the medical clinic but our evidence
22 shows that those drugs, medications, were not delivered
23 back to South Texas, were not delivered back to Universal
24 Medical Clinic. There's no evidence at all that those
25 patients were even aware these prescriptions were being

1 written and filled or they ever received such
2 prescriptions.

3 We also have direct evidence that Mr. Solomon
4 went out into the streets of Houston with Ms. Zapata and
5 had a box that he delivered to another gentleman, and then
6 he made the comment about that's what \$3 million looks
7 like. We believe that's a box of drugs. That would be
8 argument. But it's certainly direct evidence of -- to
9 support the very compelling circumstantial case of
10 diversion.

11 As to the second point, we think the -- if the
12 jury could certainly find that Dr. Elder, he's admitted he
13 wrote the scripts, which obviously went to Mr. Solomon,
14 and that they went up to Missouri. That puts him in the
15 conspiracy. There's certainly evidence in which the jury
16 could find if he's in the conspiracy, then he's in the
17 conspiracy for all purposes, and his -- if indeed he
18 provided those prescriptions, then he really is a key
19 player in starting the conspiracy because there's no way
20 this thing gets started without those written
21 prescriptions to Ms. Rostie.

22 MR. OSGOOD: I neglected to mention,
23 with regard to the four substantive counts, no evidence
24 has shown those patients were not real patients, that he
25 didn't examine them and issue the prescription. Certainly

1 on the four substantive counts, I think there's a total
2 failure of proof. Even this doctor said they're regular
3 on their face, they're real people.

4 MR. BOHLING: That's not true, Your
5 Honor, because we asked for the patient records from South
6 Texas, and they were not produced. They don't exist. And
7 that's what the state of the evidence is, that there is
8 not a file for any of these patients. We've requested
9 them. They were not provided. They were not found.
10 They're not there. That suggests these patients were not
11 actually patients of South Texas Wellness Center. That's
12 the state of the record. We also have two that were dead
13 before the prescriptions were written.

14 MR. LEWIS: Brief comment, irrespective
15 of patient files or dead patients, the fact of the matter
16 is the government is charged with the duty to prove beyond
17 a reasonable doubt these drugs were diverted to, as their
18 theory is, street users and sold for money. The problem
19 is this: The only person that testified in the
20 government's case about contacting patients and verifying
21 they got their medicine was Pharmacist Pham, as the court
22 will remember, and she said whether it was one or three,
23 people -- if it was one or three, the only people in this
24 case that were contacted were the patients -- alleged to
25 be patients that, yes, they were patients, yes, they

1 received their medications. It's strange to imagine the
2 government's theory of hundreds of thousands of pills all
3 of them, as Rostie says, never been -- putting in
4 prescriptions with the patient's names on them, put in
5 individual bags, stapled and sent to Texas, it's
6 unfathomable to imagine that in the course of this
7 conspiracy, not one pill bottle, not one sack was
8 recovered in some street arrest or the like and they can
9 link it back to this case.

10 I appreciate the government's effort. They have
11 done all they can try to make distribution, but the fact
12 of the matter is they would be asking the court to do the
13 work for them because it is absolutely below the standard
14 of proof that would be required for this court based on
15 this record. They want the court to assume innuendo by
16 Ms. Zapata's very likely, as she said, to be a puffing
17 statement as Mr. Solomon has in his course of courting
18 her, for that to be the link to distribution, that he
19 allegedly gave a box and said that's what \$3 million looks
20 like.

21 First of all, it's their theory backwards. It's
22 not drugs, according to their statement, it's cash. He's
23 supposed to be getting the cash according to their theory.

24 Given the fact the only patients, according to
25 the record, that were ever contacted verified they did in
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1 fact receive their prescriptions and it was for proper
2 medical purposes, I do not think there's anything in the
3 record that supports this.

4 MR. BOHLING: Remember that those
5 patients did receive their prescriptions, they went to
6 Universal Medical Clinic. They got a prescription, they
7 walked out, got it filled. Remember the prescription of
8 the one patient that said that, sleepy. I think we know
9 what that means from the evidence in this case.

10 I think it's quite credible to think that when
11 Ms. Pham, who is a little hard to understand, went to a
12 person -- but a little hard to understand, said did you
13 get your medication, they said yes because they did get
14 their medication from Dr. Okose at the medical clinic.
15 Our theory is that these scripts that were sent over to
16 ANP were taken from patient records, and so the real
17 patients got their prescriptions, walked out with the
18 prescription, but the ones that went to ANP were simply
19 diverted.

20 MR. LEWIS: Again, there's just no
21 evidence of that.

22 MR. BOHLING: Absolutely there is.
23 There's no evidence those things were taken back to the
24 patient because Mr. Klemen said they never received those
25 deliveries from ANP. He never heard of them, and they

1 didn't dispense medication. Those medications were never
2 dispensed to a patient at Universal Medical Clinic. We
3 know that from the record.

4 THE COURT: I think there's sufficient
5 evidence to submit the case, and I will submit the case.
6 With regard to the conspiracy, I think the government has
7 provided with a preponderance of the evidence there is
8 conspiracy among those who have testified here and it's a
9 wide enough net to include your clients.

10 Who do you have first?

11 MR. LEWIS: Delmon Johnson.

12 THE COURT: How long will he be?

13 MR. LEWIS: Fifteen minutes.

14 THE COURT: Okay.

15 MR. LEWIS: Thank you.

16 (The proceedings returned to open court.)

17 MR. LEWIS: May I proceed, Your Honor?

18 THE COURT: You may.

19 DEFENDANT SOLOMON'S EVIDENCE

20 MR. LEWIS: We will call Delmon Johnson,
21 Your Honor.

22 DELMON JOHNSON, being duly sworn, testified:

23 DIRECT EXAMINATION BY MR. LEWIS:

24 Q Sir, could you please introduce yourself to the
25 ladies and gentlemen of our jury.

1 A My name is Delmon Johnson.

2 Q If you would, Mr. Johnson, would you give the
3 members of our jury a brief history of your personal work,
4 educational background.

5 A I'm from Dallas, Texas, grew up there and went to
6 school there, worked there, married, one child, three
7 grand kids.

8 Q How old of a man, are you, Mr. Johnson?

9 A Fifty-one.

10 Q Now, let's skip forward for speed's sake. Did
11 there come an occasion -- do you know a person named
12 Philip Parker?

13 A Yes, I do.

14 Q Tell the ladies and gentlemen about your
15 knowledge of Philip Parker.

16 A Philip Parker and myself went to school together.
17 We've had over a 30-year relationship. I knew him from
18 the neighborhood and the school that I went to in Dallas.

19 Q Did you all at some point in your adult lives
20 begin to work together?

21 A Yes. I came from a construction background, and
22 Philip had -- was aware of that. And he asked me on two
23 or three occasions to help do some buildout for a law firm
24 or a couple of businesses that he had in Dallas.

25 Q Did you know of Mr. Parker's wife?

1 A Yes, I did.

2 Q Do you know what profession Ms. Parker's wife
3 performs?

4 A She is a pharmacist.

5 Q In Houston or Dallas?

6 A She's a pharmacist in Dallas.

7 Q At some point in time did Mr. Parker approach you
8 about a construction project in Houston, Texas?

9 A Yes, he did.

10 Q Would you tell the ladies and gentlemen about
11 that.

12 A In 2004, Mr. Parker asked me to help him design
13 or build two to three pharmacies in the Houston area.

14 Q At that point in time when he approaches you
15 about the buildout, have you ever met a person that you
16 later came to know as Troy Solomon?

17 A Yes. I met him afterwards.

18 Q Okay. And that's what I meant.

19 Prior to -- you didn't meet Mr. Solomon until
20 after Parker approaches you?

21 A That's correct.

22 Q Tell us how you met Mr. Solomon.

23 A Mr. Parker introduced me to him after coming to
24 Houston. It was a casual introduction, but it was right
25 around the time that he asked me to come to Houston to

1 help build out the pharmacies.

2 Q Did you in fact accomplish that task of building
3 out pharmacies?

4 A Yes, I did.

5 Q I want to direct your attention to Ascensia
6 Nutritional Pharmacy.

7 A Okay.

8 Q What did Mr. Parker tell you relative to
9 Ascensia, Troy Solomon, what was the relationship, et
10 cetera? Detail that for the jury, please.

11 A Well, I was told that it was a 50/50 partnership,
12 and for the most part he just wanted me to oversee and
13 make sure that the pharmacy was built out correctly and to
14 the specs that he had set from guidelines from a pharmacy
15 standpoint.

16 Q Was the ANP pharmacy buildout the first one that
17 Mr. Parker asked you to help him with in Houston?

18 A That's correct, yes.

19 Q Timeframe. I know you said the meeting happened
20 sometime in '04. When did you actually physically start
21 your work on the buildout to the best of your
22 recollection?

23 A It would have had to have been the fall of '04.
24 I would say probably October, late September.

25 Q Okay. Let's -- did you get the buildout
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1 accomplished per Mr. Parker's instructions?

2 A Yes, I did.

3 Q Now, were you taking any direction from
4 Mr. Solomon?

5 A Not at that time, no.

6 Q After you satisfied Mr. Parker's request on the
7 buildout, did he ask you to stay on?

8 A Yes, he did.

9 Q Tell us about that.

10 A Mr. Parker, after the buildout was complete,
11 asked if I could stay on to assist in the normal duties of
12 the pharmacy on a day-to-day basis, and I told him I
13 would.

14 Q Did he help train you in learning the pharmacy
15 business?

16 A Absolutely. I didn't have a pharmaceutical --
17 and still don't. I don't have a pharmaceutical
18 background, so when Mr. Parker asked that of me, I replied
19 to him, I don't know anything about pharmacy, and he told
20 me that he would teach me or train me on how to be
21 sufficient in that area.

22 Q Did he do that?

23 A Yes, he did.

24 Q And did you in fact, Mr. Johnson, after the
25 buildout start helping Mr. Parker run the daily business

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1 of ANP?

2 A Yes, I did.

3 Q What type of things did you do per Mr. Parker's
4 request for ANP?

5 A For the most part any errands, if the pharmacy
6 needed, for example, brooms or any of the day-to-day
7 upkeep and cleaning, maintaining the actual pharmacy from
8 a physical standpoint, I was asked to do that. Any
9 errands that needed to be ran, I was -- I assisted in that
10 also. I was asked to do some deliveries to some of the
11 patients so I did that.

12 Q Did you open and close the business physically?

13 A Yes, yes.

14 Q Every morning, every evening?

15 A Yes.

16 Q What were your all's general operating hours,
17 Mr. Johnson?

18 A From nine to five.

19 Q During this timeframe did Mr. Parker also train
20 you in the ordering of the wholesale pharmaceuticals, et
21 cetera?

22 A Yes, he did.

23 Q And without belaboring the point, did you get to
24 the point where you felt comfortable in running the
25 pharmacy day to day with Mr. Parker's help?

1 A Yes.

2 Q Let's turn our focus to Troy Solomon during this
3 timeframe.

4 Have you gotten at that point in time to know
5 Troy Solomon a little bit better?

6 A Somewhat. I would say, yes.

7 Q What was your understanding of Troy Solomon's
8 occupation during this timeframe?

9 A Well, I mean, I didn't know.

10 Q Did you later learn that he was a full-time
11 pharmaceutical sales rep for MP TotalCare?

12 A Yes, I did learn that.

13 Q And that was in the timeframe of the pharmacy
14 getting open?

15 A That would have probably been in the timeframe
16 after the pharmacy was already open.

17 Q During the setup process in these early times,
18 did you have occasion to participate in conversations with
19 Mr. Parker and Mr. Solomon or overhear their
20 conversations?

21 A Sometimes, yes.

22 Q In those conversations did you ever hear
23 Mr. Solomon asking about the legality, the propriety, the
24 lawfulness of this business?

25 A Yes.

1 Q Would he do that repeatedly?

2 A I would have to say he did it on more than one
3 occasion, yes.

4 Q And the questions that he would ask about this,
5 he would ask of Mr. Parker, I take it?

6 A That would be correct.

7 Q And did you hear Mr. Parker's responses?

8 A Yes.

9 Q Could you characterize those for the ladies and
10 gentlemen?

11 A Mr. Parker acknowledged that everything was above
12 board and everything was legal.

13 Q During this timeframe, late '04 into '05, how
14 often is Troy Solomon at ANP, or how would you
15 characterize his presence?

16 A Not that often. He would -- maybe once or twice
17 a week.

18 Q Did you come to know of Mr. Parker's requests of
19 Mr. Solomon, and more specifically do you know of
20 Mr. Parker requesting Troy Solomon to fax documents to
21 various locations from his home office?

22 A No, I do not.

23 Q Are you aware of any arrangements Parker had with
24 Troy Solomon about UPS deliveries to Kansas City or the
25 like?

1 A No, I do not.

2 Q In fairness to you, did Parker or Solomon ever
3 approach you about doing any of these tasks?

4 A No.

5 Q Fair enough.

6 Now, at some point in time did you begin living
7 in a --

8 MR. LEWIS: Before I do that, Your
9 Honor, for purposes of the record, I would offer as
10 Defendant Solomon Exhibit No. 5 the stipulation of facts
11 regarding records maintained by the Texas Board of
12 Pharmacy that has been executed by all parties and the
13 attached record documents from the Texas Board of Pharmacy
14 as Solomon Defendant's Exhibit 5.

15 THE COURT: Hearing no objections, it
16 will be received.

17 MR. LEWIS: May I approach the witness,
18 Your Honor?

19 THE COURT: Yes.

20 MR. BOHLING: Now I do have an
21 objection. Approach.

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 MR. BOHLING: This is -- I don't think
25 there's any foundation that Mr. Solomon had anything to do

1 with this document or has ever, indeed, seen it.

2 MR. LEWIS: That's what I'm going to ask
3 him if he knows about any of it.

4 THE COURT: Mr. Solomon or Mr. --

5 MR. BOHLING: Sorry. Mr. Johnson.

6 THE COURT: What is it?

7 MR. LEWIS: Board of pharmacy records
8 regarding the setup of ANP, who was listed as manager,
9 owner, the title and also --

10 THE COURT: He was?

11 MR. LEWIS: No. He's listed just as an
12 employee. I'm just going to ask if he's familiar with the
13 document.

14 THE COURT: If you've stipulated to it,
15 what's the concern?

16 MR. BOHLING: That doesn't mean that
17 Mr. Johnson knows anything about it or has any --

18 THE COURT: If he says he doesn't know
19 anything about it, then move on.

20 MR. BOHLING: Right. Thank you, Your
21 Honor.

22 (The proceedings returned to open court.)

23 Q (BY MR. LEWIS) In reference to what's been
24 admitted as Solomon Exhibit 5, Mr. Johnson, I'm going to
25 ask you to -- get past the stipulation here, and ask you

1 just to glance through these documents, front to back, see
2 if you're familiar with it.

3 A Yes. I'm familiar with that.

4 Q I'm going to let you get through the last couple
5 of pages.

6 A Okay.

7 Q Within Defendant's Exhibit 5 towards the back
8 there are a couple of letters. Did you see those?

9 A Yes.

10 Q You familiar with those letters?

11 A Yes.

12 Q Let me show you one of these letters. I'm not
13 sure if we will be able to get the lighting high enough
14 for our ladies and gentlemen of the jury. This letter,
15 can you see it on your screen, Mr. Johnson?

16 A Yes, I can see it.

17 Q And to give you the benefit of scrolling down a
18 bit, you're familiar with the signature?

19 A Yes.

20 Q Whose signature is that?

21 A Troy's.

22 Q And when you say "Troy," you're referring to Troy
23 Solomon?

24 A Troy Solomon, yes.

25 Q Tell me how you became familiar with this letter.

1 A This letter would have been generated after --

2 Q I'm jumping around a little bit. Let me help you
3 out.

4 A Uh-huh.

5 Q Were you in Mr. Parker's presence at some point
6 in time when he reviewed this letter?

7 A I don't recall.

8 Q Do you recall -- you and Mr. Parker for some time
9 lived in a townhome that Mr. Solomon and his wife had
10 owned?

11 A That's correct.

12 MR. LEWIS: May I approach the witness,
13 Your Honor?

14 THE COURT: Yes.

15 Q (BY MR. LEWIS) Let me show you what's been marked
16 for identification as Defendant Solomon Exhibit 9 and ask
17 you to take a look at these, Mr. Johnson.

18 A Okay.

19 Q What is depicted in Solomon Exhibit 9?

20 A Say again.

21 Q What is depicted within Solomon Exhibit 9?

22 A Oh, the picture of the townhouse.

23 Q It's the townhouse you've described living in?

24 A That's correct.

25 Q Now, going back to my question, do you recall at
1007

1 a time within that townhome where you and Mr. Parker were
2 still living that he received a copy of this letter that
3 the ladies and gentlemen of the jury just saw?

4 A Yes. I remember that now.

5 Q What was his reaction to the letter, if any?

6 A I can't recall exactly what his reaction was.

7 Q Does anything stand out in your mind?

8 A Well, I'm assuming that the partnership --

9 MR. BOHLING: Objection.

10 MR. LEWIS: No assumptions, please
11 Mr. Johnson.

12 Q (BY MR. LEWIS) Did Mr. Parker have any reaction
13 that you can recall?

14 A I don't recall.

15 Q Fair enough.

16 I want to shift gears.

17 A Okay.

18 Q I want to talk about boxes delivered to Ascensia
19 Nutritional Pharmacy.

20 Were you familiar with boxes and specifically
21 FedEx boxes being delivered to Ascensia Pharmacy from a
22 pharmacy in Belton, Missouri, The Medicine Shoppe?

23 A Yes.

24 Q What timeframe are we talking about that you
25 became aware that boxes such as this were being sent to

1 the pharmacy?

2 A I would say October, late September '04 through
3 sometime in '05.

4 Q Fair enough.

5 Now, just talking about these FedEx boxes, were
6 you given specific instructions by Philip Parker as to
7 what to do with these FedEx boxes?

8 A Yes.

9 Q What were those instructions?

10 A To either place them in the office or place them
11 in his vehicle.

12 Q Did you follow those instructions?

13 A Yes, I did.

14 Q Did you ever open any of these FedEx boxes?

15 A No, I did not.

16 Q Why not?

17 A It was not my concern.

18 Q Were you instructed to open them?

19 A No.

20 Q Now, did Mr. Solomon ever give you any
21 instructions as to these FedEx boxes or only Mr. Parker?

22 A Mr. Parker for the most part.

23 Q Did you have any knowledge of how or why these
24 FedEx boxes were being delivered to the pharmacy?

25 A No.

1 Q You familiar with South Texas Wellness Center,
2 Mr. Johnson?

3 A Yes, I am.

4 Q Explain the physical proximity of South Texas
5 Wellness Center to Ascensia.

6 A South Texas Wellness Center is two suites down --
7 actually three suites down from where the pharmacy is
8 right now.

9 Q Okay. So on the same floor in the same
10 multi-story building?

11 A Correct.

12 Q Are you familiar with Ada and Pleshette Johnson?

13 A Yes.

14 Q And who were they in reference to South Texas
15 Wellness Center?

16 A Owners and managers.

17 Q Fair enough.

18 Let me ask you this: Were there also the same
19 FedEx boxes that came from Kansas City delivered to South
20 Texas Wellness Center?

21 A Yes.

22 Q How do you know that?

23 A It just appeared to be the same boxes.

24 Q Okay. My question is, were those boxes either
25 taken from South Texas to Ascensia? Were you called to

1010

1 come get them? How did you know they even existed?

2 A I was told to go and get --

3 Q By whom?

4 A I was told by Philip to go and get them.

5 Q Would you follow that instruction as Philip
6 Parker gave you?

7 A Yes, if need be, yes.

8 Q Were there occasions where you would sign for
9 these FedEx boxes if they were delivered to Ascensia?

10 A Yes.

11 Q Would you ever sign for them if they were
12 delivered to South Texas Wellness Center?

13 A No.

14 Q Are you familiar with other pharmacy employees of
15 yours signing for these FedEx boxes?

16 A On one or two occasions.

17 Q I want to switch gears, make sure we know what
18 we're talking about. I want to talk about groups of
19 prescriptions now from Dr. Okose.

20 You know who Dr. Okose is?

21 A I know of him, yes.

22 Q How do you know of him?

23 A He's one of the doctors that our pharmacy filled
24 prescriptions for.

25 Q Were you aware of any pre-existing relationship
1011

1 between Philip Parker and Dr. Okose?

2 A Yes.

3 Q I want to come back to that, but let's focus
4 first on prescriptions related to Dr. Okose, okay?

5 A Okay.

6 Q How would -- when did you all start, from your
7 recollection, filling any prescriptions for Dr. Okose?

8 A January '05.

9 Q And how would the request for prescriptions, that
10 is the actual script, be delivered to Ascensia?

11 A They were either delivered by Parker or faxed.

12 Q Did Troy Solomon ever bring any of those scripts
13 into the office to be filled?

14 A No.

15 Q Were the prescriptions that either Philip Parker
16 delivered or that were faxed for Okose prescriptions, what
17 was done with those prescriptions? Were they filled?

18 A That's correct.

19 Q Okay. And were you involved in the process of
20 boxing those up or -- what was your involvement in the
21 Okose prescriptions?

22 A After those prescriptions were filled, yes, I
23 boxed them up and got them ready for Parker to deliver.

24 Q Okay. What was your understanding of where these
25 filled prescriptions were to be delivered?

1 A To the clinic for the patients to pick up at the
2 clinic, at Dr. Okose's.

3 Q Okay. Let me ask you a specific question about
4 that.

5 What was that -- you have the understanding
6 these were to be delivered back to the Okose clinic for
7 their patients, correct?

8 A Correct.

9 Q What was that understanding based upon? From
10 whom did you learn that?

11 A I learned it from Mr. Parker.

12 Q Did you do as he requested and instructed
13 regarding the Okose prescriptions?

14 A Yes.

15 Q Now, in terms of volume, Mr. Johnson, the Okose
16 prescriptions relative to the rest of Ascensia business,
17 were the Okose prescriptions a very large part of your
18 all's business at that time?

19 A Yes.

20 Q Relative to before getting the Okose
21 prescriptions, how would you compare your level of
22 business, quantity?

23 A I wouldn't know that.

24 Q Okay. Did it seem that you all were much busier
25 filling prescriptions once Parker started bringing the

1 Okose scripts?

2 A Yes.

3 Q Fair enough.

4 You testified -- let's do it this way, switch
5 gears to --

6 MR. LEWIS: Could we put up, Ms. Nelson,
7 Government's Exhibit No. 40?

8 May I approach the witness, Your Honor?

9 THE COURT: You may.

10 Q (BY MR. LEWIS) For your purpose, I'm going to
11 give you a hard copy, Mr. Johnson, of Exhibit 40.

12 Before I ask you this question, from your work
13 at Ascensia, did you become familiar with the handwriting
14 of Philip Parker?

15 A Yes.

16 Q Did you become familiar with the handwriting of
17 Troy Solomon?

18 A Yes.

19 Q Relative to those names, addresses, et cetera, in
20 Government's Exhibit 40, is that Troy Solomon's
21 handwriting?

22 A No.

23 MR. LEWIS: Could we put up 43, please?

24 And may I approach the witness, Your Honor?

25 THE COURT: Yes.
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1 Q (BY MR. LEWIS) Same thing. Just about 43 now.

2 Any of those names and addresses depicted in
3 Government's 43 look like Mr. Solomon's handwriting?

4 A No.

5 Q Thank you, sir.

6 Now, there's several others, Government's 45,
7 47, and 49. I'm not going to belabor the point.

8 Let's move to --

9 MR. LEWIS: One second before I get off
10 that topic.

11 THE COURT: Mr. Lewis, I'm going to take
12 a break at this point.

13 Ladies and gentlemen of the jury, we'll take a
14 15-minute recess. I'll ask you not discuss the case among
15 yourselves or with others or allow anyone to discuss it in
16 your presence.

17 Thank you.

18 (A recess was taken.)

19 (The following proceedings were had in the
20 presence of the jury:)

21 DELMON JOHNSON, previously being sworn, resumed the stand:

22 DIRECT EXAMINATION (continued) BY MR. LEWIS:

23 Q Mr. Johnson, I have to finish one area and then
24 one last area of your testimony.

25 I want to orient you back to a timeframe, a
1015

1 letter I showed you dated September 16th of 2005, where
2 Mr. Solomon writes Mr. Parker. You recall that timeframe
3 at Ascensia?

4 A Yes.

5 Q From that point forward did Mr. Solomon's
6 presence at Ascensia change?

7 A Yes.

8 Q How so?

9 A Mr. Solomon became more involved in the pharmacy
10 day-to-day business.

11 Q Did he become, for lack of a better word,
12 involved in the day-to-day operations after this point in
13 time?

14 A Yes.

15 Q What about Mr. Parker's presence? Contrast that
16 with his previous presence up to the point prior to the
17 letter.

18 A It decreased.

19 Q How so?

20 A He was just there less, you know, less.

21 Q After this letter, September 16th of 2005, was
22 Mr. Parker still sporadically present at Ascensia?

23 A Yes.

24 Q For how long or until when, your best
25 recollection?

1 A Late October, maybe even November '05.

2 Q Last subject. Are you familiar with a pharmacy
3 in Houston, Texas, called Eastside Pharmacy?

4 A Yes.

5 Q How are you familiar, Mr. Johnson?

6 A I was instructed by Mr. Parker to aid in the
7 buildout of that pharmacy.

8 Q When was that roughly?

9 A 2005.

10 Q Now, based on your work with Philip Parker on the
11 Eastside Pharmacy and conversations, did he ever lead you
12 to believe that Troy Solomon had any idea that he was
13 opening Eastside Pharmacy?

14 A No.

15 MR. LEWIS: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 Q (BY MR. LEWIS) I want to show you what I've
19 marked for identification purposes as Solomon Exhibit 6,
20 ask you to take a look at those, Mr. Johnson. Are you
21 familiar with what's depicted in Solomon Exhibit 6?

22 A Yes.

23 MR. LEWIS: Tender to Mr. Bohling for
24 his inspection and offer Solomon Exhibit 6, Your Honor.

25 MR. OSGOOD: No objection.
 1017

1 MR. BOHLING: No objection.

2 THE COURT: It will be received.

3 Q (BY MR. LEWIS) For the benefit of the ladies and
4 gentlemen of the jury, what is that that we see in the
5 first picture of Defendant Solomon's 6?

6 A That's the Eastside Pharmacy, the front location
7 of it.

8 Q And as I point here with my finger behind this
9 one car, is that a major thoroughfare?

10 A Yes, it is. It's a feeder.

11 Q To I-10, Interstate 10?

12 A That's correct.

13 Q Now, let me give you just one other view of
14 Eastside from Defendant Solomon's Exhibit 6. What is
15 that?

16 A Front door of the pharmacy.

17 Q Were you able to complete the buildout, as Parker
18 requested you to do, for Eastside Pharmacy?

19 A No, I was not.

20 Q Why not?

21 A It interrupted with the daily functions of the
22 pharmacy at Ascensia Nutritional Pharmacy.

23 Q So, what, did you and Parker come to an agreement
24 on that, or how did you resolve that?

25 A That it would get subcontracted out to another
1018

1 construction company.

2 Q Did you review the sub's work from time to time?

3 A Yes, I did.

4 Q And during this point in time that the Eastside
5 Pharmacy is being built, are you aware of any relationship
6 between Eastside Pharmacy and Dr. Okose's clinic?

7 A Yes.

8 Q Tell us about that.

9 A Initially when I was asked to do the buildout at
10 Eastside Pharmacy, I needed to insure my car, and there's
11 an insurance company next door. So I -- knowing that I
12 was going to be there on a day-to-day basis helping with
13 the buildout and the construction of the new pharmacy, I
14 had my car insured with the insurance company. And from
15 time to time I would go there to make a payment for my
16 insurance which is adjacent to the pharmacy that was being
17 built.

18 Q Were you -- I'm sorry. I didn't mean to step on
19 your answer.

20 A Well, one of the -- as Solomon and Parker's
21 relationship got farther and farther apart, I would still
22 have a need to go and pay my insurance. So I would stop
23 because I didn't have, per se, a bad relationship. But
24 one of the technicians that worked at the pharmacy as it
25 became functional was also a young lady who had worked at

1019

1 our pharmacy, did her internship. That's how I became
2 aware of the relationship between Okose and the pharmacy.

3 Q Let me ask you a little bit of detail about that,
4 Mr. Johnson.

5 The pharmacy tech that you're referring to used
6 to be an intern at Ascensia?

7 A That's correct.

8 Q So were you surprised at all that she became a
9 pharmacy tech once she was licensed or approved at another
10 Parker-owned pharmacy?

11 A No.

12 Q From your discussions with Mr. Parker or this
13 pharmacy tech, did you learn that they were filling an
14 enormous amount of Okose prescriptions?

15 MR. BOHLING: Objection, hearsay.

16 THE COURT: If he knows from his own
17 knowledge.

18 Q (BY MR. LEWIS) Did you have discussions based on
19 your own personal knowledge, not what somebody else told
20 you, about the relationship between Okose prescriptions
21 and this Eastside Pharmacy?

22 A Yes.

23 Q What was your understanding?

24 A The technician said that they --

25 MR. BOHLING: Objection, hearsay.
 1020

1 THE COURT: Sustained.

2 Q (BY MR. LEWIS) Now, you had testified earlier
3 about your conversations with Parker about this pharmacy.
4 Based on your own personal knowledge, not what anybody
5 else told you, did you ever hear anything from Mr. Parker
6 that would lead you to believe he had disclosed this
7 Eastside Pharmacy to Mr. Solomon?

8 A I don't believe he did disclose that to
9 Mr. Solomon, no.

10 Q Mr. Solomon certainly never indicated to you he
11 had any idea about Eastside, did he?

12 A That's correct.

13 Q Last question, local knowledge, geography. How
14 close was Dr. Okose's clinic to Eastside Pharmacy?

15 A Very close.

16 MR. LEWIS: Pass the witness, Your
17 Honor.

18 MR. OSGOOD: Your Honor, what order do
19 you want us to go in?

20 THE COURT: Let's take Dr. Elder's
21 counsel next. Then we'll come back to the government.

22 CROSS-EXAMINATION BY MR. OSGOOD:

23 Q When did you first meet Dr. Elder?

24 A September, October '05.

25 Q And was that at South Texas?

1 A Yes.

2 Q And, now, you knew Ada and Pleshette Johnson; is
3 that right?

4 A That's correct.

5 Q Ada Johnson is who?

6 A The owner or manager of South Texas Wellness
7 Center.

8 Q All right. And her daughter, Pleshette, was who
9 again?

10 A She was part owner or -- and she worked at South
11 Texas Wellness Center.

12 Q And she's a chiropractor?

13 A She's a chiropractor, yes.

14 Q And did Mr. Parker come around on quite a bit of
15 occasions into South Texas Wellness Center?

16 A Yes.

17 Q And did -- have you ever seen him in meetings,
18 not what you heard or was said, but have you seen him in a
19 cluster meeting with Ada and Pleshette or one or the other
20 or both?

21 A No.

22 Q Do you know what he would do when he would come
23 around South Texas?

24 A No.

25 Q So you don't know whether those meetings occurred
1022

1 or not?

2 A That's correct, no, I do not.

3 Q All right. You have no knowledge then, I take
4 it, of how or who gave prescriptions, original
5 prescriptions, to Cindy Parker [sic] to bring to Missouri?

6 A No, I do not.

7 Q And you have no knowledge then, I take it, of
8 whether or not someone inside of South Texas, be it Ada
9 Johnson or Pleshette Johnson, would have mailed
10 prescriptions to Missouri? Do you have any knowledge of
11 that?

12 MR. BOHLING: Objection.

13 A No, I do not.

14 Q (BY MR. OSGOOD) Did you ever have any direct
15 conversations with Dr. Elder to suggest that he was aware
16 of stuff being sent to Missouri?

17 A No.

18 Q Are you familiar with when -- or are you aware of
19 when he left the employment of South Texas Wellness
20 Center?

21 A No.

22 Q Okay. Basically your knowledge, then, is of
23 Mr. Parker and his dealings?

24 A Correct.

25 Q Okay. Did you see Dr. Elder on the few occasions
1023

1 you were -- or many -- I don't know whether it was few or
2 many occasions when you would go to South Texas Wellness
3 Center?

4 A You want to repeat that question?

5 Q Did you always see or talk to Dr. Elder when you
6 went to South Texas Wellness Center?

7 A No.

8 Q All right. As far as you know, then, he was
9 treating patients in an exam room when you were there?

10 A Correct.

11 MR. OSGOOD: That's all.

12 Thank you.

13 CROSS-EXAMINATION BY MR. BOHLING:

14 Q Good morning, Mr. Johnson.

15 A Good morning.

16 Q You have any post high school education?

17 A Navy.

18 Q You were in the Navy?

19 A Yes.

20 Q So you had some training there?

21 A Yes.

22 Q But no college?

23 A That's correct.

24 Q And you are not a licensed pharmacy technician?

25 A That's correct.

1 Q And you're not a pharmacist?

2 A That's correct.

3 Q Now, once you -- at some point you relocated from
4 Dallas to Houston, Texas, right?

5 A Yes.

6 Q You would sometimes go back to Dallas some
7 weekends?

8 A That's correct.

9 Q But during the week you would spend your time in
10 Houston?

11 A That's correct.

12 Q And is that the point in which you moved into the
13 townhouse that you were shown pictures of?

14 A That is correct.

15 Q And that townhouse belonged to Mr. Solomon and
16 his wife?

17 A Yes, Mr. Solomon, yes.

18 Q Mr. Solomon was essentially your landlord?

19 A That's correct.

20 Q And that townhouse was at 3558 Sun Forest?

21 A No. That --

22 Q I'm sorry. I misstated the address. 5833 Sun
23 Forest in Houston, Texas?

24 A That's correct.

25 Q My apologies.

1 And when you first moved into that townhouse,
2 you lived with Mr. Parker?

3 A That is correct.

4 Q Mr. Parker paid the rent on the townhouse while
5 you were there?

6 A That is correct.

7 Q Until Mr. Parker moved out?

8 A That is correct.

9 Q After Mr. Parker moved out, you paid Mr. Solomon
10 about \$300 a month in rent for that townhouse?

11 A Correct.

12 Q And you lived in that townhouse -- you still live
13 in that townhouse?

14 A That's correct.

15 Q And you still pay \$300 per month in rent?

16 A Correct.

17 Q And you got paid for your work at Ascensia
18 Nutritional Pharmacy?

19 A Correct.

20 Q Initially you got about \$500 per week?

21 A Yes.

22 Q And at some point in the summer of 2005, that
23 went up to \$1,000 per week?

24 A Yes.

25 Q At some point in 2006, you received a single

1 payment of over \$6,000?

2 A Yes.

3 Q And you didn't fill prescriptions, you weren't a
4 pharmacist, right?

5 A That's correct.

6 Q You did do things like pick up the boxes you
7 described, you talked about?

8 A Correct.

9 Q Did you clean up?

10 A Yes, I did.

11 Q Okay. And sometimes you delivered prescriptions
12 to people?

13 A That's correct.

14 Q Now, you were asked a lot about Mr. Parker.

15 Now, at some point Mr. Parker and Mr. Solomon
16 had a dispute, right?

17 A That's correct.

18 Q They had an argument, correct?

19 A Yes.

20 Q And you remember that argument was during tax
21 season?

22 A I remember it was over taxes. I don't recall
23 exactly when.

24 Q Well, do you remember that that argument happened
25 between April and June of 2005?

1 A No.

2 Q Now, do you remember talking to -- well, when do
3 you think that argument happened?

4 A I would think in August, maybe with a tax
5 extension.

6 Q Now, do you remember being in an interview with
7 Agent Watterson on June 4th of 2010?

8 A Yes.

9 Q Okay. That was here in Kansas City?

10 A Yes.

11 Q And do you remember telling Agent Watterson that
12 Mr. Parker and Mr. Solomon had a dispute which caused a
13 falling-out during tax season between approximately April
14 and June of 2005?

15 A I remember telling Ms. Watterson that they had an
16 argument over taxes, but the exact time, I wouldn't know.

17 Q Okay. And do you remember coming back about, oh,
18 a week later or so, two weeks later, and talking to
19 Ms. Watterson?

20 A Yes.

21 Q Do you remember telling her then, again, that
22 that falling-out had been in April of 2005 between the two
23 gentlemen?

24 A I very well may have said that, but I'm not real
25 sure exactly when the falling-out happened. I know that

1 it did happen over taxes.

2 Q Okay. So are you saying, then, that you did tell
3 Ms. Watterson that the falling-out may have been in April
4 of 2005?

5 A Yes.

6 Q And then after that falling-out, that is when
7 Mr. Parker was in the pharmacy less frequently?

8 A That's correct.

9 Q So if it happened in April of 2005, he was in the
10 pharmacy less frequently after April of 2005?

11 A I don't know. I really don't know that.

12 Q Okay. You didn't actually know what
13 Mr. Solomon's other job was?

14 A That's correct, no, I didn't.

15 Q Now, at some point you learned that despite what
16 you had been told initially, Mr. Solomon was actually the
17 higher-ranking person in the business at Ascensia
18 Nutritional Pharmacy, correct?

19 A That is correct. He was the owner.

20 Q Okay. So Mr. Solomon, and not Mr. Parker, was
21 actually in charge of the business?

22 A Mr. Parker was the manager slash owner.
23 Mr. Solomon was the owner.

24 Q But you -- at some point you found out
25 Mr. Solomon was the owner?

1 A Correct. I knew all along that Mr. Solomon and
2 Mr. Parker was both owner.

3 Q Now, I'd like to talk to you about the FedEx
4 packages.

5 Can you describe for us what those looked like?

6 A Brown box.

7 Q Would they look the same every time?

8 A Yes.

9 Q Sometimes more than one would come on a day?

10 A Yes.

11 Q And you remember being shown some signatures for
12 delivery?

13 A Yes.

14 Q And those signatures that we showed you that
15 appeared to be yours were in fact yours?

16 A That's correct.

17 Q And would it surprise you to learn that you
18 signed for 69 such deliveries yourself?

19 A No.

20 Q And sometimes you went down to South Texas
21 Wellness Center and got those?

22 A Sometimes if I was instructed, yes.

23 Q Okay. And you were actually instructed to pick
24 up the packages by both Mr. Solomon and Mr. Parker,
25 correct?

1 A That could be correct, yes.

2 Q Yes. Mr. Solomon instructed you as well as
3 Mr. Parker --

4 A Yes.

5 Q -- to pick up packages?

6 And they told you where to place the packages?

7 A Yes.

8 Q And that was within the office at ANP?

9 A Yes.

10 Q And you knew that the packages were addressed, at
11 least for a period of time, to Dr. Elder?

12 A Yes.

13 Q But at some point that changed and they were
14 addressed to Mr. Solomon?

15 A That's correct.

16 Q And both Mr. Solomon and Mr. Parker directed you
17 to place these packages into one or the other of their
18 cars?

19 That was a bad question.

20 At times Mr. Parker would ask you to place those
21 packages, the packages from Missouri, into his car?

22 A Yes.

23 Q And Mr. Parker's car was a black Porsche Cayenne?

24 A Correct.

25 Q And at times Mr. Solomon would direct you to
1031

1 place those packages from Missouri into Mr. Solomon's car?

2 A There were more times than not that it went to
3 Mr. Parker's car.

4 Q And that's fine with us. What I'm asking you is
5 there were times when Mr. Solomon would direct you to
6 place the boxes into Mr. Solomon's car?

7 A Yes.

8 Q And Mr. Solomon's car was a black BMW X5?

9 A Yes.

10 Q So you placed packages in both -- into
11 Mr. Parker's car and into Mr. Solomon's car?

12 A Yes.

13 Q Did you ever place those packages in your own
14 car?

15 A No.

16 Q And do you know where Mr. Solomon or Mr. Parker
17 took those packages?

18 A No.

19 Q You did not go with them when they drove away
20 with the packages in their car?

21 A No.

22 Q You never delivered any medications from the
23 packages that were shipped from the -- that you picked up?

24 A No.

25 Q And you never delivered any medication to

1 patients of South Texas Wellness Center?

2 A No.

3 Q And you never delivered medications directly to
4 South Texas Wellness Center?

5 A No.

6 Q You knew that the return address on the packages
7 was from a pharmacy in Missouri?

8 A No.

9 Q Didn't you look at the return addresses?

10 A No.

11 Q You picked them up 69 times and you didn't look
12 at the return address?

13 A No.

14 Q Do you remember telling Ms. Watterson in the June
15 11th interview you were aware that the return address on
16 the FedEx packages was a pharmacy in Belton, Missouri?

17 A I may have said that and I really don't know.

18 Q You may --

19 A What the return --

20 Q You did tell Ms. Watterson that you were aware
21 that the return address was a pharmacy in Belton,
22 Missouri?

23 A Okay. Then, yes.

24 Q I need your testimony, sir. Is that correct?

25 A Yes.

1 Q Okay. So two weeks ago approximately you told
2 that to Ms. Watterson, that you knew that?

3 A Okay. Yes.

4 Q Didn't you have a question in your mind about the
5 fact that a pharmacy in Houston was receiving packages
6 from a pharmacy in Missouri?

7 A No.

8 Q Did you ever ask any questions of Mr. Solomon
9 about that?

10 A No.

11 Q Did you ever ask any questions of Mr. Parker?

12 A No.

13 Q You just did what you were told?

14 A That's correct.

15 Q And you never questioned the -- and to be clear,
16 the pharmacy -- the Ascensia Nutritional Pharmacy did not
17 open until late December of 2004, correct?

18 A Yes.

19 Q So it was not open for business, did not have
20 patients, did not write prescriptions until late December
21 of 2004?

22 A Correct.

23 Q And these packages were starting to come in in
24 September of 2004?

25 A Okay, yes.

1034

1 Q So the packages were coming in at least two or
2 three months before ANP was open as a pharmacy; is that
3 correct?

4 A Yes.

5 Q And that didn't cause you any concern?

6 A No.

7 Q Was there ever explained to you why you were
8 picking up packages that were addressed to Dr. Elder at
9 South Texas Wellness Center?

10 A No.

11 Q Did you ever ask?

12 A No.

13 Q Did you ever go to Dr. Elder and say here's your
14 package?

15 A No.

16 Q Now, I'd like to direct your attention to the
17 prescriptions that came in from Dr. Peter Okose.

18 A Okay.

19 Q You said those started in January of 2005?

20 A Yes.

21 Q So those started very shortly after the pharmacy
22 was opened for business?

23 A Correct.

24 Q It wasn't more than a week or two at most between
25 the time the pharmacy opened its doors and the time it got

1 the Okose prescriptions?

2 A Yes.

3 Q And you would get approximately 150 of those
4 prescriptions in a stack every single day?

5 A Approximately, yes.

6 Q Okay. And then people at the pharmacy would work
7 to fill those, and when those were filled, you'd get
8 another 150?

9 A Yes.

10 Q Okay. And those were on preprinted forms,
11 preprinted prescription pads?

12 A Yes.

13 Q And the medications on there were hydrocodone and
14 Alprazolam, right?

15 A Yes.

16 Q On every single preprinted prescription pad?

17 A I wouldn't know exactly, no.

18 Q Okay. But on the ones you saw?

19 A Yes.

20 Q The ones you're familiar with, that's the way it
21 appeared?

22 A Correct.

23 Q You never saw one that wasn't like that?

24 A That's correct.

25 Q There were no patients that came into your

1 pharmacy to pick those up?

2 A I don't know that.

3 Q You don't know whether there were or there
4 weren't?

5 A I don't know if there were patients -- there were
6 patients coming so I don't know.

7 Q But you don't know if those patients had their
8 own prescriptions in their hand?

9 A That's correct, I don't know.

10 Q But you do know that you assisted in boxing up
11 the prescriptions that were being produced as a result of
12 the Okose prescriptions?

13 A Yes.

14 Q And so the pharm techs would take those and put
15 them in the vials and then put them in the little
16 prescription bags?

17 A Correct.

18 Q Then you would put those into a larger box?

19 A Yes.

20 Q And would it sometimes be more than one box?

21 A I don't recall.

22 Q But the box was fairly -- a fairly sizeable box?

23 A Yes.

24 Q Where would you get the box?

25 A There were empty boxes. We had empty boxes at

1 the pharmacy.

2 Q Okay. So would you then construct those boxes?

3 A Yes. It was folded up.

4 Q So you would construct the box and then you would
5 assist in pack -- putting the packages into the box?

6 A Yes.

7 Q And the box would be full?

8 A Yes.

9 Q It would be full basically with hydrocodone and
10 Alprazolam?

11 A Prescriptions, yes.

12 Q Right. But those prescriptions were for
13 hydrocodone and Alprazolam?

14 A Yes.

15 Q And not other kinds of substances, right? That's
16 what was in the box?

17 A Yes.

18 Q And then you would take those boxes and you would
19 put those into either Mr. Parker's car, correct,
20 Mr. Parker's car?

21 A I would put them in Mr. Parker's car, yes.

22 Q And you would also put them in Mr. Solomon's car?

23 A On one or two occasions.

24 Q So there were occasions when you did place them
25 in Mr. Solomon's car?

1 A After Mr. Parker left, yes.

2 Q So if Mr. Parker left in the April through June
3 timeframe, then there were several months when that would
4 have had to go into Mr. Solomon's car, right?

5 A No. I can't say that Mr. Parker left in April or
6 June.

7 Q I'm saying if that's the case.

8 A I mean, if that's the case what?

9 Q Then they would have to -- Mr. Parker wasn't
10 around to be -- to have drugs put in his car.

11 A I mean, if you say "if." I don't understand what
12 --

13 Q But you did tell Ms. Watterson that Mr. Parker
14 left in that timeframe?

15 A I also told Ms. Watterson that Mr. Parker did not
16 leave in June or April to my knowledge.

17 Q That's when the dispute was?

18 A That's what I told her when the dispute happened,
19 but I said that Mr. Parker did not leave.

20 Q But you just told the jury a few minutes ago that
21 Mr. Parker was no longer coming to the pharmacy after the
22 dispute. Do you remember that?

23 A I also remember Mr. Parker being there past
24 September and even in October.

25 Q But not as often?

1 A But not as often, yes.

2 Q Mr. Solomon took over more of the laboring oar at
3 the pharmacy?

4 A Yes.

5 Q And you did put -- you did put on occasion, just
6 to be clear, you did put the Okose boxed-up prescriptions
7 into Mr. Parker -- Mr. Solomon's car on occasion?

8 A Yes.

9 Q You're not denying that?

10 A That's correct.

11 Q And you did not go with Mr. Parker or Mr. Solomon
12 in their cars once they left with the boxed-up
13 prescriptions?

14 A That's correct.

15 Q You do not know where they took them?

16 A That's correct.

17 Q You were only told that they were supposed to go
18 to the Okose clinic, right?

19 A That's correct.

20 Q You never were at the Okose clinic to see if they
21 were actually delivered there?

22 A That's correct.

23 Q You never called the Okose clinic to find out if
24 they were actually delivered there?

25 A That's correct.

1 Q You have no personal knowledge of whether they
2 were actually delivered to the Okose clinic?

3 A That's correct.

4 Q You did not personally deliver these to patients?

5 A That's correct.

6 Q Because you didn't deliver controlled substances
7 to patients under any circumstances?

8 A That's correct.

9 Q Because you were concerned about the security of
10 delivering controlled substances in some of the
11 neighborhoods you had to go to?

12 A That's correct.

13 Q Now, ANP has continued as a business pretty much
14 until this day, correct?

15 A That's correct.

16 Q And you have worked there the whole time?

17 A Yes.

18 Q And you have worked there with Mr. Solomon?

19 A Yes.

20 Q So you and Mr. Solomon have been together at work
21 virtually every single day since the time of the -- your
22 working day since 2004, 2005?

23 A Yes.

24 Q And Mr. Parker -- at some point at least
25 Mr. Parker no longer goes to ANP pharmacy?

1 A Yes, that's correct.

2 Q That's been for several years?

3 A It's been since 2005.

4 Q Since Mr. Parker has been at the pharmacy?

5 A Yes.

6 Q So the last five years it's just been you and
7 Mr. Solomon at the pharmacy?

8 A Yes.

9 MR. BOHLING: Can we bring up Exhibit
10 43, please.

11 Q (BY MR. BOHLING) Now, you remember being shown
12 this by Mr. Lewis?

13 A Yes.

14 Q And you believe that to be Mr. Parker's
15 handwriting?

16 A I don't know whose handwriting it is.

17 MR. LEWIS: I object. That's a
18 mischaracterization of the testimony. Not Mr. Solomon's.

19 MR. BOHLING: I said Mr. Parker's
20 actually.

21 MR. LEWIS: I know. I didn't ask him if
22 it was Mr. Parker's handwriting.

23 MR. BOHLING: Okay. Maybe I
24 misunderstood the testimony.

25 Q (BY MR. BOHLING) Now, would you recognize
1042

1 Mr. Parker's handwriting from working with him and knowing
2 him for 30 years?

3 A Maybe. I mean, I guess the answer is, no, I
4 wouldn't recognize it.

5 Q You wouldn't recognize Mr. Parker's handwriting
6 even though you've known him for 30 years?

7 A That's correct.

8 Q And you worked with him?

9 A Yes.

10 Q Okay. But you would recognize Mr. Solomon's
11 handwriting?

12 A Maybe.

13 Q Maybe?

14 A I would have to say no also. I'm not an expert
15 on people's handwriting.

16 Q Okay. So when you told Mr. Lewis that this was
17 not Mr. Solomon, you actually don't know if it's
18 Mr. Solomon or if it's not Mr. Solomon?

19 A No, I really don't.

20 Q So why did you say that when he asked you that
21 question? Why did you tell this jury that wasn't
22 Mr. Solomon's handwriting if you don't know?

23 A I would be able to recognize Mr. Solomon's
24 handwriting in regards to messages and things of that
25 nature when he would write me in the office. And it did

1 not look like that handwriting.

2 Q Okay. So now I'm really confused. Would you
3 recognize Mr. Solomon's handwriting or would you not?

4 A Yes, I would recognize it, yes.

5 Q So you've told us that you would and that you
6 wouldn't today?

7 A So, yes, I would recognize it.

8 Q Okay. So why did you say you wouldn't recognize
9 it?

10 A Handwriting can change --

11 MR. OSGOOD: Objection, argumentative,
12 Your Honor.

13 THE COURT: Sustained.

14 MR. BOHLING: All right. Could we
15 please put up Exhibit 47.

16 Q (BY MR. BOHLING) You see Exhibit 43 on the
17 right-hand side of the screen and that's the exhibit we
18 were just looking at?

19 A Uh-huh.

20 Q Then you see Exhibit 47 on the left-hand side of
21 the screen.

22 Now, do you recognize the handwriting in Exhibit
23 47?

24 A No.

25 Q So you don't know whether or not that's
1044

1 Mr. Solomon's handwriting?

2 A I do not recognize it, no.

3 Q You don't know if it's Mr. Parker's handwriting?

4 A No.

5 MR. BOHLING: If we could bring up on
6 the left side of the screen Exhibit 1185, please.

7 Q (BY MR. BOHLING) Do you recognize the handwriting
8 in Exhibit 1185 --

9 A No.

10 Q -- which is this envelope?

11 A No.

12 Q You do recognize that street address, though,
13 right?

14 A I recognize the Houston address, yes.

15 Q That's 5833 Sun Forest?

16 A Yes.

17 Q That's the address where you live even now?

18 A Yes.

19 Q That's the address that's owned by Troy Solomon
20 and his wife?

21 A Yes.

22 Q And, now, you never sent anything to Cindy
23 Martin, did you?

24 A No.

25 Q You've never sent anything to Cindy Martin?
1045

1 A No.

2 Q So that return address is not something that was
3 put on there by you?

4 A That's correct.

5 Q Okay. But you don't recognize the handwriting?

6 A No, I do not.

7 Q Okay. Now, I did want to ask you a question
8 about Eastside Pharmacy.

9 A Yes.

10 Q Eastside Pharmacy actually opened for business
11 down in Houston in October of 2005, right?

12 A Yes.

13 MR. BOHLING: That's all I have for this
14 witness.

15 Thank you.

16 REDIRECT EXAMINATION BY MR. LEWIS:

17 Q I want to go back, make sure we're talking about
18 the same things, the FedEx boxes versus the Okose boxes.

19 A Yes.

20 Q And I think the easiest way to make sure we're
21 talking about the same thing, you physically boxed up the
22 Okose prescriptions, right?

23 A That's correct.

24 Q Did you ever open a box or do anything with the
25 FedEx boxes other than what Philip Parker told you to do?

1 A No.

2 Q Okay. So FedEx boxes, in talking -- well, when
3 you met with the government, you met with the prosecutors
4 and the agents, correct?

5 A That's correct.

6 Q So Mr. Bohling was present, right?

7 A That's correct.

8 Q Did anybody give you a chance to review a
9 statement and see if it was recorded accurately?

10 A No.

11 Q Never?

12 A No.

13 Q Okay. Well, to this day has anyone, other than
14 myself, given you a copy of what's purported to be Agent
15 Watterson's notes of your conversation?

16 A No.

17 Q Just me?

18 A Just you.

19 Q Did she get everything right?

20 A No.

21 Q Okay. So let's talk specifically about the FedEx
22 packages that you never boxed.

23 A Correct.

24 Q Just followed Parker's directions on.

25 A Correct.

1 Q Did you ever -- do you recall ever putting any of
2 those boxes in Troy Solomon's vehicle?

3 A No.

4 Q You do recall putting, I believe your testimony
5 is, one or two after Parker left of the Okose boxes that
6 you physically put together in Mr. Solomon's vehicle?

7 A Yes.

8 Q As you sit here today, any doubt in your mind
9 about that?

10 A No.

11 Q Who delivered -- Mr. Bohling talked about the 150
12 or so requests for prescriptions related to the Okose --

13 A Uh-huh.

14 Q Who brought those to you?

15 A Mr. Parker.

16 Q Mr. Solomon ever bring one to you?

17 A No.

18 Q Now, regarding this whole Ascensia Pharmacy/
19 Parker falling-out, did you suggest April or June, or did
20 the agent suggest April or June?

21 A I suggested tax time.

22 Q Right. But did you specifically say April or
23 June?

24 A No.

25 Q What did you say relative to the dispute?

1 A That when the taxes -- when Mr. Solomon found out
2 that Mr. Parker was handling the taxes and when he saw
3 some amount or document regarding taxes, he got very
4 upset.

5 Q Okay. And that's exactly what I want to talk
6 about.

7 Did you have an occasion to speak yourself
8 personally with Mr. Parker about the workings of Ascensia
9 and the legalities?

10 A Yes.

11 Q And in that conversation what did Mr. Parker tell
12 you?

13 A He said that everything was aboveboard but it was
14 a gray area.

15 Q Did he bother to explain to you what he meant by
16 "a gray area"?

17 A No.

18 Q You have said but let's make the fine point.

19 Was Mr. Parker an attorney?

20 A Yes.

21 Q So did you question him after you had asked him
22 about the legality?

23 A No.

24 Q Had you heard Mr. Solomon in your presence
25 question Mr. Parker and others about the legality?

1 A Yes.

2 Q On more than one occasion?

3 A Yes.

4 Q You mentioned taxes. Are you aware of whether or
5 not Ascensia Pharmacy under their corporate name LP, Inc.
6 filed taxes?

7 A Yes.

8 Q How are you aware, Mr. Johnson?

9 A I assisted in getting the invoices and getting
10 the paperwork ready to take to the accountant.

11 Q Did you actually deliver them to the accountant?

12 A Yes, I did.

13 Q Who was that?

14 A Mr. Dave Fisher.

15 MR. LEWIS: Pardon me one second, Your
16 Honor.

17 Q (BY MR. LEWIS) The practice of assembling the
18 underlying data and giving it to your Accountant Fisher,
19 was that one of your responsibilities?

20 A Yes.

21 Q So you were personally involved in this process?

22 A Yes.

23 Q Did you ensure from your end that these taxes got
24 filed 2005, 2006, every year?

25 A Yes. I took them.

1050

1 Q Is it your understanding that in fact the
2 Ascensia taxes were filed?

3 A Yes.

4 Q Do you recall Mr. Parker faxing a document to
5 Ascensia sometime in 2006 relative to his ownership
6 interest and his position with Ascensia?

7 A Yes.

8 Q And when I showed you the state board of pharmacy
9 records, did you see that same --

10 A Yes.

11 Q -- letter in there?

12 A Yes.

13 Q So that's a letter from Mr. Parker, right?

14 A That's correct.

15 Q Was that kind of strange to you, the timing of
16 that letter, et cetera?

17 A Yes.

18 Q Why?

19 A It was almost a year and a half, two years later.

20 Q Sometime after he kind of phased out of Ascensia?

21 A Correct.

22 MR. LEWIS: If I may have one moment to
23 ensure I've covered the water, Your Honor.

24 I'll pass the witness, Your Honor.

25 RE CROSS-EXAMINATION BY MR. OSGOOD:

1051

1 Q You said that you never took any boxes over to
2 Dr. Elder?

3 A That's correct.

4 Q I guess the other side of that coin would be, did
5 he ever drive over in his pickup and you put stuff in his
6 pickup?

7 A No.

8 Q Okay. Second area, you said in all these FedEx
9 boxes that came from Missouri, they were all brown boxes
10 of similar nature?

11 A Yes.

12 Q All brown?

13 A Yes.

14 Q As far as you remember?

15 A Yes.

16 Q And 76 of them were brown?

17 A Yes.

18 Q Did you ever get a white package during that
19 timeframe from UPS?

20 A No.

21 Q So if a white package is involved, it was
22 something other than UPS as far as you can determine?

23 A Yes.

24 MR. OSGOOD: That's all.

25 RE CROSS-EXAMINATION BY MR. BOHLING:
 1052

1 Q Mr. Johnson, on cross-examination I was very
2 clear in asking you about the boxes.

3 A Okay.

4 Q The FedEx boxes that you got from Missouri. Do
5 you remember that?

6 A Yes.

7 Q I was very clear in asking you whether you put
8 those boxes into Mr. Solomon's car, right?

9 A Okay.

10 Q And you said that you had put the boxes into
11 Mr. Solomon's car.

12 A But I didn't really know what boxes you were
13 talking about because when you asked me if there were
14 boxes placed in Mr. Solomon's vehicle, I didn't recall
15 exactly what boxes you was talking about. When you asked
16 me were there ever boxes placed in his vehicle, I was -- I
17 said yes.

18 Q I didn't ask you if there were boxes. I asked
19 you if the boxes that came from Missouri, you placed them
20 in Mr. Parker's or Mr. Solomon's vehicle and you said you
21 did.

22 A Okay. Well, rethinking on that, I don't -- I
23 don't know about that.

24 Q And you described it as a black BMW X5?

25 A That's correct.

1 Q And that's what Mr. Solomon drove?

2 A That's correct.

3 Q And you told Ms. Watterson on June 11th that you
4 had placed those boxes into Mr. -- and by that I mean the
5 Missouri boxes, the ones you had never opened, into
6 Mr. Solomon's black BMW X5?

7 MR. LEWIS: Objection, Your Honor. May
8 we approach?

9 (Counsel approached the bench and the following
10 proceedings were had:)

11 MR. LEWIS: I've tried to give the
12 government some leeway. The problem is they didn't ever
13 bother producing the June 11th interview notes. Now, I am
14 sure that at the time it was anticipation of testimony, et
15 cetera. The problem is there appear to be discrepancies,
16 and it's really unfair to us to have never been shared
17 this memorialization of this witness' conversation now
18 that he's on the stand and they're cross-examining him
19 about details.

20 MR. BOHLING: I sent you that. I sent
21 you that.

22 MR. LEWIS: I got June 4th. I didn't
23 get June 11th.

24 MR. BOHLING: I misspoke. It was June
25 4th.

1 MR. LEWIS: He keeps referring to June
2 11th.

3 MR. BOHLING: No, no. There's only one
4 short -- I'm not talking about that.

5 MR. LEWIS: We need to make clear, I
6 don't think it's fair to be going down this June 11th
7 trail.

8 MR. OSGOOD: When I asked him about
9 statements, you gave me the June 4th time as far as I was
10 concerned, but I thought that the witness' prep session --

11 MR. BOHLING: I'm talking about June 4th
12 right now. That is my misstatement. I apologize.

13 MR. OSGOOD: Is there a written
14 statement for the prep session that you had with him?

15 MR. BOHLING: No. I only have one other
16 question.

17 MR. OSGOOD: That's fair.

18 (The proceedings returned to open court.)

19 Q (BY MR. BOHLING) I apologize. Mr. Johnson, I
20 confused everyone because I meant June 4th. We met on
21 June 4th?

22 A Right.

23 Q That's the meeting I'm talking about.

24 At that meeting you've already told the jury
25 that you told Ms. Watterson that you did place Missouri

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1 boxes into Mr. Solomon's car, correct?

2 A Yes.

3 Q And that is what you told Ms. Watterson?

4 A I don't recall it being specific about Missouri
5 boxes, but if I said that, yes.

6 Q Okay. Now, as far as the tax returns, you don't
7 sign the tax returns for the corporation?

8 A That's correct, I do not.

9 Q And you do not make the decision about whether to
10 file tax returns? That is Mr. Parker and Mr. Solomon's
11 job at that time?

12 A That is correct.

13 Q You simply provide the information to the
14 accountant?

15 A As instructed, yes.

16 Q You are not an owner of the business?

17 A That's correct.

18 Q Now, finally, with regard to Mr. Parker and
19 legality, now, you certainly know that it's illegal to
20 sell controlled substances without a prescription?

21 A Yes.

22 Q All right. You have no question in your mind
23 about that?

24 A No.

25 Q And so if, if at any point you had thought that
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1 was happening at ANP, you would know that that was
2 illegal?

3 A Sure.

4 Q And you would have -- you would have concerns
5 about that?

6 A Sure.

7 Q And even if Mr. Parker had told you that's fine,
8 you wouldn't have believed it?

9 A No, I would not have.

10 MR. BOHLING: Nothing further.

11 MR. LEWIS: No.

12 THE COURT: All right.

13 Thank you, sir.

14 (Witness excused.)

15 MR. LEWIS: At this time, Your Honor, we
16 would call Troy Solomon.

17 TROY SOLOMON, being duly sworn, testified:

18 DIRECT EXAMINATION BY MR. LEWIS:

19 Q Would you please formally introduce yourself to
20 the ladies and gentlemen of the jury.

21 A My name is Troy Solomon.

22 Q Mr. Solomon, I'm going to ask you a -- try to go
23 through in as quick a fashion, but I don't want to rush
24 because it's very important, a little bit about your
25 background, your history so the jury can get a little bit

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1 of a picture of who you are.

2 Tell us about your formative years, born and
3 raised, through elementary school, or so.

4 A I was born and raised in Houston, Texas, in an
5 area of town called Third Ward, Texas, raised up by my
6 grandmother, had two siblings, went to elementary school
7 at Dotson Elementary.

8 Q Your two siblings, older, one older, one younger,
9 boys, girls, brothers, sisters?

10 A Two brothers, one older and one -- both of them
11 are older than I am. One was, like, two years older than
12 myself.

