

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON, KENTUCKY

UNITED STATES OF AMERICA,) Lexington Criminal
) Action No. 15-87
Plaintiff,)
) At Lexington, Kentucky
-vs-)
) February 28, 2017
SAMUEL A. GIROD,) 8:30 a.m.
)
Defendant.) DAY 2

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

Appearances of Counsel:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Whereupon, Day 2 of the Jury Trial proceedings
2 continued on Tuesday, February 28, 2017, at 8:30 a.m.,
3 on the record in open court, without the juror members
4 present, as follows.)

5 THE COURT: All right. Thank you.

6 We will continue in the matter of United States
7 versus Samuel Girod, Lexington Criminal Action 15cr87.

8 The jury is not present.

9 All counsel and defendant are present in the
10 courtroom.

11 During the proceedings yesterday, I had asked
12 the parties to address the issue of hybrid representation
13 on behalf of the defendant.

14 The reason for that was at the conclusion of
15 the direct testimony of the first witness that was called
16 in the case by the United States, the defendant requested
17 that standby counsel conduct the cross-examination of
18 that witness.

19 United States did not object to that proceeding
20 at that time.

21 And at a break I did direct the parties to be
22 prepared to address the issue of hybrid representation
23 this morning before we start.

24 The second and somewhat related issue also
25 arose during the proceedings yesterday in that documents

1 were brought in for the defendant to sign and then filed
2 in this matter, three rather lengthy pleadings,
3 typewritten pleadings.

4 It was apparent to the Court that this
5 defendant had not prepared those pleadings, and later
6 during a break he acknowledged that the pleadings were
7 prepared by his sons, and that he signed those documents,
8 and they were then filed in the record.

9 As to that issue, let me just note for the
10 record that a pro se defendant does not have the right to
11 have a non-lawyer act as his or her assistant as counsel,
12 which is what's occurring in this case.

13 And I will cite to the parties' benefit the
14 case from the Ninth Circuit on that point, United States
15 versus Kelly, 539 Federal 2d, 1199. It's a 1976 case
16 from the Ninth Circuit.

17 And I will advise the parties that if that
18 practice continues in the case, I will strike the
19 pleadings that are filed on behalf of non-lawyers, and
20 not -- obviously not filed by the defendant, prepared and
21 filed by the defendant.

22 With respect to the issue of hybrid
23 representation, the Court has also reviewed a number of
24 authorities from the Sixth Circuit. Some are not
25 reported cases, but I will give the parties the

1 citations.

2 The cases essentially stand for the proposition
3 that a defendant, while he's entitled to represent
4 himself, he's not entitled as a matter of right to hybrid
5 representation.

6 And those cases would include United States
7 versus Flowers, which is a case decided June 17th, 2011.
8 It's reported at 428 Federal Appendix, page 526.

9 And that case does cite a published decision,
10 United States versus Cromer for the proposition that
11 although a defendant has a constitutionally protected
12 right to present his own defense, in addition to the
13 constitutionally right -- constitutionally protected
14 right to be represented by counsel, he has no right to
15 hybrid representation.

16 Likewise, the case United States versus Peck,
17 which appears at 62 Federal Appendix 561, March 19th,
18 2003 decision, stands for the same proposition.

19 In that case the Court notes that -- in that
20 matter Peck claimed that his request that his standby
21 counsel take -- I'll just read it. "Peck also claims at
22 his request that his standby counsel take a more active
23 role in the trial, acted as a revocation of his waiver of
24 counsel before the trial began.

25 "In response to Peck's request, the standby

1 counsel become more involved in the defense, the
2 defendant," I'm sorry, "the district court advised Peck
3 that he could either choose to represent himself by a
4 lawyer or he could represent himself."

5 And that determination was upheld. The Court
6 cited, what's been often-cited proposition that "The
7 right to defend pro se and the right to counsel have been
8 described as two faces of the same coin, in that waiver
9 of one right constitutes a correlative assertion of the
10 other.

11 "While it may be within the district court's
12 discretion to permit both criminal defendant and his
13 attorney to conduct different phases of the defense in a
14 criminal trial, there's not a right to do so."

15 So it is within the discretion of the Court to
16 allow hybrid representation, but it's certainly not a
17 defendant's right.

18 And then also I would cite the parties to the
19 case United States versus Mosley, 810 Federal Second,
20 page 93, a 1987 case that also stands for that same
21 proposition, the party has a right either to represent
22 himself or to be represented by counsel, but not the
23 right to do both.

24 I've also reviewed the defendant's brief, or
25 the brief filed by standby counsel in the matter, in

1 which he asserts at this phase based upon the fact that
2 the defendant has essentially excluded him from
3 participating in the case, that it would be ineffective
4 assistance for him to take over full representation at
5 this time.

6 So with that backdrop, let me see what the
7 parties' position would be on this issue.

8 MS. SMITH: Thank you, Your Honor.

9 If I may start by just recounting a few of the
10 things before going into the United States' analysis.

11 Namely, that the defendant, once he waived his
12 right to counsel and asserted his constitutional right to
13 represent himself, he has really been unequivocal on that
14 point. He's objected numerous times in the presence of
15 standby counsel, and he's done everything on his own to
16 representing himself to the extent -- not also supported
17 by family members but not consulting with other lawyers,
18 or at least not consulting with standby lawyer. So he
19 has not elected to use standby as his attorney, and he
20 has maintained an unequivocal invocation of his right to
21 represent himself.

22 So yesterday in the presence of the jury when
23 he asked his standby counsel to ask some questions of a
24 witness, the United States was not prepared to object to
25 that and certainly did not want to be in the position in

1 front of the jury of keeping this defendant from putting
2 on his most vigorous defense.

3 And, frankly, what I thought was going to
4 happen there was that standby counsel was going to ask a
5 few questions that were prepared at the direction of the
6 defendant who was representing himself. That is not what
7 happened. You know, it was quite a lengthy
8 cross-examination, and it really seemed to be Mr. Fox
9 being the lawyer, which I don't fault him for at all, but
10 it was not what I was expecting in terms of use of
11 standby counsel in a situation where someone is
12 representing themselves.

13 I agree with Your Honor that the case law is
14 very clear that a pro se defendant does not have a right
15 to a hybrid representation, you know, particularly in
16 U.S. versus Mosley where the defendant was a lawyer and
17 was denied that opportunity. He either had to pick
18 whether he was going to represent himself and be his own
19 lawyer, or whether he was going to use his counsel.

20 So I think the case law is very discouraging as
21 to this sort of approach. I do think the principles in
22 the McKaskle versus Wiggins are worth thinking about here
23 in terms of how a pro se defendant can maintain his
24 rights. And there the divide, you know, being what
25 happens in front of the jury versus what happens outside

1 the presence of the jury.

2 And I think the only case I wanted to direct
3 Your Honor to that wasn't mentioned already is
4 United States versus Jones, which is 489 F.3d 243, and I
5 have copies here. And this is from 2007, and I think all
6 of these cases are very fact dependent in terms of what a
7 pro se defendant asks their standby counsel to do and
8 sort of what the history is.

9 And there, you know, the Sixth Circuit just
10 went through the McKaskle's principles that the pro se
11 defendant should maintain control over the case, that
12 that is a key part of representing yourself, and that
13 standby counsel should not be interfering or over
14 trumping -- not over -- but shouldn't trump what the
15 defendant's election is.

16 And then -- and then there's this issue of the
17 jury's perception that the jury -- it's important to
18 maintain the perception to respect the dignity of a
19 pro se defendant that he is, in fact, leading his
20 defense.

21 You know, what happened yesterday was kind of a
22 mix. It was, I think, clear in the jury's presence he
23 was asking and directing his standby counsel to do
24 something, and that's also reflective in the brief. But
25 then what actually happened I don't think we have a way

1 of knowing, whether all of those questions that were
2 asked were really what -- were the defendant's
3 intentions, or what he wanted to put on in his defense.
4 And I wouldn't want to pry into that, but it was kind of
5 a mix as to whether his rights as a pro se defendant was
6 preserved in what happened yesterday.

7 You know, we have not talked about how it would
8 work if the defendant were to testify. I don't know if
9 one of the options is that he writes out the questions,
10 and standby counsel asks them; or if there is really any
11 role for standby counsel in terms of actually questioning
12 witnesses during the trial.

13 This is all to say that -- that the United
14 States' position is that he does not have a right to
15 hybrid counsel, and it's certainly within the discretion
16 of the Court to deny this sort of hybrid approach. I
17 don't think we even know whether they want to continue
18 using this approach.

19 You know, if that is the intent, I think it
20 needs to be much more clearly defined how that's going to
21 be used. And really the only thing United States would
22 not object to is if the defendant wrote out the
23 questions, or gave them very explicitly to standby
24 counsel, and then standby counsel has a very limited
25 function of asking the questions. That's really the only

1 way in which the United States would not object to this
2 arrangement.

3 THE COURT: All right. Let me see what the
4 defendant's position is.

5 Mr. Girod. Let me ask Mr. Girod initially.

6 DEFENDANT GIROD: Yes, sir.

7 THE COURT: Mr. Girod, do you intend to
8 continue to represent yourself in the case?

9 DEFENDANT GIROD: Well, yes, but I'm not an
10 arguing man. I've never argued points like this. I've
11 never seen it before in my life.

12 So yesterday we was talking, wrote down some
13 notes, and I think that's a good arrangement if that can
14 work for you guys.

15 THE COURT: No, I'm not going to allow it. If
16 you're going to represent yourself, at this point that's
17 your option to represent yourself.

18 DEFENDANT GIROD: Yes, sir.

19 THE COURT: And you're going to have to do the
20 questioning of the witnesses.

21 DEFENDANT GIROD: Okay.

22 THE COURT: It's your function, you'll be able
23 to make presentations to the jury. That is your function
24 as well. You can consult with Mr. Fox as standby counsel
25 in that capacity, but he's not going to take over

1 portions of the case. I think that would be too
2 confusing to the jury. And, quite frankly, it would
3 be -- it would not be beneficial to you for him to take
4 on that partial role.

5 These cases do indicate that it is within the
6 discretion of the Court whether to allow this, and I'm
7 not going to allow hybrid representation in this matter.

8 So when witnesses testify, you will be
9 expected -- you can consult with Mr. Fox, but you're
10 expected to question those witnesses if you have
11 questions for them. You'll be required also to perform
12 all other roles that would be expected of an attorney in
13 the case.

14 Again, you can consult, but Mr. Fox is here
15 simply to consult. It's obvious from the pleading that
16 was filed this morning that you prevented him from really
17 getting into the case in any detail, and it would present
18 a number of dangers if he were to attempt to do that on a
19 witness-by-witness basis or otherwise, quite frankly.

20 So it is your decision that you've made
21 knowingly and voluntarily, and you have been cautioned
22 many times by the Magistrate Judge about the dangers of
23 you representing yourself, but you've insisted on doing
24 that --

25 DEFENDANT GIROD: I did.

1 THE COURT: -- in the case. And so you'll be
2 required to continue in that capacity.

3 Again, you do have standby counsel to consult,
4 but it is a consulting role.

5 Also, I will warn you once again that if you
6 have other individuals that are preparing pleadings and
7 just sending those for your signature, that's not you
8 preparing those pleadings. That's someone else doing it
9 as a subterfuge. And if you continue to file materials
10 in that manner, I'll strike those matters from the
11 pleadings, because you're acting as your attorney, then
12 you have an obligation to file those yourself, and not
13 have non-attorneys do that for you.

14 DEFENDANT GIROD: All right. Thank you.

15 THE COURT: All right. Are there any other
16 issues that we need to take up outside the presence of
17 the jury?

18 MS. SMITH: No, Your Honor.

19 THE COURT: All right. We have the jury coming
20 in at 9:00 this morning.

21 When the jury is assembled in the room across
22 the hallway, bring the jury in as a group.

23 If anyone makes any comments or remarks to the
24 jury as they're coming in, I would like to be advised of
25 that and identify the individuals that are responsible.

1 COURT SECURITY: Yes, sir.

2 THE COURT: We will be in recess until
3 9 o'clock.

4 (Whereupon, a recess was taken at 8:45 a.m.,
5 and Day 2 of the Jury Trial proceedings continued at
6 9:00 a.m., on the record in open court, without the juror
7 members present, as follows.)

8 THE COURT: Thank you.

9 I understand that we have all of our jurors
10 present at this time, so we will bring them in.

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

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

13 The record will reflect that all members of the
14 jury are present.

15 Defendant and all counsel are also present in
16 the courtroom.

17 Good morning everyone. Traffic can be bad in
18 Lexington on rainy days.

19 I believe we're ready to begin.

20 United States ready for its next witness?

21 MS. SMITH: Yes, Your Honor. The United States
22 calls Dr. Jane Liedtka.

23 THE COURT: Thank you.

24 THE CLERK: Raise your right hand, please.

25 Do you swear or affirm that the testimony

1 you're about to give in this matter shall be the truth,
2 the whole truth, and nothing but the truth?

3 Do you so swear unto God or affirm, subject to
4 the penalty of perjury?

5 THE WITNESS: I do.

6 THE CLERK: Have a seat right there.

7 THE COURT: Thank you, and you may proceed.

8 JANE LIEDTKA, M.D.,
9 having been first duly placed under oath, was examined
10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SMITH:

13 Q. Good morning, ma'am.

14 Could you please tell the jury your name, and spell
15 your last name for the court reporter?

16 A. Sure. I'm Dr. Jane Liedtka, and the last name is
17 spelled L-I-E-D-T-K-A.

18 Q. Dr. Liedtka, could you start by telling us about
19 your educational background, starting with college?

20 A. Sure. I went to the University of Virginia for my
21 undergraduate, and then I attended Tufts Medical School
22 in Boston for my medical degree.

23 I entered the Navy. The Navy actually paid for my
24 medical school. I was on a Navy scholarship, and so I
25 did my internship at Portsmouth Naval Hospital.

1 And then I practiced as a general practitioner for
2 the Navy in the Boston area for three years.

3 And then after that I went back and did a
4 dermatology residence -- residency at Brown University in
5 Providence, Rhode Island.

6 Q. Dr. Liedtka, what is your specialty?

7 A. I'm a dermatologist.

8 Q. Are you board-certified in dermatology?

9 A. I am.

10 Q. What does it mean to be board-certified?

11 A. Well, medical sub-specialties have testing and
12 continuing medical education requirements. So every --
13 depending on your specialty in dermatology, it's every
14 10 years you need to take a test to make sure that you're
15 staying up to date and that you know what's going on in
16 the field.

17 You also need to certify that you have a certain
18 number of continuing medical hours each year, that you go
19 to classes and courses and keep up with the new
20 information.

21 MS. SMITH: I would like to hand the witness
22 what has been premarked as Government's Exhibit 47.

23 Thank you.

24 BY MS. SMITH:

25 Q. Do you recognize that document, ma'am?

1 A. Yes. It's my resume. It's called a curriculum
2 vitae for physicians.

3 MS. SMITH: The United States moves to admit
4 Government's Exhibit 47.

5 THE COURT: See if there's any objection,
6 Exhibit 47.

7 DEFENDANT GIROD: I have no objection.

8 THE COURT: All right. Exhibit 47 will be
9 admitted.

10 (Whereupon, Government's Exhibit Number 47 was
11 admitted into the record.)

12 MS. SMITH: If that could be published to the
13 jury.

14 THE COURT: Yes, ma'am.

15 MS. SMITH: Is it working?

16 BY MS. SMITH:

17 Q. Is this a fair and accurate summary of your
18 qualifications and expertise?

19 A. Yes, it is.

20 Q. Tell us what you did after your Naval service and
21 after your residency.

22 A. My first job was as an assistant professor at the
23 George Washington University. I taught medical students
24 dermatology, and I also taught dermatology residents.

25 Dermatology, I did also see patients both as

1 outpatients and in George Washington University Hospital
2 when they had skin problems.

3 At the same time that I was at George Washington
4 University, I was a volunteer dermatology clinical staff
5 at the National Institute of Health.

6 And after my -- I was at GW University for four
7 years, and then I was in private practice in Washington,
8 DC, for about 10 years seeing patients on a regular
9 basis.

10 After that I joined the FDA in 2007 as a medical
11 officer. And as a medical officer for the FDA, I worked
12 for the dermatology department for the first nine years.
13 And our job was pretty varied. We reviewed applications
14 that a drug company would submit to the FDA asking for
15 approval of a new dermatology drug.

16 We would also do consultations for other parts of
17 the FDA. For example, for the cosmetic division, which
18 is called CFSAN -- everything in the government has
19 initials -- we would do consultations for other divisions
20 within the FDA. I worked for dermatology but say the
21 cardiologist, the heart people, had questions about skin
22 rashes that were being caused by a certain drug, they
23 would consult us, and we would do a, you know, give them
24 all the information we could about that condition.

25 Q. So let's -- let's break that down a little bit. As

1 a medical officer for FDA in the dermatology department,
2 what was your core responsibility?

3 A. Our core responsibility at the FDA in general for
4 all of us is to make sure that the drug supply -- I work
5 for the drug side of Food & Drug Administration -- is
6 safe, that the medications that are out there, both the
7 over-the-counter medications and the prescription
8 medications, have been proven to be safe and effective.

9 Q. In that position did you review dermatology drugs?

10 A. Yes, many.

11 Q. Okay. Would you review them both in getting
12 approved and once they were out on the market?

13 A. Yes. A lot of times after a drug has initially been
14 approved, they will come up with a new formulation, say
15 they'll come up with a liquid form of it that they want
16 to be able to market because they're going to use it in
17 children. So we would review at various stages of the
18 development, both the approval of a new drug, and also
19 anything new that the company was coming in for, new
20 indication, for example, a drug that maybe was originally
21 for psoriasis, and they found out that it also worked for
22 eczema. And so they would do some studies, and then they
23 would come in and ask for us to approve the indication of
24 eczema. I think that's --

25 Q. Would you also -- would you also review the

1 promotional material distributed with those products?

2 A. Yes. There is a separate group at the FDA that's in
3 charge of making sure that the labeling, which includes
4 not just what you think of as the label, which is, you
5 know, an over-the-counter drug it's that part that's
6 attached to either the tube or the bottle of pills that
7 says how many milligrams, and it also gives you
8 instructions on how to use it. But sometimes,
9 particularly for prescription medicines, they'll also
10 give you that handout when you go to the pharmacy where
11 there will be a sheet of paper that tells you what you
12 have to watch out for, what side effects there may be, if
13 this happens call your doctor. That's called the patient
14 information. All of that is considered part of labeling,
15 and we actually spend a lot of time making sure that
16 that's accurate, and that it's as helpful as possible to
17 be -- for the patient.

18 Q. Would that also include something like an
19 advertisement in the newspaper?

20 A. It does. In fact, when a drug is initially
21 approved, they have to run all their advertising by us.
22 They basically have to send us examples of what they're
23 going to say in their advertisements. I'm sure you're
24 all familiar with those commercials where they list every
25 possible side effect that could -- there could ever be

1 from a drug, and that's basically because they're also
2 telling you, well, this drug is great, and we want to
3 make sure that you get a balanced picture, that, you
4 know, the drug may be great for certain things. We
5 wouldn't have approved it if it didn't work. On the
6 other hand, all medicines have side effects. So it's
7 important we talk at the FDA about the risk versus the
8 benefit.

9 So depending on the illness and how serious the
10 illness is, the benefits of the drug have to be -- have
11 to outweigh the risk of the drug.

12 And so it's important that you know about both so
13 that you can make the decision for you because it might
14 vary from person to person as well.

15 Q. As a medical officer for the FDA, you mentioned you
16 also did consults for other departments. Could you tell
17 us what you meant by that?

18 A. Sure. I work for the drug portion of the FDA, but
19 there's also a portion of the FDA that has control over,
20 for example, devices. They would be things like the MRI
21 that they use, you know, when your doctor sends you for
22 an MRI, but it would also cover simple things like the
23 needle that your doctor uses when they draw your blood
24 or, you know, are checking you for blood tests.

25 We also do consults, for example, for the Office of

1 Compliance, which is the part of the FDA that makes sure
2 that the drug companies are following the rules
3 basically.

4 When we approve a drug, we approve it with a very
5 specific circumstance. We say this drug is to be used in
6 this group of people for this indication. That's because
7 we know that it works for that indication because they
8 did studies and showed us that it was effective for those
9 people and for that particular disease or condition.

10 They are not allowed to go to your doctor's office
11 and say, oh, by the way, it also works great for this
12 other thing.

13 And if we find out that they're doing that, they can
14 wind up in trouble and basically paying big fines, and
15 the drug companies are actually, from my years as a
16 practicing physician where we would have the drug reps
17 come to the office, they're pretty careful about not
18 saying that their drug does things that they haven't
19 proven that it does.

20 Q. And as a dermatologist and consulting whether it's
21 compliance or the cosmetics department, were you focused
22 on particular types of products?

23 A. Well, I was focused on products for the most part
24 that treated skin diseases, but that's a pretty broad
25 category. You know, it includes things like psoriasis

1 and eczema, really common things like acne.

2 It also includes very common things like skin
3 cancer, which is probably one of the things that most
4 dermatologists spend the largest portion of their time
5 taking care of.

6 Q. This is a good time for those of us who haven't been
7 to a dermatologist, can you tell us what a dermatologist
8 does?

9 A. Well, a dermatologist is a doctor who's had special
10 training in skin diseases. Part of that training is you
11 spend years just looking at every kind of skin disease
12 you can. You basically go to clinics, and you go to
13 conferences. A lot of it is having a good eye and
14 learning to tell by looking at something what the
15 condition is.

16 When we can't tell just by looking, we'll often do a
17 biopsy where we basically numb up the skin with a little
18 anesthesia like the dentist uses, and then we'll take a
19 little piece of skin. We'll send it off to the lab,
20 we'll look at it under the microscope, and that will give
21 us additional information. Sometimes it will give us an
22 exact diagnosis. Sometimes it will just tell us, well,
23 it's probably this, that, or the other.

24 So some of the things that dermatologists will take
25 care will be temporary things like poison ivy, but most

1 of my patients had more chronic conditions like eczema or
2 psoriasis or acne.

3 And, again, a large portion of my practice was skin
4 cancer. Skin cancer is the most common cancer in the
5 United States. It's the most common cancer everywhere in
6 the world.

7 There are different types of skin cancer, and the
8 most common one is basal cell skin cancer. And many,
9 many people, particularly fair-skinned people who tend to
10 sunburn easy, will get skin cancer.

11 We used to only see skin cancer in older people, but
12 nowadays with the amount of sun people get and with
13 things like tanning booths and things, we're now seeing
14 basal cell skin cancers in 20 year olds.

15 The second most common type of skin cancer is
16 squamous cell skin cancer. Squamous cell skin cancer is
17 similar to basal cell in that it usually starts small and
18 grows slowly.

19 Those two types of skin cancer, which are called the
20 non-melanoma skin cancers, don't usually spread to other
21 parts of the body and kill people. Now, I say don't
22 usually. It's uncommon, but it does happen.

23 Basal cell it probably happens one out of --
24 anywhere from one out of 10,000 to even less than that.

25 Squamous cell is a little more dangerous,

1 particularly on certain places of the skin. We consider
2 the inside of the mouth, also the skin, the mucosal
3 surface.

4 And, for example, if you get a squamous cell there,
5 which we see more commonly in smokers, it's much more
6 dangerous, and it has a much higher chance that it could
7 actually cause someone to die.

8 Now, by far the most dangerous kind of skin cancer
9 is melanoma. Melanoma you've probably seen
10 advertisements, at least most of the women probably have,
11 because we read magazines, and they're pretty good about
12 like having, you know, pictures of what you need to watch
13 for. You want to watch for a mole that changes or a new
14 skin bump that comes up, particularly if it's growing
15 over time, if it starts to bleed.

16 Sometimes when somebody comes to a dermatologist
17 office, we can tell just by looking at something that's a
18 skin cancer. We always confirm that by taking a biopsy,
19 a piece of skin, because it's very important to know what
20 kind of skin cancer, and you can't always tell by
21 looking.

22 If it turns out to be a basal cell, we usually cut
23 it out. It's the fastest, quickest, best way to remove
24 it, and 99 percent of the time it works. It never comes
25 back, it never causes any trouble.

1 Q. The three types of skin cancer you've outlined for
2 us, is that the basic universe of skin cancer you're --

3 A. Pretty much. There are a couple of really, really,
4 really rare ones that you don't need to worry about.

5 Q. So tell us how generally dermatologists would treat
6 the non-melanoma skin cancers.

7 A. So the non-melanoma skin cancers, the basal cell and
8 the squamous cell by far the most common and the most
9 effective way to treat them is to surgically remove them.

10 Now, this isn't usually big surgery like you have to
11 go into the hospital and go under for it. This is in my
12 office. I schedule you for a 45-minute appointment. We
13 numb up the skin locally, which hurts for a few seconds,
14 and you go out of there with about 10 stitches. You
15 know, most of time that's all it involves.

16 Now, it can still be, you know, upsetting,
17 especially since the most common place for basal cell and
18 squamous cell skin cancer is on the face. But when you
19 do the surgeries a lot, you get pretty good at it, and
20 most of the time, you know, six months later it's just a
21 small fine scar, and you know, it doesn't look too bad.

22 Melanoma, on the other hand, is the kind of skin
23 cancer that regularly kills people. Years ago, 20, 30
24 years ago, when I was doing my training, the chance that
25 you would die in the next five years was somewhere in the

1 neighborhood of 40 to 50 percent if you were diagnosed
2 with melanoma.

3 Now, nowadays we are doing much better than that.
4 If we diagnose it early, nowadays we have about a
5 90 percent chance that you'll be alive in five years.

6 And if we diagnose it very, very early, and there's
7 like actual stages and levels that, you know, we measure
8 under the microscope, there's a 99 percent that you'll be
9 alive.

10 With melanoma it's all about removing it early.
11 Once it spreads, it's very difficult to treat, and has a
12 very high mortality. Most people die from it once it
13 spreads.

14 So it's very important to diagnose it early.

15 Q. In terms of treatment options for the non-melanoma
16 cancers, are there options other than surgical removal?

17 A. There are. There are some topical creams that the
18 FDA has approved for the treatment of basal cell skin
19 cancer that are usually used for very superficial
20 lesions, ones that haven't gone deep in the skin. We
21 often use it in situations where sometimes people will
22 come in and have a bunch of them. They'll have three or
23 four skin cancers on their arm or on their back, and
24 that's a situation where rather than doing multiple
25 surgeries, if the patient prefers to use the topical

1 product, they put the topical product on for a few weeks,
2 we check them back. Oftentimes, we'll biopsy again to
3 make sure it's gone, because the cure rate with the
4 topical creams that are approved for non-melanoma skin
5 cancer is only about 80 percent. So that means you have
6 a one in five, 20 percent chance, you know, that it's
7 going to come back with just using the cream.

8 So I only do that in my patients that I trust are
9 going to come back. If I've got somebody that's
10 unreliable, that may disappear for three years and not
11 come in for their regular appointment, I won't -- I won't
12 recommend the cream. You really need to be checked
13 regularly to make sure that it's not coming back.

14 And these products have been approved by us and have
15 done multiple studies in patients with skin cancer where
16 they followed them very carefully and showed that they
17 were effective 80 percent of the time.

18 They also showed in those studies that they didn't
19 cause a lot of bad side effects because, again, you have
20 to put the risks versus the benefits. And so the risk
21 would be that if we use a cream, one risk is that it's
22 more likely to come back, but another risk might be the
23 cream might cause more damage than say the surgery would.
24 It might leave a worse scar. If it's a place of vital
25 structure we call it, like it's near the eye, or it's

1 near the mouth, that could leave them with, you know,
2 with an eyelid that didn't work correctly, that sort of
3 thing. So we have to take all of that into account when
4 we decide what sort of treatment to use.

5 Q. As a dermatologist would you ever recommend the
6 topical cream for melanoma skin cancer?

7 A. No.

8 Q. Why is that?

9 A. There is no approved product for melanoma, and I am
10 not aware of a dermatologist who would prescribe a cream
11 for melanoma because of the dangerous nature of that
12 condition, and the fact that the creams just aren't as
13 effective.

14 Q. And just so it's clear, how do you know whether skin
15 cancer is melanoma or non-melanoma cancer?

16 A. That's where you need a biopsy. You know, again, I
17 would say 80, 90 percent of the time I will say, oh,
18 that's probably a basal cell, but we always do a biopsy.
19 And, again, that means 10 percent of the time I'm wrong,
20 and what I thought was a basal cell turn out to be a
21 melanoma. Or more commonly what I was worried was a
22 melanoma turns out to be a benign lesion. Sometimes
23 there are a whole variety of bumps and lumps that we
24 grow, particularly we grow more of them as we get older,
25 and they don't have any medical significance. They don't

1 harm you.

2 And it's also very important that we don't wind up
3 over-treating those kinds of spots. If somebody comes in
4 with a benign spot and I'm not 100 percent sure it's
5 benign, I'll do a biopsy to make sure, and if it comes
6 back benign, you know, there's still the option to remove
7 it from a cosmetic point of view. It won't be covered by
8 insurance, but if they really don't like the look of it,
9 it can be removed, but then we wouldn't have a medical
10 need to remove it.

11 Q. For the non-melanoma basal cell skin cancer, what
12 are the survival rates for that, and what are some of the
13 factors that go into that?

14 A. Well, with basal cell 99 percent of the time we cure
15 it by cutting it out the first time around.

16 Now, less than 1 percent of the time, it can come
17 back. And if it comes back, it's a little trickier, but
18 on the second time around removal and by far the best
19 treatment the second time around is still to just cut it
20 out. We're still looking at a 94, 95 percent cure rate.

21 Sometimes we will use a special form of surgery that
22 is called Mohs surgery, and that was named after Dr. Mohs
23 who invented the technique back in the 1930s. And what
24 that surgery involves is you -- we use it in places
25 where, say, you have a basal cell right on your eyelid,

1 and the concern is that you don't want to take more out
2 than you have to because you don't want to cause a
3 disfiguring scar or mess up the way the eyelid works.

4 So what you do is with regular surgery when we're
5 removing a skin cancer, we take what we call a margin of
6 normal tissue. If the -- if the -- it's like a target.
7 If the target is the red spot or the black spot in the
8 center, we go about, you know, an inch around on all
9 directions and take that extra inch. And most of the
10 time that extra inch is going to be enough, but to be on
11 the safe side, the pathologist goes and looks at all
12 those edges and make sure that we've got the whole thing.

13 With the special Mohs surgery that we use most
14 commonly for a recurrent skin cancer, one that's come
15 back, or skin cancer near the eye or near the nose or
16 near the corner of the mouth, they take just what looks
17 like the skin cancer, and then they put a bandage on you
18 and you sit in the office, and they go look at it under
19 the microscope right then and there, and they check all
20 the edges. And if they got it the first time around,
21 they don't have to go back.

22 Now, if they check all the edges, and it's only
23 linked to the edge in one little area, they go back and
24 they remove a teeny little bit more just in that one
25 little area.

1 The end result is it takes longer because the
2 surgeon is kind of going back and forth. It's more
3 expensive because they're processing the piece of skin
4 right there while you're waiting, but it's more
5 effective.

6 And insurance companies have found out that it's
7 actually cost effective for them to let doctors do the
8 Mohs surgery type on these recurrent skin cancers, or on
9 skin cancers in these dangerous places, because the cure
10 rate is much higher because you're looking at every
11 single edge. You're doing it right then and there.

12 At the same time, it's what we call tissue
13 conserving, meaning you're not taking any skin you don't
14 have to take, and that means the scar is smaller, the
15 hole is smaller, and the chances of a disability in say
16 the way your eyelid works or your nose looks funny or
17 your mouth, you know, looks funny are a lot less.

18 Q. What are some of the risks of leaving basal cell
19 skin cancer untreated or inadequately treated?

20 A. Well, we do see that. I will sometimes have
21 patients come into the office -- or I don't practice
22 anymore, but I practiced for 15 years. Patients would
23 come into the office and they'd say, oh, I knew it was
24 something bad, I just didn't want to deal with it, I was
25 afraid, I didn't want to think about having surgery, and,

1 so they've been maybe sitting on this thing for a couple
2 of years, and that means it's bigger, and the bigger it
3 is, the higher the chance that they're going to have a
4 recurrence.

5 It also means that it's more likely to have gone
6 deeper into the skin. And when they go deeper into the
7 skin, they can damage nerves, they can wrap themselves
8 around blood vessels, they can do some things that can
9 cause other issues. They can cause numbness, you know,
10 because of nerve damage. They can cause even the kind of
11 damage that leads to say the muscles, you know, not
12 working properly in that portion of the face. The place
13 where it's most dangerous for skin cancer to be there for
14 a long time is usually going to be on the face.

15 Q. Switching gears. As a medical officer for the FDA,
16 have you done research into a category of products called
17 Black Salves?

18 A. I have. In 2009 the dermatology group received a
19 consult from the Office of Compliance, and they asked me
20 to look into Black Salve preparations, which are -- were
21 at the time, and I believe still are, being sold on the
22 Internet. And so as part of my job as a medical officer,
23 I did research. I searched the medical literature and
24 also the lay literature, and looked for articles about
25 Black Salve, both articles that talked about what was in

1 it and what it was composed of and also articles that
2 talked about when it was used.

3 I checked to see if anybody had done any real
4 studies, what we call adequate and well-controlled
5 studies, which is what the FDA requires to approve a
6 product, and I did not find any adequate and
7 well-controlled studies of its use.

8 Black Salve usually, and I say usually, because
9 there's -- it's not an approved product, so nobody is
10 policing what's in it. But the reports that we were able
11 to find about it in the literature talk about it often
12 complaining -- containing something called bloodroot,
13 which is a botanical, it comes from a plant. It's also
14 got a fancy Latin name, which is Sanguinaria Canadensis,
15 I think, but it's much easier just to say bloodroot.

16 Sometimes there are other products, zinc chloride,
17 or -- can sometimes be in these Black Salves. They often
18 contain other herbal ingredients, but the primary
19 mechanism of action of the Black Salve is that it kills
20 tissue. It causes the tissue to what we call necrose,
21 meaning kind of get gangrene and die, and the part of
22 the -- the ingredients that do that, that's the
23 bloodroot.

24 Q. So just break down for us how they work, or how, you
25 know, they would work on a skin cancer.

1 A. Well, the articles that I found in the literature
2 mostly were reports of people who had used these
3 bloodroot products to treat something that they didn't
4 know what it was, but they were concerned that it was a
5 skin cancer. So they had a new lump or a bump or they
6 had a mole that changed, and they put this product that
7 they bought on the Internet, which was a cream or a gel,
8 you know, depending, they put it on it, and the skin
9 would then kind of get inflamed and then turn black, and
10 the spot would in some cases fall off, or they would have
11 an ulcer, a hole in their skin from this product, and
12 then the skin would heal often with a significant scar.

13 The reports that I found many of them were about
14 patients who then a few years later the skin cancer came
15 back, and it grew back around the edges of the scar.
16 What had happened was the product had killed off the top
17 of it, but the skin cancer was still there underneath.

18 And in the case of a basal skin cell cancer there
19 was one case where a patient died because by the time
20 they went in to see their doctor, after the spot had come
21 back, it had actually spread to other parts of the body,
22 and they died from it. And that is very unusual. In
23 20 years of practice, I had never seen a patient die from
24 basal cell, but there is a report in the literature of
25 someone who died after using this product.

1 Q. In terms of the issues of these products, let's walk
2 through those. How are they in terms of selectivity, and
3 what does that term mean?

4 A. Well, for example, the products that the FDA has
5 approved to treat skin cancer they are selective for
6 abnormal cells, meaning that the cells that are the
7 cancer cells die first, and the normal cells are not as
8 susceptible to the product.

9 Whenever you're treating cancer, whether it's a
10 topical treatment or an internal treatment like
11 chemotherapy, the key thing is you want it to kill the
12 cancer, but you don't want it to kill the patient.

