

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF KENTUCKY
3 CENTRAL DIVISION
LEXINGTON, KENTUCKY

4 UNITED STATES OF AMERICA,) Lexington Criminal
5) Action No. 15-87
6 Plaintiff,)
7) At Lexington, Kentucky
8 -vs-)
9) February 27, 2017
10 SAMUEL A. GIROD,) 9:00 a.m.
11)
12 Defendant.) DAY 1

13 TRANSCRIPT OF JURY TRIAL PROCEEDINGS
14 BEFORE THE HONORABLE DANNY C. REEVES
15 UNITED STATES DISTRICT JUDGE

16 Appearances of Counsel:

17 On behalf of Plaintiff: KATE K. SMITH, ESQ.
18 GARY TODD BRADBURY, ESQ.
19 Assistant U.S. Attorney
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23 On behalf of Defendant: SAMUEL A. GIROD, PRO SE

24 On behalf of Defendant: MICHAEL B. FOX, ESQ.
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19 Court Reporter: PEGGY W. WEBER, RPR
20 Official Court Reporter
21 U.S. District Court
22 P.O. Box 362
23 Lexington, Kentucky 40588
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25 Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Whereupon, Day 1 of the Jury Trial proceedings
2 commenced on Monday, February 27, 2017, at 9:00 a.m.,
3 on the record in open court, without the prospective
4 juror members present, as follows.)

5 THE COURT: Thank you.

6 Madam Clerk, if you would call the matter
7 scheduled for trial this morning.

8 THE CLERK: Yes, Your Honor.

9 Lexington Criminal Action Number 15-87,
10 United States of America versus Samuel Girod, called for
11 jury trial.

12 THE COURT: Thank you.

13 And if counsel could state their appearances,
14 please.

15 MS. SMITH: Kate Smith on behalf of the
16 United States.

17 THE COURT: Thank you.

18 MR. BRADBURY: Todd Bradbury for the
19 United States.

20 THE COURT: Thank you.

21 MS. SMITH: We have Brenna Rogers, my legal
22 assistant, and Special Agent Steven Lamp with us.

23 THE COURT: Thank you.

24 And Mr. Lamp will be the case agent --

25 MS. SMITH: Yes.

1 THE COURT: -- present throughout the trial?

2 MS. SMITH: Yes.

3 THE COURT: All right. Thank you.

4 Mr. Fox.

5 MR. FOX: Good morning, Your Honor.

6 DEFENDANT GIROD: Good morning, Your Honor.

7 THE COURT: Good morning.

8 Couple matters that we'll review before we call
9 the jury in this morning at 9:30.

10 Before you came in to the courtroom this
11 morning, there should have been four items placed on
12 counsel table.

13 There's an order denying the motion to dismiss,
14 which I believe was filed on Thursday of last week.

15 You should also have some draft jury
16 instructions, for the conclusion of the case. Now, I
17 wanted to give the parties those draft jury instructions
18 early, so you would have sufficient time to review those,
19 rather than waiting until the conclusion of all the proof
20 in the case. Of course, the instructions may change,
21 based upon the proof that's presented, but I wanted the
22 parties to have as much time as possible to have those
23 for review.

24 The other two items that you should have on
25 your tables would be a statement of the case and

1 preliminary jury instructions.

2 I will use the statement of the case in
3 describing to the jury what the case is about.
4 Hopefully, you've had the opportunity to review the
5 statement of the case.

6 Now, the preliminary jury instructions would
7 include, as you can see, they will include the elements
8 of the offenses that are charged in Counts 1 through 13.

9 I will give the preliminary jury instructions
10 after the jury has been selected and prior to opening
11 statements in the case.

12 As we discussed last week, the parties have
13 requested up to 35 minutes per side for their opening
14 statements.

15 And I will remind the parties that, of course,
16 the opening statement is the opportunity to explain to
17 the jury what each side believes the testimony will be in
18 the case, and may not be used to argue the case.

19 Since I'll be doing the voir dire, I would
20 expect that the parties would -- or at least the
21 United States would want me to identify potential trial
22 witnesses.

23 Is that accurate, Ms. Smith?

24 MS. SMITH: I'm sorry? I don't think I --

25 THE COURT: Would you like for me to identify

1 your potential trial witnesses?

2 MS. SMITH: Yes, Your Honor.

3 THE COURT: All right. And if defendant would
4 like me to do the same, I'll certainly -- I'll certainly
5 do that if requested.

6 And at this time if the parties would like,
7 I'll again go through -- or go over the procedures for
8 selecting the jury. Would either side like me to do
9 that, or do feel like you're comfortable with the
10 selection process?

11 MS. SMITH: I'm comfortable but defer to the
12 defendant.

13 THE COURT: All right.

14 DEFENDANT GIROD: I think we're okay.

15 THE COURT: All right.

16 DEFENDANT GIROD: Thank you.

17 THE COURT: Yes, sir.

18 What we'll do this morning, when the jury comes
19 in is we'll have -- I believe there's one row that we'll
20 need to keep vacant on the right side, this first row
21 over here behind the defendant's table. We'll be able to
22 fill up the remaining four rows with jurors, and then we
23 have 24 seats up here. So we'll fill this up first.
24 We'll fill these seats up first.

25 COURT SECURITY: Yes, sir.

1 THE COURT: We'll fill all 24 up first. And
2 then we'll use the remaining seats for the other jurors.
3 If we need to squeeze people in a bit in the back, then
4 we can certainly do that.

5 COURT SECURITY: Yes, sir.

6 THE COURT: We'll have more room after we
7 select the jury, and then as necessary we'll need to move
8 folks around as we do pick the jury.

9 I will remind the parties that after challenges
10 for cause have been exercised, we'll have two panels, a
11 panel of 28 and a panel of four, and the panel of 28 the
12 defendant gets 10 peremptory challenges, the government
13 gets six. That gets us down to the 12. The first 12
14 called but not stricken will be the jurors seated in the
15 case. The last four jurors, panel of four, will be for
16 the two alternates that will be seated. Each side gets
17 one strike against the panel of alternates. We'll seat
18 two alternates in the case.

19 All right. Madam Clerk, how many jurors do we
20 have present at this time?

21 THE CLERK: 53, Your Honor.

22 THE COURT: We have 53 here?

23 THE CLERK: That's the last I heard.

24 THE COURT: We only had 52 called in so we have
25 more than --

1 THE CLERK: I'm sorry, Your Honor, I was
2 thinking of the -- I'm sorry, 52.

3 THE COURT: All right. We have 52 present?

4 THE CLERK: Yes.

5 THE COURT: All right. About 9:15 we'll go
6 ahead and bring the jurors into the courtroom.

7 Please call the roll before I come back in, and
8 we'll be ready to go with the jury selection at 9:30.

9 I'll remind any spectators that, of course, you
10 can't have any conversations with potential jurors in the
11 case.

12 All right.

13 DEFENDANT GIROD: Your Honor.

14 THE COURT: Yes, sir.

15 DEFENDANT GIROD: I have one question.

16 THE COURT: Yes, sir.

17 DEFENDANT GIROD: My boys are more involved
18 almost than what I am at this point because I was
19 incarcerated. But I was wondering if one of the boys
20 could sit here with him that we could discuss. It would
21 be about like an attorney brings in a paralegal.

22 THE COURT: Well, if you're using the person as
23 an attorney, and it would be different. It's not --

24 DEFENDANT GIROD: I'm not using him as an
25 attorney, but I forget so many things that I think they

1 can remind me of some things that would be helpful.

2 THE COURT: Well, of course, you do have
3 standby counsel that's available to assist you if you do
4 need to use standby counsel, but I can't allow family
5 members to sit at counsel table with you.

6 DEFENDANT GIROD: Okay.

7 THE COURT: All right.

8 DEFENDANT GIROD: Thank you.

9 THE COURT: We will be in recess.

10 (Whereupon, a recess was taken at 9:05 a.m., during
11 which the clerk of the Court called the roll of the
12 prospective juror members, in which there were 52
13 prospective juror members present, and Day 1 of
14 the Jury Trial proceedings continued at 9:30 a.m., on the
15 record in open court, with the prospective juror members
16 present, as follows.)

17 THE COURT: Good morning everyone.

18 Madam Clerk, if you would call the matter
19 that's scheduled for trial today.

20 THE CLERK: Yes, Your Honor.

21 Lexington Criminal Action Number 15-87,
22 United States of America versus Samuel Girod, called for
23 jury trial.

24 THE COURT: Thank you.

25 And, Madam Clerk, you called the roll of the

1 jury, and all 52 are present; is that correct?

2 THE CLERK: Yes, Your Honor.

3 THE COURT: All right. Thank you.

4 If the attorneys could state their appearances,
5 please, for the jury.

6 MS. SMITH: Good morning everyone.

7 I'm Kate Smith, and I represent the
8 United States in this matter. Good morning.

9 MR. BRADBURY: Todd Bradbury, Assistant U.S.
10 Attorney.

11 THE COURT: Thank you.

12 In this matter the defendant has chosen to
13 represent himself.

14 Mr. Girod, if you would like to introduce
15 yourself to the jury, please.

16 DEFENDANT GIROD: Introduce myself?

17 THE COURT: Yes, sir, if you would.

18 DEFENDANT GIROD: I'm Samuel Girod, and I'm
19 here because of what happened, and so that's all I can
20 say right now.

21 THE COURT: All right. Yes, sir. Thank you.

22 DEFENDANT GIROD: Thank you, Your Honor.

23 THE COURT: And Mr. Fox is also present as
24 standby counsel.

25 MR. FOX: Thank you, Your Honor. Michael Fox.

1 THE COURT: All right. Thank you.

2 Again, ladies and gentlemen, welcome to
3 Lexington. If you're not from here, I know that it's
4 been raining this morning, and it's difficult to get
5 here, but we do appreciate everyone's attendance.

6 Before we begin with the jury selection, I'd
7 like to ask the clerk to administer the oath to all of
8 our jurors to answer questions.

9 THE CLERK: Could you all please stand and
10 raise your right hand?

11 Do you and each of you solemnly swear or affirm
12 that you will true and perfect answers make to the
13 questions which will now be asked of you touching upon
14 your qualifications to sit as jurors in the United States
15 District Court for the Eastern District of Kentucky, as
16 you shall answer under God?

17 Do each of you so swear or affirm?

18 (Affirmative responses heard)

19 THE COURT: Thank you, and please be seated.

20 I understand that we have about 14 new jurors
21 that have not appeared previously.

22 Madam Clerk, if you could identify those jurors
23 by number.

24 And, ladies and gentlemen, if you're new, as
25 your number is called, if you would please stand, and

1 then I have just a few questions for you.

2 THE CLERK: 499, 617, 626, 627, 632, 633, 635,
3 639, 640, 643, 645, 646, 647, and 651.

4 THE COURT: Now, before I ask these questions,
5 let me see if we have anyone else that's not appeared
6 previously and has not been qualified previously.

7 (No response)

8 THE COURT: All right. If you would, please,
9 respond to the following questions. These are the same
10 questions that you were asked when you filled out your
11 questionnaire, but my purpose is to determine if the
12 information is still accurate.

13 Are each of you citizens of the United States?

14 (Affirmative responses)

15 THE COURT: Are each of you 18 years of age or
16 older?

17 (Affirmative responses)

18 THE COURT: Has your primary residence for the
19 past year been in this state and also in the same county?

20 (Affirmative responses)

21 THE COURT: Do you read, write, speak, and
22 understand the English language?

23 (Affirmative responses)

24 THE COURT: Are any charges now pending against
25 you for a violation of state or federal law punishable by

1 imprisonment for more than one year?

2 (Negative responses)

3 THE COURT: Have any of you ever been convicted
4 either by a guilty or nolo contendere plea or by court or
5 jury trial for a state or federal crime for which
6 punishment could have been more than one year in prison?

7 (Negative responses)

8 THE COURT: And do any of you have any physical
9 or mental disabilities that would interfere with or
10 prevent you from serving as a juror if you are selected?

11 (Negative responses)

12 THE COURT: All right. Thank you, and you may
13 be seated.

14 All of these jurors are qualified, Madam Clerk.

15 THE CLERK: Yes, Your Honor.

16 THE COURT: Now, ladies and gentlemen, we will
17 begin the selection process at this time. I'm going to
18 start by asking you a number of questions to determine if
19 you know anything about this case and to ensure that
20 you're otherwise qualified to be seated as jurors in the
21 matter.

22 I do want to remind you that as you respond to
23 my questions, that, of course, you are subject to the
24 oath that you were given just a moment ago. So it's
25 necessary that you give full and complete answers to all

1 the questions that I'll be asking you.

2 The procedures that I follow is I ask you not
3 to talk among yourselves while we are in the process of
4 selecting a jury.

5 If you do have a response that you need to
6 give, if you would please raise your hand until you're
7 identified.

8 Now, we have a lot of folks in the courtroom,
9 and if I don't see you, one of the security officers may
10 help me to pick you out. But don't give up. If I don't
11 identify you, make sure that you raise your hand so that
12 I can call on you to give your answers.

13 Now, there may be some of you that will give
14 more than one answer as we go through this process. What
15 I ask you to do is every time you give an answer if could
16 please identify yourself by your juror number. You don't
17 need to give me your name, but just your juror number,
18 and you need to do that every time that you respond to a
19 question because I may begin to recognize you by your
20 answers, but the court reporter is not going to be able
21 to get that down. So you'll need to first, give me your
22 number every time that you do respond to a question.

23 Now, let me begin by telling you a little bit
24 about this case, and then I'll ask you some questions to
25 see if you know anything about the case or if you've

1 heard about the case.

2 Now, ladies and gentlemen, 13 counts or charges
3 will be presented for your consideration during this
4 trial.

5 Defendant Samuel Girod is a member of the Amish
6 community in Bath County. It's alleged that he operated
7 a business in that community called Satterfield Naturals.

8 The defendant is charged in Count 1 with
9 conspiring to prevent by force, intimidation, or threat,
10 the United States Food & Drug Administration safety
11 compliance officers from performing their duties, in
12 violation of Title 18 of the United States Code,
13 Section 372.

14 In Count 2 he's charged with corruptly, by
15 threats and force and by threatening communication,
16 obstructing, impeding, and endeavoring to influence,
17 obstruct, and impede the administration of law under a
18 proceeding pending before the Food and Drug
19 Administration, in violation of Title 18 of the
20 United States Code, Section 1505.

21 It's alleged that the conduct described in
22 Counts 1 and 2 occurred on or about November 21st, 2013.

23 In Count 3 it's alleged that the defendant,
24 with the intent to defraud or mislead, operated an
25 establishment at 409 Satterfield Lane in Owingsville,

1 Kentucky, at which he manufactured, prepared, propagated,
2 and processed Chickweed Healing Salve, TO-MOR-GONE, and
3 R.E.P., and similar products, which he failed to register
4 with the FDA as required by federal law in violation of
5 Title 21 of the United States Code, Section 331,
6 subsection (p).

7 Now, it's alleged that this conduct occurred
8 from on or about September of 2013 through on or about
9 July 2015.

10 It's alleged in Counts 4 through 11 that the
11 defendant, with the intent to defraud or mislead,
12 introduced and delivered for introduction into interstate
13 commerce quantities of substances, including Chickweed
14 Healing Salve, TO-MOR-GONE, and R.E.P., which constituted
15 misbranded drugs, in violation of Title 21 of the
16 United States Code, Section 331, subsection (a).

17 It's alleged that this conduct occurred on or
18 about September 27th, 2013, with respect to Count 4; on
19 or about October 14th, 2013, with respect to Counts 5 and
20 6; and on or about November 13th, 2013, with respect to
21 Count 7, 8, 9, and 10; and then on or about January 10th,
22 2014, with respect to Count 11.

23 In Count 12 the defendant is charged with
24 knowingly threatening, attempting to threaten, attempting
25 to corruptly persuade, and engaging in misleading conduct

1 toward an individual with the intent to cause and induce
2 that individual to withhold records and documents from
3 the investigation of a federal grand jury in the
4 Eastern District of Kentucky in violation of Title 18 of
5 the United States Code, Section 1512(b)(2)(A).

6 Now, this conduct is alleged to have taken
7 place on or about December 15th, 2014.

8 Finally, in Count 13, the defendant is charged
9 with knowingly and willfully failing to appear for a
10 status conference in this matter on or about August 26th,
11 2016, having been released pending trial, after having
12 been charged with witness tampering.

13 The defendant's failure to appear charge is
14 alleged to be in violation of Title 18 of the
15 United States Code, Section 3146(a)(1).

16 Now, the conduct described in Counts 1 through
17 12 is alleged to have occurred in Bath County, Kentucky.

18 The conduct described in Count 13 is alleged to
19 have occurred here in Fayette County, Kentucky.

20 Now, the defendant, Mr. Girod, denies all of
21 the charges contained in the indictment.

22 Now, having summarized briefly the charges for
23 you, let me ask if there's anyone that knows anything
24 about the case personally or through third parties or
25 through any other sources. See if anyone knows anything

1 about the case.

2 We have a couple of hands raised. Now, what
3 I'll do I usually will start on the right side, left
4 side, and then go to the jury box. And, so again, if you
5 would, don't let me forget to come back to you.

6 Ma'am, on the back row, if you could please
7 stand up, and if you could give me your juror number,
8 please.

9 PROSPECTIVE JUROR NUMBER 513: Yes, sir.
10 Juror 513.

11 THE COURT: Yes.

12 PROSPECTIVE JUROR NUMBER 513: And I just -- if
13 you want me to stay --

14 THE COURT: If you can just tell me generally
15 what you -- how you received information about the case.

16 PROSPECTIVE JUROR NUMBER 513: Yeah. I have
17 some friends within the community in Fleming County that
18 know of the case, the Amish community in Fleming County,
19 that know of the case, in Bath County.

20 THE COURT: All right.

21 PROSPECTIVE JUROR NUMBER 513: They've
22 discussed it with me.

23 THE COURT: All right. Is there anything about
24 the conversations that you would have had with your
25 friends that would prevent you from being a fair and

1 impartial juror if you were seated in this case?

2 PROSPECTIVE JUROR NUMBER 513: I do have a
3 certain bias.

4 THE COURT: All right. You do?

5 PROSPECTIVE JUROR NUMBER 513: Yes, sir.

6 THE COURT: Would that be that you would tend
7 to favor the defendant in the case if you were seated
8 based upon your friendships?

9 PROSPECTIVE JUROR NUMBER 513: Yes, sir.

10 THE COURT: All right. Thank you, ma'am.
11 Thank you.

12 And anyone -- yes, ma'am, in the back row also.

13 PROSPECTIVE JUROR NUMBER 502: Juror 502.

14 THE COURT: Yes.

15 PROSPECTIVE JUROR NUMBER 502: My husband is
16 from Bath County, Owingsville in Bath County.

17 THE COURT: From where in Bath County?

18 PROSPECTIVE JUROR NUMBER 502: Owingsville.

19 THE COURT: Owingsville. And is your husband
20 or has your husband heard something about the case?

21 PROSPECTIVE JUROR NUMBER 502: He also works
22 for WKYT and has heard of the case.

23 THE COURT: And have you discussed the matter
24 with him?

25 PROSPECTIVE JUROR NUMBER 502: Yes. When it

1 originally came out in the news, we --

2 THE COURT: All right.

3 PROSPECTIVE JUROR NUMBER 502: Discussed it
4 among ourselves.

5 THE COURT: All right. Now, is there anything
6 about your conversations that would prevent you from
7 being a fair and impartial juror if you were seated in
8 the case?

9 PROSPECTIVE JUROR NUMBER 502: No.

10 THE COURT: If you are seated in the case, you
11 would have to set aside anything that you might have seen
12 or heard before coming into the courtroom and base the
13 decision solely on the evidence that's presented and also
14 in the context of the law that I'll be giving to you.

15 Do you feel like you could do that if you were,
16 in fact, seated as a juror?

17 PROSPECTIVE JUROR NUMBER 502: Yes, sir.

18 THE COURT: Now, one of the other things that
19 jurors are required to do, and I'll go into this in a
20 little more detail in just a moment. You can't talk with
21 anyone about the case while the matter is pending.

22 Now, after the case is over, if you choose to
23 discuss the matter, you're certainly free to do so. But
24 during the case you can't talk with anyone, friends,
25 family members, about your status as a juror or anything

1 that you see or hear in the courtroom. You can't receive
2 any information from anyone, including, of course, your
3 husband or children, family members.

4 If you were seated, do you feel like you could
5 follow that instruction?

6 PROSPECTIVE JUROR NUMBER 502: (Nods head)

7 THE COURT: All right. Thank you.

8 Anyone on the left side of the courtroom? If
9 not, I'll go back to the jury box.

10 Yes, ma'am, the third person over.

11 PROSPECTIVE JUROR NUMBER 539: Juror 539. I
12 just heard about it on the Lexington news a few weeks
13 ago.

14 THE COURT: All right. Is there anything about
15 what you might have heard on the news that would prevent
16 you from being a fair and impartial juror if you were
17 seated in the case?

18 PROSPECTIVE JUROR NUMBER 539: Absolutely not.

19 THE COURT: And I'm sure you understand that
20 there's a lot of information that circulates about cases
21 before the cases go to trial. Some of it may be true,
22 some of it may be completely untrue. And so it's
23 important when we seat a juror in the case, that they set
24 aside any ideas, thoughts, or notions they may have about
25 a case.

1 The fact that you've heard about it doesn't
2 prevent you from being a juror, but you have to be able
3 to set all of that aside.

4 Do you feel like you can do that if you're
5 seated in this case?

6 PROSPECTIVE JUROR NUMBER 539: Yes.

7 THE COURT: All right. Thank you, ma'am.

8 Anyone else that I didn't identify?

9 (No response)

10 THE COURT: Well, again, let me expand the
11 question a bit. Let me see if anyone has read anything
12 about the case in the newspaper, listened to any report
13 about the case, on television or radio, or through any
14 types of social media.

15 (No response)

16 THE COURT: Each of you were contacted by the
17 clerk's office to appear here today. Now, other than
18 being contacted by the clerk's office, let me see if any
19 potential juror has been contacted by anyone else about
20 this case.

21 (No response)

22 THE COURT: As I just mentioned to one of or
23 prospective jurors, if you are selected as a juror in the
24 case, there might be some newspaper, television, or radio
25 coverage about the matter. And if you are selected,

1 you'll be admonished, or instructed by the Court, that
2 you can't read, watch, or listen to anything about the
3 case. There will be some other admonitions, but that
4 will be one that will be given to you.

5 Do each of you agree that if you are selected
6 that you will follow that admonition? Is there anyone
7 who couldn't do that? Let me ask it that way. Anyone
8 who could not follow that admonition?

9 (No response)

10 THE COURT: And, again, if you're selected as a
11 juror, you can't talk with anyone about the case while
12 it's ongoing. After the case is over, the admonition is
13 lifted, and if you want to talk about the case, you can.
14 You're not required to, but you're allowed to.

15 Is there anyone who couldn't follow that
16 admonition and not talk about the case with anyone?

17 (No response)

18 THE COURT: I assume from your silence that
19 everyone could follow that admonition as well.

20 Now, earlier I summarized the claims for you,
21 the 13 counts that will be presented to the jury if you
22 would be selected in the case.

23 Let me ask if we have anyone here who has been
24 involved in such a case, either as a party, a witness, or
25 a juror that such claims have been made?

1 (No response)

2 THE COURT: I have briefly described for you
3 the counts that will be presented. Is there anyone here
4 who feels that it should not be illegal to engage in the
5 conduct that I've described to you in those 13 counts?

6 Again, those are allegations. They have not
7 been proven, but is there anyone here who believes that
8 it should not be illegal to engage in that conduct that
9 I've described earlier?

10 (No response)

11 THE COURT: Earlier the attorneys introduced
12 themselves to you. The defendant introduced himself to
13 you as well, and so I want to again reintroduce the
14 attorneys and the parties, and then I'll ask if anyone
15 knows the attorneys, if you've ever been involved in any
16 cases with the attorneys, or again if you know the
17 defendant in the case.

18 Now, the United States in this matter is
19 represented by Assistant United States Attorneys
20 Kate Smith and Todd Bradbury, and they're seated over to
21 my left, and they introduced themselves to you earlier.

22 Now, the case agent in this matter is
23 Steven Lamp who's a special agent with the Federal Food &
24 Drug Administration.

25 Thank you.

1 And also we have a paralegal with you that will
2 be assisting you as she's presents the proof.

3 It's Brenna Rogers; correct?

4 PARALEGAL ROGERS: Yes.

5 THE COURT: All right. Thank you.

6 PARALEGAL ROGERS: You're welcome.

7 THE COURT: And you-all can be seated.

8 Now, over to my right I've introduced Mr. Girod
9 to you, and he's seated at the counsel table, and he's
10 standing up.

11 And also he has standby counsel. He's going to
12 represent himself in this matter, but he has standby
13 counsel that's able to assist if he wishes to have that
14 assistance in the matter.

15 Thank you, gentlemen.

16 MR. FOX: Thank you.

17 THE COURT: Now, let me ask if anyone either
18 knows the defendant, the attorneys, the United States
19 paralegal, or the case agent that I've identified.
20 Anyone know those individuals personally?

21 We've got a couple of folks here. Let me start
22 back over on the left side, sir, in the first row. If
23 you could please stand up.

24 PROSPECTIVE JUROR NUMBER 482: 482.

25 THE COURT: What is it?

1 PROSPECTIVE JUROR NUMBER 482: 482.

2 THE COURT: 482.

3 PROSPECTIVE JUROR NUMBER 482: I was a jury
4 member in January. Mr. Bradbury was the prosecuting
5 attorney.

6 THE COURT: All right. Was it one of my cases,
7 or was it --

8 PROSPECTIVE JUROR NUMBER 482: No.

9 THE COURT: -- one of Judge Hood's or
10 Judge Caldwell's?

11 PROSPECTIVE JUROR NUMBER 482: Judge Hood.

12 THE COURT: Judge Hood, all right.

13 Is there anything about that case that would
14 prevent you from being fair and impartial to both sides
15 in this matter if you were selected as a juror?

16 PROSPECTIVE JUROR NUMBER 482: No.

17 THE COURT: All right. Is there anything that
18 Mr. Bradbury did that would cause you to act differently
19 than you would in any other case?

20 PROSPECTIVE JUROR NUMBER 482: No.

21 THE COURT: In other words, would you favor or
22 disfavor one side or the other based on his
23 representation?

24 PROSPECTIVE JUROR NUMBER 482: No, I would not.

25 THE COURT: All right. Thank you, sir.

1 Yes, sir, in the second row.

2 PROSPECTIVE JUROR NUMBER 503: 503. I was on
3 the same case with Mr. Bradbury.

4 THE COURT: Would your responses be the same?

5 PROSPECTIVE JUROR NUMBER 503: Yes, sir.

6 THE COURT: All right. There's nothing that
7 happened in that case which would cause you to favor or
8 disfavor one side or the other?

9 PROSPECTIVE JUROR NUMBER 503: No, sir.

10 THE COURT: And you understand that every case
11 is different, and the evidence in every case is
12 different, and it has to be considered separately;
13 correct?

14 PROSPECTIVE JUROR NUMBER 503: Yes, sir.

15 THE COURT: All right. Thank you, sir.

16 Yes, sir.

17 PROSPECTIVE JUROR NUMBER 526: I was on the
18 same case.

19 THE COURT: What was your number again?

20 PROSPECTIVE JUROR NUMBER 526: I'm sorry, 526.

21 THE COURT: 526. Yes, sir.

22 PROSPECTIVE JUROR NUMBER 526: I was on the
23 same case with these two gentlemen.

24 THE COURT: All right. Would your answer be
25 the same as well, your answers?

1 PROSPECTIVE JUROR NUMBER 526: It would.

2 THE COURT: All right. Thank you.

3 Yes. A couple of -- we'll start here in the
4 first row, one of the folding chairs. Yes, sir.

5 PROSPECTIVE JUROR NUMBER 525: Juror 525. I
6 know the defendant from business dealings in the past.

7 THE COURT: All right.

8 PROSPECTIVE JUROR NUMBER 525: And recognize a
9 couple of people in the audience from --

10 THE COURT: All right.

11 PROSPECTIVE JUROR NUMBER 525: -- business
12 dealings also.

13 THE COURT: All right. Do you still do
14 business with the defendant or members of his family or
15 members of the community?

16 PROSPECTIVE JUROR NUMBER 525: No.

17 THE COURT: Is there anything about your prior
18 dealings, or your relationship, with any of those
19 individuals that would prevent you from being fair and
20 impartial if you were selected in the case?

21 PROSPECTIVE JUROR NUMBER 525: I would have to
22 say I'd be bias.

23 THE COURT: All right. So you don't believe
24 that you could be a fair juror to one side or the other?

25 PROSPECTIVE JUROR NUMBER 525: No, sir.

1 THE COURT: You don't have to tell me which
2 side, but you believe you couldn't be fair?

3 PROSPECTIVE JUROR NUMBER 525: No, sir.

4 THE COURT: All right. Thank you, sir.

5 We'll start here, and then we'll move our way
6 down. Yes, ma'am.

7 PROSPECTIVE JUROR NUMBER 478: Juror 478. I
8 served on the same case as the rest of them back there.

9 THE COURT: All right. That was back in
10 January?

11 PROSPECTIVE JUROR NUMBER 478: Uh-huh.

12 THE COURT: Is there anything about that case
13 or Mr. Bradbury's work or participation in that case that
14 would prevent you from being a fair and impartial juror?

15 PROSPECTIVE JUROR NUMBER 478: No, sir.

16 THE COURT: What was your number again? I was
17 taking notes.

18 PROSPECTIVE JUROR NUMBER 478: 478.

19 THE COURT: 478. You can be fair and impartial
20 to both sides; correct?

21 PROSPECTIVE JUROR NUMBER 478: Yes.

22 THE COURT: All right. Thank you, ma'am.

23 Yes, ma'am.

24 PROSPECTIVE JUROR NUMBER 481: Juror 481, same
25 case, I also was a juror.

1 THE COURT: Same case?

2 PROSPECTIVE JUROR NUMBER 481: Yes, sir.

3 THE COURT: Anything about that case that would
4 prevent you from being fair and impartial to both sides
5 in this matter?

6 PROSPECTIVE JUROR NUMBER 481: No.

7 THE COURT: All right. Thank you.

8 Anyone else that I haven't identified?

9 (No response)

10 THE COURT: I asked about the attorneys. Let
11 me make sure that I've gotten all of the answers. I want
12 to make sure that I've asked about anyone that may know
13 the defendant or any of the attorneys in the case, the
14 case agent, or the paralegal that I've identified.
15 Anyone that has not identified themselves to me?

16 (No response)

17 THE COURT: And I believe everyone has told me
18 that if you participated in a trial in which the
19 attorneys have participated in, everyone has identified
20 themselves.

21 Other than being in trial, the trial that was
22 identified back in January of this year, has there been
23 anyone here that has been involved in a litigation matter
24 with any of the attorneys?

25 (No response)

1 THE COURT: Let me ask if any of the potential
2 jurors have been represented by any of the attorneys at
3 any point in the past?

4 (No response)

5 THE COURT: All right. Now, ladies and
6 gentlemen, as I've indicated, Mr. Girod has chosen to
7 represent himself in this matter, and he has the legal
8 right to do so.

9 But let me ask if there's anyone who would hold
10 this fact against Mr. Girod if you were chosen as a
11 juror? Anyone that would hold that against him because
12 he's chosen to represent himself?

13 (No response)

14 THE COURT: Is there anyone who would look more
15 favorably regarding his case because he's chosen to
16 represent himself?

17 (No response)

18 THE COURT: Is there anyone who would look not
19 as favorably toward his case because he's chosen to
20 represent himself?

21 (No response)

22 THE COURT: Will the fact that Mr. Girod has
23 chosen to represent himself, cause anyone concern in this
24 matter, it would cause you to be concerned?

25 (No response)

1 THE COURT: And if the defendant were to have
2 any problems acting as his own attorney or in any way
3 struggles in the role, would this cause anyone to be
4 either more sympathetic or less sympathetic to the
5 defendant in the case?

6 (No response)

7 THE COURT: Ladies and gentlemen, when a person
8 acts as his or her own attorney, he or she is allowed to
9 question witnesses and make statements to the jury during
10 opening and also during closing arguments. Now, this is
11 what I'll refer to non-testimonial statements.

12 However, that's not evidence, and it may not be
13 considered as evidence in the case. And, of course, the
14 evidence comes from the witness stand in the form of
15 formal testimony. It also includes any exhibits that are
16 introduced into evidence, and the party's stipulations.

17 But is there anyone who cannot separate those
18 functions, separate the non-testimonial statements from
19 the actual evidence in the case?

20 I want to make sure you understand that when
21 statements are given, whether it's by the attorneys or by
22 Mr. Girod acting as his own attorney, if it's not -- if
23 it's not testimony from the witness stand, then it's just
24 that, it's just a statement, and it can't be considered
25 as evidence.

1 (No response)

2 THE COURT: Ladies and gentlemen, as I
3 indicated earlier, Mr. Girod is a member of the Amish
4 community. If you were chosen as a juror, is there
5 anyone here who would tend to favor or disfavor his case
6 because of that fact?