13 Q Okay. How long did you live with your
14 grandmother?

15 A From a baby to 16 years of age.

16 Q Is there a reason you stopped living with your
17 grandmother?

18 A Yes, sir.

19 Q Tell the ladies and gentlemen of the jury about
20 that.

21 A In 19 -- I hate talking about this. In 1978 she
22 died and my life changed after that, and my mother came to
23 let me live with her.

24 Q Did you move areas of town when you went to live
25 with your mother?

1 A Yes. We moved to an area of town called
2 Bellaire, Texas.

3 Q Now, describe in contrast to the ladies and
4 gentlemen of the jury who aren't familiar with Houston the
5 differences, socioeconomic or the like, between the Third
6 Ward and Bellaire.

7 A The Third Ward is predominantly black, known as
8 the hood, the ghetto, however you want to describe it.
9 Bellaire is upscale, million dollar homes.

10 Q Did you begin high school or middle school in
11 Bellaire?

12 A High school.

13 Q Tell us about that experience, going to high
14 school in Bellaire.

15 A Going to high school at Bellaire was a transition
16 for me in terms of coming from the area of town I grew up
17 in into that area, but I fit in and excelled.

18 Q What type of education did you get at Bellaire?

19 A I got a high school diploma.

20 Q Did you -- were you in any extracurricular
21 activities while at Bellaire High School?

22 A I played baseball and I vaguely remember -- I
23 think I was in debate or something like that.

24 Q Did you have any vocational training relative to
25 hospitals or the like?

1 A I was in the co-op program and I worked at
2 Westbury Hospital.

3 Q Is that while you were in high school?

4 A Yes, sir.

5 Q What kind of work were you doing at Westbury
6 Hospital?

7 A Respiratory therapy.

8 Q Okay. How long did you do that, Mr. Solomon?

9 A Give or take two years, two, three years maybe.
10 I don't know.

11 Q Let's get to -- you graduated from Bellaire High
12 School. What did you do after graduation?

13 A After --

14 Q Did you continue to work at Westbury Hospital?

15 A No. I graduated from Bellaire High School. I
16 stopped working at Westbury and went to work for TDC.

17 Q What year -- what timeframe are we talking about
18 here?

19 A I graduated in '82. I guess it would be '83
20 then.

21 Q Your older brothers, had they moved with you to
22 Bellaire with your mother, or were they living elsewhere?

23 A One had gotten killed. The other was still
24 living with my dad.

25 Q Okay. So it was just you and your mother when
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1 you were going to Bellaire?

2 A Yes, sir.

3 Q Did you have any significant relationships,
4 romantic relationships around the time you graduated from
5 high school?

6 A No, sir. Hold -- no, that's not true. My
7 childhood sweetheart, yes, I did.

8 Q What was her name?

9 A Andrea.

10 Q And when did you meet Andrea?

11 A Oh, I want to say '79, '80.

12 Q So while you were in high school?

13 A Yes, sir.

14 Q That's what I was driving at. I apologize. I'm
15 not asking you for specific days, months, years
16 necessarily. That's unfair to you.

17 Timeframes in this background are fine,
18 Mr. Solomon.

19 So is it while you're dating this young lady,
20 Andrea, that you started at TDC?

21 A Yes, sir.

22 Q Tell us about your job at TDC.

23 A My job at TDC was to maintain security, counting
24 inmates, things of that nature.

25 Q For the jury's purposes, what does TDC stand for?

1 A Texas Department of Corrections.

2 Q So it was the Texas prison system?

3 A Yes, sir.

4 Q How long did you work in the prison system?

5 A Approximately four years.

6 Q Where did you go from there?

7 A From there I got into the police academy, went on
8 to be a police officer for the largest school district in
9 Texas.

10 Q Let's talk about the -- what made you decide to
11 go into the police academy and be a police officer?

12 A After working in the penal system so long, I
13 wanted to know -- and after talking with inmates so much,
14 you want to know like how did you get here versus you're
15 here.

16 Q Did you plan on going into law enforcement at an
17 early age?

18 A Yes, sir. I -- I was a house kid so I watched TV
19 a lot, Gunsmoke, Rawhide, things of that nature. Now, I
20 enjoyed law enforcement -- well, I felt I really wanted to
21 be a law enforcement officer at an early age.

22 Q Did you and Andrea's relationship progress in
23 this time period?

24 A Yes, sir.

25 Q To what extent?

1 A We had a son.

2 Q Were you married?

3 A Yes -- no, sir, not at that time we weren't
4 married.

5 Q Did you become married after your son was born?

6 A Right after his birth we did.

7 Q Tell us about the birth of your son, relatively
8 when that was in this time period.

9 A That was, I want to say, '84, give or take, '83,
10 '84. I was a kid having to be a father overnight it seems
11 like.

12 Q You were still -- so '83, '84, you were just a
13 couple years out of high school?

14 A Yes, sir.

15 Q Did you and Andrea raise Donte while you all were
16 together?

17 A Yes.

18 Q What -- at this time period, '83 or '84, you're
19 getting ready to leave TDC and go into being a police
20 officer?

21 A Yes, sir.

22 Q Okay. And you said -- what police agency did you
23 go work with first?

24 A HISD, Houston Independent School District.

25 Q How long did you stay as an HISD police officer?

1 A I want to say two or three years.

2 Q Where did you go from there, Mr. Solomon?

3 A To Houston Community College Police Department.

4 Q Were you and Andrea still together at this point
5 in time?

6 A No, sir.

7 Q What happened?

8 A Andrea didn't like the big city. She came from a
9 small town, Victoria, which is, give or take, about 125
10 miles from Houston. She just wanted to go back home.

11 Q So did you all divorce at some point in time?

12 A We divorced after two years of separation, I
13 guess. I -- being that I'm a dad, I didn't want to leave
14 my son, so I was trying to work it out.

15 Q Okay. Now, you weren't able to work it out?

16 A No.

17 Q How long did you stay with the Houston Community
18 College Police Department?

19 A Fourteen years.

20 Q And what rank did you ultimately achieve before
21 leaving HCC Police Department?

22 A Lieutenant.

23 Q Why did -- did you make a decision to leave law
24 enforcement and pursue another career?

25 A Yes, sir.

1 Q And what field were you looking to pursue another
2 career in?

3 A At that time I stepped out of that job as a
4 lieutenant on faith. I told my wife it's time to do
5 something different than what I was doing.

6 Q Was that a hard decision for you, Mr. Solomon?

7 A Yes.

8 Q Why?

9 A Law enforcement is all I knew.

10 Q Now, you said "your wife." Had you gotten
11 remarried while you were working as a police officer for
12 HCC?

13 A Yes, sir.

14 Q To whom?

15 A Lucy Solomon.

16 Q And are you and Lucy still married?

17 A Yes.

18 Q How long have you been married to Lucy?

19 A Seventeen years.

20 Q Do you and Lucy have any children?

21 A Yes, sir.

22 Q How many?

23 A One.

24 Q And what's that child's name?

25 A Coby.

1 Q Let me see if I can't get this to work.

2 Is this a recent family photograph of you, your
3 wife, and your son?

4 A Yes, sir.

5 Q And I believe we can see "Merry Christmas 2009."
6 That would have been your all's Christmas card of 2009?

7 A Yes, sir.

8 Q Tell me about your relationship with your
9 youngest son.

10 A We have an awesome relationship.

11 Q How so?

12 A I call him -- I call him My King.

13 Q What type of things do you all do together?

14 A We play baseball, basketball. We do Boy Scouts.
15 We do a lot of talking to each other.

16 Q Do you still have a relationship with Donte?

17 A Yes, sir.

18 Q Tell us about that relationship.

19 A My firstborn. I talk to him quite a bit.

20 Q Does Donte live near you, or is he still in
21 Victoria?

22 A Victoria.

23 Q Let's move forward and talk about your transition
24 out of law enforcement. Did you find another job before
25 you left law enforcement?

1 A I didn't find --

2 Q Or --

3 A No, sir.

4 Q Where did you find your first job outside of law
5 enforcement?

6 A Sales with the Better Business Bureau.

7 Q What were you selling for the Better Business
8 Bureau?

9 A Their membership.

10 Q Was that inside sales, outside sales? Let us
11 know a little bit --

12 A Started out as inside sales and then it went to
13 outside sales selling ads in their magazine.

14 Q Did you enjoy that work?

15 A I loved it.

16 Q How long did you stay with the Better Business
17 Bureau?

18 A A couple years.

19 Q Where did you go from there?

20 A Selling cars.

21 Q What led you to sell cars?

22 A I was getting the car serviced and the service
23 manager seen me many times. He says, With your
24 personality, you should be here selling cars. And I said,
25 Maybe you're right, I'll try it. So I did.

1 Q And where did you start selling cars?

2 A Momentum BMW.

3 Q And is that located in Houston?

4 A Yes, sir.

5 Q How did you like that experience?

6 A I loved it.

7 Q What did you like about it?

8 A The people you meet. First month I was there I
9 don't -- he told me -- the supervisor said no one has ever
10 sold that many seven series until you got here.

11 Q Did you -- in your humble opinion did you achieve
12 success as a salesperson at Momentum BMW?

13 A Yes, I did.

14 Q Was that success acknowledged by the corporation?

15 A Yes, sir.

16 Q How was that?

17 A They put my name on a plaque.

18 Q Let me show you -- are these the plaques we're
19 talking about?

20 A Yes, sir.

21 Q It's impossible to read those plaques. Let's do
22 a little bit better. Where are those plaques?

23 A On the wall at the dealership.

24 Q In Momentum BMW?

25 A Yes, sir.

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1 Q Is that still in Houston, Texas?

2 A Yes, sir.

3 Q Those plaques still on the wall?

4 A Yes, sir.

5 Q Let's zero in on one of them. Is that a reward
6 you achieved from Momentum BMW?

7 A Yes, sir.

8 Q How long did you stay with Momentum BMW?

9 A Few years.

10 Q How many?

11 A Few years.

12 Q What timeframe are we talking about here?

13 A I know it was 2000 something, like 2000 --
14 somewhere in that ballpark.

15 Q 2000 to 2001 maybe?

16 A Yes, sir.

17 Q Where did you go after Momentum BMW?

18 A I went into pharmaceutical sales.

19 Q Now, was there a point in time between -- or
20 maybe when you were at BMW, where you also worked with
21 Fleetwood in their finance department?

22 A Forgot about that. Yes, sir, I did.

23 Q Tell us about that work.

24 A That was one of the most stressful jobs I ever
25 had in my life.

1 Q How so?

2 A When people printed an application to obtain a
3 manufactured home, I had never been inside one. I would
4 process the loan, try to get a lender to buy it, and so
5 forth and so on.

6 Q Is that how you met Cindy Martin?

7 A I met her on the phone, yes, sir.

8 Q And tell us briefly about that. What did -- what
9 part of your work at Fleetwood did she represent?

10 A She worked for a company -- I think it's CIT or
11 something like that. After submitting these applications
12 to these companies such as CIT, I recall basically some of
13 the worst credit I ever seen, like a 460, and this lady
14 was giving \$60,000 loans for some of these manufactured
15 homes.

16 **My supervisor came up to me one day and said,**
17 **Who is this lady giving you these loans? I said, I don't**
18 **really know her. I never met her, of course. They were**
19 **buying all these loans. He said, Well, you need to be**
20 **friends with her because she's making you look really**
21 **good. So I was like, okay, good. He would continuously**
22 **ask me to call her, and she would always call anyway.**

23 Q Did you all form a more substantial growing
24 relationship out of that?

25 A Yes, sir, we did.

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1 Q You working with her and getting loans for your
2 customers on a very regular basis?

3 A Yes, sir.

4 Q So is it fair to say she was a valuable asset to
5 you at that job?

6 A Yes.

7 Q How long do you recall continuing to work with
8 Fleetwood?

9 A I think it was about a year.

10 Q Did you go to pharmaceutical sales rep from
11 there?

12 A Yes, sir.

13 Q How did that come about?

14 A I think, once again, at the dealership I met this
15 lady or someone. I can't remember basically. But all I
16 know is I ran upon this company or something. They called
17 me. I think I was submitting applications. I mean, yeah,
18 something like that, submitting applications or something
19 like that. They called me.

20 Q How did you learn about them?

21 A I think -- I want to say through a rep.

22 Q Somebody you had contact with in your -- in
23 another capacity in your life?

24 A Yes.

25 Q Why did you think pharmaceutical sales rep would

1 be good for you?

2 A I didn't know. I wanted to just try it because I
3 heard so many wonderful things about it.

4 Q What had you heard about it?

5 A Basically that they gave you a car and/or a car
6 allowance, you worked from your home, travel, things of
7 that nature.

8 Q Okay. So who did you go to work with as a
9 pharmaceutical sales representative?

10 A MP TotalCare.

11 Q What type of outfit is MP TotalCare?

12 A At that time they were the largest unit dose as
13 it relates to respiratory meds in the U.S.

14 Q Did you find your prior work or experiences at
15 Westbury Hospital helpful in your job with MP TotalCare?

16 A In obtaining that job, that was very helpful.

17 Q How so?

18 A As my supervisor said to me, says, you learned a
19 lot when you were in high school, and it's -- quite amazes
20 me that you maintained that knowledge as it relates --
21 related to Albuterol and things of that nature.

22 Q Tell us about your primary job function with MP
23 TotalCare, maybe an example of a typical day.

24 A A typical day you're going to knock on, give or
25 take, 20 doctors' doors, and that's traveling all over the

1 city and/or out of the city sometimes.

2 Q The -- what hours are we talking about?

3 A I normally started at about 8:30 in the morning,
4 sometimes a little earlier, depending on where I was going
5 to work for that day, to get away from the traffic or
6 should I say to beat the traffic.

7 Q Now, you get to the doctor's office, what's your
8 primary goal or function there?

9 A Is to get to know the people at the doctor's
10 office. What we call in pharmaceutical sales, you got to
11 get past the windowage first, which is sometimes pretty
12 difficult to do, and letting them know the product that
13 you're selling and the value of that product.

14 Q Did you have success at MP TotalCare?

15 A Yes, I did.

16 Q Tell the ladies and gentlemen of the jury about
17 your success there.

18 A I was always -- seemed like I'm always blessed in
19 my life. I got to that company and just excelled. I was
20 salesman of the month seems like every month.

21 Q How long were you with MP TotalCare?

22 A I want to say four years.

23 Q What timeframe are we talking about, Mr. Solomon?

24 A I want to say like 2003, something like that. I
25 don't know.

1 Q And when did you leave MP TotalCare?

2 A I know I left in August of '05.

3 Q How do you know that?

4 A Because I got the -- a resignation letter put
5 together and I told my supervisor, whose name was Terry
6 Littlebell. He was very disappointed that I was leaving.
7 He said, What is the real reason, Troy? Just tell me.
8 Did something happen? I said, Well, Terry, I got involved
9 with this guy in a pharmacy, and I'm real suspicious about
10 what's going on at that pharmacy.

11 MR. RHODES: Objection.

12 MR. LEWIS: Let's move on.

13 Q (BY MR. LEWIS) You referenced a pharmacy. Is
14 that Ascensia?

15 A Yes, sir.

16 Q Let's switch gears.

17 Tell us the genesis of Ascensia. How did it
18 come to be?

19 A Mr. Parker -- I was at church, my wife and my son
20 and I, and Mr. Parker and some other friends that I know
21 introduced me to him, and he had two young girls with him
22 whom I came to know that those were his daughters. And he
23 just befriended me and started talking to me about
24 business ventures.

25 Q What business ventures?

1 A Pharmacies. Told me he and his wife had owned
2 one in Dallas, and I told him a couple things about myself
3 and grandmother and grandfather at the time, Alzheimer's,
4 medicine, how expensive it was. He said, Hey, I think I
5 have a way to help cut the cost down. I said, How is
6 that? He says, When you own a pharmacy, you get the --
7 how did he say -- the wholesale price.

8 **I said, Really? He said, You have good credit?**
9 **I said, Yes, I do. He said, That's all we really need,**
10 **and a little money, which I'm sure you can raise or**
11 **something like that.**

12 Q Now, was this all in the first meeting?

13 A No.

14 Q Well, give us a flavor of how long you had known
15 Philip Parker or when he starts initiating discussions
16 about opening a pharmacy.

17 A Give or take, I want to say over a six-,
18 eight-month period.

19 Q What time -- what year, what range are we talking
20 about?

21 A 2003, I want to say.

22 Q So while you were full time at MP TotalCare?

23 A Oh, yes.

24 Q What did you think about his proposal?

25 A I thought it was interesting.

1 Q Why interesting?

2 A Because my grandmother was in that situation, and
3 I let him know if I was going to even go -- even venture
4 into something like that, I had to maintain my full-time
5 job.

6 Q Why did you let him know that?

7 A Because I wanted him to know up front that I
8 loved my job and I was not even thinking about -- dreaming
9 of leaving that job because that job was very, very hard
10 to get.

11 Q What was his answer to your condition that you
12 must keep your full-time employment?

13 A He said, No problem. I have a friend, he and I
14 will run it, and you can maintain your full-time job.

15 Q Okay. So did you talk to your wife? Did you
16 jump into this?

17 A No.

18 Q Tell us about the deliberative process, if any,
19 you went through.

20 A I talked to my wife about it and her mother is a
21 double amputee. And I said, What do you think about this?
22 She said, Well, how much money you going to have to give
23 him? I said, Well, he says about 20, 25,000. She said,
24 That's all of your retirement money. I said, Well, you
25 got to step out again on faith sometimes and just let

1 things happen, and she cautioned me a little bit. But
2 then she says, Go ahead, I'm sure you'll make it work.

3 Q What type of impression did Philip Parker make
4 upon you during this getting-to-know-each-other process?

5 A A big impression. I mean, he presented himself
6 very, very well. Again, I told him a lot of things about
7 myself. He told me he was going through a divorce at the
8 time. That's why he had his little girls with him. My
9 wife goes here's a man that's trying to take care of two
10 little girls. And their hair wasn't neat. They really
11 weren't that neat. We kind of sort of wanted to help him
12 too.

13 Q Was it a good relationship?

14 A I thought so, yes.

15 Q Did Mr. -- in addition to talking about his
16 pharmacy experience, did he tell you anything about his
17 legal experience?

18 A Said he was a lawyer down on his luck and just
19 went through a hard time in his life, and I want to say
20 that was during our -- the men like they have the -- it
21 was like a men --

22 Q Men's fellowship?

23 A Yes, something like that, yes.

24 Q And was that at your regular church or a function
25 sponsored by your regular church?

1 A Yes, sir.

2 Q What church is that?

3 A New Mount Pleasant.

4 Q New Mount Pleasant Baptist Church?

5 A Uh-huh.

6 Q Located where?

7 A On Tommy Street in northeast Houston.

8 Q How long have you been a member of New Mount
9 Pleasant Baptist Church?

10 A As long as I've been married.

11 Q So at least --

12 A It's the church we got married in.

13 Q At least seventeen years?

14 A Yes, sir.

15 Q Did Mr. Parker continue to attend church and the
16 church-related services, or where were your all's
17 discussions?

18 A Church, a restaurant occasionally. I think we
19 really got deep into conversation with this after we went
20 to Lakewood one time.

21 Q What is Lakewood?

22 A Lakewood is a huge church in Houston.

23 Q Joel Osteen's parish?

24 A Yes, sir.

25 Q Why did you all go to church at Lakewood?

1 A I told him -- because he said he wanted to
2 eventually be a pastor, and I said, Man, I was visiting
3 Lakewood on a Saturday, and I said to see -- they say 18
4 to 24, 25 years old in church on a Saturday, I said it is
5 awesome.

6 Q Did you all go?

7 A We went, yes.

8 Q And is this toward the gotten a good ways into
9 knowing each other and the discussions about the pharmacy,
10 et cetera?

11 A Oh, yes.

12 Q Who came up with the name "Ascensia"?

13 A I did.

14 Q Why Ascensia?

15 A The glucometer, which MP TotalCare had diabetic
16 supplies as well, so I thought that would be a good name.

17 Q That was the name of that mechanism?

18 A Uh-huh. And it was different.

19 Q It's a unique name?

20 A Uh-huh.

21 Q How often -- how long did the -- this courtship,
22 for lack of a better word, last before you decided to go
23 ahead and jump in?

24 A Maybe a year.

25 Q And what did you understand from Mr. Parker's

1 proposal would be your title in the pharmacy?

2 A Well, again, I was to own it 50/50.

3 Q Co-owners 50/50?

4 A Yes.

5 Q Now, was he going to contribute any capital to
6 start the business?

7 A He said he didn't have any capital.

8 Q So that was part of the request he had for you?

9 A Yes, sir.

10 Q And were you able to come up with the capital you
11 all needed?

12 A Not all of it, but, yes.

13 Q How did you come up with what part of the capital
14 that you all could?

15 A My retirement money.

16 Q And how much was that roughly, Mr. Solomon?

17 A Twenty-five thousand after I took out the taxes I
18 paid on it.

19 Q So you take it out, you get beaten up on the
20 taxes a bit, but what you had left you contributed to the
21 business?

22 A Yes.

23 Q Tell us how the business got started, what was
24 the first act?

25 A He came up with this location on Harwin Street.
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1 It was pretty much in an industrial type setting for the
2 most part and I questioned him. I said, How you going to
3 get your patient base to come down here?

4 Q Explain a little bit the industrial part and
5 Harwin. What do you mean by that for the ladies and
6 gentlemen of the jury?

7 A There's -- it's not a place like regular shopping
8 and where a lot of people just walk in. It's just a --
9 pretty much an industrial type area where you -- like
10 people go buy little trinkets and stuff like that.

11 Q Like a market or discount bizarre type place?

12 A Yes, like that.

13 Q Were there any other pharmacies, doctors'
14 offices, or medical type businesses in the area?

15 A No.

16 Q Did you all finally find a more suitable area for
17 a pharmacy?

18 A I told him that I had met Pleshette Johnson and
19 Ada Johnson and that they were in this nice bank building,
20 and there was a beautiful glass office there that was
21 available.

22 Q Did you go look at it with Parker?

23 A Sure.

24 Q What was his reaction?

25 A He liked it.

1 Q So what did you all do as a result?

2 A We went over to the leasing office. He says, I'm
3 going to need you to fill out these papers because I can't
4 be on the credit -- I mean, on the application because
5 I've got bad credit, something like that. I said, Okay,
6 no problem.

7 Q So you filled out the tenant information?

8 A Uh-huh.

9 Q Did you all get the lease on the place?

10 A We did.

11 Q When was that?

12 A '04.

13 Q Do you remember about what time that you -- did
14 you get at least --

15 A We signed the lease. I don't know exactly what
16 month it was, but --

17 Q There's a signed lease reflecting when you got
18 it, right?

19 A Sure.

20 Q What was the next step in starting the pharmacy?

21 A He was -- brought Mr. Johnson to do the buildout.

22 Q Had you met Mr. Johnson prior to Mr. Parker
23 introducing him to you?

24 A No.

25 Q Where was he introduced to you?

1 A At the building.

2 Q At the site there?

3 A Yes, sir.

4 Q Go ahead and for the record give us the site, the
5 address.

6 A 3003 South Loop West.

7 Q And when we talk about South Loop West, there is
8 a 10-mile radius circle that goes around the --

9 A The 610 Loop.

10 Q Around Houston?

11 A (Witness nodded head.)

12 Q Correct?

13 A Yes, sir.

14 Q The South Loop, we would refer to the south side
15 of Houston, correct?

16 A Yes, sir.

17 Q And the direction east or west refers to what
18 side of the freeway you're on?

19 A Yes.

20 Q All right. So --

21 A Can I get some water, please?

22 MR. LEWIS: Certainly. May I approach
23 the witness, Your Honor?

24 THE COURT: Yes.

25 THE WITNESS: Thank you.
 1083

1 Q (BY MR. LEWIS) Good?

2 A Thank you.

3 Q What did you understand Mr. Johnson's function
4 was going to be as it related to Ascensia Pharmacy?

5 A Per Mr. Parker, Mr. Johnson was going to build
6 the facility out, and he would stay on and assist him in
7 running it.

8 Q You met Mr. Johnson. What was your impression of
9 him?

10 A Very nice guy and he could build things. He
11 could build something. I was kind of impressed with that
12 because I can't build anything.

13 Q Did you get to see the labors of his work, that
14 is, did that site look like a pharmacy before you all
15 leased it?

16 A No.

17 Q Did you get permission from the owner to build it
18 out as a pharmacy?

19 A Yes, sir.

20 Q How long did that take?

21 A A couple of months.

22 Q Were you pleased with Mr. Johnson's work?

23 A Yes, sir.

24 MR. LEWIS: May I approach the witness,
25 Your Honor?

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THE COURT: Yes.

Q (BY MR. LEWIS) I'm going to show you what I've marked for identification purposes as Defendant Solomon's Exhibit No. 7.

Would you quickly glance through these, Mr. Solomon, and ensure that you're familiar with the contents of Solomon Exhibit 7.

A Yes, I'm familiar.

Q And what do the pictures within Solomon Exhibit 7 depict?

A The floor that the pharmacy is on.

Q Okay. So within here we can see what other businesses?

A You have the congressman office, a behavior center --

Q Behavioral center, let me stop you there.

Is there a doctor associated with that?

A Yes, sir.

Q Who was that doctor?

A Oh, God, what is -- they have so many doctors coming and going out of there all the time, I can't remember now.

Q It's okay. But without the specifics we've heard testimony about some -- I think from Ms. Zapata about children with ADHD or the like, Adderall prescription.

1 A Yes.

2 Q Is that the source of that business?

3 A Yes, sir.

4 Q What other offices are there in your all's floor?

5 A You have the Johnsons, whom did pain management,
6 rehabbing as well. You had an OB/GYN. You had a home
7 healthcare.

8 Q I'm going to show you one of the pictures from
9 Solomon Exhibit 7. Tell the ladies and gentlemen of the
10 jury what that is.

11 A That is the pharmacy.

12 Q That's the front waiting area through the glass
13 doors?

14 A Right when you get off the elevator, that's what
15 you see.

16 Q Okay. And let's look here at the -- what is
17 depicted within this picture contained in Exhibit 7?

18 A That is the front of the building.

19 Q Now, you said previous pictures, the view when
20 you step off the elevator, is that where we're talking
21 about?

22 A Yes, sir.

23 Q So the pharmacy is -- of all these businesses on
24 the same floor, the pharmacy is closest to the elevator?

25 A Yes, sir. It's the focal point as soon as you
1086

1 get off the elevator, that's the -- what I was saying to
2 Mr. Parker, that would be an ideal place.

3 Q For efficiency sake, we will leave the rest of
4 the picture viewing at the discretion of the jury.

5 So we get the buildout done?

6 A Uh-huh.

7 Q Do you ever have a conversation with Mr. Parker
8 about the need to outsource or supply the pharmacy at the
9 beginning?

10 A He came to me one day after I was visiting. I
11 was bringing Ada Johnson and her daughter some Nebulizers.
12 I said, Hey, if you ever get some patients that need
13 respiratory meds or something, here's some Nebulizers.
14 She took them. And he came to me and said, During your
15 travels, if you run upon -- I used to, of course, because
16 a lot of things were going on in Houston at that time with
17 prescriptions, and he said these doctors did not want
18 their prescriptions messed with or something like that.

19 Q Hold it. A lot of information there.

20 You have a -- you're talking about a
21 conversation with Philip Parker at the pharmacy?

22 A Yes.

23 Q When?

24 A I want to say while Delmon was doing the
25 buildout.

1 Q So the buildout still happened in the fall of
2 '04?

3 A Uh-huh.

4 Q Tell us about what you mean by "problems with
5 prescriptions in Houston." I think it's a very important
6 point for the jury.

7 A Well, you had people, like, changing the numbers,
8 as he said, or changing the prescription itself or things
9 of that nature, as he explained to me.

10 Q Were there a large amount of reports in the media
11 --

12 A Yes.

13 Q -- television, paper, et cetera, about this
14 prescription fraud problem?

15 A Well, being that -- I read the newspaper all the
16 time. I'm not a TV person. I read a lot. And I said to
17 him, I've been seeing a lot of that so I understand that.

18 Q So what came of that?

19 A He walks in one day, had these prescriptions, and
20 mentioned that to me, and it just so happened Cindy Martin
21 had called. She's -- of course, she was in sales. She's
22 having one of her days, and she says, I need my little
23 motivational speech this morning. So I talked with her.
24 And she says, I'm just having a bad day, and I think she
25 said she was either going to lose her job or something

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1 like that was getting ready to happen. I don't recall
2 exactly. But I mentioned this to her.

3 Q Let me ask you this: Did you know from your
4 relationship with Cynthia Martin that she was a registered
5 pharmacy tech?

6 A No, I didn't know that.

7 Q Did she tell you about that during this
8 conversation?

9 A Yes, she did.

10 Q What did she tell you?

11 A She says -- I was telling her what Mr. Parker
12 told me. She said, Yeah, I can believe that kind of stuff
13 can go on or something like that, and I said, Well, this
14 is what he told me. During your travels if you run up on
15 someone or whatever, this is what he's saying to me.

16 Q So you kind of enlisted another traveling
17 salesman -- let's first clarify your relationship at this
18 point in time.

19 You all had been closer, remained friends, or
20 what stage of your all's relationship are you in?

21 A We're in -- we're just remaining friends.

22 Q Okay. So still close friends, talking a lot?

23 A Uh-huh.

24 Q What is her --

25 THE COURT: Let me interrupt. This
 1089

1 sounds like a good place to stop; does it not?

2 MR. LEWIS: Perfect.

3 THE COURT: Why don't we go ahead and
4 take a lunch break at this time, and we'll report back
5 about 10 or 15 after and be ready to go.

6 I'll ask that you not discuss the case among
7 yourselves or with others or allow anyone to discuss it in
8 your presence.

9 We'll stand in recess.

10 Thank you.

11 (The noon recess was taken.)

12 AFTERNOON SESSION

13 (The following proceedings were had in the
14 presence of the jury:)

15 TROY SOLOMON, previously being sworn, resumed the stand:

16 DIRECT EXAMINATION (continued) BY MR. LEWIS:

17 Q Okay. Before the lunch break we had gotten into
18 your conversation with Ms. Martin in which you had brought
19 up the subject Mr. Parker had asked you about. You
20 remember what I'm talking about?

21 A Yes, sir.

22 Q Okay. What was the outcome of your conversation
23 with Ms. Martin?

24 A She said she would try to find someone. She was
25 interested because she was trying to find herself a

1 position in sales somewhere. Once again, I think she had
2 just lost her job or was getting ready to lose it or
3 something like that. I don't recall exactly what was
4 going on.

5 Q Okay. And did she ever introduce you or make any
6 introduction to Pharmacist Rostie?

7 A Yes, via phone.

8 Q Have you ever met Pharmacist Rostie in person
9 prior to her testimony here in the courtroom?

10 A No, sir.

11 Q Let's backtrack. How soon after you speak with
12 Ms. Martin about Parker's request do you hear back from
13 her or Pharmacist Rostie?

14 A Give or take, two, three weeks.

15 Q And tell us about that conversation.

16 A She calls me back and she says, I think I found
17 someone, and I'm going to work for her as a sales rep and
18 I'll get commission off this. I said, Well, good for you
19 because I said, I have no real interest in this, so
20 understanding that this is just, you know, your thing.

21 Q Did she actually put you in touch with Pharmacist
22 Rostie?

23 A Yes.

24 Q And what was -- tell us about the substance of
25 the conversation you had with Rostie.

1 A Ms. Rostie and Cindy called me, I'm assuming from
2 The Medicine Shoppe, on my cell phone, and I began to tell
3 her same thing I told Ms. Martin. And I said to
4 Ms. Rostie, Make sure that everything is legit, and she
5 said, Oh, that's no problem at all.

6 Q Did you ask her about the propriety of an
7 out-of-state pharmacy supplying or filling prescriptions
8 for someone in another state?

9 A I sure did.

10 Q What did she tell you about that?

11 A She said, Troy, Cindy told me you worked for MP
12 TotalCare. I said, I do. She says, You all fax
13 prescriptions all over the world, right? I said, Yes.
14 She says, Same thing. I said, You're right. I didn't
15 think about it like that. I said, You're right.

16 Q Did you communicate back to Philip Parker that
17 you had indeed found a pharmacist or pharmacy that was
18 willing to fill the needs he was asking you about?

19 A Yes, I did.

20 Q Did he establish a protocol with you of how you
21 would communicate with the pharmacy, et cetera?

22 A Yes, he did.

23 Q And what was that?

24 A Basically would tell me what to tell them, and
25 then they would tell me to -- I would convey that back and

1 forth.

2 Q So you were the middleman?

3 A Yes.

4 Q Did there come a time when -- or how long after
5 this conversation you had with -- initially with
6 Pharmacist Rostie did ANP begin sending requests to have
7 pharmacy -- to have prescriptions refilled?

8 A I don't remember exactly how long, but --

9 Q Short timeframe, long timeframe?

10 A I think it was a short time.

11 Q Did Philip Parker -- at this point in time, just
12 to orient us, were you still working full time for MP
13 TotalCare?

14 A Yes, sir.

15 Q Did there come an occasion where Mr. Parker would
16 come to your home where you lived with your wife and your
17 child and ask to use your office?

18 A Sure.

19 Q Tell us about that.

20 A There was a number of occasions that he would
21 just show up like 9:30, ten o'clock, and, of course, I'd
22 be sitting there doing my paperwork.

23 Q What paperwork?

24 A My -- excuse me. My log, the doctors I seen that
25 day, my mileage, things like that.

1 Q Did you have a lot of work to do for MP TotalCare
2 outside of the 9 to 5 hours?

3 A Oh, yes.

4 Q And was that paperwork?

5 A Paperwork.

6 Q Tell us briefly about how you would accomplish
7 that.

8 A At night after my son would go to bed, my wife
9 would go to bed, I'd sit there and do my reports, again,
10 my mileage log, stuff like that.

11 Q So did you have a home office with a fax machine,
12 computer, printer, et cetera?

13 A Yes, sir.

14 Q Would you allow Mr. Parker, when he would come
15 over to your house in the evening, to utilize those
16 facilities?

17 A When he would come over, I would tell him, I have
18 got to get my work done, but you're more than welcome to
19 use my house. Those were the words basically.

20 Q Did you put a stop to him coming over?

21 A Eventually I did.

22 Q Why is that?

23 A My wife kind of sort of got upset a couple of
24 times. She didn't like the idea that he would just show
25 up like that without calling. She thought it was

1 disrespectful, things of that nature.

2 Q Okay. So what did you do as an alternative?

3 A I had said to him, Let me just come to the store
4 and I'll do it up there.

5 Q Okay. So did there become a time where
6 Mr. Parker would give you items that he wanted faxed or
7 delivered to Kansas City or to Belton, Missouri, to The
8 Medicine Shoppe?

9 A Sure.

10 Q Would you do that?

11 A Sure. I told him I said, We have an account with
12 the UPS store, and I said you're more than welcome to use
13 that provided you pay the bill.

14 Q Were there occasions Mr. Parker would ask you to
15 fax materials to Belton, Missouri, to The Medicine Shoppe?

16 A Yes.

17 Q And did you do that?

18 A I sure did.

19 Q Why?

20 A He asked me to do it, and Ms. Rostie assured me
21 it was legal.

22 Q Okay. Now, the packages that are delivered to
23 Belton, Missouri, not faxes but actual packages, did you
24 assist in taking packages to the UPS store and having them
25 sent up there on your account?

1 A Sure.

2 Q At whose direction?

3 A Mr. Parker.

4 Q What did he tell you or what did he explain that
5 he needed help with?

6 A He said, I'm going to school, something like
7 that, or leaving town. He would always say he was in and
8 out of here or something like that, but if you don't mind,
9 just take this over to the UPS store -- he was coming to
10 my house still at that point -- and mail it to Missouri.

11 Q So you did?

12 A Sure.

13 Q Would these packages that you were mailing to
14 Missouri -- please describe to the ladies and gentlemen of
15 the jury size, appearance, et cetera.

16 A They started out as these little brown envelopes,
17 kind of big in size, but all taped up. Then he started
18 going through the boxes, and they would be taped up as
19 well.

20 Q Were they already addressed?

21 A No.

22 Q You'd have to address them?

23 A I would get the UPS guy to put the label thing on
24 there.

25 Q All right. And were the packages -- did you ever
1096

1 have any unopened packages that you packaged yourself and
2 sent to Missouri?

3 A No. They were already ready to go.

4 Q Okay. Did there come a point in time when you
5 transitioned from full-time work at MP TotalCare and took
6 a greater role, greater than helping out in any of these
7 Parker requests, at Ascensia?

8 A Yes.

9 Q When was that?

10 A After August of '05.

11 Q What led to that?

12 A My suspicions about what was going on in the
13 store. I wanted to be there to physically see what was
14 going on instead of someone just telling me.

15 Q What were your suspicions?

16 A Well, I got a letter in the mail from the
17 building manager about so many people coming and going. I
18 confronted them about that.

19 Q Wait a minute. A letter from what building
20 owner?

21 A The building management where Ascensia Pharmacy
22 is located.

23 Q Okay. Where did you receive the letter?

24 A To my house.

25 Q Did that surprise you?

1 A Yes.

2 Q Why?

3 A Because I'm like why am I getting this here at
4 the house? Why shouldn't I be getting that at the office
5 over there?

6 Q Now, in fairness when you filled out the original
7 lease application with the owner, did you have to give
8 them your home address as well?

9 A Yes.

10 Q What did the letter say?

11 A That we had a large amount of people coming and
12 going daily and they were hanging around, things of that
13 nature.

14 Q What did you do about that?

15 A Well, I went over to the store, and I asked
16 Mr. Parker about that. He said that's all part of the --
17 of doing business.

18 Q What was your reaction?

19 A I said, Okay. But what are you going to do to
20 curtail some of this so the building management won't get
21 all upset and start sending these certified letters out
22 like this? And he said, I'll handle it.

23 Q Any other suspicions or areas of concern for you
24 around this time in August of '05?

25 A There were -- what do you call it like when you
1098

1 get the -- you pay -- you don't pay your -- like
2 insufficient -- like the bank sends you --

3 Q Insufficient check notice?

4 A Yes. I started seeing those. He would hurry up
5 and put them in his pocket, and I would ask him about it.
6 He says, Oh, I'm handling this, don't worry about this. I
7 said, That's my credit and I don't mess around with my
8 credit.

9 Q Pause. Where would you see these insufficient
10 check notices?

11 A Laying on Delmon's desk.

12 Q Did they stand out for some reason?

13 A Yeah. They were pink.

14 Q Did you speak to Delmon about it or just Parker?

15 A Just Parker.

16 Q Did he have any explanation other than "I'll take
17 care of it"?

18 A No. That was it.

19 Q What reaction or what was your thought process
20 after this discovery?

21 A I'm thinking we're established now and I know I
22 never took money from here, and it was just those two. So
23 where is this money going, and why isn't he putting it in
24 the bank?

25 Q Were you surprised that there would be
1099

1 insufficient funds given what you thought the business of
2 the pharmacy, the revenue, was?

3 A Yes.

4 Q What did you do about that?

5 A I talked to Philip about it. He told me that he
6 was going to school, he got a little lax here or there,
7 something like that, but it was being handled. He was
8 handling it.

9 Q Did that satisfy you?

10 A At the time it did.

11 Q Okay. Did anything happen subsequently that
12 furthered your suspicions? Let me ask you this way.

13 In those discussions with Parker about the
14 revenue, et cetera, did you ever have an opportunity to
15 examine the books of Ascensia?

16 A No. I never did ask for the books, per se, until
17 -- I don't know exactly what time of the year it was, but
18 I wanted to see some type of financial report. And I
19 asked Philip for it, and he said, I got it coming to you,
20 don't worry about it. That went on for a couple of weeks.
21 Then I really started asking over and over again until he
22 just produced it.

23 Q What did he produce?

24 A The tax information.

25 Q What did you do with that information?

1 A First of all, I was floored to see the amounts of
2 money that the store had generated. Then I took all of
3 these documents, and there were a lot of documents, over
4 to a tax person whom -- a friend of mine referred me to.

5 Q Who was that person?

6 A His name was David Fisher.

7 Q And from that point forward, have you, Ascensia,
8 you personally used that accountant to do your tax
9 returns?

10 A Yes.

11 Q Let's get this out of the way while we're here.

12 Beginning in the timeframe of, let's just start
13 in 2005, have you and your wife filed your taxes every
14 year?

15 A Yes, sir, with the exception of this year, I
16 think.

17 Q Okay. Let's just cover 2005 through 2008 then.

18 You and your wife file your taxes?

19 A Yes.

20 Q Who did you use, what accountant did you use to
21 prepare them?

22 A David Fisher.

23 Q At my request did you bring me -- did you go see
24 Mr. Fisher and get a copy of your tax returns?

25 A Yes, sir, I did.
 1101

1 Q Did you give them to me?

2 A Yes, sir.

3 Q I'm going to show you what I've marked for
4 identification purposes as Defendant Solomon Exhibit No.
5 10, ask you to take a look through quickly Defendant
6 Solomon 10. Tell me if you recognize those.

7 A These are our tax returns.

8 Q Are they the tax returns you retrieved from your
9 accountant's office at my request?

10 A Yes, sir.

11 Q Are you aware of whether or not I made a copy and
12 gave them to the government?

13 A I'm not aware of that.

14 Q Okay. In that same vein, show you what's been
15 marked for identification purposes as Exhibit No. 11. Did
16 I also request that you get all of the copies of your
17 filed tax returns for Ascensia?

18 A Yes, sir, you did.

19 Q Did you do that for me?

20 A I sure did.

21 Q When did you give them to me? Yesterday?

22 A Yesterday.

23 Q Look through there, make sure that's what they
24 are.

25 A Okay.

1 Q Okay. Let's jump back to you take these for the
2 year of 2005, I guess, you take some materials to -- might
3 have been for the year '04, but you took these materials
4 to David Fisher?

5 A Yes, sir, I did.

6 Q Did you have a conversation with Mr. Fisher?

7 A I sure did.

8 Q What did you do as a result of that conversation
9 with Mr. Fisher?

10 A After speaking with Mr. Fisher, he was familiar
11 with Philip Parker. He said, Troy --

12 MR. RHODES: Objection, hearsay.

13 THE COURT: Sustained.

14 Q (BY MR. LEWIS) Stay away from anything Mr. Fisher
15 told you.

16 My question was specific, what did you do in
17 reaction to your conversation with Mr. Fisher?

18 A Got rid of Philip Parker.

19 Q How did you do that?

20 A By, as Mr. Fisher said, closed the back door of
21 the corporation, whatever that means.

22 Q Okay. And by closing the back door of the
23 corporation, what did you do?

24 A I wrote Mr. Parker a letter stating that he was
25 no longer needed at the pharmacy.

1 Q And let me show you in Solomon Exhibit 5, I'll
2 turn to the next-to-last page and ask you if in fact that
3 is the letter?

4 A That is the letter.

5 Q And that's the same letter we displayed during
6 Mr. Johnson's testimony?

7 A Yes, sir.

8 Q Did you ever hear back from Philip Parker after
9 that?

10 A No, sir.

11 Q Did you still see him around from time to time?

12 A I didn't but I was told he would come around
13 every now and then.

14 Q When you say "come around," where are we talking
15 about?

16 A By the pharmacy.

17 Q Did you have to have the locks changed, et
18 cetera?

19 A I did eventually. I didn't think about it in the
20 beginning but I did -- eventually I did.

21 Q Did it come to your attention sometime long after
22 you had written this letter to Mr. Parker that he had in
23 turn written a letter to the Texas Pharmacy Board?

24 A I learned that maybe a year ago.

25 Q Okay. And in that -- contained within Solomon
 1104

1 Exhibit 5 you have seen the letter that Philip Parker
2 wrote to the board of pharmacy, correct?

3 A Yes, sir.

4 Q In which he references your letter to him asking
5 for his immediate resignation?

6 A Yes, sir.

7 Q Did it strike you as odd that it took him so long
8 to notify you or the pharmacy board of this?

9 A Very much so.

10 Q Had you already notified the pharmacy board of a
11 change in ownership?

12 A No.

13 Q Let's talk about that. The original
14 incorporation documents, the registration with the board
15 of pharmacy, et cetera, who handled that?

16 A He did.

17 Q Why is that?

18 A Because he knew all the ins and outs of that.

19 Q Did you trust that he followed the rules,
20 regulations, et cetera, based on your conversations with
21 him?

22 A Yes, sir.

23 Q As the pharmacy was a going concern, that is, it
24 was open, after the buildout, prior to you kicking Parker
25 out, did you all have regular audits by the Texas Board of

1 Pharmacy?

2 A I think so, but I'm not for sure.

3 Q Well, in fairness to you, you weren't there, but
4 were you ever notified by Parker or Solomon [sic] that in
5 any of the pharmacy inspections the state board of
6 pharmacy had any problem with Ascensia?

7 A No.

8 Q If you had been, would that have raised a red
9 flag to you?

10 A Of course.

11 Q Now, we heard Pharmacist Pham testify about some
12 discussions you all had about the Okose situation in '05.
13 Do you recall her testimony?

14 A Yes, sir.

15 Q Did you in fact instruct her when she questioned
16 you about Okose, to check it out, to talk to him, to visit
17 Okose?

18 A Sure. I told her to do her job.

19 Q And did you ever in your suspicions go to
20 investigate the Okose clinic?

21 A Yes. I passed by his address.

22 Q Why did you do that?

23 A Because of the large amount of prescriptions, the
24 volumes that he had.

25 Q So what did you do?

1 A I drove by.

2 Q You went to the address listed on the scripts?

3 A Yes, sir, I did.

4 Q Had you ever met Okose?

5 A No.

6 Q Who had the relationship with Okose?

7 A Philip Parker.

8 Q How did Philip Parker describe that relationship?

9 A He just said he had known this guy for quite some
10 time.

11 Q What did you see when you went to Okose's clinic?

12 A I saw a large number of people and cars in the
13 parking lot.

14 Q Were you in fact satisfied that, yeah, looks like
15 this guy has got a real, booming business?

16 A I said, This looks like a legitimate practice
17 going on over here.

18 Q I'm going to turn your attention to a few
19 discrete items that have come to light during this trial
20 and ask you for your position on these items with these
21 ladies and gentlemen of the jury.

22 Now, you heard testimony about May 3rd, 2006,
23 and the chart regarding the phone calls you made on that
24 day?

25 A Yes, sir.

1 Q What were you doing in the phone calls that the
2 government has shown these ladies and gentlemen?

3 A Whomever called me, I returned their phone calls.

4 Q Okay. Did you in turn call some other people
5 once you learned there was a search going on at your
6 pharmacy and searches at South Texas Wellness Center, et
7 cetera?

8 A I might have. I can't remember but probably did.

9 Q Well, were you concerned?

10 A Of course.

11 Q Did you want to find out what was going on?

12 A Of course.

13 Q We have seen in evidence of the 1,200 or so
14 exhibits, there are a couple of handwritten examples where
15 Pharmacist Rostie's name is written as Rostic,
16 R-o-s-t-i-c. Do you recall that?

17 A Yes.

18 Q Now, did you ever refer to Pharmacist Rostie as
19 Rostic?

20 A No.

21 Q And you talked to her or corresponded with her
22 and her people quite a few times; is that fair?

23 A Yes, sir.

24 Q No confusion in your mind about her name, was
25 there?

1 A No, sir.

2 Q You recall Ms. Zapata testified in response to
3 the government's question about an occasion where you all
4 were riding around, went to a less desirable part of
5 Houston, and she alleges you took a box out of the car you
6 were driving and gave it to another man. You remember her
7 saying that?

8 A Yes, sir, I do.

9 Q Do you recall that ever happening?

10 A She'd never been in my car, no.

11 Q Well, I'll --

12 A That did not happen.

13 Q Fair enough.

14 Let's loop back to this notice from the owner of
15 the building, the location there on the South Loop West,
16 your pharmacy. The landlord -- did you confront Parker
17 about why you were getting this notice and it's never come
18 up, no one's told him about it?

19 A Sure, I did.

20 Q What was his explanation?

21 A It's just the nature of the business.

22 Q Had -- did he -- had he ever received such a
23 letter at the pharmacy?

24 A Per the building management?

25 Q Correct.

1 A They said that they did send a letter to the
2 store.

3 Q Did you confront him about that?

4 A I did.

5 Q What was his reaction?

6 A That he never got that letter.

7 Q Did you find that hard to believe?

8 A Of course, I did.

9 Q One of the other discrete areas I want to ask you
10 about, do you recall having a conversation with Lillian
11 Zapata regarding some concerns she was having about people
12 coming to the pharmacy after hours?

13 A No.

14 Q Now, at some point in time, it may have been
15 after Pharmacist Pham has left Ascensia's employ or
16 another time, but I want to ask you about was there an
17 occasion when you, yourself, met with one of the
18 inspectors from the pharmacy board who was there on a
19 routine visit?

20 A Yes.

21 Q Did you have occasion to ask this pharmacist
22 about a replacement pharmacist, that you all were kind of
23 in a bind and you had ads out and did she know anybody?

24 A She -- yes. That was the night that our
25 pharmacist that -- I think he died and she showed up the

1110

1 next morning, and she says, I know plenty of pharmacists.
2 I said, We're in dire need of one, and she said, Okay. So
3 she called a young lady. The young lady came over.

4 Q The next day?

5 A Same day.

6 Q Same day. Okay.

7 Now, again, I don't want you to talk about
8 anything that lady might have said, but this relief
9 pharmacist that the board inspector recommended, did you
10 have conversations with her about Parker's relationship
11 with Okose and Okose's prescription habits?

12 A No, I didn't.

13 Q Did you have conversations with this pharmacist
14 that led you to consult an attorney?

15 A She told me I needed to.

16 Q Did you?

17 A I did.

18 Q Timeframe?

19 A Couple of weeks, give or take. After he left, it
20 wasn't long thereafter that she came and inspected the
21 store.

22 Q Okay. So it would have been the late fall of
23 '05, October or --

24 A Somewhere in that ballpark. It was -- let's say
25 -- no. It was three weeks after he left.

1111

1 Q Okay. After that point in time did Ascensia fill
2 any more Okose prescriptions to your knowledge?

3 A I don't remember.

4 Q Do you recall that irrespective of exactly what
5 date it was, the Okose prescriptions stopped?

6 A I don't know if they stopped. I know the volume
7 went down.

8 Q And that's what I meant. May not have
9 necessarily been all the patients. But the 150-a-day
10 stuff that was going on while Parker was running the
11 pharmacy, that stopped?

12 A Oh, that stopped.

13 Q Around this timeframe, correct?

14 A When he left, yes.

15 Q Mr. Solomon, relative to -- you understand the
16 charges the government has levied against you, correct?

17 A Yes, sir.

18 Q The unlawful diversion of prescription
19 medication, that is, prescriptions that are supposed to go
20 to patients are not going there but being diverted
21 illegally to other folks. You understand that?

22 A Yes, sir.

23 Q I want you to look at the ladies and gentlemen of
24 the jury and tell them if you are at all guilty of
25 conspiring to do such a thing?

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1 A No. I would never do anything like that ever.

2 MR. LEWIS: Your Honor, may we approach?

3 THE COURT: Yes.

4 (Counsel approached the bench and the following
5 proceedings were had:)

6 MR. LEWIS: I would pass the witness
7 conditional to I have -- I want to alert the court to what
8 I think is going to be a potential issue. The government
9 claims we -- I learned yesterday at 2 p.m. by consulting a
10 tax preparer that they did in fact file these taxes, and I
11 -- in an effort to come to know these gentlemen a little
12 bit and trust they play fairly, I know that they are aware
13 of my concern. I gave them the tax preparer's
14 information, phone numbers, and stuff this morning.

15 Somebody, I'm afraid, has made a mistake and I'm
16 not pointing fingers. It may be innocent, but I've
17 tracked these EIN numbers of the corporation. They're the
18 same on each return, and the government has made a very
19 strong suggestion by direct statement that Solomon didn't
20 file these taxes. As such to rebut that --

21 THE COURT: You mean file the returns?

22 MR. LEWIS: That's right.

23 MR. BOHLING: Your Honor, the only one
24 that is actually an issue, he didn't -- we -- the only one
25 that's in issue is the 2005 tax return. We checked with

1113

1 the IRS, and from what we can garner, it was not filed
2 with them in 2005, the Ascensia return.

3 MR. LEWIS: That's why I gave them this
4 tax preparer's information, the phone number, et cetera
5 because I, as an officer of the court, have absolutely no
6 doubt these were in fact filed. The problem is once he
7 sends the original off, we don't have it. The best
8 Mr. Solomon can do is get the copy his preparer says he
9 filed, and I plan to introduce these into evidence to
10 complete the picture. But in fairness to the government,
11 that's why I've given them the information, let them
12 interview this guy.

13 If this guy is lying to us, that's his own
14 problem, but I don't think he is. I think what has
15 happened these tax returns were filed in the name of LP,
16 Inc., the parent corporation that Mr. Parker set up. As a
17 sub of that, they have a DBA, Ascensia Nutritional
18 Pharmacy. I don't know if that search or something,
19 somebody put in the wrong letters, numbers, and I'm
20 willing to give them the benefit of the doubt that
21 happened. But the fact of the matter remains the
22 suggestion to the jury that they didn't file taxes is not
23 true.

24 MR. BOHLING: It is true.

25 MR. LEWIS: Your records -- whoever is
1114

1 running them indicate that he didn't, but we've got a CPA
2 who -- and, frankly, I went about this by contacting folks
3 that I know who work for IRS, CID, Criminal Intelligence
4 Division, in Houston and said let's look into this, let's
5 look into Fisher before I go down this trail because I
6 spent a lot of time with these ladies and gentlemen
7 Friday, Saturday, and Sunday getting it straight.

8 I have no doubt. I wouldn't bring it up if I
9 had any doubt these were filed. The only way these
10 weren't filed is if this tax preparer has lied to me
11 through Mr. Solomon, et cetera. Houston IRS, CID says
12 there's never been a complaint against this gentleman.
13 They've got him on record of being in business 37 years.
14 That's why I gave them the information so they could check
15 it out to their own satisfaction.

16 I'm not trying to make a big dustup because
17 there doesn't need to be one, but I intend to put these in
18 evidence. In fairness to Mr. Solomon, there's
19 corroboration of what he said. He did file his taxes.

20 They're welcome to come back and explain, Okay,
21 we've done a search and they -- arguably so they weren't
22 filed. But to me that goes more to than anything else --
23 I think in fairness to their suggestions, we ought to be
24 able to give Mr. Solomon some cover of explanation that he
25 -- you heard Mr. Johnson's testimony too. He understood

1 the taxes were filed as well.

2 MR. BOHLING: If I can say the search,
3 according to the IRS, and we talked to them this morning,
4 was by EIN number, so that 2005 should have popped up.
5 What they told me is they can't do a second search unless
6 the court orders it. I would ask the court if you would
7 orally order now that the IRS go do an ex parte search,
8 that they could do a second search of the records. I'd be
9 happy to have them do it, do it pretty quickly.

10 MR. LEWIS: I'm happy to hold off on
11 doing any of this.

12 THE COURT: Let's do that.

13 MR. BOHLING: Okay. I will tell them
14 you so ordered.

15 MR. LEWIS: Thank you, Your Honor.

16 (The proceedings returned to open court.)

17 MR. LEWIS: We will pass the witness,
18 Your Honor, to Mr. Osgood.

19 MR. OSGOOD: Oh.

20 CROSS-EXAMINATION BY MR. OSGOOD:

21 Q Mr. Solomon, when did you first meet Dr. Elder?

22 A Are we talking about what year?

23 Q Yes, sir. First time you met him.

24 A I think sometime in '05.

25 Q Sure it wasn't '04?

1 A It could be '04. I'm not sure.

2 Q You remember the setting?

3 A It was Pleshette and Ada's clinic.

4 Q Okay. Now, you know he was hired as the
5 part-time physician there?

6 A Yes, sir.

7 Q And did you deal with him directly on a
8 day-to-day basis or have anything to do with him as far as
9 prescriptions being filled or anything?

10 A No.

11 Q Did you keep track of the patients he saw, or
12 were you involved in that in any way?

13 A No, sir.

14 Q Now, the prescriptions that he filled, were you
15 aware that or did you know that Ada and Pleshette Johnson
16 were keeping the originals in a file up in the filing
17 area?

18 MR. BOHLING: Objection.

19 A No, sir, I wouldn't know that.

20 MR. BOHLING: There's no factual basis
21 for that.

22 THE COURT: Approach the bench, please.

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. BOHLING: I don't know if the
1117

1 question was meant to be asked that way, but there's no
2 factual basis in the trial for where the originals were
3 kept. Copies may have been kept. Originals were given to
4 the patients.

5 MR. OSGOOD: She retrieved the originals
6 and then later mailed them herself. Either she or some of
7 these people mailed them without his knowledge to Kansas
8 City. Martin mailed some --

9 MR. BOHLING: There's no testimony --

10 MR. OSGOOD: You've got testimony that
11 Martin mailed some and the fact they showed up here.

12 THE COURT: Are you talking about the
13 prescriptions?

14 MR. OSGOOD: Yes, Your Honor. The
15 original prescriptions showed up in Missouri. He wrote
16 the prescription, sent the patient out the door, and the
17 patient went --

18 THE COURT: He said he doesn't know
19 about it.

20 MR. OSGOOD: No. I'm happy with that
21 point too, that he doesn't know about it.

22 (The proceedings returned to open court.)

23 Q (BY MR. OSGOOD) So to clarify, you don't know
24 what happened to a prescription after Dr. Elder wrote it
25 and sent the patient out the door with the prescription

1 and/or his file?

2 A No, sir.

3 Q All right. Was Mr. Parker in and out of this
4 place at that time?

5 A Yes, I'm sure he was, sure.

6 Q Was he pretty thick with Ada and Pleshette
7 Johnson?

8 A Yes, sir.

9 Q And they were the owners?

10 A Yes, sir.

11 Q Now, at some point the refills, the fax refill
12 coversheets began to flow to Missouri?

13 A Uh-huh.

14 Q To and from Missouri?

15 A Yes, sir.

16 Q And you've explained that you were doing that at
17 the behest of Mr. Parker?

18 A Yes, sir.

19 Q Did you ever call Dr. Elder for any reason to see
20 if he was aware of this or talk to him about it?

21 A No, I didn't.

22 Q Mr. Parker ever tell you he'd had conversations
23 with Dr. Elder about this?

24 A No, he never told me.

25 Q When Mr. Parker gave you back those refills, were

1 the initials on there that we talked about so much in
2 court here, the scrawled initials, approved by?

3 A Repeat your question. I'm sorry.

4 Q There was about a half a dozen of those refill
5 sheets that have initials on the top.

6 A Okay.

7 Q All right. Were those yours that Mr. Parker told
8 you to put on there that had been approved, or did he give
9 them back to you that way with the initials on there?

10 A He said he got them approved.

11 Q So do you know whose initials those were?

12 A No.

13 Q They weren't yours?

14 A No.

15 Q You said there were nonsufficient funds checks
16 that began to cause you concern?

17 A Yes, sir.

18 Q This was in '05, right?

19 A Okay.

20 Q To refresh your memory a little bit, you heard
21 the testimony that Dr. Elder worked there from the summer
22 of '04, until the end of December, he left around January
23 the 1st.

24 A Okay.

25 Q Some of those initial fax refills were in his

1 name as we heard, right?

2 A Yes, sir.

3 Q But you said you didn't talk to him about it?

4 A No.

5 Q Now, after he left, they, whoever "they" is,
6 continued to send these fax refills with his name on them
7 to Missouri. Are you aware of that? Was that, again,
8 Mr. Parker doing that?

9 A Yes, sir.

10 Q Did that cause you -- probably does today. But
11 did you think anything about that, the fact that he no
12 longer worked there and he was supposedly approving
13 refills for Missouri?

14 A I truthfully just assumed that he was sending
15 patients there because he knew it was a pharmacy there.

16 Q Okay. Now, the May 3rd, 2006, phone call, you
17 had a number of phone calls that day, a flurry of activity
18 as a result of the search. That's true, isn't it?

19 A Yes, sir.

20 Q And it was upsetting, I assume?

21 A Very much so.

22 Q You did not call Dr. Elder directly and tell him
23 the search was going on, did you?

24 A No.

25 Q In fact, he just happened to call over there, and
1121

1 you talked for a couple of minutes and apparently you said
2 I'll call you back because it shows a disconnect and a
3 recall back from you to him?

4 A Okay.

5 Q I'm not -- again, I don't want you to say okay if
6 you don't believe me or you don't recall a fact that way.

7 You remember that -- you remember the phone
8 sheet?

9 A I remember that.

10 Q Okay. And was it unusual for you and him to talk
11 even after he left?

12 A No.

13 Q Now, did you talk more or less during that first
14 six months as opposed to after the clock rolled over and
15 it became '05? In other words, when he was at the clinic,
16 would your conversations be more in number that first 6
17 months than perhaps the last 10 or 12 months?

18 In other words, let me rephrase it for you.
19 There's 461 phone calls between you and him, according to
20 the government, over the 12-, 15-month period?

21 A Okay.

22 Q About 15 months. That would average about one a
23 day if we did the math or 1.2 or something.

24 My point is, when he was there working as a
25 physician in the facility, would he call you and complain

1 about Ada and Pleshette, for example, he wasn't getting
2 along with them, they're hard to work for?

3 A Oh, yes.

4 Q And they're women and you're a man and it was
5 easier for him to vent against them by talking to you,
6 wasn't it?

7 A Yes.

8 Q And he'd call up and you guys got to know each
9 other pretty well on the phone?

10 A Yes, sir.

11 Q And he'd say, you know, I'm having this problem
12 with Ada or Pleshette on time sheets or whatever, whatever
13 he was grouching about at the time?

14 A Sure.

15 Q And what I'm saying is while he was there, isn't
16 it true there were more phone calls in that first six-
17 month period, a lot more, than there were in that period
18 after the clock rolled over, the year clock I'm talking
19 about and it became you went to Ascensia and he went on
20 his way, and he would call you less frequently during that
21 timeframe?

22 A Correct.

23 Q Okay. Because there's no breakout on that. I'm
24 just relying on your recollection.

25 A I understand.

1 Q Did you talk about sports?

2 A All the time.

3 Q And family?

4 A Yes, sir.

5 Q What's going on?

6 A Yes, sir.

7 Q Ordinary old guy talk?

8 A Yes, sir.

9 Q You had known each for six months while he was
10 there and so that relationship continued?

11 A Yes, sir.

12 Q Now, I think there's some suggestion in some of
13 the reports that you didn't socialize together. That's
14 true, isn't it? I mean, you weren't at each other's house
15 for dinner or anything like that?

16 A Oh, no.

17 Q But you were phone pals?

18 A Sure.

19 Q Now, these nonsufficient funds checks that you
20 saw in the -- after January the 1st over in the -- after
21 Ascensia's rolling and everything and you're making good
22 money at Ascensia, you think, and there's nonsufficient
23 funds checks, you confronted Mr. Parker about that?

24 A Yes, sir.

25 Q Did Mr. Parker at any time say, Oh, I got this

1 scheme going on and I'm paying off Elder and that's where
2 the money is going?

3 A No.

4 Q Any indication that the cash out of that business
5 was going in his direction at all?

6 A No.

7 Q To anybody?

8 A No.

9 Q Where did you think the money was going, sir?

10 A I thought it was actually going in the bank.

11 Q But, I mean, after you saw the numbers, you had
12 concern about whether or not Mr. Parker was pocketing a
13 large amount of the money?