13 In this case, you want it to be selective for the
14 cancer cells, but more or less leave the normal skin
15 cells alone because if you just kill everything, what you
16 wind up with is a big hole and a big scar. And you can
17 sometimes wind up with -- the other thing I found in the
18 literature were several cases of patients, for example,
19 one patient who had a lesion on their nose that they were
20 concerned was a skin cancer, and they used one of these
21 bloodroot products, and essentially the product removed
22 their nose. They had a hole in their face, two holes
23 where their nose should have been. And by the time they
24 came in and sought medical care, you can imagine that
25 though there are surgeries that can be done to try to,

1 you know, give them some semblance of a nose back, there
2 is no way no matter how good a plastic surgeon is that
3 you're going to be able to reconstruct when someone has
4 essentially had their nose removed.

5 So part of the problem with these products is they
6 are not selective for cancer cells. They kill
7 everything. There is no way to know how quickly that's
8 going to happen because people vary in their
9 susceptibility to things.

10 When I would use one of the approved creams, I would
11 tell people, well, it's going to get red, it's going to
12 get swollen. If it blisters or it starts to hurt, call
13 me because then I want you to come in so I can look at
14 it.

15 And when they came in if it looked like it had done
16 enough, I would say, okay, we stop now, we let it heal.
17 Then we'll go back, we'll either biopsy, or we'll keep a
18 very close eye on it and see whether it's taken care of
19 it. The idea being that you need not go too far, or
20 you're going to have a very bad result from an appearance
21 point of view, from a cosmetic point of view.

22 Q. Are you saying supervision by someone trained in
23 this area is an important part of using a cream like
24 this?

25 A. It is a very important part. Another very important

1 part is that the diagnosis is made before you treat.
2 Because if you have a bump, and we biopsy it, and it's
3 melanoma, we are not giving you cream. We're cutting it
4 out, and then we're watching you very, very closely,
5 we're checking your lymph nodes, we're trying to do
6 everything we can to make sure that that melanoma doesn't
7 kill you.

8 If it's a basal cell, there are circumstances where
9 we will offer the cream as an option.

10 Q. So do --

11 A. We don't expect a patient to be able to tell the
12 difference. I mean, most doctors can't tell the
13 difference. That's why there are dermatologists.
14 Usually, you know, if you come to your doctor's office
15 and you say I have this bump, I'm like, oh, okay, let's
16 send you to a dermatologist because they don't see enough
17 of them. They don't see enough of them to be able to
18 tell what they are. There's no way a patient can tell
19 what it is.

20 Q. In terms of using a Black Salve on melanoma tell us
21 what some of the problems are with that approach.

22 A. Well, the problems are that one of the ways that we
23 decide how aggressive we have to be with treating a
24 melanoma is based on how deep in the skin the melanoma
25 goes.

1 And so the first thing we do when we see something
2 where we think it's a melanoma is we remove the whole
3 thing, and we send it to the lab, and they send us back
4 information about exactly how deep in the skin it goes.
5 That's called a Breslow level.

6 And if you are -- if you have a melanoma that is in
7 the very top layer of the skin, you have a great
8 prognosis. You have a 99 percent chance you're going to
9 be alive five years, 10 years down the road, because
10 we've gotten it before it's had a chance to spread.

11 If you've got a melanoma that goes into the middle
12 layer of the skin, you still got a good chance. You
13 probably still got a 90 percent chance you'll be around
14 in five years. But we're then going to check lymph
15 nodes, we're going to do MRIs and CT scans, we're going
16 to check your liver, test to make sure there's no signs
17 of anything going on in your liver. We're going to keep
18 a very close eye on you because there is a chance it will
19 spread, and if we catch even -- even if it spreads, if we
20 catch the spread really early, we still nowadays, you
21 know, have a chance that we'll be able to keep you alive
22 and have you not die from that melanoma.

23 If the melanoma is very, very deep in the skin, it's
24 very -- it's -- it's a very bad prognosis. You know, you
25 have a 50 percent chance that you won't live out five

1 years.

2 Q. And what contributes to how deep a skin cancer is?

3 A. The biggest thing with melanoma is how long it's
4 been there. Early diagnosis, the difference between the
5 fact nowadays 90 percent of people live to their
6 five-year anniversary, and 20 or 30 years ago when only,
7 you know, 40 or 50 or 60 percent did is that we're
8 catching them earlier. People are more aware. Your
9 primary care doctor is way more aware of what to watch
10 for than they used to be. You know, again, women are
11 watching their husbands and women are watching themselves
12 because they read the magazine articles, and they know
13 what to watch for.

14 The way to cure melanoma is to catch it early, and
15 the problem with putting a cream on it is, if you put a
16 cream on it and it kills off the top layer, and you then
17 have a scar, and that melanoma is sitting there
18 underneath the skin, instead of growing back up through
19 that scar, which is tough, thick skin, it's going to grow
20 down, and it may be months, it may be years before
21 there's anything for you to see to know that it's still
22 there, and by then it may be too late.

23 Q. Can using Black Salve cause issues with recurrence
24 of a growth?

25 A. Well, I wouldn't say it caused the recurrence, but

1 it delays the diagnosis of the fact that you still have
2 got a skin cancer because it often will cover up the top
3 of it. It kills off the top, it covers up what's
4 underneath, and it delays the diagnosis. And for any
5 kind of skin cancer delaying the diagnosis is not a good
6 thing.

7 Q. Are you familiar with the product made by the
8 defendant called TO-MOR-GONE?

9 A. I researched it back in 2009 when I did the consult.
10 So I was -- I had copies of the pamphlets that come with
11 the product. I had copies of what we would call the
12 labeling, except it's not an approved product.

13 Q. Did anything strike you about the name of the
14 product?

15 A. Well, at the FDA we don't let drug companies name
16 drugs things like TO-MOR-GONE because we think it's
17 misleading because it implies that it's going to make any
18 kind of tumor go away.

19 You know, if you look at the names of, you know,
20 your pills for whatever condition you might have, it's
21 not called high blood pressure gone or, you know, it has
22 some name that the drug company comes up with that
23 doesn't mean anything because we don't let -- we consider
24 that false advertising. Something like TO-MOR-GONE is
25 implying that all tumors are going to go away, and

1 there's no evidence that this is an effective or safe
2 drug.

3 Q. What is the primary ingredient in TO-MOR-GONE?

4 A. Primary ingredient in the product that was sent to
5 the lab by the FDA people was bloodroot.

6 Q. Is that something that's also -- that also appears
7 on the label of the product?

8 A. Yes. It says on the label that one of the
9 ingredients the first one listed is bloodroot.

10 Q. Have you since 2009 reviewed the labeling for this
11 product?

12 A. I actually on several occasions since then have
13 received communications from the Office of Compliance
14 asking me to go back and just to, you know, get myself up
15 to date and have looked at things.

16 Q. The directions for using that product do they give
17 you some concern?

18 A. They do. They basically say to put it on and put a
19 Band-Aid over it and to keep doing this every day until
20 it's gone.

21 Again, the problem is, one, you don't know what
22 you're treating. If you don't know what you're treating,
23 then it's not safe to put any product on to try to get
24 rid of it, because the most important thing -- number
25 one, important thing is to make the diagnosis and to make

1 sure you're not dealing with a melanoma.

2 Q. In your opinion as a dermatologist, could it be
3 dangerous for someone to use this product?

4 A. I think it is dangerous. There were multiple case
5 reports of patients who used it and had either terrible
6 cosmetic outcomes with their nose being gone or with a
7 hole down to bone, having been opened up by the product.

8 There were -- was also again the report of the
9 gentleman who died from it, multiple reports of patients
10 whose diagnosis was delayed, and they wound up having to
11 have multiple surgeries to try to fix what was -- what
12 was left after they finally came in.

13 Q. And just to be clear, those incidents you reviewed,
14 we don't know that those are attributed to this
15 particular product?

16 A. I don't know that it was this particular product.
17 Generally in medical articles they will use the generic,
18 the name for the actual chemical. So they would say
19 bloodroot product. They wouldn't, you know, say what the
20 brand name was.

21 Q. Does anything on the label or the pamphlet of this
22 product warn against the dangers of bloodroot?

23 A. No, there are no warnings. And as you guys know
24 from watching TV commercials for FDA approved products,
25 we make them give all the warnings about all the bad

1 things that can happen just so that you know in case they
2 happen, you realize they're from this product, and you
3 need to, you know, go in and see your doctor and see what
4 needs to be done about it. There are no warnings about
5 the fact that this product can cause extensive necrosis
6 of the skin.

7 MS. SMITH: Thank you, Doctor. No further
8 questions.

9 THE COURT: All right. Thank you.

10 Mr. Girod, you may question the witness.

11 DEFENDANT GIROD: Yes. Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY DEFENDANT GIROD:

14 Q. Good morning.

15 A. Good morning.

16 Q. How are you?

17 A. I'm good.

18 Q. I do make -- I do make a bloodroot product, okay. I
19 did. I haven't made any for a long time, but I did make
20 some.

21 Are you aware of the FDA testing on that?

22 A. I was -- I saw some lab reports from labs that
23 showed what the chemical components in the products that
24 they had confiscated were.

25 DEFENDANT GIROD: Okay. Can we post this some

1 way?

2 THE COURT: You'll need to -- you'll need to
3 show it to the witness to see if she can authenticate it,
4 if it's an accurate document. The question --

5 DEFENDANT GIROD: Her?

6 THE COURT: Yes.

7 DEFENDANT GIROD: Okay.

8 THE COURT: The question will then become
9 whether it would be relevant, and you'll need to show it
10 to the United States first.

11 Bill, if you would bring a copy to the
12 United States.

13 MS. SMITH: Thank you. I don't have any
14 objection.

15 THE COURT: All right. There's no objection?

16 MS. SMITH: If this is the report she relied
17 on.

18 THE COURT: No objection to its introduction?

19 MS. SMITH: Or just showing it to her. Is he
20 going to admit it?

21 THE COURT: I assume he wants to show it to the
22 jury at some point.

23 DEFENDANT GIROD: Yes, I would.

24 MS. SMITH: Sure, no objection.

25 THE COURT: No objection, all right.

1 It will be marked as Defendant's Exhibit 1, and
2 it will be admitted.

3 You can show it to the witness, and then you
4 can ask her questions about it.

5 DEFENDANT GIROD: Sure.

6 (Whereupon, Defendant's Exhibit Number 1 was
7 admitted into the record.)

8 THE COURT: Give her a moment to take a look.

9 DEFENDANT GIROD: Do we post that, or do we
10 first ask questions?

11 THE COURT: Well, you need to make sure she's
12 familiar with the document first.

13 DEFENDANT GIROD: Okay.

14 THE COURT: And once she says that she is, if
15 you want to put it on the monitor over here --

16 DEFENDANT GIROD: Okay.

17 THE COURT: -- so the jury can see it, then
18 you'll be able to do that.

19 THE WITNESS: Yes, this does look like the
20 document that I was given to review.

21 THE COURT: All right. You are familiar with
22 it?

23 THE WITNESS: Uh-huh.

24 THE COURT: All right. If you would like to
25 place a copy --

1 MR. FOX: Can I help him with that, Judge?

2 THE COURT: Yes, if you would like.

3 DEFENDANT GIROD: The first page.

4 THE COURT: And if there's a particular part of
5 the documents that you want to show, you'll need to move
6 it around so that it can be viewed on that monitor.

7 DEFENDANT GIROD: We just needed the one for
8 now, really, don't we? I mean, that one is what she's
9 got right now.

10 Actually, move it right up to there if we can.
11 I don't know if we can or not.

12 MR. FOX: That is what the jury is seeing.

13 DEFENDANT GIROD: Okay. They can see it.

14 THE COURT: Thank you.

15 BY DEFENDANT GIROD:

16 Q. Now, you can see there what products were tested, I
17 guess, and -- right?

18 A. Uh-huh.

19 Q. Or what products were tested. Can you tell me what
20 was tested there?

21 A. Well, we're only seeing the second page. So on the
22 second page it talks about TO-MOR-GONE and something
23 called Burchicks Salve.

24 Q. That's not mine. We didn't do nothing with that.

25 It's just the TO-MOR-GONE that we had to do with that's

1 on that page.

2 A. Well, the first page also has multiple products on
3 it that were confiscated, I believe, from your --

4 Q. Yes, that's true. You want to see that too?

5 A. Yes, because I think that's the more relevant page
6 actually.

7 Q. All right. Okay.

8 A. The first under number 3 where it says "results and
9 conclusions," the LC-MS that stands for liquid
10 chromatography-mass spectrograph, and that's basically a
11 machine where you put the product in it, and it divides
12 the product up into its chemical components, and then the
13 chemical components are displayed on a graph that shows
14 peaks and valleys, and the individual peaks kind of
15 identify what the chemical composition of the product is.
16 And Sanguinarine is bloodroot. That's the Latin name. I
17 think I mentioned it earlier. It's like Sanguinarine
18 Canadensis, but Sanguinarine is the bloodroot.

19 Q. Now, which products were tested on the one that we
20 have right now?

21 A. That was item 3, item 3-1, 3-2, and 3-3.

22 Q. And that's --

23 A. And there's another page that I didn't see that you
24 guys have where it basically lists the items that were
25 taken, and item 3 was TO-MOR-GONE.

1 Q. Okay. That's right here. I have that right here.

2 A. Okay.

3 Q. Now, what -- on -- on this testing, on all these
4 formulas here on the bottom, do you see -- what does it
5 say on the end result kind of what it says. What does it
6 say there?

7 A. The results and conclusions say Sanguinarine, and --
8 oh, I don't now know how to pronounce that one,
9 chelerythrine were identified in, i.e., serial number
10 14-0097-40443, item 3. And then it gives another, i.e.,
11 serial number, item 3.1, 3.2, 3.3, and that based on
12 chromatographic retention time and the mass spectral
13 comparison to reference standards, that Sanguinarine and
14 this chelerythrine were what was in the TO-MOR-GONE.

15 Q. My question is you can read that right there.
16 That's one of them, here's another one, and on the bottom
17 there's from the end result that I'm talking about right
18 there, and this too, like on all of the products that's
19 what you can -- that's what I would like for you to read.

20 A. Well, the next one is for a different product.
21 That's for the product called R.E.P. where it says what
22 the chromatographic profiles are, and it says, "no drugs
23 or poisons were identified." That's for the essential
24 oil R.E.P. That's a different product than the
25 TO-MOR-GONE.

1 Q. That's right. Then on the bottom of that is the
2 chromatographic, if you might read that too, also to
3 them, if you would.

4 A. Right, but that applies to the R.E.P., not to the
5 LT-MS.

6 Q. R.E.P. We'll get to TO-MOR-GONE as well.

7 And then the Chickweed Healing Salve you might do
8 the same thing there, if you want.

9 A. Well, I actually didn't review --

10 Q. Okay.

11 A. -- the Chickweed Salve, so I --

12 Q. And you --

13 A. -- can't comment on that.

14 Q. Okay. I'll take that off, and we'll do TO-MOR-GONE.

15 Now, the end result of the TO-MOR-GONE, and the same
16 way, I want you to read what they finished out with, if
17 you would.

18 A. Sure. This is what additionally was found in the
19 TO-MOR-GONE, in addition to the previously mentioned
20 Sanguinarine and the chelerythrine stuff.

21 They also found citronellol, citronellyl formate,
22 methanoazulene, muurolene, thujopsene, Widdrol, Cedrol,
23 fatty alcohols, fatty acids, Squalene, and Vitamin E.

24 It said that they didn't use standards against those
25 particular products and that no drugs or poisons were

1 identified under these experimental conditions. So this
2 set of ingredients they did not identify any drugs in.

3 And it says that -- I think what the next line is
4 saying, which is that the chromatographic profiles of the
5 TO-MOR-GONE samples analyzed were consistent with each
6 other. I think what they mean here, and we'd probably
7 have to talk to the person who wrote the report, but I
8 think they had several samples, and what they were saying
9 is the samples were consistent with each other.

10 Q. That means that --

11 A. I think that they all have the same thing.

12 Q. That means that everything we have close -- we have
13 close measurements on everything that goes on and
14 anything in our formulas. And it was just something, we
15 did this kind of stuff almost 20 years ago, and just --
16 if there was any -- if people tell us, well, it did this
17 or did that, we took it with a grain of salt. Most of it
18 never made the pamphlets or the advertisements or
19 whatever. We just -- we just did what we -- it was a
20 nice little family business.

21 But the main point is here that I want to make is
22 there was no drugs or poisons found and that all --

23 A. I think what you're referring to is the second set
24 of ingredients that are on the second page. They didn't
25 say there weren't any drugs found in the initial

1 evaluation of the TO-MOR-GONE where they showed the
2 results of the LC-MS that found Sanguinarine and the
3 chelerythrine stuff.

4 Q. Okay. Well, results/conclusions is what I'm going
5 by. That's page 2 and page 3. Results/conclusions say
6 there was no drugs or poisons identified in these
7 experimental conditions. And that all of the samples --
8 the samples were analyzed were consistent with each
9 other. That's what it says, you know.

10 A. Right. The samples were consistent with each other
11 just means that they sampled different vials of it, and
12 that they all came out with the same results.

13 Q. Thank you.

14 And what that means is that the same -- the same is
15 in this batch what is in this batch?

16 A. Right.

17 Q. And everything is measured, and so very close.

18 A. And each batch had the Sanguinarine in it --

19 Q. Right.

20 A. -- based on what was said on page 1.

21 Q. Right. You bet, it comes from the woods.

22 So what products, what kind of a product were you
23 talking about that caused problems, you might say?

24 A. A bloodroot product.

25 Q. Was it -- which -- do you know which company?

1 A. I do not.

2 Q. There's a lot of companies making bloodroots, and a
3 lot of companies are making bloodroots and --

4 A. Well, one of the things that we learn at the FDA is
5 that the chemical composition of the drug is what
6 determines its mechanism. And so one drug that has
7 bloodroot would generally have the same mechanism as
8 another drug that has bloodroot.

9 Q. Do you believe that there's more than one kind of
10 bloodroot?

11 A. I'm not aware of more than one kind of bloodroot.

12 Q. So --

13 A. Well, there may be. When they talk about the Latin
14 name for bloodroot is the Sanguinarine Canadensis, and
15 whenever they give a second name to something, like the
16 canadensis part, that probably means that there is a
17 bloodroot, which is the Sanguinarine that comes from
18 Canada, and then there's probably a bloodroot that maybe
19 comes from other places, and it would have a different
20 second name. Generally though the chemical properties on
21 those sort of closely-related plant are going to be
22 fairly similar.

23 Q. Yes. The only thing I want to make a point here is
24 there was no drugs or poisons found in this product, and
25 they were consistent with each other. That's the main

1 thing I want to make a point of.

2 DEFENDANT GIROD: And I'm done. Thank you.

3 THE COURT: All right. Thank you.

4 Let's see if there's redirect.

5 MS. SMITH: Just briefly.

6 REDIRECT EXAMINATION

7 BY MS. SMITH:

8 Q. Dr. Liedtka, in this -- I know you didn't prepare
9 this lab analysis in working for the FDA, but you have
10 some familiarity with the lab tests?

11 A. Uh-huh.

12 Q. So when they say no drugs were found, is that --
13 what does drug mean in that context?

14 A. Well, drug has a very specific legal meaning in FDA
15 parlance. When we use drug, we're usually trying to
16 differentiate it, for example, from say a cosmetic.

17 The legal definition for the drug at the FDA is that
18 a drug is a product that is to diagnose, treat, identify
19 a condition, or disease, or a product that affects the
20 structure or function of the body.

21 And, for example, when somebody comes out with a new
22 cream, and they want to market it, we would have to look
23 at it and decide whether that cream was just a
24 moisturizing cream, in which case it's a cosmetic, and it
25 doesn't really alter the structure or the function of

1 your body. That product has a lot of -- a whole
2 different set of rules that are somewhat less stringent
3 because generally that means that we don't think there's
4 any safety issue with that product.

5 Whereas, a drug because it's altering the structure
6 or function of the body, we have to be more careful
7 because generally that means that there are safety
8 concerns, and that you again have to look at that risk
9 benefit where the -- you want to make sure that the
10 benefits of the drug outweigh the risk of the drug.

11 Q. So is this lab report testing, whether the products
12 fit into legal definition of the drug, or is it looking
13 for a different type of thing?

14 A. I think that the defendant misunderstood the use of
15 the term drug in that instance. The report clearly
16 states that Sanguinarine is in the product, and whether
17 you call Sanguinarine a drug or not, kind of depends on
18 what claims you're making for it. Because if your claim
19 is that it's going to affect the structure or the
20 function of the body, then it's a drug. And if you're
21 claiming it's going to cure skin cancer, then it's a
22 drug.

23 MS. SMITH: Thank you, Doctor.

24 THE COURT: Any further questions for the
25 witness on these matters?

1 DEFENDANT GIROD: I would like to introduce
2 this into evidence.

3 THE COURT: Is that the same document?

4 DEFENDANT GIROD: Yes.

5 THE COURT: I think it's been introduced.

6 DEFENDANT GIROD: Has it, okay.

7 THE COURT: It was the document that was shown
8 to the witness?

9 DEFENDANT GIROD: Yeah, but I just -- I took it
10 out here.

11 THE COURT: Okay. Yes, you can bring that up
12 to the clerk, and she'll mark that, as I've indicated,
13 Defendant's Exhibit Number 1. Does it have two pages or
14 three?

15 RECROSS-EXAMINATION

16 BY DEFENDANT GIROD:

17 Q. One question I would have is that chemical part,
18 it's -- you say it's in the bloodroot, which I'm aware of
19 that, but it's also -- bloodroot has other ingredients in
20 it that when God made that, when God made that, he made
21 the earth, it made it so that there was -- if there was
22 something bad about -- if there was a chemical or herb in
23 it that maybe wasn't that good, it would -- there was
24 other things that made it all better. You know, what I
25 mean? The -- we didn't take out -- nobody -- there's a

1 lot of manufacturers out there that don't take out a
2 little part or an alkaloid of an herb. They take the
3 whole herb, which makes it a lot better -- in other
4 words, it needs to be taken whole, not just in part. You
5 follow what I'm saying?

6 A. Well, is there a question? I'm not sure.

7 Q. Well, I was just trying to clarify that because what
8 I thought was -- it was talking about the chemical part
9 of it that's a Latin name; right?

10 A. Uh-huh.

11 Q. And so it's a Latin name for bloodroot basically in
12 whole; right, is that it?

13 A. I'm not sure if I understand that there was a
14 question in there.

15 Q. Well, the Sanguinarine, the one you talk about, is a
16 Latin name for bloodroot?

17 A. Yes, for the plant.

18 Q. Yes. So that's what I'm using. That's what we have
19 used in the past is a bloodroot.

20 A. Right.

21 Q. Sanguinarine is just -- it's not the chemical, it's
22 the Latin name of the bloodroot; right?

23 A. It is a plant. It's also a chemical --

24 Q. Yeah, I understand that.

25 A. -- in the same way that we're chemicals.

1 Q. Yes, in the same way, that's right. I agree with
2 that.

3 DEFENDANT GIROD: Okay. Thank you.

4 THE COURT: Thank you.

5 Anything else?

6 MS. SMITH: No. This witness may be released.

7 THE COURT: Thank you, ma'am. You may step
8 down. You're finally excused.

9 THE CLERK: Could you get that exhibit?

10 Thank you.

11 THE COURT: All right. Thank you.

12 And you may call your next witness.

13 MS. SMITH: The United States calls

14 Mary Miller --

15 THE COURT: Thank you.

16 MS. SMITH: -- of Grabill, Indiana.

17 THE COURT: All right. Thank you.

18 THE CLERK: Raise your right hand, please.

19 Do you affirm that the testimony you're about
20 to give in this matter shall be the truth, the whole
21 truth, and nothing but the truth, as you shall affirm,
22 subject to the penalty of perjury?

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 And you may proceed.

1 MARY MILLER,
2 having been first duly placed under oath, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SMITH:

6 Q. Good morning, ma'am.

7 Could you please tell us your name?

8 A. Mary Miller.

9 Q. Where are you from, Ms. Miller?

10 A. Grabill, Indiana.

11 Q. Where is Grabill?

12 A. Ten miles from Fort Wayne, Indiana.

13 Q. About how far is it -- how long did it take you to
14 get here to testify?

15 A. Five hours.

16 Q. So it's north of Indianapolis?

17 A. Yes.

18 Q. What do you do for a living, Ms. Miller?

19 A. I have a variety store.

20 Q. If you could sit a little bit closer to the
21 microphone, so the court reporter can hear you.

22 Can you tell us again what kind of store you have?

23 A. A large variety store.

24 Q. And what is the name of that store?

25 A. Miller's Country Store.

1 Q. How long have you owned Miller's Country Store?

2 A. We started in 1994, so about 24 years.

3 Q. And what types of products do you sell at Miller's
4 Country Store?

5 A. We have bulk foods, vitamins and herbs, shoes and
6 boots, gifts.

7 Q. Do you sell groceries?

8 A. Bulk foods, some, yes.

9 Q. Okay. And what types of clients do you typically
10 sell to?

11 A. I would say most of them are Amish, but we do have
12 some English.

13 Q. When you say English, what do you mean by that?

14 A. People like you, maybe, I don't really know.

15 Q. People who are not Amish?

16 A. Yes.

17 Q. You're here because you received a subpoena to
18 testify?

19 A. Right.

20 Q. You don't want to be here. Is that fair to say?

21 A. Yes.

22 Q. Okay. Have you had business dealings with a man
23 named Sam Girod?

24 A. Yes.

25 Q. Can you recognize him here in the courtroom today?

1 A. Yes.

2 Q. I see you smiled at the defendant.

3 A. Uh-huh.

4 Q. Is that Mr. Girod?

5 A. Yes, uh-huh.

6 Q. Do you know the name of the company?

7 A. Satter something, but I don't -- I can't remember.

8 Q. If you see some of your business records, would that
9 help you remember what the name of his company was?

10 A. Yes, uh-huh.

11 Q. I will show you those in a minute.

12 What type of business did you do with him?

13 A. I just got the Chickweed Salve.

14 Q. Did you purchase that from him?

15 A. Purchased from him.

16 Q. How long have you been purchasing the Chickweed
17 Salve from him?

18 A. Maybe a year or two, you know, before this all took
19 place.

20 Q. Did you ever purchase any of his other products?

21 Did you purchase any other products other than the
22 Chickweed from him?

23 A. The one that started with an R, I think, and
24 TO-MOR-GONE.

25 Q. So you bought all three of those products?

1 A. I am thinking I did, yeah.

2 Q. What did you do with the products? Were they
3 something you carried in your store?

4 A. Yes, I sold it to people.

5 Q. Did he sell you some of his products in the summer
6 of 2014?

7 A. I'm thinking so, but I can't say for sure.

8 MS. SMITH: If we could hand the witness
9 Government's Exhibit 29 and 30.

10 BY MS. SMITH:

11 Q. Have you seen those documents before, Ms. Miller?

12 A. Yes.

13 Q. Are those records that you had at your store?

14 A. Yes.

15 MS. SMITH: The government would move to admit
16 Exhibits 29 and 30.

17 THE COURT: Any objection to their admission?

18 DEFENDANT GIROD: No.

19 THE COURT: Let Mr. Girod look first. No
20 objection?

21 All right. Exhibits 29 and 30 are admitted.

22 (Whereupon, Government's Exhibit Numbers 29 and 30
23 were admitted into the record.)

24 MS. SMITH: If we could publish to the jury
25 Exhibit 29.

1 BY MS. SMITH:

2 Q. Just give me a minute. We're going to put it up on
3 their screen.

4 What kind of document is this, Ms. Miller?

5 A. I'm not real sure.

6 Q. Is it an invoice?

7 A. Oh, this is -- yes, it would be an invoice, yes.

8 Q. And who is it made out to, who is the customer?

9 A. Miller's Country Store.

10 Q. Is that your store?

11 A. Yes, uh-huh.

12 Q. And what's the date on the invoice?

13 A. 6/2/14.

14 Q. There's a handwritten note at the top. Can you tell
15 us what that says?

16 A. I wrote that. I put down Chickweed Salve.

17 Q. Is that what you were purchasing with that
18 agreement?

19 A. I believe that's what I did.

20 Q. Can you tell us how many containers of the Chickweed
21 Salve you bought?

22 A. It says 72.

23 Q. And what does it say next to that?

24 A. Four ounce and then 36 one ounce.

25 Q. Are those the two different sizes of the Chickweed

1 that you bought, that --

2 A. I would just guess so.

3 Q. -- based on this invoice?

4 A. Yes, I would just guess they were both Chickweed.

5 Q. How much did you pay for the Chickweed Healing
6 Salve, that purchase?

7 A. 700 -- \$765.

8 Q. And how did you pay the defendant for that?

9 A. I -- I paid it with a check.

10 MS. SMITH: If we could look at Government's
11 Exhibit 30, which was just admitted.

12 BY MS. SMITH:

13 Q. Is that the check?

14 A. The check, yeah. The check number was -- the check
15 number was 3569.

16 Q. Is that a company check from your store?

17 A. Yes.

18 Q. Is that your signature on the check?

19 A. Yes.

20 Q. Is that -- do you have to sign every single check,
21 or do you have a stamp?

22 A. It's a stamp.

23 Q. And what's the date on that check?

24 A. 6/2/2014.

25 Q. The date -- you listed the dates on these two

1 documents on the check and the invoice. And they're the
2 same date. Do you know if you gave that check to the
3 defendant in person?

4 A. I would think so, yes.

5 Q. Why would you think that?

6 A. Because he was there, and I reached it to him
7 probably.

8 Q. Who is the check that you wrote made out to?

9 A. Satterfield Naturals.

10 Q. Is that the name of the company?

11 A. Yes.

12 Q. Does that refresh your recollection that's the name
13 of --

14 A. Yes.

15 Q. -- the defendant's company?

16 A. Yes.

17 Q. What's your understanding of what the Chickweed
18 Healing Salve is for?

19 A. It was -- for what we used it for it was for skin
20 rashes.

21 Q. And what about the TO-MOR-GONE product?

22 A. I really never used that for myself. I just had it
23 on the shelf.

24 Q. And what about the R.E.P.?

25 A. That product I never used for myself, but I know

1 people that liked it for their headaches.

2 Q. This June 2014 order of the Chickweed Healing Salve,
3 do you know how you placed the order?

4 A. I'm thinking I probably wrote a letter and ordered
5 it.

6 Q. Is that what you typically did when you wanted to
7 buy the defendant's products?

8 A. Yes.

9 Q. Do you remember how it was delivered?

10 A. I think Sam brought it to me.

11 Q. When he sold you this Chickweed Healing Salve, did
12 he tell you he was under a federal injunction to stop
13 selling the product?

14 A. No.

15 Q. Would you have bought the \$765 of Chickweed Healing
16 Salve if you had known there was a federal injunction
17 prohibiting selling it?

18 A. No, I wouldn't have.

19 Q. Were you -- were you approached by law enforcement
20 in this case, by Special Agent Steven Lamp?

21 A. Yes.

22 Q. Did -- when he approached you, did you have any of
23 the defendant's products left on your shelves?

24 A. Yes.

25 Q. Did you provide them to Agent Lamp?

1 A. Yes.

2 Q. And did that include some of all three of the
3 products?

4 A. Yes.

5 MS. SMITH: If we could just show these. I'll
6 introduce them through the agent.

7 BY MS. SMITH:

8 Q. But, Ms. Miller, if you could just look at these. I
9 know they're in these plastic bags here, but are these
10 the -- what the containers looked like of the Chickweed
11 that you provided to Agent Lamp?

12 A. Yes.

13 Q. And these two, is this what the R.E.P. and the
14 TO-MOR-GONE looked like that you provided to Agent Lamp?

15 A. Yes.

16 MS. SMITH: Okay. Those are Government's
17 Exhibit 28A, B, and C, subject to introduction by the
18 agent.

19 BY MS. SMITH:

20 Q. Did you have any promotional materials for any of
21 these products in your store?

22 A. Yes, I think I did.

23 Q. What did that look like?

24 A. I really can't say. I think it just said what it
25 was for.

1 Q. Was it a piece of paper?

2 A. Yes.

3 Q. It was -- okay. Do you remember if it folded?

4 A. Right.

5 Q. Do you know how many folds it had in it? Was it
6 folded in half or folded in threes or folded in fours?

7 A. I would just say maybe in half, but I'm not sure. I
8 can't say for sure.

9 Q. When you bought this product in June 2014, did you
10 know that the FDA had ordered the defendant to issue a
11 recall?

12 A. No.

13 Q. Did he ever recall the products from you?

14 A. No.

15 Q. In working at your store for two decades, have you
16 ever had to deal with a recall?

17 A. No.

18 Q. Have you ever had a product recalled?

19 A. No.

20 Q. Okay. When he delivered the Chickweed to you, did
21 he mention the FDA at all?

22 A. No.

23 Q. Did he mention any legal issues he was having?

24 A. No.

25 Q. Would you have bought the Chickweed if you had known

1 it was subject to recall?

2 A. No.

3 Q. Did you receive a subpoena for records in connection
4 with this investigation?

5 A. Yes.

6 MS. SMITH: I would like to hand the witness
7 Government's Exhibit 31.

8 BY MS. SMITH:

9 Q. Have you seen that document before?

10 A. Yes.

11 Q. Is that the subpoena you received?

12 A. Yes.

13 MS. SMITH: The United States would move to
14 admit Government's Exhibit 31.

15 THE COURT: See if there's any objection to its
16 admission.

17 Any objection to its admission?

18 DEFENDANT GIROD: No, I'm sorry, I'm sorry.

19 THE COURT: That's fine.

20 Exhibit 31 is admitted.

21 (Whereupon, Government's Exhibit Number 31 was
22 admitted into the record.)

23 MS. SMITH: If it could be published to the
24 jury.

25 THE COURT: Yes, ma'am.

1 MS. SMITH: So they can read along.

2 BY MS. SMITH:

3 Q. Can you tell us what the date is on that subpoena?

4 It's towards the bottom.

5 A. 12/5/2014.

6 Q. Do you remember how you received it?

7 A. I'm thinking just through mail.

8 Q. Okay. Do you remember roughly when you received it?

9 A. No.

10 Q. Do you think it was around that time frame in
11 December of 2014?

12 A. I would just assume it is because it says so.
13 Otherwise I can't remember.

14 Q. Okay. Did you discuss this subpoena with the
15 defendant?

16 A. I think -- do you mean Sam?

17 Q. Yes, with Mr. Girod.

18 A. One time when he come, I did, yes.

19 Q. When you say -- was he there in the store?

20 A. Yes.

21 Q. Do you remember how close in time it was until after
22 you received the subpoena? Was it right after you
23 received it, was it three months later?

24 A. I can't really answer that, but it had to be, you
25 know, before I was supposed to come to court because I

1 had asked what I should do about it.

2 Q. You asked him what you should do about the subpoena?

3 A. Yes.

4 Q. Did he tell you what to do about the subpoena when
5 he was there in person in your store?

6 A. Can't say for sure what he really said.

7 Q. Do you remember being there in his store -- in your
8 store with him?

9 A. Yes.

10 Q. Did he ask to see your subpoena?

11 A. I don't even know that, no.

12 Q. Do you remember if you brought it up, or he brought
13 it up?

14 A. I don't -- I think I brought -- I brought it up.

15 Q. What was he doing there that day?

16 A. I think they just stopped in because I did not have
17 nothing ordered.

18 Q. You weren't buying product from him that day?

19 A. No.

20 Q. Did you show him the subpoena you received?

21 A. I'm thinking so, yes.

22 Q. Did he tell you what to do about the subpoena?

23 A. Well, I don't really remember, but I'm thinking that
24 he said I shouldn't worry about it right then.

25 Q. Saying you shouldn't worry about it right then. Did

1 he tell you not to respond to the subpoena?

2 A. He didn't really tell me not to respond, but just to
3 let it be for right now. I'm thinking that's all it was.

4 Q. Did he talk to you about the FDA during that visit?

5 A. A little bit.

6 Q. What did he tell you?

7 A. Really can't -- really can't say right now, think
8 right now.

9 Q. Was it a happy story, was it a frustrating story,
10 was it anything that you can remember?

11 A. Well, I was thinking that he was thinking that --
12 that the FDA, that he was going to be okay with, you
13 know, how he was good, it was going to be okay.