7 COURT SECURITY: Got one over here.

8 THE COURT: Yes, in the back. Yes, ma'am.

9 PROSPECTIVE JUROR NUMBER 513: I'm sorry,
10 Juror 513.

11 THE COURT: 513?

12 PROSPECTIVE JUROR NUMBER 513: 513.

13 THE COURT: And you responded earlier; correct?

14 PROSPECTIVE JUROR NUMBER 513: Yes, sir.

15 THE COURT: All right. And would you tend to
16 favor?

17 PROSPECTIVE JUROR NUMBER 513: I would tend to
18 favor.

19 THE COURT: All right. Thank you, ma'am.

20 COURT SECURITY: Got another one.

21 THE COURT: Yes, ma'am.

22 PROSPECTIVE JUROR NUMBER 610: Juror 610. And
23 I just live in the community where there's a lot of Amish
24 that live around us. I have a lot of respect for their
25 hard work, and I would possibly be somewhat biased

1 towards the defendant, just because of our relationship
2 with those Amish in our community.

3 THE COURT: All right. Thank you, ma'am,
4 appreciate your candor.

5 Anyone else I missed?

6 (No response)

7 THE COURT: Is there anyone who believes or
8 thinks that people of certain cultural, religious, or
9 ethnic background should be exempt from the federal laws
10 and regulations attendant to those laws?

11 (No response)

12 THE COURT: Now, let me identify some potential
13 witnesses who may be called to testify in the trial of
14 this case. There may be more witnesses called to
15 testify, but I believe that at least some or all of these
16 will be called. And I apologize in advance if I
17 mispronounce the names.

18 But I expect that the witnesses will include
19 Nicholas Paulin, a compliance officer with the FDA;
20 Matthew Suedkamp, also a compliance officer with the FDA;
21 Bath County Deputy Sheriff Jessie Stewart; Tamara
22 Umscheid, U-M-S-C-H-E-I-D, a Kansas compliance officer
23 with the FDA; Darrell Mandrell, owner of Manley's
24 Printing; Jeffrey Burkholder, owner of Cloverdale
25 Warehouse; Bridget Sargent, owner of a company known as

1 Miss Vivian's LLC, also doing business as Herbs & More;
2 Mary J. Miller, the owner of Miller's Dry Goods;
3 Kevin Miller, an employee of Family Health Foods;
4 Charles Milligan, Deanne Hollinger, Thomas Hollinger;
5 Mark Wooten, an employee of Miller's Country Store;
6 Steven Lamp, who I've identified earlier, special agent
7 with the Food & Drug Administration; Jane Liedtka, a
8 doctor with the -- a medical officer with the Food & Drug
9 Administration; and Gary Heiden, who's a Deputy United
10 States Marshal with the United States Marshal Service
11 here in Lexington.

12 Let me ask if any of our potential jurors know
13 any of the witnesses, or believe that you know any of the
14 witnesses, that I've identified?

15 Yes, sir.

16 PROSPECTIVE JUROR NUMBER 525: Juror 525.
17 Darrell Mandrell of Manley's Printing, I know him.

18 THE COURT: All right. Is there anything about
19 your knowledge of Mr. Mandrell that would prevent you
20 from being fair and impartial if you were selected in the
21 case?

22 PROSPECTIVE JUROR NUMBER 525: No, no.

23 THE COURT: In other words, if he's called as a
24 witness, you would have to give his testimony the same
25 weight as you would any other testimony, not knowing what

1 the testimony will be. Of course, you'll have to judge
2 credibility, but you'll have to consider him as an equal
3 to all other witnesses in the case.

4 PROSPECTIVE JUROR NUMBER 525: Yes, sir.

5 THE COURT: And you could do that, all right.
6 Thank you.

7 Anyone else?

8 (No response)

9 THE COURT: Let me ask if any of our potential
10 jurors or members of your immediate family are employed
11 by law enforcement agencies?

12 We've got a few folks. And what I'll do, is if
13 you could, if you could just please stand up because we
14 have several folks that have identified themselves, and
15 I'll ask you to tell me your number, and then I'll have a
16 few questions for all of you.

17 So if you've identified yourself, if you could
18 please stand up.

19 Ma'am, what is your number?

20 PROSPECTIVE JUROR NUMBER 626: 626.

21 THE COURT: And if you can tell me, what is the
22 relationship that you might have with a member of law
23 enforcement?

24 PROSPECTIVE JUROR NUMBER 626: Well, I work for
25 Kentucky Department of Corrections.

1 THE COURT: All right. So it would be your own
2 relationship?

3 PROSPECTIVE JUROR NUMBER 626: (Nods head)

4 THE COURT: Okay. Thank you.

5 Ma'am, here in the first -- you can remain
6 standing, if you would, please.

7 All right. Yes, ma'am, if you could -- 513?

8 PROSPECTIVE JUROR NUMBER 513: Yes, sir.

9 THE COURT: All right. Yes, ma'am.

10 PROSPECTIVE JUROR NUMBER 513: I have several
11 cousins that are in law enforcement in Powell County and
12 some in Estill County, and a sheriff, state trooper, that
13 sort of thing.

14 THE COURT: All right. Thank you.

15 And, ma'am, in the first row here.

16 PROSPECTIVE JUROR NUMBER 408: My son is
17 employed by the sheriff's department, Fayette County.

18 THE COURT: What is your number?

19 PROSPECTIVE JUROR NUMBER 408: 408.

20 THE COURT: 408.

21 PROSPECTIVE JUROR NUMBER 408: My brother is a
22 retired police officer in Fayette County.

23 THE COURT: Did you say your son, the first
24 person?

25 PROSPECTIVE JUROR NUMBER 408: My son.

1 THE COURT: Yes, ma'am.

2 PROSPECTIVE JUROR NUMBER 481: 481.

3 THE COURT: If you could tell me your --

4 PROSPECTIVE JUROR NUMBER 481: My husband is a
5 game warden with Fish and Wildlife.

6 THE COURT: All right. Yes, ma'am.

7 PROSPECTIVE JUROR NUMBER 507: 507. My
8 brother-in-law works for the Henderson Police Department,
9 along with my nephew.

10 THE COURT: All right. Now, let me ask these
11 questions for all of those jurors that are standing.

12 Is there anything about either your employment
13 relationship or your family relationship with law
14 enforcement that would prevent you from being fair and
15 impartial if you were seated in this case?

16 (Negative responses)

17 THE COURT: Now, as I've indicated, there may
18 be officers, federal or state officers, that would be
19 testifying in this matter that are associated with law
20 enforcement.

21 Would any one of you tend to give their
22 testimony more weight or less weight than you would the
23 testimony of any other witness called in the case?

24 (Negative responses)

25 THE COURT: All right. Thank you. You may be

1 seated.

2 Is there any one of our potential jurors that's
3 had a conflict or a problem with a member of law
4 enforcement that would prevent you from being fair and
5 impartial if you were selected in the case, understanding
6 that there will be law enforcement officers testifying?

7 (No response)

8 THE COURT: Let me ask if any of our potential
9 jurors or family member of yours has been involved in a
10 criminal matter pending either in federal court or state
11 court?

12 (No response)

13 THE COURT: It can be any type of a criminal
14 matter.

15 (No response)

16 THE COURT: All right. Is there anyone that's
17 had a family member that's been involved in a criminal
18 case such that you would not be a fair juror if you were
19 seated based upon that relationship?

20 (No response)

21 THE COURT: Let me ask if any of our potential
22 jurors have been involved in a dispute or in litigation
23 with the United States or with any agency of the
24 United States previously?

25 (No response)

1 THE COURT: Is there anyone here who has any
2 strong feelings, positive or negative, either toward the
3 federal government, the United States Attorney's office,
4 Federal Bureau of Investigation, Food & Drug
5 Administration, the IRS, Kentucky State Police, or any
6 local law enforcement agency that would prevent you from
7 being fair and impartial if you were seated as a juror?

8 (No response)

9 THE COURT: Does anyone believe that because
10 products are -- or are labeled as natural or organic,
11 that they're automatically safe to consume, just because
12 they're labeled in that fashion?

13 (No response)

14 THE COURT: Is there anyone here who has any
15 knowledge or expertise in the field of alternative
16 health?

17 (No response)

18 THE COURT: Anyone here who's presently or
19 previously worked in a health food store, for example?

20 (No response)

21 THE COURT: Now, let me ask -- I know we've had
22 a couple folks that answered already, but let me ask how
23 many of you have served previously here in federal court
24 on a jury? If you could, if you could just raise your
25 hands.

1 (Raised hands)

2 THE COURT: All right. We've got quite a few.

3 Now, those of you that didn't raise your hand,
4 let me ask if we have other folks that have served
5 previously in state court in a jury -- or on a state
6 jury, served in state court but not in federal court.

7 (Raised hands)

8 THE COURT: All right. We've got a couple
9 folks.

10 Ladies and gentlemen, of course, this is a
11 criminal case. Criminal cases are different from civil
12 cases. In a criminal case the United States has the
13 burden of proving the case to you and proving each and
14 every element of the offenses that are charged beyond a
15 reasonable doubt.

16 In a civil case the burden is much less. In a
17 civil case the party with the burden of proof, and it's
18 generally the plaintiff in a civil case, has to prove the
19 case by a preponderance of the evidence, more likely so
20 than not so.

21 Is there anyone here who doesn't understand
22 there is a difference between those two standards?

23 (No response)

24 THE COURT: Now, ladies and gentlemen, bias,
25 sympathy, and prejudice has no place in the courtroom.

1 Also, if you are selected as a juror, you will
2 be required to set aside any personal feelings that you
3 may have if they conflict with the law as I'll instruct
4 you.

5 Is there anyone, other than those that have
6 answered previously, who believe that if you're selected
7 as a juror that you could not set aside your own personal
8 feelings and base your decision on the testimony that's
9 presented and also in the context of the law that I will
10 be giving to you? Anyone who feels like they just can't
11 do that?

12 (No response)

13 THE COURT: Also, ladies and gentlemen, in
14 federal proceedings, in federal court, if a defendant is
15 found guilty of a charge or charges, punishment is
16 reserved for the Court to administer.

17 Now, do each of you understand that if you
18 reach a verdict of guilty, that you can't allow your
19 determination to be affected by any concern that you may
20 have regarding what the punishment might or might not be,
21 that you can't allow that to enter your decision-making
22 process?

23 (No response)

24 THE COURT: Also, ladies and gentlemen, if you
25 are chosen as a juror in this matter, I want you to be

1 aware that during the trial, of course, not only can you
2 not speak with anyone, but the parties can't speak with
3 you, the attorneys can't speak with you, spectators to
4 the proceeding can't speak with you, before, during, or
5 after the proceedings.

6 Let me see if anyone would hold that against
7 the parties or the attorneys if you're selected in the
8 case.

9 (No response)

10 THE COURT: Let me also ask you that if that
11 rule were to be violated, if someone were to contact you
12 or attempt to contact you during the trial, or even after
13 the trial, would you agree to report that to the Court?
14 Is there anyone who would not do that?

15 (No response)

16 THE COURT: Ladies and gentlemen, does anyone
17 have any religious, philosophical, or other reasons that
18 would prevent you from sitting as a juror and returning a
19 fair and impartial verdict based on the evidence if you
20 were selected?

21 (No response)

22 THE COURT: Now, I may have some answers to
23 this next question.

24 I expect this case will take about a week to
25 complete. Now, I -- undoubtedly, this will be an

1 inconvenience or a problem for some of you, but let me
2 ask if this would prevent such a unique hardship that you
3 could not serve if you were selected as a juror?

4 Yes, sir.

5 PROSPECTIVE JUROR NUMBER 624: I don't know if
6 it's a hardship. 624. I'm scheduled to leave on a trip
7 on Friday. It was excused, so I've got a flight.

8 THE COURT: All right. So is that a personal
9 matter or --

10 PROSPECTIVE JUROR NUMBER 624: Yes.

11 THE COURT: -- for vacation?

12 PROSPECTIVE JUROR NUMBER 624: Yes, my mom's
13 birthday.

14 THE COURT: You already have the tickets
15 purchased?

16 PROSPECTIVE JUROR NUMBER 624: Yes.

17 THE COURT: I assume your mom wouldn't like it
18 if you didn't show up for her birthday.

19 PROSPECTIVE JUROR NUMBER 624: Yes, 70.

20 THE COURT: All right. Thank you.

21 Anyone else?

22 COURT SECURITY: You've got another right here.

23 THE COURT: I'm sorry. Yes, ma'am.

24 PROSPECTIVE JUROR NUMBER 493: Juror 493.

25 THE COURT: 493? Yes, ma'am.

1 PROSPECTIVE JUROR NUMBER 493: I have a
2 doctor's appointment on Wednesday.

3 THE COURT: What time would that be on
4 Wednesday?

5 PROSPECTIVE JUROR NUMBER 493: At noon.

6 THE COURT: At noon, all right. Is it
7 something that you could have rescheduled if you --

8 PROSPECTIVE JUROR NUMBER 493: It's for my eye,
9 for my eye.

10 THE COURT: It's your eye?

11 PROSPECTIVE JUROR NUMBER 493: Yes.

12 THE COURT: You'd probably like to have that
13 taken care of then, wouldn't you?

14 PROSPECTIVE JUROR NUMBER 493: (Nods head)

15 THE COURT: All right. Anyone else?

16 Yes, ma'am.

17 PROSPECTIVE JUROR NUMBER 626: 626.

18 THE COURT: Yes, ma'am.

19 PROSPECTIVE JUROR NUMBER 626: And I am waiting
20 for a final job offer out of state.

21 THE COURT: All right. So you may or you may
22 not hear something?

23 PROSPECTIVE JUROR NUMBER 626: I may or may
24 not. I'm supposed to hear within the next two to three
25 days, so it might actually, but --

1 THE COURT: Would it be something that if you
2 received an offer, you would need to leave immediately?

3 PROSPECTIVE JUROR NUMBER 626: I would still
4 have to submit two weeks at work, which would leave me
5 time to train somebody to take over my position.

6 THE COURT: All right. So if you absolutely
7 had to participate in the trial, you would do that, but
8 it --

9 PROSPECTIVE JUROR NUMBER 626: Yes.

10 THE COURT: -- would present a hardship for
11 you. Is that a fair summary?

12 PROSPECTIVE JUROR NUMBER 626: Yes. I mean, it
13 would be okay to do so, but it would kind of cut off some
14 of my training time.

15 THE COURT: All right. I understand.
16 Thank you.

17 Anyone else?

18 Yes, ma'am, in the front row.

19 PROSPECTIVE JUROR NUMBER 408: I have --

20 THE COURT: What's your number again?

21 PROSPECTIVE JUROR NUMBER 408: 408, I'm sorry.

22 THE COURT: Yes, ma'am.

23 PROSPECTIVE JUROR NUMBER 408: I have a new
24 employee coming to be under me on Wednesday, so it would
25 be nice to be there for her or him.

1 THE COURT: Again, it's the kind of thing that
2 if you had to be here, you could?

3 PROSPECTIVE JUROR NUMBER 408: Right.

4 THE COURT: But it would present an
5 inconvenience for you at work?

6 PROSPECTIVE JUROR NUMBER 408: Right.

7 THE COURT: All right. Thank you.

8 Anyone else?

9 (No response)

10 THE COURT: Ladies and gentlemen, we generally
11 will start at 9:00 in the mornings. I do like to start
12 on time. We start at 9:00. We usually take a break
13 about an hour-and-a-half into the proceedings, and then
14 we take our lunch break, and then come back about 1:00 or
15 1:10, go for another hour-and-a-half, and then we usually
16 we'll finish about 4:30, between 4:30 and 5:00 in the
17 afternoon.

18 Let me ask if anyone has any medical issues
19 that would present a hardship for you sitting more than
20 an hour-and-a-half at a time, if there were any child
21 care issues where you would absolutely need to leave here
22 by a certain time in order to pick up children. Anything
23 of that nature?

24 (No response)

25 THE COURT: Is there anyone who's had a problem

1 seeing or hearing this morning while we've been in the
2 courtroom?

3 (No response)

4 THE COURT: Let me expand one of the questions
5 I asked a little bit earlier. I don't want to pry in
6 your personal lives, but is there anyone here who has
7 something going on in your life and because of that it
8 would be very difficult for you to participate in the
9 case? You just couldn't focus your attention on this
10 trial if you were selected because of some personal
11 matter?

12 (No response)

13 THE COURT: Now, ladies and gentlemen, having
14 heard all of my questions, you may be sitting back
15 waiting for me to ask that one question, which you're
16 ready to respond to. And it's a reason that you feel
17 like you couldn't serve if I asked you the question, but
18 I don't know what it is.

19 So is there anyone here, for whatever reason,
20 something that I haven't asked about, that you believe
21 would make it unfair for you to be seated in the case,
22 either for the defendant or for the United States? You
23 just don't feel like you could be fair to one side or the
24 other for whatever reason it may be?

25 (No response)

1 THE COURT: All right. What I'm going to ask
2 the parties to do, if you could, please come up here to
3 the sidebar. Mr. Girod, if you would like to come up
4 here, come on.

5 (Whereupon, a bench conference was had with the
6 Court, Defendant Girod, and counsel, out of the hearing
7 of the open court and prospective juror members, as
8 follows.)

9 DEFENDANT GIROD: I guess that --

10 THE COURT: Wait for everybody to get here.

11 DEFENDANT GIROD: Okay.

12 THE COURT: Wait for the attorneys to get here,
13 please.

14 DEFENDANT GIROD: Okay. I was glad to have my
15 clothes.

16 THE COURT: I'm sorry?

17 DEFENDANT GIROD: I was glad to have my
18 clothes.

19 THE COURT: Yes, sir.

20 I had included one of your questions.

21 DEFENDANT GIROD: I see that.

22 THE COURT: Another one I thought it was a
23 little argumentative so I didn't include that.

24 DEFENDANT GIROD: Right.

25 THE COURT: But I wanted to see if there are

1 any supplemental questions that the parties had before we
2 take our break to --

3 MS. SMITH: I was wondering if you might ask if
4 anyone has used any of the three products.

5 THE COURT: All right. Anyone has used any of
6 these three products --

7 MS. SMITH: Used or purchased the three
8 products.

9 THE COURT: -- identified. All right. That's
10 a fair question.

11 All right.

12 MS. SMITH: And experience with the Bath County
13 Sheriff's office. I know you mentioned that the deputy
14 was coming to testify, but sometimes people have a
15 separate interaction with the sheriff's department that
16 they might not have thought to mention.

17 THE COURT: All right. Anything else you would
18 like to ask?

19 DEFENDANT GIROD: I don't think so.

20 THE COURT: All right. What we'll do is I'll
21 ask these two follow-up questions. Then I'm going to
22 excuse all of the jurors to go out, and we can discuss
23 challenges for cause.

24 And when I bring them back into the courtroom,
25 we'll do the selection where we'll -- the ones that

1 aren't excused for cause, we'll pick the two panels,
2 28 plus four, and then we'll take a longer break so you
3 can exercise your peremptory challenges. And I'll again
4 go through procedure for doing that, but I just wanted to
5 make sure you know that's what we're going to do at this
6 time.

7 I'll give a short admonition before I send the
8 jury out not to discuss the case.

9 All right. Thank you.

10 DEFENDANT GIROD: Thank you.

11 (Whereupon, the bench conference concluded.)

12 THE COURT: Now, ladies, and gentlemen, I have
13 just a couple of follow-up questions for you.

14 Let me ask -- I've identified about as many law
15 enforcement agencies and officers I thought might be
16 relevant, but let me ask if anyone had any interaction
17 with the Bath County Sheriff's office. I know some of
18 you live not in Bath County but perhaps around -- around
19 Bath County, and I don't know if you've had any
20 interactions at all, discussions, or conversations,
21 traffic stop, anything of that nature, with that
22 particular office.

23 (No response)

24 THE COURT: And then one additional question
25 for you. I identified the three specific products that I

1 expect you'll be hearing testimony about in this case;
2 Chickweed Healing Salve, TO-MOR-GONE, and that's spelled
3 T-O, hyphen, M-O-R, hyphen, G-O-N-E, and then a third
4 product R.E.P., initials R.E.P.

5 Let me ask if any of our jurors have used,
6 purchased any of those products that I've identified?

7 Yes, sir. You have?

8 PROSPECTIVE JUROR NUMBER 525: Yes.

9 THE COURT: All right. And you identified
10 yourself earlier. What was your number?

11 PROSPECTIVE JUROR NUMBER 525: Juror 525.

12 THE COURT: 525. All right. Thank you, sir.

13 All right. Now, ladies and gentlemen, what I'm
14 going to do at this time is I'm going to send you back
15 across the hallway to the jury assembly room, and while
16 we're doing that, I'll discuss with the attorneys what's
17 called challenges for cause.

18 When we come back, I'm going to call two
19 panels, I'll excuse any jurors for cause, and then we'll
20 call a group of jurors 32 total. We have, I think, 52
21 that are here now. So I need to call 32 of those 52
22 jurors.

23 Space in the courtroom is a little tight so
24 when we come back, what we'll do is let's keep that back
25 row empty for now. We'll be able to use these other

1 chairs, this other seating, but we'll start to fill up
2 the jury box, and after we fill up the back row, I will
3 have to ask the ladies in the second -- in the front row
4 here to move, and then we'll fill up that row, and we'll
5 fill up the seats in front of it, and then I think we
6 have about four chairs at the end of the jury box. We'll
7 try to fill all this up first as we move folks around.

8 So some of you may need to stand up in the
9 aisle way for just a moment. I apologize in advance, but
10 we don't have enough seating in here for everyone.

11 So when we come back in, if we could keep that
12 back row empty initially, and we will move folks around
13 as we need to.

14 Now, before I do excuse you, I do want to give
15 you just a brief admonition, and this admonition follows
16 you throughout the course of the proceeding.

17 As we do take a recess at any point during this
18 proceeding, please don't have any discussions among
19 yourselves about the case, don't allow anyone to approach
20 you to discuss the case, and, of course, if that should
21 ever happen, you should report that to the Court
22 promptly.

23 Don't read, watch, or listen to any accounts of
24 the case if there should be any.

25 Don't do any type of research or investigation

1 on your own.

2 And, of course, don't make up your mind about
3 the case until it is finally submitted to you.

4 We'll take just a brief recess, and we'll call
5 you back in just a few moments, and we'll proceed in the
6 manner that I've outlined.

7 The jury will be excused at this time.

8 (Whereupon, the prospective juror members leave the
9 courtroom.)

10 THE COURT: Spectators are not required to
11 leave. They may, if they wish, but they are not required
12 to.

13 All right. Thank you, and please be seated.

14 And then -- or at this time we will go through
15 any challenges for cause that the parties may have.

16 There's a number of jurors that have indicated
17 that they may -- or they believe they would be bias, and
18 then we have a number of other jurors that have conflicts
19 that might prevent them from appearing in the case if it
20 does go a week or perhaps even longer.

21 Ms. Smith or Mr. Bradbury, on behalf of the
22 United States, do you have challenges for cause that you
23 wish to make?

24 MS. SMITH: Yes, Your Honor. The first being
25 Juror 513. She was the first one who said because of

1 friends in the community she has a certain bias for the
2 defendant. She was really unequivocal in her bias, very
3 firm what she said --

4 THE COURT: All right.

5 MS. SMITH: -- in terms of favoring the
6 defendant. So we move to strike her for cause.

7 Juror 525.

8 THE COURT: That's the gentlemen that's up here
9 in the row in front of the jury box?

10 MS. SMITH: Yes. And based on his business
11 dealings with the defendant, his -- he said he
12 couldn't -- he said he could be impartial as to a
13 particular witness he knew of, but he's got direct
14 business dealings with the defendant and some of his
15 family members, and really said unequivocally that he too
16 would be bias. He also used one or possibly more of the
17 products. But I would move to strike him for cause as
18 well.

19 Juror 610 said that she had a certain bias to
20 the defendant. She was less firm. I think she said she
21 had a possible bias. I would move to strike her for
22 cause but recognize that she's a little bit more on the
23 line.

24 And then those are all the motions to strike
25 for cause. There were a few people who had conflicts,

1 the doctor's appointment this week. United States would
2 take the position that she could be excused. That was
3 493.

4 THE COURT: We also had a juror who was leaving
5 for a trip on Friday.

6 MS. SMITH: I'm optimistic we'll be finished by
7 Friday. I think the United States will finish its proof
8 either by the end of Tuesday or Wednesday morning. I
9 don't know what will happen with the rest of the week,
10 but I would anticipate he would be able to leave by
11 Friday.

12 THE COURT: Of course, we don't know how long
13 the defendant will be taking for his case.

14 MS. SMITH: That's true.

15 THE COURT: My inclination would be that we
16 need to have the week available for trial. And if this
17 juror is seated, I would not be holding him on Friday. I
18 would allow him to go to his mother's birthday.

19 I'm scheduled to be in Alabama on Monday so we
20 wouldn't resume again until Tuesday. So if we did reach
21 Friday, then it would be a rather long break that we
22 would be taking.

23 MS. SMITH: I understand that, Your Honor, and
24 I understand he's already been excused by the clerk -- or
25 as of the date of his trip I think he said.

1 THE COURT: Oh, really? I wasn't aware of
2 that.

3 All right. 624.

4 All right. Thank you.

5 And we had two other work inconveniences that
6 I'll call it, or problems with work. 626 and 408.

7 MS. SMITH: 408 --

8 THE COURT: Training someone on Wednesday.

9 MS. SMITH: The employee starting on Wednesday.
10 I defer to Your Honor on -- on that one.

11 And then the woman with the job offer, that
12 sounded less -- less of an imposition because she doesn't
13 know if she will get the job offer, and there's just a
14 little bit more there.

15 THE COURT: All right. Thank you.

16 MS. SMITH: Thank you.

17 THE COURT: Give Mr. Girod just a moment if you
18 need to look through your notes.

19 DEFENDANT GIROD: Your Honor, I think 610
20 didn't really -- didn't talk about -- I think he would be
21 bias, didn't he?

22 THE COURT: To an extent. Not as strongly as
23 the first two jurors that were mentioned, 513 and 525. I
24 believe Juror Number 610 indicated that friends in the
25 community, I don't think in the same county, but in an

1 adjoining county, and would tend to favor your side of
2 the case if selected.

3 DEFENDANT GIROD: 610?

4 THE COURT: Yes.

5 DEFENDANT GIROD: Okay. All right.

6 THE COURT: What's your position on these
7 jurors? The one that's leaving on Friday, do you believe
8 if the government finishes the case on Wednesday, do you
9 believe your case would go into Friday?

10 DEFENDANT GIROD: I can't see it go that long,
11 but I don't know. I have never been here.

12 THE COURT: Well, out of an abundance of
13 caution, I'm likely to go ahead and excuse that juror,
14 rather than have a four-day recess if we do get to
15 Friday, the person that has the flight already scheduled
16 to visit 70-year-old mother for her birthday.

17 DEFENDANT GIROD: That's 624 you said.

18 THE COURT: 624. And there is a doctor's
19 appointment. I will sustain the United States' motion
20 with regard to 513, 525, and 610.

21 I'll excuse 624 for cause based on the
22 scheduled flight, and apparently the clerk has already
23 excused for Friday.

24 Also, the juror that has the doctor's
25 appointment, the eye problem, I'll excuse that juror for

1 cause.

2 MR. FOX: Which number is that, Judge?

3 THE COURT: 493.

4 The person that has job offer I don't think
5 that that's sufficient to excuse for cause. She's back
6 here to my right. And if she gets the job, it may make
7 it a little inconvenient, but she has to give her company
8 some notice, two-weeks notice, if she gets the offer. So
9 we'll keep her in the panel.

10 And 408 indicated that she may have to train
11 somebody on Wednesday, but I don't believe that is
12 sufficient to excuse for cause. So I would not excuse
13 those two for cause.

14 So we have five that will be excused for cause,
15 and I will go through these numbers with you again.

16 513, 525, 610, 624, and then 493, those five
17 jurors will be excused for cause.

18 So what we'll do is we will call the jury back
19 into the courtroom. Again, we'll keep that back row
20 empty so we can play a little bit of musical chairs here.

21 When we bring those folks back in, we may have
22 a couple of people that will need to either stand in the
23 aisle, or I believe we have an empty row, we can use that
24 empty row if we need to initially, but we will have to
25 use that at some point.

1 COURT SECURITY: Yes, sir.

2 THE COURT: So at this time let's go ahead and
3 bring the jurors back in, prospective jurors back in.

4 We need a little longer for bathroom break?

5 COURT SECURITY: Yes, Your Honor.

6 THE COURT: All right. We'll just wait until
7 everyone is ready to come in.

8 You-all can be seated. Apparently, we've had a
9 few folks that are in line for the rest room, so we'll
10 wait for them to come back.

11 You can all be seated. Some of the jurors had
12 to go to the rest -- they're standing in line for the
13 rest room, and so we'll wait for everyone to bring the
14 full panel back in.

15 (Whereupon, the prospective juror members enter the
16 courtroom at 10:35 a.m.)

17 THE COURT: Thank you, and please be seated.

18 Now, ladies and gentlemen, again, let me just
19 go over the procedures we'll be following this morning.

20 There are five prospective jurors that I will
21 excuse here in just a moment. After I've called those
22 numbers of those five jurors, they'll be excused from
23 further participation in the case.

24 Of course, the clerk will advise those jurors
25 as to when they should report again.

1 After those five jurors have been excused,
2 we'll start to fill up the jury box. We're going to call
3 the number of 32 prospective jurors. We'll fill up the
4 box first.

5 It's going to be tight, but I think probably
6 the best way to do this is for the jury to come down
7 through here and fill up from my side all the way down to
8 the end. Then I'll ask the remaining jurors that are in
9 the box, either go back and be seated back in the back of
10 the courtroom. We'll fill up that row next, and we'll
11 fill up this front row, and fill up those four seats on
12 the end.

13 Then I'll need to use that first row over to my
14 right, the one that was vacant just a few moments ago.
15 So we'll have to move folks around so if you would please
16 bear with us, and there is a method to my madness.

17 After we've done that, after we've called the
18 number of those 32 prospective jurors, and I'll be able
19 to excuse the remaining jurors.

20 Then we'll take about a 20-minute recess. I'll
21 give you-all another break while the parties exercise
22 what is called peremptory challenges.

23 And when we come back, we'll be seat the jury
24 that will be trying the case, and I'll be able to excuse
25 everyone else. We should be able to do that and actually

1 have some further proceedings before we take our lunch
2 break.

3 So the five jurors that will be excused for
4 cause are as follows, and, again, if you would please
5 listen carefully. Wait until all five jurors are called
6 before you exit the courtroom.

7 Number 513, 525, 610, 624, and 493. Let me go
8 over these again. 513, 525, 610, 624, and 493. Those
9 five jurors are excused.

10 And, ladies and gentlemen, thank you for being
11 here this morning. I appreciate your participation.
12 Thank you.

13 (Whereupon, the five prospective jurors members
14 excused for cause called by Judge Reeves leaves the
15 courtroom.)

16 THE COURT: Madam Clerk, when you're ready, if
17 you would like to call the numbers of 32 prospective
18 jurors.

19 THE CLERK: Yes, Your Honor.

20 408.

21 THE COURT: That makes it easy, doesn't it?

22 THE CLERK: 476, 503, 619, 481, 531, 625.

23 THE COURT: All right. Let's stop for just a
24 moment. That should be the back row.

25 Wait for juror 625 to come around.

1 And for those of you in this first row of the
2 jury box, if you could please move back into the back
3 portion of the courtroom, we'll fill up that row.

4 Madam Clerk.

5 THE CLERK: 509, 651, 640.

6 THE COURT: You were just up here.

7 THE CLERK: 635, 499, 530, 496.

8 THE COURT: Stop for just a moment again.

9 Ladies, for you in the first row if you
10 wouldn't mind moving back to the back. And, let's see,
11 go ahead and move those others too.

12 Fill the first row.

13 All right. Madam Clerk.

14 THE CLERK: 518.

15 THE COURT: 518.

16 THE CLERK: 643, 645, 482, 494, 623.

17 THE COURT: Move them around. We have the four
18 chairs I think.

19 THE CLERK: Okay. 524, 502, 626, 627.

20 THE COURT: As soon as 627 comes up, we'll need
21 that -- the first row. You can stand in the aisle or
22 have a seat. I think we'll need eight, seats for eight.

23 THE CLERK: 614, 606, 526, 517, 613, 498.

24 THE COURT: This row seats six people
25 comfortably, but eight not so much. So the last two, if

1 we could -- you don't have to get up, but if you could
2 maybe scoot down to that end, and we'll put the last two
3 jurors there in the second row.

4 THE CLERK: 633, 608.

5 THE COURT: Should be 32.

6 THE CLERK: Yes, Your Honor.

7 THE COURT: All right. See if the parties have
8 anything to take up before I excuse the remaining jurors.

9 MS. SMITH: No, Your Honor.

10 THE COURT: All right. Thank you.

11 DEFENDANT GIROD: I'm fine. Thank you
12 Your Honor.

13 THE COURT: All right. Ladies and gentlemen,
14 for those of you that are in the panel, if your number
15 was not called, at this time you will be excused from
16 further participation in this case.

17 Now, the clerk may call you again for sitting
18 in another matter.

19 Again, I do appreciate you being here. I know
20 we've had to move folks around. I appreciate your
21 patience as we've done that, but at this time you will be
22 excused if your number was not called.