14 A Sure. At that point, yes.

15 Q We heard that Dr. Okose made \$10 million during
16 this period from somebody. Were you aware of that
17 relationship between Okose and Parker and Ascensia?

18 A Yes.

19 Q Okay. Does that figure surprise you looking back
20 today?

21 A It does surprise me, yes, it does.

22 Q But would that be consistent with the huge number
23 of prescriptions that Ascensia was generating?

24 A Could be. I don't know.

25 Q Okay. All right. Did you at any time ever enter

1 into some kind of agreement with Dr. Elder that he would
2 write prescriptions and sell them to you for nonexistent
3 patients?

4 A No, sir.

5 Q Anybody in this case ever tell you -- by
6 "anybody," I mean Parker or Pleshette Johnson or Ada
7 Johnson ever admit to you that they were buying
8 prescriptions from Dr. Elder to generate huge amounts of
9 profit for Southwest Texas?

10 A No, sir.

11 Q If you had known that was going on, would you
12 have approved of that?

13 A No, I would not have approved of that.

14 Q All right. And you told Rostie initially to make
15 sure that what was going on was aboveboard in your
16 discussions with her at some point?

17 A I told -- asked of her, please make sure
18 everything is legitimate.

19 Q Did you tell her to call the doctors and confirm
20 it?

21 A Sure. I wouldn't say I told her to call the
22 doctors. I said, Do your job, whatever that is.

23 Q Did she -- did she ever indicate to you that she
24 had conversations with the doctors and this wasn't right
25 and this shouldn't be going on or anything?

1 A No, she never told me anything like that.

2 Q Now, in your conversations with her, at some
3 point is it apparent -- well, strike that. Strike that.

4 Do you know how often she would have been
5 talking to the other persons in this case -- that's a bad
6 question too.

7 MR. OSGOOD: I think I'm done. I'm
8 going to sit down.

9 Thank you, Judge.

10 CROSS-EXAMINATION BY MR. RHODES:

11 Q Good afternoon, Mr. Solomon.

12 A How you doing, Mr. Rhodes?

13 Q Now, you were a pharmacy sales representative for
14 MP TotalCare?

15 A Yes, sir.

16 Q And you understood that pharmacies are regulated
17 by the DEA as well as the state board of pharmacy,
18 correct?

19 A I didn't know all of that until I actually got
20 involved with Ascensia.

21 Q Okay. Preparing to get involved with ANP, you
22 knew -- you understood that the pharmacy would be
23 regulated by DEA and by the state board of pharmacy?

24 A Yes.

25 Q And you understood that the pharmacy would be

1 subject to various inspections, correct?

2 A Yes, sir.

3 Q And you understood that controlled substances
4 must be kept safe and secure?

5 A Yes, sir.

6 Q And you understood that the pharmacist had an
7 obligation to ensure that the prescriptions were
8 legitimate, correct?

9 A Correct.

10 Q You are the one, not Parker, who met Cindy Martin
11 in 2002, correct?

12 A Correct.

13 Q And you are the one who asked Cindy Martin to
14 find a pharmacy in Missouri to distribute controlled
15 substances?

16 A No.

17 Q You did not talk to Cindy about the distribution
18 of controlled substances from Missouri to Houston?

19 A I told her about filling -- having a pharmacy
20 here fill prescriptions to give the patients in Houston,
21 yes.

22 Q Okay. You're the one who had that conversation
23 with her?

24 A I did.

25 Q Okay. And you are the one who faxed the

1 prescriptions from Dr. Peter Okose and Christopher Elder
2 to The Medicine Shoppe in Belton, Missouri, correct?

3 A Correct.

4 Q Okay. And let's go to the Government's Exhibit
5 No. 40.

6 Now, on September 8th, 2004, at 10:19 you faxed
7 this handwritten list of names, addresses, and date of
8 births from your home fax machine, correct?

9 A This came from my home fax machine, I suppose.
10 But is that a.m. or p.m.?

11 Q We don't know. It's 10:19.

12 Let's go to Government's Exhibit 43.

13 Now, this exhibit was done -- this was sent on
14 September 13th, and the 1621, I believe you -- former
15 officer, that's military time, correct?

16 A Correct.

17 Q So what time is that?

18 A 4:21.

19 Q 4:21. You faxed this handwritten list of names,
20 addresses, and dates of birth from your home fax machine?

21 A Okay.

22 Q Is that correct?

23 A Yes.

24 Q Government's Exhibit 45.

25 On September 22, 2004, at 9:29 a.m. you faxed
 1129

1 this handwritten list of names, addresses, and date of
2 births from your home fax machine, correct?

3 A Yes, sir.

4 Q Government's Exhibit 47.

5 On September 30, 2004, at 12:52 you faxed this
6 handwritten list of names, addresses, and dates of births
7 from your home fax machine, correct?

8 A Is this afternoon or midnight?

9 Q I cannot tell from your fax machine but it's
10 12:52. It would be p.m. or nightttime.

11 A Okay, yes. My name is up there. Yes, sir, I
12 did.

13 Q And Government's Exhibit 49.

14 On October 19, 2004, at 9:33 you faxed this
15 handwritten list of names, addresses, and dates of birth
16 from your home fax machine, correct?

17 A Yes, sir.

18 Q Government's Exhibit No. 51.

19 On October 24, 2004, at 1710, which is 5:10
20 p.m., you faxed this handwritten list of names, addresses
21 and date of births from your home fax machine, correct?

22 A Yes, sir.

23 Q And going back to those other two that did not
24 have a p.m. or a.m., it was because you were using
25 military time. The 1252 would have been 12:52 p.m. and
1130

1 the 933 -- Government's Exhibit 49, that would have been
2 10:19 a.m. given that your fax machine was using military
3 time, correct?

4 A If that's what you're saying, I guess.

5 Q Well, that's what we're seeing, right?

6 A I see 1019 but I don't know if it's a.m. or p.m.
7 That's what I'm saying. If it's p.m., yes. A.m., I would
8 not have been at home.

9 Q Government's Exhibit 544.

10 On November 3rd of 2004, I want to make sure you
11 can see it, at 10:02 p.m. you faxed this handwritten list
12 of names, addresses, and dates of births from your home
13 fax machine?

14 A Yes, sir.

15 Q Government's Exhibit 458.

16 Now, this fax was sent to you at your home fax
17 machine and you sent a return fax from your home fax
18 machine on November 16, 2004, at 11:17 a.m., correct?

19 A Okay.

20 Q Government's Exhibit 460.

21 On November 29, 2004, you sent a return fax from
22 your home fax machine at 8:30 a.m., correct?

23 A Correct.

24 Q Government's Exhibit 461.

25 This fax was sent to you at your home fax
1131

1 machine on November 30, 2004, at 10 a.m., correct?

2 A Yes, sir, I guess, yes.

3 Q Okay. Government's Exhibit 462.

4 This fax was sent to you at your home fax
5 machine and you sent the return fax from your home fax
6 machine on December 2nd, 2004, at 12:45 p.m., correct?

7 A Correct.

8 Q Government's Exhibit 466.

9 A Can I say something? You don't mind?

10 Q Sure.

11 A You said this came at 12:45 p.m. It came from --
12 it was faxed from my house. It was faxed from my house,
13 but it could have been Philip using the fax machine as
14 well.

15 Q So Philip would come to your house in the middle
16 of the day?

17 A This is at nighttime you said. I thought one of
18 these you said it was at p.m. or something -- if it was
19 really late, it was him because he would always come at
20 night like that.

21 Q Well, I guess we've got a disagreement about
22 time. 12:45 p.m., afternoon.

23 A No, then that would have been me.

24 Q Okay. So that was you?

25 A That would have been me, yeah.

1 Q Okay. So that was you.

2 Government's Exhibit 466.

3 This fax was sent to you at your home fax
4 machine and you sent the return fax from your home fax
5 machine on December the 13th, 2004, at 10:07 a.m.,
6 correct?

7 A Correct.

8 Q Government's Exhibit 467.

9 This fax was sent to you at your home fax
10 machine and you sent the return fax from your home fax
11 machine on December 13th, 2004, at 10:07 a.m., correct?

12 A Correct.

13 Q Government's Exhibit 468.

14 This fax was sent to you at your home fax
15 machine and you sent a return fax from your home fax
16 machine on December 20, 2004, at 8:10 a.m., correct?

17 A Can I -- the question -- I have a question here
18 referencing this because there's a pattern I notice you're
19 doing that if I'm faxing it back to them, when am I
20 getting it? It's taking some time for me to give it to
21 whoever to get it signed, to give it to Philip to get it
22 signed, whatever.

23 Q So are you getting these signed once you get
24 them?

25 A I'm giving it to him to get him to get whoever
1133

1 they belong to to sign.

2 Q So you would receive the fax. They were asking
3 for Dr. Elder's signature?

4 A Correct.

5 Q Then you would give it to Parker?

6 A To go get it signed.

7 Q Parker would give it back to you?

8 A Yes.

9 Q And you would go back home and then you would fax
10 it --

11 A Or he would bring it to my house.

12 Q Okay. Somehow you would give the fax to Parker,
13 Parker would get the signature?

14 A Uh-huh.

15 Q Give it back to you, and you would go back home,
16 and then you would fax it from your home fax machine?

17 A Or he would come to my house and fax it himself
18 sometimes.

19 Q Okay. Let's see.

20 A But it did come from my house.

21 Q You're faxing it at 8:10 a.m. He's not at your
22 house?

23 A Not at --

24 Q Not at eight o'clock in the morning?

25 A No, sir.

1 Q So this is you alone, correct?

2 A Yes.

3 Q Government's Exhibit 470.

4 Now, you sent this fax from your home fax
5 machine on December 20, 2004, at 9:26 p.m., correct?

6 A It was faxed from my home.

7 Q Okay. Government's Exhibit 471.

8 This fax machine -- this fax was also sent from
9 your home fax machine on December 20th at 9:29 p.m.,
10 correct?

11 A Yes, sir.

12 Q Government's Exhibit 472.

13 This fax was sent to you at your home fax
14 machine on December 27, 2004, correct?

15 A That says something about "wellness" up there.

16 Q Let's get a broader view. No. It was faxed from
17 -- it was faxed to you -- read the body of the -- that was
18 faxed to you at your home, correct?

19 A Okay. I'm looking at what you're saying.

20 Q Okay.

21 A I'm trying to see the header at the top is what I
22 was trying to see.

23 Q Oh, you want to look at the header. The header
24 is partially cut off.

25 A That says something -- isn't that "wellness"?

1 Q That's where it was faxed from. I'm talking
2 about being faxed to you, not from where it was returned.
3 The fax originally came to you.

4 Are you finished?

5 A Yes.

6 Q Government's Exhibit 475.

7 This fax was sent to you at your home fax
8 machine. You sent a return fax from your home fax machine
9 on January 16, 2005, at 11:49 a.m., correct?

10 A Correct.

11 Q Government's Exhibit 476.

12 This fax was sent to you at your home fax
13 machine and you sent a return fax from your home fax
14 machine on January 16, 2005, at 11:50 a.m., correct?

15 A Yes, sir.

16 Q Government's Exhibit 477.

17 This fax was sent to you at your home fax
18 machine and you sent a return fax from your home fax
19 machine on January 18, 2005, correct?

20 A What time are we talking about here?

21 Q Time did not come up clearly.

22 Do you agree that it was faxed from your home
23 fax machine?

24 A That is my phone number up there, but I don't
25 totally agree with all this. But if you say, yeah.

1 Q Okay. Government's Exhibit 478.

2 This was faxed from your home fax machine?

3 A Okay.

4 Q Is that a yes?

5 A Yes, sir.

6 Q 479.

7 A But what's the time on that?

8 Q Appears to be 2:29 p.m.

9 A Okay.

10 Q Now, this fax was sent to you at your home fax
11 machine and you sent a return fax from your home fax
12 machine on January 28, 2005, at 10:15 a.m.

13 A Okay.

14 Q Correct?

15 A Yes, sir.

16 Q Government's Exhibit 481.

17 This fax was sent to you at your home fax
18 machine and you sent a return fax from your home fax
19 machine on February 3rd, 2005, at 10:44 a.m., correct?

20 A Yes, sir.

21 Q Government's Exhibit 482.

22 This fax was sent to you at your home fax
23 machine and you sent a return fax from your home fax
24 machine on February 13, 2005, at 11:41 a.m., correct?

25 A Yes, sir.

1 Q You sent several faxes from your home fax
2 machine, correct?

3 A Correct.

4 Q And just jumping ahead to Government's Exhibit
5 493, this fax was sent to your home fax machine and you
6 sent the return fax from your home fax machine on April
7 20, 2005, at 9:03 a.m., correct?

8 A Yes, sir.

9 MR. OSGOOD: Your Honor, could we
10 approach for a minute?

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. OSGOOD: The date timestamp on the
14 fax is already showing. The fax itself on the cover,
15 which is the whole exhibit in many instances, shows a
16 different date like this has a May date on the coversheet
17 of the fax written in as to the date it was faxed. The
18 date and time on a fax machine is only as reliable as the
19 person who sets the clock on it. It's local to that
20 specific fax machine. If the date and time isn't right,
21 it means nothing.

22 THE COURT: You'll have an opportunity
23 to cross on that.

24 (The proceedings returned to open court.)

25 Q (BY MR. RHODES) Government's Exhibit 495.

1 This fax was sent to you at your home fax
2 machine and you sent a return fax from your home fax
3 machine on May 4, 2005, at 9:34 a.m., correct?

4 A Correct.

5 Q Government's Exhibit 496.

6 This fax was sent to you at your home fax
7 machine and you sent a return fax from your home fax
8 machine on May 11, 2005, at 11:28 a.m., correct?

9 A Correct.

10 Q Government's Exhibit 497.

11 This fax was sent to you at your home fax
12 machine and you sent a return fax from your home fax
13 machine on May 20, 2005 at 6:17 a.m., correct?

14 A Correct.

15 Q Government's Exhibit 500.

16 This fax was sent to you at your home fax
17 machine and you sent a return fax from your home fax
18 machine on June 18, 2005, at 9:18 a.m., correct?

19 A Correct.

20 Q Government's Exhibit 501.

21 This fax was sent to you at your home fax
22 machine and you sent the return fax from your home fax
23 machine on June 24, 2005, at 10:27 a.m., correct?

24 A Correct.

25 Q Government's Exhibit 502.

1 This fax was sent to you at your home fax
2 machine and you sent a return fax from your home fax
3 machine on June 24 at 10:27 a.m., correct?

4 A Correct.

5 Q Government's Exhibit 503.

6 This fax was sent to you at your home fax
7 machine and you sent a return fax from your home fax
8 machine on July 9, 2005, at 7:41 a.m., correct?

9 A Correct. But if you don't mind, I see me faxing,
10 but what -- I don't know where that came from.

11 Q It's coming from The Medicine Shoppe.

12 A But what I'm saying is -- it isn't -- like my
13 header, what about their header?

14 Q That is your header at the top?

15 A Yes. Go ahead. I'm not understanding.

16 Q Okay. Jumping to Government's Exhibit 506, this
17 fax was sent to you at your home fax machine and you sent
18 a return fax from your home fax machine on July 22, 2005,
19 at 1:01 p.m., correct?

20 A Correct.

21 Q Jumping ahead to Government's Exhibit 508, this
22 fax was sent to you at your home fax machine and you sent
23 a return fax from your home fax machine on August 4, 2005,
24 at 3:46 p.m., correct?

25 A Correct.

1140

1 Q Jumping to Government's Exhibit 511, this fax was
2 sent to you at your home fax machine and you sent a return
3 fax from your home fax machine on August 12, 2005, at 9:23
4 a.m., correct?

5 A Correct.

6 Q Government's Exhibit 512.

7 This fax was sent to you at your home fax
8 machine and you sent a return fax from your home fax
9 machine on August 16, 2005, at 9:08 a.m., correct?

10 A Correct.

11 Q Government's Exhibit 514.

12 This fax was sent to you at your home fax
13 machine and you sent a return fax from your home fax
14 machine on August 16 -- on August 18, excuse me, 2005, at
15 9:15 a.m., correct?

16 A Okay, yes, sir.

17 Q Government's Exhibit 515.

18 This fax was sent to you at your home fax
19 machine and you sent a return fax from your home fax
20 machine on August 19, 2005, at 9:14 a.m., correct?

21 A Yes, sir.

22 Q Government's Exhibit 516.

23 This fax was sent to you at your home fax
24 machine and you sent a return fax from your home fax
25 machine on August 25, 2005, at 1:44 p.m., correct?

1141

1 A Yes, sir.

2 Q So when it came time for the initials on the
3 faxes, did you go directly to Dr. Elder to obtain his
4 signature?

5 A No, sir.

6 Q And you were an investor in South Texas Wellness
7 Center, correct?

8 A Yes, sir.

9 Q And you invested \$25,000 in cash?

10 A Yes, sir.

11 Q And what return on the investment were you
12 expecting?

13 A We never discussed exactly what type of return.
14 We didn't get that far.

15 Q Did you give it to her in a lump sum? Did you
16 give the Johnsons, the owners of South Texas Wellness
17 Center, a lump sum of money, of cash?

18 A It was a -- like \$2,000 at a time.

19 Q Two thousand dollars at a time.

20 You also were the one who purchased the
21 prescription pads for Dr. Elder, correct?

22 A There was another doctor as well that had -- I
23 think they were -- yes, yes. I picked them up for them.

24 Q You picked up the --

25 A The prescriptions from wherever they had them

1 made.

2 Q You picked them up?

3 A Yes, sir.

4 Q And you were the one who would ship cash payments
5 to Cindy Martin in UPS packages, correct?

6 A I never shipped any cash anywhere. I shipped a
7 package that was already sealed up.

8 Q You shipped the packages that were already sealed
9 up?

10 A Correct.

11 Q Okay. Let's go to Government's Exhibit 938.

12 Now, Philip Parker had been fired by you, yet
13 still you're sending Cindy Martin a package, correct?

14 A Okay. Yes, sir.

15 Q Let's go to the bottom half of that. That's on
16 September 19, 2005.

17 MR. LEWIS: What number is that?

18 MR. RHODES: Government's Exhibit 938.

19 MR. LEWIS: Thank you, sir.

20 Q (BY MR. RHODES) On September 28, 2005, you
21 shipped another package to Cindy Martin, and that package
22 contained cash as well, correct?

23 A No.

24 Q Well, we know that Parker's not giving it to you
25 because he's been fired. So you're sending her packages

1 now?

2 A It shows here I sent a package, but I would never
3 send cash to her in the mail, no.

4 Q Okay. You acknowledge you were sending her a
5 package?

6 A Correct.

7 Q Okay. The packages are still keeping up with the
8 other packages that were earlier that were sent from the
9 UPS store, correct, and you are the one going to the UPS
10 store and sending the various packages?

11 A It was more than myself. Philip sent some
12 packages. Delmon sent some packages. We all did what
13 Philip said to do, bottom line. I still sent Cindy
14 packages you said here, but the packages did not --

15 Q I'm going by your timeline. You said Philip was
16 fired, you got rid of him in early September?

17 A Uh-huh.

18 Q This is September 28th. There's no need to take
19 any more orders from Philip. You're sending a package,
20 correct?

21 A I am sending her a package.

22 Q And that package has money in it, correct?

23 A Not correct.

24 Q Government's Exhibit 940.

25 What are you sending her?

1 A I couldn't tell you, sir. I have no idea what
2 I'm sending her.

3 Q But you're sending her a package?

4 A I'm sending her a package, but I don't know what
5 I'm sending her.

6 Q This is dated October 10th. It's nearly 2
7 pounds. It's costing you 38 bucks. You sent that
8 package, not Philip, correct?

9 A Correct. How much is that --

10 Q You were not instructed to send that package, you
11 did that voluntarily, correct?

12 A Correct.

13 Q Government's Exhibit 939.

14 Again, this is October 13, 2005, and you shipped
15 Cindy Martin another package, correct?

16 A Correct.

17 Q Government's Exhibit 941.

18 You're sending Cindy Martin a package, another
19 package which you don't know what it contains, but you're
20 sending her another package after the date that you had
21 fired Philip Parker, correct?

22 A Correct.

23 Q And that's -- what date is that? Can you see the
24 date?

25 A No, sir, I can't.

1145

1 Q October 18, your delivery date is October 19.

2 Let's go to -- we've been hearing about
3 Government's Exhibit -- let's go to Government's Exhibit
4 1191.

5 That's the call sheet everybody keeps on
6 referring to, the day of the search. Now, the search in
7 all fairness to you, occurred around 9:30 a.m. You made
8 and received calls, both groupings, outgoing, incoming,
9 call waiting. There were, what, about, 40 calls made
10 before you made it to Ascensia for the interview. Your
11 interview took place at three o'clock, so you were engaged
12 in 40 different contacts, phone contacts, correct? That's
13 roughly about 40? Would you agree with me roughly -- more
14 than 20 calls?

15 A Yes, sir.

16 Q Okay. More than 20.

17 You get a call from Dr. Elder. We have Dr.
18 Okose is mentioned here, Delmon.

19 No where on that list did you call Philip
20 Parker, correct?

21 A That would be correct.

22 Q And here you are, you think it's Philip's fault,
23 but you do not call him?

24 A That would be correct.

25 Q Let's go to the -- you're receiving drugs from
1146

1 the Belton -- from The Medicine Shoppe in Belton,
2 Missouri. How were they getting paid?

3 A That I couldn't tell you.

4 Q So you have got drugs coming from Missouri and
5 you don't know how your business is paying for the drugs?

6 A That would be correct.

7 Q Okay. On the day of the search you were
8 interviewed and they asked how was The Medicine Shoppe
9 Pharmacy being paid, and you said definitively they were
10 never paid. You recall saying that?

11 A I don't even recall the interview, but if that's
12 what you're saying, sir, I'm not going to argue that.

13 Q Okay. Do you recall that you told them that --
14 you told the investigators that they were never paid?

15 A Again, I don't recall that, but I'm not going to
16 argue that. I don't know. I don't recall saying all
17 that, but I'm not going to argue that. I don't know.

18 Q Okay. What was -- let's go to the Government's
19 Exhibit 915. On this page there are three shipments to
20 Cindy Martin. So you made three shipments on three
21 different dates on this page, correct? Without us --
22 would you take me at my word or you want to look at the
23 various Cindy Martin -- one -- that's one, two, three.
24 Government's Exhibit 916, please.

25 On this one you have one shipment to Cindy

1 Martin, and the other two -- you made that shipment to
2 Lynn Rostie October 1?

3 A Yes, sir.

4 Q You made that one. Okay.

5 Let's go to the next side. You also made a
6 shipment to Lynn Rostie on this one as well, correct?

7 A Yes, sir.

8 Q And you made this shipment to Cindy Martin,
9 correct?

10 A And -- I can't see the date up there, but, yes,
11 sir.

12 Q Oh, let's show him the date. We've got you
13 shipping out on October 29, 2004, expected delivery date
14 October 30th to Cindy Martin.

15 A Yes, sir.

16 Q Government's Exhibit 917.

17 So far we've got four shipments to Cindy and two
18 to Mary Lynn.

19 Let's go to the top left corner, Cindy,
20 September 30th; Cindy, again, September 24th; and, again,
21 Cindy, October 21st. So we're up to ten shipments, all
22 packages from you, all sent to Cindy.

23 Let's go to Government's Exhibit 918. That's
24 Cindy.

25 A But this is '04.

1148

1 Q '04, yes. You are making these shipments,
2 correct?

3 A Correct.

4 Q Okay. And the bottom one there are three on
5 there, okay, so now so far we're up to the number ten.

6 Government's Exhibit 919. There are two on here
7 to Cindy, the top left one, November 22nd, November 17 to
8 Cindy Martin in this one.

9 Let's go to 920. I believe all three of these
10 are to Cindy Martin. This is December 7, 2004. December
11 2nd is the shipping date to Cindy Martin, and this is
12 December 8th, the shipping on this one. So we're up to 15
13 shipments.

14 Government's Exhibit 921. You made this
15 shipment as well to Cindy Martin, correct?

16 A Yes, sir.

17 Q All right. You made those two shipments.

18 922. That one doesn't apply.

19 A I shipped her stuff all the time even before
20 then.

21 Q We're talking about during the period here you
22 were shipping items to Cindy Martin?

23 A Cologne, perfume, stuff for her grandbaby. I
24 mean, I shipped her a lot of stuff.

25 Q Okay. So this is -- items you're shipping her.

1 Let's start looking at the dates more closely.

2 How many gifts are you sending to her?

3 A I mean, they're not --

4 Q 922, let's look at 922. All right. We're
5 sending her cologne on December 20th?

6 A I didn't say that that package contained cologne.
7 I said it could have. I don't know. I don't remember
8 exactly what I --

9 Q Okay, diapers, diapers.

10 A I never sent her any diapers.

11 Q On -- you were sending this one December 27,
12 again, to Cindy Martin. That's two more.

13 Government's Exhibit 923, this is shipped on
14 January 11 to Cindy Martin.

15 This is on January 3rd. This one is on January
16 17th, that's three.

17 924, all three of these, January 31, 2005,
18 January 24, 2005, January 26, 2005, we're now up to 25
19 packages as we came around the new year.

20 Government's Exhibit 925, you shipped one on
21 February 10, 2005. You also made a shipment on February
22 7, 2005. You made a shipment on February 15, 2005. You
23 made all three of those shipments, correct?

24 A Yes, sir.

25 Q Government's Exhibit 926.

1150

1 There's a shipment on February 23, 2005.
2 There's a shipment on February 18, 2005, and there's a
3 shipment on February 28, 2005. You made all three of
4 these shipments, correct?

5 A Yes, sir.

6 Q Government's Exhibit 927.

7 You made -- there's a shipment on March 8, 2005.
8 That one doesn't apply, bottom one. There's a shipment to
9 Cindy on March 10, 2005.

10 You made two of these shipments, correct, to
11 Cindy Martin?

12 A Yes, sir.

13 Q Government's Exhibit 928, please. You made a
14 shipment on March 22, 2005. You made a shipment to
15 Ms. Martin on March 18, 2005. You made a shipment on
16 April 12, 2005, to Ms. Cindy Martin. You made all three
17 shipments, correct?

18 A Correct.

19 Q Government's Exhibit 929.

20 You made a shipment on March 24, 2005. You made
21 a shipment on March 4, 2005. You made a shipment on March
22 28, 2005. We're now up to 39 packages.

23 Government's Exhibit 930.

24 On this page you made about two -- one was sent
25 to Lynn Rostie, Lynn Rustic. You sent this one to Cindy

1 on April 6th, 2005, this one to Cindy again on April 7,
2 2005. So you made three shipments. Two went to Cindy,
3 one went to Mary Lynn Rostie, correct?

4 A Yes, sir.

5 Q Government's Exhibit 931.

6 You made a shipment on April 15, 2005, to
7 Ms. Martin. You made a shipment on April 20, 2005, to
8 Ms. Martin, and you made a shipment on April 26, 2005.
9 You made all three of these shipments to Ms. Cindy Martin,
10 correct?

11 A Correct.

12 Q Government's Exhibit 932.

13 You made a shipment on April 28, 2005. You made
14 a shipment on May 12, 2005, to Ms. Martin, and you made a
15 shipment on May 18, 2005. All three of these shipments
16 were made by you to Ms. Martin in Belton, Missouri,
17 correct?

18 A Correct.

19 Q Government's Exhibit 933.

20 You made a shipment to Ms. Martin on May 4,
21 2005. You made a shipment on June 30, 2005, and you made
22 a shipment on June 23, 2005. All three of these shipments
23 were made by you, correct?

24 A Yes, sir.

25 Q Government's Exhibit 934.

1 You made a shipment on June 2nd, 2005. You made
2 a shipment on June 8, 2005, to Ms. Martin, and you made a
3 shipment on June 16, 2005, to Ms. Martin. We're up to 53
4 shipments from you to Ms. Martin.

5 Government's Exhibit 935.

6 You made a shipment on July 8, 2005. You made a
7 shipment on July 14, 2005, and you made a shipment on July
8 19, 2005. All three of these shipments were made by you,
9 correct?

10 A Yes, sir.

11 Q Government's Exhibit 936.

12 You made a shipment on July 21, 2005. You made
13 a shipment on July 27, 2005, and you made a shipment on
14 August 4, 2005. All three of these shipments were done by
15 you, correct?

16 A Correct.

17 Q Government's Exhibit 937.

18 You made a shipment on August 9, 2005. You made
19 a shipment on August 11, 2005, and you made a shipment on
20 August 17, 2005. All three of these shipments were done
21 by you, correct?

22 A Correct.

23 Q Government's Exhibit 938.

24 We've seen these dates before, but you would
25 agree that all three of the shipments were made by you,

1 correct?

2 A Yes, sir.

3 Q Government's Exhibit 939.

4 We've seen some of these dates. They're all
5 three addressed to Cindy Martin. All three of these
6 packages were shipped -- were sent by you to Cindy Martin,
7 correct?

8 A Correct.

9 Q And Government's Exhibit 940.

10 You have a package -- you have two of these
11 exhibits were sent to -- two of these shipments were sent
12 to Cindy Martin. That brings us up to 70 and 941.

13 Again, that's you. So you made that shipment as
14 well, correct?

15 A Yes, sir.

16 Q So you shipped over 70 packages to Cindy Martin,
17 and the last package appears around October 19. You're
18 telling this jury these were all gifts?

19 A I didn't say that. I said -- I don't know what
20 these packages -- I can't even remember. I know I sent
21 her perfume, stuff like that, because she was trying to
22 start a little perfume business. I told her about a
23 wholesale place here in Houston. I know I shipped her
24 some bottles of perfume as well as men's cologne so she
25 could try and get into that business. I done that. I did

1 ship her grandbaby -- and she shipped my son as well some
2 stuff. So, yes.

3 Q Okay. And you had a relationship with Dr. Elder,
4 you approached him about this business venture, and you
5 were the one who obtained the original prescriptions?

6 A What business venture are you talking about?

7 Q Having prescriptions filled in Missouri and sent
8 back here to -- or sent back to Houston?

9 A I never spoke with him about anything like that.

10 Q Okay. So during these various phone calls that
11 you two had, you all never talked business?

12 A No.

13 MR. RHODES: Could I have a second, Your
14 Honor?

15 Q (BY MR. RHODES) Were you trying to -- weren't you
16 and Dr. Elder trying to get a business venture interest in
17 South Texas Wellness Center?

18 A No, sir.

19 Q You heard the testimony that you, Dr. Elder held
20 meetings with the Johnson women, you remember that?

21 A We held meetings?

22 Q There were meetings about joining the company and
23 splitting up the percentage fees.

24 A I don't remember Dr. Elder being a part of a
25 meeting like that.

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1 Q Okay. It was you, you were a part of the
2 meeting, correct?

3 A Yes, I was.

4 Q And with regard to -- you were paid money and you
5 also sent some of the faxes from South Texas Wellness
6 Center to The Medicine Shoppe, correct?

7 A I was paid money from where?

8 Q I mean, you paid money -- excuse me. I misspoke.
9 You paid money to the Johnson women, South Texas Wellness
10 Center, as an investment?

11 A Yes, I did.

12 Q Twenty-five thousand dollars in cash.

13 One of the benefits of being an investor in
14 South Texas Wellness Center, you were able to use their
15 fax machine, correct?

16 A I don't recall ever using that fax machine, but,
17 first of all, let's go back because you said I gave them
18 \$25,000 or whatever in cash. When they would come to me
19 and ask me for monies to invest in their company, they
20 requested cash because they were always behind on their
21 bills and no one would accept a check from them.

22 Q You paid your other bills by check, correct?

23 A I paid my bills, yes.

24 Q All right. But in this particular business
25 venture you were paying them with cash, correct?

1 A At their request, yes, sir.

2 Q Okay. But the answer is yes?

3 A Yes, sir.

4 MR. RHODES: I'll pass the witness, Your
5 Honor.

6 THE COURT: Why don't we take a break.
7 We'll take about a 15-minute break.

8 I'll ask the members of the jury do not discuss
9 this case among themselves or with others or allow anyone
10 to discuss it in your presence. We'll stand in recess.

11 (A recess was taken.)

12 (The following proceedings were had out of the
13 presence of the jury:)

14 THE COURT: Got an issue?

15 MR. BOHLING: It's not really an issue.
16 It's up to Mr. Lewis really. We did have the IRS recheck.
17 They tell us definitively and without question that the
18 2005 ANP return, which is to me the only one of concern,
19 was not processed by the IRS.

20 Now, she makes a good point. There's a
21 distinction between what was intended and what happened,
22 so what -- all she can tell you is that the IRS never
23 received this return and never processed this return.
24 Whether the accountant attempted to file it or not, of
25 course, she doesn't know, and we can't speak to that

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1 person. They have to come into court and say what they --

2 MR. LEWIS: I think that's a fair
3 rendition. I don't think there's any reason to bring the
4 proceedings to a screeching halt. I'm just going to
5 follow up with Mr. Solomon one question about did you file
6 your tax returns according to your understanding? Yes, I
7 did. Are these what you got as receipts of your filed
8 returns? Yes, they are. That's it. Offer them, be done
9 with it, because they made the point, and I trust they'll
10 make the point in closing arguments, their records don't
11 indicate anything was filed.

12 That's a very different question than did
13 Mr. Solomon intend to file his returns and in his state of
14 mind did he think they were being filed.

15 MR. BOHLING: Right.

16 MR. LEWIS: Which leaves room for there
17 could have been a clerical error or the accountant
18 couldn't have finished the job. So I think --

19 THE COURT: Okay. Mr. Osgood, you're
20 sniffing over that way. What do you have to say?

21 MR. OSGOOD: I have no dog in this
22 fight.

23 THE COURT: Just wanted to make sure.
24 Didn't want you to feel left out.

25 MR. OSGOOD: We got a refund, as you'll
1158

1 recall, Your Honor.

2 THE COURT: Okay. Let me get some idea
3 on where we are on time.

4 MR. LEWIS: We have about five minutes.
5 I've got about four discrete follow-up questions. That's
6 it. We'll rest our case.

7 MR. OSGOOD: I have two or three
8 questions, nothing long, five minutes or less.

9 THE COURT: Who's going to be your first
10 witness?

11 MR. OSGOOD: I have Mr. Reeder standing
12 by outside. I have the defendant's mother.

13 THE COURT: I think we may start with
14 the defendant in the morning. I don't want to start and
15 then stop.

16 MR. OSGOOD: I have one witness flying
17 in from Houston that will be here this evening. He's
18 probably 20 minutes tops.

19 THE COURT: Okay. Thank you.

20 (The following proceedings were had in the
21 presence of the jury:)

22 TROY SOLOMON, previously being sworn, resumed the stand:

23 REDIRECT EXAMINATION BY MR. LEWIS:

24 Q Mr. Solomon, in the way of housekeeping, I need
25 to admit some pieces of evidence, and then I just have a

1 few follow-up questions for you.

2 A Okay.

3 Q First, you have identified Defendant Solomon's
4 Exhibit No. 11 as the copy of the completed tax return as
5 given to you by your accountant, correct?

6 A Correct.

7 Q And based on that, it is your understanding that
8 the pharmacy's taxes were filed 2005 through 2008?

9 A Yes, sir.

10 MR. LEWIS: We would offer Defendant
11 Solomon Exhibit 11, Your Honor, with that provision.

12 MR. OSGOOD: No objection.

13 THE COURT: It will be received.

14 Q (BY MR. LEWIS) I showed you some pictures of
15 Ascensia inside, out, and the suite area and marked that
16 Defendant Solomon's Exhibit 11 [sic]. Do you recall these
17 pictures?

18 A Yes, sir.

19 MR. LEWIS: We would offer Defendant
20 Solomon Exhibit 7.

21 MR. RHODES: No objection, Your Honor.

22 THE COURT: No objections?

23 MR. OSGOOD: None, Your Honor.

24 THE COURT: They'll be received.

25 MR. LEWIS: First, if Ms. Nelson could
 1160

1 put up, for instance, 40 and 43. I think the ladies and
2 gentlemen of the jury have ascertained 40, 43, 45, 47, 49,
3 and 51 are all similar lists, but just for efficiency's
4 sake, let Ms. Nelson blow that up and blow up 43 beside
5 it.

6 Q (BY MR. LEWIS) Did you prepare any of these
7 lists, Mr. Solomon?

8 A No, sir.

9 Q How did you come into their possession?

10 A Mr. Parker.

11 Q Okay. I want to turn your attention back to the
12 -- what we've called or referred to as the falling-out
13 with Mr. Parker.

14 Help us with the timeframe as to -- you
15 explained the events that led to your suspicions and the
16 ultimate conversations you had with accountants, pharmacy
17 board folks, but timeframe do you recall the date of the
18 letter you sent Mr. Parker?

19 A No, sir, I don't recall the date, the exact date,
20 no.

21 Q Let me help you.

22 MR. LEWIS: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 Q (BY MR. LEWIS) I want to show you the second to
1161

1 last page in Solomon Defense Exhibit 5. Take a look at
2 that.

3 A Okay.

4 Q Is that the letter you wrote Mr. Parker?

5 A Yes, sir.

6 Q What date is on there?

7 A The 16th of August.

8 Q Maybe your glasses aren't working so well.

9 A I'm sorry. September the 16th.

10 Q Okay. Post September 16th, 2005, did Philip
11 Parker continue to come around Ascensia?

12 A He was still drifting in and out of there.

13 Q Okay. For how long?

14 A I really don't know exactly how long.

15 Q Did he -- with your personal knowledge, did he
16 avoid contact with you sometime after September 16th of
17 2005?

18 A Yes, he did.

19 Q Other than what other people told you, how else
20 did you know that he was still coming around?

21 A I recall vaguely him -- he left a package or
22 something, again, there, something like that, a note for
23 me to do something.

24 Q Okay.

25 A As a follow-up or something.

1 Q Let's talk about that --

2 A He --

3 Q -- for a second.

4 Stop. Let's don't talk over each other.

5 What was the protocol that Parker set up for you
6 in reference to faxes to Missouri, shipments from
7 Missouri, shipments to Missouri? Tell the ladies and
8 gentlemen of the jury.

9 A He would put a package on a table with a note for
10 me to mail. I would be coming from the medical center
11 where I worked every day. And as I'm going home, I would
12 pass by the UPS store, and I would mail the package off
13 already boxed up or -- and/or taped up.

14 Q Okay. Now, these packages you described, I
15 believe, on your original direct. You gave us some
16 dimensions. You said brown envelope?

17 A Yes, sir.

18 Q Would those packages be distinctly different than
19 when you were sending Ms. Martin personal items or
20 promotional items when she was getting in the perfume
21 business, et cetera?

22 A There was no difference.

23 Q They were in similar packages?

24 A Yes, sir.

25 Q Did you package the personal documents or items

1 yourself?

2 A Yes, sir, I did.

3 Q Did you ever package any of the boxes or the
4 packages that Philip Parker asked you to send back to
5 Missouri?

6 A No.

7 Q How long after in terms of weeks or months did
8 you have to change the locks to ensure Parker was no
9 longer coming around?

10 A I think it took a -- give or take eight months,
11 something like that.

12 Q Now, after -- let's say -- let's use this
13 timeframe.

14 After Halloween, October 31st of 2005, did
15 Parker ever leave anything else for you to deliver?

16 A No, I don't think so.

17 Q Did any of the pharmacy employees ever tell you,
18 as they had previously, that he was still coming by, just
19 when you weren't there?

20 A No.

21 Q So as far as you know from the folks at your
22 pharmacy and from any packages left for you, there was no
23 further Philip Parker presence after October 31st of 2005?

24 A That would be correct.

25 Q Could it have been before then?

1 A Yes.

2 Q Okay. I picked the time October 31st just so
3 we'd have a clear time; is that fair?

4 A That would be fair.

5 Q Did you ever discuss -- in setting up the
6 arrangement with Pharmacist Rostie, did you ever discuss
7 with Philip Parker how she or her pharmacy would be paid?

8 A No, we never did discuss that.

9 Q Did -- based on your conversations with him, did
10 you understand he would handle that?

11 A Yes.

12 Q Other than the FedEx shipments that Pharmacist
13 Rostie would send here, did she also send a separate or
14 distinct category of other packages to Ascensia?

15 A Yes, she did.

16 Q Will you tell the ladies and gentlemen of the
17 jury about that.

18 A She sent 300 first aid kits for the Katrina
19 victims.

20 Q And those were coming through FedEx shipments to
21 Ascensia as well?

22 A Yes, sir.

23 Q And if you can recall, do you recall when Katrina
24 hit the Gulf Coast?

25 A I can't recall exactly.

1 Q Fair to say it was between August of '04 and
2 December of '05?

3 A Yes, sir.

4 Q Second to last area, we've heard a lot about fax
5 headers and times and dates. The fax machine that you
6 have at your house, are you able to program in whatever
7 name, number, and time you want?

8 A I don't know how to do that but I'm sure you can.

9 Q Well, for instance we've seen a bunch of fax
10 headers that have "Troy Solomon." Then we see fax headers
11 that say "Lucy Solomon." Did you do that?

12 A No, I didn't.

13 Q It's still the same number?

14 A Sure.

15 Q Were you still living at the same place?

16 A Yes, sir.

17 Q Same fax machine?

18 A Yes, sir.

19 Q Does it surprise you that one can manipulate the
20 time, date stamp, name, even the phone number on a fax
21 machine?

22 A No.

23 Q Mr. Rhodes asked you a question about the phone
24 calls that you made on May the 3rd, 2006, and a statement
25 or two that you might have made to Agent Watterson at your
1166

1 pharmacy. What was going on that day in your life?

2 A I got a phone call 4 a.m. in the morning that I
3 needed to hurry up and get to Victoria, my son, my older
4 son, tried to commit suicide.

5 Q Who called you?

6 A His girlfriend.

7 Q His girlfriend, now his wife?

8 A Yes.

9 Q What did you do as a result of her call?

10 A I was trying to make arrangements to get to
11 Victoria as soon as I could. I had my grandmother to
12 attend to as well.

13 Q What was the condition of your grandmother at
14 that time?

15 A Bedridden. We just buried her four months ago.

16 Q My condolences.

17 Did you in fact travel to Victoria early on the
18 morning of May the 3rd, 2006?

19 A I did.

20 Q Do you recall receiving phone calls or did you
21 receive phone calls from Ascensia, Delmon Johnson,
22 Christopher Elder, various other folks on that list?

23 A Yes, sir.

24 Q You recall getting those calls?

25 A Yes, sir.

1 Q Do you recall what time they started?

2 A I don't recall.

3 Q Was it nearer 4 a.m. or nearer 8:30, 9?

4 A I think it was after nine.

5 Q Okay. We see some of the calls you returned and
6 some of the calls made. Did you ever attempt to contact
7 Philip Parker?

8 A No, sir.

9 Q Why not?

10 A I didn't have his number, and I really didn't
11 want anything to do with him anyway.

12 Q Fair enough.

13 When you got back to the pharmacy, they asked
14 you to answer some questions, right?

15 A Right.

16 Q Tell us about your state of mind by that point in
17 time on this day.

18 A I was, like, totally out of it. I explained to
19 -- I can't remember her name. I want to say Ms. Richards.

20 Q Susan Richards?

21 A That's the name. Very, very professional lady in
22 spite of some of her colleagues. I told her I hadn't
23 taken my blood pressure medicine, and I felt, like, very,
24 very faint. And she said, I understand, just sign this
25 and we'll leave.

1 Q And what was it that she asked you to sign?

2 A She asked me to relinquish my DEA license.

3 Q Did you do that voluntarily upon her request?

4 A Yes, sir, I did.

5 MR. LEWIS: Pass the witness, Your
6 Honor.

7 RECROSS-EXAMINATION BY MR. OSGOOD:

8 Q Now, I'm going to ask you about each of the
9 exhibits that Mr. Rhodes went over with you, but the good
10 news is I'm going to do it in kind of summary fashion.

11 MR. OSGOOD: Will this thing come up so
12 we can see both of them?

13 Q (BY MR. OSGOOD) Now, Mr. Rhodes asked you about
14 nine refills that were generated in Dr. Elder's name and
15 those occurred in November and December of 2004, and went
16 to Missouri from your fax number?

17 A Okay.

18 Q Is that right?

19 A Yes, sir.

20 Q And of those nine, they all had these forged
21 initials or at least initials you don't know who put on
22 there, the initials we've covered in court?

23 A Yes, sir.

24 Q Then Dr. Elder, to your knowledge, left South
25 Texas Wellness Center in January -- on January 1 of '04;
1169

1 did he not?

2 A Yes, sir.

3 Q All right. And then, is it not true, that after
4 he was gone, according to the exhibits you just went over,
5 there were 34 sent in his name after he was gone again
6 with forged signatures, and that occurred between
7 February, March, April -- or it occurred on February,
8 March, April, May, June, July, and August? And I can show
9 you these exhibits one at a time like Mr. Rhodes did. But
10 that would be your recollection?

11 A Yes, sir.

12 Q And, again, they had these same forged initials
13 on them?

14 A Yes, sir.

15 Q And you -- they were given to you by this
16 Mr. Parker?

17 A Yes, sir.

18 Q Okay. And then during that same timeframe this
19 Okose fellow, he also approved refills supposedly with a
20 coversheet and some scrawled initials on it; is that
21 correct?

22 A Correct.

23 Q And there were six from him and then there was
24 one from a Dr. Botto during this timeframe; is that right?

25 A Correct.

1 Q You know who put the initials on any of those?

2 A No, sir, I don't.

3 Q Do you know whether or not there was any
4 relationship between Dr. Botto, for example, and Parker
5 and perhaps Pleshette and Ada Johnson?

6 A I wouldn't know that, sir.

7 Q What about between Okose? I think we might have
8 covered this. Was there a relationship between Okose and
9 the Johnsons?

10 A No, I don't think so.

11 Q But then after August -- I should say after
12 January, Ascensia is up and running, isn't it?

13 A Yes, sir.

14 Q And Botto, he only does one to Missouri, but he
15 does thousands over through Ascensia over to his clinic,
16 doesn't he?

17 A I'm not understanding what you're saying.

18 Q Botto, there's one batch of refills with a forged
19 initial on it that goes to Missouri, but after that
20 Ascensia is up and running, isn't it?

21 A Yes, sir.

22 Q So that's when Botto is dealing back and forth
23 between Ascensia and his clinic here -- or there in Texas?

24 A Okay.

25 MR. BOHLING: I think he means Okose.
1171

1 Perhaps that's the --

2 MR. OSGOOD: I meant Okose. I'm sorry.
3 I apologize.

4 Thanks for the help. I confused you. I'll
5 start over.

6 Q (BY MR. OSGOOD) After Ascensia is up and running,
7 there were six that went from Okose to Missouri and one by
8 Botto. But after Ascensia is up and running -- Okose's
9 clinic is right there in Houston, isn't it?

10 A Yes, sir.

11 Q And so most of the scripts then when he made \$10
12 million were back and forth between his clinic and
13 Ascensia?

14 A Yes, sir.

15 Q And that's the clinic that Mr. Parker was
16 running?

17 A Yes, sir.

18 MR. OSGOOD: Okay. That's all.

19 Thank you.

20 RECROSS-EXAMINATION BY MR. RHODES:

21 Q You were the one who was faxing the prescription
22 sheets back to Missouri, correct?

23 A Correct.

24 Q The return fax.

25 Where did you take the boxes that Delmon put in
1172

1 your car?

2 A I gave them to Mr. Parker, but I don't recall
3 actually Delmon ever putting any boxes in my car.

4 Q You heard Delmon's testimony that he put the
5 boxes in your car?

6 A I heard Delmon say something to that effect, yes.

7 Q Right, okay. And where did you take those FedEx
8 boxes that he put in your car?

9 A If I took them, I had to have given them to
10 Mr. Parker.

11 Q Why was Philip Parker talking about a customer
12 base in August when Ascensia had not even opened up for
13 business? You didn't open up for business until December.

14 A Apparently he already had some customers. I
15 really can't answer that. He would have to answer that
16 question.

17 Q You're the one who was -- you're the one who
18 communicated with Cindy Martin, correct?

19 A Correct.

20 Q You're the one who assisted with the arrangement
21 for the prescriptions from Missouri, correct?

22 A I didn't insist anything. I was asked.

23 Q But why -- you're the owner of Ascensia Pharmacy?

24 A Now I am.

25 Q Why are you seeking customers when you were not

1 open for business?

2 A I took it that Mr. Parker had already marketed
3 and got some customers or something, and they came
4 probably faster than he probably assumed they were going
5 to come, and he just needed some way to get them filled.

6 Q Okay. And why would you then tell -- you
7 remember being interviewed by Judi Watterson on May 3rd,
8 2006, and you said you didn't want to lose any customers?

9 A I don't recall saying that, but I'm not going to
10 say I did not. I don't know what I said that day.

11 Q Well, let me --

12 MR. RHODES: May I approach, Your Honor?

13 THE COURT: Yes.

14 Q (BY MR. RHODES) Does that refresh your
15 recollection?

16 A Yes. But I don't think I said it like that.

17 Q You don't think you said it like that. What did
18 you say?

19 A I don't know what I said that day, but I'm not
20 questioning Ms. Watterson either. That was an emotional
21 day for me.

22 Q Okay. You stated that Ascensia could not order
23 more drugs from their wholesale distributor because they
24 were at their credit limit. You weren't open for business
25 then. You gave a totally different answer then than you

1 are giving today, correct?

2 A Once again, sir, that day was a very emotional
3 day. I don't know what I said that day, and they were,
4 what do you call it, like, screaming and the profanity,
5 and so forth and so on. I don't know what I said that
6 day.

7 Q Didn't you have phone calls with Jill Gerstner
8 and Lynn Rostie about money owed for the shipments?

9 A I don't recall phone calls about that.

10 Q And did you direct Ada Johnson to send -- to
11 bring the FedEx packages or boxes to ANP?

12 A No, I did not.

13 Q You don't recall telling them to bring them to
14 ANP?

15 A No, sir.

16 Q But the boxes would appear at ANP, correct?

17 A The --

18 Q The boxes that were being delivered at South
19 Texas Wellness Center, they would be brought to your
20 pharmacy, ANP, correct?

21 A Correct.

22 Q Ascensia, correct, ANP? The boxes were brought
23 to your pharmacy?

24 A I'm assuming. I wasn't there to receive the
25 boxes. I'm going along with what you're saying, but I

1 don't know that to be true.

2 MR. RHODES: Okay. No further
3 questions.

4 MR. OSGOOD: None, Your Honor.

5 THE COURT: Thank you. You may step
6 down.

7 MR. LEWIS: With that, Your Honor,
8 Mr. Solomon rests.

9 DEFENDANT ELDER'S EVIDENCE

10 MR. OSGOOD: Call Mr. Reeder, Your
11 Honor.

12 MARK DOUGLAS REEDER, being duly sworn, testified:

13 DIRECT EXAMINATION BY MR. OSGOOD:

14 Q Would you state your full name for the record,
15 please?

16 A Mark Douglas Reeder.

17 Q How are you employed, Mr. Reeder?

18 A I'm a private investigator.

19 Q Where is your firm located or your office?

20 A Sir?

21 Q Are you -- what city are you located in?

22 A Kansas City, Missouri.

23 Q And you hold a state license?

24 A Yes. I hold two of them.

25 Q And where are you licensed at?

1 A Missouri and Kansas.

2 Q Are you a former sergeant on the Kansas City,
3 Missouri Police Department?

4 A Yes.

5 Q How long have you been a private investigator?

6 A Not quite 25 years.

7 Q All right. And did I employ you in this case as
8 a contract investigator?

9 A Yes, you did.

10 Q And in fairness to the jury, you have worked for
11 me for 15 years as an investigator; have you not?

12 A Yes, I have.

13 Q In various types of cases over the course of
14 time?

15 A Yes, sir.

16 Q You also work for the court on occasion, don't
17 you?

18 A Through appointments.

19 Q And you have recently been working out of town, I
20 guess, on major death penalty litigation appointed by the
21 United States District Court?

22 A Two cases, the U.S. District Court for the
23 Eastern District of California, Fresno, and then the
24 Middle District of Florida in Ocala.

25 Q Those courts in those districts appointed you?

1 A Yes.

2 Q And you in fact worked with me on a death penalty
3 case here in Kansas City, did you not, and the court
4 appointed you in that case?

5 A Yes.

6 Q So you've been approved to -- at least approved
7 as an investigator by this very court right here that
8 we're in on many prior occasions?

9 A Yes. I have testified before.

10 MR. BOHLING: Objection to the leading.

11 MR. OSGOOD: I'm not sure what I said
12 wrong.

13 Q (BY MR. OSGOOD) You've been appointed by the
14 court?

15 A Yes.

16 Q And approved?

17 THE COURT: I think I know what you
18 said.

19 (Counsel approached the bench and the following
20 proceedings were had:)

21 MR. OSGOOD: I filed a motion and the
22 court approved him.

23 MR. BOHLING: I think approved -- I
24 understood the court to be aware --

25 MR. OSGOOD: However you want me to
 1178

1 handle it.

2 THE COURT: The point is he's testified
3 in federal court and you can move on.

4 MR. OSGOOD: Okay. If you want me to
5 clean it up, that's fine.

6 THE COURT: I think we can move on.

7 (The proceedings returned to open court.)

8 Q (BY MR. OSGOOD) Mr. Reeder, did I ask you to
9 interview a number of people in this case?

10 A Yes, you did.

11 Q And approximately how many witnesses involved in
12 this case do you think you interviewed over the course of
13 --

14 A Fifteen or 20.

15 Q I believe the count was about 20?

16 A Twenty.

17 Q Did I ask you to interview a Ms. Diane Hearn, who
18 is the owner of Westfield Medical Clinic?

19 A Yes, you did.

20 Q And did you attempt to make contact with her?

21 A Yes, I did.

22 Q Were you able to get a hold of her?

23 A Yes, I was.

24 Q And did she submit to an interview with you?

25 A No, she did not.

1 Q And I don't want to know what she said, but was
2 there anything about her answers that disturbed you that
3 you reported back?

4 A Yes, I did.

5 Q And that resulted in further proceedings?

6 A Yes, it did.

7 Q All right. Now, I want to move on.

8 Over the lunch hour I asked you to go to the
9 post office; did I not, sir?

10 A Yes, you did.

11 Q I asked you to get me a white box; did I not?

12 A Yes, you did.

13 Q Show you what's marked as Defendant Elder's
14 Exhibit No. 65. Did you get that at the post office?

15 A Yes, I did.

16 Q And I guess we owe you some money for it. How
17 much was it?

18 A It was free.

19 Q It was free, oh.

20 A Free until you load it and mail it.

21 Q Is that a standard UPS -- I'm sorry -- a priority
22 mail box that's available at the post office?

23 A One of several.

24 Q And for the record, we can all see in the
25 courtroom here, but for the cold record, what color is it?

1 A White.

2 Q White box. All right.

3 Did they have any brown boxes at the post
4 office?

5 A No, sir.

6 Q All right.

7 MR. OSGOOD: That's all.

8 I'll offer the white box, Defendant's Exhibit
9 65.

10 MR. BOHLING: No objection.

11 THE COURT: Do you have an objection?

12 MR. LEWIS: No, sir.

13 THE COURT: Be received.

14 CROSS-EXAMINATION BY MR. BOHLING:

15 Q Mr. Reeder, we went down and got our own box.
16 This is a FedEx box. It's what we had on hand. You
17 recognize that as a Federal Express box?

18 A It says "FedEx."

19 Q FedEx. And that box is what color?

20 A It's white.

21 Q And isn't that the standard color and appearance
22 of a FedEx box?

23 A To my knowledge, yes.

24 Q They're not brown, are they?

25 A No.

1 Q That's UPS. Brown is -- as we know from their
2 advertising campaign, that's UPS?

3 A I can't really answer that question, because I
4 don't -- I don't deal with that kind of stuff all the
5 time, so I don't --

6 Q Okay. But this is a FedEx box and to your
7 knowledge FedEx boxes look like this?

8 A It clearly says "FedEx" and it's clearly white.

9 MR. BOHLING: I'll move that into
10 evidence.

11 REDIRECT EXAMINATION BY MR. OSGOOD:

12 Q Mr. Reeder, have you ever shipped anything in a
13 larger box, let's say a brown box, and taken it down to
14 FedEx and put it on the counter and they would take it and
15 ship it with a shipping label?

16 A Yes.

17 Q And if the witnesses said 76 brown boxes were
18 shipped, do you have any reason to believe that they
19 weren't shipped in brown boxes?

20 A I have nothing to dispute that.

21 Q In fact, if they're big, square boxes, they
22 wouldn't fit in that box they brought up here, would they?
23 That looks like it's for documents.

24 A That is more of a document box.

25 MR. OSGOOD: Thank you.
1182

1 THE WITNESS: I've used those before.

2 MR. OSGOOD: Thank you.

3 MR. BOHLING: Your Honor, we've marked
4 our box as 1217. We'd move it into evidence.

5 MR. OSGOOD: I certainly have no
6 objection against your box.

7 MR. BOHLING: Thank you, sir.

8 THE COURT: It will be received.

9 Anything else of this witness?

10 MR. OSGOOD: I have nothing else, Your
11 Honor.

12 MR. BOHLING: No.

13 THE COURT: Thank you.

14 (Witness excused.)

15 MR. OSGOOD: Call Mrs. Henry, Your
16 Honor.

17 ARLENE ELDER HENRY, being duly sworn, testified:

18 DIRECT EXAMINATION BY MR. OSGOOD:

19 Q Would you tell the ladies and gentlemen of the
20 jury your name, please, ma'am, and where you live.

21 A Yes. My name is Arlene Henry -- Elder Henry. I
22 live in New Haven, Connecticut.

23 Q How long have you lived in New Haven, Ms. Henry?

24 A For about 38 years.

25 Q Are you related to the defendant in this case,
1183

1 Dr. Christopher Elder?

2 A Yes, I am.

3 Q And how is that -- what is that relationship?

4 A He's my eldest son.

5 Q All right. Where did the family grow up when he
6 was little?

7 A In South Carolina. We lived in South Carolina,
8 and at nine months we came to -- he was nine months [sic].
9 I came here to Connecticut.

10 Q And then did you go back to South Carolina for a
11 while after that?

12 A Yes.

13 Q All right. And where did he start grade school
14 at?

15 A In South Carolina.

16 Q All right. Now, what kind of a neighborhood were
17 you living in at that time? Was it an affluent
18 neighborhood or a poor neighborhood or --

19 A It was a predominantly black neighborhood and it
20 was country.

21 Q Okay. And how far did he go in school there
22 before you moved back to the East Coast?

23 A He went through third grade. He started the 4th
24 grade back in Connecticut.

25 Q All right. And as a youth, did you have any
1184

1 problems with him?

2 A Never, ever had any problems.

3 Q All right. And then did he ultimately attend
4 high school somewhere?

5 A Yes, he did.

6 Q Where was that?

7 A James Hillhouse High School in New Haven,
8 Connecticut.

9 Q And that high school still there and open?

10 A Yes, it is.

11 Q Did they put something on the wall about him
12 there?

13 A Yes, they did.

14 Q What was that, ma'am?

15 A He -- they dedicated a wing to him because he was
16 the first one -- first person to graduate in over 25 years
17 from that high school with a medical degree.

18 Q Very good. Now, when he was in high school, was
19 he -- he ever get in trouble?

20 A Never.

21 Q Never had to go down to the school --

22 MR. BOHLING: May we approach?

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. BOHLING: I object to the relevance
1185

1 of this. We're going through every year of his life?

2 MR. OSGOOD: This is the background.

3 I'm going to be far less time than Mr. Solomon was.

4 THE COURT: Well, that's encouraging.

5 MR. OSGOOD: It is.

6 MR. BOHLING: I think it's improper. I
7 mean, I don't -- I mean, I think some relay is fine, but
8 to keep going back was he in trouble when he was --

9 MR. OSGOOD: He's on trial with lots of
10 risks, Your Honor.

11 THE COURT: I'll allow some history.

12 MR. OSGOOD: Thank you.

13 (The proceedings returned to open court.)

14 Q (BY MR. OSGOOD) What kind of student was he in
15 high school?

16 A Chris was a good student. He was a leader where
17 he always believed in doing what was right.

18 Q We'll talk to him too a little bit about that,
19 ma'am.

20 Never had any problems with him in high school?

21 A Never, ever had any problems.

22 Q Just a little anecdote, he was a high school
23 athlete, was he not?

24 A Yes. He played basketball.

25 Q Did he break his ankle at some point in time?

1 A Couple of times he had fractures and --

2 Q We don't need you to go into great detail. The
3 point I want to make is, did you tell him to stay home
4 when he broke his ankle?

5 A Yes, sir.

6 Q Did he stay home?

7 A No, sir.

8 Q What did he do?

9 A He would get up earlier and get dressed and put
10 his backpack on his back with his crutches.

11 Q What was the result of that in terms of
12 attendance at high school?

13 A He never missed a day from school.

14 Q Okay. Now --

15 A He never missed a day from high school.

16 Q Let's talk about college now. Where did he go to
17 college?

18 A UVA.

19 Q University of Virginia?

20 A Yes.

21 Q At Charlottesville, Virginia?

22 A Yes, sir.

23 Q Prestigious school. How did you pay for that,
24 ma'am?

25 A I couldn't. He got student loans.
1187

1 Q Big student loans?

2 A Yes.

3 Q All right. And then he got out. And in a couple
4 of years he went to medical school; did he not?

5 A Four years.

6 Q And had you won the lottery or anything by that
7 time, enabled him to --

8 A He took out a loan -- he took out a lot of
9 student loans.

10 Q More student loans?

11 A Yes, sir.

12 Q Then just a couple more questions.

13 You know your own son's reputation for being a
14 truthful person, don't you?

15 A Yes, sir.

16 Q What is that reputation among his peers, the
17 community, and the circles that you and he travel in?

18 A He's influenced a lot of --

19 Q Pardon me. The question was does he tell the
20 truth?

21 A He tells the truth.

22 MR. RHODES: Your Honor, may we
23 approach?

24 (Counsel approached the bench and the following
25 proceedings were had:)

1 MR. OSGOOD: Which one of these people
2 is the person cross-examining?

3 MR. RHODES: I'm going to have him do it
4 since he objected.

5 She's not a member of the community --

6 THE COURT: Are you doing the cross?

7 I think that's true. They don't live in the
8 same community.

9 MR. OSGOOD: All right.

10 (The proceedings returned to open court.)

11 MR. OSGOOD: I think that's all, Your
12 Honor.

13 MR. BOHLING: No cross-examination from
14 the government.

15 Thank you.

16 (Witness excused.)

17 THE COURT: Counsel, approach please.

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 MR. OSGOOD: We're ready for the doctor.

21 THE COURT: Do you want to go or --

22 MR. OSGOOD: It's up to you, Your Honor.
23 We're working for you.

24 THE COURT: I could get a few things
25 done, quite frankly, that I haven't been able to get done

1 since I've been in here. If it's okay with you, we'll
2 start at 8:15.

3 MR. OSGOOD: I have him and the real
4 short witness and I'm done.

5 Thank you, Judge.

6 (The proceedings returned to open court.)