14 Q. Was anyone else in the store with you when you were
15 talking to him about the subpoena?

16 A. My husband.

17 Q. Were any employees of the store?

18 A. Mark -- Mark.

19 Q. And what's Mark's last name?

20 A. Wooten.

21 Q. Do you remember talking to Special Agent Steven Lamp
22 about what happened during that meeting?

23 A. Yes.

24 Q. Do you remember the first time he asked you about
25 when the defendant was in the store with you that you

1 said he told you not to respond to the subpoena at first?

2 A. Yes, uh-huh.

3 Q. Do you remember that?

4 A. Well, I don't know if he told me not to respond, but
5 it was not to respond right then, but then later on he
6 sent me a letter that I should maybe anyhow.

7 Q. Let's take a look at that letter.

8 MS. SMITH: If you could hand this to the
9 witness.

10 BY MS. SMITH:

11 Q. This is premarked as Government's Exhibit 32. Is
12 that the letter you're referencing?

13 A. Yeah, uh-huh.

14 MS. SMITH: United States would move to admit
15 Government's Exhibit 32.

16 THE COURT: Any objection to its admission,
17 Mr. Girod?

18 DEFENDANT GIROD: I would just leave it go.
19 I'd object to that. They can --

20 THE COURT: All right.

21 DEFENDANT GIROD: They can decide on that.

22 THE COURT: Proper foundation has been laid.
23 I'll overrule the objection.

24 Exhibit 32 will be admitted.

25 (Whereupon, Government's Exhibit Number 32 was

1 admitted into the record.)

2 BY MS. SMITH:

3 Q. I have the original. Would you like to see the
4 original?

5 A. No, I have this.

6 MS. SMITH: Okay. If we could publish this to
7 the jury.

8 BY MS. SMITH:

9 Q. What's the date on this letter, Ms. Miller?

10 A. 12/15/14.

11 Q. Now, did you receive this before or after Mr. Girod
12 was in your store talking about the subpoena?

13 A. After.

14 Q. After?

15 A. After, uh-huh.

16 Q. So do you think that visit happened somewhere
17 between December 5th and December 15th?

18 A. Yes.

19 Q. Do you remember how soon after his visit you
20 received this letter?

21 A. It was probably just right soon because he told me
22 what I should say, but I said -- at the end of the letter
23 it says what he thinks I should do.

24 Q. Who is the letter addressed to?

25 A. Friends.

1 Q. Dear Friends?

2 A. Yes.

3 Q. If we could scroll down to the bottom of the first
4 page. If you could look at the bottom of the first page,
5 the sentence starting, "Now in the last two weeks."

6 Could you read that?

7 A. "Now in the -- now in the last two weeks they have
8 sent subpoenas, however you spell it, to maybe nine
9 different people. So the company that set us up in
10 private membership has done this for 40 plus years, and
11 they are already responding to the FDA. The best way to
12 handle this would be to let me know right away."

13 Q. Could you read the next paragraph?

14 A. "I would never give them one piece of record info.
15 They asked for my records, but I told them the Privacy
16 Act law would not allow me to do this. In other words,
17 it would be against the laws to do some of the stuff they
18 ask for. And the same with you, our customers."

19 Q. Could you read the next paragraph?

20 A. "One case not too long ago the FDA took a lot of
21 product away from a company with private label
22 membership, that unit, FDA, went to jail."

23 Q. And then the last paragraph.

24 A. "One thing everyone -- everybody needs to know, the
25 FDA does not go by federal or state laws. They have

1 their own rules and regulations, to mainly put small
2 businesses out of business in my opinion. If you bought
3 product from us between October the 1st, 2013, and
4 February the 5th, 2014, you can send them that invoice --
5 an invoice, with two waivers to not come to Lexington in
6 court. And if you do nothing, I really don't know if
7 they would pursue or not."

8 Q. Now, you produced records in response to the
9 subpoena; is that right, ma'am?

10 A. Right.

11 Q. And I think you just testified earlier you
12 understood this letter was telling you to do that?

13 A. Right.

14 Q. The letter mentions the date range for invoices,
15 October 1st, 2013, and February 5th, 2014. Your invoice
16 was outside of that date range; is that right?

17 A. That one maybe was, the one you had here.

18 Q. Yes, the Chickweed from June of 2014.

19 A. Well, I don't know. Maybe I didn't have invoices
20 from that. I'm not sure.

21 Q. Do you know why that date range was mentioned here,
22 why he started with October 1st, 2013?

23 A. No, I don't.

24 Q. Did you know that an injunction had come down in
25 August and September of 2013? Does he mention that in

1 the letter that there had been an injunction in place?

2 A. Right. I see it, but I don't know.

3 Q. He doesn't mention the injunction in the letter,
4 does he?

5 A. What do you mean by injunction?

6 Q. The injunction, the court order.

7 A. No.

8 Q. So when he wrote, "And if you do nothing, I really
9 don't know if they would pursue it or not."

10 A. Right, I don't know.

11 Q. Has he discussed the investigation with you other
12 times?

13 A. No.

14 Q. Did he talk to you before coming to court today?

15 A. No.

16 Q. In this letter when he says, "It would be against
17 the law to do some of the stuff they ask for," did you
18 understand that he was possibly trying to get you to not
19 respond to the subpoena?

20 A. I guess. I really didn't pay that much attention to
21 that.

22 Q. Did you want to respond to the subpoena?

23 A. Whatever I needed to do.

24 Q. How many times have you received a federal grand
25 jury subpoena for records?

1 A. Well, I received one, and then put it off.

2 Q. In this case is that the only time you have received
3 such a thing?

4 A. Yeah, uh-huh.

5 Q. And you assumed that you needed to respond to it?

6 A. Right.

7 Q. Okay. So when the defendant said these things to
8 you, did they affect what you were going to do?

9 A. Did they what?

10 Q. Did they affect what you were going to do, how you
11 were going to respond to the subpoena?

12 A. No, not really.

13 Q. If he had not sent you this letter, would you have
14 responded to the subpoena anyway?

15 A. I was a question on it. I did not know what to do
16 with it. Then I was thinking of asking my minister what
17 to do with it, but then he responded so then I did what
18 he told me to do.

19 Q. Before he sent this letter when he came to your
20 store in person, did he tell you -- did he give you any
21 advice on what to do with the subpoena?

22 A. No. Well, I think he told me just not to do nothing
23 that day.

24 Q. That you didn't have to do anything?

25 A. Yes. And then later on he sent me this letter

1 telling me that I should.

2 MS. SMITH: Thank you, ma'am.

3 THE WITNESS: Uh-huh.

4 THE COURT: Mr. Girod?

5 CROSS-EXAMINATION

6 BY DEFENDANT GIROD:

7 Q. Hi, Mary.

8 A. Hello.

9 Q. On the letter it clearly states that you do what you
10 want to do, but I didn't want you guys, my customers, in
11 trouble. You know, I -- a lot of them sent in waivers,
12 I'm aware of, and that's what I was hoping that you could
13 do. I didn't do it in any deceiving way whatsoever. You
14 understand that?

15 So did you ever have a complaint from any of your
16 customers on the Chickweed or any of the other?

17 A. No, never.

18 Q. How many -- you've got other products in the store
19 probably that are not FDA approved; right?

20 A. The products I have I asked about that since this
21 case was up, and they always told me that I'm allowed to
22 sell it.

23 Q. You're allowed to sell it, yeah.

24 A. Yeah.

25 Q. So I also -- I mentioned to you that in the

1 letter -- it's in the letter, but I also, maybe when we
2 talked, I don't know, that you should fill out the waiver
3 because --

4 A. Right.

5 Q. -- most people do that. I didn't want -- this is
6 new for the Amish. This is -- I've never been to
7 federal court until I got tied up here, but, you know,
8 it's just a thing that happened. And so I didn't
9 want nobody -- I felt really bad about you guys getting
10 in trouble. I wanted you to fill out the waiver. That's
11 why I did the letter so that you guys could fill out the
12 waiver and see if they can do that. You know, it's my
13 trouble, and I don't want you guys to have to -- that was
14 my idea.

15 MS. SMITH: Your Honor, if he could ask a
16 question of the witness.

17 THE COURT: Yes. I'll remind the jury, as I
18 instructed early, statements made by a party are not
19 evidence in the case and shouldn't be considered as
20 such.

21 Of course, Mr. Girod is not an attorney trained
22 in asking questions, and so I will direct him that he
23 should ask a question to the witness rather than making a
24 statement to her.

25 DEFENDANT GIROD: Well, I had two or three

1 questions, and one was did you have complaints from
2 the customer; right? You answered that, and you never
3 did.

4 And that's basically all I have, you know.

5 THE COURT: All right.

6 DEFENDANT GIROD: Thank you.

7 THE COURT: All right. Thank you.

8 See if there's any redirect.

9 MS. SMITH: No, Your Honor, and she may be
10 excused.

11 THE COURT: Yes. Ms. Miller, you may step
12 down, and you're finally excused from the case.

13 You may call your next witness.

14 MS. SMITH: Your Honor, the United States calls
15 Mark Wooten.

16 THE COURT: Thank you.

17 THE CLERK: Raise your right hand, please.

18 Do you swear or affirm, that the testimony
19 you're about to give in this matter shall be the truth,
20 the whole truth, and nothing but the truth, as you shall
21 swear unto God, or affirm, subject to the penalty of
22 perjury?

23 THE WITNESS: I do.

24 THE COURT: Thank you.

25 You may proceed.

1 MARK WOOTEN,
2 having been first duly placed under oath, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SMITH:

6 Q. Good morning, sir.

7 Could you please tell the jury your name, and spell
8 it for the court reporter?

9 A. Yeah, my name is Mark, M-A-R-K, Wooten, W-O-O-T-E-N.

10 Q. Mr. Wooten, where do you live? Where did you come
11 from?

12 A. Fort Wayne, Indiana.

13 Q. Where is Fort Wayne, Indiana?

14 A. About 15 miles from Grabill.

15 Q. Is it -- how far is it from Lexington?

16 A. 350 miles.

17 Q. How long did it take you to travel to Lexington?

18 A. About five hours or so.

19 Q. Where do you work, Mr. Wooten?

20 A. Miller's Country Store.

21 Q. Where is Miller's Country Store?

22 A. In Grabill, Indiana.

23 Q. How long have you worked there?

24 A. Six-and-a-half years.

25 Q. What are your responsibilities there?

1 A. I do bookwork. That's, you know, shipping and --

2 Q. What does that include at a store like Miller's
3 Country Store?

4 A. Shipping? We have, you know, a big catalog, and we
5 ship to our customers all over the U.S.

6 Q. So the store has customers who don't just walk into
7 the store?

8 A. Correct, yes.

9 Q. And in terms of the bookwork, what is your
10 responsibility?

11 A. My responsibility? You know, bank statements, you
12 know, invoicing, you know, making -- maintaining a
13 catalog as well.

14 Q. Who owns Miller's Country Store?

15 A. Mary Miller.

16 Q. Is Ms. Miller your boss or supervisor?

17 A. Boss, yes.

18 Q. Have you ever seen the defendant before,
19 Mr. Sam Girod?

20 A. I think so once, yes.

21 Q. Do you remember approximately when that one time
22 was?

23 A. Three years ago. I really don't remember.

24 Q. The jury has heard from Ms. Miller it was in 2014,
25 December 2014.

1 A. True, sounds right.

2 Q. Were you there when the defendant was talking to
3 Ms. Miller about a federal subpoena she had received?

4 A. I heard something about it, yes.

5 Q. How close were you to their conversation?

6 A. How close?

7 Q. Physically where were you?

8 A. I was -- at one point I was standing right next to
9 him.

10 Q. Were you in the retail part of the store?

11 A. Correct.

12 Q. Okay. So up in the -- can you describe it? Where
13 were you standing?

14 A. Where we cut fabric.

15 Q. It that towards the -- near the door?

16 A. Near the door, correct.

17 Q. Near the check-out counter?

18 A. Near there but, yeah.

19 Q. And you can remember being there with Ms. Miller and
20 the defendant?

21 A. Correct.

22 Q. Did he say anything to you?

23 A. Yep, yes.

24 Q. What did he say to you?

25 A. The one thing I remember is he asked me if I was an

1 FDA agent.

2 Q. Why did he ask you if you were an FDA agent?

3 A. I probably did not look -- I was not dressed Amish.
4 I'm not Amish. So that's the only conclusion I can come
5 up to.

6 Q. Were they talking about the FDA?

7 A. Yes, I slightly remember, yes.

8 Q. What was the tone of the conversation?

9 A. I mean, it wasn't pleasant, I guess. I mean, it was
10 just, you know.

11 Q. Did you say it wasn't pleasant?

12 A. Yeah.

13 Q. Did Mr. Girod seem angry or upset?

14 A. Upset, sure.

15 Q. Were they talking about the subpoena?

16 A. I remember vaguely hearing the word, yes.

17 Q. Did you know that the store had received a subpoena
18 at that point?

19 A. I think so. I really don't remember when it came
20 I'll be honest.

21 Q. Did you ask -- when he was there in the store, did
22 you ask him any questions about the subpoena or the
23 investigation?

24 A. I don't remember. I don't remember.

25 Q. But what you can remember though is him asking you

1 if you worked for the FDA?

2 A. Correct.

3 Q. Did that seem like an odd question?

4 A. Yeah.

5 Q. Has anyone ever asked you if you worked for the FDA?

6 A. No.

7 Q. How did you respond to the question?

8 A. I snickered, and I said no.

9 Q. Do you remember how the conversation ended?

10 A. I do not. I do not because I was in and out seemed
11 like.

12 Q. Shortly after that conversation, did the store
13 receive any other communications from the defendant?

14 A. I believe we got a letter.

15 Q. Is one of your responsibilities opening the mail?

16 A. Correct.

17 Q. Did you open the letter?

18 A. I did.

19 Q. What did you do with it?

20 A. I read it.

21 Q. And what did you think of it when you read it?

22 A. Oh-oh.

23 Q. What did you do with the letter then?

24 A. I gave it to Mary.

25 Q. Okay. Did you talk about the letter with

1 Ms. Miller?

2 A. Vaguely.

3 Q. Do you remember what you discussed about the letter?

4 A. I -- I don't remember exactly what we talked about.

5 I mean, we discussed, you know, that -- first of all, I

6 was never really familiar with the product, but so --

7 then I just started asking more questions, but I don't

8 remember what all was said. I really don't.

9 Q. Do you know if Mr. Girod told Ms. Miller not to
10 respond to the subpoena?

11 A. I think the letter stated that.

12 MS. SMITH: No further questions. Thank you.

13 THE COURT: Mr. Girod, any questions?

14 DEFENDANT GIROD: I don't. Thank you. I'm
15 done.

16 THE COURT: All right. Thank you, sir. You
17 may step down. You're excused.

18 Thank you. You may call your next witness.

19 MR. BRADBURY: Kevin Miller.

20 THE COURT: Thank you.

21 I'll advise the parties that we'll take a break
22 after the next witness testifies.

23 THE CLERK: Raise your right hand, please.

24 Do you affirm that the testimony you're about
25 to give in this matter shall be the truth, the whole

1 truth, and nothing but the truth, as you shall affirm,
2 subject to the penalties of perjury?

3 THE WITNESS: I affirm.

4 THE COURT: Thank you.

5 You may -- you may proceed.

6 MR. BRADBURY: Thank you.

7 KEVIN MILLER,
8 having been first duly placed under oath, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BRADBURY:

12 Q. Good morning.

13 A. Good morning.

14 Q. Please state your name for us.

15 A. Kevin Miller.

16 Q. And we've heard a witness this morning, a
17 Mary Miller, are you related to her at all?

18 A. No.

19 Q. Where do you live, in what city and state?

20 A. Arcola, Illinois.

21 Q. What do you do for a living in Arcola?

22 A. I work at a health food store.

23 Q. What is the name of the health food store?

24 A. Family Health Foods.

25 Q. And where is it located?

1 A. In Arthur, Illinois.

2 Q. Where is -- is Arthur, Illinois, close to Arcola?

3 A. Yes, it's about nine miles.

4 Q. And describe the community in Arthur.

5 A. It's an Amish community.

6 Q. Okay. And the name of the store? You may have said
7 it already.

8 A. It's Family Health Foods.

9 Q. Okay. What type of products does Family Health
10 Foods sell?

11 A. Sells vitamins, herbs, supplements, bulk foods, gift
12 items, kitchenware items.

13 Q. How long have you worked there?

14 A. Ten years.

15 Q. And who is the owner or owners, plural?

16 A. Adlai Helmuth.

17 Q. And is he related to you?

18 A. Yes, he's my grandfather.

19 Q. Okay. How many employees work at the store?

20 A. Six.

21 Q. Are they full time, part time?

22 A. Most of them are full time, few of them are part
23 time.

24 Q. What are your responsibilities or duties at the
25 store? What do you do?

1 A. I do a lot of the purchasing, do some unloading
2 trucks, and it kind of ties into the clerk as well.

3 Q. The products that are sold from the store, are they
4 all on-site purchases, people in the store buying them,
5 or do you sell products otherwise?

6 A. We do in-store and also mail order.

7 Q. Okay. Any idea the number of states that you sell
8 products to by mail?

9 A. I'm not for sure, probably four or five. It's just
10 most of the neighboring states.

11 Q. Okay. Does Family Health Foods did they in the past
12 sell a product called TO-MOR-GONE?

13 A. Yes.

14 Q. When is the first time that you were aware of the
15 store having this product in stock and selling it?

16 A. We had it when I started back in '06 I believe. I
17 can't remember for sure, but I think we had it then.

18 Q. Okay. Did you know what this product was for?

19 A. Sort of, with the brochures, it had testimonials on
20 it.

21 Q. Okay. What did you -- based on the product, the
22 testimonials, what did you think it was used for?

23 A. A lot of times it was used as a drawing salve, to
24 draw out infections, splinters, and at times tumors.

25 Q. Okay. The literature and the testimonials, where

1 did you see those documents, those pieces of paper?

2 A. There was brochures that came with the product.

3 Q. Did you have the brochures available in the store
4 for customers or --

5 A. Yes.

6 Q. -- was that just for you?

7 A. We had them available for customers.

8 Q. Where would the brochures be placed? Would they be
9 with the product?

10 A. Yes, typically.

11 Q. Okay. So just on the store shelves you would have
12 the TO-MOR-GONE along with brochures?

13 A. Yes, that's correct.

14 Q. Do you remember what the brochures looked like? I
15 know they're paper but --

16 A. Not for sure other than they were green in color.
17 That's all I remember.

18 Q. And who gave those brochures to you or to the store?

19 A. Well, they were there -- I think they were there
20 before I started ordering the product, so I don't know
21 for sure how they got there.

22 Q. Okay. Did you ever personally receive any of them
23 from anyone or in the mail or --

24 A. Not that I'm aware of.

25 Q. Did you ever meet Sam Girod?

1 A. Yes.

2 Q. Do you see here -- see him here today?

3 A. No, I don't recognize him. It's been too long.

4 Q. Okay. The purchase of TO-MOR-GONE, do you remember
5 who that was from or a company that it was from?

6 A. If I remember right, it's Satterfield.

7 Q. Okay. I'm going to show you what's been marked as
8 Government's Exhibits 23 and 24, and ask you to take a
9 look at those.

10 Do you recognize those documents?

11 A. Yes.

12 Q. Okay. And what is Government's Exhibit 23? Just
13 generally what is the piece of paper?

14 A. It's a copy of the invoice.

15 Q. All right. And 24 is what?

16 A. A copy of our check.

17 MR. BRADBURY: All right. Move to introduce
18 these as Government's Exhibit 23 and 24.

19 THE COURT: Any objection?

20 DEFENDANT GIROD: No objections.

21 THE COURT: Exhibits 23 and 24 are admitted. .

22 (Whereupon, Government's Exhibit Numbers 23 and 24
23 were admitted into the record.)

24 MR. BRADBURY: And I would ask to publish
25 Exhibit 23 to the jury, and let's take a look at number

1 23, the invoice.

2 BY MR. BRADBURY:

3 Q. Is the invoice -- who is the invoice to, to which
4 company?

5 A. To Family Health Foods.

6 Q. Okay. And that's your store or the store that
7 you're employed at?

8 A. Correct.

9 Q. Okay. What is the item that was purchased and for
10 how much?

11 A. TO-MOR-GONE for \$126.

12 Q. And is there a quantity of the product purchased?

13 A. Eighteen pieces.

14 Q. And what were the pieces? What was the -- how was
15 the product contained? What did it look like?

16 A. In small containers, 10 containers.

17 Q. And that's what was sold at the store?

18 A. Yes.

19 Q. Exhibit 24 is the check, and tell us the date of the
20 check, who it was made out to, and for how much.

21 A. The date was November 13, '13, made out to
22 Satterfield Naturals for \$126.

23 Q. Okay. And who signed the check?

24 A. Kevin Miller.

25 Q. That's you?

1 A. That's me, yes.

2 Q. Do you remember this transaction on November 13th?

3 A. I don't remember it. Of course, it's been so long
4 ago.

5 Q. Okay. Do you -- based on looking at the invoice and
6 the check, do you remember purchasing a quantity of the
7 TO-MOR-GONE, not necessarily on November 13th, but
8 purchasing the 18 tins of TO-MOR-GONE?

9 A. Yes, I remember.

10 Q. And how did that occur? Was that a transaction in
11 the mail or in person or where was it?

12 A. It was in person.

13 Q. Tell us about that. Was that at your store?

14 A. Yes, that was at the store.

15 Q. And who did you purchase it from?

16 A. From Sam.

17 Q. Did you know Sam before that date in November of
18 2013?

19 A. No. I knew of his name and the company, but I
20 didn't know him personally.

21 Q. The meeting with Sam was that something planned in
22 advance, or did he just stop in?

23 A. He just stopped in.

24 Q. Did he tell you anything about the product that day,
25 about the TO-MOR-GONE?

1 A. No, not that I remember.

2 Q. Did he provide you with any of the brochures or
3 pamphlets or just the product?

4 A. Just the product.

5 Q. And you went ahead and wrote a check and paid for it
6 that day?

7 A. Correct.

8 Q. In November of 2013, did Sam tell you that there had
9 been a federal order ordering him not to sell this
10 product?

11 A. No.

12 Q. Would you have purchased the 18 tins of TO-MOR-GONE
13 if you had known that?

14 A. No.

15 Q. Did law enforcement, a federal agent, come to meet
16 with you at some point after this?

17 A. Yes.

18 Q. Do you remember about when that was?

19 A. No, I don't.

20 Q. Okay. Do you remember who it was?

21 A. Steven Lamp.

22 Q. Do you see him here in the courtroom?

23 A. Yes, now I do. Sorry, it took a little time.

24 Q. That's quite all right.

25 All right. When -- what was your purpose of meeting

1 with Agent Lamp?

2 A. He came to inform us of the product not being legal.
3 He came to take any, but we happened to be out of it when
4 he was there.

5 Q. So by the time Agent Lamp -- did he personally come
6 to your store?

7 A. Yes.

8 Q. By the time that he came to the store, you had sold
9 out of the 18 tins?

10 A. Yes, correct.

11 Q. Okay. Did you purchase anymore of the TO-MOR-GONE
12 after Agent Lamp came to your store?

13 A. No.

14 Q. Did you have any conversations with Sam?

15 A. No.

16 Q. At any point did Sam during the conversation in
17 November of 2013, or around that time, did he tell you
18 that the product had been recalled or wasn't supposed to
19 be sold?

20 A. No.

21 MR. BRADBURY: Okay. That's all the questions
22 I have.

23 Thank you.

24 THE COURT: All right. Mr. Girod, any
25 questions for Mr. Miller?

1 DEFENDANT GIROD: Thank you.

2 CROSS-EXAMINATION

3 BY DEFENDANT GIROD:

4 Q. Hi, Kevin.

5 A. Hi.

6 Q. Did you ever have any complaints of any of the
7 customers?

8 A. No.

9 Q. In your store -- you've got a nice store, so do you
10 have any other things in there that are not FDA approved?

11 A. Not that I'm aware of, no.

12 DEFENDANT GIROD: Okay. Thank you very much.
13 That's all I have.

14 THE COURT: All right. Thank you.

15 See if there's any redirect.

16 MR. BRADBURY: There is not, and he can be
17 excused.

18 THE COURT: All right. Thank you, Mr. Miller.
19 You're finally excused at this time.

20 Ladies and gentlemen, we'll take a short recess
21 at this time, about 15 minutes.

22 Please keep in mind the admonitions that you've
23 been given previously not to discuss the case among
24 yourselves, and we'll call you back about 11:15, and
25 we'll go until 12:00 and take our lunch break.

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

2 THE COURT: Thank you.

3 Before we recess, about how long will the next
4 witness be, counsel?

5 THE CLERK: I'm sorry what?

6 MS. SMITH: Twenty to 30 minutes.

7 THE COURT: All right.

8 MS. SMITH: And then we have a very short one
9 after that, get through those two.

10 THE COURT: Thank you.

11 We will be in recess until 11:15.

12 (Whereupon, a recess was taken at 11:00 a.m.,
13 and Day 2 of the Jury Trial proceedings continued at
14 11:15 a.m., on the record in open court, without the
15 juror members present, as follows.)

16 THE COURT: Thank you.

17 We'll bring the jury back in at this time.

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

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

20 The record will again reflect all members of
21 the jury are present.

22 The defendant and all counsel are present in
23 the courtroom.

24 And I believe we're ready for our next witness.

25 MS. SMITH: The United States calls

1 Jeffrey Burkholder.

2 THE COURT: Thank you.

3 THE CLERK: Raise your right hand, please.

4 Do you swear or affirm, that the testimony
5 you're about to give in this matter shall be the truth,
6 the whole truth, and nothing but the truth, as you shall
7 swear unto God or affirm, subject to the penalty of
8 perjury?

9 THE WITNESS: Yes.

10 THE COURT: Thank you. You may proceed.

11 JEFFREY BURKHOLDER,
12 having been first duly placed under oath, was examined
13 and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SMITH:

16 Q. Good morning, sir.

17 Could you please tell the jury your name, and spell
18 it for the court reporter?

19 A. Jeffrey Burkholder, J-E-F-F-R-E-Y
20 B-U-R-K-H-O-L-D-E-R.

21 Q. Mr. Burkholder, where are you from?

22 A. Wisconsin.

23 Q. Where in Wisconsin?

24 A. Curtiss. Actually, my home address would be Owen.

25 Q. You don't have to give us your home address.

1 Where's Curtiss, Wisconsin?

2 A. Central.

3 Q. About how far is it from Lexington, Kentucky?

4 A. Right around, just shy of 700 miles.

5 Q. What do you do for a living, Mr. Burkholder?

6 A. We're a food distributor.

7 Q. What's the name of the food distributor?

8 A. Cloverdale Warehouse.

9 Q. Are you a part owner of Cloverdale --

10 A. Yes.

11 Q. Just let me finish the question so we can make sure
12 the court reporter gets everything down.

13 A. Sorry.

14 Q. Who do you own Cloverdale Warehouse with?

15 A. Me and my -- myself, my father, and one of my
16 brothers.

17 Q. A family business?

18 A. Yes.

19 Q. How long has Cloverdale Warehouse been a family
20 business?

21 A. We purchased it in 2008.

22 Q. And what does Cloverdale do?

23 A. We distribute food products to stores across
24 15 states in the midwest.

25 Q. Can you give us a range of how far west and how far

1 east those states go?

2 A. Well, basically as far east as Ohio, as far south as
3 Miller, Arkansas, west to the eastern side of the
4 Dakotas.

5 Q. What type of products? You mentioned food.

6 A. Well, we do a lot of dry goods, frozen fruit,
7 basically anything you would use in the kitchen, baking
8 products and such like that.

9 Q. How does -- how does a store order something from
10 you usually?

11 A. They can call, email, or fax in orders, or mail them
12 in.

13 Q. What type of sources do you get your products from?

14 A. From coast to coast.

15 Q. Is there a range of size of company you deal with?

16 A. Not really. I mean, we buy from anything from
17 small -- small companies up to, you know, huge companies
18 that are shipping worldwide.

19 Q. What types of clients do you provide your products
20 to?

21 A. Well, there's a huge variety. I mean, obviously we
22 sell to any businesses that have interest in buying from
23 us. Most of our clientele would be your smaller mom and
24 pop owned country stores and bakeries.

25 Q. You're here under subpoena here today; is that

1 correct?

2 A. Correct.

3 Q. You don't want to be here today, do you, sir?

4 A. Not really.

5 Q. Do -- does Cloverdale Warehouse distribute vitamins?

6 A. No.

7 Q. And why is that?

8 A. It's not our line of business.

9 Q. What do you mean by it's not your line of business?

10 A. Well, we're mostly a food distributor, and it's just
11 not, yeah, it's just not something we prefer doing.

12 Q. Do you -- do you sell health products?

13 A. Not really, no.

14 Q. Why is that?

15 A. It's -- again, it's just not our line of business.
16 It's not what we do.

17 Q. Do you -- did you do business with a man named
18 Samuel Girod?

19 A. Yes.

20 Q. Do you see him here in the courtroom today?

21 A. Yes.

22 Q. How long have you been doing business with him?

23 A. If I remember correctly, I believe it was 2009.

24 Q. Do you know what the name of his company is?

25 A. Satterfield Natural is what we would know him as.

1 Q. Is that what you have him in your business records
2 as?

3 A. Yes.

4 Q. Prior to the fall of 2013, had you purchased
5 products from him?

6 A. Yes.

7 Q. Which products?

8 A. Chickweed Salve.

9 Q. Have you purchased any of his other products?

10 A. No.

11 Q. Did -- did you know he made other products?

12 A. I was aware of that, yes.

13 Q. How were you aware of that?

14 A. He had notified us that he manufactured other
15 products.

16 Q. Do you know what Chickweed Healing Salve is meant to
17 be used for?

18 A. I don't remember exactly what it was -- what all it
19 was supposed to be for anymore, no.

20 Q. Did Mr. Girod approach Cloverdale Warehouse about
21 selling some Chickweed Healing Salve in the fall of 2013?

22 A. Yes.

23 Q. What did he offer to sell Cloverdale?

24 A. From the best of my recollection he had contacted us
25 and offered us to sell a product, wondered if we would be

1 interested in buying a larger shipment.

2 Q. When you say a larger shipment, what does that mean?
3 Was it several hundred containers, or was it a dozen
4 containers? Do you remember roughly?

5 A. I don't remember. I just know that he said he would
6 give us a better price if we took an X amount of product.
7 I don't remember exactly how much it was.

8 Q. So he offered you a better price than prior
9 transactions?

10 A. Yes.

11 Q. Do you remember roughly when this was?

12 A. If the invoice date is correct, then in my mind it
13 would have been December 27th of '13.

14 MS. SMITH: I would like to hand the witness
15 Government's Exhibit 11 and 12.

16 BY MS. SMITH:

17 Q. If you could look through those two documents, have
18 you seen those documents before?

19 A. Yes.

20 Q. And just generally can you tell us short -- briefly
21 what they are before you describe them?

22 A. An invoice and a check.

23 Q. Were those documents that Cloverdale kept in the
24 regular course of business?

25 A. Yes.

1 MS. SMITH: The United States would move to
2 admit Government's Exhibit 11 and 12.

3 THE COURT: Any objection, Mr. Girod, to
4 Exhibits 11 and 12?

5 DEFENDANT GIROD: No.

6 THE COURT: All right. Exhibits 11 and 12 are
7 admitted.

8 (Whereupon, Government's Exhibit Numbers 11 and 12
9 were admitted into the record.)

10 MS. SMITH: If we could publish Government
11 Exhibit 11 to the jury.

12 BY MS. SMITH:

13 Q. What is this document, sir?

14 A. It's an invoice for Chickweed Salve.

15 Q. Who is it made out to?

16 A. Cloverdale Warehouse.

17 Q. And what's the date on it?

18 A. 9/27 of '13.

19 Q. What did Cloverdale purchase?

20 A. It says 30 cases.

21 Q. What was the total amount of the invoice?

22 A. \$6,000.

23 Q. And what's the company listed as selling you this
24 product?

25 A. Company stamped as selling is Satterfield Natural.

1 Q. And where is that located? What's the address
2 there?

3 A. 409 Satterfield Lane, Owingsville, Kentucky.

4 Q. If we could look at Government Exhibit 12.

5 Is this a company check of Cloverdale's?

6 A. Yes.

7 Q. And what's the amount?

8 A. \$6,000.

9 Q. Who is it made out to?

10 A. Satterfield Naturals.

11 Q. And what's the date of the check?

12 A. 10/24 of '13.

13 Q. Was this Cloverdale payment for that \$6,000 invoice?

14 A. Yes.

15 Q. Do you know how you delivered the check?

16 A. I believe we would have mailed it.

17 Q. How was the \$6,000 of Chickweed delivered for that
18 sale?

19 A. I believe our truck would have probably picked it up
20 in Kentucky at a local store close by is what I think. I
21 don't recall for sure. We don't have 100 percent record
22 on that, but I believe we would have picked it up.

23 Q. Is that something that had happened before?

24 A. Yes. In prior transactions we had picked up
25 product.

1 Q. And where would the truck have come from?

2 A. The truck that runs Kentucky would have come out of
3 our Missouri location.

4 Q. Where would it have returned to?

5 A. Missouri.

6 Q. Did this \$6,000 of product end up in your Missouri
7 warehouse?

8 A. It would initially went there and then distributed
9 from there. Some of it would also went to our Wisconsin
10 warehouse.

11 Q. How many different warehouses does Cloverdale have?

12 A. Two.

13 Q. So just the Wisconsin and Missouri one?

14 A. Yes.

15 Q. And did this shipment of Chickweed end up in both of
16 those warehouses?

17 A. I believe so.

18 Q. Does Cloverdale -- how does Cloverdale advertise its
19 product selection to its customers.

20 A. Through the catalog that we send out periodically.

21 Q. Did you put the Chickweed Healing Salve in your
22 catalog?

23 A. Yes.

24 Q. Had you ever received some promotional material for
25 Chickweed?

1 A. Yes.

2 Q. For this Chickweed Healing Salve?

3 A. Yes.

4 Q. And where did you receive that material?

5 A. Sam would have gave that to us with our first
6 shipment.

7 Q. What -- do you remember what type of material that
8 was, what it looked like?

9 A. If I remember correctly, it would have been a green
10 tri-fold flyer of some sort is what my memory tells me.

11 Q. Did he provide any of those flyers with the
12 September 2013 sale?

13 A. Not that I'm aware of.

14 Q. Did you put any sort of description of the Chickweed
15 Healing Salve in your catalog?

16 A. Not other than Chickweed Salve.

17 Q. You just described it by the title; is that right?

18 A. Yes.

19 Q. Were you aware when you bought the \$6,000 of
20 Chickweed that he was under a federal court order to stop
21 selling the product?

22 A. We were not.

23 Q. Did he tell you that he was under a federal
24 injunction not to sell this product?

25 A. No.

1 Q. Did you know that it had come down just weeks before
2 he made this transaction?

3 A. Yes.

4 Q. Did you learn that later?

5 A. (Nods head)

6 Q. Is that a yes? Did you learn later that he was
7 under a federal court order?

8 A. Yes.

9 Q. Would you have purchased the \$6,000 of Chickweed
10 Healing Salve if you had known it was under a court order
11 not to be sold?

12 A. No.

13 Q. Why do you think he sold you so much product right
14 after this court order came down?

15 A. I guess -- I can't speculate on why he did it. He
16 called us and told us that he was going to be
17 discontinuing or not manufacturing for a time period and
18 just offered us a product, and that's why we would have
19 purchased it because he said it wasn't going to be
20 available for a while.