23 (Whereupon, the remaining prospective jurors leave
24 the courtroom.)

25 THE COURT: At this point, ladies and

1 gentlemen, we will take about a 20-minute recess while
2 the parties exercise what's called peremptory challenges.

3 When we come back, we'll seat the 12 jurors and
4 the two alternates that will be used to try the case.

5 Again, I do want to remind you as we are in
6 recesses you shouldn't talk to anyone about the case, and
7 you should not allow anyone to approach you to discuss
8 the case.

9 Of course, keep in mind all of the admonitions
10 that I have given you. I do anticipate we'll call you
11 back in approximately 20 minutes, so if you could please
12 be ready to go at that time.

13 The jury will be excused.

14 (Whereupon, the 32 prospective juror members leave
15 the courtroom.)

16 THE COURT: Thank you, and please be seated.

17 Before we recess, Mr. Girod had given me a
18 couple of questions to ask during the jury selection. I
19 asked one of those. I didn't ask the other.

20 So the record is clear, Mr. Girod, I'm going to
21 have this filed in the record with the clerk so it is
22 part of the case.

23 DEFENDANT GIROD: Your Honor, did I sign that?

24 THE COURT: No.

25 DEFENDANT GIROD: Is it necessary that I sign

1 that?

2 THE COURT: No, as long as I note that you
3 tendered it, and one of those questions was, in fact,
4 used. The other, for the reason I indicated at the
5 sidebar conference that we had.

6 DEFENDANT GIROD: Yes, sir. Thank you.

7 THE COURT: We'll take 20 minutes for the
8 parties to exercise their peremptory challenges.

9 Does anyone have any questions about how we are
10 going to do this?

11 Mr. Girod, do you feel like you're comfortable
12 with the procedure? You need to exercise 10 challenges
13 for that first group of 28, and then two challenges for
14 the -- I'm sorry, one challenge for that group of four.

15 DEFENDANT GIROD: He is going to help me.

16 THE COURT: All right. Very well. We'll be in
17 recess. Thank you.

18 (Whereupon, a recess was taken at 10:50 a.m.,
19 and Day 1 of the Jury Trial proceedings continued at
20 11:10 a.m., on the record in open court, without the
21 prospective juror members present, as follows.)

22 THE COURT: Thank you.

23 If you would bring the jury members in, please.

24 (Whereupon, the prospective juror members enter the
25 courtroom.)

1 THE COURT: Ladies and gentlemen, as your
2 number is called, would you please come up and be seated
3 in the jury box?

4 The clerk at this time will now call the
5 numbers of 14 jurors.

6 THE CLERK: 476.

7 THE COURT: Back row first.

8 THE CLERK: 619, 531, 625, 640, 635, 643, 645,
9 494, 524, 627, 614, 498, and 633.

10 THE COURT: Should be 14.

11 THE CLERK: Yes, Your Honor.

12 THE COURT: All right. Thank you.

13 See if we have any issues to take up before I
14 excuse the remaining members of the jury panel.

15 MS. SMITH: No, Your Honor.

16 THE COURT: Mr. Girod, any issues to take up?

17 DEFENDANT GIROD: No, Your Honor. Thank you.

18 THE COURT: All right. Thank you, and please
19 be seated.

20 Ladies and gentlemen, for those of you that
21 were members of the panel that were not selected for this
22 trial, I do appreciate you being here. I appreciate the
23 time and attention that you have given to this matter.

24 However, at this time you will be excused from
25 further participation in the case, and the clerk will

1 advise you as to when you should report again.

2 Thank you.

3 (Whereupon, the remaining prospective juror members
4 leave the courtroom.)

5 THE COURT: Thank you, and please be seated.

6 Before I ask the clerk to administer the oath
7 to the jury to be sworn, I'll invoke the rule on
8 witnesses.

9 Any person that's expected to testify as a
10 witness in the case, at this time you will be excused
11 from the courtroom.

12 Likewise, the parties are advised that
13 information may not be conveyed to witnesses directly or
14 indirectly.

15 Of course, the defendant and the parties may
16 remain in the courtroom, as is the case agent that's been
17 identified in the matter.

18 All other witnesses that are expected to be
19 called are excused at this time.

20 Also, if we have any other -- Karen, if we have
21 anyone else outside that wishes to come in to observe,
22 we'll keep the first row vacant for law enforcement, but
23 if anyone else would like to come in to observe the
24 proceedings, they may do so.

25 And, ladies and gentlemen, while we're doing

1 that, allow the others to come into the courtroom,
2 before I ask that the oath be administered to you to try
3 the case and give you the preliminary jury instructions,
4 let me just remind you.

5 Those that have been seated in this courtroom
6 before as jurors, as you know, the temperature may be
7 hot, it may be cold, just depending. So it's always a
8 good idea if you have a light sweater or jacket, you may
9 want to bring that with you. It could be 80 degrees in
10 the morning, and it could be 60 degrees in the afternoon
11 in this particular courtroom. This is an older building,
12 and we are due to get a new heating and air system. We
13 don't have it yet, so I apologize for that in advance,
14 but I do just give you that bit of a warning that you may
15 want to bring a jacket with you as you participate in
16 this trial.

17 And, Madam Clerk, at this time if you would
18 please go ahead and administer the oath to the jury to
19 try the case.

20 THE CLERK: Yes, Your Honor.

21 Could you each please stand and raise your
22 right hand?

23 Do you, and each of you, solemnly swear or
24 affirm that you will well and truly try and a true
25 deliverance make in the case now on trial, the

1 United States of America versus Samuel Girod, and render
2 a true verdict according to the law and the evidence, so
3 help you God?

4 Do each of you so swear or affirm?

5 (Affirmative responses)

6 THE COURT: Thank you, and please be seated.

7 Now, members of the jury now that you have been
8 sworn, I will give you some preliminary instructions to
9 guide you in your participation in the trial.

10 It will be your duty to find from the evidence
11 what the facts are. You and you alone will be the judges
12 of the facts.

13 You'll then have to apply those facts to the
14 law as the Court will instruct you.

15 Now, you must follow that law whether you agree
16 with it or not, and nothing that the Court may say or do
17 during the course of this trial is intended to indicate
18 or should be taken by you as indicating what your verdict
19 should be.

20 The evidence from which you will find the facts
21 will consist of the testimony of the witnesses,
22 documents, and other things received into the record as
23 exhibits, and any facts that the parties agree to or that
24 the Court may instruct you to find.

25 Now, certain things are not evidence and must

1 not be considered by you. I'll list them for you now.

2 Aside from any testimony given under oath,
3 statements, arguments, and questions by the parties are
4 not evidence.

5 Likewise, statements, arguments, and questions
6 by the attorneys are not evidence.

7 Objections to questions are not evidence. The
8 parties may make objections when they believe the
9 evidence being offered is improper under the rules of
10 evidence. You should not be influenced by an objection
11 or by the Court's ruling on it.

12 If an objection is sustained, ignore the
13 question. If it's overruled, treat the answer like any
14 other.

15 If you are instructed that some items of
16 evidence are received for a limited purpose only, then
17 you must follow that instruction. Testimony that the
18 Court has excluded, or told you to disregard, is not
19 evidence and must not be considered.

20 Anything that you may have seen or heard
21 outside the courtroom is not evidence and must be
22 disregarded.

23 You are to decide the case solely on the
24 evidence presented here in the courtroom.

25 Now, there are two kinds of evidence, direct

1 and circumstantial.

2 Direct evidence is direct proof of a fact, such
3 as the testimony of an eyewitness.

4 Circumstantial evidence is proof of facts in
5 which you may infer or conclude that other facts exists.

6 I'll give you further instructions on these, as
7 well as other matters at the end of the case.

8 But keep in mind that you may consider both
9 kinds of evidence.

10 It will be up to you to decide which witnesses
11 to believe, which witnesses not to believe, and how much
12 of any witness's testimony to accept or reject.

13 I will give you some guidelines for determining
14 the credibility of witnesses at the end of the case.

15 Now, the defendant, Samuel A. Girod, has
16 elected to represent himself in this trial. He has a
17 constitutional right to do that. His decision to
18 represent himself has no bearing whatsoever whether he is
19 guilty or not guilty, and must not affect your
20 consideration in the case.

21 Because Mr. Girod has decided to act as his own
22 lawyer, you will hear him speak at various times during
23 the trial.

24 He may make an opening statement and a closing
25 argument. He may question witnesses, make objections,

1 and argue to the Court.

2 I want to remind you that when Mr. Girod speaks
3 in these parts of the trial, his words are not evidence.

4 Now, as you know, this is a criminal case.

5 There are three basic rules about criminal cases that you
6 must keep in mind.

7 First, a defendant is presumed innocent unless
8 and until proven guilty.

9 An indictment against a defendant brought by
10 the United States is only an accusation, nothing more.
11 It's not proof of guilt or anything else. A defendant,
12 therefore, starts out with a clean slate.

13 Second, the burden of proof is on the
14 United States until the very end of the case. A
15 defendant has no burden to prove his innocence, or to
16 present any evidence. Likewise, a defendant has no
17 burden to testify.

18 Third, the United States must prove the
19 defendant's guilt beyond a reasonable doubt. I'll give
20 you further instructions on this point later, but bear in
21 mind that in this respect a criminal case is different
22 from a civil case.

23 Now, the indictment contains 13 counts for your
24 consideration. I'll summarize them for you now.

25 Count 1 charges the defendant with conspiring

1 to impede an officer of the United States from
2 discharging his or her duties in violation of Title 18 of
3 the United States Code, Sections -- Section 372.

4 To find the defendant guilty of this charge,
5 the government must prove the following elements beyond a
6 reasonable doubt.

7 First, that the defendant agreed with one or
8 more persons to do one of the following. There are two
9 items.

10 To prevent by force, intimidation, or threat
11 any officer of the United States from discharging any
12 duties of his or her office, or to induce by force,
13 intimidation, or threat any officer of the United States
14 to leave the place where his or her duties as an officer
15 are required to be performed.

16 And the second element is that the defendant
17 knowingly and voluntarily joined the conspiracy.

18 Now, Count 2 charges the defendant with
19 obstruction of proceedings before an agency, in violation
20 of Title 18 of the United States Code, Section 1505.

21 For you to find the defendant guilty of this
22 charge, the government must prove the following elements
23 beyond a reasonable doubt. There are four elements.

24 First, that on or about the date stated in the
25 indictment, there was a proceeding pending before an

1 agency of the United States.

2 Second, the defendant knew of the pending
3 proceeding.

4 Third, the defendant endeavored to influence,
5 obstruct, or impede the proceeding.

6 And, fourth, the defendant did so corruptly by
7 threats or force or by any threatening communication.

8 In Count 3 the defendant is charged with
9 failing to register his establishment with the Food &
10 Drug Administration, in violation of Title 21 of the
11 United States Code, Section 331(p).

12 To find the defendant guilty of this charge,
13 the government must prove the following elements beyond a
14 reasonable doubt. There are three elements for this
15 charge.

16 First, the defendant operated an establishment
17 engaged in the manufacture, preparation, propagation,
18 compounding, or processing of a drug or drugs.

19 Second, the defendant failed to register that
20 establishment with the Food & Drug Administration.

21 And, third, that the defendant acted within
22 intent to defraud or mislead.

23 In Counts 4 through 11, the defendant is
24 charged with introducing misbranded drugs into interstate
25 commerce, in violation of Title 21 of the United States

1 Code, Section 331(a).

2 For you to find the defendant guilty of these
3 charges, the government must prove the following elements
4 beyond a reasonable doubt.

5 First, that the defendant introduced or
6 delivered, or caused to be introduced or delivered, for
7 introduction into interstate commerce, the product
8 specified in the particular count.

9 Second, the product was a drug.

10 Third, the defendant acted with the intent to
11 defraud or mislead.

12 Now, misbranding can mean any of the following.
13 It can mean one of five things.

14 First, the drug's labeling did not bear
15 adequate instructions for use.

16 Second, the drug's labeling did not contain a
17 list of each active ingredient.

18 Third, the drug's labeling did not include
19 adequate warnings against the drug use where such use may
20 be dangerous to one's health.

21 Fourth, the drug is dangerous to health when
22 used in the dosage or manner, or with the frequency or
23 duration prescribed, recommended or suggested in a
24 labeling thereof.

25 Or, fifth, drug was manufactured, prepared,

1 propagated, compounded, or processed in a facility that
2 was not registered with the FDA.

3 Now, in Count 12 the defendant is charged with
4 tampering with a witness in violation of Title 18 of the
5 United States Code, Section 1512(b)(2)(A).

6 For you to find him guilty of this charge the
7 government must prove the following elements beyond a
8 reasonable doubt.

9 The defendant threatened, attempted to
10 threaten, or attempted to corruptly persuade another
11 person to engage -- or engaged in misleading conduct
12 toward another person.

13 Second, the defendant acted knowingly.

14 And, third, the defendant acted with the intent
15 to cause or induce any person to withhold records and
16 documents from an official proceedings.

17 Now, finally, in Count 13 the defendant is
18 charged with failing to appear in violation of Title 18
19 of the United States Code, Section 1346.

20 For you to find the defendant guilty of this
21 count, the government must prove the following elements
22 beyond a reasonable doubt.

23 First, that the defendant was previously
24 charged in this Court with tampering with a witness in
25 violation of Title 18 of the United States Code,

1 Section 1512.

2 Second, the defendant was released on bond on
3 the condition that he appear for scheduled court
4 proceedings.

5 Third, the defendant failed to appear for court
6 as required on August 26th, 2016.

7 And, fourth, the defendant knew that he was
8 required to appear for court on that date, August 26th,
9 2016, and purposefully and knowingly failed to do so.

10 Now, let me mention a few things about your
11 conduct as jurors.

12 First, during the trial you're not to discuss
13 the case with anyone, or permit anyone to discuss it with
14 you. Until you retire to the jury room at the end of the
15 case to deliberate on your verdict, you're simply not to
16 talk about this case.

17 Second, do not read or listen to anything
18 touching on the case in any way.

19 If anyone should try to talk to you about the
20 case, then bring it to the Court's attention promptly.

21 Third, do not try to do any research or make
22 any investigation about the case on your own.

23 Fourth, do not form any opinion until all the
24 evidence is in.

25 Keep an open mind until you start your

1 deliberations at the end of the case.

2 Now, finally, you'll be allowed to take notes
3 during the course of the trial. Your notes should be
4 used only as an aid to your memory. Your notes should
5 not -- you should not give your notes precedence over
6 your independent recollection of the evidence.

7 Also, you should not be unduly influenced by
8 the notes of other jurors. Notes are not entitled to any
9 greater weight than the memory or impression of each
10 juror as to what the testimony may have been.

11 The trial will now begin.

12 First, the United States Attorney will make an
13 opening statement, which is simply an outline to help you
14 understand the evidence as it comes in.

15 Next, the defendant may make an opening
16 statement.

17 Opening statements are neither evidence, nor
18 arguments.

19 The United States will then present its
20 witnesses, and the defendant may cross-examine them.

21 Following the United States case, the
22 defendant may, if he wishes to present witnesses, whom
23 the United States may cross-examine.

24 There may also be some rebuttal testimony or
25 evidence.

1 After all of the evidence is in, the parties
2 will present closing arguments to summarize and interpret
3 the evidence for you, and the Court will instruct you on
4 the law.

5 After that, you will retire to deliberate on
6 your verdict.

7 Now, at this time, ladies and gentlemen, we
8 will proceed with the opening statements. The parties
9 have requested approximately 35 minutes, and so what
10 we'll do is we'll proceed with the opening statements
11 before we take our lunch break. It may be a little bit
12 after the noon hour before we do take our break, but I
13 will give you sufficient time for lunch when we do recess
14 at that time.

15 On behalf of the United States, Ms. Smith, you
16 may proceed with your opening statements.

17 MS. SMITH: Good morning everyone.

18 I'm sure you're wondering what we're doing here
19 so I'm just going to jump right in.

20 This case is about obstructing justice.

21 It's about not following Judge's orders.

22 It's about a Federal Judge telling this man to
23 stop selling certain products and him continuing to do it
24 anyway.

25 It's about selling those products to customers

1 and not telling them he was under a court order not to
2 sell them.

3 It's about stopping federal officers from doing
4 their job.

5 And it's about running from the law when
6 charged with a crime.

7 Let me tell you how this started. This man,
8 Sam Girod, has a company that makes three products.
9 Those three products make certain health claims, meaning
10 they claim to cure certain diseases, or fix certain
11 problems with the body.

12 One of those products is called TO-MOR-GONE,
13 which as you might expect from the name, the defendant
14 claims will remove warts, tumors, moles. He claims it
15 removes skin cancer.

16 It's made with an ingredient called bloodroot,
17 which you'll hear about in the course of this trial, and
18 I'll tell you more about in a few minutes.

19 The second product is called Chickweed Healing
20 Salve. The defendant advertises it to cure all sorts of
21 skin ailments, including poison ivy, skin cancer, burns,
22 diaper rash, fungal infections, and psoriasis.

23 The last product is called R.E.P., or Sin-Eze,
24 which the defendant advertises to cure sinus infections,
25 colds, stress headaches, and sore throats.

1 You'll hear and see these products, and you'll
2 see the various claims the defendant made about them when
3 he sold the products.

4 The claims he made about them are important.
5 This case is not about whether the products do what he
6 says they do. It's about whether he is allowed to make
7 those claims to customers at all.

8 You see, when you make products, and you make
9 claims like the ones he was making, the Food & Drug
10 Administration cares about that. I'll call it the FDA
11 for short.

12 When you make a product that's advertised as
13 curing something, is fixing something with the human
14 body, the Food & Drug Administration is charged with
15 making sure that those claims follow their rules.

16 The FDA is charged with making sure that when
17 people buy food and drugs, there's some guarantee that
18 they are -- that what they're buying is safe, that there
19 are adequate warnings about how those products should be
20 used. That's why we're here.

21 You'll hear that the defendant has been aware
22 of these requirements for some time. He's been dealing
23 with the FDA consumer safety officers since at least 2012
24 when they first told him to stop making these claims on
25 his pamphlets. He didn't. He continued to sell the

1 products.

2 And in 2013 a Federal Judge in Missouri told
3 him he had to stop selling them until he met certain
4 conditions. He didn't.

5 That Judge told him to stop making these health
6 claims, and he did not.

7 The FDA then issued -- then ordered him to
8 issue a recall on the products that were out there. He
9 did not.

10 In fact, after the injunction came down, after
11 that order came down from a Federal Judge, he went on a
12 bit of a selling spree in the fall of 2013.

13 He sold the products to customers in Indiana,
14 in Illinois. He sold over a thousand containers of the
15 Chickweed Healing Salve to a distributor in Wisconsin.
16 He gave that distributor a good price.

17 He didn't mention to any of these customers or
18 any of these distributors that a Federal Judge had just
19 issued an injunction against him, against the products.

20 He didn't tell anyone about that court order,
21 people who were then going on to sell these products.

22 You'll hear about those sales. They are the
23 basis of the -- of nine counts of the indictment.

24 You will hear about how those sales are
25 violations of the Food Drug & Cosmetic Act.

1 He's charged with nine counts of violating that
2 act and doing so with the intent to defraud.

3 He's charged with selling misbranded products
4 with the intent to defraud. That becomes felony of
5 misbranding.

6 I will tell you more about the term misbranded,
7 and the Judge will tell you more about it, but basically
8 the FDA has certain rules and regulations that govern
9 people who make products that qualify as drugs, and when
10 people do not follow those rules, that is called
11 misbranding.

12 This case is about those misbranded products
13 and about the defendant intentionally selling them even
14 after he knew it was a problem.

15 But it's about something much bigger than that.
16 It's about the rule of law. You'll hear that there are
17 certain rules, certain laws, that apply to everyone.

18 There are also rules that apply to people who
19 choose to make and sell products, who choose to make and
20 sell products that make certain health claims, that claim
21 to cure something with the human body.

22 There are also rules that make it a crime to
23 interfere with the judicial process. There are rules
24 that make it a crime to stop federal officers from doing
25 their job.

1 And there are rules that apply to the
2 defendant. After he was charged in this case, he was
3 required to appear in court.

4 But in all of those instances, for all of those
5 rules, you'll hear that the defendant decided they did
6 not apply to him, that he did not have to follow the
7 rules that everyone else does.

8 Before I go any further and start talking about
9 the witnesses, I want to remind you of something the
10 Judge said. What I am here talking to you about is the
11 opening statement. It's not evidence. It's not
12 argument. I'm trying to give you an overview of what
13 you're going to hear over the next few days. This is
14 just the first time I get a chance to talk to you
15 directly, and I won't get another chance to do so until
16 closing statements.

17 I'm also going to get into the statutes a
18 little bit, which the Judge has already given you an
19 overview.

20 But let me give you a preview of some the
21 witnesses that you will hear from so you have some
22 indication of what's going to happen.

23 First, you're going to hear from FDA Consumer
24 Safety Officer Nicholas Paulin. You'll hear that a
25 consumer safety officer with the FDA is an investigator

1 at the front lines of figuring out whether the products
2 on the shelves qualify as drugs and figuring out whether
3 the people who make those products are following the
4 FDA's rules and regulations.

5 Now, a drug is something that has a legal
6 definition, and the Judge will include that in the
7 instructions. But it means something that is intended to
8 affect the structure or function of human beings. I'm
9 going to say that again because of the legal language. A
10 drug is something that is intended to affect the
11 structure or function of the human body, or intended to
12 cure, mitigate, or resolve some disease or problem with
13 the human body.

14 Now, how do you tell what a product is intended
15 for? You consider the label. You consider what's on the
16 physical product. You also consider the promotional
17 materials distributed with the product, the pamphlets,
18 the sales material.

19 Most importantly the intended use of a product
20 is what a reasonable person would conclude the maker or
21 seller of the product intended that it be used for.

22 Now, Investigator Paulin will tell you that he
23 first met the defendant in January 2012. He will tell
24 you that the defendant had dealt with FDA inspectors
25 before that, but that was the first time that he had met

1 with him.

2 He and one of his colleagues, Matthew Suedkamp,
3 another consumer safety officer, they met with him two
4 times in 2012.

5 On one of those times they were able to inspect
6 where the defendant makes the Chickweed Healing Salve,
7 the barn on his farm where this takes place. He has some
8 pictures of the area where Chickweed Healing Salve is
9 made, and he can explain the process by which its made.

10 But most importantly, in those early meetings,
11 he will tell you that he told the defendant to stop
12 making these claims, to stop including these claims on
13 the pamphlets that he was using to sell his product.

14 He told him that if he stopped making those
15 claims, he would go down dramatically in priorities of
16 the FDA, that they would not be harassing him about those
17 claims. He told him that the claims on the promotional
18 materials were the problem. This was in 2012, over five
19 years ago.

20 About those early visits, he will also tell you
21 that the conversations with the defendant sometimes got
22 so heated, that there were so many other people around
23 during those conversations, that he made a personal
24 safety note in the file noting how aggressive the
25 defendant was and recommending in the future always two

1 consumer safety officers visit the facility and have an
2 exit strategy every time they were on the property.

3 This personal safety alert in the files added
4 in March 2012, and he'll tell you how unusual it is to
5 have added something to one of his FDA files along those
6 lines.

7 Now, a year-and-a-half later Investigators
8 Paulin and Suedkamp, they visited the defendant again.
9 The reason they went was because of that court-ordered
10 injunction. This was November 2013 that they went to
11 visit, and the Court had ordered the injunction first in
12 August 2013, and then again in September 2013.

13 This visit is important as it's the basis for
14 Counts 1 and 2. Now, that court-ordered injunction told
15 the FDA that they had the right to inspect the
16 defendant's manufacturing facility. They had that right
17 for five years.

18 Investigator Paulin will tell you that for that
19 visit, because of this prior personal safety note, he
20 notified the local sheriff's office so that someone could
21 accompany the FDA officers. He notified and ended up
22 being accompanied by Deputy Sheriff Jessie Stewart.

23 He'll tell you that they arrived at the
24 defendant's farm and were almost immediately surrounded
25 by other men.

1 He'll tell you that the defendant arrived in a
2 truck shortly thereafter, that the truck pulled in behind
3 him blocking their exit.

4 He will tell you that he and his fellow
5 investigator explained why they were there and asked to
6 see the manufacturing area, they asked to inspect, which
7 is what they were there to do that day. He gave him
8 another copy of the court order.

9 He'll tell you that the defendants and the
10 others there that day kept closing in around them. They
11 kept yelling. They were angry, and the yelling increased
12 and continued.

13 He will tell you that the situation escalated,
14 and the defendant refused to let the officers inspect
15 that day.

16 The defendant said, it looks the same as last
17 time you were here, the manufacturing area.

18 Investigator Paulin will tell you he was not
19 able to do his job that day. He will tell you that it
20 was an intimidating situation, and they decided they had
21 to leave because of those safety concerns.

22 You'll hear from two other people who were
23 there that day, the other FDA Consumer Safety Officer
24 Matthew Suedkamp and also Bath County Deputy Sheriff
25 Jessie Stewart.

1 They will also tell you it was an intimidating
2 situation that escalated very quickly.

3 They will tell you that the FDA officers could
4 not inspect the manufacturing facility that day because
5 of the actions of the defendant and others.

6 You'll hear from another FDA officer. It's a
7 compliance officer. Her name is Tamara Umscheid, and
8 she's based out of Kansas City, Missouri. She was
9 brought into this because of some events that happened
10 earlier in Missouri, and she will tell you about them.

11 What she'll tell you is that a shipment of the
12 defendant's products, the three products I told you
13 about, was embargoed in Missouri. It contained over
14 1,100 tins of the Chickweed Healing Salve, over 200 tins
15 of the TO-MOR-GONE, and over 300 containers of the R.E.P.

16 That shipment was reported to the FDA by the
17 State of Missouri because of the health claims that were
18 on the products' labels and pamphlets.

19 At that point, once they had the notice of
20 these products, the FDA had an obligation to keep those
21 products from being sold. It did that by filing a civil
22 lawsuit in federal court in Missouri.

23 Now, Officer Umscheid will tell you that first
24 she didn't even know who made the products, and then
25 defendant intervened in the lawsuit. He filed a notice

1 of appearance with a lawyer and tried to get his products
2 back.

3 She'll tell you that eventually in that case
4 the Judge agreed with the FDA's position, and in the fall
5 of 2013 issued an injunction. He issued, the Judge
6 issued, it twice, first at the end of August and then
7 again in September, and she'll tell you about those two
8 different orders.

9 That order means the defendant was told to stop
10 manufacturing and selling these products. He was told he
11 had to stop doing that until he removed the claims from
12 the promotional material that made them drugs.

13 It also said that the FDA had the right to
14 inspect his facility for the next five years, and she'll
15 tell you that is why she asked those two consumer safety
16 officers to inspect the facility in November 2013.

17 She'll also tell you that in December of that
18 year, December 2013, when the FDA knew he was still
19 making and selling the products, they ordered him to
20 issue a recall. That was something else that the order
21 allowed them to do.

22 Officer Umscheid will tell you that he did not
23 issue a recall.

24 Finally, she will tell you that the defendant
25 was not and is not registered with the FDA to make drugs

1 or to make foods.

2 The injunction entered in that Missouri case is
3 important, because the sales after the date of that order
4 are the ones that issue in this case, the ones the United
5 States alleges are felony misbranding, selling misbranded
6 products with the intent to defraud.

7 You will also hear from Officer Umscheid how
8 orders, how injunctions in federal court are fairly
9 unusual, how that is usually the ultimate in what the FDA
10 gets to get compliance from someone making the products
11 that make these claims. Those orders are usually
12 effective.

13 There's another piece of this story, and you'll
14 hear it from the people who bought the defendant's
15 products after the injunction.

16 You'll hear that after that order came out, he
17 sold products across various states between September,
18 October, November 2013, even into January of 2014.

19 Most of these people are owners and managers of
20 small country stores. They had been buying the products
21 from the defendant for years, many of them.

22 You'll hear how he sold them more product in
23 the fall of 2013 into 2014, and he did not tell them he
24 was under a federal injunction to stop selling these
25 products.

1 He did not tell them there was a federal order
2 that said these products could not be sold in interstate
3 commerce.

4 None of them were told about that federal
5 injunction until the criminal case was opened, until this
6 man here, Special Agent Steven Lamp, showed up asking for
7 records. They didn't learn about the injunction until
8 then.

9 One of these customers you'll hear about is
10 named Jeffrey Burkholder. He runs a distribution company
11 out of Wisconsin that supplies products to consumers in
12 over a dozen states, to grocery stores, he supplies
13 products.

14 You'll hear that just weeks after the
15 injunction came down, the defendant sold him \$6,000 in
16 Chickweed Healing Salve. It was over a thousand
17 containers of that product. You'll hear he would not
18 have bought the products if he had known there was a
19 federal injunction that said he could not sell it.

20 You'll hear how he gave over a thousand
21 containers to Agent Lamp from his two warehouses because
22 he knew he could not sell the product once he knew of the
23 injunction.

24 Another customer you'll hear from is named
25 Mary Miller. This is confusing because there are

1 actually two Mary Millers in the United States' case.
2 But this Mary Miller I'm mentioning now she's from
3 Grabill, Indiana. She runs a store called Miller's
4 Country Store and has for several decades.

5 You'll hear from this Mary Miller how she
6 bought some additional product from the defendant in the
7 summer of 2014, almost a year after the injunction was
8 first entered.

9 You'll hear that after this criminal case was
10 opened, the defendant showed up at her store and asked if
11 she had received a subpoena. He asked to see her
12 subpoena. She had received a federal subpoena for her
13 grand jury records.

14 The defendant told her not to respond to it.
15 He followed that up with a letter, a letter addressed to
16 "Dear Friends," and he said he didn't really think the
17 FDA would do anything if she didn't comply.

18 You'll hear that trying to get someone to
19 withhold records from a federal grand jury is a crime.

20 You'll also hear from some other witnesses who
21 worked for the defendant. You'll hear from the man who
22 drove him around on many of these sales trips to other
23 states.

24 You'll hear from the man who ran the print shop
25 where the defendant ordered his labels and promotional

1 material.

2 You'll hear how after the defendant was under
3 this federal injunction, even after he was charged
4 criminally in this case for selling these products, he
5 continued to order labels, he continued to order
6 pamphlets advertising his products, and making the same
7 claims about them.

8 You'll hear that since the injunction in 2013,
9 he has ordered thousands of labels for each of these
10 three products.

11 There's another important witness you'll hear
12 from, and her name is Dr. Jane Liedtka. She's a
13 dermatologist who works for the FDA. She'll be here to
14 tell you about one of the products in particular, the
15 product called TO-MOR-GONE. And she'll tell you about
16 the main ingredient in that product, which is called
17 bloodroot.

18 The defendant advertises the product for
19 getting rid of tumors, for getting rid of skin cancer and
20 cancerous growths.

21 That bloodroot product is a problem, and
22 Dr. Liedtka will tell you what some of the problems
23 associated with that ingredient are. The product
24 TO-MOR-GONE, products that include bloodroot, are
25 sometimes also called Black Salves, and you'll see that

1 on the defendant's label as well.

2 She'll tell you about her study of these
3 products and about the study of TO-MOR-GONE in
4 particular.

5 She'll tell you that it is a corrosive product.
6 When it's used on the skin, it can cause serious damage.
7 It will remove things that are on your skin, but it will
8 also remove more than that. It can burn away more of the
9 flesh than just the growth, than just the wart. If
10 somebody has a growth and the cells underneath it are
11 also cancerous, TO-MOR-GONE may only remove the growth.
12 It won't treat your un-- someone's underlying skin
13 cancer, which can only get worse if not treated.

14 Dr. Liedtka will tell you that skin cancer is a
15 cancer that almost always can be treated when it's
16 treated medically.

17 She'll tell you that when using this product,
18 particularly with its lack of adequate warnings, it can
19 be dangerous for customers.

20 You'll also hear from Agent Lamp about the
21 investigation. You'll hear about how much money the
22 defendant was making from his products. Based on the
23 defendant's own records and his bank account, he was
24 making over \$100,000 a year every year from selling these
25 three products. You'll hear how that continued after the

1 injunction.

2 The final piece of this case started after the
3 defendant was charged with these crimes in this court.
4 He was charged in October 2015.

5 He was released on bond on certain conditions.
6 The main one being that he had to appear in court for all
7 appearances. He hired a lawyer initially, and then
8 eventually decided to represent himself.

9 He then in a pleading he filed with this Court
10 threatened not to appear. He was reminded of his
11 obligation to be here.

12 In August of 2016 he did not show up for a
13 hearing. An arrest warrant was issued, and the marshals
14 went to arrest him.

15 You will hear from Deputy United States Marshal
16 Gary Heiden about all of this. Deputy Heiden went to
17 arrest him on August 26th, 2016, at his farm, and he was
18 not there. His family was there, but he was not.

19 A few days later the defendant filed a brief in
20 court, and he referenced the arrest warrant. He
21 referenced the marshals coming to his house to arrest
22 him.

23 He did not turn himself in at that point. He
24 did not report to the court. He did not report to the
25 marshals.

1 He didn't show up until the marshals finished
2 their fugitive investigation after five months and were
3 able to arrest him.

4 You will hear it is a crime to fail to appear
5 in federal court when you're required to be here. It's a
6 crime to fail to appear when it's done purposefully and
7 knowingly.