7 THE COURT: I think I'm going to let you
8 go for the day. We've got one witness, one of the
9 defendants, yet to testify, and a short witness. We're
10 going to get the evidence wrapped up tomorrow, I'm fairly
11 certain of that, so we're not off schedule. Unless you
12 want to work a little longer today, I'm happy to stay a
13 little longer, but seeing no hands to the contrary, I will
14 recess for the day and ask that you report tomorrow at
15 8:15 and we'll get started.

16 I'll ask that you not discuss the case among
17 yourselves or with others or allow anyone to discuss it in
18 your presence, nor that you allow yourself to be exposed
19 to any media coverage that may pertain to this trial.

20 Have a good evening. Thank you.

21 (The following proceedings were had out of the
22 presence of the jury:)

23 MR. LEWIS: Your Honor, one thing in
24 housekeeping, do you anticipate we'll get to argue
25 tomorrow afternoon or Wednesday morning?

1 THE COURT: A lot is going to depend on
2 where we are with the instructions. I was thinking about
3 that. I've kind of backed myself into a little bit of a
4 corner. I could have had them come in later, and we could
5 have gotten instructions done on the front side.

6 MR. LEWIS: I can tell you from my
7 perspective I have no real objections to the government's
8 charge. I've been able to read all 108 pages. I'll make
9 a formal objection to the willful blindness instruction
10 just because of the pervasive misuse of it across the
11 world, but I know what the law is in the circuit.

12 THE COURT: Well, the other thing too is
13 it's going to be a logistical thing trying to get the
14 instructions together because there's going to be a few of
15 them in a package to give to the jury. I assume we're
16 going to have Dr. Elder on the stand for a good part of
17 the morning. I just have to see how it shakes out.

18 It would help immensely if we had a view -- if
19 you would give us or give to Jo here what you think the
20 packet of instructions are going to look like this
21 evening.

22 MR. OSGOOD: They look pretty good.
23 I'll talk to her and maybe get her e-mail address where I
24 can send anything.

25 MR. LEWIS: We have submitted our sole
1191

1 instruction.

2 MR. BOHLING: I believe Mr. Rhodes redid
3 our instructions this weekend to get rid of Mr. Johnson,
4 so they should be ready to go from the government's side.

5 MR. RHODES: We ECF'd that document so
6 everybody can see that we had revised it to eliminate
7 Johnson's name from the instructions.

8 THE COURT: Another issue that I'm a
9 little bit concerned about, but I'll wait until Jo has had
10 a chance to look at the instructions. She'll talk to me
11 and I'll talk to you about it in the morning.

12 MR. BOHLING: Okay.

13 END OF VOLUME V
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TUESDAY, JUNE 29, 2010

VOLUME VI OF VII

(The following proceedings were had in the
presence of the jury:)

THE COURT: Good morning.

THE JURY: Good morning.

THE COURT: I think we're ready to
proceed, Mr. Osgood.

MR. OSGOOD: We'll call Lionel Lynch.

LIONEL OLIVER LYNCH, being duly sworn, testified:

DIRECT EXAMINATION BY MR. OSGOOD:

Q Can you tell the folks your real name -- your
real name -- your full name, please, sir?

A My name is Lionel Oliver Lynch.

Q Where do you live, Mr. Lynch?

A I live at 2901 Forest --

Q Nowadays we don't put your actual street address
in the record. Your city is fine.

A League City, Texas.

Q Privacy rules to deal with.

A League City, Texas.

Q Is that a suburb of Houston?

A You can say that, yes.

Q What is your occupation, sir?

A I'm a physician assistant.

1 Q In Texas what's the proper title to refer to a
2 physician assistant? Is there one?

3 A Physician assistant.

4 Q All right. And then Mr. Lynch is fine for the
5 purposes of testimony, or would you -- normally someone
6 you expect them to say PA Lynch, or how does that work?

7 A PA Lynch, Lynch, Mr. Lynch, whatever.

8 Q All right. Tell me a little bit about your
9 background, how you became a physician's assistant.

10 A I first started in the medical field in Barbados
11 in 1973, and I became a registered nurse. I worked for
12 about two years there. Then I went to England, and I did
13 postgraduate training in psychiatry. I became a
14 registered psychiatric nurse. I completed a course in
15 district nursing and worked in the community for a short
16 while. After that I worked as a night supervisor at
17 General Hospital. In 19 --

18 Q Where was that, sir?

19 A At the General Hospital.

20 Q In Houston?

21 A No. This is all in England.

22 Q Still in London. Okay.

23 A In 1981 I immigrated to Alberta, Canada, and I
24 worked there for about three years as a psychiatric nurse.
25 I came to Galveston, Texas, in 1984 to work at UTMB, and I

1 worked there as a psychiatric nurse until about 1993.

2 Then I became a -- I went to PA school and graduated as a
3 PA in 1996.

4 Q Every state I think has different rules about
5 physician's assistants. Texas then has a law that allows
6 physician's assistants to practice their profession in the
7 state of Texas; is that right?

8 A They allow you to practice, but you have to be
9 under the direction of a physician.

10 Q Okay. Now, for example, do you have your own DEA
11 number that allows you to prescribe controlled substances?

12 A Yes, I do.

13 Q And do you attend annual or semi-annual courses
14 on what we call in the legal profession legal education,
15 something like that, continuing medical education?

16 A Yes, continuing medical education. I attend
17 annual courses. And I do over the internet -- sometimes I
18 do CME subjects over the internet.

19 Q All right. And are you practicing today?

20 A Yes, I am.

21 Q Who do you work for, sir?

22 A I work for Southwest Doctors Clinic in Houston,
23 Texas.

24 Q Who is the owner of that clinic?

25 A The owner of the clinic is Mr. Alex Kizeme
1195

1 (phonetic).

2 Q Okay. Now, do you know the defendant in this
3 case, Dr. Elder?

4 A Yes, I do.

5 Q And he's the gentleman seated over -- that you
6 know that's seated over here at counsel table with me?

7 A Yes.

8 Q And when did you first meet Dr. Elder?

9 A I first met Dr. Elder about the middle of 2006.
10 I met him then because he was going to be my supervising
11 physician at a clinic.

12 Q What was the name of that clinic?

13 A Genesis Pain Control Clinic.

14 Q All right. Did that in fact occur?

15 A Yes, it did occur.

16 Q Now, at some point in time did you work for a
17 doctor by the name of Peter Okose?

18 A Yes. That was before I had met Dr. Elder.

19 Q And how long did you stay with Dr. Okose?

20 A Not very long, probably about two months max.

21 Probably --

22 Q Was there something about his practice that
23 caused you concern?

24 A Yes, there were things that caused me concern.

25 Q Tell the ladies and gentlemen of the jury what

1 bothered you.

2 A Well, when I worked for Dr. Okose, I had never
3 worked in pain medicine before, but I found it was a very
4 busy clinic. The waiting room, what impressed me at
5 first, surprised me to some degree. The waiting room had
6 about a hundred chairs, and I thought that was unusual.

7 **There were about four practitioners seeing**
8 **patients from time to time, and there was an emphasis on**
9 **speed rather than thoroughness, in my opinion. And that**
10 **concerned me. And Dr. Okose did not allow the peers who**
11 **worked for him to have their own DEA numbers. Instead he**
12 **would sign prescriptions, and then you would order**
13 **basically what he wanted on it. Many of the prescriptions**
14 **were prestamped with certain medications on them. So you**
15 **examined the person and you determined what you thought**
16 **they should have based on these medications.**

17 Q Did you find that unusual?

18 A Yes, I did.

19 Q And bothered you?

20 A Yes, enough that I talked to him about it.

21 Q What did he tell you?

22 A He told me -- I told him I don't think this is a
23 good idea, and he told me my legal advisor is a federal
24 judge and he didn't think that I was qualified in telling
25 him how to run his practice.

1 Q All right. Were you aware of some of his
2 prescriptions coming to Missouri? Did you have any
3 knowledge of any of that?

4 A No, I was not aware of that.

5 Q There's been testimony he made \$10 million in two
6 years. Was the level of practice there, the way it was
7 going on, would that seem reasonable?

8 A I was only there for a short while, but --

9 Q Well, extrapolate it, though. I mean --

10 A Five people working seeing 20 or 30 people
11 sometimes, maybe some days less, I don't know, but it was
12 a busy place.

13 Q Okay. Is there -- are you familiar with the term
14 "sign and symptom"?

15 A Sure.

16 Q Tell the folks about that. I think someone else
17 did but let's remind them again.

18 A Well, a symptom is what the patient complains of,
19 and the sign is what you can elicit by examination or
20 monitoring, like, vital signs, things like that.

21 Q Is that important in determining whether or not
22 the patient is being honest with you and telling you the
23 truth?

24 A Yes, it is.

25 Q And what -- how does that come into play in, for
1198

1 example, the examination of an initial new patient that
2 you haven't met before?

3 A Well, in our business the first thing we do, we
4 ask for old medical records because we see people for
5 chronic illnesses, chronic pain, and we review the
6 records. And then we will examine the person. But you
7 may examine a person and when you examine the person at
8 that time, if they're on medications, what you find by the
9 examination may not be what the patient always feels. So
10 you have to go by your examination, but you have to bear
11 in mind that sometimes the patient is feeling worse than
12 when you examine them.

13 Q Okay. Now, when did you actually work for Dr.
14 Elder or under his supervision, I guess, would be the
15 proper term?

16 A I started at Genesis and then --

17 Q When was that?

18 A Probably June, July 19 -- sorry. 2006.

19 Q 2006.

20 A Probably. But I cannot remember exactly.

21 Q All right. Now, so were you aware of a search of
22 Ascensia Pharmacy and a big investigation in the same
23 month or year?

24 A No, sir.

25 Q At some point in time were you interviewed by

1 agents of the Drug Enforcement Administration?

2 A Yes, I was interviewed by Ms. Overton and
3 Ms. Washington.

4 Q That was in 2008, two years later; is that right?

5 A Yes, sir, about that.

6 Q And did they ask you about Dr. Okose?

7 A Yes. They told me actually -- they called me on
8 my --

9 MR. RHODES: Objection, Your Honor. May
10 we approach?

11 (Counsel approached the bench and the following
12 proceedings were had:)

13 MR. RHODES: This witness is not aware
14 of the search and everything.

15 MR. OSGOOD: I'll go somewhere else.

16 (The proceedings returned to open court.)

17 Q (BY MR. OSGOOD) Did they tell you things about
18 Dr. Okose that --

19 A Yes, they did.

20 Q -- confirmed what you had suspected?

21 A Yes, they did. They called me on my phone --

22 THE COURT: You answered the question.

23 MR. OSGOOD: Okay.

24 THE WITNESS: Yes, they did.

25 Q (BY MR. OSGOOD) Now, did they ask you about Dr.
1200

1 Elder?

2 A Yes, they did.

3 Q And what did you tell them about Dr. Elder and
4 his method of practice?

5 A I told them that --

6 MR. RHODES: Objection, Your Honor.

7 (Counsel approached the bench and the following
8 proceedings were had:)

9 MR. RHODES: This is not relevant.

10 THE COURT: I can't hear you.

11 MR. RHODES: Okay. I'm trying to make
12 sure. The witness was not present during Dr. Elder's
13 practice. They're asking questions outside of the
14 conspiracy period which ended in 2005. He knew Dr. Elder
15 in 2006, so his opinion of Dr. Elder's practice trades and
16 what he did outside the conspiracy period is not relevant
17 for purposes of this prosecution.

18 MR. OSGOOD: What he's going to say is,
19 and this is -- was during the period of the conspiracy,
20 2006. He's going to say during that period Dr. Elder was
21 trying to take people off of pain medicine. He was very
22 restrictive in the types of prescriptions that he would
23 issue, he was a mother hen over these people, and that he
24 did everything right and rejected patients that he thought
25 were running a ruse on him. It goes to the very basic

1201

1 issue in this case that they're claiming he had knowledge
2 of criminal activity over at the other place.

3 MR. RHODES: He began work for Dr. Elder
4 in July, June 2006. Our conspiracy period ends in August
5 of 2005 -- October, 2005. Excuse me.

6 MR. OSGOOD: That's true. But he had no
7 knowledge that he was being indicted or anything at this
8 time.

9 THE COURT: But still he started working
10 for Dr. Elder when?

11 MR. RHODES: June or July 2006.

12 THE COURT: Objection is sustained.

13 (The proceedings returned to open court.)

14 Q (BY MR. OSGOOD) The time you worked for Dr.
15 Elder, did he ever ask you to falsify prescriptions or
16 write prescriptions that were sold to people illegally or
17 engage in any such illegal conduct?

18 A No, no, sir.

19 Q Did you do that when you worked for Dr. Okose?

20 A No, sir.

21 MR. OSGOOD: Okay. Thank you.

22 MR. RHODES: No questions, Your Honor.

23 MR. LEWIS: I have some.

24 CROSS-EXAMINATION BY MR. LEWIS:

25 Q Good morning, Mr. Lynch. My name is Chip Lewis.

1 I represent Troy Solomon. I don't think you and I have
2 ever had the pleasure of meeting.

3 A No, sir.

4 Q I'm going to ask you just a couple of questions
5 about Mr. Solomon. You've never met Mr. Solomon, have
6 you?

7 A No, I have never met Mr. Solomon.

8 Q During your work, that couple of months at Dr.
9 Okose's clinic, you never saw or heard of Troy Solomon,
10 did you?

11 A No, sir.

12 Q No association at all between Troy Solomon and
13 Mr. -- and Dr. Okose from your personal perspective, true?

14 A I don't know, sir.

15 Q That's my point. You've never heard of Troy
16 Solomon in connection with Okose at all, have you?

17 A No, I have never heard of him.

18 MR. LEWIS: Thank you, sir.

19 Nothing further, Your Honor.

20 MR. RHODES: No questions, Your Honor.

21 THE COURT: Follow-up?

22 MR. OSGOOD: No, Your Honor.

23 THE COURT: Thank you.

24 (Witness excused.)

25 MR. OSGOOD: Call Dr. Elder.
1203

1 CHRISTOPHER ELDER, MD, being sworn by the Court,
2 testified:

3 DIRECT EXAMINATION BY MR. OSGOOD:

4 Q For the record, would you state your full name
5 and place of residence.

6 A Christopher Elder, Houston, Texas.

7 Q And how old are you, Dr. Elder?

8 A Thirty-eight.

9 Q I'm going to ask you a little bit about your
10 background. Your mother covered a little bit of it, not a
11 great deal.

12 You grew up in South Carolina; is that right?

13 A Yes, sir.

14 Q And went to grade school there, public school?

15 A All public school, grade school.

16 Q What kind of neighborhood was that?

17 A Rural.

18 Q All right. Typically segregated even though
19 obviously there was no legal segregation in those days?
20 It was a segregated black neighborhood?

21 A Yes, sir.

22 Q Was it -- were the socioeconomic conditions
23 generally poverty level or below?

24 A Below the poverty level.

25 Q All right. At some point in time did you move to
1204

1 the East Coast?

2 A Yes, I did.

3 Q And when was that?

4 A The age of 9.

5 Q All right. And did you attend public school
6 there?

7 A Yes, sir.

8 Q Now, your mother at some point remarried to a man
9 named Henry; is that right?

10 A Winston Henry, correct.

11 Q And he is your stepfather?

12 A Yes, sir.

13 Q And he was also in your life, then, for many
14 years or is, I guess?

15 A Yes, sir.

16 Q Let's jump to high school. I'm not going to
17 spend a great deal of time on this. Where did you attend
18 high school?

19 A James Hillhouse High School.

20 Q Now, two questions I didn't ask you, have you
21 ever testified before in a case?

22 A Never.

23 Q The other thing is sometimes an old saying we had
24 was my tongue got around my eyetooth or something and
25 caused me to mispronounce a word or something. Did you

1 recently have an accident that has affected to some extent
2 your speech a little bit sometimes?

3 A Yes, sir. Titanium in both sides of my mouth.

4 Q Was that a car accident?

5 A Car accident.

6 Q And the injury resulted from an airbag?

7 A Airbag imploded in my face requiring
8 reconstructive surgery.

9 Q And that was an ongoing process for several
10 months?

11 A Still is.

12 Q And your jaw was wired shut?

13 A For six weeks.

14 Q Okay. Go back to high school here. Were you
15 active in high school?

16 A Very active.

17 Q Tell me about that.

18 A The vice president of student council, played
19 varsity basketball, member of the National Honor Society,
20 and I maintained a job.

21 Q All right. And did you -- were you able to
22 finish with perfect attendance?

23 A Yes. I was awarded at graduation ceremony a
24 certificate honoring me for never missing a day of high
25 school in four years.

1 Q Where did you go to college at?

2 A University of Virginia.

3 Q That's the school in Charlottesville, Virginia?

4 A Yes, sir.

5 Q Pretty expensive school. How did you fund that?

6 A By taking out student loans.

7 Q And did you graduate from there?

8 A Yes, sir.

9 Q And what did you obtain a degree in?

10 A Biology.

11 Q And that was a bachelor's in biology?

12 A Bachelor's in biology.

13 Q Did you finish in four years?

14 A Four years.

15 Q And did you go then directly to medical school,
16 or did you do something else?

17 A I worked for two years following my undergraduate
18 studies.

19 Q And who did you work for, sir?

20 A A company called Clinipad.

21 Q What was Clinipad?

22 A Clinipad is a corporation that manufactures
23 surgical products that would be used in a preoperative
24 procedure such as iodine that they would put on your skin
25 for a surgery or alcohol prep pads, and I worked in the

1 quality assurance and quality control department of that
2 company.

3 Q So to some extent that's medically related?

4 A Yes, sir.

5 Q And at some point you in your life decided you
6 wanted to be a physician. When was that?

7 A Age 11.

8 Q Age 11?

9 A Yes, sir.

10 Q That was your goal?

11 A Yes, sir.

12 Q Now, there's a thing called the MCATs, I believe;
13 is that right?

14 A Yes, sir.

15 Q That's an acronym?

16 A The acronym for Medical College Admissions Test.

17 Q Okay. Did you take the MCATs?

18 A I took the MCATs.

19 Q While you were working at the medical lab?

20 A I took the MCATs while I was working at the
21 medical lab.

22 Q And apparently you did well on that because you
23 were accepted into medical school?

24 A Yes, sir.

25 Q And where did you go to medical school at?

1 A The Medical College of Pennsylvania.

2 Q Where is that located at?

3 A Philadelphia, Pennsylvania.

4 Q And is that a teaching hospital?

5 A Yes, sir, it is.

6 Q Large hospital?

7 A Yes, sir.

8 Q Prestigious hospital in Philadelphia?

9 A Yes, sir.

10 Q Now, in medical school when do you pick a
11 discipline that you want to pursue?

12 A Your third year of medical school.

13 Q How many years is medical school?

14 A Four years.

15 Q And so at some point in time you were required,
16 obviously, to pick a discipline. What discipline did you
17 pick?

18 A I chose physical medicine and rehabilitation.

19 Q What prompted you to pick that discipline?

20 A I chose that discipline because I was torn
21 between neurology and rheumatology, and --

22 Q What's rheumatology?

23 A Rheumatology is a -- it's a post -- after you
24 complete a residency in internal medicine, you do a
25 fellowship in rheumatology, which is basically

1 musculoskeletal disorders, people with severe arthritis or
2 lupus or other autoimmune diseases such as sarcoidosis,
3 things of that nature.

4 Q All right. Now, I don't know -- in fact, you've
5 educated me a lot on this. There's what's called
6 internship and residency?

7 A Yes, sir.

8 Q What's internship and when do you do that?

9 A Okay. Internship is essentially your first year
10 out of medical school. Once you complete your entire
11 first year of internship, which is the year that you
12 graduate from medical school, say, if you graduated in
13 May, your internship may start in June. So from June to
14 June that would be considered your intern year.

15 **So in a nutshell an intern is a first-year**
16 **resident. After you complete that first year, then you're**
17 **referred to as a resident.**

18 Q All right. Let me ask you this: Is that a
19 pretty rigorous period for a physician?

20 A Oh, yes, sir.

21 Q How many patients were you responsible for as an
22 -- first of all, where did you do your internship?

23 A I stayed at the place where I completed my
24 medical education which was the Medical College of
25 Pennsylvania.

1 Q Now, at some point in time you were also required
2 to -- there's a matching program of some kind, is that not
3 right, where a medical school or a hospital will match
4 their residents with other facilities?

5 A Yes, sir, it is.

6 Q And they've got to want you and you've got to
7 want them. Is that the way to kind of summarize it?

8 A Yes, sir. It's called "a match process."

9 Q All right. Now, you did your year of internship
10 then at the teaching hospital?

11 A Yes, sir.

12 Q How many patients would you see in an evening in
13 that process?

14 A Anywhere -- you're responsible for anywhere
15 between 20 to 125.

16 Q All right. Are these people that are admitted
17 into the hospital?

18 A Some people are.

19 Q Would this be postoperative patients just out of
20 surgery?

21 A They would sometimes be postoperative, sometimes
22 critical care, sometimes people who come in through the
23 ER, and I would make the assessment of whether to admit
24 them to the hospital or to discharge them with the
25 instructions to follow up at the clinic.

1 Q All right. An admitted patient that has -- had a
2 problem, would you get on the phone and call the assigned
3 -- their regular doctor and he'd come down, or would you
4 be required to handle that yourself?

5 A No. The ball is in your court. You handle it
6 yourself.

7 Q So that's -- you're there basically -- I guess
8 that's why they call it residency or internship, you're
9 there all the time?

10 A That's exactly correct. We live there.

11 Q Was that a paid position, Doctor?

12 A Yes, sir.

13 Q How much were you paid as an intern at the
14 teaching hospital?

15 A \$36,000 a year.

16 Q Okay. Now, where were you interested in going
17 for your residency?

18 A Baylor College of Medicine in Houston, Texas.

19 Q Why did you pick Baylor?

20 A Because it was consistently ranked number one.

21 Q In what?

22 A In my discipline, which is physical medicine and
23 rehabilitation.

24 Q Were you accepted there?

25 A Yes, I was.

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1 Q And, now, how long of a program is the residency
2 program?

3 A Three years.

4 Q And you successfully completed that?

5 A Yes, sir, I did.

6 Q All right. Now, today, as we sit here, what are
7 your credentials?

8 A My credentials are I am board certified by the
9 American Board of Physical Medicine & Rehabilitation. I'm
10 board certified by the American Board of Pain Medicine.
11 I'm a fellow of the American Back Society. I'm a member
12 of the International Public Pain Society. I'm a member of
13 the anesthesia regional -- no, the Regional Society of
14 Anesthesia. I am a member of the addiction -- the
15 American Academy of Addiction Psychiatry which allows me
16 to dispense Suboxone, and I am a member of Texas Pain
17 Society.

18 Q All right. So you're what's called a double
19 board certified physician?

20 A Yes, I am, sir.

21 Q Now, are those board certifications you have, are
22 they complementary to each other in terms of what you do?

23 A Yes, sir.

24 Q That's why you picked those two?

25 A Yes, sir.

1213

1 Q All right. Let's talk a little bit about your
2 personal finances. You told me that you financed medical
3 school and undergraduate with student loans; is that
4 right?

5 A Correct.

6 Q How much total did it cost you to go to undergrad
7 and medical school?

8 A \$250,000.

9 Q Give or take a few bucks?

10 A Yes, sir.

11 Q And today, as we sit here, how much do you owe in
12 student loans?

13 A \$246,000.

14 Q And you've been paying it down -- or you're
15 paying now regularly?

16 A Every month.

17 Q And how much is your student loan payment?

18 A Fourteen hundred dollars a month.

19 Q Is most of that principal -- I'm sorry, most of
20 that is interest with a smaller amount applied to
21 principal?

22 A Yes, sir.

23 Q That's why you've only got it down to 246 or
24 whatever it is?

25 A Yes, sir.

1214

1 Q All right. Now, when you were first required to
2 start paying back the student loan, did you defer that
3 some way?

4 A Yes. I applied for what's called an economic
5 hardship deferment.

6 Q Was that granted?

7 A Many times over.

8 Q All right. Because you just didn't have the
9 money to pay it?

10 A I didn't have the money to pay it.

11 Q Now, when you were going to medical school in
12 Baylor, where did you live, Dr. Elder?

13 A I lived in a complex about 5 miles away from the
14 hospital in an apartment, 625 square feet.

15 Q How much was your monthly rent?

16 A \$630.

17 Q And are you required to live within a certain
18 distance of the hospital because of being on call and
19 emergencies and that kind of thing?

20 A Yes, sir. That was actually part of the
21 stipulations in our guidelines.

22 Q How long did you live in that apartment?

23 A Five years.

24 Q So when did you --

25 A No. Four years.
1215

1 Q So when would you have left that apartment?

2 A I left that apartment in 2007 or 2008.

3 Q So while all of this went on, you were still
4 living in that \$625 a month apartment?

5 A Yes, sir.

6 Q This case?

7 A Yes, sir.

8 Q What were you driving, Doctor?

9 A I was driving a pickup.

10 Q All right. Now, you've got a little better car
11 now that you've been out and --

12 A Yes, sir. Oh, absolutely.

13 Q There's been a lot of talk in this case about tax
14 returns. Were you audited at some point in time by the
15 Internal Revenue Service?

16 A Yes, sir, I was.

17 Q And when was that, sir?

18 A For tax years 2004 and 2005.

19 Q And what happened -- let me show you what's been
20 marked as Defendant's Exhibit No. 18. Do you recognize
21 that?

22 A Yes, I do.

23 Q Is that the paperwork you got from the Internal
24 Revenue Service?

25 A Correct.

1 MR. OSGOOD: I'll offer Defendant's
2 Exhibit 18 into evidence, Your Honor.

3 MR. BOHLING: No objection.

4 Q (BY MR. OSGOOD) Now, as a result of that audit --

5 THE COURT: It's received.

6 Q (BY MR. OSGOOD) -- on the last page you got a
7 notice from them for those two years, '04 and '05, when
8 this all was occurring. How much did you have to pay them
9 in extra taxes that you had avoided and hidden, Doctor?

10 A Nothing. I actually received a refund.

11 Q \$212?

12 A \$212.36.

13 Q And did they scrutinize your records, and did you
14 in fact send an attorney accountant down to go over the
15 audit with them?

16 A Yes, I did.

17 Q All right. Now, I want to now jump to your work
18 at South Texas Wellness Center. We're going to talk about
19 the '04 timeframe. You did not stay on as a physician at
20 Baylor or work full time at one of those facilities. You
21 instead chose to use for a while a temp service; is that
22 right?

23 A That's correct.

24 Q Why did you do that?

25 A I did that because it allowed for flexibility and
1217

1 allowed me the opportunity to seek a -- not just
2 opportunities but to kind of gather my thoughts as to what
3 direction I wanted my career to head in.

4 Q Did you have visions of eventually opening your
5 own practice?

6 A That was my intention was to open my own clinic
7 in economically disadvantaged areas.

8 Q You were not at this time board certified the way
9 you are today?

10 A I was in preparation for the boards which would
11 be given during that year.

12 Q So this gave you some flexibility in terms of --

13 A And that's exactly why I chose --

14 Q Okay. Now, in some point in time did you meet
15 Pleshette Johnson?

16 A Yes, sir.

17 Q And where did that meeting occur and describe it
18 for me, what happened.

19 A Well, I was -- I met Pleshette through Okezie
20 Okezie.

21 Q We have mentioned his name a number of times
22 here. He's not Dr. Peter Okose, is he?

23 A He is not Dr. Peter Okose.

24 Q But it sounds very similar?

25 A It does sound very similar.

1 Q Where did you know Okezie Okezie from?

2 A Okezie Okezie trained with me at Baylor College
3 of Medicine, so he was a mutual friend who I had the
4 opportunity to do my residency with at the Baylor College
5 of Medicine.

6 Q All right. Did he suggest you apply at this
7 clinic?

8 A Well, he recommended me. He said he didn't have
9 the time commitment and that would I be interested and
10 something that would afford me flexibility. And I said
11 yeah.

12 Q At some point in time did you meet this Pleshette
13 Johnson?

14 A I met Pleshette Johnson, Ada Johnson, and
15 subsequently Troy Solomon.

16 Q And where did that meeting take place at?

17 A That occurred at a restaurant called Pappadeaux.

18 Q And what kind of restaurant is that?

19 A It's a Cajun seafood restaurant.

20 Q Was that a pleasant meeting?

21 A Yeah. It was a meeting where I got a chance to
22 ask questions about the duties and responsibilities and
23 exactly what type of clinic it was and whom they serviced
24 and things of that nature.

25 Q Did that satisfy you, that that's something you
1219

1 wanted to do at that point?

2 A Well, I told them I'd get back to them because I
3 had to think.

4 Q And what happened next?

5 A Well, eventually I gave them a call back after
6 this kind of --

7 Q Who? Obviously you can't talk to three people at
8 the same time unless it's a three-way.

9 A No. I got back with the Johnsons.

10 Q All right.

11 A And left a --

12 Q Ada and Pleshette?

13 A Ada and Pleshette.

14 Q Now, what was your understanding as to the
15 ownership of the clinic?

16 A As far as I was told by Pleshette, that the
17 Johnsons owned the clinic, and Mr. Solomon was their
18 financial backer.

19 Q Okay. And what was Pleshette's occupation, as
20 you understood it?

21 A She's a doctor of chiropractic.

22 Q And what about Ada Johnson?

23 A She was the office manager.

24 Q All right. When is the last time you saw Ada
25 Johnson?

1 A In the hallway here during the trial.

2 Q You mean when she was waiting to testify?

3 A Yeah.

4 Q For the government?

5 A For the government.

6 Q Okay. When is the last time you saw Pleshette
7 Johnson?

8 A Well, I saw her here. But prior to?

9 Q Yes, prior to.

10 A Prior to would be '06.

11 Q All right.

12 A The summer of '06 in particular.

13 Q Now, I want you to describe for me the clinic
14 setup and the intake procedure for, first, new patients
15 and then we'll talk about repeat patients.

16 A Okay. Well, it was set up such that a person --
17 a person presents to the clinic. They walk through the
18 reception area. They approach the front desk, and they
19 are then given papers kind of -- we've all been to the
20 doctor so we understand what the papers are. The
21 receptionist puts together a file for that patient.

22 **The medical assistant will then escort the**
23 **patient to the examination room and obtain their vitals,**
24 **their blood pressure, their height, their weight, oh --**
25 **their height, weight, respiratory rate, and things of that**

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1 **nature and, most importantly, their chief complaint.**

2 Q All right. Is it pretty much the way that the
3 other doctor for the government described it?

4 A Exactly the way Dr. Morgan described it.

5 Q Incidentally, we're going to talk a little bit
6 more about Dr. Morgan. Were you in agreement with 95 or
7 98 percent of what he had to say?

8 A Oh, 95 percent of what Dr. Morgan said was very
9 accurate. I'm a little more stingy than Dr. Morgan, but
10 what he said was --

11 Q We'll talk about that.

12 A Okay.

13 Q So you took the job?

14 A Yes, sir.

15 Q Was it a full-time job or part-time job?

16 A Part time.

17 Q What were the conditions of your employment?

18 A The conditions of my employment is I was going to
19 be a 1099 employee, i.e., an independent contractor, and
20 that I would work two to three days a week.

21 Q Was this tied to the number of patients you saw
22 or just a flat rate?

23 A Just a flat rate.

24 Q So during all this time that all this went on, at
25 the end of the year did you get a 1099 from Pleshette

1222

1 Johnson?

2 A Yes, I did. I get a 1099-M.

3 Q How much was that for?

4 A Five thousand dollars.

5 Q Did that go into that tax return you filed in '04
6 and '05?

7 A Absolutely.

8 Q So you made \$5,000 while hundreds of
9 prescriptions were faxed up to St. Joe -- or to Kansas
10 City for refills with your name on them?

11 A Yes, sir. That's come to my attention.

12 Q All right. Now, was your mother ill during this
13 period, Doctor?

14 A Yes, sir.

15 Q And what -- I think she told us. She had cancer?

16 A She developed Stage IIB breast carcinoma.

17 Q I presume by her testimony you two are very
18 close?

19 A Yes, we are.

20 Q And so did that cause you to be traveling
21 occasionally up to the East Coast?

22 A Yes, sir, it did. I flew there to meet with her
23 surgeon, to meet with her oncologist, and to meet with her
24 radiation oncologist.

25 Q Is she doing okay now?

1223

1 A Yes, sir.

2 Q Good. So you took an active role in that also?

3 A Absolutely.

4 Q And so besides being part time, you were part of
5 the part time, not there period?

6 A That would be accurate.

7 Q And is it a fair -- well, that would be leading.

8 How did that affect your concentration or your
9 attention to detail?

10 A Well, that affected me because I had never had
11 anyone in my family diagnosed with breast cancer, and
12 being a medical doctor myself, I was quite aware of the
13 seriousness of the breast cancer. So just being a doctor,
14 I was in constant communications with her doctors.

15 Q So it was distracting a little bit?

16 A It was very distracting.

17 Q All right. Now, how many exam rooms were there
18 at South Texas Wellness Center?

19 A There were two.

20 Q And when -- did you have an office there or
21 full-time private office?

22 A No, I did not. I used Pleshette's office when
23 she was not there.

24 Q Was she typically there every day you were there
25 or --

1 A No, no, she was not.

2 Q What was that situation?

3 A Well, Pleshette actually worked for a gentleman
4 by the name of Mr. Brown. I cannot recall his first name,
5 but his last name was Brown. And as her own testimony,
6 she would outsource her services as well.

7 Q Okay. Now, I want to talk a little bit about
8 scripts now. Obviously when you went to work there, you
9 didn't have script pads, did you?

10 A No, I did not have script pads.

11 Q And what was the arrangement then for you to be
12 able to write prescriptions?

13 A Ada and Pleshette would provide me with the
14 prescription pads upon my request. They had the
15 prescription pads. They -- I'm not certain who had them
16 printed up, but the prescription pads were generated, and
17 all I had to do is ask when I needed them.

18 Q Now, incidentally today do you use -- by
19 requirement, do you use a different kind of prescription
20 pad?

21 A Yes. I use security features on my prescription
22 pads.

23 Q What happens when you fax one of those, copy it
24 or scan it?

25 A It says "void and unauthorized."

1 Q All right. So it's in the background somewhere
2 electronically --

3 A Absolutely.

4 Q -- if you fax it or scan it or anything?

5 A Exactly.

6 Q Did you know anything about this relationship
7 with Missouri?

8 A Not at all, sir.

9 Q Now, where were the files kept at South Texas
10 Wellness Center?

11 A The files were located behind the reception area
12 in the office.

13 Q And when a file was created, who would create the
14 file?

15 A The receptionist and the MA. They would all
16 sometimes alternate duties.

17 Q What's an MA?

18 A Medical assistant. I'm sorry.

19 Q All right. Let's take a typical patient that
20 comes in. There what was the procedure in terms of file
21 preparation, issuing the script, and where it would go?

22 A Well, after the vital signs were obtained by the
23 medical assistant, they -- and the chief complaint was
24 written in the chart by the medical assistant, they would
25 let me know because typically I would be in Pleshette's

1 office. They would let me know that the patient was ready
2 to be evaluated.

3 Q And then you did your evaluation?

4 A I evaluated the patient and made a determination
5 whether the patient needed therapy or whether they needed
6 medicine to help with the -- depending on what I found on
7 clinical examination.

8 Q Now, some of these patients were coming directly
9 from Ada Johnson as the chiropractor. She would refer
10 them to you?

11 A Pleshette Johnson would refer.

12 Q Pleshette I mean.

13 A Some of the patients were referred from
14 Pleshette.

15 Q Some were just straight-up pain patients?

16 A Some were pain patients that had been referred --
17 they had been pain patients that were referred from other
18 chiropractors.

19 Q Now, were you seeing a lot of -- large number of
20 patients during this period of time?

21 A My recollection was that it was between 20 and
22 30.

23 Q All right. When you issued the script then, what
24 did you do with the script physically?

25 A I physically gave it -- provided it back to the
1227

1 patient.

2 Q And then the patient would leave and go back up
3 to the front?

4 A Well, then I would open the door and tell the MA
5 that the patient was ready, and I would then just complete
6 my charting.

7 Q Did you later have conversation with Pleshette
8 Johnson at some point in time about copying those scripts
9 and keeping them in the files up front?

10 A Yes, I did. And actually, as heard during this
11 testimony, Pleshette stated that they kept the originals,
12 and they would fax the prescriptions to a local
13 pharmacist. And the patient would then pick the
14 prescriptions up at that pharmacy, and they maintained
15 copies of the original.

16 Q How long were you out of medical school at this
17 time?

18 A Less than one year of residency.

19 Q Residency. Did that seem strange to you or odd?

20 A It seemed odd but I had seen it before during
21 residency where sometimes if I discharged a patient and
22 you didn't put one medication, we'll just fax it to the
23 pharmacist. So it was odd but not unique.

24 Q Now, there's been a number of your original
25 prescriptions that showed up in Missouri. You've seen

1 those in the --

2 A I've seen those exhibits.

3 Q When did you first find out that had happened?

4 A I found out that happened in May of '06.

5 Q During this investigation when the agents
6 interviewed you?

7 A When Connie Overton and Charlotte Washington came
8 and showed me this.

9 Q Now, some of those original scripts did not have
10 addresses on them?

11 A Correct.

12 Q And some of them have a date stamped in them?

13 A Yes. I noticed that.

14 Q Did you stamp dates in any prescription ever?

15 A Never.

16 Q Did you put addresses in at that timeframe?

17 A Sometimes I would and sometimes I wouldn't
18 because that was not the law during that particular point
19 in time.

20 Q What was the requirement as to what all went on a
21 script at that time?

22 A What went on a script was a patient's name, the
23 medication, the instructions on how to take the
24 medications, the number of refills if they are to be given
25 any refills, your name, your DEA number.

1 Q Now, some of these scripts that we saw, and one
2 of the things that concerned Dr. Morgan, was there were 80
3 or 100 of them or something all on one day with date
4 stamps on them.

5 A That concerned me as well.

6 Q You did not see that many patients on that day
7 and --

8 A No, I did not.

9 Q You got an explanation for why there's so many
10 all together there?

11 A Yeah. The explanation that I have in my mind is
12 that they held back on some of the originals, as described
13 during the testimony, and I would assume that a -- that
14 they --

15 Q Don't make assumptions now. Just --

16 A What would happen then is that a grouping would
17 be held because the originals, as heard during testimony,
18 was present at South Texas Wellness Center. And
19 subsequently --

20 Q Somebody faxed them up there -- or I mean sent
21 them up, mailed them up there, or transported them or got
22 them up there somehow?

23 A And that would account for the bulk.

24 Q Now, of all these scripts that we've seen here,
25 the names on them, is it your recollection that if it's an
1230

1 original script, you saw a patient?

2 A If there was an original script, I did see a
3 patient.

4 Q Now, one of the things that Dr. Morgan took issue
5 with was the repetitiveness of the type of medication that
6 you were issuing. You have a little different opinion
7 than he on that?

8 A Yes. One of the things that I have and supported
9 by current medical literature is the same drug can be used
10 to treat different conditions. I'll give you an example.

11 **We've all heard of Rogaine, right, grow your**
12 **hair? You can see mine receding here. Well, Rogaine was**
13 **originally designed to grow hair. One of the side effects**
14 **is it lowers your -- I mean, it was actually designed to**
15 **reduce your blood pressure. One of the side effects is it**
16 **grows your hair, but no doctor now prescribes Rogaine to**
17 **treat blood pressure. It's now for guys like me.**

18 Q Okay. Now, are you familiar with a medical
19 authoritative work called "Pain Medicine, a Comprehensive
20 Review, Second Edition by Mosby"?

21 A Yes, I am.

22 Q Do you consider that authoritative in the field?

23 A Yes, Dr. Raj.

24 Q I'm going to show you Defendant's Exhibit No. 59.
25 Do you recognize that, please?

1 A Yes, I do.

2 Q And what is that, please?

3 A This is called "A Pain Medicine Comprehensive
4 Review." This is the second edition by Dr. Raj.

5 Q And that's an authoritative work you rely on as a
6 practicing physician double board certified?

7 A Yes, it is, sir.

8 Q All right. Let me --

9 MR. OSGOOD: I'll offer that into
10 evidence, Your Honor.

11 Q (BY MR. OSGOOD) Obviously this is not the whole
12 book. This is an extract of a page; is that right?

13 A That's an extract of a page stating that --

14 Q Well, let's not talk about it until we get it
15 admitted.

16 A All right.

17 MR. OSGOOD: I'll offer Defendant's
18 Exhibit 59, Your Honor.

19 MR. BOHLING: May I see it, John?

20 No objection.

21 THE COURT: Hearing no objection, it
22 will be received.

23 Q (BY MR. OSGOOD) First of all, this is a cover; is
24 that right?

25 A That's correct.
1232

1 Q Shows it's second edition by Mosby?

2 A Well, Mosby is the publisher. Raj is the author.

3 Q I'm sorry. What's the author's name?

4 A Dr. Raj.

5 Q Okay. Now, I want to refer you to Table 22.7-7
6 in that manual or that book, that authoritative work, and
7 I want to have you take a look at it. That has some
8 sections on types of medication and directions and what
9 they can be used for and whatnot; is that right?

10 A Yes, sir.

11 Q Let me give you the document itself. I'm sure
12 the jury, if they want to look at it, they can, but you
13 can summarize for us.

14 What's significant about that exhibit?

15 A What's significant about this exhibit is that
16 Table 22-8 under the treatment of pain has anti-anxiety
17 drugs used for pain, and it gives you a list. And the
18 importance of this is that these drugs are basically
19 agonists or supporters which will help to alleviate pain.

20 Q What are some of the drugs on it that are -- that
21 you used?

22 A Some of the drugs are Ativan or Xanax, Valium,
23 Restoril.

24 Q Alprazolam or whatever it's called?

25 A That's the name for Xanax.

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1 Q All right.

2 A Just as lorazepam. Basically these are all
3 benzodiazepines.

4 Q What's that mean?

5 A A benzodiazepine is a drug that's used for
6 anxiety, but it could also be used for sleep. It could
7 also be used for nervousness. Basically helps you to
8 relax and calm down because with pain, there is a certain
9 component that's associated with anxiety. That's well
10 documented in medical literature.

11 Q So is it common or uncommon to combine an
12 anti-anxiety drug with a pain relief drug at the same
13 time?

14 A It's common, as heard by Pharmacist Chin and as
15 experienced in my training.

16 Q Now, there were a large number of drugs or
17 prescriptions that you wrote that were basically for the
18 same drug in the same amount. Can you explain that?

19 A Excuse me?

20 Q There were a large number of prescriptions or
21 quite a few prescriptions you wrote that basically were
22 for the same drug, and there's been testimony that every
23 patient is different. Can you comment on that?

24 A Every patient is different. However, the drug,
25 as I mentioned before, does not have to be used for that

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1 particular ailment. You can use the same medication for
2 -- to treat different conditions. Now, typically the
3 World Health Organization has a table, and in that table
4 the tier is NSAIDs.

5 Q You better spell that.

6 A NSAIDs, N-S-A-I-D-s.

7 Q Is that an acronym?

8 A It's an acronym for nonsteroidal
9 anti-inflammatory drugs. Those will be drugs that you
10 guys would know as Aleve, ibuprofen -- Aleve, ibuprofen,
11 Naprosyn, aspirin.

12 Q Tylenol over the counter?

13 A Well, Tylenol can be lumped in that category, but
14 typically it's going to be the ibuprofen, the Aleve, and
15 the aspirins. The problem I have with that is in 19 --

16 Q That was going to be my next question.

17 Let's say that you prescribe medical dosage of
18 aspirin, not just the one most of us take two for a
19 hangover or something, those that drink. I don't know.

20 Couple aspirin for a hangover. If you prescribe
21 that in medical dosage of four, five aspirins or a high
22 dosage of it, is there a side effect that you're concerned
23 about?

24 A Oh, yes. And I think Dr. Morgan touched upon
25 that. You are more prone to stomach ulcers or any other

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1 type of gastrointestinal ulcers as well as kidney disease.
2 In 1997, the death rate from taking over-the-counter
3 ibuprofen, aspirin, and Aleve was equivalent to deaths --
4 was equivalent to the amount of people who died from AIDS.

5 Q Was that part of the reason -- and I think the
6 doctor touched on it -- that there's this trend to use low
7 dosage opioids as --

8 A That's exactly why. And also -- he mentioned,
9 Dr. Morgan, I mean by he, he mentioned that the weak
10 opioids such as Lorcets, although far and few between,
11 they can cause liver issues. But that's very rare. You'd
12 have to exceed more than 4,000 milligrams in a day.

13 Q Now, I think it's been talked about, but I want
14 to hear it from you, Schedule II are the high potent
15 opioids; is that right?

16 A Yes, they are.

17 Q Fentanyl is a synthetic --

18 A It's -- everything is kind of an opioid
19 derivative. Fentanyl is actually a patch that you would
20 wear, so it's a transdermal patch that's absorbed via the
21 skin.

22 Q Was that something you think that one person
23 who's not on the jury was talking about?

24 A Yes, sir.

25 Q Where he would see his doctor for five minutes

1 and get renewed every time he'd go in there?

2 A Yes, sir. That's -- I know that that was
3 fentanyl that he was talking about.

4 Q Is he what you would call a chronic pain
5 patient --

6 A Yes.

7 Q -- based on what you heard him describe?

8 A Yes.

9 Q As opposed to somebody maybe with a soft tissue
10 injury, a first time?

11 A Absolutely.

12 Q All right. Did you subscribe -- did you
13 prescribe any Schedule II strong opioids during the time
14 you worked at South Texas?

15 A No.

16 Q Basically all low dose for --

17 A Weak opioids.

18 Q For pain control?

19 A Yes, sir. As I pointed out, there's a tier.
20 There's NSAIDs, opioids -- no. There's NSAIDs, weak
21 opioids, and opioids, and that was created by an
22 organizational body called the World Health Organization.

23 Q All right. Now, Dr. Morgan talked about also
24 sometimes you don't do anything, you send the patient home
25 and tell him --

1 A Well, sometimes with my training I would just
2 prescribe an exercise regimen. Everything does not have
3 to be treated with medicine.

4 Q Okay. So, of course, there's no particular
5 literature or hard and fast rules as to when you do that?
6 Isn't it a judgment call?

7 A It's a clinical judgment call.

8 Q I'm going to come back a little bit to some of
9 this, but I want to now jump into the shipment of packages
10 from Missouri to the South Texas Wellness Center. We've
11 heard that there were 76 brown boxes that were shipped
12 from Missouri to --

13 MR. BOHLING: Objection.

14 MR. OSGOOD: That was the testimony.

15 (Counsel approached the bench and the following
16 proceedings were had:)

17 MR. BOHLING: I disagree. I don't
18 believe there's any factual basis for that question, and I
19 think the brown boxes --

20 MR. OSGOOD: Mr. Johnson said there were
21 76 boxes and they were all brown. That's in the record.

22 MR. BOHLING: I don't think he could
23 identify them, white, nor brown.

24 MR. OSGOOD: No. Pleshette Johnson said
25 he received one white one.

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1 MR. LEWIS: I don't know what the truth
2 is, but Delmon Johnson testified they were brown.

3 MR. OSGOOD: Seventy-six brown boxes.

4 THE COURT: Apparently there's some
5 dispute in the record. I remember brown as well.

6 (The proceedings returned to open court.)

7 Q (BY MR. OSGOOD) Again, the testimony -- what I
8 want to ask you about is these brown boxes that were
9 apparently shipped, a number of them, with your name on it
10 from Missouri to Texas. Did you ever sign for any of
11 those?

12 A Never.

13 Q Did you know that was happening?

14 A Not at all.

15 Q And did -- there's testimony, I believe, from
16 Pleshette Johnson at some point in time she recalled
17 giving you a white box. You remember that testimony?

18 A I do remember that testimony.

19 Q Do you remember even that incident?

20 A No, I don't.

21 Q All right. So you don't even think you got a
22 white box?

23 A I don't think I got a white box.

24 Q All right. Did you know that, again, that drugs
25 were being -- at least boxes that purported to have drugs

1 in them were being shipped from Missouri to Texas in large
2 quantities like that?

3 A I had no knowledge of that, sir.

4 Q Did you ever talk to Troy Solomon about that
5 procedure?

6 A No, sir.

7 Q He ever tell you that was happening?

8 A Absolutely not.

9 Q Pleshette Johnson ever tell you that was
10 happening?

11 A She did not.

12 Q Ada Johnson ever tell you that was happening?

13 A No, she did not.

14 Q This Mr. Parker, did you see him around there on
15 occasion?

16 A I met Philip Parker twice ever.

17 Q Okay. And Mr. Delmon Johnson, do you know him?

18 A Yes, I do.

19 Q And did you see him around there on occasion?

20 A Rare occasion.

21 Q Did you ever discuss with him these boxes coming
22 from up there and what was going on?

23 A No.

24 Q Did you have any knowledge of it at all, Doctor?

25 A None.

1 Q Okay. This Ms. Martin, did you know her?

2 A Not at all.

3 Q Ever talk to her?

4 A Not once.

5 Q Now, during this timeframe you had an e-mail
6 address, did you not, sir?

7 A Yes, I did.

8 Q And what was that e-mail address?

9 A Eldermd@yahoo.com.

10 Q When did you first get that?

11 A I received that in 1999, I believe.

12 Q And was that your only e-mail address?

13 A Only e-mail address.

14 Q Let me ask you this also, were you married during
15 this period of time?

16 A No, I was not.

17 Q When did you get married?

18 A I got married April 4th, 2009.

19 Q All right. So there was some testimony about you
20 having marital problems at some point with somebody. You
21 didn't have a wife, did you?

22 A I did not have a wife. And that was Cindy Martin
23 who testified to something about the fact of that I was
24 married and had marital problems.

25 Q You never met her or ever talked to her in your
1241

1 life, did you?

2 A I just heard her during her testimony.

3 Q Let me show you Defendant's Exhibit No. 56. Is
4 this your marriage license?

5 A That is.

6 Q When did you get married?

7 A I got married in April of '09.

8 Q All right.

9 MR. OSGOOD: For what it's worth, I'll
10 offer 56, Your Honor.

11 MR. BOHLING: No objection.

12 THE COURT: Be received.

13 Q (BY MR. OSGOOD) Now, did you ever e-mail any of
14 these people?

15 A Never.

16 Q And based on reviewing stuff we were given by the
17 government, did you -- you looked at it pretty thoroughly.
18 Did you ever find any e-mails to you from any of these
19 people?

20 A No, sir.

21 Q All right. This incidentally, Defendant's
22 Exhibit No. 17, is a subpoena we sent to Yahoo requesting
23 information about your e-mail address and has a
24 declaration on it. Do you recognize that?

25 A Yes, I do.

1 Q Shows the date you got your e-mail and that
2 you've had it continuously; is that right?

3 A Yes, it is.

4 MR. OSGOOD: I'll offer 17 into
5 evidence, Your Honor.

6 MR. BOHLING: No objection.

7 THE COURT: Be received.

8 Q (BY MR. OSGOOD) Would you look at page -- I guess
9 it's page 4 of that. What does it indicate, Doctor, as to
10 when you got your e-mail address?

11 A Eldermd@yahoo.com, I got my e-mail address on
12 November -- November '05. Or is that November 5th?

13 Q Account created Friday, November 5 of 1999.

14 A 1999.

15 Q Now, you just graduated from medical school and
16 apparently were pretty proud of that, right?

17 A Yes, I was.

18 Q That's why you picked Eldermd@yahoo.com?

19 A Yeah.

20 Q And you kept that e-mail ever since?

21 A Have it currently, sir.

22 Q And we've not seen anything in any of the
23 thousands of pages of information we've got showing you
24 e-mailing any of these people?

25 A Correct.

1243

1 Q Now, there is some indication -- well, I want to
2 jump right next to fax renewals. The -- you've seen all
3 these renewals that came up through Missouri, requests for
4 renewals were generated in Missouri and went back to Texas
5 and then a renewal approval was faxed back? You've seen
6 those; have you not?

7 A Yes, sir, I have.

8 Q Over and over again here in court. I drew a
9 little chart yesterday. I'm not going to go through them
10 one by one like Mr. Rhodes did, but I will tell you that
11 based on the government exhibit list, that I've counted
12 those, and I counted them as he was covering them.

13 It appears that nine of these things were
14 generated in your name and sent to Missouri during 2004.
15 Okay?

16 A Okay.

17 Q When did you actually leave your part-time
18 position at the South Texas Wellness Center?

19 A January of '05.

20 Q January the 1st?

21 A Beginning, yes.

22 Q Okay. Because you got a 1099 for the year. You
23 didn't work there in January?

24 A Correct.

25 Q Those nine refill requests we've seen on the
 1244

1 screen numerous times that have those long scrawled
2 initials, did you sign those or initial those?

3 A Not a single one.

4 Q All right. Did you even know that was happening?

5 A Absolutely not.

6 Q And we saw the scripts, your original scripts
7 with your initials. Is that the way you wrote your
8 initials consistently?

9 A On the original scripts, yes.

10 Q Yes. And those obviously don't look like those
11 to me or to you?

12 A Not remotely close. Not remotely close.

13 Q You didn't know those nine occurred while you
14 were actually working there?

15 A No, I did not.

16 Q None of these people we've talked about -- I'll
17 just call them "they"?

18 A Okay.

19 Q The people we've talked about. We ticked off
20 their names. Let's just refer to them as "they."

21 A Okay.

22 Q You never discussed that with any of them or
23 they, did you?

24 A Never.

25 Q Didn't know it was happening. And you were
1245

1 salary?

2 A I was salaried, sir.

3 Q This is the year you made \$5,000 while all this
4 was going on, hundreds or thousands of these things were
5 renewed?

6 A Yes. I made \$5,000, yes.

7 Q And in the year '05 it continued, and in the year
8 '05, based on the exhibit list, 34 more were sent in your
9 name with the same forged initials. Were you aware of
10 that?

11 A I was not aware of that.

12 Q Did you authorize anybody, any of them, the
13 people we've talked about that are listed or have been
14 talked about in this case, did you authorize anybody to
15 put your initials on a document to renew prescriptions?

16 A Absolutely not.

17 Q And you were gone at that point?

18 A Far gone.

19 Q And 34 of them were sent up there. You didn't
20 know anything about those?

21 A No.

22 Q All right. That's also the same time period that
23 six went up for Dr. Okose and one for Dr. Botto? Were you
24 aware of that?

25 A Yeah.

1 Q Well, I mean, at the time.

2 A No, no, no, just by reading the discovery.

3 Q And seeing it here in court?

4 A Exactly.

5 Q Okay. Now, you say you terminated your
6 employment with South Texas at the end of the year. Why
7 was that?

8 A I didn't get along with Ada or Pleshette Johnson.

9 Q What kind of problems were those?

10 A Professional and personal.

11 Q All right. Were they hard to work for?

12 A Oh, yes.

13 Q Demanding, aggressive?

14 A Aggressive, demanding.

15 Q Your words, please. I don't want to testify for
16 you.

17 A Aggressive, demanding. Pleshette is a
18 chiropractor who wants to tell a medical doctor how to
19 diagnose. We just locked horns.

20 Q Okay. Did you vent some of that with Mr. Solomon
21 that you thought was an investor? He's a guy and a male.

22 A He was a male, much more easy to talk to, and I
23 told him that me, Ada, and Pleshette were just oil and
24 water.

25 Q You have a lot of conversations with him during
1247

1 that period about these people?

2 A We -- I had a lot of issues with those guys, and
3 so I would tell him, listen, these -- this is -- you have
4 financial backings and investment, your business is not
5 going to work as long as you got these two people as
6 partners.

7 Q All right. Now, as a result of talking to him on
8 the phone, did you kind of become phone buddies with him?

9 A Yes, yes, I did.

10 Q Now, I assume every phone call wasn't a bitch
11 call to him?

12 A No, no, no.

13 Q Did you talk about sports?

14 A Talked about sports, poker, things of that
15 nature, guy stuff.

16 Q You were single then, right?

17 A Yeah.

18 Q Talked about many other things?

19 A Yes, sir.

20 Q Okay. So the government has shown us a chart of
21 400 and some phone calls during the entire two-year clock
22 here that I've referred to that I've got up on the screen
23 here.

24 Were the phone calls -- and there's no breakout.
25 Were the phone calls more frequent or less frequent in '04

1 and '05?

2 A They would be more frequent in '04 for the simple
3 fact that I wanted to -- I worked for South Texas Wellness
4 Center, so it would definitely be skewed toward '04.

5 Q We haven't broken those out. That would just be
6 your --

7 A That would be my recollection, and that would be
8 the thing that makes the most common sense.

9 Q Okay. Now, after you left and you continued to
10 talk to him, what kind of things did you talk to him
11 about?

12 A Oh, we were talking about, you know, besides guy
13 stuff, I know everyone is always looking to get a freebie
14 advice from a doctor. So he would call, Hey, what do you
15 think is good for this or what do you think is good for
16 that? So it would be talk about, Hey, do you think this
17 medication would be good for that? No. I'm used to
18 getting cornered and --

19 Q Did you know he was involved with Ascensia at
20 that time?

21 A I did know that a pharmacy was going to open at
22 sometime in '04.

23 Q So those kind of calls didn't surprise you any?

24 A No.

25 Q Now, did you actually socialize with him in the
1249

1 sense that you would spend time together in the evening or
2 go to events together or drink or go out or carouse?

3 A Not at all.

4 Q Okay. So when you told the agents that you did
5 not socialize with him, is that what you were talking
6 about?

7 A That's accurate.

8 Q All right. Now, after you left on January the
9 1st, where did you go to work then?

10 A After I left in January, I worked at the
11 Methodist Hospital in Houston, Texas.

12 Q And was that a temp position?

13 A I was covering for a colleague of mine who was
14 going to be out of the country for one month.

15 Q What was his name?

16 A It was Dr. Krim.

17 Q Krim?

18 A K-r-i-m, first name Shanaz.

19 Q Can you spell that?

20 A S-h-a-n-a-z.

21 Q Okay. And what kind of doctor was he?

22 A She.

23 Q She, oh, okay.

24 A Shanaz Krim was an inpatient rehabilitation
25 hospitalist.

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1 Q All right. Methodist is not Baylor, is it? Is
2 it another large hospital in Houston?

3 A They're affiliated with Baylor. Baylor students
4 do their rotations, and residents from Baylor will train
5 at Methodist. So it was a symbiotic relationship.

6 Q Okay. Now, when were your oral boards coming up?

7 A My oral boards were at the Mayo Clinic in 2005,
8 May of 2005.

9 Q Okay. Did that require some study?

10 A Oh, yeah.

11 Q All right. And you had passed the written by
12 this time?

13 A I had passed the written, yes.

14 Q So did you look for a more maybe part-time
15 position while you were studying for these boards?

16 A Yeah. I needed that flexibility in order to
17 afford the time to devote to studying for the boards.

18 Q So at some point in time did you make an
19 application to Westfield Medical Clinic?

20 A Yes, sir.

21 Q When did that happen?

22 A I don't recall the exact date. I can recall the
23 start date.

24 Q When did you start?

25 A I started in February of '05.
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1 Q All right. Then basically you went from
2 Methodist over to Westfield?

3 A Yes, sir.

4 Q Now, how did you interview for that job and who
5 did you talk to?

6 A I talked to Diane and R. E. -- Dr. Hearn and
7 Diane Hearn.

8 Q All right. Who was the owner of the clinic?

9 A Dr. R. E. and Diane Hearn.

10 Q Now, was Dr. R. E. Hearn practicing there and
11 seeing patients?

12 A No. He had his DEA registration revoked.

13 Q When was that revoked?

14 A In 2000.

15 Q But he owned the clinic still?

16 A He owned the clinic still.

17 Q So that give you any concern?

18 A It gave me great concern.

19 Q Okay. But you talked to him and you eventually
20 decided to take the job?

21 A Yes, sir.

22 Q And describe for me the conditions of employment.
23 There's a contract, but I don't know that I can put my
24 finger on it right now. What do you remember the contract
25 was?

1 A I don't remember the exact terms of the contract
2 except for that we would split the proceeds as heard
3 during the testimony of Diane Hearn.

4 Q And what was your recollection or what's your
5 recollection today as to how you were going to be paid and
6 in what condition?

7 A I was going to be paid a -- based on the amount
8 of patients I seen, and a part of the stipulation I made
9 to her, just because I knew that the clinic had had some
10 issues in the past with Dr. Hearn having his DEA
11 registration revoked, and I wanted to make sure that my
12 compensation was correct.

13 Q So did that cause you then to ask for some copies
14 of scripts?

15 A Yes.

16 Q Now, when you hired on there, where did you get
17 the prescription pads?

18 A Oh, I would just ask Diane to -- if I needed a
19 new one.

20 Q By the way, let's back up a minute. There was
21 suggestion on -- at the other place that you took script
22 pads home en masse or something. Did that happen?

23 A That never happened, sir. There was one instance
24 where I remember leaving a prescription pad in my white
25 coat, and I just brought it back with me at my next

1 employment date. I didn't work every day. It was part
2 time.

3 Q All right. Were you during that time over there
4 writing scripts on nonexistent patients?

5 A Absolutely not.

6 Q Okay. Everybody you wrote a script for was a
7 live body that you examined?

8 A Everybody I wrote was an existing, breathing
9 person.

10 Q All right. Now, let's go over again to
11 Westfield.

12 A Okay.

13 Q You said Mr. and Mrs. Hearn owned the clinic?

14 A Yes, they did.

15 Q What were the terms of your employment, then, in
16 terms of how you were going to be paid? You were going to
17 get a percentage?

18 A Yeah. We agreed to a numerical value that I
19 would be compensated per patient and that subsequently
20 took place. And -- but because of the trust issue and I
21 knew that he had his license revoked by the DEA, I wanted
22 to make sure that I had a copy of those prescriptions.

23 Q How long did that go on for, where you got a
24 copy?

25 A Two months.

1 Q Then were you comfortable with --

2 A I felt comfortable enough with Diane Hearn that I
3 didn't -- I no longer needed any copies.

4 Q What was the intake procedure there for a new
5 patient?

6 A The intake procedure there was very similar to
7 the intake procedure at South Texas Wellness Center where
8 a person would come in, I would review their records via
9 -- I mean, I would review their records, whether it was a
10 CT scan or MRI scan or X-ray or EMG, which is basically --
11 it's a nerve conduction study to determine -- or some
12 people who had five back surgeries, you know. Surgeons
13 are very, very stingy with pain medications. You can have
14 your arm chopped off, and this guy wants to give you a
15 Tylenol.

16 Q Okay. So there's a difference of opinion among
17 people in your profession versus some of the other nonpain
18 management practitioners as to how much you give?

19 A If you want to see a good wrestling match, you go
20 to what we call morbidity and mortality conferences
21 between some surgeons and their different approaches to
22 things.

23 Q Okay. So the patient would fill out this intake
24 sheet?

25 A Yes.

1 Q Was there -- were there exam rooms there?

2 A Westfield had about three exam rooms. They would
3 fill out the intake form. The -- I -- they would bring
4 back the patient's records. I would either approve or
5 disapprove of the patient's records. I would then have
6 someone in the front staff call to verify the authenticity
7 -- basically to authenticate those records, to make sure
8 those records were -- they were -- because people were
9 known to falsify records.