21 Q. How did you learn about the injunction, about the
22 court order he was under?

23 A. Through a federal subpoena.

24 Q. Were you approached by Agent Steven Lamp?

25 A. Well, we got the subpoena. Then I wasn't sure what

1 it was about so with the subpoena created with the
2 materials they requested, and as the court date
3 approached, I called and said what is all this about
4 because I wasn't sure what was going on. And then
5 Agent Lamp told me what was going on, and then came up
6 and picked up the product we had in our warehouse.

7 Q. Did you do -- when you first got the subpoena, did
8 you know what product it pertained to?

9 A. I was a little confused on it, yeah, I wasn't sure.

10 Q. How did you figure out what product it related to?

11 A. When I made the phone call to Agent Lamp.

12 Q. Once you learned it related to the Chickweed Healing
13 Salve, did you do anything with respect to the product
14 you had in your warehouse?

15 A. Yeah. We pulled it off the shelf and notified all
16 the employees that it was no longer to be sold.

17 Q. I would like to hand you what's been premarked as
18 Government's Exhibit 10C.

19 Do you recognize the image in that exhibit?

20 A. Yes.

21 Q. Have you seen not only the image before but what it
22 is taking a picture of?

23 A. Yes.

24 Q. Is that an accurate and fair depiction of what's in
25 the photograph?

1 A. Yes.

2 MS. SMITH: The United States would move to
3 admit Government Exhibit 10C.

4 THE COURT: Any objection, Mr. Girod?

5 DEFENDANT GIROD: No.

6 THE COURT: United States Exhibit 10C is
7 admitted.

8 (Whereupon, Government's Exhibit Number 10C was
9 admitted into the record.)

10 MS. SMITH: If we could publish that to the
11 jury.

12 THE COURT: Yes, it may be published.

13 MS. SMITH: Just have to give it a minute.

14 THE WITNESS: Sure.

15 MS. SMITH: If we can zoom in a little bit.

16 BY MS. SMITH:

17 Q. What's depicted in that photograph?

18 A. The boxes would have been the product that the
19 Chickweed was in, and then we would have wrote "do not
20 sell this product" on it so nothing gets accidentally
21 distributed after we were made aware of the fact that it
22 was under a federal order not to be sold.

23 Q. When Agent Lamp came to Cloverdale, did you provide
24 him the containers that you had in stock?

25 A. Yes.

1 Q. Did you -- did they all come from one of the two
2 warehouses?

3 A. Yes.

4 Q. At that time did you sell products in both
5 warehouses?

6 A. Pardon?

7 Q. Did you -- did the product that you gave to
8 Agent Lamp come from both Missouri and Wisconsin?

9 A. Correct.

10 Q. Do you remember approximately how many boxes?

11 A. I do not, no.

12 Q. How many containers you had?

13 A. I don't.

14 Q. Do you remember counting the containers in
15 Wisconsin?

16 A. Yes, I do remember counting with Agent Lamp.

17 Q. Do you think it was around maybe 400?

18 A. That would sound about correct.

19 Q. And then there were about 600 in Missouri?

20 A. That sounds correct.

21 MS. SMITH: I have a lot of boxes here behind
22 me. If the witness needs to step down to inspect them, I
23 just want to have him verify these, the materials given
24 to Agent Lamp.

25 THE COURT: Yes. If you would like to step

1 down and open the boxes up, that would be fine.

2 MS. SMITH: We don't have to open every one.

3 Would you like to inspect every one?

4 THE WITNESS: No.

5 MS. SMITH: If I could hand one exemplar to the
6 witness. It's closed.

7 THE COURT: Yes, ma'am, that's fine.

8 MS. SMITH: And this is from Government
9 Exhibit 10, which will be admitted pursuant to
10 introduction by Agent Lamp.

11 BY MS. SMITH:

12 Q. That can I handed you is that one of the tins that
13 you provided to Agent Lamp?

14 A. Yes, it would look like one of the tins we would
15 have handed to him.

16 Q. Is that a typical appearance of the product you
17 purchased from the defendant?

18 A. As far as I can remember, yes.

19 Q. What does it say on the label?

20 A. "Chickweed Healing Salve, use is good for skin
21 disorder, dry skin, cuts, burns, draws, and poison ivy."

22 Q. Is there any expiration date on the product?

23 A. I don't see one, no.

24 Q. Is there any lot number, batch number, on the
25 product?

1 A. Not that I can see.

2 Q. Are expiration dates and lot numbers things that
3 some of the products in your warehouses contain?

4 A. Depending on the product, yes.

5 Q. Have you ever had to deal with a recall in your
6 warehouse?

7 A. Yes.

8 Q. And how does that work?

9 A. The manufacturer notified us that there was a
10 recall, and then we would send notification to all of our
11 customers that the product was being recalled and got the
12 product back to our warehouse and either destroyed it or
13 send it back to the manufacturer.

14 Q. Did Mr. Girod ever notify you that his Chickweed
15 Healing Salve had a recall requested by the FDA?

16 A. Not that I'm aware of.

17 Q. After you found out that the Chickweed was under a
18 court order, did you discuss it with Mr. Girod?

19 A. We didn't contact him, no.

20 Q. Did he contact you?

21 A. Yes.

22 Q. Did -- did he make you any offers as to how to
23 resolve these issues?

24 A. He had at one point in time offered to replace the
25 product, yes.

1 Q. And that was after you bought the \$6,000 worth of
2 product?

3 A. Correct.

4 Q. Is that after you learned of the injunction?

5 A. Correct.

6 Q. Did he replace the product?

7 A. No. He didn't take it.

8 Q. Did you purchase anymore Chickweed from him after
9 this?

10 A. No.

11 Q. In addition to purchasing products from -- from
12 Mr. Girod, did he ever purchase anything from Cloverdale?

13 A. Yes, he was a customer of ours.

14 Q. What would he typically purchase?

15 A. Well, I can't remember everything he purchased from
16 us, but I do know he purchased a lot of olive oil from
17 us. I do know that was one product.

18 Q. Did he purchase olive oil from Cloverdale after this
19 \$6,000 transaction we've been talking about?

20 A. Yes.

21 MS. SMITH: I would like to hand the witness
22 Government's Exhibit 13 and 14.

23 BY MS. SMITH:

24 Q. Do you recognize those documents?

25 A. The invoice, I do.

1 Q. What about number 14?

2 A. Well, I don't personally recognize it. Our
3 secretary would have probably handled it, but it does
4 look like a check that would have been written to
5 Cloverdale Warehouse.

6 Q. As an owner of Cloverdale Warehouse, are you
7 familiar with records that are maintained by the company?

8 A. Yes.

9 Q. Would a check received by Cloverdale have been a
10 record regularly maintained by the business?

11 A. Yes.

12 MS. SMITH: The United States moves to admit
13 Government's Exhibit 13 and 14.

14 THE COURT: Any objection?

15 DEFENDANT GIROD: I object.

16 THE COURT: All right. State the basis of the
17 objection.

18 DEFENDANT GIROD: Well, I don't think that we
19 should put the check, everything -- all my numbers are on
20 there. It's not very secure.

21 THE COURT: All right. Now, before that
22 document would be published for public consumption,
23 we'll remove those check -- the check numbers, but
24 otherwise the documents will be admitted as United States
25 Exhibits 13 and 14.

1 (Whereupon, Government's Exhibit Numbers 13 and 14
2 were admitted into the record.)

3 MS. SMITH: If we could publish Exhibit 13 for
4 the jury.

5 BY MS. SMITH:

6 Q. Is this a Cloverdale invoice?

7 A. Yes.

8 Q. What's the date on it?

9 A. 5/19 of '14.

10 Q. Who is the customer you were selling something to?

11 A. Satterfield Natural.

12 Q. What's the address?

13 A. 409 Satterfield Lane, Owingsville, Kentucky.

14 Q. Can you tell from this invoice how this order would
15 have been delivered?

16 A. This order would have generally been delivered with
17 our trucking company that we own.

18 Q. What products were purchased on this invoice?

19 A. Olive oil.

20 Q. In what quantity?

21 A. 17 cases of 6/1 gallon of the extra virgin, and
22 eight cases of 6/1 gallons of the Pomace olive oil.

23 Q. What's the -- what is Pomace olive oil?

24 A. Pomace olive oil is the -- would be a lower grade of
25 olive oil, the last pressing that -- the last time they

1 pressed the olive oil so it's a cheaper grade.

2 Q. What is the total amount in this invoice?

3 A. 2,236.24.

4 MS. SMITH: If we could briefly look at
5 Government Exhibit 14.

6 BY MS. SMITH:

7 Q. Do you know how he placed this order for olive oil?

8 A. I don't recall specifically on this order, but
9 generally he would have contacted -- he would have called
10 us to place the order, if I remember correctly.

11 MS. SMITH: Government Exhibit 14.

12 BY MS. SMITH:

13 Q. What's the amount of that check?

14 A. It appears to be 2,236.24.

15 Q. Does that match the amount on the invoice?

16 A. Yes, it does.

17 Q. What's the date on the check?

18 A. 6/17 of '14.

19 Q. Who -- who made out the check?

20 A. The name on the check comes from Sam Girod.

21 Q. At what address?

22 A. 409 Satterfield Lane, Owingsville, Kentucky.

23 Q. After the \$6,000 sale that we talked about, did
24 Mr. Girod attempt to sell anymore products to Cloverdale?

25 A. I don't recall that he specifically tried to sell

1 product, but I do recall that he offered to replace the
2 product that had been taken.

3 Q. Did you discuss his legal issues with him at any
4 point?

5 A. I guess I would like to have a little bit more
6 explanation on that question. Did I call him and discuss
7 it, or did he -- you already asked if he contacted us to
8 discuss it.

9 Q. Did he contact you and discuss his legal issues?

10 A. He did contact us and talk about it, yes.

11 Q. What did he say?

12 A. I can't correctly -- or I can't remember the entire
13 conversation. It's been too long ago. And I'll try and
14 put it in context the way I took it without trying to
15 misrepresent him.

16 From what my memory serves me, I know at one point
17 in time he had contacted us and said that he had
18 everything taken care of and he was good to sell the
19 product again, and at another point in time he had
20 called -- contacted us and stated that we
21 wouldn't have legal -- if I -- we wouldn't have legally
22 had to provide some of the documents that we had to the
23 government. I think if I have that correct, would have
24 been kind of the -- what I remember would have been the
25 point of the conversation.

1 Q. Were those two different conversations about having
2 everything resolved and about responding to the
3 subpoenas?

4 A. I believe so.

5 Q. Were they over the phone or in person?

6 A. Over the phone.

7 Q. Both of them?

8 A. Yes.

9 Q. Were they after you bought the \$6,000 in product
10 from him?

11 A. Yes.

12 Q. After that sale did you purchase anymore product
13 from him?

14 A. No.

15 Q. Why not?

16 A. Well, I guess, we didn't want to -- I mean, I wasn't
17 going to become involved again, because even though he
18 told me the products were clear, I did not want to take
19 our company -- did not want to assume the risk that it
20 wasn't in the clear. I had not received notification
21 from the U.S. Government that the product was cleared to
22 be sold.

23 And, quite frankly, we don't enjoy being involved in
24 this, we have no desire to be involved in it, and we just
25 didn't want to become involved any further, and we try

1 to -- I mean, if I have the U.S. Government telling me
2 that a product has been recalled, I will not knowingly go
3 against that order.

4 MS. SMITH: Thank you, sir.

5 THE COURT: Thank you.

6 Mr. Girod, you may question the witness.

7 DEFENDANT GIROD: Thank you.

8 CROSS-EXAMINATION

9 BY DEFENDANT GIROD:

10 Q. Hi, Jeffrey.

11 A. Hello.

12 Q. I guess the first question is did you ever have any
13 complaints from any customers on the Chickweed?

14 A. No, sir.

15 Q. Did you and your dad -- did you do this free-will as
16 far as buy product from us and so on? I never forced you
17 to do anything; right?

18 A. No.

19 DEFENDANT GIROD: That's all I have.

20 Thank you.

21 THE COURT: All right. Thank you.

22 Any follow up?

23 MS. SMITH: Nothing further of this witness.

24 He may be excused.

25 THE COURT: Yes.

1 Thank you, Mr. Burkholder. You're excused.

2 If you have any exhibits, you can pass those to
3 the security officer.

4 Thank you.

5 You may call your next witness.

6 MR. BRADBURY: Yes, Your Honor.

7 Mary J. Miller.

8 THE COURT: Thank you.

9 THE CLERK: Would you please raise your right
10 hand?

11 Do you affirm that the testimony you're about
12 to give in this matter shall be the truth, the whole
13 truth, and nothing but the truth, as you shall affirm,
14 subject to the penalty of perjury?

15 THE WITNESS: Yes, I affirm.

16 THE COURT: Thank you.

17 Mr. Bradbury, you may proceed.

18 MR. BRADBURY: Thank you.

19 MARY J. MILLER,
20 having been first duly placed under oath, was examined
21 and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BRADBURY:

24 Q. Good morning, ma'am.

25 A. Good morning.

1 Q. Please state your name for us.

2 A. Mary Miller.

3 Q. Ms. Miller, we've heard from a couple other people
4 with the last name Miller. We've heard from a
5 Kevin Miller and actually another Mary Miller. Any
6 relation to either of those?

7 A. No.

8 Q. Where do you live, in what city and state?

9 A. Arcola, Illinois.

10 Q. And where is Arcola in Illinois, north, south,
11 central?

12 A. It is central.

13 Q. Describe just briefly the community in Arcola. Is
14 it an Amish community?

15 A. Yes, we have an Amish community. It's a good sized
16 community.

17 Q. Any idea roughly how -- the population?

18 A. No, I have no idea.

19 Q. All right. What do you do for a living?

20 A. I am manager in our fabric store.

21 Q. What's the name of that store?

22 A. Miller's Dry Goods.

23 Q. How long has that company been in existence?

24 A. Over 50 years.

25 Q. Is it a family business?

1 A. Yes.

2 Q. And how long have you been an employee or a manager
3 or owner of that business?

4 A. For probably nine years.

5 Q. How many employees at Miller's Dry Goods?

6 A. Approximately five. They're just part time.

7 Q. And what type of products are sold at your store?

8 A. Anything from fabric to notions to kitchenware, gift
9 items.

10 Q. What are -- are notions, is that things for sewing?

11 A. Yes.

12 Q. Ask you if you are familiar with Sam Girod.

13 A. Yes.

14 Q. Do you see him here today in the courtroom?

15 A. I don't remember.

16 Q. When -- when was the last time you had seen
17 Sam Girod?

18 A. Back in 2013.

19 Q. So it's been a few years?

20 A. Yes.

21 Q. Tell us how you met with Mr. Girod, where it was and
22 under what circumstances.

23 A. He came to our store to sell products.

24 Q. Was this a planned meeting --

25 A. No.

1 Q. -- or -- okay. Would that be unusual for a vendor
2 to show up to sell products?

3 A. No, that's not unusual. We have a lot of drop-ins.

4 Q. Okay. And approximately when did this occur that
5 Mr. Girod stopped in to the store?

6 A. In 2013.

7 Q. Okay. And I'm going to show you Government's
8 Exhibits 19, 20, 21, and ask you to take a look at those.

9 All right. Do those look familiar to you?

10 A. Yes.

11 Q. All right. Exhibit 19, what is that document just
12 briefly?

13 A. It shows me the salves and stuff and the wholesale
14 price list.

15 Q. And who did you receive this document or the
16 pamphlets from?

17 A. From Sam.

18 MR. BRADBURY: We would move to introduce as
19 Government's Exhibit 19.

20 THE COURT: Any objection?

21 DEFENDANT GIROD: I'd object. There's not that
22 kind of stuff on there.

23 THE COURT: I'm sorry, did you say you do or do
24 not?

25 DEFENDANT GIROD: I would object.

1 THE COURT: You do object.

2 All right. I'll overrule the objection.

3 Exhibit 19 will be admitted.

4 (Whereupon, Government's Exhibit Number 19 was
5 admitted into the record.)

6 BY MR. BRADBURY:

7 Q. All right. Ms. Miller, Government's Exhibit 20,
8 what does that item show?

9 A. It shows the receipt on which he gave me my ticket
10 for what I owed on the products that I bought.

11 Q. Okay. Do you recall the products that you
12 purchased?

13 A. Yes.

14 Q. What were they?

15 A. I purchased the Chickweed Salve, the TO-MOR-GONE,
16 and the R.E.P.

17 Q. What was the total sales price for those items?

18 A. The total was \$703.

19 Q. And Government's Exhibit 21, what does that item
20 show?

21 A. It shows my business check that I paid my products
22 with, and my personal name that I signed at the bottom.

23 MR. BRADBURY: Okay. Government would also
24 move to introduce Exhibits 20 and 21.

25 THE COURT: See if there's an objection to

1 those two documents.

2 DEFENDANT GIROD: 21, again we've got numbers
3 on the bottom.

4 THE COURT: All right. This is Ms. Miller's
5 check. Before those checks are made available for public
6 review, the check numbers will be removed, but they will
7 be admitted into evidence.

8 (Whereupon, Government's Exhibit Numbers 20 and 21
9 were admitted into the record.)

10 BY MR. BRADBURY:

11 Q. All right. Ms. Miller, the check that was issued
12 who was that payable to, did you say?

13 A. It was payable to Satterfield Naturals.

14 Q. And was Satterfield Naturals Sam Girod, or was that
15 anything different?

16 A. No, it was to Sam Girod.

17 Q. Was the check given to him personally?

18 A. Yes.

19 Q. You handed it to him on --

20 A. Yes.

21 Q. -- the day you bought the products?

22 A. Yes.

23 Q. All right. Let's talk about the products that you
24 purchased.

25 First, was the Chickweed Healing Salve, what did you

1 think that product was for?

2 A. For skin disorders, something that you hurt, help
3 heal it.

4 Q. Okay. When you purchased the product from Sam Girod
5 on November 13th of 2013, did your store, Miller's Dry
6 Goods, already have some of the product?

7 A. It used to. We didn't have any left at the time,
8 but my deceased mother-in-law had some when she owned the
9 store.

10 Q. How long ago approximately had it been that your
11 store had some of the Chickweed Salve?

12 A. Probably nine years or more.

13 Q. So it had been a considerable amount of time?

14 A. Uh-huh.

15 Q. November 2013 when Mr. Girod showed up and sold you
16 additional product, did he tell you that he had been
17 ordered by a federal judge not to sell the product?

18 A. No, he did not tell me.

19 Q. Tell you anything about any court --

20 A. No.

21 Q. -- proceeding going on?

22 A. No.

23 Q. Would you have purchased the Chickweed Salve if you
24 had known that there was a court order?

25 A. No, I would not have purchased it.

1 Q. The second product is called TO-MOR-GONE. What did
2 you think that product was for?

3 A. To help with tumors.

4 Q. Did you think you could -- you or anybody who
5 purchased it could apply it and get rid of a tumor?

6 A. That's just what I was on the meaning of.

7 Q. Okay. Did Mr. Girod tell you that a federal court
8 had told him he couldn't sell that product?

9 A. No, he did not.

10 Q. Okay. Would you have purchased TO-MOR-GONE if you
11 had known that?

12 A. No, I would not have.

13 Q. The third product that you purchased for sale in the
14 store was what?

15 A. The R.E.P.

16 Q. And what did you think the R.E.P. was for?

17 A. It was also to have -- to help with infection and
18 stuff and -- yeah, to help with problems that you had.

19 Q. Okay. After you purchased all of these products
20 totaling \$703, did law enforcement or the FDA contact you
21 about them?

22 A. Yes.

23 Q. Do you know about when that happened?

24 A. I don't remember.

25 Q. Okay. Who was it, or how did you end up in contact

1 with -- with an agent or --

2 A. He just dropped by our store.

3 Q. Okay. Do you remember who he is?

4 A. His last name is Lamp.

5 Q. All right. Do you see him in the courtroom today?

6 A. Yes.

7 Q. All right. So he showed up at the store as well?

8 A. Uh-huh.

9 Q. Was this some time after November of 2013 --

10 A. Yes.

11 Q. -- when you bought the products? Did you turn over
12 any products to --

13 A. Yes, we --

14 Q. -- the agent?

15 A. -- turned over everything we had left, we turned
16 over to him.

17 Q. Do you recall approximately how much you had of the
18 various products of the Chickweed, the TO-MOR-GONE, and
19 the R.E.P.?

20 A. Well, we had bought a case of each.

21 Q. Okay. Had you sold some of each of the products?

22 A. Yes.

23 Q. Okay. But you had -- but did you have remaining
24 product of each of the three?

25 A. Yes.

1 Q. And those items were all turned over to Agent Lamp?

2 A. Correct.

3 Q. Did you ever order anymore of these products after
4 November of 2013?

5 A. No.

6 MR. BRADBURY: That's all the questions I have.
7 Thank you.

8 THE WITNESS: Okay.

9 THE COURT: Thank you.

10 Mr. Girod.

11 CROSS-EXAMINATION

12 BY DEFENDANT GIROD:

13 Q. Hi, Mary.

14 A. Hi.

15 Q. I guess my first question would be did you ever have
16 any complaints from any of your customers?

17 A. No, I don't believe I did.

18 Q. Do you feel that anybody could have any side effects
19 using this -- these products?

20 MR. BRADBURY: Objection.

21 THE COURT: Sustained. It's beyond the scope
22 of her knowledge.

23 DEFENDANT GIROD: That's it. Thank you.

24 THE COURT: All right. Thank you.

25 Anything else of the witness? Anything else of

1 this witness?

2 MR. BRADBURY: No, Your Honor. She can be
3 excused.

4 THE COURT: Thank you, Ms. Miller. You may
5 step down. You're finally excused.

6 All right. Thank you.

7 Ladies and gentlemen, at this time we will take
8 our recess for lunch. We'll give you about an hour and
9 15 minutes, until about 1:15 this afternoon.

10 Please keep in mind the admonitions that you
11 have been given several times.

12 Please don't discuss the case among yourselves,
13 and please don't allow anyone to approach you to discuss
14 the matter. If that should happen, as you know, you
15 should report that to the Court, and allow the Court to
16 deal with that.

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

19 Don't do any type of research or investigation
20 on your own.

21 Of course, don't communicate through social
22 media about your status as a juror or anything about this
23 case.

24 And don't make up your mind until the matter is
25 finally submitted to you.

1 With that admonition, you can leave your
2 notebooks there in your chairs if you wish.

3 You'll be excused until 1:15. I think it's
4 still raining outside. I don't know if anyone has a
5 jacket or anything, an umbrella. If you do, you can
6 certainly go back and get any of those materials, but
7 otherwise you will be excused until 1:15 this afternoon.

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

9 THE COURT: Thank you, and please be seated.
10 We'll close those doors in the back before we
11 proceed.

12 Let me see if we have any issues to take up
13 outside the presence of the jury.

14 MS. SMITH: No, Your Honor.

15 MR. FOX: Yes, Your Honor.

16 THE COURT: Yes, Mr. Fox.

17 MR. FOX: We seem to be moving along pretty
18 quickly today, and in speaking with Mr. Girod, he's asked
19 whether it would be permissible to during the
20 presentation of the case, of his case, if he chooses to
21 testify, would it be permissible for me to ask him
22 questions that he has developed with my assistance?

23 THE COURT: If he has written those questions
24 out, I'll allow you to from the podium ask him those
25 questions. It would be subject to my previous rulings in

1 the case. And I'll go back and address one of those that
2 I just made.

3 Before the trial of the matter, the parties had
4 filed a number of motions in limine. This is prior to
5 the superseding indictment, but I did file a couple of
6 opinions on this issue of whether the defendant could
7 call individuals to offer opinion testimony that were not
8 properly qualified as opinion witnesses.

9 And the last question that was objected to,
10 which I sustained the objection, was effectively asking
11 about whether this witness, this last witness, was able
12 to testify about side effects from any of the products,
13 and that would be an opinion type question, and I would
14 not allow the defendant to ask himself those particular
15 questions as well.

16 So that ruling would apply to the defendant, as
17 well as to any other lay witnesses that might testify in
18 the case.

19 The United States -- the United States has
20 suggested that procedure to the -- to present testimony
21 from the defendant, and so I would allow that to be done
22 in the case.

23 MR. FOX: So to be clear, are you saying that
24 you want to review the questions before --

25 THE COURT: No. I'm just saying that if you

1 ask him something that he's written down that I've
2 already ruled can't be asked, then I will sustain the
3 objection, and you won't be able to then follow up with
4 that question.

5 MR. FOX: I understand.

6 THE COURT: My rulings would be with respect to
7 the motions in limine. I would reincorporate those
8 rulings at this stage of the proceedings based upon the
9 prior attempt to obtain opinion testimony through lay
10 witnesses.

11 All right. Any other issues, any other matters
12 we can take up?

13 Let's talk about our schedule here for just one
14 moment. It looks like we have made progress.

15 MS. SMITH: May I ask one thing on your prior
16 motions in limine? I'm assuming your other rulings as to
17 the prior membership association are still in place as
18 well?

19 THE COURT: The rulings are the same, but that
20 issue has not been brought up at this point in the
21 proceedings, but I would anticipate my ruling would be
22 the same if there is an attempt to raise those issues.

23 In terms of schedule for this afternoon, it
24 does appear that we have five or maybe six additional
25 witnesses. Is that accurate?

1 MS. SMITH: We have six additional witnesses.

2 THE COURT: All right. I don't think we'll
3 finish this afternoon based upon my understanding of the
4 case.

5 MS. SMITH: I think that is correct. I think
6 we'll get close, but we might have one witness left for
7 tomorrow or possibly the remainder of Agent Lamp's
8 testimony.

9 THE COURT: You have maybe about four hours of
10 additional direct examination. So the defendant should
11 be prepared to proceed with his case first thing in the
12 morning.

13 If for some reason we do finish with the
14 Government's case this afternoon, I would not expect the
15 defendant to present his case until tomorrow morning at
16 the earliest. And so I will give him the evening to
17 prepare for presentation of his case.

18 Any other issues we need to take up?

19 MS. SMITH: No, Your Honor.

20 THE COURT: We will be in recess until 1:15
21 this afternoon.

22 (Whereupon, a lunch recess was taken at 12:00 p.m.,
23 and Day 2 of the Jury Trial proceedings continued at
24 1:15 p.m., on the record in open court, without the juror
25 members present, as follows.)

1 THE COURT: Thank you.

2 We'll bring the jury back in at this time.

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

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

5 The record will again reflect that all members
6 the jury are present.

7 Defendant and all counsel are present in the
8 courtroom.

9 We will continue at this time with presentation
10 of the United States case-in-chief.

11 Ms. Smith, you may call your next witness.

12 MS. SMITH: United States calls
13 Darrell Mandrell.

14 THE COURT: Thank you.

15 THE CLERK: Raise your right hand, please.

16 Do you swear or affirm that the testimony
17 you're about to give in this matter shall be the truth,
18 the whole truth, and nothing but the truth, as you shall
19 swear unto God, or affirm, subject to the penalty of
20 perjury?

21 THE WITNESS: Yes.

22 THE COURT: Thank you, and you may proceed.

23 DIRECT EXAMINATION

24 BY MS. SMITH:

25 Q. Good afternoon, sir.

1 Could you please tell the jury your name, and spell
2 it for the court reporter?

3 A. Darrell Mandrell, D-A-R-R-E-L-L M-A-N-D-R-E-L-L.

4 Q. Mr. Mandrell, where do you live?

5 A. Mt. Sterling.

6 Q. How long have you lived in Mt. Sterling?

7 A. 26 years.

8 Q. What do you do for a living?

9 A. I own a print shop.

10 Q. What's the name of the print shop?

11 A. Gateway Printing & Signs.

12 Q. Did -- do you do business by any other name?

13 A. Changed the name a few years ago, from Manley's
14 Printing, about six years ago.

15 Q. How long have you owned Gateway or Manley's?

16 A. 13 years.

17 Q. And when did you change the name?

18 A. About six years ago.

19 Q. What type of company is Manley's Printing?

20 A. We just sell printing and sign services.

21 Q. What type of -- what types of things do you print?

22 A. Anything from business cards to typical brochures
23 banners, outdoor signs, all kinds of printing things.

24 Q. What type of clients do you serve?

25 A. Mostly commercial clients but just individual

1 personal clients as well.

2 Q. When you say commercial clients, what does that
3 mean?

4 A. Industries, factories, people that have businesses,
5 anybody that uses marketing materials, that kind of
6 thing, to market business, or Realtors, that kind of
7 thing, people that sell things.

8 Q. Is one of your clients a man named Sam Girod?

9 A. Yes.

10 Q. Can you -- do you recognize him here in the
11 courtroom today?

12 A. Yes.

13 Q. Did you know the name of his company?

14 A. Satterfield Naturals I think was one name that was
15 on some of the materials that we would print, but I
16 mostly just knew him as Sam.

17 Q. What kind of business did you do with him?

18 A. Printing, printing materials, like labels and
19 brochures and programs or things like that.

20 Q. How long have you been doing work like this for him?

21 A. About seven, six, seven years, maybe a little bit
22 longer than that.

23 Q. Can you tell us how it generally worked, how he
24 requested work from your company?

25 A. Would either just come in to our facility and order

1 the things personally, or over time he would maybe just
2 call orders in, or -- usually most of the time it was
3 just come into our shop and place the orders.

4 Q. How would he pay for your services?

5 A. Either check or cash.

6 Q. Where is Manley's Printing located? Is it in
7 Mt. Sterling?

8 A. Yes, on Seven Willow Street in Mt. Sterling.

9 Q. And about how far is Mt. Sterling from Owingsville?

10 A. About 10 miles.

11 Q. Close?

12 A. Somewhere around that.

13 Q. I'm going to walk through a bunch of exhibits with
14 you. It will be very exciting, but appreciate your
15 patience.

16 MS. SMITH: If I could hand the witness
17 Government's Exhibit 5A and 5B. These are each two-page
18 documents.

19 BY MS. SMITH:

20 Q. Do you recognize those documents, sir?

21 A. Yes.

22 Q. Are those records that you kept at Manley's Printing
23 in the regular course of your business?

24 A. Yes.

25 MS. SMITH: The United States would move to

1 admit Government's Exhibit 5A and 5B.

2 THE COURT: See if there is any objection.

3 DEFENDANT GIROD: No objection on that.

4 THE COURT: Exhibits 5A and B are admitted.

5 (Whereupon, Government's Exhibit Numbers 5A and 5B
6 were admitted into the record.)

7 MS. SMITH: If we could publish 5A to the jury,
8 please.

9 THE COURT: Yes.

10 BY MS. SMITH:

11 Q. So this a two-page document; is that right, sir, 5A?

12 A. Yes. I'm assuming -- I'm assuming these go
13 together. Yes.

14 Q. What is the first page of that document?

15 A. It's a copy of a label for Chickweed that we made.

16 Q. Is that the artwork that you would have printed for
17 the defendant?

18 A. Yes.

19 MS. SMITH: If we could scroll to the second
20 page of that document.

21 BY MS. SMITH:

22 Q. What is that document?

23 A. It's an invoice for Chickweed labels and of two
24 different sizes.

25 Q. What's the date on the invoice?

1 A. 6/3/2014.

2 Q. Who is the client this project was for?

3 A. Sam Girod.

4 Q. How many of the two-and-a-half inch Chickweed labels
5 did he order?

6 A. 5,000.

7 Q. How many of the smaller Chickweed labels did he
8 order?

9 A. 1,000.

10 Q. What was the total amount of this invoice?

11 A. \$511.

12 Q. There's only one label here. Would they have been
13 identical but just different sizes?

14 A. Yes.

15 Q. If you could turn to 5B. What's on the first page
16 of this document?

17 A. Chickweed label also.

18 Q. And flip ahead to the second page.

19 And just wait a minute while it comes up on the
20 screen.

21 MS. SMITH: If we could scroll to the second
22 page.

23 BY MS. SMITH:

24 Q. What's the date of this invoice?

25 A. 8/5/2014.

1 Q. Is that 8/25?

2 A. I'm sorry, 8/25, yes, 2014.

3 Q. Who was the client for this job?

4 A. Sam Girod.

5 Q. What did he order that day?

6 A. The two-and-a-half inch Chickweed labels.

7 Q. There is a handwritten note on this one. Is that
8 something that you're familiar with?

9 A. Referencing the check number that was used to pay
10 for this order and the date. Yes, I'm familiar with
11 that.

12 Q. Was -- was a 5,000 order, 5,000 label order, a
13 normal order size for Mr. Girod?

14 A. It was customary, yeah.

15 Q. That he would order 5,000 at a time?

16 A. Uh-huh.

17 Q. And did you know that he made the Chickweed in two
18 different sizes?

19 A. I assume so with the printing two different size
20 labels.

21 Q. If I could hand you Government's Exhibits 6.

22 This is also a two-page document. Is this something
23 that your company maintained in the regular course of its
24 business?

25 A. Yes.

1 MS. SMITH: The United States moves to admit
2 Government's Exhibit 6.

3 THE COURT: Any objection?

4 DEFENDANT GIROD: What's this?

5 THE COURT: Any objection to the introduction?

6 DEFENDANT GIROD: No.

7 THE COURT: Exhibit 6 will be admitted.

8 (Whereupon, Government's Exhibit Number 6 was
9 admitted into the record.)

10 MS. SMITH: If you can publish the first page.
11 It might be sideways.

12 Our computer is not very fast.

13 BY MS. SMITH:

14 Q. Could you tell us with words what we're looking at
15 on the first page?

16 A. Yes, it's a label, and the product -- the product is
17 Sin-eze, I guess that's how you say that, a blue label.

18 Q. Can you read to us what is on the left-hand side?

19 A. "A proprietary, food-grade blend of essential oils
20 including peppermint, eucalyptus, and rosemary, which may
21 assist in sinus pressure release."

22 Q. What follows?

23 A. "Customers report using this product for sinus and
24 stress headaches with great results."

25 MS. SMITH: If we could flip it back and look

1 at the next page of this document.

2 BY MS. SMITH:

3 Q. Is that the invoice for this order?

4 A. Yes. It appears to be one of the items on here,
5 yes.

6 Q. When was this invoice ordered?

7 A. 6/26/2014.

8 Q. And how many of these Sin-eze labels did he order?

9 A. 5,000.

10 Q. Did he order anything else on this order?

11 A. There's also 5,000 Chickweed labels.

12 Q. And what's the total amount of this invoice?

13 A. \$605.

14 Q. How did he pay for this order?

15 A. Paid cash.

16 Q. Did the defendant also order some of the TO-MOR-GONE
17 labels around this time frame?

18 A. It's possible. I don't know for sure.

19 Q. Would looking at the documents help you, help you
20 remember?

21 A. Uh-huh.

22 Q. Let me show you Government's Exhibit 7.

23 Are these records regarding an order placed at your
24 printing company?

25 A. Yes.

1 Q. Were they regularly maintained by your company in
2 the regular course of its business?

3 A. These products, these type products, yes.

4 Q. Yeah, these two documents.

5 A. Oh, yes, yes.

6 MS. SMITH: The United States moves to admit
7 Government's Exhibit 7.

8 THE COURT: Any objection?

9 DEFENDANT GIROD: (Shakes head)

10 THE COURT: Exhibit 7 will be admitted.

11 (Whereupon, Government's Exhibit Number 7 was
12 admitted into the record.)

13 MS. SMITH: If we could publish the first page.

14 BY MS. SMITH:

15 Q. Could you read to us what's on the label of this
16 product?

17 A. "Natural Herbal Remedy, TO-MOR-GONE, Black Salve,
18 For external use only. Active ingredients: Bloodroot"
19 I'm not sure how to pronounce that, "Galangal Root, Sheep
20 Sorrel, Red Clover Blossom, Geranium, Cedarwood, Beeswax,
21 and Olive Oil. Produced by: Satterfield Naturals.
22 Private membership only."

23 Q. If you look ahead at the second page of this
24 document, is that the invoice for these order forms -- I
25 mean, or for this order?