8 I tried to give you this overview because this
9 case has several different threads. It's not a crime
10 that happened on a single day, and you're going to hear
11 about it, these events, spanning several years, and
12 you're going to hear it from numerous different
13 witnesses.

14 I can't always present it perfectly
15 chronologically, but each of the witnesses has a piece of
16 the puzzle, and the overview I'm giving here now is
17 hopefully going to help you fit the pieces of the puzzle
18 together as they come in. It will hopefully help you
19 understand why you're hearing a certain thing from a
20 certain witness.

21 Like I said, I will be back here at closing
22 arguments to help explain the puzzle pieces and how they
23 fit together.

24 Let me just touch on briefly the law that
25 you're applying in this case.

1 Conspiracy -- Count 1 is conspiracy to impede
2 an officer of the United States.

3 And Count 2 is an obstruction of proceedings
4 before an agency. In this case the FDA.

5 Both of these counts relate to the event of
6 November 2013 when those two FDA consumer safety officers
7 were at the defendant's farm.

8 Counts 3 through 11 all deal with violations of
9 the Food Drug & Cosmetic Act, the FDCA for short.

10 To give you some background on this law, the
11 FDCA was enacted to regulate and protect the foods and
12 products on our shelves.

13 The purpose of the law is to protect consumers,
14 people who are not in the position to evaluate how drugs
15 are made, are not in the position to evaluate the claims
16 that are made about a product.

17 The law recognizes that the people who choose
18 to make those products have the most control over what
19 goes into them and over how they are advertised.

20 It imposes this high burden on the people who
21 choose to make products that make health claims.

22 The FDA has a lot of rules, and one here is so
23 basic and important, and that is the requirement that if
24 you're making products that make health claims, that make
25 them drugs, you have to register with the FDA. That is

1 so the FDA knows who is making the products on our
2 shelves. Otherwise, they won't know. You have to
3 register with the FDA.

4 You'll hear that the defendant was not
5 registered.

6 The FDCA violations, the defendant is charged
7 with, include not registering with the FDA and selling
8 misbranded products with the intent to defraud.

9 The defendant -- the Judge has already
10 explained some of the ways in which the products are
11 alleged to have been misbranded.

12 The Food Drug Cosmetic Act also has an
13 interstate commerce requirement, which can mean that the
14 products were sold in other states, or that the product
15 used ingredients that came from other states.

16 So if you hear testimony about where something
17 came from or where it was sold, that's why you're hearing
18 it.

19 Count 12 is tampering with the witness
20 Mary Miller. That's trying to persuade a witness from
21 withholding documents from the grand jury.

22 And Count 13 is the failure to appear.

23 The Judge has already told you some of the
24 elements of these statutes, and I just mentioned this so
25 you have a sense of what you're looking for.

1 Some key questions to ask yourself as we go
2 through this are these.

3 Did this man impede federal officers from doing
4 their jobs?

5 Did he work with others to accomplish that
6 goal?

7 Did he register his company with the FDA?

8 Did he manufacture these products?

9 Did he sell these products?

10 Did the products make claims that make them
11 drugs under the law?

12 Did he warn his customers about the danger of
13 bloodroot?

14 Was bloodroot a dangerous ingredient?

15 Did he mislead or omit or conceal material
16 facts from either his customers or from the government?

17 Did he try to persuade Mary Miller to withhold
18 documents from the grand jury?

19 Was his failure to appear here in federal court
20 purposeful and knowing?

21 These are just some of the questions to ask
22 yourself as you hear the evidence.

23 Thank you for your patience with this process.
24 Thank you for being here today. Thank you for your
25 careful attention to the evidence that you'll hear over

1 the next few days.

2 I submit that at the end of this case, you're
3 going to find that the defendant did all of the things
4 the United States has alleged, and you're going to have
5 no doubt that it was a crime.

6 At the end of the trial, I will be back here to
7 ask that you find the defendant guilty of all counts.

8 Thank you.

9 THE COURT: Thank you, Ms. Smith.

10 Mr. Girod, if you wish, you may present an
11 opening statement, or you may reserve until the
12 government has closed its case.

13 DEFENDANT GIROD: I'm going to reserve it until
14 later.

15 THE COURT: All right. That will be fine.

16 Ladies and gentlemen, what we will do is before
17 beginning with presentation of proof, we will go ahead
18 and take our lunch break until 1:15 this afternoon.

19 Now, please keep in mind the admonition that
20 you have been given a couple times to this point.

21 As we break for lunch -- and if you don't have
22 your badges, you'll need to keep those with you.

23 As we break for lunch, please don't discuss the
24 case with anyone or allow anyone to discuss the case with
25 you.

1 As a group, you should not be discussing the
2 case, and you shouldn't allow anyone to approach you to
3 discuss the matter.

4 As I mentioned to you, if that should ever
5 happen in this case or some other case, you should report
6 that to the Court promptly and allow the Court to deal
7 with that.

8 Don't read, watch, or listen to any accounts of
9 the case, if there should be any.

10 Don't do any type of research or form any
11 investigation on your own.

12 Throughout the course of this trial you'll be
13 hearing about certain locations, and you're instructed
14 now that you shouldn't go out and attempt to visit any of
15 the locations you'll be hearing about during the course
16 of the trial.

17 Let me mention to you now, and I'll mention to
18 you again later about social media. If you're a person
19 that likes to communicate on social media, whether it's
20 Facebook or some other form of social media, you should
21 not do that about this case. You should not identify
22 yourself as a juror in this proceeding or talk about the
23 case in any way, directly or indirectly.

24 And you should not read or listen or watch
25 anything about this matter on social media.

1 So when I say don't read, watch, or listen to
2 any accounts of the case, that includes everything. That
3 includes directly or indirectly.

4 So you can't allow a spouse, for example, to
5 read something about the case and communicate with you --
6 to you.

7 So don't read, watch, or listen to any accounts
8 of the case.

9 And, again, don't make up your mind about this
10 case until it is finally submitted to you.

11 Now, with that admonition, again, you'll be
12 excused until 1:15 this afternoon.

13 At that point we'll proceed with presentation
14 of the proof in the case. The jury is excused.

15 (Whereupon, the juror members leave the courtroom.)

16 THE COURT: Please be seated.

17 Let me see if we have any matters to take up
18 outside the presence of the jury at this point.

19 MS. SMITH: No, Your Honor.

20 THE COURT: Anything to take up?

21 DEFENDANT GIROD: No.

22 THE COURT: All right. Let me just remind
23 everyone before we recess for lunch. It's very important
24 that when you're in the hallways, of course, that you
25 don't talk about the matter or communicate in such a way

1 that a juror might hear, might overhear, any conversation
2 that might be taken incorrectly if you do that.

3 I do understand that this morning there were
4 some folks in the hallway speaking louder than necessary.
5 It will not help your position in the case if that were
6 to happen. It can be taken incorrectly. Regardless of
7 your intent, it can be taken incorrectly. So I will just
8 remind everyone not to do that.

9 I don't want to have to sequester the jury.
10 That's the last thing I would like to do, but if it's
11 necessary to do that, of course, I'll certainly consider
12 that as an option in the matter.

13 All right. With that instruction and
14 admonition -- oh, one other thing.

15 If anyone violates an order of the Court,
16 directly or indirectly, I do expect that security
17 officers to advise me of that immediately, and I'll take
18 that up.

19 All right. We will be in recess until 1:15
20 this afternoon.

21 (Whereupon, a lunch recess was taken at 12:00 p.m.,
22 and Day 1 of the Jury Trial proceedings continued at
23 1:15 p.m., on the record in open court, without the juror
24 members present, as follows.)

25 THE COURT: Thank you.

1 Before we proceed, we've had an incident with
2 one of the witnesses being confronted by someone outside,
3 supporter of the defendant. So I'm going to ask the
4 security officer to bring that person into the courtroom.

5 Is the FBI here, the FBI agent present?

6 MS. SMITH: He is not physically in this
7 courtroom, but I understand that he's on his way.

8 THE COURT: All right.

9 THE CLERK: He indicated that he would be here
10 at 1:15.

11 THE COURT: All right. Thank you.

12 MS. SMITH: The agents are here, Your Honor.
13 I'm not sure if the witness is.

14 THE COURT: All right. I think the security
15 officer is bringing the individuals that confronted the
16 witness into the courtroom.

17 All right. Apparently, the offending party
18 has left the property of the courthouse.

19 Let me again repeat the warning that I gave
20 everyone before lunch, and that is you're not to have any
21 interaction with the jury, and that would include
22 potential witnesses in the case.

23 I am going to ask the Federal Bureau of
24 Investigation to begin an investigation as to one or two
25 individuals that can be identified through the security

1 officers and also through footage in the courtroom.

2 The interference with a witness in the case,
3 confronting a witness, I'd like for the FBI to
4 investigate whether that would constitute impeding or
5 interfering with an official proceeding, and also
6 potentially contempt of court based upon my previous
7 instructions through interfering with a potential witness
8 in the case.

9 The individual was previously on property of
10 the courthouse, but apparently she has left. But you
11 may, of course, interview her, there may be two
12 individuals, and also you may interview the witnesses in
13 the case to see if there has been interference or
14 tampering.

15 Any questions about that?

16 FBI AGENT: No, sir.

17 THE COURT: All right. I will again advise the
18 parties and advise the observers in the courtroom, if
19 there is interference in the course of this proceeding,
20 and if I find someone has, in fact, interfered, it will
21 constitute contempt of Court.

22 I will not hesitate to jail you throughout the
23 course of this proceeding and for up to six months if
24 necessary.

25 I'll also refer the matter to the federal grand

1 jury here in Lexington for further investigation and
2 proceedings as they may be necessary.

3 So if we have any questions about that, if you
4 think I'm joking, think again, I'm not.

5 All right. Any matters to take up before we
6 bring the jury in?

7 MS. SMITH: No, Your Honor.

8 Do you want the FBI agents to stay or --

9 THE COURT: If you would please remain in the
10 building, if necessary, if we need to have further
11 proceedings, the Court would certainly appreciate that.
12 I would expect that this particular individual may be
13 returning back to the building, so the security officers
14 can identify them for you.

15 All right. Thank you.

16 MS. SMITH: Nothing further, Your Honor.

17 THE COURT: All right.

18 All right. Thank you.

19 If there's nothing else to take up, we'll bring
20 the jury in.

21 (Whereupon, the juror members enter the courtroom.)

22 THE COURT: Thank you, and please be seated.

23 The record will reflect that all members of the
24 jury are present at this time.

25 The parties and counsel are also present in the

1 courtroom.

2 Does everyone have a notepad that needs it,
3 something to write with?

4 All right. We'll proceed at this time with
5 presentation of the United States case-in-chief.

6 MS. SMITH: The United States calls
7 Nicholas Paulin.

8 THE CLERK: Raise your right hand, please.

9 Do you swear unto God, or affirm, subject to
10 the penalties of perjury that the testimony you're about
11 to give in this matter shall be the truth, the whole
12 truth, and nothing but the truth?

13 Do you so swear or affirm?

14 THE WITNESS: Yes.

15 THE CLERK: Have a seat right there.

16 THE COURT: All right. Thank you.

17 Ms. Smith, you may proceed.

18 NICHOLAS PAULIN,
19 having been first duly placed under oath, was examined
20 and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. SMITH:

23 Q. Good afternoon, sir.

24 Could you please state and spell your name for the
25 court reporter?

1 A. Yes. My name is Nicholas Paulin, Nick is
2 N-I-C-H-O-L-A-S, Paulin, P-A-U-L-I-N.

3 Q. Mr. Paulin, where do you work?

4 A. I work for the Food & Drug Administration in
5 Cincinnati, Ohio.

6 Q. What do you do there?

7 A. I'm a drug investigator.

8 Q. What's your official title?

9 A. Consumer safety officer.

10 Q. What is your education background?

11 A. I have a biology degree from Perdue University.

12 Q. When did you receive that degree?

13 A. In 2005.

14 Q. What did you do after you graduated?

15 A. I was a middle school science teacher.

16 Q. How long did you do that?

17 A. I did that for one year.

18 Q. And where did you work next?

19 A. For the Food & Drug Administration.

20 Q. So you've worked for the Food & Drug Administration
21 since what year?

22 A. 2007.

23 Q. What's been your title throughout that time period?

24 A. Been a consumer safety officer the entire time.

25 Q. Have you received any specific training to become an

1 FDA consumer safety officer?

2 A. Yes. Whenever we're hired on, we go to a new hire
3 training in Washington, DC. It's a three-week training
4 course where we are trained on the Food Drug & Cosmetic
5 Act, and we actually have to pass an exam in order to
6 be actually -- to become an investigator.

7 Then after that we do on-the-job training with other
8 consumer safety officers.

9 And then I've also taken -- I'm a drug investigator,
10 so I've taken all the drug training courses as well.

11 Q. You mentioned being a drug investigator. Do you
12 have a particular specialty as a consumer safety officer?

13 A. Yes, pharmaceuticals.

14 Q. What are some of the other things consumer safety
15 officers can specialize in?

16 A. We regulate -- FDA regulates a variety of products
17 such as foods, drugs, medical devices, cosmetics,
18 biologics, but I specialize in pharmaceuticals.

19 Q. Have you focused in the drug area the entire time
20 you've been a consumer safety officer?

21 A. Yes.

22 Q. Tell us generally what are your responsibilities as
23 a consumer safety officer?

24 A. The number one -- or number one priority as a
25 consumer safety officer is to protect the public health.

1 We perform -- I perform pharmaceutical inspections, but
2 we perform inspections to the regulations of the CFR and
3 just to make sure the firms are -- to be able to do this
4 we perform inspections, and whenever we perform
5 inspections, we perform inspections as to the -- CFR to
6 make sure they're following the regulations.

7 Q. When you use the term CFR, what does that stand for?

8 A. It's the Code of Federal Regulations. That's -- so
9 whenever we do perform an inspection, we are using those
10 regulations and make sure firms are following those.

11 Q. When you use the term firms, what does that mean,
12 what type of places do you inspect?

13 A. Normally pharmaceutical firms as well.

14 Q. Is it always -- the term pharmaceutical has a
15 certain meaning. Is it always a pharmaceutical firm?

16 A. It could also be a drug firm as well.

17 Q. What's the difference? What does drug mean to you
18 as an FDA consumer safety officer?

19 A. A drug is defined in the Food Drug & Cosmetic Act as
20 anything that's going to diagnose, treat, cure, or
21 prevent a disease.

22 Q. Are you familiar with that in the course of your
23 responsibilities?

24 A. Yes.

25 Q. How many matters -- since you've worked for the FDA

1 for the last 10 years, how many matters have you worked
2 on that have turned into criminal cases?

3 A. This is my first one.

4 Q. Are you familiar with a man named Sam Girod?

5 A. Yes.

6 Q. Can you identify him in the courtroom today?

7 A. Yes.

8 Q. Can you point him out?

9 A. Right there. (Indicating)

10 MS. SMITH: Let the record reflect that he's
11 identified the defendant.

12 THE COURT: The record will so reflect that he
13 has identified the defendant in the case.

14 BY MS. SMITH:

15 Q. When did you -- when did you first meet the
16 defendant?

17 A. Back in January 2012.

18 Q. How did you happen to meet him in January 2012?

19 A. It was -- it was on an inspection.

20 Q. What -- did you know the name of his company at that
21 time?

22 A. We knew it was SAEG for Samuel and Elizabeth Girod.

23 Q. Did he do business by any other name?

24 A. He was also known as Satterfield Naturals.

25 Q. Did you know the -- why it was named Satterfield

1 Naturals?

2 A. That is also the street he lives on.

3 Q. Why did you go to visit with him in January 2012?

4 A. I had to gather more information on the product he
5 was manufacturing, which is Chickweed Healing Salve.

6 Q. How did you know he was making product at all?

7 A. We found out through another district, the Detroit
8 district, which is also the Indianapolis office. There
9 was an FDA inspection performed in 2004 at his other
10 location in Canton, Indiana.

11 Q. You mentioned a prior inspection. Could you tell us
12 again where that happened?

13 A. That was in Canton, Indiana.

14 Q. And what year did you say?

15 A. That was in 2004.

16 Q. At some point to your knowledge did he move to
17 Kentucky?

18 A. Yes, he moved to Kentucky from Canton to
19 Owingsville, Kentucky, in 2006.

20 Q. And between 2006 and 2012 had the FDA inspected his
21 facility in Kentucky?

22 A. No. That was the very first time we inspected his
23 facility in Kentucky.

24 Q. When you went in January 2012, did anyone go with
25 you?

1 A. Yes. My colleague, who's also a consumer safety
2 officer, Matthew Suedkamp.

3 Q. When in January did you first attempt to inspect?

4 A. It was on January 26th, 2012.

5 Q. Were you able to inspect his facility that day?

6 A. Not on that day. Only he was -- Mr. Girod was not
7 home, so we talked to -- to his two children and then
8 also one identified as -- himself as his son. So they
9 said that he was not home and he would be back in about
10 another week, so we came back a week later.

11 Q. Do you remember the day that you returned?

12 A. Yes, we returned on January 31st, 2012.

13 Q. And did anyone go with you that day?

14 A. Yes, Matthew Suedkamp, my co-worker.

15 Q. We'll walk through that specific day, but just
16 generally what happened that day?

17 A. That day we -- we were actually able to speak with
18 Mr. Girod. He was at his home that day, and we
19 actually -- we conducted our -- we tried to initiate our
20 inspection. We showed our credentials and issued an
21 FDA-42, which gives us the authority to conduct an
22 inspection under 704 of the act, and we were able to sit
23 with Mr. Girod in his living room, and we -- he -- we
24 talked. He told us the pamphlets that he distributes for
25 the product.

1 Q. We'll just --

2 A. Okay.

3 Q. -- break that down. You mentioned being in the
4 living room and going with Officer Suedkamp. Was anyone
5 else there during this conversation?

6 A. Yes. His wife was also present and then also two of
7 his children as well.

8 Q. Did you discuss the products that he makes?

9 A. Yes. He told us that he makes three products. One
10 was Chickweed Healing Salve for skin disorders and skin
11 cancer.

12 The second one was called TO-MOR-GONE for abnormal
13 growths and tumors and moles.

14 And the third one was -- it's called R.E.P. It was
15 for sinus infections and a breath freshener.

16 Q. Approximately how long did you and Investigator
17 Suedkamp meet with the defendant that day?

18 A. On that day it was approximately an hour.

19 Q. Did he have any products in stock that day?

20 A. On that day he -- he would not allow us to inspect
21 his facility, but he did tell us that he normally keeps
22 around 2,000 to 2,500 tins of TO-MOR-GONE and Chickweed
23 Healing Salve on his property.

24 Q. Were you able to -- did you get to physically see
25 that stock that day?

1 A. We did not on that day.

2 Q. Were you able to see any of the manufacturing area
3 that day?

4 A. Not on that day.

5 Q. Did he tell you where he manufactures the products?

6 A. He told us that he manufactures the product in his
7 barn.

8 Q. Did you see any of the products?

9 A. Not on that day.

10 Q. Did you see any of the promotional material?

11 A. We had -- we had the promotional material with us.
12 We --

13 Q. When -- sorry, go ahead.

14 A. We told him that he was -- through the promotional
15 materials he was making drug claims.

16 Q. When you went that day, what were you hoping to
17 accomplish?

18 A. We were hoping to conduct the inspection. We were
19 hoping to actually see Mr. Girod manufacture the product,
20 look at records, such as batch records or anything that
21 shows how he makes the product, and then also who he
22 distributes the product to.

23 Q. Did he give you any sort of sense of volume of how
24 much promotional material he distributes?

25 A. He did. He told us he has on the market

1 approximately 250,000 pamphlets of -- pamphlets for the
2 Chickweed Healing Salve on the market.

3 Q. Did you talk about the content of those pamphlets?

4 A. Yes. We told him that after looking at the
5 pamphlets, his product is making claims such as skin
6 cancer, skin disorders, psoriasis, diaper rash, burns.

7 Q. What's the format of those claims in the pamphlets?
8 What -- how are they described in the pamphlets?

9 A. They're testimonials in the pamphlet.

10 Q. And what does that mean when they're testimonials?

11 A. Testimonial is from -- it's not from a scientific
12 like FDA drug review. It's from actually consumers that
13 are saying they used the product, and they're saying that
14 it works without any -- to actually have a drug approved
15 it has to actually go through an FDA review process to be
16 able to say those claims before you could actually say
17 those claims on a pamphlet or any promotional material.

18 Q. During that January 2012 meeting, did you discuss
19 the use of testimonials and promotional materials with
20 the defendant?

21 A. On that day, we did. We told him that you can't --
22 you can't make claims on your pamphlets like this, and he
23 said -- he said he wouldn't be able to sell his product
24 without having these claims in his pamphlet.

25 Q. Did you request any other types of information from

1 him that day?

2 A. We did. We requested ingredient suppliers as well.
3 We were refused to look at his -- he refused to tell us
4 who his ingredient suppliers were.

5 We also requested to see his batch record, or his
6 recipe for making the product, and he refused to show us
7 that.

8 We asked about distribution records, who he
9 distributes the product to, and we were refused that as
10 well.

11 And he also told us that he distributes the product
12 to patients at a hospital in Lexington called St. Joe
13 East Hospital, but he refused to tell us the patients who
14 he distributes the product to at the hospital, or any
15 other hospitals he distributes there.

16 And he also -- another refusal that he did that day
17 was he would not allow us to see inside his barn where he
18 actually makes the product.

19 Q. Just walk through that. So when you said you asked
20 for the ingredient information, why is that something the
21 FDA asks for?

22 A. We always look at ingredients because we always want
23 to know what's being used in the product. And for
24 ingredients, for it to be an FDA regulated product, the
25 ingredient or the finished product has to cross over

1 state lines.

2 So in this case it would be Kentucky. So we were
3 actually going to see if incoming product was coming in
4 from across state lines to see if we had jurisdiction
5 over it.

6 Q. When you asked for distribution information, why is
7 that something you ask for?

8 A. It's important as well because it shows that the
9 product is going out, and see if the product is going
10 outside the State of Kentucky to see if we also had
11 jurisdiction that route as well.

12 Q. And what was the reason he gave for not providing
13 the distribution information?

14 A. He refused to provide us with the distribution
15 records because of -- he said because of HIPAA, which is
16 Health Insurance and Accountable -- Health Insurance of
17 Portability Accountability Act, which we told him in this
18 situation doesn't apply.

19 Q. In your experience working for the FDA who does
20 HIPAA usually apply to, what type of --

21 A. Someone who --

22 Q. -- this information?

23 A. Like patient confidentiality, and we told him that
24 does not apply in this case.

25 Q. And why did you ask for information about his batch

1 records or recipe?

2 A. We just wanted to see -- for pharmaceutical
3 inspections and drug firms we always ask to see batch
4 records and review batch records on inspections. It
5 shows pretty much the recipe of how you make the product
6 step by step.

7 Q. Did you discuss whether he maintained a complaint
8 file?

9 A. We did. We asked Mr. Girod if he maintained a
10 complaint file, and he said, no, that he doesn't; and he
11 said he had received a few complaints from diabetic
12 patients causing skin irritation from the Chickweed
13 Healing Salve, but he doesn't document the complaints at
14 all.

15 Q. Why does the FDA ask manufacturers of product to
16 keep a complaint file?

17 A. A complaint file is -- it's important to have
18 because it's part of the regulations as well to maintain
19 a complaint file for drug inspections, but it's also
20 important to be able to track. Like if you have a
21 complaint, you can track the complaints of how the
22 product is doing out on the market. It's to trend and
23 track complaints. And all drug companies track them.
24 It's part of the process of being a drug company.

25 Q. As a consumer safety officer, are you able to check

1 whether someone is registered with the FDA?

2 A. Yes.

3 Q. Before that January 2012 visit, did you check to see
4 if the defendant was registered with the FDA?

5 A. Yes. He was -- he was not registered with FDA.

6 Q. Did -- did you receive anything else from him that
7 day? Did he provide any samples of his product?

8 A. Oh, yes, he did. He provided us actually two
9 physical samples of the TO-MOR-GONE and the R.E.P. We
10 collected the physical samples so we could take back to
11 our office, and we wanted to get the labeling off of the
12 product.

13 As soon as we got back to the office, we destroyed
14 the physical product. We really were interested in
15 obtaining the labeling to see what ingredients were
16 included in the product.

17 Q. How did you leave things with that visit?

18 A. He told us that he was not-- he wasn't manufacturing
19 on that day, but he said he would contact us if he were
20 to be manufacturing again in the future. So we left him
21 our business cards, and he told us that he would contact
22 us if he were to be manufacturing -- or making products
23 again.

24 Q. How would you describe the general vibe of that
25 hour-long conversation you had with him in January of

1 2012?

2 A. It was -- it was in his living room. It was -- it
3 was the first time I've ever been in someone's living
4 room during an inspection like that as well. So it --

5 Q. Given that the understanding was he might call you
6 again, did you leave on fairly friendly terms that time?

7 A. Yes, I would say so.

8 Q. Did he contact you after that meeting?

9 A. Yes.

10 Q. And when was that?

11 A. He contacted us again March 13th.

12 Q. What -- why did he contact you?

13 A. He contacted my co-worker Matt Suedkamp to let him
14 know that we would be -- he would be manufacturing
15 product on that day.

16 Q. Did you return to his farm?

17 A. We did. As soon as -- as soon as we got notified
18 that he was making product that day, we actually went
19 down there that day to watch him make product.

20 Q. You're using the term we, who went there that day?

21 A. It was myself and Matt Suedkamp.

22 Q. That time in March 2012 were you able to inspect the
23 manufacturing area that day?

24 A. Yes, we were able to watch him make product that
25 day.

1 Q. Which product were you able to observe?

2 A. He was making Chickweed Healing Salve.

3 Q. Did he make any of the other products that day?

4 A. He did not make any other products on that day.

5 Q. Where did he -- where did you see him make the
6 Chickweed Healing Salve?

7 A. We watched him make the Chickweed Healing Salve in
8 his barn.

9 Q. Did you learn where the other products are made?

10 A. Yes. He told us that the Chickweed Healing Salve
11 and the TO-MOR-GONE is made in his barn, and then the
12 R.E.P. is made in his kitchen.

13 Q. Did you document your visit in some way?

14 A. Yes. We -- we wrote a report.

15 Q. Did you take any images of what you saw?

16 A. We did. We took photographs during our inspection
17 that day as well.

18 Q. Did you discuss the taking of pictures with the
19 defendant?

20 A. We did. We told him we were going to take
21 photographs, and he said that's fine as long as you don't
22 get any pictures of the Amish in the photos.

23 And we -- we said, okay, we won't get any photos of
24 the Amish because we wanted to respect his wishes.

25 MS. SMITH: I want to hand this to the witness.

1 May I approach or --

2 THE COURT: Yes, you may. That's fine.

3 BY MS. SMITH:

4 Q. I'll hand you what we have premarked as Government's
5 Exhibits 1A through 1X.

6 Could you flip through that stack before we walk
7 through them, before the jury gets it -- can you see
8 them? Can you flip through those and see if that is
9 something you're familiar with?

10 A. Yes, I'm familiar with these photos.

11 Q. Just using your words, can you tell us what those
12 items are?

13 A. This is a photograph that --

14 Q. Or no one else can see them yet. Just before we get
15 them into evidence, what are -- what did I hand you?

16 A. Oh, these are the photographs I took on our
17 inspection of the product of Chickweed Healing Salve and
18 pretty much documents how Mr. Girod makes the Chickweed
19 Healing Salve at his property.

20 Q. Having looked at those images, are those accurate
21 copies of the photographs you took that day?

22 A. These are accurate.

23 MS. SMITH: Your Honor, United States would
24 move to admit Exhibit 1A through X.

25 THE COURT: Is there any objection to their

1 admission?

2 DEFENDANT GIROD: Some of it don't belong in
3 the business, but -- in what we did, but other than that
4 it looks pretty normal. I didn't go through all of it.

5 THE COURT: All right.

6 DEFENDANT GIROD: There are several pictures
7 that don't belong in there.

8 THE COURT: All right. That would be subject
9 to cross-examination. Exhibits 1A through X will be
10 admitted at this time, and they may be displayed to the
11 jury --

12 MS. SMITH: Thank you, Your Honor.

13 THE COURT: -- if you wish to do so.

14 MS. SMITH: Thank you. And I just want to
15 correct. I think it's 1A through 1U. There are three
16 more photos that will be admitted through another
17 witness.

18 THE COURT: All right. Very well. Items 1A
19 through U will be admitted.

20 (Whereupon, Government's Exhibit Numbers 1A through
21 1U were admitted into the record.)

22 MS. SMITH: If those could be published to the
23 jury.

24 BY MS. SMITH:

25 Q. Is there a photograph on the screen?

1 A. Not right now. It's a blue screen.

2 JUROR: There was.

3 THE WITNESS: There was a photo on there.

4 BY MS. SMITH:

5 Q. Can you see it, Investigator Paulin?

6 A. Yes.

7 Q. All right. Could you tell us what we're looking at?
8 Is that 1A that's on the screen?

9 A. Yes, that's correct. It's 1A, Exhibit 1A.

10 Q. Tell us what we're looking at.

11 A. We're looking at a photo that I took. We wanted to
12 doc -- during the inspection, we wanted to document how
13 Mr. Girod makes the product. He was kind of explaining
14 how he makes the Chickweed Healing Salve.

15 This is the first step of the process. This is
16 where he takes -- he grows the Chickweed and the Comfry
17 on his farm, and then he puts that into these glass jars,
18 and he mixes olive -- he puts olive oil in there, and
19 that sits outside on this wooden pallet next to a chicken
20 coop, in the upper right pictures of the chicken coop,
21 upper left to the chicken coop.

22 And I think he calls this the infusion process where
23 the Chickweed and the Comfry is mixed with the olive oil,
24 and it sits out there on this wooden pallet for up to one
25 year.

1 Q. If we could look at the next picture, 1B. What are
2 we looking at here?

3 A. This is the -- the Chickweed and the Comfry mixed
4 with the olive oil. It's just a close-up picture of
5 the -- showing the kind of the dirty jar with dirt and
6 like a rusted top, just kind of close-up picture from the
7 product on the wooden pallet being stored outside.

8 Q. Approximately how big were these containers?

9 A. These are approximately about one gallon.

10 Q. If you could look at 1C. Is that on your screen?

11 A. Yes.

12 Q. What are we looking at here?

13 A. Well, then after the -- after the product -- it sits
14 outside for one year, the product is then strained. The
15 infused oil is then strained in this large kettle.

16 And after it -- it actually sits in this kettle
17 inside his barn for three months.

18 Q. If we could look at 1D.

19 A. And that's just a -- that's a close-up picture of
20 the inside of the kettle where actually the product after
21 it was strained, the product, it just shows a close up of
22 the product that is sitting inside the kettle.

23 Q. 1E.

24 A. And then after the product sits in that kettle for
25 up to three months, then it's actually -- it's actually

1 put into smaller kettles, or pots, and that's where it --
2 they melt the -- there's beeswax and other oils that are
3 melted in there, and this looks like just one of the
4 pictures that the product would have been melted into.

5 Q. If we could look at 1F. What is this a photograph
6 of?

7 A. That looks like a product -- after the product has
8 been melted with the beeswax and all the other oils have
9 been melted in the pot with the infused oil, then
10 Mr. Girod takes a -- this Pyrex, this glass Pyrex
11 container, and then he scoops it out, and that's when he
12 places it into the four-ounce tin, tin cans for the final
13 product.

14 Q. If we could look at 1G next. It might be sideways.
15 What is this a photograph of?

16 A. Okay. That's the -- after it sits in that kettle
17 for up to three months, then it is actually put into
18 these smaller pots, and actually the beeswax pellets, and
19 the -- all the other oils are put into this container,
20 and it's actually heated up with a burner, and it's
21 just -- it's just mixing the -- mixing all the
22 ingredients together.

23 We asked Mr. Girod during the inspection how many --
24 how much beeswax and all the other oils he put in here,
25 and he didn't know how many -- he didn't know the recipe.

1 He didn't know how much he actually adds to the pot.

2 Q. When you say he didn't know the recipe, I mean, did
3 he know which ingredients he was putting into it?

4 A. He knew the ingredients, he just didn't know the
5 amounts he was putting in.

6 Q. If we could look at 1H, what is this a photograph
7 of?

8 A. That looks like the product before it's actually
9 scooped out into the final four-ounce tins.

10 Q. And 1I, what is this a photograph of?

11 A. This is a photograph of the beeswax that is received
12 in from New York. I took a photo of this document that
13 one of the raw materials is coming from out of state to
14 document that we had jurisdiction of the raw materials
15 that's being used in the product.

16 Q. If we could look at 1J. Is that the same box?

17 A. Yes. That's the outer box that the product was
18 received in. I wanted to get a copy of the shipping
19 label to show the address of where the beeswax was
20 actually being received from, and it was from -- being
21 brought in from New York.

22 Q. Is that the beeswax that was being used in the
23 Chickweed Healing Salve being made that day?

24 A. Yes.

25 Q. If we could look at the next photograph, 1K.

1 A. Another reason why I took that photo of the label as
2 well because is he said he didn't have any actual
3 documentation of any ingredients being used in the
4 product, so that's one of the reasons as well why I took
5 a picture of a label to have some kind of documentation
6 of an ingredient being used.