10 Q Okay.

11 A So I would call -- I would have them call, verify
12 that this person did receive his MRI. After the person
13 was approved, they would then fill out the HIPPA, the
14 privacy act, and the other things that people fill out.

15 Q Basically the documents that Dr. Morgan
16 described?

17 A Exactly what Dr. Morgan described.

18 Q All right. Now, when you got into the exam room,
19 then, what did you have physically at your disposal to
20 examine that patient?

21 A What I used was just the standard bed that --
22 well --

23 Q No, no. I mean, you had the record, you had the
24 file?

25 A Oh. What did I use? Yeah, yeah, yeah. I had
1256

1 their previous imaging study along with their chief
2 complaint. And I may or may not have had a referral
3 letter from the doctor stating what he thought was going
4 on but he just didn't feel that he was qualified to treat
5 that particular ailment.

6 Q Let's assume for a moment at Westfield that you
7 are writing a script. What do you do with that original
8 script?

9 A I gave it to the patient to carry it back up
10 front to the reception area.

11 Q What did you think was going to happen with that
12 script?

13 A Well, I thought that they would bring it to the
14 reception area as I asked them to.

15 Q No. After you issued it, where was it going to
16 be filled?

17 A At the pharmacy of his or her choosing.

18 Q Was there a pharmacy co-located there in the
19 building down the hall?

20 A Absolutely. There's a pharmacy called C&G
21 adjacent to the Westfield Medical Clinic.

22 Q All right. So you would hand them a script. Did
23 you take the script yourself up front, or did they take
24 the script in the file, or how did that work?

25 A No. I gave them the script and the file, and
 1257

1 they brought it up front.

2 Q And that would facilitate you getting your copy,
3 at least in the first couple of months?

4 A Yeah.

5 Q So did that practice continue while -- the whole
6 time you were there, give them the original --

7 A That's my recollection. That was pretty
8 consistent.

9 Q How many employees were there at Westfield?

10 A Including myself, five.

11 Q Five?

12 A Including myself, yeah.

13 Q And you know how many employees there were at C&G
14 who had access to original scripts of yours?

15 A Five.

16 Q So there were at least 8 or 10 people that at one
17 point or another may have had their hands on your original
18 scripts?

19 A Yes, sir.

20 Q After they left you?

21 A Yes, sir.

22 Q And you've gone through all the discovery. Were
23 all those people interviewed? Do we have reports of
24 interview on those people at Westfield and C&G?

25 A Based on my study of the discovery, the only
 1258

1 person that was interviewed was Sunny Chin, who gave
2 testimony here, and at the medical clinic, at Westfield
3 Medical Clinic, Diane Hearn and Cheryl Floyd were the only
4 ones interviewed.

5 Q Okay. And you at my request authorized me to
6 hire Mr. Reeder to conduct his investigation, didn't you?

7 A Yes, I did.

8 Q And he provided us with 20-some interviews, did
9 he not?

10 A Yes, he did.

11 Q Were we able to get an interview from Diane
12 Hearn?

13 MR. BOHLING: Objection.

14 Q (BY MR. OSGOOD) I don't want to know what it
15 said. Did we get an interview from Diane Hearn?

16 A No.

17 THE COURT: I think that's already been
18 offered into evidence.

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

20 Q (BY MR. OSGOOD) Now, eventually it appears that
21 some of those original scripts that you wrote also ended
22 up in Missouri. Do you have any explanation for how that
23 happened, Doctor?

24 MR. BOHLING: Objection. If we can
25 approach?

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. BOHLING: Copies ended up in
4 Missouri.

5 MR. OSGOOD: That's what I meant.
6 Sorry. Thanks.

7 THE COURT: But wait a minute.

8 MR. OSGOOD: Copies. You're right. I
9 misspoke. Important point.

10 THE COURT: If he previously testified
11 that he knew nothing about this, how is --

12 MR. OSGOOD: This is a different clinic
13 now. These are copies. This is an important point for
14 them and me.

15 THE COURT: Doesn't it require
16 speculation on his part?

17 MR. OSGOOD: He's just going to say he
18 doesn't know basically.

19 MR. BOHLING: I think that's -- it's all
20 right with me.

21 (The proceedings returned to open court.)

22 Q (BY MR. OSGOOD) I misspoke. Not your original
23 prescriptions. The original prescriptions, the ones you
24 put in the file at Westfield, eventually copies of those,
25 again, ended up -- this time copies of your scripts at

1 Westfield ended up in Missouri. You have any explanation
2 for how that happened?

3 A I do not know. The only thing I know is I was
4 not involved. I don't know how they did this, but I
5 didn't do it and I was not involved.

6 Q Okay. This is more what you believe to be
7 victimization?

8 A Not only victimization. They subjected me to
9 humiliation, to this -- basically being disgraced and
10 discredited. I've worked too hard to have that. I don't
11 know who "they" are, but I am not happy about how these --
12 this thing played out. You know, I am a man of integrity,
13 and I would never partake of a scheme like this.

14 Q Let me ask you this: After they started
15 gathering records from C&G, Ms. Hearn testified that there
16 was missing scripts from files.

17 A I saw that during her testimony.

18 Q And she had a sheet there where she showed
19 certain files that didn't have any scripts in them at all.

20 A Yes, she did.

21 Q Which would suggest she was obviously keeping
22 scripts, originals or copies?

23 A Yes, she was.

24 Q Did you get into the files and pull scripts out
25 of her files?

1 A Absolutely not.

2 Q So you have any explanation for why files or
3 scripts were missing from her files even?

4 A I didn't know she even kept them.

5 Q Okay. Now, some general things that Dr. Morgan
6 testified to that I want to ask you about.

7 A Okay.

8 Q You always put "no refills" on your scripts?

9 A I do put "no refills" on my scripts.

10 Q You heard him testify that he puts refills on his
11 scripts sometimes?

12 A I did hear that in testimony.

13 Q That would be part of the 5 percent you're not
14 necessarily in agreement with him about?

15 A That's correct.

16 Q What is the -- or what are the three reasons that
17 you put "no refills" on a script, Doctor?

18 A Well, first reason is I have to be certain that
19 the patient is compliant with the medications that I take
20 --

21 Q What's that mean?

22 A Well, "compliant" means that you are actually
23 following the instructions as directed, and in order to
24 monitor compliance, I can't give you the medication and --
25 you know, we're trained to believe you. But, you know,

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1 growing up in a single parent household in the projects, I
2 know how to -- you know, people can hustle. So, number
3 one is compliance and how I monitor compliance.

4 Q That means you're taking the medication you've
5 been given on schedule the way you're supposed to?

6 A That's exactly correct. And that's why I would
7 not give one refill.

8 Q What's the second reason?

9 A Well, the second reason is I need to have the
10 patient come back so that I can do a functional
11 evaluation. Let's say, for instance, someone has a torn
12 rotator cuff --

13 Q Okay.

14 A -- in their shoulder.

15 Q All right.

16 A They can only go 90 degrees.

17 Q You're holding your arm out at 90 degrees for
18 demonstration purposes?

19 A For demonstration purposes, 90 degrees. The
20 normal range of motion is 180 degrees.

21 Q That's your head -- your hand full over your
22 head?

23 A Exactly. It's 180 degrees. If I were to give a
24 person a refill, I wouldn't be able to evaluate them to
25 see if the medication has helped them. Maybe I didn't

1 give them medication. Maybe I just gave them an exercise
2 such as the --

3 Q The wall walking?

4 A Yeah. It's called lig finger. Maybe we've gone
5 through this with therapy and no medicines were given. So
6 that would be contingent upon now I need to make the
7 decision is the medicine helping or is it exercise that I
8 prescribed helping because, as I mentioned before,
9 everybody is not going to get a prescription.

10 Q Okay. Now, let's --

11 A Then there's the third reason.

12 Q I was going to ask you about the third reason.
13 What's the third reason?

14 A The third reason that I don't give refills is how
15 am I going to pay my bills?

16 Q All right. So that's not an altruistic reason?

17 A No, it's not altruistic at all.

18 Q It's simply a business factor, isn't it?

19 A It is a business factor.

20 Q You want to generate another office visit?

21 A You have to unless you want to have some
22 voluntary staff, and I don't think that's going to happen.

23 Q When you worked over at South Texas, is that why
24 you were writing "no refills" on there, you thought that
25 would generate another visit?

1 A I wrote "no refills" because it -- I needed to
2 see the patient again to assess their functionality.

3 Q Again, harkening back to these fax renewals then,
4 that would defeat the purpose of all that, wouldn't it?

5 A That would be counterproductive to the purpose,
6 yes, sir, it would.

7 Q All right. Now, you had your best year there,
8 did you not, for purposes of income?

9 A Yes, sir.

10 Q And you made \$200,000 that year; is that right?

11 A Over 200,000.

12 Q And you filed taxes on that?

13 A On time.

14 Q And paid the income tax of --

15 A Yes, I did.

16 Q Forty, \$50,000, whatever it was?

17 A Closer to 50.

18 Q All right. Now, what types of medication were
19 you relying on primarily at Westfield?

20 A Well, that would be contingent upon what I found
21 on physical examination as a condition of some people
22 would get what we call weak opioids.

23 Q Now, you relied on weak opioids. You pretty much
24 used the same --

25 A There's variations. If I'm worried that a person
 1265

1 has hepatitis or any other things, I would order what's
2 called a liver function test. I think we heard testimony
3 by Dr. Morgan, he said it's very rare. It's very rare but
4 I don't want to miss it, so I would order a liver function
5 test or a panel and see if their liver was in condition
6 after -- if they had been on the medication for any
7 particular duration of time prior to coming to see me or
8 even as they were seeing me.

9 Q Now, incidentally, there's been a lot of talk
10 about promethazine with codeine. That is not pain
11 medicine, is it?

12 A I agreed with Dr. Morgan 100 percent on that one.
13 That has no indication on pain.

14 Q It is actually to treat an upper respiratory
15 problem, is it not?

16 A Upper respiratory or could be a cough, pneumonia.
17 I mean, I have extensive training in critical care, so I'm
18 not afraid to write a prescription for promethazine with
19 codeine along with an antibiotic with the presumption on
20 clinical examination this person has an infection.

21 Q You in fact wrote at South Texas antibiotic
22 prescriptions, didn't you?

23 A Yeah, I did.

24 Q And they're not -- haven't been displayed here?

25 A No, I didn't see any.

1 Q And you also on occasion saw upper respiratory
2 patients and gave them an antibiotic maybe and/or
3 promethazine with codeine to treat that; did you not?

4 A That's true.

5 Q That was a general practice in some regards?

6 A Yes.

7 Q All right. But we haven't seen those
8 prescriptions on the screen yet?

9 A No.

10 Q All right. In fact, I believe one of those
11 original scripts for antibiotics showed up based on our
12 review of the discovery in Missouri, didn't it, some of
13 them?

14 A Yeah, I believe some of them did.

15 Q Yes. Now, I think I asked you, the requirements
16 at this time for name, address, and date of birth on
17 prescriptions, what was the law as you understood it in
18 Texas?

19 A In Texas at the time you did not have to write
20 anything except for the patient's name. Their address
21 didn't have to be included. The way the medication should
22 be dispensed, the quantity, the number of refills, the DEA
23 number, and a date.

24 Q Did you have to write a date on them at that
25 time?

1 A You didn't have to because in the state of Texas
2 a prescription, as long as it's not a Schedule II, is good
3 for one year.

4 Q And these were all Schedule III, IV and Vs?

5 A Yeah, exactly.

6 Q And you presumed they were going right down the
7 hallway and fill the thing anyway, right?

8 A Right.

9 Q So --

10 A But I know that Sunny from C&G didn't even carry
11 Schedule II medications.

12 Q Okay. So the point being is you were not
13 concerned about the date on them in every instance?

14 A No. Because, as testified to by Dr. Morgan, it's
15 the obligation of the pharmacist to make contact with the
16 physician.

17 Q That's a good point.

18 Did you ever receive a phone call directly from
19 Lynn Rostie, particularly in the early part of this when
20 she, I think, claimed she didn't think she was doing
21 anything wrong, at least that's what she told the pharmacy
22 board? Did you ever receive a phone call from her saying
23 what's this about, what's going on, that kind of call you
24 would expect to get from a pharmacist?

25 A I never received a call from Lynn Rostie ever.

1 Q You did get calls from Mr. Chin, didn't you, on a
2 --

3 A Yes. And that was heard during testimony just to
4 clear things up.

5 Q -- periodic basis?

6 Sometimes you'd issue something for a patient,
7 patient didn't like that brand or maybe because of cost or
8 he wanted something stronger or something?

9 A Or they said, Hey, this medication is too
10 expensive, can you think of an alternative? I said
11 absolutely because I try to be sensitive to the needs of
12 patients and their finances.

13 Q So you'd send them back?

14 A So I'd send them back --

15 Q I mean, he'd send them back to you?

16 A He'd send them back to me, and we'd discuss
17 another alternative that would achieve the same result.

18 Q Now, a minute ago we talked about compliance
19 meaning your own personal, professional assurance that the
20 patient is doing what they're supposed to do; is that
21 right?

22 A Absolutely.

23 Q Now, you were taking primarily low-cost patients,
24 were you not -- I mean, low-income patients?

25 A Very low-income patients.

1 Q Let's talk a little bit about that.

2 A Okay.

3 Q Why did you take cash at those places?

4 A Because between 40 to 50 million people in the
5 U.S. do not have healthcare insurance.

6 Q Now, was this a socially economic challenged or
7 deprived area that you were working in?

8 A It was a poor area.

9 Q All right. And why were you working in that
10 neighborhood? Why weren't you down at one of these blue
11 ribbon hospitals seeing rich people?

12 A Well, because who's going to treat the poor? For
13 some reason people fail to acknowledge that poor people
14 have even worse medical problems. I think Dr. Morgan
15 acknowledged that.

16 **They have more health issues than a person who's**
17 **more affluent and more prone to seek out preventative**
18 **healthcare. We have a tendency to kind of bury our heads**
19 **in the sand, but to me that was my way of giving back to**
20 **the community. Everybody cannot pay the \$1,400 premium**
21 **every three months to Blue Cross/Blue Shield. They simply**
22 **can't afford that.**

23 Q Now, Dr. Morgan said that sometimes he does treat
24 poor people, and when they come in, they can't afford an
25 MRI or x-rays or something, he ultimately makes the

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1 medical decision, he said this, that he'll treat them
2 anyway.

3 A And I agree with him on that. I understood that.

4 Q Let me ask you this: Did you take any steps to
5 maybe cut costs that way on, say, MRIs or --

6 A I took several steps.

7 Q What did you do?

8 A Well, the first thing I did was I got a company
9 to give me these cups, which have --

10 Q We'll talk about that in a minute. What about
11 x-rays and MRIs?

12 A What I did is I went out on a day off and I met
13 with a gentleman -- I actually met with a few gentlemen to
14 see who could give me the lowest bid on an X-ray or MRI, a
15 CT or an ultrasound or any other diagnostic test that
16 might help me reach a diagnosis on patients that I was
17 treating.

18 Q Why are those tests important in pain management?

19 A They can help me establish a diagnosis if I'm not
20 able to determine one just clinically because sometimes
21 you just can't do it clinically. You actually need help.
22 You might need an EMG. An EMG, I don't know if anyone's
23 ever had carpal tunnels, if you've ever had that nice
24 experience where they put the needles in you and give you
25 shots right up your nerves so they can determine if

1 there's a blockage in the nerve. So with this diagnostic
2 test I wanted to see who I could find that would do this
3 at the most reasonable cost to the patient.

4 Q Were you able to do that?

5 A Yes, I was.

6 Q How much did you get an MRI down to?

7 A I got an MRI, a gentleman now who does MRIs for
8 \$500. The typical cost of an MRI is anywhere between
9 2,000 and 3,000.

10 Q Okay. Now, one of the things on compliance is we
11 talked about you want to be sure the person is taking the
12 medicine on time and in accordance with the directions.

13 Is there a drug screening technique that you can
14 be -- or you can employ?

15 A Yes, sir.

16 MR. BOHLING: Objection. Can we
17 approach?

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 MR. BOHLING: Your Honor, unless there's
21 some foundation laid, I don't believe there's been drug
22 screening in South Texas Wellness Center or Westfield. I
23 really --

24 THE COURT: I can barely hear you.

25 MR. BOHLING: Unless there's more
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1 foundation, I don't believe there's been drug screening at
2 South Texas Wellness Center, and I don't believe there was
3 any at Westfield.

4 MR. OSGOOD: I'll ask him.

5 MR. BOHLING: I don't think this is
6 relevant. I think it's post.

7 THE COURT: Where are you going with
8 this?

9 MR. OSGOOD: He actually saves the
10 patient \$125 by getting these and reading it himself using
11 the cup they've given him. If he sends them off, it's
12 \$125. So he saves a poor person the cost of a urine test,
13 and at the same time it satisfies him the patient is in
14 fact compliant as opposed to diverting.

15 MR. BOHLING: I don't think this started
16 until after 2006.

17 THE COURT: Do we know?

18 MR. OSGOOD: I'll ask him.

19 THE COURT: Ask him that before we get
20 too far down the road.

21 (The proceedings returned to open court.)

22 Q (BY MR. OSGOOD) Did you do drug screening at
23 South Texas Wellness Center?

24 A I did not do it at South Texas Wellness Center.

25 Q What about at Westfield?

1 A We did do it at Westfield.

2 Q And let me show you Defendant's Exhibit 64.

3 A Okay.

4 Q What is that, please?

5 A This is a urine drug screen cup by a company
6 called AIT.

7 Q Does that have something to do with compliance?

8 A Yes, sir.

9 Q And what do you want to do when you screen
10 somebody with that device? What's your goal?

11 A If I write a prescription for a patient and, like
12 I said before, and I won't get too deep, if -- sometimes I
13 just recommend an exercise regimen. But if I prescribe a
14 medication, any opioid, okay, this cup will allow me to
15 determine if the urine is consistent with whether or not
16 the person is taking the medication --

17 Q Now --

18 A -- or not.

19 Q Would that be for a new patient as well as a
20 repeat patient?

21 A I would do it random so that I would keep people
22 honest.

23 Q All right. Let me ask you this --

24 A But new patients I absolutely test right off the
25 bat.

1 Q How much does it cost to send that off to the
2 company to have the test done?

3 A To actually have this confirmed by the lab, it
4 would cost \$125.

5 Q Now, you said you had predominantly poor people?

6 A Predominantly poor people.

7 Q The company would send you these things
8 gratuitously in large boxes?

9 A Yes, they would.

10 Q And did they send you a DVD as to how it's used
11 and interpreted and all that?

12 A They sent me a DVD, and in addition a
13 representative from the company came by and actually gave
14 me a demonstration.

15 Q So did you in fact administer that test without
16 sending it off to the lab and read it yourself on
17 occasion?

18 A Yes. On occasions I would just have the patient
19 to urinate in this, and then I would let it sit for 15
20 seconds, pull back the label. And it can tell me if the
21 person was taking drugs that were prescribed to him or
22 other drugs that were not consistent with any medical
23 practice such as, you know, methamphetamine. There's a
24 whole list, about nine different drugs.

25 Q You pull that off and I see little --

1 A Strips, bars.

2 Q -- strips there or bars.

3 There's literature that tells you how to read
4 that?

5 A Uh-huh.

6 Q And identify the drug and whether or not it's
7 being taken properly and whatnot?

8 A That's correct.

9 Q Did you do that with --

10 A Yeah. That's when -- because I was trained to do
11 it and I understood how to do it, and I could also save
12 the person some money by doing it. Now, however you are
13 sometimes -- you can get false positives.

14 Q I understand.

15 A The false positives are ones where I would
16 actually send to the lab to confirm because there's a
17 thing, you know, where people can try to one over on you
18 and --

19 Q Well, false positive in this instance would mean
20 --

21 A A false positive would mean that it --

22 Q No drugs in their system?

23 A Right.

24 Q This is not like testing criminals to see if
25 they're violating their probation or something for drugs?

1 A Right.

2 Q You're looking for the opposite?

3 A Exactly. I want to see that the medication I
4 prescribe to you is present in your urine.

5 MR. OSGOOD: Offer 64, Your Honor.

6 MR. BOHLING: No objection.

7 THE COURT: Sixty-four will be received.

8 Is this a good place for a break, Mr. Osgood?

9 MR. OSGOOD: Yes, sir, be fine.

10 THE COURT: Let's take a break, ladies
11 and gentlemen of the jury. I would ask that you not
12 discuss the case among yourselves or with others or allow
13 anyone to discuss it in your presence. About 15 minutes
14 or so.

15 (A recess was taken.)

16 (The following proceedings were had in the
17 presence of the jury:)

18 CHRISTOPHER ELDER, MD, previously being sworn, resumed the
19 stand:

20 DIRECT EXAMINATION (continued) BY MR. OSGOOD:

21 Q Dr. Elder, when we broke, I believe we were
22 talking about cash and patient considerations for saving
23 them money. The next note I had here was -- I think Dr.
24 Morgan's already stolen your thunder.

25 I had a note here to ask you about symptoms and
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1 signs. Did you agree pretty much with what he said about
2 symptoms and signs?

3 A He described it perfectly.

4 Q Okay. And that's a tool you use that would
5 dovetail into this idea of whether or not -- how far you
6 got to go in looking into a patient's background before
7 you prescribe medication for them?

8 A Precisely.

9 Q And what's the bottom line criteria when you make
10 a decision as to whether or not to write that script?
11 What are we talking about when we say "professional
12 medical judgment"? What all goes into that?

13 A Oh, professional -- your professional medical
14 judgment is going to be contingent upon the training that
15 you've received. You know, you think back into the days
16 before everybody could get an MRI or CT scan, or even if
17 we want to be contemporary, we just talk about a
18 pediatrician.

19 **A pediatrician, who's dealing with a kid who**
20 **can't talk, pretty much has to rely on their clinical**
21 **assessment, their evaluation, their training to determine**
22 **a diagnosis because someone four months cannot tell you**
23 **what's wrong with them.**

24 Q Okay. I want to jump to the four scripts that
25 were shown up here. I believe they're Exhibits 1, 2, 3,
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1 and 4. We don't need to show them again.

2 Were these all real patients? These are
3 original scripts that went up to --

4 A If they are original prescriptions written by me,
5 they're real patients.

6 Q And you omitted the address on a couple of those?

7 A Yeah, I omitted the address because that was not
8 a requirement by the state of Texas.

9 Q All right. And we've seen several of these
10 address sheets were filled out and sent up to Missouri by
11 somebody. Did you complete any of those address sheets
12 and send them up there?

13 A No.

14 Q You didn't know the Missouri connection was even
15 there?

16 A No, no.

17 Q So that's not your handwriting on those address
18 exhibits?

19 A Absolutely not.

20 Q Now, the doctor also talked about addiction
21 versus dependency. Did you agree with his testimony on
22 that?

23 A I agreed with him 100 percent.

24 Q Okay. You said at one point you were stricter
25 than him. What do you mean by that?

1 A He's a little more trusting than I am. Whereas,
2 during his testimony he said that he would give a patient,
3 pain patient, one refill, I wouldn't even do that. You
4 know why? Because I don't know if the medication is
5 working. I don't know if they have any bad side effects.
6 I don't know if you're having an allergic reaction. How
7 can I assess any of that stuff by giving you a refill?
8 Even more importantly, the state of Texas actually frowns
9 upon refills.

10 Q Okay. Let me ask you this, jumping now to
11 another area, did you know this Peter Okose?

12 A No.

13 Q At the Ascensia Pharmacy -- I mean, that was
14 doing business with Ascensia Pharmacy?

15 A I don't know Peter Okose.

16 Q I forget the name of his -- it was Universal
17 Health Clinic or something like that?

18 A Universal something clinic -- Universal Clinic or
19 -- I don't know.

20 Q Now, a number of his patients, they were written
21 in alphabetical order and filled up there in Missouri by
22 these -- by these people, them, they, whatever we want to
23 refer to them.

24 A I've seen that during the course of this trial,
25 yes.

1 Q Did you think that's bizarre or unusual?

2 A I thought it was ridiculous actually.

3 Q All right. You would agree, then, with the
4 government that that's a clear indication of some fraud
5 going on up there?

6 A Absolutely.

7 Q Okay. You didn't have anything to do with that,
8 did you?

9 A No, sir.

10 Q Did you ever sit down in any conspiratorial
11 conversations with Dr. Peter Okose or Lynn Rostie or Cindy
12 Martin or any of those people?

13 A No, sir, especially not knowing them.

14 Q Okay. Now, I've got a note here in my little
15 outline, the investigation begins. I want to jump then to
16 the search in Texas. You apparently called -- on the day
17 of the search of the Texas pharmacy, you called Troy
18 Solomon?

19 A Okay. Yeah. I saw the record.

20 Q All right. And you talked to him for four or
21 five minutes and then he called you back?

22 A Correct.

23 Q According to the phone records?

24 A Correct.

25 Q Now, there were numerous calls to other people
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1 involved in this thing, but that's the only call you were
2 involved in?

3 A Correct.

4 Q That call originated by you?

5 A Yes, that's correct.

6 Q Had your business been searched?

7 A No.

8 Q Had you -- did you have any indication at all
9 there was an investigation underway?

10 A I had no knowledge.

11 Q How do you explain that call to him on that
12 particular day at that time?

13 A Well, I just called him. That was a random call.

14 Q Okay. Did you talk to him about the search at
15 that time, that it was going on, or had been going on
16 earlier in the morning?

17 A No, sir.

18 Q How do you know that?

19 A Because I didn't find out about the search until
20 the summer of '06, and I found out from Pleshette Johnson.

21 Q So I suppose you can't tell us what you talked
22 about, but you're certain you didn't talk about the search
23 and he didn't tell you the place was being searched?

24 A That's true. Because that would have certainly
25 pointedly stood out in my mind.

1 Q And you found out about it when, how many months
2 later?

3 A Two months later by Pleshette Johnson.

4 Q Okay. Now, have you ever received any notice
5 during this thing from banks that you bank at that the
6 government had sought out your records to do a financial
7 background on you?

8 A That never occurred.

9 Q Okay. During your interviews with the
10 government, did they ask you to sign releases to turn over
11 bank records and checks and your personal finances?

12 A They never did, sir.

13 Q Would you have given them it?

14 A Absolutely.

15 Q Do you have any large sums of cash that you
16 obtained from any of those people that's secreted away
17 somewhere?

18 A No, sir.

19 Q Do you have any foreign bank accounts, any
20 offshore bank accounts?

21 A No, sir.

22 Q All right. Now, there was discussion in the case
23 about hunting for missing patient files from South Texas
24 Wellness Center. Do you remember that?

25 A Yes, I do.

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1 Q Did you take any files from South Texas Wellness
2 Center?

3 A Not a single file.

4 Q What is a locum tenens physician?

5 A Locum tenens is a Latin phrase that simply means
6 doctor for hire.

7 Q Okay. You guys like Latin phrases worse than we
8 lawyers, I think.

9 A I think we did you guys out.

10 Q Now, were you locum tenens, am I saying that
11 right?

12 A Locum tenens.

13 Q All right. Was that your position at the South
14 Texas Wellness Center?

15 A Yes. It's a doctor for hire. So if you are an
16 independent contractor, which I was, told you I received a
17 1099-M, which makes you an independent contractor, that
18 would be a locum tenens position.

19 Q Who owns the files in that kind of an
20 arrangement?

21 A The way things work in medicine is that the
22 facility owns the files. The doctor does not own the
23 files unless it's his practicing facility. It's kind of
24 like -- I'll give you an example, ladies and gentlemen of
25 the jury.

If I was your internist and I accepted a job in Manhattan, okay, you've been seeing me four or five years, I can't bring your records to Manhattan and really expect that you're going to follow up with me in Manhattan for your next visit. That belongs to the facility in which I was employed.

Q Did you take any files with you when you left South Texas Wellness Center?

A Absolutely not.

Q Do you know whether or not any patients followed you over to Westfield?

A Not to the best of my knowledge, sir.

Q Okay. At some point in time you had a conversation with Pleshette Johnson, she says, about these files. Do you remember talking to her at some point in time somewhere?

A Yeah. I remember having lunch or something with Ada and Pleshette.

Q Where?

A Place called Fadi's.

Q What?

A Fadi's, F-a-d-i. It's a Lebanese restaurant.

Q And what were you driving at that time?

A At that time I had a Mercedes.

Q And is that when there was discussion about your

1 truck having been stolen or something?

2 A Well, no. They asked -- they happened to ask me,
3 Where's your truck? And I was like, My truck was
4 destroyed.

5 Q Okay. Did --

6 A Totaled out by Allstate.

7 Q And that was when?

8 A January of '06.

9 Q That the truck was destroyed?

10 A Yeah. It was stolen and, you know, insurance
11 companies obviously don't want to replace the vehicle. So
12 they're very reluctant to total out, but it cost more to
13 repair than it did to replace.

14 Q But you didn't tell her about that until -- or
15 she didn't see your truck until it was gone until '08?

16 A That's what she said but I put that back. I
17 think that '08 was -- I haven't seen her in '08.

18 Q Okay.

19 A So I think there is definitely some confusion as
20 far as the dates go.

21 Q Bottom line is, did you have any files that you
22 took?

23 A No, I didn't take any files.

24 Q She's suggesting you took files and they were
25 burnt up in the truck. Is that accurate?

1 A That's not accurate. I left in '05.

2 Q Okay.

3 A Why would I have charts in my car for a full
4 year?

5 Q Okay. Now, when the investigators interviewed
6 you, one of the things that they suggested was that you
7 had signed for multiple boxes of stuff.

8 A That's true.

9 Q We later learned in the discovery that that
10 wasn't true, didn't we?

11 A Yes, we did.

12 Q They misled you in that investigation suggesting
13 you'd signed for all these things?

14 A That's accurate.

15 Q Did -- was that an interview -- did it reach a
16 point where it became a little contentious?

17 A It was very contentious, both interviews.

18 Q All right. Did you ever sign for any of those
19 boxes?

20 A I never signed for a single one.

21 Q All right. Now, there was one box that had a
22 signature on it that looked -- one box out of all those
23 that had a signature on it that looked like something like
24 yours.

25 A I saw that exhibit, the CE --
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1 Q The CE. And it wasn't even Elder?

2 A It wasn't even Elder.

3 Q Did you sign that or was that your signature?

4 A That was a forgery, and I think by the age of 36,
5 I knew how to spell my last name.

6 Q Now, during that interview did you offer also to
7 help them and come up here and testify without a lawyer
8 before the grand jury?

9 A I had my attorney submit a letter to Rudolph
10 Rhodes stating that I would voluntarily appear before the
11 grand jury to answer any questions they might have.

12 Q Were you basically cooperating during that
13 interview?

14 A Yes. And that was the testimony of Connie
15 Overton. I was very cooperative.

16 Q All right. Now, about to wrap this up here.

17 Let me ask you this: There's a couple of
18 prescriptions here, one for a Hazel Hollis, I think, and
19 -- one named Perez?

20 A Mary Perez.

21 Q Mary Perez. Both of those individuals are
22 deceased?

23 A Both of those individuals are deceased.

24 Q We've learned that from seeing the death
25 certificates?

1 A Yes, I've seen that during the trial.

2 Q How many prescriptions do you think you have
3 written since you got out of medical school? Hundreds,
4 maybe thousands?

5 A Thousands.

6 Q Okay. Is that typical for physicians in your
7 profession?

8 A Yes.

9 Q Are these the only two dead patients that's ever
10 come back to your attention that somebody had had false
11 identification when they obtained a prescription?

12 A The only two to my knowledge, and Dr. Morgan
13 pretty much reiterated doctors are not infallible and --

14 Q You're not God contrary to --

15 A Contrary to popular belief, we are not God and
16 we're not infallible.

17 Q And like him, have you also even today when
18 you're required to put the date down and everything, do
19 you occasionally make a mistake on a prescription?

20 A That's true.

21 Q Okay. Do you have any explanation for how
22 somebody using Perez' or Hollis' identification was able
23 to slip through and get a prescription from you?

24 A Yes, I do. And that would actually be -- fit in
25 line with what Dr. Morgan said. I cannot entirely blame

1 the front office staff. I have to accept responsibility,
2 but, you know, two out of a thousand would be pretty --
3 that would be pretty accurate, and I think that's the
4 exact number he used.

5 Q Do you pick up the person's picture and say, I'm
6 not sure this is you or you look heavier now today than
7 you did when this picture was taken or conduct an
8 investigation?

9 A No, sir. I mean --

10 Q Do you do it like Dr. Morgan said?

11 A I do like Dr. Morgan said. As a physician, you
12 are taught to trust and believe in the people, and, no, I
13 don't sit here like a cop and look at your ID or bouncer
14 for that matter, look at your ID and look at you to see if
15 you're old enough to get into the club. There are
16 patients who have come in with lacerations. The last
17 thing on my mind before I stitch you up is let me see your
18 ID so I can make sure. I'm there to secure and heal the
19 patient.

20 Q I think one of these people actually, her picture
21 was on two false driver's licenses. Now we know that
22 later?

23 A Yeah, yeah. We found that out.

24 Q Wasn't that something you should have caught?

25 A That is something that was a blatant -- that was
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1 something that the person basically got a fraudulent
2 identification, and, like I said, and just reiterate it, I
3 don't sit there and look and then look. But, you know,
4 occasionally even the best of us can get caught --

5 Q You've got a lot of patients. You just didn't
6 happen to catch this person coming through twice with two
7 different names?

8 A Exactly. And Dr. Morgan explained that.

9 Q Now, final question, did you ever at any time
10 authorize anyone to be an agent for you acting on your
11 behalf who was a nonphysician or a nonphysician's
12 assistant?

13 A Absolutely not.

14 Q That catch you as a total surprise in this case?

15 A I've never heard the term "agent" used with a
16 physician.

17 Q Okay.

18 MR. OSGOOD: I've just got to clean up
19 some exhibits with you and I'll be done.

20 Q (BY MR. OSGOOD) Defendant's Exhibit 6, what is
21 that, please?

22 A This is my Texas controlled substances
23 registration, and if I may explain to --

24 MR. OSGOOD: I'm going to offer that
25 into evidence, Defendant's Exhibit 6.

1 MR. BOHLING: No objection.

2 THE COURT: Six?

3 MR. OSGOOD: Yes, Your Honor.

4 THE COURT: It will be received.

5 Q (BY MR. OSGOOD) Is that current?

6 A My registration to administer narcotics is
7 current and was renewed on March 31st, 2010.

8 Q And here's one, March 31st, 2011, Defendant's
9 Exhibit 7.

10 MR. OSGOOD: Which I'll offer.

11 MR. BOHLING: No objection.

12 THE COURT: Received.

13 A This shows that they've renewed it again. I'm
14 still able to write narcotics.

15 Q (BY MR. OSGOOD) You're still doing that today,
16 not today here because you're in court, but, I mean, if
17 you were working today, you'd be able to?

18 A Yes. There's no restrictions been placed on me
19 at all.

20 Q Defendant's Exhibit 8, what is that, please?

21 A Well, this --

22 Q Is that a sign you had in your office?

23 A This is a sign I have in my office, yes.

24 Q And Defendant's 9, is that also a sign in your
25 office?

1 A Yes. This was a sign in my office when I worked
2 at Aldine Westfield.

3 Q This one was at Westfield itself, 9?

4 A Westfield, yes.

5 MR. OSGOOD: I will offer 9 into
6 evidence.

7 MR. BOHLING: No objection.

8 THE COURT: Received.

9 Q (BY MR. OSGOOD) What does that sign -- I'll just
10 put it on the screen here. What does that say?

11 A "This clinic does not prescribe promethazine with
12 codeine."

13 Q Was that because you were having a problem there
14 you thought?

15 A Well, that's because that's when I started to
16 read the literature and realize that that drug was being
17 heavily abused.

18 Q And there wasn't any investigation or was there
19 -- no, there wasn't going on when you put that sign up?

20 A No, no.

21 Q You'd left South Texas and gone over there and
22 put that sign up?

23 A Yes, I did. Because that's when I became aware
24 just by reading the literature and keeping up with my
25 current -- my CMEs, as we call them, medicine CMEs.

1 Q Okay. And No. 57, you recognize this photo?

2 A Yes, I do.

3 Q Who is that?

4 A That would be me.

5 Q At your desk?

6 A At my desk.

7 Q At Westfield?

8 A At Westfield.

9 Q And during this timeframe?

10 A During -- yes, exactly.

11 Q Can you see that sign on your desk there?

12 A Yeah, I can see it. I can't exactly read it.

13 Q Who took that picture?

14 A Diane.

15 Q Ms. Hearn?

16 A Yeah.

17 Q Is that a fair and accurate representation of
18 what it purports to be at the time and date it was taken?

19 A Yes, it is.

20 MR. OSGOOD: Offer 57, Your Honor.

21 MR. BOHLING: No objection.

22 THE COURT: Received.

23 Q (BY MR. OSGOOD) Fifty-seven then is you in your
24 white coat with that sign up there and some warnings; is
25 that right?

1 A That's correct, sir.

2 Q Was this one at Westfield also, '08, or is that
3 later after you started your own clinic?

4 A No. I think that's at my office.

5 Q Okay. You're even being more cautious after you
6 got to your office now?

7 A Even stingier.

8 Q Because of all of this?

9 A Because -- precisely.

10 Q Now, when you were interviewed by the agents,
11 they explained a lot of this to you. Were you in the
12 process on -- that time of complaining about a patient and
13 terminating them?

14 A Yes. There was a patient named Amanda -- and I
15 don't remember her last name. Amanda Allen -- no, Hayes,
16 Amanda Hayes.

17 Q Tell me about that incident.

18 A Well, it started when there was a doctor who had
19 became addicted to drugs himself, and in turn he -- I
20 don't know how he got my name and number or whatever. But
21 he called me and asked me would I treat one of his
22 patients. She was a 27-year-old. When I reviewed her
23 records, I could -- I was actually dumbfounded by the
24 number of prescriptions that he was writing this
25 27-year-old.

1 Q Let me show you Defendant's Exhibit 25. Is that
2 the document?

3 A That's exactly the document.

4 Q All right. And does it have her medical records
5 attached to it?

6 A I had her medical records in my discharge file.

7 Q Did you have a cover letter on that to -- telling
8 her she was terminated as a patient?

9 A I physically mailed that to her.

10 Q Okay. And did you have discussion with the
11 agents about her and they wanted you to turn over those
12 records to them and say who she was?

13 A Well, what happened was this is where, as is
14 heard during this trial, I objected to them wanting that
15 because this guy was not even a pain specialist. But he
16 was writing -- he was writing 1,200 pills a month for a
17 27-year-old lady with back pain who had no findings on EMG
18 or MRI, a CAT scan, and I just found that unconscionable.
19 And I couldn't understand how --

20 Q Is he a white doctor?

21 A Yes, he was white.

22 Q Was that what prompted you to make that comment
23 about why are you looking at me and a white doctor is
24 doing this kind of stuff?

25 A That's what made me say, I am a pain physician.

1 This is a family practitioner and he's writing someone
2 who's 27 a thousand pills a month.

3 Q Did they try to take that off of your desk?

4 A She put her hands on my desk, and I asked her if
5 she would remove it.

6 Q This was who?

7 A That was Connie Overton.

8 Q Okay. And did you send that document to the
9 patient --

10 A I called --

11 Q -- discharging them?

12 A I called the physician and I told him I don't
13 feel comfortable treating her because I could see no
14 rationale as to why one person would need a thousand pills
15 a month, a 27-year-old at that. And then I also had an
16 objection with the pharmacy. I think something's wrong
17 with the pharmacist. A thousand pills a month for a
18 27-year-old because your back hurts?

19 Q So you discharged that patient ultimately?

20 A I discharged her, but I didn't want to break the
21 law. We have a law where you have to -- you cannot
22 discontinue treatment. You have to wean the person off at
23 least or they're likely to go into withdrawals or things
24 of that nature. So I weaned her off. I gave her a month
25 supply, which is required, or else she get into a term

1 called abandonment of patient, which I want to avoid.

2 **So I gave her a month, said, Look, now within**
3 **this month timeframe, you need to find you another**
4 **physician because I am not going to write a thousand pills**
5 **a month for a 27-year-old because her back hurts.**

6 Q And have you terminated other patients?

7 A Oh, I terminate them all. I am the terminator.

8 Q At your own clinic now, Defendant's Exhibit 53,
9 is that an example? That was when? That was before you
10 were indicted in this case. That's '07.

11 A Uh-huh.

12 Q Is that a letter of termination to a patient for
13 abuse?

14 MR. BOHLING: Objection, Your Honor.

15 MR. OSGOOD: All right. They're going
16 to object to any of those. Let's just -- after the fact.

17 I will offer the one that was discussed on
18 October the 26th, Exhibit 25, Your Honor. This is the
19 Amanda Hayes patient.

20 MR. BOHLING: No objection.

21 THE COURT: Be received.

22 MR. OSGOOD: I think that's enough.

23 That's all, Your Honor.

24 Pass the witness.

25 CROSS-EXAMINATION BY MR. LEWIS:

1 Q Morning, Dr. Elder.

2 A Good morning.

3 Q I just have a couple of questions.

4 First, I want to talk about Troy Solomon's
5 interaction with you and advice or your knowledge as a
6 medical doctor that he saw.

7 A Uh-huh.

8 Q Did he in fact talk to you on numerous occasions
9 about his health and his immediate family's health?

10 A Yes, sir, that's accurate.

11 Q Did he mention, for instance, his grandparents'
12 struggles with Alzheimer's and seek your advice, if that
13 was a proper course of treatment they were undergoing?

14 A True.

15 Q Did he speak to you about severe problems with
16 his mother's health from her four-day-a-week dialysis,
17 liver, kidney problems, and the like?

18 A That is accurate.

19 Q In fact, did he discuss with you his own
20 struggles with keeping his blood pressure down, avoiding
21 diabetes as a borderline diabetic?

22 A Yes, he did.

23 Q Let me turn your attention to other discussions.

24 A Okay.

25 Q In all of your discussions in person, over the
1299

1 phone, or any conversations you overheard Mr. Solomon
2 having, did you ever get any indication that he was
3 involved in anything improper or illegal?

4 A Not to the best of my knowledge.

5 Q And, again, from your knowledge, conversations
6 with him, overhearing his conversation with others, did
7 you ever even hear him suggest or someone in his presence
8 suggest doing anything illegal or improper with Ascensia
9 Pharmacy?

10 A That never occurred.

11 Q Last question then, did you in your own personal
12 observations ever observe Troy Solomon do anything that
13 you thought was suspicious, illegal, or improper?

14 A I never did.

15 MR. LEWIS: Thank you, sir.

16 CROSS-EXAMINATION BY MR. BOHLING:

17 Q Good morning, Dr. Elder.

18 A Good morning.

19 Q First question I'd like to ask you is actually
20 about Delmon Johnson.

21 A Okay.

22 Q You told the jury that you lived in a 625 square
23 foot apartment in Houston that cost you \$630 a month in
24 rent?

25 A That's accurate.

1300

1 Q Okay. Mr. Johnson lived in a townhouse, a much
2 bigger situation, for \$300 a month, if you remember?

3 A I didn't know Mr. Johnson's name until --

4 Q You remember his testimony?

5 A I remember him saying something about \$300.

6 Q I'm just asking you if somebody lives in Houston,
7 that's a really good deal, isn't it?

8 A It depends on where in Houston he is. I lived in
9 a more high-end area of Houston, the medical center.

10 Q Now, obviously you consider yourself to be an
11 excellent doctor?

12 A I don't know about excellent but I'm okay.

13 Q And you have a base of patients?

14 A Yes, I do.

15 Q And as Mr. Osgood asked many people or maybe this
16 point -- you see your patients over time, you don't just
17 see them one time?

18 A Yes, that's correct.

19 Q You know your patients well, you're very familiar
20 with them?

21 A Not all of them because I don't have a
22 photographic memory, but just like anything in terms of
23 the memory, you remember your very good and you remember
24 your very bad.

25 Q But if I remember correctly, the point was made
1301

1 that you didn't necessarily have to spend a lot of time
2 with each patient because you had a pre-existing
3 relationship with them?

4 A Some patients, that's correct.

5 Q Okay. So your patients respect you?

6 A I presume.

7 Q Okay. And, of course, it goes without saying,
8 you would not prescribe without seeing a patient?

9 A That's correct.

10 Q Because if you were to just sit down, write a
11 prescription for somebody, just a random name, that would
12 be illegal, right?

13 A Yes, it would.

14 Q All right. There has to be a patient, correct?

15 A That's correct.

16 Q There has to be a medical examination, correct?

17 A Correct.

18 Q So you just can't see the patient, you actually
19 have to examine him?

20 A You have to examine the patient unless you're
21 relying on a referral from -- let's say, that the person
22 was seen by someone and that doctor left, and now you come
23 into a situation where the examination was just done, say,
24 two months ago, well, me, I'm just not a trusting
25 physician. So I would re-examine the patient because

1302

1 there's no exam but mine. So I would examine the patient
2 again despite the fact that they've been examined already.

3 Q Right. So if you've never seen a patient before,
4 you're going to want to examine them?

5 A Absolutely.

6 Q But you would agree with me that for a
7 prescription to be a legal prescription written in the
8 ordinary course of medical practice, you have to see the
9 patient, you have to have an examination of the patient,
10 and you have to issue your prescription in good faith
11 based upon the signs and symptoms that patient is
12 presenting?

13 A Yes.

14 Q Okay. Now, you've told this jury that you saw
15 every single one of the patients that are in the original
16 prescriptions that we found at The Medicine Shoppe?

17 A I told you -- that's not what I told you. What I
18 told you was I saw every one of the patients that was at
19 South Texas Wellness Center, not The Medicine Shoppe.

20 Q Right. Well, you've reviewed the discovery,
21 correct?

22 A I've -- excuse me?

23 Q You reviewed the discovery in this case?

24 A Yes, I have.

25 Q That's what you said on direct examination?

1 A Correct.

2 Q And you know that there are original
3 prescriptions that have been stipulated in court to have
4 been written by you that were found at The Medicine Shoppe
5 in Belton, Missouri?

6 A Yes, I've seen it.

7 Q Okay. And in fact --

8 MR. BOHLING: Can we bring up
9 Government's Exhibit 1116.

10 Q (BY MR. BOHLING) You recall this chart that's
11 been admitted into evidence that is basically showing
12 those original prescriptions?

13 A Yeah. I've seen this chart.

14 Q Right. And I know what you've said about the
15 dates, but obviously the dates are the dates that were
16 placed on them by someone, right? Not necessarily by you?

17 A Correct.

18 Q And if we look at the first --

19 MR. BOHLING: Can we highlight the first
20 batch, please, August 17th. I meant blow up.

21 Q (BY MR. BOHLING) Now, you started at South Texas
22 on July 1st, approximately, 2000 --

23 A No. I started the summer of '04. I don't know
24 exactly when.

25 Q Okay. Would it surprise you if I told you your
 1304

1 employment contract cited July 1st as your first day?

2 A I'm not certain when the date was, but it would
3 not surprise me.

4 Q Okay. So you started sometime in the middle of
5 the summer of 2004?

6 A Sometime in the middle of the summer or the end
7 of -- or beginning of August, somewhere around there.

8 Q Somewhere around there. Okay. That's fine.

9 So we see that the first group of prescriptions,
10 original prescriptions, that you wrote were found in
11 Missouri -- there were 78 of them dated August 17, 2004?

12 A Okay.

13 Q And you recall the evidence being that those were
14 filled about that same time, August 17th or August 18th of
15 2004?

16 A Filled where?

17 Q In Missouri, sir.

18 A Okay.

19 Q So they had to be written before August 17th of
20 2004? If they were filled on August 18th -- if your
21 original prescriptions were in Missouri and had filled
22 stickers on August 18th, then they were written before
23 that, correct?

24 A I'm not following you, Mr. Bohling.

25 Q Okay. That's fine. We'll back up.

1 A Okay.

2 Q We know that these represent 78 original
3 prescriptions?

4 A Okay.

5 Q That you wrote those prescriptions?

6 A Okay.

7 Q That they were written on a South Texas Wellness
8 Center prescription pad?

9 A And these are originals?

10 Q Yes, sir.

11 A Filled?

12 Q In Missouri.

13 A Okay.

14 Q And that these were filled in Missouri on or
15 about August 17, 2004?

16 A Okay.

17 Q So if they were in Missouri and were filled, they
18 had to be written, produced, created before August 17th,
19 2004?

20 A If the date was written on the prescription.

21 Q Well, if they were physically filled in Missouri
22 on that date, they had to be written before that date,
23 didn't they?

24 A Unless the dates were stamps which we have seen
25 during this testimony -- I mean during the course of this
 1306

1 trial.

2 Q I'm not talking about the written date. I'm
3 talking about the fill date. They were actually filled
4 and sent back to Texas. You understand the pharmacy
5 filled them, they put pills in vials, and sent them back
6 to Texas on August 17th or 18th, 2004, right?

7 A Okay. I understand.

8 Q They had to have the prescription to fill it,
9 right?

10 A Certainly.

11 Q Okay. And it has a little sticker on the back
12 that says it was filled that day, right?

13 A I don't see it. If you do, you can show me that
14 exhibit. I --

15 MR. BOHLING: Okay, sure. Can we have
16 Exhibit 36?

17 May I approach the witness, Your Honor?

18 THE COURT: You may.

19 Q (BY MR. BOHLING) Okay. I'm showing you one of
20 the prescriptions from Exhibit 36. You see this was
21 written August 17th, 2004?

22 A What I can see, Mr. Bohling, is that someone
23 filled in these dates because that's obviously not my
24 handwriting.

25 Q Fair enough. I probably misstated my question.
1307

1 | Someone filled in the date, August 17th?

2 A Someone filled in the date, and they also filled
3 in the address, Mr. Bohling.

4	Q	Okay. Very good.
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5 On the back, you're familiar with that type of
6 sticker, right?

7 | A Yes, I am.

8 Q And that is a sticker from a pharmacy?

9 A That's a sticker from a pharmacy.

10 Q And that indicates that this was filled?

11 | A Which pharmacy would that be?

12 Q This is The Medicine Shoppe in Missouri, sir.

13	A Right.
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14	Q Right.
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15 A And, again, not to belabor the point, but this is
16 filled in -- the date and the address are filled in by
17 somebody else, so I don't know when that prescription was
18 written.

19 Q Right. And what I'm talking about -- I
20 understand that.

21 I'm talking about the date filled. It shows
22 that the date filled is August 18th, 2004?

23	A Sure.
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24 Q Okay. And you have no reason to doubt that?

25 | A I have a lot of reason to doubt that. Number one
1308

1 being I didn't write that date, so I don't know that --

2 Q Okay.

3 A -- it was -- that date corresponds to that
4 prescription because we were not required in the state of
5 Texas to date, Mr. Bohling.

6 Q You heard Ms. Rostie testify that these
7 prescriptions were produced on August 18th, 2004?

8 A I heard Ms. Rostie say a bunch of things that
9 were untrue, so I'm not sure that she sounds very
10 credible.

11 Q I see.

12 A Especially when I'm still looking at a
13 prescription that the date's obviously been filled in by
14 somebody else, so I'm not going to concede to that.

15 Q I see. That's fine.

16 If we look at the prescriptions in total, I'm
17 counting up 544 original prescriptions. Do you have any
18 reason to doubt that?

19 A Yes, I would because I didn't count them.

20 Q Okay. This exhibit is in evidence. You know
21 that?

22 A It's in evidence.

23 Q And this exhibit shows the number of
24 prescriptions written on each of these dates, right?

25 A Written by whom, Mr. Bohling?

1 Q By you. You've stipulated that these are
2 original prescriptions that you wrote.

3 A I stipulated they were original prescriptions.
4 However, we can see that the date -- that the bottom
5 portion was not filled in by me, nor was the date filled
6 in by me.

7 Q Very good. I'm not asking you that.

8 There are 544 prescriptions, original
9 prescriptions, that you wrote -- you stipulated that you
10 wrote that were found in Missouri.

11 A Okay.

12 Q You have no reason to doubt that?

13 A If that was -- if that's what the records
14 reflect, I have no reason to doubt that.

15 Q Okay.

16 MR. BOHLING: Now, please bring up
17 Exhibit 361.2 -- 36.1. I'm sorry. I think you just had
18 it up actually.

19 Q (BY MR. BOHLING) I think we just looked at this
20 one. I'll represent to you that this is the -- that there
21 is an original prescription you just looked at for Jerry
22 Lee Graham. So this is a patient that you saw at South
23 Texas Wellness Center?

24 A This is a patient again, once again, this is a
25 person who I physically saw. However, once again, we can

1 obviously see the dates are obviously written by someone
2 other than myself.

3 Q Okay. That's fine. I understand that.

4 My question is, I believe you've answered it,
5 you saw Jerry Lee Graham as a patient?

6 A Sure.

7 Q Tell us about Mr. Graham.

8 A I can't recall that, Mr. Bohling. That's '04.
9 We're in '10. I've seen thousands of patients since then.

10 Q How many times have you seen Mr. Graham since
11 then?

12 A Well, I only worked at the place for less than
13 five or six months, so --

14 Q I thought you said that you had a patient base?

15 A No, no, no. I have a patient base at my
16 practice.

17 Q Oh, I see. So the South Texas patients aren't
18 patients who are loyal to you?

19 A No, not at all. I wasn't there enough for them
20 to be loyal, and I didn't -- and I don't give refills.
21 So, no, I wouldn't say that I have a loyal following at
22 South Texas Wellness Center, especially the timeframe that
23 I was there.

24 Q So you remember nothing about Jerry Graham?

25 A I would have no reason to remember anything about
1311

1 Mr. Graham when I've seen countless thousands of patients
2 in the last six years, Mr. Bohling.

3 Q Let's look at 36.25. So you saw Ronnie Clark as
4 a patient?

5 A Yes.

6 Q What can you tell us about Mr. Clark?

7 A I can't tell you anything about him because I
8 have thousands of patients. Why would I remember him,
9 Mr. Bohling?

10 Q Look at 37.11. I'm sorry, 37.1.

11 Tommy Lee Adams, what do you remember about
12 Mr. Adams?

13 A Absolutely nothing.

14 Q 37.13. Okay, Doris Cooks. I think that's Cooks.

15 What do you remember about Ms. Cooks?

16 A Sir, we're getting to a repetitive pattern where
17 we can clearly see that someone wrote these things in.
18 Unless these patients have some odd or rare illness, there
19 would be nothing special to make me capture in my mind
20 what would be special about him.

21 Q But you treated Doris Cooks?

22 A Sure.

23 Q Okay. You saw Doris Cooks?

24 A I saw Doris Cooks. And, once again, may I point
25 out to you again, we can obviously see a disparity in the

1 writing here. So there's nothing special between this
2 date or that date that would stand out in my mind.

3 Q You understand I'm not asking you about the date?
4 I'm asking if you saw the patient.

5 A I'm telling you I saw the patients, but, again,
6 to curb the redundancy, why would the -- why would
7 someone -- and I've seen countless thousands. Why would
8 they stand out in my mind?

9 Q Now, it's your testimony here today that your
10 recollection of Pleshette Johnson's testimony is that
11 prescriptions were being faxed at the time you were
12 working at the clinic?

13 A She stated that in this court.

14 Q Did she not in fact state, sir, that they started
15 faxing prescriptions in 2005 after you had left?

16 A That was not my recollection, and that's not what
17 she told me. That's what she told you.

18 Q I see.

19 MR. BOHLING: Do you have that
20 available, her testimony?

21 MR. LEWIS: Your Honor, can we approach?

22 (Counsel approached the bench and the following
23 proceedings were had:)

24 MR. LEWIS: Your Honor, I have a problem
25 with this in fundamental fairness. I had to go out of my

1 pocket and pay several hundred dollars for testimony that
2 this court reporter worked very hard to compose. If the
3 government wants something, they should pay for it too.
4 That's just not right.

5 MR. OSGOOD: The other issue is this is
6 going to cause the jury to ask for testimony to be read
7 back.

8 THE COURT: I didn't hear. What's the
9 issue?

10 MR. OSGOOD: The issue is --

11 MR. LEWIS: He asked Ms. Wambolt if she
12 could pull up some testimony.

13 MR. OSGOOD: This reading back testimony
14 is going to cause a real problem because they're going to
15 ask then for testimony in their deliberations and it's
16 unfairly -- we don't have a full transcript, and it's
17 cherrypicking on testimony. They have to remember and
18 rely on their memory. That's what the court always tells
19 them.

20 THE COURT: I don't do anything
21 different.

22 MR. OSGOOD: I know your practice.

23 THE COURT: Are you going to continue to
24 go down the road asking about these prescriptions and
25 whether he saw these prescriptions?

1 MR. BOHLING: No. I'm done with that.

2 THE COURT: All right.

3 (The proceedings returned to open court.)

4 Q (BY MR. BOHLING) Rather than have the court
5 reporter read back the testimony, don't you recall that
6 Ms. Johnson said that she -- that they started faxing
7 prescriptions in 2005 in court?

8 A I recall her saying this to the court, but that's
9 not my recollection of what she told me --

10 Q Okay.

11 A -- in a face-to-face conversation.

12 Q So what you're saying is she said something
13 different in court than something she told you in an
14 out-of-court conversation?

15 A Well, as I read the discovery, she has lied to
16 you guys multiple times.

17 Q I see. Now, but this is an important point,
18 isn't it, because what your theory is or what your belief
19 is, is that Ada and Pleshette Johnson kept the original
20 prescriptions and faxed copies of those prescriptions to
21 local pharmacies, right?

22 A She said they did. That's not my point. She
23 said it. Those were her words, not mine.

24 Q My recollection is she said it in 2005, not in
25 2004, in court.

1 A She's also said some things that we know aren't
2 true.

3 Q Okay. That's fine.

4 What I'm getting to is, if that's not true, if
5 original prescriptions were given to the patients, then
6 what you're saying doesn't make any sense, does it?

7 A It makes perfect sense. If you hold on to the
8 originals --

9 Q I'm saying if that's not the case. If the
10 original prescriptions in 2004, were given to the patients
11 in their hands to go fill at their pharmacy of choice,
12 then what you've described couldn't have happened?

13 A No, no, no. You have it backwards. What she
14 said was they kept the originals for their files --

15 Q That's not my question, sir. My question is, if
16 --

17 MR. OSGOOD: Your Honor, could -- this
18 is argumentative. Could he answer the question?

19 THE COURT: Let's have the question
20 stated.

21 MR. BOHLING: Yeah.

22 Q (BY MR. BOHLING) If those prescriptions, the
23 original prescriptions in that box, were given to the
24 patients in their hand in 2004, right, they walk out the
25 door with them, then there's no way they can be in

1316

1 Missouri, right? We can agree on that?

2 A I can agree on that except for that was not what
3 occurred. We heard testimony in this courtroom,
4 Mr. Bohling, that they would fax it to a local Houston
5 pharmacy, and the South Texas Wellness Center would
6 maintain the originals.

7 Q After -- in 2005 and after?

8 A No. That is not my recollection, sir.

9 Q Okay. That's fine. We'll disagree.

10 Let's go with that. They fax these
11 prescriptions to Houston pharmacies if that's -- that's
12 your contention?

13 A No, no. As per her testimony.

14 Q That's fine.

15 You know from being a Houston physician that
16 when a clinic faxes, they intend to establish
17 relationships with pharmacies?

18 A I was an independent contractor, so I didn't
19 establish a relationship with any pharmacy, sir.

20 Q Well, let's put it this way: When you worked at
21 Westfield, most people had their prescriptions filled at
22 C&G. You knew that?

23 A No.

24 Q Most of your patients --

25 A No. The testimony was I steered them no where
1317

1 because I had no interest in where they went. Now, I know
2 --

3 Q That's not what I'm asking you, Doctor.

4 I'm asking you, whether you steered them or
5 didn't steer them, you had a clinic and you had a pharmacy
6 down the hall. Most people walked from the clinic to the
7 co-located pharmacy and got their prescriptions filled
8 without being steered, right?

9 A I don't know that, sir.

10 Q Okay.

11 A I know they got a prescription, and where they
12 went, they could have taken their private jet to El Paso.
13 I don't know where they went. That was up to their
14 discretion, Mr. Bohling.

15 Q Didn't you already tell us that Sunny Chin called
16 you occasionally?

17 A And that means what?

18 Q That means that some patients --

19 A Some patients went there.

20 Q -- took your prescription to C&G?

21 A Mr. Bohling, some patients went there. Sunny
22 Chin, being a real pharmacist, unlike Mrs. Rostie, would
23 call to confirm if he could change a prescription or not.
24 Where the patient took their prescription was of no
25 concern of mine.

1 Q You remember when Maggie Ortega testified in this
2 trial?

3 A Yes, I do.

4 Q And you remember that I showed her a group of
5 original prescriptions written by you on February 3rd,
6 2004 -- or 2005? Sorry. Remember that?

7 A Sure.

8 Q And there were, I think, in excess of 25
9 prescriptions that you had written that had all been
10 filled at C&G Pharmacy on the same day? Do you remember
11 that?

12 A Yeah.

13 Q And that would not be unusual, would it? People
14 would walk from Westfield to C&G to get their
15 prescriptions filled because it was right there, right?

16 A I do recall -- I do recall that testimony.

17 Q Right. And that's typical in Houston or anywhere
18 else, people get their prescriptions filled at a close,
19 convenient pharmacy?

20 A Well, I can't speak to what's typical because
21 maybe I have a pharmacy that I might like somewhere else,
22 sir.

23 Q I see. In any case if these -- if the Johnsons
24 faxed the prescriptions, they had to be faxed somewhere,
25 right, to a pharmacy?

1 A To a pharmacy of their choosing as Pleshette
2 Johnson's testimony.

3 Q Right. We've got 544 patients here. If they had
4 not had their prescriptions filled, wouldn't they have
5 come back and complained? You would have heard about it,
6 right?

7 A Can you restate the question?

8 Q All right. We have 544 patients who got
9 prescriptions from you. No one of those ever came back to
10 you and said, I wasn't able to get my prescription filled,
11 I had a problem?

12 A Not to my recollection. But I also recall
13 putting "no refills" and refills being regenerated, sir.

14 Q Okay. I'm not asking you about refills. I'm
15 asking you did any patient of these 544 in this box ever
16 say to you I had a problem getting my prescription?

17 A Not to my recollection.

18 Q So if they were faxed, they were faxed to a
19 pharmacy and these people got their medicine?

20 A That would be my -- yeah, I would --

21 Q There's no reason to doubt that?

22 A There's no reason to doubt that.

23 Q Okay. Now, if they got their medicine, then
24 there should be a record of that in that pharmacy, right?

25 A I would imagine so. I don't know pharmaceutical
 1320

1 law, but I would -- well, I would imagine.

2 Q Right. Well, we've seen that. We have
3 prescriptions from The Medicine Shoppe that all have the
4 stickers that show that they've been filled, correct?

5 A Well --

6 Q You just saw one of those.

7 A Whoa, whoa, timeout. What I see is someone
8 putting in -- someone other than me putting in dates.

9 Q No. I'm talking about the back, sir. I'm
10 talking about the sticker on the back.

11 A The sticker on the back is based on the
12 assumption that these were prescriptions that were not
13 altered. The prescriptions were obviously altered,
14 Mr. Bohling, so the sticker on the back means nothing to
15 me because the stuff on the front, when you alter a
16 prescription, they're invalid.