1 A. It appears to be, yes.

2 Q. How many TO-MOR-GONE labels did he order with this
3 order?

4 A. 1,000.

5 Q. What was the date of the order?

6 A. 3/4/2014.

7 Q. And how did he pay for this order?

8 A. With a check, check number 2463.

9 Q. Okay. Try to speed this up. I'm handing you
10 Government's Exhibit 8A, 8B, and 8C.

11 Are these three additional invoices from your
12 company?

13 A. Yes.

14 MS. SMITH: United States moves to admit
15 Government's Exhibits 8A, B, and C.

16 THE COURT: Any objection?

17 DEFENDANT GIROD: (Shakes head)

18 THE COURT: United States Exhibits 8A, B, and C
19 are admitted.

20 (Whereupon, Government's Exhibit Numbers 8A, 8B, and
21 8C were admitted into the record.)

22 MS. SMITH: If we could publish 8A.

23 BY MS. SMITH:

24 Q. Just to move things along, I'll have you describe
25 what's on these invoices for the jury. What's the date

1 of Exhibit 8A?

2 A. 2/18/2014.

3 Q. Who's the customer for this order?

4 A. Sam Girod.

5 Q. What did he order on that day?

6 A. 5,000 Sin-eze labels.

7 Q. And 8B what's the date of that invoice?

8 A. 5/8/2014.

9 Q. And what's -- if you could read the second and third
10 items on those invoices.

11 A. 125 Sin-eze labels and 125 two-and-a-half inch
12 circle green Chickweed labels.

13 Q. And the third invoice, what's the date on that
14 invoice, 8C?

15 A. 5/16/2014.

16 Q. Who's the customer?

17 A. Sam Girod.

18 Q. What did he order on that day?

19 A. 200 Chickweed labels, one-and-a-half inch, and
20 200 Chickweed labels, two-and-a-half inch. The UV coding
21 wasn't a product. It was just a part of the process of
22 this. It was the part of the process of printing the
23 label.

24 Q. And then I will hand you Government's Exhibit 9A,
25 9B, and 9C.

1 What are these three documents?

2 A. They are copies of checks.

3 Q. And who are the checks made out to?

4 A. The first two are Manley Printing, and the third one
5 was Gateway Printing.

6 Q. Would these have been maintained by your company in
7 the regular course of its business, copies of the checks
8 that you received?

9 A. Yes. We went by both names at that one point.

10 MS. SMITH: United States moves to admit 9A,
11 9B, and 9C.

12 THE COURT: Same request to have the check
13 numbers redacted?

14 DEFENDANT GIROD: The only objection I have is
15 the numbers on there, for safety purposes.

16 THE COURT: Plaintiff's Exhibit 9A, B, and C
17 will be admitted, but if those matters are ever published
18 to third parties of the public, the check numbers will be
19 removed.

20 MS. SMITH: We will do that.

21 (Whereupon, Government's Exhibit Numbers 9A, 9B, and
22 9C were admitted into the record.)

23 BY MS. SMITH:

24 Q. What are the amounts on these three checks?

25 A. The first one is 9A is \$611, the second one is

1 \$668.75, and the third one is \$276.

2 Q. Were these checks for some of the invoices that
3 we've just been through, based on the check numbers?

4 A. Yes, I think so, yes.

5 Q. For all these orders in 2014, did the defendant ever
6 tell you that he was under an injunction to stop
7 manufacturing these products?

8 A. I don't recall.

9 Q. Did he ever tell you that he was having some legal
10 issues with regard to his business?

11 A. I don't recall.

12 Q. Were you aware that Mr. Girod had been charged
13 criminally in this court in October 2015?

14 A. No. In 2015, no, not at that point, no.

15 Q. Did he order anything from you after October 2015 to
16 your recollection?

17 A. I'm sure, yes.

18 Q. I would like to hand you what's been premarked as
19 Government Exhibit 34.

20 Have you seen this before?

21 A. Yes.

22 Q. Is it something that your company printed?

23 A. Yes.

24 Q. Did you maintain a copy of it in your business files
25 in the regular course of business?

1 A. Yes.

2 MS. SMITH: United States moves to admit
3 Government Exhibit 34.

4 THE COURT: Any objection?

5 DEFENDANT GIROD: No.

6 THE COURT: Exhibit 34 will be admitted.

7 (Whereupon, Government's Exhibit Number 34 was
8 admitted into the record.)

9 MS. SMITH: If we could publish this to the
10 jury.

11 BY MS. SMITH:

12 Q. What does the title page of this document read?

13 A. Satterfield Naturals. There's an address and then
14 product line catalog.

15 Q. What's the address listed?

16 A. 409 Satterfield Lane, Owingsville, Kentucky, 40360.

17 Q. If you could flip ahead to the fourth page, the
18 fourth whole page. What product is advertised on the
19 left there?

20 A. Original Chickweed.

21 Q. Could you read -- starting after the first paragraph
22 with "The effectiveness"?

23 A. "The effectiveness of our product, for a number of
24 skin ailments, is best described by our customers.

25 "Many love Original Chickweed for sunburns.

1 "Original --"

2 Q. Could you keep reading that?

3 A. Yes. "Original Chickweed testimonies.

4 "I love Original Chickweed. Recently I was fishing
5 and got several deer ticks on me. Some due in kind of
6 deep, so I used the Original Chickweed to get rid of
7 them, and it really worked.

8 "Buddy, Kentucky.

9 "I am diabetic and I had a hole in my foot the size
10 of a silver dollar, and it went clear up to the bone. We
11 couldn't heal it up. Finally the doctor told me he has
12 to amputate the foot. Then we stopped at Billy Jo's
13 Health Food Store. She told us to clean it up real good
14 and put Original Chickweed on it, which we did, and three
15 weeks later the doctor looked at it and said the skin has
16 grown clear across the bone, and we won't have to
17 amputate that foot. We know the original Chickweed saved
18 my foot.

19 "Oklahoma."

20 Q. When did the defendant order this product catalog?

21 A. I don't remember the date. I wouldn't remember the
22 date.

23 Q. If you saw the invoice for the catalog, would that
24 help you remember?

25 A. Yes.

1 Q. Hand you Government's Exhibit 35. We'll get to that
2 exhibit in a few minutes before it's admitted, but can
3 you tell me the date on that invoice?

4 A. 12/23/2015.

5 Q. Does that help refresh your recollection when the
6 defendant ordered these product catalogs?

7 A. Yes.

8 Q. Turning back to the product catalog, could you turn
9 forward two more pages?

10 Do you -- do you see the page with Sin-eze on the
11 left?

12 A. Yes, ma'am.

13 Q. Could you read us what's listed there for the
14 Sin-eze product?

15 A. "Sin-Eze," and then under a picture of the bottle,
16 "A proprietary food-grade blend of essential oils
17 including peppermint, eucalyptus, and rosemary, which may
18 assist in sinus pressure relief.

19 "Customers report using this product for sinus and
20 stress headaches with great results."

21 Q. And could you read the testimonies?

22 A. "Sin-Eze testimonies.

23 "A friend of mine gave me a bottle of Sin-Eze. At
24 the time, I was taking Allegra, and inhaler, and nasal
25 spray. I have used for three months now and do not use

1 any of my prior prescriptions. It works.

2 "Barbara, Winchester, Kentucky.

3 "I use Sin-Eze with very good and fast results for
4 an awful bad cold.

5 "Kentucky.

6 "Many customers say it gives almost immediate relief
7 for sinus headaches and stuffy nose."

8 Q. If you could flip to the next page.

9 What product is advertised on the right-hand side of
10 that page?

11 A. "Natural Herbal Remedy TO-MOR-GONE."

12 Q. Can you read what's listed after the price of the
13 product?

14 A. "TO-MOR-GONE will help get rid of abnormal growths
15 like tumors, warts, and moles.

16 "Our customers report great results.

17 "TO-MOR-GONE Testimonies.

18 "I had a mole on the side of my neck. Doctors felt
19 like it could be cancer and wanted to remove it, but I
20 put TO-MOR-GONE every day and put a Band-Aid over it. In
21 about two-and-a-half weeks it came off, left no scar,
22 never bled. I am thankful to have TO-MOR-GONE.

23 "Marvin, Indiana.

24 "A few of my boys used TO-MOR-GONE on warts. They
25 came off. It really works.

1 "Shipshewana, Indiana."

2 Q. How many of these product catalogs did Mr. Girod
3 order?

4 A. Appears to have been 100.

5 Q. Exhibit 35, that invoice, is that something that
6 your company maintained in the regular course of its
7 business?

8 A. Yes.

9 MS. SMITH: United States moves to admit
10 Government Exhibit 35.

11 THE COURT: Any objection?

12 DEFENDANT GIROD: That's fine.

13 THE COURT: Exhibit 35 is admitted.

14 (Whereupon, Government's Exhibit Number 35 was
15 admitted into the record.)

16 MS. SMITH: Publish that to the jury.

17 BY MS. SMITH:

18 Q. And what's the date on this invoice again?

19 A. 12/23/2015.

20 Q. And who was the client?

21 A. Sam Girod.

22 Q. And what did he order with this invoice?

23 A. 100 bound books, staple stitch, five-and-a-half by
24 eight-and-a-half, full color 40 inside pages, plus cover,
25 product catalog.

1 Q. How much was this invoice for?

2 A. \$620.

3 Q. Had you ever printed a book like this for him?

4 A. I don't remember if it was just like this. We had
5 printed another type of book, I think, but my memory
6 would be like that it was a trip, like a vacation journal
7 or trip journal or something that would be similar to
8 this, and I recognize the picture on the front of the
9 train.

10 Q. Do you recall whether you printed anything for him
11 in 2016?

12 A. I'm confident we did, yes.

13 Q. I would like to hand you Government's Exhibit 36A,
14 B, and C. I will hand you Government's Exhibit 37 too.
15 These are the last ones.

16 Government's Exhibit 36A, B, and C, the images, have
17 you looked through those?

18 A. Yes.

19 Q. Were those records kept by your printing company in
20 the regular course of its business?

21 A. Yes.

22 MS. SMITH: United States moves to admit
23 Government's Exhibits 36A, B, and C.

24 THE COURT: Any objections?

25 DEFENDANT GIROD: Objection on A. That's -- we

1 didn't do that one I'm convinced, but whatever you want
2 to do. The rest can go in, that's fine.

3 THE COURT: All right. They've been
4 authenticated, but I'm not sure that there's been
5 relevance shown. So if you would, please, follow up.

6 BY MS. SMITH:

7 Q. Do you know when he ordered this artwork to be
8 printed?

9 A. If this is the one that matches up with the invoice,
10 Exhibit 37, it would have been 6/8/20 -- 2016.

11 MS. SMITH: Your Honor, this was subject to the
12 United States 404(b) notice, the second notice.

13 THE COURT: Very well. What is the image?
14 What is it an image of?

15 MS. SMITH: I'm sorry.

16 THE WITNESS: Original Chickweed label.

17 THE COURT: All right. Thank you.

18 I'll introduce it over the defendant's
19 objection. It will be admitted.

20 (Whereupon, Government's Exhibit Numbers 36A, 36B,
21 and 36C were admitted into the record.)

22 MS. SMITH: I would like to just publish 36C.

23 BY MS. SMITH:

24 Q. This is a two-page document, sir. What -- what is
25 this kind of document in the printing world?

1 A. This is a brochure of two-sided tri-fold brochure.

2 Q. And what is -- just what does that mean in regular
3 language? What would one do for how you would fold this
4 document?

5 A. This was -- printed like this, and it would fold
6 over like that, and kind of appear like that as a
7 finished product.

8 Q. Folded up in threes with images on both sides?

9 A. Yeah.

10 Q. Okay. And in the middle panel with the ingredients
11 and indications, do you see the first page of 36C in the
12 middle panel?

13 A. Yes.

14 Q. The -- that last paragraph, could you read that last
15 paragraph to the jury, please?

16 A. "The base is olive oil and beeswax, which are
17 natural and healthy. Infused together we create a salve,
18 which is good for a variety of skin disorders, such as
19 psoriasis, skin cancer, rashes, sore throat, cuts, burns
20 poison ivy, colds, diaper rash, tooth infections,
21 et cetera."

22 Q. When did the defendant order this pamphlet to be
23 printed?

24 A. According to the invoice here, it's 7 -- there's a
25 line item for brochure like this that would be 6/8/2016.

1 Q. How many of these brochures did he order?

2 A. 5,000.

3 Q. What else did he order that day?

4 A. 1,000 Chickweed labels, two-and-a-half inch, green,
5 and 2,000 Chickweed labels, full color, seven-and-a-half
6 by 1.75 inches.

7 Q. How did he pay for this invoice?

8 A. With a check, number 3366.

9 Q. How much did he pay for this order?

10 A. \$1,619.

11 Q. Were you aware at this time that he was under a
12 criminal indictment for selling these products?

13 A. I did not.

14 Q. Did you -- when did you learn that? Was it when you
15 received your trial subpoena?

16 A. Yeah.

17 MS. SMITH: Thank you, sir. I don't have any
18 further questions. I just have to get organized here.

19 THE COURT: All right. While counsel is doing
20 that, let me give a cautionary instruction to the jury.

21 With respect to the last exhibit that was
22 introduced, Exhibit 36A, B, and C, relates to a time
23 outside the time charged in the indictment.

24 You've heard testimony from this witness that
25 the defendant, in fact, ordered brochures for these

1 products outside the time.

2 If you find that, in fact, he did those
3 activities, you may consider that evidence only as it
4 relates to the United States' claim of the defendant's
5 knowledge, motive, and intent. You're limited to
6 considering that information for only that purpose.

7 All right. Let's see if there is any question
8 for the witness.

9 DEFENDANT GIROD: Not really a question, a
10 statement.

11 THE COURT: All right.

12 DEFENDANT GIROD: On all the brochures Darrell
13 puts on -- we had him put on this information, "It's for
14 education purposes only. Not responsible for adverse
15 affects as a result of using this salve."

16 I just wanted to put that in there.

17 THE COURT: Is that a question for the witness?
18 Mr. Girod, is it a question for the witness?

19 DEFENDANT GIROD: No more questions.

20 THE COURT: Was this a question for the
21 witness?

22 DEFENDANT GIROD: How is that?

23 (Whereupon, an off-the-record discussion was had
24 with Defendant Girod and standby counsel, Mr. Fox.)

25 DEFENDANT GIROD: Oh, I see.

1 No, it was just -- no.

2 THE COURT: All right. Then the jury will be
3 instructed to disregard. Parties may not make statements
4 without presenting questions to the witness. They may
5 not make statements to you in that regard.

6 Thank you, sir, and you may step down.

7 Thank you.

8 You may call your next witness.

9 MS. SMITH: The United States calls
10 Charles Milligan.

11 THE COURT: Charles Milligan. Thank you.

12 THE CLERK: Would you raise your right hand,
13 please?

14 Do you swear or affirm that the testimony
15 you're about to give in this matter shall be the truth,
16 the whole truth, and nothing but the truth, as you shall
17 swear unto God, or affirm, subject to the penalty of
18 perjury?

19 THE WITNESS: Yes, ma'am.

20 CHARLES MILLIGAN,
21 having been first duly placed under oath, was examined
22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SMITH:

25 Q. Good afternoon, sir.

1 Could you please tell the jury your name, and spell
2 your last name for the court reporter?

3 A. Charles Milligan, M-I-L-L-I-G-A-N.

4 Q. Mr. Milligan, where are you from?

5 A. Originally?

6 Q. Where do you live now?

7 A. Preston, Kentucky.

8 Q. How far is that from Lexington?

9 A. About 48 miles, I believe.

10 Q. What county is it in?

11 A. Bath County.

12 Q. Is it near Owingsville?

13 A. What's that?

14 Q. Is it near Owingsville?

15 A. Yes.

16 Q. What do you do for a living, Mr. Milligan?

17 A. Retired.

18 Q. I just want to make sure I finish my question before
19 you answer so --

20 A. Oh, okay.

21 Q. -- the court reporter can get everything down.

22 A. Oh, I'm sorry.

23 Q. What are you retired from?

24 A. Army.

25 Q. How long were you in the Army, sir?

- 1 A. 32 years.
- 2 Q. When did you retire?
- 3 A. 1998.
- 4 Q. What have you been doing since 1998?
- 5 A. What's that?
- 6 Q. Have you been working in any way since 1998?
- 7 A. No, ma'am.
- 8 Q. Have you ever worked as a driver?
- 9 A. Yes, ma'am.
- 10 Q. When was that?
- 11 A. I think I started in either 1999 or 2000 when I met
- 12 Samuel.
- 13 Q. How long did you -- did you say you drove for
- 14 Mr. Girod?
- 15 A. Yes, ma'am.
- 16 Q. How long did you drive for Mr. Girod?
- 17 A. Probably about 12 years.
- 18 Q. Until -- when did you stop driving for him?
- 19 A. About a year-and-a-half ago, two years ago.
- 20 Q. How did it work when you worked as a driver? How
- 21 did he let you know he wanted a ride?
- 22 A. What's that?
- 23 Q. How did he let you know? How did --
- 24 A. He just called me --
- 25 Q. -- he notify you?

1 A. -- up and asked if I wanted to go on a trip.

2 Q. Did he pay you for driving him around?

3 A. He paid for all my fuel, he paid for my lodging and
4 my food or whatever I wanted.

5 Q. Did he pay you anything on top of that?

6 A. No, ma'am. I was retired. I got a retirement
7 check.

8 Q. In terms of your expenses, what type of expenses
9 would he cover?

10 A. He covered the fuel. If I needed -- if we needed a
11 hotel room, he paid for my room. And then if I, you
12 know, went out and ate, he paid for the food, and he paid
13 for the -- covered the maintenance on my vehicle.

14 Q. Car repairs?

15 A. Yep.

16 Q. Is it fair to say you drove for him about 15 years?

17 A. It's been about 12 years I said.

18 Q. Okay. 12 years.

19 A. I have only known him for about 14.

20 Q. How frequently would you drive for him in that time?

21 A. Whenever Samuel called me up and asked me if I
22 wanted to go for a trip.

23 Q. How frequently did that happen?

24 A. Maybe a couple times a month.

25 Q. What types of places did you drive him?

1 A. Well, Illinois, Wisconsin, Iowa, wherever he wanted
2 to go I took him.

3 Q. Did you say Iowa?

4 A. Yeah, I drove to Iowa. We visited friends, yeah,
5 that he knew there, Iowa a few times.

6 Q. How far west did you ever drive him?

7 A. I think Oklahoma once.

8 Q. And how far east did you ever drive him?

9 A. Probably Pennsylvania.

10 Q. What about south?

11 A. Probably Georgia.

12 Q. Anything north of Wisconsin?

13 A. Michigan.

14 Q. How did you end up working as his driver?

15 A. A female deputy sheriff introduced me to him.

16 Q. Bath County deputy sheriff?

17 A. What's that?

18 Q. Bath County deputy sheriff?

19 A. No, this is up in Indiana.

20 Q. Have you always lived in Bath County for the last --

21 A. No.

22 Q. Okay. Where did you used to live?

23 A. I moved from Indiana down here.

24 Q. When did you move to Kentucky?

25 A. I can't remember exactly. I have been here about

1 10 years so -- or close to 10 years.

2 Q. Did you work as a driver for Mr. Girod when you
3 lived in Indiana?

4 A. Yeah, that's where I met him at.

5 Q. Where -- did he also live in Indiana at that time?

6 A. At that time he did.

7 Q. At some point did he move to Kentucky?

8 A. Yeah.

9 Q. Was that around when you moved to Kentucky?

10 A. I moved down here about eight months, I think, after
11 Samuel moved down here, when they finally found me a
12 place to live.

13 Q. Why did you move to Kentucky?

14 A. Well, I like Kentucky for one thing, I needed a
15 change of scenery, and I liked the Amish.

16 Q. You said when they found you a place to live. Who
17 found you a place to live here?

18 A. Sam. I can't think of his name. It was a friend of
19 ours that used to live down here, but he's back in
20 Indiana now, but I can't think of his name right now. He
21 found a place for me.

22 Q. Did you move to Kentucky in part because Mr. Girod's
23 family relocated to Kentucky?

24 A. Yeah. I was still working on driving for Samuel.

25 Q. What type of vehicle would you typically drive him

1 in?

2 A. I had a Ford van.

3 Q. When he would call and ask you if you wanted to go
4 on a trip --

5 A. Yep.

6 Q. -- how much warning would you get before you were
7 taking a trip?

8 A. Probably about three or four days, or maybe a week
9 or so.

10 Q. Would he tell you in advance where he wanted to go?

11 A. He didn't much tell me where he wanted to go. He
12 just told me, you know, he wanted to go on a road trip.
13 I said yeah.

14 Q. So you might be picking him up and not know you were
15 going to Wisconsin?

16 A. He let's me know once I got there where we was
17 headed to.

18 Q. You sound remarkably flexible in your plans.

19 A. Yeah, I'm retired, got to learn how to be real
20 flexible if you're in the military.

21 Q. When you would drive him, particularly in the later
22 years after you lived in Kentucky, did he ever have
23 anything else in the van with him?

24 A. He carried his products or whatever, I guess, that
25 he put in the back and stuff.

1 Q. What type of products would he carry?

2 A. I guess Chickweed Salve or whatever.

3 Q. Did you know what other products he made?

4 A. What?

5 Q. Do you know what other products --

6 A. Yeah, I --

7 Q. -- he made?

8 A. -- know about his TO-MOR-GONE and his R.E.P.

9 Q. When you would take him on driving trips with boxes
10 in the vehicle, were they sometimes business trips? Was
11 he selling that product?

12 A. I suppose he was selling it.

13 Q. Would you come home with fewer boxes than you left
14 with?

15 A. Yeah, usually.

16 Q. Do you recall driving for him in the fall of 2013?

17 A. I think so.

18 Q. Was that around the time that you stopped driving
19 for him?

20 A. Yeah, it was shortly after that, I believe, I quit
21 driving.

22 Q. Do you remember taking a trip to Indiana around this
23 time frame?

24 A. What's that?

25 Q. Do you remember taking a trip to Indiana around that

1 time frame, in the fall of 2013?

2 A. I took a lot of trips to Indiana now. My memory
3 just can't recall the dates anymore.

4 Q. What about -- well, this is near the end of when you
5 were driving for Mr. Girod; is that correct?

6 A. I think the last trip that me and Sam went on was
7 probably that, it might have been Michigan, up to his
8 wife's family's place, is probably last time I drove him.

9 Q. Do you remember near the end of your time driving,
10 any trips to Indiana or Illinois?

11 A. Illinois was probably way before that.

12 Q. How many miles would you drive him on average in a
13 year?

14 A. It all depends where Sam wanted to go. There's
15 probably sometimes I drove maybe 13, 14 hours during the
16 day.

17 Q. Long day?

18 A. It was a pretty long day, but I had a good time.

19 Q. So can you estimate how many on average miles you
20 might cover in a year driving him?

21 A. No, not really. There's probably a lot.

22 Q. What does a lot mean to you?

23 A. Whole bunch probably. It could be 50, 60,000 miles
24 maybe.

25 Q. In a year?

1 A. Samuel had a lot of family too that he went to visit
2 some. It wasn't just to sell his product or whatever if
3 he had the product.

4 Q. Understood. Would he ever -- when he would pay for
5 your car repairs, how would he -- how would he give you
6 that?

7 A. Usually if I had -- a vehicle broke down, I would go
8 over to Samuel's, and he would write me a check, and I'd
9 take it to the bank, cash it, and take it to my mechanic
10 and pay them off.

11 Q. Did -- in the fall of 2013, did he tell you that he
12 was having legal troubles?

13 A. I knew -- the only trouble I knew with Sam was when
14 we was in Indiana that the FDA asked him to take off that
15 skin cancer off his salve, and I guess he did, and that's
16 the last that I knew anything about anything else until
17 the FDA guy come to my house after I had already quit
18 driving Samuel and told me that -- or, I guess, gave me
19 the first subpoena to come to court. That was the last
20 thing I knew anything about what was going on with
21 Samuel.

22 Q. The issues --

23 A. He never talked to me much about it, and I never
24 asked questions.

25 Q. The issues you've mentioned that you knew about in

1 Indiana, do you know when that was?

2 A. Probably 2003, 2004, I think. I ain't for sure.

3 Q. Why did you stop driving for Mr. Girod?

4 A. When did I stop driving? I guess the hours was
5 starting to get down on me. The older I'm getting, the
6 less I can do, and then I became diabetic, so trying to
7 keep in my way of eating and being a diabetic and stuff,
8 I had to get off I guess.

9 Q. Had you ever advised others about driving for the
10 defendant?

11 A. Well, I put the word out once the FDA came to my
12 house one time to, you know, just to let a few drivers
13 know, you know, not to be driving Samuel in case
14 something like this came up.

15 MS. SMITH: No further questions, Your Honor.
16 Thank you.

17 THE COURT: All right. Thank you.

18 Mr. Girod?

19 CROSS-EXAMINATION

20 BY DEFENDANT GIROD:

21 Q. Hi, Charles.

22 A. Hey, Sam.

23 Q. How are you?

24 Did you ever use Chickweed Salve?

25 A. What's that?

1 Q. Did you ever use Chickweed Salve?

2 A. Yep.

3 Q. How did you use it, on what?

4 A. Well, I think it was back in '99 or 2000 when I
5 got -- had five gallons of fuel blow up in my hand and
6 got seriously burned. They took me to Louisville, and
7 you came to see me my second day, and I used your
8 Chickweed.

9 Q. How did that work for you?

10 A. Well, it got me out of the burn center within
11 11 days, and the therapist was amazed by it.

12 Q. And did any of them then inquire what that is, any
13 of the doctors or nurses confirm what that is?

14 A. They just asked me what I was --

15 MS. SMITH: Objection.

16 THE WITNESS: -- using, this and that.

17 THE COURT: Sustained. Sustain the objection
18 to hearsay, third parties.

19 DEFENDANT GIROD: Okay.

20 BY DEFENDANT GIROD:

21 Q. Did you ever hear of any complaints?

22 A. Nope.

23 DEFENDANT GIROD: That's all I have. Thank
24 you.

25 THE COURT: See if there's any matters brought

1 up on cross.

2 MS. SMITH: No, Your Honor.

3 THE COURT: All right. Thank you, sir. You're
4 excused. You may step down.

5 Thank you.

6 And you may call your next witness.

7 MS. SMITH: Your Honor, did I move to admit
8 35A, B, and C?

9 THE COURT: Let me see.

10 MS. SMITH: This was with Mr. Mandrell.

11 THE COURT: Madam Clerk, what do you have in
12 your notes on 35A, B, and C?

13 THE CLERK: I just have 35, just 35.

14 THE COURT: Just 35. Hold on just a moment,
15 please.

16 If you would hold the witness for just a
17 moment, please.

18 Ms. Smith, we only have 35 marked. There's no
19 A, B, and C.

20 MS. SMITH: 36.

21 THE CLERK: Oh, 36?

22 THE COURT: 36A, B, and C, you had discussed
23 36A with the witness. You didn't move for their
24 admission. I admitted those documents over the
25 defendant's objection.

1 MS. SMITH: Okay, great. I just wanted to make
2 sure.

3 THE COURT: All right. Thank you.

4 THE CLERK: I have 37.

5 MS. SMITH: It's not admitted?

6 THE CLERK: Do you have 37, Judge?

7 THE COURT: I don't have in my notes 37 was
8 admitted.

9 THE CLERK: Okay.

10 MS. SMITH: I would move to admit Government's
11 Exhibit 37. I know the witness is no longer on the
12 stand.

13 THE COURT: All right. Any objection to its
14 admission?

15 DEFENDANT GIROD: I got a check in there. I
16 object to that.

17 THE COURT: All right. As to Exhibit 37, that
18 is a document in which the Court gave the jury a
19 cautionary warning about how it can use those brochures.
20 This is the invoice for those brochures dated June 8th,
21 2016.

22 Exhibit 37 will be admitted, proper foundation
23 having been demonstrated.

24 If this is shown to third parties, it also has
25 the check at the bottom and the check number would need

BRIDGET SARGENT - DIRECT BY MS. SMITH

1 to be removed, but otherwise the entire document is
2 admissible.

3 (Whereupon, Government's Exhibit Number 37 was
4 admitted into the record.)

5 THE CLERK: Raise your right hand, please.

6 Do you swear or affirm, 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, as you shall
9 swear unto God, or affirm, subject to the penalty of
10 perjury?

11 THE WITNESS: Yes.

12 MS. SMITH: Sorry about that.

13 THE COURT: Please proceed.

14 BRIDGET SARGENT,
15 having been first duly placed under oath, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SMITH:

19 Q. Good morning, ma'am.

20 Could you please tell the jury your name, and spell
21 it for the court reporter?

22 A. Bridget Sargent, B-R-I-D-G-E-T S-A-R-G-E-N-T.

23 Q. Ms. Sargent, where do you live? Not your exact
24 address, but what town do you live in?

25 A. Madison, Indiana.

1 Q. Where is Madison?

2 A. Southern Indiana.

3 Q. About how far is that from Lexington?

4 A. It's about two hours.

5 Q. What do you do for a living, Ms. Sargent?

6 A. I'm the general manager of several small businesses.

7 Q. Are those businesses run by the same person?

8 A. Yes.

9 Q. Is there some sort of corporate ownership over all
10 of those businesses?

11 A. Different corporations.

12 Q. Do you know what that company's name is that owns
13 all those businesses?

14 A. The corporation name?

15 Q. Uh-huh.

16 A. Miss Vivian's LLC.

17 Q. What types of companies do you work at under
18 Miss Vivian's LLC?

19 A. Two tanning salons and an herb store, health food
20 store.

21 Q. What is the health food store called?

22 A. Herbs & More.

23 Q. Where is Herbs & More located?

24 A. 180 Clifty Drive, Madison, Indiana.

25 Q. How long have you worked for Miss Vivian's?

1 A. Over 13 years.

2 Q. Is there also a Miss Vivian, a person with that
3 name?

4 A. Yes.

5 Q. Does she run the company?

6 A. Yes.

7 Q. How -- what have you done for her in those 13 years?

8 A. I started at her beauty salon, and I was there for
9 the majority of the time before I became the manager, and
10 then I started working at her health food store and now
11 her furniture store.

12 Q. How long have you been involved with the Herbs &
13 More company?

14 A. I don't know exactly, maybe three to five years.

15 Q. What types of things does Herbs & More sell?

16 A. I mean, natural like herb capsules from health
17 foods, essential oils.

18 Q. What types of clients does Herbs & More have?

19 A. All kinds.

20 Q. Does Herbs & More, is it just a walk-in store, or do
21 you have a mail order business?

22 A. No.

23 Q. Just a walk-in store?

24 A. Mainly walk in, yeah.

25 Q. What are your responsibilities at Herbs & More?

1 A. Mainly bookkeeping, overseeing general day-to-day
2 operations.

3 Q. Do you decide which products Herbs & More orders?

4 A. No.

5 Q. Okay. Are you involved in the ordering of products
6 for Herbs & More?

7 A. I am now, yes.

8 Q. Who does Herbs & More buy its supplies from, what
9 types of companies?

10 A. Normally distributors that carry several different
11 types of -- or brands of products.

12 Q. Has Herbs & More ever bought products from
13 Sam Girod?

14 A. Yes.

15 Q. Have you ever met Sam Girod in person?

16 A. Yes.

17 Q. When was that?

18 A. It's only been one, maybe two times, but one time we
19 had the product, and I had to write him a check was --

20 Q. Was that the first time --

21 A. -- the time I remember.

22 Q. Was that the first time you remember meeting him?

23 A. Yes.

24 Q. How did -- how did you happen to meet him that day?

25 A. He came by the store, and there -- the other girl

1 was behind the counter, and he had the Chickweed Salve,
2 and so she called the owner to purchase them, and then I
3 wrote the check.

4 Q. Had you ever -- at Herbs & More had anyone ever come
5 in pitching their product like that before?

6 A. Not that I can recall.

7 Q. Was it something that sticks out to you in your
8 memory?

9 A. No.

10 Q. You don't remember it well, but was it unusual?

11 A. For anyone to come in and trying to sell products?

12 Q. Uh-huh.

13 A. Oh, yeah, they do that all the time.

14 Q. Did you know what the name of his company was?

15 A. Not until I looked at the invoice.

16 Q. That time he came in person to sell products was
17 that the first time Herbs & More bought his products?

18 A. Yes.

19 Q. And which products did Herbs & More buy?

20 A. Chickweed Salve.

21 Q. I would like to show you Government's Exhibit 17A
22 and 17B.

23 Have you seen those documents before?

24 A. Yes.

25 Q. Can you tell us what 17A is, just a few words, what

1 type of document is that?

2 A. This is an invoice.

3 Q. And what about 17B?

4 A. This is a check written to him.

5 Q. Do they pertain to buying products from the
6 defendant?

7 A. Yes.

8 MS. SMITH: The United States moves to admit
9 Government's Exhibit 17A and 17B.

10 THE COURT: Any objection?

11 DEFENDANT GIROD: That's fine.

12 THE COURT: Exhibit 17A and B are admitted.

13 (Whereupon, Government's Exhibit Numbers 17A and 17B
14 were admitted into the record.)

15 MS. SMITH: If we could publish 17A to the
16 jury.

17 BY MS. SMITH:

18 Q. What is the date of this invoice?

19 A. Looks like 10/14/13.

20 Q. Do you think that was the day he came to sell the
21 product in person?

22 A. Yes.

23 Q. And what's listed on the invoice?

24 A. I can't really read it.

25 Q. Under the quan, Q-U-A-N, do you see a number listed

1 there?

2 A. Yes, it says one.

3 Q. And are there two letters that follow?

4 A. VR maybe.

5 Q. BS?

6 A. BH over there, CS.

7 Q. Okay. CH, and then what follows after CH?

8 A. An S.

9 Q. How much was that item listed as?

10 A. 252.

11 Q. What's the second item on the invoice?

12 A. It says 8 TOMV.

13 Q. Did Herbs & More ever buy the TO-MOR-GONE product?

14 A. Not that I can remember.

15 Q. The fact that it's on this invoice, do you think
16 that means that Herbs & More bought some TO-MOR-GONE?

17 A. Well, if it's on here, I would say we would have had
18 to, but I don't remember seeing it but one little sample
19 container.

20 Q. The sample, what was that of, what product was that
21 of?

22 A. It's the TO-MOR-GONE.

23 Q. Did you have any other samples of the defendant's
24 products?

25 A. Not that I can recall.

- 1 Q. Did you have a sample of a liquid product?
- 2 A. The little -- the Sin-Eze, yeah, one of those.
- 3 Q. What was the total amount of this invoice?
- 4 A. \$308.
- 5 Q. And the handwritten note at the bottom of the
- 6 invoice on the photocopy, whose handwriting is that?
- 7 A. That is mine.
- 8 Q. And what does it say?
- 9 A. "Received in person by Sam Girod on 10/14/2013."
- 10 Q. And 17B, could you tell us what that is?
- 11 A. That is a check.
- 12 Q. Who is the check from?
- 13 A. Miss Vivian's LLC.
- 14 Q. Is that the company that owns Herbs & More?
- 15 A. Yes.
- 16 Q. And what's the date of the check?
- 17 A. 10/14/13.
- 18 Q. Who is it made out to?
- 19 A. Satterfield Naturals.
- 20 Q. What's the amount of the check?
- 21 A. \$208.
- 22 Q. That signature on the check, whose signature is
- 23 that?
- 24 A. That is the owner's.
- 25 Q. Is that -- does she have to do a live signature

1 every time, or do you have a stamp?

2 A. There's a stamp.

3 Q. Were you approached by a special agent from the
4 FDA, or was Herbs & More approached by a Special Agent
5 Steven Lamp?

6 A. Yes.

7 Q. Do you remember approximately when that was?

8 A. Honestly, no.

9 Q. Did Herbs & More have any of the products left in
10 stock that you bought in October of 2013?

11 A. Yes.

12 Q. Did you provide those left-over products to
13 Agent Lamp?

14 A. Yes.

15 Q. Was any of the TO-MOR-GONE still in the store?

16 A. No.

17 Q. Did you receive any promotional material for the
18 products you bought in October of 2013?

19 A. Yes.

20 Q. What type of promotional material?

21 A. Brochures.

22 Q. And what product was the brochure for?

23 A. Chickweed Salve.

24 Q. What did it look like generally, the brochure?

25 A. It had some testimonials. That's all I can

1 remember.