7 And this picture shows -- it's just a -- it's a
8 picture of the beeswax pellets actually inside the box,
9 inside the box that I took a picture of the outer label.

10 Q. Is 1L a similar photograph? What's on your screen
11 now?

12 A. Yes, that's the same. It's a -- it's a picture of
13 the beeswax pellets that were inside the box showing that
14 it was received from New York.

15 Q. What's the next photograph of?

16 A. This is the finished product after -- after all the
17 beeswax and all the oils are mixed together, Mr. Girod
18 scoops with the Pyrex container, and he scoops it into
19 the final product of these tin cans, and this is just
20 where they were actually being -- after he scooped them
21 into, the product into this, they were just sitting
22 there. This is what we observed during the inspection,
23 the final product being stored in the tins.

24 Q. Do you know how long they sit there?

25 A. They sit -- they -- it could be up to a -- it could

1 be up to a day, but one of the main concerns as well is
2 it's in a barn, and it's opened to the outer environment
3 where actually bees and insects and pests can get in, and
4 there's no temperature, humidity controls, inside this
5 barn as well.

6 Q. Did you discuss insects with the defendant in the
7 making of the product?

8 A. We did. We said since it's -- the barn -- it's
9 manufactured in a barn, and the door was wide open, he
10 did mention that bees and insects do fly in on occasion
11 whenever he's manufacturing the product.

12 Q. And how does he resolve that problem?

13 A. He said to get rid of all the bees and the insects,
14 he'll just buy the fly killer spray from the store and
15 just spray it in the barn area while there could be open
16 product.

17 Q. Did you observe any animals in the manufacturing
18 area?

19 A. Yes, we observed a dog walking around the barn while
20 he was making Chickweed Healing Salve that day.

21 Q. If we could look at the next photograph. One might
22 be sideways too. What is this a photo of?

23 A. That's the photo of the final product that we saw
24 that was scooped in from out of the Pyrex containers.
25 Actually, the final product is just sitting on the table

1 cooling off.

2 Q. How many containers of the Chickweed Healing Salve
3 did you see being made that day?

4 A. We -- he told us that approximately 410 tins were
5 made that day of Chickweed Healing Salve.

6 Q. And were any of his other products made in this same
7 area?

8 A. The TO-MOR-GONE is made in the barn as well.

9 Q. Did he tell you where the R.E.P. product is made?

10 A. Yes. The R.E.P. product is made in the kitchen of
11 his house.

12 Q. If we could look at the next photograph, what is
13 this a picture of?

14 A. This is a picture of the Basic H. It's a
15 concentrated organic cleaner. He said it's used for
16 cleaning the inside of the pots that he uses to -- that
17 has the product in there, because he doesn't keep
18 cleaning records or doesn't keep a -- he doesn't have a
19 cleaning procedure. He doesn't know --

20 Q. Is that --

21 A. He doesn't know the amount as well. He adds water
22 to it, but he doesn't know the amount that he actually
23 uses to clean.

24 Q. Are maintaining cleaning procedures something FDA
25 requires of manufacturers?

1 A. Yes, it's what -- we require all pharmaceutical
2 companies to maintain cleaning records.

3 Q. Did you discuss how he cleans the containers that we
4 saw on the outside photographs?

5 A. Yes, he doesn't clean those at all. Those jars that
6 are outside on the wooden pallet that are stored outside
7 for one year next to the chicken coop, he does not clean
8 those at all.

9 Q. If we could look at the next photograph, the next
10 two. Are those the same containers as the cleaning
11 supply?

12 A. Yes, the Basic H.

13 Q. Okay. Could you tell us what 1Q is?

14 A. It's -- this exhibit is still showing the Basic H
15 concentrated organic, okay. This is a picture -- this is
16 an overview shot of the barn where he manufacturers in.

17 I took this photo just to see, to get the idea of
18 the overall space of manufacturing as being performed in
19 the area, just to show -- show the barn.

20 Q. Those pictures on the table are those involved in
21 the manufacturing process?

22 A. Yes. Those are used for scooping the product out of
23 the pots that are -- that he used to pour into the tin
24 cans for the final product.

25 Q. What is the next photograph of?

1 A. It shows a picture of his -- his barn as well. It
2 also has a picture of the burners that he uses to melt
3 the beeswax and other oils for the product.

4 Q. And what about the next photograph?

5 A. It just shows all the newspapers that he uses in his
6 barn that he places the final product of the Chickweed
7 Healing Salve on.

8 Q. Were you also able to take photographs of the
9 products themselves?

10 A. We took photographs of the product, of the Chickweed
11 Healing Salve.

12 Q. Why did you do that?

13 A. We just wanted to document what the product actually
14 looked like.

15 Q. If you could look at the next photograph, is that a
16 picture of the product?

17 A. Yes, we took a picture of the final finished
18 product. We wanted to get a picture of the label, what
19 it was -- the usage, what it said, you know, what the
20 ingredients were involved in and the usage.

21 Q. What is the usage description?

22 A. Usage of the Chickweed Healing Salve says, "Good
23 for skin disorders, dry skin, cuts, burns, draws, and
24 poison ivy."

25 Q. Is there a manufacturer listed?

1 A. There's a manufacture. It says made by SAEG, which
2 stands for Samuel and Elizabeth Girod.

3 Q. If we could look at the next photograph in this
4 exhibit. What is that of?

5 A. That's a picture of the final product for the
6 TO-MOR-GONE.

7 Q. And what else is listed on that label?

8 A. It says, it's titled, "Natural Herbal Remedy." It
9 says, "For External Use Only. Active ingredients:
10 Bloodroot, Galangal Root, Sheep Sorrel, Red Clover
11 Blossom, Beeswax, Cedarwood, and Olive Oil," and I can't
12 read the other ingredient.

13 Q. Is there another term for the TO-MOR-GONE listed on
14 that label?

15 A. At the top it says it's also Black Salve.

16 Q. And the last picture, what is that?

17 A. This is a final product, the finished product,
18 labeling for the R.E.P. The final product has an
19 R.E.P. -- we asked him what the R.E.P. stands for because
20 it's not on the label. He said it stands for rosemary,
21 eucalyptus, and peppermint.

22 Q. Is that the last photograph?

23 A. That's the last photograph. And R.E.P. is for
24 breath freshener and for sinus infections.

25 Q. Do you know what the letters R.E.P. stand for?

1 A. Yes, the rosemary, eucalyptus, and peppermint.

2 Q. So you walked us through these photographs. Can you
3 tell us from the FDA consumer safety officer's
4 perspective what were some of the issues you identified
5 that day?

6 A. Yeah, we issued a 483.

7 Q. What is a 483?

8 A. An FDA-483 is something we issue for significant
9 observations that we observed during the inspection.

10 Q. What are some things that you observed?

11 A. The first thing we observed that there was no batch
12 records, there's no lot numbers, or distribution records.
13 That's observation number one.

14 Observation number two was there's no incoming
15 accept or reject for the incoming raw materials or
16 components to say that it's acceptable or reject, it's
17 going to be rejected.

18 The third thing was there's no incoming raw material
19 testing as well.

20 The next thing was there's no -- there's no finished
21 product testing, or no finished product specifications.

22 The next thing was there's no in-process testing
23 being performed during the testing or the manufacturing
24 of the product. So in-process testing is important
25 because it shows batch uniformities of the product while

1 you're making it.

2 The next thing was for sanitazation. The
3 sanitazation while he was making the product was in
4 unsanitary conditions.

5 For example, there was a dog walking around the
6 facility, or the barn. There was -- the door was opened
7 to the barn where insects and bees, rodents could enter.
8 There's no hand washing observed that day whenever we
9 were watching him. He didn't use gloves to scoop out the
10 product as well. So sanitary conditions.

11 And also there was no expiration date for his
12 product, so -- and there's no stability performed to show
13 that his product would sustain an -- you know, no
14 expiration, no expiring date.

15 Q. Why is an expiration date important?

16 A. Expiration dates are important because it shows how
17 long the product is good for.

18 And then didn't -- a couple more observations that
19 we cited him for was there's no training to his
20 employees, had no training. He had no training at all.
21 There's no GNP training, and then also he did not have a
22 complaint file or complaint -- complaint procedure, and
23 he's actually had complaints from a diabetic, few
24 complaints from a diabetic regarding skin irritations
25 from the Chickweed Healing Salve.

1 Q. I would like to hand you what's been marked as
2 Government's Exhibit 4D.

3 A. Okay.

4 MS. SMITH: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes, that's fine.

7 BY MS. SMITH:

8 Q. Can you tell us what that document is?

9 A. Yes. It's an FDA-483, inspectional observation.

10 Q. Is that a record you regularly maintain in the
11 course of business at the FDA?

12 A. It is.

13 MS. SMITH: Your Honor, the United States moves
14 to admit Government's Exhibit 4D.

15 THE COURT: All right. Any objection?

16 4D will be admitted.

17 (Whereupon, Government's Exhibit Number 4D was
18 admitted into the record.)

19 MS. SMITH: If we could publish it to the jury.

20 BY MS. SMITH:

21 Q. What is the procedure for issuing a 483?

22 A. Well, 483, the procedures of the -- 483s are issued
23 at the end of the inspection to the most responsible
24 person at the facility, which in this situation it's
25 Samuel Girod.

1 Q. Is it something you prepare that day while you're
2 there inspecting?

3 A. We can prepare it that day, or we could take it back
4 to our office and issue at a later date to the
5 individual.

6 Q. What did you do in that instance?

7 A. In this situation we came back on 3/19 and actually
8 issued the FDA-483 to Mr. Girod at his house, at his
9 property.

10 And it's something that we issue to him, and we --
11 we -- after we issue it, we read each observation to the
12 most responsible person, so to Samuel Girod, and then we
13 give him a chance to respond verbally on how they plan to
14 correct the observations that we just read to him.

15 THE COURT: All right. Let me -- let me stop
16 you for a second.

17 Mr. Girod, do you have a --

18 DEFENDANT GIROD: Yes, I would like to object.
19 I do know every ounce that goes into the Chickweed.

20 THE COURT: Well, that's subject to
21 cross-examination.

22 DEFENDANT GIROD: Okay.

23 THE COURT: So you will need to ask the witness
24 on cross-examination about that.

25 DEFENDANT GIROD: All right.

1 THE COURT: All right. Thank you.

2 You may proceed. The objection is overruled.

3 BY MS. SMITH:

4 Q. Why are you required to issue an FDA-483 in person?

5 A. It closes out the inspection. It's one of the
6 things that we do at the last -- the final stages of an
7 inspection. It closes out the inspection.

8 It -- you normally issue a 483 inspectional
9 observations if the -- you notice significant
10 observations during the inspection that violate the CFR
11 regulations.

12 Q. In notifying the maker of the product of the 483,
13 are they given a chance to respond to your observations?

14 A. Yes, they can. We -- they're given 15 days to
15 respond in writing, and we gave -- we asked Mr. Girod if
16 he planned to respond in writing, and he said he would --
17 he would have to have his lawyer look it over before he
18 would respond.

19 Q. Now, Exhibit 4D, does that accurately summarize your
20 observations from the inspection?

21 A. Yes.

22 Q. And were those the observations you walked us
23 through a few minutes ago?

24 A. Yes, yes, they were.

25 Q. Did you review those in person with Mr. Girod?

1 A. Yes, we did. We read the observation --
2 observations to him.

3 Q. Where were you when you were reading him these
4 observations?

5 A. We were in his -- in his driveway that day. And we
6 were actually surrounded by 20 individuals, Amish and
7 non-Amish individuals, that day, and we actually -- he
8 refused to allow us to actually inspect his barn that day
9 because we wanted to actually take an inventory of the
10 product he actually had on his property. Because he
11 verbally told us the amount of product he had on
12 March 13th, but we wanted to actually take a physical
13 inventory ourself on the final day, on 3/19, but he
14 refused to allow us to take inventory of his -- of his
15 product in his barn because he said his barn was messy.

16 Q. And so March 19th that was the day different from
17 when you took the photographs; is that correct?

18 A. Yes, that's correct. I took the photographs on
19 March 13th while we were watching him make the product.

20 Q. Where were you when you had this conversation?

21 A. We were in the -- we were in his, Mr. Girod's
22 driveway, whenever we were closing out the inspection.
23 We were using the trunk of our vehicle, our government
24 vehicle, as a desk.

25 Q. As a consumer safety officer are you an armed

1 officer?

2 A. No, we're not.

3 Q. What was the environment like when you were
4 reviewing these observations with the defendant?

5 A. After we -- after we issued the 483 to Mr. Girod, we
6 could tell he was -- he got aggressive, and he -- it
7 was -- he said that -- he told us that the government was
8 corrupt, and he told us that we were lucky to get all of
9 the information that we had because -- he said we were
10 lucky to be able to watch him make the product because
11 he's -- he said the only reason why we were allowed to
12 watch him make the product because he was in a good mood
13 on March 13th.

14 Q. And the 20 individuals who were there for the
15 conversation, what were they doing?

16 A. They were -- we were just surrounded by the
17 individuals, the 20 individuals. And actually one -- we
18 were actually in his driveway, but actually there was --
19 there was actually a horse and buggy, and then there was
20 another vehicle that kind of partially blocked us in his
21 drive that day.

22 Q. Did the conditions that day, reviewing the 483,
23 cause you to add something to the file?

24 A. Yes. We -- we actually -- whenever we got back to
25 the office after closing out the inspection, we wrote a

1 personal safety memo to the file just to document the
2 situation, how it was kind of a hostile environment. He
3 was kind of aggressive after we issued the 483 and just
4 to document that he was aggressive.

5 And then pretty much a personal safety memo just to
6 give a guidance of what to do for the next inspection.
7 It's like a head's up for the next investigators that go
8 out there. So pretty much like a safety plan, to park
9 the vehicle, so we can have a safe exit, like an exit
10 strategy, and take two consumer safety officers the next
11 time we go because Mr. Girod was kind of aggressive on
12 the last, whenever we issued the 483.

13 Q. How many times in your 10 years working for the FDA
14 have you added a personal safety memo to a file?

15 A. That's the first time.

16 Q. After that March visit, did you have another
17 occasion to inspect his facility?

18 A. We did. But there's one time -- going back to the
19 closing out the inspection, we also issued an affidavit,
20 and we -- whenever we issued the affidavit, a lady, a
21 non-Amish woman in the crowd, yelled "don't sign that
22 affidavit."

23 Q. And what's an affidavit?

24 A. An affidavit just documents. Normally we -- like if
25 a document is interstate, like if we wanted to document a

1 situation, for example, in this situation we used the
2 affidavit to document the incoming beeswax used in the
3 Chickweed Healing Salve to document interstate, just to
4 show that we had jurisdiction over the product that he
5 was making that day.

6 Q. Is that something that a manufacturer normally
7 signs?

8 A. Normally if they agree with it, they normally --
9 they sign it.

10 And then also we wrote in there he did say -- he
11 verbally -- Mr. Girod verbally told us that he agreed
12 with the affidavit; although, he didn't agree with the
13 word "cure." And we told him the word cure is used in
14 his testimonials and his pamphlets, and he said the -- he
15 said he refuses to sign the affidavit because it's a form
16 of swearing in the Amish community.

17 Q. So other than a verbal agreement of the affidavit,
18 did he sign the affidavit?

19 A. He did not. He did not sign the affidavit.

20 Q. What about the 483, what was his response to those
21 observations?

22 A. He -- he said he wanted his lawyer to review it
23 before he made a comment.

24 Q. Did he provide any comments on the 483?

25 A. No.

1 Q. Is there anything else about that March visit we
2 haven't covered?

3 A. That's it, yeah.

4 Q. After that visit, did you attempt to inspect his
5 facility another time?

6 A. Yes, we did.

7 Q. When was that?

8 A. In November 21st, 2013.

9 Q. Why did you return in November of 2013?

10 A. We went back in order to perform a court-ordered
11 inspection at his facility, just to verify that he
12 wasn't -- because under court order he wasn't allowed to
13 manufacture the product or distribute the product. So we
14 just went back to his facility to see if he was still
15 making the product or distributing the product.

16 Q. Do you know where that court order came from, where
17 in the country?

18 A. It came from Missouri.

19 Q. Who went with you that day?

20 A. My co-worker, Matthew Suedkamp, who's also a
21 consumer safety officer.

22 Q. Did anyone else accompany you?

23 A. Yes. Prior to going out there we contacted the
24 Bath County Sheriff's office, we contacted the day
25 before, so on November 20th. The day before we went out

1 there, I contacted the Bath County Sheriff's office just
2 to let them know that, you know, we were going out to
3 this man's house to perform an inspection. So we were
4 just requesting their assistance because the gentleman
5 was hostile the last time we were out there, and we just
6 wanted to have a police officer present for protection
7 whenever we went out there.

8 And we also told the sheriff not to -- not let
9 anyone know we were coming because FDA inspections are
10 unannounced, so not to let anyone know that we were
11 coming, and we would -- so he agreed to that, and we
12 agreed to meet the next morning --

13 Q. Where did you --

14 A. -- before going out there.

15 Q. Where did you meet the deputy sheriff?

16 A. We met the deputy sheriff the next morning on
17 11/21/13 at McDonald's, in the parking lot, just in
18 Owingsville, Kentucky.

19 Q. And what happened after you met the sheriff?

20 A. We met the sheriff. We just introduced ourselves.
21 We showed them our credentials just to identify who we
22 are, and we told him again that the reason why we're
23 requesting a police officer to go with us is just
24 because -- just for protection and just to be with us on
25 the inspection.

1 Q. Did you travel in the same vehicle or separate
2 vehicles?

3 A. We traveled in separate vehicles. We -- after we
4 talked to the police officer, we got back into our
5 vehicle, but by the time we could get our seat belts on,
6 the police officer was -- he already pulled out of the
7 parking lot, and we actually had a hard time catching up
8 with him because he was driving so fast.

9 And he actually took us on a different route that
10 we normally go on as well. We normally go on a route
11 that isn't specifically the Amish community, but this
12 time the police officer actually took us on a different
13 route that we weren't used to, and it actually went
14 directly through the Amish community.

15 Q. After you arrived at the defendant's car -- at the
16 farm, how were the cars arranged?

17 A. When we got to the farm, we pulled up into
18 Mr. Girod's driveway. It's a gravel driveway. It's
19 approximately about a fourth of a mile long.

20 We got there, we pulled in, we pulled in behind the
21 sheriff, and we noticed that there was actually a padlock
22 gate that said no trespassing. It had a no trespassing
23 sign on it that was not present during the previous
24 inspections when we were there.

25 And we pulled in behind the sheriff. We pulled in

1 behind the sheriff, and then we got out of the vehicle,
2 and as soon as we got out about five Amish, five Amish
3 men, they had jumped the fence, because there were fences
4 on both sides, and actually had jumped the fence in order
5 to surround us. They surrounded us, and then they
6 started yelling anti-government expletives toward us,
7 and then we were surrounded by the Amish men at that
8 point.

9 And then about 30 seconds later we noticed a pickup
10 truck pulling up the driveway, and it had Mr. Girod in
11 that vehicle, and it also had a non-Amish man and a
12 non-Amish woman in the vehicle as well.

13 The vehicle actually pulled up maybe five feet from
14 our vehicle. So at this point we were blocked in from --
15 we were blocked in from the no trespassing sign, the
16 gate, and we had fences on both sides of us.

17 We had the Amish men surrounded us, and then we also
18 had Mr. Girod's pickup truck that was five feet from our
19 government vehicle.

20 So we really at this point there's no way -- there
21 was no way to exit so we were -- we were surrounded at
22 that point. And then --

23 Q. Did you prepare anything to demonstrate the layout
24 of how things were arranged that day?

25 A. I did.

1 MS. SMITH: If I may approach the witness.

2 THE COURT: Yes, ma'am.

3 BY MS. SMITH:

4 Q. I would like to hand you what's been premarked
5 Government's 4B and 4C.

6 What are those two documents?

7 A. These are the -- these are drawings that -- one is a
8 Google map showing an aerial view of Mr. Girod's
9 property, pretty much showing how long the driveway is,
10 and then the --

11 Q. I'll stop before we get into. Just generally, if
12 you could, tell me what they are.

13 A. One is a Google map that I got off the Internet, and
14 one is actually a drawing, a hand-held, like hand drawn,
15 something that I drew by my hand.

16 Q. Are those documents that you kept in -- you
17 generated and maintained in the course of your business
18 at the FDA?

19 A. Yes.

20 MS. SMITH: United States would move to admit
21 Government Exhibit 4B and 4C.

22 THE COURT: See if there's any objection to
23 those two documents.

24 Any objection to their admission?

25 DEFENDANT GIROD: What?

1 THE COURT: Any objection to the admission of
2 those two documents, 4B and 4C?

3 DEFENDANT GIROD: Well, you mean on my farm?

4 THE COURT: Yes, sir. There's a Google map
5 printout and a hand-drawn document.

6 DEFENDANT GIROD: No, it's close, you know.

7 THE COURT: All right. Thank you.

8 Exhibits 4B and C will be admitted.

9 (Whereupon, Government's Exhibit Numbers 4B and 4C
10 were admitted into the record.)

11 MS. SMITH: If we could put 4B up on the screen
12 first.

13 BY MS. SMITH:

14 Q. Now that we can all see what you're looking at, can
15 you tell us what Exhibit 4B is?

16 A. Yes. Exhibit 4B is a Google map, aerial view of
17 Mr. Girod's property, specifically his driveway.

18 Q. What of note on this map will help orient people?

19 A. The -- on the Google map you can see at the
20 bottom of the -- on the top of the page where it says
21 "Satterfield Lane." It shows the -- it shows the road
22 that his address is located on.

23 Q. And if we could turn to 4C, is this the hand-drawn
24 map that you prepared?

25 A. This is the hand-drawn map that I prepared whenever

1 I got back to the office from that day.

2 Q. And could you talk us through where the cars were,
3 where the people were standing?

4 A. Yeah. Whenever we followed the sheriff, from
5 McDonald's, we pulled into the driveway, and the sheriff
6 had pulled up the driveway, and we noticed that there's a
7 locked gate that wasn't there on our previous -- it
8 wasn't there on our previous visits, and the locked gate
9 had a sign that said "no trespassing."

10 And so we pulled up behind the sheriff, and then we
11 got out of our vehicle, and that's when the five Amish
12 men jumped the fences that had actually came running
13 toward us, and then they had surrounded us, and they were
14 yelling anti-government things toward us.

15 And then about 30 seconds later is when Mr. Girod's
16 pickup truck with his -- with two -- with one man and one
17 woman in the pickup truck. They pulled up behind us
18 about five feet from our government vehicle, pinning us
19 in.

20 Q. On that driveway where you were parked, was there
21 any way to remove your vehicle or turn around?

22 A. There was no way to exit. We were pinned in.

23 Q. Did you explain to the defendant why you were there
24 that day?

25 A. We did. We did. As soon as -- as soon as

1 Mr. Girod's pickup truck came up, he got out of his
2 vehicle, and he -- he approached us in an aggressive
3 stance, and he yelled at us, he said, it's none of your
4 business what products I make.

5 And then after that we were encircled around the
6 Amish men. And then one of the -- the police officer
7 actually had to hold one of the Amish males back because
8 he was charging at us aggressively. So the sheriff
9 actually had to -- the police officer had to hold one of
10 the men back.

11 Q. Was anyone else in the group yelling at you and
12 Inspector Suedkamp?

13 A. Yes, they were yelling. They were yelling at us.
14 They were within one arm's length away from us, so they
15 were very close to us as well.

16 Q. What were you -- were you following any typical
17 procedures at that point?

18 A. Yeah, at that point we told Mr. Girod that we were
19 there to inspect under court order, and we read --
20 there's a statement out of the IOM, which is our
21 investigator's operations manual. There's a section
22 specifically related to court orders, so I read that
23 statement from the OIM.

24 And I also presented Mr. Girod with a copy of the
25 court order, and then I issued Mr. Girod an FDA-482.

1 And then after I issued Mr. Girod the 482, the
2 non-Amish woman in the crowd she pulled the 482 form
3 from Mr. Girod, and she yelled, she said, "Those idiots
4 from FDA are the only ones that signed this." She
5 pulled it away. I guess thinking it was a search warrant
6 and --

7 Q. And what is an FDA-482? We've talked about the 483.
8 What is the 482?

9 A. Yes, the FDA-482 is a notice of inspection. We
10 issue this form at the beginning of every inspection. It
11 gives FDA the authority to be in a facility and to
12 conduct an inspection under 704 of the Food Drug &
13 Cosmetic Act.

14 Q. As you were reading the canned statement from your
15 manual, what was happening around you?

16 A. Well, they were getting -- they were really close.
17 They were really -- so we were encircled around them --
18 they were encircled around us. They said -- one of the
19 Amish men said to us, he got really close, and said to
20 quit writing -- quit writing trash and to burn our
21 notes.

22 And then one of the Amish men yelled at us, he said,
23 we're not be -- we're not being very Christian like, and
24 they asked us how do we sleep at night.

25 And then Mr. Girod yelled, he said, "FDA only

1 approves drugs that kill people."

2 And then -- then also the non-Amish woman in the
3 crowd, she said -- she said she's a nurse, and she
4 recommends his products to all of her patients.

5 Q. After you got through the statement you were trying
6 to read in this environment, did you -- did you also have
7 to fill out the FDA-482?

8 A. Yes, we had to fill out the FDA-482 as well.

9 Q. Is that something that is typically provided to the
10 manufacturer of the product, or is that something for
11 your internal files?

12 A. We give -- the -- whenever we issue a 482, they get
13 a copy -- they get the original, we get the copy. So
14 actually we present them with the original, and we
15 actually keep a copy of the 482.

16 Q. I would like to hand you --

17 MS. SMITH: If I may approach the witness.

18 THE COURT: Yes.

19 BY MS. SMITH:

20 Q. -- what has been premarked as Government Exhibit 4A.

21 In a few words can you tell us what that is that I
22 handed you?

23 A. It's the FDA-482, notice of inspection, which we
24 issue at the beginning of every inspection. In this
25 situation it was what we issued to Mr. Girod on

1 November 21st, 2013.

2 Q. Is that a document you maintain in the regular
3 course of your duties at the FDA?

4 A. Yes.

5 MS. SMITH: The United States would move to
6 admit Government's Exhibit 4A.

7 THE COURT: Any objection to that document's
8 admission?

9 DEFENDANT GIROD: No, it's not all true, so I
10 don't know how you do that.

11 THE COURT: Subject to cross-examination.

12 DEFENDANT GIROD: Okay.

13 THE COURT: The document has been properly
14 authenticated.

15 It will be admitted as United States' Exhibit
16 4A.

17 (Whereupon, Government's Exhibit Number 4A was
18 admitted into the record.)

19 MS. SMITH: If we could publish that to the
20 jury.

21 BY MS. SMITH:

22 Q. Did you fill out this form?

23 A. I did. I filled out this form on that day.

24 Q. And were you doing that while these events were
25 taking place?

1 A. Yes, I was doing that, and specifically under a
2 court order I had to modify the 482 just to put in
3 the block, "notice of inspection." We have the,
4 hereby, under the authority of an injunction, I put
5 the case number of the court order pursuant to the
6 Section 704.

7 So I was able to fill out this form while we were
8 actually circled around the Amish. They encircled us.

9 Q. Were you able to conduct your inspection that day?

10 A. We were not able to conduct the inspection. He
11 refused to allow the inspection.

12 Q. Did you ask the defendant if he was still making his
13 products?

14 A. Yes. I specifically asked if -- I specifically
15 asked if he was going to refuse the inspection, and he
16 said, "What's the point of an inspection? It looks the
17 same as you did -- it looks the same as it did the last
18 time you were here."

19 We said, "Mr. Girod, are you refusing an inspection,
20 yes or no," and he said, "yes."

21 And we asked him specifically, "Are you
22 manufacturing and distributing your product, are you
23 still manufacturing and distributing your product," and
24 he said, "yes, but only in Kentucky to avoid FDA
25 jurisdiction."

1 And we explained to him that FDA jurisdiction,
2 interstate commerce, refers to incoming raw materials and
3 also outgoing distributive product as well.

4 Q. Did the defendant and the group of people there that
5 day prevent you from doing your job?

6 A. Yes.

7 Q. Were the actions of the defendant and the others
8 there harassing to you?

9 A. Yes.

10 Q. Were their actions threatening to you?

11 A. Yes.

12 Q. Were they intimidating?

13 A. Yes.

14 Q. Were you forced to leave the defendant's farm before
15 conducting your inspection?

16 A. Yes, we were forced to leave before we could even
17 conduct the inspection. The police officer actually had
18 to make a path so we could get back to our government
19 vehicle to get into our vehicle because we were blocked
20 by the Amish.

21 Q. Did you discuss this at all with the sheriff before
22 you left Bath County?

23 A. Yes. As soon as we got into our government vehicle,
24 the sheriff, he told us, he said, "if you ever come back
25 to this property, make sure you let us know before going

1 back to his property."

2 Q. In your 10 years of working for the FDA has anything
3 like this happened before?

4 A. No.

5 MS. SMITH: May I just have a minute,
6 Your Honor?

7 THE COURT: Yes, ma'am, you may.

8 MS. SMITH: I have no further questions for
9 this witness, Your Honor.

10 THE COURT: All right. Thank you.

11 Mr. Girod, you may question the witness.

12 DEFENDANT GIROD: Your Honor, I asked him to
13 cross-examine him a little bit.

14 THE COURT: All right.

15 DEFENDANT GIROD: Asked Michael Fox.

16 THE COURT: Is he taking over the case at this
17 point, Mr. Girod?

18 MR. FOX: Judge, it's my understanding at this
19 point he's asked me to cross-examine this witness.

20 DEFENDANT GIROD: This part right here.

21 THE COURT: All right. Any objection to this
22 procedure?

23 MS. SMITH: No, Your Honor.

24 THE COURT: All right. Thank you.

25 You may proceed.

NICHOLAS PAULIN - CROSS BY MR. FOX

1 CROSS-EXAMINATION

2 BY MR. FOX:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. My name is Michael Fox, and I'm going to
6 cross-examine you at Mr. Girod's request.

7 I want to ask you some questions about your
8 testimony, and I may jump around a little bit just
9 because chronological may not be okay.

10 A. Okay.

11 Q. Is that all right?

12 A. Okay.

13 Q. As I understood your testimony, you initially went
14 to the property in Bath County to conduct, I guess, an
15 interview and a kind of a look around at the property
16 with regard to some complaints that had been made about
17 the manufacturer of these products. Is that a fair
18 summary?

19 A. Yes.

20 Q. Okay. And what did you expect to find when you went
21 there?

22 A. On what day?

23 Q. The very first day.

24 A. The very, very first day?

25 Q. Yes.

NICHOLAS PAULIN - CROSS BY MR. FOX

1 A. In January 26th, 2012?

2 Q. Yes.

3 A. We were not able to perform the inspection that day
4 because Mr. Girod wasn't home. His two -- there was two
5 Amish individuals, and one claimed he was the son, and he
6 said that Mr. Girod was not home right now, but he would
7 be back in about a week.

8 Q. But what did you expect to do that day?

9 A. We expected to perform the inspection to see how he
10 manufactured the product, to see -- to review records, to
11 see who he distributes the product to.

12 Q. And who did you speak to?

13 A. We spoke to -- there's two children and one who
14 claimed to be Mr. Girod's sons.

15 Q. You didn't get their names?

16 A. I did not.

17 Q. Is there a reason why you wouldn't have gotten their
18 names?

19 A. We just -- I didn't think it was necessary since he
20 wasn't home. I just noted who I spoke to.

21 Q. You were treated well?

22 A. I was treated fine, yes, I was treated well.

23 Q. All right. And then you came back at another time;
24 right?

25 A. Correct.

NICHOLAS PAULIN - CROSS BY MR. FOX

1 Q. And did you announce when you were coming, or did
2 you just come?

3 A. No, we don't announce our FDA inspections. They're
4 unannounced.

5 Q. Right. Now, the second visit was that the visit
6 where you were allowed to inspect the barn and take
7 pictures that you've shown us today?

8 A. No. It was January -- that was January 31st.
9 That's when we spoke to Mr. Girod in his living room.

10 Q. Oh, okay, all right. And he invited you into his
11 home?

12 A. He did.

13 Q. Right?

14 A. He did.

15 Q. You spoke with him and his wife; right?

16 A. Mostly Mr. Girod was speaking. His wife was
17 present, and two of his sons were present.

18 Q. Okay. What were the sons' names?

19 A. We did not get their names.

20 Q. You didn't get their names?

21 A. No.

22 Q. Were you in the course of your investigation at this
23 point?

24 A. He actually refused the inspection, but we were
25 classified -- we classified this visit as fact gathering

NICHOLAS PAULIN - CROSS BY MR. FOX

1 because he was able to provide us some information.

2 Q. So he gave you information?

3 A. He gave us information.

4 Q. He didn't want you to do the inspection that day;
5 right?

6 A. Yeah, he refused the -- his incoming ingredient
7 suppliers, he refused his batch records, he refused his
8 distribution records, he refused who promoted his product
9 to at the hospitals, at St. Joe's East Hospital.