17 Q When a pharmacy fills a prescription, it
18 traditionally puts a sticker on the back of the
19 prescription?

20 A Even if the prescription is written in and
21 doctored up, sure, I guess that's their policy. I'm not a
22 pharmacist.

23 Q You've seen -- you've looked at these
24 prescriptions, haven't you, as part of preparation for
25 this case?

1 A I have looked at some of the prescriptions.

2 Q And every one of them had a sticker on the back
3 to show --

4 THE COURT: I think we're getting to a
5 point of being argumentative here, Mr. Bohling. The
6 record speaks for itself in that regard. He's not there,
7 he hasn't seen it done.

8 Q (BY MR. BOHLING) Well, it's also the case we have
9 prescriptions from C&G Pharmacy, and they all have
10 stickers on the back?

11 A Okay.

12 Q Now, you have -- your attorney employed Mr. Mark
13 Reeder, a private investigator, correct?

14 A Yes, he did.

15 Q Okay. Did Mr. Reeder make any efforts to go to
16 any of these pharmacies and find these stickers?

17 A I cannot speak to what Mr. Reeder did, sir. All
18 I know is he was employed by my counsel.

19 Q Well, if these prescriptions had been filled at
20 some local --

21 MR. OSGOOD: Your Honor, may we
22 approach?

23 (Counsel approached the bench and the following
24 proceedings were had:)

25 MR. OSGOOD: He's clearly burden
 1322

1 shifting. He's suggesting --

2 THE COURT: Sustained.

3 (The proceedings returned to open court.)

4 Q (BY MR. BOHLING) Now, let me ask you about
5 medical records. It is important that you have
6 documentation for each patient, correct?

7 A Absolutely.

8 Q And we should have in this case medical records
9 for 544 people, right, somewhere?

10 A I would imagine.

11 Q Okay. You saw the patients?

12 A I did.

13 Q And you testified on direct that that would
14 create files?

15 A That would create files.

16 Q Okay. And so those files should exist somewhere?

17 A Yes, they should.

18 Q Now, sir, if I could show you Exhibit --
19 actually, Elder's Exhibit No. 41.

20 MR. BOHLING: May I approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 Q (BY MR. BOHLING) Do you recognize that as your
24 employment agreement with South Texas Wellness Center?

25 A Actually I have another one.

1 Q Okay. That's fine. Is this one of them?

2 A This is not one of them, and the salary in fact
3 is not this amount.

4 Q Okay. What I'm going to ask you about is it
5 shows you beginning work on July 1st.

6 A That didn't occur.

7 Q You started later?

8 A I started later. And this amount is incorrect.
9 We actually have a copy -- my counsel has a copy that will
10 show a different amount.

11 Q Okay. That's fine.

12 You recall how much later you started at South
13 Texas Wellness Center than July 1st?

14 A Yeah. I would say sometime in late July, early
15 August. However, like I pointed out, that contract, no, I
16 do not recognize because in my discovery I have a
17 different contractual monetary amount than you have.

18 Q I'm not asking about that, sir. I'm only asking
19 about when you started at South Texas Wellness Center.

20 A I can't pinpoint the exact date, Mr. Bohling, but
21 I could give you a timeframe. That would be late July,
22 beginning of August, somewhere around in there.

23 Q And you ended your employment by early January of
24 2005?

25 A Yes, I did.

1 Q Okay. And so -- and you worked two to three days
2 a week at South Texas Wellness Center?

3 A Two to three weeks, yes.

4 Q I'm sorry? Two to three days a week?

5 A Two to three days a week, yeah.

6 Q Was it more typically two or more typically
7 three?

8 A I can't recall.

9 Q You didn't work there all day?

10 A I worked there approximately five hours.

11 Q Okay. And you were disappointed with the patient
12 load?

13 A That's not correct.

14 Q Didn't -- weren't you complaining to Mr. Solomon
15 about the fact that they didn't know how to run a
16 business?

17 A It had nothing to do with patient load. I ran
18 their business because they were imbeciles. They didn't
19 know what -- LLC was a corporation.

20 Q I see. But you heard Ms. Johnson's testimony
21 that you saw four to five patients a day in that time?

22 A Yeah, I heard that testimony but she wasn't
23 there.

24 Q I see. Do you remember the patient load being
25 fairly small?

1 A I remember a patient load being between 20 to 30
2 patients.

3 Q Twenty to 30 patients a day?

4 A Yeah.

5 Q All right. So you were there for about 25 weeks?

6 A I don't know how many weeks. I can tell you I
7 was there from July, end of July, to beginning of January.

8 Q That's actually less than 25 weeks. It's about
9 23 weeks.

10 A Okay.

11 Q All right. So -- and you saw in that time,
12 according to the records, at least 544 patients?

13 A I didn't count them, Mr. Bohling.

14 Q And you were gone sometimes to go take care of
15 your mother?

16 A At brief intervals.

17 Q And you were gone sometimes because you had other
18 employment?

19 A I had other employment.

20 Q Okay.

21 A Part time.

22 Q And sometimes that other employment, though, was
23 quite substantial, wasn't it?

24 A I don't understand the question, Mr. Bohling.

25 Q Well, sometimes you -- that other employment was
1326

1 fairly -- it was -- it took quite a bit of your time?

2 A It would take -- yeah. I wouldn't say quite a
3 bit of my time. I would call it 20 hours or so.

4 Q Okay. Well, I'd like to show you Elder's Exhibit
5 No. 58. This is one of your exhibits.

6 A Okay.

7 Q What is that, sir?

8 A That's a time sheet from when I worked locum
9 tenens at Nova which is basically an occupational medicine
10 clinic.

11 Q And what's the time period?

12 A This is August the 2nd through the -- August 8th.

13 Q Of 2004?

14 A Of '04. I had additional jobs as well.

15 Q Okay. And it shows that you worked Monday,
16 August 2nd, from nine to six?

17 A Sure.

18 Q And Tuesday, August 3rd --

19 A Hold on. I can't see it.

20 Q Sure. Please take a look. Tuesday, August 3rd,
21 from eight to six?

22 A Okay.

23 Q Wednesday, 9 to 1:30?

24 A Yep.

25 Q And Friday, nine to six?
1327

1 A For a grand total?

2 Q Of about 30 hours, 29.5 hours.

3 A Okay.

4 Q So at least that week in August, you worked at
5 Nova for about 30 hours?

6 A Yes, sir.

7 Q Now, would you agree with me that if you only saw
8 four to five patients a week, you could have only seen
9 about 250 patients during this timeframe?

10 A No, I don't agree because I didn't say four to
11 five patients. Pleshette Johnson said four to five
12 patients, Mr. Bohling.

13 Q So Pleshette Johnson is correct -- if she is
14 correct, I realize you're not agreeing to that, you could
15 not have seen 544 patients during this timeframe?

16 A Pleshette Johnson is incorrect because Pleshette
17 Johnson wasn't there. If you recall, I told you she
18 worked for Mr. Brown. I don't know how she can keep dibs
19 on how many patients I see when she's not physically
20 present, Mr. Bohling.

21 Q I'd like to ask you about promethazine with
22 codeine.

23 A Sure.

24 Q That's a substance that you know is abused on the
25 street in Houston?

1328

1 A I subsequently knew was abused on the streets in
2 Houston.

3 Q Hasn't this been in the news since the early
4 2000s, since early 2001?

5 A I didn't study promethazine with codeine,
6 Mr. Bohling. I used it to treat respiratory infections.
7 Now, it's been in the news. However, I agreed with Dr.
8 Morgan, there's no use for promethazine with codeine in
9 the treatment of pain, Mr. Bohling.

10 Q I see. Would you agree that in Exhibit 48, that
11 you prescribed that drug 15 times for your patients? Do
12 you recall Exhibit 48?

13 A Sure. I saw your chart, sure.

14 Q On another occasion within the exhibit, you
15 prescribed it 14 times on -- in Exhibit 48.

16 A Okay. Can you bring it up because we may have
17 some more fill-in-the-blank with the doctor's signature
18 going on here.

19 Q Sure.

20 A Yeah. This is exactly what I'm talking about,
21 Mr. Bohling. I see a stamp, not a date.

22 Q Yes. I'm not asking about the date, sir.

23 A Okay.

24 Q That's your prescription?

25 A That is my prescription.

1 Q You saw that patient?

2 A I saw that patient.

3 MR. BOHLING: And if we could go to one
4 with -- we're going to need to go to 48.72.

5 Q (BY MR. BOHLING) For this patient, Cindy Ashby,
6 you prescribed promethazine with codeine?

7 A Well, I prescribed promethazine with codeine.
8 Again, Mr. Bohling, I wouldn't stamp the dates because I
9 don't stamp dates.

10 Q That's not my question.

11 My question is, did you prescribe promethazine
12 with codeine to Cindy Ashby?

13 A Sure, I did. And the indication under the
14 prescription there is for a cough.

15 Q I see. But you told the agents when you were
16 interviewed that you would not prescribe promethazine with
17 codeine?

18 A That is not what I told the agents. That's what
19 the agents wrote in their report.

20 Q I see.

21 A I told them there are very few circumstances
22 where I would issue promethazine with codeine, but having
23 a background and spending a lot of time in ICU, I have no
24 fear of writing promethazine with codeine. That is a
25 legitimate drug used to treat cough. However, as Dr.

1330

1 Morgan stated during his testimony, it has no indication
2 in pain.

3 Q You decided that later, is that what you're
4 telling the jury?

5 A I decided that later?

6 Q Yes.

7 A I didn't decide anything later. He's board
8 certified and I'm board certified, sir.

9 Q I see. You know that promethazine with codeine
10 is known by names on the street like Lean and Syrup?

11 A That's what I've read.

12 Q Okay. And that it's subject to substantial
13 amount of abuse?

14 A Every narcotic is subject to a substantial amount
15 of abuse, sir, and that's why I take the precautions that
16 Dr. Morgan doesn't take.

17 Q I see. And you started at Westfield on February
18 1st of 2005?

19 A February, I don't know to be -- somewhere in the
20 beginning of February. I don't know the exact date, sir.

21 Q Okay. Now, if we could --

22 MR. BOHLING: If I may approach the
23 witness?

24 THE COURT: You may.

25 MR. BOHLING: No. Actually I don't need
1331

1 to do that right now.

2 Would you please put up Exhibit 261.

3 Q (BY MR. BOHLING) I'm happy to show the original
4 on this if you want it, but do you recognize this as an
5 original prescription from Westfield written by you?

6 A It appears to be.

7 Q Okay. And that's the actual original if you'd
8 like to see it.

9 A No. I'll take your word. That looks --

10 Q If we could see Exhibit -- the page 2 of that
11 exhibit.

12 And you see that that exhibit was -- that
13 prescription was filled by C&G Pharmacy on February 1st,
14 2005?

15 A Yes.

16 MR. BOHLING: Now, on the other screen
17 if you could please put Exhibit 52. Highlight that
18 exhibit. Go back to the first page, please. Thank you.

19 Q (BY MR. BOHLING) Now, you see that Exhibit 52 is
20 an identical copy of -- a copy but identical to Exhibit
21 No. 261?

22 A Appears that way.

23 Q Okay.

24 MR. BOHLING: Would you zoom out on
25 Exhibit 52, please, and then highlight the top.

1332

1 Q (BY MR. BOHLING) And little hard to read, but you
2 see that there's a fax header there?

3 A Yes, I can see the fax header.

4 Q Okay. There we go.

5 So this fax was sent February 3rd of 2005?

6 A Okay.

7 Q See that? And the fax number is 281-469-9912.

8 A Uh-huh.

9 Q And you recognize that number from court as being
10 Mr. Solomon's fax number?

11 A Yes, I do.

12 Q Okay. So the prescription was written and filled
13 in Houston on February 1st and by February 3rd it's being
14 faxed up to Missouri?

15 A Okay.

16 Q Correct?

17 A Okay.

18 Q Yeah. If we could go to Exhibit 53, please.

19 You see, again, the prescription, February 1st,
20 2005?

21 A Yep.

22 Q Okay. And we can zoom back out.

23 And you see, again, the fax header on that?

24 A Uh-huh.

25 Q And, again, that's from Mr. Solomon's fax
1333

1 machine?

2 A Yeah.

3 Q Now, if we could bring up Exhibit 262, please.

4 And this is the identical -- this is actually
5 the original of 53, right? Those both appear to be the
6 same?

7 A Yes.

8 Q And 262 is a copy essentially of 53, correct?

9 A Correct.

10 Q And if we can zoom out on 262, please, and go to
11 the second page.

12 And this was filled at C&G Pharmacy on February
13 1st, 2005?

14 A Okay.

15 Q So it was filled in Houston by the patient on
16 February 1st and a copy of it was on its way to Missouri
17 two days later, correct?

18 A I suppose, sir, but like I said, I can see the
19 Aldine Westfield. Show me the other exhibit.

20 Q What do you need to see, sir?

21 A No, no. My glasses are just --

22 **Okay.**

23 Q All right. Now, looking at all of the originals
24 for February 1st, I counted there were 43 patients seen on
25 that day.

1 A Okay.

2 Q Do you have any reason to disagree with that
3 because I'm happy to show you these if you like?

4 A No. I'll take your word.

5 Q Okay. Now, on these I see that 41 of those
6 patients were prescribed either Lortab, Lorcet, or
7 Vicodin. Do you have any reason to disagree with that?

8 A No -- yeah, I'd like to see that one.

9 Q Sure.

10 MR. BOHLING: Let the record reflect
11 I've handed the original exhibit to the witness.

12 Q (BY MR. BOHLING) Having reviewed those, do you
13 have any reason to question that 41 of the 43 patients
14 received Lortab, Lorcet, or Vicodin?

15 A No.

16 Q Okay. Two of them received Valium only to make
17 up the 43?

18 A Okay.

19 Q All right. Now, you've seen the exhibit, and I
20 can certainly show it to you, but every single one of
21 these was in that fax sent from Mr. Solomon's house,
22 correct?

23 A I don't want to laboriously go through them all.

24 Q I'm happy to do it if we need to.

25 A No. Can I see a few, just maybe three?

1 Q Sure. If we could bring up Exhibit 52. We've
2 seen a few. Just tell me when you're ready.

3 A I'm ready.

4 Q Fifty-three.

5 A Okay.

6 Q Okay. Go ahead. This is the third page of 53.
7 That is a Westfield -- or -- yeah, Westfield script for
8 February 1st, 2005.

9 A Okay.

10 Q Next page.

11 A I think that will do it.

12 Q Okay. So you have no reason to doubt that every
13 single prescription that you wrote on February 1st, 2005,
14 that ended up at C&G, also ended up in this fax to
15 Missouri?

16 A I had no knowledge of anything being faxed to
17 Missouri.

18 Q That's not my question. Every one of these in my
19 hand went to Missouri?

20 A Okay.

21 Q And the February 2nd ones also went to Missouri?

22 A I'll take your word.

23 Q Okay. Now, we've established, and you agreed,
24 from the phone records that you've had over 400 telephone
25 contacts with Troy Solomon, correct?

1336

1 A I saw the chart.

2 Q Diane Hearn had zero phone contacts with Troy
3 Solomon, correct?

4 A I don't know how many phone contacts she had with
5 Solomon, sir.

6 Q The records will certainly speak to that, though,
7 as to whether -- I mean, we have Mr. Solomon's phone
8 records.

9 A Well, can you put them up?

10 Q Sure. I'll let them work on getting that up.
11 That way we don't have to waste time waiting for it.
12 We'll go on and come back to that.

13 A Okay. I've got a question. You're saying
14 there's zero phone calls between Solomon and Hearn?

15 Q Yes, sir.

16 A Now, you guys studied phone records. We heard
17 Dr. Morgan testify yesterday that a pharmacist should
18 actually call and confirm with the physician, did we not?

19 Q I suppose so, sir. Let me --

20 A No. That's what was said.

21 Q Let me ask the questions, sir.

22 It's about -- correct me if I'm wrong, but it's
23 about 33 miles from South Texas Wellness Center to the
24 Westfield Clinic?

25 A I don't know, sir.

1 Q The South Texas Wellness Center and Ascensia
2 Nutritional Pharmacy are on the south side of Houston,
3 correct, south downtown?

4 A Yeah.

5 Q They're in the South Loop?

6 A Yeah, South Loop.

7 Q And Ms. Hearn's business is on the north side of
8 town?

9 A Uh-huh.

10 Q Correct?

11 A Yeah, I agree.

12 Q And there is a fairly long distance between those
13 two points?

14 A I'm not sure of the exact distance but it's not
15 short.

16 Q You've never seen Mr. Solomon at Westfield?

17 A I've never seen Mr. Solomon at Westfield, not to
18 my knowledge.

19 Q Okay. And you're not aware of any contacts
20 between Mr. Solomon and Diane Hearn or anybody else over
21 there?

22 A I can't speak to that, sir.

23 Q Okay. But you've had contacts with Mr. Solomon?

24 A Yeah. He worked at South Texas Wellness Center
25 as an investor. Of course, I had contact with him.

1 Q Okay. Now, these patients that you saw at
2 Westfield, these were all new patients to you, correct?

3 A Well, they weren't -- they were new to me as a
4 startup, but they weren't new patients.

5 Q They were new to you as a physician, correct?

6 A They were new to me as a person starting there,
7 sure. But were they new? No. So I -- I'm not sure --
8 are you asking are they new to me or are they new?

9 Q Yeah, are they new to you?

10 A They're new to me because that's my first time
11 working at that facility.

12 Q And you saw 43 patients that day at least?

13 A I guess.

14 Q You may have seen more if you had not written
15 prescriptions for any of them?

16 A I can't hear you.

17 Q You may have seen more if some of them didn't get
18 prescriptions?

19 A If I prescribed an alternative to the
20 medications, then they wouldn't have had a prescription.

21 Q Right. Now, if we could, please, look at Exhibit
22 1048.

23 Now, you recall discussing this document in your
24 interview?

25 A No. I remember seeing this document. I don't
1339

1 remember discussing the document.

2 Q That's your handwriting, right?

3 A That is my handwriting.

4 Q Okay. And it says "Patients 2/1/05," correct?

5 A Yep.

6 Q In fact, these patients are the same patients
7 that we just saw in this stack, 2/1/05 Westfield patients,
8 correct?

9 A I'm going to take your word for it, Mr. Bohling.

10 Q No. It's an important point so don't take my
11 word for it. We can look if you want.

12 A No. I don't need to look. I can see my writing
13 here.

14 Q Right. You see Margaret Crall, who is in fact
15 one of the patients in this stack?

16 A Uh-huh.

17 Q You have to say yes for the record.

18 A Yes, sir.

19 Q Okay. So if we went through this, we would find
20 that these patients that are listed on this sheet, you
21 have names and address information and date of births,
22 right, for these patients?

23 A Yes, I do.

24 Q And these patients listed on this sheet are the
25 patients in this stack of prescriptions you wrote on

1 February 1st, 2005, at Westfield?

2 A Okay. I understand, yes, sir.

3 Q Now, if we could go to the top.

4 You see that this document was faxed from Troy
5 Solomon's fax machine on February 3rd, 2005?

6 A When you say "this document," all I'm seeing is
7 the header.

8 Q Okay. Let's zoom out. That's fine. Fair
9 enough.

10 Now, you can see the header in context. The
11 header is on top of this list of patient names, correct?

12 A Uh-huh. Yes, sir, I see it.

13 Q And you wrote this document?

14 A I wrote that document in lieu of I wanted Dr. --
15 Mrs. Hearn to make copies for me because, as I told you,
16 as stated earlier on direct, I didn't trust them because
17 Dr. Hearn had his DEA revoked.

18 Q All right. Sir, you --

19 A No, no, no.

20 Q You wrote this?

21 A Yeah. I had to write the copy because she
22 couldn't print me out a list because a copier was down, so
23 I wrote this thing out. And with the trust issue and
24 Dr. Hearn having his DEA revoked, I was reluctant to just
25 simply -- you know, I don't know these people and I don't

1341

1 trust Hearn. So the logical thing for me to do was to
2 keep a list at least until I became trusting.

3 Q So the bottom line is you wrote this document?

4 A Yeah. The bottom line is I wrote that document.

5 Q And this is the same kind of document with names
6 and addresses that we've seen throughout this case, isn't
7 it?

8 A I can't speak to that, sir.

9 Q Well, it looks the same, doesn't it? You have
10 patient name, patient date of birth, address, phone number
11 -- or not phone number but address, zip code. That's the
12 same kind of information that was being faxed throughout
13 this case from Texas to Missouri, isn't it?

14 A Sir, I saw a bunch of things that were filled in
15 subsequently on some other unknown days. Now, on a lot of
16 my prescriptions in my defense, I didn't even include that
17 information.

18 Q I see. These prescriptions don't have addresses,
19 don't have dates of birth. Would you agree with that?
20 February 1st prescriptions you wrote at Westfield.

21 A Okay. Now, can you repeat the last question?

22 Q Yes. We'll look at Mr. Bertram Armstrong.

23 A Let's look --

24 Q I can show it to you. There's no address and
25 there's no date of birth on that prescription, right?

1 A Okay. I understand that.

2 Q From Mr. Bertram Armstrong.

3 Now, this -- your writing fills in what's
4 missing on this prescription, doesn't it?

5 A I need to see that, sir.

6 Q Sure.

7 A You're asking me if my writing --

8 Q No. I'm sorry. This prescription does not have
9 an address or an age for Mr. Armstrong?

10 A Correct.

11 Q And if we look through, that would be true, I can
12 show you, for all these prescriptions. There's no
13 address, there's no age.

14 A Correct.

15 Q You produced a handwritten list in your
16 handwriting key to these prescriptions on February 1st,
17 2005, that fills in the address and the date of birth for
18 all of these people?

19 A Yeah. I produced a handwritten copy because the
20 copier did not -- was not working. So that's correct.

21 Q Now, the copier had to be working because we have
22 photocopies of these prescriptions that were faxed to
23 Missouri?

24 A No, no, no, no. I wrote -- I handwrote these
25 myself because the copier at Westfield did not work at
1343

1 that time.

2 Q Excuse me, sir. Didn't we just look at
3 photocopies of these prescriptions?

4 A We looked at copies, but we didn't look at copies
5 that I -- that I said I made.

6 Q I didn't ask you that. Did we look at copies of
7 these prescriptions?

8 A We looked at originals of the prescriptions.

9 Q Okay.

10 MR. BOHLING: Can we bring up on the
11 other side Exhibit No. 52.

12 Q (BY MR. BOHLING) And that, remember, we talked
13 about there were originals of these prescriptions, which
14 we have here which were filled on February 1st, 2005, at
15 C&G Pharmacy. You recall that?

16 A Okay.

17 Q And then we looked at this document, and this was
18 a copy of this prescription that was faxed to Missouri
19 from Mr. Solomon's home on February 3rd, 2005. Do you
20 remember that?

21 A Can you repeat the last part?

22 Q Yes. There was a copy of this original
23 prescription that was faxed from Mr. Solomon's home,
24 looking at it right here, on February 3rd, 2005. Yes?

25 A Yes.

1 Q So that is a copy of this original?

2 A I believe so.

3 Q So somebody's copy machine had to be working to
4 make this copy, right?

5 A Somebody's copier machine. But, like I said, why
6 would I sit here and write down stuff if I can copy it?

7 Q That's right. Wouldn't the reason be -- well,
8 let's look at the headers, fax headers, on these two
9 documents, please.

10 Okay. Yes, I want the date.

11 You see that these on the right were faxed at
12 11:38 a.m. in the morning? You see that from the fax
13 header on the screen in front of you, sir?

14 A Well, I see fax headers, again, Mr. Bohling. I
15 don't see the -- can you bring one up and then I can maybe
16 look at the fax headers?

17 Q Bring up what, sir? The fax header is on the
18 screen, sir. We can -- so -- just so you understand,
19 here's the fax header, and we're going to blow up the date
20 and the time. And the time -- the date is February 3rd,
21 and the time is 11:38 a.m.

22 A Okay.

23 Q And that is for the original prescriptions or --
24 I'm sorry, the copies of the originals that you wrote.
25 Those were faxed up at 11:38 a.m., correct?

1345

1 A I'm not following you. Where -- who -- who's
2 faxing what?

3 Q Mr. Solomon is faxing these copies of these
4 prescriptions that you wrote to Missouri on his fax
5 machine.

6 A Okay.

7 Q Right?

8 And that happened at 11:38 a.m. on February 3rd,
9 2005, according to this fax header.

10 A Okay.

11 Q Can we agree to that?

12 A Yeah. Now I understand. I understand. I'm
13 sorry. I didn't -- it wasn't that clear.

14 Q All right. Then if we can look at the other fax
15 header, that is the handwritten list that you've produced
16 for these prescriptions, and that was faxed by Mr. Solomon
17 February 3rd, 2005, at 11:55 a.m.?

18 A Okay. I understand that.

19 Q And that's a list that you wrote in your
20 handwriting?

21 A Yeah. That is my handwriting.

22 Q Okay. So isn't it a fact that what happened is
23 that as soon as you got to Westfield, you procured copies
24 of these prescriptions and you gave them to Mr. Solomon?

25 A No.

1 Q Well, isn't it a fact that because it was missing
2 certain address information, you gave Mr. Solomon the
3 address information in your own handwriting?

4 A No. And if that was the case, then why have we
5 seen so many exhibits where they're filled in by somebody
6 in Missouri?

7 Q Yes. But the faxes are filled in by people in
8 Texas, right? You understand that?

9 A I understand, I guess, what you're driving at.
10 What I'm saying is during this case I have seen things
11 that you've introduced into exhibit that were obviously
12 not filled in by me.

13 Q Right. And some of those include fax sheets
14 from -- faxes from Texas to Missouri that include
15 information for patients like address and date of birth.
16 Have you seen that?

17 A Some of them were photocopies of photocopies that
18 were faxed, sir.

19 Q That's not what I'm asking you. You know that
20 someone faxed information to the pharmacy in Missouri so
21 that they could write that information in on the
22 prescriptions, right?

23 A I agree, yes.

24 Q Right. And that information was necessary
25 because Mrs. Rostie was asking for it?

1 A I don't know what Mrs. Rostie asked for because
2 we're talking about a lady who refilled refill after
3 refill without any authorization.

4 Q Right. And for these prescriptions --

5 A So I cannot sit here and talk about Mrs. Rostie's
6 credibility, sir.

7 Q But these prescriptions, sir, the only person who
8 had access to the address and date of birth information
9 was you, right?

10 A No. There were five people --

11 Q What --

12 A There were five people in the office.

13 Q It was you as opposed to Mr. Solomon.
14 Mr. Solomon was not at Westfield, you were at Westfield.

15 A Mr. Solomon was not at Westfield. However, there
16 were five people at Aldine. You interviewed two.

17 Q And of all the people at Westfield, the one who
18 knew Mr. Solomon, the one who had 400 phone calls with
19 Mr. Solomon, was you?

20 A In the 400 phone calls, sir, were not -- when I
21 studied the exhibit, they were not broken down into any
22 particular order. So you're saying 400 calls to say what?

23 Q To say, sir, that you start at Westfield on
24 February 1st. By February 3rd, the prescriptions that you
25 have written on February 1st and February 2nd are given to

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1 Troy Solomon along with a handwritten list by you of the
2 addresses and the names and the date of birth of those
3 people and they are both faxed by Troy Solomon to
4 Missouri?

5 A And what I'm saying -- what I'm suggesting to you
6 is you interviewed two people out of five at Aldine or
7 Westfield Medical Clinic, and you interviewed one out of
8 five at the pharmacy.

9 Q The only person at Westfield or C&G with a known
10 relationship to Troy Solomon --

11 A With a known. But how would you know if you
12 didn't interview the -- you only interviewed the
13 pharmacist, sir.

14 Q I see. Now, I want to talk about --

15 A That means you're missing four people that you
16 did not interview because you were too overzealous trying
17 to catch me.

18 Q I see. I want to talk about your business
19 relationship with Mrs. Hearn.

20 Didn't she testify that in fact when you started
21 there, that you were a contractor? You worked for a place
22 called Unisource?

23 A Initially.

24 Q Right. And in fact that relationship lasted
25 until July 1st of 2005?

1349

1 A I'm not sure when.

2 Q Well, it lasted into summer?

3 A Summer, yeah, sure.

4 Q And so you were being paid -- basically you were
5 on a wage at that point. You were being paid by
6 Unisource, not by Mrs. Hearn?

7 A Correct.

8 Q Right. So you did ask, as you told this jury,
9 you did ask Mrs. Hearn to give you copies of the
10 prescriptions when you first started there?

11 A I required copies because her husband had been
12 arrested by the DEA, and there was an issue of trust.

13 Q But you didn't require copies to check up on the
14 number of patients you were seeing because you weren't
15 paid by the number of patients on February 1st of 2005,
16 you were paid a wage by Unisource?

17 A Well, a wage with a bonus after I saw a certain
18 number of people.

19 Q I see. Weren't you -- but Mrs. Hearn didn't
20 testify to that?

21 A No, she didn't tell you that.

22 Q That's right.

23 A But I don't think you asked it either.

24 Q All right. So that's the first we've heard about
25 a bonus from Unisource?

1 A Yeah.

2 Q Okay. Now, sir, I have pulled the phone records
3 for Troy Solomon for the date of -- let's see, February --
4 early February of 2005. And I can do this however you
5 want. We can look at them, but I'm certainly glad to make
6 them available to you or to your counsel to look for any
7 contact with Ms. Hearn as you've requested.

8 A I can't hear you.

9 Q I'm happy to give these to you or to your counsel
10 to look for contacts with Ms. Hearn with Mr. Solomon as
11 you've requested.

12 A Oh, you can give it to my counsel.

13 Q Thank you.

14 MR. BOHLING: If we can put up Exhibit
15 625.1.

16 Q (BY MR. BOHLING) Do you recognize this as one of
17 the Fed Ex slips?

18 A Do I what?

19 Q Do you recognize this as one of the Federal
20 Express slips that reflects one of the deliveries to South
21 Texas Wellness Center?

22 A I recognize that this -- I've never seen anything
23 come to South Texas Wellness Center, but --

24 Q Right. I understand.

25 A I recognize my name.

1351

1 Q You recognize your name on that document?

2 A Yeah, Dr. Elder, Christopher Elder.

3 Q Okay. And if we could look at the signature
4 block down there. That appears to be your signature, does
5 it not?

6 A It does not.

7 Q Okay. So you're claiming that someone forged
8 your signature on there?

9 A Absolutely.

10 Q And if we can look at 626.1.

11 Sir, there were actually two deliveries on this
12 day, two boxes. If we can highlight the signature.

13 Again, I take it you're going to say this isn't
14 your signature?

15 A I'm going to say it's not my signature, and I
16 think even more telling is if you look at the top,
17 Mr. Bohling, Edon. I've had the name Elder all my life.
18 I think I can spell it pretty good.

19 Q Right. You understand that the Fed Ex drivers
20 sometimes misspell the name?

21 A No. I don't understand anything about Fed Ex,
22 because I didn't take any Fed Ex packages.

23 Q All right. So don't you find it odd that out of
24 hundreds of deliveries, your signature is only -- is only
25 supposedly forged on two of them?

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1 A That's my point. I agree.

2 Q Okay. In fact, there's something a little bit
3 more odd about all of this, isn't there? You're saying
4 that these people stole these prescriptions, essentially
5 misappropriated them without your knowledge?

6 A I'm saying I don't know who "they" is, but I
7 didn't --

8 Q I understand. Someone.

9 A I've been victimized. And we've seen this
10 because people writing in addresses. They are refilling
11 things without authorization. The pharmacist is not doing
12 their due diligence by contacting physicians.

13 Q I understand.

14 A I've seen so much --

15 Q I think you've answered my question. I
16 understand your contention.

17 Now, you've seen from the evidence that your
18 original prescriptions were sent out to a pharmacy in
19 Missouri?

20 A Yeah.

21 Q And you've seen from the evidence that these
22 prescriptions were filled and sent back in these boxes to
23 Texas?

24 A I've seen from the evidence.

25 Q Right. Now, according to you, you had no
 1353

1 knowledge, they were essentially trying to fool you and
2 victimize you the whole time?

3 A That is exactly what I'm saying.

4 Q So isn't it about the stupidest thing they could
5 do is to send a series of -- I don't remember, I counted
6 them up. But there are tens and tens of boxes that went
7 to South Texas Wellness Center in your name?

8 A Sir, I concur. That's the reason why I wanted --
9 why I'm here. It's stupid. Why would I send a box to
10 myself?

11 Q No. What I'm saying is, if these people wanted
12 to steal your prescriptions, prescriptions you had
13 written, and wanted to make sure that you weren't in on
14 it, that you never found out, why would they send the
15 boxes to you at your business address?

16 A To legit -- to make that appear to be legitimate.

17 Q But if they're just going to sell them on the
18 street, couldn't they send them anywhere?

19 A I don't know where they're going to sell on the
20 streets. What I know is this: I left and after I left, I
21 had no knowledge of what went on or occurred at South
22 Texas Wellness Center. And, as a matter of fact, I had to
23 send a letter to South Texas Wellness Center in '07 asking
24 them to remove my name from their marquis. Now, that was
25 --

1 Q They -- let's get back on track. The "they" that
2 did this would have no guarantee that you would not open a
3 box that was addressed to you at your business address?

4 A I never saw a box, so obviously I could not open
5 a box.

6 Q But there's always the risk that you would, isn't
7 there? It was addressed to you.

8 A No, there's no risk because I never saw one. How
9 could I open something that --

10 Q But nobody could know that ahead of time, could
11 they?

12 A Excuse me?

13 Q Nobody could know that ahead of time?

14 A Know what?

15 Q Whether you would open a box that was addressed
16 to you at your place of business.

17 A Mr. Bohling, you're not making sense. If I don't
18 see a box, how can I open a box?

19 Q If I send something to you at your address, at
20 your legitimate business address, I would presume that you
21 would open it. Wouldn't you make that same presumption?

22 A No, I wouldn't because far after I had left,
23 these boxes continued to come, Mr. Bohling.

24 Q I see.

25 A That's evident. And it's been introduced into

1355

1 evidence.

2 Q If you had opened a box that was addressed to you
3 at your place of business and found a bunch of
4 prescriptions that you couldn't account for, wouldn't you
5 have called law enforcement?

6 A Sir, that never occurred so there would be no
7 reason to call law enforcement. That's like you telling
8 me to report a stolen car when I'm sitting here about to
9 get in my car.

10 Q Would you have called law enforcement?

11 A If I sensed something was wrong, I certainly
12 would.

13 MR. BOHLING: I just need to get a drink
14 of water, Your Honor.

15 Thank you, Your Honor.

16 THE COURT: Counsel approach, please.

17 (Counsel approached the bench and the following
18 proceedings were had:)

19 THE COURT: I take it from your
20 indication you got water is you've got more to go.

21 MR. BOHLING: Yeah.

22 THE COURT: You want to take a break?

23 MR. BOHLING: Sure. That would be fine.

24 (The proceedings returned to open court.)

25 THE COURT: I think we deserve a break,
1356

1 don't you?

2 Let's take a break. How about ten till one
3 we'll come back and get started again.

4 I'll ask you not discuss the case among
5 yourselves or with others or allow anyone to discuss it in
6 your presence.

7 Thank you.

8 (The following proceedings were had out of the
9 presence of the jury:)

10 THE COURT: Can I speak with counsel
11 once again?

12 (Counsel approached the bench and the following
13 proceedings were had:)

14 THE COURT: I've kind of let Dr. Elder
15 be nonresponsive to the questions because I don't expect
16 these questions to come up again, Mr. Osgood, because he's
17 had a full opportunity to explain himself as best he can.

18 MR. BOHLING: Which is fine.

19 THE COURT: How much more do you have?

20 MR. OSGOOD: I think they're getting
21 repetitive too. I haven't objected.

22 THE COURT: It's partly because it's
23 become argumentative between the doctor trying to make his
24 point and Mr. Bohling trying to make his point.

25 MR. BOHLING: I have to follow up to
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1 make sure my question gets answered. I don't have any
2 choice.

3 THE COURT: I understand. That's what
4 I'm saying.

5 MR. BOHLING: I probably have 10 or 15
6 minutes.

7 THE COURT: Okay. All right. Let's
8 take a break.

9 (A recess was taken.)

10 AFTERNOON SESSION

11 (The following proceedings were had in the presence of the
12 jury:)

13 THE COURT: Mr. Bohling.

14 CHRISTOPHER ELDER, MD, previously being sworn, resumed the
15 stand:

16 CROSS-EXAMINATION (continued) BY MR. BOHLING:

17 Q Dr. Elder, on direct you said you lived in
18 Houston, Texas?

19 A Correct.

20 Q In fact, don't you live in a community called
21 Lake Houston, Texas?

22 A No, sir.

23 Q All right. If we could bring up Exhibit 1216.05.
24 Is that your house, sir?

25 A That's my house, but --

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1 MR. OSGOOD: May we approach?

2 (Counsel approached the bench and the following
3 proceedings were had:)

4 MR. OSGOOD: He just bought this house
5 not too long ago, and every time I try to put anything
6 into evidence about his practices after this conspiracy
7 ended, it's been objected to and overruled. Now he's
8 trying to suggest that he's got assets now five years
9 later. I don't see the connection, and I think it's
10 irrelevant and prejudicial.

11 MR. BOHLING: I can certainly provide
12 that. He put money down on this house and first started
13 buying this house in October of 2005, which is during the
14 conspiracy period.

15 THE COURT: How do we get from the
16 address to this?

17 MR. BOHLING: Well, he's claiming
18 poverty. There's no poverty.

19 MR. OSGOOD: He's not claiming poverty
20 now. He told you he made \$200,000 in '06.

21 MR. BOHLING: The fact he feels that he
22 can purchase this nice house in October of 2005 is
23 relevant.

24 MR. OSGOOD: All right. I'll withdraw
25 the objection.

1 (The proceedings returned to open court.)

2 Q (BY MR. BOHLING) This is your house, sir,
3 correct?

4 A That's my current house.

5 Q Okay.

6 MR. BOHLING: I would move 1216.05 into
7 evidence.

8 MR. OSGOOD: No objection.

9 THE COURT: 1216 -- what did you say?

10 MR. BOHLING: 1216, page 5.

11 THE COURT: All right. It will be
12 received.

13 MR. BOHLING: All right.

14 Q (BY MR. BOHLING) Lake Houston is --

15 A Sir, that's -- I don't live in Lake Houston. On
16 direct I interpreted it to mean at the time of these
17 charges, not currently my physical address.

18 Q Okay. What is your current physical address?

19 A My current physical address is 21702 Sunset View,
20 Crosby, Texas 77532.

21 Q And is there a lake called Lake Houston nearby?

22 A Yeah. There's a lake -- there is a lake called
23 Lake Houston, but that's not where I live. No one lives
24 there. It's just a lake.

25 Q Very good. Now, this is a house that you
1360

1 originally purchased the lot, correct, before the house
2 was built?

3 A I bought the lot prior to the house being built,
4 correct.

5 Q And you first put down a deposit on that lot in
6 October of 2005?

7 A Yes, that's correct.

8 Q Okay. Now, do you recall receiving a request for
9 information from the Texas Medical Board in 2008, in March
10 of 2008?

11 A Yes, I do.

12 Q And do you recall that they asked you for some
13 medical records having to do with Amanda Allen, Lindsay
14 Louis, Mark Ivey, Cheryl Zarsky, Jean Greenwald, and
15 Alexander Zhang?

16 A Yes, I do.

17 Q Those folks are the prescriptions we've seen here
18 in court today?

19 A Correct.

20 Q Right. And they're actually counts in the
21 indictment?

22 A Yes, they are.

23 Q Okay. And you took that matter very seriously,
24 correct?

25 A Yes, I did.

1 Q And you provided them with your best response to
2 that? You provided a response to this request for
3 information?

4 A Yes, I did.

5 Q And you provided that response on a letter?

6 A Yes, I did.

7 Q And you knew that that was very important that
8 you be straightforward and honest with the Texas Medical
9 Board?

10 A Yes, I did.

11 Q Okay. Exhibit 1221, do you recognize Exhibit
12 1221 as the letter you provided?

13 A Yes, sir.

14 Q Okay. If I can find my copy. Here we go.

15 Now, you testified here in court today that
16 specifically as to these individuals, that you had seen
17 them as patients?

18 A Yes.

19 Q Do you remember answering that question?

20 A Yes. I seen these people as patients in the
21 past.

22 Q Right. And specifically because you had written
23 prescriptions, original prescriptions to South Texas
24 Wellness Center for these individuals, Amanda Allen and
25 the rest, that you knew that you had seen them as

1 patients?

2 A No. I didn't recall that because these patients
3 were seen at some six years prior to this letter being
4 generated, so I didn't remember --

5 Q Right. But you told the Texas Medical Board in
6 2008, specifically on April 10th of 2008, that "To the
7 best of my knowledge, I have never served as a physician
8 for the six individuals listed in the board subpoena."

9 A Well, that's what my letter states. However,
10 just my recollection of six patients from six years ago, I
11 couldn't remember that.

12 Q Okay. Now, by 2008 you had been charged in this
13 case?

14 A February of 2008.

15 Q Right. And so you had gotten a -- you had gotten
16 a request for information from the Texas Medical Board
17 about the very patients involved in this case?

18 A Yes, I did.

19 Q And you knew it was very significant whether you
20 had seen these patients or not seen these patients?

21 A Correct.

22 Q That was very important to you?

23 A Right.

24 Q So in 2008, you told them, "I have never served
25 as the physician for the six individuals"?

1 A Well, it actually says "to the best of my
2 knowledge."

3 Q You knew that you had written prescriptions for
4 these people?

5 A No. I did not recall these individuals from '04,
6 and that's what why I put "to the best of my knowledge" as
7 opposed to a more affirmative answer.

8 Q So what we can say is in 2008, to the best of
9 your knowledge, you had not served as a physician for
10 those six people. In 2010 you tell this jury that you did
11 serve as the physician for those six people?

12 A In 2008 I told the board when they were seeking
13 these records that to the best of my knowledge I didn't
14 recall who these patients were. When I saw these people,
15 that would have been at South Texas Wellness Center and
16 that was '04. So that's a six-year timeframe. So that's
17 why I put "to the best of my knowledge" as opposed to, you
18 know, a more affirmative and resounding "I never saw these
19 patients." I didn't -- that's why I put "to the best of
20 my knowledge."

21 Q Now, one last topic. I want to circle right back
22 around to the Westfield prescriptions that we discussed,
23 and if we could put Exhibit No. 52 back up, please.

24 And this -- I don't want to repeat, but just --
25 we saw that this fax was sent February 3rd at 11:38 a.m.

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1 You remember we had a long discussion about that?

2 A Uh-huh.

3 Q I'd now like to put up Exhibit 605.235.

4 And your cell phone number, at least at that
5 time, was 832-483-6657?

6 A Correct.

7 Q Okay. And what we're looking at here, sir, is
8 the phone records for Mr. Troy Solomon. Remember
9 reviewing these?

10 A Yes.

11 Q Okay. And what we're looking at are the phone
12 records from Mr. Troy Solomon on February 3rd, 2005. We
13 can go up to look at the year if we need to. In any case
14 I'll represent to you that this is February 3rd of 2005.

15 MR. OSGOOD: Can we see the top of it
16 again, please?

17 MR. BOHLING: The year on it is the year
18 it was received.

19 Can you go back a page? How far back do you
20 have to go? There we go. I think it's in there.

21 Q (BY MR. BOHLING) So we see that the date of
22 invoice was January 29th, 2005, for these records that
23 we're looking at. You see that, sir?

24 A Yes.

25 Q Okay. We can go back.

1 Now, you see on Entry No. 391, February 3rd at
2 11:07 a.m., that's your cell phone number?

3 MR. OSGOOD: Excuse me. How could that
4 be a January invoice when it's a February phone call?

5 MR. BOHLING: I misspoke. We can go
6 back to that page. There was a March invoice as well,
7 John.

8 So that's the end of one period, January 9th,
9 and then the date of invoice of March 1st, 2005. Do you
10 see that?

11 MR. OSGOOD: Okay.

12 MR. BOHLING: If we can go back to the
13 record.

14 Q (BY MR. BOHLING) That your cell phone number?

15 A Yes, it is.

16 Q Okay. And so on February 3rd, 2005, 11:07 a.m.,
17 there was a telephone call, at least attempted telephone
18 call, from Troy Solomon to your phone number?

19 A Okay.

20 Q Right?

21 A Yes.

22 Q We saw that the fax was sent from Mr. Solomon's
23 house at 11:38 a.m. Do you recall that?

24 A Yes.

25 Q Okay. And then if we look -- all right.

1 So then we see on the same date at 6:40 p.m.
2 there's another phone call to your cell phone number from
3 Mr. Solomon, correct?

4 A Correct.

5 Q So you had telephone contact with Mr. Solomon on
6 the very day that he faxed both the prescriptions from
7 Westfield and your handwritten list of names and
8 addresses?

9 A I don't know anything about the fax, but I see my
10 cell phone number there.

11 Q Okay.

12 MR. BOHLING: Thank you. That's all I
13 have.

14 REDIRECT EXAMINATION BY MR. OSGOOD:

15 Q How far did Mr. Solomon live from you or from the
16 clinic?

17 A I don't know where Mr. Solomon resided.

18 Q Okay. I'm going to go back to the Westfield -- I
19 mean, to the South Texas Wellness Center prescriptions
20 that he was asking you about. You said you worked there
21 three days a week and sometimes two days a week?

22 A Yes, sir.

23 Q And you were there in August, September, October,
24 November, December; is that right?

25 A Yes, sir.

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1 Q So if we do a conservative view of two days a
2 week, four weeks a month, that would be eight days a
3 month, right?

4 A Yes, sir.

5 Q That would be 40 days, right?

6 A Yes, sir.

7 Q Forty days and 540 prescriptions would be by my
8 math, and anybody is welcome to check it, 10.35 patients
9 per day. Is that accurate?

10 A Yes, sir.

11 Q Is that an unusually large number of patients?

12 A No, sir.

13 Q Is that consistent with the two, four, five to
14 ten patients that was talked about in the evidence?

15 A Well, it ranged but it was consistent -- it's
16 consistent. Some days were busier than others.

17 Q All right. But that's not an unusually large
18 number of patients, is it?

19 A Not at all.

20 Q Okay. Now, when you were at Westfield, you went
21 over there, they had used your name on these faxes and
22 these refills for months after you were gone from South
23 Texas, didn't they?

24 A Yes, sir.

25 Q Did they know where you'd moved to over at
 1368

1 Westfield?

2 A Yes, they did.

3 MR. BOHLING: Objection. We'll object
4 to the use of the term "they."

5 THE COURT: Sorry, I couldn't hear you.

6 MR. BOHLING: Can we approach?

7 MR. OSGOOD: I'll rephrase it.

8 Q (BY MR. OSGOOD) Did the Johnsons know you'd gone
9 to Westfield?

10 A Yes, they did.

11 Q Had you talked to Pleshette? I believe you had
12 some meeting with her at some point.

13 A Yes, I did.

14 Q And did Mr. Solomon know you were at Westfield?

15 A I'm not certain.

16 Q Okay. How about Mr. Parker or any of these other
17 people?

18 A I believe Mr. Parker may have been privy to that
19 information.

20 Q At Westfield what was the policy on filling out
21 prescriptions, originals, and the file and how were they
22 handled?

23 A Well, what I would do is after I evaluated a
24 patient, I would give them the prescription along with
25 their chart to give up to the front office staff.

1 Q Now, you wrote down on one day there some names
2 and addresses of some patients.

3 A Yes, sir.

4 Q Do we remember when that was exactly?

5 A It was beginning of February, I believe, the 1st
6 or so.

7 Q Could that have been put in with the script in
8 the chart to say, Make me a copy of this?

9 A Yeah. Actually it was. I actually asked Diane
10 to make a copy for me.

11 Q Did you call Mr. Solomon and tell him, Come on
12 over, there's some scripts here, and we can get this
13 scheme going again?

14 A No, sir.

15 Q Is it a coincidence, then, if there was a call to
16 him?

17 A Absolutely.

18 Q Well, if it was 11:07 and he's faxing it at
19 11:38, he must have driven at breakneck speed to get over
20 there if that's what it was about?

21 A Yes, sir.

22 Q Because that's only 31 minutes' time from the
23 time to get it, to fax it, and everything?

24 A Yes, sir.

25 Q To start a new scheme and get them off and
 1370

1 running?

2 A Yes, sir.

3 Q You talked to him frequently, didn't you?

4 A I did.

5 Q You're telling us this call is a coincidence?

6 A Yes, sir.

7 Q You have any idea how these people, whoever they
8 might be, that were faxing your original prescriptions up
9 to Missouri, got a hold of them?

10 A No, sir, I do not. I just know I was not.

11 Q How many people worked at Westfield?

12 A Five.

13 Q And how many people worked over at C&G Pharmacy?

14 A Five.

15 Q Were you part of this scheme?

16 A Absolutely not.

17 MR. OSGOOD: That's all.

18 RECROSS-EXAMINATION BY MR. BOHLING:

19 Q A call at 11:07, Mr. Solomon could have been
20 anywhere, couldn't he? It's a cell phone.

21 A I guess.

22 Q You don't know --

23 A I don't -- I'm not privy to that, sir.

24 Q He could have been in his home office?

25 A Yes, sir, he could have been anywhere, sir.

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1 Q And he could have had a question for you about
2 the address information?

3 A I'm not certain.

4 MR. BOHLING: That's all.

5 MR. OSGOOD: Nothing further, Your
6 Honor.

7 THE COURT: All right. Thank you, Dr.
8 Elder.

9 MR. OSGOOD: That concludes the defense
10 case, Your Honor.

11 MR. LEWIS: May we approach, Your Honor?

12 MR. BOHLING: We do have a rebuttal
13 case.

14 THE COURT: That's what I was about to
15 ask.

16 (Counsel approached the bench and the following
17 proceedings were had:)

18 THE COURT: I'm assuming we'll be able
19 to put the witness on.

20 MR. BOHLING: There's potentially two.
21 We have Leah Swicegood here. Perhaps we could stipulate
22 to this, but I just want it perfectly clear on the record
23 in 2005, ANP returned --

24 MR. LEWIS: I'll stipulate the lady that
25 testified is with the IRS and looked to recheck after I

1372

1 gave you all the documents and cannot locate such a
2 return.

3 MR. BOHLING: Okay. That will take care
4 of that witness. We have one short witness. She's the
5 lady from Houston who is one of these patients who will
6 testify that she never went to South Texas, never saw Dr.
7 Elder, doesn't know who he is, has no idea how she's
8 there.

9 MR. LEWIS: Before we do this, Your
10 Honor, this is a procedural matter. I need to renew
11 Mr. Solomon's motion for judgment of acquittal and now
12 that the evidence is closed at this section of the trial.

13 Again, the court's review of Mr. Solomon's
14 testimony -- I put forth the earlier arguments I made at
15 the close of the government's case in chief and ask the
16 court to reconsider our motion for judgment of acquittal
17 for those reasons and based on Mr. Solomon's testimony.

18 MR. OSGOOD: Similar motion.

19 THE COURT: I still believe they made a
20 submissible case, and so those motions will be overruled.

21 MR. LEWIS: Thank you, Your Honor.

22 (The proceedings returned to open court.)

23 MR. BOHLING: Ladies and gentlemen of
24 the jury, I would like to announce a stipulation that we
25 have reached with Mr. Solomon's counsel, Mr. Lewis.

1 You may recall that during Mr. Solomon's case
2 there was a document, Solomon Exhibit 11. As part of that
3 document, there is a tax return that bears the year 2005
4 and the name of Ascensia Nutritional Pharmacy. We have
5 agreed to stipulate that Leah Swicegood, who is the
6 witness that you heard from the IRS, has rechecked the
7 records of the IRS and cannot find any evidence that that
8 particular return was ever received or -- received by the
9 IRS or processed by the IRS.

10 MR. LEWIS: That is our stipulation,
11 Your Honor, to avoid calling that witness.

12 MR. BOHLING: We have one more witness.
13 Her name is Doris Cooks. Apologize for the delay. She
14 should be here momentarily.

15 GOVERNMENT'S REBUTTAL EVIDENCE

16 DORIS COOKS, being duly sworn, testified:

17 DIRECT EXAMINATION BY MR. BOHLING:

18 Q Good afternoon, ma'am.

19 A Good afternoon.

20 Q Please state your name.

21 A Doris F. Cooks.

22 Q Where do you live?

23 A At 611 Dairy Ashford, Apartment 102, Houston,
24 Texas.

25 Q How long have you lived in Houston?

1 A Since 1976.

2 Q Are you retired? Are you doing something right
3 now?

4 A I'm disabled.

5 Q Okay. And have you received medical treatment
6 for various things during your time in Houston?

7 A Yes.

8 Q And, specifically, in 1999, did you have some
9 medical treatment?

10 A Yes.

11 Q What was that, ma'am?

12 A I had a lumbar fusion, which is -- I have six
13 bolts and rods in my back.

14 Q Now, back in 1999, did you get some pain
15 medication?

16 A Yes.

17 Q Have you continued to use pain medication since
18 that time?

19 A Off and on.

20 Q Now, I'd like to direct your attention to 2004.

21 A Okay.

22 Q Where were you living in 2004?

23 A Up until the last week of September, I was living
24 at 10300 Harwin, Apartment 1008, Houston, Texas.

25 Q Did you have a treating physician at that time?

1 A Yes.

2 Q What was your treating physician's name back in
3 2004?

4 A Thaddeus Hume, H-u-m-e.

5 Q Dr. Hume?

6 A Yes. He's an orthopedic surgeon.

7 Q Where is he located?

8 A At 2000 Crawford, Houston, Texas.

9 Q Now, have you ever heard of a clinic called South
10 Texas Wellness Center?

11 A No.

12 Q Did you -- were you ever a patient of South Texas
13 Wellness Center?

14 A No.

15 Q Have you ever heard of a doctor called
16 Christopher Elder?

17 A No.

18 Q Were you ever a patient of Christopher Elder?

19 A No.

20 Q Now, I'd like to show you Exhibit 37.13. That's
21 going to be on the screen in front of you.

22 Now, do you see the name on that, ma'am?

23 A Uh-huh.

24 Q Is that your name?

25 A It says Cooks Doris Walker.

1 Q Okay. And do you see the address?

2 A Yes. It says 10800 Harwin.

3 Q Is that exactly your address at that time?

4 A No, sir.

5 Q How is it different?

6 A I lived at 10300 Harwin, Apartment 1008. That
7 says Apartment 1000.

8 Q Did you ever receive a prescription like this
9 from Dr. Elder?

10 A No. That looks like -- I can't make out the
11 first one, but the second one looks like Xanax. I've
12 never taken Xanax.

13 Q In your whole life?

14 A No.

15 Q Now, I'd like to direct your attention to Exhibit
16 118.8.

17 MR. BOHLING: That's not it. 1188.8.
18 There we go.

19 MR. RHODES: You said 118.

20 MR. BOHLING: That's easier if we could
21 blow that up.

22 Q (BY MR. BOHLING) Do you recognize that exhibit,
23 ma'am?

24 A Yes, sir.

25 Q What is that?

1377

1 A That's a copy of my driver's license.

2 Q Okay. Now, do you know -- you have gotten
3 medications from pharmacies there in Houston?

4 A Yes.

5 Q What pharmacies do you use?

6 A CVS and Walgreen's.

7 Q Now, do you remember whether they ever made a
8 copy of your license when you went in to get medication?

9 A No.

10 Q Now, did you ever ask anybody to send your
11 license up to Missouri?

12 A No.

13 Q Have you ever had a prescription filled in
14 Missouri?

15 A No.

16 Q You live in Houston, right? You haven't come up
17 here to get any medication?

18 A No, sir.

19 Q And you've never received any medication from a
20 pharmacy in Missouri?

21 A No.

22 Q Okay. Does this have your correct, as far as we
23 can read it, I know it's a little hard, is that your
24 address back in 2004?

25 A Yes. As a matter of fact, this particular
1378

1 license I lost.

2 Q Do you remember when you lost it?

3 A It was right after we moved to where I live now.

4 It was a few days after we moved in.

5 Q And when did you move in, ma'am?

6 A The last week of September.

7 Q So you lost it sometime in the last week of
8 September?

9 A Of 2004.

10 Q Okay. And if you notice, if we can go to 37.14
11 and blow that up.

12 This is the back of that prescription we showed
13 you. That showed it was filled September 1st, 2004. Do
14 you see that, ma'am?

15 A Huh-uh.

16 Q So you actually lost your license after this
17 prescription was filled?

18 A Uh-huh.

19 Q You have to say yes for the court reporter.

20 A Oh, yes.

21 Q No problem.

22 Do you have any idea in the world how your
23 license before you lost it got from Texas to a Missouri
24 pharmacy?

25 A No, sir, I don't.

1379

1 Q And before -- we just contacted you this weekend,
2 right?

3 A Yes, sir.

4 Q And before that you'd never heard of any of this,
5 had you?

6 A No.

7 MR. BOHLING: Thank you, ma'am.

8 CROSS-EXAMINATION BY MR. LEWIS:

9 Q Afternoon, ma'am.

10 A Good afternoon.

11 Q Just one question. You don't know this
12 gentleman?

13 Stand up. You've never met or seen this
14 gentleman before, have you?

15 A No, sir.

16 Q Ever heard of the name "Troy Solomon" as it
17 related to any of your medical care?

18 A No, sir.

19 MR. LEWIS: Thank you, ma'am.

20 MR. OSGOOD: Can we pull up the license
21 again, please.

22 Can we have a better picture of it with it
23 showing her picture on the license, please?

24 MR. BOHLING: That's what we have, John.

25 MR. OSGOOD: You don't have a picture?
 1380

1 MR. BOHLING: That's the photocopy that
2 was sent to Missouri.

3 CROSS-EXAMINATION BY MR. OSGOOD:

4 Q Do you know whether or not somebody could have
5 used your license and represented themselves as you and
6 gotten medication in your name?

7 A Not without my knowledge.

8 Q It's possible?

9 A No, sir. Only when I lost it, that's the only
10 way they could have gotten it.

11 Q Your license is here in Missouri?

12 A Yes, sir.

13 Q Somebody copied it at some point in time?

14 A Some point in time somewhere. I don't know when.

15 Q We don't know whether or not when they copied it,
16 they engaged in identity theft and put their picture on it
17 instead of yours, do we?

18 A No, I don't. I just know that's my name and
19 address.

20 Q Okay. My point is, somebody could have known you
21 were a pain patient and gotten their picture and put it on
22 there and gone in and represented themselves as you to
23 this doctor, couldn't they, so he wouldn't know you?

24 A No, he wouldn't.

25 Q He knows whoever stole your license or got it by
1381

1 fraud or deception and represented themselves as you?

2 A That's possible.

3 MR. OSGOOD: Oh, okay. That's all.

4 REDIRECT EXAMINATION BY MR. BOHLING:

5 Q Ma'am, that is your signature, right?

6 A Yes, sir.

7 Q And that's your license?

8 A Yes, sir.

9 Q And on September 1st, 2004, this license was
10 still in your pocket?

11 A Yes.

12 Q So nobody else was running around with this
13 license presenting it to a doctor?

14 A They couldn't have because I didn't lose it until
15 after we moved.

16 MR. BOHLING: Thank you.

17 RECROSS-EXAMINATION BY MR. OSGOOD:

18 Q But the fact remains it's here in Missouri,
19 ma'am?

20 MR. BOHLING: A copy of it, John, not
21 the original.

22 Q (BY MR. OSGOOD) Did you give it to somebody to
23 copy for money?

24 A No, sir. I don't do things like that.

25 Q Okay. So somebody acquired a copy of your
1382

1 license and used it behind your back, didn't they?

2 A Well, I mean, you have to show your license at
3 different places, and somebody could have made a copy of
4 it.

5 Q All right. Victimized you?

6 A Without my knowledge, yes.

7 Q Yes, ma'am. Nobody's accusing you of doing
8 anything wrong. I'm pointing out somebody scammed you.

9 A Evidently.

10 Q Obviously because it's in Missouri. You ever
11 been to Missouri?

12 A Twelve years ago.

13 Q Okay. My point is you weren't part of this and
14 you can't explain how it got up here?

15 A No, sir.

16 Q And you can't explain whether or not somebody put
17 their picture on there and represented themselves as you
18 and went to see my client, Dr. Elder?

19 A No, sir. Because if that's your client over
20 there, I don't even know him.

21 MR. OSGOOD: Okay. Thank you.

22 MR. BOHLING: Nothing further, Your
23 Honor.

24 Thank you.

25 THE COURT: All right. Thank you,
1383

1 ma'am.

2 You need some help getting down?

3 THE WITNESS: No. I think I can make
4 it. It's easier going down than up.

5 (Witness excused.)

6 MR. BOHLING: Your Honor, the government
7 would rest its rebuttal case.

8 DEFENDANT ELDER'S SURREBUTTAL EVIDENCE

9 MR. OSGOOD: Surrebuttal, one witness,
10 Dr. Elder again, five minutes, please.

11 CHRISTOPHER ELDER, MD, previously being sworn, resumed the
12 stand:

13 DIRECT EXAMINATION BY MR. OSGOOD:

14 Q You and Dr. Morgan both said that it is not
15 unusual for people to use false identification?

16 A Yes.

17 Q Do you know anything about this?

18 A No, sir, I do not.

19 Q Did you treat a patient, somebody physically, a
20 live body with the name Doris Cook that's reflected on
21 that original script?

22 A Yes.

23 Q It wasn't her?

24 A It was not her.

25 Q Apparently. Okay.
 1384

1 MR. OSGOOD: Now, I have one other
2 question, and I apologize, I should have asked it when he
3 was up awhile ago. I want to cover it, if I may, Your
4 Honor.

5 MR. BOHLING: I will object as beyond
6 the scope --

7 MR. OSGOOD: On the house that they put
8 a picture of. I just neglected to ask him.

9 THE COURT: Are you objecting?

10 MR. BOHLING: No. He can ask the
11 question.

12 Q (BY MR. OSGOOD) The house that they showed you
13 that you're living in now, how much do you owe in a
14 mortgage on it right now today?

15 A \$295,000.

16 Q Now, what did you pay for it?

17 A I paid \$307,000.

18 Q You paid 10 percent down, didn't you?

19 A Well, I actually purchased a lot because I
20 couldn't afford to buy the house immediately. So I
21 purchased the lot. Three years later I had the house
22 built in '08.

23 Q Okay. This is long after any of this occurred?

24 A Absolutely.

25 Q This is after you were working full time at your
1385

1 own clinic?

2 A Yes. I had it completed in August of 2008.

3 MR. OSGOOD: All right. Thank you.
4 That's all.

5 THE COURT: Don't leave yet, Dr. Elder.

6 CROSS-EXAMINATION BY MR. BOHLING:

7 Q Dr. Elder, your explanation for this is that it's
8 identity theft, someone came in and saw you with her
9 identification, as far as you know?

10 A Yes, sir.

11 Q It could also be explained if Mr. Solomon or some
12 other person had given you a list of names and addresses
13 taken from other sources and you wrote those names and
14 addresses down on blank prescription pads, prescription
15 sheets, and gave them back to him?