2 Q. And those promotional materials did you have those
3 in the store before that October 2013 sale?

4 A. We had them -- we had them in the store when he
5 brought them.

6 Q. But not before then?

7 A. Right.

8 Q. I would like to hand you Government Exhibit 16A,
9 16B.

10 16A, do you recognize that? It's a photocopy, but
11 do you recognize that copy?

12 A. Yes.

13 Q. Is that the pamphlet you were just referencing?

14 A. Yes.

15 Q. Is that something that Herbs & More had in stock?

16 A. Yes.

17 MS. SMITH: The United States moves to admit
18 Government Exhibit 16A.

19 THE COURT: Any objection to the pamphlet being
20 admitted.

21 DEFENDANT GIROD: 16A, yes. No, that's fine.

22 THE COURT: All right. Exhibit 16A is
23 admitted?

24 (Whereupon, Government's Exhibit Number 16A was
25 admitted into the record.)

1 MS. SMITH: If we could publish 16A to the
2 jury.

3 THE WITNESS: What?

4 MS. SMITH: I was just asking her to publish it
5 to the jury.

6 THE WITNESS: Oh, okay.

7 MS. SMITH: So this page one, if we could
8 scroll down.

9 BY MS. SMITH:

10 Q. What's written in that box at the bottom, all the
11 way to the bottom?

12 A. "Does a lot of good for just about anything you use
13 it for."

14 Q. And if we could turn to the second page, could you
15 read the first testimonial?

16 A. "I had skin cancer removed two times from my face.
17 The third time it came back, I decided to use Chickweed
18 Healing Salve. Within two weeks it was gone. I also
19 used it on my leg and ankle that was swollen. It went
20 down, and the soreness left also. Thank you for your
21 help.

22 "Raymond Davis, New Washington, Indiana."

23 MS. SMITH: If we could look at the last page
24 of this document, and all the way down at the bottom,
25 scroll down.

1 BY MS. SMITH:

2 Q. What's listed there in smaller font?

3 A. "This information is for education purpose only.

4 Not responsible for adverse effects as a result of using
5 this salve."

6 Q. Then turning to 16B, what is this? It's a hard copy
7 in front of you. It hasn't been admitted yet. It's the
8 photograph.

9 A. 16B?

10 Q. Yes. Can you tell us with words what that is?

11 A. This is the brochure.

12 Q. Is it a picture of the brochures?

13 A. Uh-huh.

14 Q. Were those the brochures that were provided to
15 Agent Lamp by Herbs & More?

16 A. Yes.

17 Q. Is this an accurate depiction of those brochures?

18 A. Yes.

19 MS. SMITH: United States moves to admit
20 Government Exhibit 16B.

21 THE COURT: Any objection?

22 Exhibit 16B is admitted.

23 (Whereupon, Government's Exhibit Number 16B was
24 admitted into the record.)

25 MS. SMITH: If that could be published to the

1 jury.

2 BY MS. SMITH:

3 Q. Were those all the pamphlets Herbs & More had in
4 stock?

5 A. Yeah. He was given whatever we had.

6 Q. Did you have any promotional materials for the
7 TO-MOR-GONE product?

8 A. No.

9 Q. That October 2013 sale where Mr. Girod came to your
10 store, were you aware he was under a federal injunction
11 to stop selling these products?

12 A. No.

13 Q. Would you have bought the products if you'd known
14 there was a court order telling him to stop selling
15 them?

16 A. No.

17 Q. Did he discuss any legal issues with you at that
18 time?

19 A. No.

20 Q. Did he at any point issue a recall notice for any of
21 his products to Herbs & More?

22 A. No.

23 Q. Were you aware that the FDA had ordered him to issue
24 a recall in December of 2013?

25 A. No.

1 Q. Since -- since Herbs & More received the subpoena in
2 this case, has Mr. Girod come to the store again?

3 A. Yes.

4 Q. Were you there when that happened?

5 A. I more than likely was, yes.

6 Q. Do you remember it?

7 A. Not -- not really, vaguely.

8 Q. Do you know if he has tried to sell anymore products
9 to Herbs & More?

10 A. No.

11 Q. Do you know if he has purchased anything from
12 Herbs & More?

13 A. He -- I know he did purchase one or two products.

14 Q. Do you remember what he purchased?

15 A. I don't.

16 MS. SMITH: I don't have any further questions.
17 Thank you. Thank you, ma'am.

18 THE COURT: Any questions, Mr. Girod?

19 DEFENDANT GIROD: I got one.

20 THE COURT: Yes, sir.

21 DEFENDANT GIROD: I think that's about it.

22 CROSS-EXAMINATION

23 BY DEFENDANT GIROD:

24 Q. Hi there.

25 A. Hi.

1 Q. Did you ever have any complaints from anyone on the
2 Chickweed Salve?

3 A. Never.

4 DEFENDANT GIROD: Thank you.

5 THE COURT: Thank you. Anything else of the
6 witness?

7 MS. SMITH: We just want to move to admit 17B.
8 It's the photograph.

9 THE COURT: It's been admitted.

10 MS. SMITH: Okay, great.

11 THE COURT: Yes, thank you.

12 Thank you, ma'am. You may step down. You're
13 finally excused.

14 I expect our next witness may take an hour or
15 more. Is that accurate?

16 MS. SMITH: Yes, Your Honor.

17 THE COURT: All right. We'll --

18 MS. SMITH: Maybe 45 minutes.

19 THE COURT: All right. Well, we'll go ahead
20 and take a break at this time.

21 Ladies and gentlemen, we'll take about a
22 15-minute recess.

23 Please keep in mind the admonitions that you
24 were given previously not to discuss the case among
25 yourselves.

1 I do expect we'll call you back in about
2 15 minutes.

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

4 THE COURT: All right. Thank you.

5 We will be in recess for 15 minutes.

6 (Whereupon, a recess taken at 2:20 p.m., and Day 2
7 of the Jury Trial proceedings continued at 2:35 p.m., on
8 the record in open court, without the juror members
9 present, as follows.)

10 THE COURT: Thank you.

11 Before we bring the jury back in, I have
12 received a note from one of the jurors that reads, "What
13 are the dates that we as a jury should focus on for the
14 indictment? What is the time frame?"

15 I'll entertain any responses that the parties
16 may have to answering the question that's been asked.

17 MS. SMITH: To the extent that Your Honor
18 thinks a response is appropriate, I think that it's
19 covered in their initial instructions. I don't know if
20 they want the initial instructions again.

21 THE COURT: I would not -- at this point I
22 would not intend to read the preliminary jury
23 instructions to the jury. I think that adds too much
24 emphasis to the charges in the case.

25 I'll advise the jury that it is -- that

1 information was provided to them, both during the
2 preliminary jury instructions and in the opening
3 statement, and that they should pay attention to that
4 matter -- those matters during the completion of proof,
5 and also closing arguments, and then the final
6 instructions.

7 MS. SMITH: Sounds great.

8 THE COURT: Any objection to that procedure?

9 DEFENDANT GIROD: No.

10 THE COURT: All right. Thank you.

11 Bring the jury in.

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

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

14 The record will again reflect that all members
15 of the jury are present.

16 The defendant and all counsel are also present.

17 Ladies and gentlemen, in response to your
18 question, "What is -- what are the dates that we as a
19 jury should focus on for the indictment? What is the
20 time frame?"

21 That information was provided to you during the
22 statement of the case, also during the preliminary jury
23 instructions, and during the opening statement given by
24 the United States, and there has been proof on those
25 issues throughout the course of the trial.

1 The trial, of course, is not completed. There
2 is additional proof to be submitted.

3 Additionally, those issues will be addressed
4 not only during the additional proof to be submitted, but
5 also in closing arguments and in final jury instructions,
6 which you will be given in the case.

7 Madam Clerk, you can file the note in the
8 record.

9 THE CLERK: Yes, Your Honor.

10 THE COURT: Thank you.

11 Ready for the next witness?

12 MS. SMITH: Yes, Your Honor.

13 THE COURT: All right. Thank you.

14 MS. SMITH: United States calls

15 Matthew Suedkamp.

16 THE COURT: Thank you.

17 THE CLERK: Raise your right hand, please.

18 Do you swear or affirm, that the testimony
19 you're about to give in this matter shall be the truth,
20 the whole truth, and nothing but the truth, as you shall
21 swear unto God, or affirm, subject to the penalty of
22 perjury?

23 THE WITNESS: I do.

24 THE COURT: Thank you.

25 And you may proceed.

1 MATTHEW SUEDKAMP,
2 having been first duly placed under oath, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SMITH:

6 Q. Good afternoon, sir.

7 Could you please tell the jury your name, and spell
8 your last name for the court reporter.

9 A. My name is Matthew Suedkamp. It's S-U-E-D-K-A-M-P.

10 Q. Mr. Suedkamp, where do you work?

11 A. The Food & Drug Administration.

12 Q. And what do you do for the Food & Drug
13 Administration?

14 A. Consumer safety officer.

15 Q. How long have you been a consumer safety officer?

16 A. It will be seven years and two weeks.

17 Q. What did you do before you became a consumer safety
18 officer for the FDA?

19 A. I was a geologist.

20 Q. Is that what your education background is in?

21 A. It is.

22 Q. What does a geologist do?

23 A. Predominantly soil samples, water samples, basically
24 an environmental type work.

25 Q. Once you became a consumer safety officer for the

1 FDA, did you receive any specific training?

2 A. Yes. I went through every -- every consumer safety
3 officer goes through a three week national new hire
4 course just to learn the basics of food and drug laws,
5 how to do the bases of investigations.

6 And then after that we'll do training specific to
7 the commodity which we work in. So originally that was
8 drug work, pharmaceuticals. So would have gone through
9 two-week drug training course.

10 Q. How long were you focused on drug products for the
11 FDA?

12 A. I think four years.

13 Q. What was the time frame of that?

14 A. It would have been right when I started, so March of
15 2010 to roughly June of 2014.

16 Q. What is your current focus?

17 A. Current focus is food work.

18 Q. What are your responsibilities as a consumer safety
19 officer in the drug area?

20 A. Main responsibility is to protect the consumer, but
21 individually we would do inspections at pharmaceutical
22 manufacturers just to ensure that they're in compliance
23 with the food and drug code.

24 Q. Do you have a geographic responsibility, geographic
25 area you're responsible for?

1 A. Yes. We -- I work out of the Cincinnati district,
2 so our geographic area would be the State of Kentucky and
3 the State of Ohio.

4 Q. How many matters have you worked on that turned into
5 criminal cases?

6 A. This is the first and only.

7 Q. Are you familiar with a man named Samuel Girod?

8 A. Yes.

9 Q. Have you met him in person before?

10 A. I have.

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

12 A. He is right here.

13 MS. SMITH: Let the record reflect he's
14 identified the defendant.

15 THE COURT: The record will so reflect.

16 BY MS. SMITH:

17 Q. When did you first meet Mr. Girod?

18 A. It was January 31st of 2012.

19 Q. How did you come to meet him that day?

20 A. We had originally went to -- gone to his house on
21 January 26th, CSO Nicholas Paulin and I, to conduct an
22 inspection, but he wasn't there. So his family members
23 informed us that he would be back the next week so we
24 returned on January 31st.

25 Q. Were you able to meet him that day?

1 A. I was.

2 Q. Do you know why you were sent to inspect in
3 January 2012?

4 A. He had previous dealings with the FDA in another
5 state, in Indiana, but then some of his product had
6 been -- had turned up in Missouri. And from there the
7 Missouri district asked if we would do an inspection at
8 his manufacturing facility at his residence in Kentucky.

9 Q. Prior to you going to inspect it in January 2012,
10 had he dealt with the FDA prior to that?

11 A. Yes, yes, he had.

12 Q. Do you know how far back that went?

13 A. I believe it was back as far as 2004 I think.

14 Q. Do you know where he lived in 2004?

15 A. I think it was Canaan, Indiana.

16 Q. When did he move to Kentucky?

17 A. I think around 2006, but I'm not positive.

18 Q. Was that 2012 attempted inspection the first time
19 the FDA attempted to inspect in Kentucky?

20 A. Yes, it was.

21 Q. Do you know what business the defendant does -- what
22 the name of his business is?

23 A. It was Chickweed Healing Salve.

24 Q. And what the name of his company was?

25 A. The name of his company was SAEG, which stood for

1 Sam and Elizabeth Girod.

2 Q. Has he done business under any other name?

3 A. He had another name that he operated under,
4 Satterfield Naturals.

5 Q. When you met him on January 31st, 2012, what
6 happened that day?

7 A. CSO Nicholas Paulin and I arrived and met him, met
8 Mr. Girod and his wife, and we sat down in their living
9 room, I believe living room, and discussed that we wanted
10 to do an inspection, but he would not let us inspect the
11 manufacturing facility or his storage areas at that time.

12 Q. Did he tell you which products he made?

13 A. He informed us that he made Chickweed Healing Salve,
14 another product called TO-MOR-GONE, and another product
15 called R.E.P.

16 Q. Did he tell you where he made those products during
17 that very first visit?

18 A. He stated he made them on-site at his residence.

19 Q. Did you see the products that day?

20 A. We did not.

21 Q. Did you ask him about his inventory of those
22 products?

23 A. We did ask him about the inventory that day, and he
24 said he had some in inventory, but he did not want to
25 show us because his manufacturing and storage areas were

1 messy.

2 Q. What type of information did you request from him
3 that day?

4 A. We would have requested distribution records, batch
5 records, related to manufacturing of Chickweed Healing
6 Salve, his promotional materials, the pamphlets, anything
7 else he handed out with the products, training records if
8 he had any, standard operating procedures if he had those
9 for the production of the products.

10 Q. Are those standard things that you ask for in an FDA
11 inspection?

12 A. They are standard.

13 Q. Did he provide those records to you?

14 A. No.

15 Q. Why not?

16 A. For the distribution records specifically he stated
17 that he claimed HIPAA, that would have been a violation
18 of HIPAA to hand us his distribution records.

19 Q. Who does HIPAA usually apply to?

20 A. Medical professionals, insurance related to the
21 medical industry.

22 Q. Did he provide any information about his products?

23 A. Not really, no.

24 Q. Did you see any pamphlets of his products around
25 this time?

1 A. We did not, but CSO Paulin and I had already
2 collected some of his pamphlets during our one
3 January 26th visit. We stopped and purchased some of his
4 products at local stores, and they were distributed with
5 the pamphlets.

6 Q. During that January 2012 meeting, did you discuss
7 the contents of those pamphlets with the defendant?

8 A. We did, yes.

9 Q. What did you discuss?

10 A. We discussed that anything that a manufacturer
11 provides with -- at the point of sale with his products
12 counts as labeling, and that the claims made in his
13 pamphlets were making drug claims in regard to his
14 Chickweed Healing Salve.

15 Q. Did you talk to him about the testimonials in his
16 product, in his pamphlets?

17 A. We did, yes.

18 Q. And what did you tell him with respect to that?

19 A. We told him that since -- that even though they're
20 testimonials supposedly from clients, that since he's
21 providing them on the pamphlets that he manufacturers and
22 distributes with the Chickweed Healing Salve, that they
23 are essentially coming from him, therefore, making them
24 labeling claims.

25 Q. Did you give him any advice about the pamphlets?

1 A. We advised him to quit distributing the pamphlets
2 with the product at that time, yes.

3 Q. Did you discuss any complaints he received about his
4 products?

5 A. He stated that he had -- he did not keep a complaint
6 file, but that he did receive a few complaints from
7 diabetics that got skin irritation when applying
8 Chickweed Healing Salve.

9 Q. Had he kept copies of those complaints?

10 A. He did not keep copies.

11 Q. How did you leave things after that January 2012
12 visit?

13 A. The way we left was that we would really need to
14 watch manufacturing, but he stated that he was not
15 manufacturing that day, but that he would inform us the
16 next time he was manufacturing so that we could come and
17 observe his manufacturing process.

18 Q. Did he call you after that first meeting?

19 A. He did, yes.

20 Q. When was that?

21 A. It was the morning of March 13th, 2012.

22 Q. What did he say?

23 A. He called -- he called me and stated that he would
24 be manufacturing later in the afternoon, and let us know
25 that we were invited to come down and observe the

1 process.

2 Q. Did you accept that invitation?

3 A. Yes. CSO Paulin and I went down to observe his
4 manufacturing process.

5 Q. Were you able to inspect that day?

6 A. We were.

7 Q. Can you tell us what you observed about which
8 product you saw made and how it was made?

9 A. We observed the latter stages of Chickweed Healing
10 Salve manufacturing. We also observed some of the raw
11 materials that he has -- lack of a better word, infusing
12 with herbs that he had stored outside, we got to observe
13 that, and his storage conditions for those products.

14 Q. Did he tell you where he makes the TO-MOR-GONE
15 product?

16 A. He stated that TO-MOR-GONE products, I believe, is
17 made in the same barn. He made one in his kitchen. It
18 was either the R.E.P. or the TO-MOR-GONE, and the
19 Chickweed Healing Salve was made in the barn.

20 Q. In conducting your inspections, did you have any
21 concerns about the conditions where the Chickweed Healing
22 Salve was made?

23 A. Yes, we did. The barn was left open, not very --
24 not in very clean condition. The raw product was stored
25 outside near livestock. There was a dog that was coming

1 in and out of the facility. So, yeah, we had concerns
2 about the conditions of that.

3 Q. Did you discuss insect or pest control issues with
4 the barn?

5 A. We did. Mr. Girod stated that in the warmer months
6 he would have fly and bee problems and that he would
7 control those with store bought bug spray.

8 Q. Did he ever have issues with insects getting into
9 the product?

10 A. He did, and he stated that if a fly, for instance,
11 would land in one of the drying tins of Chickweed Healing
12 Salve that he would scoop it out and continue with the
13 processing and keep that product.

14 Q. After you saw him manufacturing the products, did
15 you return after that visit?

16 A. We did, yes.

17 Q. When was that?

18 A. On March 19th CSO Paulin and I returned.

19 Q. So just a few days after your inspection?

20 A. Approximately a week, yes.

21 Q. Why did you return on March 19th?

22 A. After the first visit we had what we would consider
23 inspection observations, that we wanted to go back to the
24 office and write up and put together, and then we issue
25 what we call a 483, inspection observations.

1 So we wanted to get that written up and run it
2 through our supervisor and make sure everything was in
3 order, and then we came back on March 19th to issue the
4 483 to Mr. Girod.

5 Q. What is the purpose of a FDA-483?

6 A. The purpose of a 483 is just to give the
7 manufacturer a very detailed specific list of issues that
8 we noticed during our inspection.

9 Q. What's the procedure for issuing a 483?

10 A. The procedure is that we prepare the 483. We meet
11 with the most responsible person at the firm, and it's
12 what we call a close-out meeting, and we will read the
13 483 out loud to the most responsible person, and then
14 give them a chance at the end of each observation to
15 either give us their argument against why that should be
16 on there and/or any corrections they might want to make
17 in regard to that observation.

18 Q. Is it officially part of the procedure that you read
19 it out loud?

20 A. It is.

21 Q. And why is that?

22 A. I think just to -- so that the manufacturer has a
23 chance to listen and hear exactly what we want to get
24 across and that we can be sure that they did hear and are
25 aware and informed of what we found.

1 Q. Were you able to review the issues in the 483 with
2 the defendant?

3 A. Mr. Girod wanted to read it himself.

4 Q. Were you able to read it out loud according to your
5 policy?

6 A. No.

7 Q. What was his response to the observations in the
8 483?

9 A. He stated that he did not want to reply until he had
10 a chance to consult legal counsel.

11 Q. Where were you when you were reviewing the 483 with
12 him?

13 A. We were on the trunk of our government car in his
14 driveway.

15 Q. Was it in the turn-around area of his driveway?

16 A. It was turn-around area up near the house and the
17 barn where he manufactured.

18 Q. Was anyone else there at this time?

19 A. Yes, there were 15 to 20 individuals total,
20 including Mr. Girod.

21 Q. And what were they doing during this conversation?

22 A. Mostly standing around. A few individuals had
23 choice words about FDA in general and basically that we
24 were not -- not really there to help the public.

25 Q. After that March visit, did you return another time

1 to inspect his facility?

2 A. We did, yes.

3 Q. When was that?

4 A. That would be November 21st, 2013.

5 Q. Why did you return in November of 2013?

6 A. There had been a court order for Mr. Girod to cease
7 and desist manufacturing the Chickweed Healing Salve, and
8 we were going back to inspect under the court order to
9 make sure that he had quit manufacturing and to take an
10 inventory of any product he had on hand at that time.

11 Q. Who went with you that day?

12 A. CSO Paulin once again.

13 Q. Did anyone else go with you?

14 A. We called the local sheriff's office to have a
15 sheriff escort at that time, the day before.

16 Q. You notified the sheriff's office when?

17 A. On November 20th, 2013.

18 Q. And why did you ask the sheriff to accompany you
19 that time?

20 A. The previous close-out meeting we had with the
21 multiple individuals -- they were standing around with
22 sticks, and they -- they didn't -- they didn't approach
23 us and really try to do a whole lot on that visit, but
24 there was enough tension in that meeting that we decided
25 it would be better to return with a local law enforcement

1 escort.

2 Q. Is that something that you have to do frequently in
3 your line of work?

4 A. I have never done that any other time, no.

5 Q. Where did you meet the person from the sheriff's
6 office that day?

7 A. CSO Paulin and I met the local law enforcement
8 individual at McDonald's on the outside of the city a
9 little bit.

10 Q. Do you remember what the position -- what that
11 person was, what their position was with the sheriff's
12 office?

13 A. I think he was a sheriff's deputy.

14 Q. What happened after you met up with him?

15 A. He arrived at McDonald's, and we informed him where
16 we wanted to go and what we needed to do, and he
17 immediately jumped in his vehicle and just sped away very
18 quickly. So CSO Paulin and I jumped in our vehicle and
19 tried to keep up with him to go to Mr. Girod's house.

20 Q. Had you had any expectation as to who was going to
21 drive in front?

22 A. CSO Paulin and I had assumed that we would lead and
23 that the deputy sheriff would basically just be kind of
24 in the background for support should anything get out of
25 hand.

1 Q. Is that what ended up happening?

2 A. That is not what happened. The deputy sheriff led
3 us a different direction to get to Mr. Girod's residence
4 that we -- that CSO Paulin and I typically had not taken,
5 which kind of paraded us through a lot of the Amish
6 community. We typically took a route that would go in
7 the back side. And so he led us, and then he actually
8 led us all the way to Mr. Girod's house.

9 Q. When you got to Mr. Girod's house, who pulled into
10 the driveway first?

11 A. Deputy sheriff pulled in first.

12 Q. What happened after the car pulled into the
13 driveway?

14 A. We followed the deputy down the driveway until we
15 encountered a closed gate. So the driveway was fenced on
16 both sides, and we encountered a closed gate. And as an
17 FDA investigator, we do not have legal authority to
18 trespass. So we were -- basically at that point we could
19 not conduct our inspection.

20 Q. Had that gate been there during any of your prior
21 visits?

22 A. I had never seen the gate closed, no. I'm not sure
23 if it was physically there or not, but it was never
24 closed.

25 Q. What happened after your vehicle got down the

1 driveway?

2 A. We pulled up behind the deputy, and we got out to
3 inform him that we did not have the authority to cross
4 fences or trespass.

5 And at that time some males came jumping over the
6 fence on both sides of us, came in a truck with Mr. Girod
7 and two other individuals came and blocked our vehicle
8 in, so that we had the fence on two sides, a gate, and
9 then a vehicle blocking us a few feet from our car on the
10 back side.

11 Q. After the truck with Mr. Girod had arrived,
12 approximately how many people other than you and your
13 co-investigator were there?

14 A. Excluding the deputy, there were eight individuals I
15 believe.

16 Q. And what -- what happened?

17 A. They surrounded us, started screaming at us. They
18 had sticks. They were kind of threatening, not yelling
19 they were going to do any harm to us, but they were very
20 intimidating us. So we at this point basically just
21 decided that we needed to get a documented refusal from
22 Mr. Girod so we were trying to communicate with him, but
23 we were -- it was very difficult with all the screaming.

24 Q. When you say document a refusal, what do you mean by
25 that?

1 A. So we came to do just a basic inspection with a
2 court order, of course, but we just wanted to get
3 Mr. Girod to officially tell us that he was not going to
4 allow us to cross his fence line and through the gate to
5 do an inspection on his facility.

6 Q. Did you explain the purpose of your visit?

7 A. We did, yes. So for a court-ordered inspection we
8 have a canned phrase that we have to read. So CSO Paulin
9 read that out loud stating that we were there by court
10 order to conduct the inspection, but Mr. Girod still
11 refused the inspection at that time.

12 Q. And physically what was happening? Where were the
13 other individuals?

14 A. The other individuals were kind of tightening the
15 circle on us at this point. At one time one of the
16 individuals kind of started to lunge forward, and the
17 deputy sheriff put his arm out and basically grabbed him
18 and held him back a little bit. And we were at this
19 point just trying to basically diffuse the situation and
20 leave since we were not going to get our inspection done.

21 Q. Verbally what was happening in the group?

22 A. They were screaming at us, telling us to burn our
23 notes, and that the FDA only approves things that kill
24 people and that we weren't good Christians and just other
25 derogatory remarks towards us.

1 Q. Did you ask the defendant if you could inspect his
2 facility?

3 A. We did, yes.

4 Q. Did he -- what was his response?

5 A. It took a few times to get a clear answer, but he
6 eventually verbally said, no, you could not inspect.

7 Q. And why -- why did you keep asking? Why were trying
8 to get a clear response?

9 A. To get the document refusal. It makes it much more
10 clean on our end if we can say he very clearly said, no,
11 we were not going to be allowed in.

12 Q. And what is that document that you fill out for
13 that?

14 A. Well, it's just a documented refusal at that point,
15 but when we write our report, it's very clear and concise
16 that we tried to do an inspection. They knew who we
17 were. We informed them who we were, and they still
18 refused to allow.

19 Q. Did he say anything about manufacturing activity?

20 A. He explained during the commotion that he was no
21 longer shipping anything interstate, but that he was
22 still manufacturing, yes.

23 Q. Were you prevented from conducting your inspection
24 that day?

25 A. Yes, we were.

1 Q. Were you able to do your job that day?

2 A. No, no, I was not.

3 Q. What prevented you?

4 A. The group of men and women that surrounded us
5 screaming at us and threatening us, and then obviously
6 Mr. Girod saying that we could not do the inspection.

7 Q. In terms of the group, was the defendant part of
8 that?

9 A. He was, yes.

10 Q. Were the actions of the defendant and the other
11 individuals there harassing you?

12 A. Yes, they were very harassing.

13 Q. Were their actions designed to threaten you?

14 A. I believe so, yes.

15 Q. Were they intimidating?

16 A. They were, yes.

17 Q. Were you forced to leave before conducting your
18 inspection?

19 A. We were.

20 Q. After you left, did you discuss what had happened
21 with the sheriff?

22 A. As we were leaving, the deputy sheriff told us not
23 to come back unless we contact his office prior to coming
24 back.

25 Q. In your seven years of working for the FDA has

1 anything like this happened before?

2 A. No, it had not.

3 MS. SMITH: I have no further questions. Thank
4 you.

5 THE COURT: All right. Thank you.

6 Mr. Girod.

7 DEFENDANT GIROD: I have got a few questions.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY DEFENDANT GIROD:

11 Q. Isn't it true that you came unannounced?

12 A. Unannounced, you said?

13 Q. Yes, that day.

14 A. Yes, sir.

15 Q. Is it true that the deputy told you to leave that
16 day?

17 A. That is not true.

18 DEFENDANT GIROD: Okay. That's all I have.

19 THE COURT: Anything else of the witness?

20 MS. SMITH: Just briefly.

21 REDIRECT EXAMINATION

22 BY MS. SMITH:

23 Q. Investigator Suedkamp, why does the FDA conduct
24 unannounced inspections?

25 A. We conduct unannounced inspections so that

1 manufacturers can't essentially prepare their facility
2 and hide anything that we might be looking for, any
3 evidence of manufacturing contrary to the FDA Act.

4 Basically if we announced our inspections, it would
5 be very difficult to catch anybody that had resources in
6 time because they could just hide everything.

7 Q. In the instance of your November 21st, 2013,
8 attempted inspection, did you notify anyone in the
9 Bath County area before your inspection that you would
10 be doing an inspection that day?

11 A. Only the sheriff.

12 Q. When you arrived at the defendant's farm, did it
13 seem that anyone knew you were coming?

14 A. It seemed very likely that the -- that Mr. Girod and
15 the other individuals that were seemingly waiting to come
16 over the fence were in the know that we would be arriving
17 that day.

18 DEFENDANT GIROD: Object to that.

19 THE COURT: Based on his observations, I'll
20 allow it.

21 BY MS. SMITH:

22 Q. What makes you say that?

23 A. The gate being closed was unusual, but obviously
24 anyone can close a gate, but the fact that there were
25 people seemingly hiding behind things that just came out

1 of nowhere from what it appeared to be able to surround
2 us and everything just kind of blocked us into that.
3 That seemed very premeditated.

4 MS. SMITH: Thank you, sir. Nothing further.

5 THE COURT: You may follow up if you wish on
6 this line of questions.

7 DEFENDANT GIROD: No.

8 THE COURT: Thank you.

9 No further questions, you may step down.

10 Thank you.

11 MS. SMITH: This witness is excused.

12 THE COURT: Yes, he is, he's finally excused.

13 Thank you, sir.

14 You may call your next witness.

15 MS. SMITH: United States calls Special Agent
16 Steven Lamp.

17 THE COURT: Thank you.

18 THE CLERK: Raise your right hand, please.

19 Do you swear or affirm, that the testimony
20 you're about to give in this matter shall be the truth,
21 the whole truth, and nothing but the truth, as you shall
22 swear unto God, or affirm, subject to the penalty of
23 perjury?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you.

1 Ms. Smith, you may proceed.

2 STEVEN LAMP,

3 having been first duly placed under oath, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SMITH:

7 Q. Good afternoon, Agent Lamp.

8 Could you please introduce yourself to the jury?

9 A. Good afternoon.

10 My name is Steven Lamp, S-T-E-V-E-N L-A-M-P.

11 Q. Agent Lamp, where do you work?

12 A. I work for the United States Food & Drug
13 Administration.

14 Q. What do you do for the FDA?

15 A. I'm a special agent.

16 Q. What does it mean to be a special agent for the FDA?

17 A. It means I'm a federal law enforcement officer.

18 Q. How long have you served in that capacity for the
19 FDA?

20 A. A little over four years.

21 Q. And what's your prior work experience?

22 A. I was a federal criminal investigator for the
23 United States Postal Service for almost nearly
24 nine-and-a-half years prior to that.

25 Q. And what about prior to that?

1 A. Prior to that I was a state police officer for
2 eight years.

3 Q. Have you received any specific training to become a
4 special agent with the FDA?

5 A. Yes. I attended the what we call FLETC. It's the
6 Federal Law Enforcement Training Center, and that was in
7 Charleston, South Carolina.

8 When I was a postal inspector, I attended their
9 Federal Law Enforcement Training Academy in Potomac,
10 Maryland.

11 And when I was a State Police officer prior to that
12 I attended the Iowa Department of Public Safety Training
13 Academy.

14 Q. What are your responsibilities as a special agent
15 for the FDA?

16 A. My responsibilities are to conduct criminal
17 investigations related to the Federal Food Drug &
18 Cosmetic Act and any other federal violations that relate
19 to that act, such as wire fraud, bank fraud, drug
20 distribution charges, things of that nature.

21 Q. How does an investigation end up on your desk?

22 A. A couple different ways. One, I can self-initiate
23 something. If I, you know, met a local law enforcement
24 agent, and I gave them my business card, which I've done
25 a lot of, and I tell them these are some of the areas

1 that the FDA, my specific section, which is the Office of
2 Criminal Investigations, if you come across this, please
3 give me a call, I can help you. That would be one way.
4 That would be self-generated.

5 Another way would be if my supervisor assigns me a
6 case, and that could be something that came in to our
7 headquarters in Rockville, Maryland, as a complaint, or
8 it could come from the regulatory district offices
9 throughout the country.

10 Q. What does it mean if it comes from a regulatory
11 district office?

12 A. I explain that there's two sides of FDA. The
13 majority of FDA employees are on the regulatory side.
14 The smaller side of the coin is the criminal
15 investigation side. It's probably only about
16 250 employees.

17 Q. Are you familiar with the investigation into
18 Samuel Girod?

19 A. I am.

20 Q. When did you first become involved?

21 A. Mid December 2013.

22 Q. How did the criminal investigation start?

23 A. I was asked to open a criminal investigation by my
24 supervisor at that time. He made me aware of the events
25 on November 21st, 2013, with the two CSOs that have

1 previously testified.

2 Q. Were those events the reason the FDA opened a
3 criminal investigation?

4 A. Yes.

5 Q. Had a court order already been issued in the matter
6 involving Mr. Girod?

7 A. Yes. There was a federal injunction issued by
8 Judge Fenner who is a United States District Court Judge
9 in the Western District of Missouri, and that was an
10 injunction, basically court order from him.

11 Q. In your experience working for the FDA, how common
12 or unusual was it to get a federal injunction against
13 someone?

14 A. On the regulatory side, which is more civil process,
15 the regular -- the injunction is what I like to refer to
16 as the cherry on the cake. On the regulatory side of the
17 house with the civil side of the United States Attorney's
18 Office, you can't get any higher than an injunction or a
19 consent decree.

20 Q. And what was in place in this case?

21 A. An injunction.

22 Q. After you opened the criminal investigations, what
23 was one of the first things that you did?

24 A. I actually drove by Mr. Girod's property and took a
25 few photographs. You know, later part of 2000 --

1 December of 2013.

2 MS. SMITH: I would like to hand the witness
3 Government's Exhibit 1V and 1W.

4 THE WITNESS: These are basically two
5 photographs that I took, and the date on the photographs
6 is December 18th, 2013.

7 BY MS. SMITH:

8 Q. Are they fair and accurate depictions of what you
9 saw that day?

10 A. Yes, ma'am.

11 MS. SMITH: United States moves to admit
12 Government Exhibit 1V and 1W.

13 THE COURT: Any objection to those two
14 photographs?

15 DEFENDANT GIROD: I don't see them.

16 THE COURT: I will give you a moment to take a
17 look.

18 DEFENDANT GIROD: That's okay.

19 THE COURT: All right. Exhibit Number 1, end
20 of Exhibit Number 1, let me make sure there is no
21 objection first.

22 DEFENDANT GIROD: No objection.

23 THE COURT: All right. United States
24 Exhibits 1V and W are admitted.

25 (Whereupon, Government's Exhibit Numbers 1V and 1W

1 were admitted into the record.)

2 MS. SMITH: If we could publish 1V.

3 BY MS. SMITH:

4 Q. Can you tell us what we're looking at here?

5 A. It's a photograph I took at the end of the driveway
6 of Mr. Girod's property. It's the mailbox and the sign
7 above the mailbox. It says Samuel and Elizabeth Girod,
8 409 Satterfield Lane.

9 Q. If we could look at the next picture, 1W.

10 A. That is a picture down the driveway, so I was -- I
11 was parked on Satterfield Lane, and I took the picture in
12 a southerly direction down the driveway.

13 Q. In the course of this investigation, how many
14 different states did you collect some of the defendant's
15 products from?

16 A. Several; Missouri, Indiana, Illinois, Ohio,
17 Kentucky, Wisconsin.

18 Q. Any other states, any southern states?

19 A. I had a business in Alabama that actually sent me
20 some product after they received one of my subpoenas.

21 Q. And in the course of this investigation,
22 approximately how many interviews did you conduct?

23 A. Right around 50.

24 Q. As part of the investigation, did you issue
25 subpoenas for records?

1 A. I did. I issued nearly -- I asked the grand jury
2 for nearly 75 grand jury subpoenas.

3 Q. What types of institutions did grand jury subpoena
4 records for?

5 A. Some of the subpoenas went to financial
6 institutions, some of the subpoenas went to shipping
7 companies, and a majority of the subpoenas went to people
8 who I had identified as purchasing Mr. Girod's products.