10 Q. Right.

11 A. And he also refused to allow us to inspect his barn
12 where he manufactures the product.

13 Q. Is this the first time you had any contact in the
14 Amish community?

15 A. On an FDA inspection, yes.

16 Q. What other contact had you had?

17 A. Pretty much in general as well.

18 Q. So this was the first time you had any contact --

19 A. Yes.

20 Q. -- from anyone in the Amish community?

21 A. Yes.

22 Q. Never went to Amish country and had meet loaf and
23 mashed potatoes or watch the buggies go up and down the
24 road?

25 A. No, sir.

NICHOLAS PAULIN - CROSS BY MR. FOX

1 Q. All right. So you sat in his living room, he
2 answered some of your questions, but not all of your
3 questions; right?

4 A. Right.

5 Q. Did you take notes of that investigation?

6 A. Yes, we took notes in our regulatory notebook.

7 Q. All right. But you didn't think it was necessary to
8 write down the names of all the people present; right?

9 A. We -- at that point we were -- we wanted to gather
10 as much information as we could regarding the product.
11 We were concerned about the drug claims he was making.
12 That was our number one concern is he was making drug
13 claims on the product. These are unapproved new drugs.

14 Our main concern was that, like I said, he was
15 making drug claims on the product, and that was our --
16 that was my number -- that was our number one focus to
17 find out what products he had, what products he made, how
18 much products that he had at his facility, wanted to
19 gather as much information as we could.

20 Q. All right.

21 A. But, no, sir, we were not able to get the names of
22 those other Amish that were present.

23 Q. You said you weren't able to get them. Did you ask
24 for those names?

25 MS. SMITH: Objection, asked and answered.

NICHOLAS PAULIN - CROSS BY MR. FOX

1 THE COURT: You can -- I'll let him repeat the
2 question.

3 You can answer.

4 BY MR. FOX:

5 Q. Are you telling the jury that you asked for names
6 and they didn't tell you or did --

7 A. I believe we did not ask for their names.

8 Q. So you got some information but not all the
9 information that you wanted; right?

10 A. We were able to -- like I said, we were able to
11 gather -- we were able to gather information that day,
12 but he did refuse the majority of the inspection that
13 day.

14 Q. All right. You were in his living room. Was he
15 nice?

16 A. Yes, he was very -- he was nice. He was cordial.
17 He was able to provide us information.

18 Q. Okay. All right. And then you came back on what
19 day?

20 A. We came back on -- he actually -- he told us if he
21 was going to be manufacturing again, he would actually
22 notify, he would notify us, and that's when he notified
23 us on March 13th, 2012.

24 Q. Okay. So he told you they were making some
25 Chickweed Salve, come on down?

NICHOLAS PAULIN - CROSS BY MR. FOX

1 A. Correct.

2 Q. You can watch us do that.

3 A. Right.

4 Q. All right. And you came?

5 A. Yes, we came that day, right. We came immediately
6 as soon as we got the call.

7 Q. And you watched, you looked?

8 A. Yes.

9 Q. Took some pictures, took some notes; right?

10 A. Yes.

11 Q. Now, you said in your direct testimony that some of
12 the complaints that you had were that it didn't seem to
13 be sanitary --

14 A. Right.

15 Q. -- correct? Prior to going to Mr. Girod's property
16 and doing that inspection that day, had you ever gone to
17 a facility that wasn't a pharmaceutical company to do an
18 inspection?

19 A. That wasn't a pharmaceutical company? Yes, I
20 performed food inspections and other type of inspections.

21 Q. All right. Food inspections?

22 A. Right. But they have different regulations than
23 food manufacturers. Food manufacturers have different
24 regulations than drug manufacturers.

25 Q. All right. So let's talk about drug, quote/unquote

NICHOLAS PAULIN - CROSS BY MR. FOX

1 drug manufacturers. Have you ever in the past prior to
2 this day gone to facilities where drug manufacturers were
3 making products --

4 A. I have.

5 Q. -- that were not pharmaceuticals?

6 A. I have never been to a place where -- that was
7 making pharmaceuticals from their barn.

8 Q. Okay.

9 A. That was the first time I had ever been to an FDA
10 inspection where an individual is making product out of
11 his barn.

12 Q. Okay. Fair enough. We'll go at it that way.

13 Are there federal regulations that prohibit the
14 manufacture of a product like Chickweed Salve or R.E.P.
15 or TO-MOR-GONE in a barn?

16 A. Well, he could -- they can make it wherever they
17 want to make the product, but they have to follow our
18 regulations. And whether you're making it in a barn or a
19 pharmaceutical company, they have to follow the same
20 regulations. They have to follow the same rules as
21 everyone else --

22 Q. Okay.

23 A. -- if they're going to make a drug.

24 Q. Which regulation would have prevented him from
25 having the Chickweed and olive oil in the jar outside?

NICHOLAS PAULIN - CROSS BY MR. FOX

1 A. Well, it goes back to sanitazation with that. He
2 was making -- he can -- you can make a product however
3 you want to, like I said, but you have to follow the
4 regulations.

5 Q. Do you know which regulation it is?

6 A. The CFR -- yeah, the 211 regulations.

7 Q. Okay. And what do they say, what does that say?

8 A. I don't have the exact CFR citation, but it's our
9 observation number 6 on our FDA-483 regarding the
10 buildings used in manufacturing, processing, testing, or
11 holding of drug products are not maintained in a clean
12 and sanitary condition, and free of infestation by
13 rodents, birds, insects, and other vermin.

14 Q. Okay. I mean, you saw that there was a dog walking
15 around, and he told you that sometimes bugs fly in the
16 barn. Was there any -- ultimately, was there any
17 testing? He gave you samples. You told us that. Did he
18 give you --

19 A. He gave us physical samples. He does not maintain
20 batch records, or he does not perform any finished
21 product testing on his product. He doesn't have any
22 finished product specifications on his products.

23 Q. Well, I appreciate that, but let me finish my
24 question --

25 A. All right.

NICHOLAS PAULIN - CROSS BY MR. FOX

1 Q. -- if you don't mind. The question was from the
2 sample that he gave you, did you test it in any way to
3 see if it was unsanitary or had contaminates in it?

4 A. No, we did not. As soon as we got back to the
5 office, we collected the samples to -- we wanted the
6 product, labeling of the product, to see what was
7 actually in there, and we actually obtained the label.
8 But as soon as we got back to the office, we destroyed
9 the physical product.

10 Q. Okay. So he gave you samples of what he made. You
11 made a criticism or a finding in your report that it
12 appeared to be an unsanitary fashion, but you didn't do
13 anything to confirm that the actual product was
14 unsanitary, did you?

15 A. He didn't -- he did mention that whenever he makes a
16 product in the barn, whenever the product is cooling,
17 if a -- if any insects or bees actually fly into the
18 product, that he just scoops them out, and he considers
19 it a good product still.

20 Q. Let me ask you again. Did you do anything to
21 confirm whether the samples that you were given of this
22 product that was manufactured were unsanitary?

23 A. No, we did not do any testing on the finished
24 product that we collected.

25 Q. All right. So if that was a concern, if you thought

NICHOLAS PAULIN - CROSS BY MR. FOX

1 that there was something unsanitary or something improper
2 or harmful about these samples, even if that was in your
3 mind, you didn't do anything to confirm it in order to
4 maybe go forward and restrict the distribution of this
5 product?

6 A. Well, we wrote on the observations that they were
7 being stored out -- the product was being stored outside
8 on the wooden pallets as well.

9 And I think our number one -- our number one
10 concern that these are unapproved drugs, and he was
11 making drug claims, specifically like cancer claims.
12 That's our -- that was our main concern, inspection.

13 Q. So is the answer, no, that you didn't do anything to
14 stop the distribution of the product, but you didn't do
15 anything to determine that it was unsanitary?

16 A. Not -- not at that time. We were still -- like I
17 said, this is our first time we were conducting an
18 inspection at his facility.

19 Q. All right. Now, you went back. Is the next time
20 you went back on the 21st of November?

21 A. It was the 19th, March 19th, 2012, to issue the 483.

22 Q. To issue -- okay.

23 A. Yes.

24 Q. All right. And remind me where -- was that when you
25 were using the back of your car as the desk?

NICHOLAS PAULIN - CROSS BY MR. FOX

1 A. Yes, yes.

2 Q. In the driveway?

3 A. Yes, in the driveway.

4 Q. And I think you said that Samuel wasn't happy that
5 you had issued that document; is that right?

6 A. That's correct. It was -- it was after we issued
7 the 483, the inspectional observations, that's when we
8 noticed that he became more aggressive. He said the
9 government was corrupt, and he said that we were lucky to
10 be able to watch him -- we were able to even watch it --
11 we were lucky to be able to watch him on March 13th
12 because he was in a good mood.

13 Q. You used the word aggressive several times in your
14 testimony today. I think I need to ask you what conduct
15 you would define as aggressive.

16 A. Specifically being yelled at. Normally on drug
17 inspections we're not yelled at by the firm, from
18 management.

19 Q. So if a person raises their voice to you, you would
20 call that aggressive?

21 A. It was specifically also whenever -- we're normally
22 not surrounded by 20 individuals.

23 Q. Well, I'm talking about -- let's talk about these
24 instances one at a time.

25 A. Okay.

NICHOLAS PAULIN - CROSS BY MR. FOX

1 Q. So in the instance where you're standing in the
2 driveway and using the car as your desk?

3 A. Yes.

4 Q. You said Sam became aggressive, and now you're
5 telling me that aggressive means he raised his voice; is
6 that right?

7 A. Yes, he was yelling.

8 Q. Did he cuss?

9 A. Not that I -- no, he did not.

10 Q. I mean, he's Amish. You would remember if an Amish
11 man was cussing you, wouldn't you?

12 A. I would.

13 Q. And he didn't?

14 A. I do not remember him cussing.

15 Q. He didn't threaten you; right?

16 A. He was just very aggressive saying the government is
17 corrupt.

18 Q. Okay.

19 A. And, yes, he was yelling at us, raising his voice.
20 At the time we were also surrounded, like I said, we were
21 surrounded.

22 Q. Surrounded, is this -- how many people?

23 A. Approximately 20 individuals.

24 Q. While you were standing in the driveway?

25 A. Yes, while we were standing using our trunk as a

NICHOLAS PAULIN - CROSS BY MR. FOX

1 desk.

2 Q. So let me back up just a little bit. You were asked
3 earlier whether you are an armed agent or inspector for
4 the FDA, and you said no?

5 A. That's correct.

6 Q. In your training to become an FDA inspector, I think
7 you said you were a middle school teacher before you went
8 to that job --

9 A. That's correct.

10 Q. -- is that right? In your training from leaving the
11 middle school to go work with the FDA, were you trained
12 as a law enforcement person or like a law enforcement
13 person would be trained in terms of physical
14 confrontations with people, the use of control tactics,
15 when someone accosts you, use of weapons? Did you
16 receive any kind of training like that at all?

17 A. We do go through training. I went through training
18 it's called verbal judo for FDA, and it talks -- it
19 speaks of how to like -- it was actually training that
20 shows you how to interact with -- if someone is irate
21 during an inspection, how you can maintain your safety.
22 Safety is our number one concern when we're out there on
23 an inspection.

24 Q. So you talked kind of fast. Did you say verbal
25 judo?

NICHOLAS PAULIN - CROSS BY MR. FOX

1 A. Yes, it's called verbal judo.

2 Q. Verbal judo?

3 A. Yes.

4 Q. So verbal judo, I think, correct me if I'm wrong,
5 sounds like dealing with people who are confronting you
6 but not physically, not using your hands or, you know,
7 judo is a body weight kind of marshal art. You weren't
8 trained physically but verbally how to handle
9 confrontations?

10 A. Right.

11 Q. Right?

12 A. That's correct. One of the main concerns too was
13 during the inspection on March 13th whenever we --
14 whenever we were watching Mr. Girod manufacture his
15 product, there was always five to six individuals, Amish
16 men, present that were holding wooden sticks during our
17 inspection, and they were always -- there's five or six
18 Amish men holding sticks, always around Mr. Girod while
19 we were there watching him make his product in his barn.

20 Q. Okay. You didn't mention that before. Walking
21 sticks or tobacco sticks or what did they have?

22 A. I can't remember the length of the sticks, but they
23 were actually sticks, and all five to six males were
24 holding the sticks.

25 Normally, like I said, in a pharmaceutical

NICHOLAS PAULIN - CROSS BY MR. FOX

1 inspection, we're not used to being surrounded by 20
2 individuals or males holding sticks or being yelled at,
3 so this was definitely new territory for us.

4 Q. All right. Okay. Fair enough.

5 So you've never been in a situation where someone
6 has raised their voices to you during an inspection;
7 right?

8 A. That's correct.

9 Q. In your official capacity?

10 A. That's correct.

11 Q. You were, for lack of a better way of saying it, in
12 the middle of nowhere in Bath County; right?

13 A. That's correct. We did not even have cell phone
14 service. Our cell phones would not work out there on
15 Mr. Girod's property.

16 Q. You don't know Mr. Girod personally?

17 A. That's correct.

18 Q. You don't know his sons or his family members
19 personally; right?

20 A. That's correct.

21 Q. You don't have any understanding or any appreciation
22 or experience with the Amish community and their beliefs;
23 right?

24 A. That's correct.

25 Q. All right. So I understand that the yelling or loud

NICHOLAS PAULIN - CROSS BY MR. FOX

1 voices may have made you uncomfortable. Did anyone
2 threaten you?

3 A. There was a threatening situation.

4 Q. Did anyone threaten you? Did anyone threaten you
5 with physical bodily harm or injury?

6 A. Not physical harm, no, but we were being yelled at.

7 Q. Verbal harm?

8 A. We were being yelled at, and it was aggressive
9 posture, and it was a tense situation. We were -- like I
10 said, we're not used to being yelled at.

11 Q. Okay. All right. And is this the situation where
12 you charged Mr. Girod with intimidating you, or is it the
13 next one in November?

14 A. It was the next one in November was when we actually
15 felt the most intimidated.

16 Q. Okay. Well, let's talk about that. So because -- I
17 think you testified that because you got yelled at when
18 you were there before, you called the sheriff's
19 department and asked for law enforcement to accompany you
20 when you went to Mr. Girod's property on November the
21 21st; is that correct?

22 A. That's correct. We just wanted their assistance.
23 We just wanted their presence to be able to have
24 protection because Mr. Girod was aggressive after we
25 issued the 483 on their last inspection. We just wanted

NICHOLAS PAULIN - CROSS BY MR. FOX

1 to have a police officer present for safety.

2 Q. Again, aggressive by being loud or louder than he
3 had been?

4 A. Just -- it was just aggressive, just yelling that
5 the government is corrupt and just really kind of irate
6 acting toward us.

7 Q. Okay.

8 A. And with that being -- we didn't know what would --
9 we didn't know what to expect on the next inspection. So
10 we wanted to -- safety was our number one concern. We
11 were hoping Mr. Girod wouldn't be upset or irate, but you
12 just never know. So that's why we asked for the
13 assistance of the police department just to be there with
14 us.

15 Q. Okay. So the sheriff's department or sheriff's
16 deputy met you at McDonald's?

17 A. Right, that's correct.

18 Q. And it was a different route than you expected, but
19 you followed him to the Girod's property --

20 A. Yes.

21 Q. -- right? And I was trying to take some notes here.
22 But you showed a diagram of the property, and the
23 sheriff's deputy went into the property first, if I
24 remember correct?

25 A. That's correct.

NICHOLAS PAULIN - CROSS BY MR. FOX

1 Q. So he was in front of you.

2 A. Yes.

3 Q. His car was?

4 A. Yes.

5 Q. And you said five Amish men jumped the fence. Well,
6 I mean, are you saying that they didn't open the gate,
7 but they came over the fence?

8 A. They came over the fences on the side. There's
9 actually fences along that border, they border the gravel
10 driveway, and actually had to jump over those fences.
11 And then as soon as we got out of our vehicle, there were
12 five Amish men right there.

13 Q. Right there?

14 A. Yes.

15 Q. They didn't know you were coming; right?

16 A. They were not supposed to know we were coming
17 because we told the sheriff to make sure not to tell
18 anyone, it was an unannounced inspection, we didn't want
19 anyone to know because we wanted the inspection
20 unannounced.

21 Q. How much do you think someone drives up to the Girod
22 property in a car?

23 A. I'm not sure.

24 Q. Do you -- did you see any cars there that looked
25 like they belonged there, like owned by the Amish people?

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1 A. I cannot remember.

2 Q. I mean, you know, that Amish generally are driving
3 horses and buggies; right?

4 A. That's correct, but Mr. Girod did -- he does have
5 drivers that actually, that whenever he pulled up behind
6 us, there was someone driving Mr. Girod, non-Amish,
7 non-Amish person driving Mr. Girod.

8 Q. He was a passenger in the vehicle?

9 A. Yes, sir.

10 Q. All right. So you're there with the sheriff's
11 deputy. I'm assuming the deputy was armed; right?

12 A. I believe he was, yes.

13 Q. Okay. And five Amish gentlemen come across the
14 fence. And some -- at some point after that Mr. Girod
15 shows up having been driven there by someone else; is
16 that right?

17 A. That's correct.

18 Q. How much time passed between when you got out of
19 your car and Mr. Girod arrived?

20 A. It was approximately 30 seconds.

21 Q. It was right after that?

22 A. Uh-huh.

23 Q. Okay. All right. So had anyone said anything to
24 you before Mr. Girod arrived?

25 A. Yes. The five Amish men they were yelling

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1 anti-government things towards us, expletives.

2 Q. Explain to me what you mean by expletives, because I
3 understand that word as a curse word. Do you mean that?

4 A. They were yelling -- yes, they were expletives. I
5 don't remember exactly what type of expletive, but it was
6 an expletive.

7 Q. A cuss word?

8 A. That's what I wrote in my report, yes.

9 Q. What word?

10 A. I do not remember what word. I was just -- it was
11 an overwhelming situation, and we tried to just maintain
12 our safety. We were just trying -- we were surrounded by
13 Amish individuals.

14 Q. You were trying to maintain your safety so I'm
15 guessing that you got in your car. Did you, or did you
16 not get in your car?

17 A. We were surrounded. We were unable to get back to
18 our vehicles because the way they were surrounding us we
19 were not able to.

20 Q. Uh-huh. And the sheriff's deputy who was with
21 you --

22 A. Yes.

23 Q. -- had a gun. What did he do?

24 A. Would you -- well, one of the Amish men actually
25 charged at us aggressively, and he had to actually pull

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1 one of them back.

2 Q. Okay. This is the first we heard of that. Who was
3 that?

4 A. It was -- it was an Amish male.

5 Q. Amish male?

6 A. Yes, sir, yeah. The police officer had to pull him
7 back. It was honestly the most -- it was a scary
8 situation of my FDA career. I've been an investigator
9 for 10 years, and it was honestly the most scared I've
10 ever been on an inspection before.

11 Q. You felt intimidated?

12 A. Yes, sir.

13 Q. Who was arrested?

14 A. No one was arrested.

15 Q. Well, you said that the sheriff's deputy was there.
16 I mean, he surely would have arrested someone who was
17 committing crimes in his presence?

18 A. Well, I'm not sure of any crime. There was -- he
19 was just trying to protect.

20 Q. There was no crime, no crime. So no one was
21 threatened with physical injuries; is that right? That's
22 a crime.

23 A. Well, he had --

24 MS. SMITH: Objection foundation.

25 THE COURT: Sustained.

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1 BY MR. FOX:

2 Q. Was anyone threatened with physical injury?

3 A. We were threatened, well, verbally, we were being
4 yelled at. They were at close proximity toward us,
5 within one arm length away. We were --

6 Q. Did you understand my question?

7 A. You said if someone was harmed?

8 Q. Was anyone physically harmed?

9 A. We were not physically harmed.

10 Q. Threatened with physical injury or harmed?

11 A. We were not physically harmed.

12 Q. Was anyone present threatened with physical injury
13 or harm?

14 A. We were not physically hurt, but we were surrounded.
15 We were surrounded by the Amish individuals.

16 MR. FOX: Judge, could you help me possibly?
17 I've asked it three times.

18 THE COURT: He's describing a threatening
19 situation. Threats don't have to be verbal. So I can't
20 help you now, sir.

21 BY MR. FOX:

22 Q. Well, were you threatened with physical injury or
23 harm?

24 A. I can honestly say I was threatened, and I was
25 fearful, and I was afraid, but I was not physically

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1 harmed. I was not physically harmed.

2 Q. Was there a verbal threat, I'm going to hit you, I'm
3 going to hurt you, I'm going to break your bones, I'm
4 going to do -- what was the physical threat?

5 A. Well, one, the police officer had to hold one of the
6 Amish men back because he was charging at us. I don't
7 know what would have happened if the police officer
8 wouldn't have been there. If the Amish man would have
9 charged at us, I don't know what would have happened.
10 But I'm glad the police officer was there to hold the man
11 back.

12 Q. So there were no threats of a physical violence
13 against you or your co-worker?

14 A. No. Like I said, I'm just very thankful that the
15 police officer was there to protect us and hold back the
16 Amish man that was charging at us aggressively.

17 Q. The police officer didn't arrest anyone; right?

18 A. He did not arrest anyone.

19 Q. To your knowledge he didn't charge anyone with a
20 crime; right?

21 A. That's correct.

22 Q. Do you think that he should have?

23 A. I mean, I'm not a police --

24 MS. SMITH: Objection.

25 THE COURT: I'll sustain the objection. It is

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1 a legal conclusion, sustained.

2 MR. FOX: Thank you, Your Honor.

3 BY MR. FOX:

4 Q. Did you make any complaints to the sheriff, his
5 supervisor, his boss, that he had not handled that
6 situation appropriately?

7 A. No, we did not.

8 Q. Okay. So you thought he did handle it
9 appropriately?

10 A. I didn't know what to expect. That was the first
11 time I've ever -- we've ever had to take a police officer
12 on an inspection for our personal safety, but I was glad
13 that he was there that day to protect us from that Amish
14 man that was charging at us.

15 Q. Okay. Now, Samuel arrived about 30 seconds after
16 you got there; right?

17 A. That's correct.

18 Q. And, I guess, he got out of the truck, and there
19 were other people there; right?

20 A. (Nods head)

21 Q. If I remember the diagram correctly, there was --
22 you have it drawn like a semi-circle of people?

23 A. Uh-huh.

24 Q. It's like a U?

25 A. Right, right.

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1 Q. So that's not really surrounded; right?

2 A. We were -- we had -- there was the locked gate in
3 front of us, and then you had fences on both sides of us
4 as well, the driveway, and we were encircled by the Amish
5 men. So there was actually a fence behind us. So
6 really -- and then there was a vehicle, a pickup truck,
7 that was within five feet away from our government
8 vehicle, so we were pinned in. We had nowhere to go.
9 There was no way to exit.

10 Q. Why didn't you just get in your car?

11 A. There was not a path to get to the vehicle.

12 Q. Why didn't you ask the police officer to do
13 something about it if you were threatened?

14 A. We eventually did ask the police officer to make a
15 path for us to get back to our vehicle.

16 Q. Okay.

17 A. We were attempting to actually perform the
18 inspection. It was because of our safety, safety is our
19 number one priority, we decided to -- we needed to exit
20 the premises.

21 Q. So what did Samuel do? You talked about a non-Amish
22 woman speaking up. You talked about other Amish
23 gentlemen yelling and acting in a threatening way.
24 Specifically what did Samuel do?

25 A. Samuel got out of the vehicle, and he took an

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1 aggressive stance with his arms, and he said, it's
2 none -- he yelled at us, it's none of your -- none of
3 your business what products I make. That was the first
4 thing out of his mouth whenever he got out of the pickup
5 truck. He just yelled, it's none of your business what
6 products I make.

7 Q. Is that it?

8 A. Yeah. And he was pointing his finger at us as well.

9 Q. All right. So that conduct, which you have told us
10 about specifically, is what resulted in the charge of
11 intimidating?

12 A. Well, then also the Amish men that were surrounding
13 us, they were -- like I said, they were within one arm's
14 length away from us. They told us to quit writing trash
15 and to burn our notes.

16 Q. But I'm talking about Samuel. Samuel is the person
17 who's on trial today. I'm not talking about all the
18 other people you're complaining about. I'm asking you
19 specifically about Samuel Girod.

20 So let's talk about him specifically. You told us
21 that he pointed his finger at you?

22 A. (Nods head)

23 Q. He said that, what, the FDA was mad?

24 A. No. He just said, he just yelled, he said, "it's
25 none of your business what products I make." And then he

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1 also yelled during -- while we were trapped, we were
2 surrounded by the Amish, he said, "FDA only approves
3 drugs that kill people."

4 Q. FDA only approves drugs that kill people?

5 A. That's right.

6 Q. All right. That's it; right? That's the sum and
7 substance of what he did that day to cause this charge?

8 A. And then all the other things we were being yelled
9 at was from the other Amish men present, and then also
10 from the non-Amish woman.

11 Q. All right.

12 A. The non-Amish yelled, she said, how much are we
13 paying the Judge to sign the court order? She was
14 yelling that.

15 Q. What was her name?

16 A. We did not get -- we did not get her name.

17 Q. I mean, was her conduct intimidating?

18 A. At that moment everything was just -- we were just
19 caught off guard. It was -- we felt threatened. We were
20 trapped for one, our vehicle was trapped. We were
21 surrounded by Amish men. One man was charging at us.
22 The police officer had to hold one back. No, sir, we
23 were not able to get her name under the circumstances.

24 Q. The gentleman who you alleged charged at you, you
25 didn't at least mention to the deputy that he should get

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1 that person's name so he could be charged with a crime?

2 A. We did not get his name.

3 Q. Didn't get his name. Didn't get anyone else's name;
4 right?

5 A. Not that -- no, we did not. Like I said, the main
6 reason is -- the main reason why we were there we were
7 trying to conduct an inspection under court order because
8 he was not supposed to be making the product or
9 distributing the product. We were there to take an
10 inventory and perform an inspection.

11 Q. I understand. You were wanting to do your job, but
12 as I'm hearing it, you were not permitted to go into the
13 barn, and people were yelling at you?

14 A. (Nods head)

15 Q. Samuel said, "the FDA only approves drugs that kill
16 people"?

17 A. Uh-huh.

18 Q. And he pointed his finger at you?

19 A. (Nods head)

20 Q. Is that fair?

21 A. It was -- I believe it was the way he was -- he was
22 yelling.

23 Q. It was the way he was yelling?

24 A. (Nods head) Not only that, but we -- also we were
25 encircled around all the Amish men as well.

1 Q. I understand that, but you didn't charge them, sir?

2 MS. SMITH: Objection, Your Honor. He didn't
3 charge anyone.

4 THE COURT: Sustained. The jury will disregard
5 the question.

6 MR. FOX: Just one moment, Judge.

7 THE COURT: Yes, sir.

8 MR. FOX: No further questions, Your Honor.

9 THE COURT: Thank you, Mr. Fox.

10 Let's see if there is any redirect.

11 MS. SMITH: Just briefly, Your Honor.

12 THE COURT: Yes, ma'am.

13 REDIRECT EXAMINATION

14 BY MS. SMITH:

15 Q. Investigator Paulin, why does the FDA do unannounced
16 inspections?

17 A. We do unannounced inspections for -- because we want
18 to see how the firm is manufacturing product in live --
19 in live day-to-day operations. If we feel like we
20 announce -- if we were to announce the inspection, that
21 would give the firm time to clean up or maybe hide
22 something or not really be a true representation of their
23 day-to-day operations of manufacturing product. So
24 that's why we show up to all drug pharmaceutical
25 companies unannounced. We treat everyone equally, we

1 treat everyone fairly, and everyone has to follow the
2 same rules.

3 Q. Were you ever able to conduct an unannounced
4 inspection of the defendant's manufacturing area?

5 A. Yes. He called us down on March 13th, 2012, and we
6 were able to perform an inspection.

7 Q. But was that one unannounced? You were there at his
8 invitation that day; right?

9 A. We were there as an invitation.

10 Q. He knew you were coming?

11 A. He knew we were coming, yeah.

12 Q. Generally when you go to do an inspection, who is
13 the person you look to deal with during your inspection?

14 A. It's the most responsible person, which in this case
15 it would be Samuel Girod.

16 Q. Do you as a matter of policy or in your manual have
17 to get the name of everyone you deal with during an
18 inspection?

19 A. No. Just the most responsible person is who we
20 issue our forms to because they're the most responsible
21 person at that firm or location.

22 Q. As an FDA consumer safety officer, have you ever had
23 to prove a product was unsanitary?

24 A. I have not. My job is to document what I see during
25 an inspection and the observations that I see on that

1 day, and which is what I wrote on the FDA-483, the
2 observations that we witnessed on that day of March 13th.

3 Q. You were asked a number of questions about having
4 not been to a manufacturing facility in a barn.

5 A. Uh-huh.

6 Q. The first time you sat down with the defendant, in
7 January 2012, what did you tell him about the products
8 and the claims he was making?

9 A. We told him that he was making drug claims on his
10 pamphlet, and we told him that we were -- these are
11 classified as drugs per FDA Act, and he told us
12 specifically, he said, he would not be able to sell his
13 products without these pamphlets.

14 Q. Did you informally give him any advice on how to
15 change his business?

16 A. We told him -- we told Mr. Girod the very first time
17 we were sitting with him in his living room, we said, we
18 told Mr. Girod that if you were to take these drug claims
19 off your pamphlets, that FDA would not be here. We tried
20 to educate him and told him that we would not be here if
21 you did not have these drug claims.

22 Q. And then you were asked a lot about the yelling, and
23 I just want to make sure the record is clear. Did you
24 take his yelling as threatening?

25 A. Yes.

1 Q. And then you were also asked about whether you
2 referred this matter to the Bath County Sheriff. After
3 that November 2013 interaction, did this matter get
4 referred to the FDA Office of Criminal Investigations?

5 A. Yes. It got referred to our OCI, which is Office of
6 Criminal Investigations to handle criminal for the FDA.

7 MS. SMITH: Nothing further, Your Honor.

8 THE COURT: Thank you.

9 Let me see if we have any redirect on --
10 recross on matters covered on redirect. Any recross?

11 MR. FOX: No further questions.

12 THE COURT: Thank you. You may step down.

13 You can leave those exhibits there. We will
14 collect those and provide those to the clerk. I believe
15 all of those have been admitted.

16 Now, ladies and gentlemen, we'll take a brief
17 recess at this time. We'll be in recess for about
18 15 minutes.

19 Please keep in mind the admonitions that you've
20 been given previously not to discuss the case among
21 yourselves while we're in recess, and we'll call you back
22 in at about 3:20 this afternoon.

23 (Whereupon, the juror members leave the courtroom.)

24 THE COURT: Thank you, and please be seated.

25 Before we recess, I'll make an evidentiary

1 finding as to some of the statements that have been
2 introduced.

3 Although they're not subject to objection, some
4 of these statements by other persons that have been
5 identified as members, either Amish or non-Amish, at the
6 time of these incidents would be admissible under
7 801(d)(2)(E) as statements of co-conspirators made during
8 and in furtherance of the conspiracy. It's charged in
9 Count 1 as a conspiracy, and those statements would be
10 admissible for that purpose. There is sufficient
11 evidence for the Court to make that determination.

12 Again, although no objection was raised to the
13 statements, they are admissible under that rule of
14 evidence, 801(d)(2)(E).

15 MS. SMITH: Thank you, Your Honor.

16 THE COURT: All right. Any other issues we can
17 take up outside the presence of the jury?

18 MS. SMITH: Your Honor, I think there has been
19 some things filed on the docket while we've been in this
20 room. I'm not sure if the defendant is responsible for
21 the filings or if someone else is filing something on his
22 behalf. I think there has been some issues as to who is
23 signing some of the documents that are going in under his
24 name.

25 THE COURT: Mr. Girod, have you signed and

1 filed anything in the record while we've been in
2 proceedings today?

3 DEFENDANT GIROD: Your Honor, I signed them.

4 THE COURT: But --

5 DEFENDANT GIROD: Oh, I'm sorry.

6 THE COURT: Did you prepare those documents and
7 file those documents in the record?

8 DEFENDANT GIROD: I didn't do that.

9 THE COURT: You didn't prepare them yourself,
10 you just added a signature to them; is that correct?

11 DEFENDANT GIROD: I read them all. I read them
12 all. I know about the situation, but then I signed them
13 and dated them.

14 THE COURT: Somebody filed those on your behalf
15 that's not an attorney; is that correct?

16 DEFENDANT GIROD: My sons did.

17 THE COURT: All right. Someone else is filing
18 documents on the defendant's behalf.

19 Well, I will take that up after we recess. I
20 don't know what the filings would be, but if there's a
21 motion for those to be stricken from the record, then
22 I'll entertain the motion.

23 MS. SMITH: And we just want to make sure we
24 understand what the role of the defendant's
25 representation is --

1 THE COURT: I'm going to direct the parties to
2 brief that issue tonight, and that is hybrid
3 representation, whether an individual can assert that
4 he's entitled to represent himself, but then defer that
5 representation to standby counsel only to reassume that
6 self-representation at a later time. I believe there is
7 some case law on that. I'm not sure what the answer is
8 in the Sixth Circuit, but I will direct the parties to
9 address that matter and be ready to respond to me
10 tomorrow morning with respect to that issue.