16 A I would never do that.

17 Q But that would explain it, wouldn't it?

18 MR. OSGOOD: I object, Your Honor. That
19 doesn't have anything to do with this driver's license.

20 MR. BOHLING: Yes, it does.

21 THE COURT: Overruled.

22 Q (BY MR. BOHLING) That would explain it?

23 A Excuse me. Say it again.

24 Q That would explain why people like Ms. Cooks, who
25 says she never, ever saw you, are on your prescription

1 pads?

2 A Can I see that exhibit?

3 Q Sure.

4 A Can we hone in on the top, the address, the
5 handwritten portion? Can you scroll over again to the
6 date?

7 Q I'm not contending you wrote the date, so that's
8 --

9 A No. I'm just looking.

10 **Now, repeat your question again, please, sir.**

11 Q If someone had given you a list of names taken
12 from another source and you had simply sat down and wrote
13 prescriptions for those people that you never saw, that
14 would explain why people like Ms. Cooks are on these
15 prescriptions?

16 A Yeah, that could explain it.

17 Q It would also explain why two dead people are on
18 these prescriptions?

19 A If people misrepresented themselves through
20 identification, that could explain it.

21 Q No. I'm talking about somebody giving you a list
22 of names taken from an older source when those people were
23 alive for you to write down those names on prescriptions
24 and write out a prescription?

25 A That could explain it.

1387

1 MR. BOHLING: Very good.

2 REDIRECT EXAMINATION BY MR. OSGOOD:

3 Q Fact remains is your testimony is you saw a
4 patient for every prescription you wrote and they had
5 identification of some kind?

6 A Yes, sir.

7 Q And it's in the file?

8 A It's in the file.

9 Q And if they're dead or they're not Mrs. Cooks,
10 somebody misrepresented themselves?

11 A Absolutely.

12 MR. OSGOOD: That's all.

13 MR. LEWIS: Judge, I was neglected. May
14 I ask one question?

15 CROSS-EXAMINATION BY MR. LEWIS:

16 Q Dr. Elder, I didn't really want to get caught up
17 in that, but in fairness, Troy Solomon never handed you
18 any names, addresses, et cetera, and asked you to phoney
19 up any prescriptions, did he?

20 A No, sir.

21 THE COURT: All right. Now, Dr. Elder,
22 you can step down.

23 THE WITNESS: Thank you.

24 THE COURT: May I speak with counsel at
25 the bench, please?

1388

1 (Counsel approached the bench and the following
2 proceedings were had:)

3 MR. OSGOOD: We are truly done now, Your
4 Honor.

5 THE COURT: We're not done yet. I'm
6 going to let them go, but I'm going to keep you guys here
7 because we have to work on the instructions.

8 MR. OSGOOD: Sure.

9 (The proceedings returned to open court.)

10 THE COURT: Okay. Ladies and gentlemen
11 of the jury, we have all the evidence in the case. The
12 lawyers and I have to talk about some things in
13 preparation for closing arguments and submission of the
14 instructions to you.

15 Rather than keep you locked in the jury room
16 while we're doing that, I'm going to let you go at this
17 time. But I'll ask that you report back tomorrow at eight
18 o'clock, and we're going to get started bright and early.
19 We'll probably have a pretty long day tomorrow, so be
20 ready for it.

21 I'll ask you not discuss the case among
22 yourselves or with others or allow anyone to discuss it in
23 your presence nor should you allow yourself to be exposed
24 to any media coverage that may pertain to this trial.

25 Are there any questions?

1 Have a good afternoon.

2 Thank you.

3 (The following proceedings were had out of the
4 presence of the jury:)

5 THE COURT: I've asked Jo and she's
6 stepped out of the room for a minute. She's going back
7 through the instructions that you submitted individually.
8 She picked up some typos and other clerical-type errors.
9 She's going to give that to you to work from.

10 But I want you guys to sit here and come
11 together on a package that will be submitted by the court
12 to the jury, and to the extent you disagree, you can flag
13 whatever instructions those are and we can talk about it.
14 But I want you to stay here. I don't want you to go
15 anywhere until we get that done. Okay?

16 MR. OSGOOD: Can I go to the restroom?

17 THE COURT: If you must go to the
18 restroom. We like it sanitary in here.

19 MR. BOHLING: When she's done with that,
20 are you going to provide us with a current copy?

21 THE COURT: Yes.

22 (A recess was taken.)

23 (The following proceedings were had in chambers out of the
24 presence of the jury:)

25 THE COURT: By the way, my plan on
1390

1 trying to read these is I know I won't be able to read
2 them all, so I've asked Jo to read or one of my other law
3 clerks or a combination of all of the above.

4 Any objection to that?

5 MR. OSGOOD: No objection.

6 MR. RHODES: No.

7 MR. LEWIS: No.

8 MR. OSGOOD: Just don't make me read
9 them.

10 THE COURT: I'm going to go through
11 these and I've looked at them. I haven't really studied
12 them. You guys have put them together this far, so we'll
13 go through them rather slowly. If you have objections as
14 we go through, we'll take up the objections at that time.

15 I'm starting with this group of instructions
16 with No. 8. That's where I left off in the preliminary
17 instructions.

18 No. 8 is plaintiff's instruction, 8th Circuit
19 Model Instruction 3.01.

20 No. 9 is -- unless I state otherwise, they're
21 all going to be model jury instructions.

22 No. 9 is 3.02 submitted by the plaintiff.

23 No. 10 is 3.03.

24 No. 11 is 3.04.

25 No. 12 is 2.03.
 1391

1 No. 13 is 4.12.

2 MR. LEWIS: Your Honor, on Instruction
3 13, I have a suggestion, certainly not in the way of a
4 formal objection, but there were some obvious charts
5 submitted by the government. There was some drawings,
6 what I would call, more diagrams by the defense. I
7 thought it may help to put "charts, diagrams, et cetera,"
8 just so they didn't think there's a fancy drawing that
9 isn't charts. It doesn't affect me really.

10 THE COURT: Are you referring to
11 Mr. Osgood's drawings?

12 MR. LEWIS: Yes, sir.

13 MR. BOHLING: I don't recall those being
14 moved into evidence.

15 MR. OSGOOD: I didn't move them into
16 evidence. It was just demonstrative as part of my
17 testimony. I plan on doing the same thing probably in
18 argument --

19 MR. LEWIS: Fair enough. Charts will do
20 it.

21 MR. OSGOOD: -- on just a white sheet of
22 paper up there.

23 THE COURT: 14 is 2.07.

24 15 is 2.19.

25 16 is 4.04.

1392

1 17 is 4.10.

2 18 is 3.08.

3 19 is 3.11.

4 Twenty, I'll have to tell you I've never seen
5 one of these before, but --

6 MR. RHODES: It was just the way that we
7 had used that language in our indictment.

8 THE COURT: It's always used in
9 indictments, but I've never seen anybody offer this
10 instruction.

11 21 is 8.02.

12 22 is 6.21.846A and 3.09. I know this one's
13 been flagged for some reason. Do you want to talk about
14 that?

15 MR. LEWIS: I think it was Mr. Osgood's
16 question.

17 MR. OSGOOD: Your Honor, I thought that
18 it was unnecessary to put all these overt acts in as
19 instructions. Overt acts are not required to be charged
20 or proven in a conspiracy to distribute drugs. And it
21 would appear that this could be easily covered by simply
22 putting in the definition of an overt act, which appears
23 elsewhere in the instructions which says an overt act can
24 be as innocent as walking across the street or making a
25 telephone call, and all the government has to prove is

1 this is one of the overt acts in furtherance of the
2 conspiracy. It saves reading time and avoids confusion.

3 THE COURT: I'd like to save the reading
4 time for sure, but the facts are so convoluted here, it
5 might be helpful to the jury, more helpful than confusing
6 as I think you were about to say unless you have some
7 specific objection to the overt acts cited in here.

8 MR. OSGOOD: Just in general I didn't
9 think they were necessary.

10 THE COURT: As I --

11 MR. OSGOOD: I think they all -- in
12 fairness to the government, they're all stuff that was
13 talked about in the trial. I can't very well argue that
14 it's not something that didn't come out at some point in
15 the trial.

16 THE COURT: Did you want to respond?

17 MR. BOHLING: I think we believe that
18 these will be helpful to the jury, that it will be very
19 helpful to understand all this.

20 THE COURT: I agree with you on that. I
21 just don't -- it just adds to the stack. Plus it will
22 make clearer for argument too, I think. Since each one of
23 them will have a copy of it, they'll be able to focus more
24 on these issues.

25 MR. OSGOOD: That's not an objection by
 1394

1 the way, it's just a suggestion.

2 THE COURT: I understand. I assume the
3 same thing on Instruction 23.

4 MR. OSGOOD: Well, that's --

5 THE COURT: Oh, wait a minute. Go
6 ahead.

7 MR. OSGOOD: 5.06?

8 THE COURT: 5.06A and 3.09.

9 MR. OSGOOD: I'm not charged in the
10 money laundering. Of course, I think there you have to
11 prove an overt act and they have to be pled, so that would
12 be a different issue.

13 MR. RHODES: There's no issue with
14 regard to Instruction 23.

15 THE COURT: What's the number for --

16 MR. OSGOOD: 23 is Instruction 5.06.

17 THE COURT: No, no. I'm saying do we
18 have -- there was a blank in this instruction that needs
19 to be filled in.

20 LAW CLERK POWERS: It's going to be
21 forthcoming, I think.

22 THE COURT: I'll follow along with you
23 guys for now.

24 24 is 506B.

25 25, is this the reference back, correct? What
1395

1 numbers do you want to put in here?

2 MR. RHODES: Let me make sure.

3 LAW CLERK POWERS: Those will be coming
4 up, the definitions.

5 THE COURT: Tell you what, we'll just go
6 through all of these, and we'll come back for the blanks.

7 26 will be 5.06E.

8 27 is 5.06D.

9 28 is 5.06I.

10 29 is 5.06F.

11 30 is 6.18.1956A and 6.18.1956J1.

12 LAW CLERK POWERS: This is the first
13 blank on Instruction No. 25.

14 THE COURT: On Instruction 25 or 23?

15 LAW CLERK POWERS: 25. 23 should refer
16 to 25, and 25 should refer to 30.

17 THE COURT: 25 is 30 in the first blank.
18 23 should refer to 25.

19 MR. LEWIS: That's correct, Your Honor.

20 THE COURT: So where are we now, 31?

21 MR. LEWIS: Yes, Your Honor.

22 MR. OSGOOD: That's the concealment
23 instruction.

24 LAW CLERK POWERS: Right. That should
25 be the second blank on 25.

1396

1 THE COURT: 31 is 6.18.1956B, 7.04 and
2 6.18.1956J1.

3 What were you saying about 31?

4 LAW CLERK POWERS: It should be the
5 second blank that we fill in then on Instruction No. 25.

6 THE COURT: Are we all in agreement
7 there?

8 MR. RHODES: Yes.

9 MR. LEWIS: Yes, Your Honor.

10 THE COURT: 32 is 6.21.841, modified,
11 5.01 and 3.09.

12 MR. BOHLING: There's a blank there,
13 Your Honor, but I guess it's coming later.

14 THE COURT: 33 is 6.21.841B, modified,
15 5.01 and 3.09.

16 34 is 6.21.841B, modified, 5.01 and 3.09.

17 MR. OSGOOD: That was 24, Your Honor?

18 THE COURT: 34.

19 MR. OSGOOD: 34, I mean. Yeah.

20 THE COURT: 35 is 6.21.841B, modified,
21 5.01 and 3.09.

22 36 is 6.21.841B, modified, 5.01 and 3.09.

23 MR. BOHLING: I did have a quick
24 question. I noticed 36 you have the initials and also we
25 have the name. Is that how we charged it?

1 MR. RHODES: Yes, for privacy concerns.
2 I was worried since they were deceased.

3 MR. BOHLING: Oh, because they're
4 deceased. Okay.

5 MR. RHODES: All right.

6 MR. BOHLING: Thank you.

7 THE COURT: 37 is 6.21.841B, modified,
8 5.01 and 3.09.

9 38 is 6.21.841B, modified, 5.01 and 3.09.

10 39 is 6.21.841B, modified, 5.01, 3.09.

11 40 is 6.21.841B, modified, 5.01 and 3.09.

12 41 is the definition taken out of the statute.
13 Is that what it is?

14 LAW CLERK POWERS: I have something else
15 entirely as 41.

16 MR. LEWIS: I do too.

17 MR. RHODES: Yes. As charged in Count
18 12, is that where you guys are?

19 MR. LEWIS: Yes, sir.

20 MR. OSGOOD: What are we on?

21 THE COURT: It's plaintiff's number 45.
22 I'm calling it 41.

23 MR. LEWIS: His Honor is missing one.

24 THE COURT: Maybe I took a jump.

25 LAW CLERK POWERS: You did take a jump.
1398

1 THE COURT: Pages are sticking together
2 on me.

3 MR. LEWIS: Plaintiff's Instruction 45
4 would be Instruction No. 42. That will be the number
5 we'll go back and fill in all those distribution counts
6 will be 42.

7 LAW CLERK POWERS: Right.

8 THE COURT: Okay. 43 is taken from the
9 cases that are cited; is that correct?

10 MR. LEWIS: Yes.

11 MR. BOHLING: Yes, sir.

12 THE COURT: 44, proposed 44, is a good
13 faith instruction that's been tendered by Defendant
14 Solomon.

15 MR. LEWIS: Yes, Your Honor.

16 THE COURT: Any objection to that?

17 MR. BOHLING: Yes, a couple of issues.
18 I think there are two kinds of sets of cases that have
19 been cited for this, and one of them has to do
20 specifically with pharmacies and doctors. I think this is
21 potentially very confusing because while Mr. Solomon was
22 an employee of the pharmacy, he wasn't a pharmacist or a
23 doctor or a pharmacist tech who actually had a legal
24 ability to distribute or dispense a controlled substance.

25 I'm concerned that the way this is written
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1 implies that he was. In fact, I don't think there's any
2 contention that he was such a person.

3 MR. LEWIS: In talking with Mr. Bohling,
4 I told him what we have, Your Honor, is a confluence of
5 the legal use of the word "dispense" versus what
6 Mr. Bohling and I are talking about giving away. It's
7 dispensed but we don't want to use the term.

8 I told him I have no problem if he crafted
9 something that explained that, but the cases are very
10 clear, Mr. Solomon does not have to be the doctor, the
11 pharmacy tech, et cetera. It is in fact the government's
12 theory, as the court can see on the previous instruction,
13 under federal any person who assists another in issuing a
14 prescription for a controlled substance or assists another
15 in knowingly filling a controlled prescription, blah,
16 blah, blah. The persons don't have to be doctors. They
17 don't have to be pharmacists, and they don't have to be
18 pharmacist techs to fit under the instruction.

19 I think the government's concern about the
20 confusion can be eliminated with whatever language they
21 suggest. I don't have a problem making it clear.
22 Mr. Solomon did not have the right to write prescriptions,
23 fill prescriptions, et cetera, but the government has
24 charged him with both starting this conspiracy by sending
25 the faxes that led to the foreseeable act of the

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1 prescriptions being delivered and then dispensed. That's
2 why under the cases of the Supreme Court and the 8th
3 Circuit clearly fit here.

4 I do not mind if the government has some need
5 for the explanation of the difference between the lay term
6 "dispense," that is, handing them out to street folks, or
7 the legal term, "dispense," which is tracked by the
8 Controlled Substances Act Statute under which Mr. Solomon
9 is charged.

10 MR. BOHLING: I guess my second issue
11 would be with Mr. Solomon's testimony, I think what it
12 really comes down to is knowledge, not good faith. He's
13 really saying I didn't know, you know, I didn't look at
14 what was in the faxes, I didn't know what was in the
15 faxes. So I think this is covered by the knowledge
16 instruction, not -- he's not so much saying I did
17 something -- I did something otherwise -- that might
18 otherwise be illegal because I talked to Mr. Parker. He's
19 basically saying I didn't -- Mr. Parker handed stuff to me
20 and I faxed it. That's a knowledge issue.

21 MR. LEWIS: What the state of the record
22 is, Your Honor, is he testified and others testified to
23 his continual refrain of is this legitimate, is this
24 legal, are we following the proper procedures. That is
25 exactly why a good-faith instruction protects folks such

1 as Mr. Solomon.

2 Even in the cross-examination Mr. Bohling very
3 effectively put forth to Mr. Delmon Johnson, he talked
4 about the unreasonableness of their understandings, which
5 is exactly why the pattern jury charge reads the
6 defendant's belief is unreasonable, you may consider it in
7 determining the sincerity of his beliefs. They've gone
8 down that road.

9 We have clearly introduced evidence from my
10 count seven witnesses about Mr. Solomon's statements to
11 them, and he testified on the stand of his continual
12 ascertaining from various folks; lawyers, Philip Parker;
13 doctors, Dr. Elder and Okose; and pharmacists, Ms. Rostie
14 and Quan Pham, of the legality of the arrangement.

15 THE COURT: I understand what you're
16 saying. I think the first paragraph is somewhat confusing
17 given the facts of this case, and it would be
18 inappropriate given the facts of this case. So --

19 MR. LEWIS: I think that's the paragraph
20 we had talked about. I agreed with the government that if
21 they had some illuminating sentence or two they wanted to
22 put in there, I didn't see a problem with that because I
23 get the problem when the distinction is we have in our
24 charging paragraph distributes or dispenses.

25 THE COURT: And, Mr. Bohling, what
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1 you're saying is the next instruction should cover that?

2 Is that what you're suggesting?

3 MR. BOHLING: Well, I think that's --

4 MR. RHODES: This willful blindness
5 instruction definitely covers it from the point of view
6 that he denies any guilty knowledge of what's going on.
7 There's been evidence -- well, this -- I know this is the
8 one you object to.

9 MR. LEWIS: Right.

10 MR. RHODES: Again, we kind of fall into
11 the next one.

12 MR. LEWIS: Frankly, Your Honor, that is
13 the interplay that makes it clearly improper to have this
14 willful blindness instruction. Their evidence has been he
15 wasn't a person who turned a blind eye. He was a person
16 who started this whole thing by seeking out the
17 pharmacist, faxing the prescriptions up there, et cetera,
18 et cetera.

19 Their evidence has not been willful blindness.
20 It has been knowingly and intentionally committing the
21 overt acts that underlie the conspiracy counts.

22 MR. RHODES: That's a theory -- and I
23 didn't mean to jump in. That's a theory. But still
24 there's evidence in the record from Mr. Solomon himself
25 that the only thing he was doing was going to the UPS,

1 mailing the packages. Whatever faxes needed to be faxed,
2 he faxed it. He is denying any knowledge of what was
3 going on with the prescription drug trafficking that was
4 occurring from Missouri to Houston, Texas. So there's
5 evidence in the record to support this jury instruction.

6 MR. LEWIS: I would agree with
7 Mr. Rhodes if this instruction was in fact tailored to
8 those acts. This instruction is tailored to his awareness
9 of the legitimacy of the medical purpose.

10 THE COURT: Why do we need either of
11 these two instructions?

12 MR. LEWIS: We have to have the good
13 faith, Your Honor, because I think the cases cited
14 instruct that it's appropriate under the circumstances and
15 on the state of the record.

16 The second one -- I objected to this before the
17 inclusion of this. I have just a general problem with
18 willful blindness because I think it unfairly lowers the
19 burden of the government, knowing and intentional.
20 There's division amongst circuits on the willful blindness
21 instruction, as I'm sure the court is aware.

22 I know it's good law in the 8th Circuit, but it
23 really lowers the burden in an unfair way contrary to the
24 beyond a reasonable doubt standard of knowingly and
25 intentionally committing an act.

1 MR. OSGOOD: And I, of course, have a
2 problem with it because it's not specific to his client.
3 I don't think that it applies to my client. My client is
4 denying it, period. He either was involved or wasn't. I
5 don't think there's any evidence he closed his eyes.

6 MR. BOHLING: I agree with that, John.

7 THE COURT: Tell me again why this
8 proposed 44 has to be in here.

9 MR. LEWIS: Your Honor, the defense has
10 been throughout our case from opening statement throughout
11 that as Mr. Parker persuaded Mr. Solomon to enter this
12 venture, he sought guidance and assurances at every turn
13 from Mr. Parker, who was a lawyer, then from the doctors
14 involved, each doctor, from Okose to Elder. We elicited
15 testimony of him questioning the legitimacy to them.

16 Further, to both Pharmacist Rostie and
17 Pharmacist Pham that testified, this is the testimony --
18 with Pham it really stood out. I asked her about an
19 occasion where she asked Mr. Solomon specifically about
20 these Okose prescriptions. He told her, It's my
21 understanding it's legitimate and aboveboard, but let's
22 call Dr. Okose and check it out. Pham testified she did
23 in fact call Dr. Okose and got him on the phone and
24 related those assurances back to Mr. Solomon. That is the
25 thrust of our defense.

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1 Like I said, Your Honor, I recognize the
2 confusion in the first paragraph. It's not because this
3 instruction isn't applicable to this case. It's because
4 of the uniqueness of the government's theory, and I'm
5 happy to work with the government on explaining the
6 distinction between "dispenses" in a legal sense and
7 "dispenses" in a sense that they were pedaled out to the
8 folks on the street.

9 MR. OSGOOD: I would agree with
10 everything he said except the part about Elder. I don't
11 think he ever testified that Elder told him it was okay.

12 MR. LEWIS: No. That was not from him.
13 That was from another witness I elicited the testimony
14 you're aware that Solomon checked with Elder and he said
15 yes.

16 MR. OSGOOD: I don't remember that.

17 THE COURT: Here's what I'm going to do,
18 guys. I'm going to shift these two instructions to the
19 very end. I'm going to give it some thought.

20 MR. LEWIS: Fair enough.

21 THE COURT: So we can keep moving it.
22 It won't be 44 then. It will be something else.

23 MR. LEWIS: For plaintiff's instruction
24 48 I'm just going to circle that to indicate we haven't
25 given it a number and circle 44 also or just erase it, I

1 guess.

2 What we had labeled --

3 THE COURT: Oh, yes.

4 MR. LEWIS: I'm just going to leave the
5 numbers blank.

6 MR. OSGOOD: 44 was your good faith or
7 was your --

8 MR. LEWIS: Yes. We've erased it.

9 MR. OSGOOD: It's not 44 anymore?

10 THE COURT: No.

11 MR. LEWIS: We're on Plaintiff's Exhibit
12 Instruction 50.

13 THE COURT: We're on 50, which would be
14 the new 44.

15 MR. OSGOOD: These two are being held in
16 abeyance. 50 is the new 44, right?

17 THE COURT: That's the 8th Circuit Model
18 7.05.

19 45 would be 21 C.F.R. 1308.13.

20 46 would be 21 C.F.R. 1308.14.

21 47 would be 21 C.F.R. 1308.15.

22 If I include one of the others, it would be
23 before the last instruction.

24 MR. LEWIS: We could do 44A for that
25 matter if the court is inclined after deliberating to make
1407

1 it 44A.

2 THE COURT: You're saying make the last
3 one 44 and the other -- what are you saying?

4 MR. LEWIS: I'm saying we don't need the
5 number on good faith and willful blindness yet, whatever
6 you decide goes in. We like the order because it went
7 naturally before the intent, followed the progression. So
8 if you decide the inclusion is proper, you can just make
9 it 44A and the other one 44B if it comes in.

10 THE COURT: That's a good idea.

11 Thank you.

12 MR. LEWIS: Yes, Your Honor.

13 MR. OSGOOD: It makes this last one then
14 48.

15 THE COURT: Yes.

16 MR. OSGOOD: For instructions on
17 deliberation.

18 THE COURT: Correct. Do we have various
19 forms here?

20 MR. LEWIS: They're all in order through
21 U, Your Honor.

22 THE COURT: Verdict Form A, we'll just
23 say on the record goes to Count I for Troy Solomon.

24 B, Count I for Defendant Elder.

25 C, Count II for Troy Solomon.

1 D, Count III for Troy Solomon.
2 E, Count III for Defendant Elder.
3 F, Count IV for Troy Solomon.
4 G, Count IV for Elder.
5 H, Count V for Solomon.
6 I, Count V for Elder.
7 J, Count VI for Solomon.
8 K, Count VI for Elder.
9 L, Count VII for Solomon.
10 M, Count VII for Elder.
11 N, Count VIII for Solomon.
12 O, Count VIII for Elder.
13 P, Count IX for Solomon.
14 Q, Count IX for Elder.
15 R, Count X for Solomon.
16 S, Count X for Elder.
17 T, Count XI for Solomon.
18 U, Count XII for Solomon.
19 I've never had this many verdict forms before.
20 Have we covered all the objections then?
21 MR. LEWIS: I believe we have, Your
22 Honor.
23 MR. BOHLING: Yes.
24 THE COURT: I'll have Jo or somebody
25 send you an e-mail so you know what I've done on these
1409

1 other instructions if I don't do it before you leave.

2 MR. LEWIS: That's good.

3 Your Honor, I wanted to appeal to your generous
4 sense of equity. I went back with Rhonda and told her
5 about the times. The government's presentation is
6 allotted for 64 percent of the six days of testimony we've
7 had; Mr. Elder, 22 percent; and Mr. Solomon 14 percent.

8 In light of our very judicious use of time, I
9 would ask the court for just an additional ten minutes for
10 my argument. I read the instructions last night, and it
11 takes almost an hour and five minutes to read them.

12 I know the government is joining in my request
13 for just a little bit more time. I know you know the
14 severity of the case. It's a heavy burden to carry with
15 two men that have never been in any trouble before and
16 facing as much time. I would love it if I had just a few
17 more minutes to -- we've got so many instructions to try
18 to weave into, highlight in the testimony how they fit. I
19 tried it last night, and, frankly, 20 minutes was -- I'll
20 be talking like a roadrunner. I try to talk slowly and
21 let the jury understand.

22 THE COURT: So you want -- we're back to
23 the hour again?

24 MR. BOHLING: I think that's about
25 right. There will be an hour for the government and 30

1 minutes for each of these gentlemen is what the proposal
2 is. I'm certainly -- I think it's a little easier for us
3 having the 40 minutes to get everything out that we need,
4 but I certainly wouldn't object to having a little more
5 time given the scope of this case and the amount of
6 information, the documents that we have.

7 MR. LEWIS: I assure Your Honor I will
8 not repeat myself. I've outlined the argument already, be
9 extremely judicious.

10 THE COURT: Well, what I'll do is give
11 you five more, each side, and if you don't need it, I
12 assume you won't use it.

13 MR. LEWIS: Certainly won't.

14 MR. BOHLING: Fair enough.

15 MR. LEWIS: Fair enough.

16 Thank you.

17 MR. OSGOOD: That would be --

18 MR. LEWIS: Twenty-five each.

19 THE COURT: You can give him more since
20 you talk so fast.

21 Mr. Osgood, I haven't thought about this, you
22 talk pretty fast. He could have given you some of his
23 time.

24 MR. LEWIS: He should.

25 THE COURT: No. I understand. We'll do
1411

1 it that way. You can talk to Rhonda about how you want
2 your time divided so she can give you appropriate
3 warnings.

4 Okay. Anything else we need to talk about?

5 MR. RHODES: No.

6 MR. OSGOOD: No, Your Honor.

7 MR. LEWIS: No.

8 THE COURT: Thank you, gentlemen.

9 (Court adjourned at 4:25 p.m.)

10 END OF VOLUME VI

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WEDNESDAY, JUNE 30, 2010

VOLUME VII OF VII

(The following proceedings were had out of the presence of the jury:)

THE COURT: Morning. I believe Jo has given you 44A and B back with my very minor adjustment.

MR. LEWIS: There are no objections from Mr. Solomon regarding those adjustments.

MR. OSGOOD: And I have none.

MR. BOHLING: No objection.

THE COURT: Okay. Here's kind of the game plan for me. I'm not sure how long I'm going to last with the instructions, but I'm going to start out reading them. I'll explain to the jury in advance that Jo may be taking over for me reading the instructions. I told her it's okay, she can sit over there and read those instructions.

After the instructions are over, we'll take a break so we don't have to interrupt the closing arguments. Then we'll have the closing arguments, I'll let the alternates go, and deliberations will commence.

Any problem with that?

MR. OSGOOD: No, sir.

MR. LEWIS: None, Your Honor.

With permission of the court I've got a couple
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1 of poster boards on my high-tech exhibit there behind the
2 TV. I'm going to ask Mr. Solomon to sit over in that area
3 just for that section so he can turn it for me for
4 efficiency, and then he'll return to his seat if that's
5 okay with the court.

6 THE COURT: I don't have a problem with
7 that.

8 MR. LEWIS: I'm not going to put him in
9 the jury box.

10 THE COURT: You're not going to have him
11 sit next to one of the jurors?

12 MR. LEWIS: Exactly. Maybe on their
13 laps.

14 THE COURT: No, I understand.

15 MR. LEWIS: Before we start, I wanted to
16 reurge a motion for directed verdict just for the record,
17 Your Honor.

18 Adopting both Mr. Solomon and Mr. Osgood -- and
19 Dr. Elder's prior arguments, we reurge directed verdict,
20 judgment of acquittal pursuant to Federal Criminal
21 Procedure 29 and add to the mix there was no testimony
22 adduced at any point in time in the case regarding the
23 national standard of care.

24 As tracked in Jury Instruction No. 43, the
25 government must prove beyond a reasonable doubt that the

1 medical treatment provided in conjunction with the
2 prescriptions issued in this case were below or in
3 contravention of the national standard of care. There is
4 absolutely no testimony offered on that element.
5 Therefore, we would ask for a judgment of acquittal
6 relative to all the charges that tie into the standard of
7 care and the deviation from the standard of care in the
8 treatment of these various patients.

9 MR. OSGOOD: And I would join in that.
10 In particular, I think that applies to the substantive
11 counts, Your Honor. After we got to talking among
12 ourselves and looking at that and reading the
13 instructions, they never asked the expert his opinion on
14 that. Does this deviate from the national standard of
15 care? And that is a critical element of the offense.

16 I don't know if it was oversight or what, but
17 they never asked him that. That was Dr. Morgan. They
18 never asked Dr. Elder that either.

19 MR. BOHLING: Actually we did, Your
20 Honor.

21 First of all, our theory is that there were no
22 patients seen, that there were no examinations, there are
23 no patients seen. So by definition there could be no
24 legitimate reason for the prescriptions.

25 We did ask Dr. Morgan about that. We asked him
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1 specifically about the need for records, and I asked --
2 first thing I asked Dr. Morgan -- one of the things I
3 asked him on cross-examination is if there's -- if you
4 agree that if there's no patient behind this, that this is
5 an invalid prescription, and he said, yes. So we have it
6 from both Dr. Morgan and from Dr. Elder.

7 MR. LEWIS: Lastly, Your Honor, relative
8 to the jury charge, on the money laundering counts that
9 apply solely to Mr. Solomon, Your Honor, we would request
10 by the way of perfecting the record, a specific intent
11 instruction as to the money laundering charges.

12 MR. OSGOOD: I guess one more thing,
13 since we're throwing all this in for the record, I
14 originally moved to sever on grounds that the money
15 laundering charge was prejudicial against my client, and I
16 would reurge that at the close of the evidence; that it's
17 prejudicial slopover against him and it's overwhelming
18 prejudice. The evidence throughout the trial has been he
19 never got a single nickel or profit from this. So that
20 reinforces my original motion that I filed as to why there
21 should have been separate trials, at least on the money
22 laundering.

23 THE COURT: Is that it?

24 MR. OSGOOD: Yes.

25 MR. BOHLING: I think so.

1 THE COURT: Those requests will be
2 denied. We'll bring the jury out now.

3 Just so you all know, it was my expressed
4 intention that the members of the jury would have
5 notebooks during instructions. We only have 12. So we'll
6 just have to wait and give it to them when they go back
7 and deliberate. Okay?

8 MR. LEWIS: That's fine.

9 (The following proceedings were had in the
10 presence of the jury:)

11 THE COURT: Good morning.

12 THE JURY: Good morning.

13 THE COURT: In just a moment I'll be
14 reading to you the court's instructions that you'll apply
15 to the facts as you deliberate. As you can tell, my voice
16 is struggling and has been this week, so I may not be able
17 to read all of these instructions. I have deputized my
18 law clerk, Jo Powers, to pick up where I am unable to
19 finish.

20 So she will be reading my instructions to you at
21 that point. I don't know what that point will be. I'm
22 going to go as long as I can before turning it over.

23 Also to give you a little bit of idea of where
24 we're going, these instructions are rather lengthy, and at
25 the time you go back to the jury room to deliberate, each

1 of you will have a binder of the instructions so that
2 you'll be able to, as you discuss the facts and how they
3 might apply to the instructions in the case, have your own
4 copy.

5 I've said that to say that at the conclusion of
6 my reading of the instructions, we'll take a short break
7 and then bring you back in. Then closing arguments from
8 counsel will be heard thereafter.

9 Then we'll recess for you to do your
10 deliberations. We're trying to break it up a little bit
11 so that everything will flow with some continuity. Before
12 I lose my voice, let me begin here. I'm going to start
13 with Instruction No. 8. I've already given you
14 preliminary instructions which were 1 through 7.

15 (Instructions Read.)

16 THE COURT: I made it.

17 We'll take a recess, as I told you we would,
18 about ten minutes or so.

19 Again, I'll ask that you not discuss this case
20 with yourselves or allow anyone to discuss it in your
21 presence. Soon you will have that opportunity, so if you
22 will bear with me until that time.

23 We'll stand in recess at this time.

24 (A recess was taken.)

25 (The following proceedings were had in the presence of the
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1 jury:)

2 THE COURT: Ready for closing?

3 MR. BOHLING: Yes, Your Honor. May it
4 please the court. Counsel.

5 Ladies and gentlemen of the jury, good morning.

6 THE JURY: Good morning.

7 GOVERNMENT'S OPENING STATEMENT

8 MR. BOHLING: This is what \$3 million
9 looks like. Ladies and gentlemen, the evidence in this
10 case has shown beyond any question that in the summer of
11 2004, Troy Solomon and other people had as their avowed
12 intention to start a business enterprise whose sole
13 purpose was to generate tremendous amounts of hydrocodone,
14 Alprazolam, and other substances solely for the purpose of
15 diversion, that is, it wasn't going to go to any patients.

16 It was going to go to the street. That was
17 their intention from the very beginning, and that is what
18 they accomplished. And they accomplished it
19 spectacularly.

20 Just looking at the total dosage units of pills
21 from The Medicine Shoppe, looking at the -- from the
22 information that's in evidence, Medicine Shoppe alone in
23 Missouri, during the course of the conspiracy from August
24 of 2004, to October of 2005, there were 2 million dosage
25 units of hydrocodone generated, that is, sent from

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1 Missouri down to Texas, over 2 million in all forms,
2 Lorcet or Lortab.

3 There were over 330,000 dosage units of
4 Alprazolam or Xanax that were generated just from the
5 Missouri pharmacy, Ms. Rostie's pharmacies alone. There
6 were 449 gallons of promethazine with codeine, 449
7 gallons, folks, that were generated just by Ms. Rostie in
8 Missouri.

9 That doesn't even count those prescriptions that
10 were being filled in Houston from Dr. Okose at the
11 Ascensia Nutritional Pharmacy. You remember how many
12 those were. That was 150 prescriptions a day during this
13 whole period, probably even dwarves what came from
14 Missouri.

15 You can see the scope of this is huge. It's not
16 small. It's huge, and that represents, as Troy Solomon
17 said to Lillian Zapata, that represents this tremendous
18 amount of money that was involved in this case, this
19 tremendous amount of drug diversion that was involved in
20 this case.

21 For Dr. Elder alone, the hydrocodone that came
22 from Missouri, was over 715,000 dosage units. The
23 Alprazolam was all his because he's the only one who wrote
24 an Alprazolam prescription. That was 330,000. And 411
25 gallons out of the 449 was from Dr. Elder.

1 Folks, this was a huge conspiracy. It was an
2 important conspiracy.

3 Now, I'd like to address actually each defendant
4 somewhat separately and then talk to you about some of the
5 jury instructions that you're going to hear and some of
6 the charges in this case. Let's start -- I want to start
7 with Dr. Elder.

8 I want to start with something -- the first
9 thing he said on the stand yesterday. First thing he said
10 on the stand yesterday was he said, well, that Pleshette
11 Johnson testified that in the fall of 2004, that the South
12 Texas Wellness Center was faxing prescriptions. You
13 remember that the doctor said that? That's not what she
14 said at all, folks. What she said was is that they
15 started faxing prescriptions later after Dr. Elder left.

16 You may remember this best in the context of
17 during the first week of the trial there are a lot of
18 discussions about people walking out with their
19 prescriptions in hand and taking them to the pharmacy of
20 their choice. We use that language a lot.

21 And Pleshette Johnson said that in the fall of
22 2004, that's exactly what was happening at South Texas
23 Wellness Center. People were taking those prescriptions
24 out in their hand and filling them at the pharmacy of
25 their choice, which was not ANP because ANP wasn't even

1 open until December of 2004, late December. So it was
2 some pharmacy other than Ascensia Nutritional Pharmacy in
3 Houston. That was her testimony. And when I
4 cross-examined Dr. Elder, it became clear that he knew
5 that, he knew that she had not testified that they were
6 faxing in the fall of 2004.

7 So why did he testify that way on direct?
8 That's a very important question for you to determine.
9 Why did he testify that way on direct when he knew and he
10 acknowledged to you on the stand that he knew that
11 Pleshette Johnson had said nothing of the kind?

12 Now, if you actually look at the evidence in
13 this case, you will see it's completely consistent with
14 the notion that these prescriptions, the 544 prescriptions
15 that we have as originals, acknowledged by the doctor that
16 he wrote, that these prescriptions were written off of
17 just patient lists. There were no patients, actual
18 patients examined or seen by Dr. Elder, none whatsoever.

19 Somebody gave him a list of names, and he sat
20 there and he wrote them out. And he gave them back to
21 Troy Solomon.

22 Well, how can we tell that? Well, for one
23 thing, he's writing prescriptions -- he's writing
24 prescriptions for dead people. He's written for Hazel
25 Hollis and Mary Perez, who died in the spring of 2004. He

1 could never have examined them.

2 What about Ms. Cooks, the lady you heard from
3 yesterday? She never saw him. Her identification was
4 there. All they had was a photocopy. Nobody stole her
5 identity. She had her license in her pocket on the date
6 that she was supposed to get this prescription. Nobody
7 stole her identity. What was stolen was that photocopy of
8 her license from some source.

9 Now, folks, if, if those prescriptions had come
10 from South Texas Wellness Center, that has certain
11 implications we have to think about. One implication is
12 that they should have all these records readily and easily
13 available to them to give this information to The Medicine
14 Shoppe. In other words, they would have all of the
15 driver's licenses. They would have all that information
16 readily at hand because they'd have 544 medical records to
17 look at.

18 Now, of course, no medical records have ever
19 been found. Where did those 544 medical records go if
20 Chris Elder saw all those patients?

21 They were subpoenaed, couldn't be found. Chris
22 Elder tells Pleshette Johnson, Oh, I took those, the 107
23 that we subpoenaed, I put them in my truck, and they were
24 burned up. I'm going to suggest to you that he did tell
25 her that because he will say anything to try to -- to

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1 whatever audience he's talking to, and we're going to see
2 some more examples of this, to whatever audience he's
3 talking to at the time, he's going to tell them what needs
4 to be said to be consistent.

5 But what's consistent is the truth. The only
6 consistent set of facts that fits what happened is that
7 Dr. Elder wrote these prescriptions out from names given
8 to him by Troy Solomon and gave them back to Troy.

9 Now, was it the case that when this address
10 information went up to Ms. Rostie that it was all well
11 organized and easily -- and put together in a consistent
12 way as they would be if they came from one big set of 544
13 medical files? No, it's not.

14 Let's look at Exhibit 43.1, please.

15 Okay. So this is a fax. It's on September
16 13th, 2004. It is from Mr. Solomon's fax machine, and it
17 goes up to Missouri. And you'll see that we've got some
18 handwriting. I'm not even sure whose handwriting that is,
19 which is interesting, and also telling. If we could blow
20 that up.

21 So we've got all this, and this all comes in
22 kind of seriatim. It comes in when it's needed. When
23 Ms. Rostie asks for it, it comes in.

24 Now, if we look at 43.12 in this same series,
25 this all went up together. So what you've got is you've

1 got a mix of driver's licenses or identifications and of
2 handwritten notes of addresses.

3 Now, why is that important? Because if they
4 were going to get all this from South Texas Wellness
5 Center, they would have all the driver's licenses because
6 the testimony was that those things got -- like all these
7 places in Texas apparently, those things got copied. So
8 all they have to do is give them a bunch of driver's
9 licenses and they'd be done.

10 Now, why do they give them driver's licenses?
11 They also did this some other times. I think Exhibits
12 1186 and 1188 are examples you'd see of where there were
13 driver's licenses -- photocopies of driver's licenses
14 actually sent by mail from Texas to Missouri.

15 Well, because who wouldn't want to avoid writing
16 down this information if they could avoid it? It's a lot
17 easier to send a driver's license than to write down all
18 this information laboriously by hand. What does that
19 suggest to us?

20 It suggests that some cases they had driver's
21 licenses. Actually not in most cases. That probably
22 covers, I'm going to estimate from looking at the
23 evidence, maybe 100 to 200 of these folks, not most of
24 them.

25 The other address information is coming from
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1 other sources. Let's take Mrs. Cooks, for example, who
2 testified. She went to Walgreen's and CVS. She didn't
3 even go to a Philip Parker pharmacy. We have no idea how
4 they got her information but they got it. It suggests
5 that they're just buying it off of the streets seriatim.
6 Also suggests, because you see different people's
7 handwriting, that different people are providing this
8 information to our conspirators.

9 Let's look at 47, please, 47.1, and put 1185 on
10 the other side of that.

11 This is a fax list that was sent on September
12 30th, 2004. If we could -- this is, again, sent from
13 Mr. Solomon as virtually everything in this case is. And
14 if we could look -- okay. We've seen this before or some
15 variation of it. The envelope there is the envelope that
16 -- where the pictures were sent by Mr. Solomon to
17 Ms. Martin.

18 And you can see that characteristic "HOU" and
19 that characteristic handwriting. So we can see with the
20 comparison that was done in court -- you know, you can use
21 your common sense on this one. Who wrote that? It looks
22 like Mr. Solomon wrote that.

23 So in some cases Mr. Solomon is writing these
24 things down. And some people -- like some cases, other
25 people are writing it down and giving it to him. But what

1 this is showing us is that these didn't come from a single
2 source of records as they would have to if Dr. Elder were
3 correct. They came from different places. They came from
4 all sorts of different places, and they're written down by
5 different people at different times.

6 If they had the South Texas records, then they
7 could just take those driver's licenses en masse, a bushel
8 full, send them up, we'd be done, really easy. That's not
9 the way it happened.

10 So you know that Pleshette Johnson is telling
11 you is correct when she says they were not faxing
12 prescriptions. The Johnsons -- the Johnsons' role in this
13 was basically to ignore the boxes. They got paid money.
14 What did they get paid for? They got paid to let their
15 place be used as a landing place for these boxes. That's
16 what they got paid for and that's what they did. They let
17 the boxes come in day after day and let Mr. Johnson,
18 Delmon Johnson, or other people come and pick them up.
19 That's what they were paid for. That's what they did.
20 They were paid to be blind to what was going on. And they
21 were. I'm not going to defend them. I can't.

22 But that's as far as it went. The evidence
23 shows that these -- that these -- that this information
24 came from Mr. Solomon and was given to Dr. Elder.

25 Now, if we could just put up 47, please.

Actually, I want to go to 49, I think. Let's go to 49.

Now, what I wanted to show you about 49, this is another fax, this relates to the Elder patients, this is October 19th of '04. Notice how L/C, L/C, Lorcet. So these patients are grouped by drug, folks. They're grouped by drug, and if we go down to, let's see, I think -- actually I'm going to go to another exhibit, 51.07.

Okay. This -- please blow that up.

This is another fax within this time period also relating to Dr. Elder's patients, and if you look at -- I won't -- we can't look at every exhibit, but this starts out with the same thing, the L/C, the Lorcet on the first page. On this page it says, prometh, prometh with codeine. Then you've got -- you kind of scroll down, you can see that all these folks are prometh with codeine, prometh with codeine. What's that suggesting?

That's suggesting that these patients are organized by drug, and that's consistent with the prescribing pattern here. So Troy Solomon is simply ordering the drugs he wants the doctor to write for him. And it's right here in the record. You can see it.

How interesting that the prometh with codeine
seems to be in different handwriting. It's like the
order's been filled.

So that's what's happening here. Troy Solomon

1 is telling Dr. Elder what he wants. Dr. Elder is writing
2 it down on the prescription pad, handing it back.

3 Now, if we could look at 1116.

4 This is a chart you've seen several times now.
5 What is interesting about this is, first of all, it does
6 appear that he's writing more prescriptions than he's
7 seeing patients. Let's look at August 17th, 2004.
8 There's 78 patients that were seen. We know that those 78
9 were filled about August 17th or August 18th. So they had
10 to have been written before August the 17th or 18th,
11 August 17th. He says he didn't even start until August
12 1st.

13 On cross-examination we discovered that he
14 didn't even -- he barely worked at South Texas for the
15 first week of August. He was working someplace else. You
16 remember that? He was working about 30 hours at another
17 -- this place called Nova. So he's not even in South
18 Texas hardly at all for the first week of August. So he
19 didn't see 78 patients before these things went up, yet
20 these things are written.

21 And the other thing that's really notable is
22 this promethazine with codeine. It looks exactly like
23 it's been -- it's been ordered to specification. There's
24 no way that 15 patients come in in the beginning of August
25 and suddenly 15 patients need promethazine with codeine,

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1 and then nobody for a month and a half. And then suddenly
2 in October you got 14 who need it and 26 who need it? No
3 way, that is not a normal prescribing pattern.

4 The thing that you guys bring to this process
5 that's so important is your common sense, is your
6 knowledge -- just common sense. That's all you need to
7 decide this case.

8 There is no way that that's a normal prescribing
9 pattern, and that tells you that this was written to
10 order. When Troy Solomon needed promethazine with
11 codeine, he told his doctor, he wrote these down on the
12 prescription pads and gave them to him because you would
13 not expect to see that if you've got real, live patients
14 coming in.

15 If he's prescribing this at all, which I think
16 the evidence shows he's probably not prescribing it to
17 live patients. But if he's prescribing it at all, then
18 you're going to see a normal distribution across this
19 timeframe of a few people who need promethazine with
20 codeine, you know, in the normal course of events, not 15
21 in August and suddenly another bunch, like 40, in October,
22 and nobody in between. That does not make any sense.

23 So what you've got, then, is -- oh, one more
24 point I'd like to make. If we can look at 37.66.

25 You'll remember this one. This is the one where
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1 we get -- end up with the Sun Forest address. We know
2 this address well. This is the address that Mr. Solomon
3 owned that house. Mr. Johnson and Mr. Parker lived in
4 that house.

5 So we know this is a fraudulent prescription.
6 There's no question about that because this lady didn't
7 live there, and it's our defendant's address.

8 But on top of that, if the doctor is correct and
9 all this is coming out of the South Texas Wellness Center
10 records, this should never happen. They would have the
11 right information. They would have it from that database.
12 It would be easily, readily accessible. It's right down
13 the hall.

14 He doesn't have to make up things and put on his
15 own address. The reason he has to do that is because it's
16 catch-as-catch-can. He's getting these patient names and
17 information from different sources and sometimes he falls
18 short. He doesn't always have it all.

19 He's made up a name. He doesn't have an
20 address. So what address does he use? His own address or
21 an address that he's associated with because that one --
22 it's the one that easily and readily comes to mind.

23 Well, I'll just use this one because Lynn Rostie
24 wouldn't know that I own this house. And, of course, she
25 didn't. Probably still doesn't. That tells you right

1 away that what Dr. Elder is trying to tell you is
2 absolutely not the case, not true. He simply wrote these
3 down.

4 Now, to kind of close the circle on that, I'd
5 like to go to the discussion of the Westfield scripts.
6 What happens when the doctor gets to Westfield? He
7 immediately starts writing.

8 If we could put 52.1 up.

9 His first day, very first day on the job was
10 February 1st. He starts writing these prescriptions.
11 Now, notice something interesting about these
12 prescriptions. They're dated.

13 Why are they dated? Because he's seeing real
14 patients in this case. It's different from South Texas.
15 These are real people. We know that because they went to
16 C&G and got their prescriptions filled. The difference
17 here is that we know from the evidence, from the doctor's
18 own admission, that he received copies of these. He asked
19 for copies of these. He received copies of these. He had
20 copies in hand. So these are dated. I'm going to suggest
21 to you that Dr. Elder telling you that he doesn't need
22 dates is absurd.

23 Use your common sense again and what the other
24 doctor told you, Dr. Morgan. These are -- these are
25 hydrocodone prescriptions, Schedule III controlled

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1 substance prescriptions. No responsible doctor wants
2 their patients walking out the door and then using these a
3 year later. If you have a pain problem, you're supposed
4 to use them right now.

5 If you're using them six months from now, then
6 you're probably abusing them, and every responsible
7 physician knows that. So the reason he systematically
8 left the dates off of those prescriptions he wrote for
9 Troy Solomon was because he didn't know exactly when they
10 were going to get to Missouri.

11 He didn't want to put the dates on them. When
12 he sees real patients, he puts the dates on there. So he
13 sees these patients.

14 And then if we can see 1048, please.

15 We know -- you'll recall that the fax header
16 here shows that that was faxed from Troy Solomon's home,
17 and I think it was at 10:38 a.m. in the morning. Then he
18 creates this address list. Looks just like all the other
19 address lists we just saw, folks. It's exactly the same
20 thing.

21 Now, why would any doctor ever write down the
22 names and addresses of his patients like this? He's just
23 wasting his time. Why would he do that? He gives them
24 the prescription. They're gone. He's done with them.
25 He's not going to write down their names and addresses on

1 a pad and put 2/1/05.

2 But who ends up with it? Troy Solomon. What
3 does Troy Solomon do with it? He faxes it to Missouri,
4 along with the prescriptions to which they pertain. Why?
5 Because it's exactly like everything else you've seen in
6 this case. The prescriptions go up and then the names and
7 addresses go up for Ms. Rostie.

8 Now, why does Dr. Elder do it this time?
9 Because in this case, unlike all the other cases, all the
10 other cases Troy Solomon or some of his cronies provided
11 the name and the address information. They had the
12 information so they write it down.

13 In this case only Dr. Elder has the information
14 because he's at a clinic that's 30 miles away or some
15 distance away in north Houston from south Houston where
16 all these other people are. He's the only one who has
17 this information, has access to it from the medical
18 records. So he's the only one that can write it down.

19 So he writes it down. He sends it to Troy and
20 he -- and what happens? It all gets sent to Missouri.

21 Now, folks, I don't know how much Dr. Elder got
22 paid for this. I'm not sure it was very much. I'm not
23 sure it would show up on a financial investigation.

24 But why would he do this? His first two days on
25 the job, and he gives this information to Troy. Because

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1 he needs money. He's been out of work somewhat for a
2 month because he's not at South Texas. He's between jobs.
3 Why did he do this in the first place? He wasn't doing as
4 well as he wanted to at that time.

5 When does he start doing well? He starts doing
6 well, as he told you, when he figures out that he can
7 charge cash for people when they come in and get
8 prescriptions. He told you in his own words, I don't
9 write refills so people can come back in and pay us again.
10 What are they paying him? Sixty bucks per head. That's
11 how he makes his money and suddenly makes \$200,000.

12 When he figures out that trick, which I guess is
13 a Texas thing, then he's rolling in the dough. It's
14 great. But before that he's not. So he's got -- I mean,
15 I think that explains his motive.

16 It's unfortunate that this happened to a doctor.
17 It's very unfortunate. It's sad but it did. And the
18 evidence proves beyond a reasonable doubt that it did.

19 And to seal the deal on this, we showed you
20 Government's Exhibit 605.235. That was the phone call.
21 These guys communicated right before that fax was sent,
22 communicated after. And you'll also, if you looked up the
23 list, this was in evidence, you would see there's some
24 phone calls before this too.

25 So they were talking. This was intentional. He
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1 knew what he was -- Dr. Elder knew what he was doing. He
2 was talking to Troy Solomon. This was all worked out. At
3 some point they made a handoff, and then Troy talks to
4 them about faxing these things up. There's just no issue
5 about this.

6 Now, I'd like to turn my attention to Troy
7 Solomon. There's just no issue, no question that Troy
8 Solomon was criminally involved in this thing from soup to
9 nuts, all the way from the beginning.

10 You'll remember that right at the beginning he
11 talks to Cindy Martin. Cindy Martin is his connection
12 totally. He and Cindy had an affair. He knew Cindy.
13 They obviously kept in touch. And it's his connection,
14 his connection, not Parker's connection, not anybody
15 else's connection. Cindy Martin gets this whole thing
16 kicked off.

17 The first thing that happens is that Cindy
18 writes down on the back of her business card what it is
19 that Troy wants. Hydrocodone, Alprazolam or Xanax, syrup,
20 cough syrup. That's what Troy wants.

21 How can he know that's what he wants? How can
22 he know right from the beginning that that's what he
23 wants? How can he know what the patient mix is going to
24 be? He knows what he wants because he knows right from
25 the beginning what he's going to do with it. He knows

1 that it's all a fraud, that every one of these
2 prescriptions that he's going to send up to Missouri, is
3 going to be a fraud.

4 So he knows exactly what he wants. He wants the
5 stuff he can sell on the street, and that's what he gives
6 to Cindy. That's the information he gives to Cindy right
7 off the bat.

8 Now, there are some real strong -- I mean,
9 there's some things he says that just defy explanation.
10 And I think the number one thing that he says that makes
11 no sense at all is that he didn't know what was in those
12 packages of money.

13 Now, wait a second. That's completely
14 inconsistent with all the other evidence in the case. He
15 talks to Cindy Martin about the money. Cindy gets the
16 money and calls him and says, What the heck? Why did you
17 send me all this money in the mail? And he says, It's --
18 Troy says, It's okay, don't worry. That's when Troy, not
19 Cindy, comes up with the idea of Cindy getting commission.
20 Troy's going to buy her off and does successfully.

21 So he gives her \$5. That's a lot of money too.
22 She got about \$70,000 off this deal. She did pretty well.

23 That's Troy's idea. But Troy is discussing the
24 money with Cindy from the beginning. He's discussing the
25 money with Jill Gerstner from the beginning. He's

1 discussing the money on the phone with Mary Lynn Rostie.

2 So Troy is discussing the money with them, payment.

3 He's the guy. He's involved with all these
4 payment plans. All the payment for all the Missouri
5 shipments is Troy Solomon only. No Parker, nobody else.
6 Parker doesn't come into it in any way. You didn't hear
7 one bit of evidence that Phil Parker had any communication
8 with any of these people in Missouri because he never did.
9 This is Troy Solomon. So Troy Solomon knows full well
10 that there's money in those envelopes.

11 Now, again, common sense. If people are
12 conducting regular business transactions, do they send
13 cash? If you're in the pharmaceutical business, do you
14 pay your suppliers with dirty twenties? No, you don't.

15 He's a businessman. He knows that. He knows
16 that. He knows that you don't pay people in cash, and you
17 don't send it to some third person to walk over to the
18 pharmacist. I mean, come on, common sense. He knows
19 exactly what the story is, and if he knows about the
20 money, then he knows about everything else.

21 Now, I'd like to put 1188 back up and then on
22 the other side 35.1. I'm sorry. 1185. I misspoke.

23 What I'm going to show you here is the same
24 envelope that Troy -- okay. Same envelope. Then 35.1 is
25 the -- one of the first Botto scripts. We showed this in
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1 court, but just to look at that again, it seems apparent
2 from the comparison of the envelope and the prescription,
3 that the top part of the prescription is written by Troy
4 Solomon.

5 That's just a forgery done by Troy in Missouri.
6 He knew exactly what the story was. The evidence in the
7 case was that Dr. Botto had lost -- or had his
8 prescription pad stolen at some time in the past. Who
9 picks it up? Troy Solomon. What does he do? He just
10 falsifies prescriptions.

11 The whole notion of good faith in this case is
12 ludicrous. It's a joke. There's no way that Troy Solomon
13 -- right from the beginning he knows exactly what's going
14 on.

15 And what is it? How is it he gets all this
16 money? Let's remember something. What was his testimony?
17 His testimony was that he takes -- he has to take his
18 retirement account and liquidate it to give it to
19 Mr. Parker to be the backer for the -- at Ascensia
20 Nutritional Pharmacy.

21 Okay. That implies what? That he doesn't have
22 any other liquid assets. Yet he's giving \$25,000 to the
23 Johnsons in cash? Where did that come from? How can he
24 get that? If he's tapped out, if he's taken his
25 retirement funds, he's got \$25,000 in cash to give the

1 Johnsons? And then he's got hundreds of thousands,
2 hundreds of thousands of dollars that he sends up to
3 Missouri for these -- to pay for these drugs.

4 Where is that money coming from, folks? Where
5 is the only place it could be coming from? It has to be
6 coming from the street sales of those drugs.

7 What do we know about those drugs? We know that
8 the Missouri boxes were -- went to South Texas Wellness
9 Center.

10 And just one more word on Dr. Elder because this
11 is important. If these master criminals had stolen his
12 prescriptions, the ones he had written without his
13 knowledge and he was truly innocent, would they ever send
14 box after box after box after box to his name at his
15 address? That's unimaginable.

16 How could you -- if you stole a respectable
17 doctor's stuff and then you sent everything, the proceeds
18 of your -- of what you'd done, all of the drugs, there's
19 nothing in those boxes but hydrocodone and Alprazolam, if
20 that doctor opens that box just once and sees what's in
21 there, he's going to call the police if he's truly
22 innocent.

23 How can Troy Solomon or anybody else know that
24 he's not going to do that? That's common sense, folks.
25 When people get packages, they open them. When packages

1 go to an office, especially a small office, day after day
2 after day to a physician who's only been there for two
3 months and works part time, that's going to be a cause for
4 comment. That's odd. That's out of the ordinary. It's
5 weird.

6 People will notice. How come nobody noticed?
7 How come Pleshette Johnson doesn't see any boxes? How
8 come Dr. Elder doesn't see any boxes even though his
9 signature is clearly on two of the receipts for those
10 boxes? That's weird. That's not within the ordinary
11 course, and it makes no sense that they would send them to
12 him at his place of business unless he were involved.
13 That is almost of itself as a fact proof of his guilt.

14 Let's go back to Troy. The evidence from
15 Lillian Zapata, Quan Pham, Delmon Johnson, the folks who
16 were in the pharmacy, he's at that pharmacy, and almost
17 immediately as soon as it opens, these Okose scripts start
18 hitting, 150 at a time. I mean, Quan Pham knows that
19 they're bad.

20 She is -- she's maybe the only person in this
21 trial who testified who is a real person of substance.
22 She's a good person. And she knew immediately that this
23 was not right. She was there for weeks before she
24 resigned. She is a decent person. She doesn't care about
25 the money. She knows what's right and wrong.

1 So a person with a moral compass knows within
2 weeks that this is wrong, and she can't stand it, and
3 she's not going to do it. She's not going to be
4 associated with it. That's probably the yardstick you
5 should use.

6 These things are coming in, 150 at a time.
7 There aren't any patients coming in to get these. There's
8 no patients from Universal Medical Clinic, which is in a
9 completely different part of Houston, coming over to South
10 Texas Wellness Center to pick them up. They're all going
11 into boxes and out the door.

12 And at the same time these boxes from Missouri
13 are coming and coming and coming. Remember, those started
14 even months in advance of the pharmacy opening. Why did
15 they do that? Why did they do Missouri? Because they're
16 impatient. They want to get going. They want to start
17 selling their drugs on the street and making their money.
18 So they go up to Missouri, and start that in August
19 knowing that it will be December before they can open up
20 the Ascensia Nutritional Pharmacy and start doing it there
21 in Houston.

22 So they get the head start. So these Missouri
23 boxes come and come. Where do they go? Philip Parker's
24 car, Troy Solomon's car.

25 What did Delmon Johnson tell you? He told you
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1 he put them into Troy's car. No question about it.

2 Now, Delmon Johnson, most interesting witness in
3 this trial maybe. He gets up on direct examination and he
4 says, I can tell you that that one -- that exhibit -- I
5 think it was one of these exhibits we just saw, that's not
6 Troy Solomon's handwriting because I know Troy Solomon's
7 handwriting. Five minutes later on cross when I'm about
8 to have him identify some of Troy's handwriting, he says,
9 Oh, no, I don't know Troy Solomon's handwriting. Whoo,
10 that was a reverse and a half.

11 He tries to reverse himself on this putting the
12 box in the car, but you know he put the box in the car.
13 You know the boxes were going into Troy's car, and you
14 know he was taking them out to the street because Lillian
15 Zapata told you he was taking them out to the street.

16 Now, Lillian, very nice, young lady. She told
17 you that she was dating Troy Solomon. I don't think she's
18 going to tell you that if it's not true. And then Troy
19 Solomon says on the stand kind of out of no where, She was
20 never in my car. Oh, yeah, she was. She was in his car.
21 She was -- the young lady was dating him. Of course, she
22 was in his car.

23 And he takes her along on one of those trips to
24 the street, and he's got a big box. What does that box
25 have in it? It has drugs. He gives it to somebody, and

1 he says, That's what \$3 million looks like. So there you
2 go, you've got -- the circle is complete.

3 You know that Troy was taking that stuff out to
4 the street and selling it, and you know that we have the
5 money because we've got hundreds of thousands of dollars
6 that was put into his account to pay the bills. That's
7 not all the money he generated, but that's what he needed
8 to put into his account to pay the bills.

9 And we've got hundreds of thousands of dollars
10 that were sent back up to Missouri. Where did that money
11 come from? It came from street sales of these drugs. The
12 circle is complete showing you what happened in this case.

13 Now, what about this Troy Parker -- I'm sorry --
14 this Mr. Parker defense? Well, look at the faxes.

15 What Mr. Solomon said is that Mr. Parker would
16 come over late at night, but what the faxes show is that
17 most of them were faxed during the day actually in the
18 morning, most of them. Why? Because that's normal
19 business hours for the pharmacy in Missouri. It's when
20 you want to fax things up there. Troy admitted on cross
21 that he faxed most of those.

22 He wrote some. Some he didn't write. He got
23 them from different sources. But there's no question that
24 he knew exactly what he was doing. He wrote some of them
25 down himself.

1 So he knows what's in those faxes. He knows
2 what their purpose is, and he's not that stupid. He's not
3 going to blindly trust Parker. The evidence clearly shows
4 -- Parker certainly had a role in this, sure. No problem.
5 I have no problem with that proposition, Parker had a role
6 in it. It was a criminal enterprise between these two
7 guys.

8 But between them. Not one of them leading the
9 other on blindly. Troy Solomon was more involved in this
10 than Parker was, according to our evidence.

11 And what about the UPS shipments? They start in
12 September of 2004, and they go through -- the last one is
13 October 18th of 2005. There's 76 total shipments of money
14 from Texas to Missouri.