9 Q. In terms of the financial institutions, what
10 institution did you subpoena records from?

11 A. Owingsville Banking Company in Owingsville,
12 Kentucky.

13 Q. What types of records did you receive from
14 Owingsville Banking Company?

15 A. I received check statements, monthly banking
16 statements, and loan documents.

17 Q. And what -- whose account were those records for?

18 A. Samuel Girod's.

19 Q. Did he receive loans from the bank?

20 A. Yes, he did.

21 Q. Did you review the loan file in particular?

22 A. I did.

23 Q. What did you find in the loan file?

24 A. In the loan file the bank provided -- I found
25 some -- well, I'll refer to as summary documents. They

1 were handwritten documents. And what it did is it
2 spelled out the quantities of Chickweed Healing Salve,
3 TO-MOR-GONE, and R.E.P. And those documents were totaled
4 up with the quantities and the prices, and those were
5 inside the loan documents.

6 MS. SMITH: I would like to hand the witness
7 Government Exhibit 33.

8 THE WITNESS: 33 is one of the handwritten
9 documents that I just spoke about briefly.

10 BY MS. SMITH:

11 Q. And was this authenticated by the bank as something
12 maintained in their bank records?

13 A. Yes.

14 Q. Was a certificate provided to that affect?

15 A. Yes.

16 MS. SMITH: United States moves to admit
17 Government Exhibit 33.

18 THE COURT: Any objection to Exhibit 33?

19 DEFENDANT GIROD: I object on that. That gets
20 into Privacy Act it seems to me like.

21 THE COURT: All right.

22 DEFENDANT GIROD: Personal stuff.

23 THE COURT: I'll overrule the objection. It is
24 relevant to the issues raised in the proceedings.

25 The objection will be overruled, and the

1 document will be admitted.

2 (Whereupon, Government's Exhibit Number 33 was
3 admitted into the record.)

4 MS. SMITH: If we could publish Exhibit 33 and
5 the first page.

6 BY MS. SMITH:

7 Q. A little hard to read. Could you describe what is
8 in this document?

9 A. Yeah. The J on January is -- you know, this is a
10 photocopy of a document that the bank provided to me so
11 there's some clarity that's missing. But it says
12 January 2012 in my best estimation, because if you look
13 on the left-hand side of the document, you'll see various
14 dates beginning with 1/2 of '12 all the way down, and
15 you'll see abbreviations for CHS, TMG, AMS, REP, and it
16 continues all the way down. So this is what I believe to
17 be a summary of the sales of those products, specifically
18 for January 2012.

19 Q. What's at the bottom of that first page?

20 A. The bottom is totals. So 713 CHS, which is
21 Chickweed Healing Salve, and onto -- off to the
22 right-hand side is AVER, which in my experience is the
23 abbreviation for average, and it says \$6.23.

24 The next line says 127 TMG, which I know during this
25 investigation is an abbreviation used for TO-MOR-GONE,

1 and that says \$6.86 average.

2 The next one says 697 REP, which is the third
3 product that I know Mr. Girod was manufacturing. And off
4 to the right-hand side it says average \$3.80.

5 The line below it is AMS. That is -- that is
6 another product that Mr. Girod was selling, but that is
7 not part of this investigation, and so the total is
8 \$11,961.74.

9 For my purposes I subtracted the AMS because I'm not
10 concerned about that.

11 Q. If we could scroll to the third page titled
12 March 2012.

13 A. Okay.

14 Q. Is this a similar format to what you saw for
15 January 2012?

16 A. Yes, ma'am.

17 Q. Can you describe what's on this page?

18 A. Yeah. Various dates beginning with 3/2 of 2012. It
19 says 18 TMG. \$126 off to the right-hand side. Goes all
20 the way down various dates throughout March of 2012, and
21 again we get to the bottom, and it's 1,461 containers of
22 CHS, Chickweed Healing Salve, with an average price of
23 \$6.09, 473 TO-MOR-GONE for an average price of \$5.84,
24 1,399 containers of REP for an average price of \$3.34,
25 and 288 one-ounce containers. The other CHS above is a

1 four-ounce container. Mr. Girod had two sizes, and that
2 says \$2.10. And, of course, there's a quantity for AMS,
3 and the total of a little over \$21,000.

4 Q. What time period did you find records like these for
5 in the defendant's loan file?

6 A. 2011 through a majority of 2013.

7 Q. Did you do any sort of analysis of this document?

8 A. I did. I went through, and I added up the totals
9 for 2011 sales of the three products, TO-MOR-GONE,
10 Chickweed Salve, and R.E.P. I did that for 2011, 2012,
11 and 2013.

12 Q. Did you deduct any sales from products not relevant
13 to the investigation?

14 A. Yes, I deducted all the AMS totals.

15 Q. How much did he earn according to these records in
16 2011?

17 A. A little over \$188,000.

18 Q. Did you calculate a monthly average for 2011?

19 A. I did.

20 Q. What was that?

21 A. \$15,686 and change per month.

22 Q. Which products was that for?

23 A. That was for all three, for 2011.

24 Q. How much did he earn according to these records in
25 2012?

1 A. 2012 my calculations were nearly \$118,000.

2 Q. Did you calculate a monthly average?

3 A. I did for the three products in question.

4 \$9,820.66.

5 Q. What else was going on in 2012 according to your
6 knowledge of the investigation?

7 A. 2012 is when the Kansas City district office, the
8 regulatory office of the FDA, got involved with the
9 embargoed seizures of Mr. Girod's products from a store
10 in Bogard, Missouri.

11 Q. How much of the three products were involved in that
12 shipment?

13 A. To the best of my knowledge and recollection it was
14 about 1,200 Chickweed Healing Salve, 300 TO-MOR-GONE, and
15 maybe a couple hundred R.E.P. I might have the two
16 totals switched around on the R.E.P. and TO-MOR-GONE.

17 Q. For 2013 did you find a ledger for every month of
18 that calendar year?

19 A. Except for December. I asked the bank several
20 times. I had all months besides September (sic), and I
21 asked him several times, and they could not provide me
22 with that document. So I went through, and I added up
23 based on the records that Mr. Girod provided to his bank.
24 I added up the amount of money for the first 11 months of
25 2013.

1 Q. And what was the month that was missing?

2 A. December 2013.

3 Q. Okay. According to these records how much did he
4 earn in 2013?

5 A. A little over 112,000.

6 Q. Did you calculate a monthly average based on the
7 data from those first 11 months?

8 A. From the first what?

9 Q. 11 months.

10 A. Yes, I did.

11 Q. And what was that?

12 A. \$10,239.43.

13 Q. Assuming he made that much in the last month of the
14 year, how much would he have earned that year from the
15 three products?

16 A. A little over 122,000.

17 Q. According to his records, how much did he make from
18 the three products in September, October, and November of
19 2013?

20 A. A little shy of 39,000.

21 Q. Did the bank have anymore records like these after
22 November 2013?

23 A. No. I asked, and they didn't have them.

24 Q. Based on the years of information available in these
25 records, did you calculate a monthly average across all

1 the years?

2 A. I did. I calculated monthly average after I
3 achieved my totals for 2011, 2012, 2013, and then I
4 calculated a monthly average of just shy of \$12,000. And
5 that's what I used when I went to calculate the earnings
6 for 2014 based on the premise that three years of prior
7 records is a good indicator of how somebody's business is
8 going to do going that point forward.

9 Q. And just to be clear, this is just an analysis. You
10 said you weren't basing it on actual sales records from
11 2014 and 2015?

12 A. That's correct.

13 Q. How much using that average would he have earned in
14 those years if he kept selling the products?

15 A. Just shy of \$143,000.

16 Q. Separate from the bank records, did you perform any
17 other calculations with respect to how much money the
18 defendant could have earned from the sale of these
19 products after the injunction?

20 A. I did. What I did is I took the amounts of labels
21 that have -- Mr. Mandrell provided the defendant,
22 Mr. Girod, and then I calculated up the value of the
23 amount of labels using the prices in Mr. Girod's own
24 materials that he had Mr. Mandrell print up for him for
25 his products.

1 Q. So based on the records in evidence from Manley's
2 Printing, how many labels did he order for TO-MOR-GONE
3 after the injunction was entered?

4 A. 1,000 labels.

5 Q. Based on -- what was the average price for the
6 TO-MOR-GONE product in his promotional material?

7 A. In the TO-MOR-GONE I based that off of the flyer
8 that I had received from the Hollingers, and it was one
9 four-ounce container was \$12, or you could buy two
10 four-ounce containers for \$20. So with a thousand labels
11 potential estimated earnings between 10 and \$12,000.

12 Q. That's if he had made and sold all of the products
13 he ordered labels for?

14 A. Correct.

15 Q. How many Chickweed Healing Salve labels did the
16 defendant order based on the records in evidence?

17 A. After the injunction that Judge Fenner handed down
18 and based on the records Mr. Manley testified, I came up
19 with 11,325 of the Chickweed Healing Salve labels at the
20 four-ounce size. And so based on his labeling, I came up
21 with 19.95 -- \$19.95 per container.

22 And then there's the one-ounce container as well,
23 and so based on the documents already submitted as
24 evidence, there was 8,200 labels of the one-ounce size,
25 and that was \$7 a piece.

1 Q. Given that there's a range for the price he could
2 have sold his product at, what was the total across the
3 two different sizes of Chickweed Healing Salve?

4 A. For the four ounce it was a little -- \$169,308 and
5 change up to nearly \$226,000 just for the four ounce.
6 The one ounce comes up to be \$57,400.

7 Q. Now, we've heard testimony that sometimes he made
8 very large sales at lower prices. So is it possible he
9 could have made less money than this if he had sold items
10 in bulk?

11 A. He could have, yes.

12 Q. How many Sin-Eze labels did the defendant order
13 based on the Manley's exhibits?

14 A. 10,125 labels were ordered after the injunction.

15 Q. And what's the price for Sin-Eze that you found in
16 his materials?

17 A. I averaged the price based on his own labeling. One
18 portion of labeling said one bottle for \$15.95, two
19 bottles for \$24.95, which is an average of \$12.48.
20 Six bottles you could buy for \$59.95 for a \$9.99 average.
21 So then I averaged all those prices to give him the
22 benefit of the doubt on a lower price, and that was
23 \$12.80 overall, which when I multiplied that by the
24 10,125 labels, that came up to earnings of \$129,600.

25 Q. Across all the three products -- this is just based

1 on the label analysis you did, if he had made and sold
2 all those products, what was the range of revenue you
3 calculated?

4 A. \$366,308.75, up towards 424,993.75.

5 Q. And just so we're very clear, this analysis you did
6 is not based on actual sales. It's just based on the
7 labels that the defendant ordered; is that right?

8 A. That's correct, because the bank was not able to
9 provide me those sales totals.

10 Q. Now, you mentioned that you also issued subpoenas to
11 various country stores.

12 A. I did.

13 Q. What types of records did you receive from those
14 stores?

15 A. What I requested is I requested any invoice
16 documents, any product that they had, any forms of
17 payment that they had, and any labeling, which would be
18 specifically the wholesale pricing sheets that have
19 already been admitted into evidence, things like that,
20 and the brochures, the triplicate form brochures of the
21 Chickweed Healing Salve, the R.E.P, the Sin-Eze, and
22 TO-MOR-GONE. So it was mainly invoices, payments, and
23 labeling, and whether or not you had product. Some
24 people I asked for sales information as well.

25 Q. When you conducted your interviews in this

1 investigation, did people also provide physical product
2 to you?

3 A. They did.

4 Q. Who are some of the individuals who provided
5 physical product to you that's relevant to the case
6 before this jury?

7 A. Herbs & More, which also does business as
8 Miss Vivian's LLC in Madison, Indiana -- Madison,
9 Indiana, provided me product.

10 The Hollingers in Anderson, Indiana, provided me
11 product.

12 Jeffrey Burkholder in Curtiss, Wisconsin, provided
13 me product, along with the product that was in his
14 warehouse in Versailles, Missouri.

15 Mary Miller in Arcola, Illinois, with Miller's Dry
16 Goods provided me product.

17 Mary Miller in Grabill, Indiana, provided me
18 product, and that's it.

19 Q. I think that's all of them.

20 A. Yes.

21 Q. In terms of the physical product you received,
22 generally what did you do with that?

23 A. What I did is when I went and visited a -- somebody
24 that I had identified as someone that had purchased
25 Mr. Girod's products, a majority of my visits were

1 unannounced because I wanted to see if they had the
2 product. And what I did with everybody that I
3 interviewed, I asked them on the day that I was there
4 would you voluntarily surrender this product to me, or I
5 can get a court order from this Court. And everybody I
6 encountered voluntarily surrendered their product, and
7 that's how I acquired the product.

8 Q. What did you do with it after you acquired it?

9 A. What I did is it's evidence. It's evidence that
10 comes into my possession. And so what I do is, you know,
11 what most law enforcement officers call tag and bag it.
12 I put in an evidence bag, put a label on it, and seal it
13 up.

14 Q. Have you brought that evidence here today?

15 A. Yes, ma'am.

16 Q. Well, let's start with the physical evidence you
17 received from Cloverdale Warehouse.

18 A. Okay.

19 Q. It's been premarked as Government's Exhibit 10A and
20 10B. What -- what are those two exhibits, how many
21 containers of products are in those two? 10A being from
22 Wisconsin and 10B from Missouri.

23 A. Those are the large boxes, some of the large boxes
24 behind you. When I visited Jeffrey Burkholder on
25 January 22nd of 2015, I drove up to Curtiss, Wisconsin,

1 and met him, and he previously testified about two boxes
2 and him and I counted. He voluntarily surrendered to me
3 413 containers of the four-ounce variety of the Chickweed
4 Healing Salve.

5 And then Mr. Burkholder informed me that he had a
6 larger amount at his warehouse in Versailles, Missouri,
7 and so he arranged with a family member that I was
8 allowed to go down there, and the family member and I
9 counted that out, and I believe that was on January 27th
10 of 2015, and that was 619 containers of the Chickweed
11 Healing Salve, the four-ounce variety, with the white
12 labels and all the Chickweed Healing Salve from Curtiss,
13 Wisconsin, was also of the white label variety.

14 Q. In terms of what you received from Herbs & More, can
15 you tell us what product you received from them?

16 A. Yes.

17 Q. And this is Government Exhibit 15.

18 A. 23 containers of Chickweed Healing Salve, 25 of the
19 Chickweed Healing brochures, the triplicate ones that
20 have been discussed in this court, and then one bottle of
21 Mr. Girod's R.E.P.

22 Q. And Exhibit 15 is just the Chickweed Healing Salve.

23 A. Okay. I'm sorry.

24 Q. And how many containers was that?

25 A. 23.

1 Q. And then in terms of the three products, what did
2 you collect from Miller's Dry Goods, Mary J. Miller?

3 A. In Arcola, Illinois, I collected 18 bottles of
4 R.E.P., 20 one-ounce containers of Chickweed Healing
5 Salve, 32 containers of TO-MOR-GONE, 28 four-ounce
6 containers of Chickweed Healing Salve, an invoice, and
7 labeling.

8 Q. And from the Hollingers, Mr. Hollinger, in terms of
9 the product, what did you collect from him?

10 A. Yes. 18 containers of Chickweed Healing Salve, the
11 four-ounce size.

12 Q. Did they still have any of the packaging for the
13 shipment they received?

14 A. Yes, they did. They had the original shipping box
15 that was shipped to them from the United States Postal
16 Service. The postmark is still on the box, and it was
17 January 6th, 2014, from the Owingsville, Kentucky, post
18 office, and it was mailed from there to their residence
19 in Anderson, Indiana.

20 Q. And what products were collected from Miller's
21 Country Store?

22 A. Mary Miller in Grabill, Indiana, I had 10 Chickweed
23 Healing Salve brochures, which were on the retail shelf.
24 She did have some in the storage area I'll call it, one
25 R.E.P. brochure, 14 containers of TO-MOR-GONE in the

1 retail, 31 containers of four-ounce Original Chickweed in
2 the retail area of the store, 11 bottles of R.E.P. in the
3 retail section, 32 containers of the one-ounce Original
4 Chickweed, which would have the green label in the retail
5 side, 27 containers of the four-ounce Original Chickweed,
6 that was in storage, and a handwritten letter that
7 Ms. Miller discussed.

8 MS. SMITH: At this time the United States
9 would move to admit Government's Exhibit 10A, 10B, 15,
10 18A, B, and C, and 25, 28A, B, and C. These are all the
11 physical products that were collected. They're in the
12 boxes over here, all the physical product.

13 And if admitted, what I would propose is that
14 instead of sending all the physical product back with the
15 witnesses that from 18A, B, and C, an exemplar of each of
16 the products that's sealed up with evidence tape and sent
17 back and then photographs of the total amount are
18 substituted as those exhibits.

19 THE COURT: All right. See if there's any
20 objection to that procedure.

21 DEFENDANT GIROD: No, Your Honor.

22 THE COURT: All right. Those exhibits, which
23 would include 10A, B, 15, 18A, B, and C, 25, 28A, B,
24 and C will be admitted, and those materials when the jury
25 goes back to deliberate will be sent back in the manner

1 that has been suggested by the United States.

2 (Whereupon, Government's Exhibit Numbers 10A, 10B,
3 15, 18A, 18B, 18C, 25, 28A, 28B, and 28C were admitted
4 into the record.)

5 BY MS. SMITH:

6 Q. In the course of this investigation, Agent Lamp, did
7 you interview Mary Miller of Grabill, Indiana?

8 A. I did.

9 Q. Did you discuss with her the subpoena she received
10 from the grand jury of her records?

11 A. I did.

12 Q. Did you discuss any conversation she had with the
13 defendant about that subpoena?

14 A. I did.

15 Q. What did she tell you?

16 A. That discussion took place February 2nd, 2015. I
17 conducted an unannounced visit to her store in Grabill,
18 Indiana, and I was -- asked her for some of the documents
19 relative to my subpoena.

20 When a subpoena is sent out, there is an affidavit
21 of authenticity that is supposed to be filled out and
22 sent back so that I, as the case agent, can file that
23 with the grand jury coordinator, have the United States
24 Attorney's office do that.

25 Well, Ms. Miller never did that, and so I was

1 made -- I was all the way up to Anderson, Indiana,
2 visiting the Hollingers, and so between Anderson,
3 Indiana, and Grabill, Indiana, maybe about 90 miles, so I
4 just decided to make the trip up.

5 Fortunately Ms. Miller was there, and she was
6 telling me that after she received my subpoena, which
7 based on my own records, I sent it to her by trackable
8 mail through the United States Parcel Service, UPS. That
9 was delivered to her on December 11th, 2014.

10 Ms. Miller told me that some time after, shortly
11 after she got my grand jury subpoena, Mr. Girod just
12 showed up at her place of business unannounced, and he --
13 she made a mention to him that she had this -- received
14 this subpoena.

15 And Mr. Girod -- per Ms. Miller, Mr. Girod asked for
16 a copy of my subpoena, and she gave him a photocopy.

17 And then what Ms. Miller told me is that Mr. Girod
18 told her not to comply with my subpoena or the grand jury
19 subpoena.

20 Q. Did you interview Mary Miller about this
21 conversation a second time?

22 A. I did. December -- or, excuse me, February 15th of
23 2017, so a couple weeks ago.

24 Q. What did she say about what the defendant told her
25 to do with respect to the subpoena?

1 A. It was consistent with what she told me on
2 February 2nd, 2015, that the defendant told her not to
3 comply with the grand jury subpoena issued to her.

4 Q. Now, as the case agent on this investigation, have
5 you attended the court proceedings?

6 A. I have.

7 Q. What was the first appearance that you attended?

8 A. November 2nd, 2015, was the initial appearance for
9 Mr. Girod once the indictment was handed down.

10 Q. What happened at that initial appearance?

11 A. That court appearance happened in this building in
12 front of Magistrate Judge Wier. And during that, it's an
13 initial appearance, so the Magistrate reads the nature of
14 the charges and explains the criminal process.

15 An initial appearance is basically the -- you know,
16 if you want to use the analogy, the train is starting
17 down the tracks, and so that's the very initial time that
18 the defendant is brought in.

19 And so at the conclusion of the hearing,
20 Samuel Girod was released on conditions of bond by
21 Magistrate Wier.

22 Q. What does it mean to be released on conditions of
23 bond?

24 A. You can either be released on conditions or you can
25 be held. If you were released on conditions of bond, and

1 in this case it was a -- like your own recognizance bond.
2 Sometimes you're allowed -- the Court orders the
3 defendant to put up an amount of money down and sometimes
4 not.

5 So basically what released on conditions of bond are
6 a set of instructions that the Judge reads to the
7 defendant, and those are memorialized by the court
8 reporter, and they become a permanent record. And so at
9 the end of that court hearing, Mr. Girod left the
10 courtroom, but he was ordered by Magistrate Wier to abide
11 by those conditions of release.

12 Q. Were those conditions written down somewhere?

13 A. Yes, they were.

14 MS. SMITH: I would like to hand the witness
15 Government Exhibit 39.

16 THE COURT: Yes.

17 THE WITNESS: Exhibit 39 is basically a
18 three-page document, and it's the conditions of release
19 that I just spoke about.

20 MS. SMITH: The United States moves to admit
21 Government Exhibit 39.

22 THE COURT: Any objection to Exhibit 39?

23 DEFENDANT GIROD: No objection.

24 THE COURT: Exhibit 39 is admitted.

25 (Whereupon, Government's Exhibit Number 39 was

1 admitted into the record.)

2 MS. SMITH: If we could publish the first page
3 to the jury and scroll down.

4 BY MS. SMITH:

5 Q. Could you read -- could you read what the title of
6 the document is?

7 A. Yes, it's in bold, capital letters, Order Setting
8 Conditions of Release.

9 Q. What was condition four?

10 A. Condition four says, "The defendant must appear in
11 court as required, and if convicted, must surrender as
12 directed to serve a sentence that the Court may impose."

13 Q. And then what part follows that?

14 A. It says, "The defendant must appear at," and then it
15 says place, "the United States Courthouse, as directed by
16 scheduling order."

17 Q. And then on the third page, is there a signature on
18 this document?

19 A. Yes. On the line that says defendant's signature is
20 the defendant's signature.

21 Q. Have you had other occasion to review the
22 defendant's signature?

23 A. Yes. I've reviewed thousands of his bank documents
24 that have a similar signature on them.

25 Q. Did the defendant appear for later court appearances

1 in 2015 and the first half of 2016?

2 A. Yes, he did.

3 Q. Did a subject of him appearing come up again in the
4 case?

5 A. Yes, it did. In -- if memory serves me right, in
6 June of 2016 the defendant filed a motion with this Court
7 basically telling the Court and the clerk that he
8 wasn't -- he wasn't going to show up for the next
9 scheduled court hearing.

10 MS. SMITH: I would like to hand the witness
11 Government Exhibit 40.

12 BY MS. SMITH:

13 Q. Is this the motion you referenced that the defendant
14 filed?

15 A. Yes.

16 MS. SMITH: United States moves to admit
17 Government Exhibit 40.

18 THE COURT: Any objection?

19 DEFENDANT GIROD: No.

20 THE COURT: Exhibit 40 will be admitted.

21 (Whereupon, Government's Exhibit Number 40 was
22 admitted into the record.)

23 MS. SMITH: If we can publish that to the jury
24 and go to the very end of the second page.

25 BY MS. SMITH:

1 Q. Could you read to the jury starting at "There will
2 be no need"?

3 A. Yes. "There will be no need for the" -- excuse me,
4 I'll start over.

5 "There will be no need for the pretrial motion
6 hearing set for July 8th, 2016. We will take our chances
7 with the appeals court and will not attend that hearing."

8 Q. Next paragraph.

9 A. Next paragraph, "The clerk of Court is hereby
10 directed to cancel the pretrial motion hearing set for
11 July 8th, 2016, to save the valuable resources of the
12 Court, that being the Court's time. We will not be
13 present at that hearing. It is called upon for this
14 Court to dismiss this matter, and we can all call it a
15 day."

16 Q. Is there a signature further down on this page?

17 A. Yes.

18 Q. And whose signature is that?

19 A. The defendant's.

20 Q. What happened after this was filed?

21 A. What happened after this was filed, is Judge Reeves
22 issued an order that instructed -- and I'm paraphrasing
23 now, instructed the defendant that he shall show up for
24 scheduled court hearings.

25 MS. SMITH: If I could hand the witness

1 Government Exhibit 41.

2 BY MS. SMITH:

3 Q. Is that the order you just referenced?

4 A. Yes. Exhibit 41 is two pages, and it was filed in
5 this court on June 13th of 2016, and it is signed by
6 United States Magistrate Judge Wier. I think I misspoke.
7 I think I said Judge Reeves issued earlier.

8 MS. SMITH: United States moves to admit
9 Government Exhibit 41.

10 THE COURT: Any objection to Exhibit 41?

11 DEFENDANT GIROD: No.

12 THE COURT: That exhibit is admitted.

13 (Whereupon, Government's Exhibit Number 41 was
14 admitted into the record.)

15 MS. SMITH: If you could publish this to the
16 jury, on the first page at the bottom.

17 BY MS. SMITH:

18 Q. Could you read starting with "The Court warns"?

19 A. Yes. "The Court warns Girod that, if he fails to
20 appear at the pretrial conference, as he suggests will
21 happen in the motion to compel, see DE," which stands
22 for in my experience document -- docket entry number,
23 "62 at 2, he will be in violation of his bond and subject
24 to potential revocation and detention pending trial.
25 Girod must appear," and that is in bolded, "at the

1 pretrial conference as scheduled.

2 Q. Moving on to the second page, in that first
3 paragraph can -- can you read starting mid sentence,
4 "Nothing"?

5 A. Yes. "Nothing Girod has filed authorizes him to act
6 contrary to the bond conditions imposed by the Court.
7 Violation of any bond condition could lead to revocation
8 proceedings and detention pending trial."

9 Q. That hearing was scheduled in -- for July. Was it
10 moved to a different date? Was it moved earlier?

11 A. Yes, it was moved to late June.

12 Q. Did the defendant show up?

13 A. Yes.

14 Q. Did you attend that proceeding?

15 A. I did.

16 Q. Did the subject of an appeal come up at that
17 hearing?

18 A. Yes.

19 Q. Was a transcript prepared of that hearing?

20 A. Yes.

21 MS. SMITH: I would like to hand the witness
22 Government Exhibit 42.

23 BY MS. SMITH:

24 Q. What is this document?

25 A. This is a transcript. It's several pages, looks

1 maybe about 13 pages long. It would be a transcript of
2 the proceedings before this Court on June 27th, 2016, at
3 9:00 a.m.

4 MS. SMITH: The United States moves to admit
5 Government Exhibit 42.

6 THE COURT: Any objection?

7 DEFENDANT GIROD: No objection.

8 THE COURT: Exhibit 42 is admitted.

9 (Whereupon, Government's Exhibit Number 42 was
10 admitted into the record.)

11 MS. SMITH: If we could publish it to the jury
12 and go to page 11.

13 I am going to use the Elmo.

14 THE COURT: That's fine.

15 MS. SMITH: May I approach the media?

16 THE COURT: Yes, ma'am.

17 BY MS. SMITH:

18 Q. Can you read the highlighted portion?

19 A. Yes. "Mr. Girod essentially, of course, you do have
20 the right to appeal any of the Court's orders, but it has
21 come" -- excuse me, "it has to be from a final judgment
22 in the case. There are a few exceptions. But in terms
23 of appealing matters such as motions to dismiss, that
24 would be at the conclusion of the case, once the final
25 judgment is entered."

1 Continuing on a couple sentences later.

2 "THE COURT: It would be at the conclusion of the
3 case, once a final judgment has been entered. In other
4 words, you can't take piecemeal appeals to the
5 Sixth Circuit. It has to be from a final judgment in
6 the case."

7 Q. What happened after this hearing?

8 A. The next hearing that was scheduled was
9 August 26th -- or, no, after this hearing.

10 Q. Yeah, before we get to the next hearing.

11 A. After this hearing, Mr. Girod filed an appeal at the
12 Sixth Circuit Court of Appeals.

13 Q. Were there any further orders regarding the
14 appropriateness of that appeal?

15 A. Yes. I believe it was Judge Reeves issued an order
16 for the docket that said that the -- that appeal was
17 without merit, and filed that with the record for the
18 Court.

19 MS. SMITH: If I could hand the witness
20 Government Exhibit 44, 46 as well. Save you a trip.

21 BY MS. SMITH:

22 Q. What is Government Exhibit 44?

23 A. 44 is a three-page document signed by Judge Reeves.
24 It was filed August 26th, 2016, in the Eastern District
25 of Kentucky.

1 MS. SMITH: United States moves to admit
2 Government Exhibit 44.

3 THE COURT: 44?

4 MS. SMITH: 44.

5 THE COURT: All right. Any objection?

6 DEFENDANT GIROD: No.

7 THE COURT: Exhibit 44 is admitted.

8 (Whereupon, Government's Exhibit Number 44 was
9 admitted into the record.)

10 MS. SMITH: If that could be published to the
11 jury and move to page 2.

12 BY MS. SMITH:

13 Q. Tell me what that first full paragraph, can you read
14 where it begins, "When an interlocutory"?

15 A. Okay. "When an interlocutory appeal is taken from a
16 non-appealable order, however, the Court of Appeals never
17 actually assumes jurisdiction. Goff" G-O-F-F, "187 F.
18 Appendix at 495. Accordingly, the District Court does
19 not lose jurisdiction upon filing of the appeal and may
20 proceed with the adjudication of the matter."

21 Q. You can stop.

22 A. Okay.

23 Q. You can stop. And if we could scroll down to the
24 bottom final order.

25 A. Yes. "Ordered" and this is in bold and all caps.

1 "Ordered that this Court retains jurisdiction in this
2 matter, as Girod's attempted appeal of its Memorandum
3 Opinion and Order of June 24, 2016, record number 70, is,
4 in fact, frivolous and clearly non-appealable."

5 Q. This order from August 26th, 2016, do you know if
6 the defendant received this order?

7 A. The Court attempted to mail a copy of the order to
8 the defendant.

9 Q. Why did the Court mail it directly to the defendant?

10 A. At that time the defendant was representing himself,
11 and the Court -- the clerk wants to make sure that he has
12 copy of all the filings in the court.

13 Q. Once he was representing himself, is that how he
14 learned of all the other filings in the court?

15 A. To my knowledge, yes.

16 Q. How did you confirm that this piece of mail was
17 returned?

18 A. During the course of my investigation, I actually --

19 Q. Just before we get to that. Physical return to
20 sender, how do you know it was returned --

21 A. Oh, yes.

22 Q. -- to the Court?

23 A. I actually saw that document on the court docket.

24 MS. SMITH: Final exhibit, if I could hand the
25 witness Government Exhibit 46.

1 THE WITNESS: I have 46 here.

2 THE COURT: You already gave it to him, the
3 original document.

4 MS. SMITH: Sorry, my copy.

5 BY MS. SMITH:

6 Q. Is this what was filed in the docket in this case?

7 A. Yes. And there's a handwritten notation "return to
8 sender." It was addressed to Samuel A. Girod, 409 --

9 MS. SMITH: The government moves to admit
10 Government Exhibit 46.

11 THE COURT: Any objection to Exhibit 46?

12 DEFENDANT GIROD: I would object, but go ahead,
13 whatever you want to do.

14 THE COURT: All right. Exhibit 46, the Court
15 can take judicial notice of that entry in the record.
16 The Court will admit United States Exhibit 46 as well.

17 (Whereupon, Government's Exhibit Number 46 was
18 admitted into the record.)

19 MS. SMITH: If that could be published to the
20 jury.

21 BY MS. SMITH:

22 Q. So tell us what this one-page document is.

23 A. Yes. This is a mailing from the clerk of this
24 District Court, and it's addressed to Samuel A. Girod,
25 409 Satterfield Lane, Owingsville, Kentucky, 40360, and

1 then off to the side is a stamp that the post office puts
2 onto it, "return to sender" because above the addressee's
3 address there was a handwritten notation "return to
4 sender."

5 Q. So is return to sender in handwriting, or is that a
6 stamp?

7 A. That appears to me to be handwritten.

8 Q. Okay. Based on your review of Mr. Girod's
9 handwriting, do you think it's possible that's his
10 handwriting?

11 A. I think it's very possible.

12 Q. Did you later learn why this piece of mail was
13 returned to the Court?

14 A. Yes.

15 Q. How? How did you learn that?

16 A. During the course of my investigation, I listened to
17 a phone call that Mr. Girod had from the Fayette County
18 jail where he was talking to another party, and he told
19 this other party that he got a letter from the Court, he
20 returned it to sender, because in his mind the matter was
21 before the Sixth Circuit.

22 MS. SMITH: If I may have just a moment,
23 Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. SMITH: No further questions.

1 THE COURT: Thank you.

2 Mr. Girod, you may question the witness if you
3 choose.

4 DEFENDANT GIROD: No.

5 THE COURT: No questions? All right.

6 DEFENDANT GIROD: No.

7 THE COURT: All right. You may step down.
8 Thank you.

9 And you may call your next witness.

10 MS. SMITH: Your Honor, the United States calls
11 Gary Heiden. I think he's possibly in another courtroom
12 so we just have to locate him.

13 THE COURT: All right. The jury like to take
14 about a five-minute recess or so while we locate the
15 witness, rather than have you sit here waiting for him?

16 We'll take just a brief recess. We'll call you
17 back as soon as the witness is available.

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

19 THE COURT: Let's see if we have anything to
20 take up outside the presence of the jury.

21 MS. SMITH: We found him.

22 THE COURT: There he is.

23 All right. Well, let's give everyone just a
24 brief recess before we call the jury back in.

25 MS. SMITH: I'm sorry.

1 THE COURT: That's fine. We'll recess for
2 approximately five minutes. We may have some jurors --
3 we took break some time ago. We may have some jurors
4 that need to take a rest room break, so we'll give them
5 that opportunity.

6 Make sure that they're ready before we call
7 them back in. When they're ready, we'll call them back
8 in.

9 We'll be in recess for approximately five
10 minutes.

11 (Whereupon, a recess was taken at 3:55 p.m.,
12 and Day 2 of the Jury Trial proceedings continued at
13 4:00 p.m., on the record in open court, without the
14 juror members present, as follows.)

15 THE COURT: Thank you.

16 The witness is present so we'll bring the jury
17 back in at this time.

18 DEFENDANT GIROD: Your Honor.

19 THE COURT: Wait just a moment before we bring
20 the jury in. Hold on.

21 Yes, sir.

22 DEFENDANT GIROD: We did two pages for the --
23 of this document, which the first page is missing.

24 MR. FOX: He's referring to Defendant's Exhibit
25 Number 1.

1 DEFENDANT GIROD: Yeah.

2 MR. FOX: Only two pages were introduced. The
3 full report is three pages. He has the third page.

4 THE COURT: All right. If you would check and
5 see if there's a third page.

6 MS. SMITH: I gave him my copy. I was the one
7 who brought this up, but the first page is missing from
8 what was used earlier.

9 THE COURT: All right. We'll include that
10 before the matter is submitted to the jury. The third
11 page will be included. Hold that aside.

12 Anything else we need to take up?

13 MS. SMITH: No, Your Honor.

14 DEFENDANT GIROD: No, Your Honor.

15 THE COURT: We'll try again.

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

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

18 All members of the jury are once again present.

19 Defendant and all counsel are present.

20 I believe our last witness is present in the
21 courtroom.

22 MS. SMITH: Yes, Your Honor. The United States
23 calls Deputy United States Marshal Gary Heiden.

24 THE COURT: Thank you.

25 THE CLERK: Raise your right hand, please.

1 Do you swear or affirm that the testimony
2 you're about to give in this matter shall be the truth,
3 the whole truth, and nothing but the truth, as you shall
4 swear unto God, or affirm, subject to the penalty of
5 perjury?