11 All right. Anything else we can take up?

12 Oh, one other matter. I believe the last
13 series of questions on behalf of the defendant may raise
14 an issue with the Bath County Sheriff's office and
15 specifically some correspondence that were communicated,
16 that were transmitted by the sheriff himself in this
17 proceeding in which he apparently claims to -- or warns
18 the government not to attempt to make an arrest of the
19 defendant while he was subject to an arrest warrant from
20 this Court. So the questions have just made that issue
21 relevant in this proceeding, as well as the -- the issue
22 of whether the deputy sheriff was, in fact, acting at the
23 behest or on behalf of the defendant in this matter. So
24 I do want to advise the parties that it does appear at
25 this point to be relevant to those issues.

1 We will be in recess until 3:20.

2 (Whereupon, a recess was taken at 3:10 p.m., and
3 Day 2 of the Jury Trial proceedings continued on the
4 record in open court, without the juror members present,
5 as follows.)

6 THE COURT: Before we bring the jury in, the
7 defendant through third parties has filed three pleadings
8 in this matter while we have been in session today.

9 The first appears as docket entry number 113,
10 motion to dismiss superseding indictment, Rule 12(b)(1),
11 Federal Rules of Criminal Procedure. The time within
12 which to file such a motion has expired, and the motion
13 will be denied for that reason.

14 Likewise, the motion will be denied because the
15 Court has previously addressed many, if not all, of the
16 arguments that have been raised and have found those to
17 be without merit.

18 The Court will adopt and reincorporate its
19 prior memorandum opinion and orders, which do address
20 some of these issues such as whether the defendant's
21 product, in fact, constitutes a drug, as that term is
22 defined under the relevant statutes.

23 The Court finds that based upon the evidence
24 that has been presented in the case to this point
25 certainly does support the United States' position.

1 Second, the defendant argues that there's no
2 rational basis for the enactment of the statute, and it
3 would violate equal protection, and the Fifth Amendment
4 guarantee due process.

5 Again, the Court has addressed many of these
6 arguments but finds that the defendant's position is not
7 well taken and will be rejected.

8 He makes a number of statements in which he
9 essentially argues that the Food & Drug Administration is
10 essentially a stalking horse for the pharmaceutical
11 industry, similar to the claims that were made by some of
12 the individuals that we've just heard testimony about,
13 but the Court finds that there is no basis to make such
14 assertions here.

15 Likewise, he argues that the -- his prosecution
16 of the statute would be void for vagueness. The Court
17 does not find that the statutory provisions would be void
18 in any sense as they're applied in this particular case.

19 Likewise, he argues that he was singled out for
20 arbitrary and discriminatory enforcement. In fact, when
21 we look at the evidence that has been presented in the
22 case, just the opposite would seem to be the case. This
23 defendant's prosecution was brought about by his own
24 actions, and there's nothing arbitrary about the FDA's
25 decision to seek criminal prosecution in this matter

1 based upon his egregious conduct.

2 There's a separate motion that has been filed
3 to dismiss for selective prosecution in which some of the
4 same arguments are made. The Court would, likewise,
5 reject those arguments and deny that motion. Again, the
6 time has passed for filing motions to dismiss the
7 superseding indictment, but there is no indication in the
8 record that the -- that this enforcement action would
9 constitute selective prosecution by virtue of the
10 defendant's standing in the Amish community, or
11 otherwise.

12 Finally, the defendant has filed a motion for
13 the Court to recuse from the case. He makes several
14 arguments that the Court should recuse, essentially in
15 part based upon the Court's refusal to grant an extension
16 of the trial date, which was outlined in the previous
17 opinion. He refers to various orders of the Court in his
18 affidavit.

19 The authority on issues of recusal essentially
20 point out that actions taken by a particular Judge in a
21 matter based upon evidence or arguments presented would
22 not give rise to recusal issues, certainly not the type
23 of arguments that have been made by this defendant in
24 this case.

25 And, therefore, his motion to recuse will be

1 denied.

2 Again, the parties will be directed to address
3 and be prepared to argue tomorrow morning at 8:30 the
4 issue of whether the defendant is entitled to hybrid
5 representation. Inasmuch as he's been given several
6 opportunities for counsel to represent him in the case,
7 he's denied representation to this point until such time
8 as the first witness is on the witness stand, and at that
9 point he's asked the standby counsel to represent him.

10 So the question presented by the parties is
11 whether he may essentially act as his own attorney but
12 then also ask his attorney to cross-examine certain
13 witnesses in the case.

14 And so I do expect the parties to brief that
15 issue and be ready to argue the point at 8:30 tomorrow
16 morning. We'll bring the jury in at 9 o'clock, but the
17 parties should be ready to address that issue at 8:30.

18 All right. Let's bring the jury in.

19 (Whereupon, the juror members enter the courtroom.)

20 THE COURT: Thank you, and please be seated.

21 The record will reflect that all members of the
22 jury once again are present.

23 Ladies and gentlemen, do you-all have water if
24 you need it? I know it's becoming a little bit stuffy in
25 the courtroom. If you need some water, if you would just

1 alert me, we will get you something to drink if you need
2 to.

3 We finished the first witness. We're ready for
4 our next witness, Ms. Smith?

5 MS. SMITH: The United States would call
6 Tamara Umscheid.

7 THE COURT: Thank you.

8 THE CLERK: Raise your right hand, please.

9 Do you swear unto God, or affirm, subject to
10 the penalties of perjury that the testimony you're about
11 to give in this matter shall be the truth, the whole
12 truth, and nothing but the truth?

13 Do you so swear or affirm?

14 THE WITNESS: Yes, I do.

15 THE COURT: Thank you.

16 Ms. Smith, you may proceed.

17 TAMARA UMSCHIED,
18 having been first duly placed under oath, was examined
19 and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SMITH:

22 Q. Good afternoon, ma'am.

23 Could you please introduce and spell your name for
24 the court reporter?

25 A. Yes. My name is Tamara Umscheid, compliance

1 officer. Last name is U-M-S-C-H-E-I-D.

2 Q. Officer Umscheid, where are you a compliance
3 officer?

4 A. In the Kansas City District Office.

5 Q. Of what agency?

6 A. I'm sorry, the Food & Drug Administration.

7 Q. How long have you worked for the Food & Drug
8 Administration?

9 A. Since 2002.

10 Q. How long have you been a compliance officer?

11 A. Since 2010.

12 Q. What position did you hold prior to 2010?

13 A. I was an investigator in the Food & Drug
14 Administration.

15 Q. Can you tell us what the difference is between an
16 investigator and a compliance officer at the FDA?

17 A. Yes. They are both consumer safety officers, but
18 there's -- the investigator spends more time -- most of
19 the time doing investigations, inspections, like several
20 complaints and things.

21 And when they -- when they have something that they
22 believe is a problem or issue, they bring the inspection
23 report in the case to a compliance officer, and the
24 compliance officer is the one who looks into it and tries
25 to get the firm into compliance, or if there needs to be

1 action taken, the compliance officer handles that.

2 Q. What is your educational background?

3 A. I have a degree in wildlife conservation management.

4 Q. And just briefly what did you do between getting
5 that degree and working for the FDA?

6 A. I was a park ranger with the Corps of Engineers. I
7 also had a logging company, and I mostly was a prison
8 guard.

9 Q. When you started working for the FDA and were first
10 a consumer safety officer, did you receive any specific
11 training in that area?

12 A. We do -- we attend a lot of training. As an
13 investigator, first few years you probably spend 60,
14 70 percent of the time in training, and continually
15 throughout the rest of your career.

16 As a compliance officer since 2010, I have attended
17 training I would say minimum of five, seven or eight
18 trainings a year, and I also give trainings in different
19 areas.

20 Q. What kind of trainings do you receive to become a
21 compliance officer?

22 A. Specifically for compliance officer there's three
23 very long courses on law and evidence. It takes the
24 things you learn as an investigator and expands on them
25 and makes them more specific.

1 Q. As a compliance officer, do you have a particular
2 area of focus?

3 A. I know they're starting to go that way, but as of
4 right now I -- we aren't specialized, but I would say
5 most of the things that I handle have to do with animal
6 feed, human food, drugs, animal drugs, and dietary
7 supplements.

8 Q. In your experience at working at the FDA since 2002,
9 how many matters have you worked on that have been
10 referred to criminal cases?

11 A. My whole career?

12 Q. Uh-huh.

13 A. Okay. Since 2002, I believe of my cases four that I
14 initiated.

15 Q. In the last 15 years?

16 A. Yeah. Now, there's been -- the whole -- well, never
17 mind. I was going to add to that, but that's not what
18 you asked.

19 Q. You used the term drugs earlier to refer to one area
20 that you're responsible for. What, in your context as a
21 compliance officer, does that mean?

22 A. Drugs? When we use the definition from the act,
23 which is -- it's anything that is intended -- whose
24 intended purposes is to change or modify the function of
25 the body. It's to affect the body.

1 Q. In your --

2 A. Affects your function of your body.

3 Q. In your experience do drugs only come from
4 pharmaceutical companies?

5 A. Oh, no, no. Water could be a drug. If you have --
6 make a claim on it, Kool-Aid, anything that you intend to
7 modify the -- something in the body, affects your
8 function of the body can be a drug.

9 Q. Are you familiar with a man named Samuel Girod?

10 A. Yes, I am.

11 Q. Have you ever met him in person?

12 A. No, I haven't.

13 Q. When did you first become aware of Samuel Girod?

14 A. That would have been in January of 2012.

15 Q. What happened in January 2012?

16 A. I was contacted by the State of Missouri. There had
17 been a county official who had come across some products
18 that he had some concerns about, and they had contacted
19 the State of Missouri, and in turn the State of Missouri
20 had contacted our office to ask, you know, questions
21 about this particular -- these three products.

22 And when we reviewed them we said, yeah, there are
23 some concerns about the ingredients and the claims that
24 were being made.

25 Q. What were those products?

1 A. There was Chickweed Healing Salve, TO-MOR-GONE, and
2 a product called R.E.P.

3 Q. When you first started working on this, did you know
4 who made those three products?

5 A. We know what the label said, Satterfield's Naturals.
6 We weren't -- we weren't sure of where that was. We --
7 when we first looked at it -- when I first started
8 looking it up and looking into it, it was -- the address
9 that we had was for Indiana, which would have been within
10 the FDA Detroit district.

11 Q. When did you learn who did make the products?

12 A. I learned it from Missouri. I contacted the Detroit
13 district, and they said they are no longer in their --
14 but they were trying to find it. But Missouri -- or
15 Mr. Girod had talked to Missouri, and in that
16 conversation she had found out where he was from, and she
17 conveyed that to me.

18 Q. Did you eventually have a phone conversation with
19 Sam Girod?

20 A. Yes, I did.

21 Q. Did he discuss the products?

22 A. Yes. Yes, he did.

23 Q. Did he say that he made those three products?

24 A. Yes.

25 Q. In starting to work on this, were you able to -- had

1 the defendant ever dealt with the FDA prior to you
2 working on the case in January 2012?

3 A. Yes, he told -- he explained to me that he had some
4 dealings with FDA when he lived in Indiana.

5 Q. Had -- did he tell you if he had any other dealings
6 with a regulatory body?

7 A. Yes. He also mentioned that in the State of Ohio,
8 which he told me during the conversation that Ohio had
9 embargoed some of his products. You know, they were
10 the only -- his comment to me was they were the only
11 agency that ever had a problem or an issue with his
12 products.

13 They had also sent him a warning letter, what
14 would amount to a warning letter, telling him that his
15 products -- there were issues with his products. And I
16 had gotten a copy of that.

17 Q. So after -- after the products were found by the FDA
18 in Missouri, what happened in Missouri?

19 A. Well, Missouri had embargoed the products, and there
20 had been several conversations between Missouri and
21 Mr. Girod and me and Mr. Girod. And we came about that
22 we -- we -- the FDA seized the products at the
23 distributor in Missouri, the same products that the
24 State of Missouri had embargoed and was kind of holding
25 in place at the store. And FDA, along with the State of

1 Missouri, went down there and released these products to
2 the U.S. Marshals and to do the seizure.

3 Q. Did that start a civil lawsuit in federal court in
4 Missouri?

5 A. Yes. Well, the seizure itself doesn't, but
6 Mr. Girod claiming the products and wanting the products
7 back, that started the procedure and now what do we do
8 with these products? How do we get these products where
9 they can either be sold or refurbished or what, you know,
10 or destroyed, and so that was up to the Court.

11 Q. What happened in that lawsuit?

12 A. He was enjoined. He was enjoined from
13 manufacturing, distributing these misbranded and/or
14 adulterated products in interstate commerce.

15 The Court in Missouri -- they tried to get what's
16 called a dissent decree where they, you know, get
17 together, they discuss how to rectify the situation, but
18 that didn't happen.

19 And so the Judge made an order telling him that he
20 can't manufacture until he gets an approval or he can't
21 ship anything. He has to quit selling.

22 There were several things that the Judge told him he
23 had to do. He had to notify his customers that he was
24 being enjoined, which meant they weren't to ship any more
25 of the product.

1 Q. We'll talk through the order, but when did the
2 injunction first get entered?

3 A. August of 2013, and then it was, I believe, it was
4 amended in September of 2013.

5 Q. So what do you mean by it was amended? Was it
6 issued again?

7 A. Yeah, it was issued again. The only thing I could
8 ever find that was any difference was there was one
9 footnote that the Judge had added so -- but basically the
10 order was the same.

11 Q. I would like to hand you what's been premarked as
12 Government's Exhibit 3.

13 MS. SMITH: May I approach?

14 THE COURT: Yes, that's fine.

15 BY MS. SMITH:

16 Q. Can you just briefly tell us what that is until we
17 get it into evidence?

18 A. This is -- yes, this is the amended order that
19 was -- that the Judge issued on September 17th of 2013.

20 MS. SMITH: Your Honor, the United States moves
21 to admit Government's Exhibit 3, and it is a certified
22 copy provided by the District Court in Missouri, and the
23 factual discussion and legal findings have been redacted
24 in the copy I'm seeking to introduce into evidence. So
25 just the order, as well as the --

1 THE COURT: Very well. Let's see if there's
2 any objection to its admission.

3 DEFENDANT GIROD: No, I'm fine.

4 THE COURT: Exhibit 3 is admitted.

5 (Whereupon, Government's Exhibit Number 3 was
6 admitted into the record.)

7 MS. SMITH: If we could publish the redacted
8 copy of this order to the jury.

9 BY MS. SMITH:

10 Q. Is it on your screen? So that first page in the
11 caption, can tell us who the parties were?

12 A. These are the products that we seized.

13 Q. How many cans -- how many products were seized?

14 A. There were -- if you add this up, this all up, it
15 was 17, but when we actually seized it, there was
16 actually 1,842 pieces of different -- of the three
17 products.

18 Q. 1,800 total but divided among the three products?

19 A. Yes, yes.

20 Q. Now, if you turn ahead to page 17 where it starts
21 with "It is further ordered," what is this portion of the
22 injunction doing in your understanding as a compliance
23 officer, just generally this section?

24 A. It's talking about the articles that were seized,
25 and it's establishing that these are drugs within --

1 within our -- within the definition of -- that we have
2 for drugs.

3 Q. And if we could just scroll through this document.
4 And I've got a big picture what did this injunction
5 require?

6 A. Required of Mr. Girod?

7 Q. Yes.

8 A. Well, it -- an injunction has requirement, and it
9 tells the person that's being enjoined what they need to
10 do, and also -- we also put your firm on FDA. But to
11 begin with, he was also required to give -- you want me
12 to read this?

13 Q. I would like to have you talk about it.

14 A. Okay. There were several things that it required
15 him to do. Like he had to notify his distributors.

16 Then he had to give them a copy of the injunction so
17 that they knew that there was an injunction, and they
18 couldn't ship these products that he -- you know, any of
19 them they have on hand.

20 He was required to put up a bond.

21 He was required to allow inspections, and that meant
22 we were required to do inspections, conduct inspections.

23 He was -- let's see.

24 Q. Was there anything about how the product that had
25 been seized should be disposed of?

1 A. Oh, yes, yes. There was -- the product that had
2 been seized it would have to be destroyed, and, you know,
3 if -- in this case I think it was already in the
4 marshal's custody, but he was required to pay for that
5 destruction. It -- he was also required to post the
6 injunction in -- on his property where he was
7 manufacturing.

8 Q. You mean put a copy up?

9 A. Yes, post it. He was also --

10 Q. Did it put --

11 A. I'm sorry. He was also required to give us a list
12 of associated people that he had given -- that he had
13 given the copy to as required by the Court.

14 Q. Did it place any restrictions on his ability to sell
15 the products in the future?

16 A. Yes. He was not -- he was to not sell any of it
17 until he either got an approval, you know, saying that it
18 was safe, or he was to cease manufacturing it and
19 distribution of these products, or --

20 Q. Were there any --

21 A. -- similar products.

22 Q. Were there any requirements on the TO-MOR-GONE
23 product in particular?

24 A. Yes. That -- the TO-MOR-GONE in particular, as I
25 remember, he was to cease to stop making that.

1 Q. Did that apply to a particular ingredient in
2 TO-MOR-GONE?

3 A. The bloodroot, it's the bloodroot is the main
4 ingredient in TO-MOR-GONE.

5 Q. Did the injunction put any requirements on the FDA
6 as well?

7 A. Yes. We had to send him -- we had to conduct
8 inspections on a regular basis.

9 We had to give notice to him when he was in
10 compliance or not in compliance.

11 We had to send him the bill for the destruction,
12 also a bill for the U.S. Marshal's in storage, and we had
13 to send a bill for that.

14 We were also required to notify him if there was any
15 reason to recall. We were required to give him notice
16 and tell him, you know, you need to recall this product,
17 which we did, I did.

18 Q. What would have been a reason for the FDA to order
19 him to issue a recall?

20 A. The fact that he was -- had not been in compliance
21 with notifying his customers. So since he didn't notify
22 his customers, they weren't aware of the injunction, then
23 we needed to do a recall to get the stuff off the market.
24 Because it was still being sold in many -- even after the
25 injunction.

1 Q. For those of us not familiar with the process, what
2 is a recall?

3 A. Okay. A recall is where the manufacturer or the
4 responsible party at -- usually -- a lot of times it's a
5 manufacturer, but it can be other people. The
6 responsible party notifies people that have received a
7 product and tells them, you know, this product needs to
8 be off the market. Please, you know -- and gives
9 instructions, you know, please destroy on site, or please
10 return it to the manufacturer, whatever the case is.

11 So it identifies the product, and it directly
12 identifies what the problem is and gives the
13 customer/distributor, whoever it is, lets them know what
14 they should do with the product.

15 Q. Did you request that the defendant initiate a
16 recall?

17 A. Yes, I did. I was -- I believe it was in November.
18 November I requested that he conduct a recall.

19 Q. Did you at some point provide notice that he was not
20 in compliance with the court order?

21 A. Yes, that was -- I'm sorry. That was in November, I
22 believe, the recall letter, it may have been early
23 December.

24 Q. In 2013?

25 A. Ha?

1 Q. In 2013?

2 A. Yes.

3 Q. Did you -- how did you notify the defendant of the
4 recall request?

5 A. I sent registered letters to him and his attorney of
6 record at the time, which I believe his last name was
7 McFarland.

8 Q. Was that the attorney that represented him in the
9 injunction case?

10 A. Yes. And we had several correspondence with him and
11 contact with him at the time. And any of the letters I
12 had from Mr. Girod had also come through this attorney.

13 Q. Were you able to verify that he received the notice
14 of the recall request?

15 A. Yes. It was -- the return receipt from the
16 United States Postal Service was signed and by him, I
17 believe by him. And also his attorney signed his,
18 because we sent the same letter to both of them at the
19 same time.

20 Q. Would it help refresh your recollection of the
21 timing of that recall request if you saw the letter?

22 A. Yes, probably. There are so many dates. Yes.

23 MS. SMITH: Your Honor, may I approach the
24 witness to refresh her recollection?

25 THE COURT: Yes, ma'am, you may.

1 THE WITNESS: Okay. Yes, this is the letter.

2 BY MS. SMITH:

3 Q. So when did the FDA request the defendant issue a
4 recall?

5 A. December 27th -- or December 17th, 2013.

6 Q. Did you receive any response to the recall request?

7 A. No.

8 Q. Did you receive any indication that he did initiate
9 a recall?

10 A. No.

11 Q. Do companies that manufacture products that make
12 health claims have to register with the FDA?

13 A. Yes, they do.

14 Q. Why is that?

15 A. There's a couple of reasons. You know, we want to
16 know who's making the product in case there's an issue.
17 If there's an issue like an ingredient. Well, we get a
18 lot of things from overseas, a lot of ingredients from
19 overseas. If we find out if there's been a problem with
20 a known ingredient, from this list of registrations, we
21 can go out and notify anybody that might get that
22 ingredient and might get that ingredient so they know
23 ahead of time so they can watch for it.

24 And it also gives us an idea who might be targeted
25 and that sort of thing.

1 And, I mean, also on the other side if we have any
2 consumer complaints with a drug product, we can go back
3 and know who manufactured it and go to them and see if,
4 you know, how big the issue or problem may be.

5 Q. As a compliance officer for the FDA, can you verify
6 if someone is registered with the FDA?

7 A. Yes.

8 Q. What types of information do you use to search for
9 someone and whether they're registered?

10 A. Well, we have a database that I have access to.
11 I -- if it comes up that someone is not registered,
12 sometimes it could be a difference in their name or
13 something. So we always search first, of course, by the
14 firm name. There's a form identification number. We
15 search by those things.

16 But we also if we find that it doesn't come up, we
17 search by -- we search by zip code and see who -- all the
18 companies under that zip code that is registered as drug
19 firms, or we use the address. There's lots of ways. We
20 search in lots of different ways, and we usually do that.

21 Q. Back in 2012 when you started working on these
22 products, did you check to see if the defendant was
23 registered with the FDA?

24 A. Yes, I did.

25 Q. Was he registered?

1 A. No, he was not.

2 Q. What did you search for in checking his
3 registration?

4 A. I searched by name, by firm name, by responsible
5 person's name, and by zip code.

6 Q. At some point more recently did you check to see if
7 he was registered with the FDA?

8 A. Yes.

9 Q. Was he registered?

10 A. No. And we also checked from his old address too,
11 Indiana address, just to make sure.

12 Q. I would like to go back to when you spoke to him on
13 the phone in 2012. What types of things did you explain
14 to him in that phone conversation?

15 A. Well, there was -- he kept coming back to the fact
16 that, you know, the label. He had taken this -- you
17 know, he had taken the cancer cure off the actual label,
18 and then which had been an issue before during the
19 previous inspections. And he kept saying, well, you
20 know -- I tried to explain to him the pamphlets where he
21 listed all these testimonials.

22 Q. What's a testimonial?

23 A. Where someone says, you know, this -- this, you
24 know, gravy made me lose weight, you know, or somebody,
25 presumably a customer, but it could be anybody, says what

1 they think about a product. So it can be -- it can vary
2 widely.

3 And as he pointed out during the phone conversation,
4 you know, he doesn't have any control over what the
5 testimonials, what people say about his product.

6 And I explained to him -- I kind of use this little
7 scenario quite often to explain to people just that sort
8 of thing.

9 If -- I told him if your wife makes the best pumpkin
10 pie in all the world, and your neighbors goes around
11 telling everybody that she makes the most wonderful
12 pumpkin pie, you know, that's a testimonial.

13 But if they go around saying your wife makes the
14 best pumpkin pie, and it cured my cancer, you know, you
15 still don't have any control saying that, and they can go
16 around saying it all they want. But the moment you
17 decide to print that up, and put it with your product,
18 now, that's advertising, that's labeling for your
19 product, and there's the difference.

20 You don't have any control what people say about
21 your products, but you do have control over what you put
22 over your information, and you do have control over what
23 you put on your labels.

24 So I thought during that conversation that, you
25 know, maybe we had gotten -- I had gotten through to him

1 about label and labeling of his products, but later we
2 found the same things again.

3 MS. SMITH: No further questions, Your Honor.

4 THE COURT: All right. Thank you.

5 Mr. Girod, you may question the witness.

6 DEFENDANT GIROD: I'm okay.

7 THE COURT: All right. Thank you, ma'am. You
8 may step down.

9 Okay. Do you have any exhibits there at the
10 witness stand with you? Do you have exhibits that were
11 introduced?

12 THE WITNESS: I'm sorry?

13 THE COURT: Do you have exhibits that were
14 introduced?

15 THE WITNESS: Did you want those introduced?

16 THE COURT: Ms. Smith, why don't you come up
17 and make sure that if there were exhibits that were
18 introduced, let's make sure that they're in the right
19 folder.

20 THE WITNESS: One was in the binder.

21 THE COURT: Yes. Thank you, ma'am. You may
22 step down.

23 THE WITNESS: Thank you.

24 THE COURT: You're excused. Thank you.

25 United States may call its next witness.

1 MS. SMITH: United States calls Officer Jessie
2 Stewart.

3 THE COURT: Thank you.

4 THE CLERK: Raise your right hand, please.

5 Do you swear unto God, or affirm, subject to
6 the penalties of perjury, that the testimony you're about
7 to give in this matter shall be the truth, the whole
8 truth, and nothing but the truth?

9 Do you so swear or affirm?

10 THE WITNESS: Yes.

11 THE COURT: Thank you.

12 Ms. Smith, you may proceed.

13 JESSIE STEWART,
14 having been first duly placed under oath, was examined
15 and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. SMITH:

18 Q. Good afternoon, Officer.

19 Could you please introduce yourself to the jury, and
20 spell your name for the court reporter?

21 A. My name is Jessie Stewart. You want me to spell it?

22 Q. Sure, just so we have it in the record.

23 A. S-T-E-W-A-R-T.

24 Q. Now, Officer Stewart, where did you work in 2013?

25 A. For the Bath County Sheriff's Department.

1 Q. Do you still work for the Bath County Sheriff's
2 Department?

3 A. No.

4 Q. When did you stop working for the sheriff's
5 department?

6 A. November of '16.

7 Q. Where do you work now?

8 A. I work for myself.

9 Q. How long did you work for the Bath County Sheriff's
10 Department?

11 A. Approximately, probably two-and-a-half years.

12 Q. Do you remember your start date?

13 A. No, ma'am.

14 Q. But you were working there in the fall of 2013?

15 A. Yes.

16 Q. What was your title when you worked at the
17 Bath County Sheriff's Department?

18 A. Chief deputy.

19 Q. Where did you work before you worked for the
20 Bath County Sheriff's Department?

21 A. I worked for Kentucky State Police, Division of
22 Vehicle Enforcement.

23 Q. How long did you work for Kentucky State Police?

24 A. 25 years.

25 Q. Now, Officer Stewart, what were your

1 responsibilities in the Bath County Sheriff's Department?

2 A. I answered calls, worked accidents, just numerous, a
3 little bit of everything.

4 Q. How many people worked in the department?

5 A. Three.

6 Q. Who was your boss?

7 A. John Tuffy Snedegar.

8 Q. And was there only one other person in the
9 department?

10 A. Yes.

11 Q. And who was that?

12 A. Josh Preece.

13 Q. Working for KSP and working for the Bath County
14 Sheriff's Department, did you receive any particular
15 training in law enforcement?

16 A. Yes.

17 Q. What types of training?

18 A. I graduated Eastern Police Academy, and numerous in
19 services every year.

20 Q. Did that training continue when you joined the
21 Bath County Sheriff's Department?

22 A. Yes.

23 Q. Were you working on November 21st, 2013?

24 A. Yes.

25 Q. Were you the only deputy on duty that day?

1 A. Yes.

2 Q. Was that -- generally in the Bath County Sheriff's
3 Department, how many people are on duty on a particular
4 day?

5 A. One.

6 Q. Were you contacted by officers from the Food & Drug
7 Administration?

8 A. Yes.

9 Q. Had the office been contacted earlier to that day?

10 A. I'm unsure, I don't know.

11 Q. Do you -- were you contacted before that day, or was
12 November 21st the first day you were contacted by the
13 FDA?

14 A. They contacted me on that date. That's all I
15 knowed.

16 Q. Well, what did they need assistance with?

17 A. To go to a residence out on Satterfield Lane.

18 Q. Was that the residence of Sam Girod?

19 A. Yes.

20 Q. Was that -- were you familiar with Mr. Girod before
21 that day?

22 A. No.

23 Q. Did you discuss this matter at all with the
24 Sheriff Tuffy before you went with the FDA officers?

25 A. He may have mentioned it, told me I was going to

1 have to go, but that would have been it.

2 Q. Did he tell you anything else about the assignment?

3 A. No.

4 Q. Do you know why they needed assistance going to the
5 residence?

6 A. No.

7 Q. Did you agree to assist them?

8 A. Yes.

9 Q. Did they tell you why they had called law
10 enforcement before going for this inspection?

11 A. They -- once I met with them, they just wanted law
12 enforcement, just afraid things may get a little bit out
13 of hand.

14 Q. Where did you meet them?

15 A. I don't recall that, where I met them at.

16 Q. What type of vehicle were you driving?

17 A. I would say if my best recollection was Ford F-150
18 pickup truck.

19 Q. Was it a sheriff's vehicles?

20 A. Yes.

21 Q. What does a sheriff's vehicle look like?

22 A. Oh, it's marked and striped up, got Bath County
23 Sheriff's Department on the side of it, dial 9-1-1.

24 Q. What type of clothing were you wearing that day?

25 A. Dress outfit with khaki jeans and a gray shirt and

1 badge.

2 Q. Does the dress outfit mean like a sheriff's uniform?

3 A. Uniform, yes.

4 Q. What happened after you met them in Bath County?

5 A. We proceeded on out to the residence.

6 Q. Did you know how to get to the residence?

7 A. Yes.

8 Q. How did you know how to get there if you had not
9 been there before?

10 A. They told me where it was at. You work in a county
11 long enough you know about where everything is at.

12 Q. Were you driving in front, or were they driving in
13 front?

14 A. Don't recall.

15 Q. When you got to the residence, do you remember who
16 entered the driveway first?

17 A. I don't recall that.

18 Q. Do you remember whether the driveway had a locked
19 gate on it?

20 A. No, I don't.

21 Q. Had you ever been to the property before that day?

22 A. No.

23 Q. And you didn't talk to the sheriff about going out
24 there, what was going to happen?

25 A. No.

1 Q. What happened after you arrived?

2 A. We arrived out there, and best of my recollections
3 Mr. Girod came in after us, and he started talking and
4 just --

5 Q. How did he arrive after you got there?

6 A. Somebody brought him. I'm not sure who it was.

7 Q. Was it in a vehicle?

8 A. Yes.

9 Q. Do you remember what kind of vehicle it was?

10 A. No, ma'am.

11 Q. Was it a non-Amish person driving the vehicle?

12 A. Yes.

13 Q. Is that fair to assume? Did that vehicle pull in
14 behind the FDA officer's vehicle?

15 A. I don't recollect where it pulled in at. I'm not
16 for sure.

17 Q. You don't remember the order the vehicles were in?

18 A. No, I don't.

19 Q. How many other people were there?

20 A. Probably six or eight.

21 Q. Is that including the people who arrived in the
22 truck?

23 A. Yes, they was there.

24 Q. How would you describe the demeanor of the FDA
25 officers?

1 A. Very calm, nothing out of the way, everything was
2 calm.

3 Q. Did they attempt to present their credentials to the
4 group there?

5 A. Yes.

6 Q. Did they explain the purpose of their visit?

7 A. Yes.

8 Q. Were they -- just how would you describe them? Were
9 they angry, antagonistic, polite, friendly, how would you
10 describe their professional demeanor?

11 A. Their professional demeanor was fine. I mean, they
12 weren't angry, they weren't hollering, they wasn't --

13 Q. And what kind of reception were they getting from
14 the people in the property?

15 A. Not real good reception.

16 Q. What do you mean by that?

17 A. At times it was verbal, real verbal, you know, kind
18 of hollered a time or two, nothing physical.

19 Q. What do you mean real verbal?

20 A. I mean loud, loud talking.

21 Q. Yelling?

22 A. Not really yelling but just real loud.

23 Q. There's a line between yelling and real loud?

24 A. Yeah.

25 Q. Okay. What were the -- what were the officers

1 trying to do there that day?

2 A. Excuse me?

3 Q. What were the officers, what were the investigators
4 trying to do there that day?

5 A. They were trying to -- wanting to look at the
6 facilities where something was made.

7 Q. Physically, with the group of people who are already
8 on the property, what was happening? Where were they
9 standing?

10 A. When we got there?

11 Q. And as the conversation went on.

12 A. Oh, it was kind of like in a -- in front of us and,
13 you know, in the proximity, you know, from here to me to
14 you.

15 Q. Did they get closer to the FDA investigators as you
16 were there?

17 A. As time, yes. They got a little bit close, yes.

18 Q. A little bit close, what does that mean to you?

19 A. Not within reach. They couldn't have reached them.

20 Q. Where were you standing?

21 A. I was with the FDA officers.

22 Q. Did you have to take any efforts to direct or get
23 compliance from the individuals on the property?

24 A. At one time I think I told them enough, you know,
25 calm down, that was enough, yes.

1 Q. Why did you say that?

2 A. I just didn't want things to get out of hand.

3 Q. Did it seem that things were getting out of hand?

4 A. It was getting a little loud, you know, yes.

5 Q. Do you remember who you said that to?

6 A. No, I don't.

7 Q. How would you describe the kind of thing that you
8 had to say?

9 A. I just said everybody just needs to calm down, you
10 know, it would be -- you know, just calm down.

11 Q. Do you remember if you said that to Mr. Girod?

12 A. No, I don't think it was Mr. Girod. I think it was
13 some of the family.

14 Q. Had you ever met Mr. Girod before that day?

15 A. No.

16 Q. So you maybe don't know who you said that to?

17 A. No, it was just some family.

18 Q. But you don't know it wasn't Mr. Girod because you
19 never met him before that day?

20 A. No.

21 Q. In your opinion, they are with the FDA
22 investigators, were they prevented from conducting their
23 inspection that day?