15 Now, Mr. Solomon is trying to say, well, I
16 didn't -- again, I didn't know what was in there, I was
17 trusting Mr. Parker. But his own evidence shows that he
18 was suspicious, according to him, of Mr. Parker and that
19 he kicked Parker out of the pharmacy -- and I'll talk
20 about this evidence in a minute -- but by his own letter
21 at least by September.

22 Yet in October he's still sending money. In
23 October he's still sending refill faxes. In October he's
24 still accepting drugs. The last medical -- shipment from
25 Missouri is also in this timeframe of around October 18th

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1 or 19th.

2 So you know from his own words his defense makes
3 no sense. Parker's gone and he says he doesn't trust him
4 at that point. So why is he continuing to do these
5 things? Because he was involved in the beginning,
6 criminally involved. He had the knowledge. He knew
7 exactly what was going on.

8 Now, I'd like to talk a little bit about what
9 was going on at ANP because that also shows his knowledge.
10 Remember that we showed you some scripts from Westfield.
11 I won't through all this on the screen again because I
12 think you'll remember.

13 Ninety of the prescriptions that Dr. Elder wrote
14 ended up in Missouri from Westfield, and 84 of them ended
15 up at ANP, I think. I might have them reversed. But
16 approximately that number.

17 The ones at Ascensia, you're going to remember
18 this, there was this Frederick Oliverrez, they filled that
19 script, it's nothing but a fax. It's not -- or a copy.
20 It's not an original script.

21 They fill it once for Mr. Oliverrez. Then two
22 weeks later they change his name and they fill it again.
23 You've got Donna -- or Leigh Turner and Romero. You've
24 got Ms. Romero. Remember that was Romero, Romaro. They
25 changed that two weeks later.

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1 ANP is nothing but a mill for fraudulent
2 prescriptions. They're actually creating fraudulent
3 prescriptions taking Dr. Elder's prescriptions from
4 Westfield and filling them multiple times simply by
5 changing the names. That's nothing but out-and-out fraud.
6 There's no patients here. There's no reality here. The
7 only purpose of this is to generate drugs to put on the
8 street.

9 What about Cecilia Paz? You'll remember her.
10 It's P-a-z. She was on one of Dr. Botto's prescriptions.
11 It's 35.67. And she was on one of Dr. Elder's
12 prescriptions. How does that happen if she was really a
13 patient of Dr. Elder's? It doesn't. She's simply a
14 person that they gave to Dr. Elder to write and then they
15 used on a Botto prescription, which we know was directly
16 forged by Mr. Solomon.

17 Now, here's another thing I'd like to talk about
18 Dr. Elder.

19 If we can put 1054 on the screen and 130 on the
20 other side. I'll do this quickly because I'm running out
21 of time.

22 Okay. You'll remember this. This was his
23 writing sample that was given when Agent Watterson was
24 there and that's the actual prescription. You see that
25 he's trying to disguise his handwriting, and that's what

1 the handwriting examiner said too.

2 So he's trying to disguise his handwriting back
3 here when he's doing this. Then in 2008, he tells the
4 Texas Medical Board that he's never -- he's never served
5 as a physician for the six individuals listed in the board
6 subpoena which happened to be six people who are in that
7 box, 6 of the 544 original prescriptions.

8 So he can't even decide what his story is,
9 folks. He keeps changing it. Perhaps he finally decided
10 he couldn't deny that all those things are written by him.
11 So he flips his defense but it's not consistent. So you
12 know beyond any real doubt that Dr. Elder is guilty in
13 this case.

14 I'd like to talk quickly about the indictment.
15 Now, you have the conspiracy count of conspiracy to
16 distribute controlled substances. There's actually two
17 aspects to that. One is distribution and one is
18 dispensing and they're actually different. You have to
19 think about both of them when you deliberate.

20 To dispense means simply to give the drug out,
21 and I'm going to give you an example of that. If you take
22 one of these Dr. Elder prescriptions, if you find that
23 that is fraudulently written, then as soon as Ms. Rostie
24 in Missouri, fills that prescription and sends the drug
25 back, it's dispensed. That's a completed crime.

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1 And I would submit to you that both Dr. Elder
2 and Mr. Solomon are guilty of that crime because they're
3 both involved in the conspiracy. They both have done
4 conspiratorial acts. You know, obviously it's really
5 Solomon who started the whole thing, got the relationship
6 going, pays for it, and then Elder writes a prescription.
7 That's it. It doesn't have to be sold to another person
8 on the street or anything like that.

9 Once it comes back to Texas, that's a completed
10 crime. That's a conspiracy to dispense.

11 A conspiracy to distribute means if they took
12 those drugs and then Mr. Solomon or his cohorts sold them
13 on the street. That's distribution. Now, we've proven
14 that too, and I've gone over all that evidence, but that's
15 a different thing.

16 The dispensing is probably the easier or the
17 more obvious and easy one on these facts because you know
18 that there was a prescription written, there were drugs
19 given for that prescription. It was dispensed. That
20 prescription -- if you find that that prescription did not
21 relate to an actual patient, then that's it.

22 Now, you've heard a lot in the instructions
23 about this concept of "other than for a legitimate medical
24 purpose and not in the course of professional practice."
25 Our theory is quite simple. There were no patients.

1 No patients ever saw these drugs. The drugs did
2 not go back to South Texas Wellness Center. They were not
3 delivered to any patient of South Texas Wellness Center.
4 They did not go back to Universal Medical Clinic where Dr.
5 Okose worked. You heard from Mr. Klemen. He never heard
6 of these people. They did not dispense drugs, and
7 Mr. Johnson did not deliver these drugs to the patients.

8 You know, you know that Mr. Solomon had that box
9 that he had out in the street with Ms. Zapata. You know
10 that you've got hundreds of thousands of dollars of cash
11 in this case. So everything suggests to you that no
12 patient in any of these cases was involved. And that's
13 really simple.

14 We're not talking about second guessing
15 somebody's judgment when they see a patient. We're not
16 talking about that at all. That isn't this case. What
17 we're talking about is out-and-out fraud.

18 These folks never saw this doctor, or in some
19 cases the prescription was a duplicate. There was a real
20 prescription somewhere, but this prescription was
21 submitted and filled in excess of that prescription like
22 the -- like the patients who went to C&G. They had their
23 prescription filled, and they walked out with it and they
24 used it and took it themselves. But then the duplicates,
25 there's no medical purpose for the duplicate because you

1 know that that patient is never going to get those. Those
2 are coming back just to be diverted. That's real simple.

3 Now, as to the money laundering conspiracy,
4 there are two kinds of money laundering. One of them is a
5 promotion, and the other one is concealment. Promotion is
6 real easy. It means that you're just buying more drugs to
7 pump back into the conspiracy. So every time Troy Solomon
8 puts money in an envelope and he gets more drugs, then
9 he's simply -- that's promoting.

10 So if you think that he's paying for that as a
11 result of selling drugs, in other words, those -- all
12 those \$20 bills are coming from drug sales, illegal drug
13 sales, if he's paying for that with drug sales, then when
14 he buys more from Missouri, that's called promotion.

15 Concealment is when you try to hide something,
16 and here the concealment is really simple. He's trying to
17 hide that money by sending it in UPS envelopes, and that
18 is a financial transaction. Every time he does that,
19 that's a transaction. It's across state lines. He sends
20 it to Ms. Martin.

21 What's the purpose of that? It's to conceal the
22 money. He's sending it to Martin. He's not using a check
23 or something that would leave a trace or a record in a
24 financial record. That's why he uses the money. It's to
25 hide it, and indeed it seems even with his testimony

1 today, he's still trying to hide it. So that seems fairly
2 obvious.

3 You then had the distribution of controlled
4 substance, and basically you have all of these folks.
5 Some of them are the dead people like Mary Perez and Hazel
6 Hollis. Some of them don't have good address information,
7 and some of them are the folks from Dr. Botto. That all
8 seems to be completely fraudulent as Mr. Solomon seems to
9 have been involved in that.

10 If you find that those were all fraudulent, then
11 you would find that those were unlawful distributions of
12 controlled substances and that the defendants would be
13 guilty of all of those charges.

14 Thank you very much for your attention during
15 this trial. It's been a long time. I appreciate it. I
16 also appreciate your -- I know what will be your dutiful
17 and thorough review of the evidence.

18 MR. LEWIS: Your Honor, may I have one
19 moment to set up?

20 THE COURT: Yes.

21 MR. LEWIS: May it please the court?

22 THE COURT: Mr. Lewis.

23 DEFENDANT SOLOMON'S CLOSING ARGUMENT

24 MR. LEWIS: You'll remember I posed a
25 question when I opened this case. Why is Troy Solomon

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1 here? Since that time, as the events have unfolded in
2 front of your eyes, there have been a lot more questions
3 raised.

4 There are a lot of answers that are lacking. It
5 is those unanswered questions that I'm going to focus on
6 today, and I'm going to do it very rapidly, so I apologize
7 for the speed of my voice. But we have a very limited
8 timeframe, so let's get to it.

9 First of all, to directly take issue with
10 Mr. Bohling, a very capable, very hard-working prosecutor
11 doing all he can, but I cannot imagine a more disingenuous
12 position to take, keep bringing up Troy Solomon sent this,
13 Troy Solomon sent this, when all they had to do was employ
14 the very handwriting expert they brought in here. You
15 remember the little, irascible fellow that argued with
16 Mr. Osgood? They didn't bother to do it.

17 Very disingenuous to keep suggesting Troy
18 Solomon wrote all this or did any of this when in fact
19 they, the government, the United States of America with
20 all its power, chose not to spend whatever dollars to
21 prove to you beyond a reasonable doubt their case.

22 Say so don't make it so. We got a saying in
23 Texas. That's what it is. It's say so. It's innuendo,
24 speculation.

25 Judge Gaitan didn't think good faith was a joke.

1 He put it in your jury charge, Instruction 44A. This is
2 your road map that will guide you to your verdict in this
3 case. The law that's in here is the law that His Honor
4 says should apply and should be considered. There are no
5 jokes in here. A man's life is at stake.

6 Something else real quick to shoot the
7 government out of the water. Do you remember, and you'll
8 pull these exhibits up, and I trust you, he wants to talk
9 about using 5833 Sun Forest as an address. Problem with
10 that when you look at that exhibit, it says Houston,
11 Texas. Now, remember, he wanted you ladies and gentlemen
12 to believe that Troy Solomon wrote H-o-u for Houston,
13 another very disingenuous attempt.

14 The unanswered questions, I want to start from
15 the top, the sources of reasonable doubt that come to my
16 mind. Now, this is just my mind in a very quick 25
17 minutes what I have found and noticed that stands out.

18 Your 12 collective groups of mind, wisdom,
19 experiences is far greater than mine, so these are not
20 exhaustive. I trust you will come up with many more, and
21 I really implore you from Mr. Jameson all the way to
22 Mr. Adams, all you folks in between, use your knowledge.
23 You are a very, very, very bright group with a vast amount
24 of experience, some very specific and particularized like
25 Ms. Rinfret in this case. Use that common sense. The

1 judge keeps telling you in here that's how you get to your
2 verdict.

3 So I'm only going to refer to two jury
4 instructions in this case. The reasonable doubt is on
5 page 19, and then Mr. Bohling's joke, good faith, 44A.

6 Take a look at the entire charge. It's huge.
7 Take your time and make sure you understand it, but when
8 you come to make your decision, I encourage you to focus
9 on these instructions.

10 So why is Troy Solomon here? What crime has
11 Troy Solomon truly committed? Well, it's none of the
12 crimes in here. His crime was putting his faith in Philip
13 Parker. That's where his problems began. That's what
14 brought him to this courtroom, and that is his crime for
15 lack of a better word. His kindness, compassion, and
16 ultimately his pursuit of the American dream caused him to
17 go into business with Philip Parker.

18 Now, Mr. Bohling concedes Mr. Parker must have
19 been involved. He's gotten to the point through all of my
20 examinations through the plethora of witnesses who have
21 all stated this was Parker's deal, that's why this chair's
22 here. This is from Solomon Exhibit 5, the pharmacy board
23 records, the records that Parker submitted to the pharmacy
24 board to start this thing, that Parker orchestrated, that
25 Parker put in place.

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1 You heard the evidence. Troy Solomon didn't
2 know the first thing about running a pharmacy when this
3 man approaches him at church. His kindness and compassion
4 got him here. Philip Parker should be here, and that's
5 why this chair is here.

6 Let's talk about the government's theory of the
7 case. Troy Solomon goes into business with Philip Parker,
8 and in an amazing leap of difference in character, 42
9 years of his life, impeccable reputation, 16 years
10 dedicated to law enforcement, all of a sudden he meets
11 Philip Parker, and he becomes one of the largest drug
12 dealers around. It defies logic, folks.

13 By our deeds and our actions we are known.
14 That's why you judge people on their track record. That's
15 why you know people of their character. To suspend all
16 reality and think that Troy Solomon all of a sudden after
17 an impeccable life as a most law-abiding citizen is now
18 going to become one of the major drug dealers of known
19 history, defies your logic and common sense. But that's
20 the government's theory. You heard them tell you.

21 After viewing all the evidence and, more
22 importantly, getting your fill, getting to watch Troy
23 Solomon up close, listen to him, and judge his demeanor, I
24 challenge you, just like the government had the
25 opportunity, to find any inconsistency between what he

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1 said and what you know the truth to be now.

2 They had every opportunity to cross-examine and
3 impeach him in any way they could. And they didn't. They
4 had a rebuttal case. They could have brought anybody to
5 tell you Troy Solomon's lying to you, that's not true.
6 They couldn't. All they could do is reiterate their tax
7 search.

8 Well, that's very telling. Sometimes we learn
9 more about a situation by what we don't see than what we
10 do see, and in this case we see no contradiction. The
11 United States Government has issued hundreds of subpoenas.
12 You've seen 1,200 exhibits, countless dollars spent, and
13 they can't bring one person, not even one? Your common
14 sense, folks, tells you he was telling you the truth.

15 You know, if he was lying and making up a story,
16 there would have been a lot better answers than the ones
17 he gave from the stand about why did you talk to this
18 person, why didn't you call Parker, et cetera. The fact
19 of the matter is that's the testimony and it's the truth.
20 You can trust their lack of impeachment or contradiction
21 is what you should make of it. It's truthful.

22 Let's talk about some specific witnesses. I
23 want to go to this right here. Curt Bohling just admitted
24 it to you, but I told you in opening when Parker's finally
25 gone, finally out of Ascensia, quits dropping by when

1 Solomon is not there, like Zapata told you, like Pham told
2 you, like Delmon Johnson told you, he kept coming. He
3 didn't listen to that letter.

4 When he's finally gone, these prescriptions stop
5 like that. October 18th or 19th I think is what Bohling
6 says.

7 Now, don't take Troy Solomon's word for it.
8 Don't take mine. Take that nice lady who was one of the
9 first witnesses, Ms. Kerste. She told you all Texas
10 prescriptions stopped before 10/20 of '05. All the other
11 witnesses agreed.

12 She told you that based on her role in the
13 pharmacy, it was her understanding these prescriptions
14 from Texas were being sent back to the doctors that
15 prescribed them, same thing Troy Solomon understood, same
16 line he was given by Philip Parker.

17 Next witness that helped us out here. Jill
18 Gerstner told you Troy Solomon never directed her on
19 pharmacy matters. He simply filled the request, answered
20 the questions, and provided the paperwork.

21 In her many discussions with Troy, you'll
22 remember her saying he never suggested, insinuated, or led
23 me to believe there was anything wrong. If you're really
24 in a conspiracy and you really want people to be quiet and
25 keep your conspiracy going, you always hear these

1 coconspirator statements in cases like this. Well,
2 Solomon told me not to tell anybody. Solomon told me to
3 keep this on the down-low. Solomon told me X. Not a
4 statement like that in this entire case.

5 It's because Troy Solomon never entered a
6 conspiracy. You know what? It pains me to say it because
7 I really like the guy and I feel for him, but he was made
8 a fool. And it's embarrassing, I'm sure, but Parker
9 played him just like he played a lot of people Delmon
10 Johnson told you.

11 Jill Gerstner also tells you one very telling
12 thing. Why would such a seemingly angelic, kind lady of
13 ill health like Pharmacist Rostie get involved in this?
14 Pressure from corporate. You'll remember I pulled that
15 out.

16 Same time this all got started, she got a visit
17 from corporate, Dean Wagner, says you got to increase your
18 sales revenue. Well, I feel for her, but her decision did
19 not involve Troy Solomon.

20 Mr. Bohling wants to tell you if these drugs
21 were sent back, he's guilty. He misses the most important
22 step. The law will tell you. Before any of this begins,
23 before you can even implicitly believe Troy Solomon is a
24 coconspirator, he has to be part of the plan. He has to
25 have the knowledge and intent to knowingly and

1 intentionally violate the law. That's where the good-
2 faith instruction comes in.

3 Pharmacist Rostie, let's talk about her. I
4 understand she's got mounting health problems. I
5 understand she had a struggling pharmacy. I wish she
6 hadn't done what she did, but nothing in her testimony at
7 all makes Troy Solomon a coconspirator at the Parker
8 inception of this case. Nothing.

9 Let's talk about it. She tells you, remember, I
10 made her answer this question: You had a problem with the
11 Okose prescriptions? What did Troy Solomon tell you when
12 you notified him? He said, Please call Okose, check it
13 out, make sure it's aboveboard. Coconspirator doesn't say
14 something like that.

15 It was Rostie's idea to start sending these
16 refill requests back to Texas, not for Troy Solomon, not
17 his suggestion, none of it. His continual refrain
18 throughout this case you heard from the Pharmacist Bede to
19 Rostie to the Pharmacist Pham and, most importantly, to
20 Parker was, This is all legit, it's aboveboard?

21 We had five different witnesses tell you they
22 heard Troy Solomon ask those questions, make those
23 requests. That's the good faith. That's why Judge Gaitan
24 put it in the case.

25 Let's talk about these lag times between the
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1 faxes, I think, is very telling. Right here. You look at
2 those faxes. We all know you can manipulate the time,
3 name, et cetera.

4 But no matter that manipulation, there is always
5 some gaps between the sending of faxes, the reply to
6 faxes. It's really easy to follow when Rostie starts
7 faxing these refill requests back. There's always a
8 couple of days before any faxes go back.

9 You know why that is? It's because Troy Solomon
10 is doing exactly what he told you all he was doing. He'd
11 get the paperwork, he'd take it to Parker. He'd take it
12 to whoever instructed and then follow their instruction.
13 That's why there's a lag.

14 Don't you know if he's really a conspirator from
15 the get-go and this is his mastermind, he just initials
16 them, he just handles it and faxes it back? Doesn't make
17 any sense. It's another source of reasonable doubt.

18 One of my favorites, and there's often aha
19 moments in a trial, you know, kind of like those Matlock
20 moments where the defendant admits he's guilty or the
21 witness admits they're lying. This was more subtle.

22 Do you remember with Ms. Martin -- and I'll help
23 you all. I'm not good at much, but, as you learned, I'm
24 pretty good at remembering things. Ms. Martin's
25 testimony, and I've highlighted it for you. I asked her

1 --

2 MR. BOHLING: May we approach?

3 (Counsel approached the bench and the following
4 proceedings were had:)

5 MR. BOHLING: I guess I thought we
6 established we weren't going to be showing transcripts to
7 the jury because I wasn't allowed to do that. I thought
8 the standard was if the jury --

9 MR. LEWIS: It's closing argument.

10 THE COURT: That's not my understanding.
11 Obviously they've got transcripts for closing argument.

12 MR. LEWIS: That's what I thought too.

13 MR. BOHLING: Okay. That's fine.

14 (The proceedings returned to open court.)

15 MR. LEWIS: Thank you, Your Honor.

16 Look at it. I asked her twice just to make sure
17 so when I got up here to tell you, I could prove to you
18 their theory is not logical. Drug dealers don't take
19 their cash to the bank and get it banded. If their theory
20 is true, Troy Solomon is out here pedaling millions of
21 dollars on the street getting wads of cash, shoving it in
22 UPS boxes or bags and sending it back to Missouri.

23 He ain't running it through a bank and getting
24 it banded. Reasonable doubt. They never saw it coming,
25 but it's the truth right there. I didn't make it up.

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1 Cynthia Martin told you.

2 About those UPS bags, all the money, all our
3 taxpayer dollars spent on this case, why not print just
4 one item, maybe one of these notes or letters that they
5 say were in these UPS packages? Print, fingerprint any
6 one of them.

7 If Troy Solomon's fingerprints are on items
8 inside that bag, can never, ever claim he was just doing
9 what Parker said. That's proof. That's not speculation.
10 That's not innuendo. We don't convict our citizens in the
11 United States of America on speculation and innuendo. We
12 do it on proof beyond a reasonable doubt. They could have
13 solved it for you.

14 Fingerprint on a bank wrapper, fingerprint on a
15 note, anything inside those bags. They chose not to do
16 it.

17 Now, I want to go to a couple of quick
18 witnesses. I apologize for doing it this way, ladies and
19 gentlemen, but I really want to cover everything so I'm
20 going to review this testimony, my summary.

21 Pleshette Johnson, co-owner of South Texas, you
22 remember her. My questions were all about who ran the
23 pharmacy, who was there, who directed things. Parker,
24 Parker, Parker. That's what she told you.

25 I then asked her very carefully about the
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1 timeframe. She says he was still around after September
2 of '05, just like everybody else. Just because Solomon
3 finds out he's a crook from the accountant and tells him
4 you got to go, Parker didn't listen. It took several
5 weeks Delmon Johnson told you. Troy never really around,
6 never observed any illegal activity.

7 Now, I do agree with Mr. Bohling about one
8 thing, Quan Pham. That's a truth teller. I couldn't
9 agree more. What did she tell you? She took direction
10 from Parker, Parker, Parker. Didn't take any direction
11 from Troy Solomon.

12 She did tell you about an instruction she
13 received from Philip Parker that's most telling. Don't
14 call Okose, don't check up on these prescriptions. When
15 she asked Troy Solomon about one of her suspicions, what
16 did he tell her? Quite the contrary. Call Okose, make
17 sure it's aboveboard. She goes a step further.

18 She calls the patients. Now, they want to fudge
19 on the numbers. You saw me, I made her admit, she said
20 three. Where are any of the other patients? She
21 confirmed herself they were receiving prescriptions just
22 as Solomon asked her to do. That's that good-faith
23 reliance that I'm telling you about.

24 Mr. Klemen, I'll speak one second about just
25 because it completely establishes the Okose connection

1 with Parker. You remember on direct he said Solomon was
2 there regularly. I almost fell out of my chair because
3 that was completely contrary to all of his prior
4 statements.

5 So I took his statement up there, you'll
6 remember. He quickly admitted, Yeah, that's what I said.
7 I said, It was Parker, Parker, it was Parker that was
8 there regularly. We know that's the case now that Delmon
9 Johnson's testified, now we revealed this Eastside
10 Pharmacy -- that he asked Delmon Johnson, he, Parker,
11 asked Delmon Johnson to help him with without Troy
12 Solomon's knowledge.

13 Remember what Delmon said? Parker told me, Do
14 not let Solomon know about this pharmacy. Well, I wonder
15 where the pharmacy is? Right across the road from
16 Eastside Pharmacy. Parker's pharmacy, Okose's clinic are
17 right next to each other.

18 Klemen admitted finally when I forced him with
19 his statement before Investigator Mark Reeder called him,
20 he'd never even heard of Troy Solomon, much less met him.
21 They can try to distance themselves from Parker all they
22 want, but it's too far to reach. Even Bohling had to
23 admit to you, yeah, he's probably involved. Where is he?
24 Where's the real conspirator?

25 Klemen went on to tie my loop up and tell you
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1 that Okose in fact backed the building of Eastside
2 Pharmacy. There's your real conspiracy. Ten million
3 dollars.

4 Next we had Agent Watterson. Frankly, I think
5 she told the whole truth, and I believe in her so much,
6 that I got her testimony. First thing she did for me was
7 establish yet again Mr. Solomon's good-faith reliance upon
8 the professionals, the pharmacist, the Lawyer Parker, the
9 doctors.

10 What did she say? You knew from interviewing
11 Bede that in fact Troy Solomon had asked him, Is this all
12 legal, is this all legit, what did Bede tell you?

13 Yes, it is.

14 Good-faith reliance.

15 She told you something else that makes
16 Mr. Bohling's closing argument very disingenuous. She
17 told you during her interview of Philip Parker himself, he
18 admitted he handled the payments, he handled the bank
19 accounts. Look at those bank account records. He's on
20 the bank account too. Delmon Johnson told you Parker
21 handled all the deposits. Troy Solomon didn't. She also
22 admits to us, yeah, they found out in their investigation
23 Parker owns Eastside Pharmacy.

24 Now, the handwriting. Here we go. The big, big
25 misstep. You'll recall I said, You assumed this writing

1 was Troy Solomon's. That's the theory of their case. Yet
2 you didn't bother analyzing his handwriting? No, we
3 didn't.

4 It gets better, gets much better. Redirect,
5 Mr. Bohling, being the very good lawyer that he is, tries
6 to clean that up on his toes contemporaneously. Did we
7 really have any records at this time to identify Troy
8 Solomon's writing? Well, you could have knocked Curt over
9 with a feather when she said, Yes, we had his bank
10 records, we had known writing exemplars. They didn't
11 bother.

12 Innuendo and speculation won't get it. Don't
13 let them get away with that. It takes proof beyond a
14 reasonable doubt like the judge tells you.

15 There's a Botto reference in the jury charge,
16 and I'll dismiss that real quick. Page 12, she
17 interviewed Botto, asked him if he even knew Troy Solomon.
18 No. Another red herring, very disingenuous.

19 Last section, last unanswered questions that I
20 have, all sources of hesitation. Any hesitation you have
21 about an element of their case, that's what the judge
22 tells you is reasonable doubt. That is why you find Troy
23 Solomon not guilty of these charges.

24 Delmon Johnson confirmed Parker owned multiple
25 pharmacies. All the while Parker is running the pharmacy,
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1 he confirms Troy is not there. He's at MP TotalCare doing
2 his full-time job.

3 He, again, repeated Troy continued to ask for
4 assurances from all professions to rely in good faith that
5 this was all aboveboard. You know, this business about
6 boxes in the car, et cetera, you can tell where Delmon
7 Johnson is coming from. He's scared to death. Crosshairs
8 of the federal government pointed on you, I'd be scared
9 too.

10 But the best question is, Why on earth did I
11 have to call Delmon Johnson?

12 He told you. I showed you the handwriting, a
13 few of the examples. He said that's not Troy's
14 handwriting. If they really wanted to prove that to you,
15 we all know now they should have.

16 Dr. Elder never heard, saw anything he believed
17 illegal as it was associated with Troy Solomon.

18 One more aha moment and Mr. Bohling kindly gave
19 this to me. You remember when he put those phone records
20 up. He did it again in closing. And he talked about the
21 timing between the phone call and the faxes. Well, I
22 don't know what they were talking about and, frankly, it
23 doesn't matter. What matters is the law of this case,
24 that good-faith reliance.

25 What does that phone call and that fax, that
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1 close time period really reflect? Troy Solomon doing his
2 due diligence, checking with the doctor. Hey, I just got
3 this request from Rostie, what do I do with it? Good-
4 faith reliance on a doctor's advice.

5 It's a good question too. Millions of drugs go
6 out, millions. Why don't we ever find one bag, one
7 prescription sack? You heard how Rostie said they were
8 tagged. Never find one, one.

9 Finally, Dr. Elder, this conspiracy, they want
10 you to believe Solomon started it. There's a problem
11 there. Elder's last bit of testimony about that Aldine
12 Westfield clinic, well, Ada Johnson, Pleshette Johnson,
13 and Philip Parker, Elder says, all knew he went to
14 Westfield. Who does he say didn't know? Troy Solomon.
15 Why all of a sudden is your main coconspirator not even
16 aware of a coconspirator's address yet Parker is? It's
17 because Troy never had any criminal knowledge.

18 He did a lot of dumb things. He trusted the
19 wrong people, and he's gotten himself in a world of hurt
20 because of it. But he doesn't have the criminal intent
21 that he has to have for each and every one of these
22 charges. He good faith relied upon the professionals.

23 The government knows they've got a problem with
24 this distribution because they don't put a pill on any
25 street person, any crackhead's hands. We don't see one

1 arrest where a crackhead had several bottles and we trace
2 it back and find out. That's how diversion cases happen.
3 Not one bit of evidence in this case. So hundreds of
4 boxes, hundreds of bottles, not one shows up.

5 They know, boy, do they know they got to hit a
6 home run here. And this is their Hail Mary, Lillian
7 Zapata.

8 THE COURT: Your time is about up,
9 Mr. Lewis.

10 MR. LEWIS: Thank you, Your Honor.

11 Pardon me, Mr. Osgood. One minute.

12 MR. OSGOOD: Sure. Take your time.

13 MR. LEWIS: Thank you, sir.

14 Look at that. I summarized it for you so I
15 didn't have to talk about it. I knew I'd be pressed for
16 time. Their whole theory is bass ackwards if Zapata is
17 right. Solomon is not bringing \$3 million to the street.
18 Solomon is bringing drugs to the street. Remember? He's
19 a street drug dealer. That's what they want you to
20 believe.

21 Well, her testimony, even if you believe it,
22 tells you it's backwards. It's not logical. He's not
23 bringing money to the street. You heard him. He's taking
24 the money.

25 I've done my level best to guide Troy Solomon
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1 through this experience, this nightmare, and in my attempt
2 to safely guide him through these troubled waters, I have
3 tried to illustrate to you all how their case, they just
4 have not proven beyond a reasonable doubt that Troy
5 Solomon is this drug-dealing criminal that they want you
6 to believe he is.

7 And I hope I've done a good job because,
8 frankly, it's a very heavy burden to have this man's life
9 in my hands. It's a unique opportunity to carry someone's
10 life in your hands who is so compassionate, kind, and
11 considerate.

12 Now, I've got to hand him off to you, and I
13 trust very much your collective wisdom, your conscience,
14 and you following the oath that the judge gave you because
15 it would be real easy to convict Troy Solomon, as
16 Mr. Bohling wants you to, on innuendo, speculation, et
17 cetera. But the fact of the matter remains, if you follow
18 that law and your conscientious oath to apply only the
19 evidence, not speculation, there's only one verdict.

20 And that's a verdict of not guilty on all of
21 these charges. That verdict sends a very important
22 message because we spent a whole lot of taxpayer dollars
23 here, and we don't have the right guy.

24 MR. BOHLING: Objection.

25 MR. LEWIS: Your verdict sends the very
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1 clear --

2 THE COURT: Hold on, Mr. Lewis.

3 (Counsel approached the bench and the following
4 proceedings were had:)

5 MR. RHODES: He's arguing it sends a
6 message to the community. That's not allowed here in the
7 8th Circuit to send a message.

8 MR. LEWIS: I'm not saying to the
9 community. I'm saying to these prosecutors that they
10 should prosecute the right person. It's my last sentence.

11 MR. BOHLING: No appeal to the community
12 at all.

13 THE COURT: Overruled.

14 (The proceedings returned to open court.)

15 MR. LEWIS: Thank you, Your Honor.

16 Your message, that not guilty, is sent to the
17 prosecutors, to the investigators to say, Look, folks,
18 let's get it right, go back, investigate this, and get the
19 real criminal.

20 Thank you very much for your time and attention.

21 Thank you, Mr. Osgood.

22 MR. OSGOOD: Thank you.

23 DEFENDANT ELDER'S CLOSING ARGUMENT

24 MR. OSGOOD: Mr. Lewis is a difficult
25 act to follow.

1 One of the things that has always troubled me is
2 I don't feel I'm eloquent enough at this point, and, as he
3 said, so many -- so much responsibility is in your hands,
4 and you've got your client's life in your hands and you've
5 got to convince the jury as to what happened.

6 I agree wholly with cocounsel that Mr. Bohling,
7 when he talks about innuendo and speculation, he uses
8 words like "it must have been," "it had to be," "it should
9 have been" or "it ought to be," but that's not what it's
10 about. It's what actually happened is what's critical in
11 this case, and it's you that will decide what happened,
12 not what he suggests to you.

13 Now, he would have you believe that my client,
14 Dr. Elder, the kid who hobbled to high school on crutches
15 because he wanted perfect attendance, who borrowed some
16 \$250,000 to get his way through the University of
17 Virginia, one of the most prestigious colleges on the East
18 Coast, and to go on to medical school in Pennsylvania to a
19 prestigious teaching hospital, and then get out and go to
20 work, would go to work at South Texas Wellness Center and
21 suddenly for nothing apparently would write fictitious
22 scripts to people that didn't exist and throw it all away
23 on the first day that he's there.

24 That makes no sense, folks. It makes no sense
25 whatsoever.

1 Now, let's take a little bit of time to reflect
2 back on what the charges are. I'm not going to waste time
3 on this because, like Mr. Lewis, I'm pressed for time.

4 Dr. Elder and Mr. Solomon are charged in a
5 conspiracy to distribute and dispense drugs. The judge
6 has read all those instructions to you. A conspiracy is
7 nothing more than a partnership in crime, and take a look
8 at some of these instructions, particularly on the
9 conspiracy instruction. It means that two or more people
10 get together and come up with a scheme.

11 Now, the instructions also say that acting in
12 common purpose of that without knowing you're part of the
13 scheme is not a crime. There's a bunch of overt acts in
14 there, and they basically describe the facts that the
15 government believes they've proven in this case.

16 If you did any of those things without knowledge
17 it was unlawful, then you're not part of the conspiracy.
18 So don't get confused about those overt acts.

19 There's a bunch of -- you remember the
20 repetition of the Counts II through X? Basically those
21 are different prescriptions with different people's names
22 on them, but they're all pretty much the same.

23 Then XI and XII, Mr. Solomon is charged by
24 himself. I'll put that aside now. You'll have time to
25 read those, understand what the law is, and apply the law

1 to the facts.

2 That, incidentally, is your job here. It's not
3 to succumb to emotion or succumb to innuendo. It's to
4 decide the facts and apply the facts to the law.

5 Now, the first thing that's important here is
6 when Dr. Elder did what he did and where he was at when he
7 did it and what the time sequence is. So to start with,
8 we want to look at his employment record. And you heard
9 the testimony.

10 You will recall that he went to work at South
11 Texas Wellness Center in July. They keep saying August,
12 but it was July, folks, and you'll remember. The date on
13 the -- I think the exhibit that Mr. Bohling pointed out to
14 you said July 1st. He worked there from July until
15 December the 31st. He was not out of work like
16 Mr. Bohling told you.

17 He then went over to medical -- or to Methodist
18 Hospital and filled in for a fellow for a month. I'm
19 sorry, a lady, a lady doctor. He filled in for her for a
20 month. Then he went over to this Westfield in February of
21 '05.

22 Now, what happened was, and I'm going to explain
23 to you how this all came about, and I'm going to do it
24 with my -- what I called my time clock, my year clock.
25 Remember when I talked about that and drew a little

1 diagram for you, and I've got a little better one now.

2 I've got a little darker ink, and it looks a little better
3 and it's a little easier to see.

4 Let's start with his employment at South Texas
5 Wellness Center, which Mr. Bohling says that this doctor
6 with all these credentials and all this life history which
7 points to a man with high integrity, with drive, with the
8 goal of becoming a doctor that he formulated in the third
9 or fourth grade, whatever it was, he's going to throw it
10 all away by seeing patients who are not even -- I'm sorry.
11 By filling out scripts for people who don't even exist.

12 Well, that defies logic. Let's look at the
13 South Texas Wellness Center scripts. He went to work
14 there in July. I think Ada Johnson said he might have saw
15 patients two, three days a week, and she tells -- I'm
16 sorry, Pleshette Johnson. She tells you that he saw four
17 to five patients a day.

18 If you look at the numbers and do the math, it's
19 pretty easy to see that of the 540 prescriptions, the 540
20 patients he actually saw over a six-month period, if we
21 take a conservative approach and say he was only there two
22 days a week -- now, he says three days a week. There's
23 been testimony by some of those folks that he was there
24 three days a week.

25 But if it's two or three and he's having to go
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1 see his mother because of her cancer, let's just call it
2 two days a week. Two times a month would be eight days in
3 a month. Six times eight is 48 days. If you divide that
4 out, 48 into 540 means he's seeing an average of 10.1
5 patients per day. That is not unreasonable for a doctor.

6 Now, what backs that up? What backs it up is
7 that at the end of this six-month period Pleshette
8 Johnson, the chiropractor, sends him a 1099, a tax form,
9 and pays him \$5,000. Now, I'm going to talk about the
10 finances in this case.

11 If my client is a coconspirator in this, he's
12 the dumbest one I've ever represented in my life, folks,
13 because they're making millions of dollars, millions and
14 millions of dollars. Okose made 10 million in two years,
15 and Mr. Bohling put that bottle of pills up and said this
16 represents several million dollars. My guy gets \$5,000
17 out of it at the end of the six-month period? He's a
18 dupe, folks, unfortunately.

19 I mean, he's a very bright, very well-educated,
20 very conscientious doctor but he's also naive. He's six,
21 eight months out of practice. He goes to work here, and
22 they used him and they played him like a fiddle.

23 Now, let's take a look at actually what happened
24 here. That's not an unreasonable number of prescriptions.
25 I submit to you that it is, as Mr. Lewis said,

1 disingenuous, ridiculous, and absurd to suggest he was not
2 seeing patients. He was seeing patients then.

3 Now, what happened was Cindy Martin and Rostie
4 come up with this scheme in Missouri, to divert these
5 drugs, and they need somebody, they need a doctor to make
6 this work. Rostie knows occasionally she's going to get
7 visited by the pharmacy board, and she knows that she's
8 going to be inspected.

9 She needs to keep records. She can't order
10 these drugs from McKesson, the suppliers, in large doses
11 and not have some accountability for it. In fact, now,
12 McKesson, remember, has a little bit of some
13 responsibility in this case because they even said, Hey,
14 your numbers are way out of wack here. She says, No,
15 they're fine, here, I've got an increase in business. And
16 she's got the records to prove it, and she's got a doctor
17 to pin it on.

18 What was the telltale reason Dr. Elder got
19 charged in this case? It wasn't the original 540 patients
20 he saw and the scripts he wrote. That's not the problem
21 here. That's not what caused the government investigators
22 to salivate, folks. What caused them to salivate and get
23 excited and pant like a dog in heat was the fact that they
24 had all these refills that were filled toward this end
25 period when he was over at South Texas Wellness Center and

1 nine of them went up to Kansas City with -- I'm sorry.
2 Nine of them came from Kansas City to South Texas Wellness
3 Center asking to be refilled.

4 Now, remember, those are the sheets that we saw
5 on the screen. Those are the sheets that I argued with
6 the handwriting expert about, and those are the sheets
7 that had the forged -- and everybody says they're forged
8 except that hired handwriting expert that wants to claim
9 that those initials are the same. I mean, we laid them
10 side by side. You saw them.

11 You saw the six original scripts of Dr. Elder
12 and the signature -- the initials of his signatures on the
13 scripts. I laid them side by side with the four or five
14 or six of these requests for refills that came from
15 Missouri, and it's clearly different initials, clearly,
16 clearly, clearly.

17 So what happened was he's working hard. What
18 happens when a patient comes in? He sees the patient. He
19 gives the script and a file to Pleshette Johnson or Ada
20 Johnson or one of the medical assistants, and they walk up
21 the hallway and they go in the office. And they fill out
22 the -- they've already filled out the paperwork.

23 They turn in the script and the file to Ada,
24 Pleshette, or one of her employees up front. He's back in
25 the exam room.

1 What they do then is they keep the original.

2 Ada Johnson keeps the original. Pleshette Johnson keeps
3 the original. Remember, Pleshette Johnson has been given
4 immunity in this case. She's not being prosecuted.

5 If she didn't do anything wrong, why did they
6 give her immunity? And if Ada Johnson didn't do anything
7 wrong -- she was out here in the hallway, and after they
8 heard Pleshette, they didn't call Ada because they didn't
9 want a replay of what Pleshette had to say.

10 What they were doing is Pleshette was putting
11 these originals in the files and collecting them en masse,
12 and they were faxing the prescription on over to some
13 other local pharmacy. These were real patients that he
14 saw from this July to December timeframe.

15 They went out the door. They went over here and
16 had their prescriptions filled, and then they collected
17 the originals. And they started this scheme with Cindy
18 Martin and Parker and whoever, and they sent them up to
19 Missouri.

20 Now, they were making good money off of just
21 duplicating the original prescriptions and sending them up
22 there because they'd already made their profit off of
23 sending them out the door. But suddenly they get greedy
24 and greed takes over.

25 What they decide to do is, well -- and this is
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1 Rostie is the greedy one here, Rostie who made a million
2 dollars in this case, Rostie whose records they traced and
3 saw the bank deposits. I'm trying to talk too fast, and
4 my tongue gets tripped up. I apologize. Need to slow
5 down.

6 These forged refills -- and everybody agrees
7 they're forged except that paid handwriting expert that
8 was the most ridiculous witness that I've ever seen on the
9 stand. These forged documents come back here with massive
10 numbers of requests for refills.

11 They're approved and generated back. They're
12 not Dr. Elder's signature. He wrote "no refill" on every
13 one of his original prescriptions. If this was a fraud,
14 why would he write no refills on them? He would have been
15 involved in it from the get-go. They wouldn't have had to
16 go through this elaborate business of generating the
17 refills here and sending them down here and sending them
18 back.

19 He didn't know about this. He had no knowledge
20 of this whatsoever. He works here for six months. He
21 makes his \$5,000, and he thinks it's time to move on.
22 He's not getting along with Ada and Pleshette Johnson.
23 They're hard to work for. They're overbearing. They're
24 arguing.

25 And what does he do while they're arguing and
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1 they're hard to work for and he's having problems with
2 them? He calls up the only guy in the place that he's
3 met, which is Troy Solomon, and they talk about it on the
4 phone the way guys probably do talk about their boss
5 sometimes. I'm not getting along with her, what's her
6 deal, what's the problem, and they get to talking over
7 time. And they become friends and they talk about sports
8 and other things.

9 That accounts for this high volume of phone
10 calls. Every chart that they've put on the screen,
11 everything they've told you, they've lumped all of this
12 together. They've lumped these entire year clocks
13 together. All these statistics that they show you,
14 they're all based on the totality of this thing. They
15 didn't break it out and they could have, folks.

16 What happens when he leaves in December? He
17 goes to work for Methodist Hospital for a month. They've
18 got this scheme going on now, and it's working pretty good
19 over here. And they know he's moved over to this other
20 clinic, and he's working over there now.

21 In the meantime they get Ascensia Pharmacy going
22 around January or February here of '05, and that's when
23 this Dr. Okose comes in to being.

24 Now, what happens after he leaves that is
25 important to this case and my position to you? The

1 refills, the requests for refills do not stop. They
2 continue. They continue into this time period.
3 Thirty-four of them with his name on them come from
4 Missouri to Texas, requesting more refills after he's
5 gone. He's not even there anymore. He's gone.

6 Thirty-four of them come in his name, and six of
7 them come in Okose's name, and one comes in Botto's name.
8 These are things originated by Rostie, the woman who's
9 pled guilty and admitted that she was a crook.

10 Now, did she ever once ever call Dr. Elder? No.
11 Did he ever get a call from any of these people about
12 these prescriptions? No. He was not in the loop. So he
13 goes to work over here at -- eventually at Westfield
14 Medical Clinic.

15 Now, in the meantime they're milking this system
16 dry. Suddenly they've got Okose in the picture, so
17 they've doubled their profits that way. And the next
18 thing happens is -- and these people all know each other
19 in this business. I think we can conclude that from what
20 we heard in the testimony.

21 He goes to work for this woman over at Westfield
22 Medical Clinic, whose husband was also a doctor who's now
23 deceased. He had had his DEA license pulled for obvious
24 reasons, engaging in illegal conduct. Dr. Elder takes a
25 job there, and he's a little bit concerned about it.

1 He's studying for his boards, and he's doing
2 part-time work at the time. He goes to work there.
3 Again, I suggest to you he's pretty naive, but he does go
4 to work there. And for the first couple of months he
5 says, Fax a copy of the prescription for me so that I can
6 kind of keep track of the work I'm doing.

7 The pattern is the same there. He fills out the
8 prescription. He gives it to the patient. He thinks his
9 patients are going out and having these prescriptions
10 filled in both instances over here as well as over at
11 Westfield. This time the pattern changes a little bit.

12 Mr. Bohling would have you believe that these
13 are nonexistent, unreal patients over here and suddenly
14 they're real patients over here because that fits his
15 little theory. But the fact remains they were real
16 patients in both instances and at both places.

17 So what happens is, again, it's the same
18 pattern. He fills out the prescription. He gives it to
19 the patient. They go back up the hall, go back in the
20 waiting area. You've all been to the doctor. You know
21 how it works.

22 And at that point somebody at Westfield is
23 providing copies of those scripts now to Ascensia and to
24 these people. The real prescription is being filled right
25 down the hallway, it appears. Copies are being made

1 probably by Mrs. Hearn or somebody in her employ. You'll
2 recall they did not interview any of those people over at
3 Westfield Medical Clinic to see if they were involved.

4 What do we know? The one person that was
5 interviewed. Well, we know my investigator, Mr. Reeder,
6 former police officer, private investigator, licensed in
7 the state of Missouri, he contacts 20 people in this case.
8 They all agree to talk. They all tell him what's going
9 on.

10 The one person he contacts who says, They told
11 me not to talk to you is Diane Hearn. "They." Who's
12 "they"?

13 MR. BOHLING: Objection.

14 MR. OSGOOD: "They" I submit to you are
15 these people up here. It wasn't --

16 THE COURT: Mr. Osgood, there's an
17 objection that needs to be addressed at the bench.

18 (Counsel approached the bench and the following
19 proceedings were had:)

20 MR. BOHLING: There's absolutely no
21 evidence in this trial anyone told Diane Hearn not to talk
22 to him. We had a pretrial hearing on this. That is an
23 unfounded thing to say.

24 MR. OSGOOD: I'm not saying the
25 government told her. My original theory was it was the
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1 government. The government took the stand and said it
2 wasn't.

3 MR. BOHLING: It's not in evidence.

4 THE COURT: You pointed toward the
5 government and said "they."

6 MR. OSGOOD: No. I'm saying it wasn't
7 the government. The "they" is the conspirators.

8 THE COURT: Objection is sustained.

9 (The proceedings returned to open court.)

10 THE COURT: Any reference by Mr. Osgood
11 that the government told Ms. Hearn not to talk to him is
12 to be stricken.

13 MR. OSGOOD: I'm not contending it was
14 the government that told her.

15 The fact remains she wouldn't talk to the
16 investigator. Fact remains scripts got loose from her
17 pharmacy. The fact remains they did not talk to any of
18 the people that worked at her pharmacy. The fact remains
19 they did not talk to anybody that worked at -- I'm sorry,
20 at her clinic. The fact remains they did not talk to
21 anybody that worked at the clinic down the hallway. Big
22 gap in the evidence there.

23 And who have they got on the hook? They've got
24 Dr. Elder. Why do they keep him on the hook over here at
25 Westfield? They keep him on the hook over here because

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1 they've got a track record with him up here in Kansas
2 City, and his name is all over the records up here in
3 Kansas City. So it makes sense. He's the patsy in the
4 case. We'll just keep using his script and his name and
5 they're going up there.

6 Now, before I run out of time, the real telltale
7 piece of evidence in this case, when you boil it all down,
8 is the financial end of it. Motive is not discussed in
9 the instructions that you get in this case. You won't see
10 a single instruction that says the government has to prove
11 motive, but we, as human beings, know that motive is what
12 drives people to do certain things. It's very important.

13 Motive for criminals and motive for conspirators
14 is profit, money. That's what drives them. That's what
15 makes the scheme work.

16 You've seen plenty of evidence in this case that
17 the motive here was massive profits, \$10 million for Dr.
18 Okose, a million for Ms. Rostie, \$100,000 for Ms. Martin.
19 Where is Dr. Elder's money? We know -- and they put a
20 picture of his house up that he just built about a year
21 ago to try and suggest to you that's where the -- he got
22 the money from, I guess.

23 Well, the truth is he has a mortgage for
24 \$295,000 on that nice house you saw a picture of. He paid
25 10 percent down which means he probably paid a point in

1 mortgage insurance because you've got to put 20 percent
2 down to get the good rates on mortgages. He's got 10
3 percent down on a \$295,000 balance on a house.

4 He owes \$250,000 in student loans. All the time
5 this was going on, he lived in a \$600-a-month apartment.
6 And he drove a pickup truck.

7 The telltale is he's audited by the Internal
8 Revenue Service in 2004 and 2005. Now, isn't that
9 convenient or isn't that odd? The scheme is going on at
10 this time and they're investigating him. And in '06,
11 after all this comes to light, he gets audited by the IRS.

12 Whose records did they not bring in here from
13 the Internal Revenue Service? They did not bring in Dr.
14 Elder's because he got a refund after they were done
15 auditing him.

16 Now, I asked their financial expert, sitting
17 right here at the counsel table, why didn't you check his
18 finances out? She says, Well, we follow the money trail,
19 we follow the money trail, and he didn't make any deposits
20 into the bank.

21 Well, you'll recall when I cross-examined her,
22 she, very capable lady, has a lot of credentials about
23 finances, she also only said, Well, nobody told me to so I
24 didn't do it. What did she not do? She did not do what
25 is known as a net worth analysis.

1 Now, when I was a federal prosecutor, I
2 prosecuted a lot of tax cases where we used that theory,
3 and I talked to her about that. And that theory is when
4 you can't show direct bank deposits or you can't show
5 somebody is directly not reporting income, the way you
6 prove it is what's called a net worth method. You go back
7 and look and see, well, how many cars does this person
8 own? How many boats do they own? How often are they
9 flying to Las Vegas? What's their track record up at the
10 casino? How much money are they spending there? How many
11 diamond rings has he bought for his wife? You look at all
12 of that, and you come up with what the person is worth.
13 It's pretty simple really.

14 You take a real clear picture of the person.
15 You say, Well, you've got all these assets, you've got all
16 this money and acquired property, and you can't account
17 for it because you've got a W-2 and a tax return that
18 shows you made X dollars, and you've got X plus way extra.
19 Where did it come from?

20 Well, it came from ill-gotten gain in those
21 cases. That's how you prove a tax evasion. They could
22 have done that here.

23 Why didn't they do it? They didn't do it
24 because they did not really believe he was getting
25 anything out of this. Now, why would he commit a crime if

1 he wasn't getting anything out of it? This is telltale.
2 This proves beyond any doubt whatsoever that he was being
3 used.

4 Now, I want to talk a little bit about his
5 testimony on the stand. My red light is coming on.

6 THE COURT: Wrap-up time.

7 MR. OSGOOD: He didn't do very well on
8 cross-examination. That was an exhibition of a
9 combination of anger, being victimized, frustration, and
10 his obvious, to me, innocence venting against this whole
11 situation and why he's here.

12 Now, I'm about done. I'm going to close right
13 now. I just want to remind you of something. I'm kind of
14 a history buff. I spent a lot of time off and on in the
15 Army too. I always admired our historical figures.

16 THE COURT: All right. Mr. Osgood,
17 let's wrap it up.

18 MR. OSGOOD: All right. Washington,
19 after he was president, after he was commander in chief in
20 the Army, he'd done all the things that he had done, all
21 of his accomplishments, he was interviewed by a biographer
22 once. And he asked him, What's the greatest thing in your
23 life that you ever did as far as you're concerned? He
24 said, Service on a jury, without hesitation because the
25 jury historically has been the buffer between the citizen

1 and its government, between the government and tyranny.

2 You stand as the buffer here. You stand in the
3 position to do the right thing. Please find Dr. Elder not
4 guilty.

5 Thank you.

6 THE COURT: I'll give the government an
7 extra minute or so.

8 GOVERNMENT'S CLOSING ARGUMENT

9 MR. RHODES: Defense counsel talked
10 about Parker. Where's Parker? It was Troy Solomon who
11 was actively involved. It was Troy Solomon who gave out
12 information on the drugs that he was trying to seek from
13 The Medicine Shoppe in Belton, Missouri.

14 It was Troy Solomon who maintained the
15 conversations and the communications with the pharmacy
16 owner, Lynn Rostie, and with Jill Gerstner. It was Troy
17 Solomon who was the one that was receiving the faxes at
18 his home. It was Troy Solomon who was the one that would
19 return those faxes.

20 It was Troy Solomon who was actively sending
21 those boxes. You saw all those UPS receipts. Sending
22 those boxes back to Lynn Rostie as well as to Cindy
23 Martin. That's what -- it was Troy Solomon who was
24 actively involved.

25 Defense counsel said that the prescriptions
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1 stopped before October 25 because Troy wanted it that way.
2 The prescriptions stopped because Mr. Van Fleet made an
3 inspection, and at that time Lynn Rostie, you heard her
4 from the witness stand, she stated, At that time I stopped
5 doing it. That's why the prescriptions stopped. Not
6 because of Troy Solomon. Lynn Rostie stopped it right
7 then and there.

8 There's this lag time that he spoke of. First,
9 they say that the fax headers, time is wrong, it could be
10 coincidence, that it could be set wrong but now it's set
11 right. But regardless of how you look at it, those faxes
12 were coming to the home fax machine of Troy Solomon. They
13 were coming at a time when -- even after ANP was open,
14 which they had a fax machine, he chose to use his home fax
15 machine. That's because he wanted to keep this stuff
16 hidden, and he wanted to keep it underground.

17 Bank bands, another point that was brought up.
18 Anybody can go to a bank and get some bank bands. It
19 doesn't mean that it's legitimate if you put a bank band
20 on some cash. That doesn't -- that doesn't mean anything.
21 So the testimony about the bank bands doesn't go anywhere.

22 Now, we're -- we were brought in about Delmon
23 Johnson. Delmon Johnson was not a credible witness. He
24 contradicted himself on the witness stand. He said to
25 Mr. Lewis, yeah, I can identify the handwriting. Then on

1 cross-examination, no, I can't identify the handwriting.

2 Well, maybe I can, maybe I can't, maybe I can't.
3 He didn't even know if he could identify the handwriting.
4 And then Parker, Mr. Parker, who he said he had known for
5 30 years, but he could not identify his handwriting. And
6 he did not say that was Mr. Parker's handwriting as well.

7 Then we heard about this -- the good faith.
8 There is no good faith when you are continuously faxing
9 prescriptions and prescription orders where it has the
10 same strength, the same drugs over and over and over
11 again. There's no good faith in that. He was intimately
12 involved.

13 He was intimately involved in knowing about
14 these drugs going up there and coming back. And the whole
15 idea that he's taking boxes, boxes that are wrapped and
16 not knowing what's in them, yet still you all saw that in
17 -- on one of those UPS packages, the one that he sends to
18 Lynn Rostie because you heard from Bobby Parikh, he said
19 it was Troy Solomon each and every time who mailed all
20 those boxes.

21 He put down "declare volume" to kind of insure
22 that box. But what was more telling was, it says the
23 content of the goods, and he said medicine. So he knew
24 what this was all about and he was involved.

25 There also was this -- not to bicker with it,
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1 but it was Dr. Elder when he was asked did he begin on
2 July 1, 2004, he said, according to Dr. Elder, he began in
3 late July, early August. So even he upped up the time.

4 Then there was a comment about Pleshette.
5 Pleshette told you, her testimony was that there were
6 hardly any patients at the clinic. So for -- to make the
7 assumptions that he was seeing 10 patients a day when
8 Ms. Johnson stated that there were hardly any patients
9 there, conflicts with that testimony.

10 Dr. Elder brings up his 1099 of \$5,000. As you
11 heard the testimony, Troy Solomon liked to pay everyone in
12 cash. How did he pay Cindy Martin? Cash. Lynn Rostie
13 got paid in cash. Even when it was time for the Johnsons,
14 for him to make an investment with the Johnsons, he said
15 he paid them \$25,000 in cash. Dr. Elder got paid in cash
16 and he didn't report it.

17 We hear about the government got excited because
18 of the faxes and his signature. Whether or not, whether
19 or not you believe that Dr. Elder wrote his initials or
20 signed off on those faxes, he is still part of the
21 conspiracy. This all began with his original
22 prescriptions. He's still a member of it, and whether or
23 not you believe he signed off on the faxes, he's still a
24 part of that conspiracy. You will see that in the jury
25 instructions.

1 There is also this theory now everybody is in it
2 against him. He leaves one place, South Texas Wellness
3 Center, I'm talking about Dr. Elder, and goes to
4 Westfield. And lo and behold the same thing happens to
5 him on the very first day that he starts.

6 His prescriptions, copies of prescriptions that
7 he had written end up in Missouri. That is not a
8 coincidence. That is a purposeful act being a part, being
9 a member, and a partnership with Troy Solomon.

10 And speaking of the other doctor, when there's a
11 mention of he came clean -- as far as Troy Solomon said he
12 came clean, said why don't you talk to Dr. Okose about
13 that. Yeah, why not talk to him? He's involved with you.

14 Why not have the pharmacist call that doctor
15 because he, as you heard from Mr. Klemen, saw Troy Solomon
16 at that clinic, Universal Medical Clinic. So why not have
17 Quan Pham call that doctor because he knew that doctor was
18 going to tell her what needed to be done to keep her to
19 keep on working.

20 But she went beyond that. She did not say she
21 talked to three patients. She said she tried to call
22 three patients, and she was only able to get in contact
23 with one. And even that one person that she spoke to
24 sounded kind of out of it, hazy, and she didn't take his
25 word for it -- take that person's word for it when she got

1 off the phone with that person.

2 Soon thereafter you heard that she put in her
3 resignation because she was uneasy about the drugs in the
4 same strength. And not only that, Mr. Solomon, Troy
5 Solomon working alongside of her on a Saturday knowing
6 about her unease and her unrest.

7 There's also testimony that -- there was
8 statements made that the government did not talk to
9 anybody at the Westfield Clinic. The government talked to
10 Cheryl Floyd. The government talked to Diane Hearn. You
11 heard from Diane Hearn.

12 Then we hear about motive. What could be the
13 motive for Dr. Elder? Well -- because of the tax records.
14 Crooks do not report illegal gains. He's not going to put
15 them on the tax returns, and an audit would not reflect
16 those illegal gains.

17 I see that my time is up.

18 THE COURT: I'll give you a minute to
19 wrap it up, Mr. Rhodes.

20 MR. RHODES: Those are the faces of your
21 new prescription drug dealers. We're asking you to come
22 back with a verdict that is just, a verdict of guilty for
23 Dr. Christopher Elder and guilty for Troy Solomon.

24 Thank you.

25 THE COURT: All right. Ladies and
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1 gentlemen of the jury, I will in just a moment recess so
2 you might begin your deliberations.

3 Before doing so, I need to separate from your
4 group the alternates in this case, Ms. Gordon and Ms.
5 Zawada.

6 Rhonda, if you would assist them to get their
7 things if you have anything in the jury room you need to
8 get. Rhonda will have some instructions for you as well.

9 For those members of the jury panel, couple of
10 housekeeping comments. When you are escorted back in the
11 jury room for your deliberations, there are individual
12 instructions in binders waiting for you in the jury room.
13 We're going to give you some time to do what you do after
14 a break, and then ask that you go ahead and start talking
15 about the case. About 12:30 we'll make provisions for
16 lunch for you. Rhonda will tell you about how that is to
17 be done.

18 And you can take your lunch and then continue
19 your deliberations. You should know that I'm not going to
20 require you to be here until 10 or 11 o'clock at night.
21 We'll probably break for the evening somewhere around five
22 like we've been doing or maybe give or take a little more.
23 If you have not been able to reach your verdict, then we
24 can start up again in the morning, if that is necessary.
25 I just want you to know you don't have to feel pressured

1 to make a decision because of the threat of being here all
2 night.

3 That's not going to be part of this process.
4 All exhibits that have been received into evidence without
5 limitation will be gathered and brought to you in the jury
6 room so that you'll have those available to you and you
7 won't have to request any exhibits. They will be given to
8 you once you get there.

9 As I told you early on, you have to rely upon
10 your collective recollection. It's not likely that the
11 court is going to be going through and getting transcripts
12 of individual witness' testimony. So you need to talk
13 about that testimony among yourselves and between your
14 collective memories come up with what you believe the
15 evidence was.

16 I believe that's pretty much the housekeeping
17 that I want to give you at this time. So we'll stand in
18 recess while you commence your deliberations on this
19 matter.

20 Thank you.

21 (The jury retired to the jury room to begin their
22 deliberations at 11:45 a.m.)

23 (The following proceedings were had out of the
24 presence of the jury:)

25 THE COURT: Just so you know, I'm
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1 keeping the alternates around. I don't want anybody
2 coming up to ask them any questions. They will be in a
3 designated location, and they may come out for something
4 to eat or something like that.

5 (At 1:30 p.m. the jury indicated they had a question, and
6 the following proceedings were had out of the presence of
7 the jury:)

8 THE COURT: You can put your heads
9 together and come up with a list showing what was received
10 and what wasn't. Otherwise, I'll tell them they'll have
11 to figure it out for themselves, and we'll be here for a
12 long time.

13 MR. BOHLING: Right. The problem is we
14 have 1,200 exhibits.

15 THE COURT: You know what's on your
16 list. Rhonda can help you fashion your list. We know
17 what's received in evidence. We'll just come up with an
18 independent list.

19 MR. LEWIS: I think we can very easily
20 Xerox their list and deal with Mr. Osgood's concern, black
21 mark another copy.

22 MR. BOHLING: We definitely have to
23 blackout anything that's not in evidence. I agree with
24 that. Then if these gentlemen have some way -- I think we
25 were fairly neutral, but if there's someplace where they

1 think it shouldn't be worded that way for the jury, that's
2 fine.

3 MR. LEWIS: Let's get us a working copy
4 of your exhibit list then.

5 MR. OSGOOD: It's right here.

6 THE COURT: Let me know. I'm on a
7 conference call.

8 (A recess was taken.)

9 (At 2:10 p.m. the jury indicated they had a question, and
10 the following proceedings were had out of the presence of
11 the jury:)

12 THE COURT: I've got a question from the
13 jury that Rhonda brought me that's different than the one
14 you're looking at. When you get a chance, take a look at
15 that and my response and we'll make a record.

16 For the purpose of the record, I'll read it in.
17 Question from the jury: "We would like to see a copy of
18 Dr. Elder's testimony."

19 My response is as No. 49 Instruction, "Members
20 of the jury, I reviewed your request regarding the
21 testimony given during trial. You must rely upon all
22 evidence presented during the trial and your collective
23 memory of that evidence, including testimony of all
24 witnesses," to which I understand there's no objection.

25 MR. OSGOOD: No objection.
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1 MR. RHODES: No objection from the
2 government.

3 (A recess was taken.)

4 (The following proceedings were had in the courtroom out
5 of the presence of the jury:)

6 MR. BOHLING: Everybody has signed off
7 on all of those.

8 THE COURT: And no objection?

9 MR. LEWIS: No objection.

10 MR. OSGOOD: No objection.

11 THE COURT: What I'll do is just have
12 Rhonda -- I notice that defendants have theirs labeled as
13 their respective list, but this one doesn't have
14 government's on it.

15 MR. BOHLING: We can write that on.

16 THE COURT: I think just to avoid
17 another question, you should do that.

18 MR. BOHLING: I'll do that.

19 THE COURT: There being no objection,
20 I'm sending back the logs.

21 (Verdict Read.)

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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