6 THE WITNESS: I do.

7 THE COURT: Thank you. And you may proceed.

8 GARY HEIDEN,
9 having been first duly placed under oath, was examined
10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SMITH:

13 Q. Good afternoon, sir.

14 Could you please introduce yourself to the jury?

15 A. Gary Heiden, H-E-I-D-E-N.

16 Q. Deputy Heiden, what do you do for a living?

17 A. I'm a Deputy United States Marshal.

18 Q. How long have you worked for the marshal service?

19 A. Almost 14 years.

20 Q. What are your responsibilities as a Deputy United
21 States Marshal?

22 A. Generally we do fugitive investigations. We also
23 enforce orders from the Court, serve process, produce
24 prisoners for jury trial, and other court proceedings.

25 Q. Do you have a particular geographic area you're

1 responsible for?

2 A. Yes, I'm in the Eastern District of Kentucky.

3 Q. How long have you been in the Eastern District of
4 Kentucky?

5 A. Seven -- I take that back, 10 years now.

6 Q. Does the Eastern District of Kentucky include
7 Bath County?

8 A. It does.

9 Q. Does it also include Fayette County?

10 A. Yes.

11 Q. What sort of training do you receive to become a
12 Deputy U.S. Marshal?

13 A. It's about a 12-week training academy in Glynco,
14 Georgia. They teach criminal investigative techniques,
15 federal laws, that type of thing, also firearms training,
16 and other things like that.

17 Q. Are you trained to deal with fugitive
18 investigations?

19 A. Yes.

20 Q. Have you worked on fugitive investigations?

21 A. I have.

22 Q. Are you familiar with the defendant Samuel Girod?

23 A. Yes, I am.

24 Q. How are you familiar with him?

25 A. I've seen him in court, and I also worked the

1 warrant for his failure to appear charge.

2 Q. Has he been facing charges in this court?

3 A. He has, yes.

4 Q. Since when?

5 A. I don't recall the exact date, but I would say
6 probably since early 2016 at least.

7 Q. Was he released on bond for those charges?

8 A. Yes.

9 Q. Are you familiar with the terms of his bond?

10 A. Yes.

11 Q. If I could show you Exhibit 39, which has already
12 been introduced.

13 THE COURT: Doing electronic.

14 MS. SMITH: It will take a minute.

15 BY MS. SMITH:

16 Q. Are you familiar with a document like this?

17 A. Yes.

18 Q. Were these the defendant's bond conditions?

19 A. It is.

20 Q. When were they entered?

21 A. It looks like it was entered November 2nd, 2015,
22 maybe 2016. It looks like 2015, I'm sorry.

23 Q. What -- what conditions was he released under?

24 A. The defendant was to not violate any federal, state,
25 or local laws, to cooperate with the collection of a DNA

1 sample. He was also supposed to get permission from
2 supervising officer if he was to change residence or his
3 phone number, that type of thing, and he must appear in
4 court as required.

5 Q. Is that a fairly standard condition --

6 A. It is.

7 Q. -- for a defendant facing charges here?

8 A. Yes.

9 Q. Was he required to appear in this court in
10 August 2016?

11 A. Yes, he was.

12 Q. Did he appear in August 2016 as required?

13 A. No, he didn't.

14 Q. What happened when he did not appear?

15 A. The Judge issued a warrant for failure to appear.

16 Q. At that point did you become involved in the
17 fugitive investigation?

18 A. I did. I was assigned to that warrant.

19 Q. After the arrest warrant was issued, what did you
20 do?

21 A. Myself and two other deputies went out to
22 Bath County. We actually met up with a state trooper
23 from the Morehead post, and then we went out to his
24 address at 409 Satterfield.

25 Q. Had you ever been to that location before?

1 A. I have, yes.

2 Q. Prior to going to arrest him, had you been there?

3 A. Yes. I had served the summons to Mr. Girod
4 personally.

5 Q. Because of that were you somewhat familiar with the
6 layout?

7 A. Yes.

8 Q. Was there a reason you took three deputies out
9 there?

10 A. Well, every investigation is different. You never
11 know what you're going to run into. Typically we like to
12 have enough people that we could cover the front and rear
13 doors if need be. Some people tend to run when they know
14 the marshals are on their front door steps. So the more
15 the better. It's a safety issue really.

16 Q. What happened after you arrived?

17 A. We approached the driveway, and his driveway is
18 actually quite long. I think it's almost, I would say,
19 at least a quarter mile long it seems to be. It's
20 narrow. It's got fences on both sides. So our vehicles
21 had to actually single file drive in to the driveway.

22 We approached a gate that was the last gate to the
23 house. The house was probably another 50 yards or so
24 further up.

25 As we drove up to the gate, I could see some adult

1 males coming towards the gate. It was approximately
2 10 or 15 adult males. So we exited our vehicle and went
3 up to the gate and waited for them to come up to us.

4 Q. What happened next?

5 A. I told the gentleman that I was Deputy U.S. Marshal,
6 that I was there to see Sam, that the Judge had issued a
7 warrant because he failed to appear in court that day.
8 And I was -- inquired if he was home. One of the
9 gentlemen identified himself as Noah and said he was
10 Sam's son and said that Sam was not at the house.

11 Q. Did you find Sam at the house that day?

12 A. No. During -- we tried -- basically we had to talk
13 our way onto the property it seemed. It seemed like they
14 were delaying us. Sam's son had asked to see a copy of
15 the warrant. You know, they were being amicable so I
16 went ahead and got a copy of the warrant from my vehicle
17 and actually showed the warrant to him.

18 At that point he opened the gate. I asked one
19 deputy to watch the male gentleman and asked if anybody
20 else was in the house, and the gentleman said that there
21 were actually women and children in the house. So I
22 asked him if he would call the women and children out,
23 and he was able to get all of the women and children out.
24 We congregated them in the back of the house in some
25 shade. It was August so it was pretty hot.

1 We had one deputy watch all the parties while
2 myself, another deputy, and trooper went in and cleared
3 the house looking for Sam, and we did not find him.

4 Q. As you initially arrived at the property, were you
5 able to have any visibility to the back of the house?

6 A. No. It backs up to a tree line, and there's also a
7 large hill to the back side of it. You know, basically
8 from the perspective of where the fence and gate were,
9 when we initially got there, we could just see the front
10 door to the house, and there are quite a few other
11 outbuildings on that property, so we couldn't have any
12 visibility to the back.

13 Q. When you checked for Mr. Girod in the house, did you
14 find anything that was of interest or was of interest to
15 the marshals?

16 A. Well, during the search of the house looking for
17 Sam, I located in one of the closets, we did find what
18 appeared to be a rifle. It was in not the greatest
19 condition. I couldn't tell you if it operated or not.
20 But, you know, I noted that in the back of my mind as,
21 you know, a weapon having been found on the property.

22 Q. Does the marshal service have a protocol when going
23 into a new place to arrest someone?

24 A. Well, we generally we always vest up. We treat
25 everybody the same. You know, we expect the worst, hope

1 for the best. So we're required to wear our ballistic
2 vest, you know, we have firearms that we're trained on
3 that we carry at that time. You know, until we get
4 people into custody and search them for any weapons, we
5 assume everybody is armed until we can prove otherwise.

6 Q. Did the -- did the marshals, did you and the
7 marshals there that day follow their protocol?

8 A. We did.

9 Q. Did you arrest the defendant that day?

10 A. No.

11 Q. How did you leave things with the family you had
12 been speaking with?

13 A. After we cleared the house and all the outbuildings,
14 everybody was gathered in the backyard near a trampoline
15 under some trees, we assembled them, and I explained to
16 them, you know, right now I didn't feel like Sam was in a
17 lot of trouble. We needed to get Sam before the Judge.
18 That was my only mission was to get Sam back in front of
19 the Judge to explain his failure to appear.

20 I left a phone number with them, told them that if
21 they knew where Sam was, they could give me a call. If
22 they didn't want to give their name, they didn't have to.
23 I just wanted to find out where Sam was and get him into
24 custody as quickly as possible.

25 Q. What happened after that day? What happened next in

1 the fugitive investigation?

2 A. Later we found out that Sam had actually filed
3 something in the Sixth Circuit Court.

4 Q. I would like to hand you what has been premarked as
5 Government Exhibit 45.

6 Is this the filing you referenced?

7 A. It is, yes.

8 MS. SMITH: The United States moves to admit
9 Government Exhibit 45.

10 THE COURT: Any objection?

11 DEFENDANT GIROD: (Shakes head)

12 THE COURT: Exhibit 45 is admitted.

13 (Whereupon, Government's Exhibit Number 45 was
14 admitted into the record.)

15 MS. SMITH: If it could be published to the
16 jury, and if we could go to page 2.

17 BY MS. SMITH:

18 Q. Could you read us the first sentence under "Relief
19 Sought"?

20 A. Certainly. "We demand the illegal and improper
21 arrest warrant be lifted immediately, today, and the
22 United States Marshal Service notified of such, today.

23 "We demand this matter be adjudicated properly, and
24 this includes providing the prima facie case."

25 Q. Thank you. You can stop there. Under "issues

1 presented," can you read that first sentence there?

2 A. Yes. "Everything addressed within mandamus, and
3 Defendant Reeves, after ignoring, yet again, the
4 appellate process did cause to be ordered a status
5 conference. Please see attachment A."

6 Q. And then the last sentence in that paragraph under
7 "issues presented."

8 A. "Defendant Reeves apparently issued an arrest
9 warrant ordering the marshals to come to the family home
10 to arrest Samuel A. Girod."

11 Q. Skipping down to the last paragraph starting with
12 the paragraph "furthermore," can you read those first two
13 sentences?

14 A. "Furthermore, we had no idea as to whom this filing,
15 attachment A, was directed to. We got a copy, but again,
16 we were not directly addressed, directed, or commanded to
17 appear. The inferior court, under the direction of
18 Defendant Reeves, is claiming 'after being properly
19 advised' by someone, and we assumed that another ex parte
20 meeting was being held, and since we were not invited to
21 the prior ex parte meeting, we assumed it was not
22 necessary to be at this one as the matter is under appeal
23 with this Honorable Court."

24 Q. And then with the "burdened," can you just read that
25 next sentence?

1 A. "Burdened with the residual confusion from when the
2 FDA's agency employees originally came to the home,
3 without authority, spawning criminal charges, and now the
4 marshals show up with an illegal arrest warrant, when the
5 matter is clearly --"

6 Q. Alleged, alleged.

7 A. I'm sorry.

8 Q. "With alleged arrest warrant," is that what it says?

9 A. Yes. Alleged warrant, alleged arrest warrant, yes,
10 sorry.

11 Q. And then skipping ahead to page 4 of this document,
12 what is -- what is page 4?

13 A. It's an order from the Court.

14 Q. In which case?

15 A. In Samuel A. Girod's case ordering that he appear on
16 the 26th of August at 11:00 a.m.

17 Q. Is Mr. Girod's name on this scheduling order?

18 A. Yes, it is. It's listed him as the defendant in the
19 case.

20 Q. Is this the order that scheduled the status
21 conference on August 26th, 2016?

22 A. Yes.

23 Q. And is that the conference that he did not appear
24 for?

25 A. Yes, it is.

1 Q. What was the date of this filing in the
2 Sixth Circuit?

3 A. The date of the filing was August 29th, 2016.

4 Q. How many days after you had gone to arrest him?

5 A. Three days.

6 Q. After submitting this filing referencing the arrest
7 warrant, did Mr. Girod turn himself in?

8 A. No.

9 Q. In the course of this fugitive investigation, did
10 you approach other individuals in his community after
11 that initial arrest attempt?

12 A. Yes, I did. Initially I identified an individual I
13 thought to be the leader of the church for the Amish
14 community that Samuel Girod was a part of.

15 Q. What did you ask of that religious figure?

16 A. Well, I initially I asked him if he knew Sam and if
17 he knew the trouble that Sam was in with the federal case
18 and the failure to appear, and he acknowledged he had
19 some knowledge of it.

20 Q. Without getting into what he told you in response,
21 did -- after you approached the religious figure in his
22 community, did Mr. Girod turn himself in?

23 A. No, he did not.

24 Q. Did you approach anyone else in his community?

25 A. Yes, another individual I identified as a possible

1 driver for Sam.

2 Q. And what's his name?

3 A. Curtis Parks.

4 Q. What did you ask of him?

5 A. I asked him to help me find Sam and get Sam to turn
6 himself in.

7 Q. What did you propose to him? Did you propose any
8 sort of meeting or cooperation?

9 A. Yes. I proposed that if he could get Sam to agree
10 to meet me at the Montgomery County Sheriff's office in
11 Mt. Sterling, that we could -- we could discuss things
12 and see what we had to do from there.

13 Also, a deputy that I worked with there, had also
14 offered a ride for Sam if he did show up to the federal
15 courthouse.

16 Q. Did Mr. Girod turn himself in after that contact?

17 A. No.

18 Q. And when was that that you contacted Curtis Parks?

19 A. I'm sorry?

20 Q. When was that that you first approached Curtis
21 Parks?

22 A. I believe it was December 5th.

23 Q. Did you approach local law enforcement about helping
24 locate Mr. Girod?

25 A. Yes. I had contacted a few local officers that may

1 know the community better than myself given this was
2 Bath County and I office out of Lexington typically.

3 A KSP trooper located out of the Morehead post, a
4 Fish and Wildlife officer that works that general area,
5 and also the aforementioned deputy from Montgomery
6 County.

7 Q. What about the sheriff of Bath County?

8 A. Yes, we did also speak with the sheriff of
9 Bath County regarding Sam Girod.

10 Q. Did you receive any messages from the sheriff of
11 Bath County?

12 A. A letter was received here at the marshal's office.

13 Q. And who purportedly signed that letter?

14 A. It was signed by the sheriff from what I could tell.

15 Q. And what is his name?

16 A. Tuffy Snedegar.

17 Q. What was just the general gist of that letter? What
18 was Mr. Snedegar asserting?

19 A. Asserting like an overreach or overstep of the
20 federal law enforcement, and that he -- in the letter it
21 stated that Sam Girod was under his protective custody.

22 Q. When was that letter first sent?

23 A. I don't recall.

24 Q. Approximately, a month?

25 A. I want to say November.

1 Q. Would it refresh your recollection to see a copy of
2 that letter?

3 A. It would, yes.

4 MS. SMITH: If this could be shown to the
5 witness.

6 BY MS. SMITH:

7 Q. Does that refresh your recollection as to when that
8 letter was first sent?

9 A. Yes, September 12th of 2016.

10 Q. What, if anything, was unique about this fugitive
11 investigation?

12 A. There were quite a few things. Given that Sam is
13 Amish, the normal ways that we might track somebody in
14 the modern day, he does not have any connection to that
15 modern society, very few utilities, no cell phones, no
16 vehicles. He doesn't even have a photo ID so it made
17 trying to track him very difficult.

18 Q. Were you able to obtain a photo of him?

19 A. Initially, no. There was actually an order not to
20 take a photo due to religious beliefs.

21 Q. Where did you eventually obtain a photo of him?

22 A. The first photo I obtained was from security cameras
23 at the Sixth Circuit building in the courthouse in
24 Cincinnati.

25 Q. What was the quality of that photograph?

1 A. It was not very good. It was very fuzzy, and I
2 believe that if you knew Sam, you could say that was Sam,
3 but if not, you may not be able to identify him.

4 Q. How does the marshal service usually use a
5 photograph of a fugitive to help identify -- help locate
6 that fugitive?

7 A. Well, it's very important in ensuring that when
8 you're speaking about a fugitive, that you can show
9 somebody a photograph and see if they recall ever seeing
10 that person in their area, that type of thing. It
11 prevents somebody from getting arrested without being
12 that person.

13 Q. Does it help other law enforcement agencies to
14 locate that person?

15 A. Yes. We could distribute that photo to local law
16 enforcement, and they could assist in the search.

17 Q. In this investigation who -- in this investigation
18 were you restricted in terms of who could work on the
19 investigation because of this photo issue?

20 A. Yes, I was.

21 Q. And why was that?

22 A. I believe I was assigned to the case because I had
23 personally served the summons initially on Sam, and so I
24 knew him having physically seen him, where the other
25 deputies in the office that had never spoken with him

1 would not be able to identify him just on his basic
2 characteristics.

3 Q. Was there anything about the house that made
4 surveillance difficult?

5 A. Again, the location of the house being so far off
6 the road, it's a very rural area. It's just a two-lane
7 blacktop road with ditches on either side, which isn't
8 conducive to conducting surveillance.

9 You know, the back of the house, given the size of
10 the property, there are no roads and that type of thing
11 where you could get visibility to the back of the house.
12 It just made things very difficult to do any time type of
13 surveillance or that type of thing.

14 Q. How long did the fugitive investigation take?

15 A. About six months.

16 Q. Were you ultimately successful in finding Mr. Girod?

17 A. Yes.

18 Q. And when was that?

19 A. That was January 12th of 2017.

20 MS. SMITH: Thank you, Deputy Heiden. No
21 further questions.

22 THE COURT: Thank you.

23 Mr. Girod, you may question the witness.

24 DEFENDANT GIROD: I have nothing.

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

1 step down. You're finally excused.

2 Ms. Smith, any additional witnesses?

3 MS. SMITH: No, Your Honor, that is all of the
4 United States' proof.

5 THE COURT: The United States announces close
6 of its case in chief at this time?

7 MS. SMITH: Yes, Your Honor.

8 THE COURT: All right. Thank you.

9 Ladies and gentlemen, the hour is late. The
10 way we'll proceed is I'll go ahead and release you for
11 tonight. We'll start back tomorrow morning with the
12 defendant's presentation of the case.

13 I would expect we'll complete the proof in the
14 matter tomorrow. I don't know if the case will be
15 submitted to you, but you should become prepared just in
16 case. If we need to stay a little bit later tomorrow, we
17 can.

18 I do want to again advise you of the
19 admonitions.

20 As you go home tonight, of course, please don't
21 talk about the case with anyone. Don't allow anyone to
22 approach you to talk about the case.

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 Don't visit any of the places that you heard
3 about.

4 I mentioned to you a few times about social
5 media, not using social media to indicate that you're a
6 member of the juror, or anything about the case
7 whatsoever.

8 And, of course, please don't make up your mind
9 about this matter until it is finally submitted to you.

10 And with that admonition, again, we will make
11 every effort to start tomorrow at 9 o'clock. So if you
12 could please make an effort to be here at that time, we
13 will try to start promptly at 9:00.

14 If you want to leave your notebooks again in
15 your chairs, you can certainly do that, and the clerk
16 will collect those before we close the courtroom.

17 All right. Jury is excused until 9:00 tomorrow
18 morning.

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

20 THE COURT: Thank you, and please be seated
21 everyone.

22 All right. The United States having announced
23 close of its case-in-chief, we will proceed with any
24 motions to dismiss, which the defendant may wish to raise
25 at this time based upon the evidence presented.

1 Mr. Girod.

2 DEFENDANT GIROD: Yes, Your Honor. I would
3 like to ask a motion to dismiss. They have proved
4 nothing I've done wrong yet.

5 THE COURT: All right. Thank you.

6 Ms. Smith, would you like to respond briefly?

7 MS. SMITH: Yes, Your Honor. The United States
8 has over the last two days submitted evidence to support
9 every single element of the 13 offenses charged against
10 the defendant.

11 He has engaged in the manufacture of products
12 that make claims that make them drugs under the law.

13 He did sell them on the dates in the
14 indictment, the September date, the October dates, and
15 the November dates.

16 The individuals that purchased the products on
17 those dates were here. They introduced the records of
18 those sales. They have also testified that they would
19 not have bought the product if they had known about the
20 injunction affecting those products.

21 THE COURT: Does that matter?

22 MS. SMITH: No, Your Honor.

23 THE COURT: Does that matter?

24 MS. SMITH: But I believe it speaks to the
25 defendant's intent to defraud his customers, his failure

1 to comply with that court order, his failure to respond
2 to the FDA, or to initiate the recall, I think speaks to
3 intent to defraud both the government and his customers,
4 which is why I mentioned that.

5 I think as to Count 3, the manufacturing
6 products that make these drug claims without having
7 registered with the FDA, there's ample evidence of his
8 operating an establishment engaged in that manufacture
9 throughout the time period alleged, including the
10 products he was selling, the materials he was ordering to
11 produce those products, the promotional material that he
12 was having made to make those products throughout that
13 time period.

14 And then we've heard from several FDA employees
15 that he was not registered with the FDA in that time
16 period. That is, of course, one way in which all three
17 products were misbranded.

18 In terms of the other ways in which they were
19 misbranded, the R.E.P. product is in evidence, and there
20 is no listing of each active ingredient, which is the
21 second way in which that product is alleged to be
22 misbranded.

23 The TO-MOR-GONE the jury has heard this morning
24 from expert witness Dr. Liedtka extensively about the
25 dangers of those products and the labeling. Promotional

1 materials about that product is also in evidence, and its
2 lack of warnings about those issues is another way in
3 which it is misbranded.

4 And then the Chickweed Healing Salve in terms
5 of the directions for use and the claims that it is
6 making are another way in which it's misbranded under
7 that FDA rules and regulations.

8 As to Counts 1 and 2, the evidence is in from
9 both of the consumer safety officers who were there on
10 the day in question, and they have both testified that
11 they were not able to do their job that day, and that
12 their job being conducted inspection under the FDA,
13 that's an agency proceeding for Section 1505.

14 And they both testified to the threatening
15 communications and to the intimidating actions of the
16 defendant and the others who were there with him that day
17 who acted in concert with him to achieve the objective of
18 getting the FDA, consumer safety officers, to leave, to
19 not do their job that day.

20 I think that meets Counts 1 and 2.

21 Count 12, the jury heard today from Mary Miller
22 of Grabill, Indiana, and heard not as clearly that the
23 defendant told her not to respond that day is what she
24 testified to today I believe. The jury heard her
25 slightly inconsistent statements with that from prior

1 interviews, but also in evidence is the letter that the
2 defendant sent to her.

3 And I think a reasonable jury could conclude
4 that that letter was trying to get her not to respond to
5 the subpoena from stating that people who stood up to the
6 FDA caused the FDA to go to jail, and that they were
7 successful. All the reasoning outlined in that exhibit,
8 I believe, was attempting to persuade her to keep her
9 from withholding documents from the grand jury
10 proceeding.

11 Of course, he doesn't have to be successful in
12 that, and he was not successful in that, but I believe
13 the elements of Count 12 have been met.

14 As to Count 13, the jury just recently heard
15 that on October 26, 2016, the defendant under a charge,
16 Count 12, was required to be in court, and he had been in
17 court every time before then. He threatened not to
18 appear, and he was told very explicitly that he had to be
19 here, and he didn't show up.

20 And the circumstances of that, the fact that a
21 few days later, he clearly knew of the arrest warrant, he
22 clearly knew the marshals had been to his house and did
23 not turn himself in, go to his intent with respect to
24 that count.

25 And then what happened after that in the

1 marshal's investigation, the repeated attempts suggesting
2 that he knew people were looking for him, and he did not
3 turn himself in, showing that it was quite purposeful,
4 that he was not here.

5 I think what Agent Lamp spoke to as well that
6 he intentionally returned mail from this Court goes
7 directly to what his state of mind was, that he was not
8 going to appear and that that was willfully, knowing, and
9 purposeful.

10 THE COURT: All right. Thank you.

11 When the Court considers whether there is --
12 whether a motion to dismiss or motion for judgment of
13 acquittal should be granted under Rule 29 of the Federal
14 Rules of Criminal Procedure, it does evaluate the
15 evidence in the light most favorable to the non-moving
16 party, in this case the United States.

17 The question then is whether there is
18 sufficient evidence that a reasonable juror could convict
19 on one or more of the charges that have been brought
20 through the superseding indictment.

21 That superseding indictment contains 13 counts,
22 and the Court finds that there is sufficient evidence for
23 each and every one of these counts to be submitted to the
24 jury for determination.

25 The elements of each of the counts are, in

1 fact, outlined in the preliminary jury instructions that
2 were given to the jury, and without repeating each one of
3 those, those elements, the Court does find that the
4 government has presented sufficient evidence for a jury
5 to return a conviction on each of the counts.

6 The closest issue is with respect to Count 12.
7 The issue is very strong with respect to all of the other
8 counts, and the only count in which -- what I would say
9 is not extremely strong would be Count 12 where there is
10 some back and forth by the particular witness who
11 hesitated in answering the questions.

12 But when the Court considers all of the
13 evidence that has been presented, including the testimony
14 of Special Agent Steven Lamp, there is sufficient
15 evidence for the matter in Count 12 to be submitted to
16 the jury as well.

17 And, therefore, the defendant's motion, which
18 is considered under Rule 29 of the Federal Rules of
19 Criminal Procedure, will be denied, and we will proceed
20 with presentation of proof on behalf of the defendant
21 tomorrow, if he, in fact, chooses to present evidence.

22 And let's discuss that now. Mr. Girod, how
23 long do you anticipate that you will need for your
24 case-in-chief?

25 DEFENDANT GIROD: Not long.

1 THE COURT: All right.

2 DEFENDANT GIROD: I don't know, hour or less --

3 THE COURT: All right.

4 DEFENDANT GIROD: -- probably. Don't you
5 think? What do you think? I don't know.

6 THE COURT: Well, I'll tell you the way we will
7 proceed. When we come in tomorrow, of course, you will
8 be able to present any witnesses that you wish to call.
9 Now, if you want to testify in the case, that's your
10 decision.

11 DEFENDANT GIROD: Okay.

12 THE COURT: You'll need -- and if you want to
13 speak with standby counsel about that, of course, you can
14 certainly consult with him.

15 DEFENDANT GIROD: Okay.

16 THE COURT: We had talked earlier today about a
17 procedure to be followed, that if you want him to ask you
18 the questions, you can write those questions out. He'll
19 stand at the podium, and he'll ask you those questions.

20 Now, they're subject to any objections that
21 might be raised by the government, and I will need to
22 rule on those if there are objections.

23 DEFENDANT GIROD: Okay.

24 THE COURT: But that's the way I believe the
25 parties had agreed to present the matter, and so you will

1 be able to do that. You will be able to testify if you
2 wish to do so.

3 Of course, there's always a peril. If you're a
4 defendant in the case, there's always a peril of
5 testifying, and you would be subject to cross-examination
6 by the United States. You're aware of that, but, of
7 course, you can talk with your attorney about the
8 advantages or disadvantages of you testifying in the
9 case.

10 DEFENDANT GIROD: All right.

11 THE COURT: All right. I would expect if we do
12 have an hour or less of testimony in the morning by the
13 defense in the case, unless there's some rebuttal
14 testimony or evidence, we'd have a bit of a gap because
15 we would have to finalize the jury instructions.

16 So I would recommend that the parties take a
17 look, a hard look, of that set of draft instructions that
18 you were given earlier, that I gave to you Monday
19 morning, I think.

20 So please take a look at those instructions
21 because what happens is after all the evidence has been
22 presented, and both parties announce close, we'll have
23 what's called an instructions conference, and we'll go
24 through the particular jury instructions that would be
25 submitted to the jury.

1 I'm planning to instruct last in this case, but
2 I do want to alert the parties because I've given you two
3 days to look at those materials. I usually don't like to
4 keep the jury out too long, waiting for too long. So
5 we'll have our instructions conference at the conclusion
6 of all of the proof.

7 All right. Any other issues we need to take up
8 tonight before we recess?

9 MS. SMITH: No, Your Honor. I just want to
10 make sure the defendant is advised of the proper format
11 for direct examination, the types of questions. I assume
12 his lawyer will cover that with him.

13 THE COURT: I would assume so. If we have
14 problems, I will just have to take those up as we
15 proceed.

16 MS. SMITH: Right.

17 THE COURT: I can't really put a lot of
18 parameters on it at this point in terms of questions that
19 can be asked, other than to remind the parties as I did
20 earlier today about my prior rulings that have been
21 incorporated with the motions in limine --

22 MS. SMITH: Yes, Your Honor.

23 THE COURT: -- that have been incorporated.

24 All right. Thank you.

25 If there's nothing else to be taken up, we will

1 be in recess until 9:00 a.m. tomorrow morning.

2 (Whereupon, Day 2 of the Jury Trial proceedings
3 adjourned at 4:40 p.m.)

4 C E R T I F I C A T E

5 I, Peggy W. Weber, certify that the foregoing is a
6 correct transcript from the record of proceedings in the
7 above-entitled matter.

8
9
10 May 31, 2017
DATE

s/Peggy W. Weber
PEGGY W. WEBER, RPR

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W I T N E S S E S

Pages

PROOF ON BEHALF OF THE GOVERNMENT:

Testimony of JANE LIEDTKA, M.D.

Direct Examination by Ms. Smith 14

Cross-Examination by Defendant Girod 43

Redirect Examination by Ms. Smith 53

Recross-Examination by Defendant Girod 55

Testimony of MARY MILLER

Direct Examination by Ms. Smith 58

Cross-Examination by Defendant Girod 78

Testimony of MARK WOOTEN

Direct Examination by Ms. Smith 81

Testimony of KEVIN MILLER

Direct Examination by Mr. Bradbury 87

Cross-Examination by Defendant Girod 96

Testimony of JEFFREY BURKHOLDER

Direct Examination by Ms. Smith 98

Cross-Examination by Defendant Girod 120

Testimony of MARY J. MILLER

Direct Examination by Mr. Bradbury 121

Cross-Examination by Defendant Girod 130

Testimony of DARRELL MANDRELL

Direct Examination by Ms. Smith 136

Testimony of CHARLES MILLIGAN

Direct Examination by Ms. Smith 160

Cross-Examination by Defendant Girod 170

Testimony of BRIDGET SARGENT

Direct Examination by Ms. Smith 174

Cross-Examination by Defendant Girod 187

Testimony of MATTHEW SUEDEKAMP

Direct Examination by Ms. Smith 192

Cross-Examination by Defendant Girod 211

Redirect Examination by Ms. Smith 212

W I T N E S S E S

Pages

CONTINUED PROOF ON BEHALF OF THE GOVERNMENT:

Testimony of STEVEN LAMP	
Direct Examination by Ms. Smith	214
Testimony of GARY HEIDEN	
Direct Examination by Ms. Smith	254
Certificate of Reporter	282
Index of Witnesses	283
Index of Exhibits	285

E X H I B I T S

Admitted

GOVERNMENT'S EXHIBITS:

No. 1V	Photograph of Mr. Girod's mailbox/driveway entrance	219
No. 1W	Photography of Mr. Girod's driveway	219
No. 5A	Template for Chickweed Salve label and invoice #22719 for \$511 dated 06/03/14	140
No. 5B	Template for Chickweed Salve label and invoice #23260 for \$276 dated 08/25/14	140
No. 6	Template for Sin-Eze label and invoice #22887 for \$605 dated 06/26/14	143
No. 7	Template for TO-MOR-GONE label and invoice #22095 dated 03/04/14 for \$199.20	145
No. 8A	Invoice #21998 for \$345 dated 02/18/14	146
No. 8B	Invoice #22585 for \$107.75 dated 05/08/14	146
No. 8C	Invoice #22632 for \$50 dated 05/16/14	146
No. 9A	Check #2463 for \$611 dated 03/04/14 (account information redacted)	148
No. 9B	Check #2642 for \$668.75 dated 06/16/14 (account information redacted)	148
No. 9C	Check #2783 for \$276 dated 09/17/14 (account information redacted)	148
No. 10A	Photos of product collected from Cloverdale Warehouse in Wisconsin - 413 four ounce Chickweed Salve	236
No. 10B	Photos of product collected from Cloverdale Warehouse in Missouri - 619 four ounce Chickweed Salve	236
No. 10C	Photo of boxes collected from Cloverdale Warehouse	110

E X H I B I T S

Admitted

GOVERNMENT'S EXHIBITS:

No. 11	Invoice #409425 to Cloverdale Warehouse for \$6,000 dated 09/27/13	104
No. 12	Check #3979 from Cloverdale Warehouse to Satterfield Naturals for \$6,000 dated 10/24/13	104
No. 13	Invoice #2140516012 from Cloverdale Warehouse to Satterfield Naturals for \$2,236.24 dated 05/19/14	116
No. 14	Check #2647 from Sam Girod to Cloverdale Warehouse for \$2,236.24 dated 06//17/14 (account information redacted)	116
No. 15	Photos of product collected from Miss Vivian's - 23 containers of Chickweed Salve	236
No. 16A	Chickweed Healing Salve flyer collected from Miss Vivian's LLC	183
No. 16B	Photograph of brochures of Chickweed Healing Salve collected from Miss Vivian's LLC	185
No. 17A	Invoice to Herbs and More for \$308 dated 11/14/13	179
No. 17B	Check #10154 from Miss Vivian's LLC to Satterfield Naturals for \$308 dated 11/14/13	179
No. 18A	Photos of product collected from Miller's Dry Goods - 16 bottles of R.E.P.	236
No. 18B	Photos of product collected from Miller's Dry Good's 48 containers of Chickweed Salve	236

E X H I B I T S

Admitted

GOVERNMENT'S EXHIBITS:

No. 18C	Product collected from Miller's Dry Goods - 32 containers of TO-MOR-GONE	236
No. 19	Labeling collected from Miller's Dry Goods	125
No. 20	Invoice #438087 to Miller's Dry Goods for \$703 (undated)	126
No. 21	Check #2103 from Miller's Dry Goods to Satterfield Naturals for \$703 dated 11/13/13 (account information redacted)	126
No. 23	Invoice #438089 to Family Health Foods for \$126 dated 10/13/13	91
No. 24	Check #2645 from Family Health Foods to Satterfield Naturals for \$126 dated 11/13/13	91
No. 25	Photos of product collected from Hollinger's - 18 containers of Chickweed Salve	236
No. 28A	Photos of 11 bottles of R.E.P. collected from Mary Miller's store	236
No. 28B	Photos of 90 containers of Chickweed Salve collected from Mary Miller's store	236
No. 28C	Photos of 14 containers of TO-MOR-GONE collected from Mary Miller's store	236
No. 29	Invoice #540222 to Miller's Country Store for \$765 dated 06/02/14	61
No. 30	Check #3569 from Miller's Country Store to Satterfield Naturals for \$765 dated 06/02/14	61

E X H I B I T S

Admitted

GOVERNMENT'S EXHIBITS:

No. 31	Grand Jury Subpoena issued to Mary Miller	68
No. 32	Handwritten letter by Defendant Girod dated 12/15/14	72
No. 33	Handwritten sales ledger for 2012/2013 from Owingsville Banking Co. records	222
No. 34	Satterfield Naturals Product Line Catalog	150
No. 35	Invoice #26409 from Gateway Printing to Sam Girod for \$620 dated 12/23/15	154
No. 36A	Template for Original Chickweed label	156
No. 36B	Template for Original Chickweed wrap label	156
No. 36C	Template for Original Chickweed pamphlet	156
No. 37	Invoice #27461 from Gateway Printing to Sam Girod for \$1,619 dated 06/08/16 and check #3366 to Manley's Printing from Sam Girod for \$1,619 dated 06/14/16 (account information redacted)	174
No. 39	Defendant Girod's order setting conditions of release entered 11/02/15	239
No. 40	Defendant Girod's motion to compel dated 06/09/16	241
No. 41	Order denying Defendant Girod's motion to compel dated 06/13/16	243
No. 42	Transcript of hearing held on 06/27/16	245
No. 44	Judge Reeves' order entered 08/26/16 (DE #81)	247

E X H I B I T S

Admitted

GOVERNMENT'S EXHIBITS:

No. 45	Court of Appeals filing (Writ of Prohibition) filed by Defendant Girod 08/29/16 (DE #5)	262
No. 46	Returned mail from Defendant Girod's residence (DE #82)	249
No. 47	Curriculum Vitae of Jane Liedtka, M.D.	16

DEFENDANT'S EXHIBITS:

No. 1	FDA lab analysis; RE: Girod products	45
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