24 A. Yes.

25 Q. What prevented them from conducting their

1 inspection?

2 A. They didn't want to inspect.

3 Q. But what -- so what prevented them?

4 A. They just told them, no, they're not inspecting.

5 Q. Was it the defendant who prevented them?

6 A. Yes.

7 Q. And did the group of people there with the defendant
8 also prevent the officers from doing their job that day?

9 A. I think it was more or less just whatever the
10 defendant told them. That's more or less what they was,
11 you know, going to do, I mean, you know.

12 Q. Were the defendant and other individuals there
13 harassing the FDA investigators?

14 A. Harassing them? No, I don't think so.

15 Q. What does that mean to you?

16 A. Harassing? Aggravating, picking, or something like
17 that. I didn't see them picking on them, no.

18 Q. Do you think the actions of the defendant and the
19 others there was designed to harass the officers from the
20 FDA?

21 A. I don't understand what you mean harass.

22 Q. Do you remember being interviewed by Special Agent
23 Steven Lamp with the FDA?

24 A. Yes.

25 Q. Do you remember telling him you thought they were

1 being harassed?

2 A. No, I don't remember that.

3 Q. You don't remember that?

4 A. No, I don't.

5 Q. Do you think that the FDA investigators were
6 prevented from doing their jobs that day?

7 A. Yes.

8 Q. Did you think the actions of the defendant and the
9 others there was designed to threaten the FDA
10 investigators at all?

11 A. They just didn't want them to inspect the
12 facilities. I mean, you know, I don't know if I would go
13 as far as threatening.

14 Q. Did you at some point physically restrain anyone in
15 the group?

16 A. No, not that I remember.

17 Q. You don't remember physically restraining anyone?

18 A. No.

19 Q. Do you remember them getting physically closer to
20 the investigators?

21 A. The investigators getting closer?

22 Q. Do you remember the individuals on the property
23 getting closer to the investigators?

24 A. Yeah, they may have walked up closer, but, you know,
25 best I can remember we were standing at the vehicles as

1 best I remember.

2 Q. And where was everyone else standing?

3 A. In front of us.

4 Q. Around you, between the two vehicles?

5 A. Yeah, they was standing, you know, in front of us.

6 Q. At some point did the FDA investigators ask for
7 assistance getting back to their vehicle?

8 A. Yes. They asked -- they was ready to leave, and we
9 got in the vehicle, yes.

10 Q. And did they ask for your assistance --

11 A. Yes.

12 Q. -- to make a path back to their vehicle?

13 A. Yes, they asked.

14 Q. Was there a vehicle blocking them in?

15 A. I don't recall.

16 Q. When you -- when you helped them back to their
17 vehicle, were they just able to back out of the driveway,
18 do you remember?

19 A. I don't remember.

20 Q. In your experience in Bath County does Mr. Girod or
21 any member of his family member have a firearm?

22 A. Not with my experience, no.

23 Q. Do you remember being asked that by Special Agent
24 Steven Lamp?

25 A. No, I don't.

1 Q. Do you remember telling Special Agent Steven Lamp
2 that some of his family members are known to possess
3 weapons, including a shotgun?

4 A. Some of them, yeah.

5 Q. So you do know that?

6 A. Some of them, I don't know about his family, but I
7 do someone that do hunting there, yes.

8 Q. So some people in the community but not necessarily
9 his family members?

10 A. Yes, I mean, there are a lot around me.

11 Q. So when you spoke to Special Agent Steven Lamp, you
12 said his immediate family members were known to have
13 shotguns?

14 A. I don't remember.

15 Q. Are you saying you did not say that?

16 A. I don't remember saying it; no, I don't remember.

17 Q. After you -- after the FDA officers were able to
18 leave that driveway, did you discuss what happened there
19 with them?

20 A. Yes.

21 Q. And what did you say to them?

22 A. He asked me what I thought, and I told him in my
23 opinion he screwed up.

24 Q. You're saying the defendant?

25 A. Yes.

1 Q. You had a conversation with him about this?

2 A. Yes, I did.

3 Q. Okay. And you told him -- I'm sorry, what did you
4 tell him?

5 A. He asked me what I thought about what had just
6 happened, and I told him I thought he screwed up. That's
7 what was said, and I've not spoken to him since.

8 Q. That was that day, the day of the events?

9 A. Yes.

10 Q. Why did you say that to him?

11 A. I thought they should have let them inspect it.

12 Q. What did you think of the tenure of the conversation
13 there? What was the vibe of the conversation like on
14 that driveway?

15 A. It was, you know, it was a little touchy. You know
16 what I mean, the vibe, you know.

17 Q. Well, we don't know what you mean. That's why I'm
18 asking you these questions. You were there, and you --

19 A. I was there.

20 Q. -- said it was a little touchy.

21 A. They was -- like I said, they were a little bit
22 aggravated, they were. That's the vibe I was getting,
23 they didn't want them there.

24 Q. After the FDA officers left, did you have
25 conversation with them about what had just happened?

1 A. Yes, yes.

2 Q. With the officers?

3 A. Oh, with the officers?

4 Q. Yes.

5 A. You know, I don't remember whether I did or not,
6 don't recall.

7 Q. Okay. Do you remember telling Special Agent
8 Steven Lamp that you did talk to them afterwards?

9 A. I may have, yes, could have.

10 Q. Did you tell him something along the lines of it's a
11 good thing you didn't go by yourself, it got out of hand
12 real quick?

13 A. Yes, I think so.

14 Q. You think you did say that?

15 A. I think so, yes.

16 Q. Did you also advise them that if they were going to
17 come back, they should notify you?

18 A. Yes, I did do that, yes.

19 Q. Were you aware in August of this past year that
20 there was an arrest warrant issued for the defendant?

21 A. Yes.

22 Q. How were you aware of that?

23 A. I believe I became aware of it by State Police had
24 been out there trying to serve it or something. That's
25 how I became aware of it.

1 Q. Did you discuss it with anyone in your office at the
2 Bath County Sheriff's Department?

3 A. About the warrant?

4 Q. About there being an arrest warrant out there for
5 Mr. Girod.

6 A. Like maybe two or three days later the sheriff
7 called me and wanted me to go out there with him, but I
8 never went to the Girod's residence. I posted at the end
9 of the road. The sheriff went over there to look for
10 him, but I never went up there to look for him.

11 Q. Why did the sheriff go to look for him that day?

12 A. I guess because he got a warrant.

13 Q. Is that your understanding, he was there to help
14 find the defendant?

15 A. He had -- the reason sheriff had me go with him is
16 in case something happened. He hollered at me on the
17 radio to come up there.

18 Q. Oh, so you were brought there as backup in case
19 things didn't go well?

20 A. Yes, yes.

21 Q. Okay. And that's the sheriff in Bath County that
22 asked you to do that?

23 A. Yes.

24 Q. Are you familiar with the letter the sheriff wrote
25 in support of the defendant?

1 A. Yes, I have heard about it, yes.

2 Q. Okay. Just getting into what your personal
3 knowledge of that is, did you talk about it with anyone
4 in the sheriff's department?

5 A. The sheriff.

6 Q. You talked about it with the sheriff?

7 A. Yes.

8 Q. Okay. What was discussed about that letter?

9 A. I think my --

10 DEFENDANT GIROD: I object to that point.

11 THE COURT: I'll overrule. Again, this would
12 be admissible under 801(d)(2)(E) as well.

13 BY MS. SMITH:

14 Q. You can answer.

15 A. Okay. About what was in the letter? I don't really
16 recall what was in the letter, but me and him was
17 discussing it over he had been to the State Police post
18 over the letter and met with somebody over it, the
19 sheriff had over the letter.

20 Q. Did the sheriff give you any direction as to whether
21 you should assist the marshals with their fugitive
22 investigation?

23 A. No, he never told me nothing, no.

24 Q. Were you ever asked to help locate Mr. Girod?

25 A. No.

1 Q. Were you ever asked to not help?

2 A. No, I wasn't.

3 Q. Okay. You never -- no one ever directed what you
4 should do or shouldn't do with respect to that arrest
5 warrant?

6 A. No.

7 Q. Did the sheriff ever tell you the defendant was in
8 his protected custody?

9 A. No.

10 Q. He never said that?

11 A. No, not to me, no.

12 Q. Did you ever see the letter he wrote?

13 A. Yes, I did.

14 Q. Does that talk about protective custody?

15 A. (Nods head)

16 MS. SMITH: Nothing further, Your Honor.

17 THE COURT: All right. Thank you.

18 You may question the witness.

19 DEFENDANT GIROD: I don't have anything.

20 THE COURT: Thank you, sir. You may step down.

21 Mr. Bradbury, will you be calling the next
22 witness?

23 MR. BRADBURY: Yes, Your Honor. Thank you.

24 Thomas Hollinger.

25 THE COURT: Thank you.

1 MR. BRADBURY: They're on their way to get him.

2 THE COURT: All right.

3 THE CLERK: Raise your right hand, please.

4 THE WITNESS: This one?

5 THE CLERK: Do you swear unto God, or affirm,
6 subject to the penalties of perjury that the testimony
7 you're about to give in this matter shall be the truth,
8 the whole truth, and nothing but the truth?

9 Do you so swear or affirm?

10 THE WITNESS: Say that again.

11 THE COURT: Do you affirm under God, subject to
12 the penalties of perjury, that the testimony you're about
13 to give in this matter is the truth, the whole truth, and
14 nothing but the truth?

15 Do you so affirm?

16 THE WITNESS: Yes.

17 THE COURT: Thank you.

18 Mr. Bradbury, you may proceed.

19 MR. BRADBURY: Thank you, Your Honor.

20 THOMAS EDWARD HOLLINGER,
21 having been first duly placed under oath, was examined
22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BRADBURY:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. Please state your name for us, and if you would, we
3 have a court reporter taking everything down. If you
4 could spell your last name for us.

5 A. Thomas Edward Hollinger, and Hollinger is
6 H-O-L-L-I-N-G-E-R.

7 Q. All right. Thank you.

8 Where do you reside, what city and state?

9 A. Anderson, Indiana.

10 Q. How long have you lived there?

11 A. Let's see, I was born in '56, since '56.

12 Q. Lived there all your life?

13 A. Yes.

14 Q. Have you ever traveled to Bath County in Kentucky?

15 A. Not that I can recall, I don't think so, no.

16 Q. All right. Or city called Owingsville in Kentucky?

17 A. No, no.

18 Q. Okay. Do you know the defendant that's here today,
19 Mr. Girod?

20 A. I could just say one time they were at our house.

21 Q. Let's talk about that. When did this occur, and who
22 was "they" that you met?

23 A. Husband and wife.

24 Q. Do you recall the wife's name for Mr. Girod?

25 A. I do not, no.

1 Q. Just remember that it was Mr. Girod and his wife?

2 A. Uh-huh.

3 Q. About when was this, month and year?

4 A. Let's see, it would have been probably -- well, I
5 can't say. I just remember -- let's see, 2004 -- I just
6 can't give a date and time when that was.

7 Q. Okay. I'll skip ahead a little so maybe you can put
8 it into context. Did you look at, before coming into
9 Court, some documents about dealings with Mr. Girod?

10 A. Yes.

11 Q. And do you recall when those were?

12 A. 2004.

13 Q. '04 or '14?

14 A. 2004 I thought. Yeah, because we -- 2004.

15 Q. 13 years ago or three years ago?

16 A. I thought it was 13, yeah, because we haven't
17 even -- it was on there, yeah, if I can see it. If you
18 could pull that up.

19 Q. Okay. We'll come back to that.

20 A. Okay.

21 Q. Well, tell us how you -- how did you meet Mr. Girod?

22 A. We had -- we had bought some salve off of someone
23 else. I don't remember first name. I don't even know
24 the last name. And then they come to our house one time.

25 Q. Okay. So you bought some salve. What kind of salve

1 did you purchase?

2 A. Chickweed Healing Salve.

3 Q. Do you know where you purchased that?

4 A. Well, the address was Kentucky. I can't think of
5 what the town name was.

6 Q. Where did you actually purchase it from? Did you
7 purchase it at a store or through the mails? How did
8 that come about?

9 A. It was just mailed to us.

10 Q. Okay. It was mailed to you. So how did you find or
11 locate the product in the first place?

12 A. Used to do construction, and I was working for a
13 friend of mine. There was another employee there, and I
14 don't remember his last name, but that's who I got it off
15 of the first time.

16 Q. Okay. So you obtained the product, the Chickweed,
17 is that what you said it was?

18 A. Right.

19 Q. From a co-worker?

20 A. Yes.

21 Q. Okay. And then how long after you obtained it from
22 a co-worker, did you make your own purchase of it?

23 A. Well, it was all -- let me see, let me think about
24 this. It was always delivered by mail, yeah. We would
25 write a check or send a check. I actually received it

1 before I wrote a check. We'd receive it, seems like it
2 was 36 cans or case maybe. We would get it, and then
3 we'd send the check after we received it.

4 Q. Oh. Well, if I can, I'll go ahead and show you
5 Government's Exhibit 27, and I'll ask you to take a look
6 at that.

7 A. Yeah.

8 Q. Court security officer will hand it to you.

9 A. Yeah. You want me to tell you the date on it?

10 Q. Well, first just look at it and see if you recognize
11 that, if --

12 A. Yeah, that's my --

13 Q. -- you've seen that before?

14 A. Yes, that's my handwriting. Yeah, 2014. Okay,
15 you're right, it was.

16 Q. All right.

17 A. See, I was thinking on the date we first started
18 getting it. That's why that surprised me. I had
19 forgotten this '14, instead of '04.

20 Q. All right. So you recognize that --

21 A. Yeah.

22 Q. -- document as a -- is that a check?

23 A. Yeah.

24 MR. BRADBURY: I would move to introduce that
25 as Government's Exhibit 27, and ask to go ahead and

1 publish that to the jury.

2 THE COURT: Okay. Let's see if there is any
3 objection to its introduction.

4 THE WITNESS: And I apologize.

5 THE COURT: Just one moment.

6 MR. BRADBURY: Just a second.

7 THE COURT: Any objection to Exhibit 27?

8 DEFENDANT GIROD: No. Thank you.

9 THE COURT: All right. United States
10 Exhibit 27 is admitted and may be published.

11 (Whereupon, Government's Exhibit Number 27 was
12 admitted into the record.)

13 BY MR. BRADBURY:

14 Q. All right. So the date of that check, I think you
15 said, but go ahead, if you would.

16 A. That's what I was wanting to apologize for because I
17 was thinking maybe when we first started purchasing it.
18 That's why I said 2004, instead of '14.

19 Q. Okay. So the check is in 2014, and is -- and what
20 was the purpose of that check, who did you write it to
21 and for what?

22 A. You want me to read what's on here?

23 Q. Yes, sir.

24 A. Satterfield Naturals.

25 Q. And the amount of the check?

1 A. 252.

2 Q. Dollars?

3 A. \$252.

4 Q. All right. And the date of that check?

5 A. January 10th, 2014.

6 Q. And who was Satterfield Naturals, or that company?

7 Do you know who that was, who owned that business, who
8 you were writing the check to?

9 A. Well, the -- there was just initials on the can.
10 I'm thinking that was on there, the initials.

11 Q. Well, is that -- the check that you're writing for
12 that, what is that product?

13 A. It was the Chickweed Healing Salve.

14 Q. All right. Is that the same product we're talking
15 about that you received from Mr. Girod?

16 A. Yes.

17 Q. So the first time that you ever received it was from
18 a co-worker, and you think that was maybe 10 years prior
19 to this purchase? Is it that long of a time frame we're
20 talking about?

21 A. I'm trying to think. Let's see, we were married in
22 '84 and six years later. Let's see, it would have
23 definitely been '84 and six, '90. I would think I would
24 be safe to say it was after '90.

25 Q. Okay.

1 A. Yeah.

2 Q. And what was your purpose for purchasing the
3 Chickweed Salve? What -- why did you want it, what did
4 you think it could do for you?

5 A. Oh, there was various things. I thought about my
6 daddy. He had psoriasis. That would have been one
7 thing.

8 I read the ingredients on it, and I thought about
9 giving as gifts, which I delighted in. So that's where I
10 would say a good amount of it went.

11 Q. Okay.

12 A. I could give -- I could give more detail, but I
13 won't do --

14 Q. That's all right.

15 A. -- that unless asked questions.

16 Q. Okay. The \$252 that you spent, how many containers
17 would that be? Do you know how many tins?

18 A. Yeah, let's see, 30. I would say at least 30. It
19 could have been just a little over that.

20 Q. Okay. Go ahead and show you some of the other
21 exhibits. Show you Exhibits 26A through 26D, and just
22 have you take a look at those.

23 A. All right.

24 Q. Are you familiar with these documents that have
25 collectively been marked as Government's Exhibit 26?

1 A. Okay. The only one I read would just be what we've
2 talked about, Chickweed Healing Salve. I had no interest
3 in anything else.

4 Q. Okay. Well, I'm not asking you which ones you
5 used --

6 A. I'm sorry.

7 Q. -- purchased. Just --

8 A. I'm sorry.

9 Q. That's okay. Government's Exhibit 26A through D,
10 did you look at all of those, and you're familiar with
11 those documents, not necessarily the products?

12 A. Yeah. Okay. Yes, I am.

13 MR. BRADBURY: Okay. I'd move to introduce
14 these as Government's Exhibit 26A through D.

15 THE COURT: All right. Any objection?

16 DEFENDANT GIROD: No, no.

17 THE COURT: Exhibits 26A through D are admitted
18 and may be displayed.

19 (Whereupon, Government's Exhibit Numbers 26A through
20 26D were admitted into the record.)

21 MR. BRADBURY: Okay. Thank you.

22 BY MR. BRADBURY:

23 Q. Let's talk about 26A. That is in regard to the
24 Chickweed that you told us you have been a historical
25 purchaser of.

1 This document, when did you first see it?

2 A. Pardon?

3 Q. About the Chickweed?

4 A. Say that again, I'm sorry.

5 Q. When did you first see this document that you have
6 there, Government's 26A, and the pamphlet about the
7 Chickweed Healing Salve?

8 A. Well, this would have been sent in every case in the
9 box, sends in the box.

10 Q. Okay. All right. So these -- this is item number
11 two. Are these what we're talking about, the tins --

12 A. Uh-huh.

13 Q. -- of the product?

14 A. Yes.

15 Q. Is that how you received them?

16 A. Yes.

17 Q. In this pamphlet or flyer, is something that would
18 be shipped with it, that would come with it?

19 A. Correct.

20 Q. All right. And look at page 2 of this, the
21 Chickweed Healing Salve, and it has "testimonials" and
22 "home." And what is the -- if you would, go ahead and
23 read the first entry under "home" there, what it says
24 about the Chickweed Salve.

25 A. Read it out loud?

1 Q. Yes, please.

2 A. "I had skin cancer and removed two times from my
3 face. The third time it came back, I decided to use
4 Chickweed Healing Salve. Within two weeks it was gone.
5 Also used it on my leg and ankle, it was swollen. It
6 went down, soreness left also. Thank you for your help.
7 Raymond Davis, New Washington, Indiana."

8 Q. Okay.

9 A. "I had a sore throat. After applying Chickweed
10 Healing Salve to the outside of my throat, it went away.
11 It is great."

12 Q. All right. I'll stop you there in just a minute.

13 A. Okay.

14 Q. What did you think the Chickweed Salve could help
15 you personally with? Why would you want to use it?

16 A. Oh, I guess I'm kind of a wimp. If I get my lips a
17 little chapped, I put something on it, if I get a little
18 cracked. All my work is physical so I get a little cut,
19 I put it on there. I pretty much just used it general.

20 Q. Okay. Did you think you could use it for more
21 serious conditions like skin cancer?

22 A. Yeah. With, like I mentioned, my dad had psoriasis,
23 I probably tried it as far as that.

24 Q. Okay. And the number of tins you said it was like
25 30 something of these --

1 A. Correct.

2 Q. -- is what you would have received? So that
3 wouldn't be just for your personal use. That would be a
4 lot of chapped lips.

5 A. That's why I said I could get detailed about. I
6 have many memories what I did with them, but I don't need
7 to do that.

8 Q. Okay. So you would -- would you give it as gifts to
9 people that you thought could benefit from the product?

10 A. Sure.

11 Q. Okay. How many times did you purchase the Chickweed
12 Healing Salve?

13 A. Yeah, that would be a guess because I had -- oh,
14 maybe three cases total over all the years.

15 Q. Okay. And Government's Exhibit 26B is a different
16 pamphlet for a different product.

17 A. Uh-huh.

18 Q. Did you -- did you receive this -- this flyer, this
19 information?

20 A. Well, it's like this. I would guess, because the
21 reason I say guess is I had no interest in anything else
22 but salve so I really didn't look at it very detailed.
23 But, you know, as I look at these, I can pretty
24 confidentially say they were in the box.

25 Q. Okay. And would these flyers be in the box every

1 time you ordered a product?

2 A. Well, I can say the Chickweed Healing Salve was.
3 Whether they sent me all the rest, I can't recall that.

4 Q. Okay. And the 26B, the R.E.P. product, you don't
5 think you ever actually ordered that one?

6 A. No, I'm positive. I don't have to see it.

7 Q. And 26C, the literature you have about TO-MOR-GONE
8 or Black Salve, do you have the pamphlet, the literature,
9 about that product as well?

10 A. We had -- yes, we did have that literature.

11 Q. All right. If you could, on the testimonials on the
12 TO-MOR-GONE, or Black Salve, if you could just read that
13 first entry of "I had a mole."

14 A. "I had a mole on the side of my cheek. The doctors
15 felt like it could be cancer and wanted to remove it.
16 But I put on TO-MOR-GONE every day and put a Band-Aid
17 over it. In about two-and-a-half weeks it came off,
18 left no scar, never bled. I am thankful to have
19 TO-MOR-GONE."

20 Q. All right. And item 26D, what is that document?

21 A. I may need a little help finding that.

22 Q. It should be the last sheet, white sheet. It's a
23 picture of products.

24 A. Okay.

25 Q. Okay. And what is that document?

1 A. It says Chickweed Healing Salve and TO-MOR-GONE. I
2 didn't really pay too much attention to.

3 Q. Is it a price sheet for the product?

4 A. Yes, it is.

5 Q. All right. And the -- do you see the second entry,
6 the 36 tins? Is that what you purchased?

7 A. Yeah. You asked amount. 36, that's -- I believe
8 that's right.

9 Q. Okay. Because does it have the price of \$252 total?

10 A. Right, that's right.

11 Q. And does that match the amount of the check that you
12 wrote?

13 A. Yes, it does.

14 Q. All right. Now, let's go back to the first time
15 that you met Mr. Girod. Was that -- where did that
16 meeting take place?

17 A. That was in our home.

18 Q. How did he come to your home? Meaning, did he --
19 did you invite him, did someone else invite him, how did
20 that occur?

21 A. Well, I know there's a place close to us called
22 Strawtown. I want to be careful here, but I think that's
23 where we might have been so that would have been fairly
24 close. And I'm not sure. Somehow he come. I just
25 remember being there around the kitchen table, but I

1 think he was in the area.

2 Q. Okay. Do you know the purpose of the visit?

3 A. It was just like we enjoy being just kind of social.

4 We even talked about -- well, I'm pretty sure they may

5 have mentioned something about some other products, but

6 kind of like I am, if I don't have an interest in

7 something, I don't pay as much attention as I probably

8 should. So it was a very, just a casual talk. It wasn't

9 about -- as far as I know, it didn't get into any details

10 about any of the products.

11 Q. At that point when Mr. Girod visited your home, had

12 you already purchased some of the Chickweed?

13 A. Yes, I had.

14 Q. All right. So when he called on you, for lack of a

15 better phrase, did he know that -- or were you an

16 existing customer at that point?

17 A. I was.

18 Q. All right. And you may or may not have talked about

19 the product while he was visiting in the home?

20 A. Very little.

21 Q. Did you continue to order the --

22 A. Yes.

23 Q. -- Chickweed Salve?

24 A. Yes, I did.

25 Q. How did you receive it, personally from Mr. Girod or

1 in what manner?

2 A. I take it that way because it was shipped from the
3 same address, whatever that was, I don't remember.

4 Q. All right. So you would -- how would you place the
5 order? Did you do that by mail?

6 A. Yes. I ordered a case at a time. And like I said,
7 possibly three cases total. I don't know.

8 Q. So you would order it by mail, and it would be
9 delivered by the --

10 A. Right.

11 Q. -- post office or FedEx or whatever?

12 A. Yes.

13 Q. All right. At any point did Mr. Girod advise you
14 that there were court proceedings about his product?

15 A. No. And I can answer this, that I don't -- I don't
16 think I ever had any communication except around our
17 kitchen table.

18 Q. Okay. So did he ever tell you that he had been
19 banned by a federal judge from selling this product?

20 A. No.

21 Q. Would you have continued to use it if you had known
22 that?

23 A. No.

24 Q. Did you -- well, at some point --

25 A. I have to correct that.

1 Q. Go ahead.

2 A. Sorry about that. When we -- when the salve was
3 taken from us, the cans, like I do, when I use it every
4 day, I might have had a part of a can stuck under the
5 seat and didn't realize it. So, yes, I was still using
6 it after that.

7 Q. You stopped using after that?

8 A. No, I said after they picked the salve up, I had a
9 partial can here and there that I didn't even know where
10 it was at, and maybe fell underneath the seat or
11 something, or whatever. And so, yeah, I have used a
12 little since then.

13 Q. Okay. Well, let's talk about when the agents met
14 with you.

15 A. Uh-huh.

16 Q. Do you recall meeting with Agent Lamp?

17 A. Yes.

18 Q. How -- when did that happen and approximately when,
19 and where was that at?

20 A. That was at our house. Let me see, I would say
21 probably the last year time period.

22 Q. All right. And did he -- did you still have some of
23 these tins of Chickweed Salve when he came to interview
24 you?

25 A. That's what I was saying. We had the case, I gave

1 all the cans that were sealed, hadn't been used. But
2 since that, you know, I found one, I'm not sure how
3 partial can that I used.

4 Q. Take a look at those items. Do those look like tins
5 that we're talking about?

6 A. Yes.

7 Q. Okay. And so you gave those to Agent Lamp as
8 requested?

9 A. Yes.

10 Q. Had Mr. Girod been in any contact with you since
11 January of 2014 when you wrote that check and then
12 Agent Lamp showing up?

13 A. No contact.

14 Q. By -- did he send you any letters or any
15 communication at all, not just personally?

16 A. No, nothing.

17 MR. BRADBURY: Just one second.

18 BY MR. BRADBURY:

19 Q. Mr. Hollinger, when you wrote the check in the
20 amount of \$252 to Mr. Girod's company, Girod's company,
21 would you have done that if you had known there was a
22 legal issue going on, an injunction, or a recall about
23 the product?

24 A. Well, I don't think so. I try to give everything I
25 do, in light of this, I know what I would hope I would

1 do, but I don't know what I would do. And what I mean by
2 that is I'm not perfect, and I make mistakes sometimes,
3 but I do try to live in all conscience before God and
4 man. And so I would have said I probably wouldn't have.
5 I could sacrifice that if it's against the law.

6 MR. BRADBURY: Okay. I would move to -- I
7 think I admitted all of the Government's Exhibits 26A
8 through D. And if I didn't move to admit Government's
9 27, I would do so at this time.

10 THE COURT: 27 is admitted. I believe all that
11 has been shown to the witness, except the group of
12 cans --

13 MR. BRADBURY: We'll reserve that and introduce
14 that through the agent.

15 THE COURT: -- if you would like. Very well.

16 MR. BRADBURY: And would you like me to
17 retrieve those, the tins?

18 THE COURT: If you would, please.

19 Mr. Girod, do you have questions for the
20 witness?

21 DEFENDANT GIROD: I am fine. That's good.
22 Thank you.

23 THE COURT: Thank you, sir. You may step down,
24 and you're excused. Thank you.

25 MR. BRADBURY: He is excused?

1 THE WITNESS: Thank you.

2 THE COURT: Give those to Lisa, please.

3 We're about to recess. We just have one issue
4 with Court security officer before we do that.

5 THE COURT: All right. All right. Thank you.

6 Ladies and gentlemen, we will go ahead and
7 adjourn for the evening.

8 Before we do that, let me again remind you the
9 admonitions that you have been given several times.

10 And while we are in recess, of course, don't
11 discuss the case among yourselves, and don't go home and
12 talk with your friends or family about the case.

13 If I do bring you back in here tomorrow and ask
14 you if you followed my admonition, I expect 14 people
15 will say, absolutely, I followed your admonition to the
16 letter.

17 So you can't talk with anyone.

18 You can't allow anyone to approach you to
19 discuss the case. And if that should occur, of course,
20 you should report that to the Court promptly.

21 Don't read, watch, or listen to any accounts
22 about the case if there should be any.

23 Don't listen to any news accounts or, of
24 course, read anything in the paper.

25 We talked about not communicating through

1 social media. Please don't do that, don't communicate in
2 any way through social media, either about your position
3 as a juror or anything about the case.

4 Don't do any type of research or investigation.

5 And don't visit any of the locations that
6 you've heard about.

7 And please, ladies and gentlemen, don't make up
8 your mind about the case until it is submitted to you.

9 We've got a lot of observers, and someone may
10 make a stray remark. You're instructed not to listen to
11 anyone if they make some stray remark to you. You
12 shouldn't hold that against either side in the case.

13 We do have security officers though that will
14 accompany you if you wish to have accompaniment to your
15 vehicles as you leave this afternoon.

16 Tomorrow we'll start at 9 o'clock. Now, I have
17 just a brief proceeding to take up with the parties in
18 the case. I'll do that in this courtroom. So what I
19 want you to do is meet across the hallway in the jury
20 assembly room.

21 Just as soon as we're finished with that
22 proceeding, we'll bring you back over here, and we'll be
23 ready to go at 9 o'clock tomorrow morning.

24 Again, please follow all the admonitions.

25 You can leave your notebooks there. I'll have

1 the clerk pick those up, and those will be available for
2 you when you come back in tomorrow morning.

3 The jury will be excused until 9:00 a.m.
4 tomorrow morning.

5 (Whereupon, the juror members leave the courtroom.)

6 THE COURT: Thank you, and please be seated.

7 Let's see if we have any issues to take up
8 outside the presence of the jury.

9 Anything on behalf of the United States?

10 MS. SMITH: No, Your Honor.

11 THE COURT: All right. Mr. Girod, anything to
12 take up?

13 DEFENDANT GIROD: Thank you. I don't have
14 anything.

15 THE COURT: All right. Let me just remind the
16 parties that we'll meet at 8:30 tomorrow morning, and at
17 that time I do expect the parties to be prepared to
18 address the issue of hybrid representation in the case as
19 I've outlined previously.

20 If there are any authorities that you would
21 like to submit in that regard, have those with you in the
22 morning because you won't be able to file that and serve
23 it on opposing party until that time. So please have
24 those authorities available tomorrow when we meet at
25 8:30.

1 It seems we've moved along fairly well through
2 the four witnesses.

3 Ms. Smith, do you have your witnesses lined up
4 for tomorrow?

5 MS. SMITH: Yes, Your Honor. We have --
6 everyone will be here tomorrow.

7 THE COURT: All right.

8 MS. SMITH: And we are not anticipating calling
9 Mr. Hollinger's wife.

10 THE COURT: All right. Very well.

11 Now, let me again advise everyone that it
12 serves no useful purpose to attempt to speak to,
13 intimidate, coerce, harass any prospective witness in the
14 case, and it serves no useful purpose to make any
15 comments whatsoever to any juror in the case. You may
16 think that you're helping one side or the other. You are
17 not. You can take my assurances that you are not helping
18 anyone when you make these stray comments to prospective
19 witnesses or to jurors that are seated in the case.

20 You can land yourself in a lot of trouble if
21 you do that. If you interfere with an ongoing criminal
22 proceeding, you can be charged with a felony offense.

23 If you violate an order of this Court,
24 including my instructions not to contact or not to have
25 communication with witnesses or jurors, you may be held

1 in contempt of court, and you may also receive separate
2 punishments in addition to any criminal charges in the
3 matter.

4 I am asking the FBI to investigate what's
5 happened to this point in the case, and I do expect to
6 get a report. And if necessary, the FBI will make a
7 report to the federal grand jury about those
8 communications.

9 So you're warned. With that warning, we will
10 be in recess until 8:30 tomorrow.

11 (Whereupon, Day 1 of the Jury Trial proceedings
12 adjourned at 4:50 p.m.)

13 C E R T I F I C A T E

14 I, Peggy W. Weber, certify that the foregoing is a
15 correct transcript from the record of proceedings in the
16 above-entitled matter.

17

18

19 May 30, 2017
DATE

s/Peggy W. Weber
PEGGY W. WEBER, RPR

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21

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24

25

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